



Filed: 31 August 2015 2:58 PM



D000MMIZK

Form 3A/B (version 4) UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2015/00254964

TITLE OF PROCEEDINGS

First Plaintiff	Lucretia De Jong
-----------------	------------------	-------

First Defendant	Carnival PLC trading as Carnival Australia ACN 107998443
-----------------	---

FILING DETAILS

Filed for	Plaintiff[s]
-----------	--------------

Legal representative	Allanah Goodwin
Legal representative reference	
Telephone	(03)9614 1433
Your reference	DEJO-LUC250195

NOTICE OF LISTING

This matter has been listed for Directions (Common Law Registrar) at Supreme Court Sydney on 4 December 2015 at 09:00 AM.

AFFIDAVIT

Deponent Name	Lucretia De Jong
Sworn/Affirmed on	27 Aug 2015

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Statement of Claim (e-Services), along with any other documents listed below, were filed by the Court.

Statement of Claim (UCPR 3A/3B) (150826 - De Jong - Statement of Claim .pdf)

[attach.]

Form 3A (version 5)
UCPR 6.2

STATEMENT OF CLAIM

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Civil
Registry	Sydney
Case number	

TITLE OF PROCEEDINGS

Plaintiff	Lucretia De Jong
Defendant	Carnival PLC t/as Carnival Australia ARBN 107 998 443

FILING DETAILS

Filed for	Lucretia De Jong , plaintiff
Legal representative	Arnold Thomas & Becker 573-577 Lonsdale Street MELBOURNE VIC 3000 DX 318 MELBOURNE
Legal representative reference	AG:DEJONG 250195
Contact name and telephone	Allanah Goodwin (03) 9614 1433
Contact email	Allanah@arnoldthomasbecker.com.au

TYPE OF CLAIM

Common law- money claim

RELIEF CLAIMED

The plaintiff claims the following relief on her behalf and on behalf of other group members:

- 1 Orders for compensation pursuant to sections 236, 267(3) and/or (4) of the Australian Consumer Law, schedule 2 of the *Competition & Consumer Act, 2010* (Cth).
- 2 Such further or other orders as the Court thinks fit.

PLEADINGS AND PARTICULARS

- 1 This proceeding is commenced as a representative proceeding pursuant to sections 157-158 of the Civil Procedure Act, 2005 (NSW).

The group members

- 2 The plaintiff and the persons she represents (the "group members") are each persons who:
 - (a) had booked and paid for the cruise referred to in paragraph 4 hereof; and
 - (b) suffered loss and damage because of the conduct of the defendant in contravention to chapters 2 and 3 of the Australian Consumer Law.

The defendant

- 3 At all material times the defendant is an incorporated entity liable to sue and be sued in its own corporate name and style.
- 4 At all material times the defendant conducted the business of operating Pacific Island cruises including an eight day Pacific Island cruise to depart Sydney on 10 March 2015 at 6:30pm AEDT to sail to Mare, Isle of Pines and Noumea and to return to Sydney on March 18, 2015 (the "cruise").
- 5 It was a term and condition of the defendant's Cruise Ticket Contract at clause 26, inter alia:

"...we may change the itinerary, ship or cancel the cruise due to operational or commercial requirements. We will notify you of these changes as soon as we can. If we are forced to cancel your cruise for any reason prior to departure we will provide a full refund..."

Changes within our control

Where we make a significant change to the ports in your itinerary prior to departure and this is due to a circumstance within our control, for example the operational or commercial requirements you will have the choice of:

1. The new itinerary;
2. An alternative cruise of comparable standard, if available; or
3. Cancelling the cruise for a full refund of your fare.

For the purposes of this clause, "significant change" means a change to the city of departure or disembarkation, or to the majority (by number) of the other ports in your itinerary."

- 6 At all material times the defendant offered and supplied the cruise in trade or commerce.

