

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 1/04/2021 11:10:46 AM AEDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Statement of Claim - Form 17 - Rule 8.06(1)(a)
File Number: NSD66/2021
File Title: ST JOHN AMBULANCE AUSTRALIA LIMITED ACN 633 627 899 v
CMB OCEAN 13 LEASING COMPANY PTE LTD & ANOR
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF
AUSTRALIA



Sia Lagos

Dated: 1/04/2021 11:30:53 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended Statement of claim

No. 66 of 2021

Federal Court of Australia
District Registry: New South Wales
Division: Admiralty and Maritime

St John Ambulance Australia Limited (ACN 633 627 899)

Applicant

CMB Ocean 13 Leasing Company Pte Ltd and another

Respondents

REPRESENTATIVE PROCEEDINGS

1. The Applicant brings this application as a representative party under Part IVA of the *Federal Court of Australia Act 1976*.
2. The Group Members to whom this proceeding relates are those persons who: are listed in Schedule A to the Amended Originating Application.
 - ~~a. were the owners or persons entitled to immediate possession of certain cargo that was:~~
 - ~~i. carried onboard the MV "APL England" (**the Vessel**) during voyage number 093S from Ningbo, China to Melbourne, Australia (**the Voyage**);~~
and
 - ~~ii. lost or damaged on or about 24 May 2020 as the result of the collapse of container stacks on the Vessel during the Voyage; and~~
 - b. are listed in the Schedule A to this Originating Application.

(Group Members)

- 3A. The Group Members were each the owners, or persons entitled to immediate possession, of certain cargo that was:

Filed on behalf of (name & role of party)	St John Ambulance Australia Limited (ACN 633 627 899)		
Prepared by (name of person/lawyer)	Henry Holland		
Law firm (if applicable)	Mills Oakley		
Tel	02 8035 7807	Fax	02 9247 1315
Email	hholland@millsoakley.com.au		
Address for service (include state and postcode)	Level 7, 151 Clarence Street, Sydney NSW 2000		

- c. carried onboard the MV “APL England” (the Vessel) during voyage number 093S from Ningbo, China to Melbourne, Australia (the Voyage); and
- d. lost or damaged on or about 24 May 2020 as the result of the collapse of container stacks on the Vessel during the Voyage.

COMMON QUESTIONS OF FACT OR LAW

- 3. The common questions of fact or law to the claims of the Applicant and the Group Members are:
 - a. whether the Respondents were a bailee for reward with respect to the cargo which was owned by the Applicant, and Group Members, and carried onboard the MV “APL England” during voyage number 093S from Ningbo, China to Melbourne, Australia;
 - b. whether the Respondents owed a duty to the Applicant, and Group Members, as bailee for reward;
 - c. whether the Respondents breached their duty to the Applicant, and Group Members, as bailee for reward;
 - d. whether the Respondents owed a duty to the Applicant, and Group Members, to exercise reasonable skill, care and diligence in and about the carriage of goods bailed by the Applicant, and Group Members, to the Respondents;
 - e. whether the Respondents breached their duty to the Applicant, and the Group Members, to exercise reasonable skill, care and diligence in and about the carriage of goods bailed by the Applicant, and Group Members, to the Respondents; and
 - f. whether the Respondents’ breaches of the respective duties was causative of the Applicant’s, and Group Members’, loss.

APPLICANT’S CLAIM

- 4. The Applicant is and was at all material times a duly incorporated company and entitled to sue and be sued in its corporate name and style.
- 5. The Respondents are and were at all material times duly incorporated companies able to sue and be sued in their corporate names and styles.
- 6. The Applicant was a provider of first aid services, training, and equipment.

7. The First Respondent was the registered owner of a vessel, MV “APL England” (**the Vessel**).
8. The Second Respondent was the demise charterer of the Vessel.
9. Pursuant to contracts between Shaoxing Fuqing Health Products Co Ltd (**the Shipper**) and the Applicant, the Applicant purchased 825 cartons of face masks and 600 cartons of face shields (**the Cargo**).
10. At all material times, the Applicant and/or the Shipper were the owners or persons entitled to immediate possession of the Cargo.

