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NEW SOUTH WALES STATE CORONER'S COURT

STATE CORONER: J B ABERNETHY

MONDAY 13 MARCH 2000

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 DEAN

GLYNN RODERICK CHARLES

Mr Hill assisting the Coroner

Mr S Wheelhouse for The Cruising Yacht Club of Australia

Mr R Stanley for the Bureau of Meteorology

Mr T J Morahan for Richard Winning

Mr S Dougall for the Lawler family

Mr Allenby appears

Mr T Elsworth for Australian Yachting Federation

Mr Hunt for Richard Purcell

CORONER: I begin my inquests today into the deaths of six who lost their lives in the 1998 Sydney to Hobart Yacht Race, those being John William Dean, Michael Bannister, Bruce Raymond Guy, Phillip Raymond Charles Skeggs, James Michael Lawler and Glynn Roderick Charles. Before I begin I'd like to draw your attention to the size of the brief of evidence, and that is perhaps the reason why over 12 months has elapsed since the deaths of these yachtsmen. In order to assist the families I did make findings of time and place of death on an earlier day.

HILL: Mr Coroner, the inquest will deal with the circumstances that surrounded the deaths of Bruce Guy and Phillip Skeggs who were aboard the yacht Business Post Naiad, also the deaths John Dean, Michael Bannister and James Lawler who were aboard the yacht Winston Churchill, and of the death of Mr Glynn Charles who was on board the yacht Sword of Orion, and though this is set down as one inquest in reality we will be looking at three different factual circumstances. However, the common theme that connects each incident aboard those yachts is that they were all competitive in the Sydney to Hobart yacht race, and as we are all aware that yacht fleet was devastated by heavy wind and seas on the second day of the race. But before dealing with the incidents on each of those three vessels that I have mentioned there is a more fundamental question that needs to be addressed, and that is why did the yacht fleet sail into such a devastating storm? Now in order to answer that question it's necessary to look at the race's organisation, the race plans and the implementation of those plans.

The race was organised, as it always is, by the Cruising

Yacht Club of Australia, which I will refer to as the CYCA, and in accordance with a category one race under the Australian Yachting Federation racing rules. Now it is informative to note that at page 147 of those rules the categories are laid out and a category one race, and this is of importance especially with regard the Business Post Naiad, they are races of long distances, well off shore, where boats must be self sufficient for extended periods of time, capable of withstanding heavy storms and prepared to meet serious emergencies without the expectation of outside assistance. That's what competitors are told about a category one race. Now the organisation started with the CYCA putting out what is called the Notice of Race, and I'll take you later to the documentation. Now the Notice of Race contains a tear out application entry which the prospective participants fill out and they send that back to the CYCA. Once the CYCA receive that application it can either reject it or seek further information or make further requirements of the yacht. A yacht, once accepted by the CYCA as a participant would pay to the CYCA an entry fee in accordance with the category it is accepted in, and it would then receive from the CYCA the sailing instructions. Now both the Notice of Race and the sailing instructions are informative documents that undoubtedly the entrants would have read, and would give them a reasonable grasp of what was required by the CYCA and the basic needs of their vessels.

Now one of the basic needs of entrants in this type of race is a weather forecast, and where it is to take some days it would require a continuing and accurate weather forecast. And the CYCA provided this to the racing yacht fleet. In order to do so it had an agreement with the weather bureau who furnished the CYCA with its forecasts. A further basic need of such a race of this type is a radio communication. Now the CYCA provided this via a vessel that travelled south at the same time as the fleet. Now this is referred to by various names, it was the vessel the Young Endeavour, it's sometimes referred to as the radio relay vessel or Telstra control. Now the yachts are required to answer a radio schedule from the Young Endeavour during the race at set times. These were referred to as the skeds which are referred to in the evidence of the people who have been interviewed. At each radio sked the radio operator aboard the Young Endeavour would read out a weather report, so we had the combination, by the CYCA, of two very important elements for the participants, a communication so that the CYCA knew where each yacht was, and that it was safe, and from the CYCA a weather report so that the yachtsmen would know what it was that lay ahead of them. Now all of this planning and preparation would culminate in the final briefing that was held at the CYCA on Christmas Eve, and in this case that was a Thursday 24th, the Friday was 25th, the Saturday, which was the race day, was 26th, and of course the Sunday was 27th. Most of the details that we will deal with will be on 26th, the Saturday, Sunday 27th and Monday 28th.

