

IN THE MATTER OF THE COMMISSION OF INQUIRY

INTO THE COLLISION OF VESSELS NEAR

LAMMA ISLAND ON 1 OCTOBER 2012

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**CLOSING SUBMISSIONS OF  
THE CHINA CLASSIFICATION SOCIETY**

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1. These written closing submissions are served on behalf of our client, the China Classification Society ("**CCS**"). References in square brackets are to the volume, tab and (where appropriate) page numbers of the hearing bundles, save that those with the prefix 'T' are to the day, page and line numbers of the hearing transcripts.
2. We have had an opportunity to have sight of the Closing Submissions of Counsel for the Commission of Inquiry into the Collision of Vessels near Lamma Island on 1 October 2012 (the "**Commission**"). We have noted and agree with, in particular, the conclusions drawn by the Counsel for the Commission in paragraph 95 of its Closing Submissions. In view of the concessions made in the course of testimony by Dr. Neville Armstrong ("**Dr. Armstrong**"), the expert naval architect retained to advise the Commission, and further discovery of materials, there can respectfully be no basis for the Commission to find that the thickness of side plating of the hull of the Vessel had been or might have been causative of its rapid sinking.

3. We shall deliberately refrain from commenting on the other issues raised over the course of the inquiry, including but not limited to issues of navigation, safety equipment, drawings approval, watertight bulkhead, weight increase of the Vessel, etc., as these issues do not relate to CCS at all.
4. In this Inquiry, the Commission will recall requesting CCS to submit a witness statement, which was duly submitted on 29 January 2013 [**DLAP Bundle 1/2/2-32**]. The deponent of the witness statement is Mr. Zhang Yu, Chief Surveyor and Senior Engineer of CCS, Guangzhou Branch, who first joined CCS in 1992 and was responsible for approving ship drawings and inspection work ("**Mr. Zhang**") [**DLAP Bundle 1/2/2**]. Mr Zhang has always been available for cross examination. Neither the Commission nor any of the Involved Parties expressed interest in wanting an opportunity to test or challenge his evidence. In the circumstances, Mr. Zhang did not need to be called to testify before the Commission and his statement was received by the Commission by way of reading out during the hearing [**T48/p.70/line 7-p.82/line 10**].
5. We therefore submit that the unchallenged evidence of Mr. Zhang should be adopted in full by the Commission based on the following authorities:
  - 5.1 The House of Lords decided in *Browne v Dunn* (1894) 6 R. 67 HL, cited and followed in *Markem Corp v Zipher Ltd* [2006] IP & T 102 CA, and in *Lo Chun Nam v HKSAR* (2001) 4 HKCFAR 1 in Hong Kong, as a rule of professional practice and essential to fair play and fair dealing with witnesses, that (as cited in the *Markem Corp* case, at page 125):

*"[w]here the court is to be asked to disbelieve a witness, the witness should be cross-examined; and failure to cross-examine a*

*witness on some material part of his evidence or at all, may be treated as an acceptance of the truth of that part or the whole of his evidence.*" (emphasis added)

- 5.2 In the *Markem Corp* case, following the rule in *Browne v Dunn*, the Court of Appeal in England held that if the other party would like to argue that the witness' evidence should be disbelieved, the witness must be given a fair opportunity to deal with the allegation.
- 5.3 Following the well-established rule set out above, it is respectfully submitted that the Commission should accept the evidence in Mr. Zhang's witness statement in its entirety.
6. In order to assist the Commission, we shall, in addition to Mr. Zhang's evidence, elaborate further on various points in response to the role played by and the exact involvement of CCS in relation to the inspection, survey and certification of the Vessel, and the circumstances and manner in which the survey was carried out which resulted in the said Survey Report dated 6 September 1995.
7. Cheoy Lee Shipyard ("**CLS**") sub-contracted the construction of the hull of a 28m aluminium launch (Cheoy Lee Yard No. 4625) to Wuzhou Shipyard in Guangxi, the PRC ("**Wuzhou Shipyard**") in 1995, by which Wuzhou Shipyard undertook to construct part of the hull of that vessel. In respect of the hull of that vessel, Wuzhou Shipyard made an application to CCS ("**Application to CCS**"), requesting CCS to conduct a survey in respect of items 1 to 4, 8 in respect of X-ray film examination, 9 to 11 and 13 ("**CCS Items**") on the survey items list of the Marine Department in Hong Kong ("**Mardep**") (Survey Items List, File No. SD/L-7962) ("**Survey Items List**") [**Marine 2/31/265**], the completion of which was subsequently confirmed on behalf of CCS by

Mr. Su Chang Tao, the CCS surveyor, by signing against the said Survey Items List, and issuing a survey report ("**Survey Report**") [**Marine 2/31/266-267**] on 6 September 1995.

8. Contrary to the suggestion from Mr. Grossman, counsel for Hong Kong Electric, it is evident from the Survey Report [**Marine 2/31/266**] that it was Wuzhou Shipyard, not CLS, that had made the Application to CCS [**T27/p.19/line 24-p.20/line 2**].
9. According to the letter and attached Survey Items List from Mardep to CLS on 27 April 1995, there was a clear division relating to survey items between CCS and Mardep. This was also confirmed by Mr. Wong Wing-chuen, Sam ("**Mr. Wong**"), senior surveyor of ships of Mardep, when cross-examined by Mr. Beresford, counsel for the Commission, [**T43/p.74/line 5-p.76/line 19**].
10. When conducting the relevant survey, the CCS surveyor would refer to the Rules for Shipbuilding Surveys, promulgated by the Register of Shipping of the People's Republic of China and effective from 15 April 1984 ("**Rules for Shipbuilding Surveys**"), for guidance [**DLAP Bundle 1/2/15-23**]. CCS Items on the Survey Items List include:
  - 10.1 Item 2, Hull Plating Materials Test: it is Mr. Zhang's evidence that CCS' surveyor confirmed that the hull plating materials had the product certificate issued by the American Bureau of Shipping ("**ABS**"), and compared the label on the said materials against the certificate label. Pursuant to Clause 3.1 of the Rules for Shipbuilding Surveys [**DLAP Bundle 1/2/18**], CCS only had to "*inspect the product certificates of all materials and products to be used in important structures and components of the vessel, and check their embossed stamps or labels*". Due to the vast amount of

