

**OPT OUT NOTICE**  
**RUBY PRINCESS CLASS ACTION**  
**KARPIK V CARNIVAL PLC AND ANOTHER**  
**FEDERAL COURT OF AUSTRALIA PROCEEDINGS NSD 806 of 2020**

**THIS IS AN IMPORTANT NOTICE ISSUED TO YOU BY THE**  
**FEDERAL COURT OF AUSTRALIA**

**Why is this important?**

This notice is about the Ruby Princess Class Action, which is before the Federal Court of Australia.

It has been sent to you because you may be an Overseas Class Member (which is defined in paragraph 6 of this notice).

As explained below, you may **do one of three things** in response to this notice:

1. **opt out** of the class action by 16 April 2021 (4.00 PM Sydney time) and lose your right to receive any compensation from the class action (but keep your right to try and get compensation in an action you start yourself);
2. **sign up** to the class action (which you can do in two ways); or
3. **do nothing**, in which case you remain part of the class action.

**A. WHAT IS A CLASS ACTION?**

1. A class action is an action that is brought by one person ("**Applicant**") on his or her own behalf and on behalf of a class of people ("**Class Members**") against another person or persons ("**Respondent**" or "**Respondents**") where the Applicant and the Class Members have similar claims against the Respondents.
2. Class Members are "bound" by the outcome in the class action, unless they have opted out of the proceeding. A binding result can happen in two ways being either a *judgment* following a trial, or a *settlement* at any time. If there is a judgment or a settlement of a class action Class Members *will not* be able pursue the same claims and *may not* be able to pursue similar or related claims against the Respondents in other legal proceedings.

## **B. THINGS YOU SHOULD KNOW ABOUT THE CLASS ACTION**

*What is the Ruby Princess class action?*

3. This class action, which is brought by one of the passengers on the Ruby Princess, Susan Karpik (who is called the Applicant), on her own behalf and on behalf of Class Members, claims compensation (that is, money) for losses suffered by Class Members as a result of the outbreak of COVID-19 on board the Ruby Princess during its journey from Sydney to Sydney via New Zealand which departed on 8 March 2020 (**the Voyage**).
4. The class action has been brought against Carnival Plc and Princess Cruise Lines Ltd. They are called the Respondents. The Respondents do not admit the allegations and are defending the class action.
5. The solicitors running the case are Shine Lawyers. A company called Balance Legal Capital (**Balance**) is funding the case by paying the lawyers and covering any exposure to pay the Respondents' costs in the event the class action is unsuccessful.

*Are you an Overseas Class Member?*

6. You are an Overseas Class Member if:
  - a. you were a passenger on the Voyage; and
  - b. you or your travel agent purchased your ticket for the Voyage in a country other than Australia or New Zealand.

*Why have I been sent this Opt Out Notice?*

7. The class action has been ordered to go to a mediation before 30 August 2021 and the Court provides you with an opportunity to 'opt out' of the class action in advance of that mediation taking place. This and the other options that are available to you are explained further in Part C below.

8. In addition to the upcoming mediation, the Respondents have asked the Court to determine whether Overseas Class Members can have their claims determined in this class action. That is explained in more detail in paragraphs 9 to 17 below and the impact that it may have on your decision to opt out of the class action.
9. The Respondents contend that Overseas Class Members are a party to one of two passage contracts (**Overseas Passage Contracts**), namely:
  - (a) the North America (& International) Passage Contract, which contains:
    - (i) a choice of law clause selecting the general maritime law of the United States or the laws of the State of California;
    - (ii) an exclusive jurisdiction clause selecting the courts of the United States or the State of California for claims of injury, illness or death;
    - (iii) an arbitration clause selecting California as the forum for all other claims; and
    - (iv) a class action waiver clause.
  - (b) the United Kingdom (UK) Passage Contract, which contains:
    - (i) choice of law clause selecting English law;
    - (ii) a non-exclusive jurisdiction clause selecting English courts as the forum for the determination of any claims; and
    - (iii) a clause providing for the application of the Athens Convention for liability for death or personal injury arising out of international carriage by sea.
10. The Respondents argue that, due to the provisions of the Overseas Passage Contracts, those Overseas Class Members bound by the North America (& International) Passage Contract can only bring claims in California and those bound by the UK Passage Contract can only bring claims in England, and not in

this class action.

