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<p>1 Friday, 8 February 2013 2 (10.00 am) 3 CAPTAIN NIGEL ROBERT PRYKE (on former oath) 4 Examination by MR SUSSEX (continued) 5 THE CHAIRMAN: Good morning, Captain Pryke. 6 A. Good morning, sir. 7 THE CHAIRMAN: May I remind you that you continue to testify 8 according to your original oath. 9 Mr Sussex. 10 MR SUSSEX: Thank you, Mr Chairman. 11 Captain Pryke, yesterday I think we reached 12 a measure of agreement on one point, and that was that 13 the risk of collision between Sea Smooth and Lamma IV 14 existed at 20:18. 15 A. Yes. 16 Q. So even if it existed earlier, it unquestionably existed 17 at 20:18? 18 A. Yes, indeed. 19 Q. Correct me if I'm wrong but your evidence is that at 20 20:18 there existed a clear head-on situation within 21 rule 14; is that right? 22 A. My evidence yesterday was that at 20:18, the Sea Smooth 23 had a target on a steady bearing at four points on his 24 port bow, and it was his duty, having now had this 25 steady bearing for some time, to alter course and keep</p>	<p>1 A. According to what you perceive the actual situation is 2 between the two ships at that moment in time. 3 MR SUSSEX: Right. But the fact is there was no perception 4 on either side in this particular case. 5 A. Yes. 6 Q. We are ex post facto rationalising this by reference to 7 the collision avoidance rules? 8 A. Yes. 9 Q. Would you accept that your evaluation of the relative 10 blameworthiness of the two vessels depends entirely on 11 your conclusion that this was a head-on situation? 12 A. No, absolutely not. The blameworthiness is, as I said 13 yesterday and as I said in December, the alteration of 14 course to port by Sea Smooth at 20:19 and a half 15 absolutely caused the collision. 16 Q. Well, we'll come to that. But if that might, as you 17 say, be the immediate cause of the collision, it doesn't 18 absolve Lamma IV from earlier blame if, for example, it 19 was the give-way vessel? 20 A. A lot of things happened, of course, between 20:17 when 21 she came out of the typhoon shelter, and the collision 22 at 20:20 and a bit. So there was a three-minute period 23 when she had been navigating out of the typhoon shelter; 24 she came upon a course of 350, I think, at around 20:18; 25 and then she went on to a northerly course around 20:19.</p>
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<p>1 clear. 2 Q. But that duty could only arise, could it not, if it was 3 imposed by one of the collision avoidance rules -- 4 A. Yes. 5 Q. -- like 14 or 15, and we're not dealing with 6 an overtaking situation. 7 A. In that situation, it was rule 14 -- 8 Q. Right, rule 14. 9 A. Or 14(c), whichever. 10 Q. But in order for that obligation to arise, there has to 11 be a head-on situation? 12 A. Head-on or nearly head-on, yes. 13 Q. So tell me, am I right that it's your opinion that at 14 20:18, there existed a clear head-on situation within 15 rule 14? 16 A. Well, as I say, head-on or nearly head-on. I put in 17 evidence a statement from Dr Steve Price in the 18 Navigator magazine. The rules are not intended to be 19 an intellectual challenge. You take a look at 20 a situation, and you don't sit there and work it out 21 with a slide rule for 10 minutes. You act according to 22 what is -- 23 Q. I follow that. But as we I think agreed yesterday -- 24 THE CHAIRMAN: You haven't finished your sentence. You act 25 according to your --</p>	<p>1 I think realistically to blame Lamma IV for the 2 collision is a bit extreme. 3 Q. Well, you would accept, would you not, that -- as 4 I understand it, you do sit occasionally in the 5 Admiralty Court? 6 A. I do indeed. 7 Q. And you would accept, would you not, that with the 8 exceptions of vessels at anchor, for example, ordinarily 9 in the case of a collision, blameworthiness is 10 apportioned -- 11 A. Absolutely, yes. 12 Q. -- as between the two vessels? And in a situation where 13 both vessels are underway, it's incredibly unusual for 14 blame to attach 100:0. 15 A. Exactly. 16 Q. So you're looking at some apportionment of blame. 17 A. If you want my opinion, it's about 80:20. 18 Q. What I suggest to you is that your -- 19 THE CHAIRMAN: Just clarify that, first of all. As 20 I understand the tenor of your evidence, that's 80 per 21 cent of the blame to Sea Smooth, 20 per cent to 22 Lamma IV? 23 A. Of that order, sir. 24 THE CHAIRMAN: Yes. Thank you. 25 MR SUSSEX: Obviously that's not a matter for you, that's</p>

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<p>1 a matter for the tribunal, and your -- 2 A. Sorry, I thought you were asking -- 3 Q. Your responsibility, as I understand it, is to provide 4 evidence on navigation and the practice of seafarers. 5 But it's right, is it not, that if the situation 6 falls to be analysed as a crossing situation different 7 considerations apply and relative blameworthiness would 8 shift. 9 A. I don't agree with that, actually. I think obviously, 10 as you say, both vessels are underway. You almost 11 cannot get away with having zero blame. I utterly agree 12 with that. But if you look at this in the round, you've 13 got a very high-speed craft ploughing into the port 14 quarter of a much slower vessel. There is absolutely no 15 way you can say that he is not primarily to blame. 16 Q. What I'm suggesting to you is that if this case does 17 fall to be examined in the context of the crossing rule, 18 then the initial obligation is imposed upon the give-way 19 vessel to keep well clear? That is right, isn't it? 20 A. Well, rule 2 would come into this as well. If you -- 21 I think we discussed it yesterday, that -- 22 Q. Are you talking about "neglect of any precaution which 23 may be required by the ordinary practice of seamen, or 24 by special circumstances of the" -- 25 A. If I could --</p>	<p>1 MR SUSSEX: Yes. We don't doubt that for a moment. 2 Let's just go back to analysing this particular 3 collision. 4 A. If I may, the connection with rule 2, rule 2(b) says: 5 "In construing and complying with these Rules due 6 regard shall be had to all dangers of navigation and 7 collision and to any special circumstances, including 8 the limitations of the vessels involved, which may make 9 a departure from these Rules necessary ..." 10 Now, clearly there is a danger to navigation on the 11 starboard side of Lamma IV, and that should be taken 12 into account by the other vessel. 13 THE CHAIRMAN: The danger being land? 14 A. Yes, sir. Yes. 15 MR SUSSEX: But that consideration would be rather different 16 if we were having to analyse this in terms of a crossing 17 situation, would it not? 18 A. I fail to understand, I'm sorry. 19 Q. Let me try to explain. If Lamma IV was the give-way 20 vessel, her action in proceeding and steering slowly to 21 starboard would not be appropriate in the circumstances. 22 Do you agree? 23 A. I don't follow. The point of rule 2 -- well, the 24 point -- the rules in general, nothing in the rules 25 requires you to put your ship in danger. So a broad</p>
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<p>1 THE CHAIRMAN: Before we go any further, may we have rule 2 2 of the Collision Regulations on the screen, please. 3 Thank you. 4 A. Yes. The bit I was actually looking for was Farwell 5 again, chapter 12, page 364, where he says: 6 "Rule 14 is applied" -- 7 THE CHAIRMAN: Before you read it out, do we have this 8 available, Mr Shieh? Page 364 of Farwell? 9 MR SHIEH: Yes. It's already attached at the end of the 10 expert report. Page 364 would be expert bundle 2, 11 page 361-21. 12 THE CHAIRMAN: Thank you very much. May we have that on the 13 screen, please. 14 MR SUSSEX: It's again in the context of rule 14, is it not? 15 A. It is. 16 THE CHAIRMAN: You were about to read from Farwell. Pause 17 if you would so we can display it on the screen and the 18 public can follow this. 19 Would you be kind enough to read out the relevant 20 passage. 21 A. At the beginning of paragraph 2: 22 "Rule 14 is applied in conjunction with all of the 23 rules in section I of Part B, including rule 5 24 (look-out), rule 6 (safe speed), and rule 7 (risk of 25 collision), along with rule 2."</p>	<p>1 alteration to starboard from Lamma IV would clearly have 2 put his ship in danger. 3 Q. Right. Could we for the moment go back to the analysis 4 of this case in the context of rule 14. 5 A. Yes. 6 Q. The starting point for any consideration of collision 7 liability must be risk of collision, must it not? 8 A. Yes. 9 Q. And rule 7? 10 A. Yes. 11 Q. You drew our attention yesterday to rule 7(d)(i), which 12 very helpfully tells us: 13 "[risk of collision] shall be deemed to exist if the 14 compass bearing of an approaching vessel does not 15 appreciably change." 16 A. Absolutely. 17 Q. That's not surprising because it indicates that the 18 approaching vessel is converging on the observing 19 vessel? 20 A. Yes. 21 Q. And that can be true of a head-on situation, a crossing 22 situation or an overtaking situation? 23 A. Yes. 24 Q. And in order for vessels to collide, they must converge? 25 A. Yes.</p>

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<p>1 Q. But as I understand your evidence, you say that the 2 relative bearing of one vessel to the other is also 3 relevant to the question of whether or not we are 4 dealing with a head-on situation? 5 A. Yes. It's generally accepted that -- well, according to 6 Farwell, around about 6 degrees. 7 Q. For that you quoted the passage from Farwell yesterday, 8 page 366. 9 A. Yes. 10 Q. Perhaps that could be put on the screen. 11 MR SHIEH: Page 361-23. 12 MR SUSSEX: Thank you. 13 A. But of course, it doesn't have to be limited to 14 6 degrees because if you're in any way unsure and you're 15 unable to measure it, you go with rule 14(c), of course. 16 Q. Yes, of course. But then we're not concerned with that 17 here, are we, because we don't have any evidence that 18 anybody was in extremis or in doubt, because nobody was 19 applying their minds to the question? 20 A. Correct. 21 MR SHIEH: Well, Mr Chairman, insofar as that is an 22 observation as to whether we have already heard anyone 23 testify as to what's in their mind, that's of course 24 true because the crew hasn't gone in yet. 25 THE CHAIRMAN: I've mentioned this to Mr Sussex already, and</p>	<p>1 What Farwell is telling us is that you look at the 2 relative bearing to ascertain whether the vessel is 3 ahead or nearly ahead for the purposes of rule 14; yes? 4 A. That would be one way to do it, yes. 5 Q. So if we go back to the text of rule 14, we see, do we 6 not, that rule 14(a) doesn't actually talk in terms of 7 vessels being ahead or nearly ahead; it's only concerned 8 with courses. 9 A. Sorry, I rather missed that. Did you ask me something? 10 Q. Yes, I did. What I'm asking you is if you look at 11 rule 14(a), it doesn't talk in terms of vessels being 12 ahead or nearly ahead; it merely talks in terms of 13 meeting on reciprocal or nearly reciprocal courses. 14 A. Correct. 15 Q. The part of rule 14 that deals with vessels being ahead 16 or nearly ahead is rule 14(b). 17 A. Yes, it does. 18 Q. And it's rule 14(b) that you're not terribly fond of; is 19 that right? 20 A. Well, I agree with Farwell: it's good for the look-out 21 but not quite so good for the captain. 22 Q. But would you accept that the mere fact that the 23 relative bearing of one vessel to another is within 24 one-half point of the bow does not of itself tell you 25 that this is a head-on situation?</p>
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<p>1 the caveat is "as yet". 2 MR SUSSEX: Yes, fair enough. 3 MR SHIEH: Because obviously we have seen the relevant 4 written statements which may cast light on what actually 5 went on in the relevant person's mind. Whether anyone's 6 testimony is to be accepted is of course another matter. 7 THE CHAIRMAN: Yes. But essentially and most importantly, 8 we're yet to have sworn oral testimony. 9 MR SUSSEX: Yes, I'm fully aware of that. 10 Right. What you quoted yesterday from Farwell, 11 eighth edition, page 366, is this: 12 "... the weight of authority supports the conclusion 13 that a vessel should be considered nearly ahead under 14 the present rule if, when risk of collision arises, her 15 relative bearing is within one-half point (five to six 16 degrees) of the bow." 17 A. Correct. 18 Q. Right. It's right, isn't it, that there are 32 points 19 of the compass? 20 A. Sounds good to me, yes. 21 Q. If we go north, south, east, west and we work our way 22 through, they work out at 32. If we divide 360 by 32, 23 we ascertain that one point is equal to 11.25 degrees? 24 A. Yes, correct. 25 Q. So half a point is 5 and 5/8, or between 5 and 6.</p>	<p>1 A. Can we put up the radar plot on the screen, of the two 2 vessels coming together? Yes, that one. 3 THE CHAIRMAN: What is the reference for this, for the 4 transcript? 5 MR SHIEH: Actually it's in the DVD. It's not a paper plot. 6 It's in police bundle E, in a DVD. 7 THE CHAIRMAN: Thank you very much. 8 A. I would just put it to you, Mr Sussex, that 999.5 9 mariners out of 1,000 would say that's end-on or nearly 10 end-on. We don't measure it with a protractor; we look 11 at radar tracks. And that is end-on or nearly end-on. 12 MR SUSSEX: Obviously when the vessels collided, their paths 13 converged. But what we are concerned with, as 14 I understand it, is the time at which the risk of 15 collision attached. What we are concerned with is 16 characterising the circumstances at that time in terms 17 of head-on or crossing. 18 A. Mr Sussex, if I may, you continually are looking through 19 the wrong end of the telescope. I made it very clear 20 yesterday that the first vessel that had an obligation 21 to alter course was Sea Smooth, because Sea Smooth had 22 a steady bearing before Lamma IV did. So Sea Smooth was 23 the first vessel that had to alter course. 24 Q. Right. 25 A. You don't, in those circumstances, wait and say, "Oh,</p>

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<p>1 I think it's the other chap that should be altering for 2 me." You are carrying a full load of passengers. You 3 don't put them at risk by playing chicken with another 4 ship. You alter course. It's very simple. 5 Q. It must be right, must it not, that rule 14 cannot 6 operate unilaterally; it can only operate in a situation 7 where vessels are meeting on reciprocal or nearly 8 reciprocal courses? 9 A. That's correct. 10 Q. So it cannot impose a duty on one before it imposes 11 a duty on the other? They both have to change course to 12 starboard so to pass on the port side of the other? 13 A. That's correct. There's an obligation on both vessels. 14 But what I was pointing out was that Sea Smooth did 15 actually have a steady bearing before Lamma IV did. And 16 so she was obliged to alter course. 17 Q. She's not obliged, is she, except by rule 14? 18 A. It would be rule 14, yes. 19 Q. Yes. And she can't be obliged until a head-on situation 20 has arisen. And a head-on situation cannot arise 21 unilaterally. Do you agree with that? 22 A. No, that's correct. But it's very clear, and I think we 23 discussed yesterday about, again, Mr Farwell's ideas of 24 high-speed craft and rule 14. 25 Q. Can I just revert to the question I asked you. Would</p>	<p>1 view: 2 "The present rule is a marked improvement over the 3 former standards, under which sidelights might be 4 visible up to one point across the opposite side of the 5 bow. The former standard might explain the origin of 6 the within one point of the bow rule of thumb for 7 assessing the end-on situation." 8 A. Yes, that's correct. 9 Q. So it's a fact they were inextricably intertwined? 10 A. Yes. 11 Q. You had a rule; the rule is different now. 12 Now, I revert to my question. It is right, is it 13 not, that the mere fact that the relative bearing of one 14 vessel to another is within one-half point of the bow 15 does not of itself render the situation a head-on 16 situation? 17 A. The rule is "head-on or nearly head-on". 18 Q. The rule is "reciprocal or nearly reciprocal courses". 19 A. Yes. And looking at the chart of the two vessels' 20 courses and their coming together, I would say instantly 21 that that is head-on or nearly head-on. I mean, as 22 I said before, we don't go into this business with slide 23 rules. It's a judgment. 24 Q. But it's right, is it not, and you sat in the Admiralty 25 Court with Mr Justice David Steel, as I understand it,</p>
<p>Page 14</p> <p>1 you accept that the mere fact that the relative bearing 2 of one vessel to another is within one-half point of the 3 bow does not of itself tell you that this is a head-on 4 situation? 5 A. The rule very clearly tells you in rule 14(c), when 6 a vessel is in any doubt as to whether such a situation 7 exists, she shall assume that it does exist and act 8 accordingly. 9 I don't know if you're familiar with points and half 10 points -- 11 Q. Well, I've just told you that I am. 12 A. I mean, when you're on the bridge and you're looking at 13 something with your naked eye at between a point and 14 half a point, I assure you it's a very, very fine 15 judgment. And the old rule, incidentally, which is 16 mentioned in Farwell, it was the point rule and they 17 always used to talk about a point. Because it's 18 actually quite difficult for a look-out to start telling 19 you the difference between a point and half a point. 20 That, to my mind, is the very reason for rule 14(c). 21 Because it's incredibly difficult with a mark I eyeball 22 to actually say something is half a point or 23 three-quarters of a point. 24 Q. Yes, but if we go to page 361-31 of the expert bundle, 25 which is page 374 of Farwell, Farwell expresses the</p>	<p>Page 16</p> <p>1 that when we get into court we do start looking at 2 things rather more minutely than might be the situation 3 with a mariner on the bridge. 4 A. I've sat in the Admiralty Court on a number of occasions 5 and I can honestly say this case is extraordinary in the 6 amount of data we have and the amount of -- you know, 7 we're putting positions on the chart in half-minutes and 8 we're talking about 20:20:17. That is quite 9 extraordinary. I mean, normally we're dealing in much 10 broader aspects. 11 This case is unique. You mentioned yesterday the 12 difference between 180 degrees and 182 degrees being the 13 difference between a rule 14 and a rule 15. I mean, you 14 just don't get those arguments in Admiralty Court. 15 Q. I think we both have experience of the Admiralty Court, 16 so we can differ on that one. 17 Now, if we break down rule 14(a), the obvious 18 prerequisite is the risk of collision must exist; do you 19 agree with that? 20 A. Yes, indeed. 21 Q. And the vessels must be meeting on reciprocal courses or 22 they must be meeting on near-reciprocal courses? 23 A. Yes. 24 Q. If we turn to the deeming provision in rule 14(b), one 25 vessel must see the other ahead or nearly ahead, and the</p>

