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<p>1 Thursday, 7 February 2013 2 (10.00 am) 3 MR NG SIU-YUEN (on former affirmation in Punti) 4 (All answers via interpreter unless otherwise indicated) 5 THE CHAIRMAN: Good morning, Mr Ng. May I remind you that 6 you continue to give your evidence according to your 7 original affirmation. Before we resume with your 8 testimony, there are a number of matters I wish to make 9 enquiries about. 10 As I understand it, Mr Pao, who is obviously not 11 here -- do I take it that nobody from Wilkinson & Grist 12 is here either? In which case may I direct these 13 remarks at counsel to the Commission and our solicitors. 14 Please communicate immediately with Cheoy Lee in respect 15 of the outstanding issues that they were asked to deal 16 with. In the first place, they were asked to identify 17 the Cheoy Lee representative present at the surveys of 18 2011 and 2012, who signed on the form that we were 19 referred to yesterday. 20 Secondly, we asked them some days ago now for their 21 assistance in obtaining the personal particulars of the 22 naval architect who was responsible for the original 23 drawings provided by -- 24 MR SHIEH: That's Mr Cheung Fook-chor. 25 THE CHAIRMAN: That's the gentleman.</p>	<p>1 MR SHIEH: Not for the time being, no. 2 MR SUSSEX: Could I just deal with one thing that's really 3 arisen during the course of the day. There is a report, 4 as you know, from Andrew Moore & Associates, from 5 Captain Browne, and I understand we haven't formally 6 asked for leave to call Captain Browne. It seems to me 7 that that decision could perhaps be deferred until we 8 knew whether there was a large measure of agreement. 9 I'm informed reliably by my learned friend that 10 there's not going to be a large measure of agreement and 11 therefore I should like to make a formal application to 12 call Captain Browne. 13 THE CHAIRMAN: We hear and receive your application. It's 14 a matter we'll come back to after Captain Pryke has been 15 dealt with. 16 MR SUSSEX: Yes, of course. But I think to get time 17 running, if we could treat the application as having 18 been made. 19 THE CHAIRMAN: Yes, we treat it on that basis. 20 MR SUSSEX: Thank you very much. 21 THE CHAIRMAN: Of course we have the draft of his report, 22 and that no doubt will be matters that are canvassed 23 with Captain Pryke in due course. 24 MR SUSSEX: Yes. 25 THE CHAIRMAN: Thank you.</p>
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<p>1 The third matter is now in their province, it 2 appears, because Messrs Reed Smith Richards Butler 3 inform us that the application form for the annual 4 survey of Lamma IV and the original annual inspection 5 records given to the "owners of the vessel or his 6 representatives" are, as I understand the content of the 7 letter, with Cheoy Lee. 8 So can I ask that they are communicated with by 9 email, now, so that they are requested to provide 10 a response as to the progress in those enquiries -- 11 MR SHIEH: Looking up those matters. 12 THE CHAIRMAN: -- by return. 13 MR SHIEH: Thank you. I'm sure they are being looked into 14 and dealt with immediately. 15 THE CHAIRMAN: Yes. 16 There is another matter that's outstanding that 17 concerns the Marine Department. That was our request 18 yesterday to obtain the Marine Department records of 19 these applications that the vessel be surveyed. 20 MS LOK: It has been done. 21 THE CHAIRMAN: That's been done? 22 MS LOK: Yes. 23 THE CHAIRMAN: Thank you very much. 24 Are there any other outstanding matters, reminders 25 ought to be dealt with at this stage?</p>	<p>1 MR SUSSEX: Thank you. 2 MR SHIEH: There is one point arising from that, 3 Mr Chairman, before we proceed with Mr Ng's evidence, 4 which is this. The draft report of Captain Browne 5 already is in the expert bundle and obviously it is 6 anticipated that even without any application formally 7 put in or relied on the Captain Browne report, points in 8 that report would be put to Captain Pryke. 9 THE CHAIRMAN: That's what I'm anticipating. 10 MR SHIEH: Captain Pryke has been preparing himself on that 11 basis. 12 Overnight, some documents, I think pages from 13 Farwell, the textbook, and also a plot which Captain 14 Pryke has done specifically to respond to certain points 15 in the Browne report have been produced and I think 16 circulated to everybody. 17 THE CHAIRMAN: Yes, I've certainly seen them myself. 18 Mr Sussex, you have them? 19 MR SUSSEX: I have seen them overnight, yes. 20 THE CHAIRMAN: Thank you. 21 MR SHIEH: Captain Pryke has also prepared some notes for 22 himself. These are -- call them a report, call them 23 some notes for himself, so that he can speak to them in 24 case he is asked questions on particular parts of 25 Captain Browne's report as yet to be admitted.</p>

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<p>1 THE CHAIRMAN: Yes.</p> <p>2 MR SHIEH: I see there are several ways of dealing with it.</p> <p>3 One is for that to be simply kept as Captain Pryke's own</p> <p>4 little crib sheet, and as and when questions are asked</p> <p>5 of him, he could rely on them and speak to them, without</p> <p>6 disclosing that to the parties.</p> <p>7 The other perhaps, one would say, more open way of</p> <p>8 dealing with it is for Captain Pryke and for us to</p> <p>9 really make that available now. But the only caveat is</p> <p>10 that that would be in response to a report which has not</p> <p>11 yet been ruled to be in.</p> <p>12 THE CHAIRMAN: I follow that. What are you suggesting we</p> <p>13 do?</p> <p>14 MR SHIEH: We have no difficulty in terms of openness,</p> <p>15 irrespective of whether or not something is officially</p> <p>16 ruled to be in or not.</p> <p>17 THE CHAIRMAN: Yes.</p> <p>18 MR SHIEH: If Captain Pryke has prepared something, he's</p> <p>19 going to speak to that, on the basis of something he's</p> <p>20 seen, then as a matter of openness --</p> <p>21 THE CHAIRMAN: I'll hear from Mr Sussex, but it seems better</p> <p>22 that Mr Sussex and others be provided with everything.</p> <p>23 Mr Sussex?</p> <p>24 MR SUSSEX: I would ask for that. The issue obviously here</p> <p>25 is as to whether from an early stage we're looking at</p>	<p>1 scheduled movement of the vessels in order that the crew</p> <p>2 would know what to do, where to be, when to board the</p> <p>3 vessel, where to go, et cetera. And your answer was</p> <p>4 "Yes".</p> <p>5 A. Yes.</p> <p>6 Q. In fact, could I remind you of an email. I don't know</p> <p>7 whether you have seen it. Can you turn to the Reed</p> <p>8 Smith Richards Butler bundle at page 109.</p> <p>9 A. I can see it.</p> <p>10 Q. The sender of this is WO Tang, Tang Wan-on. You can see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. He is actually an officer of Hongkong Electric. Do you</p> <p>14 know him?</p> <p>15 A. Yes.</p> <p>16 Q. He sent an email to April. Do you see the name there,</p> <p>17 "April", April Lam?</p> <p>18 A. I can see it.</p> <p>19 Q. April Lam is a staff or employee of your company;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. In fact if we were to look at the organisation chart</p> <p>23 that you produced yesterday -- I don't know whether it's</p> <p>24 been scanned yet.</p> <p>25 THE CHAIRMAN: I think it has.</p>
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<p>1 an end-on situation or a fine crossing. If Captain</p> <p>2 Pryke has answers as to why it's one rather than</p> <p>3 t'other, then obviously it would be of considerable</p> <p>4 assistance to know whether we're pushing a decent point</p> <p>5 or a bad point. And I'm certainly not in the habit of</p> <p>6 pushing thoroughly bad points.</p> <p>7 THE CHAIRMAN: Very well. I think we're all at one then.</p> <p>8 They should be provided --</p> <p>9 MR SHIEH: I will arrange for that to be disseminated in the</p> <p>10 course of the morning.</p> <p>11 THE CHAIRMAN: Thank you very much.</p> <p>12 Now we can turn to Mr Ng.</p> <p>13 MR SHIEH: Yes.</p> <p>14 Mr Ng, welcome back. You are still giving evidence</p> <p>15 on your affirmation.</p> <p>16 THE CHAIRMAN: I've reminded him of that.</p> <p>17 Examination by MR SHIEH (continued)</p> <p>18 MR SHIEH: Mr Ng, could I ask you to turn to the Holman</p> <p>19 Fenwick bundle, back to your witness statement,</p> <p>20 paragraphs 9 and 10. We were going through paragraphs 9</p> <p>21 and 10 yesterday when we stopped.</p> <p>22 Perhaps I could pick up two points. First, we</p> <p>23 stopped at a time -- in fact the very question where we</p> <p>24 stopped was when you were asked, I think by Mr Chairman,</p> <p>25 whether or not your company has been told of the</p>	<p>1 MR SHIEH: The organisation chart that you kindly produced</p> <p>2 yesterday. Let me just locate it.</p> <p>3 It's Holman Fenwick bundle, page 203.</p> <p>4 A. I can see.</p> <p>5 Q. Nelson Ng is yourself; correct?</p> <p>6 A. Yes, correct.</p> <p>7 Q. April Lam is the management executive; correct?</p> <p>8 A. Correct.</p> <p>9 Q. And below her we have engineering superintendent, that's</p> <p>10 Wiskey, Wiskey Chan; correct?</p> <p>11 A. Yes.</p> <p>12 Q. And operation executive Larry Cheung. Is that what you</p> <p>13 call the shipping department?</p> <p>14 A. Yes, correct.</p> <p>15 Q. So when you refer in your witness statement at</p> <p>16 paragraph 4, page 1 of the Holman Fenwick bundle, the</p> <p>17 "operations department" in the first sentence of that</p> <p>18 paragraph, paragraph 4, you are referring to the</p> <p>19 operations department headed by Larry?</p> <p>20 A. Correct.</p> <p>21 Q. We have administrative officer Tim Leung, and there are</p> <p>22 people working under him.</p> <p>23 A. Correct.</p> <p>24 Q. Then there's the accountant and the accounts clerk.</p> <p>25 A. Correct.</p>

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<p>1 Q. So in terms of hierarchy, April Lam is immediately below 2 you, and she reports to you; correct? 3 A. Correct. 4 Q. This email was only addressed to April Lam and then CC'd 5 to various people. Those email addresses are not your 6 company's email addresses, right, those are Hongkong 7 Electric people, the CC recipients? 8 A. I believe so. 9 Q. Anyway, did April Lam report to you that she had got 10 this email or did she report to you the gist of this 11 email? 12 A. At that time I was on leave and not in Hong Kong. 13 Q. So you mean she handled it by herself? 14 A. Yes, correct. 15 Q. It says: 16 "Further telephone conversation with your Mr Cheung 17 on 19/09/2012 afternoon ..." 18 That Mr Cheung is likely to be Larry. Would you 19 think so? 20 A. Yes, correct. 21 Q. "... please be informed that your night-time crew shall 22 be assigned for cruise outing (Victoria Harbour) from 23 20:00 hours to 22:30 hours ..." 24 Do you see that? 25 A. Yes, I can see it. Cheung Wai-on has informed the</p>	<p>1 Mr Ng would you agree that this email gave your 2 company fair notice that on that evening there was going 3 to be at least one vessel Hongkong Electric vessel 4 commencing its voyage at 8 o'clock from the power 5 station to Victoria Harbour for the purpose of viewing 6 the fireworks, and actually your crew were going to man 7 that vessel? 8 A. I agree. 9 Q. This sort of scenario would not be -- how should I put 10 it? Let me rephrase it. 11 Has anyone within your company considered, or there 12 any system within your company which requires this to be 13 considered, that any reminders or notice be given to 14 crew of your own ferries to watch out for unusual vessel 15 movements coming from Lamma Island Power Station that 16 evening? When I say "unusual", I mean this is not 17 a regular route, regular itinerary undertaken by the 18 Hongkong Electric vessels. 19 A. In fact apart from the Hongkong Electric pier, there 20 were also quite a number of pleasure boats near the Yung 21 Shue Wan pier which were also prepared to view the 22 fireworks. So we had verbally reminded the crew to 23 watch out for these vessels. 24 Q. That's near Yung Shue Wan? You orally reminded your 25 people to be careful when they were near Yung Shue Wan,</p>
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<p>1 coxswain of Lamma II, who is Cheng Muk-hei. 2 Q. I'll read on: 3 "The preliminary itinerary was indicated below for 4 your information ..." 5 In the absence of translation, could I do 6 an impromptu translation, and perhaps Madam Interpreter 7 can -- why don't I read out the Chinese and Madam 8 Interpreter can interpret it for the record. 9 THE CHAIRMAN: Yes, please do that. 10 MR SHIEH: 8 o'clock, could Madam Interpreter interpret the 11 entry next to "20:00", "(Chinese spoken)". Read into 12 the record. 13 THE INTERPRETER: "20:00 hours Sail from Lamma Power Station 14 to Victoria Harbour to view the fireworks display 15 (Lamma II). 16 20:00 To view the fireworks display for the National 17 Day, there will be staff of the Hongkong Electric on 18 board the vessel. 19 21:30 Return trip to Central Pier 9, and Ap Lei Chau 20 company pier (Tsim Sha Tsui Pier will be closed 21 temporarily due to the fireworks display). 22 22:30 Resume normal duty." 23 MR SHIEH: Thank you. And then: 24 "Should you have any enquiry, please feel free to 25 call me. Regards. [Tang Wan-on]."</p>	<p>1 on the approach to the pier? 2 A. This is more or less the case. In fact we know that 3 there were many vessels which will be sailing in the 4 Lamma Channel and the Green Island, and there will be 5 a lot of pleasure boats near Yung Shue Wan and Sok Kwu 6 Wan which would set sail to view the fireworks. And in 7 fact Yung Shue Wan and the Hongkong Electric pier are 8 very close to each other. 9 Q. So you are saying that your company had given oral 10 reminders to the crew and the coxswains to be careful? 11 A. This is what we usually do on these kinds of -- on these 12 occasions. 13 THE CHAIRMAN: Who gives this notice usually? 14 A. Usually it was by Cheung Wai-on and Lam Hoi. 15 MR SHIEH: Lam Hoi is the name of the chief coxswain; 16 correct? 17 A. Correct. 18 Q. His name is not on the organisation chart, but he is the 19 chief coxswain, so he would be within the operations 20 department if you want to place him within a particular 21 division; is that correct? 22 A. Usually we put him on the list of the outdoor staff. 23 Q. In the sense that he doesn't work in the office? 24 A. There are chances that he would work in the office as 25 well, but he also conducts inspection of vessels.</p>

<p style="text-align: right;">Page 13</p> <p>1 Q. Anyway, it was left to the judgment and the good sense 2 of the chief coxswain and this Mr Cheung as to how they 3 communicate to the coxswains and when? 4 A. You can put it that way. 5 Q. Could I return to the text of your witness statement at 6 page 3 of the Holman Fenwick bundle. Yesterday we 7 stopped at paragraph 10. At paragraph 11 you said: 8 "There is also a notice informing the coxswain to 9 check whether the radar and other equipment on board are 10 functioning properly at all times and that he should 11 assign other crew members to assist in keeping 12 a look-out when it is bad weather. This notice is 13 attached herewith marked 'C'. The coxswain is reminded 14 again that he should follow the collision regulations." 15 Could you look at page 29, which is the English, and 16 the Chinese is at page 27. 17 I won't read it out. You can see it for yourself. 18 A. Yes, I can see it. 19 Q. So these notices would be issued -- notices like this or 20 with similar wording would be issued in foggy seasons; 21 correct? 22 A. Correct. 23 Q. At page 30 in the English, and page 28 in the Chinese, 24 there is a list of dates where such notices have been 25 issued to the crew?</p>	<p style="text-align: right;">Page 15</p> <p>1 now, I'm talking about then, before the incident -- to 2 remind the crew members and the coxswain of the 3 importance or the need to use radar, and not just to 4 check that they are operating? 5 A. Our vessels had applied for an exemption in terms of 6 their sailing speed, and there is a provision which 7 concerned the use of radar, and our coxswains were 8 informed about that. 9 Q. Mr Ng, of course they would have passed the requisite 10 training or exams as to how to operate a radar. But 11 what I'm asking about is did your company do anything to 12 remind them that "You don't just have to know it, you 13 actually have to operate it and use it in your 14 day-to-day navigation"? 15 A. As I have mentioned, there is a provision stipulating 16 that the radar has to be used, and also the chief 17 coxswain, Mr Lam Hoi, often reminded them about this. 18 THE CHAIRMAN: Where do we find this stipulation requiring 19 the use of radar? What document? 20 A. As far as I know, it is contained in the certificate of 21 exemption of sailing speed. 22 THE CHAIRMAN: Could someone provide us with the reference 23 for that? 24 MR SHIEH: Could it be marine bundle 11, page 3819? 25 Is this the one you have in mind, Mr Ng?</p>
<p style="text-align: right;">Page 14</p> <p>1 A. Correct. 2 Q. This notice reminds coxswains to check the radar and 3 other navigational equipment on board, whether they are 4 in serviceable condition. That's only during bad 5 weather and low visibility, or foggy seasons. 6 A. In fact the radars were checked every day, and 7 subsequently the documents with the date have been 8 submitted to the solicitors. 9 THE CHAIRMAN: Just before we go any further, Mr Tang has 10 pointed out a translation mistake to me, at least it 11 seems to be one. Page 29, the penultimate line of the 12 paragraph refers to "posting a look-out at the stern", 13 which would be rather unusual. Is that in fact "the 14 bow" in Chinese? 15 MR SHIEH: It should be "the bow", yes. 16 THE CHAIRMAN: Thank you. 17 MR SHIEH: Mr Ng, I know as a matter of routine there will 18 be a box in the log which perhaps relates to checking 19 the radar. But in terms of notices, specific notices 20 mentioning radar, apart from such notices which you say 21 were issued during foggy seasons, are there other 22 specific notices reminding the crew member of anything 23 about radar? 24 A. As far as I am concerned, I don't think there is. 25 Q. So did your company do anything -- I'm not talking about</p>	<p style="text-align: right;">Page 16</p> <p>1 Paragraph 4? 2 A. Correct. 3 Q. You see, paragraph 4 says: 4 "The vessel shall be equipped with working 5 radar ..." 6 Paragraph 5 says: 7 "At least one of the crew members serving on the 8 vessel shall have a valid radar observer certificate." 9 Do you see that? 10 A. (Witness nods). 11 Q. That's what you have in mind, yes, Mr Ng? 12 A. Yes. 13 Q. Again, let me just go straight to the point. Having 14 a functional radar on board and having somebody on board 15 who knows how to operate radar does not necessarily mean 16 that that person is actually going to use the radar 17 during navigation; do you accept that? 18 A. I don't quite agree. 19 Q. Why? 20 A. Because if there is an operational radar installed and 21 there is a person who is able to operate the radar, and 22 then if it is not used, then what is the purpose of 23 having this provision? Also, it is our coxswains' 24 understanding that they were required to use it. 25 Q. What gave them this understanding?</p>