Now the 1998 race was no exception to the general rule, so

that on Thursday 24th the CYCA gave their briefing. Mr Ken Batt of the weather bureau gave a weather briefing to the yacht crews at the CYCA. Evidence will be called there were approximately 250 people attended that, mostly skippers and navigators. Now this weather briefing has been criticised as being non-specific, and that will be dealt with in the evidence. And on Christmas Day the race committee itself of the CYCA met and, among other things, discussed the weather. Now exactly what was said and by whom has been difficult to ascertain, but undoubtedly those people will be called and they will shed light on it. The important part about it is that the race committee did meet on Christmas Day and the weather was discussed. Now on the morning of 26th, that was the race day, Mr Ken Batt, as the evidence states he usually does, he attended the CYCA to give out last minute weather reports, this was so that each participant would have an up to date weather forecast as far as the bureau could furnish one. Now of significance is that the weather bureau at that time that Mr Batt went to the CYCA had upgraded the weather report to a gale warning. Now this is at approximately 10 o'clock on the morning of the race. Now I suppose it's prudent to pause here and note that many of the yachtsmen who have been interviewed did not know what the gradations used by the weather bureau were. Some thought that a gale was worse than a storm and no yachtsmen knew of the weather bureaus rule of adding 40 percent to wind speeds that they gave nor to add 80 percent to wave heights for rogue waves. The situation was that as far as the yachtsmen were concerned if you said the winds would be 35 knots then that's all they could expect, they had no idea that you then add on to that 40 percent for gusts. As far as waves were concerned they had no idea that you add on to the wave height given 80 percent for rogue waves. Now how this lack of understanding by the yachts' crew would influence their decisions over the next 36 hours will remain to be seen, but of importance is that according to Mr Phil Thompson, and Mr Thompson was the head of the race committee of the CYCA, he spoke with Mr Ken Batt on the morning--

CORONER: Of 26th?

HILL: Of 26th, and was told words to the effect of "There's going to be a bit of a front down off Eden 25 to 35 knots. It will moderate around to the west, nothing to worry about.". Now according to Mr Thompson that took place at about 10am on 26th, three hours before the race start, and the race commenced at 1pm. Now at 1.58pm, approximately an hour after the race had started, in Victoria, and at 2.15pm in New South Wales, the weather bureau upgraded the weather forecast from a gale warning to a storm warning. Now this storm warning was faxed to the radio relay vessel the Young Endeavour, it was faxed to the CYCA, it was faxed to AMSA, which is the Australian Maritime Safety Authority in Canberra, and faxed to the Eden Volunteer Coast Patrol.

According to Mr Brett Gage of the weather bureau, he has been interviewed, and he was so concerned by this weather forecast, that is the storm warning, that he took the unusual step of telephoning the CYCA Sydney to Hobart race

media centre, the Australian Maritime Safety Authority in Canberra, where he spoke to a Mr Andrew Burton, and the Eden Coast Patrol. His concern with regards the storm warning was such, and I use his words, and he stated "I would be very surprised that if the race went through without at least one person having died through the event. So I did have a strong feeling that there would be death from this event.". One must bear in mind that this statement was shortly after 2pm, one hour after the race had commenced. Now Mr Gage does not recall who he spoke to at the CYCA, the Sydney to Hobart media centre, only that the person he spoke with was female. Now it is quite obvious, if you accept the evidence of Mr Gage, and it is corroborated by Mr Batt, Mr Badham and Professor Leslie, that very serious danger lay in the path of the fleet. I don't think anyone can question that. And though all the facts that have been produced the fleet would not strike the foul weather until noon on Sunday 27th. In plain words there were 22 hours warning of this storm's approach.