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<p>1 visual aspect must be satisfied. Do you agree with 2 that? 3 A. The visual aspect must be satisfied? I don't 4 understand. 5 Q. Rule 14(b) deals with a visual aspect, does it not? You 6 have to see the vessel nearly ahead and see the masthead 7 lights of the other in a line or nearly in a line and/or 8 both sidelights and by day you have to observe the 9 corresponding aspect of the other vessel. 10 Compendiously, I've referred to that as "the visual 11 aspect". 12 A. Yes, right. 13 Q. Do you agree that there has to be a sighting of a vessel 14 ahead or nearly ahead, coupled with the visual aspect 15 stipulated in 14(b)? 16 A. Yes, but as we said yesterday, it's the courses and 17 speeds of vessels that are important at the end of the 18 day when making a decision about risk of collision. 19 Q. Right. Well, let's turn to the situation at 20:18. For 20 this, I'll want your chartlet, which is at page 361-1 in 21 the expert bundle. 22 You agreed that at this time, the risk of collision 23 had attached, or attached; that's right? 24 A. Yes, I do. 25 Q. The chartlet shows that the relative bearing of Sea</p>	<p>1 shows the course of Lamma IV at the time as being 2 340 degrees. And we see, do we not, that really it's 3 not until a minute later that she gets to a course of 4 350. 5 THE CHAIRMAN: Give us the two times that you're referring 6 to, please, Mr Sussex. 7 MR SUSSEX: 20:18 and 20:19. 8 A. Thank you. 9 MR SUSSEX: From 20:18:02, the police record shows her as 10 being on 340 degrees, and she progresses to starboard 11 all the way through to 20:19:01 when her course is given 12 as 349. Is that right? 13 A. Well, as with the other one, it varies. At 20:18:22, 14 she's doing 349. So just after 20:18, she's doing 349. 15 And then 353 immediately after that. And then 351. And 16 then -- 17 Q. Yes, but that's 20:19. We're talking about 20:18. 18 A. No, we're talking about -- I'm talking about -- 19 Q. What I'm suggesting is you have -- we're looking at the 20 position as at 20:18. You, as I understand it, have put 21 the Lamma IV on a course of 350 degrees. All I'm 22 pointing out to you is that the police records indicate 23 that she didn't achieve that course until a minute 24 later. 25 THE CHAIRMAN: She achieves it, as Captain Pryke was</p>
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<p>1 Smooth from the perspective of Lamma IV is 6 degrees on 2 Lamma IV's starboard bow. Am I right about that? 3 A. Yes, that's correct. 4 Q. This also shows that Lamma IV's relative bearing as 5 observed from Sea Smooth is some 4 degrees from the bow 6 of Sea Smooth? 7 A. Yes. 8 Q. If those bearings are correct, relative to one another 9 the vessels are ahead or nearly ahead; you would say 10 that's right, is it not? 11 A. I would say so, yes. 12 Q. The next question is, are they on reciprocal courses? 13 You show Sea Smooth on a course of 180 degrees. 14 A. Sea Smooth made a course of 180 between 20:17 and 20:18 15 and a half. 16 Q. Of 180 degrees? 17 A. Yes. 18 Q. It's right, isn't it, that if we go to the Marine Police 19 tracking records, they're slightly different: they give 20 the course as 183. 21 A. Yes, but you can't rely on those, not for seconds. I've 22 plotted it over a minute and a half and that was 23 actually the course she made. 24 Q. If we go to page 285 of the expert bundle, we see the 25 police records. We saw this yesterday, I think. That</p>	<p>1 pointing out, at 20:18:25 when she's at 353, and before 2 that, at 20:18:22, she's 349. There are variations is 3 what Captain Pryke is saying, as I understand it. 4 MR SUSSEX: All right. Okay. 5 A. Yes, and actually on my plot, from 20:17 and a half, 6 she's doing around 350 plotted from 20:17 and a half to 7 20:18 and a half, in fact to 20:19. And I agree with 8 you, of course, that she's slowly coming round to north. 9 Q. Yes. 10 A. He will have to say for himself what he was doing, but 11 it looks to me as if his offing of the lighthouse was to 12 be on a northerly course, and he was heading round in 13 that direction. 14 Q. Yes. Now, it's not apparent to me from your chartlet 15 that you've actually plotted Lamma IV as being on 16 a course of 250 at this time, but I think it becomes 17 clear when one looks at your -- 18 A. 350. 19 Q. It is 350, is it? 20 A. Yes. 21 Q. Because you say at paragraph 8 of the note that I saw 22 yesterday, one minute later -- 23 THE CHAIRMAN: Just pause there. May we have that on the 24 screen. 25 MR SUSSEX: I'm not quite sure where that is in any bundle.</p>

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<p>1 Page 361-54, apparently. 2 Paragraph 7 deals with the situation at 20:17 when, 3 as you rightly observe, Lamma IV is completing her 4 departure manoeuvre from the typhoon shelter. Various 5 courses are apparent, as you notate on your chartlet. 6 "One minute later", so we're talking about 20:18, so 7 this ties up with the chart dealing with 20:18, "when 8 the vessels were 1.375 miles apart, Sea Smooth would 9 have seen that Lamma IV remained on a steady bearing of 10 176 degrees, ie 4 degrees on her port bow. Now Lamma IV 11 would have steadied on her first course of 350 12 degrees ..." 13 So it's right that you have plotted her at 20:18 as 14 being on a course of 350 degrees? 15 A. Yes, I think that's right. 16 Q. All I'm suggesting to you is we are seeing a gradual 17 turn to starboard, and you're treating her as if she'd 18 actually achieved the totality of that, or in large 19 part, that turn, by 20:18, when it seems to have 20 happened a minute later. Do you agree or disagree? 21 A. Well, I think it's a bit dangerous to use these courses 22 which are produced by the radar computer, if you like, 23 on a second-by-second basis. Because I don't think 24 they're 100 per cent accurate in that sense. You can 25 only, as I've tried to do, plot them at sort of</p>	<p>1 on -- 2 A. Something I've also said in my evidence is that these 3 are small local ferries. They're not big ships out in 4 the middle of the sea. And I would expect generally 5 that they would alter course for collision avoidance at 6 around about a mile or three-quarters of a mile. So if 7 you look at 20:19, which is 8 cables, they're absolutely 8 on reciprocal courses. 9 Q. Right. We'll come to that in a minute. 10 It's right, is it not, that they are not on 11 reciprocal courses at 20:18; they are not on nearly 12 reciprocal courses, according to Farwell? 13 A. I don't agree. 14 Q. Well, which part don't you agree with? Farwell says 15 that the -- let's go back to Farwell. 16 THE CHAIRMAN: As I understand it, Captain Pryke then refers 17 to rule 14(c). 18 MR SUSSEX: Yes. 19 THE CHAIRMAN: It says there is doubt, and therefore you 20 assume. 21 Is that your response to this proposition, so that 22 I understand it? 23 A. Yes, sir. 24 MR SUSSEX: So you would say, would you, that that doubt is 25 doubt in the mind of the tribunal rather than doubt in</p>
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<p>1 half-minute intervals. Then you get a real sense of 2 what the course actually is. 3 Q. Right. But giving it your best effort, you put Sea 4 Smooth on a course of 180, and Lamma IV on a course 5 of 350. 6 THE CHAIRMAN: At which point in time? 7 MR SUSSEX: 20:18. 8 THE CHAIRMAN: Thank you. 9 A. Yes, that's correct. 10 MR SUSSEX: The vessels are then not on reciprocal courses, 11 are they? 12 A. No. 13 Q. The reciprocal of 180 is obviously 360 -- 14 A. They're on a nearly reciprocal course. 15 Q. Well, the reciprocal of 180 is 360. Lamma IV is 16 10 degrees off that. That's right, isn't it? 17 A. Yes. At 20:18. 18 Q. So if one adopts Farwell's widely held definition, ie 19 "within five to six degrees", they're not even on nearly 20 reciprocal courses, are they? 21 A. Well, that's a very -- I think you wouldn't be standing 22 on the bridge 100 per cent certain of that, so you'd 23 look at rule 14(c), which urges you to stray on the side 24 of caution. 25 Q. But we are looking at this ex post facto. We are not</p>	<p>1 the mind of the person on the bridge? 2 A. I think it -- to me, it's absolutely clear that we're 3 looking at a very -- you're looking at a very tight 4 angle of 1 or 2 degrees, and I am saying that a man 5 standing on the bridge doing his day-to-day job will 6 look at that and think, "Is it reciprocal or nearly 7 reciprocal? Well, I must go to rule 14(c), because 8 I won't be 100 per cent sure." 9 Q. But the fact is you've lopped 10 degrees off that angle 10 by plotting Lamma IV as being on 350 degrees rather than 11 the figure that appears in the police tracking records 12 for 20:18. 13 A. But what I've also said is that the bearing between the 14 two is 4 degrees from one and 6 degrees on the other. 15 And that is very clearly within the Farwell definition 16 of 5-6 degrees on the bow for both ships. 17 Q. Yes, but could I just make good the point that I'm 18 trying to make to you. Farwell is concerned with two 19 things. Farwell says in the passage that you quoted 20 yesterday -- sorry, let me just turn it up. 21 THE CHAIRMAN: Give us the page reference, if you would, so 22 that we can put it on the screen. 23 MR SUSSEX: It's page 366, which is page 361-23 of the 24 expert bundle. 25 THE CHAIRMAN: Thank you.</p>

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<p>1 MR SUSSEX: "The discussion which follows" -- and as 2 I understand it you relied upon this -- "will suggest 3 that the weight of authority supports the conclusion 4 that a vessel should be considered nearly ahead under 5 the present rule if, when risk of collision arises, her 6 relative bearing is within one-half point (five to six 7 degrees)" -- that's an explanation of what one-half 8 point means -- "of the bow." 9 A. Yes. 10 Q. "Similarly, courses may be considered nearly reciprocal 11 if within five to six degrees of the actual reciprocal." 12 A. Yes. 13 Q. Right. We have ascertained from your chartlet that Sea 14 Smooth is on a course of 180 degrees. The reciprocal of 15 that is 360. You have plotted Lamma IV on a course of 16 350. That's 10 degrees from the reciprocal. That is 17 more than half a point, is it not? 18 A. Yes, but it complies with the idea of being 5-6 degrees 19 on the bow. 20 Q. No, that's the bearing. 21 A. The bearing, yes. 22 Q. The bearing, yes. But there are two aspects to Farwell, 23 are there not? The first is Farwell is directing his 24 attention to rule 14(a): what is a nearly reciprocal 25 course? Those words only arise in rule 14(a). He is</p>	<p>1 The question is, are they on nearly reciprocal 2 courses? 3 A. Yes. 4 Q. For that, Farwell tells us that they have to be within 5 half a point of one another, ie 5-6 degrees. They are 6 not, because they are 10 degrees from reciprocal. 7 Therefore, rule 14(a) does not apply. Do you agree? 8 A. I'm sorry, I'm struggling with what you're trying to 9 say. I go back to what we've just said: 10 "... the weight of authority supports the conclusion 11 that a vessel should be considered nearly ahead under 12 the present rule if, when risk of collision arises 13 [which it has], her relative bearing is within ... (five 14 to six degrees) of the bow." 15 That's very clear to me. 16 Q. Yes, of course it's clear, and it's clear to me too, 17 surprisingly enough. But it relates to rule 14(b). 18 Because rule 14(b) says: 19 "Such a situation shall be deemed to exist when 20 a vessel sees the other ahead or nearly ahead and by 21 night she could see the masthead lights ... and/or both 22 sidelights and by day she observes the corresponding 23 aspect of the other vessel." 24 So what we have in this situation as plotted by you 25 is vessels which are not on reciprocal or nearly</p>
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<p>1 also directing his attention to what is meant by "ahead 2 or nearly ahead". Those words only appear in 3 rule 14(b). That's right, isn't it? 4 A. I'm struggling to see where you're going. 5 "... the weight of authority supports the conclusion 6 that a vessel should be considered nearly ahead under 7 the present rule if, when risk of collision arises 8 [which it has], her relative bearing is within ... (five 9 to six degrees) of the bow." 10 So that to me means that it becomes a rule 14(a). 11 Q. Let me take you to rule 14. Ultimately this is a matter 12 for submission to the tribunal, but I'll explain where 13 I'm coming from. 14 Rule 14(b) uses the two forms of words that Farwell 15 is there concerned with. One is what is a nearly 16 reciprocal course; the second is when is a vessel nearly 17 ahead under the present rule? So it's where the word 18 "nearly" appears in juxtaposition to another word that 19 Farwell is providing guidance. 20 A. Right. 21 Q. For the purposes of rule 14(a), we are concerned only 22 with determining whether vessels are meeting on 23 reciprocal or nearly reciprocal courses. You've 24 accepted from me that the vessels are not meeting on 25 reciprocal courses.</p>	<p>1 reciprocal courses, but which are ahead or nearly ahead 2 for the purposes of rule 14(b). 3 A. So what you're saying is there's a conflict? 4 Q. I'm not saying there's a conflict. I'm just saying 5 where we've got to. 6 A. You're saying there's a conflict between what he says in 7 terms of relative bearing, and what you're saying about 8 the reciprocal course? 9 Q. No, what I'm suggesting to you is there's no problem at 10 all with what he's saying. But the mere fact that you 11 happen to be on reciprocal bearings within one-half 12 point of the bow does not automatically mean that you 13 have a head-on situation. 14 A. Well, I thought we just agreed that it did. 15 Q. No, we didn't agree that at all. 16 THE CHAIRMAN: Mr Sussex, you've exhausted this subject. 17 Move on to another one, please. 18 MR SUSSEX: Could I then go to the question of rule 14(b). 19 You don't suggest, do you, that as at 20:18 either 20 Lamma IV or Sea Smooth should have seen both sidelights 21 of the oncoming vessel? 22 A. I think at certain stages throughout this, both 23 sidelights may have been visible. But whether exactly 24 at 20:18, I don't know. 25 Q. Well, come on. At 20:18, we know what their respective</p>

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<p>1 courses were, we know what their relative bearings were. 2 They did not come within 1-3 degrees of the bow, did 3 they, vis-a-vis one another? 4 A. It's -- without -- I really don't know. It's quite 5 possible you're right, but I don't know. 6 Q. If properly adjusted, those lights would have been 7 exhibited only in the forward direction 1-3 degrees 8 beyond right ahead; yes? 9 A. Yes. 10 Q. So, knowing as we do the courses of the vessels -- 11 they're 10 degrees off reciprocal -- they would not have 12 been exhibiting both sidelights to one another, would 13 they? 14 A. Probably not, no. But as you, you know, keep drawing 15 attention to, these courses, according to the police 16 record, are changing regularly. So to say that 17 throughout this thing they never saw both sidelights is 18 wrong. 19 Q. I'm not suggesting that "throughout this thing they 20 never saw both sidelights". What I'm dealing with is 21 the position as at 20:18. 22 A. I think you're probably right there, yes. 23 Q. Thank you very much. 24 Now, Sea Smooth at 20:18 would only be exhibiting 25 a red sidelight to Lamma IV, would she not?</p>	<p>1 interpretation of subsidiary legislation. 2 We've agreed that the vessels can't see one 3 another's sidelights, both sidelights? 4 A. At 20:18, yes. 5 Q. So it follows, does it not, that at 20:18 we must be 6 looking at a fine crossing situation? 7 A. Well, that's a matter of judgment, isn't it. If there's 8 any doubt at all, it's rule 14(c). 9 Q. That's if there's any doubt at all on the ground? 10 A. Which there would be, of course. 11 Q. If people were alive to the fact at 20:18. 12 A. Yes. 13 Q. Rule 15 provides: 14 "When 2 power-driven vessels are crossing so as to 15 involve risk of collision, the vessel which has the 16 other on her own starboard side shall keep out of the 17 way and shall, if the circumstances of the case admit, 18 avoid crossing ahead of the other vessel." 19 A. That's correct, yes. So, in other words, you're 20 encouraged to alter course to starboard. 21 Q. Well, that's not strictly true. That's one of your 22 options. 23 We have already seen that Lamma IV is to port of Sea 24 Smooth; that's correct, isn't it? This is at 20:18. 25 A. Yes, that's correct. You mean she's bearing on the port</p>
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<p>1 A. Yes. 2 Q. And Lamma IV at 20:18 would only be exhibiting a green 3 sidelight to Sea Smooth? 4 A. Yes. 5 Q. So the position we've got to, I suggest, is that risk of 6 collision exists? You've said that throughout, the risk 7 of collision exists at 20:18. 8 A. Absolutely. 9 Q. The vessels are not on reciprocal or nearly reciprocal 10 courses? 11 A. At 20:18 -- 12 Q. At 20:18. 13 A. -- are on nearly reciprocal courses, by my judgment. 14 Q. Well, they're not on nearly reciprocal courses by 15 Farwell's judgment, are they? 16 A. Yes, they are, by within Farwell's judgment. 17 Q. They're not within 5-6 degrees. 18 A. The bearing is within 5-6 degrees. 19 Q. That's only to determine the question of whether they 20 are ahead or nearly ahead but we won't -- 21 THE CHAIRMAN: We've canvassed this already, many times, 22 Mr Sussex. You disagree. 23 MR SUSSEX: Yes, very profoundly. 24 THE CHAIRMAN: The witness disagrees with you. 25 MR SUSSEX: Yes. Well, ultimately it's actually a matter of</p>	<p>1 side? 2 Q. Yes. And Lamma IV has Sea Smooth to her starboard. 3 A. Correct. 4 Q. She is exhibiting a starboard sidelight -- 5 A. Yes. 6 Q. -- to Sea Smooth? So rule 15 mandates that Lamma IV 7 should keep out of the way and shall, if the 8 circumstances admit, avoid crossing ahead of Sea Smooth? 9 A. That's correct, yes. 10 Q. And rule 16 prescribes the action which the give-way 11 vessel must take. She must: 12 "... so far as possible, take early and substantial 13 action to keep well clear." 14 A. Yes, but, as I say, this is all a bit relative. If 15 you're two supertankers in the middle of the ocean, that 16 might be at 2 or 3 miles. But if you're two very small 17 local ferries, that might be at a mile or even less than 18 a mile, I guess. 19 Q. Yes. But once the risk of collision attaches, you have 20 to evaluate whether you are looking at a head-on or 21 a crossing or an overtaking, because the relevant rule 22 then engages, does it not? 23 A. Yes. What I tried to explain yesterday was that at 24 20:18, Sea Smooth would have known she had a steady 25 bearing. The same thing doesn't quite apply to</p>

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<p>1 Lamma IV, because she had been manoeuvring prior to 2 20:18 and the observance of a steady bearing logically 3 might not have happened until about 20:18 and a half, 4 20:19. But because Sea Smooth was on a steady course of 5 180, she would have had this absolutely steady bearing. 6 Q. We're talking about relative bearings, are we not, and 7 they change according to how the vessels move relative 8 to one another? 9 A. Yes. 10 Q. So you can't have a steady relative bearing unless the 11 vessels relative to one another are maintaining the same 12 angle towards one another; is that right? 13 A. Yes, but as I've plotted, the bearing of Lamma from Sea 14 Smooth virtually didn't change from 20:17 to -- well, it 15 didn't change at all from 20:17 to 20:18. 16 Q. You said that the thing that Lamma IV had to do if she 17 was the give-way vessel was to turn to starboard. But 18 rule 8 deals with possible actions to avoid collision, 19 does it not? 20 A. Yes. 21 Q. What it says, for example, and you've already drawn our 22 attention to this: 23 "Any action taken to avoid collision shall, if the 24 circumstances of the case admit, be positive, made in 25 ample time and with due regard to the observance of good</p>	<p>1 THE CHAIRMAN: I'd invite you to deal with that accordingly. 2 MR SUSSEX: Yes. I am doing that. 3 THE CHAIRMAN: Do you understand that? 4 MR SUSSEX: Yes, of course I understand, sir. 5 THE CHAIRMAN: Please do so. 6 MR SUSSEX: Rule 17 prescribes the action by the stand-on 7 vessel. 8 A. Yes, that's correct. 9 Q. And it's predicated on rule 16, because: 10 "Where one of 2 vessels is to keep out of the way 11 the other shall keep her course and speed." 12 A. Yes, that's correct. 13 Q. So it's predicated on there being a give-way vessel 14 under rule 16. 15 A. Yes, but of course you have to put that into context. 16 That's clearly meant for at sea. And when you have one 17 ship with the land on its starboard side, you don't 18 carry on to a close-quarters situation if you don't have 19 to. 20 Q. Well, it's right, is it not, that the duty to maintain 21 course and speed is subject to a number of 22 qualifications? 23 A. Yes, that's right. 24 Q. And it doesn't mean that the stand-on vessel must 25 maintain a constant heading or a constant speed,</p>
<p>1 seamanship." 2 A. Yes. 3 Q. And: 4 "Any alteration of course ... shall ... be large 5 enough to be readily apparent to another vessel 6 observing visually or by radar; a succession of small 7 alterations ... should be avoided." 8 Then rule 8(e): 9 "If necessary to avoid collision or allow more time 10 to assess the situation, a vessel shall slacken her 11 speed or take all way off by stopping or reversing her 12 means of propulsion." 13 A. Yes. 14 Q. So turning to starboard is not the only option? 15 A. No, that's right. 16 Q. If we are dealing with a crossing situation, then from 17 20:18 we have, I suggest, Lamma IV as the give-way 18 vessel and Sea Smooth as the stand-on vessel? 19 A. Yes, predicated by the fact that if we are dealing with 20 a crossing situation -- 21 Q. We're not allowed to talk about that anymore because 22 we've already exhausted that topic, according to the 23 Chairman. 24 THE CHAIRMAN: I've ruled that, Mr Sussex. 25 MR SUSSEX: Yes, and so be it.</p>	<p>1 does it? 2 A. Well, I'm not quite sure what you're driving at. What 3 rule 17(b) says is: 4 "... [if] the vessel required to keep her course and 5 speed finds herself so close that collision cannot be 6 avoided by the action of the give-way vessel alone, she 7 shall take such action as will best aid to avoid 8 collision." 9 Q. We haven't got there yet. We're looking at rule 17(a). 10 A. Right. 11 Q. One qualification is, I suggest to you, that course and 12 speed in fact means course and speed in following the 13 nautical manoeuvre in which she was, to the knowledge of 14 the other vessel, at the time engaged. Do you agree 15 with that or disagree with that? 16 A. I don't understand it. 17 Q. All right. What I'm suggesting is that course and 18 speed, for the purposes of rule 17, mean she must follow 19 the course and speed associated with the nautical 20 manoeuvre in which she is, to the knowledge of the other 21 vessel, engaged at the time? 22 A. My understanding of the rule is she was on a course 23 of 180 at the time and she should have carried on on 24 a course of 180. 25 Q. For two minutes, and shot down to the bottom of Lamma?</p>