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<p>1 A. As I have mentioned just now, since an operational radar 2 has been installed on board the vessel and there is 3 a person who is able to operate it, then it was supposed 4 to be used. That is the understanding. I would like to 5 point out one thing which I don't know whether it is 6 reasonable. We have once received a complaint that 7 while the vessel was being berthed, the radar was still 8 on, and that proves that we did use the radar. 9 THE CHAIRMAN: That proves the radar's on, not that it's 10 being used. 11 The issue really is this. Did you, for example, 12 give your crew any guidelines as to, for example, the 13 range that they should set the radar on on a particular 14 voyage, where they should set it, how they should change 15 the range? Were there any instructions to that effect? 16 A. The chief coxswain, Mr Lam Hoi, would give them 17 instruction. But since the conditions of the sea varies 18 from place to place, so we didn't give them such 19 instruction and it all depends on the conditions of the 20 sea. 21 THE CHAIRMAN: So no guidance, specific guidance, given? 22 A. Correct, Mr Chairman. 23 THE CHAIRMAN: Thank you. 24 MR SHIEH: No spot-checks as to whether or not somebody is 25 not just leaving it on and looking elsewhere?</p>	<p>1 Q. Are there any steps taken to develop a culture whereby 2 people realise that there would be consequences if they 3 simply switch on the radar, leave it on but don't 4 use it? 5 A. We trust the coxswains' qualification, and we also trust 6 that they use the radar. 7 Q. Right. I now move on, Mr Ng, to the next part of your 8 witness statement. We dealt with paragraph 13 9 yesterday, about D and E, how to deal with an emergency 10 situation. 11 Could I look at attachment E again. The Chinese 12 version -- the particular page in Chinese is page 40. 13 The particular page in English is page 44. 14 The English translation, Mr Chairman, actually says 15 "collision regulations", it actually perhaps should say 16 "Guidance in case of collision". 17 THE CHAIRMAN: Thank you. 18 MR SHIEH: So, Mr Ng, this is part of your guidelines 19 telling your crew members what to do in the event of 20 a collision? 21 A. Yes. 22 Q. It doesn't actually set out in terms of demarcation of 23 duties what, for example, the coxswain is to do, the 24 engineer is to do, or members of the crew or the sailors 25 are to do. It's again very generally worded; do you</p>
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<p>1 A. Mr Lam Hoi, the chief coxswain, would look into this, 2 and also when I board the vessel, I would also check 3 this. 4 THE CHAIRMAN: What would you do? 5 A. I would sit at the back, at the place where I won't 6 affect their operation, and I saw that they had indeed 7 used the radar. 8 THE CHAIRMAN: Are you talking about the back of the 9 wheelhouse? 10 A. I was sitting at the back of the coxswain, where he 11 controlled the wheel. I was inside the wheelhouse. 12 THE CHAIRMAN: And how often did you do this? 13 A. Irregularly. 14 THE CHAIRMAN: Once a year? Once a month? Once a week? 15 Once a day? 16 A. Probably two to three times a month. But I'm not sure 17 that this is done on a monthly basis. 18 THE CHAIRMAN: Thank you. 19 MR SHIEH: Let me just ask you this. Is it possible that 20 experienced seafarers, coxswains, might develop a kind 21 of mentality that they could rely on their eyes better 22 than looking at a radar, and therefore switching on 23 a radar is simply bureaucrats wanting them to switch it 24 on, you know, "but I rely on my eyes, even at night"? 25 A. I am not sure whether they have such mentality.</p>	<p>1 accept that? 2 THE CHAIRMAN: I think that's two questions, really, and 3 I think it is probably fairer to split it. 4 MR SHIEH: Yes. 5 THE CHAIRMAN: It doesn't say who is to do which of the 6 duties, does it? 7 A. It is not written here, but it corresponds to the drill. 8 THE CHAIRMAN: Are you suggesting that the drill does 9 stipulate who is to do what? 10 A. Yes, Mr Chairman. 11 THE CHAIRMAN: Thank you. 12 MR SHIEH: You mean the document that we see at 13 attachment D, page 32? The English is at page 33. 14 A. Yes. 15 Q. In your collision guidelines, page 40 -- English, 16 page 42 -- at point 3, you can see what it says and I'm 17 not going to read it out: 18 "Steer the vessel away from the sailing course 19 immediately." 20 What is the thinking behind this instruction, 21 steering the vessel away from the course? 22 A. I'm not an expert in navigation, but according to my 23 understanding, there are a lot of vessels on the 24 fairway, and so to steer the vessel away would ensure 25 safety.</p>

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<p>1 Q. But if you put your guidelines in this way, would it 2 lead to confusion and inconsistency? Because sometimes, 3 depending on the circumstances, your vessel may have to 4 stay there, for example, to help the other vessel, or 5 you may wish not to steer away because it may create 6 a dangerous situation.</p> <p>7 A. I agree with what you said, but the coxswain has to 8 decide, to make his discretion in accordance with the 9 situation. That is why we put down "as soon as 10 possible", and we didn't say that they must do so.</p> <p>11 Q. Anyway, you are not the draftsman of this document?</p> <p>12 A. As far as I know, this document has been in place 13 before. I also know that similar wordings were used in 14 the trade.</p> <p>15 THE CHAIRMAN: But the language that's used is directive, is 16 it not: "Do this"? And it doesn't in any way qualify in 17 what situations it should be done.</p> <p>18 A. Even though this is directive, but I believe that the 19 coxswain would also make his discretion in accordance 20 with the actual situation at that time.</p> <p>21 MR SHIEH: Because, you see, whether it would be relevant to 22 the recommendations of the Commission is another matter. 23 But if somebody were to look at your guideline 3 and 24 then guideline 7 and then guideline 8, if he were to 25 rely on these as telling them what to do, he would feel</p>	<p>1 should do, of course within safety considerations, in 2 respect of helping other vessels involved in a casualty 3 involving Sea Smooth.</p> <p>4 A. As I have mentioned, a qualified coxswain would be able 5 to apply the -- to see the MD collision provision.</p> <p>6 Q. So again, your company was content to rely on the 7 judgment of individual coxswains and did not regard it 8 as necessary to spell out these matters?</p> <p>9 A. As I mentioned previously, these two documents relate to 10 each other and should be applied in connection with each 11 other.</p> <p>12 Q. Could I then move on. In the paragraphs that follow -- 13 14, 15, 16, 17 -- you basically summarise or set out 14 your understanding of the contents of attachment D. I'm 15 not going to go through those with you.</p> <p>16 Paragraph 18, you refer to attachment E, which is 17 the document containing the collision guidelines. 18 Again, I will not go through those with you.</p> <p>19 Paragraph 20, you said: 20 "After internal discussions and following this 21 incident, the companies will compile the abovementioned 22 guidelines in relation to safety, management and 23 operation of the vessels into one standardised 24 handbook ... While the information will be the same, it 25 is hoped that this handbook will standardise and contain</p>
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<p>1 very contradicted, very confused. One rule tells him to 2 steer away. Another rule asks him to help. Another 3 rule says, "In some cases you should not separate."</p> <p>4 A. Maybe I can interpret it that way. Take, for instance, 5 provision 3. It suggests that the vessel should be 6 steered away. And if the two vessels were together, 7 then they would steer away together.</p> <p>8 As for clause 7, concerning the help, I believe that 9 if help was needed, then both vessels would render help 10 to each other.</p> <p>11 As for clause 8, it says to see whether the two 12 vessels can be separated. It doesn't say it must be 13 separated.</p> <p>14 I believe that the coxswain would be able to judge 15 which provision to be applied according to the actual 16 situation.</p> <p>17 Q. Could I ask you then to look at your attachment D, which 18 is the drill separation of duties that you mentioned. 19 In the Chinese, page 32; in the English, page 33. And 20 it goes on.</p> <p>21 There are various columns stipulating the scenario 22 and then what various people are to do in those 23 scenarios; correct?</p> <p>24 A. Yes, correct.</p> <p>25 Q. What it doesn't stipulate expressly is what the crew</p>	<p>1 all of the relevant information in one place. The 2 handbook is now being finalised and it will be 3 distributed to all crew members and operations 4 department staff shortly."</p> <p>5 This is the several-tens-of-pages document that you 6 mentioned yesterday, is it?</p> <p>7 A. Yes.</p> <p>8 Q. Paragraph 21: 9 "Apart from providing written guidelines ... the 10 chief coxswain would also attend the vessels from time 11 to time to verbally remind the crew of the various 12 safety and operation directions as set out in the 13 guidelines. The chief coxswain would also inspect the 14 vessels from time to time during their operation to 15 ensure that the crew members are complying with the 16 companies' guidelines and instructions, and operating 17 the vessels in a safe manner. He would also ensure that 18 the equipment on board the vessels are in a good working 19 and safe order."</p> <p>20 Are there any logs and records recording when such 21 spot-checks were conducted, and what aspects have been 22 inspected?</p> <p>23 A. I would like to clarify whether the first sentence, 24 saying "Apart from providing written guidelines to the 25 crew", does it correspond to paragraph 20?</p>

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<p>1 THE CHAIRMAN: Are you saying that this has been done, or 2 this is what lies in the future? 3 A. The chief coxswain did conduct the inspection, but there 4 were cases in which there were omissions. But in the 5 future, we will provide a checklist for the chief 6 coxswain to ensure that everything is in order so that 7 the record could be complete. 8 THE CHAIRMAN: What you're being asked is are there any 9 records that show that the coxswain has already 10 performed these duties? Where are these records? 11 A. As I have mentioned just now, at present there might be 12 some -- the inspection may not be done in a thorough 13 way, because sometimes the coxswain would just board the 14 vessel, take a look and then go back to the pier, 15 because it is quite near. And there was no detailed 16 record. 17 But in the future, we will have a checklist and the 18 chief coxswain and coxswain would be required to sign 19 the checklist. 20 THE CHAIRMAN: Whether or not there's any detailed record, 21 is there any record whatsoever of these checks performed 22 by the chief coxswain? 23 A. I believe that he does have it. 24 THE CHAIRMAN: Can you produce these to us? 25 A. I will ask my colleagues to ask for it.</p>	<p>1 A. Correct. We comply with the stipulation of the Marine 2 Department. 3 Q. So because Marine Department did not require regular 4 eyesight test, therefore your company did not require 5 any regular eyesight test and simply relied on the 6 eyesight test passed in 1997? 7 A. Correct. 8 Q. I'm not suggesting that the coxswain had any problem 9 with eyesight, but do you think that it's a prudent or 10 safe way to manage your crew by not having check-ups or 11 eyesight tests? 12 A. As far as I know, apart from complying with the 13 requirements of the Marine Department, I also know that 14 this is also the practice in the trade. 15 Q. If it's a practice in the trade, it may or may not be 16 a systemic problem. I'm asking you whether or not you 17 regard it to be a prudent way of going about it, by 18 relying on an eyesight test passed at the time when his 19 certificate was granted, which could be quite some time 20 ago. 21 A. Personally I agree. 22 THE CHAIRMAN: That it's not prudent? 23 A. Yes. 24 THE CHAIRMAN: Because this particular coxswain had had his 25 eyesight tested 12 years earlier; is that not the case?</p>
Page 26	Page 28
<p>1 THE CHAIRMAN: Thank you. 2 Mr Sussex, will those behind you please set this in 3 motion now? 4 MR SUSSEX: Yes, of course. 5 THE CHAIRMAN: Thank you. 6 MR SHIEH: Paragraph 22 talks about the annual dry docking 7 and the emergency saving practice in front of the Marine 8 Department surveyors. That's the annual dry docking and 9 the survey you told us about yesterday? 10 A. Yes, correct. 11 Q. In the next section -- I can go over that reasonably 12 quickly, because you are simply exhibiting or setting 13 out the documents and qualifications involving the 14 coxswain of the Sea Smooth; correct? Paragraphs 23 15 and 24? 16 A. Yes, correct. 17 Q. For the actual documents, we can see, for example, 18 page 47 of the bundle. So that is, for example, the job 19 application of Mr Lai, the coxswain. Page 48, the 20 certificate. It actually mentioned that the eyesight 21 test was passed in 1997, on page 48. 22 A. Yes, I can see it. 23 Q. In fact your company did not have any requirement or 24 stipulation for regular health check-up or eyesight test 25 by your coxswains; that's correct?</p>	<p>1 I beg your pardon, 15 years earlier. Is that prudent, 2 without any other checks, to allow him to be in charge 3 of a fast-moving vessel? 4 A. I think that there is reason why this practice is 5 prevalent in the trade, but even though we comply with 6 the requirement of the Marine Department, I personally 7 opine that it would be better to increase the number of 8 eyesight tests. 9 MR SHIEH: And the reason why it would be prudent to impose 10 such check-up requirements, whether for the eyes or for 11 health generally, is that in the absence of these tests 12 imposed by the company, you are basically left to the 13 good sense and the judgment of the particular crew 14 member or coxswain in question, as to how well he wants 15 to take care of himself. Would you accept that? 16 A. I agree. In fact we are discussing about this issue in 17 some of the committees of the Marine Department. 18 Q. Mr Ng, I'm not going to go through the detailed exhibits 19 and the various certificates of Mr Lai Sai-ming that you 20 have exhibited to paragraph 24. 21 I'm going to jump the topic about "Improvements" 22 because I'm going to go straight to the bundle at page 7 23 where you talk about "Regime in place for reporting and 24 for reviewing concerns arising out of incidents and/or 25 accidents".</p>

