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### Details of Filing

Document Lodged:	Statement of Claim - Form 17 - Rule 8.06(1)(a)
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Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink that reads "Sia Lagos".

Dated: 24/03/2021 11:10:54 AM AEDT

Registrar

### Important Information

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Form 17

Rule 8.05(1)(a)

**Further Amended Statement of claim**

(Filed pursuant to orders made by Justice Stewart on 16 March 2021)~~(Filed pursuant to orders made by Justice Lee and Justice Stewart on 9 September 2020)~~

No. NSD806 of 2020

Federal Court of Australia

District Registry: New South Wales

Division: General

**Susan Karpik**

Applicant

**Carnival PLC** (ARBN 107 998 443 / ABN 23107998443) **(the First Respondent)**

**Princess Cruise Lines Limited** (a company registered in Bermuda) **(the Second Respondent)**

Respondents

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### Overview of Claim

- A. Coronavirus is a disease that is and was at all material times known to be highly contagious and incurable. Those who are infected can have a mild illness but can also have a severe illness resulting in multiple organ failure, coma, and death.
- B. On 20 January 2020, the *Diamond Princess* (owned by the Second Respondent, which in turn is owned by the First Respondent) departed Yokohama, Japan, for a round trip across Asia carrying 2,666 passengers. During that holiday cruise, over 700 people were infected with coronavirus. At least seven of those people died before the *Ruby Princess* left port on 8 March 2020. Similarly, on 21 February 2020, the *Grand Princess* (also owned by the Second Respondent) departed San Francisco. A number of people on the ship developed symptoms consistent with coronavirus. On 5 March 2020, helicopters delivered coronavirus test kits to the *Grand Princess*. On 6 March 2020, the Vice President of the United States of America confirmed 21 people of the 46 tested on board were infected with coronavirus. On the same day, one of the Respondents e-mailed future *Ruby Princess* passengers, stating they “*continue to implement increased monitoring, screening and sanitation protocols to protect the health of our guests*”, but that anyone departing on a cruise from 9 March 2020 would be eligible for a 100% refund credit. Coronavirus was not mentioned in the e-mail.
- C. Notwithstanding the recent experiences on cruises as set out above, and the obvious danger associated with them, on 8 March 2020, the Respondents let thousands of passengers board the *Ruby Princess*. In that process, each passenger was asked to fill in a health card, however they were only asked to disclose if they had a fever or were otherwise sick if they were a coronavirus close (or suspected close or monitored) contact or if they had been to a list of countries. Anyone else who had a fever, cough or any other symptoms, were let on board.
- D. On 8 March 2020, the *Ruby Princess* was at red level sanitation, which was a policy of the Respondents requiring the highest level of cleaning and sanitation and no self-service buffets.
- E. Mr and Mrs Karpik embarked, healthy, on 8 March 2020. Like all other passengers they booked their cruise, and embarked on 8 March 2020 expecting a safe, relaxing and pleasurable holiday experience. They went to their cabin and found in their room a half-empty chip packet, a box full of empty bottles and it was apparent that the shelves of the cupboards had not been cleaned. At around this time they were mustered in the

Wheelhouse Bar. They were crammed shoulder-to-shoulder in a small room with about 100 people in it. Moreover, throughout the journey there was self-service food available, including at the buffet and in the form of communal nut bowls, and all the usual amenities were available to be used (and were often crowded).

- F. On 10 March 2020 the Communicable Diseases Network of Australia released guidelines for cruise ships, which classified all persons on board the *Ruby Princess* with an acute respiratory illness or fever as 'suspect cases' for coronavirus. On 10 March there were already 'suspect cases' on board. The Respondents did not warn passengers. On 11 March 2020, the World Health Organisation declared a pandemic. On board activities continued as per usual.
- G. On about 17 March 2020 Mr Greg Jackson, the First Respondent's Vice President of Fleet Operations told Mr Peter Little, Senior Vice President and employee of the First Respondent in writing that "Ruby Numbers are going berserk", meaning the numbers of 'suspect cases' were spiralling out of control. They did not inform the passengers. By 18 March there were over 100 'suspect cases' on board.
- H. On around 16 or 17 March, Mr Karpik went to the on-board Medical Centre reporting symptoms consistent with coronavirus, including fever. Initially he was told he did not need to self-isolate, however on another visit to the Medical Centre later that day he was told to self-isolate. He was not told, at any time by the ship's medical staff, that he might have coronavirus. After the cruise Mr Karpik was taken to hospital by ambulance, placed in a medically induced coma, intubated and ventilated. He almost died. He continues to suffer ongoing medical complications as a result. This has been, at the risk of understatement, extremely distressing for Mrs Karpik.
- I. **Purpose and Result Guarantees:** It is obvious that any person who goes on a cruise for the purpose of having a holiday wants it to be a safe, relaxing and pleasurable experience from which they *come back new*®. Passengers expect that the positive benefits of a cruise will last for a reasonable period on their return and that they will not experience any adverse consequences on their return by reason of the cruise. That is the purpose for which passengers go on cruises and the result they desire. The experience of the Group Members as passengers on the *Ruby Princess* cruise was diametrically opposite. Mrs Karpik was significantly distressed, *inter alia*, by the mismanagement of the risk of coronavirus by the Respondents, by the fear it was on the ship, by the fear that she might get it, by the fear that if she got it that she might spread

it and most of all by her husband almost dying from it. The Respondents breached the guarantees imposed by s.61 of the *Australian Consumer Law*.

- J. **Negligence:** The Respondents were negligent in letting anyone board the vessel at all. The cruise should never have departed. Further, once they let people on board, they failed to take even the most basic of steps to protect the health and safety of passengers. There are many factors that inexorably lead to those conclusions, some of which are that they did not ask the vast majority of the people boarding the cruise if they had symptoms consistent with coronavirus, they did not test any temperatures of those boarding, they did not warn anyone of the risks of coronavirus on board (before boarding, after 'suspect cases' came to their knowledge or even when, by their own admission, the numbers of 'suspect cases' were going "berserk"), they failed to isolate 'suspect cases', they failed to warn 'suspect cases' that they may have coronavirus, they allowed self-service food (in breach of their own policy), did not impose physical distancing, and they did not properly clean and sanitise the ship even when they were on red level sanitation (their highest alert level).
- K. **Misleading conduct:** By letting people on board, the Respondents misled passengers into thinking it was safe to board, and they further misled passengers by promising in their 6 March e-mail to "*protect the health of our guests*" with "*recommended best practices*". As is clear from the above, this was false. They also misled passengers into believing that they would have a relaxing, pleasurable and enjoyable time on the Ruby Princess and would come back feeling new. By no later than midday 8 March 2020 it was clear that this was not going to be the case.
- L. In terms of damage, Mrs Karpik suffered, *inter alia*, economic loss as well as distress and disappointment damage. She also seeks aggravated and exemplary damages, *inter alia*, because the Respondents put their corporate profits before her and her husband's health and safety. The Respondents had total control of an enclosed space (being the *Ruby Princess*) and knew there was a real risk that the passengers who entered into that space may become trapped there with an uncontrollable, spreading, contagious, life-threatening virus – as occurred on their other ships, the *Diamond Princess* and *Grand Princess*. Accordingly, common sense and human decency would create an expectation that that knowledge of the risk and its dire consequences would be disclosed to passengers before they boarded so each passenger could make up their own minds as to whether they wished to risk their health, safety and life and the health, safety and life of their family members (and friends). There was no such warning or disclosure. It is

even more reprehensible that they continued to keep amenities such as bars and the nightclub open as they knew (at the highest levels of management) that the numbers of 'suspect cases' were going "berserk" (or at any time they had 'suspect cases'). If they shut down some of the amenities while the numbers were going "berserk" they might have lost revenue.

- M. As a result of the *Ruby Princess* outbreak almost 40% (663 people) of the Australians on board were confirmed to have contracted coronavirus, and 28 people have tragically died according to the Special Commission of Inquiry (at [14.2]). The overseas traveller infection numbers are not yet known.

## A Parties

### A.1 The Applicant and Group Members

- 1 This is a representative proceeding commenced pursuant to s 33C of the *Federal Court of Australia Act 1976*.

- 2 The Group Members are:

(a) **Passenger Group Members**, being persons who:

- I. travelled on board the vessel "Ruby Princess" as a passenger during its voyage from Sydney to Sydney via New Zealand, departing on 8 March 2020 (the **Voyage**) (**Passengers**);
- II. are not deceased;
- III. suffered loss or damage by reason of the Voyage; and
- IV. are not, as at the time of filing of this Statement of Claim, a party to proceedings against any Respondent in which the same relief as is claimed on their behalf in this proceeding is available; or

(b) **Executor Group Members**, being persons who:

- I. are the executor or administrator of a person:
  - (A) who was a Passenger; and



- (B) who contracted “severe acute respiratory syndrome Coronavirus number two” (known also as SARS-Cov-2), being a coronavirus that infects humans and causes the disease known as COVID-19 (**Coronavirus**), during the Voyage; and
    - (C) who died by reason of contracting Coronavirus during the Voyage; and
    - (D) whose death resulted in injury, loss or damage to the person’s spouse, brother, sister, half-brother, half-sister, parent, or child; and
    - (E) who did not have more than one spouse; and
  - II. are not, as at the time of filing of this Statement of Claim, a party (in their capacity as the executor or administrator of the Passenger described above in subparagraph I above) to proceedings against any Respondent in which the same relief as is claimed on their behalf in this proceeding is available; or
- (c) **Close Family Group Members**, being persons who:
- I. are a close member of the family (as that term is defined in s 30 of the *Civil Liability Act 2002* (NSW)) (**Close Family Member**) of a person who:
    - (A) was a Passenger; and
    - (B) contracted Coronavirus during the Voyage; and
    - (C) died or became severely ill by reason of contracting Coronavirus during the Voyage; and
  - II. suffered a recognised psychiatric injury arising wholly or partly from mental or nervous shock in connection with the person described in subparagraph I above dying or becoming severely ill by reason of contracting Coronavirus during the Voyage; and
  - III. are not, as at the time of filing of this Statement of Claim, a party to proceedings against any Respondent in which the same relief as is claimed on their behalf in this proceeding is available.

- 3 As at the date of commencement of these proceedings, there are seven or more Group Members.

A.2 The Respondents

- 4 At all material times, the **First Respondent** (Carnival plc):
- (a) was an incorporated entity able to sue and be sued;
  - (b) traded as 'Princess Cruises';
  - (c) had a registered office in New South Wales, Australia;
  - (d) carried on business in Australia;
  - (e) traded as 'Carnival Australia' in Australia;
  - (f) was a registered foreign company, having:
    - I. an ABN of 23 107 998 443;
    - II. an ARBN of 107 998 443;
  - (g) owned the Second Respondent;
  - (h) together with Carnival Corporation collectively owns and operates a number of subsidiaries, including nine cruise line brands;
  - (i) was the time charterer of the vessel Ruby Princess; and
  - (j) was the employer of some shore-based personnel in Sydney who were involved in:
    - I. managing the arrival of the Ruby Princess in Sydney on 8 March 2020;
    - II. managing the departure of the Ruby Princess from Sydney later that day and the ship's arrival in Sydney on 19 March 2020; and
    - III. issuing instructions as to the conduct of that voyage, including instructions to the ship's commodore during the voyage.

### **Particulars**

The relevant employees included:

- Valerie Burrows, Port Agent Manager, Carnival Australia;
- Dobrila Tokovic, Port Agent, Carnival Australia;
- Greg Jackson, Vice-President of fleet operations, Carnival Australia;
- Peter Little, Senior Vice-President Guest Experiences, P&O Cruises;
- Paul Misfud, Senior Director, Port Operations Asia-Pacific, Carnival Australia; and
- Sture Myrmell, President, Carnival Australia.

5 At all material times, the **Second Respondent** (Princess Cruise Lines Ltd):

- (a) was an incorporated entity able to sue and be sued;
- (b) carried on business in Australia;
- (c) was incorporated in Bermuda;
- (d) was a subsidiary of the First Respondent;
- (e) owned the vessel *Ruby Princess*;
- (f) operated the vessel *Ruby Princess*;
- (g) owned the vessel *Diamond Princess*;
- (h) operated the vessel *Diamond Princess*;
- (i) owned the vessel *Grand Princess*; and
- (j) operated the vessel *Grand Princess*.

### **B Coronavirus Characteristics**

6 Coronavirus has the characteristics pleaded in paragraphs 7 to 16 below (**Coronavirus Characteristics**).

- 7 Coronavirus can be transmitted via objects and bodily fluids contaminated with the virus.
- 8 Coronavirus is capable of human-to-human transmission.
- 9 Human-to-human transmission of Coronavirus can occur via droplets and fomites from an infected person.
- 10 Coronavirus can be transmitted by a person who suffers from one or more symptoms at the time of transmission:
  - (a) directly to another person; and or
  - (b) indirectly to another person by depositing Coronavirus on to a surface, food or an object and another person becoming infected after contact with that surface, food or object.
- 11 Coronavirus can also be transmitted by a person who had no symptoms at the time of transmission:
  - (a) directly to another person; and or
  - (b) indirectly to another person by depositing Coronavirus on to a surface, food or an object and another person becoming infected after contact with that surface, food or object.
- 12 Coronavirus is highly contagious.
- 13 At all material times there was no vaccine or cure for Coronavirus.
- 14 Coronavirus can cause the following symptoms, *inter alia*:
  - (a) lethargy;
  - (b) coughing;
  - (c) shortness of breath;
  - (d) fever;
  - (e) lifelong internal organ damage;
  - (f) an inability to properly breathe without a respirator; and / or

- (g) death.
- 14A The symptoms caused by Coronavirus may be similar to, or the same as, symptoms caused by an acute respiratory illness (**ARI**) and/or and influenza-like illness (**ILI**).
- 15 The mortality rate in people infected with Coronavirus increases with age.
- 16 People who are elderly or who have comorbid conditions are more susceptible to becoming severely ill or dying due to Coronavirus than people who are not elderly or have no comorbidities.
- 17 The World Health Organisation (**WHO**) declared the outbreak of Coronavirus a Public Health Emergency of International Concern on 30 January 2020.
- 18 By 8 March 2020:
- (a) there had been over 100,000 confirmed cases of Coronavirus reported globally;
  - (b) over 90 countries had confirmed cases of Coronavirus;
  - (c) countries that had over 100 confirmed cases included:
    - I. United Kingdom;
    - II. United States of America;
    - III. Canada;
    - IV. France;
    - V. Germany;
    - VI. Italy;
    - VII. Netherlands; and
    - VIII. Spain;
  - (d) there had been local transmission of Coronavirus reported in more than 40 countries including each of those countries listed at (i) to (viii) of the previous sub-paragraph.

### **Particulars**

World Health Organisation (**WHO**) Coronavirus disease 2019 (COVID-19)  
Situation Report – 47, data as of 7 March 2020:

<https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200307-sitrep-47-covid-19.pdf> at pp 3-6

19 By 8 March 2020, in Australia:

- (a) there were over 70 confirmed cases of Coronavirus, including two deaths;
- (b) 16 cases had direct or indirect links to mainland China;
- (c) 10 cases were among the 'Diamond Princess' cruise ship passengers repatriated from Japan;
- (d) 16 cases had direct or indirect links to the Islamic Republic of Iran;
- (e) 14 cases had a recent travel history to other countries, including:
  - I. the United Kingdom; and
  - II. the United States of America.

