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NEW SOUTH WALES STATE CORONER'S COURT

STATE CORONER: J ABERNETHY

THURSDAY 30 MARCH 2000

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5/98 - EVENT OF THE 1998 SYDNEY TO HOBART YACHT RACE

INQUEST INTO THE DEATHS OF JAMES MICHAEL LAWLER

MICHAEL BANNISTER

BRUCE RAYMOND GUY

PHILLIP RAYMOND CHARLES SKEGGS

JOHN WILLIAM DEAN

GLYN RODERICK CHARLES

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Mr A Hill and Mr M Papallo assisting the Coroner

Mr R Stanley QC for the Bureau of Meteorology

Ms T Nugan for the Cruising Yacht Club of Australia

Mr P Callaghan SC for Mr Robert Kothe

Mr A Shand QC for Mr Richard Purcell

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PART HEARD

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<CARLOS ALBERTO BRITO(10.11AM)

SWORN AND EXAMINED

CORONER: Which volume, Mr Papallo?

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PAPALLO: Volume 12A, number 9.

Q. Mr Brito, could you please give this inquest your full name?

A. My name's Carlos Alberto Brito.

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Q. And your work address?

A. 56 Rothschild Avenue Rosebery.

Q. You presently work for Crashlab, is that right?

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A. That's right.

Q. Can you please explain briefly what Crashlab do?

A. We work for the Roads and Traffic Authority and we basically test safety products. I've been working there for seven years and in those seven years we've tested - I've tested motor cycle, pedal cycle helmets and also industrial safety harnesses and a few yachting harnesses.

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Q. Relevant to this inquest, you have been given some - you've been given specifically the harness from the Sword of Orion that was worn by Glyn Charles, who was killed, is that correct?

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A. That's right, I'm not sure of the person who was wearing it, I was told it was involved in a fatal--

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Q. Can I show you the harness?

A. Yes.

-30/03/00

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BRITO X (PAPALLO)

Q. You can take it from me that that's the harness that you were asked to look at. What I'm basically doing is taking you through your first report and that's report SR99/004.

A. Yes.

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Q. Have you got that with you?

A. Yes I have.

Q. So your terms of reference with that report were to examine that harness, is that correct?

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A. Yes, basically do a visual examination on this one.

Q. And also you were to look at another - it's not a harness actually, it's a lanyard, is that correct?

A. That's the line, yes.

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Q. You were also to look at another lanyard from the same vessel?

A. And the harness assembly.

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Q. Can I just show you this other harness. Is this similar to what you - sorry, a lanyard, is this similar to the lanyard that you tested?

A. Yes.

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Q. So with those two lanyards, basically you were first of all trying to determine whether the lanyard worn by Glyn Charles was manufactured to the standard, that is the Australian Standard AS2227, is that correct?

A. That's right.

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Q. With respect to the other lanyard that's intact, what were you trying to do with that?

A. We were going to do another test to see whether it could possibly pass the standard in its condition.

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Q. Can you please explain to his Worship what test you actually carried out on the lanyard that was complete?

A. Yes, we basically did appendix B of the standard which is a dynamic drop test. What that involves is wetting the assembly, donning it on to a dummy which weighs 136 kilograms.

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Q. With the dummy itself you have an actual body harness attached to it? A harness attached to the--

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A. That's right. Like it did have a label on it which gives you donning instructions and I used those donning instructions to put the harness onto the body block and then attached the line on. We attach it to the top of our drop tower and we set the release mechanism and winch up to give us a drop height of 1.47 metres, which is what's required in the standard for the 136 kilogram dummy and then we basically released the dummy to fall through that falling distance.

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Q. And basically that is all in accordance with the Australian Standard that you referred to?

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A. That's right.

Q. I understand that there was some difficulty in ascertaining which edition of the Australian Standard applies?

A. Yeah, at the time - at the time that I first got the job, there was no markings on the actual lanyards, there was some on the harness and on the harness they mentioned compliance to Australian Standard AS2227 but no year and usually we have a year reference, or a serial number, or a date of manufacture or something like that. None of that information was on it.

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Q. Is that something that you would normally expect?

A. No, it should have all that to pass compliance in the visual - in a visual sort of sense that we're testing.

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Q. Is that a requirement of the standard itself?

A. That's right.

Q. You obviously conducted the test on the complete harness or a complete harness and what was the result of that test?

A. Had very similar failures actually to the one that was supplied from the fatal incident.

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Q. First of all, if you can just take me through, what are the requirements in terms of what sort of weight it has to withstand--

A. Right.

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Q. --if it's to comply with the standard?

A. Basically the standard has requirements of slippage on the adjuster and also no--

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Q. What's the adjuster?

A. When you don the harness, you actually have to get it to fit like different people so they supply it with an adjuster and that adjuster will slip on and you make it fit as per the instructions, the label, pretty firm and you mark that adjuster and there's a 25 mil slippage requirement for that adjuster. And also there's the requirement for, I'm not exactly sure of the wording, I don't want to go off memory from the standard, but basically it says that nothing shall fail to such a point that it cannot be continued to be used.

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Q. Correct me if I'm wrong, there's in terms of references to kilonewtons, there's certain - there's a certain minimum that has to be withstood, is that right, with the drop test?

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A. Not really in the standard for the dynamic test, that is. The standard does mention a webbing kilonewton load, the maximum I think is 22 kilonewtons I think off memory from standard. I really can't - I'd like to have the standard in front of me.

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Q. So basically in terms of the drop test you're saying that the various weights that it has to withstand are irrelevant and all it really has to do is just handle the drop test--

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A. That's right.

Q. --that is stay intact, is that right?

A. Assembly test, yes.

Q. Is it as long as even one stitch remains it passes the test, is that right?

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A. Yes, I believe so, that's - the way it's worded, it's a bit open to interpretation but that's what we do generally at Crashlab, the full stitching pattern either has to fail.

Q. But certainly that lanyard actually failed in the test?

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A. Yes, definitely.

Q. What were your observations of the lanyard that was worn by Mr Charles, your visual observations?

A. From the results I got on the testing that we completed it was very similar because it had a full stitch pattern torn on one side and on the other - on the other end it was about 50 per cent and I got exactly the same results with the testing I did except that happened at opposite ends, like the attachment point to the harness.

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Q. When you refer to the stitching, you're referring to the stitching, that's the red coloured stitching at the end?

A. The red and yellow, because it's got two basically - it's got the main stitch pattern, the box with the diagonals and it's also got small bar tacks spaced out in between the--

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Q. So at one end all the bar tacks ripped and all the stitching ripped?

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A. That's right.

CORONER: Q. Fifty per cent of it ripped on the other end?

A. On the other one, with one of those tearing.

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Q. Could you hold up Mr Charles's lanyard, the other lanyard, the one we take to be Mr Charles's?

A. Yes. You can see - you can see that that--

Q. You can see the stitching has completely come away?

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A. That's right.

Q. So that the metal buckle has slipped out?

A. That's right.

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Q. What about the other end?

A. The other end you can see--

Q. You can see it's too, the first of those--

A. It's actually roughly 50 per cent approximately and one of those yellow bar tacks.

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Q. And that exactly mirrors your - almost exactly mirrors your test?

A. Almost, they're very close, except that the points of failure were at opposite ends.

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Q. Yes, so the points of failure in your test were near the

vest, the--

A. At the anchorage point on the side.

Q. At the anchorage point.

A. And on the other lanyard they were obviously at - where the harness-- 5

Q. Near the harness?

A. --is attached to the - the lanyard is attached to the harness. 10

PAPALLO: Q. So ultimately your conclusions are that firstly the lanyard, the complete lanyard that you were given, failed and the lanyard from your - the lanyard--

A. Assembly test. 15

Q. --the fatal accident occurred with, you really are unable to determine whether it complied with the standard, is that right?

A. That's right. 20

Q. Why is that?

A. Basically when we test, we do a straight drop of 1.47, the loads that were involved in the fatal incident, what direction they came in or what actually happened I don't know so I couldn't really-- 25

CORONER: Q. I see, there might have been much more force than your test?

A. Or a different direction or something. 30

PAPALLO: Q. I note that you - subsequent to those testings you did further testings last year, that is around in December last year and that was on some replica lanyards, is that correct? 35

A. Yes. I think what we decided together was that because the harness had been used for an undetermined amount of time and what not, it was unfair to say that it should have passed that test so the replica testing would try and give an indication of how close to an original sample of the same design and type would have gone in an original test for compliance. 40

Q. So that's basically to get around any argument that it failed because of the actual materials degrading over time, is that what you're saying? 45

A. I believe so, yes.

Q. So you've got - you were given four replica lanyards, is that right? 50

A. That's right.

Q. And they were manufactured brand new?

A. Yes.

Q. You tested them on a Bourke yachting harness? 55

A. That's right.

Q. So you conducted exactly the same drop test, is that right?

A. Yes, exactly the same. We did do one dry - we usually - for the standard they all have to be wet but I think Chris Turner was the one who determined the test matrix from WorkCover, he thought we'd do one dry one just for comparison results, see how much difference.

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CORONER: Q. What was the result of these four lanyards that you--

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A. Well, the first one, the values were slightly higher than we obtained but the failure was pretty much - the harness - can I just read from the results?

Q. Yes.

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PAPALLO: Q. Yes, sure.

A. The harness attachment and stitch pattern had approximately 10 per cent of the main stitching pattern torn and approximately 50 per cent of one of the small reinforcing stitch patterns torn. And the other end was severe stitching failure where the pattern failed completely. So again it's pretty similar, similar results.

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Q. So basically the brand new replica lanyards all failed?

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A. Yes.

Q. Under both wet and dry conditions?

A. Yes, that's right.

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Q. So what conclusions can you draw from that?

A. Well, basically that it is unlikely that that harness would have passed originally.

Q. You're referring to the harness?

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A. The one that I was given.

Q. That's the harness from the Sword of Orion?

A. Yes.

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Q. That was worn by Mr Charles?

A. I'm referring more roughly to the complete assembly one that we tested.

Q. Okay, righto.

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A. And the other one too, I suppose.

Q. But you can't say that for certain because they did originally pass the Australian Standards test, is that correct?

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A. Yes. From other material that I've read they got a marginal pass which is covered in other reports I think what Chris did where basically it said 80 millimetres along the stitch pattern amount of failure. So you could say that any other variables, say be it the weather or any variables in the production of that particular line, may have been enough for it to fail.

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Q. I notice in paragraph 6 of your report you're making reference to - you're actually giving some allowance for the bar tacks, that is on the replica lanyard the bar tacks appear visually to be actually a bit wider?

A. Yes, I think they were 25 mil and on these ones they're 16 or 15 mil. 5

Q. And subsequent to writing that report, what have you discovered about the bar tacks on the replica?

A. Yeah, once we found out that the actual number of stitches - the number of stitches in each one of those bar tack stitch patterns is exactly the same, even though they appear-- 10

Q. So basically although the bar tack stitches on the replica unit appear wider, they're the same number of stitches are on the lanyards that came from the Sword of Orion? 15

A. That's right. 20

Q. So essentially there shouldn't really be a discount given? 20

A. Yeah, it should be negligible, yeah.

Q. Yes, should be negligible. 25

CORONER: So by a replica, you mean these are harnesses of the same manufacture, are they?

PAPALLO: They're manufactured to exactly the same-- 30

BENCH: Sorry, and manufactured express to comply with the same standard?

PAPALLO: Yes. And they're actually manufactured to the same specifications and the stitching is basically made as close as possible. 35

Q. I just show you just so it can illustrate the point. This is a replica lanyard that you used in one of the tests. 40

CORONER: You say you used these I take it because the type that you tested originally you can't obtain now, or something like that-- 45

PAPALLO: No, that's right.

CORONER: --is that the situation?

PAPALLO: Yes. 50

Q. With the replica lanyard that I've just given you, I notice that the actual metal hook at the end has broken?

A. Yes. 55

Q. You haven't actually referred to that in your report as such.

A. It actually happened twice, two out of the four tests

that we conducted we got this sort of failure.

Q. Is there anything that you want to say in relation to the hook failing?

A. Well yeah. It obviously raises concerns about this design of hook and I'm not sure how much - how many of these hooks are being used at the moment, so maybe--

CORONER: Q. Yes, it seems that if the lanyard doesn't fail, the hook might?

A. Yes.

PAPALLO: Q. Are there any - from the testings that you've done, are there any recommendations that you - any further recommendations that--

A. From reading Chris's report I also agree that there should be--

Q. You're referring to Chris Turner from WorkCover?

A. Chris Turner, that's right. We noted - because I'm heavily involved with industrial safety harnesses and I do a lot of visuals and what not and one of the things that's specified in that is a withdrawal date or a usage life, something like that and there's nothing in the current standard asking for that. So in light of what's happened, maybe there could be - could be introduced or a certain amount of time put in, just in case, you know, the weather or the amount of usage and everything is deteriorating a device and it may not pass when it's needed.

Q. So you're basically talking about the deteriorating components of the line, is that right?

A. Yes.

Q. What are they?

A. You've got the stitch pattern, webbing also through sunlight and even to some extent the metal, they'd need to be non-deteriorating.

Q. You say that basically because the test, all that requires is the lanyard, sorry, the line--

A. The complete assembly.

Q. --to withstand the drop test and that's it?

A. Yes, yes.

Q. Even if it's hanging by a thread, that means technically it still passes, is that correct?

A. That's right.

PAPALLO: Thank you, I have no further questions.

CORONER: Are there any questions from the bar table with this witness?

NUGAN: Just one question.

Q. I just wanted to confirm that the harness had the

Australian Standard label on it that you received from the Sword of Orion?

A. Yes.

Q. Under the Australian Standard only the harness should have that label, isn't that right, not the line? 5

A. ..(not transcribable).. should be on - because they're two separate components so it should be on both.

Q. They're not sold as a unit with the label only being required to be on the harness? 10

A. I'm not quite sure how they're sold but from my experience in the industrial safety harnesses, the line is separate to the harness so they both have labels on them.

Q. I put it to you that they're sold as a unit with the label just being required to be put on the harness? 15

A. Sorry?

Q. I just put it to you that they're sold as a unit-- 20

A. Right.

Q. --with the safety requirement only - label only being required on the harness?

A. Right. 25

NUGAN: No further questions.

CORONER: Q. You think not?

A. I'm not quite sure because the visual - I haven't done a visual for yachting harnesses in quite some time so I'd have to look at the standard. 30

PAPALLO: Q. Is there some mention of that in the Australian Standard, or would there be? 35

A. There should be, yes.

Q. Okay, I'll get you a copy of the Australian Standard and we'll double-check that. 40

CORONER: You can show a copy to Miss Nugan too.

PAPALLO: Sorry?

CORONER: Show a copy to Miss Nugan as well. 45

PAPALLO: Perhaps your Worship I could call the other gentleman from Crashlab and the issue can be sorted out through his evidence.

CORONER: Yes, we might have some action here. 50

PAPALLO: Q. I'll show you copies of Australian Standard 2227 and these are for 1978, 1983 and 1986. If you just want to show the solicitor as well please. 55

NUGAN: I'll need to be pointed to which section as well.

PAPALLO: Okay.

Q. Mr Brito, if you can just look through that and see if any mention is made of the requirement that the Australian Standard label be put on the line as well as the harness? 5

A. It says safety harnesses and lines shall be clearly and indelibly marked as follows, the name, trademark or other means of identification of the manufacturer and the date of manufacture shall be marked on both the safety harnesses and safety line. 10

Q. Which section does that come under?

A. Marking, 10, section 10.

PAPALLO: Perhaps that could be shown to the solicitor and-- 15

CORONER: Q. What do they mean by safety line?

A. The line is the lanyard, it's been brought(?) with both from what I-- 20

PAPALLO: Your Worship, I think the sailors themselves refer to some as a line or a lanyard but that's the actual single piece of webbing that's attached to the harness, so you've got the harness and throughout the report actually it's referred to as a line. Your Worship, I've just been handed a harness, so I mean just to illustrate the point I can just hand that up to the witness. 25

CORONER: I just want to be clear, Miss Nugan, what are you putting, that-- 30

NUGAN: I just want to confirm my instructions. My instructions your Worship are that the Australian Standard label is only on the harness, not on the line as well when they come in a package, they're sold as a package and it's only on the harness. 35

CORONER: I see. It's on the harness but not on the line yet they're sold as a package. 40

NUGAN: And they're sold together.

CORONER: Q. Isn't that the Australian Standard written on the line furthest away from you? Just to the - yes, that.

A. That's right. The one that I - the one that I did didn't have one on the line. 45

Q. No, right, but that one does?

A. Yes. 50

Q. Could it be that the part of - I see.

A. This is not one that I've tested because it's still intact.

Q. I see. And the lanyard that you tested, other than the one from the Sword - Mr Charles's broken one, the unbroken one, did it have the Australian Standard on the lanyard as well? 55

A. This is the one I tested.

Q. That's it. And it has it?

A. That's the one I tested.

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Q. And it has it?

A. Yes.

Q. But Mr Charles's, the broken one, doesn't have it?

A. Didn't have it.

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CORONER: So what do you want to put in relation to that, if anything? I don't know what I'm to make of that.

Q. So it does appear that there is an Australian Standard at least in some of them on both the harness and the line but in the case of Mr Charles's particular one you can't say it's on the line, that's the highest you can put it, isn't it?

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A. Yes.

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CORONER: Does that seem right?

PAPALLO: I think your Worship the point is that although in fact a manufacturer may not put the Australian Standard on the line when it sells harness and line together, the Australian Standard requires it. Although it may not happen in practice, it is actually required.

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CORONER: That's a matter for me at the end of the day but it does appear that on some of them it is on the line.

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PAPALLO: Yes.

CORONER: Alright. Is there anything else?

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NUGAN: No, thank you.

CORONER: No, I think we've got it straight. You can see that it's on one line--

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NUGAN: Yes, I can see that.

CORONER: --but it's fair to say it doesn't appear to have been on Mr Charles's line. Alright.

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PAPALLO: Nothing further.

<WITNESS RETIRED

PAPALLO: I call Derek Wainohu.

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<DEREK JAMES WAINOHU(10.33AM)
SWORN AND EXAMINED

PAPALLO: Q. Can you please give the inquest your full name?

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A. Derek James Wainohu.

Q. And your work address?

A. It's 56 Rothschild Avenue Rosebery, it's the RTA crash lab.

Q. What's your position in the RTA crash lab? 5

A. I'm the test laboratory manager.

Q. You've prepared two reports for this inquest, is that correct?

A. That is correct. 10

Q. Have you got those reports with you?

A. I have.

Q. I'm looking at SR99/006. Now, you were given the 15
yachting - the line that was worn by Mr Charles, that's the
line with one end completely torn off and the other end with
50 per cent remaining?

A. Yes, that's correct. 20

Q. What was your - what was the test that you conducted on
that line? 25

A. What we did was after the first dynamic test program
that Carlos did for us, it was obvious that the main point
of contention was the strength of the stitch pattern, so we
test machine to specifically look at and target the strength
of both the stitch pattern, the hook and the webbing. So
what was done in the dynamic test is testing the total
assembly and the performance of the assembly. We then found
an area of concern so we tried to target that a lot more
specifically and that was the static test program that we
did. 30

CORONER: Q. So the three things you were looking at again 35
were the stitching?

A. The stitching. So it was the actual stitch pattern, the
strength of the webbing and also the strength of the hook.
But we knew that the stitching was going to be the weak
link. 40

PAPALLO: Q. You've had a lot of experience with testing
these sort of lines, have you?

A. I've been involved with testing and designing seatbelts
and child restraints for 22 years and I've been involved
with testing industrial safety harnesses and yachting
harnesses for the last nine. 45

Q. What were your initial observations just from observing
that-- 50

A. The initial observation, when we first got the harness
assembly from the Sword of Orion, was the structure of the
stitch pattern itself. The stitch pattern looked just by
visual to be of the same consistency as what would be used
as decorative stitching, what you would use to hold a stitch
- sorry, a label in place. It didn't have the same - what I
would class as the same structure of load bearing stitch
pattern that we've seen in other applications. So that was 55

one of the reasons why we wanted to target that more specifically in the static testing.

Q. How did you go about testing - we'll go through each component, the webbing?

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A. What we did first, because we had a line from Sword of Orion, the line consisted of hooks at both ends, so the first thing we actually looked at doing was in the Avery tensile machine, if you've got the report in front of you, you'll see in appendix B photograph 2 we have a bollard grip in the lower portion of the photograph. That's so that you can wrap the webbing around the bollard. It will hold the webbing without putting a concentration point on the webbing and cut the webbing. At the top was just a clevis for us to anchor the hook to. So the very first test we did was a direct static pull like that.

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Q. What were you - what was the minimum requirement in order to pass the test and where did the requirement come from?

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A. The Australian Standard does not have a minimum requirement for the stitch pattern. For dynamic performance for cars it is purely a retention of the dummy. As long as the 136 kilo dummy does not hit the floor, the harness will pass. What we looked at doing is because the standard also then nominates AS1754 D22 for the webbing, which is the class and grade of the webbing to be used, it also then calls up for the hooks and any non-deteriorating component 12 kilonewtons but there is nothing within the standard and any edition of the standards for the stitch pattern. So what we decided to was we would take the weakest link of the chain, being 12 kilonewtons, and we would apply a 12 kilonewton static load and see what type of result that we would obtain.

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Q. When you're referring to the weakest link, are you talking about the standard for the non-deteriorating parts of the line is 12 kilonewtons is that right?

A. That is correct.

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Q. And the 22 kilonewtons?

A. Is the Australian Standard requirement for the webbing that's nominated in the yachting standard.

Q. What was the result of your testing with the stitching?

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A. We obtained a failure, we did a series of tests, one hook at either end and then we also did a tensile fail load of just the actual webbing. The hooks failed, they gave us a load of six kilonewtons.

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CORONER: Q. Does that mean they fail over that?

A. We actually got complete failure of the stitch pattern--

Q. At six?

A. Yes, at six kilonewtons. So it failed at half what we would have expected.

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Q. That's the hooks?

A. No, the--

Q. The stitching?

A. --stitch pattern.

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Q. Stitching failed.

