

# SUPREME COURT OF NEW SOUTH WALES

## David Moore v Scenic Tours Pty Limited Proceedings 2014 / 223271

# IMPORTANT NOTICE

## European River Cruise Class Action

### 1. Why is this notice important?

A representative action has been commenced in the Supreme Court of New South Wales by David Moore (“plaintiff”) against Scenic Tours Pty Ltd (“defendant”).

The representative action claims damages for the plaintiff and group members for breaches of consumer guarantees by the defendant arising out of the alteration of European River Cruises in May and June 2013 when flooding occurred in parts of Europe.

In February 2020, the Supreme Court of New South Wales determined that passengers from the United States, Canada, New Zealand, and Thailand, are entitled to participate in the representative action. Passengers from Vanuatu are also entitled to participate in the representative action.

The Supreme Court of New South Wales has ordered that this notice be published for the information of persons who might be members of the group on whose behalf the action is brought and may be affected by the action. If you think that you may be a group member, then **you should read this notice carefully**. If there is anything in it that you do not understand, you should seek legal advice. You should not direct your questions to the Court.

### 2. What is a representative action?

A representative action is an action, commonly known as a class action, brought by one person (the “plaintiff”) on his or her own behalf, and on behalf of a group of people (“group members”) against another person (the “defendant”) where the plaintiff and group members have similar claims against the defendant.

Group members are bound by any judgment or settlement entered into in the representative action unless they have opted out of the proceeding. This means that:

- (a) If the representative action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) If the representative action is unsuccessful, group members are bound

by that result;

- (c) Regardless of the outcome of the representative action, group members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

### **3. What is “Opt out”?**

The plaintiff in a representative action does not need to seek the consent of group members to commence a representative action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the representative action. An explanation for how group members are able to opt out is found below in the section headed ‘How can you opt out of the proceeding’.

### **4. What is this representative action?**

This representative action, the European River Cruise representative action, is brought by the plaintiff on his own behalf and on behalf of all persons who are “group members” as defined in the proceeding.

The action arises out of a series of tours arranged by the defendant, “Scenic Tours” for its customers, with such tours scheduled to be conducted by cruise along European rivers in the period from 10 May 2013 to 14 June 2013.

The plaintiff alleges, in the Fourth Further Amended Statement of Claim filed in the Supreme Court of NSW Proceeding 2014/223271, that the enjoyment of those tours, by that mode of touring, was substantially disrupted due to rising river levels caused by extensive flooding. It is also alleged that by its supply of services to group members in trade or commerce, certain ‘consumer guarantees’ came into existence and the defendant did not comply with those guarantees; and, further, that it was as a result of the non-compliance with those guarantees that group members suffered loss or damage.

On 31 August 2017, the Supreme Court found that the defendant had breached their obligations to the plaintiff and ordered the defendant to pay damages to the plaintiff. The Court also found that the defendant breached their obligations in relation to a number of additional cruises to varying extents. An explanation for how group members are able to obtain a copy of the Court’s judgment is found below in the section headed ‘Where can you obtain copies of relevant documents?’

Unless the defendant persuades the Court that a member of the group did not rely on the skill or judgment of the defendant (or that it was unreasonable for them to rely on the skill or judgment of the defendant), group members on affected cruises are entitled to recover damages, in an amount which is yet to be assessed.

### **5. Are you a group member?**

You are a group member if you:

- (a) Booked and paid for, and travelled on, one of the following cruises

operated by the defendant:

