

**SUPREME COURT OF NEW SOUTH WALES**

***Darran Kelly v Scenic Tours Pty Ltd (ACN 002 715 602)***

**Proceedings 2022/00238642**

**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 Darran Kelly (“plaintiff”) against Scenic Tours Pty Ltd ACN 002 715 602 (“defendant”).

The representative action claims damages for the plaintiff and group members for an alleged breach of obligations under the Australian Consumer Law by the defendant arising out of the alteration of European River Cruises on the Rhine, Moselle, Main or Danube river systems from June 2018 to December 2018, when each cruise allegedly suffered disruption arising from drought conditions in Europe.

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 might be a group member, then **you should read this notice carefully**. If there is anything in it that you do not understand, please use the contact details in Section 10 below, or alternatively seek your own 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 but are not liable for adverse costs (see Section 6 below);
- (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 about?**

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 "Scenic", "Evergreen" or "Emerald"-branded tours allegedly supplied by the defendant, and operated by the defendant or its related entities, with such tours scheduled to be conducted by cruise along European rivers in the period from 1 June 2018 to 31 December 2018.

The plaintiff alleges, in the Amended Statement of Claim filed in the Supreme Court of NSW Proceeding 2022/238642, that the enjoyment of those tours, by that mode of touring, was substantially disrupted due to insufficient river levels caused by drought conditions in Europe. 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.

The defendant denies the allegations. It is defending the proceeding on the basis, among other things, that the consumer guarantees relied on by the plaintiff were not breached, that the need for any departures from the scheduled itineraries for the cruises arose due to factors beyond its control, and that it was not responsible for any loss or damage suffered by group members.

The defendant also contends that it is not liable under the Australian Consumer Law to customers ordinarily resident outside Australia.

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

You are a group member if you:

- (a) Booked a place and travelled on any of the European river cruises set out in schedule 1 to this notice scheduled from 1 June 2018 to 31 December 2018 (hereafter the ‘relevant period’);
- (b) Have suffered loss or damage because of the conduct of the defendant alleged in the Amended Statement of Claim; and
- (c) 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 the Omni Bridgeway Client Liaison Team using the contact details available at <https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview> or email [scenictours@omnibridgeway.com](mailto:scenictours@omnibridgeway.com), or seek your own legal advice without delay.

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

You will not become liable for any adverse or legal costs simply by remaining as a group member for the determination of the common questions. However:

- (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 at Section 10 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.

#### **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, however, you are invited to sign up as a registered group member, using the information in Section 10 below, 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 entitled to share in the benefit of, or be bound by, any order, judgment or settlement in the representative action, but you will 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.

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 27 September 2024**, otherwise it will not be effective.

#### **10. Where can you obtain more information?**

Copies of relevant documents, including Amended Statement of Claim and Defence 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 (02) 9923 2321.
- (c) Inspecting them on the Supreme Court’s website <https://supremecourt.nsw.gov.au/cases/class-actions/current-class-actions/european-river-cruise-insufficient-water.html>

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact the Omni Bridgeway Client Liaison Team using the contact details

available at <https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview> or email [scenictours@omnibridgeway.com](mailto:scenictours@omnibridgeway.com), or seek your own legal advice.

This Notice is published pursuant to orders of the Supreme Court of New South Wales 26 July 2024.

## 11. What are my options?

If you are a group member, and have not already registered your claim, you have 3 options. There may be different consequences depending on which option you choose.