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<p>1 A. Well, you can't have it both ways, Mr Sussex. 2 Q. I'm not trying to have it both ways. 3 A. You're trying to say that she had every right to alter 4 course to port, aren't you? 5 Q. What I'm saying is that as at 20:18, Lamma IV was the 6 give-way vessel and Lamma IV should have anticipated 7 what the stand-on vessel was going to do. 8 A. Well, I've already said that I think both vessels should 9 have altered course to starboard, but -- 10 Q. That's because you -- 11 A. -- in the event, Lamma IV did alter her course and, you 12 know, it's up to the coxswain of Lamma IV to say what 13 that alteration was about, but he altered course to 14 starboard. He put the two on completely reciprocal 15 courses around about 20:19 when they were 8 cables 16 apart. 17 Q. Yes. But well before then we know that the risk of 18 collision attached. 19 A. There was a risk of collision at 20:18, and there wasn't 20 at 20:19. 21 Q. I agree with you that we weren't dealing with a head-on 22 situation at 20:19, if that's what you're saying. 23 A. No, what I'm -- they were on absolutely reciprocal 24 courses at 20:19, but they wouldn't have hit each other. 25 They would have passed port to port.</p>	<p>1 Just humour me for the moment, and let's look at it that 2 way. 3 We've seen that the obligation on the give-way 4 vessel is to keep out of the way. That's right, is it 5 not? 6 A. Well, you could argue that he did. 7 Q. Well, he ended up colliding so that's perhaps difficult. 8 But there are a number of ways in which -- 9 A. He did. He did keep out of the way, because when he had 10 altered course to starboard and he was heading north, he 11 was clear. 12 Q. Until he wasn't. But the position -- 13 A. No, he was clear until the other one altered course to 14 port and hit him on his port quarter. 15 Q. But one of the things he could have done, for example, 16 was to slacken his speed to allow more time to assess 17 the situation. 18 A. That's a bit rich coming from your side, I must say. 19 Q. Well, we can have an argument but -- 20 A. You know, when the other vessel actually -- strangely 21 enough, I was in the VTS centre on Wednesday for the 22 second time and I asked the experts -- and believe me, 23 there are some experts there -- to play the tape back 24 very slowly and explain to me exactly, without the 25 computerised graphics of what speed the vessels were</p>
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<p>1 Q. Do you accept that the rule does not mean that the 2 stand-on vessel has to maintain a constant heading or 3 a constant speed? 4 THE CHAIRMAN: Rule 17? 5 MR SUSSEX: Yes, rule 17. 6 A. I don't quite see what you're -- well, clearly rule 17 7 is trying to say you keep your course and speed, in 8 other words not to interfere with the action being taken 9 by the other vessel. But, if you're still going to be 10 too close or getting into a close-quarters situation, it 11 doesn't stop you taking other action to keep out of the 12 way. 13 Q. No, of course. 14 But it's right, isn't it, that your suggestion that 15 both sides should have altered course to starboard is 16 posited on your analysis that this is a head-on 17 situation? 18 A. Or nearly head-on, yes. 19 Q. Sorry, it's a head-on situation because the vessels are 20 on reciprocal or nearly reciprocal courses. You'd have 21 to come within the wording of the rules, wouldn't you? 22 A. Mm. 23 Q. Yes. We are analysing this, I hope, from the context of 24 a crossing situation now, a fine crossing admittedly, 25 but it's a crossing situation, not a head-on situation.</p>	<p>1 doing, to show me exactly at what speed Sea Smooth 2 collided with Lamma IV, and it was 24.5 knots. Now, at 3 that time I believe Lamma IV was doing of the order 4 of 14. 5 Q. Yes. But if we are in fact looking at a crossing 6 situation, the initial obligation is imposed upon the 7 Lamma IV to keep out of the way, is it not? 8 A. I agree, if we were looking at a crossing situation 9 alone, there would be an obligation to alter course to 10 starboard. 11 Q. There is no obligation imposed by rule 15 to alter 12 course to starboard, is there? The obligation is to 13 keep out of the way. 14 A. And avoid crossing ahead. 15 Q. And "if the circumstances of the case admit, avoid 16 crossing ahead". 17 A. Well, the circumstances of the case did admit to 18 avoiding crossing ahead. 19 Q. Right. And the initial obligation under the rules is 20 upon the give-way vessel, and the give-way vessel can 21 take a number of courses to avoid collision, and 22 examples are given in rule 8, are they not? 23 A. Yes. 24 Q. The stand-on vessel has to keep her course and speed. 25 She may "take action to avoid collision by her manoeuvre</p>

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<p>1 alone, as soon as it becomes apparent to her that the 2 vessel required to keep out of the way is not taking 3 appropriate action" in accordance with the rules. 4 Rule 17(b) stipulates that when she "finds herself 5 so close that collision cannot be avoided by the action 6 of the give-way vessel alone, she shall take such action 7 as to avoid collision". 8 A. Correct. 9 Q. So the obligation is imposed primarily on the give-way 10 vessel? 11 A. Yes. 12 Q. And the stand-on vessel has to take collision avoidance 13 once it becomes apparent that collision cannot be 14 avoided by the action of the give-way vessel alone? 15 A. That's correct. 16 Q. And, what it does stipulate in rule 17(c) is once we get 17 to that later stage where action by the give-way vessel 18 alone cannot avoid collision, what she can't do is alter 19 course to port to avoid a vessel on her own port side? 20 That's in paragraph 17(c). 21 A. Yes. Which is what she did, of course. 22 Q. Well, that's what happened, yes. In the sense that 23 there was a turn to port. But what I suggest to you is 24 that the reason she was turning to port was she was 25 following her usual course to Yung Shue Wan.</p>	<p>1 a decision in 1908 reported in the Probate Cases which 2 I'll be treating the tribunal to later. 3 A. I'm sorry, I'm not familiar with that case. 4 Q. What I'm suggesting to you is that seeing a yellow 5 flashing light on a vessel in the vicinity of Yung Shue 6 Wan, given that one can see navigation lights as well, 7 would inform the master of the Lamma IV of a broad range 8 of things which I suggested to you yesterday. 9 A. I fail to see this argument at all. I'm very familiar 10 with the ferry traffic across the Dover Strait, and have 11 been in fact in safety management of ferries for 12 12 years. I have never, ever known a case where a ferry 13 did not apply the rule of the road by saying, "Well, you 14 know where I'm going so you keep out of my way." It 15 just doesn't happen. 16 Q. So you say. 17 A. And incidentally, when I was in management of fast 18 ferries and conventional ferries for 12 years, I never 19 had one of our ships having a collision. It seems to be 20 quite common for your ships to be having collisions. 21 THE CHAIRMAN: Whilst we're on the subject of yellow 22 flashing lights, you were going to help us to find, 23 Mr Sussex, the provenance of any provision that deals 24 with their visibility. 25 MR SUSSEX: I have not tracked that down. What I have</p>
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<p>1 THE CHAIRMAN: That's not a matter that Captain Pryke can 2 deal with. That's a matter that the coxswain of Sea 3 Smooth can tell us about. 4 MR SUSSEX: Right. 5 It's right, is it not, that you don't have 6 experience of the coastal waters of Hong Kong such as to 7 tell us what a seafarer operating in Hong Kong ought to 8 conclude from the flashing yellow light on a ferry in 9 the vicinity of Yung Shue Wan? 10 A. We're talking here about the rules. If you can show me 11 some local rules which tell a seafarer what to do when 12 he sees a flashing yellow light, then I'd be happy to 13 read it. 14 Q. Well, the rules ultimately are a question for this 15 tribunal because they are subsidiary legislation. 16 But you can't help us on the seafaring aspect of 17 that, can you? 18 A. I can help you if you show me what the rule is. 19 Q. What I've suggested to you is that the requirement for 20 the stand-on vessel to keep her course and speed is 21 qualified by the requirement that she follows the 22 nautical manoeuvre in which she is, to the knowledge of 23 the other vessel, engaged at the time. 24 THE CHAIRMAN: You're quoting from which rule? 25 MR SUSSEX: I'm actually quoting from the Roanoke,</p>	<p>1 ascertained is that my clients have been required by the 2 Marine Department to sport a flashing yellow light on 3 any vessels built by Cheoy Lee since 2002-2003. 4 THE CHAIRMAN: Yes. 5 MR SUSSEX: So it appears to be a Marine Department 6 requirement. It is not unique. 7 Captain Pryke, it's right, is it not, that the Isle 8 of Wight ferry, not a hovercraft, sports a flashing 9 yellow light? 10 A. Yes, it does. There's a particular reason for that, 11 again regrettably to do with a fireworks display at the 12 end of Cowes Week when, I think, if I recall rightly, 13 a yachtsman was killed. It was the local harbour 14 master, I think, instituted the regime that the 15 hydrofoils should have a flashing yellow light after 16 that incident. 17 Q. And that's also true of catamarans, is it not, that 18 catamarans should also -- 19 A. Yes. 20 Q. It's certainly not unique to Hong Kong. As you said, 21 you've encountered this on Isle of Wight ferries. It 22 also operates in Greece, does it not? 23 A. I'm sure it's done a fair bit. 24 MR SUSSEX: But in answer to your question, sir, I apprehend 25 that the Marine Department may be able to give us some</p>

Page 45	1 help in relation to this. It is a local requirement. 2 THE CHAIRMAN: Imposed upon your company specifically? 3 MR SUSSEX: Yes. But we have no written record of why. It 4 is just a requirement. 5 THE CHAIRMAN: But do you have a written record of the 6 imposition of the requirement? 7 MR SUSSEX: No. My instructions are that my client has been 8 required by the Marine Department to -- 9 THE CHAIRMAN: Take instructions if -- 10 MR SUSSEX: I wonder if I might, because I think I'm being 11 contradicted. 12 THE CHAIRMAN: Yes. 13 MR SUSSEX: My instructions are that my client's 14 understanding is it's a Marine Department requirement. 15 It's been incorporated in all new builds from Cheoy Lee 16 since 2002 or 2003. There is nothing in writing that 17 records why or what the requirements are, in terms of 18 visual -- 19 THE CHAIRMAN: But someone can give oral testimony as to 20 this requirement? 21 MR SUSSEX: I apprehend that somebody can, but that's about 22 as much as they can say. 23 THE CHAIRMAN: Yes. 24 MR SUSSEX: We'll liaise with the Marine Department to try 25 to get chapter and verse on this.	Page 47	1 20:18. 2 Q. But you have discounted that as being a serious factor, 3 have you not, in your report? 4 A. I mean, it's the same for both, isn't it? I mean, they 5 both allegedly had trouble seeing because of either 6 shore lights or anchored ships' lights. But they just 7 don't use their radars. I don't understand why. 8 THE CHAIRMAN: Mr Sussex, do we have information as to the 9 wattage of the yellow flashing light actually installed 10 on Sea Smooth? 11 MR SUSSEX: I'm told we can probably find that out in five 12 minutes. 13 THE CHAIRMAN: Thank you. 14 MR SUSSEX: If we do analyse this collision in terms of 15 a crossing situation, it would be right, would it not, 16 that Lamma IV would be in breach of the rule relating to 17 look-out, rule 5? 18 A. Yes, I think I've already said that in my report. 19 Q. Lamma IV would also be in breach of rule 7(b) regarding 20 to radar. That would be true irrespective of whether 21 one was looking at a head-on or a crossing situation? 22 A. Yes. I mean, I think I brought that out in my first 23 report. 24 Q. But we'd also be looking at breaches of rules 15 and 16, 25 wouldn't we?
Page 46	1 THE CHAIRMAN: Perhaps you can initiate those enquiries. 2 MS LOK: Of course. 3 THE CHAIRMAN: Thank you very much. But we're none the 4 wiser as to what the visibility range of the light is as 5 a requirement? 6 MR SUSSEX: No, we're not. But the one thing I think we can 7 all agree on is that the visibility -- 8 Would you agree with this: the visibility of the 9 yellow flashing light must be at least visible by the 10 time the navigation lights are visible, the port and 11 starboard lights? 12 A. Yes, I would have thought so. 13 Q. So that within the range that we're talking about -- 14 THE CHAIRMAN: That's a factual way of dealing with the 15 matter, as opposed to whatever the requirement is? 16 MR SUSSEX: Yes. 17 A. Yes. 18 Q. So when we're talking about the vessels being apart by 19 1.375 miles, the flashing light would have been clearly 20 visible; do you agree? 21 A. I would have thought so. We haven't discussed 22 Lamma IV's assertion that the vessels in the anchorage 23 were -- we saw a lot of lights from vessels in the 24 anchorage which were immediately behind Sea Smooth, I'm 25 guessing at around that time, actually. At around	Page 48	1 A. No. Well, I wouldn't accept that. 2 Q. Sorry, let me understand you correctly. If we were to 3 analyse this case in terms of a crossing situation, you 4 would say that there was no breach of rule 16; is that 5 right? 6 A. Well, certainly not at -- I wouldn't say there was at 7 20:18. As I've said before, you can't treat this as two 8 big deep-sea ships. I mean, as you well know, there are 9 ferries zipping about all over Hong Kong Harbour, and 10 they don't generally make course alterations for each 11 other at 1.37 miles. It would be impossible. 12 Incidentally, I was particularly interested at the VTS 13 centre to see how easy it would be for a VTS operator to 14 advise these vessels that they were heading into 15 trouble. And they put all the -- we've all seen in the 16 police report where alongside courses at a certain 17 moment, it says "Collision" or "Collision event". Well, 18 in the VTS centre that generates an alarm. It's like 19 a red flashing alarm. Just to demonstrate this to me, 20 the man in charge switched all the alarms on and the 21 whole screen was full of alarms. So, you know, I would 22 not expect these vessels to be altering course at 23 1.3 miles. 24 Q. But if the risk of collision attached at 20:18, and the 25 case fell to be assessed by reference to a crossing

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<p>1 situation, whenever the obligation arose, the give-way 2 vessel has to keep out of the way; that's right, 3 isn't it? 4 A. Yes, but I mean in the course of a journey from Lamma 5 Island to Victoria Harbour, there would be 100 such 6 occasions. And you can't -- and they would not have 7 altered course for them. Clearly the course alteration 8 between these two vessels should have happened between 9 three-quarters of a mile and a mile, in these 10 circumstances, I would have said. 11 Q. Now, you've touched upon the position as at 20:19 and 12 your chartlet shows what you estimate to be the 13 positions of the two vessels as at 20:19. 14 A. Yes. 15 Q. You say the relative bearing of the Sea Smooth is 16 6 degrees on Lamma IV's port bow. 17 A. Yes. 18 Q. You show Sea Smooth still on a course of 180 degrees; 19 Lamma IV on a course of 360 degrees. 20 A. Yes. 21 Q. Those are exactly reciprocal courses, aren't they? 22 A. They are. 23 Q. But you say the vessels will not meet? 24 A. No, they won't meet. 25 Q. It's right, is it not, if we go to page 285 of the</p>	<p>1 north between 20:19 and 20:20. 2 Q. That can't be right, can it? Because you are deriving 3 your information from the Marine Police positions. 4 A. Yes, I am. 5 Q. And those positions indicate fairly clearly that she's 6 on the turn. 7 A. Well, no, the positions don't. The courses do. But 8 I think I'm right in saying that this is on a prediction 9 to course. I have plotted the positions. 10 THE CHAIRMAN: In plotting the positions, did you take the 11 positions given by the Marine Department or the Marine 12 Police? 13 MR SUSSEX: Marine Police. 14 A. The Marine Police. 15 Q. So you haven't used the VTC records for your plotting; 16 you've used the Marine Police tracking records? 17 A. Yes. 18 Q. If, as is recorded here, at 20:19 Lamma IV was actually 19 on a course of 349, Sea Smooth was actually 5 degrees on 20 Lamma IV's starboard bow rather than 6 degrees on her 21 port bow, as you've recorded here. Would you agree with 22 that? If she was actually on a course of 349. 23 A. Yes, I guess so, if that was the case. But it looks to 24 me as if she was on a heading of north either at 20:19 25 or very soon after.</p>
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<p>1 expert bundle, that Lamma IV's course at 20:19 is 2 recorded as 349 degrees? 3 THE CHAIRMAN: Is this the police table of -- 4 MR SUSSEX: Yes, this is the police table. 5 THE CHAIRMAN: Thank you. 6 MR SUSSEX: And she still appears to be turning to 7 starboard. 8 A. Yes, that's correct. She is turning to starboard. It's 9 what I said, that by the time it gets to 20:19:29, she's 10 357 and then at 32, she's north. 11 THE CHAIRMAN: 20:19:29, Lamma IV's course is shown as 357? 12 A. Yes. 13 THE CHAIRMAN: Thank you. 14 MR SUSSEX: So that's half a minute later. 15 A. Yes. When I plot those courses -- sorry, when I plotted 16 the positions, and you can see it on the chart, from 17 20:19 -- 18 THE CHAIRMAN: Can we go back to the chart, please. 19 A. -- from 20:18 and a half to 20:19, she is altering; and 20 then from 20:19 to 20:20, she is absolutely on her 21 northerly course. 22 MR SUSSEX: But it's right, isn't it, that if she is in fact 23 on 349 at 20:19, she's 11 degrees off reciprocal? 24 A. You may say so, but when I plot it and it's on the 25 chart, if you follow the plot, she makes a course of</p>	<p>1 Q. And once again we're not in a head-on situation, because 2 the Lamma IV is 11 degrees off reciprocal and that must 3 apply to Sea Smooth as well. I don't want to argue this 4 point with you, but the fact is that Sea Smooth -- if 5 this is right, if she was on a course of 349 as the 6 Marine Police record, Sea Smooth -- 7 THE CHAIRMAN: At what time? 8 MR SUSSEX: At 20:19. 9 THE CHAIRMAN: 20:19:01? 10 MR SUSSEX: Yes, 20:19:01. Captain Pryke has taken that 11 from 20:19:00 but I think we'll probably not fall out 12 over a second. 13 Now, if it is right that as at 20:19 Lamma IV was on 14 a course of 349 degrees, Sea Smooth was to her 15 starboard; is that not right? 16 A. I couldn't tell you without actually plotting it. 17 Q. You've just agreed with me that if she was on 349, she 18 was actually 5 degrees on Lamma IV's starboard, rather 19 than 6 degrees on her port bow. 20 THE CHAIRMAN: If you want to plot it in order to answer the 21 question, we'll give you the time to do so. 22 A. Yes, I will do that. I don't have parallel rulers or 23 anything. 24 MR SUSSEX: We have parallel rulers which we can supply. 25 THE CHAIRMAN: And you need dividers as well?</p>

