

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 28/10/2020 4:43:27 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	NSD806/2020
File Title:	SUSAN KARPIK v CARNIVAL PLC (ARBN 107 998 443 / ABN 23107998443) & ANOR
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



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

Dated: 28/10/2020 5:02:43 PM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended Originating application

(Filed pursuant to orders made by Justice Lee and Justice Stewart on 28 October 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

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: [Registry will insert time and date]

Place: Federal Court of Australia, 184 Phillip St, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to [Registry will insert date, if applicable].

Filed on behalf of Susan Karpik (Applicant)
Prepared by Vicky Antzoulatos
Law firm Shine Lawyers Pty Ltd
Tel 02 8754 7229 Fax 02 9267 5650
Email vantzoulatos@shine.com.au
Address for service Level 6, 299 Elizabeth Street, Sydney, NSW 2000



Date:

Signed by an officer acting with the authority
of the District Registrar



Details of claim

On the grounds stated in the amended statement of claim (**SOC**), accompanying affidavit or other document prescribed by the Rules, the aApplicant claims on her own behalf and on behalf of the Group Members (defined below and herein):

1. Damages.
2. Exemplary damages.
3. Aggravated damages.
4. Exemplary damages pursuant to s 22 of the *Federal Court of Australia Act 1976* (Cth).
5. Damages (including aggravated damages) pursuant to s 236 of the *Australian Consumer Law*.
- 5A. Damages pursuant to s 267(4) of the *Australian Consumer Law*.
- 5B. Damages pursuant to s 33Z(1)(e) and (f) of the *Federal Court of Australia Act 1976* (Cth), in respect of some of the damages suffered by Passenger Group Members, in an aggregate amount.
6. Compensation pursuant to s 237 of the *Australian Consumer Law*.
7. Compensation pursuant to s 267(3) of the *Australian Consumer Law*.
8. Interest pursuant to s 51A of the *Federal Court of Australia Act 1976* (Cth).
9. Costs.
10. Any further or other order that the Court sees fit.

Representative action

The aApplicant sues in a representative capacity on behalf of Group Members.

The Group Members are ~~persons~~:

~~a. Who~~

- ~~i. travelled on board the vessel "Ruby Princess" as passengers during its voyage from Sydney to Sydney via New Zealand, departing on 8 March 2020 (the **Voyage**) and are still alive; or~~
- ~~ii. are the executors and administrators of persons deceased who were passengers who travelled on the Voyage who contracted the illness known as "COVID-19" and or "SARS-Cov-2" (**coronavirus**) during or as a result of the coronavirus outbreak on the Voyage and passed away; or~~



iii. ~~_____ are a passenger's close family members or loved ones who suffered a recognised psychiatric injury, mental harm or nervous shock consequent upon the passenger contracting coronavirus on or as a result of the Voyage and subsequently passing away or becoming severely ill; and~~

b. ~~_____ Have suffered loss and damage; and~~

c. ~~_____ Have not otherwise commenced proceedings against the Respondents in relation to the Voyage as at the date of filing.~~

(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:
- (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.

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

The claim gives rise to a number of common questions of fact or law, being:

1A Whether coronavirus has the Coronavirus Characteristics, as alleged.

1. The proper characterisation of the services supplied by the ~~r~~Respondents to the ~~the~~ Passenger Group Members ~~Group Members~~ (**Services**).
2. Whether ~~each Group Member~~ Passenger Group Members “acquired” the Services from the ~~r~~Respondents ~~for the purposes within the meaning of s 2 of the *Australian Consumer Law*.~~
3. Whether ~~each Group Member~~ Passenger Group Members ~~was a~~ were “consumers” ~~for the purposes within the meaning of s 3 of the *Australian Consumer Law*.~~
4. Whether the Services were ~~provided~~ supplied in trade or commerce.
5. ~~Whether coronavirus has the characteristics alleged.~~
6. What knowledge (actual or constructive) the Respondents had of the Coronavirus Characteristics.
7. What knowledge (actual or constructive) the Respondents had ~~of the~~ in relation to the Likely risk of Passengers becoming infected with Coronavirus during the Voyage ~~Coronavirus Impact.~~