### **Particulars**

On 5 March 2020, it was reported that a 29 year old female had tested positive for Coronavirus in Queensland, having recently travelled from London to Brisbane, with a short stopover in Singapore:

<https://www.health.qld.gov.au/news-events/doh-media-releases/releases/queensland-coronavirus-update15>

On 7 March 2020, it was reported that a doctor in Victoria, who had travelled back from the United States to Melbourne on or about 29 February 2020, had tested positive for Coronavirus and mostly likely acquired his infection in the United States:

<https://www2.health.vic.gov.au/about/media-centre/MediaReleases/eleventh-case-coronavirus-victoria>.

## **C    Coronavirus Risk**

- 19A    As at 8 March 2020, the risk of contracting Coronavirus on a cruise ship (**Cruise Ship Coronavirus Risk**) was heightened as compared to the risk of contracting Coronavirus in the community generally.

### **Particulars**

The risk of contracting Coronavirus on a cruise ship is heightened by the following characteristics of cruise ships:

- passengers and crew travel to the cruise from a diversity of geographic regions;
- cruise ships are inherently confined spaces, resulting in reduced physical distancing;
- recreational, health and dining facilities on cruise ships are shared between passengers, leading to frequent physical interaction between crew and passengers and numerous 'high-touch' surfaces;
- cruise ships offer and promote recreational and entertainment activities requiring physical interaction between crew and passengers and reduced physical distancing; and
- passengers who fall ill with a highly infectious illness on a cruise may not be able to be removed from the cruise for several days, or at all, depending on the nature of the voyage.

Further and better particulars may be provided following the exchange of expert evidence.

- 20    Prior to the Voyage of the *Ruby Princess* departing Sydney on 8 March 2020, Coronavirus outbreaks had occurred on board other cruise ships, including at least two cruise ships owned by Princess Cruise Lines.

### **Particulars**

The Diamond Princess outbreak in about late January and February 2020 referred to in paragraphs 21 to 32 below.

The Grand Princess outbreak on and from about 5 March 2020 referred to at paragraphs 33 to 37 below.

C.1 *Diamond Princess* outbreak

- 21 On 20 January 2020, the *Diamond Princess* departed Yokohama Port on a 16-day round trip itinerary, including travelling to Hong Kong on 25 January 2020 (***Diamond Princess* cruise**).
- 22 There were approximately 3,700 passengers on board the *Diamond Princess* for the cruise.
- 23 On or about 1 February 2020, the Second Respondent and/or the First Respondent announced that a guest from Hong Kong who travelled for five days on *Diamond Princess* from 20 January and disembarked in Hong Kong on 25 January 2020, tested positive for Coronavirus on 1 February 2020, six days after leaving the ship.

**Particulars**

Announcement made on 1 February 2020:

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 24 On or about 4 February 2020, the Second Respondent and/or the First Respondent announced that 10 people on board *Diamond Princess* had tested positive for Coronavirus, including two Australian guests, three Japanese guests, three guests from Hong Kong, and one guest from the U.S. in addition to one Filipino crewmember.

**Particulars**

Announcement made on 4 February 2020 at 6.00PM Pacific Time (PT):

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 25 On or about 9 February 2020, the Second Respondent and/or the First Respondent announced an additional 66 cases of Coronavirus as tested by the Japanese Ministry of Health on *Diamond Princess*.



### **Particulars**

Announcement made on 9 February 2020 at 11.00PM PT:

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 26 On or about 11 February 2020, the Second Respondent and/or the First Respondent announced 39 new positive cases of Coronavirus on board *Diamond Princess*.

### **Particulars**

Announcement made on 11 February 2020 at 11.00PM PT:

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 27 On or about 16 February 2020, the Second Respondent and/or the First Respondent announced 67 new positive cases of Coronavirus on board *Diamond Princess*.

### **Particulars**

Announcement made on 16 February 2020 at UTC+9:

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 28 On or about 18 February 2020, the Second Respondent and/or the First Respondent announced a total of 169 new positive cases of Coronavirus on board *Diamond Princess*.

### **Particulars**

Announcement made on 18 February 2020 at UTC+9:

[https://www.princess.com/news/notices\\_and\\_advisories/notices/diamond-princess-update.html](https://www.princess.com/news/notices_and_advisories/notices/diamond-princess-update.html)

- 29 By 20 February 2020, over 600 people who had been on the *Diamond Princess* cruise had tested positive for Coronavirus.
- 30 On or about 1 March 2020, a passenger who had contracted Coronavirus on the *Diamond Princess* cruise became the first Australian to die due to Coronavirus.
- 31 By 7 March 2020:

- (a) over 600 passengers who had been on the *Diamond Princess* cruise had tested positive for Coronavirus;
- (b) over 300 of those confirmed cases showed no symptoms of Coronavirus at the time of specimen collection for testing; and
- (c) more than 5 passengers from the *Diamond Princess* cruise had died due to Coronavirus.

32 By 8 March 2020, when the *Ruby Princess* departed Sydney:

- (a) 7 passengers from the *Diamond Princess* cruise had died due to Coronavirus;
- (b) nearly 700 (over 18%) of the approximately 3,700 passengers who had been on the *Diamond Princess* cruise had tested positive for Coronavirus; and
- (c) over 40% of the people on the *Diamond Princess* cruise who tested positive for Coronavirus were asymptomatic at the time of testing.

## C.2 *Grand Princess* outbreak

33 From 11 to 21 February 2020, the *Grand Princess* sailed on a roundtrip passenger cruise from San Francisco, California.

34 On 21 February 2020, the *Grand Princess* departed San Francisco on a second voyage, carrying approximately 3,750 passengers.

35 By 4 March 2020:

- (a) at least one passenger from the 11-21 February cruise on the *Grand Princess* had tested positive for Coronavirus; and
- (b) at least one passenger from the 11-21 February cruise on the *Grand Princess* had died as a result of Coronavirus.

36 On or about 4 or 5 March 2020, after the Second Respondent was notified of the positive test, it commenced cancelling all social activities planned for the remainder of the second voyage.

37 On or by 6 March 2020, over 20 passengers on the *Grand Princess* had tested positive for Coronavirus.

C.3 *Ruby Princess* 24 February 2020 outbreak

- 38 On 24 February 2020, the *Ruby Princess* departed Sydney on a cruise to New Zealand, returning to Sydney on 8 March 2020 (**24 February Cruise**).
- 39 On 7 March 2020:
- (a) there were approximately 3,000 passengers and 1,163 crew on board the *Ruby Princess*;
  - (b) 170 of those persons had presented to the ship's Medical Centre with acute respiratory illness;
  - (c) 18 had presented with influenza-like illness; and
  - (d) the ship had only six viral swabs on board.
- 40 On 8 March 2020 when the *Ruby Princess* docked at Sydney:
- (a) over 360 persons gathered in the dining room on board the ship for health screening;
  - (b) those persons gathered in the dining room following an announcement made on the ship calling for anyone with a travel history of concern or respiratory symptoms to present themselves for screening;
  - (c) the people in the dining room were not practising physical distancing and were not wearing face masks when they first gathered in the dining room;
  - (d) approximately 240 of those people had symptoms consistent with Coronavirus;
  - (e) fewer than 10 of those people were tested for Coronavirus;
  - (f) each of the tests were negative;
  - (g) over 200 of the people who had gathered in the dining room on the *Ruby Princess* on the morning of 8 March 2020 and who had symptoms consistent with Coronavirus;
  - (h) were not tested for Coronavirus on 8 March 2020 prior to disembarking from the *Ruby Princess*; and

- (i) so far as the First Respondent and/or the Second Respondent were aware at the time, did not get tested and receive negative test results for Coronavirus prior to the *Ruby Princess* departing later that day on its next voyage.

41 In the circumstances, there was a not insignificant risk that:

- (a) one or more of the passengers or crew who had been on the 24 February Cruise on the *Ruby Princess* had been infected with Coronavirus whilst they were on board the *Ruby Princess*; and
- (b) there were active / contagious Coronavirus particles on the *Ruby Princess* on 8 March 2020, at the end of the 24 February Cruise.

41A As at 8 March 2020:

- (c) there was a risk that Passengers would contract Coronavirus during the Voyage, which risk was, by reason of the matters pleaded in paragraph 41 above, heightened as compared to:
  - I. the risk of contracting Coronavirus in the community generally; and
  - II. the Cruise Ship Coronavirus Risk,

**(Ruby Princess Coronavirus Risk).**

#### **D Reasonable Precautions**

41B As at 8 March 2020, the Ruby Princess Coronavirus Risk could have been avoided by cancelling the Voyage.

42 Further, as at 8 March 2020, the Ruby Princess Coronavirus Risk could have been avoided or reduced by the Respondents taking the following reasonable precautions prior to boarding the ship:

- (a) ensuring that the ship was thoroughly cleaned prior to Passengers boarding the ship;
- (b) immediately prior to boarding,
  - I. asking each Passenger individually if they had any symptoms consistent with ARI/ILI or Coronavirus, such as shortness of breath, cough or fever,

and refusing to permit any Passenger who advised that they had any such symptoms to board; and

- II. testing each Passenger's temperature to determine if that Passenger had a fever, and refusing to permit any Passenger who had a fever to board;

(c) before permitting any new Passenger to board:

- I. asking each crew member on board if they had any symptoms consistent with ARI/ILI or Coronavirus, such as shortness of breath or cough or fever, and requiring any crew member who advised that they had any such symptoms:

- (A) to disembark and remain off the ship until such time as the crew member tested negative for Coronavirus; or,

- (B) alternatively, to quarantine on board until such crew member tested negative for Coronavirus;

- II. testing each crew member's temperature to determine if that person had a fever and requiring any crew member who had a fever:

- (A) to disembark and off the ship until such time as the crew member tested negative for Coronavirus; or,

- (B) alternatively, to quarantine on board until such crew member tested negative for Coronavirus;

(d) making enquiries of each Passenger to identify Passengers who, in the last 14 days had travelled:

- I. from a country other than Australia (**Overseas Passengers**);

- II. from:

- (A) a country other than Australia that had experienced local transmission of Coronavirus and/or had reported more than 100 confirmed cases of Coronavirus (each a **High Risk Country**); or

- (B) China, Hong Kong, Macau, South Korea, Iran, Italy, Japan, Singapore, Taiwan, Thailand, Cambodia and or Indonesia (each a **High Risk Country**)

(each a **High Risk Overseas Passenger**);

(e) [not used]

(f) [not used]

(g) [not used]

(h) [not used]

(i) [not used]

(j) in respect of Overseas Passengers:

- I. considering whether any Overseas Passenger may have been exposed to Coronavirus, including on their flight to Australia;
- II. conducting further health screening of each Overseas Passenger, away from other Passengers;

(k) in respect of High Risk Overseas Passengers:

- I. refusing to permit High Risk Overseas Passengers to board, unless the Passenger tested negative for Coronavirus;
- II. alternatively, requiring High Risk Overseas Passengers to quarantine on board until the later of:
  - (A) the expiration of 14 days from the date upon which the High Risk Overseas Passenger last visited a High Risk Country; or,
  - (B) in the event that the High Risk Overseas Passenger developed ARI/ILI or Coronavirus symptoms during quarantine, the conclusion of the Voyage;
- III. alternatively, requiring all High Risk Overseas Passengers to minimise close contact with other persons during and after the embarkation process

and to stay a minimum distance of two metres (alternatively, 1.5 metres) from other Passengers and crew;

- (l) limiting the number of Passengers permitted to board the ship in order to allow for physical distancing during the Voyage and prevent overcrowding;
- (m) complying with up-to-date government, industry and company guidelines, protocols and procedures concerning Coronavirus; and
- (n) warning Passengers of:
  - I. the Cruise Ship Coronavirus Risk; and
  - II. the Ruby Princess Coronavirus Risk.

**(Reasonable Pre-boarding Precautions).**

43 Further, as at 8 March 2020, the Ruby Princess Coronavirus Risk could have been avoided or reduced by the Respondents taking the following reasonable precautions after boarding and throughout the duration of the Voyage:

- (a) requiring passengers and crew to wash their hands with soap for 20 or more seconds or use appropriate sanitiser when entering or leaving public areas;
- (b) adequately cleaning the ship, including by sanitising all surfaces on the ship ordinarily touched by Passengers or crew with specialised chemicals capable of killing Coronavirus;
- (c) preventing self-service of food;
- (d) preventing the use of common implements for the handling of food;
- (e) preventing food being served by hand, including communal nut and chip bowls;
- (f) requesting all Passengers and crew on board to engage in physical distancing;
- (g) limiting numbers of people within all parts of the ship to allow for physical distancing (and closing such parts which could not permit adequate physical distancing);
- (h) requiring all Passengers and crew to wear masks in public spaces (except where eating or drinking with appropriate physical distancing);

- (i) [not used]
- (j) [not used]
- (k) [not used]
- (l) [not used]
- (m) [not used]
- (n) [not used]
- (o) [not used]
- (p) having adequate personal protective equipment (**PPE**), viral swabs, and influenza testing kits on board and using that equipment as appropriate;
- (q) notifying all Passengers and crew that medical assessments would be provided free of charge for any Passengers and crew who were experiencing symptoms consistent with ARI/ILI or Coronavirus (such as fever, cough or shortness of breath);
- (r) in respect of Passengers and crew who were experiencing symptoms consistent with ARI/ILI or Coronavirus (such as fever, cough or shortness of breath):
  - I. directing such persons to seek immediate medical assessment;
  - II. providing such persons with an immediate medical assessment, free of charge;
  - III. conducting medical assessments of such persons away from other Passengers and crew, and utilising adequate PPE;
  - IV. testing such persons for Coronavirus;
  - V. advising such persons that it was possible that they were infected with Coronavirus;
  - VI. unless such persons tested negative for Coronavirus, requiring such persons to quarantine on board until the conclusion of the Voyage; or
  - VII. alternatively, requiring such persons to wear masks in public areas;



- (s) regularly monitoring, including throughout the voyage, developments in relation to Coronavirus, including its nature, detection, diagnosis, the mechanisms by which it spreads, methods and procedures to be adopted to reduce its spread and guidelines in relation to those matters;
- (t) ensuring that updated information was provided to the Commodore, ship Medical Centre, hotel manager and or other necessary officers (including the ship's doctor) during the Voyage in relation to the matters identified as a result of the monitoring described in subparagraph (s) above;
- (u) conducting regular assessments throughout the Voyage of the risk of Passengers contracting Coronavirus during the Voyage, and regularly warning Passengers of that risk and the measures that should be adopted by Passengers in light of that risk; and
- (v) complying with up-to-date government, industry and company guidelines, protocols and procedures concerning Coronavirus,

(**Reasonable Post-boarding Precautions**, and together with the Reasonable Pre-boarding Precautions, the **Reasonable Precautions**).

44 [Not used]

## **E Guidelines, protocols and procedures**

### **E.1 CDC Coronavirus Guidance for Ships**

45 On or about 18 February 2020, the United States Centers for Disease Control and Prevention (**CDC**) released interim "Coronavirus Disease 2019 Guidance for Ships".

#### **Particulars**

A copy of the guidance appears in exhibit 'GT-1' to the statement of Dr Grant Tarling dated 29 June 2020, Exhibit 106 in the evidence in the Special Commission of Inquiry at pp CAU.001.107.0003 to CAU.001.107.0014.

