

Our Ref: PC:GG:P&O4851

Date: 21 November 2023

Clyde & Co  
Level 22, 12 Creek Street  
Brisbane QLD 4000  
Sydney NSW 2000

**By email only: Ernest.van.Buuren@clydeco.com**

Colleagues,

RE: DEBRAH JACKSON V CARNIVAL PLC t/as P&O CRUISES AUSTRALIA ABN 23 107 998 443  
FEDERAL COURT PROCEEDING NO QUD 183/2023  
REQUEST FOR FURTHER AND BETTER PARTICULARS

We refer to your client's Defence filed on 6 October 2023 (**Defence**). This is a Request for Further and Better Particulars written pursuant to r 16.45 of the *Federal Court Rules 2011* (**FCR**).

Paragraph 33, Defence

As to paragraph 33, please provide particulars as to:

- (a) what information is alleged that was issued by the FMS and the Bureau of Meteorology;
- (b) in what form was that information issued;
- (c) what information issued by the FMS and the Bureau of Meteorology did the Respondent have access to;
- (d) please identify the "weather records" that the officers on the Ship had access to;
- (e) please identify the "weather records" that the marine managers ashore had access to;
- (f) where were the marine managers ashore located;
- (g) when (if at all) did the officers on board the Ship access weather records and, if so, what weather records were accessed;
- (h) what published information did the Respondent rely on concerning the "categorization, strength and projected path of Cyclone Donna" including:
  - i how that information was obtained;
  - ii who that information was sent to and by what means it was sent;
  - iii copies of the published information;



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- (i) with regard to the 'marine managers ashore' please provide particulars of:
- i. the names and qualifications of each "marine manager ashore" who had access to the information;
  - ii. the authority held by each marine manager and whether that authority could affect the daily itinerary (or change thereof) of the Ship, or the route (or change thereof) of the Ship, and if so, how that authority was implemented and effected in each circumstance;
  - iii. any instructions that a marine manager gave to any master or officer onboard the Pacific Aria regarding the weather, actions that were to be taken because of the weather, or any change in the route, birthing of other activities involving the Ship;
  - iv. the data which comprise the "various weather recordings and same" and any and all other information and source material that each marine manager had access to, and provided to the master and officers onboard the Ship;
  - v. the data which comprise the "various weather recordings and same" and any and all other information and source material that the marine managers had access to concerning the categorization, strength and projected path of Cyclone Donna;
- (j) with regard to the 'master and officers onboard the Ship' please provide particulars of:
- i. the names and qualifications of each master and officer onboard the Ship to which the Respondent has pleaded had access to the information;
  - ii. the authority held by master and whether that authority could affect the daily itinerary (or change thereof) of the Ship, or the route (or change thereof) of the Ship, and if so, how that authority was implemented and effected in each circumstance;
  - iii. the data, "various weather recordings and same" and any and all other information and source material that master and officer had access to, and whether than information was supplied exclusively from the marine managers offshore;
  - iv. copies of the "various weather recordings and same" and any and all other information and source material that the master and officers onboard the Ship had access to, whether supplied by the marine managers ashore, or sourced independently, concerning the categorization, strength and projected path of Cyclone Donna;
- (k) what is meant by the phrase "various weather recordings and same" as it is used in paragraph 33; and
- (l) please provide particulars of the name, date, database and weather bureau that each "various weather recording" was issued from and the time of each various weather recording;
- (m) please provide copies of all "various weather recordings" that the allegations in paragraph 33 of the Defence refer to so that we may consider each various weather recording in order to be able to respond to the allegation in due course.

Paragraph 35(d)(i) Defence

As to paragraph 35(d)(i), please provide particulars as to:

- (a) when the Respondent became aware, and who on behalf of the Respondent was informed of, the development of Cyclone Donna prior to the departure of the Ship from Brisbane on 5 May

2017;

- (b) how the Respondent became aware of the development of Cyclone Donna and the source of the information provided to the Respondent; and
- (c) how that information was provided to the Respondent and who kept a record of the information.

Paragraph 35(d)(ii)(1), Defence

As to paragraph 35(d)(ii)(1), please provide particulars as to, prior to departure of the Ship from Brisbane:

- (a) how the Respondent monitored the strength and path of Cyclone Donna;
- (b) who was responsible for the monitoring, recording and information sourcing in relation to the strength and path of Cyclone Donna on behalf of the Respondent;
- (c) how was the Respondent provided the information regarding the strength and path of Cyclone Donna and what information was provided to the Respondent;
- (d) what information was provided as part of the monitoring process;
- (e) what precautionary steps and risk assessments did the Respondent undertake upon becoming aware of the development of Cyclone Donna; and
- (f) who was responsible on the part of the Respondent for undertaking the precautionary steps and risk assessments and who was this information passed on to before the Ship departed on its set course.

