

NOTICE OF FILING

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
Court of Filing: FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment: 23/07/2025 3:51:56 PM AEST
Date Accepted for Filing: 23/07/2025 4:03:52 PM AEST
File Number: NSD1039/2022
File Title: JULIE MCLEAN-PHILLIPS v CARNIVAL PLC T/AS P & O CRUISES
AUSTRALIA
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



Sia Lagos

Registrar

Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.



Form 17
Rule 8.05(1)(a)

Second Further Amended Statement of Claim

(Filed pursuant to orders made by Justice Jackman on 22 July 2025)

No. NSD 1039 of 2022

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

Julie McLean-Phillips

Applicant

Carnival Plc ARBN 107 998 443

Respondent

A. THE GROUP MEMBERS

1. The Applicant brings this proceeding on her own behalf and on behalf of represented persons pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth) being natural persons (**Group Members**) who:

(a) travelled as passengers on the 'Sun Princess' cruise ship on the following journeys within the period 5 December 2016 to 26 February 2017 (**The Relevant Cruises**):

| | Cruise | Port of Origin | Departure Date | Via | Arrival Date | Number of days | Definition |
|-------|--------|----------------|----------------|---|--------------|----------------|----------------------|
| (i) | S622P | Fremantle | 5/12/16 | Fremantle Albany Kangaroo Island Adelaide Burnie Melbourne Port Lincoln | 18/12/16 | 13 days | First Cruise |
| (ii) | S623 | Fremantle | 18/12/16 | Margaret River | 21/12/16 | 3 days | Second Cruise |
| (iii) | S701 | Fremantle | 21/12/16 | Komodo Island Ujung Padang Semarang Probolinggo | 05/01/17 | 15 days | Third Cruise |

Filed on behalf of Julie McLean-Phillips (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

| | Cruise | Port of Origin | Departure Date | Via | Arrival Date | Number of days | Definition |
|--------|--------|----------------|----------------|---|--------------|----------------|-----------------------|
| | | | | Bali Lombok | | | |
| (iv) | S702 | Fremantle | 5/01/17 | Margaret River | 08/01/17 | 3 days | Fourth Cruise |
| (v) | S703 | Fremantle | 8/01/17 | Geraldton Broome Kimberley Coast Darwin Port Douglas Airlie Beach Brisbane | 22/01/17 | 14 days | Fifth Cruise |
| (vi) | S704 | Brisbane | 22/01/17 | Alotau Kitava Rabaul Kiriwana Island Doini Island Kawanasausau Strait | 02/02/17 | 11 days | Sixth Cruise |
| (vii) | S705 | Brisbane | 2/02/17 | Fiordland National Park Dunedin Akaroa Wellington Napier Tauranga Auckland | 16/02/17 | 14 days | Seventh Cruise |
| (viii) | S706 | Brisbane | 16/02/17 | Noumea Mystery Island Vila Champagne Bay Luganville | 26/02/17 | 10 days | Eighth Cruise |

- (b) in their dealings with the Respondent (**Carnival**), acquired the services of the Carnival within the meaning of section 2 of the *Australian Consumer Law (ACL)* and were each a 'consumer' within the meaning of section 3 of the ACL;
- (c) suffered loss or damage by reason of being a passenger on one or more of the Relevant Cruises;
- (d) are not:
- (i) legal practitioners providing services to Ms McLean-Phillips and other group members in order to assist them to recover the relief claimed in this proceeding; or

- (ii) judicial officers of the Federal Court of Australia or the High Court of Australia.

A. THE PARTIES

2. The Applicant (**Ms McLean-Phillips**):

- (a) is a natural person;
- (b) at all material times was a resident in Western Australia; and
- (c) in her dealings with Carnival was a 'consumer' within the meaning of section 3 of the ACL.

3. Carnival:

- (a) is an incorporated entity able to be sued in its own corporate name and style;
- (b) had a registered office in Australia, situated at Level 5, 465 Victoria Avenue, Chatswood, in the state of New South Wales;
- (c) carried on business in Australia, as a provider of cruises, through at least the use of Australian ports, marketing, advertising and supply of services to passengers located in Australia (among other places) through which services it derived revenue in Australia; and
- (d) for the purpose of conducting this business, used local agents.

B. THE RELEVANT RELATIONSHIP BETWEEN THE PARTIES

- 4. During March 2016, Ms McLean-Phillips entered into an agreement with Carnival for the supply of recreational cruise services provided by Carnival (the '**Services**').

Particulars

On or about 21 March 2016, Ms Vivienne Trudgeon as agent for Ms McLean-Phillips, entered into an agreement with Ozcruising Pty Ltd as agent for Carnival, for their passage on the 13-night cruise identified as "S622P" (~~Southern Australia Cruise~~ that is, the First Cruise) commencing on 5 December 2016 (JMP.001.001.0007).

- 5. Ms McLean-Phillips acquired the Services by going on the ~~Southern Australia Cruise~~ First Cruise.

Particulars

The Services were commenced to be accepted by Ms McLean-Phillips by her embarking on the ~~Southern Australia Cruise~~ First Cruise.

6. The Services acquired by Ms McLean-Phillips were:
- (a) 'services' within the meaning of section 2 of the ACL.

Particulars

Rights, benefits, privileges or facilities or amenities were provided, or were to be provided, by Carnival to Ms McLean-Phillips to arrange for and facilitate the cruise for the use, amusement, entertainment, recreation or instruction of Ms McLean-Phillips. Without limitation, the services included accommodation, meals, transportation and amenities, onboard activities, medical services, cleaning services, and all services necessary to safeguard and protect the health and safety of passengers, including Ms McLean-Phillips, together with Carnival arranging for the tours and monitoring and assessing (and therefore communicating with passengers, including Ms McLean-Phillips) whether the tour itinerary could proceed in accordance with the existing arrangements or should be varied, cancelled or delayed. The services thus also included Carnival providing information to passengers, before boarding the cruise and during the cruise, about events and circumstances affecting or likely to affect passengers' (and Ms McLean-Phillips) enjoyment of the cruise.

- (b) supplied in trade or commerce within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth).
7. Ms McLean-Phillips made known to Carnival that the particular purpose for the acquisition of the Services was to have a relaxing and pleasurable cruise and experience the selected cruise in accordance with the itinerary and standards advertised by Carnival including the use of the facilities and amenities provided on board the ship and to be able to visit the various ports (the '**Particular Purpose**').

Particulars

- (i) The Particular Purpose was impliedly made known to Carnival by:

- A. the nature of the relationship between Ms McLean-Phillips on the one hand (as a consumer of the Services) and Carnival (as the supplier of the Services);
 - B. the purpose of the transaction that Ms McLean-Phillips entered into with Carnival; and
 - C. the booking of and payment for the Services.
- (ii) The itinerary and standards for the cruises were set out in the information provided by Carnival to Ozcruising on its website at [https://www.ozcruising.com.au/detail/cruiseS622P\(JMP.001.001.0280\)](https://www.ozcruising.com.au/detail/cruiseS622P(JMP.001.001.0280)) and the information generally provided by Carnival on its website at www.princess.com and in its "2016-2017 Cruise Atlas" ([CAR.271.002.5245](#)).
 - (iii) Further particulars may be provided after discovery, interrogatories and the like.
8. Ms McLean-Phillips also made known to Carnival that the result she wished to achieve from the acquisition of the Services was to have a relaxing and pleasurable cruise and experience the cruise in accordance with the itinerary and standards advertised by Carnival including the use of the facilities and amenities provided on board the ship and to be able to visit the various ports (the '**Desired Result**').

