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<p>1 Monday, 11 March 2013 2 (10.00 am) 3 THE CHAIRMAN: Mr Shieh. 4 MR SHIEH: Good morning, Mr Chairman. Over the weekend the 5 parties have filed their written submissions, and I hope 6 that the Commission now has the relevant bundle or 7 bundles containing the submissions. 8 THE CHAIRMAN: I think we do. I know for my part I received 9 yours at about 5 o'clock on Saturday, and I got 10 Mr Grossman's shortly after 8.30 this morning. That's 11 what I've dealt with so far. I understand the others 12 have come in. 13 MR SHIEH: The others came in at various points in time, 14 I think sometime past midnight last night, and some of 15 them this morning. For our part, due to oversight, we 16 actually omitted a section on seats which we actually 17 made good yesterday afternoon. 18 So in accordance with the understanding that I think 19 everybody had taken to be the case, I'm not going to 20 read out chunks of our written submissions. What I will 21 do is to perhaps highlight particular areas, and perhaps 22 to put any relevant issues in proper context, because 23 ultimately the task of making recommendations and making 24 findings obviously is for the Commission, but we would 25 try to assist the Commission by putting the various</p>	<p>1 MR SHIEH: Should be "Lamma IV", that's right. And 2 paragraph 72, it is not -- 3 THE CHAIRMAN: Before we get to paragraph 72, because this 4 is perhaps a convenient moment to take it, there is -- 5 no, it comes a bit later. Paragraph 44.2, you deal with 6 Fireman Tam, who saw the green light and the radar 7 scanner still spinning. He arrives at 20:41, I think. 8 MR SHIEH: Yes. 9 THE CHAIRMAN: Then there is reference to another fireman, 10 Ma Ngai-kong, who, as is pointed out, didn't testify and 11 whose statement we haven't received. 12 MR SHIEH: That's right. 13 THE CHAIRMAN: We can't have regard to that evidence unless 14 it's been dealt with publicly. 15 MR SHIEH: Yes. We have explicitly referred to the fact 16 that he hasn't been called. 17 THE CHAIRMAN: Yes, I appreciate that -- 18 MR SHIEH: We also drew attention to the fact that Yau had 19 referred to his evidence. Of course it may be regarded 20 as hearsay and indirect so -- 21 THE CHAIRMAN: We regard that as not the way in which we've 22 received evidence. Clearly he was a witness whose 23 evidence spoke to an issue in the hearing, and frankly 24 he ought to have been called. 25 MR SHIEH: But we have the previous fireman, Mr Tam.</p>
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<p>1 debates in the proper setting. Because very often, in 2 dwelling on the details, the nitty-gritty of the 3 evidence, very often one might have to be reminded as to 4 how various items of evidence and how various issues fit 5 into the overall framework. 6 THE CHAIRMAN: Yes. 7 MR SHIEH: And that is what I will endeavour to do. 8 There is no time for any rhetoric. I have no role 9 to push for any particular conclusion or criticism. In 10 a way I have no instructions one way or the other in 11 favour of any party. We would remind the Commission of 12 the nature of any evidence that has been given, because 13 no doubt the Commission has taken note of the evidence 14 but sometimes we would regard it to be helpful to remind 15 the Commission as to where certain evidence can perhaps 16 be found. 17 THE CHAIRMAN: We welcome that assistance. 18 Closing submissions by MR SHIEH 19 MR SHIEH: I will first deal with the immediate cause of the 20 collision. Before I do that, there are two minor 21 amendments I wish to make to our written closings, with 22 thanks to my learned friend for pointing that out. 23 I will simply mention them. 24 Paragraph 42 of our written closing. 25 THE CHAIRMAN: Yes. Should be "Lamma IV"?</p>	<p>1 THE CHAIRMAN: I appreciate that. Presumably they were on 2 the same fireboat, Fireboat 4, I think it is. 3 MR SHIEH: Fireboat 8 for Ma and Fireboat 4 for Tam. 4 THE CHAIRMAN: Yes. 5 MR SHIEH: But Fireman Tam's evidence had not been seriously 6 challenged -- 7 THE CHAIRMAN: Well, it wasn't challenged. 8 MR SHIEH: It wasn't challenged in respect of the bit about 9 seeing the green light. 10 THE CHAIRMAN: Yes. 11 MR SHIEH: So, in a way, one can say it's not a numbers game 12 anyway, especially in view of the fact that -- 13 THE CHAIRMAN: No, it's not, but for everyone's information, 14 subject to any submissions, the evidence of Fireman Ma 15 hasn't been received by the Commission, so we're not 16 going to have regard to it. 17 MR SHIEH: Very well. 18 Also paragraph 72, there's a statement that Eastern 19 District No. 2 had been built by Cheoy Lee. It has been 20 pointed out by my learned friend Mr Pao that Eastern 21 District No. 2 was not built by Cheoy Lee. The plans 22 were drawn -- 23 THE CHAIRMAN: I remember that being corrected by Mr Lo, 24 I think. 25 MR SHIEH: Yes. In the submission there's a sentence that</p>

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<p>1 says it's built by Cheoy Lee; that's incorrect. The 2 plans were also drawn by Naval-Consult. 3 THE CHAIRMAN: Just give me a moment. Paragraph 72? 4 MR SHIEH: Paragraph 72. 5 THE CHAIRMAN: Just read out the impugned paragraph or 6 sentence. Ah, "built by". It wasn't built by. 7 MR SHIEH: Wasn't built by. 8 THE CHAIRMAN: "Not built by". 9 MR SHIEH: Yes. 10 Now, Mr Chairman, in respect of the immediate cause 11 of the collision and the events on 1 October, in terms 12 of the evidence, we have had the evidence of the crew in 13 respect of which memory should still be reasonably 14 fresh. 15 As to the track of both vessels, we have the data 16 from the radar information and the charts plotted by 17 Captain Pryke, and on the navigational aspects and 18 Collision Regulations aspect we have the expert evidence 19 of Captain Pryke. I'm not going to rehearse and make 20 detailed reference to the underlying evidence. We would 21 say, and respectfully suggest, that it's a clear case of 22 poor look-out on both sides. 23 In respect of Chow, we would submit there's no 24 proper training for radar use for Coxswain Chow on 25 Lamma IV. At the material time, there was no-one in the</p>	<p>1 THE CHAIRMAN: Yes. 2 MR SHIEH: But obviously one could see the system in the 3 wheelhouse -- I mean, just placing the manual there in 4 a language with which the coxswain is not necessarily 5 familiar -- 6 THE CHAIRMAN: It goes beyond that, doesn't it? Because the 7 coxswain said that he'd asked for help. 8 MR SHIEH: He'd asked for help, he'd asked for training. 9 And he had spoken to the marine officer, Mr Tang Wan-on. 10 There had been no response. So that is the state of the 11 evidence. The coxswain hasn't really received any 12 training himself. It was really kind of ad hoc, 13 learning-on-the-spot type of learning. 14 THE CHAIRMAN: Yes, with a lifetime at sea. 15 MR SHIEH: Yes. But that is really not the way 16 a professional coxswain ought to have been allowed to be 17 really put in charge of the vessel. 18 THE CHAIRMAN: To put this into context, of course, Lamma IV 19 was not required to carry radar, was she? 20 MR SHIEH: But she was in fact equipped with a radar, and of 21 course Collision Regulations actually say that insofar 22 as radars are actually equipped, then they shall be 23 used. And if you see fit to actually put in a radar, 24 then one would respectfully submit that you don't do it 25 in a half-baked manner.</p>
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<p>1 wheelhouse to assist him, even though the minimum crew 2 number was four, and the Commission has received 3 evidence that really it makes sense for there to be four 4 crew, so that there would be one crew who would be 5 assisting the coxswain in respect of look-out. 6 The so-called crew member, the event organiser, 7 I will be making submissions in due course, wasn't 8 really crew at all, both in terms of the legal 9 definition of crew -- Mr Beresford will be dealing with 10 the issue about the meaning of "crew" -- and also as 11 a matter of fact. He hadn't actually been playing any 12 meaningful role as crew. 13 THE CHAIRMAN: What do you say about the issue of, as you 14 put it, no proper training for Coxswain Chow in respect 15 of radar? Does anyone bear culpability for that or 16 ought be criticised for that? 17 MR SHIEH: Well, obviously it would be for the ferry 18 operator to make sure that there's a safe system, and in 19 part 2, Captain Pryke has made numerous recommendations. 20 Insofar as the system within Hongkong Electric had 21 fallen short of those requisite or desired standards, 22 then one could well say they had fallen short of those 23 standards. Whether one puts it in the language of 24 a criticism or an aspiration obviously would be a matter 25 for the Commission.</p>	<p>1 THE CHAIRMAN: So you would say that that's a matter that 2 the Commission should consider as in the frame, perhaps, 3 of being a failing by Hongkong Electric? 4 MR SHIEH: Yes. As I say, whether one puts it in strong 5 language, as a matter of criticism or as a matter of 6 failing certain standards or in aspirational language 7 would be a matter for the Commission, but we would 8 respectfully submit, if they themselves actually see the 9 need to put in a radar, then it's actually their job to 10 make sure that people are properly equipped and trained 11 to deal with them. 12 THE CHAIRMAN: And amongst those who required support that 13 they failed would be the coxswain himself? 14 MR SHIEH: Yes. 15 THE CHAIRMAN: As well as others who have an interest in the 16 safety of the vessel? 17 MR SHIEH: Yes. 18 THE CHAIRMAN: Thank you. 19 MR SHIEH: Now, there was a debate as to when it was that 20 the Sea Smooth was first sighted, whether or not it was 21 1 mile on the radar or whether or not it was one minute 22 prior to the collision, or 3 cables, or whether or not 23 it was really even closer than 3 cables. These are 24 various possibilities that have been mooted in the 25 course of examination.</p>

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<p>1 But we respectfully submit that in a sense, it 2 varies or matters not much in the overall scheme of 3 things, and very often, these matters, one cannot be 4 overly precise. We would make submissions as to what 5 possibilities can really be discounted, and we would 6 respectfully say that one minute, first sighting, 7 visually, can obviously be discounted because of working 8 backwards. If it had been sighted one minute before the 9 collision, there would really have been enough time to 10 take rather drastic avoidance action, and the track 11 would not really be in the form we have seen. 12 But we say on the radar track -- and there really 13 cannot be any dispute about it -- we can see no 14 discernable hard turn to starboard before 20:20. 15 The joystick should react very quickly if there had 16 really been an attempt to put hard to starboard, and 17 it's the subject of Mr Sussex's examination of Coxswain 18 Chow. Captain Pryke's opinion is that, looking at the 19 track, the real turn to starboard, hard turn to 20 starboard, only took place around -- I think he said 21 20:20:10. 22 THE CHAIRMAN: Yes, seven seconds before. And in the time 23 then available, the seven seconds, the vessel was 24 turned. He's accepting Dr Armstrong's evidence about 25 the angle of the collision, that the vessel was turned.</p>	<p>1 per cable. 2 Now, on Coxswain Chow's evidence, from the time of 3 his first visual sighting and from the time of his 4 taking collision avoidance action of turning hard to 5 starboard, it could not have accounted for 20 seconds. 6 THE CHAIRMAN: Let's just deal, if you would, first of all, 7 with the first visual sighting and what Coxswain Chow 8 said. He said he saw masthead, red and green lights, 9 did he not? 10 MR SHIEH: Yes. 11 THE CHAIRMAN: Vessel coming head-on. 12 MR SHIEH: Yes. 13 Assuming that it's 3 cables, he saw a vessel coming 14 head-on, there really was very little else that should 15 really have exercised his mind so as to delay or justify 16 a delay in taking any collision avoidance action so that 17 the -- 18 THE CHAIRMAN: There's only one thing to do. 19 MR SHIEH: Yes: turn hard to starboard. So if one were to 20 work backwards, let's say he turned hard to starboard at 21 20:20:10 and even, let's say, we add 5 or even 22 10 seconds to that as being the time of approximate 23 first sighting, it would be around about 20:20. It 24 would still not be 3 cables; it would be much closer 25 than 3 cables.</p>
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<p>1 MR SHIEH: Was turned to starboard, but that obviously -- 2 THE CHAIRMAN: Yes. Hence the place on Lamma IV where the 3 collision occurred. 4 MR SHIEH: Yes. But that obviously, in the overall scheme 5 of things, was late. Of course one could debate as to 6 who was later, but in the overall scheme of things, only 7 putting it hard to starboard at around that sort of 8 timeframe was late. 9 If one actually works backwards from 20:20:10 as 10 being around about the time when Coxswain Chow actually 11 made a hard turn to starboard, it could be said that the 12 time of sighting, visual sighting, was likely to be less 13 than 3 cables because we have had the approximation -- 14 if we take 1 cable for 10 seconds, 3 cables would be 15 30 seconds. Obviously subsequently we have had a more 16 precise calculation by Dr Armstrong as to the precise 17 position of the vessels. Mr Chairman, you will remember 18 the latest calculations done by Dr Armstrong as to 19 the -- 20 THE CHAIRMAN: The distance that the vessels were apart? 21 MR SHIEH: The distance at various points in time. 22 THE CHAIRMAN: Yes. 23 MR SHIEH: But we can take it largely that they don't 24 actually differ much from Captain Pryke's approximation, 25 if one were to work backwards. Around about 10 seconds</p>	<p>1 THE CHAIRMAN: Because the hard to starboard was the only 2 thing to do, and that's what eventually he did do -- 3 MR SHIEH: Yes. 4 THE CHAIRMAN: -- and therefore the sighting must have been 5 closer than the 3 cables? 6 MR SHIEH: Yes, that's one possible argument. In fact 7 I think that was actually the point put by Mr Sussex to 8 Coxswain Chow. It's not as if some delicate judgment 9 had to be made, and Coxswain Chow had not actually 10 spoken of anything that was particularly exercising his 11 mind at the time. 12 Now, there is the evidence lately given in the 13 witness box about sighting on radar at about 1 nautical 14 mile away. That's within the range of the radar. 15 THE CHAIRMAN: That was during questioning by Mr Sussex? 16 MR SHIEH: Yes. 17 THE CHAIRMAN: Never mentioned anywhere previously? 18 MR SHIEH: Never mentioned anywhere previously, that's 19 correct. 20 THE CHAIRMAN: Notwithstanding that a detailed prepared 21 statement, I think 6 February, was amongst the various 22 written documents -- 23 MR SHIEH: Yes. 24 THE CHAIRMAN: -- that were available as to what he had to 25 say about the incident?</p>

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<p>1 MR SHIEH: Yes. And notwithstanding the fact that actually 2 on various occasions in his police interview, he 3 actually referred to having looked at the radar display 4 to look at various matters. So the fact of looking at 5 the radar or looking at certain information on the radar 6 had been mentioned, and curiously -- 7 THE CHAIRMAN: Yes. He sees Lamma II and the Shek Kok Tsui 8 beacon. He then at a later stage notices the vessel is 9 now doing 12 knots from the radar. 10 MR SHIEH: Yes. He says he saw the speed on the radar 11 display. So he did see fit to mention something about 12 the radar and one might say it's a bit odd that if he 13 did have the radar in mind, he did not at the same time 14 mention, "Actually, I saw Sea Smooth coming at 15 1 nautical mile range". These are the usual 16 considerations in considering credibility, as to why he 17 did not mention something as important as that. 18 Of course, it could well be said that mentioning 19 that he had actually seen the radar, seen it on radar at 20 1 nautical mile away, and not having done anything, 21 doesn't actually help him much. 22 THE CHAIRMAN: In the event. 23 MR SHIEH: Because in either case, it would be a case of bad 24 look-out. Seeing it at 1 nautical mile range and doing 25 nothing is equally -- well, I'm not going to suggest any</p>	<p>1 his far right and therefore would have the effect of 2 straining his neck. We would respectfully suggest this 3 is not something the Commission should really place 4 a good deal of weight on as justifying or providing any 5 valid reason for not looking at the radar, because the 6 radar is something that can be adjusted or tilted. 7 THE CHAIRMAN: Captain Pryke dealt with how one would deal 8 with that if it was a problem. 9 MR SHIEH: Yes, I have in mind that late evidence given by 10 Captain Pryke. It may well indicate some kind of defect 11 in the design of the wheelhouse, in the sense of placing 12 the radar so far away from the conning chair. Factually 13 speaking, it may be because the radar actually didn't 14 come with the vessel and the original design of the 15 wheelhouse didn't actually take into account the need to 16 look at the radar. 17 In any event, it would have helped if there had been 18 an extra crew station by his side helping with the 19 look-out. 20 In the case of Sea Smooth, there was actually 21 a separate conning chair next to the coxswain so that 22 there could be two persons sitting in front of the 23 console. The fact of Sea Smooth is actually a different 24 type of fault. Nobody actually bothered to sit there, 25 even though the facility was there. I'll come to that.</p>
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<p>1 relative fault as to which one is worse. But it doesn't 2 actually improve his position. So what one may say, if 3 one were to play the devil's advocate, is that he had no 4 reason to make up this matter in trying to make him look 5 better, because it doesn't actually make him look 6 better. But of course, a counter-argument is that it 7 could well be some kind of embellishment of his 8 evidence, which we sometimes see in witnesses thinking, 9 "Maybe saying I saw it on radar could make me look 10 better", when on analysis it doesn't. 11 THE CHAIRMAN: It would be one of the aspects of look-out he 12 ought to have been using. He has the equipment 13 available. 14 MR SHIEH: Yes. 15 THE CHAIRMAN: So that may have been the temptation, 16 following your line of argument. 17 MR SHIEH: It might be a temptation to embellish his 18 evidence by perhaps improving his position by saying, 19 "I did look at the radar", but, of course, upon proper 20 analysis it doesn't make him look better. Because 21 I think Captain Pryke accepted that if you actually see 22 it at 1 nautical mile away, I mean, you should actually 23 constantly monitor the radar. 24 He had made a suggestion that if he had to actually 25 regularly look at the radar, he would have to look to</p>	<p>1 THE CHAIRMAN: That was the obvious place from which to 2 mount a look-out. 3 MR SHIEH: Yes. But obviously we've heard evidence that on 4 that night, as Mr Chairman put, that might appear to 5 have been the seat to avoid. Everybody was lying at the 6 back of the wheelhouse, rather cosy. 7 THE CHAIRMAN: If you sit there, you might be called upon to 8 work; whereas if you sit on the settee or you sit on 9 a chair where you can't see outside the wheelhouse, 10 you're not called upon to work, perhaps. 11 MR SHIEH: Yes. Whatever might be the internal thinking as 12 to why people didn't choose to sit there, Mr Chairman, 13 you have the evidence of one of the crew members that 14 they regarded the act of going into the wheelhouse after 15 performing their various duties as being in the nature 16 of taking a rest. That's in the case of Sea Smooth. 17 And that is something to take into account in respect of 18 the atmosphere, in a way, in the Sea Smooth. But I'll 19 come to Sea Smooth -- 20 THE CHAIRMAN: Who do you say said that in evidence? 21 MR SHIEH: It's one of the crew's evidence when he was 22 interviewed by the police. I'll have that checked. 23 THE CHAIRMAN: Thank you very much. 24 MR SHIEH: I actually put it to that particular member, so 25 it's actually in evidence. I'll come back to that.</p>

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<p>1 There is a number of small issues concerning 2 Coxswain Chow's evidence that I perhaps wish to remind 3 the Commission that they will have to deal with. One is 4 the question of the sounding of the horn, and the other 5 is the flashing of the searchlight. The sounding of the 6 horn has been mentioned all along, but the only evidence 7 is from Coxswain Chow himself. There's no other 8 corroborative evidence, not from his own crew members 9 and not from the Sea Smooth crew. We know that the Sea 10 Smooth wheelhouse was sound-proof. But Coxswain Lai 11 said in his experience, even though the wheelhouse was, 12 in a way -- sorry, I might have said it's sound-proof. 13 No, it was actually sealed. The doors were closed. The 14 windows were closed. 15 THE CHAIRMAN: The whole purpose of a nautical whistle of 16 this kind -- 17 MR SHIEH: Is to be able to be heard by others inside the 18 wheelhouse. 19 THE CHAIRMAN: By other vessels. It might well be cold and 20 raining, so of course the windows would be closed on the 21 other vessel. That's why the whistle is required to be 22 of certain characteristics. 23 MR SHIEH: Yes. In fact Coxswain Lai said in his 24 experience, despite the closing of the windows, if the 25 horn had been sounded, he would have heard it.</p>	<p>1 Professor Ho examined it. 2 MR SHIEH: Yes. So it doesn't actually suggest in any way 3 that the horn might have been malfunctioning at the 4 time. 5 At the end of the day, there's only Coxswain Chow's 6 word for it and the Commission will have to take that 7 into consideration, in deciding whether or not to accept 8 his evidence that he actually sounded the horn. 9 In any event, if he only sighted Sea Smooth very 10 late in the day, it's questionable whether or not 11 sounding the horn at such a late stage would or might 12 have helped. 13 The flashing of the searchlight was actually 14 something not hitherto mentioned. It was something he 15 mentioned for the first time when he went into the 16 witness box. Again, there's no corroborative evidence 17 as to anyone seeing the flashing of the searchlight. 18 THE CHAIRMAN: It was mentioned in his witness statement 19 I think of 6 February, was it not? 20 MR SHIEH: Not previously. 21 THE CHAIRMAN: No, but it was mentioned in the statement 22 prepared in effect as evidence-in-chief. 23 MR SHIEH: Yes, but not previously. Not previously. 24 THE CHAIRMAN: No, I follow that. 25 MR SHIEH: Yes. Again, bearing in mind the lateness of his</p>
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<p>1 THE CHAIRMAN: Yes. The word he used was it was impossible 2 for him not to have heard it. 3 MR SHIEH: Yes. Yes. Professor Ho inspected the console 4 and he gave some evidence as to the severe degree of 5 rusting actually under the horn button. But in 6 fairness, Professor Ho actually inspected various other 7 buttons too -- 8 THE CHAIRMAN: That applied to all the others. 9 MR SHIEH: That applied to all the others, and therefore it 10 might not be entirely conclusive because one doesn't 11 actually know -- 12 THE CHAIRMAN: Copper oxide, was it not? 13 MR SHIEH: Rusting. It may be that. 14 THE CHAIRMAN: He called it rusting, but I think he then 15 said it was copper oxide. 16 MR SHIEH: Copper oxide. There were photographs in his 17 latest report where he took pictures of the horn console 18 and others. 19 THE CHAIRMAN: Yes. 20 MR SHIEH: That's inconclusive and it may not suggest any 21 malfunctioning of the horn. In fact that's something we 22 may never be able to find out. 23 THE CHAIRMAN: It's entirely consistent with a vessel that's 24 been under the sea, covered in water, and then is 25 brought up and in the atmosphere for months until</p>	<p>1 sighting of the Sea Smooth, it's again questionable 2 whether or not the flashing of a searchlight would have 3 played any role in avoiding the collision or alerting 4 the other vessel. 5 Turning again to the Sea Smooth, we say there's no 6 enforced system of look-out, no attempt to lay down any 7 ideas in the mind of the crew that they had 8 a responsibility in terms of looking out, no allocation 9 of duties. The Commission will recall the crew evidence 10 that there was no allocation of duties; it's all ad hoc. 11 Depends on who was in the mood to actually do anything. 12 THE CHAIRMAN: And in the hierarchy of a maritime crew, who 13 bears responsibility for that? 14 MR SHIEH: Well, the coxswain. The coxswain, obviously, 15 being the leader of the vessel should be somebody who 16 had taken the responsibility for saying, "Hey, you. Can 17 you help me with it?" So he should not feel inhibited 18 from doing it. Of course, higher up in the hierarchy, 19 the employer obviously should have a proper system to 20 ensure that people are told what their duties are. 21 I mean, in the event, for example -- because we have 22 heard evidence that sometimes it may well be that the 23 coxswain could well feel inhibited from actually giving 24 orders to other crew members. Now, whether that is 25 justifiable or whether that is a valid excuse of course</p>

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<p>1 is another matter.</p> <p>2 THE CHAIRMAN: Well, there was some degree of obvious</p> <p>3 prevarication by Coxswain Lai as to the issue of whether</p> <p>4 or not he was empowered to order crew members to do</p> <p>5 things.</p> <p>6 MR SHIEH: Yes. And they might say, well, if the boss tells</p> <p>7 them, that's fine. "I mean, I'm not going to do the</p> <p>8 dirty work in telling my fellow crew members to do it."</p> <p>9 THE CHAIRMAN: Therefore you say Hong Kong &amp; Kowloon Ferry</p> <p>10 bears some responsibility for not having set out</p> <p>11 clearly, if that be the case, that the coxswain --</p> <p>12 MR SHIEH: If only the coxswain can actually tell you guys</p> <p>13 to perform look-out --</p> <p>14 THE CHAIRMAN: Yes, and perhaps going even further, not only</p> <p>15 that but the coxswain should appoint someone to be</p> <p>16 a look-out on all voyages.</p> <p>17 MR SHIEH: Yes. The employer may not have to actually get</p> <p>18 down to the level of specifically saying, "On this</p> <p>19 voyage, crew member A shall perform the look-out", but</p> <p>20 some official --</p> <p>21 THE CHAIRMAN: No, one wouldn't expect that. But the system</p> <p>22 ought perhaps to be such that the crew and the coxswain</p> <p>23 knew that the coxswain had power to give these</p> <p>24 directions, and that's --</p> <p>25 MR SHIEH: Yes. And the coxswain is not inhibited.</p>	<p>1 THE CHAIRMAN: What do you say of the day's work that the</p> <p>2 Sea Smooth had had to work that day before they began</p> <p>3 the 20:00 hours voyage to Yung Shue Wan, as an aspect or</p> <p>4 in respect of the issue of the causes of the collision?</p> <p>5 MR SHIEH: Well, there was no evidence that the crew members</p> <p>6 actually felt tired or they somehow were not able to</p> <p>7 focus on any aspect of look-out. But these matters,</p> <p>8 one --</p> <p>9 THE CHAIRMAN: I thought the engineer said that he did feel</p> <p>10 tired after a 12-hour day.</p> <p>11 MR SHIEH: Yes, but there's no suggestion that somehow it</p> <p>12 would have the effect of hampering any look-out.</p> <p>13 But the point I'm driving at is these are not the</p> <p>14 sort of matters that one would readily secure any sort</p> <p>15 of admission from the crew, and it's after all a hectic</p> <p>16 day --</p> <p>17 THE CHAIRMAN: I'm trying to look at it objectively. This</p> <p>18 is a crew that had been on duty since 7.30 in the</p> <p>19 morning.</p> <p>20 MR SHIEH: It was a hectic day. They had to do extra</p> <p>21 voyages.</p> <p>22 THE CHAIRMAN: Yes. So as a result, much time was spent</p> <p>23 dealing with when it was they managed to grab a bite to</p> <p>24 eat.</p> <p>25 MR SHIEH: Grab a meal. Yes.</p>
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<p>1 THE CHAIRMAN: -- a power that the company wished the</p> <p>2 coxswain to use because they wished someone to be</p> <p>3 appointed by the coxswain to be look-out on all</p> <p>4 voyages --</p> <p>5 MR SHIEH: Yes.</p> <p>6 THE CHAIRMAN: -- given this was a high-speed craft.</p> <p>7 MR SHIEH: And there should not be any inhibition on the</p> <p>8 part of the coxswain in placing these orders. It's</p> <p>9 really the culture and the atmosphere in the whole</p> <p>10 company; there should be an encouragement for look-out.</p> <p>11 The Commission will remember the evidence as to the</p> <p>12 set-up in the Sea Smooth wheelhouse. I use the word</p> <p>13 "cosy". It was indeed rather cosy. One could imagine,</p> <p>14 after a hard day's work, it's rather dark and there's</p> <p>15 a chair next to the conning chair; nobody sat there. We</p> <p>16 don't have to speculate whether anyone actually sat at</p> <p>17 the other conning chair during other voyages, but we</p> <p>18 know as a fact nobody actually sat there during that</p> <p>19 fateful journey. We know two sailors sat on the</p> <p>20 port-side sofa and the engineer sat on the small chair.</p> <p>21 Leaving aside whether they were tired after a day's</p> <p>22 work, and we knew it was a busy day, the atmosphere was</p> <p>23 not conducive to very vigilant look-out, even if</p> <p>24 somebody wanted to take it upon himself voluntarily to</p> <p>25 perform any look-out when they were sitting on the sofa.</p>	<p>1 THE CHAIRMAN: That's the kind of day it was. So they were</p> <p>2 well over 12 hours into a working day.</p> <p>3 MR SHIEH: Although there was no direct admission of</p> <p>4 tiredness -- as I say, one could readily imagine, after</p> <p>5 a hectic evening, in the evening, in a dark, cosy</p> <p>6 wheelhouse, one cannot preclude the possibility that</p> <p>7 they would not be in as vigilant a position as one might</p> <p>8 have wanted to be, even had they wanted to take on the</p> <p>9 role of a look-out. Of course, if one actually tells</p> <p>10 them to take on a look-out, one could readily imagine</p> <p>11 the slackness with which they would go about conducting</p> <p>12 themselves in the wheelhouse.</p> <p>13 In fact that's entirely consistent with what we know</p> <p>14 was happening in the wheelhouse. There was the</p> <p>15 occasional chatting, they were lying on the sofa.</p> <p>16 THE CHAIRMAN: I don't think anyone said they were lying on</p> <p>17 the sofa.</p> <p>18 MR SHIEH: Sitting. Sitting on the sofa. I think Mr Lee</p> <p>19 from the trade union actually also gave some rather</p> <p>20 helpful evidence in his witness statement during the</p> <p>21 last day of the hearing as to comparatively -- this</p> <p>22 24 hours on, 24 hours off arrangement, how it would have</p> <p>23 compared with other regimes. Of course that is on</p> <p>24 a rather high level of generality.</p> <p>25 THE CHAIRMAN: Yes.</p>