46 The CDC interim guidance as revised on 18 February 2020, *inter alia*:

- (a) provided guidance for preventing the spread of Coronavirus during and after a voyage;

(b) advised that:

- I. “early detection, prevention, and control of Coronavirus Disease 2019 (COVID-19) on ships is important to protect the health of travellers on ships and to avoid transmission of the virus by disembarking passengers and crew members who are suspected of having COVID-19”;
- II. “like other close-contact environments, ships may facilitate transmission of respiratory viruses from person to person through exposure to respiratory droplets or contact with contaminated surfaces”;
- III. “identifying and isolating passengers and crew with possible symptoms of COVID-19 as soon as possible is needed to minimize transmission of this virus”;
- IV. passengers or crew on board who are suspected of having COVID-19 infection be isolated in a single-occupancy cabin with the door closed until symptoms are improved;
- V. “passengers and crew members who have had high-risk exposures to a person suspected of having COVID-19 should be quarantined in their cabins. All potentially exposed passengers, cruise ship medical staff, and crew members should self-monitor under supervision of ship medical staff or telemedicine providers until 14 days after the last possible exposure”;

(c) recommended that ships encourage crew members and passengers to:

- I. postpone travel when sick;
- II. self-isolate and inform the on board Medical Centre immediately if they develop a fever (100.4F / 38C or higher), begin to feel feverish, or develop other signs or symptoms of sickness;
- III. use respiratory, cough, and hand hygiene;

(d) recommended that:

- I. crew members and other staff who may have contact with people with symptoms of Coronavirus be instructed in the proper use, storage, and disposal of personal protective equipment (PPE);

- II. ships should carry a sufficient quantity of PPE, including facemasks;
- III. ships have crew members whose work activities involve contact with passengers and other crew members who have fever or acute respiratory illness:
  - (A) ask the sick person to wear a facemask if tolerated, any time they leave their cabin or interact with other people;
  - (B) maintain a distance of 6 feet from the sick person while interviewing, escorting, or providing other assistance;
  - (C) keep interactions with sick people as brief as possible;
  - (D) limit the number of people who interact with sick people;
  - (E) to the extent possible, have a single person give care and meals to the sick person; and
- (e) recommended a cautious approach to interacting with patients under investigation for Coronavirus, including:
  - I. ask such patients to wear a surgical facemask as soon as they are identified;
  - II. evaluate patients in a private room with the door closed, ideally an airborne infection isolation room, if available; and
  - III. staff entering the room should use precautions and use eye protection (such as goggles or a face shield).

## E.2 NSW Health Coronavirus Procedures for the Cruise Line Industry

- 47 On or about 22 February 2020, the Chief Health Officer for NSW, sent a letter to cruise line industry representatives enclosing a document titled “Enhanced COVID-19 Procedures for the Cruise Line Industry” (**NSW Health 22 February Enhanced Procedure**).

### **Particulars**

A copy of the letter and procedure is at CAU.001.040.6314 – CAU.001.040.6317 in Exhibit 104 in the evidence in the Special Commission of Inquiry.

- 48 The First Respondent and the Second Respondent received the NSW Health 22 February Enhanced Procedure on or about 23 February 2020.

### **Particulars**

Emails dated 23 February 2020 at pp 3-4 [CAU.001.040.5818 - CAU.001.040.5819] in Exhibit 92 in the evidence in the Special Commission of Inquiry.

- 49 The NSW Health 22 February 2020 Enhanced Procedure set out a number of requirements for cruise ships in relation to the on board management of illness, including:
- (a) ensuring that sufficient supplies were available to manage an outbreak of ARI/ILI including facemasks for ill passengers and crew, and PPE for clinical staff;
  - (b) having cruise ship vessel staff ensure that they actively identify passengers and crew with ARI/ILI symptoms (cough, sore throat, fever or difficulty breathing) and ask them to attend the medical clinic for free assessment and management 12 – 24 hours before arrival; and
  - (c) appropriately isolating passengers who may be infectious.
- 50 On 26 February 2020, the First Respondent wrote to NSW Health about the 22 February 2020 Enhanced Procedure and informed NSW Health that:
- (a) “We already encourage reporting of illness throughout the voyage. We will continue to message throughout the cruise.”
  - (b) “We do not consider that the offer of a free assessment [at the medical clinic] for all guests to be necessary or manageable and request this point to be reconsidered.”

- (c) “Our operation over time has provided us with feedback that our current practices are working and we have no evidence to suggest that guests do not present when ill or suffering symptoms.”

**Particulars**

Email dated 26 February 2020 from Sture Myrmell, President, Carnival Australia to NSW Health, copied to Peter Little, with attachment, a copy of which at CAU.001.040.6308 – CAU.001.040.6313 in Exhibit 104 in the evidence in the Special Commission of Inquiry.

- 51 On or about 6 March 2020, the First Respondent and the Second Respondent received an update to the NSW Health ‘Enhanced COVID-19 Procedures for the Cruise Line Industry’, which inter alia, strongly recommended that pre-embarkation screening of crew and passengers include a history of travel in the previous 14 days.

**Particulars**

A copy of the update and cover emails appears in Exhibit 92 in the evidence in the Special Commission of Inquiry at pp 14-19 and 37-41 [CAU.001.040.7498-CAU001.040.7503 and CAU.001.036.5873-CAU.001.036.5877].

- 52 On or about 10 March 2020, the First Respondent and the Second Respondent received an update to the NSW Health ‘Enhanced COVID-19 Procedures for the Cruise Line Industry’ dated 9 March 2020, which inter alia, advised that cruise ship staff should ensure that:

“They actively identify passengers and crew with acute respiratory illness (ARI) – including cough, sore throat, fever or difficulty breathing – by making regular announcements throughout the cruise, inviting them to attend the clinic for assessment.”

**Particulars**

A copy of the update and cover emails appears in Exhibit 106 in the evidence in the Special Commission of Inquiry at pp 54-69.

E.3 Australian Government Guidelines of 6 March 2020

53 The Australian Government, Department of Health authored a document titled *Information for the Cruise Industry* (v3) which was dated 6 March 2020, and provided as follows:

- (a) For passengers or crew presenting with ILI,
  - I. where point of care testing for influenza is available, two samples should be collected using droplet precautions;
  - II. one of those two samples should be tested for influenza and the second for Coronavirus.
- (b) Each of the Respondents should to actively encourage all passengers and crew to seek immediate medical assessment for any ARI/ILI.
- (c) Each of the Respondents should to actively encourage all passengers and crew to seek immediate medical assessment for any ARI/ILI at all stages throughout the Voyage.
- (d) Crew should be advised to continue to follow existing employer infection prevention work instructions when in contact with ill passengers, including the use of personal protective equipment (PPE) when recommended by employer work instructions.
- (e) Crew and passengers should be encouraged to practise good hand hygiene and good sneeze/cough hygiene.
- (f) Crew and passengers should be encouraged to avoid touching the face (mouth, eyes, and nose) with unwashed or gloved hands.
- (g) Crew should use appropriate PPE if close contact with an ill passenger is required.
- (h) If PPE is used, it should be fitted and worn properly.

- (i) Cruise ships should ensure appropriate cleaning and disinfection activities are undertaken.
- (j) If a crew member is required to assist a passenger (and their close personal contacts) who is unwell, the crew member should wear a surgical mask, disposable full-length gown, gloves and eye protection.

### **Particulars**

Information for the cruise industry, Australian Government Department of Health, version 3 (06/03/2020).

#### **E.4 CDNA Guidelines**

- 54 In January and February 2020, the Communicable Diseases Network of Australia (**CDNA**) published guidelines relating to the management and response to Coronavirus for Public Health Units in Australia (**CDNA Guidelines**).

### **Particulars**

A copy of the guidelines is in Exhibit 32 in the evidence in the Special Commission of Inquiry.

- 55 The CDNA Guidelines contained a definition of 'suspect case' of Coronavirus, which broadly defined a "suspect case" as a patient satisfying identified epidemiological and clinical criteria.
- 56 On or about 10 March 2020, the CDNA published amendments to the CDNA Guidelines, which:
- (a) updated and significantly broadened the epidemiological criteria for a "suspect case" of Coronavirus to include all international travel in the 14 days before the onset of illness; and
  - (b) specified clinical criteria as being fever OR acute respiratory infection (e.g. shortness of breath, cough, sore throat) with or without fever,

**(Updated 'Suspect Case' Definition).**

### **Particulars**

Version 1.18 of the CDNA Guidelines.

E.5 Respondents' own protocols

- 57 On or about 27 February 2020, an enhanced fleet sanitation protocol was distributed by the First Respondent and/or the Second Respondent (**Respondent's Fleet Sanitation Protocol**).

**Particulars**

A copy of the Respondents' fleet sanitation protocol appears in exhibit 'GT-1' to the statement of Dr Grant Tarling dated 29 June 2020, Exhibit 106 in the evidence in the Special Commission of Inquiry at p CAU.001.107.0001.

- 58 The Respondents' Fleet Sanitation Protocol required, *inter alia*:
- (a) thermal screening at entrance of cruise terminals;
  - (b) increased frequency of sanitizing for hand touch surfaces in public areas (every 15 minutes).
- 59 On or about February 2020, a document titled *Identification, Assessment and Management of Patients for Coronavirus Disease 2019 (COVID-19)* was issued by the Holland America Group, which is comprised of four of the nine cruise line brands owned and operated by Carnival plc, including the Second Respondent (**Respondents' Identification and Assessment Protocol**).

**Particulars**

A copy of the Respondent's Identification and Assessment Protocol is Exhibit 121 in the evidence in the Special Commission of Inquiry.

- 60 The Respondents' Identification and Assessment Protocol required, *inter alia*:
- (a) that certain individuals who had travelled from or through high risk countries identified in Question 1 would not be permitted to board the ship;
  - (b) that individuals who answered 'yes' to Question 3 would be subject to additional screening, including verification of the absence of reported acute respiratory symptoms in the past 14 days and a temperature of  $<37.5^{\circ}\text{C}$ ;



- (c) individuals who answered 'no' to questions 1, 2 and 3 would be cleared to board;
  - (d) at the ship's on board Medical Centre, medical staff triaging patients with ILIs should wear appropriate PPE including gloves, goggles and N95 masks;
  - (e) on board, all patients presenting with an ILI must be assessed for Coronavirus using the form: "*Interim 2019 novel coronavirus (2019-nCoV) patient under investigation (PUI) form*"; and
  - (f) on board, all patients who meet the ILI case definition should be isolated for at least 24 hours post-resolution of fever.
- 61 The Second Respondent (and further and in the alternative, the First Respondent) had, on and from at least 1 March 2020, a screening policy directed to the health and safety of passengers which policy provided as follows:
- (a) "for those [passengers who have a ticket, but have not yet boarded] who have travelled to countries with community spread of Coronavirus, these guests will undergo additional screening before boarding, including temperature checks";
  - (b) "for those [passengers who have a ticket, but have not yet boarded] who are ill or who have fever will not be allowed to board and will receive a full refund";
  - (c) "all [passengers who have a ticket, but have not yet boarded] will be required to complete a pre-cruise health screening survey at their homes or hotels. These questionnaires will verify travel history within the last 14 days";
  - (d) all "crew members are also being screened" as above;
  - (e) all crew members are providing "a clean bill of health before they are permitted to embark the ship".

### **Particulars**

The Screening Policy was set out by Chief Medical Officer Grant Tarling, on behalf of Princess Cruises, announced the policy on YouTube. The video is available at: <https://www.youtube.com/watch?v=kSOuXwmh9Lo> .

- 62 On or about 7 March 2020, the Second Respondent distributed instructions including to the Hotel Manager on the *Ruby Princess*, to urgently implement the below procedure:

“Wherever operationally possible, staff is to now serve all guest and crew at buffet stations: Horizon Courts, WorldFresh Marketplace and ice cream machines.”

### Particulars

The instruction was emailed by Livio Rebagliati, Director, Fleet of Guest Experience & Quality Assurance at Princess Cruises, to the Ruby Hotel General Manager (among others) prior to 8am Sydney time on 8 March 2020. A copy of the email appears in Exhibit 106 in the evidence in the Special Commission of Inquiry at p 53 [CAU.001.109.0087].

Further particulars may be provided after discovery and evidence.

63 On 8 March 2020, the *Ruby Princess* was at red level sanitation, which was a policy of the Respondents requiring the highest level of cleaning and sanitation.

64 [Not used.]

## F The Voyage

### F.1 Pre-boarding and boarding

65 The *Ruby Princess* was scheduled to depart Sydney at approximately 6.45pm Sydney time on 8 March 2020 for a 13 night round trip via New Zealand.

66 Passengers were scheduled to board at a time between about 12.30pm and 5.45pm Sydney time that day.

67 On or about 5 March 2020, the First Respondent, alternatively the Second Respondent, caused an email to be sent to passengers booked on the voyage on the *Ruby Princess* scheduled to depart on 8 March 2020, which email referred to “New cancellation policy changes” (**5 March 2020 email**).

68 In the 5 March 2020 email, the First Respondent and/or the Second Respondent:

(a) informed the recipients, among other things, that:

I. “We continue to implement increased monitoring, screening and sanitation protocols to protect the health of our guests, crew and the residents of the destinations we serve”;

- II. “Our measures are designed to be flexible to adapt to changing conditions and recommended best practices”;
  - III. For sailings departing between March 9 and April 3, booked guests could cancel up to 3 days prior to departure, receive a credit for 100% of the cancellation fee amount, and move their booking to any voyage that departs by December 31, 2021; and
- (b) made no offer and gave no information to booked guests about cancelling a booking for a cruise scheduled to depart prior to 9 March 2020, including the *Ruby Princess* cruise scheduled to depart Sydney on 8 March 2020.
- 69 Booked guests who attended at the Overseas Passenger Terminal from about 12pm on 8 March 2020 to board the *Ruby Princess* were:
- (a) told by the First Respondent, alternatively the Second Respondent:
    - I. that boarding of the *Ruby Princess* would be delayed;
    - II. to disperse and come back to the dock later in the day;
  - (b) not all health screened (including having their temperature taken);
  - (c) not asked during pre-embarkation screening for a history of travel in the previous 14 days;
  - (d) asked to declare if they had in the past 14 days:
    - I. travelled from, or through Mainland China, Hong Kong, Macau, South Korea or Iran (including transiting through an airport in those locations) (Question 1);
    - II. had contact with a suspected or confirmed case of coronavirus, or a person under monitoring for coronavirus (Question 2); or
    - III. had travelled from, or through any of Italy, Japan, Singapore or Thailand (including transiting through an airport in those locations) (Question 3);
  - (e) permitted by the First Respondent and/or the Second Respondent to embark on the *Ruby Princess* without further screening if they answered ‘no’ to each of the

three questions referred to above, being questions 1 to 3 in Section A of a form titled “Traveller’s Health Declaration – Australia”;

- (f) not asked to disclose if they had a fever, cough or difficulty breathing in the past 14 days unless they answered ‘yes’ to at least one of the three questions in Section A of the “Traveller’s Health Declaration – Australia” form referred to above;
- (g) not permitted to board the *Ruby Princess* if they answered ‘yes’ to Question 1 or 2 on the ‘Traveller’s Health Declaration – Australia’ form; and
- (h) subject to further screening if they answered ‘yes’ to Question 3 on the ‘Traveller’s Health Declaration – Australia’ form.