Particulars

Ms McLean-Phillips repeats the particulars to paragraph [7] above.

9. In supplying the Services to Ms McLean-Phillips, Carnival guaranteed to Ms McLean-Phillips that:
- (a) the Services supplied would be reasonably fit for the Particular Purpose (**Purpose Guarantee**);

Particulars

Section 61(1) of the ACL.

- (b) the Services might reasonably be expected to achieve the Desired Result (**Result Guarantee**).

Particulars

Section 61(2) of the ACL.

C. THE LIKELY IMPACT OF ANY OUTBREAK OF THE NOROVIRUS ON THE RELEVANT SERVICES

10. Norovirus is a virus:
- (a) that features as its symptoms acute nausea, vomiting (including projectile vomiting), diarrhoea (including uncontrollable and explosive bowel movements) and other constitutional symptoms such as fever, abdominal cramps, headache or muscle ache which can last for many days;
 - (b) that can be highly debilitating;
 - (c) that can be fatal and particularly targets the elderly;
 - (d) that is transmitted by liquid, surfaces or food that has been in contact with bodily fluids, such as faecal matter, of another person and can be breathed in where there are airborne bodily fluids; and
 - (e) that is highly infectious and was well-known (prior to 5 December 2016) for being susceptible to an outbreak on cruise ships (amongst other public places).

(Norovirus Characteristics).

11. At all material times, Carnival knew, or as an entity holding itself out as a specialist in supplying cruise recreational services (and particularly to a large demographic of relatively elderly people on a ship), employing medical staff and with access to information promulgated by official health authorities, ought to have known:
- (a) of the Norovirus Characteristics; and
 - (b) that if the ship took on board embarking passengers who reported as having the norovirus, or symptoms of the virus, there was a real risk that the virus may spread to such degree as to cause an outbreak;
 - (c) that if the ship experienced an outbreak, then irrespective of whether or not it was being competently managed, there was a strong likelihood that the recreational

experience of Ms McLean-Phillips and the Group Members would be wholly frustrated or diminished by reason of:

- (i) the debilitating effects of the illness for those who caught the norovirus;
 - (ii) the exposure to the unpleasant symptoms of those who had the norovirus;
 - (iii) the risk of contracting the norovirus;
 - (iv) the potential restrictions on movement to try and control the spread of the norovirus;
 - (v) the potential removal or restriction of various facilities and amenities and entertainments to try and control the spread of the norovirus; and
 - (vi) the potential removal of crew members who had contracted the norovirus or were reassigned to control the spread of the norovirus;
- (d) that if the ship were to experience an outbreak, there was a residual risk that the virus could not be eradicated (whatever the steps that were taken by Carnival to decontaminate the ship) and could be contracted by persons embarking on a new journey,

(the '**Likely Norovirus Impact**').

Particulars

- (i) Carnival's actual knowledge is inferred from:
 - A. The ship operating at level 3 sanitation procedures (formerly known as 'red' level) as a result of the presence norovirus or the risk of the presence of norovirus at some or all points on each of the Relevant Cruises (CAR.210.025.1204, CAR.210.024.5037, CAR.210.024.1812);
 - B. The knowledge of the medical staff on board having

1. diagnosed passengers with norovirus on each of the Relevant Cruises (CAR.109.001.0009, CAR.353.001.0001, CAR.353.001.0002; CAR.353.001.0003, CAR.353.001.0004; CAR.353.001.0005, CAR.353.001.0006; CAR.069.001.0089, CAR.069.001.0090);
2. monitored the spread of norovirus on board the ship on all journeys (CAR.210.025.1206, CAR.353.001.0001, CAR.353.001.0002, CAR.353.001.0003, CAR.353.001.0004, CAR.353.001.0005, CAR.353.001.0006, CAR.069.001.0089, CAR.069.001.0090);

C. The knowledge of the specialised cleaning staff on board

1. Each of whom had specialised training in cleaning norovirus (CAR145.001.0092);
2. Who actually cleaned up the consequences of the symptoms of norovirus on all journeys (CAR.300.016.2245, CAR.300.016.2211, CAR.300.016.2215, CAR.300.016.2219, CAR.300.016.2225, CAR.300.016.2229, CAR.300.016.2234, CAR.300.016.2240, CAR.276.014.4951);

D. The documents provided by Carnival to the health authorities of Australian governments, including

1. Biosecurity documents (which used to be called 'Approval to Berth' documents) listing the number of norovirus diagnosed people on board;
2. Graphs and tables that reported the number of norovirus diagnosed people on board on all journeys (CAR.210.024.7891, CAR.276.011.5791);

3. E-mails related to norovirus and its spread aboard the ship on each of the Relevant Cruises (CAR.210.024.7891, CAR.047.005.2526, CAR.210.024.2603, CAR.210.024.7019);

E. Carnival's policies and procedures, including:

1. attempting to isolate guests diagnosed with norovirus during the time in which they display symptoms and 24 hours thereafter (CAR.067.001.0008 0001);
2. attempting to isolate crew diagnosed with norovirus during the time in which they display symptoms and 48 hours thereafter (CAR.067.001.0008 0001);
3. requiring passengers to fill out a questionnaire titled *Gastrointestinal Illness Surveillance System Questionnaire* authored by the Centres for Disease Control and Prevention (CDC; a department of the United States of America's Government) (CAR.210.021.9854);
4. the closure of various amenities during each outbreak by Carnival (CAR.067.001.0006);
5. the removal of books from the library by Carnival (CAR.067.001.0010 003);
6. the use of water-soluble washing bags by cleaners of Carnival, so that the bags did not carry the infection and the infected items of washing did not need to be handled multiple times (CAR.210.021.4101, CAR.235.003.1854);
7. the following written policies or procedures for dealing with outbreaks that were in use by Carnival:
 - i. EMR 2001 – Emergency Response Thresholds (CAR.189.001.0008);
 - ii. EMR 2002 – notification and reporting (CAR.067.001.0002);

- iii. EMR 2003 – overall management of outbreaks (CAR.067.001.0003);
- iv. EMR 2004 – communication and information during outbreaks (CAR.067.001.0004);
- v. EMR 2005 – management of cleaning and sanitizing during outbreaks (CAR.067.001.0005);
- vi. EMR2006 - management of food and beverage during outbreaks (CAR.067.001.0006);
- vii. EMR2007 – management of housekeeping and laundry during outbreaks (CAR.067.001.0007) ;
- viii. EMR 2008 – medical management during outbreaks (CAR.067.001.0008);
- ix. EMR 2009 – management of technical and environmental operations during outbreaks (CAR.067.001.0009);
- x. EMR2010 – management of public facilities, revenue and administration areas during outbreaks (CAR.067.001.0010);
- xi. EMR 2011 – management of security, gangways, deck areas, and crew drills during outbreaks (CAR.067.001.0011);
- xii. EMR 2012 – management of child activity and youth areas during outbreaks (CAR.067.001.0012);
- xiii. EMR 2013 – management of shore excursions and transport during outbreaks (CAR.067.001.0013);
- xiv. EMR 2014 – management of outbreak turnarounds (CAR.067.001.0014);
- xv. EMR 2015 – management of continued precautions and the return to routine operations (CAR.067.001.0015); and
- xvi. ~~AGE outbreak procedures.;~~ [Not used]
- xvii. PHS 1101 – Acute Gastroenteritis (AGE) Response Level Management (CAR.210.021.4080);
- xviii. PHS 1102 – Crew Personal Hygiene and Illness Reporting Requirements (CAR. 210.021.4082);
- xix. PHS 1103 – Acute Gastroenteritis (AGE) Notification and Reporting (CAR.210.021.4083);