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<p>1 MR SHIEH: But we've had comparative evidence as to how 2 other crew members had their -- 3 THE CHAIRMAN: Working conditions in other companies, at 4 least the two that he mentioned, were not as onerous. 5 MR SHIEH: Yes, not as onerous, both in terms of working 6 hours and also meal time. 7 THE CHAIRMAN: Yes. 8 MR SHIEH: In fact, Mr Chairman, you may remember in fact in 9 the minutes produced by Hong Kong &amp; Kowloon Ferry, the 10 company actually had to issue warnings or reminders to 11 crew members that although the company knew that they 12 had to find time to grab a bite, at least don't do it in 13 front of passengers. It's in that clip of minutes 14 attached to Mr Ng's witness -- 15 THE CHAIRMAN: I remember what you're referring to. 16 MR SHIEH: So the company was indeed aware that crew members 17 had to find time to grab a bite and they were actually 18 driven to eating it in front of passengers. What the 19 company did was to tell them not to do so, without 20 giving thoughts to meal arrangements. 21 Of course, it's hard to establish positively that 22 this hectic schedule has had a positive causative 23 impact, but that is something obviously, in terms of 24 recommendation, the Commission may wish to consider 25 dealing with. Because even though matters may not be</p>	<p>1 still have been spotted. 2 THE CHAIRMAN: Yes. What Captain Pryke said about that was 3 it was incumbent upon a coxswain to go up and down the 4 range, if you set it as low as 0.75, in a vessel doing 5 that speed. 6 MR SHIEH: Yes, he should vary the range. In fact, even in 7 COLREGs itself I think it refers to long-distance 8 scanning. 9 THE CHAIRMAN: Yes. 10 MR SHIEH: In terms of whether or not Lamma IV had 11 navigation lights on, the Commission may wish to 12 consider direct evidence coming from the crew members of 13 having switched on the navigation lights, and also that 14 they had actually seen the navigation lights from the 15 berth. We had two members giving evidence of that. 16 THE CHAIRMAN: Yes. 17 MR SHIEH: One seeing only the green light, and the other 18 going to berth 1 and seeing both starboard lights. At 19 that point in time, I believe Lamma II hadn't got to 20 berth 1 yet. 21 THE CHAIRMAN: That was the evidence we received, and that 22 afforded him the view that he testified to. 23 MR SHIEH: Yes, because Lamma II had not yet got to berth 1, 24 so he would have an unobstructed view. 25 Of course, one might say they may have a motive to</p>
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<p>1 positively proven to be a positive contributing factor 2 on a balance of probability, it is obviously something 3 which one could well believe to be in need of 4 improvement in the overall safety regime. 5 The coxswain admitted that he actually did not 6 regularly monitor the radar and there was a sense of 7 complacency. He first saw the Lamma IV, according to 8 him, 2-3 ship-lengths away, and we say that obviously 9 was late. He didn't recall seeing any lights on 10 Lamma IV. Now, he might not actually be positively 11 saying that there were no lights. 12 THE CHAIRMAN: I thought he got to that point when pressed: 13 there weren't any lights. 14 MR SHIEH: Yes, but that caused into enquiry whether or not 15 the navigation lights were on at the time of collision. 16 That is why we have had wide-ranging scientific evidence 17 and expert evidence as to examination of the powder and 18 also the wiring system. 19 Of course, whether the lights were on or not does 20 not alter the antecedent question of poor look-out, 21 because had he looked at the radar more, had there been 22 a proper system of look-out, had somebody actually 23 helped him look at the radar, the approach of Lamma IV 24 would and should have been spotted at an earlier time. 25 Even though his range was 0.75 nautical miles, it should</p>	<p>1 lie. I'm not sure it was put to them in terms that they 2 were lying. But insofar as one wants to look at other 3 objective evidence -- of course, we have the evidence of 4 the fireman who saw the green light and whose evidence 5 was -- 6 THE CHAIRMAN: That's Fireman Tam. Dramatic evidence. 7 MR SHIEH: Yes. Who did testify. 8 THE CHAIRMAN: He's alongside the Lamma IV on the starboard 9 side. There's a woman clinging onto a railing, and 10 above her is the lit green navigation light. 11 MR SHIEH: Yes. 12 THE CHAIRMAN: And above that is the radar scanner, which is 13 still spinning. 14 MR SHIEH: Yes. So one could well take the view that that 15 is rather cogent, direct evidence from somebody at close 16 range. 17 Of course the Commission will remember the evidence 18 that the crew had given about the manner in which they 19 switched the various buttons; that they would be 20 switched to "2", battery, because of the experience they 21 had in switching to generator, and that there was 22 nothing untoward about the buzzer and also the indicator 23 lights. 24 Of course we also have Dr Cheng's evidence as to his 25 examination of the deposits on the broken bulbs. He was</p>

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<p>1 able to positively determine that there had been 2 an electric current on the port side and the masthead 3 light, and although he wasn't able to conclude 4 an electric current on the starboard, he was indeed able 5 to detect the presence of tungsten and oxygen on 6 starboard, which would have indicated -- 7 THE CHAIRMAN: Well, in all three bulbs there was tungsten 8 oxide. 9 MR SHIEH: Yes. 10 THE CHAIRMAN: And in masthead and port, there was magnesium 11 hydroxide, which is what is formed by electrolysis of 12 seawater. 13 MR SHIEH: Yes. Yes. In terms of the appearance of the 14 various circuit breakers, we know from the latest 15 evidence from Professor Ho that the circuit breakers for 16 the navigation lights, barring the stern light, because 17 the stern light was badly damaged, in respect of 18 masthead and the two sidelights, they were in the "on" 19 position. So had there been electric power available, 20 then those should have been in the "on" position. There 21 is some evidence that the appearance of the circuit 22 breaker supported that the two sidelights should have 23 been -- 24 THE CHAIRMAN: The indicator lights for the four external 25 navigation lights -- the masthead light, the green and</p>	<p>1 MR SHIEH: No. No. But to counter that sort of suggestion, 2 I would respectfully say this. The stern light -- the 3 stern relay was badly damaged, and the stern circuit 4 breaker had obviously jumped or tripped. So the stern 5 light had certainly had an electric current going 6 through it. So the stern light would have been on and 7 perhaps damaged as a result of the collision. 8 One would venture to say that if the stern light was 9 on, is there any other reason why the others would not 10 be on? So the likelihood would be, okay, all -- stern, 11 masthead and sidelights -- would have been on, and 12 because of the particular configuration of damage, the 13 stern light was particularly badly damaged, so as to 14 result in a strong surge of current which had the effect 15 of tripping the stern circuit breaker and also it was so 16 high that it actually also tripped the navigation lights 17 circuit breaker -- the second one from the left, 18 Mr Chairman, you may remember -- tripping that one as 19 well. 20 THE CHAIRMAN: We also have the evidence of the coxswain of 21 Lamma II, do we not, who spoke of seeing the navigation 22 lights on Lamma IV as she manoeuvred and then exited the 23 Hongkong Electric typhoon shelter. 24 MR SHIEH: Yes, yes. That actually happened to be a Hong 25 Kong &amp; Kowloon Ferry employee. So if one were to</p>
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<p>1 red sidelights, and the stern light -- were all in the 2 position that was consistent with what Coxswain Chow had 3 said was the practice for sailing with the navigation 4 lights. 5 MR SHIEH: Yes. 6 THE CHAIRMAN: And so was the battery -- 7 MR SHIEH: Switching to "2". 8 THE CHAIRMAN: The switch that dealt with power, which was 9 on battery. 10 MR SHIEH: Yes. The stern circuit breaker was badly 11 damaged, and the evidence was that -- 12 THE CHAIRMAN: Well, the relay was certainly badly damaged. 13 MR SHIEH: The relay was badly damaged and even the circuit 14 breaker was badly damaged. It should actually have been 15 in a dangling position, but somebody actually put it 16 back to the "on" position. 17 That is something which may suggest the possibility 18 of tinkering, certainly in respect of the stern circuit 19 breaker, and it may be said that there is a possibility 20 that other circuit breakers or other switches might have 21 been tinkered with and therefore any photographic 22 evidence as to the appearance of the other circuit 23 breakers may not represent the true state at the time of 24 the collision. It is something that may -- 25 THE CHAIRMAN: Has that been suggested to any witness?</p>	<p>1 actually go down the route of actually looking at 2 whether or not somebody had any reason to tell 3 an untruth, not that anyone has suggested that, but he 4 actually belongs to Hong Kong &amp; Kowloon Ferry. He's 5 a Hong Kong &amp; Kowloon Ferry employee. 6 THE CHAIRMAN: Yes. 7 MR SHIEH: Now, although there is bad look-out on both 8 sides, and both should have turned starboard earlier, in 9 our submission there is one point, not that it has been 10 seriously suggested by anyone, but there is one point 11 that perhaps we should say in respect of Sea Smooth, and 12 that is to say Sea Smooth should be absolved from any 13 suggestion that she had somehow deliberately or 14 recklessly tried to cut across Lamma IV by turning port. 15 It was simply a case that Coxswain Lai was simply 16 ignorant of the approach of Lamma IV, and he turned port 17 in an attempt to get ready for berthing at Yung Shue 18 Wan, and he saw Lamma IV too late. 19 THE CHAIRMAN: How in 6 miles of visibility do you not see 20 the navigation lights of a vessel the size of Lamma IV, 21 with the cabin lights in the main deck lit, until 22 2-3 boat-lengths before the collision? How does that 23 happen? 24 MR SHIEH: Extremely bad look-out would be one possibility. 25 Because the evidence from the wheelhouse is consistent.</p>



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<p>1 Of course, one could actually decide to reject all the 2 evidence and then decide that they did see the approach 3 of Lamma IV at a distance, but then the corollary would 4 be that they did see the approach of Lamma IV at 5 a distance and then somehow took a reckless gamble. 6 THE CHAIRMAN: Well, a much higher speed of approach by the 7 Sea Smooth following her normal route. "This is my 8 route to Yung Shue Wan." 9 MR SHIEH: Or maybe playing a game of "who blinks first". 10 THE CHAIRMAN: "I'm faster than you. Twice as fast." 11 MR SHIEH: Nobody has actually accepted that or admitted 12 that. It could be possible. But it would be rather 13 serious and reckless conduct. 14 THE CHAIRMAN: So you suggest that on Coxswain Lai's own 15 account, this is extremely bad look-out? 16 MR SHIEH: Yes. Of course, that depends on the Commission 17 accepting Coxswain Lai's and in fact the entire crew's 18 evidence that they did not actually see the approach of 19 Lamma IV. 20 THE CHAIRMAN: Well, the other three members of the crew had 21 left the wheelhouse some little time earlier, had they 22 not? 23 MR SHIEH: Only a little time earlier. 24 THE CHAIRMAN: Only a little time earlier. 25 MR SHIEH: Yes.</p>	<p>1 where he couldn't see outside the wheelhouse. 2 MR SHIEH: Yes. Of course, one has to bear in mind the 3 nature of the "look-out" that they had been carrying 4 out. But, of course, I'm postulating the possibilities. 5 If it's a bad look-out, it's a bad look-out. But if 6 it's not a case of bad look-out, it would have been 7 a case of, as I have just put it, seeing it from 8 a distance, but basically taking a reckless gamble, 9 saying, "Who blinks first? I'm going to turn to 10 starboard and you have to slow down anyway." It so 11 happened that Lamma IV wasn't keeping a good look-out 12 herself. 13 I now turn briefly to the suggestion that it 14 actually is not a head-on or near head-on situation, but 15 a fine-crossing situation. Captain Browne's evidence 16 has not actually been admitted, but the suggestion has 17 been put to Captain Pryke on the basis that it is 18 fine-crossing and not head-on. 19 THE CHAIRMAN: I haven't seen the submissions filed on 20 behalf of Hong Kong &amp; Kowloon Ferry. Is this still in 21 issue? 22 MR ZIMMERN: This is, yes, very much in issue. 23 THE CHAIRMAN: Very much in issue? 24 MR ZIMMERN: Yes. Whether it's a head-on or fine-crossing, 25 if this Commission believes it ought to be applied.</p>
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<p>1 THE CHAIRMAN: Before they'd reached -- I think one of them 2 had it at 20 or 30 degrees off the port bow, the light 3 of Shek Kok Tsui. 4 MR SHIEH: Yes. It was not immediately -- 5 THE CHAIRMAN: It wasn't abeam. 6 MR SHIEH: It wasn't yet abeam. But they all deposed to the 7 fact that it was really shortly after they had reached 8 their respective positions. 9 THE CHAIRMAN: Yes. They'd been able to make their way down 10 from the wheelhouse, out into the upper cabin, down the 11 stairs to the main deck. One of them was still -- 12 MR SHIEH: Still on the steps, before he reached the bottom. 13 THE CHAIRMAN: -- the penultimate step. The other two were 14 at their positions close to the gangway. 15 MR SHIEH: Yes. So, yes, if one accepts the crew's 16 evidence, all four of them -- because I know the time 17 difference between the actual sighting and also the -- 18 there's a small gap between what Coxswain Lai said to be 19 the actual sighting, and the time when the crew actually 20 left. But if the approach of Lamma IV was indeed 21 visible at a distance, then one would have thought that 22 it should actually have been seen by all four crew 23 members, even before they left the wheelhouse. Of 24 course -- 25 THE CHAIRMAN: Well, the engineer was sitting down on a seat</p>	<p>1 Because our primary position is that whether it's 2 a rule 14 or rule 15 situation is a matter of 3 attributing blame, which is something the Commission 4 ought not to do, but should determine the cause of the 5 collision based on the factual evidence as opposed to 6 an analysis of head-on versus crossing. But I'll come 7 to that in a moment. 8 THE CHAIRMAN: I'll look forward to you explaining that to 9 me. 10 Yes, Mr Shieh. 11 MR SHIEH: Coming back to the question as to which of the 12 two possibilities, namely whether it was merely a case 13 of a bad look-out or whether it was something more 14 serious. In case the Commission feels unable to 15 actually deal with the matter or finds the matter 16 perhaps inappropriate to be dealt with in an Inquiry of 17 this nature, the Commission could well readily say, even 18 on the less culpable evidence, even on Coxswain Lai's 19 own admission it's a case of really bad look-out, 20 obviously because of wider implications if the 21 Commission does not actually wish to go down any route 22 of perhaps debating the various possibilities. 23 As to fine-crossing, the evidence of Captain Browne 24 has not been admitted, but points may still be taken, in 25 fact we now know it will be taken, that it is in fact</p>

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<p>1 a fine-crossing situation.</p> <p>2 Captain Pryke has dealt with the questions put to</p> <p>3 him. The questions put to Captain Pryke were really</p> <p>4 based on two matters. First was the data in the various</p> <p>5 print-outs as to the course over ground figures.</p> <p>6 Captain Pryke has dealt with that. The more reliable</p> <p>7 data or information from those print-outs would really</p> <p>8 be the positions, the longitudinal and latitude</p> <p>9 positions as reflected by the radar, and not really</p> <p>10 course over ground, which would be unreliable.</p> <p>11 The other point really that is relied upon for</p> <p>12 suggesting that it's a fine-crossing situation is that</p> <p>13 rule in the Collision Regulations dealing with the</p> <p>14 deeming -- the deeming provision, that a head-on</p> <p>15 situation is deemed to exist if you could actually see</p> <p>16 both sidelights. But the corollary is not necessarily</p> <p>17 correct. In other words, the fact that you may not be</p> <p>18 able to see both sidelights does not mean that it is</p> <p>19 therefore not a head-on or near head-on situation.</p> <p>20 Captain Pryke, in our submission, has given</p> <p>21 a convincing explanation, because if you are in any</p> <p>22 doubt whether or not you are head-on or whether or not</p> <p>23 it's fine crossing, you apply the head-on rule and</p> <p>24 therefore each turn starboard. So in a way, the rules</p> <p>25 have built in a default position.</p>	<p>1 a sister ship called Eastern District No. 2.</p> <p>2 The plans had consistently shown frame 1/2 to be</p> <p>3 watertight. The plans were understood by the various</p> <p>4 Mardep inspectors to be watertight. The plans were</p> <p>5 understood by Cheung Fook-chor of Cheoy Lee to show</p> <p>6 a watertight bulkhead. It was understood by Mr Kwok of</p> <p>7 Cheoy Lee to be watertight. And the damage stability</p> <p>8 calculations of Cheoy Lee were done on the basis that</p> <p>9 there was a door there, although overlooking the 0.1L</p> <p>10 rule -- that's a separate point -- but they were</p> <p>11 calculated on the basis that there was a door there. So</p> <p>12 in terms of the primary players at that time, Mardep and</p> <p>13 Cheoy Lee, they all regarded the plans as showing</p> <p>14 a watertight bulkhead at frame 1/2.</p> <p>15 Now, the Marine Department had time and time again</p> <p>16 attempted to suggest that there were ambiguities and</p> <p>17 confusion. In actual fact, contemporaneously, nobody</p> <p>18 felt confused at all. Nobody felt any ambiguity at all.</p> <p>19 The only suggested basis of ambiguity was that in the</p> <p>20 Sections and Bulkheads plan for Lamma IV, there is one</p> <p>21 part which says "access opening". The Commission will</p> <p>22 remember that part.</p> <p>23 THE CHAIRMAN: Yes.</p> <p>24 MR SHIEH: Bottom left-hand corner. But in our submission,</p> <p>25 that does not create any confusion or ambiguity on the</p>
<p>Page 38</p> <p>1 I now move on to the sinking. The evidence as to</p> <p>2 the manner in which the vessel sank is clear: within</p> <p>3 a short time, two big openings were created on the port</p> <p>4 hull and it resulted in three compartments being flooded</p> <p>5 because of an access opening at frame 1/2, and that</p> <p>6 meant Lamma IV sank stern-first very quickly.</p> <p>7 Dr Armstrong had done his calculations. The absence</p> <p>8 of a door at frame 1/2 proved fatal. Had a door been</p> <p>9 fitted at frame 1/2, the vessel would have tilted but it</p> <p>10 would not have sunk, at least it would not have sunk so</p> <p>11 quickly and there would probably have been enough time</p> <p>12 for rescue operation to be arranged.</p> <p>13 Could I have expert bundle 1, page 463.</p> <p>14 6.2 depicts the theoretical position of Lamma IV had</p> <p>15 there been a watertight bulkhead at frame 1/2. Of</p> <p>16 course, Dr Armstrong indicated that even in that</p> <p>17 position, the vessel might in due course still sink</p> <p>18 because of the effect of waves and matters of that</p> <p>19 nature. But there would have been enough time for</p> <p>20 a meaningful rescue operation to be conducted.</p> <p>21 Now, the vessel was built by Cheoy Lee. The hull</p> <p>22 was subcontracted to the Wuzhou Shipyard, which the</p> <p>23 Commission's solicitors have tried to serve -- well,</p> <p>24 tried to fax and contact -- but have failed. The plans</p> <p>25 were prepared by Naval-Consult and were based on</p>	<p>Page 40</p> <p>1 plans, because once you see the preponderance of</p> <p>2 references to "watertight bulkhead", the reference to</p> <p>3 an access opening can perfectly be rationalised with</p> <p>4 other parts of the plans on the basis that frame 1/2 was</p> <p>5 to be a watertight bulkhead, and the opening, the access</p> <p>6 opening, was to have a closing device fitted in</p> <p>7 accordance with the requirement in the Blue Book.</p> <p>8 Because the Commission will remember in the Blue Book</p> <p>9 there is this requirement that any opening in</p> <p>10 a watertight bulkhead should be fitted with a closing</p> <p>11 device. So basically, put bluntly, if it's meant to be</p> <p>12 a watertight bulkhead but you have an access opening</p> <p>13 there, you fit it with a closing device, which in our</p> <p>14 case would be a door, to make it watertight. It is</p> <p>15 I think rule 12(v) of the Blue Book.</p> <p>16 THE CHAIRMAN: Yes.</p> <p>17 MR SHIEH: The Commission will have the ready reference to</p> <p>18 that. Rule 12(v) of the Blue Book.</p> <p>19 So, in our submission, on the basis of the plans as</p> <p>20 they understood them to be depicted, Mardep ought to</p> <p>21 have spotted that there was a departure from the plans</p> <p>22 and ought to have rejected the ship as built. But</p> <p>23 unfortunately Mardep did not spot the departure, whether</p> <p>24 in 1995, 1998 or 2005. 1998 was originally built --</p> <p>25 well, 1996, actually; 1998 was the adding of ballast;</p>

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<p>1 and 2005 was the raising of the ballast. 2 I don't need to rehearse the detailed evidence of 3 the various Mardep inspectors who had a role to play in 4 the various inspection exercises, because all they did 5 was to actually bring out a negative point, namely they 6 missed it. We have actually put in a rather more 7 detailed chart assisting the Commission in case the 8 Commission wants to find out which inspectors testified 9 in respect of the 1995-1996 exercise -- 10 THE CHAIRMAN: We will do. Where do we find that? 11 MR SHIEH: We have actually put in a table, just to assist 12 the Commission. It's in our submissions bundle. It's 13 a table. It's on the screen now. 14 THE CHAIRMAN: Which page of the submission? 15 MR SHIEH: It's not part of the original submission. It is 16 a separate document. 17 THE CHAIRMAN: No, I didn't think I'd seen it. 18 MR SHIEH: It is a separate document. But just to assist 19 the Commission, it's headed "List of Inspectors and 20 Surveyors (Marine Department)". 21 THE CHAIRMAN: I follow that. But where is a paper copy for 22 me? 23 MR SHIEH: It's in tab 3. 24 THE CHAIRMAN: I'm working on the copy that I downloaded on 25 Saturday --</p>	<p>1 then maybe later went back to revisit the matter. But 2 it was dealt with on a witness-by-witness basis. 3 THE CHAIRMAN: So what do you say then in respect of, first 4 of all, the failure to note that -- 5 MR SHIEH: I'm going to develop the consequence of failing 6 to note. 7 So we say Mardep ought to have spotted the absence 8 of a door and rejected the ship as built. 9 Miscellaneous bundle at page 92, I've been reminded 10 by Mr Beresford, is a timeline that had been put in 11 earlier. It's "Chronology of initial surveys of 12 Lamma IV". If you scroll on, it moves from 1995 to 13 1996. 14 THE CHAIRMAN: Yes. Thank you. 15 MR SHIEH: So a combination of this document and also the 16 document we had just now. Because the document that we 17 just handed up to Mr Chairman also included the latest 18 transcript references, which is up-to-date, but the 19 document in the miscellaneous bundle is actually in 20 chronological form. 21 THE CHAIRMAN: Yes. Well, the two together will be very 22 helpful. 23 MR SHIEH: Yes. 24 Before I deal with the consequence of Mardep missing 25 the point, can I just deal with an ex post facto attempt</p>
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<p>1 MR SHIEH: It's now being handed up. (Handed). 2 THE CHAIRMAN: Thank you. 3 MR SHIEH: The various witnesses explained what they 4 perceived their role to be and why somehow they had not 5 taken any steps or action in respect of the missing 6 door. As I said, I'm not going to go into the details 7 of what each of them said, because the broad picture is 8 clear: namely, that they all missed the point. 9 I suppose it's not entirely accurate to say they all 10 missed the point, because I think Mr Fung actually saw 11 the absence of a door. But he actually thought it's 12 going to be dealt with later. So perhaps the more 13 accurate way of putting it would be that they did not 14 take any steps in respect of the missing door. 15 It's arranged in this format, Mr Chairman. So the 16 first page would be "Certification and Initial surveys". 17 Section B would be "Addition of the ballast in 1998 and 18 raising of the ballast in 2005". 19 THE CHAIRMAN: Is there an accompanying timeline? That's 20 the bold figure, is it? 3 May, 8 May, 17 May. Yes. 21 MR SHIEH: It's not chronological in the sense that -- 22 because some of these witnesses actually had roles to 23 play at different points in time. 24 THE CHAIRMAN: Yes. 25 MR SHIEH: Some of them actually did it first, however, and</p>	<p>1 by Mr Wong Chi-kin to suggest that despite 2 non-compliance, approval might still have been granted 3 to Lamma IV. 4 In our submission, that was ex post facto on 5 a hypothetical basis, and also the basis upon which Wong 6 Chi-kin said that he would still have granted approval 7 was actually on a basis that it was questionable because 8 Mr Chairman will remember that what he said was, "Oh, 9 I would have done a rough comparison because the 10 combined size of the tank room and the steering gear 11 compartment was actually smaller than the size of the 12 engine room. So if the engine room survived the 13 relevant margin line calculation, then the combined size 14 of the tank room and the steering gear compartment, 15 which was smaller than the engine room, should likewise 16 survive the margin line calculations." 17 Now, that sort of crude approach had been shown to 18 be rather questionable because I think it was accepted 19 that that fails to take into account the question that 20 if the relevant compartments are closer to the stern, 21 the moment that they create would be larger. 22 MR MOK: I'm sorry, Mr Chairman, I hesitate to interrupt my 23 learned friend. I think this part of Mr Wong Chi-kin's 24 evidence was not actually received. Mr Chairman, you 25 remember that during the examination by Mr Beresford,</p>

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<p>1 you said that perhaps we should not look at that but 2 look at someone who actually did the work at the 3 relevant time. 4 THE CHAIRMAN: Yes. Thank you for that. 5 MR SHIEH: I'm grateful. So the evidence might not actually 6 have come out from Mr Wong Chi-kin, but I think another 7 inspector also gave evidence. 8 Mr Beresford is trying to look up the point. 9 I think one inspector did look that up, and I think the 10 point was actually put to that witness and he actually 11 accepted that this crude and rough-and-ready way of 12 actually working out the matter is not really 13 satisfactory, because he actually didn't take into 14 account the question of the moment. 15 THE CHAIRMAN: What about the simple issue of the fact that 16 the access opening didn't have a watertight door but the 17 plans, the drawings, described it as a watertight 18 bulkhead? 19 MR SHIEH: I'm coming to it immediately. Because as 20 a matter of commonsense and proper public 21 administration, we would submit that Mardep, who is 22 faced with obviously maritime safety and obviously 23 ensuring conformity with plans, if it's faced with 24 a departure from approved plans, the normal thing to do 25 would be to ask the person submitting the vessel to</p>	<p>1 done in their witness statements and say, "Ah, but there 2 may be other ways in which I could actually give you 3 approval." 4 It's actually a witness called Mr Leung Kwong-chow. 5 It's in Day 17. I don't actually have the exact 6 reference here. But it's in Day 17. I think it's 7 a witness taken by Mr Beresford, and the point was 8 actually put to him that this crude and rough-and-ready 9 way of ex post facto granting approval was dubious. 10 THE CHAIRMAN: Do you have the transcript reference? 11 MR SHIEH: It's Day 17. It's now being looked up. 12 It may not be Leung Kwong-chow, but we'll look it up 13 and supply the reference later. 14 The Commission may well wish to consider what would 15 or might have happened had Mardep rejected the plans and 16 asked them to redo them. One might say that that is 17 venturing on perhaps hypothesis upon hypothesis. If 18 that is the view taken, then the very least that the 19 Commission can say or should say, we submit, is to say 20 that the failure of Mardep to spot the matter and to 21 raise it had actually resulted in numerous safety and 22 construction matters not being attended to, such as 23 those concerning, for example, the aft peak bulkhead. 24 Now, there were debates and debates, in fact 25 last-minute attempts by Mardep to put in yet a further</p>
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<p>1 conform. To conform. Or, if they say it was a mistake, 2 then they go back and amend the plans and resubmit. 3 Rather than to take it upon itself, as might be 4 suggested by Mardep, to think of ways, to justify the 5 departure and to grant approval, despite departure. We 6 respectfully submit the prima facie starting point would 7 be to say, "Well, go back and redo your work. I'm not 8 going to do your work for you in trying to find 9 justifications." 10 So we actually would invite the Commission to find 11 and to say that had the point been spotted, that really 12 would have been or ought to have been the approach that 13 Mardep should have taken. 14 THE CHAIRMAN: And required that the drawings be amended? 15 MR SHIEH: Either be amended or that they make it watertight 16 in line with Mardep's then understanding of the plans. 17 THE CHAIRMAN: Well, even if that was done, wouldn't it be 18 sensible to have amended the Sections and Bulkheads 19 drawing to -- 20 MR SHIEH: To make that clear, that it is watertight, there 21 is a door there, the bottom left-hand bit, yes. 22 THE CHAIRMAN: So that you've created an accurate audit 23 trail, so that people who come to these documents later 24 are given the correct information. 25 MR SHIEH: Yes. Rather than to in a way do what they have</p>	<p>1 email on the aft peak bulkhead point, which goes to show 2 that this actually is a rather serious issue. I'm going 3 to develop possibilities as to how the matter could or 4 might have panned out if Mardep had raised the point. 5 All these debates as to aft peak bulkhead, in particular 6 whether or not frame 1/2 ought to have been regarded as 7 the aft peak bulkhead and therefore made watertight, is 8 a serious issue. But they failed to raise the point, 9 and all this somehow got buried without anyone even 10 raising the matter. 11 THE CHAIRMAN: But the starting point is really very simple, 12 is it not, without these interesting arguments about 13 which we've received much evidence: the drawings ought 14 to reflect the vessel as-built. 15 MR SHIEH: That's why I say, without even going down the 16 route of perhaps hypothesising what might have happened 17 had they rejected, what they might come back and say, 18 "Oh, it's a mistake", the very least the Commission 19 should say and can say is that they should have actually 20 rejected the vessel or asked them either to amend the 21 plans or to fit a door. If they insisted, "Oh, we are 22 not going to put in the door because it's our original 23 design intention that there should be no door", then 24 debate as to whether or not as a matter of aft peak 25 bulkhead then that it should be made watertight can be</p>

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<p>1 raised. But that opportunity had been deprived because 2 Mardep didn't see the point. 3 I do now go on to consider, as Mr Chairman had 4 indicated to be, the interesting evidence as to whether 5 the plan was a mistake and questions of aft peak 6 bulkhead, because much evidence has been given. 7 Let's say the Commission were to entertain the 8 question as to what might have happened had Mardep 9 raised the point, because Mardep might well wish to say 10 even had they raised the point, the situation would have 11 been exactly the same and the ship would still have 12 sunk. 13 But, let me deal with it. First of all there was 14 a suggestion that the plan was a mistake, the way the 15 plans were drawn was a mistake. It's a suggestion that 16 came -- 17 THE CHAIRMAN: By the Naval-Consult draftsman in Singapore? 18 MR SHIEH: By the draftsman, who wrongly simply copied 19 Eastern District No. 2. Mr Chairman, I must preface 20 this submission about mistake by saying that the actual 21 draftsman at Naval-Consult had left; he's not available. 22 The actual person responsible for this project at 23 Cheoy Lee at the material time was also not available. 24 So insofar as there had been any "mistake", the primary 25 players were not available. The Commission has not</p>	<p>1 The other prayed in aid is the trim and stability 2 calculation booklet in the miscellaneous bundle which 3 was prepared by Naval-Consult, which was perhaps the 4 only calculation in the bundle which actually treated 5 the steering gear compartment and the tank room as one 6 in performing stability calculations. Much would be 7 said that it shows that the intention of the draftsman 8 was that these two be treated as one, but a possible 9 counter-argument is that treating these two as one for 10 the purpose of stability calculation doesn't actually 11 mean that the intention was that there should be no 12 door. It could simply be because of an awareness of the 13 0.1L rule that they disregarded the bulkhead. In other 14 words, it doesn't actually necessarily mean that the 15 intention of the draftsman was that there should be no 16 door. Because Mr Chairman realises that for the purpose 17 of applying the 0.1L rule, even if there is a door, it 18 is to be ignored when calculating. 19 But let's say, let's assume for the sake of argument 20 Naval-Consult and Cheoy Lee -- I don't need to dwell on 21 the argument about error because, as I have submitted, 22 all the arguments about error were really ex post facto 23 commentary. But let's assume for the sake of argument, 24 upon Mardep rejecting the vessel and telling Hongkong 25 Electric and Cheoy Lee to go back to the drawing board</p>
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<p>1 heard from them. The Commission has not actually seen 2 any suggestion from them as to whether there had been 3 any mistake, and what the mistake was. All the 4 suggestions about mistake were ex post facto 5 interpretation put by subsequent players on to what they 6 had seen by way of documentation. 7 The Wuzhou Shipyard, who actually built that 8 bulkhead without a door, could not be reached. 9 Playing the devil's advocate, there were perhaps two 10 possible lines in favour of the suggestion that the 11 designer or the draftsman intended that part to be open, 12 without a door. One is the difference between the 13 Lamma IV plan and the Eastern District No. 2 plan, 14 because there was indeed a difference. But it may be 15 said that it matters very little because even if the 16 Lamma IV plan says "access opening", all the rest say 17 "watertight bulkhead". So the fact that he saw fit to 18 modify the Eastern District No. 2 drawing to say "access 19 opening" on Lamma IV matters very little. Because 20 obviously the intention was to have an access opening. 21 But that's not the point. The point is whether or not 22 there should be a door in the access opening. 23 So the fact there was a change from the Eastern 24 District No. 2 plan to Lamma IV plan may not carry 25 a good deal of weight.</p>	<p>1 and either refit a door or to amend the plans, and let's 2 say Naval-Consult and Cheoy Lee came back to Mardep and 3 said, "Oh, it was actually a mistake. We actually 4 intended there to be no door, and the design intention 5 was that there should be no door." It doesn't mean that 6 Mardep would necessarily swallow that, or should 7 necessarily accept that. Because in that case, Mardep 8 would either insist that, "Well, if you actually say the 9 design intention was really that there should be no 10 door, can you revise the entirety of the plans? Because 11 the entirety of the plans actually say 'watertight 12 bulkhead'". And given that the cost of actually fitting 13 a door was only a few thousand dollars, it could well be 14 very possible that, faced with a request from Mardep to 15 say, "Well, if you insist that there should be no door, 16 can you redraw everything", they would simply say, "Just 17 to spare the hassle, I will just fit a door there". It 18 is a possibility that can't be ignored. They would just 19 go about it and say, Look, I'm just going to fit a door 20 there". Especially when there is no evidence before the 21 Commission, in fact none has been suggested by anyone, 22 that the absence of a door is so important or is driven 23 by some kind of a design or technical requirement that 24 they must insist on it. It may be because of 25 convenience that they say, "Oh, let's do away with the</p>

