



SEMAPHORE

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Negligence Ruled in Ruby Princess Sailing

Carnival plc and Princess Cruise Lines Ltd have been found liable in a class action brought following a coronavirus-struck sailing of the cruise ship Ruby Princess which ultimately saw almost 30 deaths as well as about 660 people falling ill.

Furthermore, Justice Stewart stated in a 283-page October 2023 Federal Court of Australia [judgment](#) that the respondents – respectively the time charter and owner of the Ruby Princess – made “misleading representations”.

The 288-metre and 113,561-GT vessel, which left Sydney on 8 March 2020 bound for a two-week return cruise via New Zealand ports with about 2671 passengers and 1146 crew onboard, had reported health issues in the immediately-preceding sailing.

In his accompanying [summary document](#) to the judgment, Justice Stewart stated there had been an outbreak of “acute respiratory infection and influenza-like illness onboard that cruise”.

“That is relevant because of the possibility that that outbreak included coronavirus thereby heightening the risk of coronavirus being carried over to the next voyage, whether by a crew member who remained onboard for the next cruise, or by some other means,” he stated.

Lead applicant in the case, Susan Karpik of Wollongong (NSW), advanced five alternative and overlapping causes of action or claims and sought damages for personal injuries and distress and disappointment of over A\$360,000.

Although Mrs Karpik’s COVID-19 symptoms had been relatively minor, she endured witnessing the near-death of her husband, Henry Karpik, “without being able to be by his bedside because she was in isolation herself after the voyage”.

“Mr Karpik became very ill – was intubated, ventilated and placed into an induced coma, and at one point was given only a few days to live. He spent nearly two months in hospital.

“As a result, she suffered a recognised psychiatric illness, namely an adjustment disorder with mixed anxiety and depressed mood.”

Mrs Karpik consequently advanced claims the respondents had:

- failed to comply with guarantees under the Australian Consumer Law that the services provided to her would be, first, reasonably fit for the particular purpose that she had made known she acquired them for (the purpose guarantee) and, second, of such a nature and quality that they might reasonably be expected to achieve the result that she had made known she wished to achieve (the result guarantee)
- committed the tort of negligence and also that they had failed to comply with their guarantee under the consumer law that the services supplied by them would be rendered with due care and skill
- engaged in misleading and deceptive conduct in trade or commerce which is prohibited under the consumer law. The conduct in question is the respondents’ pre-cruise communications, which were designed to reassure passengers of their safety on the cruise and the measures that the respondents were taking to protect them, and allowing the passengers to board the ship

Justice Stewart ruled that causation and loss had been established on each of the claims.

Among pertinent explanatory passages quoted from the summary document:

- “As a result of Mr and Mrs Karpik contracting COVID-19 on the cruise, Mrs Karpik did not have a safe, relaxing and pleasurable cruise holiday [as had been guaranteed by the respondents under Consumer Law].”
- “To the respondents’ knowledge, to proceed with the cruise carried a significant risk of a coronavirus outbreak with possible disastrous consequences, yet they proceeded regardless.”
- “There are a number of considerations that have led me to conclude that cancellation of the cruise would not have been so burdensome that a reasonable person in the respondents’ position would not have cancelled the cruise ... the respondents were therefore negligent and in breach of their duty of care.”
- “The respondents were also negligent in certain specific respects with regard to the precautions taken for passenger safety.”
- “I have found that the respondents by their conduct made misleading representations that it was reasonably safe for passengers to embark on the cruise, that the respondents would take reasonable care for the safety of passengers during the cruise, that they would implement increased monitoring, screening and sanitation protocols to protect the health of passengers, and that they would do all things reasonably within their ability to enable the passengers to have a safe, relaxing and pleasurable cruise.”

Justice Stewart ruled that Mrs Karpik had been successful in her claim for out-of-pocket medical expenses in the sum of A\$4,423.48 plus interest.

Personal injury damages were ruled to have not reached the non-economic threshold and so were not available in respect to the misleading or deceptive conduct claim.

Although Mrs Karpik was deemed entitled to distress and disappointment damages on all of her claims, the assessed sum was at about the full fare refund already paid by the respondents, so no further compensation was ruled in that respect.

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