A. We then turned it around and tested the other end.

Q. Would you go a bit slower for me.

A. Sorry.

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Q. That's alright. Failed at about six kilonewtons--

A. Yes, six kilonewtons.

Q. --the stitching. And you say it should have gone to 12?

A. Yes.

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Q. Why do you say that?

A. Because that is the minimum weak link in the specification being that you have this overall performance requirement in 2227 and when you start trying to grab an actual tensile failure load you have 22 kilonewtons on the webbing and you have 12 kilonewtons on hooks or any non-deteriorating, so we adopted the 12 being the lower denominator.

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Q. So you said it well and truly failed?

A. Yes.

Q. Right, go on.

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A. And then we repeated it, repeated the static test on the other end of the line, on the other hook and we obtained another failure at 6.4 kilonewtons. And again it was complete failure of the stitch pattern. We then put bollard grips, upper and lower bollard grips in the Avery and then tested the strength of the webbing, the webbing itself. We got 16.6 kilonewtons. So when you compare those results with what was obtained during the dynamic testing, the webbing was 6.6 (as said), it's up near the 22, it's well above the 12 that we adopted as being the minimum requirement, the stitch pattern--

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Q. Was way below?

A. Way below.

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PAPALLO: Q. But still the webbing actually failed?

A. No. No failure of the webbing. We would automatically - you would expect - when you start loading a stitch pattern, not only does the thread fibre start to go but also the fibres of the webbing itself, it starts to actually tear the webbing fibre. You're get a real fluffy - a very high technical term, you'll get a very fluffy section of the webbing where the fibres of the webbing are just torn out by the thread. But all of the static tests that we got are exactly like this sample that's here.

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CORONER: Q. Right, so the webbing didn't fail?

A. No. And the webbing was in very good - very good

condition. So it highlighted again that there was definitely something substandard about the stitch pattern on the product from--

Q. Didn't you say the webbing failed at 16.6 kilonewtons? 5
A. Sorry, that was when we were looking at the entire assembly, it was the stitching failed.

Q. The stitching went?
A. When we finished that and we took the actual webbing, we decided we'd actually take that to destruction to see what the tensile fail load of the webbing would be. 10

Q. It'd be very high, presumably?
A. And that was the 16.6 kilonewtons. 15

Q. What should it - so it's - what's it mean to--
A. In the new--

Q. --under the standard? 20
A. In the new condition in the standard, 22 kilonewtons.

Q. So isn't it true that it failed too?
A. The standard is only there for new product, so had that webbing been straight off the roll-- 25

Q. It would have failed?
A. Or it could have passed. The drop from 22 down to 16.6 could be the degradation of the webbing over time. 30

Q. I see, yes, righto, okay. So the failure at 16.6 because it's used webbing doesn't mean a lot to you?
A. No. Sufficient when you see that the actual stitch pattern was failing at 6 kilonewtons which was far lower and of greater concern. 35

PAPALLO: Q. For that reason that you were dealing with a used line, you actually conducted tests on two replica lines, that is--
A. That is correct. That was the reason why the replica program is looked at. The other thing I just wanted to - I noticed the comment that was made before. The replica line was not manufactured to demonstrate compliance with 2227, the replica line was purely manufactured to directly replicate the lanyards from - or the lines from the Sword of Orion. So the whole idea of these replica lines was to determine what the tensile failure loads of these lines would be, to try and give you some form of indication as to what the failure of the Sword of Orion's lines would have been, had they been in a new condition. So we were trying to actually eliminate any loss in load with regards to degradation. 40 45 50

CORONER: Q. I see, so they're not bought products, they're products that have been specially made for the testing?
A. These were specifically made for this test program. 55

Q. By the same company?

A. No, no, by another company.

Q. But the material is identical isn't it?

A. The webbing would be similar and this replica reconstruction was instigated by Chris Turner from WorkCover. The harness manufacturer I believe was Sala(?) in Marrickville.

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Q. But the stitching's the same and the hooks are the same, is that basically--

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A. All I can say is they are similar. I couldn't say that they are exactly the same but they are indeed similar. I believe actually - no, there's no identification.

Q. They look the same. They look very similar, do they?

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A. Yes.

Q. So what do you say about the replicas testing?

PAPALLO: Q. What test did you actually carry out on the replicas?

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A. On the replica, we did a series of tests, I believe we did those both dry - okay, we did one in a dry condition, both ends and we did one in a wet condition at both ends. The results of that testing were--

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Q. These tests were conducted in accordance with an Australian Standard, is that right?

A. No, no the static testing - because there is no static requirement in AS2227 for stitch patterns, we took the 12 kilonewton load, being the lowest denominator and we applied that using the Avery - we used very similar procedures to what's used in AS1753, which is the tensile testing of webbing. So we used the same equipment and the same procedure for testing webbing to actually test the safety line.

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Q. If you can just take me through the tests that you conducted and the results.

A. Yeah, we did - like I said, the very first sample that we did of the replica line we did in the dry condition. We tested one end of the lanyard exactly the same way as we did the samples from Sword of Orion, we tested then the other end. We got complete failure of the stitch pattern again, similar to the failures that we observed from the samples from the Sword of Orion.

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CORONER: Q. What, about six kilonewtons again?

A. No, these were actually tensile tests. The first one was 9.85 kilonewtons.

PAPALLO: Q. Was there any fluffy effect to the webbing as you would have expected?

15

A. No. Again exactly the same or similar failures. You can see that - very badly in the photographs - on the last page of - page 9 in appendix B. In those photographs, in both the samples, both the dry and the wet samples, we had complete failure of the stitch pattern both wet and dry. All tensile fail loads were below the 12 kilonewtons. They range from 9.85 down to 8.9 kilonewtons with no obvious damage to the webbing fibre but again complete failure of the stitch pattern.

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25

Q. What happened to the hooks in these tests?

A. It was only in the dynamic drops that we also - we found another problem we weren't looking for because we were specifically targeting the stitch pattern. We then observed this happening to the hooks, which is another problem, another issue and definitely an issue of concern that there are possibility of substandard hooks out there in the marketplace currently.

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Q. You've taken us through the first two tests that you conducted?

A. Right.

Q. You've done two further tests. Can you please explain what those tests were, the additional two wet tests?

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A. Right. To then try and replicate the performance requirement in hook 27, the harness and line assembly have to be wet when the dynamic drop is done. So just to have a look at if there were any differences between dry and wet breaking strain, we also did a tensile test of a wet safety line.

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Q. And what were the results?

A. And they gave very similar results. Again they were nine kilonewtons at one end and 8.9 at the other.

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Q. What conclusions can you draw from the fact that these replicas failed?

A. The conclusion in the report sort of covers that. It's a case of - the replica lines definitely did not demonstrate that they would meet the strength requirements of AS2227 and it also gave an indication that it would be highly unlikely

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that the original Sword of Orion in a new condition would have demonstrated compliance. If they had - we're privy to the test results of the very first certification of these harnesses. They could have been a marginal part. Because the past fail criteria is so open-ended in the standard and you do get great variations in production, you could have obtained a product that had demonstrated compliance and that goes into production, failed to demonstrate compliance. The thing or the other concern that we raised with regard to this product was whether or not - it was the other thing that Crashlab could not determine because we didn't visit the manufacturer and select the sample, so we cannot categorically state that those harnesses or lines are indeed those manufactured by Tuff Marine. Tuff Marine has got identification on the product. All we can say is that the product that we tested had labels on them stating Tuff Marine. That's not to say that somebody else manufactured them and then--

CORONER: Q. Put Tuff on them? 20

A. Stitched those labels on them. So that's something that Crashlab couldn't or something that I could not determine.

Q. Do you know whether WorkCover went down that road?

A. I'm unaware of it. I'm not too sure. 25

PAPALLO: I have no further questions, your Worship.

<WITNESS RETIRED 30

PAPALLO: Your Worship, I have one more witness in relation to the harnesses.

<ROY LESTER BELSHAW(10.56AM)
SWORN AND EXAMINED 35

PAPALLO: Q. Mr Belshaw, can you please give this inquest your full name?

A. Roy Lester Belshaw. 40

Q. And your work address?

A. 190 Dunmore Street, Wentworthville.

Q. What's your occupation, Mr Belshaw?

A. I'm a quality assurance controller with Pacific Fabrics, which is part of Bonds Industries. 45

Q. Constable David Upston, who is involved in gathering information from the Coroner, had given you a sample of a line from the Sword of Orion. Is that correct?

A. That's correct, yeah. 50

Q. What did you actually do with that line in terms of testing?

A. I was required to determine the fibre content of the - of the sewing thread, there was two different types of sewing thread, and of the tape. 55

Q. How did you go about conducting those tests? I mean what was the procedure?

A. Microscopical examination and chemical analysis, chemical dissolving of the fibres, which is the standard procedure.

5

Q. What was your conclusion in relation to the webbing, the material used for the webbing?

A. I looked at both the warp and weft direction in the tape and in both cases it was polyester.

10

Q. And with the stitching?

A. The stitching was aramid.

CORONER: Q. How do you spell that?

15

A. Aramid. That's the generic term and in actual fact it's probably better known in sailing circles as kevlar. Kevlar is one of the two - kevlar and amix are the two fibres in polyester.

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PAPALLO: Q. And when you're talking about the stitching, you're talking about the red stitching as well as--

A. The yellow stitching.

Q. --the yellow stitching, which are the bar tags?

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A. Yes, both the red and yellow stitching I tested and both cases it was aramid.

Q. And upon determining what materials comprised the line, you conducted further tests to find out the degradation, if any, of those materials. Is that correct?

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A. I simply looked at the fibres under a microscope to see if there was any apparent degradation, but there didn't appear to be any.

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Q. On the webbing?

A. On all of them.

Q. So no degradation on the webbing nor--

A. It was a purely mechanical degradation, just to see if the fibre appeared to be abraded or something of that nature.

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Q. So the stitching was intact? There was no degradation with the stitching?

45

A. No, yeah.

Q. Either stitching, the red or the yellow?

A. Yeah.

50

Q. And nor the webbing?

A. Correct.

Q. You took some photos of the fibres, is that correct?

A. Yes.

55

Q. If I can just show you - they're the photos, is that correct?

A. Yes.

Q. What do the photos show that--

A. The fibres are smooth, have smooth surfaces, cylindrical. If they were - what I was looking for, I was looking for mechanical abrasion would be an abraded appearance, the surface would be rough, and it's not evident in the photos. 5

Q. What sort of a sample did you take? Did you take only one sample from the line or did you take several samples? 10

A. I probably took two or three from each source, so the two yarns in the tape and the two sewing threads.

PAPALLO: I've no further questions, your Worship. 15

CORONER: Q. So basically you can say that if you learn that these products fail AS standard tests or testing done by the RCA, it certainly wasn't because of some inherent abrading or problem with the ..(not transcribable).. themselves? 20

A. That's true. I was not able to test if there was any degradation due to light, but due to weathering I was unable to--

Q. I couldn't see any degradation due-- 25

A. My test would not indicate one way or the other in that respect.

Q. Wouldn't it ? 30

A. It was purely mechanical abrasion that I was--

Q. What do you mean by mechanical abrasion?

A. Just a rub-- 35

Q. A rubbing abrasion.

A. As a result of rubbing.

Q. You mentioned other forms of possible abrasion. What, light's one? 40

A. A form of degradation?

Q. Yes, degradation, sorry.

A. The fibres that I identified, the fibre types that I identified, are not normally subject to - suffer from that form of degradation. Nylon is a fibre that is very much likely to be affected but it was not-- 45

Q. But not these polyester aramid.

A. They're usually very resistant. 50

Q. What other forms of degradation?

A. Well chemical but I would suspect that would be unlikely in the situation generally. 55

Q. What about simple air, sea air, salt?

A. Well that's what I was talking about initially. Those fibres are chemically very resistant and that would include

such things as salt.

Q. You'd class that under chemical would you?

A. Yes. The other one I was referring to, ultraviolet, and they are resistant very much to that.

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CORONER: Thank you. It's a small bit of evidence but it's very important, Mr Belshaw.

<WITNESS RETIRED

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SHORT ADJOURNMENT

CORONER: Sorry if I've pulled you away from another place, Mr Shand. I really came to a decision this morning which I hadn't reached last night, it was as simple as that.

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SHAND: I had thought the decision was final last night. That's why I--

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CORONER: I thought it was too.

SHAND: --became desperately committed this morning, to find--

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CORONER: I had another look at the law this morning and changed my mind I'm afraid.

SHAND: Well your Worship, I came as quickly as I could, and you will understand how embarrassing it was to be dragged from where I was.

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CORONER: I appreciate that.

SHAND: And I'm not as well prepared as I should be, having regard to what I thought had happened last night.

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CORONER: I appreciate that too. Mr Hill.

<ROBERT MAXWELL KOTHE(11.45AM)
SWORN AND EXAMINED

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HILL: Q. Sir, would you give this inquest your full name?

A. Robert Maxwell Kothe.

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Q. And your address, sir?

A. 44 Sloane Street, Summer Hill.

Q. And your occupation?

A. Company director. We manufacture safety equipment.

50

Q. You've made a number of - or you've participated in a number of interviews.

A. I have.

55

Q. Do you have copies of those transcripts?

A. Yes, I do.

Q. If I'm right, there should be one of 2 January 1999. I think that was the first interview?

A. Yes, that's correct.

Q. Then there was one of 3 March 1999?

A. Yes.

Q. Then there was a further one of 4 June 1999?

A. Fourth of the sixth, yes.

Q. And one of 24 July 1999?

A. Yes.

Q. The next one was 3 November 1999, is that correct?

A. Yes.

Q. And then there was a statement by yourself of some four pages?

A. Yes. I'm not sure I've got a copy of that. Yes, there was.

Q. Do you have a copy of that?

A. No - yes I do, yes I do.

Q. The first matter I want to clear up is this. The harnesses, they were with the vessel and Mr Charles used one of those harnesses, is that correct?

A. That's correct.

Q. Where did those harnesses come from?

A. They were with the boat when we bought the boat in the May of that - of 1998.

Q. How many were there, do you recall?

A. Twelve from my recollection.

Q. Do you remember the brand name of them?

A. I didn't at that time. I now know that they were Tuff.

Q. That's Tuff?

A. Correct.

Q. Australia I think Pty Limited?

A. Yes, I think so.

Q. Who did you purchase the vessel from?

A. David Gotz from Melbourne.

Q. The 12 harnesses were aboard the vessel?

A. Yes.

Q. Were any repairs carried out to those harnesses?

A. No.

Q. Where were they usually stored?

A. They were stored in a dry part of the boat, it would have been in one of the aft compartments. The boat had a dehumidifier so the boat was dry and the harnesses were dry,

kept dry.

Q. How were they looked after?

A. Darren Senogles was responsible for them. He would pack them away, you know, wash them, inspect them whatever. When we got the boat, the safety certificate from the previous Hobart was with the boat as part of the equipment we got and they had passed inspection then. We had a safety done and they passed those inspections.

Q. I want to ask you about that safety. Is your understanding that the harnesses when they're inspected - and by the CYC inspectors, is that right?

A. Yes.

Q. Is your understanding that the harnesses must comply with the Australian Standard?

A. Yes.

Q. You've heard evidence indeed from the CYC this morning that the lanyard doesn't have the standard printed on it. Were you aware of that?

A. I didn't hear the evidence this morning, but no, I was not aware of that.

Q. The harness itself does but the separate part, the lanyard, doesn't.

A. I was not aware of that.

Q. Well was that ever pointed out to you by the CYC inspectors, that it appeared from that that the harnesses themselves complied but the lanyard did not?

CORONER: Well I think the evidence only said Mr Charles's particular lanyard, not the other - there was one other one off the board which looked identical which certainly appeared to have the AS taped onto it, sewn onto it, so it's really only Mr Charles's particular one that we can say that about.

HILL: Q. Was that ever pointed out to you?

SHAND: I have had difficulty in hearing your Worship and I don't like to miss what's being said.

CORONER: I'll speak up. I'll try not to mumble.

SHAND: Thank you very much.

CORONER: It's one of my faults. Just to get that straight, the evidence was that Mr Charles's particular lanyard didn't appear to have the AS on it, but another one that we seized did. That's as far as we can take it.

HILL: Q. Was that ever pointed out to you?

A. No. To my knowledge they were inspected on three occasions for three different - you know, they had to be inspected for the Southport race, the Hobart race, and

they'd previously been inspected for the Hobart race and I don't have records prior to that, but no one had pointed that out.

- Q. You had your crew assembled for the Sydney to Hobart race 1998? 5
A. Yes.
- Q. Who were the helmsman? 10
A. The terminology we tend to use is drivers, but the drivers or helmsmen, Steve Kulmar was the senior helmsman, Glyn Charles was brought on as a helmsman, Adam Brown was the other major helmsman and Carl Watson did some helming, we'd planned would do some helming. There were three or four other people who could have but didn't in the race. 15
- Q. Well what I want to know is, this was a race.
A. Yes.
- Q. Extremely competitive? 20
A. Yes.
- Q. The best helmsmen on your vessel were Kulmar, Charles and Brown?
A. Yes. 25
- Q. They were your choice as helmsmen?
A. Correct.
- Q. Then you had people who could take the helm? 30
A. Yes.
- Q. Watson?
A. Watson, Parkes, Senogles. 35
- Q. But primarily the watches would be presumably shared between the helmsmen Kulmar, Charles and--
A. Brown.
- Q. Brown. 40
A. Correct.
- Q. The helm, I'm going to suggest to you, whoever is on the helm, that's the most important job on the vessel. What do you say to that? 45
A. Certainly in a - yes. In a seaway especially yes.
- Q. They had quite a deal of experience as far as you were concerned?
A. Mr Charles' experience was only - I hadn't - it was only by say so, but the others certainly. 50
- Q. But you accepted that was so--
A. Yes, that's--
- Q. --because of his resume? 55
A. Yes.

Q. I'm going to take you to the briefing on the 24/12/98 and that's at the CYC. Did you attend that?

A. Yes, I did.

Q. Did you attend the weather briefing as well there? 5

A. They were contiguous.

Q. All part of it?

A. Yes. 10

Q. So you were there from beginning to end?

A. Yes, correct.

Q. What was your impression of what the weather would be in the race on the following Saturday? 15

A. I had been following the models which the Bureau had been following. I was aware that - as Ken Batt said at the time - there was a number of possibilities of what might happen, I was also aware of that. They at that time had - it was a fairly gentle forecast really, up to into the 40s, 20
but I think there was conversation about average wind speed, projected average wind speed of 18 knots across the race.

Q. When you said up to the--

A. Forties. 25

Q. --forties, what are you actually saying there?

A. That we should expect winds, you know, 30s into 40s.

Q. So that was wind speed. 30

A. Yes.

Q. Did you have any weather update on the Christmas Day? That would have been the Friday.

A. On Christmas Day - I had been following every day for the entire month, you know, on the Net, all the various - looking at the outputs from the various models. I certainly continued to do that. I didn't specially ..(not transcribable).. of anything from the CYC on the 25th. I did on the morning of the 26th. 40

Q. On the morning of the 26th, what did you receive?

A. I got the - I got one of my guys to get the package from the Met tent, the Bureau of Meteorology tent. We had also the very detailed document from Dr Roger Badham. 45

Q. Did Badham come on board?

A. He came, said hello, but we'd already arranged that an associate of his who'd previously given briefings for oceanography in the Hobart, that he would background and give us the full briefing and much more extended than Roger had the time to do for any individual boat. 50

Q. So someone else came along afterwards did they?

A. Yes, yeah. 55

Q. Who was that?

A. That was Mark Gibbs, who's an oceanographer currently,

working in New Zealand at the time, but has - from the University of New South Wales. He'd also worked with the CSIRO.

Q. About what time did you meet with Mr Gibbs? 5

A. From recollection, something like 9.30 through 10.30 approximately.

Q. Was it drawn to your attention that the Weather Bureau had issued a gale warning at that stage? 10

A. Yes, we were aware of that and we looked at the various models.

Q. What was your conclusion from that? 15

A. That was a reasonable expectation and not outside, you know, the bounds of what we expected.

Q. You then proceeded to go to the start line? 20

A. Yes.

Q. Crossed the start line and there was a collision? 25

A. The collision was before the start line.

Q. Before the start line? 30

A. Yes.

Q. Before you actually started? 35

A. Yes.

Q. What was the damage? 40

A. The damage appeared initially to be quite substantial. We discovered it to be less so, but the initial damage was on the port aft stanchion which was the leg - support leg of the stanchion was punched through the deck or down - no, not through the deck, into the deck, such that there was delamination underneath, and the next stanchion forward was bent forward. The life - the bow, bowsprit was lifted up from the deck because of the tension on the lines. That - and there was some entanglement of the rigs which lasted a few seconds. 45

Q. Anything on the mast? 50

A. We at the time - and I - you know, Darren believed there was a mark on the mast. I believed there was a mark on the mast. He pointed it out to me. Obviously we kept racing so as we got-- 55

Q. Why obviously we kept racing? 60

A. Sorry, it was a very minor mark and we were going down the Harbour. As we got clear water in the Harbour away from the start, people looked at it. 65

Q. Look, you've just said that at first you thought the damage was severe. 70

A. Yes. 75

Q. Is that right? 80

A. Yes. 85

Q. And then you say to me obviously we kept racing. Now why obviously we kept racing?

A. Okay. The damage was - did not appear of any nature that was going to stop us going to the start line or stop us racing at that point in time. We had to get away from the start area and move down the Harbour. As we did that we put - Darren went forward to the mast, had a look at the mark, came back, reported to me. Other people had a look at it, numbers of people had a look at it, some of them just rubbernecking, and others, you know, people like Steve, myself, you know, Darren, we had a long look at it, but we believed at that time that it wasn't going to cause any immediate problem and we determined that we would keep a very close eye on it when we went past the Harbour mark and look further once we get on the breeze.

Q. You sent an e-mail about that though didn't you?

A. Yes, I did.

Q. When did you send that?

A. I would have thought somewhere around 2.30.

Q. About 2.30?

A. Mm.

Q. That's an hour and a half after you've assessed this damage?

A. Yes.

Q. That e-mail said you had sustained severe damage.

A. Yes.

Q. Including delamination at the starboard stern quarter and a compression crease of the mast just two metres above the deck.