<p style="text-align: right;">Page 53</p> <p>1 door so people can actually move in and out more 2 easily", but if Mardep insists, "Look, your plans 3 actually show watertight bulkhead", is it something 4 worth arguing about? Not necessarily. 5 But as I said, all this may be by the by because the 6 failure to spot it resulted in all these matters not 7 being investigated, so I'm actually perhaps in the realm 8 of hypothesis. But it is something which perhaps Mardep 9 may wish to argue and therefore I'm perhaps meeting that 10 sort of argument, that one mustn't take it for granted 11 that Mardep would actually approve a vessel with no door 12 had the point been raised. 13 THE CHAIRMAN: How could they have approved it without 14 requiring the drawings to be changed? Because the 15 drawings showed "watertight bulkhead". 16 MR SHIEH: Yes. They couldn't. 17 THE CHAIRMAN: That's what had to be changed, and that would 18 have required some changes presumably to the design of 19 that bulkhead, since it was no longer watertight. 20 MR SHIEH: Yes. 21 THE CHAIRMAN: But that was a minimum step, was it not, if 22 it had been spotted? 23 MR SHIEH: If it had been spotted, they would send the 24 vessel back and they would -- as I said, there would be 25 two choices. They would either redo the plans or they</p>	<p style="text-align: right;">Page 55</p> <p>1 I will not rehearse, as to whether or not the aft peak 2 bulkhead needs to be less than 0.1L and how far removed 3 from the stern it needs to be, et cetera. 4 In fairness, Dr Armstrong did accept that although 5 his firm view of the location of the aft peak bulkhead 6 is that it should not be positioned at the place of the 7 bulkhead between tank and engine room, he did accept 8 that he could not say that Mardep's view on the location 9 of the aft peak bulkhead was so unreasonable as to be 10 outside the realm of any reasonable view. I believe 11 that was a point actually put by Mr Mok to Dr Armstrong 12 near the tail end of his evidence. 13 But the late enclosure put in by Mardep -- I don't 14 know whether or not Mr Chairman has had the chance of 15 seeing that late email from Mr Bennett from the United 16 Kingdom? 17 THE CHAIRMAN: We've ceased to receive evidence. When was 18 this put in? 19 MR SHIEH: Yesterday, by an email. 20 THE CHAIRMAN: No. We finished on Friday. 21 MR SHIEH: But even if perhaps one were to say there is no 22 numerical definition, the location of an aft peak 23 bulkhead is a matter of opinion so Dr Armstrong -- 24 THE CHAIRMAN: There is no statute or ordinance that 25 specifies this --</p>
<p style="text-align: right;">Page 54</p> <p>1 would say, "Look, I'll simply fit a door there to make 2 it watertight." 3 THE CHAIRMAN: "Because a door only costs a few thousand 4 dollars, and we can do it." 5 MR SHIEH: Yes. But let's assume further. We're assuming 6 on assumptions. Let's assume further that Cheoy Lee and 7 Naval-Consult, "We are not going to put a door there at 8 all costs. We are not going to put the door there. We 9 are going to amend our plans to say 'no door'". How 10 would that have panned out? It would trigger the debate 11 as to aft peak bulkhead because Mardep would then have 12 to consider whether or not the requirement of aft peak 13 bulkhead requires that bulkhead to be watertight. 14 Now, we have received streams and streams of 15 evidence about whether or not the relevant aft peak 16 bulkhead should be frame 1/2, or whether or not the 17 bulkhead between tank room and engine room can qualify 18 as the relevant aft peak bulkhead. The bulkhead between 19 tank room and engine room was near the centre point 20 between midship and the aft perpendicular, and 21 Mr Chairman remembers Dr Armstrong's clear and firm 22 evidence that he did not regard that bulkhead between 23 tank room and engine room, so far removed from the 24 stern, could qualify as the relevant aft peak bulkhead. 25 And we have received lots and lots of evidence, which</p>	<p style="text-align: right;">Page 56</p> <p>1 MR SHIEH: The distance. 2 THE CHAIRMAN: -- in terms in the way that a collision 3 bulkhead forward is dealt with by a formula. 4 MR SHIEH: Yes. So it might be said that it's a matter of 5 opinion, and Dr Armstrong, however firm his opinion is, 6 can't say that Mardep's view was clearly wrong. But we 7 say one has to stand back and put the matter in 8 perspective. We are now dealing with a hypothetical 9 situation of what would have happened had Mardep not 10 missed the point. We say as a matter of commonsense, 11 putting oneself in the position of the administrator or 12 the regulator as of that time, not as of now, who is 13 trying to find ways perhaps of being defensive -- 14 I don't mince my words -- one would say, "Look, you 15 asked them to go back to the drawing board. They come 16 back and insist that there should be no hole. You raise 17 the point that there should be an aft peak bulkhead. If 18 they argue the toss, the easiest way to is to tell the 19 shipbuilder, 'look, you have already a bulkhead here. 20 All that is missing is a door'. 21 THE CHAIRMAN: That is watertight, to make it a watertight 22 bulkhead. 23 MR SHIEH: Yes. Yes. That's a natural candidate for 24 watertight bulkhead. To argue whether or not a bulkhead 25 nearer the midship is an aft peak bulkhead, look, we're</p>

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<p>1 not going to do that. A natural candidate for aft peak 2 bulkhead would be frame 1/2, bearing in mind you already 3 say watertight bulkhead in your plans. 4 Again, Mr Chairman, I repeat my point: even if the 5 Commission does not find it necessary to make detailed 6 findings of causal link in the sense that if Mardep had 7 done this, then this would have followed -- A would have 8 said this to B and B would have said this to Mardep, 9 they would have argued the toss, this, that and the 10 other. Even if the collision does not feel able or 11 doesn't actually want to make any findings of that, the 12 least the Commission should say is because Mardep had 13 missed a golden opportunity, all these safety 14 considerations have all been missed. They have not been 15 ventilated. Perhaps at great cost. 16 The 0.1L rule is a separate consideration from the 17 presence or absence of the door, because the Commission 18 now knows that the working of the 0.1L rule actually is 19 independent of whether or not there is a door at 20 frame 1/2. We now know as a matter of fact that the 21 0.1L rule was actually again missed by everybody at the 22 time. 23 It was missed by the persons calculating the 24 calculations in Cheoy Lee at all stages. It was missed 25 by the Mardep inspectors. It had little effect in 1996,</p>	<p>1 MR SHIEH: That's right. That's right. That's right. 2 THE CHAIRMAN: That is significant in the cause of the 3 sinking, is it not? The ballast? 4 MR SHIEH: Not -- yes -- well, I should have put it this 5 way. It would not have had any correlation with whether 6 or not the absence of a door -- 7 THE CHAIRMAN: No. 8 MR SHIEH: -- had been spotted. 9 THE CHAIRMAN: No, because you're doing tank room and 10 steering gear compartment together for 0.1L rule. 11 MR SHIEH: Yes. 12 THE CHAIRMAN: And the margin line is submerged. Alarm 13 bells. 14 MR SHIEH: Yes, yes. But in fairness, one might well say 15 that even if, for example, no ballast whatsoever had 16 been added, let's say upon discovering that the margin 17 line test had failed in 1998, and let's say they say, 18 "Okay, we'll just do away with the ballast, we don't add 19 any ballast", so the vessel continued in its 1996 20 situation, but without a door, I think the calculations 21 had shown that in the event that had eventually 22 transpired, the vessel would still have sunk, without 23 the door. Because I believe that Dr Armstrong and 24 Dr Peter Cheng were I think at one on this, and that is 25 to say even in the configuration of Lamma IV as it was</p>
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<p>1 because even had the 0.1L rule been applied in 1996, 2 Lamma IV would still have complied. But it would have 3 resulted in a different result in 1998 and 2005, after 4 ballast had been added and after ballast had been 5 raised, because the margin line would have submerged, 6 and it would have failed the watertight subdivision 7 regime. 8 But it is questionable whether or not the missing of 9 the 0.1L rule had any causative link to the incident, 10 because let's say if the 0.1L rule was correctly applied 11 and it was realised that in 1998, the margin line had 12 submerged, the way of curing that would not be to fit 13 a watertight door. It might have to do with tinkering 14 with the ballast or not adding it, or placing it 15 somewhere, but the way to cure the failing of margin 16 line tests would not have been to put in a watertight 17 door. 18 So it was a lamentable error, failing to spot the 19 0.1L rule and failing to treat the two compartments as 20 one, but it's questionable whether or not even if one 21 had spotted the 0.1L rule, it would have resulted in the 22 discovery that there was no watertight door. 23 THE CHAIRMAN: Yes, but that's a separate issue. The vessel 24 would not have been allowed to sail with that amount of 25 ballast.</p>	<p>1 in 1996, without adding ballast, but without that door, 2 it would have sunk. 3 THE CHAIRMAN: Yes, but that would have been flooding in 4 2.5 compartments. Is that what you have in mind? What 5 actually happened? No ballast -- 6 MR SHIEH: No ballast. 7 THE CHAIRMAN: -- but 2.5 compartments. No watertight door 8 either. Two things that are not there. But we've got 9 an engine room that's flooded and we've got a tank room 10 that's flooded, and because there's no watertight door, 11 we have the steering gear compartment flooded. So, 2.5 12 compartments flooded. 13 MR SHIEH: Or three. 14 THE CHAIRMAN: Call it three if you like, but a half-size 15 compartment. 16 MR SHIEH: Yes. 17 I now move on to deal with questions of life jackets 18 and crew number. I don't propose to be too long on 19 those. 20 THE CHAIRMAN: Before you do that, we will take our normal 21 break so I'll leave it to you to choose what's 22 an appropriate time to take our 20 minutes. 23 MR SHIEH: Perhaps I can deal with these matters after the 24 break, because I have to leave time for Mr Beresford to 25 address the Commission on part 2.</p>

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<p>1 THE CHAIRMAN: That might give you time think about how 2 matters could be left out. We'll take a 20-minute break 3 now. 4 (11.26 am) 5 (A short break) 6 (11.45 am) 7 MR SHIEH: Mr Chairman, could I just feed in a couple of 8 references. Just now I mentioned the part about the 9 crew referring to their retreat to the wheelhouse as 10 being in the nature of taking a break. That actually is 11 the statement of Mr Wong Yung-shing, the crew. He 12 actually did not expressly agree with that statement, 13 and he said it's only a rest when the weather was good 14 and the visibility was good, but if the weather was bad, 15 then they would do look-out. 16 If I can just give the Commission the reference in 17 the transcript where that was dealt with. It's Day 41, 18 and that is Gregorian calendar 27 February, at 19 pages 28-29. 20 THE CHAIRMAN: Thank you. 21 MR SHIEH: The other part was the point about approving the 22 plans despite departure on the ground, among other 23 things, that the combined volume of tank and steering is 24 less than the volume of the engine, that actually is 25 dealt with in the evidence of Mr Leung Wai-hok, and the</p>	<p>1 MR SHIEH: Yes, they gave a useful overview of the matter 2 from the Fire Services Department perspective and the 3 Marine Police perspective. 4 THE CHAIRMAN: No-one's disputed, nor could they, that this 5 was a massive response that was both expeditious and 6 efficient. 7 MR SHIEH: Yes. I just feel that in fairness we have not 8 given enough tribute to that one in our written closing, 9 and I simply raise it for the assistance of the 10 Commission. 11 We've heard evidence about problems with life 12 jackets, difficulties with putting them on and absence 13 of children's life jackets. Those are really matters of 14 primary fact, not subject to very serious dispute. 15 THE CHAIRMAN: No, and you've given us the transcript 16 references at your paragraph 96. 17 MR SHIEH: Yes. There's perhaps one point that we wish to 18 address, and that is the question of children's life 19 jackets and this mystery about the asterisk. 20 THE CHAIRMAN: Before you get to that, the references, the 21 footnotes, are to passengers on Lamma IV, are they 22 not -- 23 MR SHIEH: Lamma IV. 24 THE CHAIRMAN: -- having difficulties with life jackets? 25 MR SHIEH: Yes, Lamma IV. Should be Lamma IV.</p>
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<p>1 transcript reference is Day 21, which is 23 January, at 2 pages 41-42. 3 THE CHAIRMAN: Thank you. 4 MR SHIEH: That's the point about the moment. The 5 compartment near the end would have a greater moment 6 than a compartment near the centre. 7 Mr Chairman, I now move on to the life-saving 8 aspects and aspects about the equipment on board 9 Lamma IV. As I said, Mr Beresford will be dealing with 10 the questions about recommendations and shortcomings 11 arising out of those matters. 12 First of all, on the question of the broader 13 picture, Mr Chairman would have the evidence of the 14 survivors well within his memory and the difficulties 15 they encountered. 16 In terms of the rescue operation, this hasn't been 17 actually dealt with in our written address but we feel 18 obliged perhaps to point out that there is no evidence 19 of any complaint made against the efficiency of the 20 rescue mission. And the evidence of Mr Yau Wai-keung 21 from the Fire Services Department -- that is Day 12 -- 22 THE CHAIRMAN: He's the officer who gave the overview? 23 MR SHIEH: Correct. Mr Yau Wai-keung, Day 12, and also 24 Mr Terence Fung from Marine Police, Day 16 -- 25 THE CHAIRMAN: Again, the overview?</p>	<p>1 THE CHAIRMAN: There were difficulties on Sea Smooth as 2 well, were they not? Didn't we have Mr Rebanks's tale 3 of the strings being caught in the door as he tried to 4 make his way out on to the fore deck, the bow, and also 5 Mr Marsden, I think, who gave up trying to get a life 6 jacket out on the main deck and then pursued that 7 endeavour on the upper deck? 8 MR SHIEH: Yes. No doubt passengers on both vessels had 9 encountered difficulties of one form or the other, but 10 I think it's fair to say the key focus, because the 11 casualty really is on Lamma IV, the focus really would 12 be on the inadequacies of the life jacket situation on 13 Lamma IV. Of course the Commission may still wish to 14 comment on the situation on Sea Smooth insofar as that 15 has come out -- 16 THE CHAIRMAN: It's a common theme and it's to do with the 17 ties that bind the life jackets. 18 MR SHIEH: Bind them together, yes. 19 In terms of the life jacket, obviously in terms of 20 improvement, that would be a part 2 matter that 21 Mr Beresford will deal with. But I would wish to focus 22 on the point about the approval, not in terms of the 23 types of life jackets but in terms of number, because 24 obviously -- 25 THE CHAIRMAN: You are talking now about the survey?</p>



<p style="text-align: right;">Page 65</p> <p>1 MR SHIEH: The survey, and the mysterious asterisk. In 2 terms of children's life jackets, we know as a matter of 3 objective fact that there are no children's life jackets 4 on board Hongkong Electric. In fact it is Hongkong 5 Electric's evidence that consistently, they've never had 6 children's life jackets on board. Initially there were 7 only 90-odd, but they have produced documentary evidence 8 indicating that as from 1998 onwards, they had purchased 9 enough life jackets, up to, I think, 230, more than 230, 10 I believe. As far as the relevant regime is concerned, 11 the new law was passed in 2007, coming into effect in 12 2008, I believe. Under the old regime, the requirement 13 was only that there should be 40 per cent life jackets 14 and the rest can be taken up by other types of 15 life-saving devices, and that's what accounted, 16 I believe, for the 92 figure.</p> <p>17 But since the passing of the new law, we have heard 18 evidence that there is this unwritten policy among some 19 members of Mardep not to enforce the new law against 20 pre-existing vessels. Now, Mr Mok will no doubt 21 actually say on behalf of the Marine Department whether 22 or not that is an official Mardep policy, but I would 23 respectfully suggest that in the administration, the 24 proper administration of maritime safety, leaving aside 25 the merits of such a policy, if there is this policy,</p>	<p style="text-align: right;">Page 67</p> <p>1 would be completely at a loss as to "Gosh, could you 2 just tell me how many children's life jackets there 3 are?" It says one life jacket per person. So if it's 4 a children's outing, one would say it means there would 5 be enough life jackets for all the children on this 6 outing. But it plainly is not.</p> <p>7 The evidence, in a rather wishy-washy way, I would 8 say, is, "Oh, it simply means 5 per cent". Quite how 9 "one life jacket for each child" can translate to 5 per 10 cent is perhaps something for the originator of this 11 idea to explain.</p> <p>12 But that actually brings me to the next point, and 13 that is nobody quite knew the origin or provenance of 14 this change to the asterisk. Because no official 15 version has come out about the origin of this asterisk 16 system, the impetus for the change to asterisk, and 17 there is no minute, no internal memo in typical 18 Government format, because those familiar with 19 Government administration will know there will be 20 internal deliberation, there will be a minute 21 suggesting, "Why don't we do this." There's nothing of 22 this nature. What we are left with --</p> <p>23 THE CHAIRMAN: But that's not only a function of what 24 Government does. That's what big companies do as well. 25 They create audit trails --</p>
<p style="text-align: right;">Page 66</p> <p>1 one would have expected as a matter of administration 2 for it to be properly documented and minuted. Whether 3 or not communicated externally, there should be some 4 internal document articulating the considerations 5 underlining it, and how it is to be administered, rather 6 than to leave it floating around like by a mentor 7 passing on to a mentee, with now nobody able to find out 8 its provenance, its duration, et cetera.</p> <p>9 We know in 2009 and 2010 the Lamma IV certificate 10 only said 92, even though we know as a matter of fact 11 from Hongkong Electric, and I don't think there is any 12 serious dispute, that actually it's got more than 92 13 because, as I said, since 1998 it has got one life 14 jacket for each passenger, although no children's life 15 jackets.</p> <p>16 Since 2011, there is a new format for Lamma IV. 17 There is the asterisk system, and there has been much 18 debate about the meaning of the asterisk. We 19 respectfully submit that this change in the format is 20 not very desirable because even on its face, it's not 21 quite clear what it meant, especially for children, 22 because the layout was that for adults and children, 23 they are both covered by the asterisk.</p> <p>24 But for children, it simply says one life jacket per 25 child. It doesn't actually say 5 per cent. So a reader</p>	<p style="text-align: right;">Page 68</p> <p>1 MR SHIEH: Yes.</p> <p>2 THE CHAIRMAN: -- so that it is known who, when, and with 3 whose approval various decisions are made, and how it is 4 promulgated.</p> <p>5 MR SHIEH: And now we are left with people saying, "I heard 6 it from my mentor, I heard it from my colleague, saying 7 there is this asterisk system". Particularly striking 8 is Mr Lau, who did the 2011 survey. Day 34, page 57. 9 I'm not going to turn it up. He actually explained his 10 approach to putting in the asterisk. He didn't 11 originate the asterisk system. What he said at Day 34, 12 page 57, is when he joined the department, he asked his 13 colleague when he saw the asterisk somewhere, he asked 14 what is the difference between the asterisk and the 15 figure, and they said in fact there's not much 16 difference. So he adopted the asterisk. So that's what 17 Mr Lau said. Mr Lau was the surveyor for 2011.</p> <p>18 Most oddly so, for Lamma II, in the same year, the 19 practice of "92" instead of asterisk was used.</p> <p>20 We have heard the evidence of Mr Wong Kam-ching, who 21 was recalled, when he said even though non-compliant 22 vessels would still be passed as long as it complied 23 with the old regime, if a vessel had gone out of its way 24 to comply with the new regime, the asterisk system would 25 be used. I think that is Mr Wong Kam-ching. He was</p>

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<p>1 recalled.</p> <p>2 In my submission, that is a bit odd because on</p> <p>3 Mr Wong Kam-ching's evidence -- I'm just taking his</p> <p>4 evidence to its logical extreme -- if a vessel had,</p> <p>5 let's say, 230 adult life jackets but no children's life</p> <p>6 jackets, it would fall foul of the new law but it would</p> <p>7 comply with the old law. But according to him, the</p> <p>8 certificate would say "92" because he says, "Oh, we just</p> <p>9 carry on the old way, so it's 92". So 230 becomes 92.</p> <p>10 No children's life jackets; still okay.</p> <p>11 So it's a rather odd regime as described by the</p> <p>12 Marine Department inspectors, and we are hampered by any</p> <p>13 document describing how it's supposed to work.</p> <p>14 Another oddity is that as a matter of</p> <p>15 administration, surely if the minimum for Lamma IV or</p> <p>16 any pre-2007 vessels was 92, an inspector would be</p> <p>17 satisfied with 92. So the moment he walks in and sees</p> <p>18 a whole chunk of life jackets, let's say one under each</p> <p>19 chair, he would be able to say to himself, "Surely it</p> <p>20 complies with the old regime" and he would simply</p> <p>21 certify 92. Then why this business of actually</p> <p>22 counting, "Can I see children's life jackets?", and</p> <p>23 then, "Ah, if it actually over-tops the old law into the</p> <p>24 new regime, then I give you an asterisk"? It's hard to</p> <p>25 see why he would go about doing it that way.</p>	<p>1 Mardep's policy was to pass them, even though --</p> <p>2 THE CHAIRMAN: Well, the policy amongst some Marine</p> <p>3 Department officers.</p> <p>4 MR SHIEH: Yes, but Hongkong Electric and Cheoy Lee would</p> <p>5 have known that they managed to pass in 2009 and 2010</p> <p>6 without children's life jackets, so one ventures to ask</p> <p>7 what would be the motivation for bringing in children's</p> <p>8 life jackets? Maybe for a show, just to secure a pass.</p> <p>9 THE CHAIRMAN: It was never suggested, was it, to the crew</p> <p>10 of Lamma IV who participated in, say, the 2012 survey,</p> <p>11 that they had spirited children's life jackets aboard</p> <p>12 the vessel in order to trick the Marine Department?</p> <p>13 That was never suggested.</p> <p>14 MR SHIEH: No, and it makes little sense for them to have</p> <p>15 done so any way, bearing in mind they could have secured</p> <p>16 a pass without it.</p> <p>17 THE CHAIRMAN: I follow the latter, but the former was never</p> <p>18 suggested.</p> <p>19 MR SHIEH: No.</p> <p>20 THE CHAIRMAN: It wasn't suggested to the Cheoy Lee employee</p> <p>21 who was present at those surveys that he had taken it</p> <p>22 upon himself to give an enhanced client service by</p> <p>23 providing children's life jackets.</p> <p>24 MR SHIEH: No, no. So in our respectful submission --</p> <p>25 THE CHAIRMAN: The issue is simple. Were there children's</p>
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<p>1 More importantly, over that question which is</p> <p>2 perhaps immediately relevant to this Inquiry, and that</p> <p>3 is to say, did Mardep really approve Lamma IV in 2012 in</p> <p>4 the knowledge that there were no children's life</p> <p>5 jackets?</p> <p>6 We've had evidence from the 2011 and the 2012</p> <p>7 surveyors who, although they did not purport to have</p> <p>8 independent recollection of having positively seen</p> <p>9 children's life jackets, they purported to say what</p> <p>10 their practice would have been and they said they had no</p> <p>11 reason to believe that they had not followed their usual</p> <p>12 practice. In other words, if they put an asterisk, it</p> <p>13 means that they had seen children's life jackets.</p> <p>14 But we respectfully say if that -- it makes little</p> <p>15 sense for there to be children's life jackets. First of</p> <p>16 all, Hongkong Electric was adamant that they had no</p> <p>17 children's life jackets. So in a way it's a bit odd --</p> <p>18 the suggestion seemed to be that a party who maintains</p> <p>19 they had no children's life jackets had somehow taken it</p> <p>20 upon itself to bring children's life jackets onto the</p> <p>21 vessel for the purpose of satisfying the inspectors --</p> <p>22 there is no motive, no incentive to do so. Because it's</p> <p>23 not as if the absence of children's life jackets on</p> <p>24 board Lamma IV would have failed it. Because we now</p> <p>25 know, after this new evidence has come out, that</p>	<p>1 life jackets on board or not?</p> <p>2 MR SHIEH: Yes.</p> <p>3 THE CHAIRMAN: You have on the one hand the party who, by</p> <p>4 not having them on board, was at fault saying they</p> <p>5 weren't on board.</p> <p>6 MR SHIEH: They weren't on board. Yes. And Mardep, perhaps</p> <p>7 for rather obvious reasons, wanting to say, "When we</p> <p>8 inspected the vessel they were on board, albeit maybe</p> <p>9 for a short time, just for our eyes only".</p> <p>10 THE CHAIRMAN: It's perhaps an illustration of what the</p> <p>11 Court of Final Appeal like to call inherent</p> <p>12 probabilities and improbabilities.</p> <p>13 MR SHIEH: Yes, and perhaps I need say little more about</p> <p>14 that narrow question of fact, whether or not there were</p> <p>15 in fact any children's life jackets.</p> <p>16 As to crew number, the point is simple. It should</p> <p>17 be four; in fact, three. It was an ad hoc system.</p> <p>18 There was no sign-in book for the day in question.</p> <p>19 Mr Lai didn't know he was. He didn't play any role of</p> <p>20 crew. During the Mardep drill tang Wan-on posed</p> <p>21 as crew -- he served as crew. I should not say "posed".</p> <p>22 But it turned out he wasn't even there on the night of</p> <p>23 1 October, and the whole point of having a crew is not</p> <p>24 just to fill up the numbers. To have a crew is that the</p> <p>25 crew of a vessel work as a team. So even though you</p>

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<p>1 have somebody purporting to be crew at a drill, it 2 doesn't actually serve the purpose of having crew. 3 As to thickness -- I can deal with it reasonably 4 shortly. The drawing stipulated 5 mm. This perhaps is 5 the only point where the Blue Book versus 1995 6 Instructions could be relevant. The Blue Book did not 7 stipulate actual thickness. The 1995 Instructions did. 8 But only for steel. 9 Incidentally, this point about Blue Book versus 1995 10 Instructions threw up an interesting question about the 11 potential coverage or time coverage of the 1995 12 Instructions. The Commission remembers the 1995 13 Instructions, although named "1995 Instructions", and 14 providing in terms that they were to apply to ships with 15 keels laid on or after 1 January, were promulgated in 16 1996 and Mardep says, "We're only going to apply it 17 post-1995 and in 1996". The situation is not very 18 satisfactory, but the thing to remember is that these 19 are not law; these are only guidelines. And surely 20 Mardep should not take this completely rigid approach 21 and say, "We now only apply these guidelines for 22 particular ships after 1996", and if a matter is 23 regarded to be sufficiently important in respect of 24 maritime safety, surely there is scope for Mardep to 25 say, "Well, in terms it says it applies to ships whose</p>	<p>1 Mr Chairman rightly pointed out, the bottom line is that 2 he was unable to exclude corrosion. But the relevant 3 part -- 4 THE CHAIRMAN: Because he didn't have experience about 5 dealing with what might be the effect of Hong Kong 6 pollution. 7 MR SHIEH: This climate. This sort of climate. He dealt 8 with Western Australia. 9 THE CHAIRMAN: Well, the pollution. He was familiar with 10 what happens in the Western Pacific, but perhaps the air 11 is different there. 12 MR SHIEH: Yes. That perhaps captures the point rather 13 succinctly. But perhaps can I give the Commission the 14 transcript reference about Dr Armstrong's conversion and 15 calculation from the steel figure in the 1995 16 Instructions, steel to aluminium. It's Day 25, 17 pages 67-70, and then pages 75-79. That is Dr Armstrong 18 explaining his manuscript calculation. Mr Mok 19 cross-examined Dr Armstrong as to the assumed strength 20 of aluminium; that is Day 26, pages 81-101 and Day 27, 21 pages 1-16 and pages 118-131. 22 THE CHAIRMAN: Thank you. 23 MR SHIEH: Seats. The question is a short one. We know the 24 seats did not actually withstand the force -- and this 25 is in our supplemental seats submission that we sent in</p>
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<p>1 keels are laid on or after 1 January 1995. As a matter 2 of internal guidelines we are going to apply those." 3 At the end of the day, it may or may not matter very 4 much because the issue of thickness has in fact been 5 narrowed down significantly during the hearing. 6 As I say, the drawing stipulated 5 mm. Dr Armstrong 7 also did some calculation by looking at the -- 8 THE CHAIRMAN: The bottom line is, Dr Armstrong was unable 9 to exclude -- 10 MR SHIEH: Corrosion. 11 THE CHAIRMAN: -- corrosion through a mixture of humidity 12 and Hong Kong's pollution? 13 MR SHIEH: Yes. There is a whole line of examination where 14 Dr Armstrong had been taken to various possibilities of 15 corrosion; that's Day 27, pages 68-90. We may have not 16 put that in the written submission. As I say, the point 17 is rather short. I'm not going to go through the 18 details about his method of converting steel to 19 aluminium, because, Mr Chairman, you'll remember, 20 there's a whole chunk of testimony about how he would 21 convert the steel figure in the 1995 Instructions to 22 aluminium, and Dr Peter Cheng had dug up some figures 23 for strength of aluminium. 24 I'll simply give the Commission the reference, 25 without actually bothering to deal with those. As</p>	<p>1 yesterday. 2 THE CHAIRMAN: Yes, I have it. 3 MR SHIEH: We would take issue with the suggestion by the 4 Marine Department that as long as it can sustain forces 5 that you encounter during what one calls a normal 6 journey, then that's enough. But perhaps I should 7 supplement one point before I sit down and then 8 Mr Beresford will address the Commission on part 2. 9 Dr Armstrong actually performed some calculations in 10 respect of the wave encounters that a vessel would 11 encounter in every five-minute period, and that seats 12 must be able to withstand the relevant wave encounters 13 over a long period of 360 days a year. 14 Can I just give the Commission the relevant part. 15 It is in Dr Armstrong's part 2 report, appendix IV. 16 I think Mr Beresford in dealing with part 2 will perhaps 17 take the Commission to the relevant page, and also 18 I think Mr Beresford will address the Commission on the 19 seat foundations that would be required to withstand 20 this sort of wave encounters. 21 But for seats, I don't believe there is any 22 controversy as to the manner in which they broke and to 23 the way they are affixed and all that. That objective 24 evidence, the Commission should still be familiar with. 25 So, Mr Chairman, perhaps I shall now leave</p>