70 Thirty four (34) passengers were denied boarding on the basis of their answers to Questions 1 and 2 on the ‘Traveller’s Health Declaration – Australia’ form.

71 All of the fifty nine (59) booked guests who underwent additional screening on 8 March 2020 were permitted to board the *Ruby Princess*.

72 There were no separate toilet facilities in the area designated for further health screening.

73 At least some booked guests who had been refused boarding on the basis of the screening questions on the ‘Traveller’s Health Declaration – Australia’ form:

- (a) mingled with passengers in the screening area who were permitted to board the *Ruby Princess*;
- (b) were not prevented by the First Respondent and/or Second Respondent from talking to others in the screening area; and
- (c) were not discouraged by the First Respondent and/or Second Respondent from talking to others in the screening area.

74 Embarkation for the 8 March Voyage on the *Ruby Princess* commenced at approximately 5.25pm and concluded shortly after 9pm Sydney time on 8 March 2020.

75 The *Ruby Princess* sailed at approximately 10.59pm on 8 March 2020 Sydney time carrying over 2,600 Passengers and 1,100 crew members.

76 Of the Passengers on board:

- (a) more than 1,600 were from Australia;
- (b) more than 500 were from the United States of America; and
- (c) more than 200 were from countries in Europe (aside from Italy) that had reported more than 100 confirmed cases of Coronavirus (being the United Kingdom, France, Germany, the Netherlands and Spain).

#### Particulars

Nationality	No. of Passengers	Country name	Local transmission as at 7 March 2020	No. of confirmed cases in country as at 7 March 2020*
AU	1679	Australia	Yes	Over 60
US	521	United States of America	Yes	213
GB	191	United Kingdom	Yes	167
CA	111	Canada	Yes	51
NZ	55	New Zealand	Yes	5
ES	25	Spain	Yes	374
PH	22	Philippines	Yes	5
DE	12	Germany	Yes	639
CN	4	China	Yes	80813
MY	3	Malaysia	Yes	83
NL	3	Netherlands	Yes	128
AR	2	Argentina		2
FR	2	France	Yes	613
UA	2	Ukraine		1
AT	1	Austria		66
BZ	1	Belize		(0)
CZ	1	Czech Republic	Yes	12
FJ	1	Fiji		(0)
ID	1	Indonesia	Yes	2
IT	1	Italy	Yes	4636
SG	1	Singapore	Yes	130
VN	1	Vietnam	Yes	17
ZA	1	South Africa		1
<b>Total</b>	<b>2641</b>			

\*Source: World Health Organisation (**WHO**) Coronavirus disease 2019 (COVID-19) Situation Report – 47, data as of 7 March 2020:  
<https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200307-sitrep-47-covid-19.pdf>

- 77 There was an outbreak of Coronavirus on the Voyage as a result of which:
- (a) at least 663 Passengers from Australia contracted Coronavirus;
  - (b) at least 28 Passengers died as a result of contracting Coronavirus; and
  - (c) several Passengers from overseas contracted Coronavirus, although the number of such overseas Passengers is not presently known.

### **Particulars**

The Special Commission of Inquiry into the *Ruby Princess* at 14.2 to 14.4.

#### **F.2 Medical supplies**

- 78 On 28 February 2020, the Senior Doctor on the *Ruby Princess* gave instructions for an order to be placed on an urgent or expedited basis for medical supplies, including 30 viral swabs.
- 79 The order was placed via the ship's online ordering system known as "Crunchtime" and an email was sent on 28 February 2020 to the Second Respondent and/or First Respondents' Supply Chain Team to indicate the order was urgent.
- 80 Those medical supplies had not been received by:
- (a) 5 March 2020 in Sydney; or
  - (b) the time the *Ruby Princess* docked in Sydney on the morning of 8 March 2020; or
  - (c) midday on 8 March 2020; or
  - (d) the time the *Ruby Princess* departed Sydney on the night of 8 March 2020.
- 81 On 7 March 2020, the Senior Doctor on the *Ruby Princess* gave instructions for a further order to be placed for the following supplies:
- (a) 40 viral swabs;

- (b) 2000 surgical face masks; and
- (c) 300 influenza test kits.

82 An order for those supplies was placed in “Crunchtime” and an email was sent to the Second Respondent’s and/or the First Respondent’s Supply Chain team on 7 March 2020 asking for them to expedite the order and advising that the items were urgently required as soon as possible.

### **Particulars**

Email sent by Senior Nurse Mary White to Norman Hoffman (PCL), Susie Vidal (PCL), Dulcie Bond (PCL) and Medical Operations (HAGROUP) on 7 March 2020 at 1.12, a copy of which is at p 79 of Exhibit 106 in the evidence to the Special Commission of Inquiry.

83 Those items were not received by:

- (a) the time the *Ruby Princess* docked in Sydney on the morning of 8 March 2020; or
- (b) midday on 8 March 2020; or
- (c) the time the *Ruby Princess* departed Sydney on the night of 8 March 2020.

84 When the *Ruby Princess* departed Sydney on 8 March 2020, it had stock of:

- (a) 27 viral swabs;
- (b) a limited number of rapid influenza testing kits, each of which contained a viral swab; and
- (c) approximately 250 face masks.

85 On or about 9 March 2020, a Senior Nurse on the *Ruby Princess* sent an email to the Second Respondent’s and/or First Respondent’s procurement supervisor advising that more surgical masks were urgently needed on the ship and more than double the amount requested in the 7 March 2020 order (i.e more than double 2000 masks) would be needed.

### **Particulars**

Email from Senior Nurse Mathee to Norman Hoffman (PCL) dated 9 March 2020 at 6.14pm, a copy of which is at p 104 of Exhibit 106 in the evidence to the Special Commission of Inquiry.

- 86 On 10 March 2020, the Senior Doctor on the *Ruby Princess* sent an email to the Second Respondent and/or First Respondent's supply chain team advising that "We have only a FEW surgical masks left (cannot count as boxes), we have NO stock of viral swabs and LOW stock of Influenza tests."

### **Particulars**

Email from Dr Ilse von Watzdorf to Norman Hoffman (PCL), Tahlia Duty (PCL), copied to Medical Operations (HAG Group) dated 10 March 2020 at 11.48, a copy of which is at p 104 of Exhibit 106 in the evidence to the Special Commission of Inquiry.

### **G The Applicant**

- 87 The Applicant and her husband, Mr Karpik, have been married since 1970.
- 88 The Applicant and Mr Karpik boarded the *Ruby Princess* 8 March 2020 cruise and travelled from Sydney to Sydney via New Zealand.
- 89 The Applicant had no cold, flu or Coronavirus symptoms before boarding the *Ruby Princess*.
- 90 Mr Karpik had no cold, flu or Coronavirus symptoms before boarding the *Ruby Princess*.
- 91 Before boarding the *Ruby Princess* on 8 March 2020, neither of the Respondents provided a warning to the Applicant or Mr Karpik that there was any risk related to Coronavirus on the Voyage.

#### **G.1 The Applicant's cabin**

- 92 The Applicant and Mr Karpik were allocated Cabin B301 on board the *Ruby Princess*.
- 93 Cabin B301 was not clean when the Applicant and Mr Karpik entered it for the first time on boarding the *Ruby Princess* in the early evening of 8 March 2020.

### **Particulars**



There was a half-empty, open, chip packet and a box containing empty bottles in Cabin B301.

The surfaces of the shelves of the cupboard in Cabin B301 were unclean.

## G.2 Physical distancing on the Voyage

- 94 Shortly after boarding the *Ruby Princess*, the Applicant and Mr Karpik were required by one or both of the Respondents to muster in the Wheelhouse Bar.
- 95 A large number of people attended the Wheelhouse Bar muster, which was crowded with Passengers and crew.

### **Particulars**

There were over 100 people in the Wheelhouse Bar at the time.

The Wheelhouse Bar appeared to the Applicant to be at full capacity and people were standing shoulder-to-shoulder.

- 96 A safety briefing was conducted in the Wheelhouse Bar during the muster. The safety briefing did not make any mention of the risk of contracting Coronavirus on the Voyage or the measures that could be adopted by Passengers to avoid contracting Coronavirus.
- 97 The Second Respondent, and further or in the alternative, the First Respondent, did not enforce physical distancing between Passengers, or between Passengers and crew, during the muster on 8 March 2020.
- 98 During the Voyage, the Second Respondent (and further or in the alternative the First Respondent) published a newsletter (the **Newsletter**).

### **Particulars**

The *Princess Patter* was published at least once daily and was provided to each Passenger by one or both of the Respondents.

The *Princess Patter* was delivered to each cabin at least once per day.

- 99 The Newsletter promoted activities to all Passengers who received it.

- 100 By promoting activities to all Passengers who received the newsletter, the Second Respondent (and further and in the alternative the First Respondent) encouraged each of the Passenger recipients to attend those activities.
- 101 The Second Respondent (and further or in the alternative the First Respondent) intended to deliver the Newsletter to all Passengers aboard the *Ruby Princess*.
- 102 The Second Respondent (and further or in the alternative the First Respondent) did deliver the Newsletter to all or almost all Passengers aboard the *Ruby Princess*.
- 103 The Applicant and Mr Karpik participated in a number of activities on the Voyage.

### **Particulars**

The Applicant and Mr Karpik attended the following areas or activities:

- Crooners Bar.
- International Café Bar.
- International Café.
- the laundry.
- the lounge area.
- Trivia events in the lounge area.
- communal dining areas.
- the theatre.

The Applicant also attended the following areas or activities:

- a shopping area in the Michael Angelo dining room.
- an on board clothing boutique.
- the Explorer's Lounge.
- various shops, including on board perfume and make-up shops and a pharmacy.

The Applicant and Mr Karpik travelled on tender boats organised and or run by *Ruby Princess*.

Further particulars may be added after discovery and evidence.

104 The activities that the Applicant and Mr Karpik participated in as set out above had a large number of people in attendance and at no time did the Second Respondent (and further or in the alternative, the First Respondent):

- (a) enforce physical distancing between those in attendance;
- (b) advise physical distancing between those in attendance; or
- (c) have in place or implement any physical distancing protocol during the Voyage in all public places in the ship.

### G.3 Illness

105 On or about 13 March, Mr Karpik felt tired, weak and had developed body aches.

106 On or about 16 or 17 March 2020, Mr Karpik had a cough, lethargy and fever.

107 On or about 16 or 17 March 2020, Mr Karpik went to the Medical Centre (**the First Appointment**).

108 The Medical Centre is a facility on board the *Ruby Princess* operated by the Second Respondent, alternatively, the First Respondent.

109 Mr Karpik attended the First Appointment with the Applicant.

110 At the time of the First Appointment, there were a large number of people in attendance at the Medical Centre.

111 At the First Appointment, a male staff member of the Medical Centre:

- (a) took a medical history from Mr Karpik; and
- (b) took the temperature of Mr Karpik.

112 At the end of the First Appointment, the male staff member of the Medical Centre informed the Applicant and Mr Karpik that:

(a) Mr Karpik did not need to self-isolate.

(b) Mr Karpik was free to move around the ship.

113 The male staff member of the Medical Centre did not wear a mask during the First Appointment.

114 On about the same day and after the First Appointment, Mr Karpik attended the Medical Centre for a second time (**the Second Appointment**).

115 At the Second Appointment, Mr Karpik was attended to by a female staff member of the Medical Centre.

116 At the Second Appointment, the female staff member told Mr Karpik that:

(a) he had the flu;

(b) he ought to self-isolate; and

(c) he should visit the Medical Centre two times a day.

117 The female staff member of the Medical Centre did not wear a mask during the Second Appointment.

118 Visiting the Medical Centre as advised required Mr Karpik to walk through the ship from his cabin to the Medical Centre and back.

119 The Applicant was not advised by either of the Respondents to self-isolate.

120 The Applicant was not advised by either of the Respondents to isolate away from Mr Karpik.

121 The Applicant was not advised to take any other precautions in relation to Mr Karpik's illness by either of the Respondents.

#### G.4 Physical distancing on disembarkation

122 On or about 15 March 2020, the Commodore of the *Ruby Princess* announced that the cruise would be cut short, that not all destinations on the itinerary would be visited and that the vessel would begin its journey back to Sydney.

- 123 At the end of the Voyage, on 19 March 2020, the Second Respondent (or further and in the alternative the First Respondent) required the Applicant and Mr Karpik to muster in the Explorer's Lounge.
- 124 At the time of the muster in the Explorer's Lounge, Mr Karpik remained ill.
- 125 At the time of the muster in the Explorer's Lounge, Mr Karpik was experiencing symptoms consistent with Coronavirus.

### **Particulars**

Mr Karpik was experiencing the following symptoms:

- Cough.
- Breathlessness.
- Lethargy.
- High temperature (fever).
- Inability to walk properly.
- Sore throat.
- Trembling.

- 126 There were a large number of people in the Explorer's Lounge at the time of the muster and no physical distancing was enforced by the Second Respondent (or further and in the alternative the First Respondent) between those present.

### **Particulars**

There were approximately 200 people in the Explorer's Lounge when Mr Karpik and the Applicant arrived.

- 127 The Applicant and Mr Karpik were instructed by the Second Respondent (or further and in the alternative the First Respondent) to disembark with a large group of people from the *Ruby Princess*.

### **Particulars**

There were approximately 50 people in the group with whom the Applicant and Mr Karpik were instructed to disembark the *Ruby Princess*.

128 Crew members lined the gang plank during disembarkation.

129 In the premises of the previous two paragraphs, it was not possible to physically distance during disembarkation.

G.5 The Applicant and Mr Karpik did not 'come back new' from their cruise

130 The Applicant and Mr Karpik returned home on 19 March 2020.

131 On about 21 March 2020, Mr Karpik was taken to Wollongong Hospital by ambulance.

132 Wollongong Hospital allocated Mr Karpik to the Intensive Care Unit (ICU).

133 The Applicant could not go with her husband to the hospital because she was required to self-isolate by NSW Health.

**Particulars**

A bag was provided outside of cabin B301 on or about 18 March 2020 which inside contained instructions from NSW Health in relation to isolating for 14 days.

134 On about 22 March 2020, Mr Karpik was intubated, ventilated and unconscious.

135 On 22 March 2020, Mr Karpik was placed into a medically induced coma.

136 Mr Karpik remained intubated, ventilated and unconscious for about four weeks.

137 During that four-week period, doctors of Wollongong Hospital informed the Applicant that Mr Karpik was becoming increasingly difficult to ventilate.

138 During that four-week period, Mr Karpik suffered from renal failure.

139 At one point during that four-week period, the Applicant was informed that Mr Karpik had one-to-three days to live.

140 The Applicant was allowed to visit her husband for the first time in hospital on 12 April 2020.

141 Mr Karpik remained in hospital until about 16 May 2020.

142 Since Mr Karpik has left hospital he has continued to suffer from a number of ailments.

### **Particulars**

The ailments from which Mr Karpik has continued to suffer since leaving hospital include:

- Significantly deteriorated muscle mass and resultant loss of strength.
- Reduced lung capacity and resultant breathlessness.
- Neuropathy in hands resulting in inability to grip and numbness in fingers.
- Fatigue.
- Right shoulder injury due to clotting.
- Depression and anxiety.

Further particulars may be added after evidence.

