



Annexure A

Dear [NAME],
[STREET ADDRESS]
[EMAIL ADDRESS]

MV “APL England” Class Action
St John Ambulance Australia Ltd v CMB Ocean 13 Leasing Co Pte Ltd & APL Co Pte Ltd
NSD66/2021

Why is this letter important?

This letter has been sent to you because you are named as a group member of the MV “APL England” Class action.

This letter has been approved by the Federal Court of Australia. The Court has directed that it be sent to all group members in the MV “APL England” class action. It is important that you read this letter carefully as it relates to your decision whether to continue your participation in the class action. Any questions you have concerning the matters contained in this letter should **not** be directed to the Court. If there is anything in this letter that you do not understand you should seek legal advice.

1. The Incident

On 24 May 2020, the vessel MV “APL England” (**the Vessel**) suffered a significant container stow collapse whilst sailing off the east coast of New South Wales. A number of containers were lost overboard and/or damaged as a result (**the Incident**). You are receiving this letter because you may have suffered loss or damage or had an insurance claim paid to you due to the damage to, loss or delay in delivery of one or more containers from the Vessel.

2. What is a class action?

In a class action, the applicant, here, St John Ambulance Ltd (**St John Ambulance**), makes a claim for compensation for loss on its own behalf and on behalf of a class of persons (**group members**) who have similar claims against a respondent, here, the **carriers**, being one or both of:

- CMB Ocean 13 Leasing Co Pte Ltd (**CMB**) – as the owner of the Vessel as at 24 May 2020; and
- APL Co Pte Ltd (**APL**) – as the demise charterer of the Vessel as at 24 May 2020

You and other insured persons whose cargo was lost, damaged or delayed as a result of the Incident, together with your cargo insurer, are likely to have similar claims against the carriers. All group members are listed in **Schedule B**.

Importantly, individual group members in a class action, like you, have no responsibility to pay any legal costs associated with St John Ambulance bringing the class action in the Court. St John Ambulance is **solely responsible** for all of those costs, including any costs that the Court orders it to pay to the carriers.

Group members are “bound” by the outcome in a class action, unless they have opted out of the proceeding. A binding result can occur as the result of either a **judgment** following a trial, or a **settlement** at any time. If there is a judgment or a settlement of a class action, group members will not be able to pursue the same claims and may not be able to pursue similar or related claims against the carriers in other legal proceedings. Group members should note that:

- in a **judgment** following a trial, the Court will decide various factual and legal issues in respect of the claims made by St John Ambulance and group members. Unless those decisions are



successfully appealed they will bind St John Ambulance, group members and the carriers. Importantly, if there are other proceedings between a group member and the carriers, it may be that neither of them will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue(s) decided in the class action;

- **in a settlement** of the class action, the settlement may answer the common question(s) in a way that will extinguish all rights to compensation which a group member might have against the carriers that arise in any way out of the events or transactions which are the subject-matter of the class action (here, the Incident).

3. What is this class action about?

St John Ambulance has commenced a class action in the Federal Court of Australia against the carriers (CMB and APL).

Each group member was the shipper or consignee of one or more of the insured cargos carried on the vessel. You are receiving this letter because you are a group member (as defined in Schedule B) as:

- you have been indemnified under cargo insurance policies by any of NTI Ltd; Chubb Insurance Australia Ltd; QBE Insurance (Australia) Ltd; AIG Australia Ltd; AIG Insurance Co China Ltd; HDI Global SE; Zurich Australia Insurance Ltd; and Royal and Sun Alliance Insurance (**the insurers**). Your insurer has a right under your policy to bring a subrogated claim to recover the amount it has paid to you that is now included in the class action. Your policy of cargo insurance gives the insurer the right to be subrogated pursuant to section 85 of the *Marine Insurance Act 1909* (Cth) to recover amounts paid to indemnify you for damage to or loss of your cargo; and
- your insurer has engaged Mills Oakley directly to pursue recovery on your behalf, up to the amount your insurer paid or is liable to pay you under your policy.