11. The Applicant disputes the Respondents' position that the Federal Court of Australia is an inappropriate forum and argues that Overseas Class Members' claims should not be excluded from this class action.
12. On 20 May 2021, the Court will hear arguments by the Applicant and the Respondents regarding whether the claims of Overseas Class Members should be excluded from the class action.
13. If you are an Overseas Class Member and you **do not opt out** of this class action before **16 April 2021**, the Court's findings about whether the claims brought on behalf of Overseas Class Members should be excluded from the class action, may bind you.
14. What this means is, if the Respondents are successful in excluding claims brought on behalf of Overseas Class Members, this may, among other things, limit your ability to pursue your claims individually in Australia. This may not however prevent you from bringing your claim, if you so wish, in the USA or England subject to the time limitations referred to below.
15. If you **do opt out**, it means that you will no longer be a participant in the class action and, if ultimately there is money compensation recovered in favour of Overseas Class Members, **you will not be entitled to share in those funds**.
16. If you wish to commence proceedings in a jurisdiction, other than Australia, you should be aware that there may be time limitations by when you must commence the proceedings, and if you seek to bring your claim in the USA the time limit may have already expired.
17. **If you are considering opting out of this class action, it is very important before you opt out, that you obtain legal advice including about any limitation periods that apply to your claim and whether they have already expired.**

*Will Class Members have to pay any legal costs?*

18. Class Members will not have to pay any "out of pocket" legal costs by remaining in this class action. If the class action is successful (that is, if money compensation is recovered), the Court might be asked to share the legal and funding costs among all persons who have benefitted from the class action. The effect of any such order, if made, would be that all Class Members who benefit will contribute to the costs and pay a reasonable litigation funding commission. That means even those who do not sign up to a funding agreement may have to contribute to these costs and funding commission from their share of compensation.
19. If the class action is unsuccessful (that is, no money compensation is recovered), Class Members will not have to pay any legal costs by remaining in the class action.
20. As part of funding the class action, Balance is funding the legal costs incurred in relation to the hearing mentioned in paragraph 12 above. The costs of that hearing will not be deducted from the amounts payable to non-Overseas Class Members if there is a successful outcome in the class action.
21. In practice, this means that if you remain a Class Member and Overseas Class Members are allowed to remain in the class action, and the class action is successful or settles, you may have to contribute more to the legal costs spent than the non-Overseas Class Members to account for the costs of this hearing.
22. If Overseas Class Members are not allowed to remain in the class action, you will not have to pay anything and Balance will not be able to deduct the legal costs spent in the hearing from the amounts payable to the non-Overseas Class Members.
23. If Overseas Class Members are allowed to remain in the class action but the class action is not successful or does not settle, you will not have to pay anything and no Class Member will be out of pocket for the legal costs of the hearing or the class action generally.

## C. YOUR THREE OPTIONS

### *OPTION 1: OPT OUT AND CEASE TO BE A CLASS MEMBER*

24. Overseas Class Members who opt out will not receive any money from this class action if it wins or settles.
25. Overseas Class Members who opt out may preserve their right to commence their own claim for compensation against the Respondents, subject to applicable time limits.
26. To opt out, you must complete the “Opt Out Notice” at Annexure A. Once complete, send the notice directly to the New South Wales District Registry of the Federal Court of Australia before **4:00pm on 16 April 2021**.

### *OPTION 2: SIGN UP TO THE CLASS ACTION*

27. All Class Members can sign up to the class action by providing their details, and information about their claims to the lawyers, Shine Lawyers. This means it is possible for their claims to be specifically considered at the mediation.
28. Although you do not have to sign up to remain a Class Member (see Option 3 below), it is likely that at some point you will need to register your interest to participate - either to receive money in any settlement, or to take further steps to bring your claim forward.
29. If you wish to sign up, it would assist the lawyers to prepare for any settlement discussion if you were to register by 31 May 2021. If you have already signed up, you do not need to sign up again.
30. If you wish, you may now sign up with Balance and Shine Lawyers, by either:
  - (a) entering into funding and costs agreements (and becoming a **Represented Class Member**); or
  - (b) not entering into funding and costs agreements but submitting your claim details

to Shine Lawyers (with the result you will be a **Registered Unrepresented Class Member**).