A. Yes.

Q. That's an hour and a half when you say that it wasn't severe.

A. If I was to send that e-mail again I wouldn't have used the word severe. I sent that e-mail specifically - my intention for sending it was to officially notify the club that I was protesting, and one of the elements of a protest - this is the protesting incident before the start - is to establish that there has been, you know, substantial damage. Now we were about to repair that or in fact process of repairing it and I just wanted effectively to log it. If I had - was to send that again I would not have used the word severe. It turned out not to be severe.

Q. Well you had an hour and a half to think about that didn't you, whether or not the damage was severe or not?

A. We - we were still looking closely at it. There was still a possibility in the next two or three hours as the wind picked up that it might cause problems.

Q. Cause problems with the mast?

A. Yes.

Q. Because there was a compression crease in the mast?

A. No, we thought there was a compression crease in the mast.

Q. Well that's what you've said. An hour and a half after the damage has occurred, you e-mail--

A. Yes.

Q. --the CYC and tell them that you have had a compression crease to the mast. Now that's extremely dangerous for a yacht isn't it?

A. What was likely to happen - the worst that could happen is in the next couple of hours. We believed the mast would show more signs of compression, in which case we'd pull the sails down and stop racing.

Q. The reality is you weren't sure whether or not that damage to the mast was going to cause the mast to collapse.

A. That's true.

Q. And you were sailing into an area that had a gale warning.

A. No, weren't at that stage. We were - we were sailing along an area which was not predicted to get winds above 25 knots for the next - at least next six or eight hours, and with this stage we were north of Wollongong, we were in winds of 20 knots. The forecast gale was for Bass Strait, which was a long - a lot of hours ahead and there was plenty of time for us to - and we discussed it at length, there was plenty of time for us to discontinue racing. We could have pulled into Wollongong, we could have pulled into a lot of different places.

Q. But look, the gale warning wasn't for Bass Strait. It was from Broken Bay downwards wasn't it?

A. Not initially. The thing about weather forecasts is the timing. The initial forecast was for a nor'easterly, and that's what we were in.

Q. What time was the gale warning issued?

A. The gale warning was issued in the morning. That didn't mean the gale started there.

Q. But you had taken a vessel that had a crease in the mast into an area where there had been a gale warning. Isn't that correct?

A. There was going to be - they were forecasting that there would be a gale at a later time, not forecasting there was a gale now. We didn't start in a gale.

Q. I realise you didn't start in a gale, but you were going into an area that had been forecast for a gale warning.

A. My recollection is that the prediction from the Bureau was for a change around 2am. I'll stand corrected on that, but it was certainly a substantial number of hours further ahead, and we therefore had a substantial number of hours to ascertain the condition of the mast, which we did.

Q. Look, it was issued at 26 minutes past 9 on Saturday 26 December 1998.

A. Mm hmm.

Q. For a priority gale warning coastal waters south of Broken Bay. Now you know where Broken Bay is?

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A. Yes, yes.

Q. That's north of Sydney.

A. Yes.

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Q. So that's where the gale warning was going to be, for waters south of Broken Bay. You understood that?

A. Yes. However, there is more material than that forecast.

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Q. What was the more material you were relying on?

A. Well there is a timing element in that. I don't have a copy of it in front of me but there is a timing element there I believe.

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SPEAKER: Perhaps the witness could be shown--

CORONER: Yes.

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HILL: Q. We'll just get you a copy now.

A. We're looking at the - 9.26.

CORONER: Yes.

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A. South-west change 30 to 40 knots, expected south coast tonight.

HILL: Q. So you were going to sail into it.

A. No, we were - we sent this approximately my recollection about 3 o'clock in the afternoon. There were other forecasts too. I notice here there were other forecasts that gave timing and--

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Q. Let's just stick with this one.

A. Okay.

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Q. This one is at 9.26 in the morning.

A. Yes.

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Q. This is the one that you know about before you cross the start line.

A. Yes, yes that's right.

Q. Was it your proposal to sail into the gale warning area to test the mast?

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A. No.

Q. Well what was the purpose of going on for a few more hours?

A. Well as it - as we discovered while watching the mast very closely, which we were doing all afternoon, we were concerned that it might cause a problem but by 4 o'clock in

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the afternoon it became very clear that the mast was perfectly all right and the - as it turned out, the front didn't come through till about 2 o'clock in the morning. We believed that - we believed that it would come through because we had - we had certainly been following the weather forecasts and we had looked in much more detail than just this forecast at the - at the time lines that the Bureau and the models were predicting. 5

Q. So are you saying by 4 o'clock in the afternoon you had no further worries about the mast? 10

A. Yes.

Q. How did you arrive at that?

A. We had been on two different gybes. When you are going downwind that is the most testing condition for the mast. The winds were up to 30 and 40 - not up to 30 or 40 knots, up to - certainly up to 25 to 30 knots, and we had people closely looking at the mast. At that stage we believed there was no problem. It was discussed between the senior members of the crew and we felt there was no problem. We did however continue to watch it and we did right into the evening. About every half hour I would send someone forward to make sure there was no further change, and there wasn't. 15 20 25

Q. Who did you send forward?

A. Darren.

Q. Well according to Mr Senogles, his evidence, he just looked at it the once. 30

A. Well I'm - he looked at it many more times than once because I asked him to. He assured me that it was okay.

Q. And you did this on a regular basis did you?

A. When you're sailing downwind - I mean I was sitting controlling - controlling lines probably seven or eight feet away, there was no problem. 35

Q. But after 4 o'clock you did this on a regular basis?

A. Yes. 40

Q. And I think you've said every half hour?

A. I'm not saying we did it every half hour for a continuous period, but we certainly looked at numbers of times and I was satisfied there was no further problem, as was Mr Kulmar, as was Darren Senogles. 45

Q. And you were satisfied when? Every half hour are we talking about or what?

A. I was - by 4 o'clock I was satisfied. However, prudence indicated I should, you know, continue to check it. 50

Q. So the situation is you've had winds on that mast up to 30 knots, is that right?

A. Yes. 55

Q. You later had a storm warning?

A. We had a storm warning - I had the storm warning by 3.30

or thereabouts. It wasn't relayed on the--

Q. By what time?

A. Approximately 3.30. It was a 2.50pm warning from recollection and it was broadcast to the fleet at the 8 o'clock sked, but I had it from my recollection approximately 3.30. 5

Q. What were the winds forecast for that storm warning?

A. From recollection 45 to 55. It may have been 40 to 50. It's obviously documented. 10

Q. Well it's 45 to 55, and you get that at about 3.30 on Saturday afternoon?

A. Yes. 15

Q. The last inspection of the mast is at four?

A. Mm hmm.

Q. That you're satisfied about? 20

A. Yes.

Q. You've had winds on that mast of about up to 30 knots?

A. Yes. 25

Q. So you're going to an area now that's issued with a storm warning and you're going to get winds average between 35 and 45 - sorry, 45 and 55. Is that right?

A. Possibly. 30

Q. Well what do you mean by possibly?

A. Well I was aware that the Bureau was working along with a number of models. We had been working along with the similar models. I felt that - we had felt that the morning forecast was perhaps a little underdone. We felt perhaps this one is a little overdone. However, we had - the forecast area where we were expecting to see this was well down and we believed, given the fact that the Weather Bureau had brought out forecasts at 4.55am, 9.30, 12.30, 3 o'clock, that we would get another forecast well before we reached the area in question. We felt that that was much more likely to be accurate. 35 40

Q. Well by the next morning, at about 9.30 you were getting fairly severe winds weren't you? 45

A. Yes.

Q. What were the winds you were getting then?

A. In the morning we were - by 10 o'clock we were getting winds in the 40s. 50

Q. In the 40s?

A. Mm.

Q. Well what did you do about the mast at that-- 55

A. We had no concern about the mast at that time.

Q. No concern?

A. No concern whatsoever.

Q. Well when you say no concern, do you mean that you inspected it and any fears were allayed, or you just weren't concerned with looking at it? What do you mean? 5

A. The conclusion that we had come to, that it was either a rub mark or it was a mark that we'd had there for some time, because it certainly wasn't showing - I mean in a racing boat you get deflection in the mast all the time. That's the nature of a racing mast, that's why we set it up, we set it up to cause deflection in the mast, and the stresses we put on the mast with the runners are very substantial and there was no - nothing happening at that point. 10

Q. Look sir, what you called it the day before was a compression crease. 15

A. Yes.

Q. You're fully aware of what a compression crease means? 20

A. Yes. The conclusion we had come to - I mean was that that was an overstatement, a distinct overstatement. There was a body of opinion on the boat that it was nothing more and I - nothing more than a rub mark.

Q. Well did you e-mail the CYC to say that the damage wasn't severe after all and it wasn't a compression crease, it was a rub mark? 25

A. No, we didn't.

Q. Well have you told anyone since that time that it wasn't severe damage and it wasn't a compression crease? 30

A. Yeah, that's in my statements. It's in my statements in January.

Q. Have you told anyone such as your insurance that it wasn't severe damage and it wasn't a compression crease? 35

A. I don't know whether I specifically told the insurance company.

Q. Have you told the CYC that it wasn't severe damage and it wasn't a compression crease? 40

A. Individuals. I mean not the CYC as an entity.

Q. There was a protest committee?

A. Yes.

Q. Wasn't there?

A. Yes.

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Q. And the reason you sent the e-mail to the CYC was so that you would have before the protest committee a document that said you had severe damage and a compression crease?

A. Correct.

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Q. Was there a meeting of this protest committee?

A. There was a protest committee meeting. We were initially told it would not occur because one of the main witnesses would have been Glyn Charles. It was held some time later.

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Q. When?

A. May or June.

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Q. Did you tell them that there wasn't severe damage nor a compression crease at that protest meeting?

A. I didn't give evidence at the protest meeting.

Q. It was on your behalf, wasn't it?
(No verbal reply)

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Q. You had people there representing you?

A. Yes, that's correct, yes.

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Q. Did those people tell the committee that there was not severe damage nor a compression crease to the mast?

A. I know they talked about what damage there was to the stanchions, I don't believe they talked about the mast. I don't believe the matter of that e-mail was raised by anybody at that protest meeting.

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Q. But it would have been on the protest committee file, you know that?

A. I don't know that.

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Q. I see, alright. Now, you were getting winds of how much at 9.30 on Sunday morning?

A. Into the 30s.

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Q. Into the 30s?

A. Uh hmm.

Q. I thought you said it was the 40s?

A. Well, by 10 o'clock I believe it was 40s.

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Q. 10 o'clock it was in the 40s, was it?

A. Mm.

Q. Was anything expressed by any of the crew at that stage about whether or not you should continue?

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A. Not at that stage.

Q. When was it?

A. My first recollection of anyone talking about it was Mr Kulmar at approximately 11.30.

Q. And what did he say to you? 5

A. I don't remember his exact words but it was along the lines that this is much worse than we expected, which I agreed with because it was, and we should think about going back. 10

Q. What was the wind at that stage?

A. By that time it was into the 40s and 50s.

Q. Mr Kulmar was your most experienced crew member?

A. Yes. 15

Q. He was your chief helmsman?

A. Yes.

Q. He was also equivalent to your sailing master? 20

A. Yes but he wasn't looking after the weather full time. He was one of - you know, he was off watch and we all - I was the person who was across that and I was the one who at that time said Steve, I'm concerned about it because the wind shouldn't be this strength. 25

Q. Are you saying that you raised it with him?

A. No, I'm saying that when he raised it, I agreed we should be considering it. I didn't need any persuasion that we should consider it. 30

Q. The reality is he had more experience than you in sailing yachts?

A. Much less experience than me in meteorology. 35

Q. Than what?

A. Meteorology.

Q. He had more experience than you in sailing yachts?

A. Correct, correct. 40

Q. He was your best helmsman?

A. Yes.

Q. There was another helmsman, Mr Charles? 45

A. Yes.

Q. And a further helmsman, Mr Brown?

A. Yes. 50

Q. And they all had greater experience than you in sailing yachts?

A. Correct.

Q. Mr Kulmar raised with you the question of turning around and going back? 55

A. Yes.

Q. The winds were what speed at that stage?

A. 40s and 50s.

Q. Was there any concern by you about the compression crease in the mast?

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A. None, none whatsoever.

Q. Is that because you had by that time come to a conclusion that it wasn't a compression crease?

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A. Yes.

Q. The VANG broke at some stage in the morning?

A. Yes.

Q. Why did that break?

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A. We were taking the main down, reducing - de-powering the boat, taking the mainsail down and it occurred when that happened. It isn't a structural member of the boat insofar as has been given in evidence. You can rig up a block and tackle system. It didn't cause us any major problems but it happened because of the, you know, the seaway. It was - the actual breaking was a dangerous thing because there were pieces of aluminium tubing around and the concern was to deactivate that but it had no effect on the function of the boat.

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Q. No but was that an indication to you that the conditions were becoming severe?

A. The conditions were becoming severe.

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Q. When Mr Kulmar raised with you at 11.30 the proposition of retiring from the race, what did you say?

A. I said I'm puzzled about the weather, we need to wait till the 12 o'clock official radio - the official Bureau of Meteorology forecast.

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Q. We need to wait?

A. Yes, we need to wait till the forecast.

Q. In effect you were overruling him?

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A. Yes but I don't feel at that stage he in any way - he didn't disagree with the proposition, there was no oh I don't think we should do that Rob, I think we should turn around regardless. He certainly didn't raise any such proposition to me.

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Q. After or just before the 12 o'clock weather forecast, what were the winds like?

A. Again in the - I think we had overcast, we had rain and we had winds in the 40s and 50s.

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Q. Wasn't there a very severe gust?

A. I've heard that evidence. I was the person who had the best wind data because while other people were glancing to see what it was at a given time, typically during a gust, people, you know, if they're able, look up to see on the masthead what the conditions were. I had it on my computer on the nav station and I could track it and see what had

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been - what it spiked to or what it was for over long - for long periods. I don't recall the particular gust that Mr Kulmar has given evidence about, some time around 12. I don't recall it. The conditions were getting difficult and we were very concerned and I was concerned mostly about the position of the low and that's why I was saying let's wait and get the weather.

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Q. Who would have had the best idea of the seaway at that stage?

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A. It was pretty clear what the seaway was, I don't think any one individual would have a better idea than any other.

Q. I'm going to suggest to you that the person on the wheel, the helmsman, would have had the best idea of what the seaway was doing?

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A. Him or the person, you know, sitting next to him calling the waves.

Q. Who was on the helm at that stage, that's the 12 o'clock weather forecast?

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A. My recollection it was still Adam Brown.

Q. Did he go into shock at one stage and have to be taken down?

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A. Yes, I was the person who said when he's come off the helm, guys, give him something to drink, he's shivering, I think he's going into shock.

Q. What time was that?

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A. It must have been around I would have thought about 1.10, something like that.

Q. About 1.10?

A. Mm. When I say going into shock, because I'm the person who raised that, he was - he was in tremor, he was shaking, you know, from physical exertion and he certainly - it was very clear that the drivers were expending a lot of energy and he had been on the helm for a long time and he was exhausted.

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Q. So he's your third helmsman, your third best helmsman and about 1.10 he goes off the wheel and you think as the skipper that he's gone into shock?

A. Well he was - yes.

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Q. He's certainly trembling--

A. He was--

Q. --because of the--

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A. Yes, yes.

Q. --the physical effort?

A. Yes. I'm the person that said, you know, I think he's going into shock and I made sure - I made someone give him a big hot drink and he, you know, improved.

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Q. Was there a meeting after the 12 o'clock weather

forecast?

A. Not a meeting of the whole group. There was at no stage really probably ever more than four people at one time having a discussion. You probably got the impression from the evidence of Mr Senogles for instance that there were, you know, stop the road show meetings. They didn't happen like that. There were at any given time two experienced people on the deck, there were people in bunks and there were people - you know, I was talking to people. So there were numbers of you know two and three people discussions. 5 10

Q. After 12 o'clock, after the weather forecast at 12 o'clock, did you speak with Mr Kulmar about retiring from the race?

A. I said I'm still concerned, the information we've got from the weather forecast isn't enough, I am going to try and get more information. 15

Q. When did Mr Kulmar say to you that he and the other two helmsmen wanted to turn around and discontinue racing? 20

A. That would have been in my recollection well after 1.

Q. Well after?

A. Darren Senogles I recall telling - him telling me that he was approached at 1.30 by Mr Kulmar on the subject. 25

Q. Mr Senogles still works for you, doesn't he?

A. A little bit. I mean he works for a lot of different people, he's a sub-contractor. 30

Q. Alright but you still employ him, don't you?

A. One day a week or thereabouts average.

Q. Does he still look after your vessel?

A. Yes. 35

Q. The Sword of Orion?

A. Yes.

Q. So he keeps it shipshape et cetera? 40

A. Yes.

Q. And how much - how long does he do that for per week?

A. It averages about one day a week, sometimes it's two, sometimes he's away for a couple of weeks. 45

Q. And he sails on your vessel whenever you sail on it?

A. If he's in the country.

Q. Going back, when were you told by Mr Kulmar that your helmsmen, their opinion the vessel should be turned around? 50

A. My recollection that the earliest it could have been would have been quarter to 2.

Q. Now at that stage you've still got number 3 helmsman, Brown, in his bunk after being-- 55

A. Yes.

Q. --fatigued. You've got your two other helmsmen saying you should turn around?

A. Well, to be honest I didn't give a lot of credence to the reporting that Glyn Charles felt we should turn around because he had at no had a weather briefing in the intervening three or four hours. So what I knew was that he was probably being lent on and, you know, suggested that that'd be a worthwhile - but I hadn't had the opportunity to talk to him about it.

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Q. Lent on by whom?

A. Certainly - not lent, maybe I've used that word badly. The suggestion - strong suggestion was coming from Steve and certainly he was strongly suggesting we should turn around. He made his best efforts to persuade Mr Senogles we should turn around. And that was with my blessing, I didn't have any problem with that, because what I was doing at that time was as people came below or awake or there I would go through with them my concerns about the weather, my concerns about the position of the storm and that we had to make a sensible decision and to do that I was retailing to them each of them as they were available the information we had. In that timeframe I was also obtaining more information. I had around 12.30 been dissatisfied with the brevity of what I saw the Bureau of Meteorology forecast. I spent some 25 minutes attempting to get through and finally getting through to the Eden Coastguard to get more weather data. The problem I found when I got that weather data, it seemed to me inconsistent with the forecast and so I was discussing that with people. Steve and I spent some quite bits of time with the charts looking at where weather systems were coming from. I have a strong recollection of him drawing up his theory and I said yes but that's inconsistent with the fact that we've got 92 knots at Wilsons Promontory, I'm concerned that if we turn around we may not be going in the correct direction in terms of the weather. And I was not in disagreement with changing course, I was just concerned that if we changed course that we went the right way.

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Q. When they came to you, or rather when Mr Kulmar came to you and told you that it was the opinion of your helmsmen to turn around, you effectively overruled him?

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A. I said I want to wait - the answer is yes. I want to wait till the 2 o'clock sked. The 2 o'clock sked is important, we need to do it. When I said that, not a single person disagreed and it wasn't said in any sort of dictatorial way, it was a consultative, you know, explanatory way because I had been briefing these senior people on my comprehension of the weather and the conditions and so they were fully informed.

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Q. At 2 o'clock - I withdraw that. At quarter to 2 when you overruled Mr Kulmar--

A. Yes.

Q. --you knew that the low was still to the south of you, didn't you?

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A. I believed it was to the south of us.

Q. So if you went north you would be going away from the low?

A. Yes but what was really worrying me was the ground information from the coastguard.

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Q. Look, you had the opinion of your helmsmen, the people who guide the vessel through the sea, that it was better to turn around and not go on, that was right wasn't it?

A. I had an opinion from three of them but one of them I knew hadn't had a weather briefing and you know I was concerned and it turned out it was an appropriate concern that the weather - information I'd got from the ground, from the coastguard, of 92 knots at Wilsons Promontory, 55 to 60 knots at Bass Strait oilfields, was inconsistent with my information that I had derived from the weather forecast. I was therefore concerned that if we went back to the north-west which is where we'd have to go, we may be going into the centre of the storm. That's in fact what we later did and it wasn't a good thing to have done.

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Q. Now that you've said that, the one that didn't have a weather briefing was Mr Charles?

A. Correct.

Q. Did you go and give him a weather briefing and then ask him what his opinion was?

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A. I was in fact on my way up to do that at a later stage but I asked him before he went on deck at 1 o'clock did he want to have it and he said no, I'm feeling really sick, I want to get up on deck.

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Q. He was going up on deck to go on the helm?

A. Yes.

Q. He was feeling really sick, that's what he told you?

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A. Yes.

Q. And you as the skipper were allowing him to go up on the helm?

A. Well, the problem is if you're feeling even a little bit seasick and for most people just standing below decks in you know in a heavy sea, if you're not seasick you'll get seasick in three or four minutes, so the custom is that people get out of their bunks, put their wet weather on and get on deck. He didn't want to stand and pore over the computer with me.

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Q. What time was that?

A. That was my recollection 1 o'clock.

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Q. 1 o'clock? You've got him feeling sick and he's going up on the helm and you're bringing Brown off the helm who is physically in such a state that you consider it shock?

A. Yes. These are very difficult conditions and--

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Q. These are your--

A. --very concerned.

Q. These are your two second and third helmsmen?
A. Yes.

Q. And you've got the major helmsman telling you that you should turn around?

A. I agreed, I was very concerned with the conditions. However, I was more concerned that we go the right direction.

Q. Or were you more concerned with continuing to race?
A. Absolutely not.

Q. Absolutely not?
A. Absolutely not.

Q. After Mr Kulmar was overruled at about 1 or quarter to - half past 1, quarter to 2, there came the 2 o'clock sked. Now you gave out a warning to the fleet?

A. At approximately 2.50.

Q. But it was a warning wasn't it of the weather that you were in fact then in?

A. Yes.

Q. And that was quite different weather from what you've told us occurred at 11.30 when this was first raised, turning around?

A. The weather was certainly deteriorating.

Q. It was.

A. And that's as Mr Kulmar gave evidence and I agreed. We were hopeful, initially we thought at the beginning of the sked we may get more information. The forecast at 12.09 was very general. We anticipated, given the record of the previous day when the Weather Bureau had come out with a supplementary forecast, that they may in fact provide more information at 2 o'clock which would help us resolve the conflict, the conflict being whether the storm was to the south of us or to the north-west of us.