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<p>1 Paragraph 34 at page 8, you talked about the 2 requirement to inform the companies and Mardep in case 3 of an emergency, and they are advised to report to the 4 VTC at Mardep. This is paragraph 34. 5 A. I can see it. 6 Q. Paragraph 35, you say: 7 "The management and the operation staff of the 8 companies would convene meetings from time to time to 9 review, address and follow up concerns arising out of 10 any incidents and/or accidents. In fact, these meetings 11 had been convened after accidents which did not involve 12 the vessels of the companies in order to discuss 13 measures to prevent similar accidents." 14 That's what you say? 15 A. Yes. 16 Q. Is it fair to say -- I've looked at the minutes that you 17 have produced, because in the original attachment O, 18 it's simply a summary of the record of the topics 19 discussed. You have since disclosed the meeting 20 minutes. 21 From the minutes, is it fair to say that these 22 meetings are held maybe twice a year? 23 A. You can put it that way. 24 Q. And also, we're going to look at the actual minutes 25 later, but again on a broad level of generality, these</p>	<p>1 coxswain conducts inspection, and the crew members could 2 approach the chief coxswain or the shipping department 3 at the resting room at the pier. They could convey 4 their opinion directly to them. 5 Q. And I suppose you might say also during these meetings 6 that are held roughly twice a year? 7 A. Yes, you can put it that way. 8 Q. I am going to take you through the minutes. 9 Mr Chairman, I can see the time. Maybe I can 10 actually continue a couple of minutes before we take the 11 mid-morning break. 12 THE CHAIRMAN: Yes, please do. 13 MR SHIEH: Can you turn to the Chinese version at page 154. 14 The English version is at page 173. 15 This is the minutes for August 2012, 2.5 months 16 before the casualty. 17 A. In fact this is not the minutes of meeting. It is only 18 a reminder from me -- 19 THE INTERPRETER: Sorry. 20 A. Because this kind of meeting with the staff were held at 21 least three times, and so this is just a reminder to 22 remind myself what I have said in the first meeting. 23 THE CHAIRMAN: These are your notes, are they? 24 A. The notes prepared by my colleague. 25 THE CHAIRMAN: Who prepared the notes?</p>
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<p>1 meetings are not purely safety-oriented; they talk about 2 a wide range of other matters, such as employment 3 condition, salary and the like, is that correct, or even 4 MPF? 5 A. I agree. The purpose of this meeting is to enhance 6 communication with staff. 7 Q. But it would be fair to say, would it not, that there is 8 no system of regular brainstorming meetings whereby crew 9 and coxswain exchange views on safety measures, 10 navigational matters, or problems frequently encountered 11 on various routes or itineraries? 12 A. Yes, there are no such regular meetings. But in fact 13 the shipping department is located at the pier, so the 14 crew could in fact approach the chief coxswain or the 15 shipping department directly. As for the exchange of 16 opinions, I believe that there is no such meetings 17 between the crew members and management in the trade. 18 Q. Of course, coxswains and crew may not like to sit down 19 and have meetings. But likewise, is it fair to say 20 there is no system for channelling concerns, safety 21 concerns, by crew or coxswain, up to management level 22 and for management level to discuss or formulate 23 recommendations and guidelines and channel them back to 24 the crew? 25 A. Our channel of such communication is such that the chief</p>	<p>1 A. Usually by Cheung Wai-on, the shipping -- 2 A. (In English) Operations executive. 3 THE CHAIRMAN: They're prepared as an aide-memoire for you; 4 is that it? 5 A. It's not a preparation, but it just puts down what 6 I have said in the first meeting, in the first round. 7 MR SHIEH: I understand. Can I pause and see whether I have 8 understood you correctly. 9 These sessions are held in two or three -- every 10 slot, there will be two to three meetings, because you 11 have to accommodate the shifts of various employees and 12 crew, right? So you can't expect all of them to turn up 13 in one go. So you have to have one tranche of dates, 14 maybe with two or three meetings? 15 A. Agree. 16 Q. For the first meeting in these clusters of meetings, 17 maybe you just say what you want, develop your points, 18 and then Mr Cheung, Larry Cheung, would make a note of 19 what you have said and then he would give you back his 20 notes of what you have said, and you can rely on those 21 as your reading script or crib sheet for your next two 22 or three meetings; is that correct? 23 A. You can put it that way. 24 Q. Whereas if it is intended to be a formal set of minutes, 25 it would be typed up, as we can see at page 170, and the</p>

<p style="text-align: right;">Page 33</p> <p>1 English version would be at page 189. 2 A. Yes. 3 Q. Because you actually see people attending and there's 4 supposedly a list of everybody who attended. That would 5 be formal minutes? 6 A. Yes, but as you have said earlier, the staff don't like 7 to sit down formally to hold a meeting in a formal way. 8 If you put down the minutes of meeting and make them 9 sign them, they would say they won't attend the meeting 10 next time. That was why change has been made in the 11 form subsequently. So I hope you understand why change 12 has been made. 13 Q. Yes, I understand that. But you yourself were present 14 in all these meetings and you took the lead for 15 discussion, and you can assist us in the content of 16 these meetings that are recorded here; correct? 17 A. I think I can. 18 MR SHIEH: Mr Chairman, I anticipate after I have taken 19 Mr Ng through the minutes, I will go back to his witness 20 statement to talk about improvements, and then that will 21 complete his evidence. 22 THE CHAIRMAN: Thank you for that indication. 23 MR SHIEH: Hopefully I'll finish his evidence if not before 24 lunch, then shortly after lunch. 25 THE CHAIRMAN: Thank you. We'll take our mid-morning break</p>	<p style="text-align: right;">Page 35</p> <p>1 "... if sufficient manpower in the mid-session, 2 should consider improving rest time." 3 What is the significance of the point that you are 4 seeking to make there? 5 A. In fact the coxswains work on a shift duty, that they 6 were on on one day and then have a day off alternately. 7 In fact they have time to rest in between duties. But 8 we just want to give them more resting time. 9 Q. Has there been any complaint about coxswains being 10 overworked and not having enough rest time? Complaints 11 coming from the coxswains themselves, maybe, or the 12 crew? 13 A. They feel that if they have more resting time in 14 between, then it will be better. 15 THE CHAIRMAN: And that's a view that expressed to 16 management, is it? 17 A. They expressed this opinion to me directly in the 18 meeting. 19 THE CHAIRMAN: Thank you. 20 MR SHIEH: "(Chinese spoken)", "in between". Are they 21 referring to in between work days? Maybe they're on 22 duty on one day, then they have a period of rest and 23 then they have a duty on some other day? So they are 24 talking about in between two days when they have to 25 work; is that the meaning?</p>
<p style="text-align: right;">Page 34</p> <p>1 now. 2 Mr Ng, we'll take a 20-minute break. I'd ask you to 3 be back in time, in 20 minutes' time, to resume your 4 testimony. 5 (11.34 am) 6 (A short break) 7 (11.54 am) 8 MR SHIEH: Mr Ng, could I ask you to look at page 154 in the 9 Chinese, page 173 in the English. 10 Item 3: 11 "Less holidays -- mainly the coxswains." 12 "(Chinese spoken)." 13 Do you see that? 14 A. Yes. 15 Q. Is there a problem that coxswains have less holidays, 16 because of loss of manpower, because people were 17 switching to other companies? 18 A. You can put it that way. That is why we raised this 19 issue for discussion. 20 Q. Item 5, for coxswains. I think the translation, there 21 might be a problem, because it actually should say "if 22 sufficient manpower in the mid-session", not 23 "insufficient". 24 THE CHAIRMAN: Thank you. 25 MR SHIEH: It says:</p>	<p style="text-align: right;">Page 36</p> <p>1 A. They mean the time during their duty, and not between 2 two days. 3 Q. So during a particular work day, maybe having come back 4 from a particular voyage, they wanted more time to rest 5 before commencing the next voyage? 6 A. You can put it that way. 7 Q. This question about staff shortage or staff loss that 8 you alluded to in item 3, did that create some tension 9 with the point that you just mentioned about wanting 10 more rest time? Because if there is a staff shortage, 11 then existing staff would have to do more work. 12 A. We have no problem providing regular service to the 13 members of the public, but you can see in point 3 that 14 we have to buy leave because our counterparts in the 15 trade, they don't have Sunday off. But we do have 16 Sunday off. So in accordance with the Employment 17 Ordinance, we buy the leave legally to alleviate the 18 problem of staff shortage. 19 THE CHAIRMAN: By that you mean that you persuaded your 20 existing staff to give up their Sunday holiday, to work 21 overtime, as it were; is that it? 22 A. Similar to this, but of course it has to be agreed by 23 both parties and should be in compliance with the 24 Employment Ordinance. 25 THE CHAIRMAN: Yes. Don't worry about that. You got them</p>

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<p>1 to do overtime; is that it? That was the solution to 2 the manpower shortage? 3 A. In fact I don't think you should say that they do 4 overtime because even in spite of the buying of the 5 leave, they were still working on the basis of one day 6 on and one day off, and they were not working 7 continuously. 8 THE CHAIRMAN: So what was it you were "buying", as you put 9 it? 10 A. For example if a staff has four Sundays off -- 11 MR SHIEH: You mean supposed to have four Sundays off in 12 a month? 13 A. He is entitled to four Sundays off. Then we buy leave 14 from them to the effect that they may lose some of the 15 holidays on the Sundays. 16 I want to add that in some of our counterparts in 17 the trade, some of them don't even have leave on Sunday. 18 THE CHAIRMAN: You've told us that already. 19 A. I'm sorry, Mr Chairman. 20 MR SHIEH: So basically what happened is that by buying 21 these holidays from them, the only difference is that 22 they had two days less of holidays per month, but in 23 terms of resting, you would plan their schedules so that 24 it would still be day on, day off, day on, day off, 25 without two consecutive days working? Is that what you</p>	<p>1 respect of what happened that night, or was it 2 a complaint about what happened on the company's vessels 3 generally? In other words, is that audient complaining 4 about what happened on this fateful journey, or was that 5 audient simply talking about what he or she had observed 6 on other journeys on your company's vessels? 7 A. First of all, I would like to clarify that the complaint 8 might have been made to the newspaper or the radio 9 station -- I'm not sure. I knew that there was such 10 a complaint. 11 After the tragedy happened, it was a very sensitive 12 period and many people paid attention to the staff 13 working on board the vessels. 14 Q. But coming back to the point, was the complaint, whether 15 in a newspaper or on the radio, about what somebody saw 16 that night during that journey, or was it simply 17 somebody moaning about, "Oh, this is what happens in the 18 ferry company's vessels generally"? 19 THE CHAIRMAN: Do you understand? Was it Sea Smooth's 20 1 October collision journey, or another journey? 21 A. Maybe I didn't explain myself clearly. I mentioned just 22 now that it was a sensitive period, so I was saying that 23 the complaint was not about the fateful journey, not the 24 night on 1 October. 25 MR SHIEH: So as far as you're aware, was there this</p>
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<p>1 are trying to convey? 2 A. Correct. 3 THE CHAIRMAN: Did you pay them at a premium rate for giving 4 up their holiday, or pay them on a regular day's pay? 5 A. Regular pay. 6 MR SHIEH: Can I move on, Mr Ng, to the Chinese document at 7 page 155. The English is at page 174. I believe this 8 is specially convened because of the casualty; correct? 9 It says "5-6 October", and then "(1 October incident)". 10 A. Yes, correct. 11 Q. Could I go straight to the middle of the page where 12 there's a bracket "on the vessel": 13 "Those who are not staff are prohibited on the 14 bridge." 15 What prompted you to raise this as a point worthy of 16 mention? 17 A. Because somebody made a complaint to the radio station 18 that individuals other than staff members had entered 19 the steering room. So we discussed about this matter. 20 MR SHIEH: "Steering room" should be "wheelhouse". 21 THE INTERPRETER: Sorry, "wheelhouse". 22 MR SHIEH: Let me get this clear. Somebody rang up a radio 23 phone-in station and complained about non-working staff, 24 who were not staff members, entering the wheelhouse. 25 First of all, was that a phone call or complaint in</p>	<p>1 phenomenon whereby non-working staff, non-crew members, 2 would go into the wheelhouse during a journey in respect 3 of vessels owned by your companies? 4 A. Yes. In fact I myself would go into the wheelhouse and 5 the law didn't stipulate whether non-working staff are 6 allowed to enter the wheelhouse. But the company 7 stipulates that non-working staff would not be allowed 8 to enter. But I am a staff of the company. 9 Q. So what you're saying is that that entry, about 10 "(Chinese spoken)", is not prompted by what you've heard 11 about what happened during that voyage? Is that what 12 you're saying? 13 A. My recollection is that the complaint was about a staff 14 who was not wearing a uniform, because he just came off 15 from work at the last journey. The reason he entered 16 into the wheelhouse was because he was carrying the 17 money of the company. So for safety reasons, he entered 18 into the wheelhouse. However, the passenger didn't know 19 that he was a staff of the company. 20 Q. So that was a complaint made in respect of an incident 21 which occurred at some other time about this crew member 22 without uniform but with lots of cash, which prompted 23 you to make this observation? 24 "Caused you to make that observation", meaning to 25 say what he said. "Observation" not meaning to look</p>

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<p>1 with the eye; "observation" as in saying something.</p> <p>2 A. Yes, you can put it that way. This made us think that</p> <p>3 we need to communicate with our staff. Because some of</p> <p>4 our staff have heard the radio programme or have read</p> <p>5 the newspaper.</p> <p>6 Q. You see, I don't want to read this script as some kind</p> <p>7 of legal document but somebody looking at it may well</p> <p>8 think that this phenomenon about non-working staff going</p> <p>9 into the wheelhouse may have something to do with what</p> <p>10 happened that night. But you are now explaining that</p> <p>11 this actually was simply referring to some other</p> <p>12 incident about a non-uniformed staff walking into the</p> <p>13 wheelhouse? Is that what you're trying to explain?</p> <p>14 A. As I have said previously, after the accident, it was</p> <p>15 a sensitive period so the staff had raised this issue in</p> <p>16 the communication meeting, so I believe that is why my</p> <p>17 colleague has put it down in the notes.</p> <p>18 Q. The next entry is:</p> <p>19 "(Chinese spoken)."</p> <p>20 "Sailors should help with steering. Inform Ah-Hoi</p> <p>21 [or Brother Hoi] about" -- I think "the minutes",</p> <p>22 a better way of saying it would be "the record". Then</p> <p>23 I think there's a bracket: "(command him not to let</p> <p>24 others see)". I think that "command" might be too</p> <p>25 strong a word. I think "hope that others won't see it</p>	<p>1 Marine Department, and he confirmed that we haven't</p> <p>2 violated the Ordinance. I don't understand why my</p> <p>3 colleague put down this note. It was probably due to</p> <p>4 his opinion that he hoped that nobody had seen it, so</p> <p>5 that no explanation needed to be made.</p> <p>6 MR SHIEH: Sorry, the phenomenon that's being described</p> <p>7 there is not just a sailor going in to help with</p> <p>8 a look-out. Right? The phenomenon there is the sailor</p> <p>9 would actually sit where the coxswain is supposed to</p> <p>10 sit; correct?</p> <p>11 A. You can understand it that way. As I have explained</p> <p>12 previously, under the supervision of the coxswain, other</p> <p>13 crew members were allowed to steer the vessel.</p> <p>14 Q. Are you saying that this is what happened that night,</p> <p>15 which led to that phone-in? Or are you saying that this</p> <p>16 was, again, some member of the public calling in to talk</p> <p>17 about what they had seen on other voyages on your</p> <p>18 vessel?</p> <p>19 A. Maybe I haven't made myself clear. This incident</p> <p>20 happened on a trip on the Peng Chau route and has</p> <p>21 nothing to do with the accident.</p> <p>22 Q. I see. Again, this is an incident on another route but</p> <p>23 a member of the public phoned in at that sensitive</p> <p>24 period, which called for an explanation from you, and</p> <p>25 which is something that you mentioned at this meeting?</p>
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<p>1 to avoid unnecessary explanation", because "hei mong"</p> <p>2 would be "hope".</p> <p>3 A. I can see it.</p> <p>4 Q. What is that entry about?</p> <p>5 A. The people in the trade and even myself need to recall</p> <p>6 in order to figure out what's written there. This is</p> <p>7 about a phone-in programme in which a complaint was made</p> <p>8 about a deckhand who took charge of steering the vessel.</p> <p>9 So our company informed Hoi Gor about the incident.</p> <p>10 Q. Pausing here. Hoi Gor obviously was the chief coxswain;</p> <p>11 correct?</p> <p>12 A. Yes. It says in the bracket "it was hoped that nobody</p> <p>13 had seen it to avoid unnecessary explanation". In fact,</p> <p>14 I have explained about it in the programme. I have</p> <p>15 explained to the host of the programme that under the</p> <p>16 supervision of the coxswain, a crew member could take up</p> <p>17 the role of an assistant.</p> <p>18 A. (In English) Assistant to coxswain.</p> <p>19 THE INTERPRETER: "He could take up the role of assistant to</p> <p>20 coxswain."</p> <p>21 MR ZIMMERN: My understanding is that it's "assistant helm".</p> <p>22 THE CHAIRMAN: Is that what you mean?</p> <p>23 A. Assistant helmsman.</p> <p>24 THE CHAIRMAN: Yes. And this is what you said on the radio?</p> <p>25 A. Subsequently the host made a call to the Director of</p>	<p>1 A. You can understand it that way.</p> <p>2 Q. And the bit about "hope that no-one could see it", you</p> <p>3 are saying that even though there's nothing wrong with</p> <p>4 it, you still won't want people to see and maybe make</p> <p>5 accusations so you have to make unnecessary explanation;</p> <p>6 is that what you're trying to communicate?</p> <p>7 THE CHAIRMAN: I thought Mr Ng's evidence was to the effect</p> <p>8 that he doesn't know why his colleague made this note.</p> <p>9 A. (In English) Yes.</p> <p>10 THE CHAIRMAN: It's not something that he'd said. This is</p> <p>11 something a colleague has added.</p> <p>12 That's your evidence, is it not?</p> <p>13 A. Yes, you are right, Mr Chairman. My understanding is</p> <p>14 that since explanation has already been made and</p> <p>15 confirmation from the Director has also been given, our</p> <p>16 colleagues were hoping that such incident would not be</p> <p>17 spotted in future, so that we don't have to make some</p> <p>18 unnecessary explanation in future.</p> <p>19 MR SHIEH: But why would you need to be so furtive and hope</p> <p>20 people won't see it? Because you can perfectly well</p> <p>21 say, you know, "It's a matter of ordinary seamanship</p> <p>22 that the master could well supervise a sailor to do</p> <p>23 certain things". Why so defensive?</p> <p>24 A. But this is a sensitive period, and perhaps I haven't</p> <p>25 made myself clear. I think because people were thinking</p>