- xx. PHS 1104 – Acute Gastroenteritis (AGE) Communication and Information (CAR.210.021.4086);
- xxi. PHS 1105 – Case Management of Communicable Illness (CAR.210.021.4088);
- xxii. PHS 1106 – Acute Gastroenteritis (AGE) Management of Cleaning, Sanitizing and Hand Sanitizing (CAR.210.021.4098);
- xxiii. PHS 1107 – Acute Gastroenteritis (AGE): Outbreak Prevention and Response in Housekeeping and Laundry (CAR.210.021.4101);
- xxiv. PHS 1108 – AGE Outbreak Prevention and Response in Food and Beverage Areas (CAR.210.021.4103);
- xxv. PHS 1109 – AGE: Outbreak Prevention and Response in the Medical Center (CAR.210.021.4064);
- xxvi. PHS 1110 – Outbreak Prevention and Response in Technical and Environmental Operations (CAR.210.021.4065);
- xxvii. PHS 1111 – Outbreak Prevention and Response in Security and Deck Areas (CAR.210.021.4066);
- xxviii. PHS 1112 – Outbreak Prevention and Response in Child Activity and Youth Areas (CAR.210.021.4067);
- xxix. PHS 1113 – Outbreak Prevention and Response in Public Facilities, Revenue and Administration Areas (CAR.210.021.4068);
- xxx. PHS 1114 – Outbreak Prevention and Response in Spa, Salon and Fitness Areas (CAR.210.021.4069);
- xxxi. PHS 1115 – Management of Shore Excursions and Transport during Outbreaks (CAR.210.021.4070); and
- xxxii. PHS 1116 – Management of Outbreak Turnarounds (CAR.210.021.4071).

8. the written policies or procedures for dealing with Acute Gastroenteritis outbreaks that were historically used by Carnival, including the *Princess Cruises Public Health P&P: 8.1 Acute Gastroenteritis: Outbreak Prevention and Response* (CAR.235.003.1084); and
 9. Hotel Policy and Procedures including the procedures where guests are suspected to be experiencing symptoms of gastrointestinal illness (CAR.246.001.0001);
- F. the electronic cruise card issued by Carnival to passengers being electronically tagged (in the case of some infected passengers) in such a way as to record the fact that a person was diagnosed as having norovirus and Carnival's policy of ensuring that person was isolated and otherwise Carnival attempting to track the infected person's movement using the card;
- G. further particulars to be provided after discovery, interrogatories, or subpoenas.
- (ii) Carnival's constructive knowledge is inferred from:
- A. ~~&~~ the range of governmental publications on the virus, accessible to Carnival, including (but not limited to):
 - i. *Guidelines for the public health management of gastroenteritis outbreaks due to norovirus or suspected viral agents in Australia* (April 2010) published by the Australian Government (JMP.003.001.0001);
 - ii. The following publications by the US Government:
 - (1) providing information specifically directed to cruise ships (<https://www.cdc.gov/nceh/vsp/surv/gilist.htm>) (JMP.003.001.0005); and

- (2) an Operations manual to assist with the management of outbreaks on cruise ships (<https://www.cdc.gov/nceh/vsp/operationsmanual/opsmanual2011.pdf>) (CAR.289.001.8184)

- iii. The CDC Vessel Sanitation Program operating under the authority of the Public Health Service Act (42 U.S.C. Section 264 Quarantine and Inspection Regulations to Control Communicable Diseases) (<https://www.cdc.gov/vessel-sanitation/about/index.html>) (JMP.003.001.0004);

B. ~~9.~~ Medical staff employed by Carnival with training and study in relation to norovirus and experience of norovirus;

C. ~~10.~~ Medical staff and members of the unit known as “Health Services” working for Carnival, or its parent company Holland America Group, having such knowledge by reason of their training or experience, tailored to service for their employer in whose business operations, outbreaks of norovirus were a risk.

D. STEPS WHICH SHOULD HAVE BEEN TAKEN IF THE NOROVIRUS WAS IDENTIFIED ON THE RELEVANT SERVICES

12. In addressing the Likely Norovirus Impact, Carnival should have, but did not, take at least the following steps pleaded in paragraphs [13] to [14] and [16] to [18] below (for the First Relevant Cruise), and paragraphs [13] to [18] (for all other Relevant Cruises).
13. Firstly, Carnival should have informed Ms McLean-Phillips and the Group Members prior to their acquisition and/or during the provision of the Services and the Group Member Services of the:
 - (a) Norovirus Characteristics;
 - (b) the Likely Norovirus Impact; and,

- (c) the potential inability of Carnival to fulfil their guarantee of the Particular Purpose, the Group Member Particular Purpose, the Desired Result and the Group Member Desired Result.

13A. Second, Carnival should have excluded all passengers from the Relevant Cruises who exhibited or reported norovirus like symptoms during their pre-boarding public health screening (including on their passenger health declaration cards).

Particulars

- (i) Princess Cruises Booking & Passage Conditions (CAR.210.090.9694), Princess Cruise Lines, Ltd Passage Contract (CAR.210.090.9696) and Princess Cruise Lines, Ltd Booking Conditions (CAR.210.090.9695)
- (ii) Email dated 21 March 2017 from Mel Skipp to William Burke Subject "Re: Sun Princess norovirus" (CAR.800.001.0364) and Sun Princess AGE Summary.docx (CAR.276.003.7562).
- (iii) PHS 1101 – Outbreak Prevention Management of Illnesses of Public Health Concern (CAR.278.001.6872).
- (iv) Princess Cruises Guest Logistic Procedures Sun Princess Fremantle, Australia (CAR.044.016.4824).
- (v) Princess Cruises Public Health P&P: Procedures and Guidance 8.8.7 Questionnaires (CAR.235.005.5728).

13B. Third, Carnival should have communicated to Ms McLean-Phillips and Group Members prior to boarding that any passengers excluded from the Relevant Cruises after exhibiting or reporting norovirus like symptoms during their pre-boarding public health screening would be offered a refund and/or an alternative opportunity for a subsequent journey.

Particulars

- (i) Princess Cruises Booking & Passage Conditions (CAR.210.090.9694), Princess Cruise Lines, Ltd Passage Contract (CAR.210.090.9696) and Princess Cruise Lines, Ltd Booking Conditions (CAR.210.090.9695).

- (ii) Letter dated 27 February 2017 from John Piispanen, Director Metro North Public Health Unit, to Captain Darius Balana c/o Princess Cruises (CAR.210.024.7532).
- (iii) Email dated 4 March 2017 from Ivano Calandri to James Leonard copied to Alastair Haywood, Dennis Peyton, Grant Tarling and certain Sun Princess Officers Subject "Re: FW: Norovirus outbreak follow up - Sun Princess" (CAR.210.024.7606).