Q. Was it discussed about giving out this warning to the fleet?

A. Yes.

Q. When?

A. During - by mid sked.

Q. Mid sked?

A. Yes.

Q. Who was it discussed with?

A. I was sitting at the nav station and certainly Carl Watson for one said Rob, are you going to tell them what it's like here and I said yes I am, mate. Mr Kulmar recalls a prompting to me which I don't recall but I'm quite prepared to believe that he would have equally prompted me. We felt the conditions were way greater than forecast.

Q. What you were hoping for was a weather forecast from ahead to the south?

A. No, I mean I was hoping that I would get a weather report. Initially I was hoping that we'd get at the beginning of the sked a more detailed or amended forecast which would better explain to us the weather. The problem with the 12.09 forecast, it was that there was a low in eastern Bass Strait and eastern Bass Strait's about 180 miles in length and that wasn't enough information for us.

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Q. What you were hoping for was that the vessels in front of you would give you a weather forecast?

A. No, a position - a report on the position - on the weather and where they were experiencing it.

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Q. Yes.

A. Not a forecast, we're not qualified to give forecasts.

Q. To tell you what the weather was like ahead?

A. Yes. A report on the weather.

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Q. Were you hoping for any other reports on the weather from anywhere else in the fleet?

A. We were hoping for a more detailed report by the Telstra Control. We were hoping for an amended or modified or improved or more updated forecast.

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Q. But your main concern was to find out what the weather was from the yachts in front of you?

A. That would be prior to the forecast, prior to the sked, no but during the sked as the weather got more severe we felt it was appropriate to do two things. We felt it was appropriate to warn the boats behind us insofar as the sked is read out was totally different from what we were experiencing. I had no desire for other boats to sail into what we were in. And I was certainly hoping to get some guidance, whether the weather ahead was greater or less.

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Q. Because ahead of you was where the race was to go, wasn't it?

A. Yes.

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Q. That's what you were concerned with?

A. Sorry, I don't - could you put that question again please.

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Q. You were more concerned with the raceway in front of you than any way out of the storm, that was your main concern?

A. No, my concern was for the safety of my crew, safety of my vessel and which was the appropriate way to go. I didn't want to be there any more than any of the other members of the crew.

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Q. If it was the concern that you've just said of yourself for your crew and your vessel, why didn't you accept the advice of your helmsmen at approximately 1.30 to quarter to 2 to turn around?

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A. Because the data I had which I'd gotten was inconsistent, it didn't make sense and we discussed it and we agreed that we needed more information. I mean Steve drew up the little paper chart with Flinders Island and here's where he thought the storm was and I shared with him the information that the wind reports from the north-western area and the western area were inconsistently high and we agreed we should wait. I had better knowledge of meteorology and weather than anybody else on the boat.

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Q. The charts, the weather forecast, the maps that you were looking at, at 1.30, quarter to 2, showed the low to the south of you?

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A. No, they didn't show that at all.

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Q. What did they show?

A. At 2am there had been a position of the storm at being 60 nautical miles, if you took the position on the chart now, east of Eddystone Light which is on the north-east coast of Tasmania, below Flinders Island. That same weather forecast gave a direction of that low and the speed of that low. It gave a direction of east nor'east at 20 knots. That would have meant - and that was the basis on which we went in Bass Strait, that would have meant that the low would be going towards New Zealand. The experience we were having on the boat was inconsistent with that, therefore we were concerned that we needed to make a wise informed decision, the best possible we could - decision on which way was the appropriate way to go. What we could see in the sky, what we could see in the sea, what we could get from ground station was inconsistent with the previous report. The midday report was not helpful. We weren't sure which was the best way to go. It's easy to make a decision and it would have been to make - much easier to make a decision to just, yeah, okay, Steve, we're going this way. That's easy. This is not about easy, this is about trying to do the best possible thing.

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CORONER: Q. What time was that Tasmanian forecast that you're relying on?

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A. The forecast at 2.09am was the only one that had given us a position of the centre of the low. The one 12.09 didn't, it just said a low in eastern Bass Strait.

HILL: Q. That's all it said?

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A. Yes. I mean it said other things about the weather but about the low it said and I'm sure we can check the exact words but my recollection is a low in eastern Bass Strait moving east. It gave no position.

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Q. Between the time that you had the 12 o'clock weather forecast and the time you actually turned around--

A. Correct, yes.

Q. --did you have any other weather forecasts?

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A. We had from the Telstra Control we had a repeat of the 12 o'clock weather at the beginning of the sked and at the end of the sked and that was actually the reason why I said

what I said during the sked because the contrast was awful between the weather report - the weather forecast and our conditions. I got more information, I rang the eastern - sorry, the Eden Coastguard and I obtained from them the Tasmanian forecast, which was the same, the Bass Strait forecast which was the same and the ground station information.

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Q. Look, you've got about three or four things in there. Let's start with the first one, the coastguard?

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A. Yes.

Q. Eden Coastguard, what time was that? Approximately?

A. Approximately 12.30.

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Q. Then what did you do?

A. By then it was 10 to 1. I talked with various members of the crew.

Q. No, no, the forecasts?

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A. In terms of forecast, I had no more information till 2 o'clock.

Q. No more information, then after 2 o'clock?

A. At 3 o'clock the same information.

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Q. That's both from Telstra Control?

A. Yes.

Q. And then what forecasts from there?

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A. No further forecast.

Q. You then sailed into a lull, is that right?

A. That's quite a bit later. The sked ran to roughly 2.50 but it was an incomplete sked, it was horrifying incomplete. I'm sure Lew Carter never wants to have an incomplete sked like that because at the front of the fleet Ausmaid hadn't reported in for two skeds, Brindabella, the second biggest boat in the fleet, high profile boat, hadn't reported in.

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And a number of other boats hadn't reported in. So it's now 2.50, I'm about to get up from the nav station to go upstairs to stand next to Glyn Charles to make an assessment and talk to him when I hear Ausmaid calling. That was great. That was really good. But Telstra Control couldn't hear Ausmaid and Ausmaid had been missing for two skeds, so I sat back down at the nav station and I relayed and then I relayed that and that meant they didn't have to send search and rescue aircraft out. I then relayed for Team Jaguar, again this was not my choice but I happened to be there and--

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Q. What time was that, for Team Jaguar?

A. This was from 2.50 on right through till about quarter to 4.

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Q. So you remained on the--

A. I was on the nav station from 2.50 to quarter to 4. Now I didn't want to be there and I got up to leave it on a

number of occasions and Steve Kulmar was on deck and wanted to talk to me. However, there were boats in distress, boats in trouble, boats dismasted and Lew Carter could plainly hear my signal very well, I was in the area where those boats were and I didn't want to be there but it would have been irresponsible of me just to walk away and not relay.

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Q. Alright, go on?

A. So it's now at this stage about quarter to 4. People - I had - while doing the relaying I had been having conversations with my crew. By that time the weather had started to moderate and very soon after we had this freaky condition where we had a patch of blue sky. This blue came, a couple of people went up on deck and the wind dropped. The wind dropped and I stuck my head up and just then it went down to 15 knots, which is sort of like insanity, just for a second but it then came back up. And someone said we're through the storm, one of the juniors, we're through the storm and Carl Watson said to me, I agreed with him, it could be the eye, we'd better be careful and one of the young fellows said we need to put up more sail, we're going too slowly. And I said, expletive deleted, wait. And I said - at this time the wind level had dropped so you could actually be heard and I said we may be at the centre, if it's the centre it could be much worse ahead, if it gets back to 60 we're going home.

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Q. Why have you suddenly come to that conclusion then, if it gets back to 60 we're going home?

A. Because we were concerned if the weather was still ahead of us, we had survived what was behind us but we didn't know how bad it was going to be ahead.

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Q. If you've just gone through what you think was the eye, why would you turn around and go back in it?

A. Because if the - we don't know what's ahead but we do know what's behind, we believed.

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Q. But what has changed from quarter to 2 when your helmsmen wanted to turn around and this time at about 4 o'clock? What has changed that makes you say yes, we'll turn around?

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A. Well, a couple of things. One, I - if the weather ahead was going to be another 12 hours of what we'd just had, we didn't have enough helmsmen. That was plain. We certainly had plenty more people who could drive and we couldn't be racing.

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Q. That's the first thing but just stop there. What do you mean you wouldn't have enough helmsmen?

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A. Well, the helmsmen, you know, the three senior helmsmen were tired.

Q. But you knew that at 1 o'clock, you knew you were putting a sick helmsman up there who'd been sick most of the morning, is that not correct?

55

A. He'd been sick but I asked him was he alright to go on deck and he was and there's no - there was no suggestion has

been made by anyone that I believe that he was not able to helm and I saw no evidence of it.

Q. And you're just replacing another helmsman who is, to use your words, going into shock and that's at 1 o'clock or thereabouts, so you've known that you've got real problems with your helmsmen, you've known that for about four hours, three hours?

5

A. For a couple of hours certainly but the question was which is the appropriate direction to go.

10

Q. No, the question was, what had changed your mind to turn around and you've just told us one of the reasons was that you wouldn't have enough helmsmen to go through and I pointed out to you--

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A. If the conditions stayed in for another 12 hours it would be very difficult and I would be asking people to do very difficult things. We at that stage felt, I felt that the conditions ahead, I didn't know what they were, but we had come through the conditions behind and I made the decision, which turned out I believe to be the wrong decision, to go back.

20

Q. Mr Kothe, did you understand my question when I asked you what it was at 4 o'clock that had changed your opinion so that you turned around, and you said one of them was that you may not have the helmsmen to go through 12 more hours?

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A. Yes.

Q. And I've just suggested to you that in fact you knew that you didn't have two of your helmsmen and that was at about 1 o'clock?

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A. No, the suggestion we didn't have two helmsmen, when Glyn Charles came on deck and was helming, he was fine, I hadn't lost Glyn Charles and Adam Brown was very exhausted after a long period on the helm and you know there was no problem with him doing two hour bursts later on. There was - we - I was concerned about helmsmen, certainly helmsmen were, you know, felt that the conditions were difficult. By that time, by 4 o'clock I - what had changed in my mind was I believed the storm definitely was ahead of us and that it was safest to go back to the north-west.

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40

Q. Alright, what was it that made you conclude that the storm was definitely ahead of you, having Mr Watson just tell you that you could be going through the eye?

45

A. Yes. When it got down to it finely it was a matter of assessing the sky, because we didn't believe the weather forecast. We just looked at the sky and said we think it's worse down there, we've come through what we've come through, we can go back through it. Ahead was uncertainty.

50

Q. But look, you were able to assess the sky when it was first raised with you by your chief helmsman at about 11.30, that was so, wasn't it?

55

A. There's - it was - I think I said earlier it was overcast and raining.

Q. But look, you knew at about 11.30 that your - that the storm was ahead of you and you knew that because you had your computer on board, didn't you?

A. My computer didn't tell me the storm, it didn't - there was - I'm sorry if you - there was no suggestion that we had any weatherfax data or anything like that. I didn't have the position of the storm. If I had the position of the storm, that would have been easy, because all I had on the computer was our location and the graph of what the conditions had been.

5

10

Q. What was your computer being used for?

A. The computer was just giving us navigation data that told us exactly where we were in the ocean in relation to the - you know, land, and it was giving us - it was graphing historical weather data. That meant you can see - the effect of that is you can see a wind shifting, you can see a, you know, a wind direction changing, which you won't see just looking at - glancing at it. You know, the mind doesn't track these things well, and you can see trends and you can see what's happening and see which way the wind's changing. But there was no - no satellite in the sky providing us information on where the storm was.

5

10

Q. But isn't it the case that at about a quarter to three or ten to three, thereabouts, you radioed through that you were getting gusts between 70 and 80 knots?

15

A. I think that - 73, 78 and 82.

Q. And that continued until you went into what you've described as the lull?

20

A. Yes.

Q. And that was about another hour?

A. Yes.

25

Q. And you proceeded on?

A. Yes.

Q. That was against the advice of your helmsman?

A. I don't think - at 10 or 15 minutes before the sked there was a suggestion that waiting to the sked was inappropriate. Nobody said - none of the helmsmen said I don't think we should do that.

30

Q. But look the sked finished--

A. At ten to three.

35

Q. Yes, and you had made a decision to continue on.

A. No, I didn't. Unfortunately the decision making process got stopped at ten to three when I got involved, and I don't regret it, in relaying for Telstra Control.

40

Q. I understand that, but you weren't relaying constantly. The tapes show that.

A. And in between I'm having conversation with my crew.

45

Q. Yes, conversations about what?

A. About whether we should go back or not.

Q. So these conversations that are taking place in between for an hour was you saying to them that you wanted to continue on?

50

A. No.

Q. Well you didn't turn around did you?

A. No, but that doesn't mean that I wanted to go on. We were trying to figure out which was the appropriate thing to do.

55

Q. When you made the decision to turn around, did you tell them so?

A. At that stage, yes.

Q. You told them, and then they took about 15 minutes to come about? 5

A. Yes.

Q. That could have been done at 3 o'clock.

A. Yes, and would it have been a good decision? 10

Q. The reality is that they were under your command.

A. Yes.

Q. And it was up to you to tell them to go about. 15

A. Yes.

Q. To return. And even though they had been telling you, that is your helmsmen, from 1.30 - three helmsmen quite clearly. 20

A. No.

Q. No what?

A. No, three helmsmen didn't tell me quite clearly. One helmsman told me that the other helmsman said something. 25

Q. Well did you accept that?

A. I accepted he was telling me.

CORONER: No, no, no. 30

HILL: Q. Well did you accept that that was the opinion?

A. I didn't believe that Glyn was fully briefed. I knew Glyn was not fully briefed. 35

Q. Did you go and fully brief him?

A. No. I was going to do that at ten to three. That was my intention.

Q. Well did you speak to Adam Brown? 40

A. Yes.

Q. And what did he tell you?

A. Adam Brown said to me that he wasn't sure, he wasn't sure whether he was experienced enough to make a decision, and I've read the record and that's - you know, that's what I believe it says, and that's my recollection. 45

Q. What, so that he wasn't - took no part in it, is that what you say? 50

A. No, he said look, you know, I don't want to go back but I'm not sure Steve wants to go back. He didn't want to make a decision.

Q. Well did you say to Mr Kulmar just a minute, there's one of the helmsmen you've told me who says wants to go back and he is not saying that at all? 55

A. I don't recall those exact words but I'm - I'm - there

was certainly a lot of to-ing and fro-ing in that regard.

Q. Look, as master of that vessel you were responsible for its safety and therefore the safety of its crew.

A. Yes. 5

Q. You've your senior helmsman telling you that the other two helmsmen are with him in the opinion to turn around. That's so far right?

A. Yes. 10

Q. You are now saying that you questioned one of those helmsmen and that was not so.

A. Yes. 15

Q. Did you therefore go back to the senior helmsman and say that's not what the other helmsmen say?

A. In a gentle way I would have said I'm not sure it's quite like that Steve. 20

Q. Well what did he say?

A. Well I didn't say Steve you're lying. 25

Q. What did you say in a gentle way?

A. I don't think it's as simple as that. 30

Q. What, that the three helmsmen were not united?

A. Well it was my responsibility to ensure that decisions were made that were appropriate decisions. I have - I knew for a fact I had asked Glyn did he want a briefing and no, he wanted to go up on deck, therefore I knew that he hadn't - the only information he would have gotten was from Steve. Now it was my intention at ten to three and go and have a long discussion with him, but I wasn't able to do that. I made the decision to turn around in fact without discussing with him. 35

Q. Well what about prior to the sked?

A. He went on deck. He was asleep prior to 1 o'clock. At 1 o'clock I asked him did he want to get a briefing and he said no. He was up on deck, I was below. 40

Q. Well you had the conversation when do you say with Mr Kulmar?

A. I had conversations with Mr Kulmar that started as early as 11.30 and went through in bits and pieces right through 2 o'clock. Mr Kulmar said, and I can't recall, the time - some of that time he was asleep. 45

Q. Well look, you've told us that you had a conversation at quarter to two with Mr Kulmar where he said to you that the helmsman wanted to turn back. 50

A. Yes.

Q. Did you go then and speak to Mr Charles? 55

A. No.

Q. Did you go then and speak to Mr Brown?

A. Mr Brown was below decks and I recall that he was asleep, and I wasn't about to wake him up.

Q. When did you go and ask him about turning back and he wasn't sure?

5

A. Prior to that, when he'd come down the stairs and sat on the bottom stair quite exhausted, we had the conversation then. I said "Brownie, what do you think we should do?" and he said "I'm not sure," and we talked it through. I told him what information I had and he told me what he thought.

10

Q. Well wasn't your reason to speak to Mr Brown because of what Mr Kulmar had raised, that the helmsman wanted to turn around?

A. No. You see I was initiating the conversations except the very first conversation with Mr Kulmar. I was initiating the other conversations. I was presenting to crew information about, you know, what other people thought and I was trying to draw them out and get information from them. I was doing my best to give them as much information as I had, tell them about the pluses, tell them about the minuses, which were in terms of weather particularly where we had a great deal of uncertainty. I mean none of us wanted to be in that circumstance, we were all trying to find the right thing to do.

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HILL: I will be going on with a separate subject. Perhaps that's the appropriate time.

CORONER: You've finished this subject basically?

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HILL: Yes.

<WITNESS STOOD DOWN

35

LUNCHEON ADJOURNMENT

<ROBERT MAXWELL KOTHE
ON FORMER OATH

40

HILL: Q. Mr Kothe, before the luncheon adjournment I was asking you questions about what Mr Kulmar said to you in regards to the other helmsmen. At one stage you said that in regards to the helmsman Charles, Glyn Charles, that he was leant on, that was the word you used, then you withdrew that. I'm not going to cavil with the word, it's been said, but are you saying that he was influenced by someone?

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A. The only web of information he could have gotten was from Steve Kulmar. It wasn't from me.

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Q. Are you suggesting then that he was influenced by Mr Kulmar?

A. Yes, yes.

Q. Well are you suggesting that you didn't accept what Mr Kulmar said in regards to what he said to you about the helmsmen?

55

A. I certainly felt that - well I couldn't see how

Mr Charles would be in possession of all the relevant information that we had.

Q. Did you therefore discount the opinions of Mr Brown and Mr Charles because they were brought to you via Mr Kulmar? 5

A. No, I had heard Mr Brown's opinions. I didn't doubt in any way that Mr Kulmar - you know, the information he was telling me which was that Mr Charles wanted to go back. I didn't doubt that in any way, shape or form. I just felt that it probably wasn't - it wasn't an informed opinion. I didn't want to be there but it was a matter of which way we should go. 10

Q. Well are you saying then that as far as you were concerned, you had only one opinion and that was of Mr Kulmar? 15

A. Yes.

Q. And therefore that was just helmsman and not the three as represented? 20

A. I was - yes.

Q. And therefore you could overrule Mr Kulmar's opinion because it was a lone opinion?

A. It wasn't a matter of overruling because I discussed with him the extra information I thought we needed to get, and he agreed. He didn't say I - you know, he didn't register an ongoing disagreement with what my proposal was, which was to get more information. 25

Q. Well did you regard the statement by Mr Kulmar as really representing his opinion and his opinion alone? 30

A. Primarily it was - I believe it was his opinion.

Q. And his sole opinion and not the opinions of Charles and Brown? 35

A. I wouldn't go so far as to say it was his sole opinion. There might have been a degree of other people's opinion, but I pretty much did feel that it was his - he was driving that particular agenda. 40

Q. Was it a case that instead of three helmsmen, your three prime helmsmen telling you they wanted to go back, you regarded it as just one?

A. Yes. 45

Q. And you did not seek Mr Charles's opinion?

A. I had tried to bring him up to speed earlier but plainly he - I couldn't get him to come - given his likelihood of getting seasick down below, that meant I needed to go up and talk to him, and I was planning to do that and I - you know, at ten to three I got up to start to do - to go up and talk to him about that. 50

Q. At the time that Mr Kulmar gave you that opinion to turn around, did you also see Mr Brown? 55

A. I had - I had spoken to Adam Brown earlier and he hadn't given me that emphasis, that suggestion, impression, and at

the time - you know, he - soon thereafter he went into his bunk and I wasn't about to wake him to ask him.

Q. Are you saying that you distrusted what Mr Kulmar was telling you?

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A. No.

Q. Well did you accept what he told you, that it was the opinion of the three helmsmen?

A. I didn't believe it was the opinion of Mr Brown because I had been party to conversations with Mr Brown.

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Mr Charles, I quite believed that Mr Charles would have said that to him.

Q. But you disbelieved what he said about Mr Brown?

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A. No, I didn't disbelieve what he said about Mr Brown. I thought that Mr Brown wasn't adequately briefed in my opinion to make an informed decision. People can make decisions and say things. It doesn't mean you necessarily put weight on them if you believe they haven't been adequately briefed.

20

Q. So you simply didn't accept what he said?

A. Correct.

25

Q. Have you sailed with Mr Kulmar since this episode?

A. Yes.

Q. When?

A. At the CYC, you know, in Harbour races, yes.

30

Q. With him aboard your vessel?

A. Yes.

Q. As what?

A. Driver, tactician.

35

Q. How many times?

A. Only a few times. Mr Kulmar has decided he doesn't want to do any more, you know, Hobarts and offshore racing. It was an awful experience and he has made public that he doesn't want to go the Hobart again, so consequently that - as that part of my campaign, you know, he doesn't want to do that.

40

Q. I'm going to take you onto a different subject and that is after you turned back, and you didn't actually quit the race. You didn't retire from the race did you?

45

A. No.

Q. You simply were turning back for shelter, and it was your intention that having sought shelter and rode out the storm, you would continue to race?

50

A. That was my hope but I - you know, we hadn't closed our options.

55

Q. The situation was that the vessel was turned. You were on deck at that time?

A. No.

Q. You were below?

A. Yes.

5

Q. Was the engine on?

A. The engine was turned, on at my instruction I believe.

Q. At your instruction?

A. Mm.

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Q. Was it used, do you know?

A. Yes, it was used.

Q. Who used it?

15

A. I asked Darren to do it. I didn't see whether Darren was doing it. I could hear it being used, because below decks you can hear the noise whereas on deck in those sorts of conditions you may not, whereas below you're almost deafened. You can't use the radio. In fact I couldn't, you know, use the radio with the motor revving, the motor on.