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<p>1 otherwise, and so my colleague put this down. 2 Q. It's Larry Cheung who wrote this; right? 3 A. Judging from the penmanship, it should be written by 4 him. 5 Q. There are two points I wish some assistance on. You say 6 there was this phone-in programme, when somebody 7 complained about this Peng Chau itinerary, about 8 a sailor helping out in the wheelhouse. Do you remember 9 what radio station, what programme? 10 A. Can I provide this information to you afterwards? 11 THE CHAIRMAN: Can you do that this afternoon? 12 A. I believe I can. 13 THE CHAIRMAN: Thank you. 14 MR SHIEH: Let me give you a checklist of what I want from 15 you arising out of your answers. 16 I would like the radio channel, the name of the 17 programme when the phone-in was first made, this audient 18 phoning in and making a complaint. And when you went on 19 air to explain it, whether it was the same time slot or 20 a subsequent call. 21 Also you said you explained to Marine Department -- 22 I'm sorry, Mr Chairman. 23 THE CHAIRMAN: I was going to say, would you be kind enough 24 to produce that for us, that information. 25 A. I believe so, Mr Chairman.</p>	<p>1 air, being interviewed by the host, or was it Mardep 2 writing some letter of some sort? 3 A. I'm sorry, Mr Shieh, during that period of time 4 I attended a large number of interviews. So I really 5 need to go back and find out from the record. As for 6 the response made by the Director of Mardep, I just 7 learned from the newspaper that he had made such 8 response and I haven't heard him speaking on air. 9 Q. Right. Thank you. I want to keep this in perspective, 10 and proportionate. This helps to put this whole series 11 of minutes in context, to understand the background. 12 A. (Witness nods). 13 Q. Do you see when why I'm getting all this information, 14 Mr Ng? 15 A. I understand. 16 MR SHIEH: Could I maybe call upon Mardep, if they have 17 records of the Director of Marine or anyone having made 18 any public statement or written any letter in response 19 to any queries, perhaps they can -- 20 THE CHAIRMAN: Would you make those enquiries? 21 MS LOK: Yes, we'll take instructions. 22 MR SHIEH: I'm just thinking, if push comes to shove, even 23 if there's no contemporaneous audio recording, we could 24 approach the relevant channel to see whether they could 25 assist.</p>
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<p>1 THE CHAIRMAN: Thank you. By chance, did you audio-record 2 your own participation in the programme? 3 A. Mr Chairman, I really can't remember because at that 4 time, I had to take psychiatric medication and I was 5 quite confused. 6 THE CHAIRMAN: So you can't remember if you recorded what 7 you said in the programme, is that it? 8 A. I believe my colleagues have done so, but I am not sure. 9 THE CHAIRMAN: Perhaps you could produce that for us this 10 afternoon as well, your colleagues' audio recording of 11 this. 12 A. Yes, I can do so. I would also like to respond to 13 Mr Shieh's question. In fact I was not speaking at the 14 same time slot as the complainant. We were speaking 15 separately. 16 THE CHAIRMAN: On the same day? 17 A. I'm sorry, I really can't remember. 18 THE CHAIRMAN: Thank you. 19 MR SHIEH: It's fine. I don't want to test your memory 20 cold. But try to remember the date/time of the phone 21 call making the complaint, the date/time of your going 22 on air to deal with that complaint, and also you 23 mentioned that the Marine Department also came out and 24 provided confirmation that what you had been doing was 25 all right. Was that also someone from Mardep going on</p>	<p>1 THE CHAIRMAN: Yes. Obviously if one of Mr Ng's colleagues 2 has recorded this event, as he thinks did happen, then 3 that would be a shortcut at arriving at resolution -- 4 MR SHIEH: It would be. I'm just thinking about the default 5 position. All else failing, that would be the line that 6 we may -- 7 THE CHAIRMAN: We'll come to that when we see where we are. 8 MR SHIEH: Yes. 9 I'm going to move on, Mr Ng. 10 The next item is: 11 "Coxswain, please note the radar should be switched 12 on at the start of navigation." 13 Then there's a reference to speed exemption. Of 14 course, we have seen the speed exemption certificate 15 requires the radar to be switched on. We have seen that 16 this morning. 17 Why is there a need to specifically mention for 18 coxswains to pay attention that when commencing a voyage 19 they should switch on the radar? 20 A. I believe that this is purely a reminder. 21 Q. Were you made aware of anything which made you suspect 22 that the radar might not have been switched on that 23 evening, or it might not have been observed by the 24 coxswain that evening? 25 THE CHAIRMAN: By that you mean 1 October?</p>

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<p>1 MR SHIEH: 1 October, that fateful journey. 2 A. No. As I have mentioned, it was a sensitive period, and 3 people paid attention to whether the radar was switched 4 on. So we put this down as a reminder only. 5 Q. Then the next entry -- I think the Chinese simply says 6 "(Chinese spoken)" -- I think the English translation is 7 perhaps -- I'll propose a translation and see whether 8 Madam Interpreter agrees. Rather than "everyone should 9 take up double sessions of work for the time being 10 (vessel)", I think a faithful, literal translation would 11 simply be, "Double sessions of work (vessel)". 12 THE CHAIRMAN: Do you agree, Madam Interpreter? 13 THE INTERPRETER: Maybe I'll discuss it with the witness. 14 THE CHAIRMAN: No, we're asking whether you agree with 15 the -- 16 MR SHIEH: As a matter of translation. 17 THE CHAIRMAN: -- proposed translation. 18 THE INTERPRETER: Yes, Mr Chairman. 19 MR SHIEH: "Double sessions of work (vessel)." 20 Then "Coxswains have little holidays", I think 21 that's fine. 22 Can you explain to us what this entry is about, this 23 reference to "double sessions" and also "little holidays 24 for coxswains"? 25 A. The reason there's a bracket with the characters</p>	<p>1 "Single" would mean the guy maybe works a few days in 2 a stretch and then take a couple of days off. Is that 3 the meaning? 4 A. You can understand it that way. 5 Q. The next item, please: 6 "Engineer hopes to substitute as the master." 7 How did that come up? 8 A. Because some of our engineers also possess a coxswain 9 licence, and we hoped that they would help with their 10 duties, to take up their duties, to alleviate the 11 pressure of the management. 12 Q. I see. So basically there may not be enough coxswains 13 to take up the necessary shifts, and so those engineers 14 who also have coxswain certificates would be asked to 15 shoulder the responsibility of coxswains; is that 16 correct? 17 A. This is not completely true. Even in spite of the 18 shortage of manpower, we have been able to maintain the 19 service to the public. We just hope to buy some leave 20 from the coxswains. So that they have more leave, so we 21 hope the engineer to take up their duties. 22 Q. Thank you. Can I move on to the right-hand side of the 23 Chinese page. In the English, it is still at page 174. 24 There is an entry which says: 25 "Sailor must do rounds on the vessel.</p>
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<p>1 "vessel", it is because when the meeting was held, we 2 had colleagues from the pier attending the meeting. 3 Q. Yes. But leaving aside the meaning of "(vessels)", 4 basically what you are saying is that this only applies 5 to those members of staff who work on vessels. But what 6 is the significance of "double sessions" and "coxswains 7 have little holidays"? 8 A. By "double duty", I mean the day on and day off. As for 9 "less holiday", it was, as I have mentioned previously, 10 because due to the shortage of manpower, we have to buy 11 leave. 12 Q. You mean the reference to "double session" simply refers 13 to the arrangement whereby the coxswains take day on, 14 day off, day on, day off? They work on alternate days? 15 A. Yes. 16 Q. That is, according to you, what the company has been 17 doing all along anyway: day on, day off. Why 18 specifically mention it? It's entirely a matter of your 19 jargon, maybe, but why "seung", "double", "gaang"? 20 A. It is a jargon of our trade. The "seung gaang" actually 21 means day on and day off. In our trade, we have vessel 22 which we refer to spare vessel, in which staff have to 23 work every day, and we call it "single session". 24 Q. I see. So "double session" is used in contradistinction 25 with "single session"? "Double" means day on, day off.</p>	<p>1 Help with looking ahead -- keep a look-out." 2 "(Chinese spoken)." 3 Do you see that? 4 A. Yes. 5 Q. I'm particularly interested in the bit about helping to 6 keep watch-out. That would mean keep a look-out at the 7 bow? 8 A. Correct. 9 Q. Is there anything that suggested to you that nobody was 10 keeping a look-out that evening, and that's why you were 11 prompted to make that suggestion? On 1 October. 12 A. That's not the case. 13 Q. Why did you mention that? 14 A. As I have explained earlier, it was a sensitive period 15 so I was just trying to remind everybody to do what they 16 should and to keep a look-out at the bow after doing the 17 inspection. 18 Q. Thank you. Then I think there were two names. One name 19 asked something about life jackets, and the next name, 20 which is illegible, mentioned something about "should 21 have more rest, don't drink alcohol, would help when you 22 go to work the following day". 23 A. I can see it. 24 Q. What prompted you to make that -- well, first of all, 25 it's not you who made that observation, right? It's</p>

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<p>1 someone else? Who said that? Maybe I should say who 2 said that? "Observation" would be maybe a confusing 3 word. 4 A. You see the character "ask" after the name of "Liu 5 Kin-shing", and then the other name is "Lai Chi-kwan". 6 I believe that they were the ones who would be asking 7 the question. 8 Q. Who were they? 9 A. Liu Kin-shing was the engineer and Lai Chi-kwan was the 10 coxswain. 11 Q. I see. I'm interested in the part about Lai Chi-kwan. 12 So the bit about having more rest was a point raised by 13 Lai Chi-kwan during the meeting? 14 A. I believe so. 15 Q. Do you remember the precise context in which it was 16 raised? In particular, I am interested in whether or 17 not it was raised in the context of anything heard about 18 what actually happened on 1 October, or was it simply 19 a friendly or gentle suggestion or reminder to his 20 colleagues? 21 A. I believe that when he raised this issue, it has had to 22 do with the 1 October incident. I believe that by 23 saying that more rest and abstaining from alcohol would 24 help, it's purely his personal opinion. 25 Q. And not because of anything he knew about what happened</p>	<p>1 page 178. 2 What I am interested in is really items 5 and 6. 3 Item 5 talks about an accident and then "not to conceal 4 (Sea Splendid incident)". 5 And item 6: 6 "Recent vessel incident -- Sea Splash incident (Peng 7 Chau)." 8 So there had been two recent accidents involving 9 vessels of your company which you raised for discussion 10 in that series of staff meetings; correct? 11 A. Yes. 12 MR SHIEH: Mr Chairman, I note the time. Because I'm going 13 to go into these two incidents, the records of which 14 have been disclosed by the company -- 15 THE CHAIRMAN: Very well. 16 MR SHIEH: -- it may be an appropriate moment. 17 Could I just raise one point of timing. 18 THE CHAIRMAN: Yes. 19 MR SHIEH: Captain Pryke is scheduled to go into the witness 20 box after Mr Ng's evidence. 21 THE CHAIRMAN: Yes. 22 MR SHIEH: I do not believe I have that long to go, having 23 to go through the minutes. But obviously anything may 24 happen in the course of taking the witness through the 25 minutes.</p>
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<p>1 on 1 October? 2 A. As far as my recollection is concerned, it has nothing 3 to do with the accident. 4 Q. Could I then leave this set of records and move on to 5 page 158. The English version is page 177. 6 In your witness statement, in the Holman Fenwick 7 bundle at page 8, paragraph 30, in the middle of 8 paragraph 35 you say: 9 "Safety matters have always been discussed 10 throughout the years, for example, the coxswains were 11 reminded to supervise the crew members in the October 12 2011 meeting and operation safety has been discussed on 13 various occasions." 14 Now, the October 2011 meeting, we've seen the 15 minutes here, the record at page 158. I think what you 16 really want to refer to about coxswains being reminded 17 to supervise the crew members is item 2. If you look at 18 item 2 of these minutes, the Chinese at page 158, and in 19 English, page 177. 20 A. I can see it. And I understand. 21 Q. But that only concerns the question of safety on the 22 gangplank. 23 A. From what I can see here, yes. 24 Q. Thank you. Can I then move on to the next page, 25 page 159 in the Chinese, and in the English, it is</p>	<p>1 THE CHAIRMAN: Yes. 2 MR SHIEH: One possibility, in order to make sure that 3 Captain Pryke is under no amount of time pressure, and 4 Mr Sussex is under no amount of time pressure to rush 5 up, is to perhaps interpose Captain Pryke after lunch 6 and maybe running a bit over till tomorrow morning, and 7 for this witness maybe to straddle, to be stood over -- 8 THE CHAIRMAN: Why don't we see where we are when we finish 9 as it were, evidence-in-chief of this witness. 10 Can I enquire of counsel whether they have any 11 applications in relation to posing questions of the 12 witness? 13 MR MCGOWAN: Yes, I do. I have at the moment quite a lot, 14 but I'll be looking through those at lunchtime. 15 MR SUSSEX: Mr Chairman, Mr Zimmern will be dealing with 16 this witness. 17 MR ZIMMERN: Yes, we also have some applications to be made 18 on certain issues to clarify Mr Ng's evidence. 19 The only other thing we wanted to update the 20 Chairman on is we've checked on the chief coxswain's 21 purported notes, but there are no written notes of the 22 chief coxswain. 23 THE CHAIRMAN: Thank you for dealing with that. 24 Ms Lok? 25 MS LOK: Not on our part.</p>

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<p>1 THE CHAIRMAN: Very well. We'll see what progress we make 2 in the early part of the afternoon, and then consider 3 doing what you suggest, subject to any submissions by 4 counsel to the contrary. I see nobody objecting. 5 MR SHIEH: Maybe perhaps if we come to 3.30 and I'm still 6 nowhere near completing his evidence in-chief, maybe a 7 judgment call will then have to be made -- 8 THE CHAIRMAN: I propose stopping you before then. 9 2.30 this afternoon, Mr Ng. Thank you. 10 (12.58 pm) 11 (The luncheon adjournment) 12 (2.30 pm) 13 MR McGOWAN: Mr Chairman, before we get under way this 14 afternoon, perhaps I could just bring you up-to-date 15 with the various requests that have been made of my 16 clients. 17 THE CHAIRMAN: Yes. 18 MR McGOWAN: The survey requests, as you will probably see 19 from the correspondence, are actually held by Cheoy Lee. 20 We wrote to Wilkinson & Grist last night and they've 21 replied saying that Cheoy Lee are closed for the Chinese 22 New Year holiday and will resume business on 23 19 February. So those will not be available until -- 24 THE CHAIRMAN: Yes. But we've received them through the 25 Marine Department, I think.</p>	<p>1 MR ZIMMERN: Thank you, Mr Chairman. Just a further update. 2 The newspaper articles that the witness mentioned have, 3 I think, just been provided to the Commission's 4 solicitors, Messrs Lo & Lo. 5 THE CHAIRMAN: Thank you. 6 MR ZIMMERN: There are two articles, one being the complaint 7 and the second article relating to the Director of 8 Marine's response. 9 THE CHAIRMAN: Yes. 10 MR ZIMMERN: We've also found the audio recording. They are 11 being put onto CDs at the moment as well. 12 THE CHAIRMAN: Thank you very much. When will they be 13 available? 14 MR ZIMMERN: They'll be available within half an hour, I'm 15 told. 16 THE CHAIRMAN: Thank you. 17 MR ZIMMERN: Lastly, there was a mention of the engineer, 18 I believe, questioning the life jacket extraction. 19 That's the minute notes or the meeting notes for the 20 October 2012 meeting. 21 THE CHAIRMAN: Yes. 22 MR ZIMMERN: We do actually have a picture of the housing of 23 the life jackets on the vessels pre and post, because 24 there has been a change in housing following that 25 comment by the engineer.</p>
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<p>1 MR McGOWAN: Well, if they're coming from another source -- 2 THE CHAIRMAN: I was shown them about 90 seconds ago. 3 MR McGOWAN: Well, you're as ever ahead of me, sir. 4 The plans, we've handed over the plans, they've all 5 been scanned. If there's anything you don't have yet 6 and you want, could you let us know, sir, please. 7 THE CHAIRMAN: Yes. 8 MR McGOWAN: We're putting together an omnibus letter 9 dealing with the seat repairs and that will be with you 10 after Chinese New Year; and the crew statements have 11 been served as well. 12 THE CHAIRMAN: Yes, they have. Is there any reason why the 13 statement dealing with the repair of seats can't be with 14 us tomorrow? 15 MR McGOWAN: I'll pass that message on, but we're trying to 16 put everything into one document with some annexes 17 rather than -- 18 THE CHAIRMAN: I'd rather not have delay in order to achieve 19 the perfect -- "do not let the attainment of the perfect 20 be the enemy of the good". Good is good enough. 21 MR McGOWAN: We are working on it and we will try to get 22 that to you as quickly as possible. 23 THE CHAIRMAN: Thank you. Tomorrow would be the most 24 desirable. Thank you. 25 Yes, Mr Zimmern?</p>	<p>1 THE CHAIRMAN: Yes. 2 MR ZIMMERN: I believe that's being scanned at the moment 3 should the Commission wish to look at it. 4 THE CHAIRMAN: Thank you very much. 5 Mr Shieh? 6 MR SHIEH: Mr Chairman, may I now continue with the 7 questioning of Mr Ng? 8 THE CHAIRMAN: Yes. 9 Mr Ng, may I remind you again that you continue to 10 give your testimony according to your original 11 affirmation. 12 MR SHIEH: Mr Ng, could I take you back to the Holman 13 Fenwick bundle, page 159; the English is page 178. 14 Item 5 refers to: 15 "Accident -- not to conceal (Sea Splendid 16 incident)." 17 Could I ask you to look at the same bundle, the 18 Holman Fenwick bundle, page 194. That's the Chinese. 19 The English is page 194-1. 20 "Sea Splendid, hull of the vessel collided with 21 an unknown object when sailing at night." 22 The text basically describes the events that day. 23 I won't seek to read it out. It's an incident in the 24 evening: 25 "The vessel collided with an unknown object off</p>