13C. Fourth, in the event that passengers or crew members who exhibited or reported norovirus like symptoms during their pre-boarding public health screening were not excluded from the Relevant Cruise, Carnival should have informed Ms McLean-Phillips and Group Members that there was a heightened risk of each Relevant Cruise being adversely affected by:

- (a) passengers or crew members who reported norovirus like symptoms during their pre-boarding public health screening and were not excluded from the Relevant Cruise;
- (b) the Norovirus Characteristics;
- (c) the Likely Norovirus Impact;
- (d) the potential inability of Carnival to fulfil its guarantee of the Particular Purpose, the Group Member Particular Purpose, the Desired Result and the Group Member Desired Result.

14. ~~Second~~Fifth, Carnival should have informed Ms McLean-Phillips and the Group Members once it was aware that a passenger or crew member had contracted the norovirus or was exhibiting or reporting symptoms of norovirus:

- (a) of the fact that a passenger or crew member had contracted the norovirus or was exhibiting or reporting symptoms of norovirus;
- (b) of the Norovirus Characteristics;
- (c) of the risk of Ms McLean-Phillips, her travelling companions, the Group Members and their travelling companions contracting the norovirus; and

- (d) of the Likely Norovirus Impact upon the Services and Group Member Services.

15. ~~Third~~Sixth, ~~Carnival should have informed the Group Members~~ once it was aware that a passenger or crew member had contracted the norovirus on the immediately preceding cruise on the Sun Princess (or any Relevant Cruise which preceded it), ~~Carnival should have informed the Group Members:~~

- (a) that a passenger or crew member had contracted the norovirus on the previous cruise on the Sun Princess (or any Relevant Cruise which preceded it);
- (b) of the Norovirus Characteristics;
- (c) of the risk of the Group Members, and their travelling companions, contracting the norovirus; and
- (d) of the Likely Norovirus Impact upon the Group Member Services.

15A. Seventh, upon becoming aware that there was a heightened risk of each Relevant Cruise being adversely affected by the norovirus (because of a passenger or crew member having contracted the norovirus on the immediately preceding cruise on the Sun Princess (or any Relevant Cruise which preceded it)), Carnival should have informed the Group Members of:

- (a) the heightened risk that the cruise could be adversely affected by a passenger or crew member having contracted the norovirus on a previous Relevant Cruise on the Sun Princess;
- (b) the Norovirus Characteristics;
- (c) of the risk of the Group Members, and their travelling companions, contracting the norovirus; and
- (d) the Likely Norovirus Impact upon the Group Member Services;

16. ~~Fourth~~Eighth, in the circumstances of paragraphs [13C], [14], [15] and/or [15A], Carnival should have offered Ms McLean-Phillips and the Group Members the opportunity not to proceed with their journey and to provide a refund and/or alternative opportunities for a subsequent journey (the '**Alternatives**').

Particulars

~~Condition 28 of the *Princess Cruises Passage Contract (S701)*.~~

Princess Cruises Booking & Passage Conditions (CAR.210.090.9694 0009),
Princess Cruise Lines, Ltd Passage Contract (CAR.210.090.9696) and Princess
Cruise Lines, Ltd Booking Conditions (CAR.210.090.9695 0008)

17. ~~Fifth~~Ninth, if Carnival did not offer the Alternatives, Carnival should have implemented effective cleaning protocols including, if necessary, disembarking all the passengers, removing those infected by the Norovirus from the Services and/or delaying the commencement of the cruise for sufficient time to complete this (even if this meant truncating that, or a subsequent cruise on the ship, and partially or wholly refunding passengers commensurately) (Cleaning and/or Schedule Alteration) ~~changing the cruise ship to be used to provide the Services ('New Cruise Ship')~~.
18. ~~Sixth~~Tenth, Carnival should have competently implemented its policies and procedures to address the spread of the Norovirus (**'Competent Implementation'**).

Particulars

Carnival's relevant policies and procedures, included:

- (a) requiring passengers to fill out a questionnaire titled *Gastrointestinal Illness Surveillance System Questionnaire* authored by the Centres for Disease Control and Prevention (CDC; a department of the United States of America's Government) (CAR.210.021.9854);
- (b) the use of water-soluble washing bags by cleaners of Carnival, so that the bags did not carry the infection and the infected items of washing did not need to be handled multiple times (CAR.210.021.4101, CAR.235.003.1854);
- (c) EMR 2002 – notification and reporting (CAR.067.001.0002);
- (d) EMR 2003 – overall management of outbreaks (CAR.067.001.0003);

- (e) EMR 2004 – communication and information during outbreaks (CAR.067.001.0004);
- (f) EMR 2005 – management of cleaning and sanitizing during outbreaks(CAR.067.001.0005);
- (g) EMR 2006 – management of food and beverage during outbreaks (CAR.067.001.0006);
- (h) EMR 2007 – management of housekeeping and laundry during outbreaks (CAR.067.001.0007);
- (i) EMR 2008 – medical management during outbreaks (CAR.067.001.0008);
- (j) EMR 2009 – management of technical and environmental operations during outbreaks (CAR.067.001.0009);
- (k) EMR 2010 – management of public facilities, revenue and administration areas during outbreaks (CAR.067.001.0010);
- (l) EMR 2011 – management of security, gangways, deck areas, and crew drills during outbreaks (CAR.067.001.0011);
- (m) EMR 2012_– management of child activity and youth areas during outbreaks (CAR.067.001.0012);
- (n) EMR 2013 – management of shore excursions and transport during outbreaks (CAR.067.001.0013);
- (o) EMR 2014 – management of outbreak turnarounds (CAR.067.001.0014);
- (p) EMR 2015 – management of continued precautions and the return to routine operations (CAR.067.001.0015); and
- ~~(q) AGE outbreak procedures;[Not used]~~
- (r) PHS 1101 – Acute Gastroenteritis (AGE) Response Level Management (CAR.210.021.4080);

- (s) PHS 1102 – Crew Personal Hygiene and Illness Reporting Requirements (CAR.210.021.4082);
- (t) PHS 1103 – Acute Gastroenteritis (AGE) Notification and Reporting (CAR.210.021.4083);
- (u) PHS 1104 – Acute Gastroenteritis (AGE) Communication and Information (CAR.210.021.4086);
- (v) PHS 1105 – Case Management of Communicable Illness (CAR.210.021.4088);
- (w) PHS 1106 – Acute Gastroenteritis (AGE) Management of Cleaning, Sanitizing and Hand Sanitizing (CAR.210.021.4098);
- (x) PHS 1107 – Acute Gastroenteritis (AGE): Outbreak Prevention and Response in Housekeeping and Laundry (CAR.067.001.0135);
- (y) PHS 1108 – AGE Outbreak Prevention and Response in Food and Beverage Areas (CAR.210.021.4103);
- (z) PHS 1109 – AGE: Outbreak Prevention and Response in the Medical Center (CAR.210.021.4064);
- (aa) PHS 1110 – Outbreak Prevention and Response in Technical and Environmental Operations (CAR.210.021.4065);
- (bb) PHS 1111 – Outbreak Prevention and Response in Security and Deck Areas (CAR.210.021.4066);
- (cc) PHS 1112 – Outbreak Prevention and Response in Child Activity and Youth Areas (CAR.210.021.4067);
- (dd) PHS 1113 – Outbreak Prevention and Response in Public Facilities, Revenue and Administration Areas (CAR.210.021.4068);
- (ee) PHS 1114 – Outbreak Prevention and Response in Spa, Salon and Fitness Areas (CAR.210.021.4069);

- (ff) PHS 1115 – Management of Shore Excursions and Transport during Outbreaks (CAR.210.021.4070);
- (gg) PHS 1116 – Management of Outbreak Turnarounds (CAR.210.021.4071); and
- (hh) further particulars to be provided after discovery, interrogatories, or subpoenas.