Particulars

- a. The Shipper is a Group Member as listed in Schedule A to the Amended Originating Application.
11. On or about 11 May 2020, the Shipper made the Cargo available for collection by the Respondents for carriage on board the Vessel from Ningbo, China to Melbourne, Australia.

Particulars

- a. The 825 cartons of face masks were packed in container TLLU4631973.
- b. The 600 cartons of face shields were packed in container CMAU5864730.
12. On or about 11 May 2020, the Cargo was loaded on board the Vessel, and the Respondents thereby became bailees for reward.

Incident

13. At approximately 0608 hours on 24 May 2020, the Vessel suffered an engine failure approximately 46 nautical miles south-east of Sydney, Australia.
14. Shortly after the engine failure, the containers in bays 62 and 30 of the Vessel collapsed (**the Container Stack Collapses**).
15. As a result of the Container Stack Collapses, containers TLLU4631973 and CMAU5864730 containing the Cargo fell overboard, and the containers and Cargo were unable to be recovered.

Bailment and Negligence

16. Between 11 May 2020 and 24 May 2020, the First and/or Second Respondents were bailees of the Cargo.

17. In breach of their duties as a bailee for reward, the First and/or Second Respondents failed to deliver the Cargo in the same good order and condition as when the Cargo was received by them from the Applicant.
18. Further and in the alternative, the First and/or Second Respondents were under a duty to the Applicant to exercise reasonable skill, care and diligence in and about the carriage of the Cargo.
19. Negligently and in breach of their aforesaid duties, the Respondents failed to exercise reasonable care and skill in and about the carriage of the Cargo.

Particulars

- a. Failing to properly and safely secure the Cargo on the Vessel.
- b. Allowing the Cargo to fall off the Vessel during the Voyage.
- c. Failing to properly secure the Cargo using proper or sufficient securing mechanisms.
- d. Failing to safely and carefully carry the Cargo.
- e. Failing to make the ship seaworthy.
- f. Failing to make the holds and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation.
- g. Failing to properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.
- h. Failing to maintain or replace corroded and/or broken deck eyes, lashing plates, lashing bridges, container cell guides, twist-lock sockets and supporting structures.
- i. Failing to use twist locks to secure containers in accordance with the Vessel's Cargo Securing Manual and lashing plan.
- j. Failing to properly stabilise the container stacks.
- k. Failing to ensure there was appropriate tension between the turnbuckles, rods and extension bars.
- l. Failing to maintain lashing plates to a condition that enabled them to withstand the tension required to secure the cargo.
- m. Failing to utilise a sufficient amount of lashing bars, tie rods, extenders and/or twist locks for each container.

- n. Failing to connect the containers at the top of the container stacks to the top of tier 4 in order to prevent toppling.
 - o. Failing to attach lashing bars to tier 6 lower corner castings.
 - p. Failing to fit lashing bars tightly and with adequate tension.
 - q. Utilising twist-lock sockets that were inconsistent with those indicated in the lashing plan.
 - r. Loading Hicube containers that protruded above cell guides and that were contrary to the loading plan.
 - s. Res ipsa loquitor.
20. As a consequence of the Respondents' breaches of their respective duty as bailee and negligence the Applicant has suffered loss and damage.

Particulars

- a. The total value of the Cargo which was unable to be recovered was USD \$658,500.
 - b. Further particulars of loss and damage will be provided in due course.
21. The Applicant claims:
- a. Damages;
 - b. Interest; and
 - c. Costs.

Date: ~~21 January 2024~~



Signed by Frazer Hunt
Lawyer for the Applicant

This pleading was prepared by Henry Holland, lawyer

Certificate of lawyer

I, Frazer Hunt, certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: ~~21 January 2024~~



Signed by Frazer Hunts
Lawyer for the Applicant