20

CORONER: Q. But you can when it's in neutral?

A. Yes. It's a substantially different noise.

25

HILL: Q. So you can tell the difference?

A. I know the motor was used during the turn.

Q. And who was on the helm?

A. Glyn Charles.

30

Q. Who would have used the motor?

A. Darren Senogles, sitting next to him.

Q. And if Mr Darren Senogles has said that he didn't?

A. I don't think I heard that.

35

Q. You don't think you heard that?

A. No.

40

Q. The roll took place.

A. The - okay, go on.

Q. Later on, after you had turned, about what, some--

A. My belief was about 20 minutes. We were still baling at the time.

45

Q. You were still?

A. Baling.

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Q. When?

A. When you're a long time on one tack, you get water in one side of the boat. When you turn around and happen to be on the leeward side, the nav station is on the starboard side, so the water didn't bother me. I could see it but I didn't have my feet in it and it wasn't endangering the nav station. When we turned around and went north-west, I had a substantial amount of water slopping up the side of the nav

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station endangering the electronics. We were therefore engaged in baling the water out of the boat.

Q. Were the pumps not adequate for that purpose?

A. No.

5

Q. So you just hand baled?

A. We were bucketing it out.

Q. The roll took place and I think you were at the navigation station when that occurred. You were injured?

10

A. Yes.

Q. I think you had your leg very badly twisted, is that correct?

15

A. Yes. When we were going south, to enable me to stay on the nav station in the bouncing waves, I had a harness strap because I couldn't physically hold myself there because you've got nothing to support you so I kept sliding into the seat, so we had a restraining strap. That wasn't necessary when we were going the other way but it was still there. When the boat rolled over, I got caught in the restraining strap.

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CORONER: I'll just stop you there. Just to correct that business about whether the boat was being driven when it turned. My note of Mr Senogles' evidence is motor used to turn the boat. So the witness was quite right according to - corroborates Mr Senogles.

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SHAND: I'm sorry, your Worship had a note?

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CORONER: I had a note from Mr Senogles' evidence that the motor was used to turn the boat.

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SHAND: Was used?

CORONER: Yes.

HILL: I think that Mr Kulmar says--

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CORONER: Maybe Mr Kulmar said no, but Mr Kulmar wasn't on deck.

HILL: Q. You were at the navigation table after the sked?

45

A. Yes.

Q. And you were relaying messages from vessels that were out of range of Telstra Control, is that right?

A. Yes.

50

Q. Can you recall who they were - and it's not a memory test in any way or anything like--

A. Certainly the two I do remember was Ausmaid, because that was very important because otherwise there were going to be search and rescue aircraft, but the main one that spent most of the time was Team Jaguar.

55

Q. Why were you relaying their messages? I realise because of the physical problem that they had, but why did you do that?

A. I guess geographically Ausmaid would have only been a few miles ahead of us. The signal came in very clearly to Ausmaid. Boats further back wouldn't have heard it. Well you know, assuming it was - plainly it wasn't strong enough to get back to Telstra Control, which was some substantial distance back, but we were able to hear and so it was really incumbent upon us to not ignore the--

Q. Well that's what I want to know. Why do you say it was incumbent upon you to do that?

A. I couldn't contemplate not helping in that circumstance.

Q. So basically if you're in a position, as far as you're concerned, to relay such a message, you feel yourself duty bound to do so. Is that right?

A. Absolutely.

Q. The roll happened and you've told us - I think it was the right leg that was injured, is that right?

A. The left leg.

Q. Any other injuries?

A. I wiped out the companionway steps. I physically knocked them off their mountings with my head, so I - there was blood streaming everywhere. It turned out not to be too terrible but it was spectacular.

Q. I think that after people removed sails off you and sailbags I think they were, got you up, were you on the radio after that?

A. Yes. I obviously wasn't feeling any pain and I walked across the - took three steps up the post back to the nav station and locked myself in the nav station and, you know, physically just jammed myself in there. I went for the motor controls but I had ripped them off in the rollover.

Q. What I want to concentrate on first of all is the man overboard button. It's my understanding that the evidence so far indicates that once it was pressed, you had your position and that was physically written down?

A. Yes.

Q. That was the position of Glyn Charles's going overboard?

A. Yes. Within a few seconds, yes.

Q. Was that at any stage, that position, the man overboard position, ever relayed through that you know of? I'm just trying to clear that up.

A. I believe - I mean Carl Watson certainly gave - when he first spoke to an aircraft because this was some time down the track, he spoke to an aircraft and yes, that position was given out. I was calling it over the radio, I was calling the position man overboard at such and such a position. I wasn't giving our new position, I was calling where the man overboard had happened.

Q. This was a mayday call was it?

A. Mayday remote, yes.

Q. What was the state - when you go back to the nav table after the rollover, what was the state of the radios? 5

A. When I - there were sparks everywhere, there was smoke and sparks, and we were concerned that we were going to lose - the whole thing was going to short out. So I pulled all the cables out of the computer, killed the computer, and realised the HF radio, the high frequency radio produced, you know, high frequency and doesn't like water, and there were sparks. I turned that off because it was obviously dead and I just - we actually pulled the cables out so that there'd be no connection between it and everything else. The VHF was working, the GPS was working. They were the main things we needed. 10 15

Q. What were you doing with regards the VHF's and the mayday?

A. I turned the VHF on - well it was on already, sorry, I didn't turn it on. It was on 16. I immediately started calling mayday, took a few deep breaths and then went into the sequence. 20

Q. When you say channel 16, what was that? 25

A. Channel 16 is the standby channel, the international distress or communication channel that every, you know, tanker, boat - now in the Sydney to Hobart it's become mandatory for the vessels to use that - to have that frequency on. At the time of that race it was recommended and we certainly had had it on all through the race. 30

Q. So you had in essence a listening watch on your vessel on channel 16?

A. All the time. 35

Q. So that if there were any distress calls that you could receive, you would have heard them?

A. Yes. 40

Q. And you were broadcasting on that channel now? 45

A. Yes.

CORONER: Q. About how long after Mr Charles went overboard did you commence broadcasting your maydays on channel 16? 45

A. I imagine it took them two or three minutes to uncut me. It would have been within five or six minutes.

Q. So perhaps before 5 o'clock?

A. Five, 5.15, somewhere there. 50

HILL: Q. What you've said at page 26, your first - that's 2 January 1999 - I just want to get the sequence correct.

It's at the bottom of that page and you say "the VHF which was further forward and consequently higher out of the water, you don't expect water down there, but it had lost its aerial and we couldn't get a signal out initially." 55

A. That's correct.

Q. So an aerial had to be set up. That presumably was kept below?

A. Yes.

Q. What sort of aerial was it? 5

A. It was a short aerial that Darren Senogles got out which is expandable into two parts. He put it on the top of the cabin of the boat exteriorally so it was virtually above my head and it extended a metre into the air, and that would have happened-- 10

Q. Sorry, extended a--

A. About a metre into the air.

Q. A metre into the air? 15

A. So that's a central position on the boat. At that stage it would have been the highest part of the boat, given the fact that it had no mast.

Q. How long did it take to do that? Just an approximation. 20

A. Yeah, it would have only taken him three or four minutes to do it, but I don't think he did it for - it was about the first thing he did after he stopped looking back to Glyn Charles. So that may - I was broadcasting but we knew that we didn't have a good aerial but it wasn't - there would have been some signal getting out, but I would believe it was probably something like 20 minutes before we actually had a signal that was really going any distance. 25

Q. You go on in that, and I just want to clarify this. You say there was no mobile phones working on the boat. We had the VHF was working and we could hear helicopters. This was not immediately but within the next 15 minutes we could hear helicopters. 30

A. Yes. 35

Q. So could you actually speak to them or just hear them?

A. No, we could hear fragments of conversation and we could hear - we could hear - there was - we believed there was search and rescue activity going on. 40

Q. You then say we eventually got a helicopter probably in 45 minutes. We got a helicopter who recognised that we were calling it and it was a mayday and these are helicopters that had come to other boats. The time factor I'm looking at there, 45 minutes. 45

A. Yes. I made that statement, you know, a few days after. I'm not convinced now that it was a helicopter. It was certainly - it was an aircraft. 50

CORONER: Q. And the time? Have you any comment about the 45 minutes? 50

A. Yes, I believe the time was right but I don't believe that - I said it was a helicopter but I'm not convinced that that was necessarily the case. 55

SHAND: Would you kindly tell me the date of the statement you are reading from?

HILL: The statement is 2 January 1999. I'm at page 27 now, the top of page 27. The page begins "this was not immediately but within the next 15 minutes we could hear helicopters." And it goes on "at that stage we established contact and we got going." Now what do you mean, first of all, established contact? 5

A. My recollection at the time was that that was the first time we got the position out, yeah.

Q. What I want to clear up as it goes on, "there was a boat that we sighted and we fired a mass of flares at it." Which comes first? That's what I'm trying to work out, whether the contact with the aircraft comes first or the seeing of the other vessel comes first. 10

A. I can't be absolutely sure. 15

Q. You say "there was a boat that we sighted and we fired a mass of flares at it. I'm sure Carl's told you about this. We identified the boat." Did you see the boat at all? 20

A. No, I didn't see the boat.

Q. What were you told?

A. I was told initially it was a white boat. Then - then people on deck who'd raced a lot on Sydney Harbour said "it's the Margaret Rintoul II." 25

Q. What did you do?

A. At that stage the VHF was working much better, I believe it was drying out, and the aerial was working quite well. We could certainly hear aircraft and hear things. We were - and I was transmitting on VHF and I was calling "white boat, white boat, white boat," and, you know, saying "Sword of Orion, we have a man overboard," gave them our position, you know, where we could. And I just continued to do that which is why I didn't see the boat, while people were doing other things. 30 35

Q. Just stop there. If in fact you had been communicating with an aircraft just before that, then presumably you were able to receive and send? 40

A. I'm not absolutely sure as I said about whether the aircraft was before or after.

Q. You were calling "white boat, white boat, this is Sword of Orion." What did you call when you were told it was the Margaret Rintoul? 45

A. I didn't start calling Margaret Rintoul.

Q. Why?

A. No particular reason. I just - you know, I guess you go into repetitive mode, enough to think about without - without - it's a long word I mean in those circumstances. 50

Q. Look, it might be a long word, but your vessel was breaking up. 55

A. Yes.

Q. And you could have all drowned.

A. Correct.

Q. Why would you not call a vessel that you can clearly identify?

A. It's a good question. I didn't think of it.

5

Q. The situation has been that at one stage you were quite angry about the Margaret Rintoul having gone past you, isn't that so?

A. When they went past us we assumed they hadn't seen us.

10

Q. When you found out they had seen you, you were angry about it?

A. Members of my crew were very angry about it. I - it was not a major emphasis for me.

15

Q. It wasn't a major emphasis for you?

A. No.

Q. Well it was a major emphasis for your crew.

20

A. Yes, it was.

Q. And you in fact stated that the rest of us could have died because of the fact the boat was breaking up.

A. Yes.

25

Q. And you had no feelings of animosity to someone who had sailed past you in those circumstances?

A. As a skipper it's very difficult to put yourself on somebody else's boat and say what they should have done. It seemed to be easier for my crew to do that than it was for me.

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Q. Well what you said at the bottom of page 27, I've just been referring to you, "had that boat stopped then we would have got a signal or a VHF or a VHF signal." They could have been your radio platform couldn't they?

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A. I don't see the anger.

Q. I'm sorry?

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A. I don't see the anger, I see the fact.

Q. All right. Do you see the facts? They could have been a radio platform for you.

A. Absolutely.

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Q. You have a vessel breaking up.

A. Yes.

Q. Do you not?

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A. Yes.

Q. You have crew on board.

A. Yes.

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Q. You are responsible for their safety.

A. Yes.

Q. A vessel has gone past of which you have communicated and they could have--

A. Absolutely agree with that. There was a lot of things that I think they could have done had they seen us. I didn't believe they'd seen us.

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Q. Well one of the things you said, and this is page 28, "but, you know, had they stopped" - about point 5 - "it would have, it would have meant that a search could have been instituted for Glyn Charles."

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A. Yes.

Q. "The belief among the crew is that he was last seen probably eight minutes after the capsized."

A. Yes. I'm not - I'm not disagreeing with the facts, I'm just saying that I wasn't angry. I was - there was a lot of things they could have done had they stopped.

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Q. Well what would you have done, had the positions been reversed and you had seen a dismasted yacht?

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A. Given the seas, the first thing I would have done, I would have ensured my navigator was using channel 16, that he was calling on channel 16. That would have been the first thing I would have done. The second thing I would have done was slowed the boat down but not changed its direction. I would have, you know, eased the sails. The third thing I would have done is I would have reminded the radio operator that he didn't have to just use 4483, the race frequency, to transmit to search and rescue or emergency authorities. I would have reminded him there's about five or six internationally recognised listening frequencies he could have called on. I would have done that and then I would have - hopefully he would have been able to ascertain from - because he would have been able to get through to Eden Coastguard, I would be asking did they have a report of a boat anywhere near that condition - that position. It could have been that they had already got through and there's a helicopter on the way. I would have first of all found out what I could have about the situation before I made any decision about whether I'd, you know, turn the boat round. That's the first thing I would have done.

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Q. If you had seen that it was a dismasted yacht and there were people with red flares on the deck, what would you have sent over your radio to the control or to the person you were communicating the position to?

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A. I would have told them that, that it was a dismasted yacht, its position and that people were firing red flares, distress flares.

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Q. Well you've seen what was reported by the Margaret Rintoul some time later, a red flare?

A. Yes.

Q. Do you consider that totally inadequate if they in fact saw your vessel dismasted and people on the deck with red flares?

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A. If they had seen the boat dismasted and people on deck

with red flares, I believe they should have reported it. I would have.

CORONER: Q. Reported it?

A. Reported it over the radio.

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HILL: Q. In other words, to simply say a red flare at a certain position is inadequate in your opinion?

A. If they are in possession of more information, yes.

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HILL: I've nothing further, thank you.

CORONER: You had a few essential questions which you--

CALLAGHAN: I have some matters, your Worship, but I would still like to go up the front but I think I'd even go before Mr Stanley because of some of the questions. It might assist you. 5

CORONER: Probably of assistance. No problem with that, Mr Callaghan. 10

CALLAGHAN: I might like to come back at the heel of the hunt to clear up a few things.

Q. Right pre race. In December you've told the inquest that you started assembling oceanography, oceanographic and meteorological information, correct? 15

A. Correct.

Q. In terms of the oceanography what did you do? 20

A. I - while we were waiting in December when they start giving or showing on the internet the colour charts of the water temperatures, which is effectively currents, I subscribed I think about 20 November to start getting information so I'd have it all the way through. I was also looking daily at the output of the three major mathematical models that the bureau obviously analysed as data just to compare the predictive data with then what happened to get a feeling for how fast the systems were coming through and to understand the weather. 25

Q. Do you subscribe to Dr Badham's service, if I can call it that? 30

A. Yes, yes.

Q. The inquest has evidently already heard from Dr Badham, so we don't need to labour that I don't think. You spoke of the pre race briefing at CYC and you spoken of the day of the race. Just one particular aspect of the pre start situation, this briefing from Mr Mark Gibbs-- 35

A. Yes. 40

Q. --can I ask you some questions about that. Now he is an oceanographer by profession? 45

A. Correct.

Q. Did he have with him data though at that briefing of you and your senior members? 50

A. The briefing on the boat, he had Roger Badham's notes, he had - well all - we all had the Bureau of Meteorology's information. He - you know, he had other models. We went through in a lot of details the various models and the percentage prediction he came up with was something like 25 per cent chance of an intense low in Bass Strait. 55

Q. That's the sort of east coast low that I think Mr Watson spoke--

A. That's right.

Q. Into the race you received by radio, I take it, an updated weather forecast 2 o'clock, 2.30--

A. 2.50 I believe.

Q. 2.50pm. In terms of weather forecasts, the CYC gave the fleet the facility through Telstra Control of race forecasts? 5

A. Yes, at every step they would read out a weather forecast for the area we were in rather than a series of forecasts, one for north - you know, running down the whole coast. The forecast package effectively that was being given to the fleet was the forecast generally for the area they were in. They weren't giving the full run of the forecast which would be the rest of the east coast of Australia or Tasmania, they were giving it for the area we were in. 10 15

Q. In any event, at about 2.50pm on the Saturday you received, via radio, a Bureau of Meteorology forecast?

A. Yes. 20

Q. Was that issued for the race fleet or was that just a--

A. I'm not - I'm not sure. I don't recall. I know it was re-broadcast, in essence, to the fleet at 8 o'clock. 25

Q. The inquest knows that there was a matter of significance, of particular significance in that forecast in that gale had changed to storm?

A. Correct. 30

Q. You were in the radio room or the nav table and you heard this?

A. Yes. 35

Q. Did you do something with that information?

A. Yes, I - I wrote it down very carefully. My recollection is I was tape - using a tape recorder because sometimes they are a bit quick, so I wrote it down and played it back to make sure it was right. I then went up on deck and spoke to the crew about it at some length. 40

Q. Do you recall the substance of the discussion?

A. I recall not using the word "storm" and I did that quite deliberately. I talked about the wind strengths but the problem is that people who live in Sydney think storms are what you go out on the verandah and watch with a beer in your hand and you probably heard some of my sailors talking about gusts and they are talking about eight second gusts and 10 second gusts. They're thinking about weather in their own terms and so I explained that the weather was going to be much more severe or a possibility it would be much more severe and I gave them wind speeds. 45 50

Q. Now as you came down the coast you were running before a nor' easter, correct?

A. Yes. 55

Q. What were you doing, yourself, as you came down the

coast in the afternoon?

A. After I sent through the e-mail about the weather, I came up on deck. I was on deck - we were running under spinnaker and I was doing trimming things and spinnakering things and at that stage had control of the VANG because the VANG is, in those circumstances, what keeps you on your feet and it's the sort of things that skippers and owners tend to do and so I was - I was on deck for much of the time until about 10 o'clock at night except for the skeds.

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Q. And you even got your head down for a while, did you?

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A. Yes, I think I slept from about something like 11 through till about half past 1.

Q. We know then that shortly after 2 o'clock in the morning, you received, by radio, another forecast?

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A. Yes, I can't be sure of the time I received it but it was the 209 forecast.

Q. This was the forecast for the area Jervis Bay to Gabo Island?

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A. Yes, I believe so, yes.

Q. Amongst other intelligence it communicated was this, a deepening low near 41 degrees south, 149 degrees east, moving east nor' east at about 20 knots?

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A. Correct.

Q. That's the latitude and longitude of this point or area about roughly 60 nautical miles east of Eddystone Light?

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A. Yes.

Q. On the north eastern corner of Tasmania, or off the north eastern corner of Tasmania, south of Flinders Island?

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A. Yes.

Q. You then received the next forecast, that is bureau forecast, at about midday, is that right?

A. Yes, the forecast was marked at 12.09 and there was - basically the same forecast came out at half past 12 was again for the area we were in.

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Q. This did not give any precise location of the low pressure cell?

A. No, that was the very - that was the problem we had, which is the forecast said eastern Bass Strait.

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Q. You have spoken about that and as you recall it located the low in eastern Bass Strait expected to move to the east today?

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A. Yes.

Q. In relation to that intelligence you have told the inquest that you had some problems and you sought other intelligence?

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A. Yes.

Q. Is that correct?

A. Yes.

Q. That's when you, for example, got on the radio, the VHF, to Eden Coast Guard?

A. Yes.

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Q. And you got the situation of the Bass Strait oil rig?

A. Yes.

Q. Wilson's Promontory?

A. Yes.

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Q. We won't repeat that intelligence that you got?

A. Yes.

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Q. You had some concern about that intelligence from the mainland, is that right?

A. Yes.

Q. Could you just explain again to the inquest why you had that concern?

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A. Well, we felt, given the fact that we were continuing south and the weather wasn't moderating, that the initial low must not have followed the track of the predicted track. If it was off Eddystone Light at 2 o'clock in the morning, then it should have been going out to sea and we should have been going into moderating conditions and the conditions were just doing the opposite. We therefore surmised that the storm must have stalled, because there was a big high in New Zealand, must have stalled and was coming north. That was the supposition.

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Q. Now you mentioned "we" a little while ago, would you have discussions of these matters that you have just spoken of--

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A. Yes.

Q. --to the Coroner with other people?

A. Yes. Many yachts have a nav station which is hidden away in the, you know, the bowels of the boat. On the old Sword of Orion the nav station was on the starboard side but quite central, so anyone coming below to get a drink or to eat or to come off watch or come on watch could easily just lean on the nav station and while taking their boots off, I could show them the information we had, so consequently it was the focus of discussions like that.

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Q. Could I just deal with a couple of perhaps incidental matters arising from that. There has been talk today in your evidence of this computer you had. As part of your electronic gear you had a computer. What was the function of this computer would you say again?

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A. The computer was taking the GPS positional data from the boat and putting it across electronic charts which would mean that it was accurately positioning us in any scale you wanted to in the ocean.

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Q. Perhaps more importantly, you spoke to the inquest about

it charting input data, wind speed?

A. Yes, I could get any amount - any information. I could get angle of heel(?) or wind speed, wind direction, any piece of information, you know, some 26 different parameters coming in but I - that was - and that was a historical record and I could go back five or six hours if it was relevant to see what the wind angle was, not that I needed to.

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Q. What you weren't getting are these weather pictures--

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A. No, no--

Q. --by fax?

A. We weren't getting--

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Q. You didn't have that facility?

A. We didn't have that facility.

Q. The other matter that I had in my mind was this, that when you were in touch with Eden Coast Guard, did you, apart from the information from those stations, did you ask for some bureau forecasts as well? Did you ask for Tasmania?

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A. We asked that - because the storm we believed was to the south, because we were looking south, our focus was there, so we got Bass Strait and Tasmanian forecasts.

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Q. How did they measure up with what you'd heard at midday?

A. They were essentially the same forecast.

Q. In relation to the sked, I think you've already said - I gather this to be the fact - that at the start of a sked and again at the end of the sked, Telstra Control repeated to the fleet that midday or so forecast?

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A. Yes.