143 The Applicant has provided care for Mr Karpik and has needed to do a number of tasks for Mr Karpik since he has returned home.

### **Particulars**

From the time of Mr Karpik's release from hospital to about mid-July 2020, the Applicant provided complete support for the daily living activities of Mr Karpik, including getting dressed, showering and all household tasks.

From about the time of Mr Karpik's release from hospital, the Applicant has performed washing and cooking.

The Applicant drives Mr Karpik to many medical appointments on a regular basis.

144 Mr Karpik's illness, as described above, was caused by Coronavirus.

145 Mr Karpik caught Coronavirus on board the *Ruby Princess*.

G.6 The Applicant's loss and damage

146 Because of the matters set out above, the Applicant suffered loss and damage, ~~namely she was:~~

(a) she was:

~~(a)~~ I. \_\_\_\_\_ significantly distressed and disappointed because she observed or was concerned that the risk of exposure to Coronavirus was mismanaged by the Second Respondent (or further and in the alternative, the First Respondent), including because of a failure to implement the Reasonable Precautions;

**Particulars**

- i. mixed nuts were being offered by the *Ruby Princess* in communal bowls;
- ii. in communal dining areas salt and pepper crackers remained on the table and did not appear to be subject to cleaning in between sittings;
- iii. physical distancing was not being observed;
- iv. physical distancing was not being encouraged;
- v. physical distancing was not being enforced;
- vi. the matters set out in paragraphs 122 to 129;
- vii. there were large crowds at the musters, activities and disembarkation;
- viii. clothing boutiques allowed customers to try on clothes in the communal bathrooms or in their own rooms and then return those clothes to be tried on or bought by others;
- ix. there was no temperature screening at embarkation;
- x. there was no adequate health checks on embarkation;
- xi. the male medical person told Mr Karpik that it was not necessary to self-isolate when he presented sick to the Medical Centre;



- xii. Mr Karpik was required to visit the Medical Centre twice daily, meaning that he moved through the ship (including using elevators) twice daily; and
  - xiii. the Applicant and Mr Karpik's assigned waiter took sick part way through the Voyage;
  - xiv. Passengers entered the back section of the buffet area without sanitising their hands;
  - xv. some food at the buffet remained self-service throughout the duration of the voyage, with Passengers using shared serving implements;
  - xvi. the tender boat service that transported Passengers to Akaroa was overcrowded with about 100 people per trip;
  - xvii. there were no health or temperature checks getting on at the New Zealand ports;
  - xviii. there was no meaningful communication by the Respondents about the reasons for delayed embarkation;
  - xix. the Medical Centre not taking swabs for Coronavirus and also flu from those exhibiting flu-like or Coronavirus-like symptoms; and
  - xx. the medical staff at the Medical Centre on the ship did not wear masks at all appropriate times including when seeing patients.
- (b)II. \_\_\_\_\_ significantly distressed and disappointed because she feared people other than herself had caught and were suffering from Coronavirus, including her husband;
- (e)III. \_\_\_\_\_ significantly distressed and disappointed because soon after the cruise she knew people other than herself had caught and were suffering from Coronavirus, including her husband;
- (d)IV. \_\_\_\_\_ significantly distressed and disappointed that she could not see her husband because he had Coronavirus and was isolated, and she was also required to self-isolate;

~~(e)~~V. \_\_\_\_\_ significantly distressed and disappointed that she might or had already spread Coronavirus to others;

~~(f)~~VI. \_\_\_\_\_ significantly distressed and disappointed that she might contract Coronavirus;

~~(g)~~VII. \_\_\_\_\_ significantly distressed and disappointed that she might be infected with Coronavirus;

~~(h)~~VIII. \_\_\_\_\_ significantly distressed and disappointed that if she became infected with Coronavirus she may become severely ill and possibly die; and

~~(i)~~IX. \_\_\_\_\_ disappointed that she did not get to experience the full extent of the package cruise (because it had been cut short);

(b) she contracted the Coronavirus; and

(c) she has suffered nervous shock.

### **Particulars**

i. Adjustment Disorder with Mixed Anxiety and Depressed Mood.

ii. Alternatively, Major Depressive Episode.

## **H Knowledge of the Respondents**

### **H.1 Knowledge prior to the Voyage**

147 By 5 March 2020, each of the First Respondent and the Second Respondent knew, or ought reasonably to have known each of:

(a) Coronavirus Characteristics;

(b) the matter pleaded in paragraph 17 above (namely that WHO had declared the outbreak of Coronavirus a Public Health Emergency of International Concern on 30 January 2020);

(c) the matters pleaded in paragraphs 19A to 30 above (relating to the *Diamond Princess* outbreak);

- (d) the matters pleaded in paragraphs 33 to 36 above (relating to the *Grand Princess* outbreak);
- (e) the matters pleaded in paragraphs 45 to 46 above (relating to CDC guidance);
- (f) the matters pleaded in paragraphs 47 to 50 above (relating to guidelines issued by NSW Health);
- (g) the matters pleaded in paragraph 54 to 55 above (relating to CDNA Guidelines);
- (h) the matters pleaded in paragraphs 57 and 58 above (relating to the Respondents' fleet sanitation protocol);
- (i) the matters pleaded in paragraphs 59 and 60 (relating to the Respondents' Identification and Assessment Protocol);
- (j) the matters pleaded in paragraph 61 (relating to the Respondents' screening policy);
- (k) [Not used];
- (l) the matters referred to in paragraphs 78, 79 and 80(a) above (relating to medical supplies); and
- (m) the Cruise Ship Coronavirus Risk.

### **Particulars**

- i. As to sub-paragraphs (a), (b) and (e):

- these were matters which were widely publicised and reported and ought reasonably to have been known to any large cruise ship operator operating in Australia and/or globally;
  - the Respondents' Chief Medical Officer, Dr Grant Tarling, monitored WHO and CDC publications throughout the relevant period from January to March 2020 (inclusive);
  - the Respondents received and distributed publications which referred to the characteristics of Coronavirus, including Instructional Notices regarding the Prevention and Control of Coronavirus issued between 23 January 2020 and 29 February 2020, copies of which are contained in Exhibit 106 of the evidence to the Special Commission of Inquiry.
- ii. As to sub-paragraphs (c):
- these were matters which were known to the Second Respondent as the owner and operator of the Diamond Princess and to the First Respondent as its parent company and controller of cruise brands including Princess Cruises; and
  - these matters were publicised and reported and ought reasonably to have been known to any large cruise ship operator.
- iii. As to sub-paragraph (d):
- these were matters which were known to the Second Respondent as the owner and operator of the Grand Princess and to the First Respondent as its parent company and controller of cruise brands including Princess Cruises; and
  - these matters were reported and ought reasonably to have been known to each of the Respondents as operators of cruise ships and providers of cruise ship services.
- iv. As to sub-paragraphs (f) and (g) (re NSW Health and CDNA Guidelines):

- these were matters which were known to the First Respondent as its employees received (or wrote) the relevant communications; and
- these matters ought reasonably to have been known to each of the Respondents as operators of cruise ships and providers of cruise ship services at a port in NSW, Australia.
- v. As to sub-paragraphs (h), (i) and (j), these were the Respondents' own protocols and known to them.
- vi. As to sub-paragraph (l) these were matters which were known to the First Respondent as its employees received (or wrote) the relevant communications or documents.
- vii. As to sub-paragraph (m), this was a matter that was known or ought reasonably to the Respondents as operators of cruise ships and providers of cruise ship services.
- viii. Further particulars may be provided after discovery.

148 By midday Sydney time on 8 March 2020, each of the First Respondent and the Second Respondent knew, or ought reasonably to have known, each of:

- (a) the matters referred to in sub-paragraphs 147(a) to 147(l) above;
- (b) the matters pleaded in paragraphs 18 to 19 above (relating to the prevalence and sources of Coronavirus cases);
- (c) the matters pleaded in paragraph 31 above relating to the *Diamond Princess* outbreak;
- (d) the matters pleaded in paragraph 37 above relating to the *Grand Princess* outbreak;
- (e) the matters pleaded in paragraph 38 to 40 above (relating to the 24 February cruise of the *Ruby Princess*);
- (f) the matters pleaded in paragraphs 41 to 41A above (relating to the risks of Coronavirus being on the *Ruby Princess*);
- (g) each of the matters pleaded in paragraphs 41B to 43 above;

- (h) the matters referred to in paragraph 51 above (relating to NSW Health guidance);
- (i) the matters pleaded in paragraph 53 (relating to guidelines issued by the Australian Government's Department of Health);
- (j) the matters referred to in paragraphs 62 to 63 above (relating to the Respondents' own sanitation policies and instructions given for staff to serve all guest and crew at buffet stations); and
- (k) the matters referred to in paragraphs 78, 80(c), 81 to 83(b) above (relating to medical supplies).

### **Particulars**

As to sub-paragraph (a), the Applicant repeats the particulars to paragraph 147 above.

As to sub-paragraph (b), the Applicant repeats sub-paragraphs (i) and (ii) of the particulars to paragraph 147 above.

As to sub-paragraph (c), the Applicant repeats sub-paragraph (ii) of the particulars to paragraph 147 above relating to the *Diamond Princess* outbreak.

As to sub-paragraph (d), the Applicant repeats sub-paragraph (iii) of the particulars to paragraph 147 above relating to the *Grand Princess* outbreak.

As to sub-paragraph (e) (relating to the 24 February cruise of the *Ruby Princess*), those matters:

- were known to the Second Respondent because it owned and operated the *Ruby Princess*; and
- ought to have been known to the First Respondent as its employees were involved in managing the arrival and the departure of the *Ruby Princess* in Sydney on 8 March 2020.

As to sub-paragraph (f) (relating to the significant risk that there were active / contagious Coronavirus particles on the ship at the end of the 24 February

cruise of the *Ruby Princess*), those matters ought to have been known by each Respondent in the premises referred to above, including each Respondents' knowledge at the time of the characteristics of Coronavirus.

As to sub-paragraph (g) (relating to Reasonable Precautions), each of those matters ought to have been known by each Respondent in the premises referred to above, including each Respondents' knowledge at the time of the characteristics of Coronavirus.

As to sub-paragraph (h) (relating to NSW Health guidance):

- each of the Respondents knew of those matters as they received, reviewed and/or forwarded a copy of the document; and
- further and alternatively, each of the First Respondent and Second Respondent ought to have known of those matters as they were sent a copy of the Enhanced Procedures document and ought to have reviewed it given it was issued by NSW Health and was highly relevant to their operations including on the *Ruby Princess*.

As to sub-paragraph (i) (relating to guidelines issued by the Australian Government's Department of Health), these matters ought reasonably to have been known to each of the Respondents as operators of cruise ships and providers of cruise ship services at a port in NSW, Australia.

As to paragraph (j) (relating to the instructions given for staff to serve all guest and crew at buffet stations):

- the Second Respondent knew of those matters as its Director, Fleet of Guest Experience & Quality Assurance, emailed instructions to, among others, the Second Respondent's Hotel Manager on the *Ruby Princess*;
- the Second Respondent's Hotel Manager on the *Ruby Princess* knew of those matters; and
- the First Respondent ought to have known of those matters as they related to cruises it supplied and were highly relevant to the safety of persons on board those cruises.

As to paragraph (k) these were matters which were known to the First Respondent as its employees received (or wrote) the relevant communications or documents.

Further particulars may be provided after discovery.

- 149 Further, at all times on 8 March 2020, the Respondents knew or ought to have known that the *Ruby Princess* did not have sufficient supplies of materials to manage an outbreak of ARI/ILI on board if one were to occur during the Voyage.

### **Particulars**

The Respondents knew that the orders placed for medical supplies on 28 February 2020 and 7 March 2020 had not been delivered to the *Ruby Princess* and would not be delivered to the *Ruby Princess* that day.

The Respondents knew that the *Ruby Princess* had not had sufficient supplies on board to manage the ARI/ILI outbreak on the previous cruise, which arrived in Sydney on the morning of 8 March 2020.

The Respondents knew that the *Ruby Princess* was low on supplies of swabs, face masks and influenza testing kits on 8 March 2020 including when it sailed.

Further, the Respondents had the knowledge referred to in paragraph 148 above, including as to the *Diamond Princess* and *Grand Princess outbreaks* as well as public health guidelines as to the recommended use of face masks.



In all the circumstances, each of the Respondents ought to have known there were insufficient medical supplies on board to manage an outbreak of ARI/ILI on board if one were to occur.

The Senior Doctor on board the *Ruby Princess* knew that there were insufficient supplies on board to manage such an outbreak.

Further particulars may be provided after discovery.

150 Further, and in the premises referred to above, by midday (Sydney time) on 8 March 2020, each of the First Respondent and Second Respondent knew, or ought to have known:

- (a) that if it allowed or encouraged people to board the *Ruby Princess* on 8 March 2020, that one or more of those people may have Coronavirus (whether they displayed symptoms consistent with Coronavirus or not);
- (b) that if any person on board had Coronavirus, or there were Coronavirus particles on board from the *Ruby Princess's* previous voyage, there was a real risk that Passengers would become infected with Coronavirus during the Voyage;
- (c) that if people were allowed to board without the Reasonable Pre-boarding Precautions having been taken, there was:
  - I. a heightened and real risk that people may board the ship carrying Coronavirus, and
  - II. a heightened and real risk that Passengers would become infected with Coronavirus during the Voyage;
- (d) that if the vessel experienced an outbreak of Coronavirus, then irrespective of whether or not the Reasonable Pre-boarding Precautions had been implemented and whether the Reasonable Post-boarding Precautions were implemented:
  - I. the pleasure, relaxation and safety of the holiday would be diminished, as would Passengers' propensity to come back new from that holiday;
  - II. knowledge of any Passenger of the outbreak of Coronavirus on or as a result of the Voyage, being a disease known to be potentially deadly, would

likely cause those Passengers possessing that knowledge significant distress and disappointment;

- (e) that the safety, relaxation and pleasure of the Passengers' holidays would likely be diminished as would Passengers' propensity to 'come back new' (in the sense of feeling refreshed and invigorated) from that holiday if they observed or were concerned that the risk of exposure of Coronavirus (irrespective of the actual presence of that risk) was not being managed in accordance with the Management and Prevention Methods;
- (f) that, if Coronavirus spread on the vessel, those who caught the virus may suffer a number of symptoms and consequences, including serious injury or death, where the risk of serious injury or death was heightened where those on board were elderly;
- (g) that a substantial proportion of the people booked on the Voyage were elderly;

#### **Particulars**

This matter was known or ought to have been known to each of the First Respondent and Second Respondent as:

- date of birth information was required from Passengers at the time of booking the cruise on the *Ruby Princess*; and
  - they knew from their business as cruise line operators that a substantial proportion of their customers on the *Ruby Princess* and similar ships were over 60 years of age.
- (h) that, if Coronavirus caused the death or serious injury of a Passenger, a Close Family Member of that Passenger might suffer emotional (including a recognised psychiatric injury, mental harm or nervous shock) and or financial detriment as a result of that death or serious injury; and
  - (i) that an absence of skill and care in taking measures to prevent and manage a Coronavirus outbreak would mean a greater risk of the spread of the virus and incidence of Passengers contracting the virus.

### Particulars

Each of the First Respondent and Second Respondent ought to have known these matters having regard to their knowledge of the characteristics of Coronavirus, the nature of their business as cruise line operators, their previous experience with virus outbreaks on ships including the *Diamond Princess* and their knowledge of other matters pleaded to at paragraphs 147 and 148 above.