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<p>1 Green Island and a hole was found in the cabin." 2 You can see all that? Do you remember this 3 incident? 4 A. I more or less remember it. 5 Q. At the bottom of this page, the vessel was taken to 6 Cheoy Lee Shipyard to be dry docked. Correct? 7 A. Yes. 8 Q. Then page 195, again, it is a report of the same 9 incident but by the sailor, Mr Lam. The translation is 10 page 195-1. Do you see that? 11 A. I can see it. 12 Q. Is that the incident referred to in that meeting note? 13 A. Correct. 14 Q. What was the point or purpose of mentioning this 15 incident, and what was said to the attendants of the 16 meeting? 17 A. The investigation revealed that in fact the vessel had 18 hit the buoys off Green Island and not "unknown 19 objects", as stated in the report. That is why we told 20 our staff that they should report the fact to us and 21 should not conceal. 22 Q. Who was it that was said to have concealed? 23 A. The coxswain. 24 Q. I see. Instead of admitting having hit a buoy off Green 25 Island, he said it's an unknown object?</p>	<p>1 A. I understand, and I will try to get my colleagues to 2 look for the record. 3 THE CHAIRMAN: Thank you. If that could be begun now. 4 MR SHIEH: The next entry, item 6 at page 178 in the English 5 and page 159 in the Chinese, says: 6 "Recent vessel accident -- Sea Splash incident (Peng 7 Chau)". 8 A. I can see it. 9 Q. That we can see at page 198 in the Chinese and 10 page 198-1 in the English. 11 Mr Ng, from the appearance it's not so much 12 an accident rather than an engine breakdown, is it? 13 Simply looking at the wording of this document. 14 A. Yes, it is about an engine breakdown. 15 Q. So, again, what was said during that meeting? 16 A. Since this incident involved a problem with the engine 17 starter and the crew member involved didn't deal with it 18 in a very desirable way, this would result in the 19 schedule being affected. So we convened the meeting to 20 brief them, to advise them as to how to deal with such 21 situation. 22 Q. So this is not so much an incident involving contact or 23 collision; it's simply about staff members handling 24 an engine breakdown? 25 A. That should be the case.</p>
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<p>1 A. Yes, this is the understanding. 2 Q. Was it regarded as something serious within the company? 3 A. You mean the fact that he concealed it? 4 Q. Well, it's good you mention it. Were these regarded as 5 serious: first, the fact that it hit a buoy, and, 6 second, that he tried to conceal it? 7 A. It depends on the situation. Just like in the case of 8 land traffic, if there is a collision but nobody was 9 hurt, then it would be regarded as a minor incident. 10 But if it affects the safety, then it would be regarded 11 as serious. 12 Q. Were any notices issued immediately after the incident 13 informing the crew members of the incident and maybe 14 teaching them lessons to be learned, both about the 15 collision itself and about the need to be frank? 16 A. I'm sorry, I couldn't recall it at the moment. 17 Q. No doubt the documentary records will show one way or 18 the other. It can be checked, can it? 19 A. It should be. 20 Q. So could that be put in motion? What I mean is not just 21 this meeting note, but any contemporaneous notice or 22 circular telling the crew, "There was this incident, can 23 you please be careful when going around that area, and 24 also anything that happened, it's important to be 25 frank"?</p>	<p>1 Q. But leaving these two incidents aside, from time to time 2 vessels owned by your companies would be involved in 3 collisions or contacts or impacts with other vessels, 4 whether belonging to your company or whether belonging 5 to other companies; correct? 6 A. Yes, there is such possibility. 7 Q. Could I ask you to look at a table provided by the 8 lawyers that you have instructed, at page 207. Here is 9 a table setting out dates of various accidents or 10 incidents. Do you see that? 11 A. Yes. 12 Q. These would be compiled based on documentary records 13 kept by the company; correct? 14 A. I believe that my colleagues have done this in that way. 15 Q. I've gone through this. Some of them were not really 16 about contact or impact. Some of them were simply 17 about -- let's say a passenger falling into the sea or 18 somebody getting injured on board. But some of them did 19 involve contact with other vessels. 20 A. Yes, I can see it. 21 Q. Could I just pick out a few and explore with you. Is it 22 correct that sometimes, during the process of berthing, 23 contact might occur between vessels when one is trying 24 to berth and when the other is trying to start a voyage? 25 A. The case that you mention, I haven't got much impression</p>

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<p>1 about it. But my understanding is that sometimes when 2 one vessel is berthed and the other one is approaching 3 or trying to leave, in that case there might be minor 4 contact. 5 Q. Look at the bundle at page 211. The English translation 6 is at page 214. Do you see that? 7 A. Yes. 8 Q. This involves Mr Lai, the coxswain? 9 A. Correct. 10 Q. So basically it involved two vessels, both berthed 11 overnight. But then when one vessel was really trying 12 to in a way back out, they came into contact because of 13 wind. 14 A. This kind of situation does occur sometimes. 15 Q. Then looking at page 212, the English at page 215. 16 Mr Lai. 17 A. I can see it. 18 Q. This is when the vessel Sea Strike, arriving at the pier 19 and because of the tide, the port bow collided with 20 a rubber tyre on the pier, causing damage. 21 A. I can see it. 22 Q. Then page 213; the English, page 216. 23 A. I can see it. 24 Q. This time it actually involved the vessel Sea Smooth, 25 together with a bunker vessel, Chun Choy III. Do you</p>	<p>1 stern of the fuel boat." 2 Do you see that? 3 A. Yes. 4 Q. And page 222. This involves minor contact between Sea 5 Spring and a pilot vessel off the Central Pier. Do you 6 see that? 7 A. Yes. 8 Q. According to this record, this is not a case where maybe 9 your vessel was stationary or maybe when it's 10 undertaking some operation when maybe tides would have 11 drifted the vessel. This involved actually contact when 12 the vessel was moving. Do you see that? 13 A. Yes. 14 Q. In fact there was a reference to the fact that the 15 vessel has sounded one long whistle, and the other 16 vessel didn't care and continued to collide with the 17 port side of your vessel. Do you see that? 18 A. Yes, I can see it. 19 Q. Page 223, please. The English is at page 223-1. 20 This is a report about a contact with a barge in 21 Tsuen Wan. Do you see that? 22 A. I can see that it is not a case involving collision or 23 impact; it is about berthing. 24 Q. It's during berthing? 25 A. From this record, I can see that it concerns a barge in</p>
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<p>1 see that? 2 A. Yes. 3 Q. From the sound of it, it says: 4 "The bunker vessel was sailing astern and her 5 starboard bow contacted the port bow, causing damage." 6 So it was while the bunker vessel was moving, was 7 it? And while Sea Smooth was berthed. Is that the 8 case? 9 A. Correct. 10 MR SHIEH: Mr Chairman, the year is missing but it's 2010. 11 THE CHAIRMAN: Thank you very much. 12 MR SHIEH: I checked it against the table. It should be 13 2010. 14 But there are other incidents which actually 15 involved what one may call impact or collisions. If 16 I could take you to documents further down, which are 17 samples of incident reports that we have sought from 18 your company. 19 First of all, could I ask you to look at page 220. 20 The English is at page 220-1. 21 A. I can see it. 22 Q. It talks about: 23 "When adding bunker by the fuel boat You Tai, the 24 protruding part of the starboard bow of our vessel 25 contacted with a rudder tier gantry at the starboard</p>	<p>1 Tsuen Wan. We have rented a vessel to another company 2 and the vessel sailed from Park Island to Tsuen Wan. 3 During the berthing, it might come into contact with the 4 rubber tyres and lead to this incident. 5 Q. All right. We'll move on from this one. Could I ask 6 you to look at page 225. Page 225-1 is the English. 7 The first glass -- this is contact with the 8 starboard side of Sea Superb when Sea Superior was 9 leaving Yau Ma Tei. 10 A. I can see it. 11 Q. So when the vessel set sail from Yau Ma Tei, it sailed 12 astern, I think it's "(Chinese spoken)", and the port 13 bow contacted with the starboard bow of Sea Superb. Do 14 you see that? 15 A. I can explain about it. We have an area in the Yau Ma 16 Tei Typhoon Shelter for ships to berth. The two vessels 17 were berthed at the same location. When one of them 18 tried to sail astern, they came into contact. 19 Q. So basically, when one was trying to back out, maybe its 20 bow contacted with the other one, which was stationary? 21 A. This should be the case. 22 Q. Then can I ask you to look at page 227. Page 227-1 is 23 the English. 24 A. I can see. 25 Q. "Inter-island vessel, Ming Hoi, was leaving the bridge.</p>

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<p>1 Its stern collided with the port side of Sea Star near 2 the bow." 3 A. I can explain about this incident. In Peng Chau pier, 4 we have places where the vessels anchor at the front 5 part of the pier, to take a rest and maybe stay 6 overnight. This vessel, Ming Hoi, was anchored at the 7 entrance of the pier. When it tried to leave, it 8 collided into the Sea Star, which was parked at the end 9 of the pier. 10 Q. So Sea Star, you say, was berthed at the time? 11 A. Yes, according to the record. 12 Q. Could I now move on to page 241. 13 Mr Chairman, I can see it's 3.05. I have a few of 14 these incident reports to go through with the witness, 15 and then need to ask a wrapping-up question about the 16 companies' policy and approach to these incidents that 17 had occurred involving moving vessels, and then maybe 18 I would go through a few more minutes and then round up 19 the companies' actions after the incident. 20 THE CHAIRMAN: I'm not sure we'll get that far. Press on 21 for the moment. 22 MR SHIEH: Yes. 23 Mr Ng, page 241. 24 A. I can see it. 25 Q. It talks about Sea Spring returning to Yau Ma Tei</p>	<p>1 THE CHAIRMAN: Carry on. Perhaps someone else can locate 2 that. 3 MR SHIEH: Yes. I think we can deal with the gist of the 4 report. 5 THE CHAIRMAN: Yes. 6 MR SHIEH: It concerns a collision, as we can see at 7 page 233. The word "Collision" is circled; correct? 8 A. Yes. 9 Q. It involved the vessel Sea Superior? 10 A. Yes. 11 Q. Can you turn the page. At page 235, this was the 12 coxswain of the vessel, Mr Yeung, reporting the matter. 13 A. Yes. 14 MR SHIEH: Translations are being sorted out, but I'll press 15 on, Mr Chairman. 16 THE CHAIRMAN: Thank you. Do. 17 MR SHIEH: This is an incident in 2008, in March; correct? 18 A. Yes. Yes, according to the record. 19 Q. 5 March; correct? 20 A. Yes, according to what I see. 21 Q. To cut a long story short, at about 7.55 pm that day, 22 the vessel was near Hung Hom. Do you see that? 23 A. Yes. 24 Q. It had finished the day's voyages and was travelling 25 from Pier 4 in Central back to Kowloon City Pier.</p>
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<p>1 shelter for standby, and then: 2 "Yue Hai 236 collided with the second glass on the 3 starboard side of our company. The glass was broken. 4 After mutual negotiation, the other side agreed to pay 5 [a certain amount] to our company." 6 Do you see that? 7 A. I can see it. 8 Q. So the other side paid compensation to your company? 9 A. Yes, according to this record. 10 Q. Thank you. Could I move back to the previous document, 11 because this is actually of a different format. This is 12 "Report of Marine Incident". If you can look at 13 page 233. 14 Unfortunately -- this is obviously a Mardep standard 15 form; correct? 16 A. This should be the case. 17 Q. In the previous documents that we have seen, and they 18 are a selection only, those were internal reports within 19 the company. But this one was actually a report made to 20 Mardep, presumably pursuant to statutory requirements; 21 correct? 22 A. Correct. 23 MR SHIEH: I am informed that there is an English 24 translation. Perhaps I can try to look it up. My 25 bundle doesn't contain the relevant English translation.</p>	<p>1 A. Yes. 2 Q. But near Hung Hom there was this other vessel on the 3 port side of the vessel, Sea Superior, approaching the 4 vessel at high speed. 5 A. Yes, according to the record here. 6 Q. That vessel in a way overtook the Sea Superior on the 7 port side, and then turned starboard. Do you see that? 8 A. Yes. 9 Q. So in a way crossing from the port side, correct, of 10 your vessel? 11 A. Yes, according to the record here. 12 Q. And the coxswain said he realised there's a risk of 13 collision? 14 A. Yes, according to what I see here. 15 Q. He actually said that he stopped and put the engine full 16 astern. 17 A. Yes, according to what I see. 18 Q. But within a minute, there was a collision? 19 A. Yes, according to what I see. 20 Q. And the report said during the collision, the vessel had 21 already slowed down to I think 4-5 knots. But the other 22 vessel was still colliding with you at high speed? 23 A. Yes, according to what I see. 24 Q. If you turn to page 237, "true course of own vessel", 25 it's about 350 degrees. Do you see that?</p>

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<p>1 A. Yes. 2 Q. "Speed when first observed the other vessel" was 3 15 knots? 4 A. Yes. 5 Q. And on the port side of your vessel, around 8 metres. 6 That's item 37. 7 A. Yes, according to the record. 8 Q. "True course of other vessel", 10 degrees; do you see 9 that? 10 A. Yes. 11 Q. When first seen, the other vessel, you saw green? 12 A. Yes. 13 Q. "True direction of other vessel's head at the time of 14 collision", around 50 degrees? 15 A. I can see it. 16 Q. Perhaps I'll move down to item 45. "Did you give any 17 sound signal and/or light signal?" The answer was "No; 18 there wasn't enough time." Do you see that? 19 A. Yes, I can see it. 20 Q. Right. That was an incident which was sufficiently 21 serious to warrant a report made to Mardep pursuant to 22 statutory requirements? 23 A. I believe so. 24 Q. Then there was another incident at page 240. This is 25 from Tim Leung of your company to a Mr Alan Yu of A Yu</p>	<p>1 control, because maybe there was some problem with the 2 engine. 3 A. Yes, I can see it. 4 Q. So it resulted in a collision. Then, lastly, if you 5 look at page 244. The English is at page 244-1. 6 The handwriting is a little bit difficult to read, 7 but it's about Sea Superior; correct? Do you see that? 8 A. Can I be given some time to take a look at it? 9 THE CHAIRMAN: Yes, take your time. 10 MR SHIEH: The Chinese is a little bit difficult to read, 11 Mr Chairman. 12 A. I believe that it is concerning Sea Superior. 13 MR SHIEH: Sea Superior, yes. That's correct. So again, if 14 you look at the heading, it's about loss of control. 15 "Main engine out of control"; do you see that? 16 THE CHAIRMAN: But this is the same event, is it not, at 17 page 243? 18 MR SHIEH: Yes, it is. 19 THE CHAIRMAN: Just two different reports? 20 MR SHIEH: Just two different reports by two different 21 persons. One is by the engineer, Lai. 22 Again, this is the same incident where the vessel 23 lost control, the engine lost control, resulting in 24 a collision; correct? 25 A. The control of the main engine is out of order and</p>
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<p>1 & Associates Risk Solutions Ltd. Do you see that? 2 A. Yes. 3 Q. This is a firm of risk assessors or risk adjustors, is 4 it? Loss adjustors? 5 A. It is a broker. 6 Q. Right. Thank you. A firm of brokers. 7 "Dear Alan: 8 Please be informed that our Sea Splendid was rammed 9 by an ambulance ship near Yung Shue Wan ferry pier at 10 around 6.30 pm on 16 June 2008. As reported, a hole at 11 the rear part of Sea Splendid was resulted by the 12 incident. 13 Please call Mr Wiskey Chan ... for arranging survey 14 for the vessel. Thank you." 15 Do you see that? 16 A. Yes. 17 Q. By this description, an ambulance vessel rammed into the 18 port end of Sea Splendid? 19 A. Yes, I can see it. 20 Q. Then page 243. The English is page 243-1. This is 21 March 2012. This is about a collision between Sea 22 Superior and a new ferry vessel, Xin Fei III. 23 Do you see that? 24 A. Yes. 25 Q. The cause was apparently because your vessel was out of</p>	<p>1 resulted in the collision. 2 THE CHAIRMAN: Mr Shieh, I think, as we discussed earlier, 3 it's sensible to bring this element, as it were, of the 4 evidence-in-chief to a close, as you can, within the 5 next minute or two, if you are able to do so. This 6 topic. 7 MR SHIEH: Yes. 8 Mr Ng, as we have seen from this survey of 9 a selection of incident reports, the company's vessels 10 have been involved in different kinds of incidents 11 involving contacts and collisions. I know it's 12 difficult to generalise. Sometimes they may not be due 13 to the fault of your crew. Sometimes they may. And we 14 have seen that in one or two reports, collision 15 avoidance actions were engaged, not necessarily always 16 successfully. 17 Has anyone in your company ever considered, 18 following any of these incidents, issuing notices or 19 perhaps engaging, interacting with your crew and 20 imparting upon them the importance of safe navigation 21 and the need to observe particular collision avoidance 22 rules? 23 A. Yes, but in our trade, usually this advice was given 24 orally. Also, in the future, since we are in the 25 process of compiling updated guidelines, what you said</p>