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Q. Is that correct?

A. That's correct.

Q. When you radioed through after giving Sword of Orion's position, your data as to the conditions she was then experiencing was there something done about a broadcast then to the fleet by Telstra Control?

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A. Yes, Lew Carter, the Telstra operator, immediately stopped the sked and re-broadcast that information to the fleet. He, at the same time, reminded skippers of rule - whatever it is - which is that they have the responsibility for whether they are continuing in the race or going back or what they should be doing. He made quite an emphasis on the whole thing and didn't proceed the sked till he'd done that. I think he may have even repeated the bit about the responsibility of the skippers twice but he made a real point of it.

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Q. You said before the adjournment, and I don't have a precise note of what you said, in relation to your decision to turn back something to this effect - if I've got the effect wrong please correct me. My understanding is you said something to this effect about that decision to turn

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back, to turn around, to try and go on a nor' westerly heading?

A. Yes.

Q. Having regard to the sea state, that you now think that that might have been the wrong decision? 5

A. It was the decision that we made with the information we had. We thought it was the best decision but what actually happened, you know, and we have since discovered by looking at the tracking information that seems to be generally available of the path of the actual storm, we went back into the storm. 10

Q. I don't want to spend too much time with charts and so forth but I think you've shown that within the CYC's report on the race, the May 1999 report on the 1998 Sydney/Hobart race, which is document 13.30 in the Coroner's brief, figure 2, unfortunately it's not at a page number, but it's figure 2 which is a couple of pages after page 49, showing track of low pressure centre 27 December 1998. Are you familiar with that? 15 20

A. Yes, sadly.

CORONER: What page? 25

CALLAGHAN: Now, it's a couple of pages after page 49. It's figure 2 at the top of the page.

Q. It's headed "Track of Low Pressure Centre 27 December 1998". That's the centre of the lower pressure cell I take it, is that right? 30

A. That's what I understand.

Q. So that shows at 3 o'clock on--
A. That's 3 o'clock in the morning. 35

Q. 3 o'clock in the morning, that's right, 0300, the centre of the cell being located roughly north, a bit to the east of the town of Wynyard on the north western area of Tasmania, is that right? 40

A. That's correct.

Q. How did that compare with your intelligence or your appreciation about roughly an hour earlier as to the location of the centre of the low pressure cell? 45

A. The 209 forecast had said there was a low of 987 hecto-pascals 60 - a position 1 - 41149, which is 60 nautical miles to the east off Eddystone Light.

Q. On the north eastern corner-- 50

A. So our basis for starting was there, then we had a track east nor' east at 20 knots, which meant that it was going to clear us which is why we proceeded on down the coast. We believe that was - we were not going to encounter difficulties with that storm. 55

Q. Then it shows the track of that low pressure centre at ensuing three hourly intervals north east across Bass Strait

and you can see there the position at 1200 which is - how would you describe that position in relation to appropriate landmark?

A. South of Gabo Island, a little bit - north of Wilson's Promontory, not far from where the worst - where the bulk of the fleet that got clobbered was. We were in there. 5

Q. You were in there, you are pointing to an area to the east of that, roughly your finger is in the area of the mark four, the low pressure centre at 1500 hours? 10

A. That's right, yes, and the information that we'd had suggested to us is that the worst part of the storm was the north east quadrant, which is where - north west quadrant, which is actually where we went sadly. 15

Q. If I just might repeat this - I may be mistaken and you think it's obvious - that wasn't information that you had received? 15

A. That information was being transmitted, in basic form, on the Victorian weather forecast but the CYC information that was coming out was not the Victorian weather forecast. We listened to the Bass Strait forecast which didn't say it - no Bass Strait forecast that we heard said, and we listened to the Tasmanian one because that's where we were going. Had we listened to the Victorian forecast, we would have - you know, the scales would have come off our eyes. 20 25

Q. Assuming for the moment that you had not jibed and gone off into the north western quadrant, but had continued ahead, with that intelligence can you make a suggestion of what conditions you might have encountered? 30

A. Other boats that were with us, such as Atara, a boat we sail with a lot, of similar sort of size, we were within moderating conditions within a couple of hours and the conditions continued to moderate thereafter. 35

STANLEY: Q. Mr Kothe, can I just ask you some questions about your sailing background. How many Hobart races had you sailed in before this?

A. Prior to that I had done one Hobart. 40

Q. That was as navigator?

A. As navigator.

Q. As a navigator, did you see your task to involve not just knowing where the boat was at any particular time but also being a person responsible for assessing or ascertaining then assessing the weather? 45

A. I had 10 years experience flying sail planes with charts on my knees and the whole thing was about the weather. Your success or failure was your ability to understand the weather. 50

Q. My question really was directed more to the role of a navigator generally? 55

A. Yes.

Q. Do you see the role of a navigator as being to be a

person who is responsible for ascertaining and then assessing the weather?

A. It depends very much on the skill set on a particular boat. On my boat I was by far the most experienced in meteorology. It was appropriate. Had there been somebody else we would have split the roles.

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Q. You've already given evidence that you had attended in the past some sailing schools?

A. Yes.

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Q. Had these schools dealt with weather?

A. I specifically did navigation/meteorology schools.

Q. Did you go to any of those which Mr Ken Batt gave talks, lectures?

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A. No, I didn't but I had read some of his material.

Q. So apart from going to the schools you had taken it upon yourself to do some reading and to educate yourself generally?

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A. Yes.

Q. About the problem. I want to show you some documents. Were you in court when Mr Batt gave evidence?

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A. No.

Q. In the course of his evidence he produced a number of books, books that he said were commonly available in boat bookshops and were generally well known amongst the boating fraternity, or those that were particularly interested and involved in it. If I can just hand up to you - the first page is a list of the books and the other pages have some extracts from the books, some of which, if not all of which, he referred to in his evidence. Just looking through that list, do you identify any of the--

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A. "High Performance Sailing", Bethwaite, "Heavy Weather Sailing", Coles, "Off-shore Magazine". They were the ones that I had - in fact I read "Heavy Weather Sailing" a couple of weeks before Hobart.

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Q. So you were clearly a person who was concerned to find out what you could--

A. Yes.

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Q. --about the problems you might anticipate?

A. Yes.

Q. This isn't an exam but I just want to take you to some of the extracts. Can you turn over first - unfortunately those pages aren't numbered - the sixth page. It's an extract from "Deep Sea Sailing". Can you see that? It has "Deep Sea Sailing" at the top of the page. I can just point it out to you?

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A. Yes. That's not a book I read.

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Q. No, but I just want to ask you about some of the comments in it and just see whether you agree with them.

Perhaps if you just look at me for the moment, it might make it easier. Do you see the sentence at the end of the top paragraph, it says, "It is an utter fallacy to believe that open waters always enjoy steady winds." You would agree with that I take it?

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A. Yes.

Q. Then under the heading of "Measurement of Wind", do you see it's here talking about the Beaufort scale, because it's an English book, do you see the second sentence commences, "For correct Beaufort scale number does not show the force of the strong gust which will be an amount greater than the mean depending on the turbulence". Do you agree with that?

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A. Yes.

Q. So when one talks about Beaufort scales, that is not incorporating an allowance for gusts, is it?

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A. Correct.

Q. Then the next paragraph commences, "As a very general guide in cyclonic winds above gale force," and they are the sort of winds we are talking about in this case, aren't they?

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A. Yes.

Q. "the fiercest gusts will be about 40 per cent higher than the mean wind force". Now do you accept that as an accurate statement?

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A. Plainly it now - now appears to be so. I was unaware of that at that time.

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Q. These questions aren't being put to be critical of you, they are put to show--

A. I've seen the--

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Q. If you don't know the answers, and you have done these courses, what do other sailors, other yachtsmen know, do you see? Can I take you now to the - it might be easier if you hand it back to me or can you turn about halfway through the document, you will find a heading "Oceanography and Seamanship by Van Doorn". You will see it handwritten up the top?

40

A. Yes.

Q. The fourth paragraph - this is under the heading of "Weather Instrumentation" - the third paragraph starts "Gustiness", do you see that?

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A. Yes.

Q. "Gustiness is another factor that affects the determination of slow changes in the mean wind. Gustiness increases with increasing wind and sea state and can amount to instantaneous readings that differ by as much as 50 per cent in speed." Do you see that?

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A. Yes, I do.

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Q. You now know that that in fact is the case, don't you, from your own experience in this race?

A. Yes.

Q. Were you not aware of that before this race?

A. I had not seen it in writing.

CORONER: Q. Now, that's not quite--

A. Okay, no I was not aware of it. No, I hadn't seen it in writing. I was not aware of it.

STANLEY: Q. Could you turn on a little further, a few more pages, and you will find the document entitled, in the handwritten section, "Manual of Weather at Sea"?

A. Yes.

Q. This is from an article published apparently by the Royal Ocean Racing Club by Mr Pike and again it deals with gusts. Do you see commencing the second paragraph, "Gusts are a feature", do you see that?

A. Yes.

Q. "Gusts are a feature of most strong wind situations and reflect the general instability of the wind, instability generated by the turbulence of the wind in contact with the sea." Again, you would accept that?

A. Yes.

Q. Then it goes on, "Everyone with a sail boat will be aware that these gusts, which are generally short lived, usually lasting for only a few minutes but often increasing the wind strength by up to two numbers on the Beaufort scale." Were you aware of that?

A. The definition of gusts is probably the problem. My crews are used to leaning into a gust for 10 or 15 seconds. That's what - when we talk about gusts, that's what they actively mean.

Q. Now down the bottom of that page, you can see there's a table and there's a description of the table below it, the last paragraph. It says, "This table provides a means of calculating the maximum winds which can be expected based on forecast values. A forecast value doesn't allow for gusts or as the table shows the wind speed can be double the forecast strength. Gusts tend to be less violent at night, hence the reduced correction factors." Do you accept, firstly, and did you know at the time of this race, that forecasts do not include, as a rule, allowance for gust factors?

A. I believed that when a wind range was given that I should - say 50 knots - 40 to 50 knots, that I would expect in that period, because in a forecast sometimes you get - it's a split forecast, such as we were getting, a nor' easterly, you know, 15 to 20, then a front coming through at 40 to 50. In the 40 to 50 part, I would reasonably have expected 30 through 60 from lulls to gusts.

CORONER: The question is whether you would expect it to be set out in the forecast, wasn't it?

STANLEY: I am sorry, sir.

CORONER: Your question was whether it was expected to be set out in the forecast?

STANLEY: Yes.

WITNESS: No, I expected the gusts to be, and lulls, to be apart - on top of that.

STANLEY: Q. On top of the forecast?

A. Yes.

Q. So the forecast doesn't cover those matters--

A. No, I agree.

Q. But any experienced sailor should know that and should make allowance for it?

A. I agree.

Q. For people who are brought up on the Beaufort scale, there's this table and it sets out various factors for maximum gusts speeds in tabular form and do you see depending upon whether it's a force three or four wind up to force seven or eight, the fact that you incorporate for maximum gust speed ranges from 1.6 up to 2?

A. I can see it's in that British book.

Q. In other words, if you are looking at a force three to our wind, you can have maximum gusts of double?

A. I can see that that's written there.

STANLEY: Your Worship, I propose to tender those. The list of books has already been tendered.

CORONER: That might be of assistance. I would like to see it tendered. I don't think there's any objection.

STANLEY: Perhaps if we could include it as an addendum or just add it to the list of books.

CORONER: Yes, make it part of that.

STANLEY: Or should we make it an addendum to Mr Batt's--

CORONER: No, I think to the list of books.

STANLEY: Q. Mr Kothe, had you ever raced in seas where a storm warning was applicable?

A. No.

Q. Had you ever sailed in seas where a storm warning had actually been issued?

A. No.

Q. So you were sailing into conditions that you didn't know?

A. I hadn't sailed in conditions above 60 knots.

Q. Do you accept that it may be different in terms of what one might expect to have a storm warning in Bass Strait as distinct from a storm warning in some other area of coastal waters or ocean waters?

A. I understand the gravity of a storm warning.

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Q. Do you also accept that storm warning in Bass Strait has greater potential for danger or hazard for boats and crew?

A. I understand because of the sea and the possibility of current and possibility of shallow water but not inherently in the storm warning.

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Q. If you understand that those other factors are there, if you superimpose on them conditions that give rise to a storm warning, wouldn't that make the situation even more potentially dangerous?

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A. Yes.

Q. You told the court that you did not use the word "storm" when you described the weather conditions to the fellow members of the crew and that was because they were from Sydney and you thought they may have had a different understanding of what a storm was?

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A. We are all aware that in thunder storms at sea, you can get line squalls, very quick squalls of, you know, high winds and that's the conditions which I've had 60 knots previously to that and people are - you know, that means that you don't get a building sea wave, you tend to get bang, the wind goes through, the boats fall over, the mast - the sails get shredded and they pop again.

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Q. Does it follow that your belief was, right or wrong, but your belief was that at the time that generally if a sailor's coming from Sydney didn't have a proper appreciation of what a storm warning involved?

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A. Plainly we haven't had - very few of them obviously had any experience with a storm warning, yeah.

Q. From what you've learned since, whether at this inquest or just generally, does that confirm your view that a large number of, if not most of the sailors in this race didn't appear to appreciate what a storm warning meant?

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A. No, I think the navigators and those people responsible for the - interpreting the weather on the boats would be much more familiar with it than the average sailors. On race boats there's a high degree of specialisation. So, some people know much more about the bow than I ever want to know but I know much more about the weather than they ever want to know.

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CORONER: Q. Having heard the evidence in this inquest, do you still say that?

A. The sailors generally I don't believe know what a storm is. I think most of the skippers have a pretty good idea what - skippers or navigators have a pretty good idea of what a storm warning was. I certainly was expecting, you know, that winds could get up to 60 knots, 65 knots even as gusts. We experienced winds much greater than that not as

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gusts.

STANLEY: Q. You indicated when you were endeavouring to make the decision as to go on or go back, you were looking for information and one of the reasons you contacted the Eden Coast Patrol and you were obviously looking at the forecast and so on, what I want to put to you is this: What you were really looking for were real time observations of the sea conditions and the position of the low, wasn't it? 5
A. I guess what I was really looking for was the information in the Victorian weather forecast. 10

Q. Well, it really wasn't so much a matter of forecast, it was a matter of what was happening?
A. Okay, the reporting on the position of the low that was in the Victorian forecast. 15

Q. At that particular time--
A. Yes. 20

Q. Relevant to you?
A. Yes. 20

Q. You would have, I take it, appreciated that that information could be given if and only if there were actual observations, either from equipment or from oral information provided to the bureau? 25
A. I am a little puzzled.

Q. You were at the pre race briefing, weren't you?
A. Yes. 30

Q. Given by Mr Ken Batt?
A. Yes. 35

Q. Did you hear it and see it when it was being replayed in this court? Were you here?
A. No, I wasn't.

Q. Well in the course of that briefing, Mr Batt made a point, and it was highlighted with a note that he put on the screen during his talk, the request was for yachtsmen, those that had the e-mail facility, to send weather conditions by e-mail to the bureau during the course of the race? 40
A. Correct. 45

Q. And you were aware that request had been made?

A. Yes.

Q. And you were one of the boats that had the facility?

A. We did early in the race. We lost the facility as the weather conditions increased.

5

Q. In fact on the tape of the actual pre-race briefing Mr Batt is heard to say with respect to those that had the e-mail facility, "We urge you to send in the latest weather observations so we can come up with a good forecast"?

10

A. Yes.

Q. Did you at any stage think to do that, and this isn't a criticism, I'm just asking you whether as a fact it happened?

15

A. No I didn't.

Q. Can you tell us why you didn't?

A. Well I guess I - when I realised how bad it was I effectively did in the best way I knew how.

20

Q. That was pretty late though, wasn't it? What about earlier?

A. Earlier I lost my ability to use e-mail, somewhere around Ulladulla.

25

Q. Which would've been about what time?

A. Probably something like roughly 10 o'clock at night and we were in - there was no difference between the conditions we were in and the forecast at that time, none whatsoever.

30

Q. On the morning of the 27th, certainly by midday, you've described the conditions then as overcast with rain and winds in the 40s to 50s?

35

A. Correct.

Q. And was it about just after one o'clock that Adam Brown as you say went into shock, he was shaking and obviously exhausted as a result--

40

A. I think my original words in my statement was "starting to go into shock". I don't think he really went into full shock. I suggested that that was a possibility and asked them to give him some liquid.

45

Q. So the conditions up until one o'clock had been so severe that the man at the helm had such difficulty controlling the boat that he became utterly exhausted and was in the condition you've described?

A. Yeah, he was on the helm for quite some hours, yes.

50

Q. You were in a position to make a pretty good assessment of his condition, you were a pharmacist by occupation?

A. Correct.

55

Q. So you had wind speeds of 40 to 50 odd with gusts presumably, is that correct?

A. Yes.

Q. And you had these conditions over a period of a couple of hours and a man who was so affected that he had to go down and rest as--

A. Well he came off watch and then just started to get muscle tremor, et cetera, et cetera.

5

Q. In that situation, you described it as a difficult situation that you were in - that the boat was in at that time?

A. Yes.

10

Q. Accept that? And indeed you had at least one member of the crew wanting to go back?

A. Yes.

15

Q. So it was difficult and demanding?

A. Yes.

Q. I suggest to you it was really also hazardous?

A. Yes it was hazardous and what we were trying to do was find out which was the correct way to go.

20

Q. Sure but my point is this, here you had condition where the winds were around about 40 to 50 within the range that the bureau had forecast and yet it was still such that you regarded it as difficult, demanding and hazardous?

25

A. Yes we however had expected moderation of the weather at this stage.

Q. But knowing that, having had that experience would you go out now in a sea in Bass Strait where a storm warning alone had been issued, if you knew nothing more than that a storm warning had been issued?

30

A. I think that's pretty hypothetical because I know the bureau wouldn't let me go out there without detailed forecasts and I wouldn't go out there without detailed forecasts, so we're talking about a situation that isn't - it's a different situation.

35

Q. Well we're not really. What I'm suggesting to you is that no yachtsman should have gone into Bass Strait on that day with a storm warning having been issued, full stop?

40

A. I don't agree with that because if you look at the course of the track given to use by the Bureau of Meteorology at 2am and if you chart that out you'd find that if you believed that then the storm was going to clear us well and truly and that was the basis on which I went into Bass Strait. I can't answer for anybody else, that's the basis on which I went into Bass Strait.

45

Q. That's your position. It certainly doesn't deal with the position of other boats, does it?

50

A. There's nothing I can do about other boats.

STANLEY: Your Worship, there's a matter arising out of that piece of this witness's evidence that I desire to get some instructions on. That's the only other matter I have to deal with--

55

CORONER: I'll get back to you.

STANLEY: If I can do that whilst other cross-examinations be continued?

CORONER: Yes. Very well, Mr Shand?

SHAND: Q. Now, is it clear, Mr Kothe that there was no weather fax on your boat?

A. Correct.

Q. Now, I want to take you to some things you said about if you had seen from a boat that you may have been skippering or been in control of, you'd seen a dismasted yacht, I think you were asked, in the conditions in which the Sword of Orion was at the time the Margaret Rintoul went past, what you'd have done. Do you remember being asked those questions?

A. Yes I do.

Q. You were asked to put yourself into the position of the skipper of a yacht which had a choice it might make about stopping or going on. All right?

A. Yes.

Q. Now, first of all, when did you first exercise your mind about that subject?

A. When I was in Bass Strait calling on the VHF I was hoping like hell they had their VHF on.

Q. Well that's the extent of the exercise, is it?

A. That was - the question was when I first did it, that's when I first did it.

Q. And the extent of the exercise at that time was that you - if the positions were exchanged you might try and call them on the VHF?

A. That would've been the first thing I would have done.

Q. Now I suppose if the fact be that at the time this yacht hove into sight and went past was the situation in which you were then placed with regard to the boat sinking or losing your crew or something of that nature, that right?

A. Sorry, I'm not sure?

Q. Do you say that at time the Margaret Rintoul was seen your boat was in the course of sinking?

A. We didn't know whether it was going to sink then or later. It was breaking up and we were bailing very hard.

Q. Well do you recall that you had some conversation with fixed-wing aircraft that flew over and spoke to you by radio?

A. Yes.

Q. And presumably you presented to the pilot or the crew of that aircraft what your true position was?

A. I've explained that I'm not sure of the time sequence of

that. That's the evidence I gave on that date but I'm not positive now about the time sequence.

Q. On what date are you talking about now?

A. It must have been the day of the memorial service when we were in Hobart, would be the second or the first of--

5

Q. I'm looking at the moment at a statement you made or an interview that took place with you--

A. The one where I talk about the helicopter is the one I'm casting doubt on, my own evidence.

10

Q. Let me start again. Do you recall what passed between you on the Sword of Orion and the pilot of the fixed-wing aircraft which came and flew over your yacht and communicated with you?

15

A. No I didn't. I didn't communicate with it.

Q. Well, did anyone else from your boat do that?

A. Carl Watson was the person who first communicated with any outside - anything.

20

Q. You weren't manning the radio then at that time?

A. I was manning the radio when the Margaret Rintoul went past.

25

Q. Well what I'm concerned about at the moment is who was manning the radio when the aircraft came over the top and spoke to your yacht?

A. Carl Watson.

30

Q. Were you there at the time when he did?

A. I didn't have any other place to go.

Q. You were there then, were you?

A. Yes.

35

Q. You could hear what he was saying?

A. Yes.

40

Q. Mayday calls had been issued before this aircraft came over the top, hadn't they?

A. Yes.

Q. Did you hear Mr Watson, if he it was who was speaking to the aircraft, tell the pilot presumably on the radio of the aircraft this, that there was one person overboard, that's the first matter?

45

A. Whenever he spoke to - the first aircraft he spoke to he said there was a man overboard, yes.

50

Q. Do you know when that was roughly, in relation to other events?

A. No.

55

Q. It was certainly after the man went overboard of course, wasn't it?

A. Yes.

Q. Was it in fact somewhere about the time that Margaret Rintoul was there?

A. It could have been, I can't be sure. I've in fact said my own evidence I'm not absolutely convinced of the timing at that particular point.

5

Q. Well do you remember Carl Watson telling the pilot of that aircraft that there was no imminent danger of your vessel sinking at that time?