E. THE CONTRAVENING CONDUCT

- 19. Ms McLean-Phillips booked the Services to enjoy a relaxing and pleasurable cruise holiday with her family in the lead up to Christmas in 2016.

Particulars

Ms Vivienne Trudgeon, with whom Ms McLean-Phillips shared an Interior Stateroom, is her older sister. Mr Ian Partington, who was also on the cruise with his wife Kaye, is her older brother.

- 20. Prior to embarkation of the passengers, Carnival did not take all or any of the steps outlined in paragraph [13] to [13B].
- 21. During November 2016, Ms McLean-Phillips was very excited about the Services and the entertainment on offer during the cruise.

Particulars

Email exchange between Ms McLean-Phillips and Ms Trudgeon dated 16 and 22 November 2022 (JMP.001.001.0075, JMP.001.001.0092).

- 22. On 5 December 2016, Ms McLean-Phillips boarded the First Cruise.
- 23. On 6 December 2016, at the first port in Albany, Western Australia:
 - (a) ~~Ms McLean-Phillips observed~~ there were three or four ambulances waiting for passengers to disembark the Sun Princess ~~and began to feel worried~~; and
 - (b) approximately 300 further passengers embarked onto the First Cruise.
- 24. Of the 300 passengers picked up from Albany, two of them reported to relevant persons employed by Carnival that they were ill with “gastro” (ie, the norovirus) (CAR.210.024.1812).

Particulars

Master Patient Log for the First Cruise indicate two guests were reportable Acute Gastroenteritis (AGE) cases, and reported to the medical centre at 14:00 on 6 December 2016 (CAR.210.020.9218).

25. As at 6 7-December 2016 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13C] and/or [14] above in relation to the First Cruise; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration ~~did not use a New Cruise Ship~~;
 - (d) did not undertake Competent Implementation.
26. By the end of the First Cruise, about ~~350339~~ 350339 ~~guests-passengers~~ and ~~1543~~ crew had directly contracted reportable cases of the norovirus on board the cruise.
27. On or around 1544 December 2016, Ms Trudgeon, while on board the cruise began to experience symptoms consistent with the norovirus.

Particulars

- (i) Sudden and uncontrollable diarrhoea.
 - (ii) Vomiting.
28. Ms McLean-Phillips observed during that first night that Ms Trudgeon become pale, had difficulties walking by herself and experienced sudden and uncontrollable diarrhoea and vomiting on the bed, the carpeted floor and in her clothes.
29. Further during that first night, Ms McLean-Phillips called the medical centre and crew a number of times for assistance to:
- (a) get a crew member to help her carry Ms Trudgeon into the shower as she was near collapse;
 - (b) provide her with a set of disposable gloves; and
 - (c) to clean and sanitise their room.

30. Ms McLean-Phillips had to call three or four times before a crew member attended to clean their stateroom. At this time, Ms McLean-Phillips was provided with a set of disposable gloves but was not provided any assistance to carry Ms Trudgeon into the shower or to care for her generally.
31. When Ms McLean-Phillips carried Ms Trudgeon into the shower by herself, diarrhoea fell on several areas of the carpeted floor between the bedroom and the bathroom, and she observed diarrhoea run down Ms Trudgeon's leg onto the carpet.
32. After Ms Trudgeon's shower, Ms McLean Phillips assisted her out of the bathroom and back into the bedroom to get dressed but another episode of diarrhoea and vomiting began again which left her clothes soiled.
33. Ms Trudgeon was unwell for approximately ~~two~~five days during the cruise and was told to isolate in her stateroom for ~~two~~five days while she was symptomatic and for a further 24 hours which meant that during this period, Ms Trudgeon was not allowed to leave the stateroom, but Ms McLean-Phillips was.
34. During the ~~three~~five days that Ms Trudgeon was ill or isolating, Ms McLean-Phillips cared for her by helping her:
 - (a) walk between the bedroom and the bathroom;
 - (b) get dressed;
 - (c) deal with the ship's crew on Ms Trudgeon's behalf;
 - (d) change the linen on Ms Trudgeon's bed; and
 - (e) encourage Ms Trudgeon to eat and drink.
35. During Ms Trudgeon's ~~five day~~ isolation: Ms McLean-Phillips was not offered any alternative accommodation and continued to share a stateroom with Ms Trudgeon.
 - ~~(a) Ms McLean-Phillips was also not offered any alternative accommodation and continued to share a stateroom with Ms Trudgeon; and~~
 - ~~(b) Ms McLean-Phillips had to call the crew for additional cleaning and sanitation due to the presence of vomit and diarrhoea in the stateroom.~~

36. After the stateroom was cleaned by Sun Princess crew on or about 1544 December and following subsequent cleaning of her room on the days that followed, Ms McLean-Phillips continued to smell vomit and diarrhea in the room.
37. On 17 December 2016, Ms McLean-Phillips fell ill with norovirus.
38. Ms McLean-Phillips reported her illness to crew at the medical centre and was advised to remain in her stateroom and was not provided with any medication to treat the symptoms of norovirus.
39. Ms McLean-Phillips experienced the same symptoms as Ms Trudgeon and spent most of the night seated on the toilet with her head over the basin while she experienced simultaneous bouts of vomit and diarrhoea.

Particulars

See particulars to paragraph [27 24] above.

40. On 18 December 2016, Ms McLean-Phillips was still very unwell and despite requesting a wheelchair was not provided with the necessary assistance by crew to disembark from the Sun Princess to the shore and had to rely upon other passengers to assist.

Particulars

The crew did not provide Ms McLean-Phillips with a luggage trolley, wheelchair, or bucket. Ms McLean-Phillips was having difficulty walking. While a crew member assisted with carrying some of her luggage while on the ship, a fellow passenger had to assist Ms McLean Phillips to the shore.

41. During the cruise and prior to 1544 December 2016, many of the facilities on the Sun Princess were not available to Ms McLean-Phillips and other passengers as a result of the steps Carnival took to manage the outbreak of the norovirus.

Particulars

- (i) At least the following facilities and events were unavailable:
 - A. the library;
 - ~~B. the grand casino on deck 8;~~
 - C. the hot tub; ~~and~~

- D. the beer and wine garden
 - E. atrium events;
 - F. outlet sales events; and
 - G. effy champagne events.
 - H. ~~the art gallery.~~
- (ii) Level 3 Summary Reports (CAR.018.004.9692, CAR.044.014.6756, CAR.018.004.9581, CAR.112.001.0021, CAR.044.015.1474, CAR.018.005.0354, CAR.044.015.3392, CAR.044.015.4737).
 - (iii) Internal Revenue Reports (CAR.143.001.0003, CAR.143.001.0004, CAR.143.001.0006, CAR.145.001.0076).
 - (iv) End of Voyage Reports (CAR.145.001.0081, CAR.290.054.5183, CAR.290.055.6634).
 - (v) Youth Program Manager Reports contained in the End of Voyage Reports (CAR.143.001.0011, CAR.290.054.5148, CAR.290.054.5165, CAR.290.054.5172, CAR.290.054.5183).
 - (vi) Shore Excursion Voyage Reports (CAR.083.001.0308, CAR.083.001.0321, CAR.083.001.0332, CAR.259.005.5152).
 - ~~(vii) Further particulars may be provided after discovery, interrogatories and the like.~~

42. Due to Ms Trudgeon contracting the norovirus on 15 December 2016, Ms McLean-Phillips was not able to enjoy the Services including the facilities and activities on board the Sun Princess and the activities ashore, which she had planned to attend with Ms Trudgeon.