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<p>1 Mr Beresford to address the Commission on part 2; that 2 is to say, recommendations. 3 THE CHAIRMAN: Thank you, Mr Shieh. 4 Mr Beresford? 5 Closing submissions by MR BERESFORD 6 MR BERESFORD: Mr Chairman, Mr Commissioner, before I come 7 to part 2 I heard my learned friend say I would address 8 you as to the meaning of the term "crew" in Cap 548 in 9 relation to the manning requirement, and specifically 10 the requirement of the Marine Department that there 11 should be a minimum of four crew on the Lamma IV. 12 I have dealt with this or we have dealt with this in our 13 closing submissions from paragraph 103. 14 THE CHAIRMAN: Yes. 15 MR BERESFORD: You may wish to have the Merchant Shipping 16 (Local Vessels) Ordinance, Cap 548, open, to begin with 17 at section 2. 18 THE CHAIRMAN: That's the definition? 19 MR BERESFORD: That's the definition of the term "crew". 20 Just to remind ourselves, it means: 21 "The coxswain and any other person employed or 22 engaged in any capacity on board a local vessel on the 23 business of the vessel." 24 I have submitted that the terms "employed or 25 engaged" suggest an agreement as in hire for work or</p>	<p>1 control, even if it is a task that would normally be 2 carried out by crew. 3 Of course, we heard from Mr Lee of the trade union 4 in relation to international conventions relating to 5 seamen. They would all be thrown into disarray if 6 "crew" could be so casually interpreted as suggested on 7 behalf of Hongkong Electric. 8 At paragraph 106 of our submissions, we have also 9 reminded the Commission of Captain Pryke's opinion that 10 the fourth crew arrangement on Lamma IV is unacceptable, 11 because it defeats the whole point of having weekly 12 emergency drills, allowing the crew to work as a team 13 and understand what their respective role is in case of 14 an emergency. 15 But perhaps crucially in the present case, the 16 concept of employment or engagement implies that the 17 employer and the crew member must be ad idem as to the 18 employment or engagement. If the employer has not told 19 the person concerned that he is a crew member, and if 20 that person has not agreed to be a crew member, then in 21 my submission he couldn't properly be regarded as crew 22 for that purpose. 23 The Commission will recall the evidence of Mr Lai, 24 who said that he had not been told that he was crew. 25 THE CHAIRMAN: Do you have a reference for that?</p>
<p>Page 78</p> <p>1 take up employment, because this is consistent with the 2 way the words are used in section 89 of the Ordinance. 3 And in particular, section 89(1)(p), where it refers to: 4 "the employment on vessels of a coxswain and 5 engineering crew who possesses local certificates of 6 competency ... 7 (q) the number and grade of crew to be employed on 8 vessels; 9 (r) the engagement and discharge of crew, their 10 conditions of employment, and their hours of work and 11 rest periods ..." 12 The term "crew" is also used in distinction from the 13 term "passenger". 14 So I've submitted that the words "in any capacity on 15 board a local vessel on the business of the vessel" make 16 it clear that the employment or engagement must be for 17 that specific purpose; that is, a capacity on board 18 a local vessel on the business of the vessel, and that 19 this would not extend to cover a general employment or 20 engagement by the employer. So it wouldn't be 21 legitimate to regard any employee of Hongkong Electric 22 who happened to be on board as crew unless he had been 23 specifically employed for that purpose. 24 The requirement will not be satisfied by giving some 25 other employee a task on board, such as passenger</p>	<p>Page 80</p> <p>1 MR BERESFORD: I'll try and get one to you, Mr Chairman. 2 And also Mr Cheng, I think it was, who confirmed that 3 Mr Lai had not been notified, or couldn't at any rate 4 confirm that he had been notified. 5 THE CHAIRMAN: That's Mr Francis Cheng? 6 MR BERESFORD: Mr Francis Cheng, yes. 7 So I'll come back to the Commission with those two 8 references, but in those circumstances it's my 9 submission that the minimum safe manning requirements 10 for Lamma IV were breached on the night of 1 October. 11 THE CHAIRMAN: Yes. 12 MR BERESFORD: Turning, then, to part 2. From paragraph 111 13 of our submissions, we have summarised the causes of the 14 incident. Firstly, the causes of the collision and 15 secondly the causes of the loss of life. I have said in 16 paragraph 111 that Captain Pryke's evidence has not been 17 seriously challenged. At paragraph 111.1, I set out Sea 18 Smooth's breaches, according to Captain Pryke, in 19 summary form, being its failure to keep a proper 20 look-out; failure to proceed at a safe speed; failure to 21 make proper use of her radar; failure to take action to 22 avoid collision; failure to alter course to starboard; 23 failure to make any warning signals. 24 I've noted my learned friend Mr Zimmern's contention 25 that in fact there is still an issue as to whether there</p>

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<p>1 was a head-on situation or a crossing situation, and 2 I just note that none of these matters are affected by 3 this dispute. 4 So whichever it was, there's still no real dispute 5 that there was a failure to keep a proper look-out; that 6 Sea Smooth failed to proceed at a safe speed; Sea Smooth 7 failed to make use of her radar, or take action to avoid 8 the collision; importantly, that she failed to alter 9 course to starboard, an obligation that existed in 10 either situation; or that she failed to make any warning 11 signals. 12 Similarly, there's no real dispute about Lamma IV's 13 breaches of the Collision Regulations. 14 I hear my learned friend saying there is; no doubt 15 he'll explain in due course. 16 Of course the important point for this Commission, 17 although it is charged with finding the causes of the 18 incident, is what can be learned from what happened. 19 And in relation to these errors that are primarily 20 errors of human error, nevertheless they disclose 21 failings in the support system ashore and in the 22 regulatory environment, which appear to have contributed 23 to the causation of the incident. 24 From a navigational point of view, the most striking 25 features are the failure to keep a proper look-out, and</p>	<p>1 respect of each of those issues? 2 MR BERESFORD: I think it's fair to say that, Mr Chairman, 3 yes. The difficulty, as I recall him explaining, was 4 that it was impossible ultimately to determine what 5 exactly the rate of inflow would have been in view of 6 the requirement to estimate the effects of the blockage 7 of the wreckage in the holes. 8 There's one correction I should make which my 9 learned friend Mr Shieh touched upon a moment ago. In 10 our written submissions, we've said: 11 "However, in the course of his evidence he accepted 12 that it was plausible that 'conforming' plates had been 13 worn down to the current thickness through corrosion." 14 THE CHAIRMAN: He didn't use the word "plausible". 15 MR BERESFORD: No, indeed, Mr Chairman. He said "possible". 16 THE CHAIRMAN: "Possible". Highly unlikely but possible. 17 MR BERESFORD: "Possible, but unlikely". The reference is 18 Day 27, page 81, line 3. 19 He also agreed that if there had been a lack of 20 paint, then the corrosion would be higher than he 21 expected, but possible. Of course, the "lack of paint" 22 point has not been established as a fact before this 23 Commission. That's the same day, page 89, line 2. 24 Then he referred to the aft peak bulkhead at 25 frame 1/2, which according to the approved plans was</p>
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<p>1 in particular the failure to make proper use of radar. 2 So this raises the questions of whether there should be 3 a second person on the bridge with the coxswain, and 4 whether radar training is sufficient or adequate. 5 Further, the speed of both vessels and of Sea Smooth 6 in particular was a factor which left the coxswains very 7 little time to appreciate the risk and take avoiding 8 action. 9 That is what I have to say about the causes of 10 collision. 11 The causes of the loss of life. The most 12 significant direct cause was the speed with which the 13 Lamma IV foundered, sinking by the stern so quickly that 14 passengers were trapped and could not evacuate the 15 vessel. 16 In this connection, I refer to Dr Armstrong's 17 conclusions in his first report. He said that Lamma IV 18 sank quickly because of the extent of the damage. He 19 thought that Lamma IV's hull was thinner than the design 20 thickness, which contributed to the extent of the damage 21 because had it been of the required thickness -- that is 22 to say, 5 mm -- the holes in the hull would not have 23 been so large and the vessel would not have sunk so 24 quickly. 25 THE CHAIRMAN: Didn't he qualify that by saying "might" in</p>	<p>1 designed to be watertight but in fact had an access 2 opening with no closing appliance. His view was that 3 had the aft peak bulkhead been watertight, only two 4 compartments and not three would have been flooded, and 5 either the vessel would not have foundered completely at 6 all, or if it had, it would not have foundered so 7 quickly, thus leaving greater time for evacuation. 8 Fourthly, he noted that the passenger seats were 9 insufficiently attached to the upper deck and 10 contributed to the trapping of passengers when they 11 collapsed. 12 From paragraph 118, we consider the general 13 conditions of maritime safety concerning passenger 14 vessels in Hong Kong, which reflects paragraph (b) of 15 the terms of reference. We give the references of 16 Captain Pryke and Dr Armstrong, who have each considered 17 aspects of the general conditions of maritime safety, at 18 least insofar as they are relevant to this incident. 19 Captain Pryke noted straightaway in his first 20 report -- he felt it was urgent to note -- that the 21 definition of Lamma IV as a class I launch and not 22 a class I ferry vessel made a big difference to the 23 safety inspection regime for such vessels, which was 24 unjustifiable when they carried the same number of 25 passengers. In other words, in my language, I've</p>

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<p>1 put it, the distinction between launch and ferry is 2 sterile because the risk arises out of the number of 3 people that a vessel is permitted to carry and not 4 whether you call it a launch or a ferry. 5 I believe there may have been some suggestion that 6 the distinction may also have had to do with whether 7 a fare was charged. There was in fact so such 8 distinction in the present case, because the passengers 9 on the Lamma IV paid \$100 a head for the privilege of 10 going out that day. But again -- 11 THE CHAIRMAN: What evidence has the Commission received 12 that goes to there being this distinction between 13 a launch and a ferry, in the safety regime? 14 MR BERESFORD: Very little, I think, Mr Chairman. The 15 operating licences classify Lamma IV as a launch and the 16 Sea Smooth as a ferry. 17 THE CHAIRMAN: But what evidence have we had about a more 18 demanding regime for ferries? 19 MR BERESFORD: I think very little. It's really Captain 20 Pryke's interviews with the Marine Department and the 21 conclusions he's reached from that. It's a point that 22 he raised in his first report, the reference to which is 23 given at paragraph 120 of our closing submissions. 24 There were definitions in sublegislation, Cap 313E 25 of both "ferry" and "launch". That legislation has been</p>	<p>1 At paragraph 122, we turn to the subject of VHF. 2 Lamma IV was not required to carry VHF. The radio on 3 board only connected with Hongkong Electric, thus the 4 coxswain had no means of communicating with Sea Smooth 5 in order to clarify its intentions before the collision, 6 and after the collision he needed to use his own and 7 then a passenger's mobile telephone to dial the 8 emergency services. 9 We've noted Mardep also disseminating advice that 10 includes using mobile telephones to call emergency 11 services. As Dr Armstrong has observed in his part 2 12 report, the problem with the use of mobile telephones is 13 that this doesn't inform the vessels who were nearest to 14 the casualty that assistance is required. 15 In paragraph 123, we touch upon the issue of life 16 rafts. There's no requirement for local passenger 17 vessels, class I, to carry life rafts for all persons on 18 board. The life raft on Lamma IV had a capacity of only 19 10, which is less than 5 per cent of the maximum number 20 of passengers on board. As the Chairman observed the 21 other day, it was almost an irrelevance. 22 Paragraph 124, we touch on the subject of children's 23 life jackets. Although these were required and have 24 been required since 1 January 2007 by the regulations, 25 those regulations only would require 12 to be on board</p>
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<p>1 repealed. It is in our bundle, but they're not helpful 2 definitions and I won't trouble to take the Commission 3 to them now. 4 At paragraph 121, we note Captain Pryke's 5 observation that operators of ferries carrying more than 6 100 passengers are not at present required to implement 7 a safety management system, with Mardep arranging or 8 specifying suitable training courses for owners and 9 coxswains. Dr Armstrong has also noted that without 10 understanding how passenger safety is intended to be 11 ensured over a range of topics, it is difficult to offer 12 comprehensive advice on what standard is required of 13 ships built to previous regulations. 14 Dr Armstrong, the Commission will recall, referred 15 to Australian National Standard for Commercial Vessels 16 which were endorsed by the Australian Transport Council, 17 which set out overriding safety management objectives. 18 I should add that Mr Sam Wong gave evidence of the 19 Marine Department now developing an ISO 9001-compliant 20 system with the help of Lloyd's Register, and all 21 I would submit in that regard is that this is important 22 because it's difficult not to leave this Inquiry without 23 the impression that there were very large areas of 24 discretion left to individual officers, and very little 25 documented in the way of systems.</p>	<p>1 Lamma IV, which was considerably less than the number of 2 children on board on the night of 1 October. 3 Moreover, that regulation was not enforced, at least 4 uniformly, by Mardep in relation to vessels that had 5 existed before 1 January 2007. 6 Dr Armstrong has observed that there's no definition 7 of "life jacket" or of an acceptable standard of life 8 jacket. 9 At paragraph 125, we touch upon the absence of any 10 requirement for medical or eyesight tests, other than 11 eyesight tests when a certificate of competency is first 12 applied for. 13 The current legislation makes no provision for the 14 harbour police to test randomly for drug and alcohol 15 consumption. 16 Other than that contained in the Collision 17 Regulations, the current legislation has no requirement 18 for a look-out, particularly in relation to 19 passenger-carrying vessels and high-speed craft. 20 There's no present requirement for passenger vessels 21 carrying more than 100 passengers to have a muster list. 22 Paragraph 129 -- this seems to come slightly out of 23 place -- there's a recommendation by Captain Pryke 24 reflected here that a small adjustment should be made to 25 the VHF sector boundary.</p>

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<p>1 THE CHAIRMAN: Mr Beresford, forgive me for interrupting. 2 You're now over the two-hour time limit. We don't 3 intend enforcing it in the way that the American Supreme 4 Court might do, and we will give you more latitude, but 5 please bring your submissions to a close as 6 expeditiously as you can.</p> <p>7 MR BERESFORD: Very well, Mr Chairman. I'm grateful for the 8 extension, given that I think I was in breach when 9 I started.</p> <p>10 But the next subject is important, in my submission. 11 It is the subject of speed, although it only has a small 12 paragraph. It played an important role in this 13 incident. It increased the risk of collision in the 14 first place, as already discussed, and it also had 15 a role to play in the damage, the extent of the damage 16 to Lamma IV, because the Commission will recall from 17 Dr Armstrong's first report that he considered that the 18 second compartment would probably not have been holed if 19 the Sea Smooth had been travelling at 15 knots or less. 20 Of course, the applicable speed limit was 15 knots had 21 Sea Smooth not had an exemption.</p> <p>22 The next important issue is radar, dealt with at 23 paragraphs 133 and 134. The legislative scheme relating 24 to radar is rudimentary. No radar was required for 25 Lamma IV. In my submission, this is surprising on</p>	<p>1 come on to seats at paragraph 139. We've recapped there 2 the requirements in the Blue Book, the 1995 3 Regulations -- firstly that the seats be properly 4 secured; the second "adequate for the intended service", 5 which is the wording used in the current certificate.</p> <p>6 The intended service of a vessel such as Lamma IV is 7 that of a ferry in local Hong Kong waters. Dr Armstrong 8 has calculated that if the average wave period in the 9 waters of Hong Kong is 3 seconds, then there are 10 100 wave encounters, on average, in every five-minute 11 period, ignoring the effect of ship speed and heading 12 relative to the waves. So that amounts to over 13 17,000 periods of five minutes' duration or 1.7 million 14 wave encounters per annual period. The reference in 15 appendix IV to his report.</p> <p>16 So it follows, in my submission, that seats required 17 to withstand this must be firmly attached. Also, it has 18 to be borne in mind that, firstly because this is water, 19 not a garden party, pressures come from different 20 directions so they have to withstand forward, aft, 21 transverse and vertical forces. Secondly, given the 22 rates of collision in Hong Kong and the crowded nature 23 of the waters, it seems in my submission to be 24 commonsense to suggest that they should be built to 25 withstand collision.</p>
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<p>1 a vessel authorised to carry more than 100 passengers. 2 I refer the Commission to the recommendations of Captain 3 Pryke at paragraphs 63 to 64 in expert bundle 3, 4 page 1132.</p> <p>5 I'd also ask the Commission to recall Tang Wan-on's 6 evidence that training did not cover the use of 7 long-range scanning to obtain early warning of the risk 8 of collision, which is of course required by rule 7(b) 9 of the Collision Regulations. And he was good enough to 10 agree that it should, at Day 29, page 35, line 9.</p> <p>11 There was some discussion earlier this morning about 12 whether the coxswain of the Lamma IV could see the radar 13 easily enough from his conning position. Without 14 turning them up, can I please give the Commission 15 references to photographs.</p> <p>16 THE CHAIRMAN: We're familiar with the layout of the 17 wheelhouse. We're also mindful of what Captain Pryke 18 had to say about how easy it was to remedy such issue 19 that might have arisen.</p> <p>20 MR BERESFORD: Well, you've anticipated me, Mr Chairman. 21 That's exactly what I was going to refer you to. 22 There's a reference, photograph 3, in his report at 23 expert bundle 3, page 1138.</p> <p>24 Passing over a number of other matters that I've 25 referred to in the written submissions, if I can just</p>	<p>1 THE CHAIRMAN: But they did withstand the collision. It's 2 when the vessel became tilted that they started to fail.</p> <p>3 MR BERESFORD: Well, yes, Mr Chairman, that's right. But of 4 course it's all part and parcel of the collision.</p> <p>5 Anyway, if I can please give you some references. 6 There was a page from Wallaston's exhibit. Although 7 Mr Wallaston's evidence is not before the Commission, 8 the exhibit was put to Dr Armstrong and that was at 9 page 1025. It was put to Dr Armstrong on Day 28 at 10 pages 132-133. In the light of that, I would submit 11 that seats and their attachments should be of a form and 12 design and so arranged so as to minimise the possibility 13 of injury and avoid trapping of the passengers after the 14 assumed damage and in the event of collision. That 15 means, to put it simply, that they must be firmly 16 secured.</p> <p>17 Criteria for testing and evaluation of seats need to 18 be developed and adopted with the purpose of minimising 19 injury and disruption of evacuation in the event of 20 collision.</p> <p>21 As the Commission knows, Dr Armstrong has suggested 22 that seat foundations be designed and tested to 23 withstand a force of about 2G.</p> <p>24 In the last part of our submissions, we've come on 25 to the measures that have been suggested by Captain</p>

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<p>1 Pryke and Dr Armstrong for the prevention of the 2 recurrence of similar incidents in future. I don't 3 propose to go through those orally unless the Commission 4 requires assistance. 5 THE CHAIRMAN: No, they're all fresh in our mind -- 6 MR BERESFORD: Yes, indeed. 7 THE CHAIRMAN: -- since the witnesses were taken through 8 them not long ago. 9 MR BERESFORD: So unless I can be of any further assistance, 10 Mr Chairman, those are our submissions. 11 THE CHAIRMAN: Thank you, Mr Beresford. 12 Mr Grossman? 13 MR GROSSMAN: Thank you, Mr Chairman. 14 Closing submissions by MR GROSSMAN 15 MR GROSSMAN: Mr Chairman, what I propose to do is to 16 summarise very quickly the position from the viewpoint 17 of Lamma IV and Hongkong Electric. Then I propose to go 18 through my submissions briefly because no doubt you'll 19 have an opportunity to read them fully, even if you 20 haven't had a chance so far, and then deal quickly with 21 some of the matters raised by my learned friend 22 Mr Shieh. 23 I haven't had an opportunity yet to read the 24 submissions of the other parties, and I think I may not 25 have time to do that in any event.</p>	<p>1 perhaps one can't say that was within seconds, depending 2 on, I suppose, how one finds how responsible or not 3 responsible they were. But they too had their worlds 4 torn apart. 5 The importance of that, Mr Chairman, 6 Mr Commissioner, is this. That is, when one comes to 7 examine the evidence, in particular of the crew, or let 8 me say the crews, one has to bear in mind that they were 9 doing their best, after very traumatic experiences, to 10 assist. 11 Taking the crew of the Lamma IV, the coxswain and 12 the other members of the crew were very severely 13 criticised and they were taken to statements they gave 14 to the police, the statements for the evidence here, and 15 the evidence they gave, and discrepancies, 16 contradictions were found. This, with respect, is 17 absolutely inevitable. If you see a vehicle coming 18 towards you with its headlights blazing, to stand in the 19 cold light of day in the witness box and to try explain 20 how far away it was when you first saw it, how many 21 seconds before you turned right or you turned left, 22 would be absolutely impossible. 23 To some extent, that's exactly the same with the 24 crew and in particular the coxswain of the Lamma IV. 25 Similarly, as far as the witnesses were concerned, they</p>
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<p>1 Can I say first of all, as far as my learned friend 2 Mr Shieh's submissions are concerned, to a very large 3 extent we respectfully submit they're very fair, they're 4 very balanced, they're very objective. However, there 5 are aspects of what he says that we would take issue 6 with, but that doesn't derogate in any way from the 7 overall fairness with which he has approached this 8 matter, as one would expect of him and of Mr Beresford. 9 The position, as we see it, is this. In the 10 beginning introduction to our submissions, we have put 11 in language that you may think is rather florid but 12 nevertheless we put in very strong terms what happened. 13 Because this is a tragedy, one of the worst since the 14 Second World War in Hong Kong. What happened, although 15 you've heard graphic and heart-rending stories from the 16 survivors and indeed from the rescuers and from the 17 crews in this matter, it's very difficult indeed for us 18 to be able comprehend exactly what happened. 19 The importance of that, Mr Chairman, is not simply 20 to paint a horrific picture but to emphasise the fact 21 that these people, all of them, those involved, had 22 a good, relaxing day enjoying themselves, and suddenly, 23 within seconds, as far as the passengers were concerned, 24 their lives were turned upside down, literally. 25 As far as the crews were concerned, the rescuers,</p>	<p>1 had dreadful times. They had no reason whatsoever to 2 exaggerate. They had no reason not to tell the absolute 3 truth. But their recollection of what happened is based 4 on a moment of horror, a few moments of horror. And 5 insofar as any of their evidence needs to be carefully 6 examined as to what the truth was, et cetera, et cetera, 7 I ask you, Mr Chairman, Mr Commissioner, to bear in mind 8 too the reliability or unreliability of what they say. 9 This, as I say, was an unthinkable tragedy, what 10 happened. It was absolutely appalling. The coxswain 11 and the crew of Hongkong Electric did not shrink from 12 trying to give their best recollections of what 13 happened. You may find at the end of the day they 14 weren't telling the truth, or they were rationalising, 15 or they were mistaken; I don't know. But you will 16 recall, and my learned friend will forgive me for 17 saying, in contradistinction to the crew of the Sea 18 Smooth, they took every opportunity that was given to 19 them to give explanations. They spoke to the police. 20 They didn't shy away from it. Perhaps they should have 21 done. But because they gave so many statements, it was 22 so much easier to pick holes in them and say, "Ah, but 23 you said this here and you said that there." 24 Insofar as their statements for the Commission are 25 concerned, there were contradictions between them that</p>



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<p>1 were pointed out. And the contradictions pointed out 2 indicate that was no putting together of minds, there 3 was no conspiracy to tell the same story here. 4 I simply ask you, Mr Chairman, when looking at the 5 issue of who did what at what time, at what stage, who 6 saw what, who was standing next to what, how many 7 seconds passed between this and that, to bear in mind 8 the traumatic and dreadful circumstances that they were 9 trying to recollect. 10 Everyone knows, I think -- Mr Chairman, you've sat 11 in many cases where things happen at the last moment. 12 Honest people do their best to try to recollect what 13 happens. It doesn't always happen, and the two most 14 honest people give you completely different stories 15 about it. 16 So, in short, what our submission is so far as what 17 happened is concerned and when, it's to look really more 18 at the objective evidence, to look at the evidence of 19 Dr Armstrong and Captain Pryke, insofar as they were 20 able to rationalise and determine what happened. 21 What we've done in our submissions, in appendixes B 22 and C, to make it easier, we've set out here the 23 comments by Captain Pryke and Dr Armstrong. I'm not 24 going to go through them all, unless you wish me to. 25 We've set them out as objectively and as fairly as</p>	<p>1 we can, and I concede my pen is not good enough to evoke 2 the real horror of it. I just can't do it. It would 3 take a better author than I to do it. We've set it out 4 as best we can. I'll just read you, if I may, the very 5 last paragraph of the introduction, paragraph 9: 6 People, and again we include the crew, who suddenly 7 within seconds, are facing deaths and disaster, cannot 8 be held to account ('the slide rule' approach as 9 described by the Chairman) for every second, indeed 10 every action, indeed every word, that was spoken by whom 11 or to whom, in those fateful minutes or seconds, 12 compressed into nano-seconds by the awful events. Their 13 clarity of recollection must inevitably be distorted by 14 the events, and the torture they underwent in the 15 reliving and retelling of their ordeal during the 16 passenger of time since then. 17 Mr Chairman and Mr Commissioner, you will understand 18 a person goes through an event, whether it's a happy or 19 a tragic one, tells his family, tells his friends, and 20 here he would have been asked every day by different 21 people, "What happened? What happened?" He's reliving 22 it and retelling it. Inevitably there are going to be 23 distortions, however honest a person may be. 24 Let me say this. Ultimately, of course, the 25 Commission will make its decision on the credibility,</p>
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<p>1 I think we could do. 2 But there's one particular statement by Captain 3 Pryke that, with respect, does appear to be perhaps 4 definitive. If you would go to our annexure B, the 5 third page, you see there's a heading "Day 33". The 6 third entry there -- the second entry is: 7 "The blameworthiness ... is the alteration of course 8 by Sea Smooth at 20:19 and a half [which] absolutely 9 caused the collision." 10 And then: 11 "I think realistically to blame Lamma IV for the 12 collision is a bit extreme." 13 Those are, in a sense, summaries of the other 14 evidence that Captain Pryke gave and to an extent what 15 Dr Armstrong said. 16 Our submission in this regard is, Mr Chairman, 17 Mr Commissioner, when you're looking at what happened, 18 don't, as with great respect my learned friend Mr Shieh 19 has done and as Mr Sussex did in cross-examination, look 20 at what Mr Chairman called the slide rule approach and 21 just to take into account the dreadful circumstances, 22 the horror, the ghastly events of that night and the 23 effect that it had on the various members of the crew. 24 Mr Chairman, if I can go now to my submissions. 25 In the introduction we've set out this scene as best</p>	<p>1 the honesty, of all of the witnesses, I suppose, but in 2 particular the witnesses on the Lamma IV, and you may 3 find at the end of the day, as my learned friend has 4 suggested and no doubt others may urge, that there were 5 errors on the part of the coxswain and crew. That may 6 be. I would simply ask you, when you're looking at it 7 from that point of view, to simply bear in mind Captain 8 Pryke and Dr Armstrong. 9 If I can go now to page 3 of my submissions, the 10 background to the collision. 11 We've taken into account here what, Mr Chairman, you 12 said I think on the last day or the second-last day of 13 the hearing: not to rely on statements of the persons 14 who may be criticised, like the coxswain, for instance, 15 and we've only referred -- sorry, the witness 16 statements. We've referred in the main to his evidence. 17 and put it in where it may be capable of corroboration 18 by VTC, et cetera. 19 By and large, except for the question of fault, of 20 responsibility, I think the background to the collision 21 that we've put in, we've stated here, is not greatly 22 disputed as far as Captain Pryke is concerned and as far 23 as Dr Armstrong is concerned. So I'm not going to read 24 it out to you, because frankly they've done it better 25 than I would have done.</p>

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<p>1 To a large extent, what is put here is from the 2 coxswain's point of view, and we've put here where 3 Dr Armstrong and Captain Pryke have confirmed what he 4 said. 5 The next few pages relate to the Collision 6 Regulations and I'm not going to go through them 7 because, to a very large extent, my learned friend 8 Mr Shieh has dealt with it and I know the Commission is 9 now completely familiar with them. In any event, all 10 we've done is to set out what they are and if you think 11 it's of relevance, no doubt you would look at it. 12 We talk at paragraph 33 of the risk of collision, 13 and we deal with rule 7 in that regard. We say on 14 page 11 at the top that the assistance here of Captain 15 Pryke would be invaluable in determining when the risk 16 of collision existed, and it appears to have been about 17 20 seconds after the Sea Smooth appeared on her radar. 18 Again, Mr Chairman, I'm not going to go into the 19 fine details of all this. We rely again -- and I'm 20 sorry I'll repeat it again in the future, no doubt -- 21 very much on what we've set out in appendixes B and C. 22 If I can go to paragraph 36 now, which is "The 23 Design and Construction of Lamma IV". 24 We say here, Mr Chairman, we're not going to engage 25 in the finger-pointing exercise of who was responsible.</p>	<p>1 MR GROSSMAN: No, he wasn't a naval architect, and we say 2 that. Tang Wan-on stated, correctly, that Hongkong 3 Electric was a lay purchaser and it was not his place, 4 nor that of his company to second-guess the experts and 5 the competent governmental authority. This is 6 particularly so given the fact that they were annual 7 surveys and the "careful" and presumably meticulous 8 inspections and checks which took place before and after 9 the additions of the ballast. 10 We end in paragraph 41 on this point. Incidentally, 11 we have a reference to Dr Armstrong who more or less 12 confirms the view or the submission I've just made. He 13 said much the same thing. 14 In paragraph 41, insofar as you will need to deal 15 with this, we say: To blame Hongkong Electric would in 16 effect place a "lay" purchaser of a custom-built machine 17 (ship, motor et cetera), such as Hongkong Electric, 18 under an obligation to employ or engage its own engineer 19 to verify the construction. This would be unreasonably 20 onerous for a company such as Hongkong Electric which is 21 not in the shipping business. 22 I note neither Dr Armstrong or Captain Pryke have 23 ever said, "Well, owners of ships need to second-guess 24 all these people." 25 THE CHAIRMAN: It wouldn't be an engineer. It might be</p>
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<p>1 My learned friend Mr Shieh has dealt, it seems to me, 2 looking at it as an outsider, very effectively with that 3 and very fairly as far as that was concerned. The fact 4 of the matter is, as far as Hongkong Electric were 5 concerned, they obtained a vessel which had design 6 faults that had errors apparently in calculations, and 7 it was a vessel that had gone through every test, every 8 survey, every examination that was required of it and 9 eventually receives, ultimately, the seal of approval of 10 the Marine Department. 11 We say in paragraph 40 on page 13: Given the 12 hierarchy of expertise in the construction, survey and 13 final seal of approval by Mardep it would be an empty 14 exercise to blame, even partly, Hongkong Electric for 15 accepting the vessel with its design and construction 16 faults. 17 I mention that because, though my learned friend 18 Mr Shieh doesn't mention it, I think there was some 19 criticism of Tang Wan-on at one stage and he repeated 20 time and again, "Well, we got this vessel from 21 a reputable shipyard and Mardep said it's all right; who 22 are we to say that it's not?" 23 THE CHAIRMAN: Well, Tang Wan-on had some lengthy experience 24 in the maritime industry. But he wasn't a naval 25 architect.</p>	<p>1 a surveyor. 2 MR GROSSMAN: Maybe. But the point is the same. 3 In paragraph 42 -- I now come to deal with the 4 coxswain and crew of the Lamma IV. Much of what I said 5 in my introduction, I restate here. But in addition to 6 that, you will bear in mind, no doubt, Mr Chairman, 7 Mr Commissioner, that following this tragedy, the 8 coxswain was undergoing psychiatric treatment. He was 9 on medication. He was getting psychological 10 counselling. And I think he indicated his sleep was 11 affected. So when one looks at the quality of his 12 evidence, the detail in which he was -- the slide rule 13 approach in which he was cross-examined, you will, 14 I hope, bear in mind all these shortcomings of his which 15 have been highlighted by my learned friends, and his 16 attempt to reconstruct, the very best he could, the 17 events of that terrible night. 18 Also, I ask you to bear in mind the fact that he -- 19 as I've said already, and it's important here -- and the 20 other crew were so ready, so willing to give statements 21 to whoever asked them -- the Police, Marine Department, 22 et cetera -- gave a fruitful area, if they were not 23 conspiring together to tell the same story, a fruitful 24 area to pick a hole here, "But he said this, he said 25 that", et cetera, et cetera.</p>