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<p>1 A. Yes, please. 2 THE CHAIRMAN: We're not asking you to do it right now, 3 unless it can be done quickly. But what we might do is 4 take the morning break and give you more time to do it. 5 Very well. That's what we'll do. We'll take 6 a break for 20 minutes. Thank you. 7 (11.27 am) 8 (A short break) 9 (11.47 am) 10 THE CHAIRMAN: We've come back in simply to say that we've 11 received a message that Captain Pryke needs a little 12 longer, we understand 15 minutes, in order to do that. 13 A. I've only just received my ... 14 THE CHAIRMAN: I see. How long do you need to do it? 15 A. 15 minutes. 16 THE CHAIRMAN: Very well. That's what we'll give Captain 17 Pryke. 18 MR SUSSEX: Sir, can I just mention to you the 19 characteristics of yellow flashing light. 20 THE CHAIRMAN: Yes. 21 MR SUSSEX: The yellow flashing light apparently is made in 22 Taiwan by a company called Maxim, no relation to our own 23 Maxim's. It's powered by 24 volts. The particular bulb 24 is a 70-watt halogen bulb and the light flashes 25 180 flashes per minute. There is no mention of the</p>	<p>1 (12.05 pm) 2 THE CHAIRMAN: Captain Pryke, have you been able to complete 3 the task? 4 A. Yes, I have, thank you. 5 THE CHAIRMAN: Thank you. 6 Mr Sussex? 7 MR SUSSEX: Can we just make sure that we've completed the 8 task. 9 Your new plot would show Lamma IV on a course 10 of 349, would it? Is that right? 11 A. No, it doesn't. Let me just explain. I've replotted 12 the positions between 20:19:01 and 20:19:32, and in that 13 half-a-minute period, the Lamma IV made a course of 358. 14 In the half-a-minute period between 20:19:32 and 20:20, 15 she made a course of 000. 16 Now, I know you're referring to the courses given on 17 the police record, but you've got to remember they're 18 not actual -- the only actual factual stuff there is the 19 position. The courses are either historic or 20 a prediction, because the radar can't actually tell you 21 what course a vessel is steering except by history. 22 Q. Yes. It can't tell you the heading, but what it can 23 tell you is if you join up the dots, if you join the 24 positions as recorded by Mardep, these will be the 25 courses, the course over the ground?</p>
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<p>1 yellow flashing light requirement on the Marine 2 Department licence or in any survey record. My clients 3 do not have any dealings with Mardep on this subject. 4 When they bought the vessels from Cheoy Lee, from about 5 2002 or 2003, the light was already installed and 6 according to Cheoy Lee, it's at the request of Marine 7 Department. 8 These yellow flashing lights are not unique to fast 9 ferries operated by my client. Apparently the Shun Tak 10 ferries to Macau also sport them, as do the Discovery 11 Bay ferries. It seems to be a general requirement for 12 fast ferries. 13 THE CHAIRMAN: No doubt the Marine Department will come back 14 and assist us on this. Thank you for that information. 15 May I ask what is the provenance of the technical 16 detailed information? 17 MR SUSSEX: It comes from my client. It comes from the 18 operations department of my clients. We can provide 19 a statement if necessary. 20 THE CHAIRMAN: Not a statement, but something that shows us 21 the details that you've quoted for us. That's all. 22 Thank you. We'll adjourn then for 15 minutes so 23 Captain Pryke can complete his plot. 24 (11.49 am) 25 (A short break)</p>	<p>1 A. That's exactly what I've done. And between 20:19:01 and 2 20:19:32, the Lamma IV made 358. 3 Q. Yes, but the thing is she's turning at that time, isn't 4 she? 5 A. Well, she had turned but by 20 -- that's why I think the 6 course information might be a bit historic. She had 7 turned from her previous position at 20:18:32. She was 8 still on her, I think, 350, and then she comes round to 9 358. That's all I can tell you, I'm afraid. 10 THE CHAIRMAN: Have you done this calculation, the course 11 that Lamma IV was pursuing between 20:19:32 and 12 20:20:20? 13 A. Between 20:19:32 and 20:20:01, she made a course of 000. 14 THE CHAIRMAN: Thank you. 15 MR SUSSEX: Now, if we go to the police tracking records for 16 Lamma IV which appear on page 285 of the bundle -- 17 A. Yes, that's the one I've got. 18 Q. We see, do we not, that for the whole of that page 19 she -- 20 THE CHAIRMAN: Would you, for the transcript, put the times 21 that are relevant. 22 MR SUSSEX: The relevant time starts at 20:17:38 and 23 continues through to 20:19:01. 24 What we are trying to achieve, as I understand it, 25 is the snapshot as at 20:19, because that's what your</p>

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<p>1 chartlet shows. It shows the position as at 20:18, 2 20:19 and 20:20. Is that not right? 3 A. Yes, but to be fair, I think the experts would tell you 4 that this equipment cannot tell you that snapshot from 5 the radar information. It can only tell you what the 6 course made good was. 7 Q. Yes, but the fact is -- that is joining up the dots. 8 I mean -- 9 A. This isn't a compass. This is a computer making 10 a prediction. 11 Q. Yes, but as you told us yesterday, I think, it's the 12 best we've got to go on. 13 A. The best we've got to go on is the positions. The 14 positions are for real. 15 THE CHAIRMAN: Latitude and longitude at a particular 16 time -- 17 A. Yes. 18 THE CHAIRMAN: -- and then latitude and longitude at a later 19 time -- 20 A. Exactly, sir. 21 THE CHAIRMAN: -- and the course steered between the two 22 places in that time? 23 A. Yes. 24 MR SUSSEX: And the courses that appear in each case are the 25 course over the ground, and it's the course as</p>	<p>1 A. No, I'm saying my joining up of the positions from these 2 actual positions in the police evidence. 3 Q. But you haven't joined up the positions for every three 4 seconds, have you? 5 A. No, no, no. 6 Q. So you've chosen -- 7 A. No, but, I mean, realistically between 20:19:01 and 8 20:19:32, if she was steering 347 at some period she 9 would have had to have been steering well over 000 to 10 compensate. 11 THE CHAIRMAN: In order to get to 358 overall? 12 A. Exactly, sir, yes. So I honestly believe, and that's 13 all I can tell you, my honest belief, that that's the 14 course she was making. 15 MR SUSSEX: But it's right, is it not, that if this course 16 is right and she was making a course of 359 over the 17 ground at 20:19:01, then Sea Smooth would be to her 18 starboard? 19 A. That's a big "if", but if she was, yes. 20 Q. And she would not be on a reciprocal course? 21 A. Well, look, I can't have that because I know -- I can 22 see -- I've just worked out what course she was on. 23 Q. Can we move on to another subject very briefly. I want 24 to touch upon the fog light at the end of the breakwater 25 of the Hongkong Electric --</p>
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<p>1 calculated between the three-second positions; is that 2 not right? So, for example, if we go to 20:17:40, where 3 we pick up the second of the records for the label "93", 4 being Lamma IV -- 5 A. Yes. 6 Q. -- her position has changed from 20 13.447 north 7 114 06.198 east -- 8 A. Yes. 9 Q. -- and the difference between those two dots would 10 represent a course over the ground which is there 11 recorded at 347; is that right? 12 A. No, I don't believe it is. I believe -- well, certainly 13 the reality isn't that. The reality is that she was 14 making 358. 15 To be perfectly honest, I don't know exactly how 16 those courses are derived. But I do know that the 17 positional information of a radar target is correct. We 18 heard from Mr Boorsma, the expert, that there can be 19 a slight error, but it's a very, very small one. 20 Whereas this course information is not -- it's 21 a calculated course information from various bits of 22 information. But I do not believe it's as accurate as 23 joining up the dots of the positions. 24 Q. Oh, I thought you had agreed with me earlier that that's 25 what it was.</p>	<p>1 A. If you put my chart up, I've drawn a line on the chart 2 to help you with that. 3 Q. Yes, I understand. I do see that, and you've indicated 4 where it's shining. 5 A. Yes. If you join the positions of Sea Smooth and 6 Lamma IV -- well, it doesn't line up exactly, but round 7 about 20:20 the fog light would have appeared behind 8 Lamma IV to Sea Smooth's vision. 9 But for the earlier periods, you see quite clearly 10 that at earlier times, the Lamma IV would have appeared 11 to the right of the light. 12 Q. You said you've no doubt that the fog light may have 13 been a distraction. What do you mean by that? 14 A. I can only tell you that I was out there on the police 15 launch on my last visit and I noted that it was a very 16 bright light and if clearly you had something right in 17 front of it, it would visually have been difficult. 18 Q. But it's right, isn't it, that in your first report you 19 obviously considered the question of safe speed. You 20 had rule -- 21 A. Safe speed, yes. 22 Q. You had rule 6 very much in mind? 23 A. Yes. 24 Q. And rule 6 specifically refers to shore lights? 25 A. Yes.</p>

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<p>1 Q. You didn't consider that to be an issue which impacted 2 upon safe speed at that time, did you? 3 A. Oh, yes, I did, I think -- you mean in my first report? 4 Q. Yes. You didn't mention the shore light -- 5 A. Yes, I actually said that Sea Smooth was not going at 6 a safe speed in the conditions. 7 Q. Yes, but you didn't mention the shore light, the fog 8 light? 9 A. Specifically, probably not, no. 10 Q. No. Would I be right to think that at the time you 11 prepared that first report -- 12 A. If you're talking about my first report, can I just look 13 at it? 14 THE CHAIRMAN: Yes, please do. 15 MR SUSSEX: Yes, of course. 16 What I'm asking is, would I be right to infer that 17 at the time you prepared your first report you didn't 18 think that the fog light had any impact on this 19 collision? 20 A. No. The coxswain of -- 21 Q. Is that a no, you agree, or a no, you disagree? 22 A. I was just going to explain. The coxswain of the 23 Lamma IV did say in his statement that he felt that the 24 lights in the anchorage had affected his vision, and 25 I also look the view at the time, having been out there</p>	<p>1 THE CHAIRMAN: Yes. 2 MR SHIEH: Mr Sussex asked whether the light would have 3 shone into the wheelhouse of the Lamma IV and would have 4 impaired the vision of the master of the Lamma IV. 5 I wonder whether he actually meant to say the Sea Smooth 6 or whether he did mean the Lamma IV? 7 MR SUSSEX: No, I mean the Lamma IV. 8 MR SHIEH: The Lamma IV. That would be the anchorage 9 lights, not the fog light? 10 MR SUSSEX: No, the fog light. As she comes out, the fog 11 light is beaming in to her wheelhouse on the port side. 12 MR SHIEH: Right. 13 THE CHAIRMAN: That's as I understood it. As she's leaving 14 the typhoon shelter, she passes the light. 15 MR SUSSEX: That's right. 16 A. Yes. 17 Q. The light is pointing north and it's shining into her 18 wheelhouse. 19 A. At a certain point, yes. 20 Q. Yes. We weren't at cross-purposes, as I understand it? 21 A. I don't think so, no. 22 Q. Good. Would you accept that it's perfectly possible 23 that the coxswain of the Sea Smooth may well not have 24 realised that his vision was impaired, if indeed it was? 25 THE CHAIRMAN: That's not a matter that Captain Pryke can</p>
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<p>1 and seen the fog light, that the fog light would have 2 had the same effect for the captain of the Sea Smooth. 3 Q. But you didn't mention that in your report? 4 A. I don't -- did I not? I don't know. Okay, I didn't. 5 Q. Would you agree with me that -- 6 A. I'll tell you why. The only reason I mentioned Coxswain 7 Chow's remarks was because he had made it in 8 a statement, and there was no statement from the 9 coxswain of the Sea Smooth at that time. I wasn't 10 speculating; I was just repeating what Coxswain Chow had 11 said. 12 Q. It's right, is it not, that that light would actually 13 have shone into the wheelhouse of the Lamma IV? 14 A. At a certain point, yes. 15 Q. And that could have impaired the vision of the master of 16 the Lamma IV, could it not? 17 A. Yes, but all the way through this you have to take the 18 view that high-speed craft have to be particularly 19 careful. It even says in the high-speed craft rules 20 that high-speed craft should, if required, carry 21 night-vision equipment. And all through this piece it 22 seems to me that the speed is not being taken into due 23 consideration. 24 MR SHIEH: Could I raise a point perhaps of possible 25 cross-purposes.</p>	<p>1 help us about, Mr Sussex. 2 MR SUSSEX: Well, he has actually seen the light, as 3 I understand it. 4 A. All I can say is how many times a day did he go there? 5 I mean, he was obviously very familiar with the 6 territory, far more familiar than me, obviously. So he 7 would know precisely what to expect. 8 Q. Well, what I'm suggesting is that he might not know that 9 his vision was impaired. Anyway, let's move on. 10 Would you support a recommendation by this 11 Commission, if it thinks it appropriate, that the fog 12 light be removed and replaced by more conventional 13 lights appropriate to a typhoon shelter? 14 A. Very interesting. I was discussing this matter with 15 Mr Chung at the VTS centre, who I understand is 16 responsible for lights. I was discussing this with him 17 yesterday. They are very willing to make adjustments, 18 and of course if the Commission decides that's the right 19 thing to do, then they will do it. 20 I asked the question, why is that light on (a) when 21 it's not foggy and (b) when ships are leaving and not 22 entering? I mean, it seems to me that if you have a fog 23 light, it's there for ships coming in in fog. So 24 I agree with you; I'm a little surprised by the 25 situation.</p>

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<p>1 Q. And the question was, would you support a recommendation 2 by this Commission, if it thought it appropriate, to 3 remove that? 4 A. Yes, I would indeed, yes. 5 MR SUSSEX: Thank you very much, Captain Pryke. 6 THE CHAIRMAN: Ms Lok? 7 MS LOK: I do not have any application, Mr Chairman. 8 THE CHAIRMAN: I take it there's nobody present representing 9 either Cheoy Lee or China Classification Society? 10 In which case, Mr Shieh? 11 Further examination by MR SHIEH 12 MR SHIEH: Captain Pryke, I have a few questions to follow 13 up with you on the answers you have given to Mr Sussex. 14 A. Right. 15 Q. First of all, could I ask you to turn up Farwell, which 16 is in expert bundle 2, page 361-31. This is internal 17 page 374. Do you see that? 18 A. Yes. 19 Q. You referred to this. I have a few questions on this 20 extract. First of all you can see in the middle 21 paragraph: 22 "Under the present rules, sidelights on a vessel may 23 lawfully show up to three degrees across the bow, thus 24 potentially enabling an approaching vessel to view both 25 sidelights over a six-degree arc ..."</p>	<p>1 Q. Thank you. 2 A. As you mentioned my previous mistake, may I just put 3 that right, that -- 4 Q. Do you want to actually take a look at that? It's 5 Day 3, page 62. Do you want to see the transcript or 6 can you just develop it? 7 A. All I was going to say, just to apologise to the 8 Commission, that I actually answered the wrong question 9 when I said 25 degrees. I was thinking of the wrong 10 thing. 11 Q. It's 25 degrees abaft the beam? 12 A. Yes. If losing one sidelight would be over 25 degrees. 13 Q. 22.5? 14 A. Sorry, 22.5, yes. 15 Q. Thank you. Then page 361-23. This is another extract 16 from Farwell: 17 ""The discussion that follows will suggest that the 18 weight of authority supports the conclusion that a 19 vessel should be considered nearly ahead under the 20 present rule if, when risk of collision arises, her 21 relative bearing is within one-half point ..." 22 Then at the end of this passage, there is 23 a reference to rules 7(a) and 14(c): when in doubt, you 24 assume the situation exists. It says: 25 "... both of which direct the mariner to adopt the</p>
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<p>1 Do you see that? 2 A. Yes. 3 Q. Just to clarify a point about the answer you gave in 4 December. Do you remember a point has arisen yesterday 5 out of an answer that you had given way back in 6 December -- 7 A. Yes. 8 Q. -- as to the angle at which a vessel had to move before 9 one sidelight would disappear? 10 A. Yes. 11 Q. Actually, the angle -- to move from a position where 12 both sidelights are visible to a position where one 13 sidelight disappears, it should be 6, right? 14 A. It appears that it would be 6 degrees. I apologise for 15 my -- 16 Q. If you start with head-on collision, reciprocal 17 position, then it's 3, but bearing in mind that you have 18 basically a 3-degree margin either way -- 19 A. That would appear to me it could be -- 20 Q. If you start off at the extremity of 3 degrees on the 21 port side, you start moving starboard, you start turning 22 the other way, you have to move 6 degrees? 23 A. Yes, it sounds right to me. 24 Q. That is the 6-degree arc referred to in this paragraph? 25 A. Yes.</p>	<p>1 more cautious alternative." 2 I think you drew this to our attention yesterday. 3 Can you develop for us further what you understand by 4 "the more cautious alternative" and in what respect is 5 it a more cautious alternative? 6 A. Sorry, I haven't quite picked up the quotation. Which 7 page of Farwell? 8 Q. At page 361-23. 9 A. But which page of Farwell is it? 10 Q. Internal page 366. I'm sorry, I wasn't aware that you 11 were using your own Farwell. 12 A. Right. 13 Q. It actually is in the middle paragraph, where there is 14 a sentence five lines from the end of the middle 15 paragraph: 16 "Borderline head-on-on/crossing cases, which give 17 rise to doubt in the watchstander about whether risk of 18 collision exists or the encounter should be treated as 19 a head-on situation, should be resolved in accordance 20 with rules 7(a) and 14(c), both of which direct the 21 mariner to adopt the more cautious alternative." 22 A. Yes, exactly. 23 Q. I wish you to explain to us in greater detail what you 24 understand by "the more cautious alternative", and why 25 that alternative is a more cautious one. More cautious</p>