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<p>1 will also be incorporated into the guidelines. 2 Q. Let me put one more question and perhaps that would 3 bring a close to this current line of enquiry. 4 Tell me whether you agree. It's one thing simply to 5 tell people generally just to obey the rules. They 6 would say, "Thanks for reminding me". But it's another 7 thing to utilise actual examples like these to make 8 an impression upon them as to how they could react in 9 actual situations. Do you agree with that? It's more 10 effective? 11 A. I agree. 12 Q. But nobody has seen fit to instil a system at the time, 13 before the incident, to implement this; correct? 14 A. This should be the case. 15 MR SHIEH: Mr Chairman, perhaps this would be an appropriate 16 time to stop this line of enquiry, and maybe Mr Ng can 17 come back after Captain Pryke. 18 THE CHAIRMAN: Yes. Thank you very much. 19 Mr Ng, just a word of explanation for your benefit. 20 We're going to stop the questioning of you at the 21 moment, and the reason for that is that we have Captain 22 Pryke, who's sitting in the back of the hearing room, 23 who's a witness who gave evidence in December. Counsel 24 for your company was permitted to reserve his 25 examination. It's important that we're able to complete</p>	<p>1 A. Yes. Fine. 2 Q. Would you agree that it's overwhelmingly probable that 3 many of the changes in course that we observe from the 4 tracking records of the two vessels leading up to the 5 collision were at the time navigational manoeuvres 6 rather than collision avoidance manoeuvres? 7 A. Yes, I would. 8 Q. But it's right, isn't it, that when considering the 9 causes of the collision, those navigational manoeuvres 10 fall to be judged by reference to the COLREGs, the 11 Collision Regulations? 12 A. Inevitably, yes. 13 Q. That's because rule 3(k) -- 14 THE CHAIRMAN: Mr Sussex, I know you're both speaking 15 English but we're trying to have this simultaneously 16 translated so others who are interested are able to 17 follow this. Can I ask you to bear that in mind. 18 MR SUSSEX: That's because rule 3(k) of the Collision 19 Regulations provides: 20 "Vessels shall be deemed to be in sight of one 21 another only when one can be observed visually from the 22 other." 23 THE CHAIRMAN: May we have that on the screen, please. 24 A. Yes. 25 MR SUSSEX: So that has the consequence that if the vessels</p>
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<p>1 Captain Pryke's evidence this week, and so that no-one 2 is under any time pressure to do that, we want to make 3 sure that we have enough time. So I'm going to ask you 4 to stand down in a moment. 5 We anticipate, I think, that we will reach you 6 tomorrow at some stage, but we'll be in a better 7 position to inform you of when that might be through 8 your solicitors, perhaps by the end of today. But if 9 you could make yourself available at some stage tomorrow 10 to continue your evidence. 11 A. Thank you, Mr Chairman. 12 THE CHAIRMAN: Thank you. You may leave the witness box. 13 (The witness stood down) 14 THE CHAIRMAN: May I invite Captain Pryke to resume his seat 15 in the witness box. 16 CAPTAIN NIGEL ROBERT PRYKE (sworn) 17 Examination by MR SUSSEX 18 MR SUSSEX: Captain Pryke, as you doubtless know, 19 I represent the Sea Smooth interests and I have several 20 questions to ask you. 21 A. I'm sorry, I'm not hearing you very well. Can I perhaps 22 put these on? 23 Q. I was seeking to introduce myself. I'm representing the 24 Sea Smooth interests, and I have a few questions for 25 you.</p>	<p>1 could be observed from one another, they are deemed to 2 be in sight of one another even if nobody on board those 3 vessels was actually maintaining a proper watch, 4 a proper look-out? 5 A. Correct. 6 Q. It's right, isn't it, that this collision occurred at 7 night? 8 A. Yes. 9 Q. So I want to discuss with you first of all the 10 navigational lights on board the Sea Smooth. 11 The rules which govern the lights which Sea Smooth 12 was required to display are primarily rule 22, are they 13 not? 14 A. Yes. 15 Q. Because Sea Smooth was a vessel of more than 12 metres 16 in length but less than 50 metres in length, we are 17 concerned, are we not, with rule 22(b)? 18 A. Yes. 19 Q. That means she had to carry a masthead light visible 20 within a range of 5 miles? 21 A. Yes. 22 Q. She had to have sidelights visible within a range of 23 2 miles? 24 A. Yes. 25 Q. But we also know that because she's a high-speed ferry,</p>

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<p>1 she also carries an all-round flashing yellow light?</p> <p>2 A. Yes.</p> <p>3 Q. Do you happen to know the range within which that yellow</p> <p>4 flashing light should be visible?</p> <p>5 A. Not off-hand, no.</p> <p>6 Q. If I suggest to you 5 miles, would that surprise you?</p> <p>7 A. Not really, no.</p> <p>8 THE CHAIRMAN: Can we confirm it? Is there a rule that</p> <p>9 makes provision for this?</p> <p>10 MR SUSSEX: That, as I understand it, is the rule in</p> <p>11 relation to yellow masthead lights.</p> <p>12 THE CHAIRMAN: Is there a rule that says that?</p> <p>13 A. It is in here somewhere.</p> <p>14 MR SUSSEX: Yes, it is.</p> <p>15 THE CHAIRMAN: Perhaps give Captain Pryke a moment to see if</p> <p>16 he can answer my query. If anyone behind you can</p> <p>17 assist, we'll take help from any direction.</p> <p>18 A. A yellow all-round light, 2 miles -- but that's not the</p> <p>19 one. I mean, quite frankly, it's irrelevant because</p> <p>20 this vessel under the Collision Regulations shouldn't</p> <p>21 have been carrying that light anyway.</p> <p>22 MR SUSSEX: But that is a local requirement, as I think you</p> <p>23 accept in your report?</p> <p>24 A. Yes.</p> <p>25 THE CHAIRMAN: Is it a local requirement or a local habit?</p>	<p>1 MR SUSSEX: That's right. I will chase down chapter and</p> <p>2 verse on that. I didn't realise --</p> <p>3 A. It is actually mentioned in rule 23, but it doesn't say</p> <p>4 the visibility, it just says "an all-round flashing</p> <p>5 yellow light".</p> <p>6 Q. Yes. It's right though, isn't it -- you observe at</p> <p>7 paragraph 24 of your report, at page 10 of the expert</p> <p>8 bundle, that the flashing yellow light at the masthead</p> <p>9 of Sea Smooth would have made her approach very clear?</p> <p>10 A. I would have thought so, yes.</p> <p>11 Q. You tell us in paragraph 22 of your report, at page 9 of</p> <p>12 the expert report, that you've seen a sister ferry of</p> <p>13 Sea Smooth complete her passage into Yung Shue Wan, and</p> <p>14 you did that on the evening of 29 November of last year.</p> <p>15 A. Yes.</p> <p>16 Q. Was it dark when you saw that sister ferry?</p> <p>17 A. It was dusk.</p> <p>18 Q. It's right, isn't it, that if you position yourself off</p> <p>19 the breakwater of the Hongkong Electric typhoon</p> <p>20 shelter --</p> <p>21 THE CHAIRMAN: Have you ever been there, first of all?</p> <p>22 A. I've seen it, but I haven't stood on it.</p> <p>23 MR SUSSEX: -- you can actually see the fast ferries coming</p> <p>24 through the Sulphur Channel, can't you?</p> <p>25 THE CHAIRMAN: Well, if he's never been there, it's</p>
Page 82	Page 84
<p>1 MR SUSSEX: I think it's a local requirement. That's my</p> <p>2 understanding.</p> <p>3 THE CHAIRMAN: Again, can you give me chapter and verse?</p> <p>4 MR SUSSEX: Yes.</p> <p>5 THE CHAIRMAN: Can we deal first of all with the distance at</p> <p>6 which this yellow flashing light is required to be</p> <p>7 visible.</p> <p>8 A. Well, as it's a local requirement, it would be a local</p> <p>9 rule as to how far it could be seen.</p> <p>10 THE CHAIRMAN: Let's find out if it is a local requirement</p> <p>11 first. It certainly appears to be accepted that it is,</p> <p>12 but I'd like to see the provenance of that.</p> <p>13 MR SUSSEX: We will chase that down.</p> <p>14 MR SHIEH: There seems to be a difference between a yellow</p> <p>15 all-round light or --</p> <p>16 THE CHAIRMAN: And a yellow flashing light?</p> <p>17 MR SHIEH: -- a yellow flashing light, yes.</p> <p>18 MR SUSSEX: As Captain Pryke rightly points out in his</p> <p>19 report, an air-cushion vessel -- that's a hovercraft --</p> <p>20 is required to exhibit an all-round flashing light.</p> <p>21 THE CHAIRMAN: Yes. That's the distinction he drew when he</p> <p>22 first gave evidence.</p> <p>23 MR SUSSEX: That's right.</p> <p>24 THE CHAIRMAN: Because he was the one who made some</p> <p>25 observation about it appearing to be a local practice.</p>	<p>1 difficult to say that.</p> <p>2 A. I have no idea.</p> <p>3 THE CHAIRMAN: Unless you ask him to look at a chart, to do</p> <p>4 it that way.</p> <p>5 MR SUSSEX: You have, I believe, been in a police launch to</p> <p>6 the position of the collision, have you not?</p> <p>7 A. Yes.</p> <p>8 Q. And did you happen to notice fast ferries coming through</p> <p>9 the Sulphur Channel?</p> <p>10 A. No. I mean, we only saw the one ferry and we saw her</p> <p>11 just as she was close to the lighthouse at Shek Kok</p> <p>12 Tsui.</p> <p>13 Q. So would I be right that you're not able to tell us</p> <p>14 whether the first thing you're going to see of the Sea</p> <p>15 Smooth, for example, is her yellow flashing light?</p> <p>16 A. I wouldn't know, no.</p> <p>17 Q. You've already told us that the collision under</p> <p>18 investigation occurred at night. It's right, is it not,</p> <p>19 that it occurred in conditions of clear visibility?</p> <p>20 A. As far as I understand it, yes.</p> <p>21 Q. It's also right, is it not, that neither wind nor tide</p> <p>22 would have affected the ability of these two vessels to</p> <p>23 achieve their intended courses? So that course over the</p> <p>24 ground can be regarded as heading for the purposes of</p> <p>25 trying to work out what aspect these vessels would be</p>

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<p>1 showing to one another? 2 A. No, you can't guarantee that. It would be very close, 3 yes. 4 THE CHAIRMAN: Just a moment, please. 5 Thank you. 6 MR SUSSEX: The yellow flashing light on board a high-speed 7 ferry is positioned above the masthead light, is it not? 8 A. Yes. 9 Q. Do you agree that a yellow flashing light informs 10 a look-out on another vessel, "I am a fast ferry"? 11 A. Yes. 12 Q. It's not likely to be an ACV; there aren't many of those 13 around. 14 THE CHAIRMAN: An ACV being what? 15 MR SUSSEX: An air-cushioned vessel. 16 A. No, I agree. 17 Q. And such a light observed off Shek Kok Tsui also informs 18 a look-out, "I am making for the Yung Shue Wan ferry 19 pier"? 20 A. That is an assumption that you might make, but you're 21 not obliged to make that assumption by any means. You 22 seem to be implying that a fast ferry displaying 23 a flashing yellow light is saying "Everybody get out of 24 my way". That's what you seem to be saying. That is 25 entirely not what the rule of the road is about.</p>	<p>1 also informs a look-out on another vessel, "You can 2 expect me to follow the nautical manoeuvres normally 3 associated with a fast ferry making for Yung Shue Wan 4 ferry pier". 5 A. That is not within the rule of the road. 6 THE CHAIRMAN: Just give me a moment. 7 MR SUSSEX: We'll come back to that later. 8 If that is what the yellow flashing light informs 9 a look-out in that context, it's right, is it not, that 10 it means that that ferry is going to be executing a turn 11 to port? 12 A. I'm sorry, but this is completely fatuous. 13 Q. That's very sweet of you. 14 A. I mean, the rule of the road is very simple. You are 15 obliged to keep out of the way of other vessels, 16 according to the rules. You are not obliged to decide 17 that ship is going over there, so he's going to turn 18 that way. That's not what the rule of the road is. 19 Q. No. But we'll work out what the rule of the road is, 20 and then we'll come back to what these lights inform 21 you. 22 What I'm suggesting to you is that a yellow flashing 23 light, in the context in which it's observed off the 24 side of Lamma Island, conveys a great deal of 25 information of itself and in that context.</p>
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<p>1 Q. Well, I haven't said anything yet. 2 THE CHAIRMAN: Just let me get a note of what it is you are 3 putting. 4 Again, Mr Sussex, you have been out of action for 5 a while in this Commission. Please bear with us. 6 MR SUSSEX: I'm sorry. Yes. 7 THE CHAIRMAN: I know you're champing at the bit, but give 8 me a moment, please. 9 So you would say that a flashing yellow light 10 indicating fast ferry off Shek Kok Tsui light, you might 11 infer from that that it was heading for Yung Shue Wan 12 ferry pier, but you're not obliged to make that 13 inference? Is that what you're saying, Captain? 14 A. Yes. You're not obliged to make that inference at all. 15 MR SUSSEX: Well, it's right, is it not, that there's no 16 high-speed ferry serving anywhere south of Yung Shue Wan 17 on that side of Lamma Island? 18 A. You're not obliged to know that. 19 Q. No. But if you happened to know your way around, you 20 would reasonably draw that inference, would you not? 21 A. We all know it was a special night and the Lamma IV was 22 doing a special trip. Who knows who else was doing 23 special trips. I mean, you can't make those 24 assumptions. 25 Q. Well, I suggest to you that the yellow flashing light</p>	<p>1 A. It is possible that it could, but nobody is obliged to 2 read it that way. 3 Q. Now, in answer to questions from Mr McGowan -- this was 4 before Christmas -- you suggested that the point of 5 using VHF was to be sure what the other ship is doing. 6 A. VHF is very frequently used between ferries that are 7 berthing and unberthing, or any ships that are berthing 8 and unberthing. When a ship is recognised as a certain 9 ship by name, another ship may call it up and say either 10 "Red to red" or "Green to green", do you agree, that 11 type of thing, in pilotage waters. That's what I was 12 trying to convey. 13 Q. And the fact is that you can remain safe if you're sure 14 what the other man is doing? 15 A. Precisely. 16 Q. And in the absence of being obtuse, if a yellow flashing 17 light on board a high-speed ferry is observed in good 18 time off Lamma Island, the west of Lamma Island, that 19 tells you all you need to know about what that vessel is 20 doing? 21 A. No, it absolutely does not. Absolutely not. 22 THE CHAIRMAN: Just a moment, please. 23 Thank you. 24 A. Unless there is a specific agreement between the two 25 vessels that is well understood by both, and they have</p>