<p style="text-align: right;">Page 105</p> <p>1 I have cited a case, a motor vehicle case, the 2 judgment of Mr Justice Seagrott in paragraph 45. This 3 was a case where they were talking about events that had 4 happened five years earlier, and of course one 5 acknowledges that. But I'll read it out quickly: 6 "It is impossible to expect any witness to talk with 7 accuracy in terms of feet, seconds, distance or time 8 some five years after the event. It is difficult enough 9 to estimate time and distance immediately after such a 10 traumatic event let alone years later. There is 11 inevitably a degree of reconstruction. It is quite 12 unreasonable to expect any such witness to speak 13 reliably in terms of distance, time, and speed and 14 equally unreasonable to take them to task on variations 15 or inability to be precise." 16 I very respectfully commend that to the Commission. 17 THE CHAIRMAN: As you point out in the text of your 18 submissions, the context of those observations were 19 primarily dealing with giving evidence about events that 20 have happened five years earlier. 21 MR GROSSMAN: Well, it had. But then he goes on to say: 22 "It is difficult enough to estimate time and 23 distance immediately ..." 24 The rest of it is talking about what happened 25 immediately.</p>	<p style="text-align: right;">Page 107</p> <p>1 THE CHAIRMAN: Just give me a moment. 2 Yes? 3 MR BERESFORD: Mr Francis Cheng's evidence on Day 14 at 4 page 42, line 10. And Mr Tang Wan-on's evidence on 5 Day 29, from page 55 at line 9, to page 57 at line 12. 6 THE CHAIRMAN: Thank you. 7 MR BERESFORD: Finally, there's confirmation from Reed Smith 8 Richards Butler that there were no sign-on records for 9 1 October, which is at RSRB3, page 1624. 10 THE CHAIRMAN: Yes, I remember that. 11 Mr Grossman. 12 MR GROSSMAN: Thank you, Mr Chairman. 13 I was on page 17 of my submissions, paragraph 47. 14 I deal here with the question of the whistle. It's 15 perfectly clear that the coxswain said he did sound the 16 whistle; no-one else heard it. 17 THE CHAIRMAN: Nobody on either vessel. 18 MR GROSSMAN: Nobody on either vessel heard it. So, to 19 an extent, it depends, I suppose, on what you make of 20 the coxswain. He appeared to me to try his best. He 21 may have simply been mistaken. He may have sounded it 22 and at the end of the day, everybody else, because of 23 what happened and what I indicated this morning, it's 24 not something that registered with them. That's 25 a matter for you to find.</p>
<p style="text-align: right;">Page 106</p> <p>1 THE CHAIRMAN: Yes. 2 MR GROSSMAN: In paragraph 46 -- this is the last point 3 I make before lunch -- the coxswain was always at pains, 4 and when I say "always", that's probably a slight 5 exaggeration, but he was at pains to point out that he 6 was always saying this was about 3 cables, this was 7 about so many seconds, this was about this number of 8 cables, et cetera, et cetera. He was not, as he 9 couldn't possibly do, absolutely precise and he was 10 criticised -- I think my learned friend with respect 11 says, "Oh, he was 3 cables ahead. This means X, this 12 means Y." 13 With the Commission's permission, I will stop there. 14 THE CHAIRMAN: Yes. Very well. 15 MR GROSSMAN: I'll be well within the hour allotted to me. 16 THE CHAIRMAN: Thank you. We'll adjourn now and resume at 17 2.30 this afternoon. 18 (1.02 pm) 19 (The luncheon adjournment) 20 (2.30 pm) 21 THE CHAIRMAN: Yes, Mr Beresford? 22 MR BERESFORD: Mr Chairman, if I may just please provide the 23 Commission with three references that I promised earlier 24 this morning in relation to the fourth crew member. 25 Mr Lai Ho-yin's evidence at Day 6, page 84, line 18.</p>	<p style="text-align: right;">Page 108</p> <p>1 Another possibility is that because he was making 2 a very hard turn to the right, because of the sudden 3 emergency that appeared before him, he may have thought 4 that he turned on the whistle and he didn't. That's 5 a possibility. It may be a genuine mistake. 6 THE CHAIRMAN: Or he wished he had. 7 MR GROSSMAN: I'm sure if he didn't, he wishes that he had. 8 But that would be to find that he deliberately didn't 9 tell the truth about it, and of course it's up to you, 10 if that's what you find. I simply say that it's very 11 difficult to make these kind of decisions in the light 12 of what happened. 13 At page 18 I deal with a matter that I dealt with in 14 opening, and that is, yes, there were a lot of 15 contradictions in his evidence and in the evidence of 16 the other crew members of the Sea Smooth, and that 17 really is a function of the fact that they made so many 18 statements, that they were only too pleased to try to 19 assist. And that's what he tried to do all the way 20 through: to assist. 21 Of course, one can then pick out perceived 22 contradictions, some of which are genuine, some of which 23 aren't genuine. 24 There's a matter I think I must refer to in 25 paragraph 54, on page 19.</p>

<p style="text-align: right;">Page 109</p> <p>1 THE CHAIRMAN: Yes.</p> <p>2 MR GROSSMAN: Now, there may well be shortcomings attributed</p> <p>3 to the coxswain and other members of the crew, but,</p> <p>4 Mr Chairman, you did acknowledge -- and this is</p> <p>5 something that I need to highlight -- that they acted</p> <p>6 with commendable bravery. They may be mistaken about</p> <p>7 various things, but they obviously haven't colluded.</p> <p>8 It's regrettable that their integrity has been called</p> <p>9 into question in cross-examination by various parties.</p> <p>10 It's not only the crew, but the other people who were on</p> <p>11 board, members of Hongkong Electric who helped to</p> <p>12 assist. They acted extremely bravely, if I may say so.</p> <p>13 Mr Chairman, we accept in paragraph 55, because one</p> <p>14 has to be realistic, that it would seldom be that</p> <p>15 a court, an inquiry that are looking into a collision,</p> <p>16 would hold that one vessel is completely blameless and</p> <p>17 the other wholly to blame. One must acknowledge that.</p> <p>18 But what we say is, with respect, if one looks at the</p> <p>19 evidence, the objective evidence, the uninvolved</p> <p>20 evidence of the experts, one can see here that the</p> <p>21 Lamma IV was -- if there is blame to be attached to it,</p> <p>22 it is minimal. I'll deal a bit more with that when</p> <p>23 I come to deal with my learned friend's submissions, but</p> <p>24 that's a point that I want to highlight.</p> <p>25 Now, I turn to deal with the crew of the Sea Smooth.</p>	<p style="text-align: right;">Page 111</p> <p>1 friend Mr Shieh has dealt with that extremely fully.</p> <p>2 I'm not going to repeat it. I simply say that the</p> <p>3 evidence, with respect, is overwhelming, that the</p> <p>4 navigation lights of the Lamma IV were on, and I would</p> <p>5 respectfully adopt what my learned friend Mr Shieh has</p> <p>6 said in that regard.</p> <p>7 Besides the vagaries of people's recollections, at</p> <p>8 the end of the day, in this type of matter, one relies</p> <p>9 heavily on the forensic evidence.</p> <p>10 Now, the coxswain, when he gave his evidence, only</p> <p>11 really had one excuse -- and I use the word "excuse"</p> <p>12 advisedly. He says the navigation lights weren't on.</p> <p>13 Well, if you come to the view that the navigation lights</p> <p>14 of the Lamma IV were on, then he doesn't really have, if</p> <p>15 I can call it this way, a defence. One simply doesn't</p> <p>16 know why he did what he did, or didn't do what he didn't</p> <p>17 do.</p> <p>18 It may be, as was canvassed this morning, a question</p> <p>19 of fatigue. In this regard, can I give you some</p> <p>20 references that we dug up this morning. The two sailors</p> <p>21 and the engineer each say they were very tired: Sailor</p> <p>22 Wong Tai-yau, Day 40, page 8, lines 9 to 11; Sailor Wong</p> <p>23 Yung-shing on Day 40, page 125, lines 3 to 4, he says he</p> <p>24 was a little bit tired; and Engineer Lo Pui-kay, also</p> <p>25 Day 40, page 53, lines 14 to 17, he says "I felt</p>
<p style="text-align: right;">Page 110</p> <p>1 Let me say immediately as far as that's concerned, of</p> <p>2 course, to state the blindingly obvious, I don't act for</p> <p>3 them. But I bear in mind as a matter of fairness, as</p> <p>4 I'm sure that everyone in this room will do, that they</p> <p>5 are uneducated people who do not have the benefit of</p> <p>6 legal representation, although invited to do so, to</p> <p>7 articulate any defence or any excuses that they have.</p> <p>8 I accept that.</p> <p>9 THE CHAIRMAN: It was only at a late stage that legal</p> <p>10 representation for them ceased.</p> <p>11 MR GROSSMAN: Perhaps I'm being over-fair. But I feel it is</p> <p>12 necessary. I don't want to be accused of hitting people</p> <p>13 while they're down, as it were.</p> <p>14 The other point that we make is -- and we have been,</p> <p>15 in our submissions, and I will be, extremely critical of</p> <p>16 them, far more, I may say so, than my learned friend</p> <p>17 Mr Shieh was. I do so on the basis of what they</p> <p>18 themselves say, to a large extent. I haven't succumbed</p> <p>19 to the temptation to say, "Well, you said you were so</p> <p>20 many cable lengths away, so many feet away, so many</p> <p>21 seconds, et cetera; you must be not telling the truth."</p> <p>22 I haven't done that.</p> <p>23 At the end of the day, the coxswain had one excuse</p> <p>24 only: "I didn't see the lights. The lights weren't on.</p> <p>25 I saw a black shadow." That was his excuse. My learned</p>	<p style="text-align: right;">Page 112</p> <p>1 a little tired". And then at page 107, he confirmed</p> <p>2 this to you, Mr Chairman, at lines 19 to 23. But</p> <p>3 I should say as a matter of fairness that the coxswain</p> <p>4 said he wasn't tired; he's been used to it; 30 years.</p> <p>5 THE CHAIRMAN: Do you have a reference for that?</p> <p>6 MR GROSSMAN: No, I'm sorry, I don't.</p> <p>7 THE CHAIRMAN: I do remember that testimony.</p> <p>8 MR GROSSMAN: Yes. I think I asked him the question, if</p> <p>9 I remember correctly.</p> <p>10 If the Commission rejects the excuse that the lights</p> <p>11 were not properly and fully illuminated, then</p> <p>12 realistically, one has to say, well, he wasn't keeping</p> <p>13 a proper look-out. I heard the debate this morning --</p> <p>14 or not the debate, the exchange between yourself and my</p> <p>15 learned friend Mr Shieh about, well, perhaps he simply</p> <p>16 cut across because he was trying to get there quickly.</p> <p>17 It's a maybe, just as it is that it may be that he was</p> <p>18 more attentive to what was in the rice cooker, or he was</p> <p>19 tired, despite what he says. One doesn't know. The</p> <p>20 simple fact of the matter is, he simply didn't keep</p> <p>21 a look-out, as he himself says.</p> <p>22 He said, "Well, the possibility of the glare from</p> <p>23 the fog light" -- and I've dealt with the fog light in</p> <p>24 some detail a bit later on. But I think the probability</p> <p>25 is that he was tired. He knew, because he says so, and</p>

<p style="text-align: right;">Page 113</p> <p>1 quite rightly, that this was a special evening because 2 of the fireworks and he had to be particularly vigilant; 3 these are his words. The fact of the matter is, he 4 wasn't vigilant at all. 5 On page 24, we deal with -- oh, yes. I've just been 6 given a reference. The coxswain's denial that he was 7 tired: Day 42, page 90, lines 7 to 9. 8 THE CHAIRMAN: Thank you. 9 MR GROSSMAN: On page 24, we raise an issue which is 10 extremely important. I notice my learned friend 11 Mr Shieh hasn't dealt with it. But we say in some ways 12 this is as important as any other issue: why the Sea 13 Smooth didn't stop, and what might have happened had 14 they stopped. 15 Now, the reason that they gave was identical: that 16 is, that members of the crew, passengers, were injured, 17 there was water pouring in, passengers were screaming, 18 there was chaos, and demanding the vessel sail for the 19 pier. That's what their story was. 20 Curiously, not a single one of them saw the Lamma IV 21 in trouble. That's almost impossible to believe, with 22 respect. It was sinking rapidly. It sank -- well, you 23 know the timeline -- in about 90 seconds, and people 24 were thrown into the water and drowning. The coxswain 25 says he didn't see the Lamma IV, even when he went to</p>	<p style="text-align: right;">Page 115</p> <p>1 this of course would have been while they were underway, 2 not while they were sitting there. The evidence was, 3 from the crew, "Well, passengers were demanding that we 4 head straight for the pier, which was a few minutes 5 away", but there was evidence, and it's in police bundle 6 -- I've put the reference at the bottom of 7 paragraph 76 -- that there was a foreign passenger, 8 a woman, I think it was, who asked the coxswain to stop 9 and help the survivors. 10 THE CHAIRMAN: Wasn't there other evidence that she was told 11 to shut up, that being the phrase used? 12 MR GROSSMAN: I confess I don't recall it, and I wouldn't 13 wish to say that if my memory is faulty. But if that's 14 what the position is, so be it. 15 Paragraph 77, we point out some evidence that a crew 16 member shouted out, "Don't worry. No need to put on 17 life jackets." That was the beginning. A bit later on, 18 when the water started coming in, they were told to put 19 on life jackets. But there was certainly not the chaos 20 that was being described as soon as the accident 21 happened. Then of course we've cited -- 22 THE CHAIRMAN: Perhaps not chaos in the sense that that is 23 perhaps an appropriate term to describe aspects of what 24 was happening on Lamma IV, but the tenor of the evidence 25 is that there was a clamouring, at least among some</p>
<p style="text-align: right;">Page 114</p> <p>1 the port bow. He says, again, in an unbelievable story, 2 he shouted but there was no reply so he thought, "Well, 3 all right. They're all right." There must have been 4 dreadful screaming at this stage. 5 He went into the wheelhouse to make his phone calls. 6 If he turned his head to the left or to the right, one 7 of them, he would have seen what was going on. But he 8 didn't. That's what he said. He didn't look to see 9 what the position was. He knew there had been a lot of 10 damage to his vessel. There was a huge impact. He 11 didn't use his searchlight; he didn't use his 12 life-saving equipment. And the engineers and the 13 sailors say much the same. We're critical of that. 14 But one accepts that his first duty, the first duty 15 of a coxswain and a crew is to their own vessel. But 16 one knows now the damage to the Sea Smooth was not 17 extensive in the sense that there was no danger of 18 sinking; that only two or three passengers, I think two 19 were reported, maybe three passengers, were slightly 20 injured. Don't know if any of them went to hospital. 21 And evidence that we've cited here, from passengers, 22 there was none of this chaos and screaming. Of course 23 there were probably were people who were upset, but 24 nothing like that. 25 As far as the water spurting through the manholes,</p>	<p style="text-align: right;">Page 116</p> <p>1 passengers, that the vessel proceed to its destination. 2 MR GROSSMAN: Absolutely. I think that's it. But the 3 graphic descriptions of people shouting and screaming, 4 "Get us to the pier on time", that kind of thing, just 5 didn't happen. 6 Section 29 of Cap 548, which referred to -- 7 THE CHAIRMAN: Let me have a look at this, please. 8 MR GROSSMAN: Yes, certainly. Section 29 of the Merchant 9 Shipping ... 10 THE CHAIRMAN: Yes. Thank you. 11 MR GROSSMAN: The preface is he must "do so without danger 12 to his own vessel, crew and passengers". 13 THE CHAIRMAN: Let's just have a look at the relevant 14 provision. 15 MR GROSSMAN: Yes, I'll read it out. 16 THE CHAIRMAN: Thank you. If you would. 17 MR GROSSMAN: "Where two vessels collide and either of those 18 vessels is a local vessel it shall be the duty of the 19 coxswain or person in charge of the local vessel 20 involved in the collision, if and so far as he can do so 21 without danger to his own vessel, crew and passengers, 22 if any -- 23 (a) to render to the other vessel, the coxswain, 24 crew and passengers, if any, such assistance as may be 25 practicable and may be necessary to save them from any</p>

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<p>1 danger caused by the collision, and to stay by the other 2 vessel until he has ascertained that there is no need of 3 further assistance ..."</p> <p>4 And then it goes on to deal with what he should do 5 thereafter. In fact, it creates a criminal offence.</p> <p>6 So we acknowledge that he at first must look at his 7 own vessel, but the evidence in this case simply was 8 that he could have done what he was required to do in 9 section 29 without any adverse effect on his vessel or 10 passengers at all. After all, he was only two or three 11 minutes away.</p> <p>12 At paragraph 79, and forgive me for reading this 13 out, but in some ways it's as important as any of the 14 paragraphs that I have in my submissions:</p> <p>15 The real issue, however, is this: if Sea Smooth had 16 done its duty and stopped to help rescue passengers who 17 were in distress, would more of them have been saved? 18 When one bears in mind that the crew of Lamma II and the 19 people on the passing pleasure craft saved many 20 passengers, as shortly afterwards did the Police and 21 Fire Services, the overwhelming probability is that the 22 death toll would have been, and should have been, very 23 much less.</p> <p>24 Mr Chairman, I then raise the question in 25 paragraph 80, well, why did they run away? In</p>	<p>1 THE CHAIRMAN: That was my memory of the evidence. Thank 2 you for finding the reference.</p> <p>3 MR GROSSMAN: I'm grateful to my learned friend also. 4 I then deal briefly with the question of the fog 5 lights, because the coxswain of the Sea Smooth said his 6 vision was blurred or affected by it. Again I notice my 7 learned friend Mr Shieh hasn't dealt with this, because 8 probably it's a waste of time dealing with it. It's 9 a non-starter, at the end of the day. The coxswain knew 10 the route. No complaint -- and this is perhaps the main 11 point -- had ever been made, either to Hong Kong 12 &amp; Kowloon Ferry or Hongkong Electric or the Marine 13 Department, about it. It is simply a non-starter.</p> <p>14 THE CHAIRMAN: But the other factor in all of this, surely, 15 if reality is to intrude, is the distance between the 16 Sea Smooth and the fog light at various points.</p> <p>17 MR GROSSMAN: Yes.</p> <p>18 THE CHAIRMAN: Captain Pryke gave us some calculations as 19 far as that's concerned.</p> <p>20 MR GROSSMAN: That's right, he did.</p> <p>21 THE CHAIRMAN: At 20:20, it was 0.8 of a nautical mile away.</p> <p>22 MR GROSSMAN: Yes, I recall that. I haven't dealt with all 23 these matters, because it seems to me -- I took the 24 liberty of assuming that you weren't going to spend 25 a lot of time on it, because it doesn't seem to me to be</p>
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<p>1 cross-examination, I made a suggestion which was not 2 accepted, of course, but it seems the only reason why 3 they would have done it, bearing in mind, as I say 4 elsewhere, helping people struggling in the water, these 5 people had all been at sea for the whole of their lives 6 and it's in their DNA to help people, to assist people 7 who are struggling in the water.</p> <p>8 We say the coxswain knew it was his fault. There 9 was no reason why they shouldn't have stopped. He just 10 panicked and ran away.</p> <p>11 MR SHIEH: Mr Chairman, before I forget, the bit about being 12 told to shut up, I've located the reference.</p> <p>13 THE CHAIRMAN: Thank you very much.</p> <p>14 MR SHIEH: It's actually a passenger of Sea Smooth called 15 Madam Wong Wing-see who witnessed it. I'm just going to 16 give the reference. It's Day 7, page 135, and also 17 Day 7, pages 143-144. It was an expatriate lady who 18 said something in English, according to this witness, 19 and a male expatriate then asked her to shut up. But 20 unfortunately, there's actually no explanation by that 21 witness as to what she understood the female expatriate 22 to be saying. It's not clear whether -- what it was 23 that she was being asked to shut up. It's not a Sea 24 Smooth crew who asked her to shut up; it was another 25 expatriate, male passenger.</p>	<p>1 a starter, frankly.</p> <p>2 Then we've set out our submissions slightly 3 differently from my learned friend. I think the way he 4 did it was correct. I've dealt with other criticisms of 5 the crew of Lamma IV. He's put that in part 2 to some 6 extent, but I'll deal with it now anyway.</p> <p>7 THE CHAIRMAN: Yes.</p> <p>8 MR GROSSMAN: He deals with that at his paragraph 94, the 9 question of the life jackets. He dealt with it, to 10 a very large extent, in a way that I don't need to 11 repeat it. I simply say this, that although there were 12 criticisms of the life jackets, and of course I look at 13 this purely from the point of view of Hongkong Electric, 14 these were life jackets the quality of which was passed 15 by the Marine Department, and who are we, we ask 16 rhetorically, to second-guess them and say they're not 17 good enough?</p> <p>18 THE CHAIRMAN: Titanic was passed by the British 19 authorities, was it not?</p> <p>20 MR GROSSMAN: Sounds likely to me.</p> <p>21 MR BERESFORD: Not the Irish.</p> <p>22 MR GROSSMAN: Yes.</p> <p>23 As far as the asterisk is concerned, all I say is 24 simply this: the simple thing would have been to put the 25 number "12" instead of an asterisk requiring the crew,</p>

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<p>1 and for that matter passengers who were interested, to 2 start trawling through the legislation to find out just 3 how many were required. That made very little sense 4 indeed. 5 As far as the question of did we have children's 6 life jackets? My learned friend has dealt with that. 7 Why on earth we should lie about it and pretend we 8 hadn't complied when in fact we had just makes no sense 9 whatsoever. 10 I want to deal a little with the four members, the 11 manning requirements. In the first place, you will 12 recall, of course, the rather odd evidence given by the 13 Marine Department that for reasons that nobody could 14 remember, that were never recorded, that were never 15 apparently passed on, either upwards or sideways, the 16 manning requirement was increased only on the Lamma IV 17 but not the Lamma II, from two to four. We always had 18 three on both. 19 So there's no question, of course, that we were 20 trying to save money. If we were trying to save money, 21 we could have just had two people on the Lamma IV. So 22 that wasn't an issue. The issue is, I suppose, did we 23 have, in terms of the law, four people on board who 24 could be categorised as crew or not? 25 First of all, and perhaps I should say last of all,</p>	<p>1 And it says: 2 "The terms 'employed or engaged' suggest an 3 amendment as in 'hire for work' or 'take up employment'. 4 This is consistent with the use of those words in 5 section 89 ... and with the distinction of 'crew' from 6 'passenger'. 7 Well, of course there's a distinction between them. 8 Then he says: 9 "The words 'in any capacity on board a local vessel' 10 and 'on the business of the vessel' make it clear that 11 the employment or engagement must be for that specific 12 purpose ..." 13 Well, the specific purpose is he's there in a 14 capacity on the business of the vessel. That's what it 15 says. It doesn't mean, as my learned friend says at 16 paragraph 5: 17 "Hence it is submitted that a general employment or 18 engagement by the employer will not suffice and that it 19 would not be legitimate to regard any employee of 20 Hongkong Electric's who happened to be on board as 21 'crew' unless he has been specifically employed for that 22 purpose." 23 That's not correct, because that's not what the 24 definition says at paragraph 104. 25 THE CHAIRMAN: But how can you be a member of the crew if</p>
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<p>1 but whether we'd had three, four or six people on board, 2 it wouldn't have made any difference to the accident. 3 Yes, it may be said we should have had somebody else 4 keeping a look-out, and perhaps -- and I put it no 5 higher than that -- they would have given an alert 6 earlier. But there's no requirement for that, and other 7 people were on board and keeping a look-out. They 8 didn't see it. One person more may have. Well, so 9 would two or three or four more. We say that is not 10 causative of the accident, the fact there wasn't 11 a fourth person on board. 12 But in particular, what we take issue with is the 13 way my learned friends have dealt with it. If we could 14 go to his submissions, please, on page 53, 15 paragraph 103. 16 THE CHAIRMAN: Yes. 17 MR GROSSMAN: It says: 18 "The term 'crew' is defined in Merchant 19 Shipping ..." 20 Yes. 21 "... the coxswain and any other person employed or 22 engaged in any capacity ..." 23 And we underline "any capacity". 24 "... on board a local vessel on the business of the 25 vessel."</p>	<p>1 you don't know you've been appointed as a member of the 2 crew; that's Mr Lai's position, is it not? 3 MR GROSSMAN: But that's simply a matter of -- it doesn't 4 matter in the sense that he is there. He is helping; he 5 has a function. 6 THE CHAIRMAN: You can be a member of the crew although you 7 don't know you're a member of the crew? 8 MR GROSSMAN: Well, it's only a question of appellation. He 9 knows, Mr Lai, "You're there to look after the 10 passengers." 11 THE CHAIRMAN: So, you can, to answer my question? 12 MR GROSSMAN: Yes. Adding the words "and you're a member of 13 the crew" would add nothing to it. That's my point. 14 THE CHAIRMAN: Yes. 15 MR GROSSMAN: You will recall that when Mr Tang says, and 16 there's no reason to disbelieve him in this regard, 17 "Well, we phoned up Mardep and we said, 'What is this 18 fourth person to do?'" , he got no answer to it. Of 19 course, a company like Hongkong Electric which can 20 afford to employ many people is hardly likely to ignore 21 it. If they said, "Look, the fourth member's duty -- we 22 need four on this one, not like Lamma II, for the 23 following reasons", they would not have ignored it. 24 THE CHAIRMAN: Unless, of course, there had arisen some kind 25 of personal animus between the lower echelons of</p>

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<p>1 Hongkong Electric about the way in which they'd been 2 treated. No explanation. 3 MR GROSSMAN: If that was so. 4 THE CHAIRMAN: "Well, we're not going to do that. We can 5 find a way around it." 6 MR GROSSMAN: If that was so. There's no evidence of that. 7 With respect, Mr Chairman, that would be so speculative. 8 The simple fact of the matter is -- that's the 9 evidence. Suddenly, arbitrarily increased from two to 10 four. Nobody is told anything about it. They ask 11 questions about it. Nobody can give an intelligent 12 explanation about it. So they say, "Well, we'll carry 13 on with three but we'll always have a fourth member on 14 board. We won't tell him he's crew, won't use the magic 15 words 'you're crew', but it doesn't matter." 16 Now, on page 32, we deal with the question of the 17 sundeck. I can deal with it quickly because my learned 18 friend doesn't mention it, but at one stage it was 19 suggested there were too many people there. The fact of 20 the matter is, although there were only 14 seats there, 21 it doesn't mean people couldn't stand on the sundeck. 22 That's what it's for. 23 THE CHAIRMAN: What did that sign say at the open deck? 24 MR GROSSMAN: It said "14 passengers". 25 THE CHAIRMAN: "Permitted"?</p>	<p>1 accommodates 14P". 2 MR GROSSMAN: There were 14 seats. It doesn't mean to say 3 nobody was allowed to stand. 4 THE CHAIRMAN: I know what the word "accommodates" means, 5 Mr Grossman. No doubt you do as well. 6 MR GROSSMAN: I do. But what I'm saying is that's not 7 a law. That was something painted there. There are 8 14 seats. I'm sure that's what was intended. This is 9 a sundeck. That's where people go, to see what's 10 happening. In any event, it made no difference to the 11 number of people who were killed. 12 Then I deal with the seats, and I say no more than 13 what my learned friend has said, save to say that the 14 way in which we fixed them was the way it had been 15 utilised at the design and build stage, which is the way 16 we should have done it, and they were inspected every 17 year and no complaints about it. 18 As far as the radar was concerned, you've heard what 19 my learned friend has said and his criticisms of it. We 20 simply say that the radar that evening was for normal 21 navigation purposes, and the submission that we've made 22 is that we did turn to starboard, as required, and the 23 fact that we didn't look earlier or nobody looked at the 24 radar more closely and more often was not causative of 25 the collision.</p>
<p>Page 126</p> <p>1 MR GROSSMAN: I don't know if it used the word "permitted". 2 It said "14". 3 THE CHAIRMAN: Somebody remind me of the reference for the 4 photograph. 5 MR GROSSMAN: While my learned friend is very kindly looking 6 for it, can I simply say this. The fact that there 7 probably were more than 14 didn't make any difference to 8 the number of people who died, because there's no 9 suggestion that more people died who were on the sundeck 10 than not. And in particular, if I may say so, it's 11 highly likely that if everybody -- I used the word 12 compendiously -- had sat in the upper deck, when the 13 seats started falling backwards, more people would die. 14 That seems the probability in that regard. 15 THE CHAIRMAN: It may well have been a safer place to be, as 16 long as you could swim. 17 MR GROSSMAN: If you could swim, yes. 18 MR SHIEH: Mr Chairman, "This deck accommodates 14 people". 19 It's police album, page 166. 20 THE CHAIRMAN: "This deck accommodates ..." 21 MR SHIEH: "... 14P". 22 MR BERESFORD: Page 167 is a better one. 23 THE CHAIRMAN: Thank you. 24 MR SHIEH: On page 167 you can see "14P". It's slightly 25 obliterated by a pole, but you can see "This deck</p>	<p>Page 128</p> <p>1 We deal with crew training and experience. 2 In part 2, as far as the improvements are concerned, 3 we've added nothing there because we say we will do 4 whatever the law tells us to do, and more. Mr Cheng has 5 set it out. We will study all the recommendations made 6 by the Commission, and of course we will go, as Mr Cheng 7 says, further than is required, et cetera. 8 Now, before I deal with the conclusion, there are 9 a few points that my learned friend made that I'd like 10 to deal with very quickly, if I may. If we could go to 11 his submissions. 12 My learned friend in paragraphs 24, 26 onwards, 13 deals with Mr Chow, the coxswain of the Lamma IV. 14 I simply say in that regard what he has done is to take, 15 with respect, the way forward on the slide rule method, 16 which you have said is incorrect. 17 What we say is, as far as that's concerned, look to 18 see what Captain Pryke and Dr Armstrong say. 19 If we could go to paragraph 59 on page 31, my 20 learned friend says: 21 "In our submission, the cause of the collision was 22 failure to keep proper look-out (both visually and by 23 use of radar) on the part of both vessels." 24 He uses it equally. 25 However, if you go to paragraph 60, you see that he</p>