Now at 8pm on the night of 26th, that's the race day commencement, a radio sked was scheduled. Now you will hear evidence that many yachts they turn off their radios, they don't have to communicate, but they do communicate at the set skeds. So at 8pm that night all the yachts would have been listening and reporting in. Now each one could have been told of the weather bureau's fears, and the transcripts reveal that weather report was read out. There was a further radio sked scheduled for 3am on the morning of 27th. Again the weather bureau's fears could've been communicated but there was simply a weather forecast read out.

Now at 9am on Sunday 27th, bearing in mind that the fleet does not really strike this storm until approximately noon of 27th, at 9am 70 knot winds were reported at Wilsons Promontory. You will hear evidence that you must discount by up to 25 percent any readings at Wilsons Promontory, but if that was the case they were still down around the 50 knot winds around the Promontory. Now some time on the morning of Sunday 27th the CYCA race committee met in Hobart and discussed the weather because of yacht reports of 80 knot winds. Now at about the same time Phil Thompson states that he spoke with the weather bureau and that he was told that winds would be 25 to 35 knots. Now shortly after this, that is when Phil Thompson speaks with the weather bureau, and it's still in the morning of 27th, Mr Lou Carter, who is the radio operator aboard the vessel Young Endeavour, broadcast the rule that skippers of yachts must make their own decision whether they will continue to race. I will take you into fuller detail of what was actually said. Now the only clear fact that comes out of this is that the yacht fleet sailed into the storm and many of those yachts were unable to cope with that weather.

I turn now to the facts aboard the separate vessels, the Business Post Naiad, the Winston Churchill and the Sword of Orion. Now the Business Post Naiad with the crew of Mr Bruce Guy, Mr Tony Guy, Mr Phillip Skeggs, Robert Walker, Steve Walker, Rob Matthews, James Rogers, Shane Hansen, Tony

Sheriff and Peter Keats. Now at some time between 5pm and 6pm on Sunday 27th, that's approximately 5 hours after they've run into the foul weather, the vessel Business Post Naiad was rolled 360 degrees for the first time. It was rolled completely and then came back up. None of the crew were injured at this time, though those on deck had been immersed in the sea but saved by their harnesses. They were pulled back on board. Now the crew secured the yacht as best they could and then turned back towards Gabo Island sailing, presumably heading for Eden.

Now at the same time as securing the yacht a mayday call was made by the Business Post Naiad's navigator and the mayday was not received by the radio relay vessel Young Endeavour but was picked up by the yacht Yendys and then relayed on to the Young Endeavour. The mayday that was sent was that they were stabilised and under way but wanted a boat to stand by them. They were asked by the Young Endeavour how urgent and they replied "Not critical but we would like someone to stand by us.". At 7pm on the same day, 27th, the Business Post Naiad requested a helicopter as three crew were suffering from seasickness and hypothermia. The Yendys passed this on to the Young Endeavour who said that they had passed the message on.

Now at 11pm that night the Business Post Naiad was struck by a large wave and it was rolled over, but this time it did not return to its upright position but remained in the inverted or capsized position. Robert Matthews and Phillip Skeggs were the two crew members that were on deck at that time. Now according to Mr Matthews the yacht remained upside down for some five minutes. At first he was trapped under the vessel and unable to release his harness. Then the wave action on the yacht allowed him some air to breathe and slackened his harness such as to allow him to undo the buckle. You will hear more evidence of this, that when there is pressure on you and you are dragged through the water it is almost impossible to undo the safety harness buckle. Now having undone the harness buckle Mr Matthews made his way along the yacht's side and eventually rested on the vessels boom. His hope was to get up onto the hull, the upturned hull, and cling on to either the rudder or the keel itself. Now he was resting on the boom in that position when the vessel was righted by another wave so he was tipped back. He clung to that boom when it came right side up and he was deposited back into the vessel's cockpit from where he had originally started. It was at that point that he saw that Mr Phillip Skeggs was in the cockpit still strapped in his harness with ropes across his legs. He appeared to be dead. CPR was commenced on Mr Skeggs and was continued for some time but the efforts of his fellow crewmen they proved futile. Now at the same time that the vessel was righted by the wave the crew who had been below during the capsize came up on deck. It was at this point in time that Mr Bruce Guy, while still below deck, appeared to suffer a fatal heart attack. The crew continued on during the night and approximately 8am on Monday 28 December the surviving crew members were taken off the Business Post Naiad and the bodies of Bruce Guy and Phillip Skeggs remained on board and

were recovered along with the yacht at some time later.