ship plates, at this stage of ship plate certificate inspection a surveyor could not and would not even ascertain precisely which part of the shipbuilding would a certain ship plate be used, and would only compare the certificates against the actual label on the plates to ensure that the plates in question had valid product certificates. For the avoidance of doubt, CCS was not required to measure the thickness of any hull plates, which would have been done during inspection for item 6 of the Survey Items List. Item 6 was not the responsibility of CCS.

We note from paragraph 95.1 of the Closing Submissions served by the Counsel for the Commission that they agree with Mr. Zhang on this, and that the ABS certificates which came with the plates were inspected by CCS and CCS accepted these certificates in the sense that the label on the materials matched the certificate label.

- 10.2 Item 8, Hull Construction Survey (X-Ray Examination): it is Mr. Zhang's evidence that CCS did not take any part in carrying out X-Ray Examination [T29/p.97/line 24-p.99/line 17], contrary to suggestions from Mr. Fung Wai Man ("Mr. Fung") of Mardep and Mr Lo Ngok Yang ("Mr. Lo"), director of Cheoy Lee Shipyards Limited ("CLS") [T17/p.100/lines 18-20; p.125/lines 23-25; T19/p.14/lines 16-23]. CCS' responsibility regarding this item was limited to reviewing the X-ray films and the non-destructive testing report, and that the results had met the relevant requirements. It is also Mr. Zhang's evidence that the usual practice is that, after the completion of hull welding but before the tightness tests, the shipyard would carry out an X-ray examination on the welding. The shipyard would then notify the surveyor to attend the shipyard and review the X-ray films and the non-destructive testing report.

In order to ensure that the X-ray examination and the tightness tests can be carried out smoothly, the surveyor would usually carry out a visual inspection of the relevant welding before the X-ray examination and the tightness tests.

11. Regarding the division of labour of item 8 of the Survey Items List, CCS is only responsible for examining the X-ray film taken of the welding [T29/p.97/line 24-p.99/line 17]. Dr. Armstrong accepted that, so far as item 8 is concerned, the examination on the hull structure should be done by Mardep [T28/p.110/lines 2-20].
12. Mr. Zhang's evidence regarding the division of work between Mardep and CCS is this:
  - 12.1 According to the notes at the bottom of the Survey Items List, the surveys carried out by CCS' surveyors were the items that were marked with an asterisk and had a survey date and name of surveyor marked against them;
  - 12.2 The CCS surveyors were only present for the inspection necessary for carrying out CCS' responsibilities; and
  - 12.3 According to the Survey Items List, CCS is only responsible for the CCS Items, which did not include items 5 (Floor and Framing), 6 (Shell and Bulkheads), 7 (Beams and Deck) and 8 (Hull Construction Survey; examination of X-ray film excepted as submitted in preceding paragraph). These items had been accepted by Mr. Fung [T17/p.99/line 20-p.100/line 17; p.125/line 16-p.126/line 1] himself to be Mardep's responsibility [T17/p.110/line 24-p.111/line 15].
13. Similarly, regarding the division of labour of item 8 of the Survey Items

List, as submitted in paragraph 11 of these written closing submissions above, CCS is only responsible for examining the X-ray film taken of the welding [T29/p.97/line 24-p.99/line 17], and again as confirmed by Mr. Fung and Dr. Armstrong, the examination on the hull structure was done by Mardep [T17/p.125/line 16-p.126/line 1; T28/p.110/lines 2-20].

14. In summary, it is evident that Mardep was responsible for, among others, items 5 (Floor and Framing), 6 (Shell and Bulkheads), 7 (Beams and Deck) and 8 (Hull Construction Survey; examination of X-ray film excepted), while CCS was only responsible for the CCS Items, which did not include the measuring of hull plate thickness.
15. As the bottom plating is not in issue, we shall not make submissions on the matter. As for the side plating, CCS agree with Dr. Armstrong and Counsel for the Commission that it was not undersized (see paragraph 95 of the Closing Submissions of Counsel for the Commission), because:
  - 15.1 it was likely that the side plates delivered and used were 4.83mm thick; and
  - 15.2 the use of 4.83mm plates for building the hull side-plating would not be non-compliant with the Instructions for the Survey of Class I and Class II Launches and Ferry Vessels (1995), even if they were to apply; and
  - 15.3 the reduction in thickness of side plates from 4.83 mm to 4.4 mm or 4.5 mm was due to corrosion of the material in the particular context of Hong Kong where one would find high temperatures, high humidity and atmospheric pollution.
16. To conclude, we trust that our submissions can assist the Commission in ascertaining that:

- 16.1 there is no basis for the Commission to find that the thickness of side plating of the hull of the Vessel had been or might have been causative of its rapid sinking; and
- 16.2 the roles and responsibilities of CCS vis-à-vis Mardep were clear and that CCS has discharged its responsibilities.

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**DATE: 11 MARCH 2013**



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**LIST OF AUTHORITIES**  
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1. *Browne v Dunn* (1894) 6 R. 67
2. *Markem Corp v Zipher Ltd* [2006] IP & T 102
3. *Lo Chun Nam v HKSAR* (2001) 4 HKCFAR 1