- 7A. Whether the result that Passenger Group Members wished the Services to achieve was as pleaded in paragraph 172 of the SOC (**Result**).
8. ~~Whether the alleged result for which the Passenger Group Members made known to the respondents, or to a person by whom any prior negotiations or arrangements in relation to the acquisition of the Services were conducted or made, the Result Services were acquired by each passenger was impliedly made known to the Respondents.~~
9. Whether the Services were not of such nature, quality, state or condition as might reasonably be expected to achieve a the Rresult desired by the Applicant and Group Members that was made known to the Respondents (within the meaning of s 268(d) of the *Australian Consumer Law*).
- 9A Whether the Purpose for which the Services were acquired by Passenger Group Members was as pleaded in paragraph 170 of the SOC (**Purpose**).
10. ~~Whether the alleged particular purpose for which the Services were acquired by each Passenger Group Members passenger was impliedly made known to the rRespondents the Purpose.~~
11. Whether the Services were not reasonably unfit for a particular the Ppurpose for which the services were acquired by the Applicant and Group Members made known to the Respondents (within the meaning of s 268(c) of the *Australian Consumer Law*).
- 11A Whether the respondents failed to render the Services with due care and skill.
- 11B Insofar as the respondents failed to comply with a guarantee that applied to the supply of the Services under Subdivision B of Division 1 of Part 3-2 of the *Australian Consumer Law*:
- a. whether such failure was a major failure within the meaning of s 268 of the *Australian Consumer Law*;
 - b. whether such failure caused a reduction in the value of the Services below the price paid by Passenger Group Members for the Services;
 - c. if so, the quantum of the reduction in the value of the Services below the price paid by Passenger Group Members for the Services;
 - d. whether an award of damages pursuant to s 33Z(1)(e) or (f) of the *Federal Court of Australia Act 1976* (Cth) should be made in favour of Passenger Group Members in respect of any reduction in the value of the Services below the price paid by the relevant Passenger Group Members for the Services.



12. ~~Whether the Services created an unsafe situation by exposing the Applicant and Group Members to the risk of contracting the virus (within the meaning of s 268(e) of the Australian Consumer Law).~~
13. ~~Whether the Respondents guaranteed that the Services that it rendered would be rendered with due care and skill.~~
14. Whether the rRespondents owed the Applicant and Group Members a duty of care, at common law, to:
 - a. Passenger Group Members; and
 - b. Close Family Group Members.
15. ~~Whether the Respondents' duty of care encompassed a duty to take any or all of the Reasonable Steps.~~
16. Whether (and if so, to what extent) the rRespondents breached their duty of care took each of the Reasonable Steps.
17. Whether the rRespondents made the Safety Representation.
18. Whether the Safety Representation was false, misleading and or deceptive.
19. Whether the rRespondents made the Protection Representation.
20. Whether the Protection Representation was false, misleading and or deceptive.
21. Whether the rRespondents made the Best Practices Representation.
22. Whether the Best Practices Representation was false, misleading and or deceptive
- 22A. Whether the respondents made the Pleasurable Cruise Representation.
- 22B. Whether the Pleasurable Cruise Representation was false, misleading and or deceptive.
- 22C. Whether any of the Safety, Protection, Best Practices and or Pleasurable Cruise representations were continuing representations.
- 22D. Whether the Safety, Protection, Best Practices and or Pleasurable Cruise representations were made in trade or commerce.
23. ~~Whether any of the Safety, Protection and or Best Practices representations were future representations and if so whether the (ACL) s 4 presumption is rebutted.~~
24. Whether aggravated damages are available for each cause of action.
25. Whether exemplary damages are available for each cause of action.

Applicant's address



The Applicant's address for service is:

Place: Level 6, 299 Elizabeth St, Sydney NSW 2000

Email: vantzoulatos@shine.com.au

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 28 October 2020

A handwritten signature in black ink, appearing to read 'V. Antzoulatos', written over a horizontal line.

Signed by Vicky Antzoulatos
Lawyer for the Applicants

**Schedule**

No. of 2020

Federal Court of Australia
District Registry: New South Wales
Division: General

Respondents

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

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

Date: 28 October 2020