<p style="text-align: right;">Page 69</p> <p>1 than what?</p> <p>2 A. Well, more cautious than -- for example, in this case,</p> <p>3 if you take the position from the bridge of Sea Smooth,</p> <p>4 he might say, "I have a light on my port side. I am the</p> <p>5 stand-on vessel." But because it's very close to</p> <p>6 a head-on situation, and it is on a steady bearing in</p> <p>7 accordance with rule 7, then he would adopt rule 14(c),</p> <p>8 because it is the more cautious approach.</p> <p>9 Q. More cautious in the sense that if both vessels are to</p> <p>10 adopt that approach and both go starboard, there's no</p> <p>11 risk that people exercise a different judgment; is that</p> <p>12 what you mean?</p> <p>13 A. That's right, and even if he alone went to starboard and</p> <p>14 the other man was asleep and did nothing, he would still</p> <p>15 avert the collision. So it is taking the cautious</p> <p>16 approach.</p> <p>17 Q. Is it also more cautious in this sense -- I mean, as</p> <p>18 Mr Sussex kept emphasising, it's ultimately a matter of</p> <p>19 submissions and interpretation. But rule 14(c)</p> <p>20 stipulates obligatory rules -- both turn to starboard,</p> <p>21 little room for judgment; whereas if you go by the</p> <p>22 crossing rule, in other words if you proceed on the</p> <p>23 basis that it's a crossing situation, the language of</p> <p>24 rule 15 -- if you want it, it can be put up on the</p> <p>25 screen.</p>	<p style="text-align: right;">Page 71</p> <p>1 Q. -- that's 11.25 --</p> <p>2 A. Yes, I mean, it's very difficult to judge. People on</p> <p>3 the bridge of ships nowadays do not take bearings.</p> <p>4 I mean, years ago when I first went to sea you were</p> <p>5 instructed to take a bearing of any light that you saw</p> <p>6 and then to take another bearing a few minutes later to</p> <p>7 see if it was steady. That sort of thing just doesn't</p> <p>8 happen now. People use their eye, and mostly they use</p> <p>9 the radar.</p> <p>10 Rule 14(c) is urging you to be very cautious. As</p> <p>11 you rightly say, if you take a combination of rules 15,</p> <p>12 16 and 17 --</p> <p>13 Q. That's for crossing?</p> <p>14 A. -- for crossing, it's not obliging you, that person in</p> <p>15 Sea Smooth, to do anything at all at that moment. But</p> <p>16 a cautious approach, you would do something. You would</p> <p>17 say it's nearly end-on, and you'd go to starboard.</p> <p>18 Q. Which brings me to the next question I want to ask you.</p> <p>19 Again, the precise interpretation of rules 14(a), (b)</p> <p>20 and (c) would be a matter for the Commission. But</p> <p>21 practically speaking, you have said that 14(b) -- which</p> <p>22 talks about at night, when would there be deemed to be</p> <p>23 a situation of a head-on or nearly a head-on</p> <p>24 collision -- you have said in your evidence that those</p> <p>25 are not the only circumstances which would indicate that</p>
<p style="text-align: right;">Page 70</p> <p>1 The combined effect of rules 15 and 16 -- and could</p> <p>2 I move down to the next part of 16 -- "Action by</p> <p>3 give-way vessel" and "Action by stand-on vessel". Yes,</p> <p>4 the combined effect of rules 15, 16 and 17 connotes</p> <p>5 a series of judgment calls by the stand-on vessel.</p> <p>6 A. Yes.</p> <p>7 Q. It's obliged to stand on at first, but if there comes</p> <p>8 a time when you know the other guy is not doing what</p> <p>9 he's supposed to do, then everything's at large</p> <p>10 basically, nothing really obligatory; whereas the</p> <p>11 default rule of rule 14(c) is short, sweet and simple.</p> <p>12 Would that be why you think it's a more cautious</p> <p>13 approach, because people are dictated as to what they</p> <p>14 should do?</p> <p>15 A. Yes. I mean, the purpose of the rules -- the rules are</p> <p>16 written for very simple sailors. They're not supposed</p> <p>17 to be complicated at all. And rules always direct you</p> <p>18 to the cautious approach. That's why I think 14(c) is</p> <p>19 very explicit: when there is any doubt. We're not</p> <p>20 talking about the doubt between 6 degrees and 7 degrees.</p> <p>21 We could be talking about a point. If there is any</p> <p>22 doubt at all, you assume that it's end-on or nearly</p> <p>23 end-on.</p> <p>24 Q. When you say you could be talking about a point --</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 72</p> <p>1 you are going for a head-on collision situation.</p> <p>2 Now, put yourself in the position of the</p> <p>3 hypothetical mariner at night. Rule 14, putting (b) to</p> <p>4 one side, does it approach the question of the risk of</p> <p>5 a head-on situation qualitatively or quantitatively?</p> <p>6 Leaving aside Farwell, does it actually tell you,</p> <p>7 "X degrees either side, then it is; otherwise it isn't".</p> <p>8 Does it adopt that approach?</p> <p>9 A. No, it doesn't.</p> <p>10 Q. So putting yourself in the bridge, what sort of data,</p> <p>11 information, would you look for in assessing or helping</p> <p>12 you form a judgment as to whether or not you were going</p> <p>13 for a head-on situation or whether you were going for</p> <p>14 a crossing situation? You need some raw data, right, or</p> <p>15 information?</p> <p>16 A. Well, normally, as I say, as a prudent navigator you'd</p> <p>17 be using your radar and you would probably see the</p> <p>18 target before you saw the sidelights. You would put</p> <p>19 a bearing marker on the target and if it was 5 or</p> <p>20 6 degrees on either side of the bow, you would</p> <p>21 automatically be thinking -- and if it was on a steady</p> <p>22 bearing, you would automatically be thinking it's</p> <p>23 head-on or nearly head-on.</p> <p>24 Q. So radar at night is something that a cautious or</p> <p>25 prudent mariner would use in --</p>

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<p>1 A. Oh, absolutely. I mean -- 2 Q. -- collecting the raw data for him to form a view? 3 A. Yes, not just at night. At any time. You know, I was 4 a ferry man myself and I've managed ferry men for many 5 years, and they all work with a radar the whole time. 6 Q. The deeming provision in rule 14(b) -- you know what 7 "deeming" means? "Deeming" means "if you see this, you 8 must treat it as such". 9 The deeming provision says if you see both 10 sidelights, a head-on situation is deemed to exist. 11 A. Yes. 12 Q. I'm not sure whether the wording actually says "head-on" 13 or "ahead" or "nearly ahead". Basically you're obliged 14 to take the requisite action if you see both sidelights? 15 A. Yes. 16 Q. Yes, the precise wording is: 17 "Such a situation shall be deemed to exist ..." 18 "Such a situation" means meeting on reciprocal or 19 nearly reciprocal courses so as to involve risk of 20 collision. "Such a situation shall be deemed to exist", 21 among other things, when by night she could see both 22 sidelights. Right? If you see both sidelights, it's 23 deemed to be reciprocal or near reciprocal. 24 MR SUSSEX: It's got to be ahead as well. 25 MR SHIEH: Yes, ahead.</p>	<p>1 reference is 361-25. In the middle of that page: 2 "Rule 14(b) provides the commonly used visual 3 means ..." 4 Then, next paragraph: 5 "As vessels on parallel but slightly offset courses 6 draw closer, the geometry of the approach is such that 7 each will eventually lose sight of one of the other 8 vessel's sidelights ..." 9 A. Yes, precisely. 10 I think this is the whole point -- well, certainly 11 one of the points of 14(c). I mean, in all these 12 situations you don't see both sidelights all of the 13 time. 14 Q. So these are basically scenarios whereby you could lose 15 one sidelight -- 16 A. Yes. 17 Q. -- and the vessels are still on near-reciprocal courses, 18 so as to create a risk of collision. 19 A. Yes. 20 Q. Yesterday a question was asked of you. Could we have 21 the transcript for yesterday, page 102. Can we move 22 down. 23 This is Mr Sussex's question at line 13. He says: 24 "I suggest to you that if you start with a crossing 25 situation, the entire collision then falls to be</p>
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<p>1 But if you do not see both sidelights at night, 2 I take it that you are saying that it doesn't 3 necessarily mean that it is not reciprocal or near 4 reciprocal? 5 A. No, that's right. I mean, I think our friend Mr Farwell 6 does that better than I. 7 Q. Which internal page? 8 A. On page 370 of Farwell. 9 Q. Yes. 10 A. We have done this before. 11 MR SHIEH: Page 361-27. 12 THE CHAIRMAN: Thank you. 13 A. "It is the ... actual courses (and speeds), not their 14 headings, that create the risk of collision, and in 15 determining risk of collision under rule 7, watch 16 officers on both vessels will base their assessment on a 17 solution based on the vessels' respective courses, not 18 their headings. Rule 14(a) [therefore] is correctly 19 cast in terms of the vectors that may or will produce 20 collision, while 14(b), drawing as it does on the visual 21 picture, could only be cast in terms of the headings 22 revealed by that visual picture, not the actual 23 courses." 24 I think that's the best description, really. 25 MR SHIEH: How about the previous page, 368? The bundle</p>	<p>1 analysed in terms of a crossing situation; and if you 2 start with a head-on situation, the entire collision 3 falls to be assessed by reference to a head-on 4 situation. 5 Answer: Yes. If you were talking about two vessels 6 in the middle of the China Sea in a crossing situation 7 and there was no land close by, there were no other 8 ships close by, just two ships in the middle of the 9 ocean, you're quite correct." 10 Then Mr Sussex moved on to talk about rule 14(b). 11 Could I take you back to the answer you gave. You 12 said if it's in the middle of the China Sea, et cetera, 13 "you're quite correct". You seem to be trying to draw 14 a contradistinction between the situation where you're 15 in the middle of the China Sea, with all those 16 attributes, and some another situation. What 17 contradistinction were you trying to draw in that 18 answer? 19 A. This is a pilotage situation. In effect you have to 20 take account of the situation of the land, as we've 21 discussed, the various lights and shore lights. It is 22 not a clear-cut, one-off anti-collision manoeuvre. The 23 ships are manoeuvring, doing different courses and 24 speeds. I think Mr Sussex was trying to suggest that if 25 a certain collision course was apparent at a given</p>

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<p>1 moment in time, then that would be the collision 2 situation that would apply, whatever happened 3 subsequently. Well, that's clearly not the case in 4 pilotage waters. 5 Q. I want to test that further. Could there be a different 6 dimension to it, irrespective of whether or not you're 7 talking about a pilotage matter, and that is to say even 8 on the facts of this case, given that the position and 9 the course of the vessels were changing rather rapidly, 10 is it really correct to say, for example, that even if 11 one were to arrive at a crossing situation, looking 12 simply at the headings as of, let's say, 20:17, the 13 whole situation thereafter follows to be analysed by 14 reference to a crossing situation, even though 15 subsequent manoeuvring of both vessels evolved by, let's 16 say, 20:19 into a head-on situation? 17 A. Yes, that -- 18 Q. That was the precise question being put to you. 19 A. That was what I was trying to explain. If you were in 20 the middle of the ocean and you were both on a steady 21 course that you'd been on all day and there were no 22 course alterations at all, no land in sight, then it may 23 well be that your position at 20:17 would affect the 24 whole case if there was ultimately a collision. But in 25 this case, with the multiple courses and speeds, that is</p>	<p>1 be an extremely noisy room. 2 A. Absolutely. 3 Q. Can you describe to us what happened if you actually 4 switched on the volume? 5 A. Well, it was just the noise of warnings. You couldn't 6 do your job. You were just surrounded by noise. 7 Q. What does it tell you about the sort of collision or 8 head-on collision situations prevailing in Hong Kong 9 waters, if you -- 10 A. Well, of course, because of the number of vessels that 11 there are at any one time on the water, there will 12 always be a number of collision courses between some of 13 those vessels. It's 100 per cent of the time. That's 14 the inference. 15 Q. But, you see, the rules still continue to apply; 16 correct? 17 A. Oh, yes. But what I'm trying to get across is that 18 rather than -- 19 Q. There are numerous collision situations, but the rules 20 continue to apply. 21 A. The rules apply, but if you're in the middle of the 22 China Sea and you're 2 miles apart and you're on 23 a collision course, then the rules would indicate that 24 you should alter course. Here, in pilotage waters with 25 a lot of small ferries going to and fro, that 2 miles</p>
<p>Page 78</p> <p>1 not the case. 2 Q. So whether or not a vessel or both vessels have steadied 3 their course would be a relevant consideration as to 4 whether or not which set of rules were to apply as 5 a function of time? 6 A. This is a dynamic situation. Things are changing all 7 the time. I don't honestly believe you can say the 8 position at 20:17 is the defining position. 9 I think you start to get to a defining position at 10 20:18, and you're definitely in a defining position at 11 20:19. But I really struggle with the concept that the 12 whole thing rests on the position between the two 13 vessels at 20:17. That does not happen in pilotage 14 waters. 15 As I tried to explain, at the VTS centre they have 16 collision warnings, oh, a page full at every second of 17 the day. You couldn't try and analyse all of those, if 18 they became incidents, by the moment that the collision 19 alarm occurred. 20 Q. You told us that during your visit, you were shown 21 a demonstration. But I think we've heard it when the 22 Mardep witnesses gave evidence. In the normal 23 operation, they muted the volume; is that correct? 24 A. Yes. 25 Q. I thought the gentleman told us that otherwise, it would</p>	<p>Page 80</p> <p>1 comes right down. And, you know, it could even be as 2 little as half a mile where you do the anti-collision 3 manoeuvre. 4 Q. So it's not that the rules don't apply; it's the rules 5 apply as moulded to the type of waters you're in? 6 A. Yes, I suppose -- the rules always apply, but the 7 reality of the situation is that you have to take 8 avoiding action when it's appropriate. 9 Q. Mr Sussex asked you, when you discussed the question of 10 blame -- we know the apportionment of blame may or may 11 not even be the province of the Commission, because it 12 may or may not turn on civil liability. 13 A. Yes. 14 Q. But when you were addressing that issue, you were asked 15 whether or not your view as to blameworthiness is 16 entirely dependent on your premise that it is a head-on 17 situation. I think you gave a negative answer. 18 A. No, I mean, I've always said and always maintained that 19 if you're operating at very high speed, you have 20 an added responsibility. There is absolutely no doubt 21 about that. In fact our friend Farwell alludes to it as 22 well. 23 And of course, I've managed ferries that do over 24 40 knots, and if you're doing those sort of speeds, it 25 is just absolutely simple to keep out of everybody</p>

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<p>1 else's way. You don't sit down and analyse, is this 2 a rule 15 or is this a rule 14? You just keep out of 3 everybody's way. It's easy if you're doing a very high 4 speed. And in general, in crowded waters, high-speed 5 craft just keep out of everybody's way. 6 That's not to say that the rules don't apply, of 7 course they do. But you take a more cautious approach 8 if you're speeding. 9 Q. What I really want to focus on is -- Mr Sussex asked you 10 whether -- obviously you disagree with his proposition 11 that this is a rule 15 crossing situation. 12 A. (Witness nods). 13 Q. But I think what Mr Sussex was trying to test you on is 14 whether or not your view as to blame of Sea Smooth in 15 particular is purely because you had taken the view that 16 it is a head-on situation. In other words, had it been 17 ruled, contrary to your view, that it is actually 18 a crossing situation, would you still take the view that 19 Sea Smooth had some degree of blameworthiness? 20 A. You just cannot get away from the fact that the final 21 alteration of course to port by Sea Smooth at 20:19 and 22 a half caused the collision, without any shadow of 23 a doubt. 24 Q. Is that really what you are attempting to say in your 25 note, at expert bundle page 361-55, paragraph 14?</p>	<p>1 THE CHAIRMAN: Very well. We'll allow you to do that. As 2 a consequence, we'll take the luncheon adjournment now 3 and we'll resume this afternoon at 2.30, if you'd be 4 kind enough to be here then. 5 MR McGOWAN: Mr Chairman, there is one matter that I would 6 like either my learned friend to deal with, or be 7 allowed leave to ask Captain Pryke about. That's what 8 appears in paragraph 17 of his note. 9 THE CHAIRMAN: Yes. 10 MR McGOWAN: Which is the speed and angle of blow matter. 11 You'll recollect when he gave evidence in December that 12 information was not available. It is now, and he's 13 reached certain conclusions based upon it. 14 THE CHAIRMAN: Yes. Discuss it with Mr Shieh, if you would, 15 as to whether or not it's a matter he can deal with. 16 MR McGOWAN: Yes, certainly. Thank you. 17 THE CHAIRMAN: 2.30. 18 (12.55 pm) 19 (The luncheon adjournment) 20 (2.31 pm) 21 THE CHAIRMAN: Good afternoon, Captain Pryke. 22 A. Good afternoon, sir. 23 THE CHAIRMAN: You continue, as you would expect, to give 24 your evidence according to your original oath. 25 A. Thank you.</p>
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<p>1 Because you posited two situations there. First of all, 2 you said: 3 "If rule 14 [that is, the head-on collision rule] 4 had applied, as I maintain, then she is in flagrant 5 breach of that rule because she did not alter course to 6 starboard. If rule 15 had applied, then Sea Smooth 7 would also have been in breach of rule 17(a)(i), because 8 she was obliged to maintain her course, but she altered 9 course to port and caused the collision." 10 A. Yes, that's correct. 11 Q. It has been suggested that maintaining her course could 12 well mean maintaining the course that she would 13 ordinarily have made as a matter of ordinary navigation. 14 In other words, turning to port -- 15 A. No, that is not true. That is absolutely not true. 16 Course is course. Course was 180, and it meant 180. 17 Q. Would turning to port be consistent with good 18 seamanship? 19 A. Absolutely not. You're told frequently in the rules not 20 to cross ahead of other vessels. 21 MR SHIEH: Mr Chairman, I have a discrete topic left with 22 Captain Pryke which would involve looking back and forth 23 at some figures and course and longitude and latitude 24 which may be better reserved until after the break. But 25 that is the one topic left for Captain Pryke.</p>	<p>1 THE CHAIRMAN: Mr Shieh? 2 MR SHIEH: Captain Pryke, before I deal with the question of 3 course which Mr Sussex spent some time with you on, 4 could I raise with you a point concerning the work 5 Dr Armstrong has done and which you have had a chance to 6 consider. 7 Could you look at paragraph 17 of your note, which 8 is expert bundle 1, page 361-56. 9 A. Yes. 10 Q. You refer to Coxswain Chow's evidence. This actually 11 was in your note, but it hasn't been actually touched on 12 orally and therefore perhaps I will just make sure that 13 you speak to it. 14 "Chow then said, 'I hooted the short signal once and 15 swerved to the right'. Although the radar tracking data 16 shows only a further alteration of course of 4 degrees 17 prior to the collision -- from 358 degrees to 18 002 degrees, I am persuaded by Dr Armstrong's work on 19 the angle of the impact that Lamma IV did actually swing 20 to starboard quite considerably immediately before 21 impact. The considerable force of the impact on her 22 port quarter may well have pushed her bow back around to 23 port." 24 You confirm that? 25 A. Yes, I confirm that. The reason I said that is because</p>

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<p>1 when I did my original report, I relied on the radar 2 information post-collision, which appeared to show that 3 Lamma IV continued on the same course. But after Tony 4 Armstrong's work, I really do believe that she did swing 5 to starboard and then was pushed back again by the 6 impact. 7 Q. Thank you. Back to the question of the course of the 8 two vessels. Could we go back to the basics. You 9 mentioned the raw data based upon which you did your 10 various plots. You referred to the longitudes and 11 latitudes. 12 A. Yes. 13 Q. In other words, when you did your first report based on 14 the Marine Police print-out, and your second report 15 based on the Marine Department print-out, and also the 16 most recent plot which you did and which we saw on the 17 screen this morning, you based yourself on the position 18 in the various print-outs? 19 A. Yes, I did. 20 Q. You placed no reliance upon the figures in the "course" 21 column? 22 A. No. As I said before, I think for accuracy the best 23 evidence we have is the plotted positions. 24 Q. The plotted positions derive from the radar echo, 25 basically?</p>	<p>1 Q. If we turn to page 315, "786", 20:17:38, the figure we 2 get is 352 for 7622. 3 A. Yes, correct. 4 THE CHAIRMAN: Just a moment. Yes, thank you. And we're 5 now looking at Marine Department figures, are we? 6 MR SHIEH: Correct. I'm going to take Captain Pryke to 7 figures for the course for the same time, but looking at 8 the Marine Police figures and then the Marine Department 9 figures and see what we get out of it. 10 THE CHAIRMAN: Thank you. 11 A. I think what you're saying is they're different. 12 MR SHIEH: Yes, they're different. And of course it could 13 be said that the positions depicted would also be 14 different, as in fact we know because when you did your 15 subsequent plot in your supplemental report, based on 16 the positions depicted by the Marine Department 17 positions, the plot looked a little bit different. 18 A. There was a very slight difference, yes. 19 Q. A slight difference, yes. We can go on. But you can 20 see that you can see differences to the -- 21 A. Yes. 22 Q. -- magnitude of a few degrees. So it's not just one. 23 THE CHAIRMAN: Perhaps you'd take another couple of 24 examples. 25 MR SHIEH: Yes.</p>
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<p>1 A. Yes. 2 Q. Because the various longitude and latitude figures were 3 basically the result of the sound signal that bounced 4 back from the object? 5 A. Yes. They must have a computer program that translates 6 the echo into latitude and longitude. 7 Q. Yes. So it reflects the actual position as perceived -- 8 A. It is actual, yes. 9 Q. Whereas the course, under the "course" column, that 10 would have an element of -- 11 A. Yes, I mean, I don't honestly believe that you can 12 regard those figures as evidence. 13 Q. Could we actually take a look at the various figures 14 under the "course" column in the Marine Department 15 figures, and compare that with the Marine Police 16 figures. I just wish to see what comment you have. 17 Could we take a look at the Marine Police figures, 18 which are the figures Mr Sussex asked you to look at. 19 A. Yes. 20 Q. Could we look at, for example, page 285. If we look at 21 20:17:38, for Marine Police, Lamma IV had a course of 22 348. 23 A. Yes. 24 Q. Do you see that? 25 A. Correct.</p>	<p>1 Perhaps better examples would be if we were to look 2 at 20:18:22. We're now at page 285. 20:18:22, for 3 Lamma IV, We get -- 4 THE CHAIRMAN: Just give us a moment because we're bringing 5 it up on the screen. 6 MR SHIEH: At 20:18:22, we get 349. 7 A. Yes. 8 Q. And then if we compare that with the Marine Department 9 figures for 20:18:22, and that we can get at page 316. 10 A. 343. 11 Q. Yes. We don't have an exact match, but let's say 12 20:18:20 or 23. 13 THE CHAIRMAN: 20:18:23? 14 MR SHIEH: Yes. 15 And we get the figure of? 16 A. 342. 17 Q. 342. 18 A. Yes. 7 degrees difference. 19 Q. So we can have a few more. If you look at the next one, 20 for example, 20:18:26 at page 316, we have 343; correct? 21 Do you see that? 22 A. Yes. Yes. 23 Q. And when you go back to page 285 -- 24 A. Yes. 25 Q. -- we get around 351.</p>