Now after the Business Post Naiad was brought into the southern New South Wales port of Eden the vessel was cut up and disposed of on the local rubbish tip, and the relevance of this will emerge later on, because it becomes apparent that its stability rating may have been in question, and I will deal with that further shortly. There are two questions which arise from this series of events. First of all why did the Business Post Naiad take so long to right itself after being rolled over the second time? And the second is was the buckle on Mr Skeggs's harness tether impossible to release because of the water pressure with the result that Mr Skeggs drowned under the upturned yacht unable to free himself? Now that question, the harness buckle, and the difficulty with the releasing of the buckle has been investigated and witnesses will address this issue during the inquest. Question (a), that is the stability, however that requires the background details of the entry of the Business Post Naiad into the race, and it is necessary to begin when the CYCA sent out the Notice of Race which contained a tear-out application form. Now the purpose of this was so that in law the CYCA could treat an application for entry as an offer and could therefore refuse any entry if it did not comply with the conditions.

Now one of the conditions of entry of a yacht was that the limit of positive stability of the yacht was 115 degrees or greater. And what that means in basic terms is that the yacht could be knocked down to 115 degrees and still come back up, and afterwards if it did become inverted it would be easier to come back up because it didn't have to be knocked by a wave very far to reach its limit of positive stability. So basically that means this requirement also comes from what is described as a category one race, and then according to the international rules of yacht racing. Whilst the lower degree of positive stability the longer the vessel will remain in the capsized or inverted position I'm quite sure Mr Coroner we've all seen these vessels that are usually involved in the round the world yacht races and they're always tipped upside down, and you'll see people standing on the hull of them waiting to be rescued. It's a known fact that the lower the stability of a yacht the longer it will remain upside down, and the basic reason I am told for this by the experts is that you have to be knocked further by the wave to get back up because of your lower stability rating. Now at the time leading up to the 1998 race the CYC had in place what was termed a grandfather clause, and what this allowed the CYC to do was accept entrance into the Sydney to Hobart race of yachts which had a limit of positive stability of less than 115 degrees but more than 110 degrees. The rationale for this exception appeared to be founded upon two bases, one that the yacht in question had successfully completed a previous Sydney to Hobart race, or (b) the entrant was of equal class to yachts that had successfully completed Sydney to Hobart races. Now I should add that this exemption no longer applies. The CYC have done away with that. Yachts that now enter the race must comply with the limit of positive stability rating of

115 degrees or greater.

Now on 29 September 1998 Mr Bruce Guy, one of the deceased, sent his application to the CYCA for his yacht, Business Post Naiad, to be entered into the race. This application contained what is called an IMS certificate, it's a measuring certificate, and it showed a limit of positive stability that would allow acceptance into the race, however, the date on this IMS certificate was not current, so it was out of date - and for convenience I'll refer to that as the first IMS certificate. When this arrived the CYC required Mr Guy to get an up to date IMS certificate and that be submitted to the CYCA and then they would accept the Business Post Naiad as an entrant in the race. A current IMS certificate for the Business Post Naiad was obtained by Mr Guy and it was forwarded to the CYCA. Now this certificate, although current as far as dates were concerned, also showed the limit of positive stability of the Business Post Naiad was 104.7 degrees. That was well below what was required for entry to the Sydney to Hobart Yacht Race. For some reason the CYCA accepted this IMS certificate and the Business Post Naiad was accepted as a legitimate entrant. Inquiries have been made as to why such a certificate with such a low stability rating was accepted, and the only explanation that we have been able to uncover is that revealed in the CYCA report by Mr Peter Bush, where at page 146 appears the statement that "acceptance of a yacht with a limit of positive stability of less than the requirement was an administrative oversight". Nothing more has been revealed despite inquiries as to what is meant by "an administrative oversight".