Particulars

- (i) Ms McLean-Phillips spent extended periods of time in her Stateroom caring for Ms Trudgeon.
- (ii) Ms McLean-Phillips and Ms Trudgeon had planned to attend:

- A. dinners and evening entertainment;
- B. day activities; and
- C. the formal ball on the Sun Princess.

43. If Ms McLean-Phillips had known of the Norovirus Characteristics and the ~~Norovirus~~ Likely Norovirus Impact upon the Services, she would not have acquired the Services from Carnival.

F. CONTRAVENTIONS OF THE ACL

44. In supplying the Services, Carnival exercised control over every aspect of the Services including:

- (a) the measures to be taken to suppress or manage any norovirus outbreak, including potentially significantly limiting passenger movements and access to amenities and facilities and entertainments;
- (b) the manner in which the Services were supplied; and
- (c) whether to cancel, delay or vary the Services.

45. Ms McLean-Phillips and Ms Trudgeon contracted the norovirus on board the Sun Princess in the course of being supplied the Services in the circumstances pleaded above.

46. By reason of the outbreak of the norovirus on the First Cruise, and in the circumstances of paragraphs [25] to [43] and the failure to take the steps at paragraphs [13], to [14] and [16] to [18], a substantial proportion of the Services were not able to be enjoyed by Ms McLean-Phillips (including by reason by her own illness and that of Ms Trudgeon and the withdrawal of amenities, facilities and entertainments) and she did not, for a substantial proportion of the itinerary, have a relaxing and pleasurable cruise.

Particulars

(i) Through the itinerary and standards advertised by Carnival, the Services included:

- A. a voyage to “relax, and unwind” and “come back new”
(CAR.035.002.5192);

- B. attentive service (CAR.271.002.5245);
- C. activities including “ship tours and sports competitions, enriching multimedia presentations, live music and fun games out by the pool special presentations such as “guest lectures, special music and dance” (CAR.271.002.5245 0011);
- D. “every moment of your voyage is a wonderful way to connect to a sense of joy and freedom that will enrich your soul~~countless opportunities to enjoy your day and rejuvenate your body, mind and spirit~~” (CAR.271.002.5245 0013);
- E. everything needed to “reconnect and renew” (CAR.271.002.5245 0013);
- F. a ~~great~~ the most comfortable night’s sleep in the “Princess Luxury Bed” with “luxurious linens” (CAR.219.002.0677 0005);
- G. on board entertainment such as “Broadway-style original musicals, renowned headliner comedians and dazzling illusionists~~high-tech musicals to comedians, and live music and more~~” with every evening on the Princess Ship “coming alive” (CAR.271.002.5245 0012);
- H. ~~access to all amenities and services included in the ticket price;~~ [not used]
- I. luxury beds that transform staterooms into a state room to relax and to “experience a “sleep sanctuary” (CAR.219.002.0677 0005); and
- J. “with elegant and casual dining options onboard entertainment like production shows, musicians and comedians, a Las Vegas-style casino and much more” (CAR.271.002.5245 0026)~~all dining, onboard entertainment, activities and much more;~~

K. stops at ports listed on the itinerary and “award-winning shore excursions” on shore at the various ports
(CAR.035.002.5192 0002).

(ii) Ms McLean-Phillips did not, for a substantial proportion of the itinerary, have a relaxing and pleasurable cruise, because:

- A. she was unable to enjoy all the entertainment scheduled to be on board, such as special presentations, musicals, comedians, live music and more due to such events being closed or cancelled due to the norovirus being on board or due to needing to care for Ms Trudgeon;
- B. she was unable to make use of all the amenities on board that were included in her ticket price, including dining options and various activities, due to the amenities being closed due to the norovirus being on board and due to needing to care for Ms Trudgeon;
- C. did not receive attentive service;
- D. she did not disembark at ports or attend on shore excursions when she, or Ms Trudgeon, were unwell.
- E. she was unable to relax in her stateroom due to:
 - i. needing to take care of Ms Trudgeon, who was suffering from the symptoms of the norovirus;
 - ii. then herself suffering from the symptoms of the norovirus, which included, uncontrolled vomiting and explosive diarrhoea; and
 - iii. the room being contaminated with vomit and faecal matter and emitting a smell of vomit and faeces.
- F. she was unable to relax and unwind or to rejuvenate her body, mind and spirit, due to:

- i. being on a confined ship with people suffering from the norovirus and fearing she may also contract the norovirus;
- ii. Ms Trudgeon contracting the norovirus and experiencing the symptoms of the norovirus;
- iii. needing to care for Ms Trudgeon, including cleaning up her vomit and diarrhoea;
- iv. contracting the norovirus and suffering from the symptoms of the norovirus, which included, uncontrolled vomiting and explosive diarrhoea;
- v. observing other passengers suffering from the norovirus;

G. for the reasons set out at (A) to (F) above, did not come back new.

- (ii) Further particulars regarding what aspects of the Services were not provided, or only partially provided, may be provided after discovery, interrogatories and the like.

47. In the premises of paragraph [46]:

- (a) the Services were not reasonably fit for the Particular Purpose because the failure to take the steps at paragraphs [13] to [14] and [16] to [18] and the norovirus outbreak did not have only a minor or relatively insignificant impact upon the Services but fundamentally affected Ms McLean-Phillips ability to have a relaxing and pleasurable cruise and to use the facilities and amenities provided on board the ship and to be able to visit the various ports for a substantial proportion of the itinerary; and/or
- (b) the Services were not of such nature and quality as might reasonably be expected to achieve the Desired Result because, once the norovirus outbreak occurred, its impact and the impact of the failure to take the steps at paragraphs [13] to [14] and [16] to [18] was was not minor or relatively insignificant but fundamentally affected Ms McLean-Phillips ability to have a relaxing and pleasurable cruise and to use the facilities and amenities provided on board the ship and to be able to visit the various ports for a substantial proportion of the itinerary.

48. In the premises of paragraph [47], Carnival contravened:
- (a) the Purpose Guarantee; and/or
 - (b) the Result Guarantee.
49. Carnival's failure to comply with the Purpose Guarantee and/or the Result Guarantee:
- (a) could not be remedied, or cannot be remedied, within the meaning of section 267(3) of the ACL; and/or
 - (b) were a 'major failure' within the meaning of section 268 of the ACL because:
 - (i) the Services supplied by Carnival would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure, including Ms McLean-Phillips; and
 - (ii) the Purpose and Result failures could not easily and within a reasonable time be remedied to make the Services fit for the Purpose to achieve the Result.
50. Having regard to the control exercised by Carnival over the Services and the Likely Norovirus Impact upon the Services, it was reasonably foreseeable that Carnival's failure to comply with the Purpose Guarantee and/or the Result Guarantee would result in Ms McLean-Phillips suffering loss or damage as a result of such a failure.
51. Pursuant to section 267(3) of the ACL, Ms McLean-Phillips is entitled to recover compensation for the reduction in value of the Services below the price paid for the Services.