- FRCR190513.1 – ‘South of France’ cruise commencing on 19 May 2013;
  - STC200513.1 – Scenic cruise from Budapest to Amsterdam, commencing on 20 May 2013;
  - EGFC250513.1 – Evergreen cruise from Amsterdam to Budapest, commencing on 25 May 2013;
  - STC270513.1 – Scenic cruise from Amsterdam to Budapest, commencing on 27 May 2013;
  - STC270513.2 – Scenic cruise from Budapest to Amsterdam, commencing on 27 May 2013;
  - STC290513.1 – Scenic cruise from Amsterdam to Budapest, commencing on 29 May 2013;
  - STC290513.2 – Scenic cruise from Budapest to Amsterdam, commencing on 29 May 2013;
  - STC030613.1 – Scenic cruise from Amsterdam to Budapest, commencing on 3 June 2013;
  - EGRC080613.2 – Evergreen cruise from Budapest to Amsterdam, commencing on 8 June 2013;
  - STC100613.2 – Scenic cruise from Budapest to Amsterdam to Budapest, commencing on 10 June 2013.
- (b) Are not a legal representative or funder assisting other group members to recover remedies in this proceeding.

If you are unsure whether or not you are a group member, you should contact Cameron Graham of Somerville Legal, on +612 9923 2321 or [cgraham@somervillelegal.com.au](mailto:cgraham@somervillelegal.com.au) or seek your own legal advice without delay.

#### **6. Will you be liable for legal costs?**

You will not become liable for any legal costs except in the following circumstances:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Somerville Legal or other lawyers to do that work for you. A copy of the terms on which Somerville Legal are acting in the group action may be obtained from them on the number shown below.
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the representative action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff in running the representative action but which are not able to be recovered from the defendant; and
- (c) Representative actions are often settled out of court. If this occurs in the representative action, you may be able to claim from the settlement amount without retaining a lawyer.

## **7. What will happen if you choose to remain a group member?**

Unless you opt out, you will be bound by the outcome of the representative action. If the representative action is successful, you will be entitled to a share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members (although in some cases, you may have to satisfy certain conditions before your entitlement arises). If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

If you opt out the proceedings, you may be able to pursue your own claim against the defendant. However, it is possible that it may now be too late for you to bring that claim, due to the operation of a relevant “limitation period”. Before you opt out of these proceedings, you should obtain legal advice to determine whether any such limitation period would apply to you.

### **8. How can you remain a group member?**

If you wish to **remain** a group member there is **nothing you need to do** at the present time. You are invited to contact the plaintiff's Solicitors, Somerville Legal, on the number below and register as a group member so that further notices about the representative action can be sent to your preferred address.

### **9. How can you opt out of the representative action?**

If you do **not wish to be** a group member you must opt out of the representative action.

If you opt out, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action, but you may be at liberty to bring your own claim against the defendant, provided that you issue Court proceedings within the time limit applicable to your claim.

If you wish to bring your own claim against the defendant, you should seek your own legal advice about your claim and the applicable time limit **before** opting out. Please see the notes in the section above entitled 'What will happen if you choose to remain a group member?'.

If you wish to opt out of the representative action you **must** do so by completing an "Opt Out Notice" in the form shown below, then return it to the Registrar of the Supreme Court of NSW at the address on the form. **IMPORTANT: the Opt Out Notice must reach the Registrar by no later than 4.00pm on 28 August 2020**, otherwise it will not be effective.

### **10. Where can you obtain copies of relevant documents?**

Copies of relevant documents, including the Fourth Further Amended Statement of Claim, Defence, and the Court's judgment may be obtained by:

- (a) Downloading them from [www.somervillelegal.com.au](http://www.somervillelegal.com.au); or
- (b) Inspecting them between 9am and 5pm at the office of Somerville Legal, contact details for which are available from [www.somervillelegal.com.au](http://www.somervillelegal.com.au) or by calling +612 9923 2321.
- (c) Inspecting them on the Supreme Court's website [http://www.supremecourt.justice.nsw.gov.au/supremecourt/sco2\\_class\\_action/european\\_river\\_cruise.html](http://www.supremecourt.justice.nsw.gov.au/supremecourt/sco2_class_action/european_river_cruise.html).

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Cameron Graham of Somerville Legal on +612 9923 2321 or [cgraham@somervillelegal.com.au](mailto:cgraham@somervillelegal.com.au) or seek your own legal advice.

This Notice is published pursuant to orders of the Supreme Court of New South Wales made on 5 March 2020.