However, bearing in mind that the Business Post Naiad's first IMS certificate showed an acceptable degree of limit of positive stability, and the second an unacceptable degree, inquiries were made as to what had happened, how had the stability rating changed. These inquiries revealed that the change in the degree of limit of positive stability of the Business Post Naiad may have been brought about by the removal of 300 kilograms of lead from the bilge area of the yacht by the deceased owner Mr Guy. However these investigations also revealed that the second IMS certificate with the limit of positive stability of 104.7 may have in itself been incorrect, because the figures did not match. Now that could have come about when the IMS measurer in Tasmania noted incorrect figures which gave the rating of 104.7 degrees. It was therefore thought prudent to obtain a vessel of the same class of the Business Post Naiad, that's the part that I refer to earlier, unfortunately the original Business Post Naiad had been destroyed.

Now the Business Post Naiad was what's called a far forty, and as near as possible we needed a duplicate including the lead removal of the Business Post Naiad. Now this was done and the duplicate vessel was measured by Mr Fisher, who was the Tasmanian measurer who had done the original measurement, and also by Mr Anderson, an IMS measurer. Now these measurements of the duplicate vessel were given to Mr Andrew Davell, who's a marine architect and yacht

designer. Now his report on these measurements will be found in the additional documents that are there, and I'll take you to them eventually when he is called, but he concludes that the probable limit of positive stability for the Business Post Naiad when she actually went into the Sydney Hobart race was 109.5 degrees. It is still below the requirements for the race entry--

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CORONER: But only just below it if you're using the grandfather clause.

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HILL: But only just below because of the grandfathering clause. But that had to be clarified and that has been done. Now the next vessel aboard which deaths occurred was the Winston Churchill. Now she was an old vessel, she was built some time the 1940s of hardwood ribs and Huon pine planking, and she was purchased by Richard Winning approximately three years before the December 1998 race. She was surveyed by James Perdriau who was satisfied that the vessel was seaworthy at that time and required no more than cosmetic work. She was entered in the race and had the following crew, Mr Richard Winning who was the skipper, Mr Bruce Gould, Mr John Stanley, Mr John Gibson, Mr John Dean, Mr Michael Bannister, Mr James Lawler, Mr Paul Lumtin and Mr Michael Rynan. We have to go back before the actual race in order to follow the history of this vessel, because it was between 8.30am and 9am on 26 December, that's the morning of the race, that a diver, Mr Jeffrey Bascombe, was giving a final cleaning to the hulls of two other competing yachts, and this was at the CYC berths, Rushcutters Bay. When he was about to leave the water Mr Bascombe swam towards the Winston Churchill. He did not have his face mask on, he had taken that off, and he noticed that there was corking which appeared to be missing from the rabbit line where the planking of the hull meets the stem of the bow, in other words where the bow stem is the planks come into it and there was corking missing, so he swam over for a closer look. He also saw that there was paint along the planking where the corking was missing that was cracking. He then spoke to people on board the Winston Churchill and on the wharf and was told that they would tell the boss. There will be more evidence on this particular point.

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Now the Winston Churchill crossed the start line of the race and continued south during Saturday 26th and Sunday 27 December. She ran into the foul weather about noon on 27th along with the rest of the fleet. At about 4pm on Sunday 27th John Dean and Richard Winning, who was at the helm, were the only crew members on deck. At about this time the Winston Churchill was struck by a very large wave which rolled the vessel onto its side and carried away portion of its bulwark and destroyed windows in the coach house. Now after this impact the vessel was taking water, and according to Bruce Gould he thought from somewhere around the bottom of the mast area. The motor would not start as the batteries were inundated with water, and as a consequence the vessels pumps were of no use. It became clear quite early to the crew that the Winston Churchill was

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sinking. So they began to deploy the life rafts and prepare to abandon. Now the vessel had two life rafts, one a round four man raft and the other an oblong six man raft. They both had canopies. And Richard Winning, before they abandoned ship, sent a mayday call and then the crew abandoned the Winston Churchill when her decks were awash. They saw the vessel sink, so it was quite clear that what they had done so far was perfectly correct.