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<p>1 THE CHAIRMAN: What time? 2 MR SHIEH: 20:18:28, let's say. 3 A. The times don't match up, do they? 4 Q. The times don't match up. 5 We have actually done a kind of comparative table in 6 column form. We can actually have it printed out and 7 handed in. 8 I am told it's been scanned. We can actually show 9 it on the screen. 10 THE CHAIRMAN: Yes. Thank you. 11 MR SHIEH: It has the Marine Police bundle number on the 12 right-hand side, but the Marine Department bundle 13 reference, it's basically the same bundle and expert 14 bundle, around about page 315 onwards. But we don't 15 have to turn up the pages one after the other because 16 the relevant data has been extracted. 17 This is only focusing on Lamma IV. So you can see 18 the differences in the course reflected by the various 19 columns as between the Marine Department print-out and 20 the Marine Police print-out. 21 A. Yes. 22 Q. Now, of course, as I said, bearing in mind also that the 23 positions would be different -- so bear that in mind -- 24 what does tell you about any reliance on these course 25 figures?</p>	<p>1 the course as shown in this print-out. 2 If you look at the difference in the course as 3 between Lamma IV and Sea Smooth, that would turn out to 4 be around about 173; would that be correct? 5 A. It's -- 6 Q. Look at 20:19:17. 7 A. Yes. It's 7 degrees from reciprocal. 8 Q. Yes. And if we were to look at the next time, 20:19:20, 9 what will that show you? 10 A. 20:19:20. It's 9 degrees from reciprocal. 11 Q. And moving on. 20:19:23. 12 A. 8 degrees. 13 Q. And then 20:19:26? One is 178 and the other is 353. 14 A. 9 degrees. 15 Q. And then 20:19:29? 16 A. 8 degrees. 17 Q. 20:19:32? 18 A. 9 degrees. 19 Q. Now, we move on, until we get to, for example, 20:19:47? 20 A. It's 8 degrees. No, sorry, 10. 21 Q. Perhaps you can explain to me, because if we take, for 22 example, 20:19:47, one is on a course of 356, and the 23 other is on a course of 174. The difference between 24 them would be 182. Is that correct? Would that be 25 2 degrees from reciprocal?</p>
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<p>1 A. I don't believe you can rely on them at all as evidence. 2 My understanding is that the police and Mardep use the 3 same raw radar data, in fact it's Mardep's raw radar 4 data which is used as well by the police. But they both 5 have different computer arrangements attached to the raw 6 radar data. 7 THE CHAIRMAN: That's what the Dutch witness told us. 8 A. Yes. 9 THE CHAIRMAN: Mr Boorsma. 10 A. Mr Boorsma, yes. And I think that accounts for the 11 differences. But I think the course prediction or 12 estimation is no more than that, in both cases. 13 MR SHIEH: Thank you. Could I then ask you a slightly 14 different question about course, and that is to say, if 15 we were to concentrate solely on the Marine Department 16 figures, and we turn to the period shortly before the 17 collision, let's say page 316 -- 18 A. Right. 19 Q. -- if you focus on around about 20:19:17 -- "786" is Sea 20 Smooth and "7622" is Lamma IV. 21 A. Yes. 22 Q. If you simply look at the course -- we take on board 23 your suggestion, your opinion that the course under the 24 "course" column is not something you would regard to be 25 reliable as indicating the course. But let's look at</p>	<p>1 A. Sorry, which time are we looking at? 2 Q. 20:19:47. 3 A. So if you take 180 degrees off 356 -- yes, it's 4 2 degrees off reciprocal. 5 Q. Yes, because the way it worked in my mind is that you 6 use the larger one to minus the smaller one, and you 7 then compare the difference between the difference and 8 180; is that correct? 9 A. I think you take 180 from the biggest one and then 10 compare it with the smallest one. 11 Q. Yes, but could we do it again. Let's start with the 12 previous page. The fault may be mine in not making it 13 entirely clear. Let's say 20:19:20. 14 A. 20:19:20, yes. 15 Q. So we have 351 against 180. So it's 9 degrees? 16 A. So that's 171 -- that's 9 degrees. 17 Q. It's 9 degrees. Yes. And 20:19:23? 18 A. 23? 19 Q. It's 20:19:23. 20 A. Yes. 21 Q. We have 353 against 179. It should be 6 degrees from 22 reciprocal; correct? 23 A. Yes, 6 degrees. 24 Q. Let's turn over the page. Let's move on a bit. 25 If we look at 20:19:32, we have 354 against 177.</p>

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<p>1 A. 3 degrees. 2 Q. 3 degrees, yes. And 20:19:35? 3 A. 1 degree. That's 1 degree different. 4 Q. Yes. And then 20:19:38? Also 1 degree? 5 A. 1 degree, yes. 6 Q. 20:19:41? 1 degree? 7 A. Yes, 1 degree. 8 Q. We can continue, but it's pretty close to reciprocal. 9 A. Yes, indeed. 10 Q. If you simply look at the numbers, just looking at the 11 numbers -- this is not about plotting the actual track. 12 Just looking at the numbers. 13 So on one set of data you could have courses not 14 very close to reciprocal, maybe a very degrees from 15 reciprocal. And using another set of data, the course, 16 you could have a course very close to reciprocal, 17 utilising these course figures. What does that tell you 18 about the use of this course data to reflect what 19 actually is happening? 20 A. Yes. I repeat, I don't think they're reliable as -- at 21 a point in time, I don't believe they're reliable. 22 Q. So you would rather rely on the actual positions as 23 plotted, although you acknowledge you did not actually 24 plot them three seconds by three seconds? 25 A. That's correct. When I did my supplementary report the</p>	<p>1 could vary from the course steered, depending on the 2 wind and tide. But we've already established that there 3 wasn't much in the way of cross-tide, and there wasn't 4 much in the way of wind. So one would assume that the 5 course made good is not terribly far from the course 6 steered. 7 Q. I'm not talking about the course steered. I'm talking 8 about the figure as shown in these print-outs. 9 A. Yes. Well, that -- 10 Q. Just now, based on what you have plotted, comparing it 11 with the figure under the "course" column, there is 12 a divergence. 13 A. Yes, there is a divergence. 14 Q. Just doing the best you can -- if you can't, maybe say 15 you can't -- but would you be able to offer any 16 explanation for this divergence? 17 A. Yes. As I said before, it's a computer program. It's 18 not based on a compass. It's a computer program that is 19 trying to assess what has happened in the last three 20 seconds, and I'm not sure -- I know one of them tries to 21 predict what is happening in the next three seconds, but 22 I'm not sure which. Anyway, it's a prediction. 23 MR SHIEH: Could I just have a moment to check whether 24 I have any other questions. 25 THE CHAIRMAN: Yes.</p>
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<p>1 first time round, I checked all the data that was given, 2 including some of the AIS data, which is probably flawed 3 anyway. But with all the positions I checked at various 4 times, they were all fairly close but, as you say, 5 slight differences. 6 I don't know why, but I chose the police data 7 because I rather assumed that the police computer was 8 more accurate for collecting forensic evidence. It was 9 just an assumption. 10 Q. I think we have since heard evidence that the system in 11 Marine Department and Marine Police, they are 12 differently calibrated. 13 A. Yes. 14 Q. I think the police system might be calibrated or more 15 suited for picking up small changes. 16 A. Yes. 17 Q. If you're interested in, let's say, smuggling boats or 18 things of that nature. 19 A. Yes, that's correct. But I assume it's fairly accurate. 20 Q. You might have actually said this when you were being 21 questioned by Mr Sussex anyway. But the course made 22 good, basically, based on the actual position on your 23 plotting, you expect there to be a divergence from the 24 course figure as shown in the print-out? 25 A. Well, I mean, the reality is that the course made good</p>	<p>1 MR SHIEH: Thank you, Captain Pryke. I have no further 2 questions for you. 3 THE CHAIRMAN: Captain, I wonder if you would be able to 4 assist us with calculating this, not now but after 5 you've finished your evidence. That is the distance 6 between the Sea Smooth at certain points in time and 7 what Mr Sussex has called the fog light on the pier at 8 the typhoon shelter entrance for Lamma Power Station. 9 Perhaps you would do that exercise from, say, 20:17, 10 20:18, and then at half-minute intervals. So 20:18:30, 11 20:19, 20:19:30 -- I beg your pardon. We don't need to 12 go as far as that. Yes, we do -- 20:19:30, 20:20, 13 giving us the calculated distance. What we're looking 14 at is the size of the light as viewed from Sea Smooth as 15 she approached the place of collision. 16 A. Yes. 17 THE CHAIRMAN: So it's that figure that would assist us. 18 A. Okay. 19 THE CHAIRMAN: With that, may we thank you for your further 20 assistance in this part of proceedings. We look forward 21 to receiving your assistance in the second part of our 22 proceedings in due course. But thank you for your 23 assistance so far. Now you are free to leave the 24 witness box. 25 A. Thank you very much.</p>

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<p>1 (The witness withdrew)</p> <p>2 THE CHAIRMAN: Mr Sussex, I'll deal with your application in</p> <p>3 respect of Captain Browne now.</p> <p>4 The tribunal will receive Captain Browne's oral</p> <p>5 testimony, speaking to that which is set out in his</p> <p>6 report, and we will receive the report as well.</p> <p>7 MR SUSSEX: Thank you very much, sir.</p> <p>8 THE CHAIRMAN: At the same time, I should say we will also</p> <p>9 receive, if it is in any doubt, what is described as</p> <p>10 "the note" by Captain Pryke, which of course in large</p> <p>11 part deals with Captain Browne's report.</p> <p>12 MR SUSSEX: Yes. And presumably we'll be told when that</p> <p>13 evidence can be received orally? At the moment I think</p> <p>14 the intention is to put the crew in immediately</p> <p>15 afterwards.</p> <p>16 THE CHAIRMAN: Yes, it is. It will be dealt with, in your</p> <p>17 case, after the crew, if that helps with timing.</p> <p>18 MR SUSSEX: I'm very grateful. Thank you.</p> <p>19 THE CHAIRMAN: Yes, Mr Shieh. Back to Mr Ng?</p> <p>20 MR SHIEH: Yes, back to Mr Ng from Hong Kong & Kowloon</p> <p>21 Ferry.</p> <p>22 MR NG SIU-YUEN (on former affirmation in Punti)</p> <p>23 (All answers via interpreter unless otherwise indicated)</p> <p>24 THE CHAIRMAN: May I remind you that you continue to testify</p> <p>25 according to your original affirmation.</p>	<p>1 Q. "A resident on Peng Chau, Mr Shek [not me], complained</p> <p>2 in the programme of the Commercial Channel yesterday</p> <p>3 alleging that sailor was steering the vessel in relation</p> <p>4 to the Peng Chau to Central ferry."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. "He noticed that situation since early 2009. When he</p> <p>8 was taking the same route on the day following the</p> <p>9 National Day, ie the day of incident, he noticed that</p> <p>10 the vessel was wobbling and he discovered that the</p> <p>11 helmsman was not the master when he opened the</p> <p>12 wheelhouse to check. Mr Shek alleged in the programme</p> <p>13 that he took photographs and videos. However, he</p> <p>14 refused to disclose for evidence and also refused to</p> <p>15 accept interview again.</p> <p>16 Ng of Hong Kong & Kowloon Ferry responded that his</p> <p>17 company does not allow non-master to steer vessel.</p> <p>18 However, according to the law, the master can supervise</p> <p>19 other person to steer the vessel."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. So this report in Ming Pao on the 5th actually referred</p> <p>23 to a radio programme on Commercial Radio where somebody</p> <p>24 phoned in and complained about seeing a sailor at the</p> <p>25 helm?</p>
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<p>1 A. Yes, I understand, Mr Chairman.</p> <p>2 Examination by MR SHIEH (continued)</p> <p>3 MR SHIEH: Mr Ng, thank you for coming back to assist us.</p> <p>4 Yesterday you gave evidence as to certain complaints</p> <p>5 that appeared in newspapers which prompted you to make</p> <p>6 certain remarks in the staff or employee meeting shortly</p> <p>7 after the collision in this case. Do you remember that?</p> <p>8 A. Yes.</p> <p>9 Q. You have since supplied us with newspaper cuttings.</p> <p>10 Could I ask you to look at page 247 of the Holman</p> <p>11 Fenwick bundle.</p> <p>12 The translation, Mr Chairman, is at page 248.</p> <p>13 THE CHAIRMAN: Thank you.</p> <p>14 MR SHIEH: Do you see that?</p> <p>15 A. (Chinese spoken).</p> <p>16 Q. It is from Ming Pao, 5 October. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. We can see a photograph of you. To cut to the nub of</p> <p>19 this particular passage, in the middle of that page we</p> <p>20 can see the paragraph:</p> <p>21 "The respective steering attitude of the masters of</p> <p>22 the two vessels involved is a key of the investigation."</p> <p>23 "(Chinese spoken)."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>1 A. Yes, I can see.</p> <p>2 Q. Is that the radio programme that you had in mind?</p> <p>3 A. That should be the one.</p> <p>4 Q. Because I can see that you have also supplied a CD or</p> <p>5 DVD which actually is a recording of a programme in</p> <p>6 a Commercial Radio programme, "On a Clear Day",</p> <p>7 4 October, which was actually the day before this</p> <p>8 newspaper cutting.</p> <p>9 A. Yes.</p> <p>10 Q. I haven't yet had a chance to listen to the DVD because</p> <p>11 it came I think into the bundle early this morning.</p> <p>12 Obviously, after hearing it, if we have any questions to</p> <p>13 raise with you, we will.</p> <p>14 But this newspaper cutting, together with the radio</p> <p>15 programme is, according to you, what prompted you to</p> <p>16 make the remark, which was that if sailors were to help</p> <p>17 at the helm, they should report to Hoi Gor and make</p> <p>18 a record; correct?</p> <p>19 A. Yes.</p> <p>20 Q. That deals with that entry in the minutes. If we can</p> <p>21 look at the minutes. They're actually in the Holman</p> <p>22 Fenwick bundle, page 155 in the Chinese. The English is</p> <p>23 page 174.</p> <p>24 That deals with the entry concerning sailor helping</p> <p>25 with steering. But does that also explain why you</p>

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<p>1 uttered that point about "Those who are not staff are 2 prohibited from entering the bridge"? 3 The reason I ask is that a sailor would prima facie 4 be staff. So the complaint about sailor helping at the 5 helm would not cover this point about "Those who are not 6 staff being prohibited from entering the bridge". 7 A. I would like to understand this question better. 8 Q. Can I just ask it in perhaps a simpler manner. In 9 relation to the point, "Those who are not staff are 10 prohibited from entering the bridge", did you intend 11 that to cover the same complaint? 12 A. The staff on the vessel absolutely have the right to 13 enter the wheelhouse. But I posted it up for the 14 purpose of avoiding other -- to prevent other non-staff 15 to enter the wheelhouse. 16 Q. But what sort of people who are non-staff were you 17 focusing on by that remark? 18 A. Because I saw that the words, similar words, "Non-staff 19 are prohibited from entering", are used in other places 20 like buildings. So the purpose of my putting the remark 21 here is for a similar purpose. And also I don't want 22 the work of the coxswain to be affected. And also the 23 coxswain has to prohibit even the staff entering the 24 wheelhouse. 25 Q. So are you saying that this remark about "Those who are</p>	<p>1 A. Yes. 2 Q. "As for there is allegation that crew member was 3 steering Sea Smooth of Hong Kong & Kowloon Ferry instead 4 of the master at the time of the incident, according to 5 the Director of Marine, it does not contravene the law 6 for crew member to steer the vessel instead of master 7 temporarily." 8 Do you see that? 9 A. Yes. 10 Q. Then the next paragraph: 11 "Liu" -- I think, is the Director of Marine -- 12 "pointed out that the law does not require master must 13 steer. He admitted that dual master scheme will enhance 14 navigational safety. However, this involves costs 15 increase if safety standard is enhanced." 16 Do you see that? 17 A. Yes. 18 Q. That is what you meant yesterday by saying that the 19 Director of Marine, or the Marine Department, had 20 subsequently come out to clarify that it's not against 21 the law for a sailor to be at the helm? 22 A. Yes, that should be -- 23 Q. Can I now pick up a few short points arising out of 24 other parts of this pile of meeting notes. 25 First of all, the Chinese version is at page 161 and</p>
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<p>1 not staff are prohibited from entering the bridge" was 2 not directed at a particular known incident whereby 3 non-staff had actually entered the bridge? 4 A. You can understand it that way. 5 Q. All right. Thank you. 6 Coming back to newspaper cuttings. Could we look at 7 page 249 of the bundle. The English is at page 249-1. 8 This is from Sing Tao Daily. 9 A. I can see it. 10 Q. This is actually 7 October. 11 A. I see. 12 Q. Which was actually after the two meetings in October 13 that we have been looking at; correct? 14 A. Yes. 15 Q. So this newspaper cutting could not have been 16 a newspaper cutting which prompted you to say what you 17 did on those two dates? 18 A. Correct. 19 Q. But the first paragraph of this newspaper cutting refers 20 to something you mentioned yesterday, and that is that 21 the Marine Department had actually come out to state 22 that it was permissible for somebody who was not 23 a master to be at the helm, steering. 24 If you look at the first paragraph. Do you see 25 that?</p>	<p>1 the English is at page 180. 2 The top part of this page, if we could go close, 3 after the date, 15 January, there is a reference to 4 "seung leung", "double pay", the next paragraph says: 5 "In view of the recent boat collision on the Macau 6 line due to big fog, crew should operate more 7 carefully." 8 Do you see that? 9 A. Yes, I can see it. 10 Q. Was that a reference to a collision involving vessels of 11 your company, or was it a reference to collision of 12 vessels belonging to other companies? 13 A. My recollection is that our company was not involved in 14 any collision, and judging from here, I believe it is 15 a collision on the route to Macau, the Macau route, and 16 not a collision of our own company. 17 Q. So, other vessel operators? 18 A. Yes, I believe so. 19 Q. Because I've been through the list of incidents supplied 20 by your lawyers and I couldn't find a collision around 21 about that time. 22 So you are using collisions of other ferry operators 23 to remind your staff to be careful? 24 A. Yes. 25 Q. If we move down the same page, after that very long line</p>