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<p>1 both agreed it, then the Collision Regulations apply 2 every time. 3 MR SUSSEX: I don't doubt that the Collision Regulations 4 apply, but it's how they apply in the particular 5 circumstances that we'll discuss. 6 Now, you of course have analysed this collision by 7 reference to rule 14. 8 A. Yes. 9 Q. That rule deals with a head-on situation. 10 A. Yes. 11 Q. In its terms, it's concerned with vessels meeting on 12 reciprocal or near-reciprocal courses so as to involve 13 the risk of collision? 14 A. Correct. 15 Q. If a vessel is on a reciprocal course, her course 16 differs from the course of the approaching vessel by 17 180 degrees? 18 A. Correct. 19 Q. In this case we have the advantage of very detailed 20 radar tracking records from the VTC and from the Marine 21 Police. 22 A. We do. 23 Q. Would you agree that rule 14 is really concerned with 24 headings of vessels rather than their courses made good 25 over the ground?</p>	<p>1 a head-on encounter and taking appropriate action." 2 THE CHAIRMAN: You're quoting there from page 370 of 3 Farwell, are you not? 4 A. Yes, I beg your pardon. That's correct. 5 THE CHAIRMAN: What edition of Farwell is that? 6 A. It's the eighth edition. 7 THE CHAIRMAN: May we have that up on the screen. I think 8 it's paginated as page 361-59. It comes from Captain 9 Pryke's notes, but it's helpful for those -- 10 MR BERESFORD: Page 361-27, Mr Chairman. 11 THE CHAIRMAN: Very well. I'm looking at the actual quote 12 that is in Captain Pryke's notes. Are you saying that 13 we have the actual textbook itself? 14 MR SHIEH: The actual text is in expert bundle 2. 15 THE CHAIRMAN: Thank you. Put it up, please. Page 361-27, 16 at page 370. Just give us a moment to look at this in 17 context. 18 MR SUSSEX: It's right, is it not, that rule 14(a) deals 19 with courses and rule 14(b) deals with aspect, which 20 necessarily involves heading; is that right? 21 A. Yes, that's right. But the heading, of course, can be 22 different than the course. And of course when your ship 23 is at sea and rolling or corkscrewing, you can see all 24 sorts of different aspects of the light, within reason, 25 but which have no bearing on the course.</p>
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<p>1 A. No, I absolutely would not agree. 2 Q. Okay. So -- 3 A. May I just quote to you from Farwell's Rules of the 4 Road? 5 Q. Yes. 6 A. "It is the vessels' actual courses (and speeds), not 7 their headings, that create the risk of collision and in 8 determining risk of collision under rule 7, watch 9 officers on both vessels will base their assessment on 10 a solution based on the vessels' respective courses, not 11 their headings. Rule 14(a) is correctly cast in terms 12 of the vectors that may or will produce collision, while 13 14(b), drawing as it does on the visual picture, could 14 only be cast in terms of the headings revealed by that 15 visual picture, not the actual courses. It might, in 16 fact, be said that rule 14(a) is written in terms that 17 speak to the watch officer or master, while 14(b) is 18 best used for interpreting the look-out's report. The 19 two paragraphs can be harmonised -- while giving effect 20 to both -- if, as suggested below, rule 14(b) is treated 21 as a sufficient test, but not the sole test, for 22 determining whether the situation is a head-on 23 encounter. Any doubt or conflict based on differences 24 between the vessel's course and her heading should be 25 resolved as rule 14(c) directs: by assuming it is</p>	<p>1 Q. Yes. 2 A. That is why Farwell very correctly says that when you 3 assess risk of collision under rule 7, what you're 4 assessing is courses and speeds. 5 Q. Yes. 6 A. And you're expected to do that by radar, of course. 7 THE CHAIRMAN: Just a moment, please. 8 MR SUSSEX: It's right, is it not, that we are, with the 9 benefit of hindsight, able to perceive the courses that 10 the vessels were following by reference to the tracking 11 records of the VTC and the Marine Police? 12 A. Yes. 13 Q. We are therefore able to assess from those records 14 whether at any given moment the vessels were on 15 reciprocal or nearly reciprocal courses? 16 A. Yes. I have actually drawn that on a chart to show you. 17 Q. I'll come to that, if I may. 18 It's just a matter of arithmetic to calculate from 19 the VTC tracking records or the Marine Police records 20 whether or not the vessels were at any given moment on 21 reciprocal courses; is that right? 22 A. You could assess that, yes. 23 Q. Just by adding or taking away 180 degrees, you end up in 24 the same position? 25 A. Yes.</p>

Page 93	1 Q. And from 20:17:35, the VTC records which you annex to 2 your report at page 315 of the expert bundle helpfully 3 juxtapose the courses over the ground of the two 4 vessels. Do you remember that? Let's go to page 315 5 just to show you that. 6 If we go to page 315, we see that all the way 7 through pages 314, 313, 312, the designation "786", 8 which was Sea Smooth, appears with a course over the 9 ground, a speed over the ground and a position. 10 THE CHAIRMAN: Just help me as to where this data is 11 derived. 12 MR SUSSEX: These are the VTC records. 13 A. Is it the police record or -- 14 Q. No, these are the VTC records. 15 THE CHAIRMAN: Page 315 of which bundle? 16 MR SUSSEX: Page 315 of the expert bundle. 17 THE CHAIRMAN: Is this therefore an annex to Captain Pryke's 18 report? 19 MR SUSSEX: Yes, it is. 20 THE CHAIRMAN: Has it got an annex number? 21 MR SUSSEX: I don't think it does, actually. Certainly it 22 doesn't in mine. 23 THE CHAIRMAN: Can anyone else assist me? 24 MR SHIEH: It doesn't have an appendix number, 25 unfortunately, because it is an item to appendix 4 of	Page 95
Page 94	1 MR SUSSEX: Yes, he has. 2 We see from page 315, for example, that from 3 20:17:25, Sea Smooth's course over the ground is 4 recorded at 180 degrees. 5 A. Yes. 6 Q. And that of Lamma IV -- I know this is obviously the 7 early stage of her voyage -- is recorded as 354 degrees. 8 THE CHAIRMAN: Sorry, you have to give me those figures 9 again. 315 I now have, yes. 10 MR SUSSEX: 315 is for Sea Smooth, 180 degrees. 11 THE CHAIRMAN: Sea Smooth being described as 786; is 12 that it? 13 MR SUSSEX: 786. And Lamma IV, being described as 7622: 354 14 degrees. 15 A. Yes. 16 Q. So reciprocal courses would be either 360 for Lamma IV, 17 or 174 for Sea Smooth? Just add or take away 180. 18 A. They're 6 degrees off, yes. 19 Q. That's right. And it's right, isn't it, we're here 20 concerned with the words "nearly reciprocal courses" in 21 rule 4(a)? 22 A. Correct. 23 Q. And we get some assistance on that in rule 14(b). That 24 tells us, "Such a situation shall be deemed to exist", 25 in certain specified circumstances.	Page 96
Page 94	1 Captain Pryke's supplemental report. 2 THE CHAIRMAN: It's not the main report; it's the 3 supplemental? 4 MR SHIEH: It's the supplemental report. 5 THE CHAIRMAN: Thank you. 6 MR SUSSEX: Yes. If you remember, there were slight 7 differences between the Marine Police tracking records 8 and those of VTC -- 9 A. Yes, that's right. 10 Q. -- and you compared them and said they didn't really 11 affect your conclusions? 12 A. Yes. 13 Q. The VTC reports you have set out, you have appended to 14 your second report. And the Marine Police records 15 appear on page 282 of the expert bundle, through to 16 page 291. They give first of all the records of the Sea 17 Smooth -- sorry, let me get that right. Sorry, it's 18 Lamma IV and then Sea Smooth, starting at page 285. 19 THE CHAIRMAN: So the point you're making is that these 20 records enable us to do the arithmetic calculation of 21 whether or not the vessels are on an actual reciprocal 22 course? 23 MR SUSSEX: An actual reciprocal course. 24 THE CHAIRMAN: And Captain Pryke I think has agreed with 25 that.	Page 96

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<p>1 the screen. 2 MR SHIEH: Page 361-23. 3 THE CHAIRMAN: Thank you. 4 Yes, please go ahead. 5 A. Just over a third of the way down the page: 6 "The discussion that follows will suggest that the 7 weight of authority supports the conclusion that 8 a vessel should be considered nearly ahead under the 9 present rule if, when risk of collision arises, her 10 relative bearing is within one-half point (five to six 11 degrees) of the bow. Similarly, courses may be 12 considered nearly reciprocal if within five to six 13 degrees of the actual reciprocal. Borderline 14 head-on/crossing cases, which give rise to doubt in the 15 watchstander about whether risk of collision exists or 16 the encounter should be treated as a head-on situation, 17 should be resolved in accordance with Rules 7(a) and 18 14(c), both of which direct the mariner to adopt the 19 cautious alternative." 20 Rule 7(a) definitely applies here because they're on 21 a collision course. And rule 14(c) -- 22 THE CHAIRMAN: Just pause there. Let's have rule 7(a) on 23 the screen, please. 24 MR SUSSEX: This deals with risk of collision. 25 THE CHAIRMAN: Yes.</p>	<p>1 papers, if you would. 2 Thank you. Now would you give us your exposition. 3 A. Yes, sir. What I have tried to achieve -- if you look 4 at 20:17, Sea Smooth, on the top right, I have 5 transposed 20:17 Sea Smooth to the top left. And 6 similarly, 20:17 of the Lamma IV at the bottom, I have 7 transposed that to the bottom left and drawn the -- in 8 this case, I didn't assume Lamma IV was actually on her 9 course yet. So there's no course line. But from Sea 10 Smooth, the bearing is 176 degrees; that is, 4 degrees 11 on the port bow of Sea Smooth. 12 THE CHAIRMAN: Yes, I see that. 13 MR SUSSEX: But that's the bearing of the typhoon shelter, 14 isn't it, effectively? 15 A. No, no. It's the bearing of Lamma IV. 16 THE CHAIRMAN: At 20:17? 17 A. At 20:17, yes. 18 MR SUSSEX: She's just outside the typhoon shelter then. So 19 she's not far off? 20 A. No, not far off it. Yes. 21 Then moving on to 20:18, which is the next little 22 chart along, to answer your question now, she is now -- 23 Sea Smooth has Lamma IV bearing 176, 4 degrees on the 24 port bow. In other words, on a steady bearing. So 25 rule 7 now comes into effect for Sea Smooth.</p>
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<p>1 A. If you go, Mr Chairman, to rule 7(a): 2 "Every vessel shall use all available means 3 appropriate ... to determine if risk of collision 4 exists. If there is any doubt such risk shall be deemed 5 to exist." 6 Now, in (d)(i) of the same rule: 7 "such risk shall be deemed to exist if the compass 8 bearing of an approaching vessel does not appreciably 9 change ..." 10 And this is the case here in this case. They're on 11 a steady bearing. 12 THE CHAIRMAN: Just a moment, please. Thank you. 13 MR SUSSEX: When do you say the risk of collision first 14 attached? 15 A. Well, if you let me show you the chart, I can show you 16 precisely. 17 Q. All right. This is the chart you produced overnight, is 18 it? 19 A. Yesterday. 20 Q. Yes. 21 A. I don't know if we can put it up on the screen. 22 THE CHAIRMAN: Yes, I'm sure we can. 23 MR SUSSEX: I don't know whether it has a page number yet. 24 MR SHIEH: It's expert bundle 2, page 361-1. 25 THE CHAIRMAN: Just give us a moment whilst we arrange our</p>	<p>1 In spite of your idea that a flashing light goes 2 where it likes and does what it wants, the reality is 3 that the flashing light should be the first one to alter 4 course because, if you look at, again, the head-on 5 situation according to Farwell, page 371 -- 6 THE CHAIRMAN: Could we have that on the screen, please. 7 MR SHIEH: It's internal page 371 in the book, but bundle 8 page number 361-28. 9 THE CHAIRMAN: Thank you very much. 10 A. Page 361, almost exactly halfway down the page: 11 "The need for avoiding action at longer ranges is 12 particularly acute with high-speed craft. While it must 13 be acknowledged that rule 14 applies only to approach 14 situations involving vessels in sight of one another, it 15 would be fatuous to read that requirement as a bar 16 against two vessels approaching each other at a closing 17 speed of thirty knots or more [which is this case, by 18 the way] taking collision avoidance action before the 19 vessels draw near enough to discern the colour and 20 relative position of the other's lights. Collision 21 avoidance decisions must be made, and are made daily on 22 the basis of radar clots or equivalent systematic 23 observations, as supplemented by AIS data when 24 available." 25 So Farwell is clearly saying that if you're</p>

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<p>1 a high-speed craft making these decisions under rule 14, 2 because of the speed of approach of two vessels, then 3 you need to be a bit quicker than you would otherwise 4 be. 5 MR SUSSEX: So when do you say the risk of collision 6 attached? 7 A. Well, I would go for 20:18, and I would go for -- 8 because Sea Smooth now has a steady bearing for over 9 a minute. I'm not sure that Lamma IV is in quite the 10 same situation, because she's only just finished her 11 swing and she's getting onto her course. So in the case 12 of Sea Smooth, definitely 20:18, and, I would say, in 13 the case of Lamma IV, 20:19. 14 THE CHAIRMAN: That's when the risk of collision ought to 15 have been assessed as existing by the coxswain on 16 Lamma IV? 17 A. I think he should have been thinking about it probably 18 at 20:18, if he was alert, and certainly be thinking of 19 doing something at 20:19. 20 THE CHAIRMAN: Thank you. 21 Just a moment, please. 22 MR SUSSEX: It's right, is it not, that once the risk of 23 collision attaches, that moment in time determines 24 whether one is looking at a head-on situation or 25 a crossing situation, for example?</p>	<p>1 other vessel as observed from the look-out vessel, if 2 I can call it that. Is that right? 3 A. Yes. 4 Q. And rule 14(b) deals with observations both by day and 5 by night; yes? 6 A. Yes. 7 Q. Common to both day and night is the requirement that 8 a vessel must see the other ahead or nearly ahead? 9 A. Yes. 10 Q. By night, the observing vessel must be capable of seeing 11 the masthead lights of the other in a line or nearly in 12 a line; that's one possible deeming provision? 13 A. Yes. 14 Q. Or, she must be capable of seeing the masthead lights of 15 the other vessel in a line or nearly in a line, and see 16 both sidelights? 17 A. Yes. 18 Q. Or, she must be capable of seeing both sidelights? 19 A. Yes. 20 Q. And in our particular case, because we're dealing with 21 a vessel which is under 50 metres in length and which 22 doesn't have two masthead lights, we are solely 23 concerned, when considering rule 14(b), with the 24 requirement of seeing both sidelights? 25 A. Correct.</p>
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<p>1 A. Well, it's clearly a head-on situation, isn't it? 2 Q. I know you say that, but it's right, is it not, that 3 a crossing situation doesn't mutate into a head-on 4 situation and vice versa? 5 A. It could do, I suppose, but -- the whole point of the 6 rule of the road is to keep vessels apart. 7 Q. Yes. 8 A. It's not about arguing with each other which rule 9 applies. It's about keeping away from the other vessel. 10 And in general, in almost every case, you would alter 11 course to starboard. It's in a navigator's DNA that he 12 alters to starboard. 13 Q. I suggest to you that if you start with a crossing 14 situation, the entire collision then falls to be 15 analysed in terms of a crossing situation; and if you 16 start with a head-on situation, the entire collision 17 falls to be assessed by reference to a head-on 18 situation. 19 A. Yes. If you were talking about two vessels in the 20 middle of the China Sea in a crossing situation and 21 there was no land close by, there were no other ships 22 close by, just two ships in the middle of the ocean, 23 you're quite correct. 24 Q. I want to deal with rule 14(b). The deeming provision 25 in rule 14 is expressed in terms of the aspect of the</p>	<p>1 Q. And although vessels under 50 metres in length may have 2 two masts, Sea Smooth didn't, Lamma IV didn't; that's 3 right, isn't it? 4 A. Yes. 5 Q. Now, on Day 3 of your evidence before the Commission, 6 you were answering questions from Mr McGowan and I'd 7 like to go to the transcript of Day 3. I'm concerned 8 with page 62. 9 THE CHAIRMAN: And the Gregorian calendar? 10 MR SUSSEX: The Gregorian calendar, 14 December 2012. 11 THE CHAIRMAN: Thank you. 12 MR SUSSEX: At line 6. You said: 13 "So when the two vessels are coming head-on or 14 nearly head-on, they see both sidelights of each other. 15 So there needs to be an alteration [of course] between 16 them of at least 22.5 degrees before you cease to see 17 one of the side lights. So at night-time, that's a good 18 indication of whether somebody is altering course." 19 A. That was wrong. That's completely wrong. 20 Q. That's completely wrong, isn't it? 21 A. I just had no idea where this questioning was leading. 22 I had no idea what the point of it was, and I was just 23 thinking of the 22.5 degrees. 24 Q. That's the rule of where the sidelights should display 25 abaft the beam?</p>