The crew members in the six man oblong raft were Mr John Stanley, Mr John Gibson, Mr John Dean, Mr Michael Bannister and Mr James Lawler. Now three of the deceased the subject of this inquest were in this particular raft. Now at first the two rafts were roped together but the ropes soon parted and the rafts lost sight of each other not long after that. Now the six man raft was buffeted severely by the waves during the remainder of the hours of 27th, that's the Sunday night. But according to John Gibson it had not been tipped over during that day, though it had been tossed around so roughly that John Stanley had been injured, suffering a broken ankle and torn ligaments in the hips. Now Mr Gibson recalls looking at his watch at half past twelve during the night, that is 00.30 hours on 27th, so it's half past midnight the morning of 27th, Monday morning, early. It was shortly after that time--

BENCH: Twenty eighth.

HILL: Yes, I'm sorry, 28th, I beg your pardon. It was shortly after that time that the raft was tipped upside down. Now the occupants found that in fact being upside down the raft was more stable than it had been the right way up, and they were quite happy to be in that particular position. However, the oxygen content of the air was depleting and they were having difficulty breathing. Now to right the raft and allow air in would require someone going outside and it would also require that person removing what's now called a personal flotation device, or a life jacket. It was decided that such an attempt would be too dangerous because of the seas. Now it was then decided by the occupants that if they cut a small hole in the floor, which was now the roof, then air could be taken into the raft by doing so. A hole was cut and air was brought into the raft by pushing the raft floor upwards, much like a bellows. The occupants found this effective and they could breath quite comfortably. Now about 10 minutes after the hole was cut the raft was again tipped over by a large wave and the consequence of this was that what had been the roof shortly before now assumed its correct position as the floor. The combined weight of the five occupants on the floor now caused the small hole that had been cut for air to begin to tear. Now the occupants of the raft were unaware that the integrity of the raft's shape depended upon the integrity of its floor. Now with the tearing of the floor the raft's shape no longer remained oblong but rather the inflated tubes just elongated into a diamond shape. Tests were done in the maritime college about this, and in fact all this life raft is is no more than an inflated tube that's bent into a square and held fast by the floor itself;

if you cut the floor away you destroy the integrity of the raft, it just becomes a diamond shape and very difficult to hold onto.

Now they clung to that as best they could and at about 2am that morning, that was some time after the life raft began to disintegrate, John Gibson, who still had his safety harness on, actually clipped the harness around the tubes, and that in fact was probably why his life was saved. And it wasn't long after that time that without any warning the remains of the raft were struck by a wave and they were tumbled for some considerable distance, about 300 metres. When the raft steadied only John Stanley, who had somehow clung to the inflated tubing, and John Gibson, who was harnessed on, remained with the raft. Now according to Mr Stanley he saw two figures in the water about 75 to 100 yards away. He saw what he thinks was James Lawler's strobe light and he heard voices. Now the wind then took the remains of the raft away. That was the last they saw of the other two. Now Mr Gibson and Mr Stanley remained clinging to the tubing of the raft for the remainder of that night being tossed about by the waves. At dawn, which would have been Monday 28 December, the conditions began to moderate. However they continued on till approximately 4pm that afternoon when they heard an aeroplane. At about 5pm the plane returned and John Gibson tried to attract its attention by waving his yellow personal flotation device. He did this as he felt that the black coloured inflated tubes of the life raft were not conspicuous. Indeed you will hear evidence upon this point Mr Coroner by the rescuers who say that the black is very difficult to see, and also the white yachts are very difficult to see because they're looking at white on white from helicopters and planes. We're also told that there's no reason that the manufacturers make the tubes of the life rafts black, they just always have, it costs them no more to make them in a colour that is easily seen. So fortunately Mr Gibson and Mr Stanley were seen and they were picked up at about 8pm that night.