The class action is seeking compensation for damage to, or delay in delivery of, cargo of group members that was:

- carried onboard the Vessel during voyage number 093S from Ningbo, China to Melbourne, Australia (**the Voyage**); and
- lost or damaged or delayed as the result of the Incident.

At this stage, the common question is whether the carriers (CMB and/or APL) breached their duties as bailees of goods carried on board the Vessel during the Voyage, by failing to deliver the cargo in the same good order and condition as when the cargo was received on the Vessel, or delaying its delivery.

The defences of the carriers (CMB and APL) are due to be filed in the Court by 9 April 2021.

NOTE: If your cargo insurer has paid your claim in full for loss or damage arising from the Incident, it is entitled to seek to recover that payment in your name in the class action. But, if your cargo insurer either has not paid you yet or your cargo insurance did not cover all of the loss or damage that you claim to have suffered as a result of the Incident, you (and possibly your insurer) can participate in the class action to seek further compensation or damages for those amounts. Your position is also further dealt with in **section 6** below.

If you consider that you have claims against the carriers which are based in your individual circumstances or otherwise additional to the claims described in the class action, then it is important that you seek independent legal advice about the potential binding effects of the class action **before** the deadline for opting out (see **section 7(b)**).



4. What is “opt-out?”

An applicant in a class action (such as St John Ambulance here) does not need to seek consent of class members to commence the class action on their behalf. However, all of the insurers have exercised their right of subrogation under the policies of cargo insurance they had with group members. The insurers agreed to St John Ambulance commencing this class action so that they can recover the amounts they paid the group members, who they insured.

A group member can cease to be a group member by opting out of the class action. **Section 7(b)** below explains how group members are able to opt out.

5. Costs

You will not be liable to pay any costs if you remain a group member up to the time that the Court gives a judgment that decides the common question(s) or the Court approves a settlement agreed between St John Ambulance and the carriers.

The legal costs of all group members (except Kimberly-Clark) for the determination of the common question(s) in the class action are being paid by the insurers pursuant to a costs sharing agreement between the insurers. Those costs include any costs in the class action that the Court orders St John Ambulance to pay. The insurers (as well as Kimberly-Clark) have agreed to pay the costs of the class action up to any judgment or settlement on a pro rata basis by reference to the claim amounts.

Kimberly-Clark is the only group member that has elected to pursue a claim as a self insured. Kimberly-Clark has also entered into the same in-principle agreement with Mills Oakley to pay its costs of the class action on a pro rata basis by reference to the claim amount.

6. Losses outside the scope of your insurance

Once the Court determines the common questions(s), or there is a settlement of the answers to those questions, and assuming the determination or answers favour the group members, the Court is likely to arrange a separate scheme to determine any individual group member’s claims for loss or damage not covered by your insurance. The insurers will cease to be involved in funding the class action once that occurs.

Therefore, if you have suffered any loss or damage not covered by your insurance, you may be able to recover compensation for that loss or damage from the carriers in the next phase of the class action if the Court finds the carriers liable in the judgment or the approved settlement of the common question(s). If you have such uninsured losses, you can either:

- instruct Mills Oakley, or your own lawyers in liaison with Mills Oakley, to pursue these claims as part of the class action. You will need to make your own separate costs arrangement with Mills Oakley or your own lawyers, who will in turn have to liaise with Mills Oakley on the conduct of the proceeding, to pursue any additional claim; or **alternatively**
- opt-out of the class action, as explained in **section 7(b)** below.

It is important that you consider seeking any legal advice urgently as any claims may be subject to a time limitation defence of 12 months from the date the goods would have been delivered. It is expected that the limitation period for bringing proceedings against the carrier under a bill of lading or waybill, the owner of the ship and the demise charter may expire on **24 May 2021**.



If you have suffered losses that your insurer has not paid and are unsure whether these are covered by your policy and/or included in the current class action, you should **immediately** contact your insurer and/or seek independent legal advice.

7. What class members need to do now

(a) How you can remain a class member?

If you wish to remain a class member there is **nothing you need to do** at the present time. St John Ambulance will continue to bring the proceeding on your behalf up to the point where the Court determines those questions that are common to its claims and those of the group members. However, you are invited to contact St John Ambulance's lawyers, Mills Oakley, by email or telephone as listed below and register your contact details so that future notices about the class action can be sent to your preferred address.