Cyclone Pam

- 7 The following warnings in relation to Cyclone Pam were posted and published at the dates and times indicated:

- (a) 6 March 2015, 0400 UTC, Tropical Cyclone 3 - Day outlook for area: Equator to 25S and between 160E and 120W issued by Regional Specialised Meteorological Centre Nadi - "The potential for genesis of a tropical cyclone till 1200 UTC Monday 9th March; A tropical disturbance is expected to develop near 10S 170E:

Saturday 03/03 - low

Sunday 07/03 - moderate

Monday 08/03 - high"

- (b) 8 March 2015, 1939 UTC Tropical Disturbance Advisory Number 7 issued from Regional Specialised Meteorological Centre Nadi "Organisation has not changed much in the past 24 hours...Global model have picked the system and move it southwards with further intensification. Potential for this system to develop into a tropical cyclone within next 24 hours is high".

- (c) 9 March 2015, 0400 UTC - Tropical Cyclone 3 - Day outlook for area: Equator to 25S and between 160E and 120W issued by Regional Specialised Meteorological Centre Nadi - "A tropical depression near 08.2s 168.6e at 03pm today. It is expected to develop into a tropical cyclone tonight, Monday, 9 March:

Tuesday, 10/03 – high.

Wednesday 11/03 – high.

Thursday 12/3 – high.”

- (d) 9 March 2015, 0752 UTC Tropical Disturbance Advisory Number 9 issued from Regional Specialised Meteorological Centre Nadi "Tropical Cyclone Pam centre 995HPA Category 1 was located near 8.4S 169.8E at 090600 UTC....Depression moving east-south-east at about 04 knots. Maximum 10 - minute average winds near centre estimated at about 35 knots".
- (e) 9 March 2015, 0813 UTC - first high seas gale warning is issued for Pam by Regional Specialised Meteorological Centre Nadi.
- (f) 9 March 2015, 1500 UTC Joint Typhoon Warning Centre (JTWC) - Pearl Harbour - "Tropical Cyclone 17P (Pam) warning NR 002 01 Active tropical cyclone in Southpac...

"Remarks: ...located approximately 745NM northwest of Nadi, Fiji, has tracked eastward at 07 knots over the past 6 hours... TC17P (Tropical Cyclone Pam) is expected to steadily intensify as VWS decreases and outflow improves with the introduction of a poleward outflow channel as the cyclone tracks southward. Rapid intensification is a distinct possibility near Tau 72 as the poleward ventilation is further enhanced after the system becomes exposed to the strong westerlies. After Tau 96, TC17P (Tropical Cyclone Pam) will track more south-eastward as the STR is weakened by a mid-latitude trough. The available numeric guidance is in overall agreement in the long term, however, there is a significant spread in the initial portion of the forecast prior to the transition in the steering mechanism. In view of this discrepancy, there is low confidence in the JTWC track forecast. Maximum significant wave height at 091200Z is 20 feet".

- (g) 10 March 2015, 0400 UTC, Tropical Cyclone 3 - Day outlook for area: Equator to 25S and between 160E and 120W issued by Regional Specialised Meteorological Centre Nadi - "Tropical Cyclone Pam centre 985 HPA category 2 was analysed near 9.7S - 170.5E at 100300 UTC. It is moving SSE at 05 knots".

The cruise

- 8 The plaintiff and group members boarded the Carnival Spirit (the "ship") provided by the defendant in Sydney at about 6:00pm AEDT on 10 March 2015.

- 9 The ship departed on the cruise from Sydney at about 7:00pm AEDT on 10 March 2015.
- 10 At about 10:00pm AEDT on 10 March 2015 the captain of the ship informed the plaintiff and group members that Tropical Cyclone Pam had been upgraded and it was no longer safe to cruise to New Caledonia and the itinerary had been changed.
- 11 On 11th March 2015 the plaintiff and group members were provided with a letter from the bridge updating the cruise itinerary replacing the Ports of Mare, Isle of Pines and Noumea, New Caledonia with the Port of Hobart and Port of Melbourne, Australia.