#### H.2 Knowledge at and after sailing

151 By the night of 8 March 2020 when the *Ruby Princess* sailed from Sydney, each of the First Respondent and the Second Respondent knew, or ought reasonably to have known, each of:

- (a) the matters referred to in sub-paragraphs 147(a) to 147(l) above;
- (b) the matters pleaded in sub-paragraphs 148(b) to 148(j) above;
- (c) the matters pleaded in sub-paragraphs 150(a) to 150(i) above;
- (d) the matters pleaded in paragraph 32 above (relating to the number of passengers on the *Diamond Princess* who had contracted Coronavirus and the number who had died as a result);
- (e) the matters pleaded in paragraphs 65 to 76 (relating to the screening and embarkation process for the 8 March 2020 Voyage on the *Ruby Princess* and the country of origin of the Passengers who were permitted to board); and
- (f) the matters referred to in paragraphs 78 to 84 above (relating to medical supplies).

### Particulars

As to sub-paragraph (d) (relating to the *Diamond Princess* outbreak):

- these were matters which were known to the Second Respondent as the owner and operator of the *Diamond Princess* and to the First Respondent as its parent company and controller of cruise brands including Princess Cruises; and
- these matters were reported in media outlets and published by WHO and ought reasonably to have been known to any large cruise ship operator monitoring information from relevant authorities, including WHO, about Coronavirus.

As to sub-paragraph (e) (relating to the 24 February cruise of the *Ruby Princess*), those matters:

- were known to the Second Respondent because it owned and operated the *Ruby Princess*; and
- ought to have been known to the First Respondent as its employees were involved in managing the arrival and the departure of the *Ruby Princess* in Sydney on 8 March 2020.

Further particulars may be provided after discovery.

### H.3 Knowledge of the NSW Health and CDNA Guidelines

152 Further, by 10 March 2020, each of the First Respondent and Second Respondent knew, or ought to have known:

- (a) that NSW Health had issued updated 'Enhanced COVID-19 Procedures for the Cruise Line Industry' dated 9 March 2020 (referred to in paragraph 522 above);
- (b) that those procedures advised that Cruise ship staff should actively identify passengers and crew with ARI – including cough, sore throat, fever or difficulty breathing – by making regular announcements throughout the cruise, inviting them to attend the clinic for assessment.

### **Particulars**

The Applicant repeats the particulars to paragraph 52 above.

Further, each of the First Respondent and Second Respondent ought to have known of those matters as they were sent a copy of the 9 March Enhanced Procedures document on 10 March 2020 and ought to have reviewed it given it was issued by NSW Health and was highly relevant to their operations including on the *Ruby Princess*.

153 Further, by 10 March 2020, each of the First Respondent and Second Respondent knew, or ought to have known:

- (a) of the amendments to the CDNA Guidelines issued that day, including the updated 'suspect case' definition in those guidelines (referred to in paragraph 56 above);
- (b) that under the CDNA Guidelines (as amended on 10 March 2020), all persons on board the *Ruby Princess* with an ARI or fever were 'suspect cases' for Coronavirus within the definition in those guidelines;
- (c) the CDNA guidelines stated that patients meeting the 'suspect case' definition should be tested for SARS-Cov-2;
- (d) the CDNA Guidelines required that 'suspect cases' be isolated;
- (e) the CDNA Guidelines provided that all 'suspect cases' and their close contacts:
  - I. should be provided with a COVID-19 factsheet; and
  - II. made aware of the signs and symptoms of COVID-19, the requirements of quarantine and isolation, and the infection control practises that can prevent the transmission of COVID-19.

### **Particulars**

Each of the First Respondent and Second Respondent ought to have been aware of the change in the definition of 'suspect case' in the CDNA Guidelines on 10 March 2020.

Cruise line companies, with ships operating in Australia, can and should be expected during a pandemic or potential pandemic (such as Coronavirus was in early March 2020) to keep abreast of any relevant definitions of that particular disease.

Further particulars may be provided after discovery.

- 154 There were 'suspect cases' on board the *Ruby Princess*, under the definition in the CDNA guidelines, on and from 10 March 2020.

#### **Particulars**

A copy of the ship's acute respiratory diseases log is in Exhibit 3 in the evidence in the Special Commission of Inquiry.

- 155 Each Respondent knew or ought to have known there were 'suspect cases' on board the *Ruby Princess*, under the updated 'suspect case' definition in the CDNA guidelines, on and from 10 March 2020.
- 156 Each Respondent knew or ought to have known that the number of 'suspect cases' (pursuant to the updated 'suspect case' definition in the CDNA guidelines) rose throughout the Voyage to over 100 'suspect cases' on 18 March 2020.
- 157 Each Respondent knew on the morning of 19 March 2020 when the *Ruby Princess* docked at Sydney and at the time of disembarkation, that there was an unexcluded, real possibility that one or more Passengers on the *Ruby Princess* may have Coronavirus.

#### **Particulars**

That was known by, among others:

- i. Mr Verwaal, the Second Respondent's hotel manager on the *Ruby Princess*;
- ii. Dr von Watzdorf, the Second Respondent's Senior Doctor on the *Ruby Princess*; and
- iii. Ms Burrows, the First Respondent's Port Agent Manager.

Further particulars may be provided after discovery.

#### **H.4 Knowledge of disappointment**

- 158 On 15 March 2020, the *Ruby Princess*' Commodore announced that the Voyage was to be cut short with not all planned destinations visited and that as a result he knew that Passengers would be very disappointed.

## Particulars

Exhibit 85-3 of the *Ruby Princess* Special Commission of Inquiry evidence.

- 159 The Second Respondent (and further and in the alternative the First Respondent) knew Passengers would be “very disappointed” the Voyage was to be cut short with not all planned destinations visited.

### I Purpose and Result Guarantee

#### I.1 Acquisition of services by consumers

- 160 The First Respondent supplied services (**Services**) to the Applicant and Passenger Group Members as Passengers booked on the Voyage departing Sydney on 8 March 2020.

- 161 Further and in the alternative, the Second Respondent supplied the Services.

- 162 The Services comprised:

- (a) everything necessary to provide a 13-day recreational cruise including accommodation, meals, transportation and amenities, on-board activities, cleaning services, medical services as well as services to ensure the health and safety of Passengers; and
- (b) provision of information before embarkation, during the Voyage and during disembarkation about circumstances that may affect the services set out in (a).

- 163 The Applicant and the Passenger Group Members acquired (for the purposes of s 2 of the *Australian Consumer Law*) the Services by going on the Voyage.

## Particulars

The Services were accepted by the Applicant and the Passenger Group Members by them embarking on the Voyage.

- 164 The Applicant and the Passenger Group Members were consumers (for the purposes of s 3 of the *Australian Consumer Law*) because:

- (a) the amount paid or payable for the Services did not exceed \$40,000; and

- (b) the Services were of a kind ordinarily acquired for personal, domestic or household consumption.

165 The Services were supplied in trade or commerce.

I.2 Australian Consumer Law Guarantees

166 '*Come back new*' is a registered trademark of the Second Respondent.

167 The '*come back new*' trademark is registered in relation to the following classes of goods and services:

- (a) cruise ship services; transportation of passengers by ship; travel and tour arrangement services; (Class 39)
- (b) sports and entertainment services, namely, providing recreational services in the nature of swimming, table tennis, basketball, volleyball and golf; providing facilities for recreational activities, namely, movies, dancing, poolside and water activities; entertainment, namely, live musical performances, live cabaret performances, live comedy performances and live variety performances; educational services, namely, conducting classes, demonstrations and workshops in the fields of physical fitness training and the arts; casino and gambling services; (Class 41)
- (c) restaurant and bar services; (Class 43)
- (d) hairdressing, massage and health spa services, namely, cosmetic body care services. (Class 44).

168 The '*come back new*' trademark is used by the First Respondent in relation to the marketing and promotion of cruises on the *Ruby Princess*.

169 The '*come back new*' trademark is used by the Second Respondent in relation to the marketing and promotion of cruises on the *Ruby Princess*.

170 The Applicant and the Passenger Group Members made it known to the Respondents that the particular purpose for which they acquired the Services was to have a safe, relaxing and pleasurable 13-day cruise holiday and to '*come back new*' from that holiday (**Purpose**).



### **Particulars**

In the case of the Applicant and Passenger Group Members, this was impliedly made known to the First Respondent (and further and in the alternative, the Second Respondent) when their respective cruises were booked and the Second Respondent (and further and in the alternative the First Respondent) when they boarded the *Ruby Princess* vessel. The implication arose from:

- the First Respondent's (and further and in the alternative the Second Respondent's) enticement of passengers (including the Applicant and Passenger Group Members) manifested in its online (and other forms of media) advertising of the benefits to be achieved by passengers of taking a cruise, and the content of brochures distributed to travel agents across Australia;
- the fact that the object of booking a pleasure cruise is to have a pleasurable, relaxing and enjoyable holiday, that is safe, where each of these characteristics is conducive to peace of mind, tranquillity of environment, refreshment of the spirits and the creation of an environment free from molestation, distress and vexation while both on the ship and for a reasonable time after leaving the vessel;
- the use by the First Respondent of the trademark 'come back new' in relation to the Services provided to the Applicant and Passenger Group Members; and
- the use by the Second Respondent of the trademark 'come back new' in relation to the Services provided to the Applicant and Passenger Group Members.

171 In supplying the Services to the Applicant and Passenger Group Members, each Respondent guaranteed that the Services would be reasonably fit for the Purpose.

### **Particulars**

The guarantee arose at law, pursuant to s 61(1) of the *Australian Consumer Law*.

- 172 The Applicant and the Passenger Group Members made it known to the Respondents that the desired result of the Services was to have a safe, relaxing and pleasurable 13-day cruise holiday, and to come back new from that holiday (**Result**).

**Particulars**

The Applicant and the Passenger Group Members repeat the particulars to paragraph 170.

- 173 In supplying the Services to the Applicant and the Passenger Group Members, each Respondent guaranteed that the Services would be of such a nature, quality, state or condition that they might reasonably be expected to achieve the Result.

**Particulars**

The guarantee arose at law, pursuant to s 61(2) of the *Australian Consumer Law*.

- 174 Further and/or in the alternative, in supplying the Services to the Applicant and the Passenger Group Members, each Respondent guaranteed that the Services would be rendered with due care and skill.

**Particulars**

The guarantee arose at law, pursuant to s 60 of the *Australian Consumer Law*.

**I.3 Breach of purpose and result guarantees**

- 175 The Services supplied by the First Respondent (and further and in the alternative the Second Respondent):

- (a) were not reasonably fit for the Purpose; and
- (b) were not of such a nature, quality, state or condition, that they might reasonably be expected to achieve the Result.

**Particulars**

The Respondents failed to take the Reasonable Precautions, such that:

- the cruise was not safe, in that the Applicant and Passenger Group Members were exposed to a heightened risk of contracting Coronavirus on the Voyage;
- the cruise was not relaxing or pleasurable, in that the Applicant and Passenger Group Members were distressed by the failure of the Respondents adequately to protect them from the risk of contracting Coronavirus on the Voyage, and were distressed that they had or would contract Coronavirus by reason of their exposure to the heightened risk of contracting Coronavirus on the Voyage;
- several hundred Passengers contracted Coronavirus on the Voyage;
- at least 28 Passengers died as a result of contracting Coronavirus on the Voyage;
- by reason of the matters set out above, the Applicant and Passenger Group Members did not achieve the feeling of “com[ing] back new” from their holiday;

The cruise was cut short, such that the Applicant and Passenger Group Members did not receive a safe, relaxing and pleasurable 13-day cruise holiday.

The Applicant repeats the matters pleaded and particularised at paragraphs 130 to 146 above.

176 In the premises of the previous paragraph, the Services failed to comply with the guarantee in:

- (a) s 61(1) of the *Australian Consumer Law* (ie, the purpose guarantee); or
- (b) s 61(2) of the *Australian Consumer Law* (ie, the result guarantee).

177 These failures to comply with each of the purpose and result guarantees were each a major failure within the meaning of s 268 of the *Australian Consumer Law*, because:

- (a) the Services supplied by the First Respondent (and further and in the alternative the Second Respondent) would not have been acquired by a reasonable

consumer fully acquainted with the nature and extent of the failure, including the Applicant;

- (b) the Services supplied by the First Respondent (and further and in the alternative the Second Respondent) created an unsafe situation by exposing the Applicant and the Passenger Group Members to the risk of contracting Coronavirus; and
- (c) the Purpose and Result Failures cannot easily and within a reasonable time be remedied to make the Services fit for Purpose or able to achieve the Result.

## **J Negligence**

### **J.1 Risk of Harm**

177A At all material times prior to and during the Voyage, there was a risk that:

- (a) Passengers would contract Coronavirus during the Voyage;
- (b) Passengers who contracted Coronavirus during the Voyage would become severely ill or die, as a consequence of having contracted Coronavirus;
- (c) Passengers would suffer distress by reason of:
  - I. observing that Passengers were exposed to a heightened risk of contracting Coronavirus by reason of the Respondents' failure to take one or more of the Reasonable Precautions;
  - II. observing or otherwise becoming aware of other Passengers contracting Coronavirus during the Voyage; and
- (d) Close Family Members of Passengers described in subparagraph (b) above would suffer a recognised psychiatric injury arising wholly or partly from mental or nervous shock in connection with said Passengers dying or becoming severely ill by reason of having contracted Coronavirus during the Voyage,

(the **Risk of Harm**).

177B The Risk of Harm was not insignificant.

177C The Risk of Harm was foreseeable to each Respondent.

### Particulars

Each Respondent had actual knowledge of the Risk of Harm by reason of their knowledge and experience of the *Diamond Princess* and *Grand Princess* outbreaks.

Further or in the alternative, each Respondent ought to have known of the Risk of Harm by reason of the matters they knew or ought to have known as pleaded at:

- paragraphs 147 to 150 above (knowledge prior to sailing); and/or
- paragraph 151 above (knowledge at time of sailing); and/or
- paragraphs 152 to 157 above (knowledge after sailing).

#### J.2 Duty of Care

178 Each of the Respondents owed the Applicant, Passengers, Passenger Group Members and Close Family Group Members a duty of care at common law to exercise due care and skill in supplying the Services to Passengers.

179 In relation to the common law duty of care and the guarantee set out in s.60 of the ACL (together the **Duty of Care**), the standard of care was that of an organisation that:

- (a) was a specialist in providing passenger cruises;
- (b) employed or engaged medical professionals on board the vessel *Ruby Princess*;
- (c) employed medical staff (or a related entity to each of the Respondents employed medical staff) that had medical knowledge by reason of their training or experience, tailored to service for their employer in whose business operations, outbreaks of various viruses were a constant risk, namely:

- I. Doctor Grant Tarling (the Chief Medical Officer); and
- II. members of the departments called, “Health Services”, “Public Health”, “Fleet Medical Operations”, “Clinical Services” and “Health Care Administration and Finance”;

- (d) had knowledge of the matters pleaded in paragraphs 147 to 159 above.