(b) How you can opt out of the class action?

If you do not wish to remain a class member you must opt out of the class 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 class action, but you will be at liberty to bring your own claim against the carriers, provided that you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the carriers, you should seek your own legal advice about your claim and the applicable time limit **prior** to opting out.

If you wish to opt out of the class action you **must** do so by completing a "**Notice of opting out by class member**" in the form shown below (Form 21 of the Court's approved forms), then return it to the Registrar of the Federal Court of Australia at the address on the form. **IMPORTANT: the Notice must reach the Registrar by no later 4.00pm on 7 May 2021**, otherwise it will not be effective.

NOTE: Before opting-out you should consult your insurer because opting out may affect your insurance or require you to repay to your insurer any money it has paid to you in response to a claim. If you opt-out of the proceeding, you will be able to bring your own claim against the carriers. However, it may be that, if you fail to issue Court proceedings within the time bar applicable to your claim, your claim will be lost. If you are considering bringing your own claim against the carriers, **prior to opting out** and as soon as possible, you should seek your own legal advice about your claim, the legal costs involved and the applicable time bar; and you may have to repay your insurer any amount that it paid you in settlement of a claim for indemnity that you made under your cargo insurance policy.

Where can you obtain copies of relevant documents?

Copies of relevant documents, including all Court documents, may be obtained by accessing the Mills Oakley website (<https://www.millsOakley.com.au/class-actions/>) or by contacting Mills Oakley Lawyers (tmangan@millsOakley.com.au; 02 8035 7935).

If there is anything of which you are unsure, you should also contact Mills Oakley Lawyers (tmangan@millsOakley.com.au; 02 8035 7935) or seek independent legal advice.

Kind Regards,

Mills Oakley Lawyers



SCHEDULE A

Opt-Out Notice

Form 21
Rule 9.34

No. NSD66 of 2021

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

St John Ambulance Australia Limited
Applicant

CMB Ocean 13 Leasing Company Pte Ltd
First Respondent

APL Co Pte Ltd
Second Respondent

To: The Registrar
Federal Court of Australia
Level 17, Law Courts Building Queens Square, 184 Phillip Street SYDNEY, 2000
Or by email to: nswdr@fedcourt.gov.au

..... (print name), a group member in this
representative proceeding, gives notice under section 33J of the *Federal Court of
Australia Act 1976*, that he, she or it is opting out of the representative proceeding.

Date:.....

Signed by

..... (signature)

..... (print name)
Group Member / Lawyer for the Group Member

(please complete the next page)



Address of group member:

.....
.....

Telephone:

Email:

ACN/ABN:(if a company or trustee)

HIN/SRN:

If the shares were acquired on behalf of another person/entity, name of that person/entity:

.....

If you are signing as the solicitor or representative of the group member:

Name:

Capacity in which you are signing:

Address:

.....
.....

Telephone:

Email:



SCHEDULE B

Group Members

Air Change Australia Pty Ltd
ALDI Stores - A Limited Partnership
Anji Yangrong Furniture Trading Co. Ltd
Apache Mills Inc
Arlec Australia Pty Ltd
Beijing Kang Jie Kong Int'l Cargo Agent Co. Ltd
Beijing Kang-Jie-Kong International Cargo Agent Co. Ltd
Bookleaf Pty Ltd as trustee for the Eden Unit Trust t/as Holman Industries
Britax Childcare Pty Ltd
Brown & Watson International P/L
Brown and Watson International
Bunnings Group Limited
Capstone Steel Material Co., LTD
Cargo Services (China) Limited
Cargo Services (Tianjin) Co. Ltd
Chanrol Pty Ltd
Chile Hardware Co. Ltd
Chinastar Optoelectronics(Ningbo) Limited
Cixi Haoshou Tools Co. Ltd
Cixi Zhong Fa Lamps Co. Ltd
Coles Supermarkets Australia Pty Ltd
Coral Bay East Coast Pty Ltd
Dhl Isc (Hong Kong) Ltd
Disruptive Packaging Pty Ltd
Faulkner Industries P/L
Fire Safety Equipment Pty Ltd
Flamestop Australia Pty Ltd
Fuzhou Dawawu Furniture Co. Ltd
Gale Pacific Ltd;
Gale Pacific Special Textiles (Ningbo) Ltd
Hangzhou Boya Industry Co. Ltd
Hangzhou Firstwell Industry Co. Ltd
Hangzhou Home Dee Sanitary Ware Co Ltd