<b><u>Option 1</u></b> <b><u>Register</u></b>	<p>(a) If you wish to register for the European River Cruise Class Action so that further notices about the representative action can be sent to your preferred address, you may do so now by completing the online registration process available at <a href="https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview/the-sign-up-process">https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview/the-sign-up-process</a> or</p> <p>(b) If you wish to remain a group member and you have already entered into a retainer with Somerville Legal, or a funding agreement with Omni Bridgeway, then you do not need to take any further steps in relation to this notice. If any further information is required from you and you have already provided your contact details to Somerville Legal or Omni Bridgeway, for the European River Cruise Class Action, you will be contacted directly.</p> <p>(c) If you register, you will be bound by any settlement reached and will have the opportunity to share in any benefit resulting from the settlement. The settlement will be subject to Court approval and you may have to satisfy certain conditions before your entitlement to share in this benefit arises. You will also be bound by any final judgment and have the opportunity to share in the benefit of any favourable judgment.</p> <p>(d) If you are unable to register online or if you are unsure whether you have already signed up for the European River Cruise Class Action, you can contact the Omni Bridgeway Client Liaison Team using the contact details available at <a href="https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview">https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview</a> or email <a href="mailto:scenictours@omnibridgeway.com">scenictours@omnibridgeway.com</a></p>
<b><u>Option 2</u></b> <b><u>Do Nothing</u></b>	<p>(a) If you do nothing you will remain a group member and you will be bound by any orders made in the class action, and any judgment or approved settlement agreement in the proceeding as a group member.</p>

<p><b><u>Option 3</u></b> <b><u>Opt Out</u></b></p>	<p>(a) If you <b>do not</b> wish to be involved in the European River Cruise Class Action you must complete an Opt Out Form in the form appearing at Schedule 1 to this notice and submit it directly to the Court using the details provided at the bottom of that Opt Out Form before the Opt Out Deadline on 4pm (AEST) on 27 September 2024.</p> <p>(b) Opt out notices received after this time will not be accepted and you will be treated as having not responded to this notice, and you will remain a group member.</p> <p>(c) By opting out of the European River Cruise Class Action, you will:</p> <ul style="list-style-type: none"> <li>i. Cease to be a group member in the European River Cruise Class Action and will not be affected by, or entitled to the benefit of, any judgment or orders made;</li> <li>ii. Not be entitled to receive any compensation for any damages award or settlement secured in European River Cruise Class Action; and</li> <li>iii. Be able to bring your own separate 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 prior to opting out.</li> </ul> <p>(d) Each group member seeking to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).</p>
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## **SCHEDULE 1**

The relevant river cruises are:

- I. NBU180618.1 – Scenic ‘Gems of the Danube’ cruise from Nuremberg to Budapest commencing on 18 June 2018;
- II. STC250618.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest commencing on 25 June 2018;
- III. NBU120718.1 – Scenic ‘Gems of the Danube’ cruise from Nuremberg to Budapest commencing on 12 July 2018;
- IV. NBU180718.1 – Scenic ‘Gems of the Danube’ cruise from Nuremberg to Budapest, commencing on 18 July 2018;
- V. STC250718.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam, commencing on 25 July 2018;
- VI. STC300718.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam, commencing on 30 July 2018;
- VII. EWCR040818.2 – Evergreen ‘Splendours of Europe’ cruise from Budapest to Amsterdam, commencing on 4 August 2018;
- VIII. STC060818.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest, commencing on 6 August 2018;
- IX. STC150818.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest commencing on 15 August 2018;
- X. STC200818.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest, commencing on 20 August 2018;
- XI. STC030918.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam commencing on 3 September 2018;
- XII. EWCR080918.2 – Evergreen ‘Splendours of Europe’ cruise from Budapest to Amsterdam, commencing on 8 September 2018;

- XIII. STC170918.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest commencing on 17 September 2018;
- XIV. NBU200918.1 – Scenic ‘Gems of the Danube’ cruise from Nuremberg to Budapest, commencing on 20 September 2018;
- XV. STC011018.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam commencing on 1 October 2018;
- XVI. STC101018.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest, commencing on 10 October 2018;
- XVII. STC151018.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam, commencing on 15 October 2018;
- XVIII. AMBC221018.1 – Scenic ‘Rhine Highlights’ cruise from Amsterdam to Basel, commencing on 22 October 2018;
- XIX. STC241018.2 – Scenic ‘Jewels of Europe’ cruise from Budapest to Amsterdam, commencing on 24 October 2018;
- XX. STC071118.1 – Scenic ‘Jewels of Europe’ cruise from Amsterdam to Budapest commencing on 7 November 2018; and
- XXI. CHMA211118.2 – Scenic ‘Christmas Markets’ cruise from Budapest to Amsterdam commencing on 21 November 2018.