<p style="text-align: right;">Page 129</p> <p>1 says: 2 "Subject to the comments below, Captain Pryke's view 3 on the cause of collision is in our submission sound and 4 should be accepted." 5 We repeat what we put in appendixes B and C, that 6 Captain Pryke and Dr Armstrong were of the view that it 7 was very, very largely the fault of the Sea Smooth and 8 not us. 9 MR SHIEH: But I would also remind the Commission of our 10 paragraph 63: that is to say, the Commission should 11 avoid precisely apportioning which bit is more to blame, 12 because that would really be a matter for civil 13 liability. 14 THE CHAIRMAN: Yes, I'm mindful of your submission there. 15 MR GROSSMAN: I'm going to deal with paragraph 63. I have 16 the specifically marked. I want to deal with 17 paragraph 62 also. Paragraph 62 says: 18 "Chow Chi-wai claimed that he saw Sea Smooth when it 19 was at a distance of 3 cables. ... [this] was still too 20 dangerously close for any master to take avoidance 21 actions." 22 I want to refer to a document that was put in on 23 Friday, I think it was, from Mr Chung Siu-man, marine 24 bundle page 4616. He is the assistant director of Port 25 Control Division. In paragraph 16(3), he says:</p>	<p style="text-align: right;">Page 131</p> <p>1 narrow areas. 2 THE CHAIRMAN: 3 cables is 30 seconds, at the closing speed. 3 MR GROSSMAN: That's correct, yes. That's what it would be. 4 THE CHAIRMAN: One minute is 6 cables. 5 MR GROSSMAN: Yes, I accept that. 6 If we could look next at paragraph 63. I hear what 7 my learned friend says and of course I understand the 8 point, but -- and this is an important "but" -- this, to 9 state the obvious, is a public inquiry. There has been 10 intense public speculation, intense public interest, for 11 very good reasons, into this Inquiry. The press have 12 been here every day. It's been given very prominent 13 position in newspapers, television, radio, et cetera. 14 It would not be right, it would not be fair to my 15 clients if the crew of Lamma IV were to be treated 16 exactly the same way as the crew of the Sea Smooth. If 17 this Commission of Inquiry were simply to say both sides 18 were at fault, without indicating at least, however it 19 is worded, the proximate, the real cause of the 20 collision -- because it would not be right for the world 21 at large, for Hong Kong at large, to get the wrong 22 impression that they were equally at fault. Because 23 they weren't. And I'm sure that's what the Commission 24 will find. 25 Of course I'm not saying that the Commission should</p>
<p style="text-align: right;">Page 130</p> <p>1 "In the inner zone, due to the presence of a large 2 number of small vessels, which pass at close distance 3 with the participating vessels, the CPA is reduced to 4 less than 90 metres. This CPA strikes a balance between 5 the reality in the inner zone where there are more 6 encounters between vessels of varying sizes, and 7 avoiding the system generating too large a number of 8 alerts making it impossible for the VTSOs to comprehend, 9 interpret and make decisions on dissemination of 10 information in a meaningful manner." 11 And paragraph 20: 12 "It must be appreciated that the nature and 13 navigational behaviour of LVs are different from OGVs 14 and RTVs. LVs, which are considerably smaller in 15 size ... are more manoeuvrable and take much less time 16 and space to carry out collision avoidance action. In 17 general, LVs take collision avoidance action less than 18 1 minute away, and pass each other at around 50 metres 19 apart." 20 Now, it may well be this Commission would recommend 21 that that shouldn't be the position. But that is the 22 position. It may be one of the recommendations the 23 Commission makes that this is far too close, far too 24 dangerous for normal navigational purposes. And this is 25 the point we're making. We're talking here about very</p>	<p style="text-align: right;">Page 132</p> <p>1 say 80:20, 60:40, 90:10 or whatever it is. Of course, 2 I'm not making any concession here that you would find 3 we were at fault in any way, but if you do, I'm simply 4 saying that it would not be right for the public at 5 large in Hong Kong to go away with the impression, after 6 your report has been published, that the two sides were 7 equally at fault. That would be unfair; it would be 8 wrong. 9 I see my time is almost up. Can I just say this. 10 Mr Chairman, in conclusion, I do no more than read out 11 my paragraph 115. 12 THE CHAIRMAN: Yes. 13 MR GROSSMAN: When the Commission opened its Inquiry, we 14 pointed to the importance of answering questions as to 15 the what, why and how the tragedy happened on 1 October 16 2012. Now in closing on behalf of Hongkong Electric and 17 the crew of Lamma IV we thank the Commission for its 18 painstaking efforts to deal with these questions. 19 And I interpose here, whether you find us culpable 20 in any way or not, the thanks remain. 21 And finally, and once again, we express our 22 condolences to the families and friends of all the 23 deceased and injured. 24 Mr Chairman, before I sit down, I think I should 25 say, on behalf of probably everyone here, how much we</p>

<p style="text-align: right;">Page 133</p> <p>1 owe to the support staff here; to the shorthand writers, 2 to the interpreters, to the gentleman and the ladies who 3 have been so helpful with the witnesses, to the 4 extraordinary efficiency of the people who get matters 5 onto the screen so quickly, people who give us all the 6 documents that suddenly arise, particularly I should say 7 perhaps the interpreter who left, and last, and not 8 least, I want to thank the people on the gates who have 9 been so helpful to us. 10 Mr Chairman, thank you very much. 11 THE CHAIRMAN: Thank you for those remarks, Mr Grossman, and 12 they are entirely appropriate and deserved. 13 MR GROSSMAN: Mr Chairman, may I say I shall be leaving 14 shortly. Thank you. 15 THE CHAIRMAN: Yes. Thank you for the courtesy of informing 16 us. 17 Mr Zimmern. 18 Closing submissions by MR ZIMMERN 19 MR ZIMMERN: Thank you, Mr Chairman. 20 May it please this Commission, Mr Chairman and 21 Commissioner Tang. Before I make the oral submissions, 22 I would also echo my learned friend's comments as to the 23 hard work of the support staff in the Commission these 24 last 49 days, and before. 25 THE CHAIRMAN: Thank you.</p>	<p style="text-align: right;">Page 135</p> <p>1 the leaving of the Sea Smooth from the scene of the 2 collision, and what we perceive to be the unfairness of 3 his submission that that was causative or probably 4 causative of loss of life. 5 At the outset, Mr Chairman, we wish to emphasise 6 that this Commission should not be concerned with 7 whether the situation in which the two vessels found 8 themselves in the minutes leading to the collision ought 9 to be regarded as either head-on under rule 14, or 10 a crossing situation under rule 15 of the Collision 11 Regulations. 12 We say this for the following reasons. Firstly, 13 those rules are of assistance in attributing fault for 14 the purposes of civil liability. Because if vessels 15 ought to have been observed visually from one another, 16 their navigational manoeuvres thereafter fall to be 17 judged as though they were in fact in sight of one 18 another. But as this Commission has heard, and is clear 19 from the evidence, neither of these two vessels were in 20 sight of one another at the material time, being the 21 time of risk of collision occurring, such that by the 22 time they were in sight of one another, whether it be 23 30 seconds or 27 seconds before collision, in the case 24 of the Lamma IV, or 100 metres away, and I think Captain 25 Pryke has said three seconds in the case of the Sea</p>
<p style="text-align: right;">Page 134</p> <p>1 MR ZIMMERN: The Commission should have received our closing 2 submissions this morning, which submissions we adopt in 3 full. 4 THE CHAIRMAN: Yes. 5 MR ZIMMERN: Whilst the written submissions may not have the 6 necessary brevity as directed, our oral submissions 7 hopefully will. This is in large part due to the fair 8 and detailed analysis of the evidence by the 9 Commission's counsel, for which there is a large measure 10 of agreement. 11 As was pointed out earlier, where we respectfully 12 differ or materially differ from the Commission's 13 counsel's submissions is in two respects. It is in the 14 need for an application of either rules 14 or 15 of the 15 Collision Regulations and, should the Commission 16 disagree and consider it appropriate to consider those 17 rules, the correct rule to apply. 18 I will also, albeit briefly, touch upon the issues 19 of the first sighting by Coxswain Chow of the Sea Smooth 20 in terms of timing; the navigation lights on the 21 Lamma IV; the fog light at the Hongkong Electric pier on 22 Lamma Island; and the undermanning of the Lamma IV. 23 THE CHAIRMAN: Yes. 24 MR ZIMMERN: As a result of my learned friend Mr Grossman's 25 submissions, we will also seek to deal with the issue of</p>	<p style="text-align: right;">Page 136</p> <p>1 Smooth, they were in an unacceptably close-quarters 2 situation. 3 THE CHAIRMAN: But in paragraph 4 in your written 4 submissions, you say that they are invoked if the 5 vessels ought to have been observed visually from one 6 another. I'm reading from the penultimate line of 7 page 2. 8 MR ZIMMERN: Yes. That is a reference to the fact that 9 visibility that night was clear. 10 THE CHAIRMAN: Yes. Captain Pryke said they ought to have 11 been -- 12 MR ZIMMERN: And therefore they ought to have been able to 13 see one another. 14 THE CHAIRMAN: About 2 miles is what Captain Pryke says, by 15 radar and visually. 16 MR ZIMMERN: Yes. Which is why we attribute fault, and we 17 would press on this Commission to do so, that the 18 proximate cause of this collision was the egregious 19 failure of look-out, both visually and for the non-use 20 or improper use of radar. 21 But the reason we say this Commission ought not to 22 consider rule 14 or rule 15 is because, at the end of 23 the day, if it is accepted by the Commission that these 24 two vessels were not in fact in sight of one another at 25 the time the relevant rule ought to have been</p>

<p style="text-align: right;">Page 137</p> <p>1 classified -- and we'll suggest in due course that's at 2 20:18 on the night in question -- then -- 3 THE CHAIRMAN: 20:18 for the Sea Smooth and 20:19 for the 4 Lamma IV. That's what Captain Pryke said. 5 MR ZIMMERN: He also agreed, with respect, on several 6 occasions that risk of collision occurred at 20:18, and 7 we find it difficult to accept that you can have two 8 separate times for risk of collision occurring because 9 you require two vessels. You require an oncoming 10 vessel, and -- 11 THE CHAIRMAN: Are you saying that he resolved the 12 distinction between the two? If so, can you give me the 13 transcript reference? 14 MR ZIMMERN: I will come to it in due course, Mr Chairman. 15 When we made these submissions or when I'm making 16 these submissions now, it is also on the basis that we 17 are in agreement with the Commission's counsel's 18 submissions at their paragraph 63, that attribution of 19 fault ought not to be made by the Commission and should 20 be left, in terms of civil liability, for the courts. 21 THE CHAIRMAN: By that you mean the apportionment of 22 liability? 23 MR ZIMMERN: I'm sorry, the apportionment of fault. 24 THE CHAIRMAN: Because it's difficult to see how we can 25 honour our terms of reference as to ascertaining the</p>	<p style="text-align: right;">Page 139</p> <p>1 of the two. 2 THE CHAIRMAN: Although Captain Pryke did factor in, when he 3 gave us that timeline, a period beginning with collision 4 minus 30, the first 20 seconds taken up with identifying 5 the lights and determining what to do, followed by the 6 decision at 20:20:10 to go hard to starboard. 7 MR ZIMMERN: I do understand, but my understanding from that 8 timeline was Captain Pryke was trying to assist this 9 Commission based upon an acceptance of the evidence as 10 was at the time. 11 THE CHAIRMAN: Yes. 12 MR ZIMMERN: But in any event, our suggestion that it is 13 less than the 27 seconds that Captain Pryke fits in 14 within his timeline, or whether it was 10 seconds, we 15 would agree with the Commission's counsel's submission 16 that it doesn't really make much difference because in 17 either time, both vessels would be in an unacceptable 18 close-quarters situation. 19 As for the navigation light issue, that is of course 20 clearly a matter for this Commission's determination and 21 we make no further submissions on this, seeing the force 22 of the Commission's counsel's submissions. 23 In regard to minimum manning, we submit that that is 24 a material matter. We have alluded to a potential 25 breach of section 11 of the Merchant Shipping (Local</p>
<p style="text-align: right;">Page 138</p> <p>1 causes of the incident. 2 MR ZIMMERN: It was a slip of the tongue. But the 3 apportionment of fault. 4 THE CHAIRMAN: When addressing the issue of collision we 5 must, if it becomes necessary, make findings attributing 6 liability. 7 MR ZIMMERN: Yes. It was a slip of the tongue. 8 Apportionment of fault. 9 However it is said, we would urge the Commission to 10 find that the proximate cause of the collision was 11 a failure of look-out, both visual and by radar, in 12 respect of both vessels. 13 Now, as far as the first sighting by Coxswain Chow 14 of the Sea Smooth, having heard Mr Shieh this morning, 15 we would agree that a useful way to consider when 16 Coxswain Chow actually first sighted Sea Smooth would be 17 to look at the matter backwards, from the point of 18 Captain Pryke's evidence that the turn to starboard was 19 at 20:20:10 -- 20 THE CHAIRMAN: Well, the hard turn to starboard. 21 MR ZIMMERN: The hard turn to starboard. And that if one 22 then goes back from that, one can either accept his 23 evidence that he saw the Sea Smooth at about 3 cables, 24 or that he turned hard to starboard upon sighting the 25 Sea Smooth. And we say the latter being the more likely</p>	<p style="text-align: right;">Page 140</p> <p>1 Vessels)(General) Regulations, but for the purposes of 2 this Commission, we say that the question of manning 3 impacts upon a vessel's safety and, in determining 4 whether the Lamma IV was a safe or seaworthy vessel, its 5 seaworthiness. 6 I then come to the issue of the fog light, the 7 Hongkong Electric fog light off its pier at Lamma 8 Island. Whether this bright light impaired the vision 9 of Coxswain Lai on the night in question and is a factor 10 in the cause of the collision is a matter for this 11 Commission, and we're not going to say anything there. 12 However, in regard to safe speed -- 13 THE CHAIRMAN: Can you help me, just so that I can confirm 14 in my own mind that I have the facts right -- how many 15 bulbs were there in the fog light? We've seen one. 16 We've got one. 17 MR ZIMMERN: There were two. 18 THE CHAIRMAN: And it's 1 kilowatt? 19 MR ZIMMERN: There were two bulbs of 1,000 watts each. 20 THE CHAIRMAN: Yes. Thank you. 21 MR ZIMMERN: We're looking from a couple of different 22 angles, and one is that we haven't made any comment in 23 our submissions regarding safe speed, but naturally 24 accept that if his vision was impaired, then this may be 25 a factor to be considered, whether there was a breach of</p>

<p style="text-align: right;">Page 141</p> <p>1 rule 6 of the Collision Regulations, but would suggest 2 that if the finding is that his vision wasn't impaired 3 at all, that this is likewise a factor for this 4 Commission to consider, as to whether he was in breach 5 of that rule. 6 Going forward, and more importantly, there has been 7 evidence, both by our crew and I understand the crew -- 8 I think it was Coxswain Chow -- that there had been 9 concern or expressions of impairment of visibility 10 regarding this fog light. 11 THE CHAIRMAN: Many years earlier. 12 MR ZIMMERN: Many years earlier. 13 THE CHAIRMAN: As a result, the angle at which it shone its 14 beam was dipped down. 15 MR ZIMMERN: That was the evidence, I understand, from the 16 engineer. 17 THE CHAIRMAN: Yes. 18 MR ZIMMERN: However, as was asked of Captain Pryke as 19 a matter of a recommendation going forward, and I think 20 he was in agreement with it, it was suggested or it was 21 asked whether he thought the light ought to be removed. 22 Now, whether or not this Commission feels that 23 recommendation ought to be taken forward is one thing. 24 But at the very least, one can consider other 25 recommendations with regard to this light.</p>	<p style="text-align: right;">Page 143</p> <p>1 Hongkong Electric's submissions, they have appeared to 2 attribute this to be causative of loss of life. To 3 correlate the leaving of the scene of the Sea Smooth 4 with being causative of death, we suggest there is no 5 evidence at all. In fact, to the contrary, as my 6 learned friend Mr Beresford mentioned this morning, most 7 of the deaths, the unfortunate, tragic deaths, were by 8 drowning or being trapped within the Lamma IV. So we 9 found that particular comment unfair. 10 As to the application, should this Commission wish 11 to do so, of either rule 14 or rule 15 of the Collision 12 Regulations, we do differ with both the Commission's 13 counsel and, with due respect, Captain Pryke as to the 14 applicable rule to be considered. We've set out in 15 a little detail, or some detail, in our written 16 submissions why we say so. It may be useful to take as 17 a starting point the Commission's counsel's submissions 18 at paragraph 53.2. 19 At paragraph 53.2, it is stated correctly that the 20 vessels were 1.37 nautical miles apart. Lamma IV was on 21 a steady bearing of 176 degrees and Sea Smooth would 22 have been able to see her at 4 degrees on her port bow. 23 Now, that is, as I understand it, based upon the 24 chartlet produced by Captain Pryke. 25 THE CHAIRMAN: Yes.</p>
<p style="text-align: right;">Page 142</p> <p>1 THE CHAIRMAN: The obvious one is, why isn't it marked like 2 every other typhoon shelter -- 3 MR ZIMMERN: That would be one. The other would -- 4 THE CHAIRMAN: -- with a green and red light to indicate the 5 entrance. 6 MR ZIMMERN: The other would be to only turn it on in terms 7 of fog or bad light, or otherwise redirect it. But this 8 is always on the basis of the findings this Commission 9 will be making. 10 THE CHAIRMAN: On the evidence we've received, it's clearly 11 not simply used as a fog light. It's on day and night, 12 is it not? 13 MR ZIMMERN: It's on 24 hours a day, in good weather and in 14 bad. That would seem unnecessary, and it doesn't appear 15 to be serving any useful purpose. 16 THE CHAIRMAN: Perhaps only an electricity company would 17 choose to do that. 18 MR ZIMMERN: Before dealing with the application otherwise 19 of the appropriate Collision Regulations, Mr Chairman, 20 might I just say one or two words regarding the leaving 21 of the scene by Sea Smooth. We have dealt, albeit 22 briefly, with the reasons that have been given, and, 23 given our situation, don't take that any further. 24 It is for this Commission to determine whether those 25 reasons were fair or not. However, in paragraph 79 of</p>	<p style="text-align: right;">Page 144</p> <p>1 MR ZIMMERN: But this is where we respectfully start to 2 differ. 3 "At this point, Lamma IV would have steadied on her 4 course of 350 degrees. She would have been able to see 5 Sea Smooth bearing 6 degrees on her starboard bow ..." 6 What is not stated there is at that same time, the 7 Sea Smooth would have been on a course of 180 degrees 8 and therefore been outside of the 6 degrees needed to be 9 nearly reciprocal. I'll explain that in a little bit 10 more detail. 11 Rule 14(a), respectfully, envisages a situation 12 where the forces of the two vessels are reciprocal or 13 nearly reciprocal. Captain Pryke obviously agreed to 14 that. In order to be reciprocal, the courses to be 15 180 degrees from one another. Farwell in the wealth of 16 authorities seems to suggest that in order to be nearly 17 reciprocal, the courses have to be within 6 degrees of 18 the reciprocal. 19 If one at 20:18 -- and we'll have to come to that in 20 a moment -- accepts that that is when the risk of 21 collision occurs, it is incumbent then to classify which 22 rule ought to apply. And although there's not much in 23 it, 10 degrees -- 180 to 350, which is what Captain 24 Pryke charted these vessels' courses to be at that 25 time -- is 10 degrees off the reciprocal, and therefore</p>

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<p>1 outside of rule 14(a). 2 So in our submission, then, in order for rule 14 to 3 then apply, you'd have to rely on the deeming provision 4 of rule 14(b). 5 Rule 14(b) deals with a visual aspect, and that is 6 when the vessels are ahead or nearly ahead, for one 7 part, and, if sailing by night, that you can see either 8 both the side navigation lights or the mast light in 9 a line. 10 THE CHAIRMAN: Well, the second one doesn't apply to these 11 vessels, does it? 12 MR ZIMMERN: The second one does not apply. 13 If we take the bearing of the Lamma IV from the Sea 14 Smooth, that is at 4 degrees as charted by Captain Pryke 15 and is set out in paragraph 53.2 -- 176 degrees, which 16 is 4 degrees off the port. So one might then say, 17 "Okay, that's fine", and we start to come within 18 rule 14(b). It's rule 14(b) that deals with bearings 19 and the visual aspects, and rule 14(a) to do with 20 courses. 21 The next part of the rule to actually deem it 22 a head-on would require that the other vessel have sight 23 of both the navigation lights. 24 We have set out the questions and answers provided 25 by Captain Pryke in our submissions, and it may be</p>	<p>1 exhibiting a green sidelight to Sea Smooth? 2 Answer: Yes." 3 So in our submission, when one is looking at the 4 bearings, although it might come in at 20:18 to the 5 first part of rule 14(b), the second is not complied 6 with. As a result, in neither rule 14(a) or (b) is 7 a head-on collision classified as at 20:18. That the 8 risk of collision occurring at 20.18 was a matter that 9 Captain Pryke did agree with. I take the Commission's 10 point that he also mentioned 20:19 of Lamma IV, but 11 naturally, as the submission went earlier, you can't 12 have a risk of collision with only one boat. It has to 13 be in relation to an approaching vessel. And therefore 14 if the risk of collision applied to Sea Smooth at 20:18, 15 it would likewise have to apply to the Lamma IV at that 16 point in time. 17 And at that point in time, Mr Chairman, is the time 18 that the classification of the rule to apply must be 19 made. Because in the interests of certainty, those who 20 are conning the vessels need to know what scenario and 21 situation they're up against. 22 It is said in Farwell at page 368: 23 "Once risk of collision exists and the approach 24 situation can be classified, subsequent changes do not 25 affect that original classification."</p>
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<p>1 instructive to look at those. They start at page 43 of 2 our submissions. 3 THE CHAIRMAN: Yes. 4 MR ZIMMERN: The question from Mr Sussex was: 5 "Right. But giving it your best effort, you put Sea 6 Smooth on a course of 180, and Lamma IV on a course 7 of 350. 8 The Chairman: At which point in time? 9 Mr Sussex: 20:18. 10 The Chairman: Thank you. 11 Answer: Yes, that's correct. 12 Mr Sussex: The vessels are then not on reciprocal 13 courses ... 14 Answer: No. 15 Question: The reciprocal of 180 is obviously 360 -- 16 Answer: They're on a nearly reciprocal course. 17 Question: Well, the reciprocal of 180 is 360. 18 Lamma IV is 10 degrees off that. That's right, isn't 19 it? 20 Answer: Yes. At 20:18." 21 Then on the next page, we asked about the lights: 22 "Now, Sea Smooth at 20:18 would only be exhibiting a 23 red sidelight to Lamma IV, would she not? 24 Answer: Yes. 25 Question: And Lamma IV at 20:18 would only be</p>	<p>1 So what has to be determined, if this Commission 2 wishes to do so -- it's right at the bottom of 3 page 368 -- is to determine as at 20:18, assuming you 4 agree with us that that is the time it's right to apply 5 the rules, what rule ought to be applied. 6 THE CHAIRMAN: How do the rules come into play if neither 7 vessel has seen the other? 8 MR ZIMMERN: Well, this is the point of our original 9 submission, and that's the primary one, which is that 10 the rules ought not to come into play at all. 11 THE CHAIRMAN: But what's your authority for your submission 12 which I've taken -- 13 MR ZIMMERN: I think it's paragraph 4. It's principally 14 paragraph 4. 15 THE CHAIRMAN: Yes, but where does your proposition -- 16 "[The] rules are of assistance ... because if vessels 17 ought to have been observed visually from one another, 18 their navigational manoeuvres", where does "ought to" 19 come from, as opposed to "did"? 20 MR ZIMMERN: If I may just have a moment. 21 THE CHAIRMAN: Yes. 22 MR ZIMMERN: I think actually it's just an application of 23 rule 3(k) of the Collision Regulations, which says: 24 "Vessels shall be deemed to be in sight of one 25 another only when one can be observed visually from the</p>

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1 other." 2 THE CHAIRMAN: Just give me a moment. 3 MR ZIMMERN: Not that they actually have to be observed. 4 THE CHAIRMAN: Thank you. And that was at 20:18? That was 5 at 2 nautical miles' distance? 6 MR ZIMMERN: 1.3 -- 7 THE CHAIRMAN: According to Captain Pryke they could see 8 each other on radar and visually at 2 nautical miles. 9 MR ZIMMERN: At 2 nautical miles. Yes, that's correct. 10 THE CHAIRMAN: What time was that? 11 MR ZIMMERN: On his chartlet, at 20:17, he has 1.92. 12 THE CHAIRMAN: No, Dr Armstrong did a calculation at my 13 request -- 14 MR ZIMMERN: I've got that at hand. 15 THE CHAIRMAN: Where do they cross -- 16 MR ZIMMERN: Dr Armstrong's unfortunately stops at 17 1.636 nautical miles on the table. 18 THE CHAIRMAN: Right. What time is that? 19 MR ZIMMERN: That's at 20:17:35. 20 THE CHAIRMAN: So it's at earlier than 20:18 -- 21 MR ZIMMERN: Yes. 22 THE CHAIRMAN: -- that they can see each other on radar 23 obviously at 2 miles if they had it at 2 miles, and 24 visually? 25 MR ZIMMERN: Yes, but at that point of time, the risk of	1 submissions as they are. 2 However, there is a point raised by Mr Shieh in his 3 submissions and that is that even if rule 15 applied, 4 then we may be in breach of rule 17(a)(i). We've 5 referred this Commission to the case of the Roanoke and 6 made our submissions therein in that regard. So whether 7 or not we were in breach of rule 17(a)(i) we leave to 8 the determination of the Commission. 9 But what seems to have been missed is that were to 10 be considered under rule 15 there is also an obligation 11 on the give-way vessel, and our suggestion is that 12 Lamma IV would have been the give-way vessel, to slow 13 down and take early action. If we were to be in breach 14 of rule 17(a)(i), we would suggest that Lamma IV was 15 also in breach of rule 16. 16 I don't think there is anything else to add, unless 17 this Commission has any questions for me. 18 THE CHAIRMAN: No. Thank you. 19 There's an issue that arises now as to who we should 20 hear next. We said we would accommodate Mr Yeung, who 21 has some commitment tomorrow. 22 Is that still the position, Mr Yeung? 23 MR YEUNG: Yes. 24 THE CHAIRMAN: Mr Mok, who I think we would hear from next 25 on the basis that the Marine Department were stipulated
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1 collision hadn't attached. 2 THE CHAIRMAN: No, I appreciate that. 3 MR ZIMMERN: Yes. Not to dwell on the matter too much, but 4 the difference between rule 14(a) courses, and bearings 5 being part of rule 14(b) ahead, appears appreciated from 6 Farwell as well. That's at page 366. The words were 7 carefully used. The paragraph starts, "Modernly, 8 courses are most", and I'll take it from the middle: 9 "The discussion that follows will suggest that the 10 weight of authority supports the conclusion that 11 a vessel should be considered nearly ahead under the 12 present rule if, when risk of collision arises, her 13 relative bearing is within one-half point ... of the 14 bow. Similarly, courses may be considered nearly 15 reciprocal if within 5 to 6 degrees of the actual 16 reciprocal." 17 So the editors -- from Farwell one can see there is 18 an appreciative difference between the bearings and the 19 courses when one applies the two subrules of rule 14. 20 Mr Chairman, if rule 14 doesn't apply, which is what 21 we're suggesting, then our written submissions have 22 already dealt with whether rule 15 would apply, and that 23 would happen if one vessel had another to the starboard 24 on a crossing, even a fine-crossing situation. I won't 25 go into any detail there. I'll leave my written	1 to be an involved party before Cheoy Lee were. 2 MR MOK: Yes, of course. 3 THE CHAIRMAN: I think that's the appropriate way we should 4 do it. But if neither you nor Mr Pao object to Mr Yeung 5 jumping the queue, we'll take him next. 6 MR MOK: I don't. 7 MR PAO: I don't, Mr Chairman. 8 THE CHAIRMAN: Mr Yeung, over to you. 9 Closing submissions by MR YEUNG 10 MR YEUNG: I'm most grateful, Mr Chairman, for you allowing 11 me to make these submissions out of the batting order, 12 and I'm grateful to my learned friends. 13 We submitted our written submissions this morning 14 and I believe, Mr Chairman and Mr Commissioner, you both 15 have received it? 16 THE CHAIRMAN: I have, but I can tell you that I haven't had 17 chance to address it yet because I've been dealing with 18 the ones that have been coming. 19 MR YEUNG: I see. 20 THE CHAIRMAN: So take that on board when you address us 21 orally. If you're content that we should just deal with 22 it in due course, then by all means approach it on that 23 basis. 24 MR YEUNG: Thank you. If I may start by drawing your 25 attention to paragraph 2 of my written submission.