31. If you want to become a Represented Class Member, what you need to do is to enter into a funding agreement with Balance and a costs agreement with Shine Lawyers. You can do this:
  - (a) online at <https://www.shine.com.au/service/class-actions/ruby-princess-coronavirus-claim>; or
  - (b) by calling 1800 325 172 or sending an email to [rbyprincess@shine.com.au](mailto:rbyprincess@shine.com.au).
32. If you are considering becoming a Represented Class Member, you should read carefully the funding agreement including the costs agreement and, if you then do not understand everything you should speak with Shine Lawyers and/or get independent legal advice from your own lawyer.
33. Becoming a Registered Unrepresented Class Member will mean you will not enter into any contract with Balance and Shine Lawyers. It will be possible for your claim to be specifically considered to some extent at the mediation, but if further steps are required to bring your individual claim (once all of the issues that are common to all Class Members are sorted out), you will have to pay any legal costs yourself. Also, at the end of the class action, an order may be sought requiring Registered Unrepresented Class Members who benefit, to contribute to the costs and the funding out of any money they receive.
34. An aspect of the funding of this class action by Balance is that it can be withdrawn by Balance in certain circumstances. The Court has been told that:
  - (a) in considering whether this class action is commercially viable and whether to continue to fund the proceedings, Balance will take into account the number of Represented Class Members and the value of the claims of the Represented Class Members; and
  - (b) Balance may decide to cease funding the proceeding if there is an insufficient number of Represented Class Members.

### *OPTION 3: DO NOTHING*

35. Overseas Class Members who do not opt out by 16 April 2021, or sign up will remain as Class Members and await the outcome. You will be an Unregistered Class Member but, as noted above, at some point Unregistered Class Members may need to register to get any money out of any settlement (if that happens) or run their individual case (and because you are not a Represented Class Member you will have to pay any legal costs yourself). At the end of the class action, an order may be sought requiring Unregistered Class Members who benefit from the class action (e.g. receive money compensation) to contribute to the costs and the funding out of any money they receive.

#### **D. FOUR IMPORTANT THINGS TO NOTE**

36. *Firstly*, this is not a scam. You can check (and get any copies of relevant documents) by:

- (a) Visiting the Federal Court of Australia website for the class action at <https://www.comcourts.gov.au/file/Federal/P/NSD806/2020/actions>;
- (b) visiting Shine Lawyers' website <https://www.shine.com.au/service/class-actions/ruby-princess-coronavirus-claim>; or
- (c) by telephoning 1800 325 172.

37. *Secondly*, if you are unsure about any of the 3 options referred to above or about anything else in this notice, you should seek clarification by contacting Shine Lawyers or by seeking other independent legal advice.

38. *Thirdly*, if you are an Overseas Class Member, and you either sign up to the class action or do nothing, then you will continue to be bound by all orders and judgments the Court makes in the Ruby Princess Class Action.

39. *Fourthly*, if there is anything of which you are unsure and you do not want to speak with Shine Lawyers (or you want to understand their involvement or the funding agreement or costs agreement better), you should seek your own legal advice.



**OPTION 1 – OPT OUT**

Form 21  
Rule 9.34

**OPT OUT NOTICE**

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

No. NSD 806 of 2020

**SUSAN KARPIK**

Applicant

**Carnival PLC (ARBN 107 998 443 / ABN 23107998443) and another named in the schedule**

Respondents

To: The Registrar  
NSW Registry, Federal Court of Australia  
Level 17, Law Courts Building Queens Square  
SYDNEY NSW 2000

Or by email: [nswdr@fedcourt.gov.au](mailto:nswdr@fedcourt.gov.au)

The person named below, as a Overseas Class Member in this representative proceeding, gives notice under section 33J of the *Federal Court of Australia Act 1976* (Cth), that the person is opting out of the proceeding.

Name of class member	
Country of Residence of class member	
Country in which class member purchased tickets for the Voyage	
Postal address of class member	
Telephone contact for class member	
Email address for class member	

If signing as the lawyer or representative of the class member:

Person completing form	
------------------------	--

Authority of person completing	
Postal address of person completing this form	
Telephone contact	
Email address	

Date:.....

Signed by:

..... (signature)

..... (print name)

Class Member / Lawyer for the Class Member