The Claim

- 12 The defendant knew or ought to have known before the ship left Sydney that the ship would not proceed on the cruise to the region of New Caledonia

Particulars of knowledge

The defendant would have decided not to proceed on the cruise by relying on the following information:

- (a) the defendant had available to it warnings and information in relation to Tropical Cyclone Pam including warnings and information pleaded in paragraphs 7 (a)-(g) hereof;
- (b) the defendant had experience of tropical cyclones and their affect;
- (c) the warnings and information available on 9 March 2015 told of the existence of Tropical Cyclone Pam located north of the cruise area likely to move south and to intensify;
- (d) Tropical Cyclone Pam had by 10 March 2015 intensified and moved south;
- (e) on the warnings and information available to it the defendant knew or ought to have known that it was not safe for the ship to proceed on the cruise to the region of New Caledonia as planned

Chapter 2, section 18 of the Australian Consumer Law

- 13 The Defendant failed to advise the plaintiff and group members that the cruise itinerary was significantly changed before departure from Sydney.
- 14 The defendant's failure to advise of a significant change in the cruise itinerary before departure from Sydney was misleading or deceptive or was likely to mislead or deceive.

Particulars

- (a) Allegations in paragraphs 4 to 6 and 12
 - (b) Failure to advise the change of destination before departure was misleading and deceptive in the circumstances of the contract.
- 15 If the plaintiff and group members had been advised of the significant change in the itinerary in a timely manner they would have cancelled and claimed a full refund under clause 26 of the defendant's Cruise Ticket Contract.

Consumer guarantees

- 16 At all material times the plaintiff and group members were consumers for the purposes of section 3(1) of the Australian Consumer Law, schedule 2 of *Competition & Consumer Act 2010* (Cth) (the "Australian Consumer Law").
- 17 At all material times the defendant supplied services to the plaintiff and group members for the use or enjoyment of facilities for amusement, entertainment, recreation or instruction as defined in section 2 of the Australian Consumer Law.
- 18 The supplying of the said services to the plaintiff and group members was in trade or commerce, the defendant guaranteed the plaintiff and group members its services would be rendered with due care and skill (the "care and skill guarantee").

Particulars

- (a) The guarantee arose in law pursuant to section 60 of the Australian Consumer Law.
- 19 Further, and/or alternatively the plaintiff and group members made known to the defendant the particular purpose for acquisition of services from them, as suppliers, was the experience of enjoying travel and accommodation whilst on the cruise.

Particulars

- (a) The particular purpose was impliedly made known by the plaintiff and group members to the defendant by the nature of the relationship between the plaintiff and group members and the defendant (the supply of recreational services to each and every one of them), the purpose of transactions that the plaintiff and group members entered into with the defendant and the booking of and payment for the cruise.
- (b) The group members reserve the right to contend the particular purpose was also made expressly known by group members to the defendant; however this

would be the subject of individual enquiry and may be subject of further particulars after determination of the common issues.

- 20 Further and/or alternatively, the plaintiff and group members made known to the defendant that the desired result they wished to achieve from the acquisition of services from them was the experience of enjoying the cruise.

Particulars

- (a) The plaintiff and group members' desire was impliedly made known by the plaintiff and each of the group members by the nature of the relationship between the plaintiff and the group members and the defendant, the purpose of the transactions of the plaintiff and group members entered into with the defendant in the booking of and payment for the cruise.
- (b) The group members reserve the right to contend that the desired result was also made expressly known by the group members to the defendant; however this will be subject to individual enquiry and may be subject to further particulars after the determination of the common issues.
- 21 In the premises, in supplying the said services to the plaintiff and group members in trade or commerce, the defendant further guaranteed them that the services supplied would be reasonably fit for the purpose (the "purpose guarantee").

Particulars

- a) The guarantee arose in law pursuant to section 61(1) of the Australian Consumer Law.
- 22 In the premises, in supplying the said services to the plaintiff and group members in trade or commerce, the defendant further guaranteed them that the services might reasonably be expected to achieve the result (the "result guarantee").

Particulars

- a) The guarantee arose in law pursuant to section 61(2) of the Australian Consumer Law.
- 23 The defendant knew or ought to have known before departure of the cruise that it would not provide the services it had contracted to supply to the plaintiff and group members.

Particulars

- (a) The plaintiff and group members rely on paragraphs 12 and 17 to 22 hereof.