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<p>1 A. That's correct.</p> <p>2 THE CHAIRMAN: And you lose both sidelights with a very much</p> <p>3 smaller change of course, do you not, if you're head-on?</p> <p>4 A. It's something like 3.5 degrees, yes. You'd lose one,</p> <p>5 not --</p> <p>6 THE CHAIRMAN: I beg your pardon.</p> <p>7 A. One at a time.</p> <p>8 THE CHAIRMAN: Both sidelights are only displayed within</p> <p>9 a narrow range?</p> <p>10 A. Within quite a narrow range, yes, that's correct.</p> <p>11 MR SUSSEX: But obviously, without knowing where this</p> <p>12 questioning was going, you actually persisted in this</p> <p>13 quite a lot. For example at line 20, you said -- it was</p> <p>14 suggested to you, for example, that very much less than</p> <p>15 that was required to lose one sidelight and you said:</p> <p>16 "No, not if you're on a reciprocal course. You</p> <p>17 would need to do the full 22.5 [degrees] to</p> <p>18 extinguish it."</p> <p>19 A. Yes, my brain was not -- I did later on, I'm sure, say</p> <p>20 I would need to draw it to really give you a proper</p> <p>21 answer.</p> <p>22 THE CHAIRMAN: But at all events, you accept that that's</p> <p>23 wholly wrong?</p> <p>24 A. That's wholly wrong. I apologise.</p> <p>25 THE CHAIRMAN: Yes.</p>	<p>1 expressed the view at paragraph 29 of your report that</p> <p>2 when the vessels were 1 mile apart, there was a clear</p> <p>3 rule 14 head-on situation, you reached that conclusion</p> <p>4 merely by looking at the courses which you had plotted?</p> <p>5 A. Largely the courses, yes, and the radar plot. It's --</p> <p>6 you know, I'm absolutely with Mr Farwell on this, that</p> <p>7 it's rule 14(a) that is the crucial one for the person</p> <p>8 in charge of the bridge. And if there is any doubt,</p> <p>9 it's rule 14(c). Rule 14(b) is one way to decide</p> <p>10 whether you're almost end-on and in a collision</p> <p>11 situation. But if you have plotted it, which you should</p> <p>12 have done, on the radar, you will know you're on</p> <p>13 a steady bearing on a collision course, and you will</p> <p>14 know that because of the bearing of the other vessel,</p> <p>15 the course is almost opposite. I mean, you can't get</p> <p>16 much more opposite than 4 degrees.</p> <p>17 Q. Well, we'll come to that in a minute. But it's right,</p> <p>18 isn't it, therefore, that you didn't seek to analyse the</p> <p>19 lights which the vessels were exhibiting to one another</p> <p>20 at the time?</p> <p>21 A. No, I didn't.</p> <p>22 Q. And you didn't seek by reference to the recorded</p> <p>23 tracking records to work out whether the vessels were in</p> <p>24 fact on reciprocal courses or near-reciprocal courses at</p> <p>25 any given time, by reference to the tracking records of</p>
<p>Page 106</p> <p>1 MR SUSSEX: Despite the fact that when you were asked by the</p> <p>2 Chairman that if you don't change 22.5 degrees -- he</p> <p>3 said:</p> <p>4 "Otherwise you're presenting the same two lights,</p> <p>5 the green and red?"</p> <p>6 And you said, "Exactly. Exactly, yes."</p> <p>7 That's wrong as well, isn't it?</p> <p>8 A. Yes, that is wrong.</p> <p>9 Q. And in fact your evidence there was to the effect that</p> <p>10 the arc of visibility of both sidelights was 45 degrees,</p> <p>11 was it not?</p> <p>12 A. I just -- I should have drawn it as I suggested. I got</p> <p>13 that wrong.</p> <p>14 Q. But that was the implication of your evidence, was it</p> <p>15 not?</p> <p>16 THE CHAIRMAN: Mr Sussex, I've got this point. So has my</p> <p>17 fellow Commissioner.</p> <p>18 MR SUSSEX: That was your evidence given on 14 December</p> <p>19 2012.</p> <p>20 A. Correct.</p> <p>21 Q. Would I be right to infer that that was your impression</p> <p>22 when you prepared your report, which is dated only</p> <p>23 10 days earlier on 4 December 2012?</p> <p>24 A. I wasn't thinking in the lines of seeing sidelights, no.</p> <p>25 Q. Right. So would I be right to infer that when you</p>	<p>Page 108</p> <p>1 courses over the ground?</p> <p>2 A. I did use the tracking records, but you have to be</p> <p>3 careful of that because they were moving around a bit.</p> <p>4 Q. They were moving around, but you've used the tracking</p> <p>5 records to plot the geographical locations of the</p> <p>6 vessels at any given time.</p> <p>7 A. Oh, yes. Yes.</p> <p>8 Q. But those tracking records also give the courses over</p> <p>9 the ground which are derived from those positions at</p> <p>10 three-second intervals; is that not right?</p> <p>11 A. My plot is derived from the tracking records. Is that</p> <p>12 what you're saying?</p> <p>13 Q. No, no. What I'm saying is this. You have plotted the</p> <p>14 courses of the two vessels --</p> <p>15 A. Yes.</p> <p>16 Q. -- by plotting their geographical positions at</p> <p>17 intervals?</p> <p>18 A. Yes.</p> <p>19 Q. The geographical positions are taking from the tracking</p> <p>20 records; that's right, isn't it?</p> <p>21 A. Yes.</p> <p>22 Q. But those tracking records also derive courses over the</p> <p>23 ground assessed at three-second intervals; that's right,</p> <p>24 is it not?</p> <p>25 A. Yes.</p>

Page 109	1 Q. And those courses over the ground are assessed by 2 reference to the geographical locations of the vessels 3 at three-second intervals? 4 A. Yes. 5 Q. And you have no reason to believe, do you, that the 6 courses over the ground as recorded in those tracking 7 records are in any way inaccurate? 8 A. There is a certain error in all of it, but they're as 9 good as we're going to get. 10 Q. Exactly. 11 THE CHAIRMAN: As I understand, what you've done is taken 12 a broader picture, rather than plotting it every three 13 seconds. You've taken whatever it was -- 30 seconds, 14 one minute -- in order to do it? 15 A. Exactly, yes. 16 THE CHAIRMAN: And that irons out anomalies or errors in the 17 three-second track; is that it? 18 A. Yes, indeed. 19 MR SUSSEX: Humour me for a moment on the subject of the arc 20 of visibility of sidelights. 21 Sidelights are defined by rule 21(b) of the 22 Collision Regulations to mean a green light on the 23 starboard side, a red light on the port side, showing 24 an unbroken light over an arc of 112.5 degrees. Do you 25 agree with that?	Page 111	1 the vessel shall show the minimum required intensities. 2 The intensities shall decrease to reach practical 3 cut-off between 1 and 3 degrees outside the prescribed 4 sectors." 5 Now, the prescribed sector is right ahead in the 6 forward direction; that's right, isn't it? 7 A. Yes. 8 Q. So paragraph 9 of annex I mandates, in practical terms, 9 that your port sidelight must be visible between 1 and 10 2 degrees beyond right ahead to your starboard? 11 A. Yes. 12 Q. Similarly, your starboard light must be visible between 13 1 and 2 degrees beyond right ahead to your port? 14 A. Yes. 15 Q. Sorry, 1 and 3 degrees. 16 THE CHAIRMAN: Yes. I wondered where you were getting 2 17 from. 18 MR SUSSEX: I'm sorry. 19 THE CHAIRMAN: I am trying to follow this. You're going at 20 breakneck speed, if I may say so. 21 MR SUSSEX: I'm sorry, but I am acting for a fast-speed 22 vessel. 23 THE CHAIRMAN: Perhaps you ought to have a yellow flashing 24 light. 25 MR SUSSEX: What that means is that the arc of visibility of
Page 110	1 A. Yes. 2 Q. And that is from right ahead to 22.5 degrees abaft the 3 beam? 4 A. Correct. 5 Q. So the position of beam is 90 degrees from right ahead? 6 A. Yes. 7 Q. So the 112.5 degrees is calculated by adding 90 to 22.5? 8 A. Yes. 9 Q. If sidelights were to cut out right ahead, there could 10 potentially be a black spot immediately ahead where no 11 light would be observed; do you agree with that? 12 A. Sounds good, yes. 13 Q. Hence, annex I, paragraph 9 of the Collision 14 Regulations, provides for a mandatory cut-off in the 15 forward direction which takes the arc of visibility 16 beyond right ahead. Do you agree with that? 17 A. Yes. 18 THE CHAIRMAN: Let's just have a look at it. Where do you 19 say it is? 20 MR SUSSEX: Annex I, paragraph 9. 21 THE CHAIRMAN: Would you read out what you say is the 22 appropriate provision? 23 MR SUSSEX: Yes. Paragraph 9 is concerned with horizontal 24 sectors. Paragraph 9(a)(i): 25 "In the forward direction, sidelights as fitted on	Page 112	1 both sidelights is required to be between 2 and 2 6 degrees? 3 A. Yes, I see what you're saying. Yes. 4 Q. So if vessels are meeting on exactly reciprocal courses, 5 a change of course to either port or starboard of 6 between 1 and 3 degrees will mean that one sidelight is 7 extinguished? 8 A. Yes. Sorry, 1 and 3? 9 Q. 1 and 3. Depending on how the lights are set, they are 10 to be set within 1 to 3 degrees. 11 A. Yes. 12 Q. So if they're set to 1, a change of course of 1 degree 13 will extinguish one sidelight; or if they're set to 14 3 degrees, a change of course of 3 degrees will 15 extinguish one sidelight. 16 A. Yes, but I think you're going into a very grey area 17 here. 18 Q. Well, we're going to have a red or green light shining 19 through the grey whatever happens. 20 THE CHAIRMAN: Yes. In practical terms, with real people on 21 real vessels, how difficult is it to achieve these kind 22 of niceties? 23 A. Mr Chairman, I was a ferry officer and master for seven 24 years on the English Channel on pretty fast 25 roll-on/roll-off ships doing over 20 knots. I must have

<p style="text-align: right;">Page 113</p> <p>1 had a thousand times a vessel such as Sea Smooth had, 2 fine on the port bow on a steady bearing. You 3 automatically alter course to starboard, you just do it. 4 There is no question. You don't start looking for 5 visibility of sidelights. You just don't. You check 6 whether it's on a steady bearing with your radar cursor, 7 and if it's on a steady bearing, you alter course to 8 starboard. You rarely alter course to port. It is done 9 in certain circumstances, but very, very rarely. 10 MR SUSSEX: It's right, is it not, that in this context 11 there is no suggestion that there was ever any doubt in 12 the mind of the watchkeeper or the look-out or anybody 13 on board the vessels as to whether this was or was not 14 a head-on situation, because we don't have anybody 15 express any doubt; they weren't thinking in terms of 16 rule 14. 17 A. That's quite correct. 18 THE CHAIRMAN: We don't have evidence from them as yet. 19 MR SUSSEX: No, but insofar as we've seen statements. 20 Now, we have the benefit of 20/20 hindsight, and we 21 are seeking with that benefit to evaluate whether this 22 was a head-on situation or a crossing situation. In 23 that context, rule 14(c) has no application, does it? 24 Because rule 14(c) is concerned with doubt at the 25 time, is it not, a doubt in the context of in the mind</p>	<p style="text-align: right;">Page 115</p> <p>1 not acceptable, but there was no collision event. The 2 collision event absolutely happened because Sea Smooth 3 altered course to port at 20:19 and a half. At that 4 stage, in fairness to Lamma IV, because of the relative 5 speeds of the vessels, there wasn't -- he would have had 6 to have been very, very slick to have avoided it. 7 THE CHAIRMAN: Because of the relative speed of approach of 8 Sea Smooth -- 9 A. Yes. 10 THE CHAIRMAN: -- it having gone to port -- 11 A. Yes. 12 THE CHAIRMAN: -- compounding the problem, Lamma IV's 13 dilemma was, as you put it, to be very slick to avoid 14 the collision? 15 A. As I think I said in my evidence last time, his only 16 hope was to go hard to starboard and if necessary do 17 a round turn. But you would never go to port in that 18 situation because you've got to have it in your mind 19 that the other guy will wake up and go to starboard. So 20 Sea Smooth absolutely caused the collision by his 21 alteration of course to port. 22 And I agree that the look-out situation was bad on 23 both sides, and I said that in my first report. 24 MR SUSSEX: Let us assume, as you do, and we accept this, 25 that risk of collision attached around 20:18.</p>
<p style="text-align: right;">Page 114</p> <p>1 of the watchkeeper, for example, or the look-out? 2 A. Well, no more than rule 14(b). 3 Q. What it provides is that in the context where action is 4 required, if there's doubt as to whether you're dealing 5 with a head-on situation, if you need to wonder about 6 it, you're dealing with a head-on situation and you 7 should take appropriate action. That's what rule 14(c) 8 is saying. 9 A. Yes, it is. But, I mean, no more so than rule 14(b) in 10 this hypothetical situation when we know they weren't 11 looking to see what sidelight they could see or whether 12 they were confused about it. So you can't read (c) 13 without (b) in this context. 14 Q. No, but what we're seeking to do is to analyse what 15 happened in terms of the Collision Regulations, despite 16 the fact that the real or proximate cause of the 17 collision was an egregious failure of look-out. 18 A. The actual cause of the collision was Sea Smooth's 19 alteration of course to port at 20:19 and a half 20 minutes. That was absolutely the cause of the 21 collision. 22 If I could just, Chairman, go back to my chart, 23 moving on now to 20:19, the plot on there. 24 At 20:19, the two vessels were going to pass each 25 other at around 1/10th of a mile, which is too close and</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes. 2 Q. At that time, according to your chartlet, the vessels 3 were 1.375 miles apart. 4 A. Yes. 5 THE CHAIRMAN: Just give me a moment, please. 6 Thank you. 7 MR SUSSEX: You have shown, as I understand it, Sea Smooth 8 on a course of 180 degrees, and a bearing of 176 degrees 9 for Lamma IV from Sea Smooth? 10 A. Yes, that's correct. 11 THE CHAIRMAN: Sorry, where is this demonstrated? 12 MR SUSSEX: On the chartlet, this one, at page 361-1. 13 THE CHAIRMAN: Yes. At which time? 14 MR SUSSEX: 20:18. 15 THE CHAIRMAN: Thank you. 16 20:18. Yes. Repeat the proposition for my benefit, 17 if you would. 18 MR SUSSEX: Right. You show that at 20:18, Sea Smooth is on 19 a course of 180 degrees. 20 A. Yes. 21 Q. And there's a bearing of 176 degrees for Lamma IV from 22 Sea Smooth? 23 A. Yes. 24 Q. To arrive at your conclusion that the vessel is 25 4 degrees on the port bow of Sea Smooth?</p>

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<p>1 A. Yes, that's correct.</p> <p>2 Q. It's right, is it not, that the police track records</p> <p>3 show the course of Sea Smooth as being 183 degrees.</p> <p>4 THE CHAIRMAN: Do you want to give us the data so we can</p> <p>5 follow this?</p> <p>6 MR SUSSEX: Yes. It's page 285 of the expert report.</p> <p>7 Sorry, that's the Lamma IV.</p> <p>8 A. Yes. It's page 289 you're looking for.</p> <p>9 MR SUSSEX: It is page 289 I'm looking for. Okay, we'll</p> <p>10 come back to that. Page 289 shows the course of the Sea</p> <p>11 Smooth as being 183 degrees.</p> <p>12 THE CHAIRMAN: At 20:18:01?</p> <p>13 A. Yes.</p> <p>14 MR SUSSEX: Which is, give or take a scruple, 20:18, is it</p> <p>15 not?</p> <p>16 A. Yes, it is. But, I mean, these courses of course are</p> <p>17 changing almost with every flick of the radar mast.</p> <p>18 I have plotted them and if I plot all the way from 20:17</p> <p>19 to 20:18 and a half, the course she's actually made is</p> <p>20 exactly 180. I mean, that doesn't mean a thing,</p> <p>21 frankly.</p> <p>22 Q. Well, you say it's flickering with every -- if you look</p> <p>23 at the course on that page, it doesn't vary very much,</p> <p>24 does it? It's consistently 182 rather than 180.</p> <p>25 A. Yes.</p>	<p>1 sensible thing he could do is to alter course to</p> <p>2 starboard.</p> <p>3 Q. We can reasonably infer that nobody on Sea Smooth was</p> <p>4 thinking in those terms at all. We're trying to</p> <p>5 evaluate this ex post facto to determine which</p> <p>6 particular rule applies.</p> <p>7 THE CHAIRMAN: Perhaps we'll do that tomorrow, since we're</p> <p>8 over time.</p> <p>9 MR SUSSEX: All right.</p> <p>10 THE CHAIRMAN: Captain Pryke, I'm going to have to ask you</p> <p>11 to come back to continue your testimony tomorrow. As</p> <p>12 you know, we sit at 10 o'clock, so please be here and</p> <p>13 available to do that at 10 o'clock.</p> <p>14 A. Yes. Thank you.</p> <p>15 THE CHAIRMAN: Thank you. 10 o'clock tomorrow.</p> <p>16 (4.35 pm)</p> <p>17 (The hearing adjourned until 10 am on the following day)</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 THE CHAIRMAN: You say "that page". It begins at page 186</p> <p>2 at the top, does it not? Are you actually focusing on</p> <p>3 a narrower time period?</p> <p>4 MR SUSSEX: Yes, obviously by looking at that page.</p> <p>5 THE CHAIRMAN: Give me the time period you're inviting the</p> <p>6 witness to look at.</p> <p>7 MR SUSSEX: Well, what we're looking to do, as I understand</p> <p>8 it, is on taking the view that the risk of collision</p> <p>9 attaches at 20:18, we want to assess whether this is</p> <p>10 a rule 14(a) situation at that time.</p> <p>11 A. Can I help you a bit here. The reason I said for Sea</p> <p>12 Smooth the risk of collision can be clearly seen to</p> <p>13 exist at 20:18 is because she's had a full minute with</p> <p>14 having this steady bearing on the port bow at 4 degrees.</p> <p>15 Nothing to do with lights or anything else. It's</p> <p>16 a steady bearing on the port bow. Risk of collision</p> <p>17 exists.</p> <p>18 Q. Right. We accept that risk of collision exists. What</p> <p>19 I'm seeking to explore with you is whether this is</p> <p>20 a rule 14 situation.</p> <p>21 A. Look, if you're in Sea Smooth, you're not thinking</p> <p>22 whether it's rule 14 or rule 24. You're thinking,</p> <p>23 "I must alter course, because I have this steady bearing</p> <p>24 I'm going to collide with in the next three minutes. So</p> <p>25 I have to alter course". As it happens, the only</p>	<p>1 I N D E X</p> <p>2 MR NG SIU-YUEN (on former affirmation in Puntì)1</p> <p>3 Examination by MR SHIEH (continued)6</p> <p>4 (The witness stood down)78</p> <p>5 CAPTAIN NIGEL ROBERT PRYKE (sworn)78</p> <p>6 Examination by MR SUSSEX78</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</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>