Particulars

Ms McLean-Phillips paid \$1,609.23 for the Services and contends that she lost the entire value of the Services and is entitled to a full refund (JMP.001.001.0267, JMP.001.001.0264, JMP.001.001.0258).

52. Pursuant to section 267(4) of the ACL, Ms McLean-Phillips is entitled to recover for any loss or damage suffered as a result of the failures to comply with the Purpose Guarantee and/or Result Guarantee which was reasonably foreseeable.

Particulars

Such losses include inconvenience, distress and disappointment.

G. CLAIMS OF GROUP MEMBERS

53. Group Members entered into agreements with Carnival for the supply of recreational cruise services provided by Carnival or were passengers known to Carnival to whom it would supply recreational cruise services (the '**Group Member Services**').
54. The Group Members acquired the Group Member Services by going on the Relevant Cruises.

Particulars

The Group Member Services were accepted by the Group Members by their embarking on the Relevant Cruises.

55. The Group Member Services acquired by the Group Members were:
- (a) 'services' within the meaning of section 2 of the ACL.

Particulars

Rights, benefits, privileges or facilities were provided, or were to be provided, by Carnival to the Group Members to arrange for and facilitate the cruise for the use, amusement, entertainment, recreation or instruction of the Group Members. Without limitation, the services included accommodation, meals, transportation and amenities, onboard activities, medical services, cleaning services, and all services necessary to safeguard and protect the health and safety of passengers, together with Carnival arranging for the tours and monitoring and assessing (and therefore communicating with the Group Members) whether the tour itineraries could proceed in accordance with the existing arrangements or should be varied, cancelled or delayed. The services thus also included Carnival providing information to passengers, before boarding the cruise and during the cruise, about events and circumstances affecting or likely to affect passengers' enjoyment of the cruise.

- (b) supplied in trade or commerce within the meaning of section 4 of the *Competition and Consumer Act 2010* (Cth).

56. The Group Members made known to Carnival that the particular purpose for the acquisition of the Services was to have a relaxing and enjoyable cruise and experience the selected cruise in accordance with the itinerary and standards advertised by Carnival including the use of the facilities and amenities provided on board the ship and to be able to visit the various ports (the '**Group Member Particular Purpose**').

Particulars

- (i) The Group Member Particular Purpose was impliedly made known to Carnival by:
 - A. the nature of the relationship between Group Members on the one hand (as consumers of the Group Member Services) and Carnival (as the supplier of the Group Member Services);
 - B. the purpose of the transaction that Group Members entered into with Carnival;
 - C. the booking of and payment for the Group Member Services.
- (ii) The itinerary and standards for the cruises were set out in the information provided by Carnival to the travel agents used by the Group Members and the information generally provided by Carnival on its website at www.princess.com and in its "2016-2017 Cruise Atlas" (CAR.271.002.5245).
- (iii) Further particulars may be provided after discovery, interrogatories and the like, following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

57. Group Members also made known to Carnival that the results they wished to achieve from the acquisition of the Group Member Services was to have a relaxing and pleasurable cruise and experience the cruise in accordance with the itinerary and standards advertised by Carnival including the use of the facilities and amenities provided on board the ship and to be able to visit the various ports (the '**Group Member Desired Result**').

Particulars

~~Group Members repeat t~~ The particulars to paragraph [56] above are repeated.

58. In supplying the Group Member Services to Group Members, Carnival guaranteed to the Group Members that:

- (a) the services supplied would be reasonably fit for the Group Member Particular Purpose (**Group Member Purpose Guarantee**);

Particulars

Section 61(1) of the ACL.

- (b) the services might reasonably be expected to achieve the Group Member Desired Result (**Group Member Result Guarantee**).

Particulars

Section 61(2) of the ACL.

59. In supplying the Group Member Services, Carnival exercised control over every aspect of the Group Member Services including:

- (a) the measures to be taken to suppress or manage any norovirus outbreak;
- (b) the manner in which the Group Member Services were supplied; and
- (c) whether to cancel, delay or vary the Group Member Services.

60. Prior to embarkation on the Second Cruise, it was known that there had been an outbreak of the norovirus on the First Cruise.

61. Further, on or about 18 December 2016, upon embarkation of the Second Cruise, at least three passengers reported to the relevant persons employed by Carnival that they were ill with “gastro” (ie, the norovirus).

62. As at 18 December 2016 and thereafter, Carnival:

- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
- (b) did not offer the Alternatives;
- (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
- (d) did not undertake Competent Implementation.

63. Prior to embarkation on the Third Cruise, it was known that there had been an outbreak of the norovirus on the Second Cruise.
64. As at 21 December 2016 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship;~~
 - (d) did not undertake Competent Implementation.
65. Prior to embarkation on the Fourth Cruise, it was known that there had been an outbreak of the norovirus on the Third Cruise.
66. As at 5 January 2017 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
 - (d) did not undertake Competent Implementation.
67. Prior to embarkation on the Fifth Cruise, it was known that there had been an outbreak of the norovirus on the Fourth Cruise.
68. As at 8 January 2017 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
 - (d) did not undertake Competent Implementation.

69. Prior to embarkation on the Sixth Cruise, it was known that there had been an outbreak of the norovirus on the Fifth Cruise.
70. As at 22 January 2017 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
 - (d) did not undertake Competent Implementation.
71. Prior to embarkation on the Seventh Cruise, it was known that there had been an outbreak of the norovirus on the Sixth Cruise.
72. As at 2 February 2017 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
 - (d) did not undertake Competent Implementation.
73. Prior to embarkation on the Eighth Cruise, it was known that there had been an outbreak of the norovirus on the Seventh Cruise.
74. As at 16 February 2017 and thereafter, Carnival:
- (a) did not take steps outlined in paragraphs [13] to [15A] ~~[14] and [15]~~ above; and
 - (b) did not offer the Alternatives;
 - (c) did not undertake Cleaning and/or Schedule Alteration; ~~did not use a New Cruise Ship~~
 - (d) did not undertake Competent Implementation.
75. During the provision of the Group Member Services:

- (a) some or many of the Group Members on the Sun Princess became sick with the norovirus in the course of being supplied with the Group Member Services;
- (b) some of the Group Members were companions to those passengers who became sick with the norovirus in the course of being supplied with the Group Member Services; and
- (c) some of the Group Members were passengers who, not contracting the norovirus themselves, were otherwise detrimentally affected by the norovirus outbreak on the ship through:
 - (i) having access to certain common areas on the ship, and certain amenities closed off to them;

Particulars

The nature and extent of restrictions upon access to amenities is a matter within the respondent's knowledge. Further particulars are intended to be supplied after discovery, following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

- (ii) witnessing the symptoms of, or smelling the stench from vomiting and odour associated with the norovirus in those who contracted the virus in various parts of the ship;

Particulars

Particulars following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

- (iii) regularly being reminded of the existence of the outbreak on board the ship, by being advised to take precautions, such as regularly washing hands before meals, and to refrain from touching; and

Particulars

The nature and extent of reminders and advices is a matter within the respondent's knowledge. Further particulars will be supplied after discovery, following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

- (iv) constantly being under the apprehension that they may also contract the virus and suffer the symptoms of that virus.