Contravention of consumer Guarantee

- 24 In contravention of the care and skill guarantee the defendant failed to exercise due care in supplying the services by:
- (a) Failing to make any or any adequate enquiry prior to departure of the cruise into the nature and extent of Tropical Cyclone Pam.
 - (b) Failing to determine, prior to departure of the cruise that the nature and extent of Tropical Cyclone Pam was such that it was inconceivable that the cruise could proceed to that region.
 - (c) Failing to cancel the proposed cruise in a timely manner to enable the plaintiff and group members to make alternative arrangements and not incur costs of travel to Sydney and overnight stay.
- 25 By reasons of the facts and circumstances alleged in paragraphs 19 and 21, in contravention of the purpose guarantee, the services provided by the defendant were not reasonably fit for the particular purpose for which they were required and that prior to the departure of the cruise from Sydney it was reasonably apparent that the plaintiff and group members would not enjoy, or substantially enjoy, the benefits of the cruise but despite that circumstance, the defendant failed to cancel the cruise or offer the plaintiff and group members refunds.
- 26 By reason of the facts and circumstances alleged in paragraphs 20 and 22, in contravention of the result guarantee the services were not of such nature and quality as reasonably might be expected to achieve the result the subject of the result guarantee, in that prior to departure from Sydney was reasonably apparent that the plaintiff and group members would not enjoy or substantially enjoy, the benefits of the cruise offered but despite that circumstance, the defendant failed to cancel the cruise in a timely manner and offer plaintiff and group members refunds.

Loss and damage

- 27 The plaintiff and group members suffered loss or damage because of the deceptive and misleading conduct of the defendant in that they did not have the opportunity to cancel and obtain a refund which they would have done had they been advised in a timely manner of the cancellation of the cruise.
- 28 The plaintiff and group members suffered loss or damage because of the said contraventions of the care and skill guarantee, purpose guarantee and/or result guarantee in that, having embarked from Sydney they did not experience, or substantially experience, travel and accommodation on the cruise that had been offered by the defendant.

- 29 The services purportedly supplied to the plaintiff and group members:
- (a) would not have been acquired by a reasonable consumer fully apprised of the likely nature and extent of the failure by the defendant to comply with the care and skill guarantee, the purpose guarantee and/or the result guarantee;
 - (b) were substantially unfit for the purpose;
 - (c) were unfit for the particular purpose for which they were required by the plaintiff and group members; and/or
 - (d) were not of such a nature, quality, state or condition that might reasonably be expected to achieve the result desired by the plaintiff and group members that was made known to the defendant.
- 30 In the premises the said failures to comply with the consumer guarantees could not, or cannot, be remedied, or were a "major failure" within the meaning of sections 267(3) and 268 of the Australian Consumer Law.

Particulars of loss

- 31 The plaintiff and group members claim they suffered the following loss and damage:
- (a) Money outlaid to travel to Sydney.
 - (b) Money outlaid for accommodation in Sydney on the evening of 9 March 2015.
 - (c) Money paid for the cruise.
 - (d) Inconvenience

Common questions

- 32 The questions common to the claims of group members are:
- (a) What knowledge did the defendant have concerning Tropical Cyclone Pam before the ship sailed on 10 March 2015.
 - (b) What enquiries did the defendant make prior to the departure of the ship as to Tropical Cyclone Pam;
 - (c) What knowledge was available concerning Tropical Cyclone Pam before the ship sailed on 10 March 2015;
 - (d) What warnings and / or information to prospective passengers on cruises did other tour operators in comparable positions and circumstances to the defendant provide to respective passengers on similar cruises.