A. No.

10

Q. You don't?

A. No but I'm sure if there's a transcript that says he said it I'm sure he said it.

15

Q. I'm indicating this to you on the basis of an interview conducted with a man called Angus Cameron who identified himself as flying the fixed-wing aircraft over the top of Sword of Orion when it was in its disabled state and having conversation with whoever it was on the radio of Sword of Orion.

20

A. Could you tell me what time that's occurred at?

Q. I'll do the best I can. It doesn't come out in the pilot's interview, may I say, but there's been evidence from which - and I'm speaking, your Worship, about John Young's evidence.

25

CORONER: Yes.

30

SHAND: Q. It is determined that this aircraft came over the top of your yacht shortly before 1915 hours, namely 7.15pm. Does that help you?

A. Yes, then that would place it about an hour after we would estimate Margaret Rintoul went past.

35

Q. Well would you subscribe then to the proposition as accurate that at that time Sword of Orion was not in imminent danger of sinking?

A. At 7.15?

40

Q. At the time I've given you which is 7.15pm, yes, 1915?

A. No, I wouldn't necessarily subscribe to it but it's certainly obviously what Carl Watson said.

45

Q. You wouldn't dispute that in saying that he was inaccurately describing the position would you? You wouldn't suggest that that was inaccurate--

A. He wasn't attempting to be misleading or anything, I'm sure.

50

Q. And so that that could in fact be the factual situation of Sword of Orion at that time, couldn't it?

A. Yes, the situation did deteriorate. He himself was involved in putting members up to try and stop the boat splitting and that went on for the entire evening, but at that time I'm sure he believed it.

55

Q. All right, and you've no reason to say it wasn't accurate?

A. I didn't believe it.

Q. You didn't believe it?

A. No.

Q. What do you--

A. I thought the boat was in danger - more danger than suggested there but I don't know whether it would've been necessarily a great thing to yell out across the boat, "tell 'em we're sinking, we're sinking".

Q. Look, if in fact the boat was sinking, can you imagine it being proper or likely that Mr Watson would've told the pilot by radio that the boat was in no imminent danger of sinking? You seriously say that?

A. The boat was splitting--

Q. No, please answer my question. Did you hear it?

A. If you'd repeat it I'd appreciate it.

Q. You don't suggest, do you, that if the boat had been in imminent danger of sinking Mr Watson could conceivably to a rescue aircraft appearing overhead have said something to the pilot which was quite false, namely that the boat was in imminent danger of sinking?

A. No imminent danger. I don't know what definition was being used of "imminent" in that conversation.

Q. Well you know what "imminent" means, don't you?

A. Within the next hour?

Q. It means within a short time.

A. Yes.

Q. You'd agree that to say that at that time there was no imminent danger of the vessel sinking would've been an accurate description?

A. No I don't necessarily believe it was an accurate description, it was Mr Watson's description.

Q. We know that.

A. One of the things that was presented was some photos which showed the boat was split along the side.

Q. That doesn't mean it was in imminent danger of sinking, does it?

A. It does if it got hit by a large wave.

Q. What do you say? It had been hit or if it were hit?

A. If it was hit by a large wave I believe the boat would have sunk.

Q. Well that's your view and obviously--

A. Yeah I was in Bass Strait and that was my view at the time.

Q. Was it?

A. Yes.

Q. All right, now in fact this aircraft, you ascertained did you not, attempted to carry out, very briefly I might say, a search of the area where in fact the body might have been or Mr Charles might have been? 5

A. I have read that since, yes.

Q. And found that conditions were such as to make it impossible to continue with that? 10

A. I understood they were short of fuel.

Q. No, the conditions I'm talking about not the fuel tank. The weather conditions made it impossible to continue that attempt? 15

A. I am not aware of that.

Q. Now beacons were dropped by this aircraft, weren't they?

A. I don't recall - beacons, what do you mean by "beacons"? 20

Q. Beacons, I thought perhaps you might tell me?

A. I don't think they dropped strobes I don't think they dropped any lights that I know of. I'm unaware that they dropped anything. 25

Q. Well you may take it presumably beacons would be illuminated objects that would show up to guide other craft to the scene if need be, that right? That's what you imagine beacons to be, isn't it? 30

A. Well I'm not sure I - no I can't imagine what they might be, I'm unaware of such devices. The helicopters didn't drop any beacons. When they were positioning us they relied on our strobes, they certainly didn't have any facility to drop beacons and I'm unaware of any beacon devices being dropped by that aircraft. 35

Q. Well you may take it that I'm referring to an interview carried out with Mr Neil Boag on 1 July 1999 at Moorabbin where he describes in relation to the Sword of Orion they dropped a number of beacons in its vicinity. Now, might you have been downstairs and not seen it happen, or what? 40

A. Absolutely, I was downstairs at that stage. I would've been strapped in a bunk. 45

Q. Yes, so you mightn't be in a position to say yes or no to this question?

A. I was unaware - my answer was, I was unaware of any beacons. 50

CORONER: His answer was, I don't know about that.

SHAND: Q. Now, can you tell us, bearing in mind that when this aircraft was around you were below, whether in fact there was a time given to the pilot of the aircraft as to when the person, being Glyn Charles, had been lost over the side? 55

A. I don't know.

Q. You didn't hear Mr Watson inform the pilot that the man, Glyn Charles, had gone overboard some time previously?

A. My recollection 18 months ago isn't that accurate, I'm sorry.

5

Q. Now to revert to what you said in evidence today about what you'd done had the positions been reversed and you'd been sailing near a disabled yacht, you said, I think, that you would have ensured that your navigator was on channel 16 is that right?

10

A. Correct.

Q. So as to be able to communicate with the appropriate receivers of distress news, is that so?

A. I'm not sure I said that last bit.

15

Q. Well I'm asking you whether in fact you would've done that because channel 16 was recognised as the channel used to communicate situations of distress in which for instance yachts were placed?

20

A. Channel 16 is the channel that is most commonly used for short range communication in a circumstances where a boat loses its mast the probability of it being able to use channel - VHF and channel 16 is considerably greater than any other frequency and that is the frequency that is normally used for close range ship-to-ship communication.

25

Q. So that's your view about making sure the navigator or the person operating the radio was switched on to channel 16?

30

A. Absolutely.

Q. Now, you'd have slowed the boat down you said, did you?

A. I would've attempted to.

35

Q. Why?

A. Well I would not wanted to have left the scene. I may have received instructions or a request from the search authorities to stand by or I may have, after ascertaining the situation, wanted to stand or found I was able to stand by, therefore I wouldn't have wanted to exit the scene any faster than necessary.

40

Q. You'd have slowed the boat down was your statement, wasn't it?

45

A. Yes, if I could.

Q. And what do you mean by if you could? If the conditions--

A. If the conditions allowed me to do so.

50

Q. Sorry?

A. If the conditions allowed me to do so.

Q. Conditions were horrific at the time weren't they? At the time the Margaret Rintoul moved up?

55

A. It's hard for the crew of Sword of Orion to really judge that.

Q. Well give me the view that you have perhaps qualified by the limitations that you feel. Are you not in a position to describe them now because at the time the Margaret Rintoul was seen you didn't have an observation of them?

A. A number of factors. We had no mast, that means the boat is less likely to rock, we had no instrumentation that would enable us to read it and we had a sea anchor out which means that we were head to wind and consequently as stable as we could make the boat. The other side of it is my leg was hurting a hell of a lot and I was pretty sensitive to movement of the boat.

Q. You could see the waves, couldn't you?

A. When I got up and looked out, yes.

Q. And they were very large, weren't they?

A. They were less - during the night they got worse, they were considerably less than they had been.

Q. They were still very large, weren't they?

A. I can't give evidence on the size of the waves. I had no mast to judge it by which is the normal - you've got a thing in the air that enables you to gauge the height.

Q. Well, perhaps I ought solve this problem by asking you something from a previous interview. The conditions at the time you saw the Margaret Rintoul were pretty horrible, weren't they?

A. Is there a particular part of my evidence you're referring to?

Q. I certainly am.

A. Okay, if that's what I said, that's what I said.

Q. Well that means you--

A. I mean the conditions were horrible, they were horrible in a number of ways. They were horrible on Sword of Orion.

Q. No, no, please Mr Kothe, you don't think I'm asking you about that, do you?

A. No, no, but I'm - if you tell me the page and I can get a context that might help.

Q. All right, page 3 of an interview conducted on 3 November 1999. Have you got that page?

A. Yes.

Q. About the fifth line on that page and you refer to the fact, and I'll read from the second line, "We had ourselves reached the conclusion during the race they hadn't seen us, you know, which was the only possible explanation that they hadn't seen us and conditions were pretty horrible." That's clear enough, isn't it?

A. Yes, certainly.

Q. You don't need any further reminder as to the sort of conditions they were indeed - and that meant wind, wave and the rest, didn't it?

A. I don't think it says that. It says the conditions were pretty horrible.

Q. Mr Kothe, what were you talking about when you said the conditions were pretty horrible?

5

A. Certainly visibility was not good, it was raining.

Q. Are you serious that's all you meant?

A. I don't think it says more or less than that.

10

Q. Really? The conditions--

A. Were pretty horrible. I in fact, in a radio interview, did actually say that I thought the visibility was very bad.

Q. Please don't go to some other occasion. Are you saying that that statement, general as it is, about conditions, would you agree?

15

A. Yes it is a general statement about conditions.

Q. Are you saying that that did not include under the description pretty horrible wind and waves?

20

A. I'm sure it contained an element of that but it certainly doesn't define it.

Q. An element of it and what?

25

A. The conditions in total were pretty horrible, I agree with that. I don't think that statement defines whether it was the wind or the waves and the seaway or whatever.

Q. You're mincing words, aren't you?

30

A. No.

Q. These were your words I'm putting to you.

A. The conditions were horrible--

35

Q. Excuse me. These are your words that you gave to the police officer interviewing you.

A. Correct.

Q. Are you saying you don't recall in using they included "wind and waves"?

40

A. The date of that interview was November 1999.

Q. Would you answer my question, and answer it directly if you wouldn't mind. You heard the question, what's the answer?

45

A. Were the conditions horrible? Yes.

Q. And that meant wind and waves?

A. The combination of the elements involved were wind, waves and rain.

50

Q. That'll do, thank you. Took a while, didn't it, Mr Kothe?

55

CORONER: Get on with it, please.

SHAND: Q. You said something then, I'm talking about your

evidence today, about - my notes are hard to read but something to do with the navigator being provided with listening frequencies. Do you remember that?

A. I'm not sure, but yeah.

Q. I want to ask you what you meant by it. Do you recall saying that after saying that you wouldn't change course - I haven't quite got to that, actually.

A. In relation to the HF radio perhaps is what it was.

CORONER: Yes.

A. There's a number of frequencies which are standard international distress frequencies on which boats commonly listen, by which I mean that it is normal that particularly - that the default frequency is one of those distress frequencies and you can go to those frequencies if you're on another one and can you put out a distress signal and you will be heard. You'll be heard by the coast guards, you'll be heard by Sydney radio, you'll be heard by Melbourne radio, depending on your distance you can reach, but you'll be heard on those emergency frequencies.

SHAND: Q. You recognise, do you not, in giving that evidence today that what Margaret Rintoul did was to radio to Telstra Control a sighting of your vessel as it turned out to be by reporting the seeing of the flares?

A. Yes.

Q. Now that of course was the effective and may I suggest the most effective way of causing the institution of assistance being provided to your yacht?

A. Quite the contrary.

Q. Well it happened, didn't it?

A. Yes, but unfortunately there was a long delay which wouldn't have happened, I would suggest, if they had used a recognised distress frequency which was not crowded with boats talking about this particular problem. As I understand it the problem was there was a lot of traffic on the radio and consequently there was a delay.

Q. You've been sitting down and concentrating on picking holes in what they did for your assistance, haven't you?

OBJECTION (CALLAGHAN).

A. No, absolutely not.

Q. You've been musing over ways and means of criticising what they did?

A. In the middle of Bass Strait while--

Q. Please answer the question, would you?

A. No.

CORONER: What was the question, I didn't hear it?

WITNESS: Been musing over.

SHAND: Q. Musing over--

A. No. With emphasis.

Q. Musing over ways and means of criticising what they did or didn't do, was the question.

A. No.

Q. Now you would have told whoever you managed to get hold of by radio that there was a dismasted yacht and people firing off flares. Was that part of your answer?

A. If that's what I had seen which was the question I was put, if I had seen that that's what I would have reported.

Q. Yes, and you say they should have reported more than red flares or a red flare if they had more information. That's what you said today?

A. Yes.

Q. Well you've no reason to suggest they had or to believe they had any more information than that, have you?

A. Than what?

CORONER: Than that they had information that they saw red flares?

SHAND: Yes.

Q. Have you, Mr Kothe?

A. I have since read they had more information than that. I don't know whether it's true or not.

Q. Well where have you been doing your reading?

CALLAGHAN: Your client's statement.

SHAND: Well please don't answer.

CALLAGHAN: Are you acting--

SHAND: ..(not transcribable).. witness box, are you, Mr Callaghan?

CORONER: Please, the question and an answer, an objection. I'll rule on it if I'm given time but I expect simply that, the question and an answer and no interjections from the bar table from either of you.

WITNESS: I have read - without any prompting I have read--

CORONER: Excuse me, witness, please.

WITNESS: I'm sorry.

CORONER: Have we got that clear, gentlemen?

SHAND: It's our fault, not his, your Worship.

CORONER: I know it is. You're used to the proceedings, he's not. Thank you.

CALLAGHAN: I'm sorry.

CORONER: Go on, Mr Shand. 5

SHAND: Q. You appear to be - have some bitterness towards Mr Purcell, do you, Mr Kothe?

A. No. 10

Q. You don't think you're showing any of it today, I suppose, do you?

A. No.

Q. So not a critical approach to him? 15

A. I think on the contrary I've probably made some statements that are reasonably favourable.

Q. You don't have, in your view, a critical approach to his behaviour at the time in question. Is that what you said, you tell us? 20

A. I would have done things differently. I was responding to questions.

Q. Will you answer my question? 25

A. Am I critical?

Q. Do you have a critical approach to what he did or didn't do at the time in question? 30

A. No.

Q. You don't? You don't think you've been showing it today? 35

A. No.

Q. All right. Well do you remember issuing a press release on 11 June 1999 about this matter?

A. Yes.

Q. Was what you said in that press release about Mr Purcell sincere? 40

A. Yes.

Q. And in your view accurate? 45

A. I was advised of information and--

Q. Was it accurate?

A. To the best of my knowledge.

Q. Good. And you said this, didn't you, "We have recently been advised that the civilian fixed-wing aircraft from Merimbula which pinpointed our position was responding to a radio report from Margaret Rintoul II". That's what you said, wasn't it? 50

A. Correct. 55

Q. And you believe that to be the truth?

A. I believe I've been advised of it. I don't know whether it was true or not but that's what I was advised.

Q. Well you, I take it, repeated the advice because you had no reason to believe it was other than true.

5

A. What I said is that's what I've been advised.

Q. Look, Mr Kothe, it will be quicker if you answer my question. You had no reason to believe, when you made the statement, that it was other than true, the advice you'd been given?

10

A. I had no knowledge of - I couldn't confirm whether it was true or false but based on the fact that that's what I'd advised that was my response.

15

Q. Who advised you?

A. Mr Purcell.

Q. You were repeating his words?

A. He advised me of it.

20

Q. He advised you before you made this press release. That was the case, did he?

A. Correct.

25

Q. And you accepted that as true?

A. I said I'd been advised.

Q. "We have been advised", you went on, "that Margaret Rintoul II had managed to relay our position to the CYCA's radio relay vessel". Did you regard that as true, in substance?

30

A. At that time the information wasn't available to me to verify it or otherwise because all that information was in the hands of the police, but Richard told me that and so I said I'd been advised.

35

Q. This was a very limited sort of statement in his favour, was it, you were making?

A. It was done for the best of reasons.

40

Q. Look it was a very - that's got nothing to do with my question. This statement was a very limited one in his favour, was it, which you were deliberately making in that form?

45

A. I was only saying things that I knew to be true.

Q. Well did you know to be true that Margaret Rintoul had managed to relay your position--

A. No.

50

Q. --to the radio relay vessel?

A. No, what I knew to be true was I had been advised of that.

55

Q. By June 1999 you had every means of confirming whether it was true or not, didn't you?

A. No.

Q. Couldn't you have had access to the log of the Telstra Control?

A. I asked could I have some of that information and was told it would be available at some point in the future but it wasn't available to me.

5

Q. I see. Well now you know it's true, don't you?

OBJECTION(HILL). LEGAL ARGUMENT.

10

SHAND: I've just been putting to him that Margaret Rintoul had managed to relay our position to the radio relay vessel.

A. Yes, I know that to be true.

15

OBJECTION(HILL). LEGAL ARGUMENT. QUESTION ALLOWED.

SHAND: Q. You know for a fact now, do you not, that the message given or transmitted by Margaret Rintoul, the radio rely ship, was in substance, not in terms, that which established the position of the Sword of Orion, don't you?

20

A. I haven't seen the transcript but I understand that it gave a position of a red flare which ultimately turned out to be us. Yes.

SHAND: Q. You will accept, won't you--

CORONER: You asked for another way. The question has been answered on that basis.

SHAND: Q. Your statement then went on to say, "After our position was verified, we were over flown by a naval helicopter." You know that it says that?

A. Yes.

Q. You were referring then to the position which had been transmitted to the radio relay vessel, weren't you?

A. I think the sequence was that a - the fixed wing aircraft came over and then a couple of hours later or an hour and a half later a helicopter came over, yes.

Q. The position of the Sword of Orion was verified when the fixed wing aircraft came across?

A. Yes.

Q. You were saying in the statement that in fact the verification of your position followed from the radio contact made by Margaret Rintoul for the radio relay ship?

A. My statement says that's what I understood at the time, yes.

Q. That's what you understood you were indicating?

A. Yes, that's right.

Q. Then you said, "The crew of Sword of Orion and their families are grateful for the assistance of Richard Purcell and the crew of Margaret Rintoul II." I will pause there. Remember those words?

A. Yes.

Q. That was sincere, was it?

A. Yes.

Q. And recognised exactly the conduct I have been putting to you in contacting the radio relay vessel with your position at the time, didn't it?

A. I was grateful they did what they did.

Q. And that's what they did, you recognised?

A. Yes.

Q. This wasn't sort of a political publication, was it?

A. No.

Q. Not tactical in any way at all?

A. No.

Q. You mentioned that there was an e-mail sent from the Sword of Orion to the Cruising Yacht Club on the afternoon of 26 December, is that so?

A. That's correct.

Q. Do you have that here please?

A. No.

Q. Where is it?

A. The bottom of the ocean from my end. It's gone. The computer went down with the boat. 5

SHAND: May I inquire through your Worship for a copy of that e-mail?

CORONER: I don't know if we do. We were looking for it in our brief and the brief's so big, we can't find it. I think that's the position. 10

SHAND: One would hope the position - found and produced by the Cruising Yacht Club. 15

HILL: I am told by the investigating officers that they were shown a copy of this e-mail by Mr Kothe. We have asked since then and Mr Kothe says he doesn't have it. 20

CORONER: I take it's not produced.

WITNESS: You've jogged my memory. My recollection is that I did have it on the computer I had at the time which, as computers occasionally do, died. I got a copy from the CYC. They e-mailed me a copy of it but it was on a computer and it died. I'm sure you could have gotten it from the CYC. 25

HILL: I also asked the representatives of the CYC in the presence of their commodore and they were going to try and obtain a copy. 30

HARRIS: Let me say that I had been told that the head of the Media Centre - it's hoped that he does have a copy of it and if you could give me a moment, I will see if there's any further news. 35

CORONER: All right. How did you go, Mr Harris?

HARRIS: I am told that a solicitor with my firm has all Mr Peter Campbell's files, so we will have a good search through those. 40

CORONER: Can you do that this afternoon? 45

HARRIS: Yes, certainly.

CORONER: You are excused.

STANLEY: Could I just put two matters to the witness, they arise out of-- 50

CORONER: Yes, I'll interpose that now.

STANLEY: Thank you. 55

Q. Mr Kothe, I just want to ask you some questions about what the weather charts in fact showed as to the positioning of this low. Can I hand you up a copy of the document that

you were looking at before.

CORONER: That's the CYCA?

STANLEY: Yes, it is. I am sorry, no, the preliminary report with the chart in it. 5

Q. You have one there?

A. Yes.

Q. If I can just take you to the page with the surface charts. 10

A. Can you give me a figure number or something? Sequence of main sea level surface chart?

Q. That's it, yes. Can I take you to figure 9, the time is 3am on the 27th. Do you see that? 15

A. Yes, where it shows there is two lows.

Q. It shows two lows, yes. It shows the low on the right is the one that you were describing as being just on-- 20

A. That was the one on the 2am weather forecast.

Q. Yes, at the tip of Tasmania. But then you can see there is another low--

A. The Wynyard depression is the other one, yes. 25

Q. If we turn over the page we'll see the next weather chart three hours later and you can see the little low, in fact I am instructed it's referred to as a subsidiary low that develops or is borne, and you can see it's moving slowly east. Do you see that? 30

A. The Wynyard depression on the left is moving east.

Q. There are still two lows shown there but what I am putting to you is what is the small low, which is to the left of those, is the low that is the one that we are concerned with in this case. 35

A. Are you talking about the low over the north-western part of Tasmania versus the one over the north-eastern part of Tasmania? 40

Q. Yes, exactly.

A. Yes, yes.

Q. And if we just keep our eye on that low in the following figures going 9am, then midday and 3 pm, down the page and onto the next page 6pm, 9pm, do you agree with me that that is the low that in fact caused the damage, that was the danger? 45

A. Yes I do, absolutely. 50

Q. So that the forecast that you saw, the 2am broadcast that showed the presence of the low, it was in fact accurate?

A. Oh absolutely, I am not suggesting that it wasn't, no. Plainly there were two lows. 55

Q. Yes, and it was the second low that gradually developed,

that was the one that caused the damage?

A. Yes, and the unfortunate thing is that we didn't hear about the second low.

CORONER: You said it wasn't described in--

5

STANLEY: It was described in the Victorian forecast.