180 The scope of the Duty of Care required each of the Respondents to:

- (a) [Not used.]
- (b) [Not used.]
- (c) [Not used.]
- (d) [Not used.]
- (e) [Not used.]
- (f) [Not used.]
- (g) [Not used.]
- (h) [Not used.]
- (i) [Not used.]
- (j) [Not used.]
- (k) [Not used.]
- (l) [Not used.]
- (m) [Not used.]
- (n) [Not used.]
- (o) [Not used.]
- (p) [Not used.]
- (q) [Not used.]
- (r) cancel the Voyage;
- (s) in the alternative:

- I. implement the Reasonable Precautions, including warning Passengers prior to boarding of the Ruby Princess Coronavirus Risk; and

- II. offer a refund to Passengers who did not wish to board in light of the Ruby Princess Coronavirus Risk;
- (t) in the further alternative, in the event that the Voyage was not cancelled and the Reasonable Precautions could or would not be implemented:
  - I. warn Passengers, prior to boarding, that the Reasonable Precautions could or would not be implemented;
  - II. warn Passengers, prior to boarding, of the Ruby Princess Coronavirus Risk; and
  - III. offer a refund to Passengers who did not wish to board in light of either of the matters the subject of the warnings described in subparagraphs I and II above.

### J.3 Breach of the Duty of Care

180A In breach of the Duty of Care, the Respondents failed to:

- (a) cancel the Voyage;
- (b) in the alternative:
  - I. implement the Reasonable Precautions, including warning Passengers prior to boarding of the Ruby Princess Coronavirus Risk; and
  - II. offer a refund to Passengers who did not wish to board in light of the Ruby Princess Coronavirus Risk;
- (c) in the further alternative:
  - I. warn Passengers, prior to boarding, that the Reasonable Precautions could or would not be implemented;
  - II. warn Passengers, prior to boarding, of the Ruby Princess Coronavirus Risk; and
  - III. offer a refund to Passengers who did not wish to board in light of either of the matters the subject of the warnings described in subparagraphs (t)I and (t)II above.

## Particulars

Particular of the breach of the Duty of Care are provided in Appendix 1.

181 [Not used.]  
182 [Not used.]  
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268 [Not used.]

**K Misleading and deceptive conduct**

269 Each Respondent, by their conduct, represented to the Applicant and Passenger Group Members that it was safe to board the *Ruby Princess* for the Voyage (**Safety Representation**).

**Particulars**

The conduct was partly express and partly implied by conduct.

- Insofar as it was express, it was contained in the e-mail authored by the First Respondent (and further and in the alternative, the Second Respondent) and sent on or about 5 or 6 March 2020 to the Applicant and most or all of the Passenger Group Members.
- Insofar as it was implied, it was implied by the fact that each of the Respondents allowed the Applicant and the Passenger Group Members to board the *Ruby Princess*.

(together the **Misleading and Deceptive Conduct Particulars**)

270 Each Respondent, by its conduct, represented to the Applicant and Passenger Group Members that they would adequately protect the health of the Passengers on the Voyage (**Protection Representation**).

### Particulars

The Applicant and the Group Members repeat the Misleading and Deceptive Conduct Particulars.

- 271 Each Respondent, by its conduct, represented to the Applicant and Passenger Group Members that they had implemented adequate protocols to protect the health of their Passengers that were designed to be flexible to adapt to changing conditions and recommended best practices (**Best Practices Representation**).

### Particulars

The Applicant and the Passenger Group Members repeat the first Misleading and Deceptive Conduct Particulars.

- 272 Each Respondent represented to the Applicant and Passenger Group Members that they would have a relaxing, pleasurable and enjoyable time on the *Ruby Princess* and would come back feeling new (**Pleasurable Cruise Representation**).

### Particulars

The representation is to be implied from: (i) the conduct the Respondents in supplying the Services, together with (ii) the marketing and promotional material produced by the Respondents in relation to the Services, which material included the use of the trademark “come back new”.

- 273 Insofar as each of the Safety, Protection, Best Practices and Pleasurable Cruise Representations was a future representation, the Respondents did not have reasonable grounds to make each representation.

### Particulars

The Applicant and Group Members rely on the presumption in s 4 of the *Australian Consumer Law*.

- 274 Insofar as the Safety Representation was not a future representation:

- (a) it was a continuing representation, and
- (b) each Respondent failed to correct or qualify the representation at any time up to the time of boarding.

275 Insofar as the Protection Representation was not a future representation:

- (a) it was a continuing representation, and
- (b) each Respondent failed to correct or qualify the representation at any time before or during the Voyage.

276 Insofar as the Best Practices Representation was not a future representation:

- (a) it was a continuing representation, and
- (b) each Respondent failed to correct or qualify the representation at any time before or during the Voyage.

277 Insofar as the Pleasurable Cruise Representation was not a future representation:

- (a) it was a continuing representation, and
- (b) each Respondent failed to correct or qualify the representation at any time before up to the time of boarding.

278 The Applicant and Passenger Group Members relied on each of the Safety, Protection, Best Practices and Pleasurable Cruise Representations in attending at the Sydney Overseas Passenger Terminal on 8 March 2020, boarding the *Ruby Princess* that day and in attending events in communal areas and participating in activities on and off the ship during the Voyage.

279 The Safety Representation was false, misleading or deceptive within the meaning of ss 18 and 29(1)(b) of the *Australian Consumer Law*.

### **Particulars**

Insofar as the representation was a future representation, the Applicant and the Group Members rely on section 4 of the *Australian Consumer Law*.

Insofar as the representation was not a future representation, it was not safe to board the *Ruby Princess* because of:

- the Cruise Ship Coronavirus Risk;
- the Ruby Princess Coronavirus Risk;

- the Risk of Harm;
- the fact that by at least 8 March 2020, the Respondents could not, or alternatively did not propose to, implement the Reasonable Precautions; and
- the failure by the Respondents to implement the Reasonable Precautions.

280 The Protection Representation was false, misleading or deceptive within the meaning of ss 18 and 29(1)(b) of the *Australian Consumer Law*.

#### **Particulars**

Insofar as the representation was a future representation, the Applicant and the Group Members rely on section 4 of the *Australian Consumer Law*.

Insofar as the representation was not a future representation, then the Applicant and the Group Members rely on the matters pleaded at paragraph 180A.

281 The Best Practices Representation was false, misleading or deceptive within the meaning of ss 18 and 29(1)(b) of the *Australian Consumer Law*.

#### **Particulars**

The Applicant and the Group Members repeat the particulars to the previous paragraph.

Insofar as the representation was not a future representation, then, during the Voyage, each Respondent failed to:

- a. During the Voyage, implement the Australian government's requirement to test every person with an influenza-like illness twice and provide the second sample to government health officials for COVID-19 testing: *Information for the cruise industry, Australian Government Department of Health, version 3 (06/03/2020)*.
- b. During the Voyage, implement the Australian government's recommendation:

- I. to actively encourage all passengers and crew to seek immediate medical assessment for any ARI/ILI at all stages throughout the Voyage;
  - II. that crew and passengers should be encouraged to practise good sneeze/cough hygiene - cough and sneeze into the elbow or a clean tissue, dispose of the tissue and use alcohol based hand sanitiser;
  - III. that crew and passengers should be encouraged to avoid touching the face (mouth, eyes, and nose) with unwashed or gloved hands, as per the *Information for the cruise industry, Australian Government Department of Health, version 3 (06/03/2020)*.
- c. Before the Voyage, provide specific information to the senior doctor of the *Ruby Princess* in relation to the outbreak on the *Diamond Princess*, in circumstances where this failure made her less able to know what systems caused the outbreak on the *Diamond Princess* and what systems (if any) ameliorated the outbreak and if there was any other information she should have to detect and manage an outbreak, and this further limited her ability to make recommendations to the captain and hotel manager relating to the health and safety of Passengers.
- d. In relation to the 10 March CDNA Guidelines updated definition of 'suspect case':
- I. inform Dr von Watzdorf of the definition of a 'suspect case' of Coronavirus following 10 March.
  - II. *on and after 10 March*, have Dr von Watzdorf (or another member of the *Ruby Princess*' Medical Centre) inform all those with ARI or ILI that they were considered 'suspect cases' of Coronavirus.
  - III. *on and after 10 March*, announce to the other Passengers on the ship that there were 'suspect cases' of Coronavirus on board.
  - IV. *on and after 10 March*, have each 'suspect case' isolate in the cabins for the duration of the Voyage.

e. The particulars in Appendix 1 paragraphs 24 to 41 are repeated.

Further particulars may be added after discovery and evidence.

282 The Pleasurable Cruise Representation was false, misleading or deceptive within the meaning of ss 18 and 29(1)(b) of the *Australian Consumer Law*.

### **Particulars**

Insofar as the representation was a future representation, the Applicant and the Group Members rely on section 4 of the *Australian Consumer Law*.

By no later than midday 8 March 2020, it was clear to the Respondents that Passengers on the Voyage were not going to have a relaxing, pleasurable and enjoyable holiday and would not come back feeling new because of:

- the Cruise Ship Coronavirus Risk;
- the Ruby Princess Coronavirus Risk;
- the Risk of Harm;
- the fact that by at least 8 March 2020, the Respondents could not, or alternatively did not propose to, implement the Reasonable Precautions; and
- the failure by the Respondents to implement the Reasonable Precautions.

283 The Safety, Protection, Best Practices and Pleasure Cruise Representations were made in trade or commerce.

### **L Loss and damage**

284 As a result of the breach of the guarantees set out in s.61 of the ACL and/or the breaches of the Duty of Care pleaded above the Applicant and Group Members suffered loss and damage.

### **Particulars**

I. Paragraph 146 above is repeated.



II. In the case of the Applicant:

- i. Non-economic loss damages including damages for distress and disappointment.
- ii. Lost income.
- iii. Lost superannuation.
- iv. Medical costs (past and ongoing).
- v. Costs of home modification.
- vi. Gratuitous care.
- vii. Loss of capacity to provide domestic services.
- viii. Cost of the Voyage (to the extent it has not been refunded)

III. Further particulars of each group members' loss and damage will be provided following the initial trial and the determination of the common questions.

285 As a result of the misleading and deceptive conduct pleaded above, the Applicant and Passenger Group Members suffered loss and damage.

**Particulars**

~~The Applicant and Passenger Group Members suffered distress and disappointment damage.~~ The particulars to paragraph 284 are repeated.

286 Further, on and from midday on 8 March 2020, each of the First Respondent and the Second Respondent engaged in aggravating conduct in circumstances where they had the knowledge as pleaded in paragraphs 147 to 150 above by midday on 8 March 2020 and in paragraphs 151, 155 and 157 at relevant times after that.

**Particulars**

Particulars of aggravating conduct are set out in Appendix 2.

287 In the circumstances, the Applicant claims aggravated damages on her own behalf and on behalf of Group Members in respect of each of:

- (a) the breaches of the guarantees set out in s.61 of the ACL pleaded at paragraphs 175 to 177 above; and/or
- (b) the misleading and deceptive conducted pleaded at 269 to 283 above; and/or
- (c) the breaches of the Duty of Care pleaded at paragraph 180A above.

288 Further or in the alternative, on and from midday on 8 March 2020, each of the First Respondent and the Second Respondent engaged in conduct in contumelious disregard for the rights of the Applicant and Group Members in the circumstances where they had the knowledge as pleaded in paragraphs 147 to 150 above by midday on 8 March 2020 and in paragraphs 151, 155 and 157 at relevant times after that.

### **Particulars**

Particulars of the relevant conduct are set out in Appendix 2.

- 289 In the circumstances, the Applicant claims exemplary damages on her own behalf and on behalf of Group Members in respect of each of:
- (a) the breaches of the guarantees set out in s.61 of the ACL pleaded at paragraphs 175 to 177 above; and/or
  - (b) the misleading and deceptive conduct pleaded at paragraphs 269 to 283 above; and/or
  - (c) the breaches of the Duty of Care pleaded at paragraph 180A above.

Date: ~~9 October 2020~~ 23 March 2021

A handwritten signature in black ink, appearing to read 'V. Antzoulatos', with a long horizontal stroke extending to the right.

---

Signed by Vicky Antzoulatos

Lawyer for the Applicant

This pleading was prepared by Ian Pike SC, Sonia Tame and Quintin Rares of counsel, and Vicky Antzoulatos, lawyer.

The amendments made pursuant to the orders dated 9 September 2020 were prepared by Ian Pike SC, Patrick Meagher and Ryan May of counsel, and Vicky Antzoulatos, lawyer.

The amendments made pursuant to orders dated 16 March 2021 were prepared by Ian Pike SC, Ryan May of counsel and Vicky Antzoulatos, lawyer.

**Certificate of lawyer**

I Vicky Antzoulatos certify to the Court that, in relation to the amended statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 23 March 2021

A handwritten signature in black ink, appearing to read 'V. Antzoulatos', with a long horizontal stroke extending to the right.

Signed by Vicky Antzoulatos

Lawyer for the Applicant

## **Appendix 1**

### **Particulars of Breach of Duty of Care**

- 1 Each Respondent failed to cancel the Voyage, in view of the Ruby Princess Coronavirus Risk and the Risk of Harm.
- 2 Each Respondent failed to ensure that the ship was thoroughly cleaned and sanitised prior to Passengers boarding the ship.
- 3 Each Respondent failed, immediately prior to boarding,
  - (a) to ask each Passenger individually if they had any symptoms consistent with ARI/ILI or Coronavirus, such as shortness of breath, cough or fever, and refuse to permit any Passenger who advised that they had any such symptoms to board; and
  - (b) test each Passenger's temperature to determine if that Passenger had a fever, and refuse to permit any Passenger who had a fever to board.
- 4 Each Respondent failed, before permitting any new Passenger to board on 8 March 2020, to:
  - (a) ask each crew member on board if they had any symptoms consistent with ARI/ILI or Coronavirus, such as shortness of breath or cough or fever, and require any crew member who advised that they had any such symptoms:
    - I. to disembark and remain off the ship until such time as the crew member tested negative for Coronavirus; or,
    - II. alternatively, to quarantine on board until such crew member tested negative for Coronavirus.
  - (b) test each crew member's temperature to determine if that person had a fever and require any crew member who had a fever:
    - I. to disembark and remain off the ship until such time as the crew member tested negative for Coronavirus; or,
    - II. alternatively, to quarantine on board until such crew member tested negative for Coronavirus.

- 5 Each Respondent failed to make enquiries of each Passenger, prior to boarding, to identify:
  - I. Overseas Passengers; or
  - II. High Risk Overseas Passengers.
- 6 Each Respondent failed, prior to boarding, in respect of Overseas Passengers:
  - (a) to consider whether any Overseas Passenger may have been exposed to Coronavirus, including on their flight to Australia;
  - (b) to conduct further health screening of each Overseas Passenger, away from other Passengers.
- 7 Each Respondent failed, in respect of High Risk Overseas Passengers:
  - (a) to refuse to permit High Risk Overseas Passengers to board, unless the Passenger tested negative for Coronavirus; or
  - (b) alternatively, to require High Risk Overseas Passengers to quarantine on board until the later of:
    - I. the expiration of 14 days from the date upon which the High Risk Overseas Passenger last visited a High Risk Country; or,
    - II. in the event that the High Risk Overseas Passenger developed ARI/ILI or Coronavirus symptoms during quarantine, the conclusion of the Voyage; or
  - (c) alternatively, to require all High Risk Overseas Passengers to minimise close contact with other persons during and after the embarkation process and to stay a minimum distance of two metres (alternatively, 1.5 metres) from other Passengers and crew.
- 8 Each Respondent failed, prior to boarding, to warn Passengers:
  - (a) of the Ruby Princess Coronavirus Risk; and
  - (b) that there was a risk that they may contract Coronavirus during the Voyage.