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<p>1 across the page, we see a reference to "Coxswain", so it 2 may be the chief coxswain or a coxswain speaking: 3 "Dangerous to follow Kong Ching too closely when it 4 sails out of Shun Tak Centre." 5 What is that reference about? 6 A. It has taken place a long time ago, but judging from the 7 wording, it should be a reminder by the coxswain about 8 a vessel running between Hong Kong and Macau. The word 9 "Macau" has been omitted here. 10 Q. I see. So the second Chinese character after "gong" 11 should be "ngo"; is that what you're saying? 12 A. I would like to give another explanation. It was about 13 the vessels of Shun Tak sailing after our own vessel at 14 a relatively high speed, that is about 40 knots, and 15 because it was too close to our vessel, so it was 16 dangerous. 17 My recollection is that we have already informed the 18 Shun Tak Shipping Company and the Pearl River Shipping 19 Company because it is the practice of the trade that we 20 would inform each other of these kind of incidents. 21 Q. So the concern or the worry was that the Hong Kong-Macau 22 ferries were sailing too close after your vessels? 23 A. Although I am not an expert, but judging from the 24 wording, I believe that this is correct. 25 Q. Thank you. Could I now ask you to look at page 163.</p>	<p>1 again." 2 Do you see "(Chinese spoken)"? 3 A. I can see it. 4 Q. What is that incident about? 5 A. If I remember correctly, it was about a minor collision 6 that happened to a coxswain. It was a collision with 7 a wooden boat. He didn't report the incident to us, and 8 it was not discovered until somebody came to sue 9 compensation from the company. So if I remember 10 correctly, he has been terminated. 11 MR ZIMMERN: Mr Chairman, Mr Commissioner, I don't know if 12 it assists but we do actually have a copy of the report 13 that we can provide in 10 minutes. Because this event 14 took place in 2005, so is outside the scope of what was 15 previously requested. 16 THE CHAIRMAN: Very well. If you would be kind enough to do 17 that. 18 MR SHIEH: We will look at it. It does fall outside of the 19 scope of the earlier request. 20 THE CHAIRMAN: Yes. 21 MR SHIEH: Thank you, Mr Ng. Just on this question of 22 collisions and perhaps concealment by coxswains, 23 yesterday I asked you about an incident that was 24 referred to in one of the meeting minutes concerning 25 an incident involving Hoi Ching Ho, Sea Splendid; do you</p>
<p>Page 106</p> <p>1 The English translation is page 182. 2 At item 3, there's a reference to "Hoi Gor". That 3 would be Lam Hoi, the chief coxswain; correct? 4 A. Correct. 5 Q. Then there's a reference to "Safety" and then 6 "Accident", and "Especially Engine Room". 7 A. Yes, I can see it. 8 Q. What's that about? 9 A. It has been a long time. It took place in 2007, and 10 I believe it was the opinion raised by Hoi Gor. 11 I believe he was trying to remind people to pay 12 attention to safety and perhaps some accident might have 13 happened near that day by the vessels of other 14 companies. 15 Q. Very well. Perhaps I will move on to certain entries 16 which might be more specific, which might prompt your 17 memory. Can we look at page 167. The English 18 translation is page 186. 19 This is a record of a meeting in 2005, August. If 20 we could close up on the first entry, it says: 21 "Coxswain -- left employment. 22 Too serious. 23 (a) did not report the incident, recourse is being 24 sought. 25 (b) there was previous misconduct, committing</p>	<p>Page 108</p> <p>1 remember? 2 A. Yes, I remember that. 3 Q. I asked you whether or not any notice or circular had 4 been issued in respect of that specific incident and you 5 said "yes", and that you'd look for it. I think it has 6 now found itself in the bundle at page 253, the 7 translation of which is at page 253-1. That is the 8 notice; correct? 9 A. Please let me take a look at it first. 10 Q. This was an incident about the unidentified object. 11 A. That should be the right one. 12 Q. So, after that incident, the coxswain simply said that 13 the ship hit an unidentified object that turned out to 14 be a buoy, and the company took the view that he was 15 concealing and therefore issued this notice basically by 16 way of reprimand, and then setting out the punishment. 17 A. Yes, that should be the one. 18 Q. Thank you. Lastly, can I take a look at page 169, the 19 translation of which is at page 188. Item 7. Again 20 there's a reference, we see, to "rest time, should have 21 enough rest time". Is that simply by way of gentle 22 reminder, or was it in response to complaint that 23 coxswains were sleepy, not getting enough rest? 24 A. I believe that we have enough time for them to rest. 25 But there were disputes as to the number of rounds they</p>

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<p>1 sailed. For instance, one of them might have sailed 2 10 trips, while the other one might have only done about 3 six trips. And so they were having a dispute over this 4 matter. 5 Q. So different coxswains were quibbling over "Why you work 6 for one day, I work for one day, you have to sail so 7 many trips and I have to sail so many trips"; is that 8 the sort of quibbling? 9 A. This is a matter of interpretation. In fact they were 10 taking rotation in the trips. For instance, on one 11 particular day, I might be taking 10 trips, but if 12 I were posted to work on the other vessel, I might sail 13 for about six or seven rounds. So then the other person 14 won't dispute. So they were discussing this matter. 15 Q. I know. But this is the sort of quibbling that this 16 item in the record was talking about; right? I'm not 17 talking about whether or not the company was right or 18 wrong. I know there's an explanation. But this is the 19 sort of quibbling that this item was talking about? 20 A. They just want to know the reason why, and after we 21 explained to them, there was nothing special. 22 Q. Thank you. Could I now turn to your witness statement 23 in the Holman Fenwick bundle, page 6. There is 24 a section headed "Improvements". Actually the initial 25 request by the Commission's solicitors focused on the</p>	<p>1 to and attend the drills in accordance with the 2 schedule. 3 A. Correct. 4 Q. Then at pages 68 to 81 -- and the English is pages 82 5 to 95 -- this is a series of notices that the company 6 had issued to coxswains and staff. 7 A. Correct. 8 Q. Then you talked about new stickers on board the vessels 9 to remind the passengers of safety issues, and those are 10 at pages 97 and 98. In fact they set out the 11 differences: page 97 is the old version; page 98 is the 12 new version. And pages 99, 100 and 101 are new 13 stickers. 14 A. Correct. 15 Q. Then you have new life jacket instructions at pages 103 16 and 104, instructions as to donning of life jackets. 17 A. Correct. 18 Q. And then you have installed televisions, four 19 televisions on board to play videos as to safety 20 demonstrations. 21 A. Yes, we are in the process of doing this. 22 Q. I thought at paragraph 33 of your witness statement you 23 said that these have been installed on board? Or is it 24 for some vessels only at the moment? 25 A. But since it takes some time to have the cables laid and</p>
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<p>1 regime in place at the material time. So strictly 2 speaking, any improvement measures did not fall within 3 the ambit of what was requested. But could I just take 4 you very briefly to what you said. 5 At paragraph 25, you mentioned: 6 "... the companies have hired Mr Liu ... and Mr Wong 7 ... as operation executive and marine & safety executive 8 respectively." 9 Correct? 10 A. Yes, I can see it. 11 Q. That's correct, yes? Is that correct? Yes. 12 In the next paragraph you talked about notices that 13 have been issued. Can we look at that, at pages 56 14 and 57. That's the notice that had been issued by 15 Mr Wong Ho-yam, the marine & safety executive; correct? 16 A. Correct. 17 Q. At paragraph 27, you talk about the system whereby there 18 would be monthly emergency drills and training, despite 19 the requirement by Marine Department that these should 20 be performed every two months; correct? 21 A. Correct. 22 Q. At pages 59, 60 -- the English is at pages 61, 62, 63 -- 23 you set out the new format for the drill timetable. 24 A. Correct. 25 Q. Then pages 65 and 66 is a reminder for the crew to stick</p>	<p>1 it has to be done in the shipyard, so they are being 2 done in turn. 3 Q. Basically there would be two televisions per deck? 4 A. Yes, this should be the correct way to understand. 5 Q. At pages 110 and 111 we can see the deck plan and we can 6 see where the televisions are. At page 110 we can see 7 the main deck, and the televisions are marked in 8 manuscript. If we look at the top plan, that shows 9 where the televisions are. Over to the right of the 10 screen -- "TV". Right-hand side. That's the one. The 11 other television is near the middle. Yes. That's 12 correct? 13 A. Correct. 14 Q. For this vessel, Sea Serene? 15 A. Correct. 16 Q. And then the next page, 111, it shows the roof deck or 17 the upper deck. Again, the television locations are 18 marked in handwriting. 19 A. Correct. 20 MR SHIEH: Thank you, Mr Ng. I do not have any further 21 questions for you as yet. Please remain seated. Other 22 counsel may have some questions for you. 23 THE CHAIRMAN: Mr McGowan, do you have any application? 24 MR MCGOWAN: Yes, I do, sir. I'd like to ask some questions 25 about the Hong Kong Ferry fleet, their number of</p>

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<p>1 employees; how the relationship with Islands Ferry Ltd 2 works; their life jacket arrangements; their contractual 3 relationship with Hong Kong Ferry that we heard about, 4 particularly in relation to Lamma II -- 5 MR SHIEH: You mean Hongkong Electric? 6 MR McGOWAN: Sorry, Hongkong Electric. Thank you very much. 7 The fog lamp; reporting of accidents; written 8 guidelines; and one or two other matters. 9 THE CHAIRMAN: Do you have any documents that you are going 10 to be referring to in relation to the Hongkong Electric 11 contract? 12 MR McGOWAN: Yes, I do. They have been put in and they're 13 RSRB bundle at page 1058 onwards. 14 THE CHAIRMAN: What are these "one or two other matters"? 15 MR McGOWAN: Well, one or two matters arising from the 16 meetings; and the drills carried out on board. 17 THE CHAIRMAN: Yes, very well. Proceed. 18 MR McGOWAN: Thank you, sir. 19 Examination by MR McGOWAN 20 MR McGOWAN: Mr Ng, I'm representing the Hongkong Electric 21 Company and also the crew of the Lamma IV in this 22 Inquiry. 23 A. Yes. 24 Q. You told us when you started giving your evidence, and 25 you were using your witness statement which appears in</p>	<p>1 & Kowloon Ferry Holdings Ltd, including its 2 subsidiaries. They are distributed among the parent 3 company and the subsidiaries. 4 THE CHAIRMAN: What's the relevance of this to this 5 Commission, Mr McGowan? 6 MR McGOWAN: I was going on to ask whether the people who 7 work on Sea Smooth and other Islands Ferry Company 8 vessels are employees of Hong Kong Ferry Company or the 9 subsidiary company. 10 A. All of them are employees of Hong Kong & Kowloon Ferry 11 Holdings Ltd. They were deployed to work in different 12 subsidiaries. 13 Q. Right. So they have a common recruitment, training and 14 management across your fleet? 15 A. You can understand it that way. 16 Q. Right. And how many people do you have working on your 17 vessels in total? 18 A. There is a chance that there are changes on a daily 19 basis. Would you like me to explain to you? 20 THE CHAIRMAN: No, just give us a ballpark figure, if you 21 would, to start with at least. 22 A. We have about 20 to 21 coxswains; about 21 to 23 22 engineers; and 42 to 44 sailors. 24 MR McGOWAN: Thank you. And the normal crew for each of 25 your vessels is four people?</p>
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<p>1 the Holman Fenwick bundle, I think, at page 1 onwards, 2 that you were not only the general manager of Hong Kong 3 & Kowloon Ferry Ltd but also the director and general 4 manager of Islands Ferry Company Ltd. 5 A. Correct. 6 Q. And that it was the latter company, Islands Ferry 7 Company Ltd, who were the actual owner and operator of 8 Sea Smooth? 9 A. Correct. 10 Q. Could you just help me, and I hope the Commission, with 11 the arrangement between the two companies? 12 A. Islands Ferry Ltd is wholly owned by Hong Kong & Kowloon 13 Ferry Ltd. 14 Q. Right. And they operate four vessels? 15 A. Correct. 16 Q. Which they also own? 17 A. Correct. 18 Q. Are the 13 other vessels you mentioned as being Hong 19 Kong & Kowloon Ferry vessels also owned by separate 20 smaller companies? 21 A. Do you mean three vessels? 22 Q. You said in your evidence Hong Kong Ferry had 13 vessels 23 and Islands Ferry had four. 24 A. I think I need to clarify about this. 25 We have in total 13 vessels owned by Hong Kong</p>	<p>1 A. You can understand it that way. 2 Q. I'm just asking because I notice you have 3 different-sized vessels and different sorts of vessels. 4 A. The number was in accordance with the approval of the 5 Marine Department. So most of them have four crew. 6 Q. Right. If I've understood your evidence correctly, they 7 work 24 hours on and 24 hours off? 8 A. Yes. 9 Q. And they join the ferry in the morning and work all the 10 way through, and then leave it the next morning, at 11 about 8 o'clock? 12 A. You can understand it that way. 13 Q. Well, that's how I understood it. Is that right, Mr Ng? 14 A. You can understand it that way. 15 Q. Thank you. Do you train your own staff or do you 16 recruit people from the rest of the industry? 17 A. Mostly from the industry. 18 Q. Do you have a high staff turnover? 19 A. As far as I understand, it was not high. 20 Q. I noticed from the records that the crew on duty on Sea 21 Smooth that night had all joined you either in 2008 or 22 2009. 23 A. Here I would like to make an explanation. The reason 24 the coxswain joined the company in 2008 was because 25 a subsidiary company under our company has opened up</p>

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<p>1 a route to Peng Chau. And there is a provision in the 2 tender document that we are obliged to employ the 3 employees of our previous company. And this is the 4 reason for this situation. 5 Q. Right. So you're saying he moved across, so to speak? 6 A. You can understand it that way. 7 Q. When people join your company, do you give them any form 8 of medical check? 9 A. Since most of the staff were recruited in this manner, 10 so we just consult the former company. So most of them 11 haven't done that. 12 Q. Right. And we've heard some evidence about eyesight 13 checks. Are general health checks provided for your 14 staff members on an annual or longer basis, but regular 15 health check-ups? 16 A. As I have responded to Mr Shieh, we did that in 17 accordance with the law. So we haven't done that. 18 Q. Right. So there are no regular health checks? 19 A. Correct. 20 Q. That's even for the people who are manning and in fact 21 in charge of your ferries? 22 A. You can look at it that way. 23 Q. Mr Ng, several times during your evidence you've made 24 reference to what you've described as "industry 25 standards" in response to questions.</p>	<p>1 Ltd. 2 Q. Do you belong to that? 3 A. Yes. 4 Q. Is that, if I can describe it, an official organisation, 5 with membership and minutes and so on? Regular 6 meetings? 7 A. Yes. 8 Q. Do the Marine Department attend that meeting? 9 A. I don't think there is any reason for the Marine 10 Department to attend the meetings between the members. 11 But if there is any agenda related to them, we would 12 invite them to attend the meeting. 13 Q. Right. Does that association discuss and set various 14 standards across the membership? 15 A. They have to fulfil the requirements of the Hong Kong 16 Marine Ordinance, and we also have some executive 17 members who serve as committee members of the committees 18 in the Marine Department. 19 Q. Thank you. So it's a sort of -- not exactly a trade 20 union, but just a body who will represent the interests 21 of its membership to Mardep if necessary, either 22 directly or indirectly through these committees? 23 A. You can understand it that way. It is a trade union and 24 not a work -- it's a commercial union and not -- 25 A. (In English) Labour union.</p>
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<p>1 THE CHAIRMAN: I don't think he called it "industry 2 standards"; I think he called it "the practice in the 3 trade" or "our counterparts". 4 MR McGOWAN: The Chairman is absolutely right. 5 I didn't adopt quite the language you used, Mr Ng. 6 Do you understand what I'm talking about, "the practice 7 in the trade"? 8 You look a bit puzzled. Do you want me to try and 9 explain what I'm asking you? 10 A. I'm just trying to figure out how to answer your 11 question. 12 Q. If you don't understand it, I'll repeat it or try and 13 make it clearer. 14 A. Yes, please do. 15 Q. Yes. What I'm about to ask you is based on your answers 16 to a number of questions, where you described various 17 things as being effectively "practice in the trade" or 18 "practice in the industry" of operating ferries in 19 Hong Kong. Do you remember that? 20 A. Yes. 21 Q. Is there an association of ferry operators in Hong Kong 22 that meets and agrees various practices or standards? 23 A. There is no formal meeting as far as the ferry operators 24 are concerned, but some ferry operators have joined the 25 Hong Kong & Kowloon Motor Boats & Tug Boats Association</p>	<p>1 A. -- a labour union, and its committee acts for its 2 members. 3 Q. Who are the owners and operators? 4 A. You can understand it that way. 5 Q. Are you able to say from your experience that the 6 operating arrangements and conditions of your crew are 7 very similar to those on other public passenger ferry 8 companies in Hong Kong? 9 A. You can understand it that way. 10 Q. So 24-hour working days, one on, one off, are common 11 throughout? 12 A. As far as I know, this is very common. 13 Q. Are they having the same sort of difficulties as you've 14 been having with your coxswains? 15 A. What do you mean by "difficulties"? 16 Q. You told us -- not yesterday, but I think the day before 17 yesterday, Mr Ng -- that you'd had to ask your coxswains 18 to work extra days to ensure you had enough people to 19 man your fleet, and indeed were at least considering 20 promoting engineers into acting coxswains, to keep your 21 ships running. 22 A. What I said was that we have no problem with the basic 23 service. It's only that sometimes their resting times 24 have to be shortened. 25 Q. That's the resting time on a particular day, or the days</p>