<p style="text-align: right;">Page 153</p> <p>1 There we said we have had the opportunity of reading the 2 closing submissions of counsel for the Commission, and 3 we wish to point out that we agree with the conclusion 4 drawn by counsel for the Commission, in particular in 5 paragraph 95 of its closing submissions, namely, in view 6 of the concessions made in the course of testimony by 7 Dr Neville Armstrong, the expert naval architect 8 retained to advise the Commission, and further discovery 9 of materials, there can respectfully be no basis for the 10 Commission to find that the thickness of side plating of 11 the hull of the vessel had been or might have been 12 causative of its rapid sinking. 13 So this is our position at the outset. 14 Over the page, we draw the Commission's attention to 15 the fact that of course our client was requested by the 16 Commission to address issues raised in a later dated 17 29 January -- no, dated earlier than that. But on 18 29 January, we did submit a witness statement made by 19 Mr Zhang, chief surveyor and senior engineer of CCS. 20 The point I wish to make here in paragraph 4 of my 21 submission is that of course Mr Zhang has always been 22 available for cross-examination, but as it turned out, 23 his statement was received by the Commission by way of 24 reading out during the hearing. 25 Relying on the rules in <i>Browne v Dunn</i> cited in</p>	<p style="text-align: right;">Page 155</p> <p>1 THE CHAIRMAN: From the? 2 MR YEUNG: Yes, ABS, the American Bureau of Shipping. 3 THE CHAIRMAN: Yes, but they didn't say it was their policy 4 to destroy documentation. 5 MR YEUNG: Yes. But there it is. In any event, the upshot 6 is that the certificate was not available to the 7 Commission. 8 For the rest of the submission, on page 3, we tried 9 to assist the Commission and elaborate further issues in 10 addition to Mr Zhang's evidence. This relates mainly 11 to -- in paragraph 7, we pointed out that the Wuzhou 12 Shipyard actually made the application to CCS, 13 requesting CCS to conduct a survey in respect of certain 14 items. We just want to put the record straight on this 15 aspect, on this point, as we pointed out in paragraph 8, 16 contrary to the suggestion of my learned friend 17 Mr Grossman, who suggested otherwise, but this is 18 a small point. 19 From paragraph 9, we also want to set out the clear 20 division of work relating to the survey items between 21 CCS and Mardep, and again from paragraph 10 onwards 22 until the end of the submission, that is paragraph 15, 23 and then we spell out what role which party played. 24 Unless Mr Chairman and Mr Commissioner wish me to go 25 into detail, I think I will just leave them with the</p>
<p style="text-align: right;">Page 154</p> <p>1 <i>Markem Corp v Zipher Ltd</i> and also in the Hong Kong Court 2 of Appeal case of <i>Lo Chun Nam</i> -- 3 THE CHAIRMAN: I don't think you need go on about that. 4 MR YEUNG: All right. Thank you. Then I move on. 5 The main thrust of our client's position is spelled 6 out in paragraph 10.1 on page 4 of our submission, and 7 if I may read out this passage: it is Mr Zhang's 8 evidence that the CCS surveyor confirmed that the hull 9 plating materials had the product certificate issued by 10 the American Bureau of Shipping, and compared the label 11 on the said materials against the certificate label. 12 I think this answered the question raised by the 13 Commission. 14 THE CHAIRMAN: Well, no-one's produced the certificate to 15 the Commission. 16 MR YEUNG: No. Because, as we pointed out in Mr Zhang's 17 statement, it was unable to be located, because it was 18 the policy of CCS that they only keep documents for five 19 years. 20 THE CHAIRMAN: That's somewhat surprising, but it was 21 confined to the nature of this particular construction, 22 was it not? 23 MR YEUNG: Yes, of course. But of course likely the 24 Commission were not able to get the certificate from ABS 25 as well, so --</p>	<p style="text-align: right;">Page 156</p> <p>1 written document. If the issues are required to be 2 addressed by the Commission, then the references are 3 there. 4 THE CHAIRMAN: Yes. Thank you. 5 MR YEUNG: So it's not a matter of submissions; it's 6 a matter of laying out the references. 7 Of course, since we made our written submission, 8 we've had sight of the closing submissions of other 9 parties and I'd like to address that as well. 10 THE CHAIRMAN: Yes. 11 MR YEUNG: On the issue of the hull thickness, of course 12 Hong Kong &amp; Kowloon Ferry did not mention this point in 13 their submissions. In Mardep's submissions, in 14 paragraph 34 of their closing submissions, the issue of 15 hull thickness was treated as a non-issue, quite in 16 accordance with the view taken by counsel for the 17 Commission. 18 As far as Hongkong Electric -- 19 THE CHAIRMAN: Just give me a moment to look at that. 20 MR YEUNG: Thank you. It's paragraph 34 on page 24. If you 21 wish, I can read this out. 22 THE CHAIRMAN: Yes, I see it. Thank you. 23 MR YEUNG: Of course, there is a one-line throwaway comment 24 by counsel for Hongkong Electric, and that is in 25 paragraph 38 of their closing submission. It says</p>

<p style="text-align: right;">Page 157</p> <p>1 there: 2 "The errors above all related to the failure to have 3 a watertight door in a designated and designed 4 watertight bulkhead, the unnecessary thinness of the 5 hull plating and the poor affixing of the seats to the 6 deck." 7 This is the only paragraph that touches upon hull 8 thickness. That is page 13, paragraph 38 of the closing 9 submission for Hongkong Electric. 10 THE CHAIRMAN: Just read out what you say is there. 11 MR YEUNG: It says, the whole paragraph, if I may: 12 "The errors above all related to the failure to have 13 a watertight door in a designated and designed 14 watertight bulkhead, the unnecessary thinness of the 15 hull plating and the poor affixing of the seats to the 16 deck." 17 THE CHAIRMAN: Yes. Thank you. 18 MR YEUNG: Our comment, of course, is my learned friend 19 Mr Grossman did not elaborate in his oral submission on 20 this point, and, as we pointed out, the Commission's 21 counsel, Mardep, and Hong Kong &amp; Kowloon Ferry, and 22 ourselves, and also Dr Armstrong who considered this 23 point, we respectfully submit that the Commission should 24 not put too much thought on Hongkong Electric's 25 throwaway comment as I've just quoted. Because, simply,</p>	<p style="text-align: right;">Page 159</p> <p>1 plating of 4.83 mm." 2 To this, we say, of course, as I've just read out 3 earlier, that the evidence of Mr Zhang -- 4 unchallenged -- that CCS's role was only in comparing 5 the certificate label with the plate labels, the labels 6 on the plate. 7 THE CHAIRMAN: And not measuring the plate? 8 MR YEUNG: No. And this practice -- of course, you 9 definitely remember that Dr Armstrong did say this is an 10 internationally accepted practice by classification 11 societies. 12 Of course then, further to that, Cheoy Lee ordered 13 5 mm plates, but then of course they were given 4.83 mm. 14 That's in the evidence. And of course they wrote -- 15 THE CHAIRMAN: Well, they were given 0.19 inch. 16 MR YEUNG: Yes. 17 THE CHAIRMAN: Because it was the Americans using the 18 imperial system of measurement, which they then 19 converted in the letter to the Marine Department. 20 MR YEUNG: Thank you for correcting me. I was about to come 21 to this letter. Of course then the Marine Department 22 was made aware of that and no objection was raised by 23 the Marine Department. 24 THE CHAIRMAN: Well, there was no response by the Marine 25 Department. None at all.</p>
<p style="text-align: right;">Page 158</p> <p>1 thickness of the hull is not an issue in this Inquiry. 2 THE CHAIRMAN: Well, it's not an issue because Dr Armstrong 3 has conceded that whatever the starting thickness, 4 within the parameters that we know about -- 4.83 mm or 5 less -- because he doesn't know about the actions of 6 pollution in Hong Kong, together with high humidity, he 7 can't say that it was put into place on the vessel at 8 an unacceptably undersize. That's really what it comes 9 to. 10 MR YEUNG: Yes. I think that is the view taken by the other 11 parties. 12 Of course, what is left to be dealt with by me is 13 the comments made by Cheoy Lee in paragraphs 34 and 35 14 on page 8 of their closing submission. 15 THE CHAIRMAN: Yes. 16 MR YEUNG: Paragraph 34 says: 17 "The CCS Certificate was an acceptable confirmation 18 of the thickness of the plating by the Marine Department 19 and was indeed accepted. The thickness of the plating 20 was within the tolerance level allowed by CCS. 21 35. The Commission's expert now accepts that the 22 4.5 mm thickness measurement upon which his opinion was 23 based could have been the result of corrosion or the 24 inaccuracy of the device used to measure it and that it 25 was likely that the Lamma IV was constructed with side</p>	<p style="text-align: right;">Page 160</p> <p>1 MR YEUNG: Yes. So no objection. 2 Of course, also we've heard the evidence from 3 Dr Armstrong that due to the difficulty in the 4 manufacturing of these aluminium plates to the exact 5 ordered thickness -- 6 THE CHAIRMAN: Yes. By that you mean over-rolled or 7 under-rolled, which is why price, no doubt, is quoted in 8 weight? 9 MR YEUNG: Yes. We are all familiar with the evidence. And 10 of course the internationally accepted -- the applicable 11 tolerance, of course. 12 So under these circumstances, we respectfully submit 13 that of course our client had discharged its duties in 14 accordance with this international practice, and we 15 further say that of course it's quite proper for the 16 Marine Department to have accepted the CCS certificate. 17 Of course, those instructing me have reminded me 18 that as far as the evidence stands, the best evidence we 19 have so far is that the plates were, as you've pointed 20 out, 0.19 inch or 4.83 mm plates, and of course there 21 were two factors that caused its reduction in thickness, 22 and that is of course the accuracy in measurement, and 23 also the corrosion factor, as we are all familiar with 24 that evidence. 25 THE CHAIRMAN: Well, all Dr Armstrong said about that was</p>



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<p>1 that that was a possible cause that he couldn't rule 2 out, although my memory is he said that he thought it 3 was unlikely or highly unlikely. But he couldn't rule 4 it out. 5 MR YEUNG: I don't think he said "highly unlikely", 6 actually. 7 THE CHAIRMAN: Well, then unlikely. 8 MR YEUNG: He didn't even use the word "unlikely", actually, 9 if I may. That is the transcript of Day 27, starting 10 from page 78. 11 THE CHAIRMAN: Yes. What did he say? 12 MR YEUNG: Let me put on my glasses. Mr Chairman, you 13 asked: 14 "Let me understand what the issue is. 15 If the plate, as you've accepted I think now is 16 likely, was 4.83, is it possible that it was corrosion 17 that resulted in it being measured as 4.5 in 2005? 18 Answer: It could have been a certain degree of 19 corrosion. It could have been the level of accuracy of 20 the measurement device. It's more corrosion than 21 I would have expected, sir, but it is possible." 22 And then his evidence went on at page 82, line 9, of 23 course it's the question by my learned friend Mr Mok: 24 "But you also reason that because of the inherent 25 lack of accuracy of these measurements, you can't take</p>	<p>1 Dr Armstrong, and further down on page 85, Mr Mok asked: 2 "Do you agree that is an equally possible scenario 3 from the scenario of, say, a decrease from 4.83 to 4.5 4 in the first period and no deterioration in the second 5 period? Those two scenarios, because we're operating 6 under certain assumptions, they're equally possible 7 based on this reasoning? 8 Answer: Yes." 9 Then it went on. Mr Mok asked: 10 "I doubt whether the reduction in thickness of the 11 side plating from 4.83 mm to 4.4 mm could have been 12 caused by corrosion. I also find it difficult to 13 comprehend how this could have happened in the first 14 nine years ... and then there was no further significant 15 corrosion over the next six years (2005-2011) as 16 suggested by the thickness gauging reports.' 17 It is this sentence that I was addressing in my 18 discussion with you just now; right? 19 Answer: Yes. 20 Question: I think you've accepted that the equally 21 likely scenario or possible scenario is that there 22 should be a deterioration, say, of 0.23 in the first 23 nine years, and 0.2 in the second six years; correct? 24 Answer: Understood, yes." 25 Then Mr Mok went on to the next bit, and that is</p>
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<p>1 these figures to be 100 per cent correct? 2 Answer: That is correct, yes." 3 It went on: 4 "So at least on this particular occasion, you are 5 prepared to recognise a margin of error of, say, 0.1 mm? 6 Answer: Yes, sir." 7 THE CHAIRMAN: That's the issue of measuring, not corrosion. 8 MR YEUNG: I'm getting to that. 9 MR SHIEH: Corrosion can be found on Day 27, page 81, 10 lines 3 to 4. 11 THE CHAIRMAN: Thank you. Would you read that out, 12 Mr Yeung. 13 MR YEUNG: Yes. It's the answer: 14 "I think I did respond that I thought it was 15 possible, but unlikely." 16 THE CHAIRMAN: "Unlikely", but not "very". 17 MR YEUNG: No. That is in the context of -- 18 MR SHIEH: It was in the context of whether or not to 19 (unclear). 20 THE CHAIRMAN: Yes, I remember the context. 21 MR YEUNG: Yes. I am grateful to my learned friend 22 Mr Shieh, and that is the answer he gave: 23 "I think I did respond that I thought it was 24 possible, but unlikely." 25 But then Mr Mok went on to cross-examine</p>	<p>1 again line 18 of page 86: 2 "... and it is possible that condensation on the 3 inside surfaces may have been acidic and caused some 4 corrosion.' 5 Do you see that? 6 Answer: Yes. 7 Question: So that would be one possible cause of 8 corrosion, say, in a place like Hong Kong, sometimes 9 with high temperatures and high humidity? 10 Answer: (Witness nods) 11 Question: Do you agree? 12 Answer: Yes, I agree." 13 It went on, line 16: 14 "So atmospheric pollution, on top of high 15 temperatures and high humidity, could also in your view 16 be a cause of corrosion in Hong Kong; right? 17 Answer: Almost certainly atmospheric pollution and 18 condensation" -- 19 THE CHAIRMAN: I don't think there's any need to go on any 20 further. 21 MR YEUNG: All right. 22 If I may return to the point of the product 23 certificate. We wish to say, as I've pointed out, ABS 24 and even Cheoy Lee couldn't find the certificate. 25 No-one can find it.</p>

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<p>1 THE CHAIRMAN: No. We know that because we've been looking 2 for it for weeks, months. 3 MR YEUNG: Yes. 4 If I may now draw the Commission's attention to the 5 conclusion we make, and that is on the last page, 6 page 8. Of course we urge the Commission that (1) there 7 is no basis for the Commission to find that the 8 thickness of side plating of the hull of the vessel had 9 been or might have been causative of its rapid sinking; 10 and (2) the roles and responsibility of CCS vis-a-vis 11 Mardep were clear and that CCS has discharged its 12 responsibilities. 13 THE CHAIRMAN: Really what you're saying at paragraph 16.1 14 is that some undersizing or underspecification of the 15 plating was causative of its rapid sinking, because 16 clearly the thickness of the side of the hull is 17 a factor in how a vessel sinks. 18 MR YEUNG: Yes, of course it is a factor. 19 THE CHAIRMAN: But you're suggesting that what we should 20 find is there's nothing to suggest that there was 21 an impermissible undersizing of the thickness of the 22 side of the hull that was causative in this sinking? 23 MR YEUNG: No, I think our position is the same as that 24 suggested by counsel for the Commission, also Mardep, 25 and that is that we ask the Commission to find that</p>	<p>1 vessel sinks." 2 And I answered: 3 "Yes, of course it is a factor." 4 I'd just like to clarify that what I meant to say is 5 of course the thickness of the hull is a factor to the 6 rate of sinking of a vessel, but I'm not conceding or 7 saying that a thinner hull, therefore a lighter vessel, 8 would necessarily mean that the rate of sinking would be 9 less than a heavier vessel. Because if you have 10 a thinner hull, then the weight of the vessel would be 11 less. But if it were a thicker hull, the weight of the 12 vessel would be heavier. It takes a naval architect to 13 work that out in a very complicated formula. 14 So just taking one factor and isolating it and 15 saying that a thinner hull would therefore reduce the 16 rate of sinking, that, of course, is not correct. This 17 is the point I would like to clarify. 18 As to the basis of our submission, I'd like to draw 19 the Commission's attention to the evidence of 20 Dr Armstrong, Day 27, page 16. If I may read this out. 21 It's line 13. Mr Chairman, you asked: 22 "Just dealing with the consequence of your evidence 23 in terms of the plating, can I ask that you be reminded 24 of what you say in your first report, paragraph 25, page 25 410. The bottom of that paragraph, the penultimate</p>
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<p>1 there's no basis for the Commission to find the 2 thickness of the side plating of the hull of the vessel 3 had been or might have been causative to its rapid 4 sinking. 5 THE CHAIRMAN: Well, if you don't take my point, I won't 6 repeat it. But thank you for your assistance, Mr Yeung. 7 MR YEUNG: Thank you. 8 THE CHAIRMAN: We propose taking a 20-minute break now, and 9 then we'll resume with you, Mr Mok. 10 MR MOK: Yes, of course. 11 THE CHAIRMAN: We'll give you an hour before we finish. 12 20 minutes. 13 (4.10 pm) 14 (A short break) 15 (4.30 pm) 16 THE CHAIRMAN: Yes, Mr Yeung? 17 MR YEUNG: I ask permission to address the Commission on the 18 last two questions that you had posed, if I may. 19 THE CHAIRMAN: Yes. 20 MR YEUNG: I was asked by your good self, Mr Chairman -- you 21 said: 22 "Really what you're saying at paragraph 16.1 is that 23 some undersizing or underspecification of the plating 24 was causative of its rapid sinking, because clearly the 25 thickness of the side of the hull is a factor in how a</p>	<p>1 line: 2 'The thinner plating size on Lamma IV may have 3 contributed to the extent of the damage that was 4 experienced, as plating of a greater thickness would 5 have reduced the damaged hole size, which in turn might 6 have provided marginally more time for escape before the 7 vessel sank'. 8 You've couched that opinion in cautious, conditional 9 language. Do I take it that you haven't attempted to do 10 any empirical study as to the effect of the difference 11 of plating size? 12 Answer: I have done no such studies, Mr Chairman." 13 This is the basis of your submission, that there is 14 actually no basis for the Commission -- and of course, 15 I invite the Commission not to speculate because, as 16 I've pointed out, a thinner hull, meaning a lighter 17 vessel, will not necessarily sink faster than a vessel 18 with a thicker hull, and therefore heavier. It all 19 depends on the design of the vessel itself. This is the 20 point we're really making. 21 I hope I've clarified myself, and I'm sorry for any 22 inconvenience caused in misunderstanding. 23 THE CHAIRMAN: Well, you've had the last word, Mr Yeung. 24 Mr Shieh, could I ask you to deal with what 25 I understand to be fax communications that were received</p>

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<p>1 from the crew of Sea Smooth so that we can deal with 2 them in the proper sequence of events -- 3 MR SHIEH: Yes. 4 THE CHAIRMAN: -- as I understand it, confirming that they 5 didn't wish to participate in this part of the 6 proceeding? 7 MR SHIEH: Yes. 8 THE CHAIRMAN: If you'd be kind enough. Do we need the 9 interpreter to interpret this? 10 MR SHIEH: Identical Chinese faxes have been received by -- 11 THE CHAIRMAN: Yes, I follow that. But there's nothing in 12 English, is there? 13 MR SHIEH: There isn't. 14 THE CHAIRMAN: If the interpreter can come forward. If you 15 were to read it -- 16 MR SHIEH: I have copies immediately available. If they 17 have been scanned so much the better. I have ready hard 18 copies available. 19 THE CHAIRMAN: They have been scanned. If you would be kind 20 enough to read it out in Cantonese, then we'll ask the 21 interpreter to translate it into English. 22 MR SHIEH: They are in identical form, bearing the names of 23 all four crew members, and they all read, taking 24 Coxswain Chow's fax, by way of example. 25 (Reads document in Cantonese).</p>	<p>1 THE CHAIRMAN: Thank you for that. 2 MR MOK: In particular, I would like to mention the 3 stenographers and interpreters who, amongst all the 4 people, must stay awake at all times because we will 5 know whenever they are not. I would also like to thank 6 Lo &amp; Lo for always keeping us up to date with all the 7 evidence and information, sometimes even minutes after 8 the documents have been filed, so that the Commission 9 and all parties involved get a full picture as and when 10 information comes in. I would of course like to thank 11 all the support staff for all the help inside and 12 outside this hearing room. And finally, of course, 13 I thank the Commission and its counsel for taking up 14 most of the work, because you are doing the work of all 15 the rest of the parties combined as you have to deal 16 with all of the issues. 17 Mr Chairman and Commissioner Tang, I will not seek 18 to repeat most of the submissions that have been reduced 19 into writing. I would like to focus on four areas by 20 way of oral submissions to highlight certain points. 21 These four areas are, first of all, very briefly, on the 22 question of hull thickness; secondly, on the question of 23 seating; thirdly, in the area of the access opening and 24 the various issues related to it; and finally, on life 25 jackets.</p>
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<p>1 THE CHAIRMAN: If that would could be interpreted, we could 2 put the other ones up as well. 3 MR SHIEH: The other three are identical. 4 THE INTERPRETER: "To the Commission of Inquiry into the 5 Collision of Vessels near Lamma Island on 1 October 6 2012. 7 I, Lai Sai-ming, with Hong Kong identity card number 8 [redacted] had received advice from Lo &amp; Lo that the 9 Commission would make the final submission on 11 March 10 2013. I understand this and also my entitled right, and 11 I hereby notify the Commission that concerning the 12 hearings by the Commission of Inquiry into the Collision 13 of Vessels near Lamma Island on 1 October 2012, I have 14 no other supplement to make, nor will I attend the 15 hearings on 11 March 2013." 16 Then he signs his name there on the date of 9 March 17 2013. 18 THE CHAIRMAN: Thank you very much. 19 Yes, Mr Mok. 20 Closing submissions by MR MOK 21 MR MOK: Thank you, Mr Chairman and Commissioner Tang. 22 Before I forget, I would like to associate myself 23 with my learned friends in thanking all those who are 24 involved in this Inquiry in assisting the Commission in 25 the work of this Inquiry.</p>	<p>1 I would like to preface by saying that in all of 2 these four areas, there are quite large areas of 3 agreement between ourselves and counsel for the 4 Commission. I shall attempt to identify those areas 5 with which we are in agreement, and then also to 6 highlight the areas where there is or may be 7 disagreement between us. 8 First of all, very briefly on the question of hull 9 thickness, we would like to associate ourselves with the 10 submissions by counsel for the Commission, particularly 11 those submissions set out in their paragraph 95 and the 12 various reasons set out in support. If I may just read 13 out the matter that we agree with. It says: 14 "... there is no sufficient ground for the 15 Commission to find that the thickness of the side 16 plating of the hull of Lamma IV had been or might have 17 been causative of its rapid sinking", with which we 18 respectfully agree. 19 And the reasons, which we have set out, are set out 20 in paragraphs 33 to 47 of our written closing, which 21 I will not go into. 22 I would only like to perhaps remind the Commission 23 of two points in relation to this topic. The first 24 point is this. To be fair to Dr Armstrong, we know that 25 Dr Armstrong's attention had not been directed to the</p>

<p style="text-align: right;">Page 173</p> <p>1 letter. Mr Chairman, you remember the letter which 2 informs Mardep of the reduction of the hull thickness to 3 4.83 mm. You remember that Dr Armstrong did not have 4 sight of that letter when he first drew up his initial 5 report. 6 THE CHAIRMAN: No, I think that's a valid point to make, 7 because Dr Armstrong was working under pressure -- 8 MR MOK: Yes. 9 THE CHAIRMAN: -- to formulate views that would assist us in 10 the way forward. 11 MR MOK: Yes. 12 THE CHAIRMAN: And that was a letter that was buried in the 13 papers and certainly not drawn to his attention that 14 that time. 15 MR MOK: That's right. And therefore, I think his initial 16 comment should be viewed in that light, Mr Chairman. 17 After he had sight of that letter, and particularly 18 in the course of questioning, I think Dr Armstrong very 19 fairly informed the Commission that in fact it is 20 industry practice to accept plating that is slightly 21 below the thickness that is being ordered. For that 22 reason, I think he also accepted that, based on all the 23 evidence, there is indication that in fact the original 24 thickness was 4.83 mm. He also fairly informed the 25 Commission that there may be factors -- of course, he</p>	<p style="text-align: right;">Page 175</p> <p>1 stated: 2 "... it was only in abnormal condition where the 3 vessel had excessive stern trim and the weight of the 4 seated person generated an abnormal tipping force that 5 the foundations would fail." 6 I think that is a matter which again was accepted by 7 Dr Armstrong, and the Commission may recall in the 8 witness statement of Mr Wong Chi-kin he referred to 9 areas of possible problem. If I may just refer very 10 quickly to remind the Commission of his description of 11 this. Wong Chi-kin, marine bundle 11, tab 39. He talks 12 about this -- 13 THE CHAIRMAN: Do you have a page number? 14 MR MOK: Yes, I am coming to that. It is page 3883, 15 paragraph 60. 16 In paragraph 59, he refers to paragraph 26 of the 17 Blue Book, which of course says that seats must be 18 firmly secured. But in paragraph 60 he explains that. 19 He says: 20 "The requirement was that under normal and 21 favourable weather condition, the seats could withstand: 22 (1) Static loading in accordance with its intended 23 purpose. For example, for a vessel intended to carry 24 passengers, the securing of the seats should be able to 25 support the weight of the passengers and their</p>
<p style="text-align: right;">Page 174</p> <p>1 does not claim expertise in all of those factors -- that 2 may have caused the thickness to have whittled down from 3 4.83 mm to about 4.5 mm. That's the first point. 4 The second point, Mr Chairman and Commissioner Tang, 5 is that there are in fact two different issues relating 6 to errors which may arise from measurement. One 7 possible measurement is that mentioned by my learned 8 friend Mr Pao where, when you measure something and you 9 sand the surface of the plate, that may have caused 10 a very slight reduction in thickness. That's one point. 11 The other point is, of course, the nature of the 12 instrument itself and the process of measurement using 13 that instrument may contain within itself a margin of 14 error. Dr Armstrong had also fairly, in fact 15 explicitly, stated that is a possibility which he would 16 like to take into account. 17 Other than these two matters, Mr Chairman, I believe 18 that all of the other matters have been adverted to 19 either orally or in writing before you. 20 If I may now move on to the second area, which 21 concerns the seating arrangements and attachments. 22 Again, here, there is an important point where we would 23 like to associate ourselves with counsel for the 24 Commission. This appears in their second closing 25 submission on seats, in paragraph 10, where it is</p>	<p style="text-align: right;">Page 176</p> <p>1 belongings. 2 (2) Dynamic loading. In other words, the forces 3 that the vessel would encounter in local waters, in 4 which the significant sea wave height is about 1.2 m. 5 The forces included the vertical force (pulling out) and 6 the lateral force (shearing) exerted on the vessel by, 7 for example, waves, current and the wind when the vessel 8 is in motion." 9 I believe that this part of his evidence is 10 consistent with Dr Armstrong's evidence which has been 11 summarised, as I said, in paragraph 10 of my learned 12 friend Mr Shieh's second closing submission. 13 Also I would like to point out in this regard that 14 in paragraph 26, which we just looked at, all it states 15 there is that the seats should be firmly -- sorry, if 16 I may backtrack a little bit. 17 If we may go back to paragraph 58 of Wong Chi-kin's 18 statement. There, in paragraph 26 of the Blue Book, the 19 last line, it states: 20 "Seats should always be properly secured." 21 It may fall upon the Commission to interpret this 22 particular sentence, because there is a difference 23 between the way that Mardep understands this and also 24 what the Commission proposes should be interpreted. 25 According to what I understand from my learned</p>

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<p>1 friend, what they are saying is that what is properly 2 secure should not be limited to the ordinary and normal 3 conditions of sail, but should be extended to matters of 4 what they call marine casualties. And I may say 5 a little bit more about that. But for that reason, it 6 may fall upon the Commission to come to some sort of 7 interpretation or understanding of this paragraph 26. 8 In terms of what principle the Commission should 9 apply, I have cited an authority. In fact it's the only 10 one I wish to refer to. 11 The Commission can find this as annex 6B to our 12 written closing submissions. We respectfully say that 13 this is an apposite authority to guide the Commissioner 14 to interpret something which is not black and white, 15 like, in particular, matters such as which grounds, the 16 jurisdiction, for example, of a court or tribunal, but 17 matters which are what may sometimes be called soft 18 matters, not hard-edge matters. 19 This case illustrates the point by reference to 20 a transaction of a public transport company. This is 21 the case of R v Monopolies and Mergers Commission and 22 South Yorkshire Transport Ltd. 23 I'm don't know whether the Commission has found -- 24 THE CHAIRMAN: I'm looking for the authority at the moment. 25 MR MOK: It's marked 6B in our bundle, after our main</p>	<p>1 the transaction would have influence on 1.65 per cent of 2 the total area of the United Kingdom. 3 THE CHAIRMAN: Population or area? 4 MR MOK: Area. The population -- and containing 3.2 per 5 cent of the total population and 4.04 per cent of the 6 total vehicle mileage. 7 So the question which arose in judicial review as to 8 the jurisdiction of the Commission to embark upon this 9 particular inquiry was whether or not the precondition 10 of a "substantial part of the United Kingdom" was 11 satisfied, having regard to these figures. 12 THE CHAIRMAN: Yes. 13 MR MOK: Ultimately, the case went to the House of Lords who 14 held that the Commission was properly being satisfied 15 that a substantial part of the United Kingdom was 16 engaged by the acquisition, and therefore the 17 precondition for the inquiry was met. 18 The relevant part of this case -- there are two 19 parts that I would like to read. First of all, page 31, 20 a short passage starting from line 3, the third line on 21 that page. 22 THE CHAIRMAN: Yes. 23 MR MOK: This is in the speech of Lord Mustill, where he 24 said: 25 "As regards geographical extent the reference to a</p>
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<p>1 submissions. 2 THE CHAIRMAN: I have it now. 3 MR MOK: I don't need to read the headnote, but what it 4 basically concerns is an acquisition by a public 5 transport company of other companies, and the question 6 was whether or not it falls within the parameters of the 7 relevant legislation which has the words that the 8 transaction affects a "substantial part of United 9 Kingdom". Because if this condition was being 10 satisfied, then it would trigger an investigation by the 11 Monopolies and Mergers Commission and, in this case, see 12 whether or not the transaction amounted to a merger. 13 THE CHAIRMAN: Can you just give me a short summary, precis, 14 of the factual situation? 15 MR MOK: Yes. The factual summary is there was this 16 acquisition and the Secretary of State then referred 17 this transaction to the Monopolies Commission to 18 determine whether or not it was a merger within the 19 meaning of the relevant act, which was the Fair Trading 20 Act of 1973. There was subsequently -- 21 THE CHAIRMAN: This was an acquisition of a bus company? 22 MR MOK: Yes, I think of a number of bus companies in the 23 same areas. 24 THE CHAIRMAN: In South Yorkshire? 25 MR MOK: That's right. The evidence was that the effect of</p>	<p>1 substantial part of the United Kingdom is enabling, not 2 restrictive. Its purpose is simply to entitle the 3 Secretary of State to refer to the commission mergers 4 whose effect is not nationwide. Like the asset-value 5 criterion of section 64(1)(b), the epithet 'substantial' 6 is there to ensure that the expensive, laborious and 7 time-consuming mechanism of a merger reference is not 8 set in motion if the effort is not worthwhile." 9 So that sets the scene to an understanding of this 10 word. 11 Then the relevant part for our purposes starts on 12 the following page, 32, between B and C, where Lord 13 Mustill said this: 14 "Accordingly I would prefer to state that the part 15 must be 'of such size ...'" 16 So this is his interpretation of the word 17 "substantial". 18 "... must be 'of such size, character and importance 19 as to make it worth consideration for the purposes of 20 the Act.' To this question an inquiry into 21 proportionality will often be material but it will not 22 lead directly to a conclusion. 23 Applying this test to the present case one will ask 24 first whether any misdirection is established, and 25 secondly whether the decision can be overturned on the</p>