Particulars

Particulars will be supplied following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

76. If the Group Members had known of the Norovirus Characteristics and the ~~Norovirus~~ Likely Norovirus Impact upon the Group Member Services, some Group Members ~~they~~ would not have acquired the Group Member Services from Carnival.

Particulars

Particulars will be provided following the initial trial of common questions at the time for bringing forward individual Group Member Claims.

77. As a result of the outbreak of the norovirus on the Sun Princess during the Group Member Services, and in the circumstances of the failure to take the steps at paragraphs [13] to [18], a substantial proportion of the Group Member Services were not able to be enjoyed by Group Members (including by reason of their illness, the illness of any person they were travelling with and the withdrawal of amenities) and they did not, for a substantial proportion of the itinerary, have a relaxing and pleasurable cruise.

Particulars

- (i) Through the itinerary and standards advertised by Carnival, the Group Member Services included:
- A. a voyage to "relax₁ and unwind" and "come back new" (CAR.035.002.5192);
 - B. attentive service (CAR.271.002.5245);

- C. activities including “ship tours and sports competitions, enriching multimedia presentations, live music and fun games out by the pool”~~“special presentations”~~ such as ~~“guest lecturers, special music and dance”~~ (CAR.271.002.5245 0011);
- D. “every moment of your voyage is a wonderful way to connect to a sense of joy and freedom that will enrich your soul~~countless opportunities to enjoy your day and rejuvenate your body, mind and spirit”~~ (CAR.271.002.5245 0013);
- E. everything needed to “reconnect and renew” (CAR.271.002.5245 0013);
- F. a “great the most comfortable night’s sleep” in the “Princess Luxury Bed” with “luxurious linens” (CAR.219.002.0677 0005);
- G. on board entertainment such as “Broadway-style original musicals, renowned headliner comedians and dazzling illusionists~~high-tech musicals to comedians, and live music and more”~~ with every evening on the Princess Ship ~~“coming alive”~~ (CAR.271.002.5245 0012);
- H. ~~access to all amenities and services included in the ticket price; [not used]~~
- I. stops at ports listed on the itinerary and “award-winning shore excursions” on shore at the various ports; (CAR.035.002.5192 0002).
- J. luxury beds that transform staterooms into a state room to relax and to experience a “sleep sanctuary” (CAR.219.002.0677 0005); and
- K. “with elegant and casual dining options onboard entertainment like production shows, musicians and comedians, a Las Vegas-style casino and much more” (CAR.271.002.5245 0026)~~all dining, onboard entertainment, activities and much more.~~

(ii) Group Members did not, for a substantial proportion of the itinerary, have a relaxing and pleasurable cruise, because:

- A. they were unable to enjoy all the entertainment scheduled to be on board, such as special presentations, musicals, comedians, live music and more due to such events being closed or cancelled due to the norovirus being on board, due to needing to care for family or friends that had contracted the norovirus or due to fear of contracting the norovirus in public areas;
- B. they were unable to make use of all the amenities on board that were included in their ticket price, including dining options and various activities, due to the amenities being closed due to the norovirus being on board, due to needing to care for family or friends that had contracted the norovirus or due to fear of contracting the norovirus in public areas;
- C. they did not receive attentive service;
- D. they did not disembark at ports, or attend on shore excursions, when they were unwell or when their travelling companions were unwell;
- E. they were unable to relax in their stateroom due to:
 - i. suffering from the symptoms of the Norovirus, which included, uncontrolled vomiting and explosive diarrhoea;
 - ii. needing to take care of family or friends, who were also suffering from the symptoms of the Norovirus;
 - iii. the room being contaminated with vomit and faecal matter and emitting a smell of vomit and faeces; or
 - iv. fears that they may contract the Norovirus in public areas.
- F. they were unable to relax and unwind or to rejuvenate their body, mind and spirit, due to:

- i. being on a confined ship with people suffering from the norovirus and fearing they may also contract the norovirus;
- ii. contracting the Norovirus and suffering from the symptoms of the Norovirus, which included, uncontrolled vomiting and explosive diarrhoea;
- iii. having family or friends contract the norovirus and experiencing the symptoms of the norovirus;
- iv. needing to care for family or friends who contracted the norovirus, including needing to clean up vomit and diarrhoea;
or
- v. observing other passengers suffering from the norovirus;

G. for the reasons set out at (A) to (F) above, did not come back new.

78. In the premises set out in paragraph [77] above:

- (a) the Group Member Services were not reasonably fit for the Group Member Particular Purpose because the failure to take the steps at paragraphs [13] to [18] and the norovirus outbreak did not have only a minor or relatively insignificant impact upon the Group Member Services but fundamentally affected the Group Member's ability to have a relaxing and pleasurable cruise for a substantial proportion of the itinerary; and/or
- (b) the Group Member Services were not of such nature and quality as might reasonably be expected to achieve the Group Member Desired Result because, once the outbreak of the norovirus occurred, its impact and the impact of the failure to take the steps at paragraphs [13] to [18] was not minor or relatively insignificant but fundamentally affected the Group Member's ability to have a relaxing and pleasurable cruise for a substantial proportion of the itinerary.

79. In the premises of paragraph [78], Carnival contravened:

- (a) the Group Member Purpose Guarantee; and/or
- (b) the Group Member Result Guarantee.

80. Carnival's failure to comply with the Group Member Purpose Guarantee and/or the Group Member Result Guarantee:
- (a) could not be remedied, or cannot be remedied, within the meaning of section 267(3) of the ACL; and
 - (b) were a 'major failure' within the meaning of section 268 of the ACL because:
 - (i) the Group Member Services supplied by Carnival would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure, including the Group Members; and
 - (ii) the Group Member Particular Purpose and Group Member Desired Result failures cannot easily and within a reasonable time be remedied to make the Group Member Services fit for the Group Member Particular Purpose and/or to achieve the Group Member Desired Result.
81. Having regard to the control exercised by Carnival over the Services and the Likely Norovirus Impact upon the Group Member Services, it was reasonably foreseeable that Carnival's failure to comply with the Group Member Purpose Guarantee and/or the Group Member Result Guarantee would result in the Group Members suffering loss or damage as a result of such a failure.
82. Pursuant to section 267(3) of the ACL, Group Members are entitled to recover compensation for the reduction in value of the Group Member Services below the price paid for the Group Member Services.

Particulars

The Group Members also seek refunds of the amounts they paid for their cruises.

83. Pursuant to section 267(4) of the ACL, Group Members are entitled to recover damages for loss suffered as a result of the failures to comply with the Group Member Purpose Guarantee and/or Group Member Result Guarantee which was reasonably foreseeable.

Particulars

Such losses include inconvenience, distress and disappointment, and consequential losses arising from wasting expenditure to travel to and from

the cruise. Further particulars will be provided following the initial trial of common questions at the time for bringing forward individual Group Member Claims

Date: 23 July 2025



Signed by Vicky Antzoulatos
Lawyer for the Applicant

This pleading was prepared by Michael Pruscino of counsel and settled by William Edwards of King's Counsel.

Certificate of lawyer

I, Vicky Antzoulatos, certify to the Court that, in relation to the Second Further 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 July 2025

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

Signed by Vicky Antzoulatos
Lawyer for the Applicant