Paragraph 35(d)(ii)(2), Defence

As to paragraph 35(d)(ii)(2), please provide particulars as to, throughout the duration of the Cruise:

- (a) how the Respondent monitored the strength and path of Cyclone Donna;
- (b) who was responsible for the monitoring, recording and information sourcing in relation to the strength and path of Cyclone Donna on behalf of the Respondent;
- (c) how was the Respondent provided the information regarding the strength and path of Cyclone Donna and what information was provided to the Respondent;
- (d) what information was provided as part of the monitoring process;
- (e) what precautionary steps and risk assessments did the Respondent undertake and how often did this occur at different stages of the Cruise; and
- (f) who was responsible on the part of the Respondent for providing regular updates and risk assessments, and who was this information provided to in order to make informed decisions as to the route of the Cruise and whether the daily itinerary should be changed.

Paragraph 39, Defence

As to paragraph 39, please provide particulars in relation to:

- (a) the calls made by the Ship not to visit Lifou and Port Vila:

- i. when were these calls were made and by whom;
  - ii. on what information were the calls made;
  - iii. please provide copies of any notes or logs in relation to the change in the calls the Ship was to made; and
- (b) the "additional full day shore program" in Noumea, New Caledonia on 8 May 2017:
- i. what was the additional full day shore program offered to passengers;
  - ii. please provide a list of passenger names and details of the passengers who participated in the "additional full day shore program";
  - iii. please advise what was in place prior to the "additional full day shore program"; and
  - iv. please provide a copy of the itinerary.

Paragraph 40(a), Defence

As to paragraph 40(a), please provide particulars of:

- (a) any passengers that disembarked from the Ship at Noumea, New Caledonia, including the number of passengers and the names of passengers; and
- (b) any passengers who returned to the Ship at Noumea, New Caledonia, including the number of passengers, and the names of passengers.

Paragraph 44(a), Defence

As to paragraph 44(a), please provide particulars in relation to:

- (a) what was originally forecasted and the source of information of the original forecasts;
- (b) the route that the Ship took when passing through the "local weather system";
- (c) what is meant by the phrase "local weather system";
- (d) who classified, or identified, the storm as a "local storm" or "Other Weather System" as opposed to Cyclone Donna and please identify their expert qualifications in meteorology.

Paragraph 44(b), Defence

As to paragraph 44(b), please provide particulars in relation to what is meant by the phrase "the Other Weather System was different to Cyclone Donna" including:

- (a) the difference between the storms;
- (b) who classified the storms as "different" and please identify their expert qualifications in meteorology.

Paragraph 44(c), Defence

As to paragraph 44(c), please provide particulars in relation to what "appropriate measures" the master of the Ship took to respond to the Other Weather Conditions including:

- (a) what is meant by the phrase "appropriate measures";
- (b) what measures did the master of the Ship take;
- (c) please identify any guidelines that are followed by the master and officers, and any standards that their actions are measured against, and what protocol (if any) they are to follow when responding to the "Other Weather System";
- (d) please identify what actions were undertaken by the Master of the Ship in responding to the Other Weather Conditions including:
  - i. what time each action, or series of actions were undertaken;
  - ii. who was responsible for each task, or series of actions and how this was recorded and the reporting system;
  - iii. whether the Master had to notify any other person during the "Other Weather Condition" and if so, how they were to be notified; and
  - iv. whether the Master had to follow orders of any owner and/or operator and/or marine manager offshore in relation to the Ship and its route, or whether the Master had complete responsibility of the Ship.

Paragraph 46(b)

As to paragraph 46(b), please provide particulars in relation to which 12-hour period the Respondent alleges that the elevators were unable to be used onboard the Ship, and whether this was the only period that the elevators were not able to be used during the Cruise.

**Response Requested**

Please provide your written response to the request for particulars by **4:00PM on Wednesday 29 November 2023**. If your client fails to provide an adequate response to our client's request for particulars, our client will likely seek an Order from the Court pursuant to rule 16.45 of the FCR requiring your client to provide further and better particulars.

Our client reserves all of its rights in respect of the matter, including in relation to costs.

Yours faithfully,

CARTER CAPNER LAW

*Carter Capner Law.*

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