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<p>1 facts. As to the first it is quite clear that the 2 approach of the commission was in general accord with 3 what I would propose. It is true that matters such as 4 academic and sports activities, mentioned by the 5 commission, are of marginal importance at the most, but 6 I do not regard their inclusion in the list of features 7 to which the commission paid regard as vitiating 8 an appreciation of 'substantive' which was broadly 9 correct. On the second question the parties are at odds 10 as to the proper function of the courts. The 11 respondents say that the two stages of the commission's 12 enquiry involved wholly different tasks. Once the 13 commission reached the stage of deciding on public 14 interest and remedies it was exercising a broad judgment 15 whose outcome could be overturned only on the ground of 16 irrationality. The question of jurisdiction, by 17 contrast, is a hard-edged question. There is no room 18 for legitimate disagreement. Either the commission had 19 jurisdiction or it had not. The fact that it is quite 20 hard to discover the meaning of section 64(3) makes no 21 difference. It does have a correct meaning, and one 22 meaning alone; and once this is ascertained a correct 23 application of it to the facts of the case will always 24 yield the same answer. If the commission has reached 25 a different answer it is wrong, and the court can and</p>	<p>1 judgment rather than an exact quantitative measurement. 2 Approaching the matter in this light I am quite 3 satisfied that there is no ground for interference by 4 the court, since the conclusion at which the commission 5 arrived was well within the permissible field of 6 judgment. Indeed I would go further, and say that in my 7 opinion it was right." 8 So, Mr Chairman and Commissioner Tang, I would urge 9 a similar approach to be adopted by the Commission so 10 far as the understanding of these rules are concerned, 11 particularly where the rules use words which are not 12 that precise. Because when you say "are properly 13 secure", it can mean all sorts of things. For example 14 it can mean on the one hand, as we have proposed, it 15 should be properly secure for the purposes of the normal 16 voyage or journey, in the normal operation of the 17 vessel; or on the extreme end, that it should also cater 18 for some very rare incident and accident such as the one 19 that happened in this particular case. 20 There is a spectrum within which perhaps even 21 reasonable persons may differ as to what should be meant 22 by the words "properly secure". And unless the 23 Commission comes to the view that the interpretation 24 that Mardep has adopted and we propose is so aberrant or 25 so out of the range of reasonableness that it should be</p>
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<p>1 must intervene. 2 Lord Mustill says: 3 "I agree with this argument in part, but only in 4 part. Once the criterion for a judgment has been 5 properly understood, the fact that it was formerly part 6 of a range of possible criteria from which it was 7 difficult to chose and on which opinions might 8 legitimately differ becomes a matter of history. The 9 judgment now proceeds unequivocally on the basis of the 10 criterion as ascertained. So far, no room for 11 controversy. But this clear-cut approach cannot be 12 applied to every case, for the criterion so established 13 may itself be so imprecise that different 14 decision-makers, each acting rationally, might reach 15 differing conclusions when applying it to the facts of 16 a given case. In such a case the court is entitled to 17 substitute its own opinion for that of the person to 18 whom the decision has been entrusted only if the 19 decision is so aberrant that it cannot be classed as 20 rational ..." 21 Then the well-known case of <i>Edwards v Bairstow</i> is 22 cited. 23 "The present is such a case. Even after eliminating 24 inappropriate senses of 'substantial' one is still left 25 with a meaning broad enough to call for the exercise of</p>	<p>1 ascribed to be a decision which is irrational, outside 2 of the range of rationality altogether. 3 So this is the approach that I respectfully ask the 4 Commission to adopt, if it sees fit to do so. 5 THE CHAIRMAN: Why should not those travelling on the 6 Lamma IV expect and require that the seating on the 7 upper deck be attached in the proper way in which it was 8 attached on the main deck? In other words, it stayed in 9 place when the vessel was at an acute angle? And the 10 evidence, as I recall it, is that the seats started to 11 tilt at about 30 degrees. 12 MR MOK: Yes. 13 THE CHAIRMAN: There was one witness who certainly ascribed 14 to that point, because he disagreed with Mr McGowan in 15 terms on that point. 16 MR MOK: Mr Chairman, I think the answer lies in partly the 17 industry practices as to what is required for this kind 18 of vessel. You will recall that there is a special 19 regime for high-speed craft, and you may compare that -- 20 and in fact I think my learned friend Mr Beresford 21 wishes to borrow from the formulation there. 22 Mr Chairman, may I refer you to that. 23 THE CHAIRMAN: Yes, but dealing with the generic first of 24 all. 25 MR MOK: Yes, of course.</p>

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<p>1 THE CHAIRMAN: The main deck worked; the upper deck didn't. 2 Not one single seat fell down or collapsed on the main 3 deck, whereas only one remained on the upper deck. 4 MR MOK: Yes. 5 THE CHAIRMAN: Isn't that dramatic, by contrast? 6 MR MOK: Absolutely. I think there is a lot to be said, 7 I think as throughout this hearing, that perhaps the 8 seats could be attached in a more secure manner. 9 THE CHAIRMAN: But if you were a member of the public -- 10 forgive me for interrupting -- and you're not a lawyer 11 and you're not debating how many angels can stand on 12 a pin head, wouldn't you say, "Well, the seats on the 13 main deck, those are properly secured; the ones on the 14 upper deck are not"? 15 MR MOK: Yes. Mr Chairman, I think the question really is 16 this, that in relation to the material with which this 17 particular -- the upper deck was being constructed, 18 there is some inherent weakness in the upper deck. 19 THE CHAIRMAN: Yes. The foam sandwich was inappropriate for 20 attachments of this kind. 21 MR MOK: Yes. It may well be that certain studies should go 22 into whether or not this kind of material should be 23 allowed, and if this kind of material is allowed, in 24 which event whether or not there should be very 25 stringent rules to deal with this particular kind of</p>	<p>1 paragraph 4.3. You will see there that there are much 2 more specific requirements in relation to high-speed 3 craft. Paragraph 4.3 says: 4 "Seats and their attachments, and the structure in 5 the proximity of the seats, should be of a form and 6 design, and so arranged, such as to minimise the 7 possibility of injury and to avoid trapping of the 8 passengers after the assumed damage in the collision 9 design condition. Dangerous projections and hard edges 10 should be eliminated or padded." 11 I think my learned friend Mr Beresford borrowed from 12 this or a formulation similar to this and submitted that 13 it is only when the requirements of this paragraph are 14 satisfied that the seats should be said to be adequate, 15 or properly secure. 16 Mr Chairman, that may well be the case in terms of 17 moving forward to the future and what recommendation the 18 Commission wishes to make. But the point that I am 19 making is that going back to the past, when Mardep was 20 approving the vessel back in 1996, with no better 21 guideline than what was set out in the Blue Book, with 22 an imprecise criterion, they used their judgment, no 23 doubt judgment which they had exercised along the same 24 lines for quite some time. And the guideline which they 25 used was whether or not the ships or the vessels</p>
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<p>1 material. 2 THE CHAIRMAN: Didn't Dr Armstrong tell us it wouldn't be 3 allowed in Australia, but that was for fire regulation 4 purposes? 5 MR MOK: Yes. I think as a result of this particular 6 incident, certainly questions could be raised as to 7 whether or not we should go further, to have more 8 stringent rules relating both to the materials as well 9 as the method of attachment if such materials were used. 10 But certainly I think there is one common thread amongst 11 the various experts and also accepted by Mardep, that 12 there should at least be a procedure for the approval of 13 seating arrangements which hitherto was not there. 14 THE CHAIRMAN: Well, as I recall the evidence, no plans of 15 the seating securing arrangements -- 16 MR MOK: Was required. 17 THE CHAIRMAN: -- was required. 18 MR MOK: That's right. And I think it is a common thread 19 that such a procedure at the very least should be put in 20 place. Now, whether -- 21 THE CHAIRMAN: You were going to move on to the requirements 22 of the high-speed craft regulations when I interrupted 23 you. 24 MR MOK: Yes. This is Cap 11 of the code of practice which 25 we find in marine bundle 11, page 3527, at</p>	<p>1 involved would be able to withstand the course of 2 a normal journey. In this particular case, we all 3 remember that the vessel for some 16 years -- at least 4 there has been no known report of detachment of seats in 5 the normal operation of that particular vessel. 6 THE CHAIRMAN: Well, we know that the seats had to be 7 re-screwed and they were re-screwed with different 8 holes. And we know that rivets were attached to one of 9 the legs of seats. So they obviously did have 10 difficulties with the seating. 11 MR MOK: Yes. Mr Chairman, I think certainly there is room 12 for comment as to the way in which these re-attachments 13 were made. But I think one of the issues which the 14 Commissioner may have to face is whether or not the way 15 in which the seats were attached goes beyond what was 16 permitted by paragraph 26 of the Blue Book. All I'm 17 saying -- 18 THE CHAIRMAN: It doesn't go as far as what was required. 19 Isn't that the really issue? It's required to be 20 properly secured. 21 MR MOK: Yes. 22 THE CHAIRMAN: And it wasn't properly secured. 23 MR MOK: Mr Chairman, this precisely is the reason why 24 I cited the case. 25 THE CHAIRMAN: I follow that.</p>

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<p>1 MR MOK: Yes.</p> <p>2 THE CHAIRMAN: But, you see, from the Marine Department's</p> <p>3 point of view, if it doesn't have a plan that tells it</p> <p>4 how the seating is being secured, what the composition</p> <p>5 of the deck is, how the attachments have been put in</p> <p>6 place, whether or not there is through-bolting, how can</p> <p>7 it be satisfied that the seating has been properly</p> <p>8 secured? It didn't have the requisite information.</p> <p>9 MR MOK: Well, it certainly did not have that kind of</p> <p>10 information but I think the practice of Mardep was</p> <p>11 I think manually, as they have informed the Commission,</p> <p>12 to check the chairs during the survey or --</p> <p>13 THE CHAIRMAN: That's the marine equivalent of the</p> <p>14 second-hand car dealer kicking the tyres. That's not</p> <p>15 ensuring that something is properly secured.</p> <p>16 MR MOK: Yes. As I said, Mr Chairman, there may be room for</p> <p>17 comment that the procedure which was adopted, either by</p> <p>18 the owner or the Department, was not that desirable.</p> <p>19 THE CHAIRMAN: Well, there was also this factor, was there</p> <p>20 not. There was no evidence that in the absence of any</p> <p>21 documentary material upon which to form a proper</p> <p>22 judgment, the shipbuilder, Cheoy Lee, was interrogated</p> <p>23 about the seating, "How have you attached them, what</p> <p>24 have you done, what lies beneath it?" There was none of</p> <p>25 this. So, documents missing and no system of oral</p>	<p>1 there is a distinction between the normal type of</p> <p>2 lateral force which may be applied in a normal collision</p> <p>3 on the one hand, and also in the extreme situation as</p> <p>4 mentioned by you, Mr Chairman, of the ship's stern</p> <p>5 tilting so that the seats would be subject to the</p> <p>6 abnormal force which I think in this particular case,</p> <p>7 and I'm sure that in many other cases, the seats were</p> <p>8 designed to withstand.</p> <p>9 THE CHAIRMAN: Yes.</p> <p>10 MR MOK: I think that's the area of difference between the</p> <p>11 parties.</p> <p>12 THE CHAIRMAN: But the fact remains that the ones on the</p> <p>13 main deck did sustain all of his abnormal loading</p> <p>14 without a single failure.</p> <p>15 MR MOK: Yes. Well --</p> <p>16 THE CHAIRMAN: The difference, of course, was the way in</p> <p>17 which they were attached and to what they were attached.</p> <p>18 MR MOK: Yes. All I can say is that of course on the main</p> <p>19 deck the seats were able to withstand more than the</p> <p>20 normal operation, and they were able to withstand the</p> <p>21 extreme situation that obtained in this particular case,</p> <p>22 whereas the upper deck was not designed and did not</p> <p>23 perform that particular function.</p> <p>24 But I do urge upon the Commission, at least for past</p> <p>25 purposes, not for future purposes, to apply the rules in</p>
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<p>1 interrogation, which in itself of course ought then to</p> <p>2 have been documented. All missing.</p> <p>3 MR MOK: Yes. I'm not saying that all of this should not be</p> <p>4 put in place, Mr Chairman. But I think the burden of my</p> <p>5 submission is simply that --</p> <p>6 THE CHAIRMAN: It was good enough for 1996, even if not for</p> <p>7 now?</p> <p>8 MR MOK: No, Mr Chairman. What I'm saying is that in 1996,</p> <p>9 there was a formula which guided the work, and the</p> <p>10 question was whether or not the seats were properly</p> <p>11 secured, and the question is for what purpose.</p> <p>12 According to the understanding of Mardep as applied at</p> <p>13 that time, it was that it should be adequate for the</p> <p>14 normal journey or the normal operation of the vessel.</p> <p>15 Mr Chairman, you may also recall that there is</p> <p>16 a slight change in the formula in 1995 under the 1995</p> <p>17 Instructions. The wording used there was that the</p> <p>18 attachment to the deck should be adequate for the</p> <p>19 intended service.</p> <p>20 THE CHAIRMAN: Yes.</p> <p>21 MR MOK: Again, there is an imprecision there. What is</p> <p>22 meant by "the intended service"? Is it the normal</p> <p>23 service, or whether or not you should also cater for all</p> <p>24 sorts of possible accidents or what my learned friends</p> <p>25 call marine casualties? Even with marine casualties,</p>	<p>1 the spirit as explained in the authority which I have</p> <p>2 cited, in that, yes, there is imprecision in the concept</p> <p>3 of proper securing of the seats, but within this, there</p> <p>4 may be a spectrum of different degree of secureness.</p> <p>5 And the explanation or the interpretation, with</p> <p>6 reference to the normal operation, is, respectfully,</p> <p>7 within the range of reasonableness which the Marine</p> <p>8 Department could have applied at the relevant time.</p> <p>9 THE CHAIRMAN: Of course, the Monopolies case is actually</p> <p>10 dealing with a statute, is it not?</p> <p>11 MR MOK: Yes.</p> <p>12 THE CHAIRMAN: These were never more than guidelines.</p> <p>13 MR MOK: That's right. In that sense, you can say that</p> <p>14 these guidelines should be more flexibly applied. But</p> <p>15 I think --</p> <p>16 THE CHAIRMAN: In favour of safety.</p> <p>17 MR MOK: Well, in favour of safety but at the same time,</p> <p>18 Mr Chairman, I think the key purpose is one needs to set</p> <p>19 the standard in the sense of when you apply that</p> <p>20 particular rule, for what purpose would the seats have</p> <p>21 to cater for?</p> <p>22 THE CHAIRMAN: Yes, I take your point.</p> <p>23 MR MOK: And there is a degree.</p> <p>24 THE CHAIRMAN: Normal or abnormal caused by maritime</p> <p>25 collision.</p>



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<p>1 MR MOK: Yes, and even abnormal, there is the normal or 2 lateral collision which exerts forces on the seat 3 laterally, which these seats apparently were able to 4 withstand. Mr Chairman, you will recall that at the 5 moment of collision, it is Dr Armstrong's opinion that 6 the seats were not affected by the collision itself. It 7 was actually the tilting that -- 8 THE CHAIRMAN: Well, that was the tenor of the evidence of 9 the passengers. Nobody spoke of a seat moving sideways 10 or falling down. 11 MR MOK: No. And I think Dr Armstrong also, when he did the 12 calculation, he said that the impact would not have 13 dislodged or detached the seats. 14 THE CHAIRMAN: Yes. 15 MR MOK: So, Mr Chairman, I don't think I can take this 16 topic much further -- 17 THE CHAIRMAN: Thank you for your help. 18 MR MOK: -- except to inform the Commission of the 19 difference between the parties and how we propose the 20 rule under the Blue Book should be interpreted. 21 THE CHAIRMAN: Thank you. 22 MR MOK: Now, the third area, as I said, relates to the 23 access opening. 24 THE CHAIRMAN: Yes. 25 MR MOK: On this topic, first of all we do agree with</p>	<p>1 frame 1/2 -- 2 MR MOK: Yes. 3 THE CHAIRMAN: -- and another plan said that there was 4 an access opening but didn't then condescend to the 5 additional particular watertight door? 6 MR MOK: Yes. 7 THE CHAIRMAN: How is that approved? 8 MR MOK: Mr Chairman, I think the evidence on this is quite 9 clear, particularly the evidence of Mr Wong Chi-kin. He 10 regarded, looking at the plans as a whole, that the 11 bulkhead should be watertight. That was his 12 interpretation. He did not see there was any conflict 13 between the various plans at all. 14 THE CHAIRMAN: So why was the shipbuilder, Cheoy Lee, not 15 required to have the plan amended so that that 16 stipulation was made in terms on the face of the 17 drawing? 18 MR MOK: I think there are probably two explanations to 19 this. The first explanation is that, as Dr Armstrong 20 described, a disconnect between those approving the 21 plans and those doing the subsequent survey or 22 inspection of the ship. In other words, there was 23 probably a lack of either paper trail or communication 24 between the two groups of officers and the two 25 processes, to enable them to efficiently cross-check one</p>
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<p>1 counsel for the Commission's observation in 2 paragraph 83, where they say: 3 "Had damage stability calculations been done in 1996 4 with the 0.1L rule applied correctly, Mardep would have 5 granted the certificate of survey for Lamma IV on the 6 ground that the margin line test was passed on 7 a one-compartment flooding basis (which is common 8 ground)." 9 However, I think my learned friend goes further and 10 makes a number of submissions which I would like to 11 address now. 12 First of all, if I may just ask the Commission to 13 look at my learned friend's closing, starting from 14 page 40, all the way to page 42, paragraphs 77 to 82. 15 I think what my learned friend is trying to do is 16 this. It is one thing to say that the plans -- or from 17 the plans you see that there are indications clearly 18 that there should be a watertight door. But what is the 19 connection between that and the sinking of the ship? 20 What is the causal relationship between that? 21 THE CHAIRMAN: Yes. The first thing is the plans. 22 MR MOK: The first thing is the plan. 23 THE CHAIRMAN: How were these plans approved when, on the 24 one hand, it was asserted that there were watertight 25 bulkheads, that there was a watertight bulkhead at</p>	<p>1 against the other. 2 THE CHAIRMAN: That certainly comes into play at a later 3 stage. But when this was first examined, on its face 4 there was this contradiction between the access opening, 5 not described as a watertight door, and yet on various 6 other drawings, frame 1/2 described as a watertight 7 bulkhead. Why was Cheoy Lee not required at that stage, 8 before approval, to make clear the nature of the access 9 opening? 10 MR MOK: Well, as I said, the evidence was that the person 11 ultimately in charge of approving the plans, Mr Wong 12 Chi-kin, did not regard that to be a conflict. As far 13 as he was concerned -- I understand that there may be 14 other interpretations -- he considered that the bulkhead 15 should be watertight. 16 THE CHAIRMAN: Very well. Thank you. 17 You then come to the next stage, when the vessel is 18 physically surveyed. 19 MR MOK: Yes. When it was physically surveyed, and of 20 course the officers involved were, because of the lapse 21 of time, not all that clear as to what happened, but 22 what clearly has happened is that the fact that there 23 was an access opening without any watertight door did 24 not actually translate into the ultimate calculation in 25 relation to the damage stability of the vessel.</p>

<p style="text-align: right;">Page 197</p> <p>1        Somehow along that process, from the time of the 2 approval, the construction of the vessel, and the 3 calculation of the damage stability, the fact that there 4 was an access opening without a watertight door had not 5 been identified. It had not been identified in any of 6 the documents we have seen. 7 THE CHAIRMAN: No. But isn't that the whole point of the 8 first step? If the drawings had been amended as 9 required by the Marine Department, when the access 10 opening was found not to be described as a watertight 11 door on the plan, but they'd been required to put that 12 onto the plan because this was going to be a watertight 13 door, then when it came to the next stage, when they 14 surveyed the vessel, matching the drawing with the 15 physical fact, they would have found that it wasn't 16 there, as was on the drawing. 17 MR MOK: Yes. I think, Mr Chairman, you're perfectly right. 18 It's either way -- if it was intended not to be 19 watertight, then all the mistakes which Cheoy Lee, 20 I think Mr Ken Lo, said were made should have been 21 corrected on the plans; that amendment should have been 22 made. On the other hand, if it was intended to be 23 watertight, then there should be, I think even at the 24 access opening, it should be stated clearly, as in the 25 other plans, you recall, in relation to the earlier</p>	<p style="text-align: right;">Page 199</p> <p>1        cases is that there would be discussions between the 2 authorities and the shipbuilders as to what should be 3 done. I think maybe that sort of process -- I'm not 4 talking about this particular case, because the access 5 opening was not identified. But assuming that it was, 6 and that something needed to be done about it, it seems 7 that there could have been some sort of informal method 8 of dealing with it. But I do accept that even with this 9 informal discussion, it would not replace the need for 10 black-and-white amendment. 11 THE CHAIRMAN: That then creates an audit trail. That 12 allows others to come to deal and rely on documents in 13 time to come to have a solid base. 14 MR MOK: Yes, I perfectly accept that. 15 THE CHAIRMAN: Otherwise they're operating on quicksand. 16 MR MOK: Yes. I think that is one of the most fundamental 17 issues arising from this particular case. And I should, 18 of course, to be fair to the officer who approved -- 19 that he did not take the view that there was any 20 conflict and therefore, as far as he is concerned -- 21 THE CHAIRMAN: "This is clearly an opening that will have 22 a watertight door attached to it." 23 MR MOK: Well, he would expect one, I think is the tenor of 24 his evidence. 25 THE CHAIRMAN: Yes. But that still doesn't answer the</p>
<p style="text-align: right;">Page 198</p> <p>1        vessel, Eastern District -- 2 THE CHAIRMAN: Eastern District, yes. Indeed. 3 MR MOK: -- where it says that there should be a watertight 4 door there. 5 THE CHAIRMAN: So the genesis of all the difficulties that 6 followed was the failure to take the correct step at the 7 outset. 8 MR MOK: Yes, I accept that. 9 THE CHAIRMAN: And that was at the drawing stage, before the 10 drawings were approved. 11 MR MOK: Yes. 12 THE CHAIRMAN: "Before we go any further building this 13 vessel, clarify that the access opening is to have 14 a watertight door or is to be otherwise closed. Put 15 that on the drawing so that everyone will understand 16 what it's to be", and then if met with the response, 17 "Oh, well, we're not going to put a door there", "Well, 18 then, change your other drawings where this shows that 19 to be a watertight bulkhead." 20 MR MOK: Yes. That definitely would have been the procedure 21 which would have eliminated many problems down the road. 22 I think also in relation to this, I should also remind 23 the Commission that there is some evidence from 24 Dr Armstrong where he said that in many cases, there may 25 be departures from the plan. And what happened in those</p>	<p style="text-align: right;">Page 200</p> <p>1        question of making sure that that's stated on the 2 drawing. 3 MR MOK: Yes. I think that much is clear. And if that is 4 done, then I think arguably a lot of difficulties might 5 have been averted, by that procedure. 6 I just need, on this particular topic, to have a few 7 comments about my learned friend's line of reasoning, 8 because he poses, in the paragraph that I highlighted, 9 under the heading "Had the lack of watertight door at 10 frame 1/2 bulkhead been known" -- 11 THE CHAIRMAN: Yes, I've got it. 12 MR MOK: If I may summarise it, what he says is this. Had 13 this been known, there would be two possibilities. One 14 is to have the plans amended; the other is to install 15 a watertight door in any event. Mr Chairman, you have 16 already made the point, I think when he was making the 17 submission, that even if you install the door, you 18 should nevertheless have the plans make that position 19 clear. 20 THE CHAIRMAN: Yes. 21 MR MOK: But in any event, I think my learned friend's 22 argument is that the likelihood or the balance of 23 probabilities is that the plans would not simply be 24 amended but in fact there should be a door there. The 25 reasoning he relies on is that the installation of</p>

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<p>1 a door is cheap. I need to take issue -- 2 THE CHAIRMAN: Well, that was perhaps based on what 3 Mr Ken Lo said. 4 MR MOK: Yes. 5 THE CHAIRMAN: That for the sake of a few thousand dollars, 6 if they intended to have a door, they would have had 7 a door. 8 MR MOK: Yes. But I think he said much more than that. 9 First of all, he said that the intention was, judging 10 from what he had seen from the evidence, that there 11 never should have been a door. Because you remember he 12 said if there was to be a door, then there should be 13 some sort of flat bars around the opening -- 14 THE CHAIRMAN: Yes. Preparation to receive the door. 15 MR MOK: -- in preparation for the fixing of a door. But 16 otherwise, the bulkhead would simply be made of 17 corrugated iron of uneven thickness. 18 THE CHAIRMAN: Yes. 19 MR MOK: Therefore looking at that evidence, he was unable 20 to conclude that clearly it was never intended for 21 a door in the first place -- 22 THE CHAIRMAN: So how, then, when the vessel was physically 23 inspected -- February 1996, I think -- 24 MR MOK: Yes. 25 THE CHAIRMAN: -- by the Marine Department, was this not</p>	<p>1 said: 2 "When we built the ship, that hole is meant to be 3 an access hole without a door. If we think a door is 4 necessary when we constructed the aluminium structure in 5 Wuzhou, we would have ordered the shipyard to install 6 a door and prepare the plate accordingly. 7 If I can refer to Dr Armstrong's report ..." 8 Then going down to Mr Chairman's question, line 16: 9 "-- 'Make a door and prepare a plate to receive a 10 door?' 11 Answer: Exactly. And if you see the finish of that 12 access hole, it is finished probably with flat bars 13 meant for a hole and not a door. And if you fit a door, 14 as Dr Armstrong said, he looks at it or looks at the 15 thing -- the corrugated area is already at the flat bar. 16 There is no way to fit a door in that structure as 17 built. 18 The Chairman: As provided for in the plans? The 19 place where it was to be? 20 Answer: Yes. So it was never meant to have a door 21 on it from day one, as far as our construction is 22 concerned. 23 The Chairman: By that do you mean that there wasn't 24 room for the necessary fittings to be attached to or 25 around the access hole for the door to be secured?</p>
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<p>1 picked up? They're not going to put a door on here 2 later because they haven't done the work. 3 MR MOK: They hadn't prepared the hole for the fixing. 4 THE CHAIRMAN: Yes. So there isn't going to be a door here. 5 Why wasn't that picked up? 6 MR MOK: That was again I think a combination of the perhaps 7 inadequate information and the lack of alertness to this 8 particular issue. I think first of all there is this 9 evidence, but secondly I wish to in particular draw to 10 the attention of the Commission this: if you redo the 11 door subsequently, although it was never intended for 12 a door, and although the opening was not prepared for 13 a door, then you need to make some physical changes to 14 the opening before you can put up the door and for that, 15 you would have extra costs, of course. Secondly, he was 16 also asked the question, "Well, compared between the 17 cost of doing the amendment of the plans and the cost of 18 installing the door, what do you say would be the cost 19 of the amendment?" I think what Mr Lo said was that it 20 was almost minimal, or equally minimal. 21 Can I direct your attention to this, because it's 22 quite fundamental. 23 THE CHAIRMAN: Yes. 24 MR MOK: It's Day 18, Mr Ken Lo, 29 January. At 115, 25 I think. Can I start with page 115, line 2. Mr Lo</p>	<p>1 Answer: Yes, Mr Chairman. If you need to fit a 2 door onto a structure, you have to prepare the plate 3 next to it to have sufficient space to bolt the door 4 onto the plate. And the fact that the corrugated areas 5 are so close to the end means that there is no flat area 6 to bolt any door on it. And in fact, that structure was 7 finished in the shipyard." 8 Also relevant to that is Dr Armstrong's comment as 9 to what needs to be done if you do install a door there, 10 and the comparative cost as compared to the cost of 11 simply amending the plan, but not putting a door there. 12 This is Day 25 at page 140. 13 THE CHAIRMAN: Yes. 14 MR MOK: May I just read from page 140, line 4. There 15 Dr Armstrong says: 16 "The changes to the vessel would have been a small 17 change to the depth of the flat bar running around the 18 opening, to make it a slightly bigger structure to avoid 19 the corrugations, because the opening was fitted in a 20 corrugated bulkhead, so you needed to get clear of those 21 corrugations. 22 I think the minimal cost -- changing the drawings, 23 almost minimal because all you need to do is rub out 24 'access opening' and type in 'watertight door' ..." 25 If I may just read on a little bit, at page 140,</p>

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<p>1 line 14: 2 "Question: No, but what if the idea was to say, "We 3 are now determined not to have a watertight door", and 4 therefore the plans needed to be redrawn to actually 5 make it explicitly clear that it's not watertight? 6 The Chairman: Not a watertight bulkhead now. 7 Mr Shieh: Not a watertight bulkhead now. 8 Would the costs have been equally minimal in that 9 case? 10 Answer: Equally minimal." 11 So, Mr Chairman, Commissioner, what I say is that 12 the costs argument actually doesn't assist in the 13 Commission coming to the inference that if the matter 14 was being identified, then the likelihood is that there 15 was going to be a watertight door as indicated in some 16 of the drawings. 17 I think in the light of the overall evidence, 18 particularly the evidence of Mr Ken Lo, since he said 19 that it was never intended to be a watertight door, and 20 the cost of simply amending the plans would be minimal 21 or equally minimal, the chances are that he would simply 22 go for the amendment to reflect what he said would have 23 been the original intention of the builder and also the 24 designers. 25 This actually goes to the point eventually, and</p>	<p>1 Mr Chairman, that's the only point which on this 2 particular matter I differ from my learned friend, as to 3 the possible inference as to what would have been had 4 the lack of the watertight door been noticed. So this 5 is one part. 6 The other part which, as I said, I'm in agreement 7 with him, is that the next stage of this is of course 8 the damage stability calculation. On this, I think 9 there is common ground that had the calculations been 10 done with the 0.1L rule applied correctly, then Mardep 11 would still have granted the certificate of survey on 12 the ground of the margin line being passed. That is in 13 1996, on the basis of one-compartment flooding basis. 14 But my learned friend goes on -- 15 THE CHAIRMAN: But we've already reached 5.35, so we'll take 16 a break now and we'll allow you to resume tomorrow on 17 those matters. 18 MR MOK: Thank you. 19 THE CHAIRMAN: So we'll adjourn until 10 o'clock tomorrow. 20 (5.35 pm) 21 (The hearing adjourned until 10 am on the following day) 22 23 24 25</p>
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<p>1 I think my learned friend wishes to develop from that, 2 that if there had been a watertight door, the sinking 3 might have been different and therefore there is 4 a linkage, according to him, to the failure to detect 5 this point linking it to the causing of the sinking or 6 the rapid sinking of the ship. So that's how he ties 7 the argument, by positing in between the two points the 8 likelihood, as he says, of a watertight door being 9 installed had the point been noticed. That's my only 10 comment on the -- 11 THE CHAIRMAN: Your submission then is that Mr Lo makes it 12 clear that it was never intended to have a watertight 13 door, there wasn't going to be one, and the route to 14 resolving all of this would have been to have changed 15 the drawings. Why wasn't that done? 16 MR MOK: Well, one, it was not detected; and two, as I said, 17 the approving officer considered that there was no 18 conflict. 19 THE CHAIRMAN: How does a shipbuilder not know that the 20 drawings that its naval consultant has drawn are not 21 accurate as to what they all intend to do? How does 22 a shipbuilder reach that stage? 23 MR MOK: Yes, I think there is clearly an omission there, 24 and that omission or the combination of circumstances 25 resulted to what happened later on.</p>	<p>1 I N D E X 2 Closing submissions by MR SHIEH .....2 3 Closing submissions by MR BERESFORD .....77 4 Closing submissions by MR GROSSMAN .....93 5 Closing submissions by MR ZIMMERN .....133 6 Closing submissions by MR YEUNG .....152 7 Closing submissions by MR MOK .....170 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>