CORONER: But not the New South Wales--

10

WITNESS: Not in the Bass Strait or the Tasmanian forecast, nor the forecast given by Telstra Control to us as the Sydney-Hobart forecast.

STANLEY: Q. Mr Kothe, you had access by means of radio to the forecasts that were given?

15

A. Plainly if I had been smart enough to look behind me and get the Victorian forecast the information was available.

Q. I suggest to you that in fact it was available some of the Sydney forecast too. The forecasts for the high seas give positions in longitude and latitudes, don't they?

20

A. Yes, but the Sydney-Hobart forecast broadcast to the fleet, the Tasmanian forecast and the Bass Strait forecast, didn't have it. I had no reason to look at other forecasts. I was busy enough frankly without looking other places. Logically being in Bass Strait and going towards Tasmania that's why I looked at those forecasts. I wish I had looked at the Victorian forecast but it did not occur to us that we should do that.

25

30

Q. Can I just take you to the storm warnings here in the forecast section, it's about the middle of the volume.

CORONER: It's under appendix 4, Mr Kothe.

35

STANLEY: Q. Can you find the storm warning issued for 12.27000UTC? It might be easier perhaps if I could find it for you.

40

CORONER: It's a high seas forecast from where?

STANLEY: The high seas forecasts have the word 'Securite' up in the top and this is the one for storm warning issued at 12.27000UTC which is 11am on the 27th.

45

Q. Do you accept that?

A. I haven't got it here but--

Q. The left-hand page is the one that I am referring to, you'll see that had been issued out of the Victorian office but it's the high seas forecast and it describes the low and refers to its position, does it not?

50

A. Yes.

Q. And indicates that it's moving east?

55

A. Yes.

Q. Do you accept that that in fact is the low?

A. Oh yes, I mean I am not in any way disputing that there isn't the information available in places we didn't think to look, I am not suggesting that at all.

Q. If I can take you over the page. In the left-hand page is the Securite, it's a high seas forecast issued out of the Sydney office, and again I suggest that shows the position of the low and shows that it's moving east, it's now at 150 east and at about 20 knots. 5

A. With respect it's wonderful information, it just wasn't on the Sydney to Hobart forecast and it wasn't on the Tasmanian forecast and it wasn't on the Bass Strait forecast that I heard. 10

Q. But you don't dispute the fact that it was there to be obtained-- 15

A. Oh absolutely not. I am sure it was there had we thought that we needed to look to the high seas forecast or to the Victoria forecast, it is no doubt we would have found it. But reasonably-- 20

Q. Well,--

CALLAGHAN: Just let him finish. 25

WITNESS: It's just I imagine if that sort of information was so important it would have been in the Bass Strait forecast or the Tasmanian forecast or the Sydney to Hobart forecast. I didn't think - given the fact that the previous day we got so many reports out for the Sydney to Hobart forecast it didn't occur to me that information would stop flowing. 30

CORONER: Q. The point you are making is it was only in the Victorian and the high seas forecast? 35

A. Yes, and that's not the forecast to go running looking for in that circumstance. We knew there was a problem off the coast of Tasmania.

HILL: I am going to ask the Bar table if they could remain a little while so I can find out how far we are going because I have other witnesses, I think one is from Queensland-- 40

CORONER: Yes, just to give us an idea, gentlemen, you'll have a rough idea-- 45

HILL: So that I can organise and put people off et cetera.

CORONER: You will have a rough idea about how long you will be in the morning? 50

SHAND: Your Worship, I just can't be here in the morning I am afraid, I am placed in a most embarrassing position. If we had started this morning at 10 I would have been able to have sufficient time to cross-examine properly here, but with the loss of the time, the first hours or so - I just can't be here, I can't go deserting continuously the 55

interests of other people who depend on my being present so that I have to suggest, with respect, this matter should stand over and I can cross-examine at some other time.

CORONER: How long are you going to be out of the country, Mr Kothe? 5

WITNESS: I'll be absent for two weeks.

CORONER: I just don't see how we can do that. How long are you going to be? 10

SHAND: Half an hour I'd need, that's a minimum.

CORONER: Let's get on with it. Let's proceed now please. 15

SHAND: Q. Mr Kothe, is it correct that after the collision that occurred prior to the start of the 1998 Hobart race that you with regard to the mast noticed a little spot on it? 20

A. I didn't notice it first up, it was drawn to my attention.

Q. When it was drawn to your attention did you see what was nothing more than a little spot on the mast? 25

A. Yes.

Q. Looking far from anything that could be described as extreme or severe damage, is that right?

A. Yes. 30

Q. What were the terms in which you communicated with the Cruising Yacht Club about the damage resulting from this collision?

A. I used the word severe which I plainly should not have used. 35

Q. It was obviously and grossly false, wasn't it?

A. It turned out to be less important than I believed it may be at that time. 40

Q. At the time you sent it it was to your own knowledge obviously and grossly false, wasn't it?

A. We continued to look at it for some time-- 45

Q. Will you answer my question? At the time you sent the e-mail it was obviously to your knowledge grossly and clearly false, wasn't it?

A. It wasn't severe and I used the word severe and I shouldn't have. 50

Q. Will you please answer my question?

A. Not false, I'll happily accept I exaggerated.

Q. You knew very well that the damage you saw, being a little spot, could not conceivably be described as severe damage, didn't you? 55

A. It depended what the consequences were.

Q. No, as severe damage as one might visualise it.

A. Well, the little spot wasn't going to cause a problem, if the mast fell down as a result it would have been severe.

Q. I want to ask you a straight question and I hope I get a straight answer from you, Mr Kothe. You knew very well upon having this little spot on the mast drawn to your attention that it could not conceivably truthfully be described as severe damage, didn't you? 5

A. If it turned out to be a compression problem then it would have been a serious problem. 10

Q. But you did not recognise it as conceivably being a compression problem then, did you?

A. The jury was still out on that one, we weren't absolutely sure. 15

Q. You were expecting the CYC to believe this comment you made in your e-mail, weren't you? 20

OBJECTION (CALLAGHAN). RELEVANCE. LEGAL ARGUMENT. QUESTION ALLOWED. 20

Q. You were inviting the Cruising Yacht Club to accept that there was in fact severe damage to this yacht, weren't you? 25

A. I should not have used the word severe, I agree.

Q. You were inviting them to accept that there was able to be visualised or observed severe damage, weren't you?

A. Yes. 30

Q. And that was false, wasn't it?

A. It was an exaggeration, yes.

Q. That's the best word you can use, is it? And you were doing that, were you not, to give yourself a status in relation to a protest which had been generated by the collision, weren't you? 35

A. Yes.

Q. It was purely a tactic on your part, wasn't it? 40

A. That's what protest committees are about unfortunately.

Q. A little bit of deception and dishonesty doesn't matter very much in that situation, is that right? 45

OBJECTION (CALLAGHAN). COMMENT. ALLOWED IN REPHRASED FORM.

Q. You think the use of a bit of trickery or deception in a situation like that for the purpose of founding a protest if part of the game, do you, or protest? 50

A. No, I wasn't present at that hearing, I didn't give evidence--

Q. I am not talking about being present, I am talking about sending false information by this e-mail to the Cruising Yacht Club. You know what I am talking about really, don't you? 55

A. I have said that I should not have used the word severe, I stand by that.

Q. I am asking you this, did you use it in the knowledge that a little bit of deception and trickery in the course of preparing a protest is regarded as acceptable? 5

A. No, I genuinely believed that it was potentially severe. It turned out not to be so but there certainly was a potential for severity. Had the mast come down that would have been severe. 10

Q. But you were motivated in using that description by the necessity for providing a basis for a protest, weren't you?

A. The stanchion damage was adequate basis-- 15

Q. You are not even listening to my question, are you? You don't even listen to my question, do you Mr Kothe? 15

CORONER: I think in a way he is, he is saying that the protest was based on more than the mark on the mast. That's what he is saying. 20

WITNESS: I said there were other - the stanchion was adequate damage. 25

CORONER: There were other factors to the protest. 25

SHAND: Q. Well, are you saying this, that you didn't put the spot on the mast forward as part of any severe damage?

A. There was sufficient damage-- 30

Q. Did you hear my question?

A. Well, I am not sure - the spot of the mast wasn't necessary-- 35

Q. Did you hear my question?

A. If you could repeat the question I'd appreciate it. 35

Q. Did you put the spot on the mast forward to the Cruising Yacht Club as part of the severe damage? 40

A. No.

Q. Oh it wasn't intended to be understood that way?

A. You are asking me did I put it? 45

Q. Are you saying it wasn't intended to be understood in that way? 45

A. It we were to go - if we had--

Q. At the time you sent it was it intended to be understood in that way or not as part of the severe damage? 50

A. I didn't really think about it in that degree of details whether the spot was in or out. I just didn't think about it at that time. 50

Q. That's just a way out of the problem, isn't it Mr Kothe? 55

CORONER: Would you answer the question, Mr Kothe.

SHAND: Q. Was it possible--

CORONER: Just answer the question please.

WITNESS: No. 5

SHAND: No, I see.

Q. Was it possible to examine this spot metallurgically to see whether in fact it was a serious structural problem or not? 10

CORONER: When, Mr Shand.

SHAND: After it occurred and during the next day or so. 15

CORONER: During the race?

SHAND: During the race, yes.

Q. Was it possible to examine it in some metallurgical way? 20

A. Not to my knowledge.

Q. How was an opinion formed as to whether or not it was serious?

A. Because we put the mast, as we had the ability to do, under deliberate overtension to see whether it would bend in any abnormal way. It did not. We were able - I can exert 36 tonnes of force on the mast deliberately from the back stay and we did that and it did not deflect. 25

Q. Was there any perceptible groove or depression on the surface of the mast? 30

A. No.

Q. None at all. And it was a spot, was it? Not a line, a spot? 35

A. From recollection it was an out-swelling, a small out-swelling. You could hardly see it with you finger but if the mast had come down then it would have been very substantial in the whole context. But I mean it wasn't a scar or a lump. 40

CORONER: Q. A small bulge?

A. Yes, a very - you could just feel it with your finger, but had it failed at that point then the results would have been very serious. 45

SHAND: Q. I want to ask you this. You have given evidence about the times at which it was signified to you that certain senior members of your crew were of the view that you should turn around, remember that evidence? 50

A. Yes.

Q. And we got the position, have we not, that Mr Kulmar made his attitude to that very plain early in the piece. Is that correct? 55

A. Around 11.30 was my recollection, 11.30 to a quarter to 12.

Q. And his attitude to that matter to your knowledge didn't change thereafter, did it?

A. No.

Q. Was it you who made the decision that the decisions as to whether the boat was turned around or not was one that had to be made by the drivers? 5

A. I certainly said to Steve something along the lines of "if we run out of drivers we'll have to go back". 10

Q. My question is a little clearer than that. Did you make a decision that the decision about turning the boat around or not was to be made by the three principal helmsmen? 15

A. I don't believe I did that.

Q. You understand there to be evidence very clearly to the effect that that's what you decided, don't you? 15

A. Yes.

Q. You do? 20

A. From Mr Kulmar.

Q. In your mind was it you who was going to make the decision? 25

A. Yes.

Q. Always you?

A. It would be a consultative process but I had - when it came down to it I had to make the decision. 30

Q. You in fact, would you agree, had very clearly insufficient experience of the conditions that might be encountered in a Hobart race, particularly in Bass Strait, compared with others who were available to use their experience. Is that so? 35

A. No.

Q. You don't agree with that? 40

A. No.

Q. You had had one race only before that? 40

A. Yes, that's right.

Q. One only?

A. Yes. 45

Q. And your experience was such, you'd say, to equip you at least equally with Mr Kulmar--

A. I had much much much more navigational and meteorology experience than Mr Kulmar. He had certainly been in some nasty seas but the decision about which way you go because of the weather system has nothing to do with your ability about steer across a wave which Steve can do extremely well. 50

Q. I am not asking you about that and you know I am not, don't you? I am asking you about his experience with regard to the making of a decision to turn around. Do you understand me? 55

A. I felt that I had more experience in the things that mattered.

Q. With regard to that decision?

A. Yes.

5

Q. I see. When did you make the decision yourself effectively that the boat would turn around?

A. When we went into the quiet period around 4 o'clock I said if the wind comes back up we will turn around, I effectively put the decision into automatic at that stage.

10

Q. That was around 4 o'clock, was it?

A. Yes, that's right.

15

Q. The blue sky period?

A. Yes.

Q. Mr Kulmar expressed his view clearly at about what, 1.45?

A. Yes.

20

Q. And the other two hadn't contributed at all during that afternoon you say, don't you?

A. Effectively no.

25

Q. How did it come that it wasn't until about 16.44 that the decision was made for this vessel to turn around?

A. Around 4 o'clock we had conversation, we had blue sky for a short period, I said "well, if the wind comes back up we will go back". And the wind came up about 4.20 approximately, 4.25,--

30

Q. So in the intervening period you continued to sail in roughly a southerly direction?

A. One of the problems I referred to this morning was the fact of noise of motor, you couldn't transmit effectively while we had the motor on. My recollection was that I transmitted after we turned. The motor was on for some 10 or 15 minutes. We didn't use it for 10 or 15 minutes but it was on quite loudly.

35

Q. Didn't you transmit the message before you commenced to prepare to make the turn back?

A. No, I can't recall whether it was immediately before or immediately after.

40

Q. In any case you'd agree, wouldn't you, that after what you say was the decision that you made and no-one else made to turn around some three quarters of an hour went past?

A. No, no, we had blue sky at 4 o'clock, it didn't just snap into nasty weather. It stayed - it went down to 15 knots, it came up to 30, it played with us. It went up and down and went up into the 40s and you tend to be optimistic in those circumstances. So we waited till it got back up into the 60s.

50

55

Q. You mean you waited?

A. Yes.

Q. Not we, we is not appropriate?

A. Well, no-one else wanted to at that stage, you know, jump into turning around when we were in 40 knots of breeze. 5

Q. You were the only person then who had any inclination to proceed further south, weren't you?

A. Oh absolutely not. 10

Q. Is that right?

A. Absolutely not.

Q. No?

A. No. 15

Q. But amongst those you had chosen as those best qualified you were standing out as the lone exception?

A. No, Darren Senogles, for instance, really didn't want to go back. In fact I recall him actually - you know, there were tears in his eyes when we went back, he did not want to go back. 20

Q. He wasn't part of the three you had chosen, was he?

A. He wasn't one of the three helmsmen but I had a great deal of respect for his position, attitude and understanding of the conditions. 25

Q. Isn't this the real truth about what happened, Mr Kothe, in regard to this question of turning around or not, that you appointed yourself the person to make the sole decision. That seems clear, doesn't it? 30

A. It's pretty proper.

Q. You did that? 35

A. Yes.

Q. And for some hours that afternoon you were frozen in indecision, weren't you?

A. No. 40

Q. Unable to come to any effective decision about what to do?

A. No. 45

Q. You really regarding yourself as the skipper I suppose as you did, didn't you?

A. Yes.

Q. Personally having that responsibility you found yourself quite unable to come to a decision on that subject, didn't you? 50

A. I felt we didn't have enough information.

Q. And at the same time as you were in such a state of indecision you continued to sail down-- 55

OBJECTION (CALLAGHAN). FORM.

Q. You were in a state of indecision you say because of insufficient information?

A. I wasn't in a state of indecision, I knew very clearly I wanted to have more information to make a responsible decision. 5

Q. And until that happened you couldn't make a decision?

A. It would have been very silly for me to make a decision ..(not transcribable)..-- 10

Q. You couldn't make one. That's the answer, isn't it?

A. Sorry, would you please repeat--

Q. Until as you suggest you got further information you could not make a decision? 15

A. I could have easily made a decision.

Q. You could have?

A. I could have made a decision, I could have made at any stage a snap decision which says forget about the possibilities and the probabilities of what actually the weather is like, I could have said it's easier to - Steve I'll go with you, let's go back. That would not have been responsible I believe. 20

Q. Your belief during this period was by sailing further south you were sailing in probability towards the depression? 25

A. Well no, because--

Q. The low. 30

A. No, the information I had initially was it should be well away and so initially we were not the least bit concerned, we believed the weather would moderate. 35

Q. Your other reports said otherwise, didn't they? 35

A. What other reports said otherwise?

Q. The other reports indicated it was probably further to the south of where you were, the low, the depression. 40

A. Which reports are you referring to?

Q. Did you have no reports at that time, your deliberations during the early hours of the afternoon which indicated that this low was further to the south than your boat? 45

A. No, we had no forecast that gave us the information of the position of the low, we did not know actually from the 12noon forecast whether it was north of us or south of us or east of us or west of us. 50

Q. And no way of making any decision on that at all? 50

A. The way I sought to find extra information was to contact the Eden coastguard to get more information because I was unhappy with the information we had. 55

Q. But you did know that there had been reports of two enormously high wind strengths further south, didn't you?

A. No.

Q. You didn't?

A. No. At 12.50 sadly when Doctel Rager, which is coast information, had reported wind speeds of 80 knots I was talking to Eden coastguard. I wish I had heard it but I hadn't.

5

Q. What about Wilsons Promontory?

A. I had heard Wilsons Promontory was 92 and that was the problem, that was the real concern.

10

Q. You did have a report of an enormously high wind at that point, didn't you?

A. Yes, and that's exactly the point, that's exactly the point.

15

Q. And where was the other place about which you had a report of not quite such a high wind but a very high one?

A. In the north-western quadrant which is the point of the whole decision-making process.

20

Q. Edelstone lighthouse, was it, or some name like that?

A. That was - no, no, I am sorry, at 2am the low was east of Eddystone light. The two places that we had reports from of winds were the Bass Strait oil fields, oil rigs, and Wilsons Promontory. They were the reasons why I didn't want to go back because--

25

Q. What--

A. Please let me finish. They were the reasons that gave me the clue that in fact if we went back it was the wrong thing to do. We went back, it was the wrong thing to do. The reason I was trying to slow the decision-making down was to get more information from the CYC at the 2 o'clock sked which sadly we did not get.

30

35

Q. What was the wind report from the Bass Strait oil fields?

A. From memory 50 to 60.

Q. Yes, and there was another one from?

40

A. Wilsons Promontory, 92 which discount according to the Bureau of Meteorology 25 per cent so call it 70.

Q. You discount it, do you?

A. Yes.

45

Q. Why is that?

A. They tell us the reasonable reason to discount, which I believe, is that the reading point is 100 metres above the sea and they therefore say it should be discounted.

50

Q. What was the report that emanated from the area of the Eddystone lighthouse? Is that the right word?

A. None whatsoever.

55

Q. What mention did you make of that? Wasn't there a report--

A. That was at 2am the position of the low.

CORONER: Q. 2am?

A. 2am the position of the low.

SHAND: Q. But not a wind strength?

A. No.

5

Q. So what you chose to do was to do nothing until you got further information while sailing further south possibly further towards the centre of the low?

A. Yes, the reason that--

10

Q. No, please I want you to answer my question without launching into a long speech each time. That's the fact, isn't it, with the possibility of moving closer to the centre of the low?

A. Yes.

15

Q. You mentioned that it was wrong in your view, as it turned out, to have turned around?

A. Yes.

20

Q. And you say that, do you, because of what you encountered after you did?

A. Yes, we went back towards the storm.

25

Q. You sailed into what, the thick of the storm?

A. Yes.

Q. And that's where you remained, did you not, for the new how long?

A. The storm was moving--

30

Q. How long? I just want an estimate.

A. How long did we stay in the worst of it?

35

Q. Yes.

A. We believe about an hour.

Q. And you still were in the worst of it or so close to it there'd be no difference when you saw the Margaret Rintoul, weren't you?

A. I don't know.

40

Q. Is this was Mr Senogles told you about his views on the question of turning around, firstly that he wasn't in favour of turning around. Did he say that?

A. That's correct.

45

Q. And secondly did he say that was his view because of the dangers of turning around?

A. I don't recall that.

50

Q. Don't you remember him saying that as a matter of trying to compare the dangers of going ahead and those involved in turning around and sailing the other way?

A. Well I don't think he was referring to the mechanism of turning around. He was talking about the - I believe--

5

Q. I'll grant that, I'll grant that, the dangers of what was possibly to be encountered by sailing in the reciprocal direction. That was what you were saying?

A. Yes.

10

Q. You had to compare the two and try and make a judgment?

A. Yes, yes, which was what I was doing, yes.

Q. And that's it took you until 1644 or thereabouts in the afternoon to decide in terms of what you were going to do?

15

A. Yes. Well we weren't talking about turning around for a few miles, we were talking about turning around for 100 miles.

20

Q. I'm not disputing that, Mr Kothe. That's what you delayed until 1644 in doing?

A. Correct.

Q. That decision at that time?

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A. Correct.

DISCUSSION AS TO HOW MUCH LONGER THE WITNESS WILL BE REQUIRED

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SHAND: Q. In the conditions which you - well you don't exactly know it but I suggest you will agree probably existed at the time Margaret Rintoul was sighted, would you agree that even the manoeuvre of turning around without an engine involved significant risk to that boat?

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A. As a skipper I don't think a boat without a motor should have been there, and therefore as a result of that I think it certainly would have been a dangerous manoeuvre.

Q. Yes.

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A. But I don't think a boat without a motor should have been at that location.

Q. Should have been at?

A. At that location.

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Q. Well, all right, I'll accept those answers. Thank you.

<WITNESS STOOD DOWN

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CORONER: Thank you, Mr Kothe. Is there anything else before we - it's been a long day.

HILL: I should say that Professor Cross will be giving evidence tomorrow afternoon that may be of interest to Mr Kothe's representatives. It may also be of interest to Mr Purcell's representatives. I intend calling him and I have no choice about that.

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CORONER: No, that's right. Thank you, we're adjourned.

ADJOURNED PART HEART TO FRIDAY 31 MARCH 2000

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CERTIFICATION OF TRANSCRIPT

I, We the undersigned being (a) Sound Reporter(s) do hereby certify that the within transcript is a correct transcript of the depositions sound recorded at the State Coroners Court of New South Wales in the matter of inquest into the deaths of Michael Bannister, Phillip Skeggs, James Lawler, Bruce Raymond Guy, John William Dean and Glyn Roderick Charles on Thursday 30 March 2000

Part Heard

Dated at Goodsell
this 3rd day of April 2000

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