Hangzhou Leibo Industrial Co. Ltd
Hangzhou Tianyuan Pet Products Co. Ltd
Htl Furniture (China) Co. Ltd
Hunter Leisure Pty Ltd
Hyper Extension Ltd
Ilana Accessories Australia Pty Ltd
Innovative Designs LLC;
Jason Furniture (Hangzhou) Co. Ltd
Jenmar Australia Pty Ltd;
Jiangsu Haoyue Industrial Co Ltd
Karmy Pty Ltd trading as Schot Restoration
Kimberly Clark (Nanjing) Care Products Co. Ltd
Kimberly-Clark Australia Pts
Kimberly-Clark Australia Pty Limited
Kimberly-Clark Australia Pty Ltd
Kmart Australia Limited
Koa FC Trading, Inc.
Kogan Australia Pty Ltd
Koya Corporation Pty Ltd t/as Koya Wheels
Kunshan Skyline Import & Export Co. Ltd
Lena Industrial Holding Limited
Life Interiors Pty Ltd
Lincraft Australia Pty Ltd
Linkware Australia Pty Ltd
Meridian International Co Ltd
Mitre 10 Australia Pty Ltd
New Aim Pty Ltd
Nick Scali Limited t/as Nick Scale Furniture
Ningbo Amico Copper Valves Manufacturing Inc
Ningbo Baby First Baby Products Co. Ltd
Ningbo Carstel Manufacturing Co. Ltd
Ningbo Linhua Plastic Company Limited
Ningbo Mas-Houseware Imp & Exp Ltd
Ningbo Paramount IMP and EXP Co. Ltd
Ningbo Xikou Jinxing Wood-Products Co. Ltd



Ningbo Zhengxin Fire-Fighting Equipment Co. Ltd;
Oriental Merchant Pty Ltd
Polypak Products Co. Limited
Reece Pty Ltd
Saferoads Pty Ltd
Sandleford Holdings Pty Ltd
Shaan Xi Succeed Trading Co. Ltd
Shanghai Ying Ta Aircondition Enterprise Co Ltd
Shaoxing Fuqing Health Products Co. Ltd
Shaoxing Sinai Textile Co. Ltd
Shinbo International Co. Ltd
Sinotrans Eastern Company Ltd
Sinotrans Zhejiang Co. Ltd Ningbo
Solargain PV Pty Ltd
St John Ambulance Australia Limited
St John Holdings Limited
Steinhoff Asia Pacific Pty Limited Trading As Freedom Imports Warehouse
Taizhou Heil Import Export Co Ltd
Tiger Auto Accessories Co. Ltd
Tubeworks Furniture Pty Ltd
Unipak Pty Ltd
United Wholesalers Pty Ltd
Woodtree Australia Pty Ltd As Trustee For Universal Gift Traders Australia Trust
Woolworths Group Limited
Yitai Plastic Rubber Vacuum Forming Co. Ltd
Yiwu Homa Craft Factory
Yongjia Aocheng Hardware Co. Ltd
Younglim B And A Co. Ltd
Yuhan-Kimberly Ltd
Yuyao Amber Lamp Co. Ltd
Yuyao Jiajia Electrical Appliance Co. Ltd
Zhejiang Chairmeng Technologies Company Limited
Zhejiang Jiayou Biotech Co. Ltd
Zhejiang Jiefeng Science And Technology Industry Co. Ltd
Zhejiang Jinko Solar Co., Ltd;



Zhejiang Orientx Fire Safety Equipment Co. Ltd
Zhejiang Sanmen Eastsea Rubber Factory
Zhejiang Yueling Co. Ltd