- (e) Whether in the circumstances the defendant's actions in failing to advise passengers of significant change in itinerary in a timely manner was misleading or deceptive;
- (f) Whether any guarantee that the services be supplied with due care and skill required the defendant, in advance of the departure of the cruise, to cancel the cruise or to offer refunds to group members;
- (g) Whether any guarantee to render services with due care and skill required the defendant to disclose to the plaintiff and group members in advance of the departure of the cruise:
 - (i) information it had acquired in relation to the forecasts of Tropical Cyclone Pam.
 - (ii) The risk from Tropical Cyclone Pam was so high that the cruise could not proceed to the region of New Caledonia
- (h) Whether any guarantee that services would be reasonably fit for the purpose of the cruise was satisfied in circumstances where the defendant failed to cancel the cruise prior to departure or to offer refunds;
- (i) Whether any guarantee that services would achieve the desired result of the cruise was satisfied in circumstances where the defendant failed to cancel the cruise prior to departure or to offer refunds;
- (j) Was there any failure by the defendant to comply with a consumer guarantee applicable to the supply of services to group members under Sub Division B, Div 1 of Part 3-2 of the Australian Consumer Law which was a "major failure" for the purpose of section 268 of the Australian Consumer Law and/or a failure which could not be remedied by the defendant.
- (k) What are the principles for identifying and measuring compensable losses suffered by group members resulting from the breaches alleged herein.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the Legal Profession Uniform Law Application Act 2014 that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Solicitor

Date of signature

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiff's costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 **If you intend to dispute the claim or part of the claim**, by filing a defence and/or making a cross-claim.
- 2 **If money is claimed, and you believe you owe the money claimed**, by:

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.lawlink.nsw.gov.au/ucpr or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Law Courts Building, Queens Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of New South Wales GPO Box 3 SYDNEY NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Lucretia De Jong
 Address 16A Canning Street, Avondale Heights Victoria 3034
 Occupation Director
 Date

I [#say on oath #affirm]:

- 1 I am the plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

#SWORN #AFFIRMED at Melbourne

Signature of deponent

Name of witness

Address of witness

Capacity of witness Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

Victorian Drivers License

Identification document relied on (may be original or certified copy)[†]

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**

Lucretia De Jong, Plaintiff

DefendantCarnival PLC t/as Carnival Australia
ARBN 107 998 443, Defendant**FURTHER DETAILS ABOUT PLAINTIFF****Plaintiff**

Name	Lucretia De Jong
Address	16A Canning Street Avondale Heights Victoria 3034

Legal representative for plaintiff

Name	Allanah Goodwin
Practising certificate number	P0027065
Firm	Arnold Thomas & Becker
Contact solicitor	Allanah Goodwin
Address	573-577 Lonsdale Street Melbourne VIC 3000
DX address	DX38
Telephone	03 9614 1433
Fax	03 9614 6348
Email	Allanah@arnoldthomasbecker.com.au
Electronic service address	Allanah@arnoldthomasbecker.com.au

DETAILS ABOUT DEFENDANT

Defendant

Name	Carnival PLC t/as Carnival Australia ARBN 107 998 443
Address	Level L 5 15 Mount Street North Sydney New South Wales 2060

FILE COURT FORMS ONLINE

The NSW Online Registry provides secure services for all parties to cases in the NSW Supreme, District and Local Courts including legal representatives, agents and clients who are representing themselves.

- File court forms online
- Download court sealed documents
- View information about your case
- File multiple forms at once
- Publish & Search probate notices

You may respond to this Statement of Claim by filing a Defence, Statement of Cross Claim or Acknowledgment of Liquidated Claim online.

To respond online, you will need the Case Number (located in the Court Details section of the court approved Statement of Claim). If you are representing yourself, you will also need the document barcode (normally located on the top right hand side of the Statement of Claim).

If this Statement of Claim does not have a document barcode, you will need to attend a Court Registry to obtain the document barcode. You will need to provide identification (e.g. drivers license) before the Court Registry staff can give you a form relating to this case.

Save time and money

- File online from your home or office
- View your case information online
- Most online forms processed within minutes.
- Option to attach and file your own pre-prepared form online for many forms
- Court sealed documents available online ready to download and serve
- Forms pre-filled with existing case and party information where known
- Filing fees calculated for you online
- Pay for up to 100 forms in one transaction
- View and download tax invoices online

Simple to Use

- Free to register
- Easy to use website
- Step-by-step guidance and links to useful information provided throughout the online filing process
- Preview function to review forms before submitting

For help using the Online Registry

- Call 1300 679 272 Mon-Fri (business hours)
- Email onlineregistry_support@agd.nsw.gov.au

Register now

www.onlineregistry.lawlink.nsw.gov.au