- 9 Each Respondent failed, during the Voyage, to require Passengers and crew to wash their hands with soap for 20 or more seconds or use appropriate sanitiser when entering or leaving public areas.
- 10 Each Respondent failed, during the Voyage, adequately to clean the ship, including by sanitising all surfaces on the ship ordinarily touched by Passengers or crew with specialised chemicals capable of killing Coronavirus.
- 11 Each Respondent failed, during the Voyage, to prevent self-service of food.
- 12 Each Respondent failed, during the Voyage, to prevent the use of common implements for the handling of food.
- 13 Each Respondent failed, during the Voyage, to prevent food being served by hand, including communal nut and chip bowls.
- 14 Each Respondent failed, during the Voyage, to request all Passengers and crew on board to engage in physical distancing.
- 15 Each Respondent failed, during the Voyage, to limit numbers of people within all parts of the ship to allow for physical distancing (and closing such parts which could not permit adequate physical distancing).
- 16 Each Respondent failed, during the Voyage, to require all Passengers and crew to wear masks in public spaces (except where eating or drinking with appropriate physical distancing).
- 17 Each Respondent failed, during the Voyage, to have adequate personal protective equipment (**PPE**), viral swabs, and influenza testing kits on board and using that equipment as appropriate.
- 18 Each Respondent failed, during the Voyage, to notify all Passengers and crew that medical assessments would be provided free of charge for any Passengers and crew who were experiencing symptoms consistent with ARI/ILI or Coronavirus (such as fever, cough or shortness of breath).
- 19 Each Respondent failed, during the Voyage, in respect of Passengers and crew who were experiencing symptoms consistent with ARI/ILI or Coronavirus (such as fever, cough or shortness of breath), to:

- (a) direct such persons to seek immediate medical assessment;
  - (b) provide such persons with an immediate medical assessment, free of charge;
  - (c) conduct medical assessments of such persons away from other Passengers and crew, and utilising adequate PPE;
  - (d) test such persons for Coronavirus;
  - (e) advise such persons that it was possible that they were infected with Coronavirus;
  - (f) unless and until such persons tested negative for Coronavirus, require such persons to quarantine on board until the conclusion of the Voyage; or
  - (g) alternatively, require such persons to wear masks in public areas;
- 20 Each Respondent failed, during the Voyage, regularly to monitor, including throughout the voyage, developments in relation to Coronavirus, including its nature, detection, diagnosis, the mechanisms by which it spreads, methods and procedures to be adopted to reduce its spread and guidelines in relation to those matters.
- 21 Each Respondent failed, during the Voyage, to ensure that updated information was provided to the Commodore, ship Medical Centre, hotel manager and or other necessary officers (including the ship's doctor) during the Voyage in relation to the matters identified as a result of the monitoring described in subparagraph 43(s) above.
- 22 Each Respondent failed, during the Voyage, to conduct regular assessments throughout the Voyage of the risk of Passengers contracting Coronavirus during the Voyage, and regularly warn Passengers of that risk and the measures that should be adopted by Passengers in light of that risk.
- 23 Each Respondent failed, during the Voyage, to comply with up-to-date government, industry and company guidelines, protocols and procedures concerning Coronavirus.



## Failures in relation to guidelines, protocols and procedures

### *Failure to implement CDC Guidelines*

24 Each Respondent failed to implement advice and recommendations in the CDC's 'Coronavirus Disease 2019 Guidance for Ships' referred to at paragraphs 45 and 46 above, in that each Respondent failed to:

- (a) during the Voyage, identify and isolate Passengers and crew with possible symptoms of Coronavirus as soon as possible;
- (b) encourage crew members and Passengers to:
  - I. postpone travel when sick, where such encouragement should be provided pre-boarding;
  - II. during the Voyage, self-isolate and inform the on board Medical Centre immediately if they develop a fever (100.4F / 38C or higher), begin to feel feverish, or develop other signs or symptoms of sickness;
- (c) during the Voyage, carry a sufficient quantity of PPE, including facemasks;
- (d) during the Voyage, have crew members whose work activities involved contact with Passengers and other crew members who had fever or acute respiratory illness to:
  - I. ask the sick person to wear a facemask if tolerated, any time they leave their cabin or interact with other people;
  - II. maintain a distance of 6 feet from the sick person while interviewing, escorting, or providing other assistance;
  - III. limit the number of people who interact with sick people;
  - IV. to the extent possible, have a single person give care and meals to the sick person; and
- (e) pre-boarding and during the Voyage, take a cautious approach to interacting with patients under investigation for Coronavirus.

*Failure to implement NSW Health Coronavirus Guidelines for the Cruise Industry*

- 25 Each Respondent failed to implement advice and recommendations in the NSW Health 22 February Enhanced Procedure referred to at paragraph 48 and 49 above, in that each Respondent failed to:
- (a) Pre-boarding and during the Voyage, each Respondent failed to ensure that sufficient supplies were available to manage a respiratory outbreak including facemasks for ill Passengers and crew, and personal protective equipment for clinical staff.
  - (b) During the Voyage, each Respondent failed to have vessel staff ensure that they actively identified Passengers and crew with respiratory symptoms (cough, sore throat, fever or difficulty breathing).
  - (c) During the Voyage, each Respondent failed to appropriately isolate Passengers who may be infectious.
  - (d) The Applicant and Group Members repeat paragraphs 78 to 86, 148(k), 149, and 151(f).
- 26 Each Respondent failed to implement recommendations in the version of the NSW 'Enhanced COVID-19 Procedures for the Cruise Line Industry' they received on 6 March 2020, which is referred to at paragraph 51 above, in that each Respondent failed to ensure that pre-embarkation screening of all crew and Passengers included a history of travel in the previous 14 days.
- 27 Each Respondent failed promptly to implement recommendations in the update to the NSW Health 'Enhanced COVID-19 Procedures for the Cruise Line Industry' dated 9 March 2020, which is referred to at paragraph 52 above, in that each Respondent failed to ensure that cruise ship staff actively identified Passengers and crew with symptoms of ARI – including cough, sore throat, fever or difficulty breathing – by making regular announcements throughout the cruise, and inviting them to attend the clinic for assessment.

*Failure to implement the Australian Government Guidelines of 6 March 2020*

- 28 Each Respondent failed to implement the guidelines of the Australian Government (set out at paragraph 53 herein):

- (a) to actively encourage all Passengers and crew to seek immediate medical assessment for any respiratory illness at all stages throughout the Voyage; and
- (b) to ensure medical staff at the Medical Centre use proper PPE when interacting with a person presenting symptoms consistent with Coronavirus.

*Failure to implement the CDNA Guidelines from 10 March 2020*

- 29 Each Respondent failed promptly to advise the senior doctor on the *Ruby Princess* of the change in the definition of a 'suspect case' for COVID-19 in the CDNA Guidelines on or about 10 March 2020.
- 30 Each Respondent failed to warn, or ensure that warning was given to, each person on the Voyage who fell within the definition of 'suspect case' of COVID-19 under the CDNA Guidelines (as amended on 10 March 2020) to the effect that they were considered a 'suspect case' of COVID-19.
- 31 Each Respondent failed to warn, or ensure that warning was given to, all persons who were 'suspect cases' of COVID-19 (within the definition in the CDNA Guidelines) to the effect that they should isolate in their cabins or another suitable space for the duration of the Voyage.
- 32 Each Respondent failed to warn Passengers that there were 'suspect cases' of COVID-19 on board on 10 March or at all.

*Failure to follow company protocol*

- 33 In breach of the Respondents' own fleet sanitation protocol (referred to at paragraph 57 and 58 above), each Respondent failed to implement thermal screening at the entrance to the Overseas Passenger Terminal in Sydney on 8 March 2020 for people seeking to travel on the *Ruby Princess* that day.
- 34 Further, in breach of the Respondents' own Identification and Assessment Protocol (referred to at paragraphs 59 and 60) failed to ensure that:
  - (a) at the ship's on board Medical Centre, medical staff triaging patients with ILIs wore appropriate PPE including gloves, goggles and N95 masks; and
  - (b) on board, all patients who met the ILI case definition were isolated for at least 24 hours post-resolution of fever.

- 35 Further, in breach of their own sanitation procedures (referred to at paragraph 62 above), each Respondent failed to:
- (a) have staff serve all guest and crew at buffet stations; and
  - (b) prevent guests and crew from serving themselves at buffet stations.
- 36 Each Respondent failed to engage in screening to ensure, pre-boarding, that all Passengers who are ill are refused boarding rights.
- 37 Each Respondent failed to engage in screening to ensure, pre-boarding, that all Passengers who have fever are refused boarding rights.
- 38 In relation to those Passengers referred to in the previous two paragraphs, each Respondent failed to notify all Passengers or those Passengers that they would receive a full refund if they fit into either of those two categories.
- 39 Each Respondent failed to require each Passenger to complete a pre-cruise health screening survey at their homes or hotels that verified their entire travel history within the last 14 days.
- 40 Each Respondent failed to conduct additional screening and temperature checks in relation to all crew who travelled to a country with community spread of Coronavirus, ensure that each crew member had a clean bill of health (including, but not limited to no illness or fever), and, require each crew member to fill in a pre-cruise health survey in their homes or hotels, before being allowed on board the *Ruby Princess* for the Voyage starting 8 March 2020.
- 41 Further particulars to be provided following discovery and evidence.

## **Appendix 2**

### **Particulars for aggravated and exemplary damages**

- 42 Each Respondent knew of the outbreak on board the *Diamond Princess* that occurred more than a month before the Voyage, and the outbreak on the *Grand Princess* that had begun a few days before the Voyage.
- 43 Each Respondent knew that over the preceding 5 or 6 weeks, more than 700 people had caught Coronavirus as a result of the *Diamond Princess* voyage, and each Respondent knew that a number of people on board the *Diamond Princess* had died and many were seriously ill.
- 44 Each Respondent knew that since the time of the *Diamond Princess* voyage the worldwide prevalence of Coronavirus had increased.
- 45 Each Respondent knew the ship had been placed at red alert level prior to boarding, due to the risk of Coronavirus.
- 46 Each Respondent knew that the *Ruby Princess* did not have sufficient supplies of materials to manage a respiratory an outbreak of ARI/ILI on board if one were to occur during the Voyage.
- 47 Each Respondent knew that they had not warned each Passenger entering the ship of the danger to each Passenger.
- 48 Each Respondent did not warn each Passenger entering the ship that the Second Respondent (and further or in the alternative, the First Respondent) planned to fail to implement any or all of the Reasonable Precautions.
- 49 Each Respondent did not implement any, alternatively many or all of the Reasonable Precautions.
- 50 Each Respondent knew, especially after 15 March 2020, that there was an unexcluded, real possibility that some Passengers on the vessel had Coronavirus. Nevertheless, they continued to encourage large groups of people to muster in confined spaces, they continued to crowd people into activity spaces and they continued communal dining with buffets, shared serving implements, hand served goods (such as nuts from nut bowls) and communal seating.

- 51 Each Respondent also knew of a peculiar risk factor of the Passengers on this vessel, being that there were a number of elderly people who were especially susceptible to dying or being seriously injured by Coronavirus. They knew a majority of deaths from the *Diamond Princess* Coronavirus outbreak had occurred among passengers over 70 years of age.
- 52 In those premises, the Respondents each had knowledge of an extreme danger, being a real danger of death or serious injury to any Passenger who boarded the *Ruby Princess*, but nevertheless, allowed Passengers to board, and then in fact took steps to exacerbate the danger to their Passengers by encouraging and (in musters) requiring crowding or bunching of Passengers.
- 53 The First Respondent, took active steps to try to make it seem as if they were able to adequately decrease the risks to their Passengers, including in the 5 or 6 March e-mail sent to the Applicant and most or all of the Group Members.
- 54 In that e-mail they offered all guests departing on 9 March 2020 a full (credit voucher) refund.
- 55 However, for the Voyage (starting on 8 March 2020), each of the Respondents decided to put corporate profits ahead of the safety and wellbeing of their Passengers.
- 56 Despite receiving advice from NSW Health on 10 March 2020 ('Enhanced COVID-19 Procedures for the Cruise Line Industry' dated 9 March 2020) recommending that Cruise ship staff should ensure that:
- “They actively identify Passengers and crew with acute respiratory illness (ARI) – including cough, sore throat, fever or difficulty breathing – by making regular announcements throughout the cruise, inviting them to attend the clinic for assessment”,
- the Respondents waited until 17 March 2020 (i.e. a week) to make such an announcement on the *Ruby Princess* and only made one such announcement during the Voyage.
- 57 Neither Respondent ensured that all persons who were 'suspect cases' of Coronavirus (within the definition in the CNDA Guidelines) were advised to isolate in their cabins or another suitable space for the duration of the Voyage.

- 58 Neither Respondent announced, or ensured that it was announced to Passengers on the ship that there were 'suspect cases' of Coronavirus on board.
- 59 On about 13 March 2020, the First Respondent announced (and the Second Respondent knew the First Respondent had announced or further and in the alternative, the Second Respondent announced) that they were cancelling all sailings for two months. Despite this, they continued to encourage large groups of people to muster in confined spaces, they continued to crowd people into activity spaces and they continued communal dining (with buffets, shared serving implements, hand served goods (such as nuts from nut bowls) and communal seating).
- 60 On about 17 March 2020 Mr Greg Jackson, Vice President of Fleet Operations of Carnival Australia told Mr Peter Little, Senior Vice President and employee of Carnival plc in writing that "Ruby Numbers are going berserk", meaning the numbers of illnesses with symptoms consistent with Coronavirus were spiralling out of control. They did not inform the Passengers. It is even more reprehensible that they continued to keep amenities such as bars and the nightclub open as they knew (at the highest levels of management) that the numbers of 'suspect cases' were going "berserk" (or at any time they had 'suspect cases'). If they shut down some of the amenities while the numbers were going "berserk" they might have lost revenue. While the Respondents were continuing to make money from those on the ship, the executive management did nothing to slow the numbers of 'suspect cases' rising.
- 61 If a person (being each Respondent) with control of an enclosed space (being *the Ruby Princess* and each part of her) knows there is a real risk (that the Passengers who enter into that space may become trapped there with an uncontrollable, spreading, contagious, life-threatening virus, common sense and human decency would create an expectation that that knowledge would be disclosed to the said Passengers before they boarded so each Passenger could make up their own minds as to whether they wished to risk their health, safety and life and the health, safety and life of their family members (and friends). There were no such warnings or disclosures.
- 62 Moreover, as a matter of basic human decency and common sense if it became apparent during that trip that there was a growing number of people on board with an unexplained illness, where there was an unexcluded, real possibility that some or more Passengers on the vessel had Coronavirus, that information ought to have been communicated to Passengers so that they could act in the interests of their own safety and protection and

the health, safety and life of their family members (and friends). There were no such warnings or disclosures.

- 63 Neither of the Respondents apologised to the Applicant or the Group Members.
- 64 In the circumstances, each Respondent engaged in aggravating conduct and engaged in conduct in contumelious disregard for the rights, health and safety of the Group Members.
- 65 Further particulars to be added after discovery and evidence.