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<p>1 off?</p> <p>2 A. As I explained to Mr Chairman yesterday, our company</p> <p>3 provides four Sundays off. What I mean is that only</p> <p>4 maybe they have to take one or two days less among the</p> <p>5 four Sundays, from the four Sundays.</p> <p>6 Q. Do your competitors have to make the same manning</p> <p>7 arrangements?</p> <p>8 A. I don't understand what you mean by "competitors".</p> <p>9 Q. Are they also having to ask their coxswains in</p> <p>10 particular to give up their Sundays off?</p> <p>11 A. Although I am not in a position to answer on their</p> <p>12 behalf, but as far as I know, some operators are faced</p> <p>13 with the same problem.</p> <p>14 Q. Thank you. You provided us with an organisational</p> <p>15 structure which is at page 203.</p> <p>16 A. Yes.</p> <p>17 Q. The operations executive is Mr Larry Cheung.</p> <p>18 A. Yes.</p> <p>19 Q. Is he responsible for the day-to-day running of the</p> <p>20 ferry fleet?</p> <p>21 A. Correct.</p> <p>22 Q. He's made a statement to the Marine Department following</p> <p>23 the collision. I'm not going to take you to that now,</p> <p>24 but have you read that statement?</p> <p>25 A. I haven't really officially reviewed it.</p>	<p>1 is that the position?</p> <p>2 MR McGOWAN: I don't know whether it would help if he was</p> <p>3 allowed to look at it to see if he recognises it or not.</p> <p>4 THE CHAIRMAN: Well, let's just deal with what his evidence</p> <p>5 is.</p> <p>6 A. Mr Chairman, I think there isn't a big difference, and</p> <p>7 I was saying that because I have taken medicine, so I'm</p> <p>8 not sure whether I have read it or not.</p> <p>9 THE CHAIRMAN: Thank you. That's enough.</p> <p>10 Yes, Mr McGowan.</p> <p>11 MR McGOWAN: How many people work in your operations</p> <p>12 department?</p> <p>13 A. As you can see from this organisation chart, there is</p> <p>14 only Larry Cheung.</p> <p>15 Q. He has no subordinates at all?</p> <p>16 A. As I have said, Mr Lam Hoi was placed in the list of the</p> <p>17 outdoor staff.</p> <p>18 Q. Right. Just before we move on to Mr Lam Hoi, does your</p> <p>19 company run an operations room which is open 24 hours so</p> <p>20 if any of your vessels have any problems, they can</p> <p>21 contact somebody immediately?</p> <p>22 A. The officer in charge of the pier is responsible for</p> <p>23 this work.</p> <p>24 Q. Right. And that's for all ferries, is it, wherever</p> <p>25 they're operating?</p>
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<p>1 Q. Have you read it at all?</p> <p>2 A. No. Strictly speaking, no.</p> <p>3 THE CHAIRMAN: Either you've read it or you haven't.</p> <p>4 "Strictly" or "unofficially" or "officially" is neither</p> <p>5 here nor there. Have you read it?</p> <p>6 A. I'm sorry, Mr Chairman. As I have said during the first</p> <p>7 10-odd days, I have been taking psychiatric medication</p> <p>8 for about 10 days so I'm not going to give a direct</p> <p>9 answer to what I'm not sure.</p> <p>10 THE CHAIRMAN: No, you're simply being asked if you've read</p> <p>11 it. If you haven't read it, say you haven't read it.</p> <p>12 If you have read it, say you've read it.</p> <p>13 MR McGOWAN: Or if it's a long time ago and you've forgotten</p> <p>14 about it, say that, Mr Ng. I'm just asking whether</p> <p>15 you've read it or not.</p> <p>16 A. I choose to say that I have forgotten about it.</p> <p>17 THE CHAIRMAN: Well, is that the truth? When you say you</p> <p>18 choose to say that, is that the truth?</p> <p>19 THE INTERPRETER: (Chinese spoken).</p> <p>20 A. (Chinese spoken).</p> <p>21 THE CHAIRMAN: Is there a translation problem?</p> <p>22 MR ZIMMERN: I think in fairness he said, "I've forgotten.</p> <p>23 I can't remember."</p> <p>24 THE CHAIRMAN: You're saying on your affirmation that you</p> <p>25 can't remember whether or not you've read the statement;</p>	<p>1 A. You can understand it that way.</p> <p>2 Q. Well, I'm just asking you to confirm that's the</p> <p>3 situation, Mr Ng.</p> <p>4 A. Yes.</p> <p>5 Q. And that's the pier in Central?</p> <p>6 A. Yes.</p> <p>7 Q. Is there a sort of operations room with a radio which is</p> <p>8 on all the time so vessels can call him?</p> <p>9 A. Yes. Apart from radio, they also have a handheld radio</p> <p>10 and mobile phones.</p> <p>11 Q. And is he part of Mr Larry Cheung's organisation, the</p> <p>12 operations executive on the diagram?</p> <p>13 A. Correct.</p> <p>14 Q. You mentioned Lam Hoi. He's the chief coxswain of the</p> <p>15 companies?</p> <p>16 A. Correct.</p> <p>17 Q. And you know he's made a witness statement?</p> <p>18 A. I don't remember.</p> <p>19 Q. Well, I won't ask any other questions about that again</p> <p>20 at the moment. I would ask that you have a look at that</p> <p>21 before we continue, Mr Ng.</p> <p>22 THE CHAIRMAN: What is the relevance of this line of</p> <p>23 questioning, and in particular what's the relevance to</p> <p>24 you questioning on behalf of Hongkong Electric, given</p> <p>25 that this is a Commission?</p>

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<p>1 MR McGOWAN: Yes, sir. I think it's a question of 2 standards, sir. 3 THE CHAIRMAN: I think you've canvassed this area 4 sufficiently as it is. I'd invite you to move on to one 5 of your other topics. 6 MR McGOWAN: Yes. Thank you. 7 You've gone on in your witness statement to talk 8 about the regime in place for ongoing training, at 9 paragraph 6 onwards. That sets it all out in great 10 detail. 11 A. I can see it. 12 Q. You've produced a number of copies of the guidelines and 13 amended guidelines which are attached to your statement; 14 correct? 15 A. Correct. 16 Q. Were these the guidelines that were in force on 17 1 October last year? 18 A. Correct. 19 Q. You also have in the annex a set of instructions, 20 annex D, of what's to be done in the event of 21 an incident on board by various members of the crew. 22 A. Correct. 23 Q. I'd like to ask you one or two questions about that, 24 please. At paragraph 19 of your statement, you have set 25 out what the coxswain is supposed to do in the event of</p>	<p>1 "Exchange information with [the other party or the 2 opposite party] and try to understand their situation." 3 A. Yes. 4 Q. It goes on, "Provide assistance if necessary". 5 A. Yes, I can see it. 6 Q. That was the standing instruction that was in operation 7 on 1 October last year? 8 A. Yes. 9 Q. Then at paragraph 8 you go on to address a number of 10 different scenarios, starting with (a). 11 A. Yes, correct. 12 Q. And that requires the coxswain to contact and enquire of 13 the situation of the other vessel? 14 A. Correct. 15 Q. I'm not quite sure if this has been translated 16 accurately, whether it should read "if there is no risk 17 of sinking, leave the collision scene", or how it's been 18 typed or translated is that with a full stop, so it 19 originally reads -- 20 MR SHIEH: The "not" could well have been otiose. It should 21 actually say, "If water keeps entering the vessel and 22 the vessel is at risk of sinking", I think that would be 23 a more appropriate way of putting it. 24 THE CHAIRMAN: Thank you. 25 MR McGOWAN: Sorry, I'm now a bit confused. So it should</p>
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<p>1 a collision. 2 A. Correct. 3 Q. That includes passages which you were taken to 4 yesterday, which has: 5 "If the vessel has a risk of sinking, he should seek 6 for assistance and find the nearest and appropriate 7 place for grounding with appropriate light signals or to 8 berth the vessel." 9 A. Correct. 10 Q. Those are expanded in annex D with the English 11 translation being at page 44, a page headed "Collision 12 Regulations". Again, you were asked questions about 13 that yesterday. 14 A. Yes. 15 Q. Item 7 on that list is: 16 "Exchange information with the opponent vessel and 17 try to understand their situation." 18 THE CHAIRMAN: Is "opponent" perhaps a misinterpretation? 19 MR McGOWAN: I'm sure it is. 20 THE CHAIRMAN: Perhaps we could find out what the correct 21 interpretation is. 22 MR SHIEH: "The other side", "the other party". 23 THE CHAIRMAN: So it's not jousting after all? 24 MR McGOWAN: Indeed not, sir. 25 You see that, section 7:</p>	<p>1 read -- 2 MR SHIEH: Perhaps the witness could simply be directed to 3 read the Chinese version, the bottom of page 40, because 4 that makes the sense quite clear, that it's "(Chinese 5 spoken)": "There's a risk of sinking". 6 MR McGOWAN: Right. Thank you. 7 A. Yes, I can see it. 8 Q. The coxswain is also required to make a collision report 9 to the Marine Department 24 hours within 24 hours after 10 the collision. 11 A. Yes, I know that. 12 Q. Was a report made in this particular case? 13 A. I have handed it over to the lawyer. 14 Q. That was a written report? 15 A. What I mean is that I have left this incident, left this 16 case to the lawyer. 17 Q. Thank you, Mr Ng. Was there a report given to the 18 lawyers, or did you just pass the matter on to them? 19 A. At that time I only arrived in Hong Kong on the 2nd, and 20 I knew that my colleagues had already been detained by 21 the police. So I have passed over the whole case, 22 including the report, to the lawyer. I would like to 23 add that before I returned, our company had requested 24 the lawyer to take care of the case. 25 Q. Can you just help me with the position of drills like</p>

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<p>1 fire-fighting drills, man overboard, evacuation drills, 2 and how frequently those were exercised before the 3 collision? 4 A. According to the law, these drills have to be done once 5 on every annual docking. But we did conduct these 6 drills on irregular basis. 7 Q. How frequently is "irregular"? 8 A. It was decided according to the manpower resources and 9 various conditions. 10 Q. How many times a year would either a vessel or a man, 11 one of your marine staff, perform one of these 12 exercises? 13 A. There is no fixed number of times. 14 Q. That's now changed with your new programme? 15 A. Correct. 16 Q. You go on to talk about the experience of your crew 17 members. Were you aware that one of your sailors who 18 was on board the Lamma II on the night of the incident 19 was illiterate? 20 A. I would like to reiterate that this is very common in 21 the industry. 22 THE CHAIRMAN: No. Were you aware that this sailor on the 23 Lamma II was illiterate? 24 A. Yes. 25 THE CHAIRMAN: Thank you.</p>	<p>1 back after we've taken a break for the holiday season; 2 that is on Monday, 18 February at 10 o'clock. Would you 3 be kind enough to make yourself available so we can 4 resume with what I hope will be a short period of 5 questioning that will bring your evidence to 6 a conclusion. Thank you. 7 A. Thank you, Mr Chairman. 8 (The witness stood down) 9 THE CHAIRMAN: Mr Mok? 10 MR MOK: I understand that the witness statement has just 11 been -- 12 THE CHAIRMAN: As at 4.26, because I've been making 13 enquiries all day. This isn't good enough, Mr Mok. 14 MR MOK: I'm sorry about that. 15 THE CHAIRMAN: That's why we're going to issue an order. 16 I'll ask that that be given to you now. We want this 17 material to be provided to the Commission by Thursday 18 close of business next week. 19 MR MOK: Yes. Thank you. 20 THE CHAIRMAN: We try not to shoot messengers, but those 21 that lie behind the messengers must get the message that 22 we're sending. 23 MR MOK: Yes. 24 THE CHAIRMAN: Yes, Mr McGowan? 25 MR MCGOWAN: Sir, we spoke yesterday about the seats.</p>
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<p>1 MR MCGOWAN: Are any special steps taken to ensure that they 2 are able to read your instructions? 3 A. We rely on the coxswain to instruct this crew. Or, in 4 case there is anything he doesn't understand, he could 5 consult the chief coxswain or the shipping section. 6 Q. And the chief coxswain is a man who maintains standards 7 within your fleet; is that correct? 8 A. Yes. 9 Q. And does he go to sea with them, on journeys with them, 10 on a regular basis? 11 A. He conducts regular inspection. 12 Q. Right. And he's known to all the crew; is that correct? 13 A. Correct. 14 Q. Does he have anyone to help him in this job, with your 15 13 vessels? 16 A. He conducts this job by himself. 17 MR MCGOWAN: I'm about to move on to something else, sir. 18 Would that be a convenient moment? 19 THE CHAIRMAN: Yes. I'm wondering what the focus of all 20 this is. Frankly, this line of questioning has almost 21 been a filibustering exercise for the last half an hour. 22 There's no focus on this at all. But since we've 23 reached 4.30, we'll adjourn. 24 Mr Ng, I'm sorry that we haven't reached the end of 25 your testimony. I'm going to have to ask you to come</p>	<p>1 A letter was sent to the Commission this morning. I'm 2 just wondering if you want any more information than 3 that we already provided. 4 THE CHAIRMAN: This is in relation to? 5 MR MCGOWAN: The repairs of the seats. 6 THE CHAIRMAN: I've yet to see that. So we'll consider that 7 over the break and we'll come back to you on that then. 8 MR MCGOWAN: Certainly, sir. 9 Directions 10 THE CHAIRMAN: I'm proposing now to give some directions 11 that resonate with what I said on 5 December when 12 I indicated this, and this is at page 85 of the 13 transcript, line 12: 14 "Counsel for the Commission and counsel for the 15 involved parties may make closing addresses. The 16 Commission may determine the sequence and length of such 17 addresses." 18 That is what I propose to deal with now, and I do so 19 in the hope that this will help counsel, and in order to 20 deal specifically with what Mr Grossman raised some days 21 ago now and I said that I would come back to, and that's 22 what I'm doing now. 23 In formulating the directions, which are very 24 specific, that I'm about to give, we have had regard to 25 the Practice Direction 4.1 for Civil Appeals to the</p>

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1 Court of Appeal, and in particular to those that relate
2 to skeleton arguments, and they condescend to some
3 detail as to the size of submissions.
4 We will receive written and oral submissions from
5 counsel at the conclusion of the receipt of evidence
6 before the Commission. Subject to any submissions of
7 counsel, we will receive written submissions limited to
8 a maximum of:
9 -- as to the involved parties, 50 pages of A4 size,
10 14-font, 1.5-spacing and a minimum margin of 1 inch.
11 The limit to encompass everything, footnotes and
12 appendices, but not copies of legal authorities.
13 -- counsel to the Commission may submit a written
14 submission limited to a maximum of 100 pages, with the
15 same stipulations as to size, font, spacing and margin.
16 The difference between the limits is obvious.
17 Counsel for the Commission is addressing everything, to
18 assist the Commission. Individual involved parties have
19 different roles to play in representing their interests.
20 Counsel to the Commission is to provide copies to
21 the Commission and all parties on one day. All other
22 parties are to provide copies of their submissions the
23 following day; that is, the day following that day on
24 which counsel for the Commission has provided their
25 written submissions. We will come to the fine details

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1 when we get closer to it.
2 Turning then to oral submissions.
3 Counsel for the Commission may make an oral closing
4 submission limited to a maximum of two hours.
5 Thereafter, counsel for each of the involved parties may
6 make oral closing submissions limited to a maximum of
7 one hour, in the following sequence: (1) counsel for
8 Hongkong Electric and the crew of Lamma IV; (2) counsel
9 for Hong Kong & Kowloon Ferry, Islands Ferry, and the
10 crew of Sea Smooth; (3) counsel for Marine Department,
11 Police and Fire Services; (4) counsel for Cheoy Lee; and
12 (5) counsel for China Classification Society.
13 In stipulating maximum sizes, counsel are not to be
14 thought that they are not doing their duty to their lay
15 clients if they are able to submit their submission in
16 less length. Brevity is a merit and not a default.
17 Just to tidy up one of the matters that we dealt
18 with earlier today. We asked Captain Pryke to calculate
19 the distance that Sea Smooth was from the fog light at
20 various points in time, and I'd ask that the table he's
21 produced be put up on the screen, and we can read that
22 into the record. I think it's page 361-61.
23 MR SHIEH: Does Mr Chairman wish that to be actually
24 officially read for the --
25 THE CHAIRMAN: Yes. I'm quite prepared to read it myself.

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1 The table sets out the information in this way:
2 "20:17 hours, 1.97 nautical miles.
3 20:18 hours, 1.59 nautical miles.
4 20:18:30 hours, 1.38 nautical miles.
5 20:19 hours, 1.20 nautical miles.
6 20:19:30, 1.02 nautical miles.
7 20:20 hours, 0.80 nautical miles."
8 One other matter of tidying up for the benefit of
9 members of the public.
10 Mr Shieh, we've received a response, have we not,
11 from the America Bureau of Shipping in relation to our
12 enquiry of them as to whether or not they still had the
13 certificates relating to the aluminium that was supplied
14 to Cheoy Lee, the certificate that is said to have been
15 received by Cheoy Lee I think in April 2005?
16 MR SHIEH: Yes.
17 THE CHAIRMAN: And the result of that, if one can just
18 summarise it, is that they don't have any records that
19 can assist us?
20 MR SHIEH: Yes. We're trying to locate the communication.
21 Perhaps if Mr Chairman so wishes, we may simply project
22 that on the screen.
23 THE CHAIRMAN: Yes. If you can find the reference.
24 MR SHIEH: Yes, that's being put in train.
25 THE CHAIRMAN: I think it was a short email and simply says,

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1 "We've looked at our records and there isn't anything
2 there."
3 MR SHIEH: It's in the correspondence bundle, page 158.
4 THE CHAIRMAN: I'm told it's not something that can be put
5 on the screen, so perhaps you would just read it out.
6 MR SHIEH: I'll just read it out. There is actually
7 a series of enquiries --
8 THE CHAIRMAN: I think it's just the result we need.
9 MR SHIEH: -- the latest of which is from the American
10 Bureau of Shipping by an email dated 5 February,
11 Mr Timothy Bush, addressed to Ms Abdullah of
12 Messrs Lo & Lo, simply stating:
13 "We have searched our records and do not have the
14 requested documents."
15 So that is the response.
16 THE CHAIRMAN: Thank you very much.
17 Looking ahead, Mr Shieh, what evidence might we be
18 expecting to receive on Monday, 18 February?
19 MR SHIEH: After Mr Ng, there are the two Marine Department
20 inspectors who respectively took part in the 2012 and
21 2011 surveys which gave rise to the two certificates of
22 survey with the asterisk in respect of adult and child
23 life jackets. We are yet to receive the individual
24 statements from the Marine Department inspectors who
25 carried out the inspection for the preceding years, in

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<p>1 other words 2010 --</p> <p>2 THE CHAIRMAN: Correct. So we've got 2011 and 2012,</p> <p>3 Messrs Wong Kam-ching and Lau Wing-tat?</p> <p>4 MR SHIEH: Yes. Those two will be called. As things now</p> <p>5 stand, the witnesses after those would be the coxswain</p> <p>6 and the crew of the Lamma IV, followed by the coxswain</p> <p>7 and the crew of the Sea Smooth.</p> <p>8 THE CHAIRMAN: Thank you.</p> <p>9 MR SHIEH: There are, of course, possibly other</p> <p>10 miscellaneous witnesses who may come up, for example, as</p> <p>11 and when the witness statements from Marine Department</p> <p>12 come in in respect of prior inspections in 2010, 2009,</p> <p>13 and maybe statements explaining the system, et cetera.</p> <p>14 THE CHAIRMAN: Yes.</p> <p>15 MR SHIEH: Those may have to be called after the crew.</p> <p>16 THE CHAIRMAN: Yes, and also we are looking for the</p> <p>17 representative, who I think has now been identified, of</p> <p>18 Cheoy Lee who was present at the surveys in 2011 and</p> <p>19 2012.</p> <p>20 MR SHIEH: Yes. We have also finally managed to track down</p> <p>21 the draftsman, Mr Cheung Fook-chor --</p> <p>22 THE CHAIRMAN: The octogenarian draftsman --</p> <p>23 MR SHIEH: -- previously employed by Cheoy Lee. He is</p> <p>24 indeed an octogenarian. He is, I think, about 80 years</p> <p>25 old. He has been contacted and is prepared to assist.</p>	<p>1 I N D E X</p> <p>2</p> <p>3 CAPTAIN NIGEL ROBERT PRYKE (on former oath)1</p> <p>4 Examination by MR SUSSEX (continued)1</p> <p>5 Further examination by MR SHIEH65</p> <p>6 (The witness withdrew)97</p> <p>7 MR NG SIU-YUEN (on former affirmation in Punti)97</p> <p>8 Examination by MR SHIEH (continued)98</p> <p>9 Examination by MR McGOWAN113</p> <p>10 (The witness stood down)131</p> <p>11 Directions132</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>1 So he is yet another witness who has to be called after</p> <p>2 the --</p> <p>3 THE CHAIRMAN: Yes. We'll anticipate that, then, in the</p> <p>4 week of the 18th. But thank you for outlining where we</p> <p>5 lie.</p> <p>6 Before we rise, though, and we're going to do so in</p> <p>7 a moment, I'm reminding everyone that we will recommence</p> <p>8 the hearing at 10 o'clock on Monday, 18 February.</p> <p>9 May we wish everyone the compliments of the season.</p> <p>10 Kung hei fat choi.</p> <p>11 (4.45 pm)</p> <p>12 (The hearing adjourned until 10 am</p> <p>13 on Monday, 18 February 2013)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	