If I move then to the other raft from the Winston Churchill. It fared somewhat better and the occupants were rescued on the Monday 28th at about five or 6pm. However, even the second raft began to disintegrate with the floor coming away from the inflated tubing. And of course we have done various tests on rafts down at the Australian Maritime College and certain recommendations will come out of that, and it's hoped that they will be adopted. Now as a consequence of both these events, that is the life rafts themselves and the Winston Churchill, as far as the life rafts are concerned Mr Boyle from the Australian Maritime College will be giving evidence and his evidence will take some time, and that is in the fourth week. The question of the seaworthiness of the Winston Churchill has also to be inquired into. As a result Mr Perdriau, who initially surveyed the vessel, will be called and Mr Quilkey will express his professional opinion on what Mr Bascombe saw and described as missing cork. Mr Perdriau says that it is of little consequence whereas Mr Quilkey says it shows that

there was a weakness in the vessel, probably around the keel area.

Moving from that vessel, Mr Coroner, to the Sword of Orion. Now this vessel, from which Glynn Charles was lost, and among the crew is Mr Kenneth Cottee, who was the owner, Mr Darren Senogles, Mr Carl Watson and Mr Glynn Charles of course who was lost. Now prior to the Sword of Orion meeting the storm we have to go back to just after the race started, because the Sword of Orion had a minor collision with another yacht just after the start, and as a result of this collision the vessel suffered damage to two places, the mast in the form of a slight bulge some metres above the deck, and a stanchion on the starboard quarter was driven into the deck. Now this stanchion was repaired by Mr Senogles as the yacht made its way south. The significance of this repair will emerge in more detail later but at this stage it is sufficient to say that when Mr Charles was washed overboard the boom of the Sword of Orion was actually lashed to that area of the stanchion. And we do know that boom, when the Sword of Orion rolled, came across and destroyed the wheel at which Mr Charles was, and it may well have been that he was struck by that boom. The boom may have come away from an area that had already been damaged and it was lashed to. However there will be evidence on this from Professor Cross and he will be called in regards to that hypothesis.

Now on the second day, that's Sunday 27th, the weather began to deteriorate to such an extent that it was decided to turn around and head back. Now this turning was completed successfully and the yacht headed north, and I should say they turned around because of the weather that they were actually in, not because of a forecast, which is of importance. They had also told the Young Endeavour that they were experiencing quite severe winds. Now some time after the turn and they were heading back Glynn Charles was at the wheel and he was sat on the gunnel of the port quarter. So he's over near the stern and he's steering the vessel from there. Now his harness was secured to a strong point on the deck, it would've been just at his feet before the cockpit, and I believe it was, he was secured to what's called a pad eye, which is really a round piece of metal that's into the deck usually secured underneath, so it's a good strong point. Mr Senogles was the only other crew member on deck with him.

The yacht was struck suddenly by a wave which rolled the yacht through 360 degrees, so it was rolled right over and came back up. When the vessel righted itself Mr Senogles saw that the boom had moved from the starboard side to the port side, the wheel had all but been destroyed and Glynn Charles was gone overboard. Now Mr Senogles did not see the boom strike Mr Charles, he only sees that the boom has moved across, it's obviously gone through the wheel, it's destroyed that practically, and Mr Charles has gone overboard. Darren Senogles was keeping his eye on Mr Glynn Charles and he lost sight of him after about five to six minutes. The normal procedure for a man overboard, Mr

Coroner, is that one crew member will at all times keep his eye on the person in the water, that's his sole task, while the others prepare to retrieve him, so you don't lose sight of the person as it's very easy to do so. Now he did that for five to six minutes and then Mr Charles disappeared. Now the harness that Mr Charles was wearing was secured by means of a tether to the strong point, as I've described. Now this tether had parted because the stitching that secured the safety clip to the body strapping of the harness had parted, so the stitching itself had come undone. Now the tether in question should comply with the Australian Standard so that it would stand a force of what is called 12 kiloneutons. In simple words it should hold a 132 kilogram weight dropped from 1.7 metres, and it shouldn't break, that's the test that occurs.

Now we have tested the various harnesses from the Sword of Orion and it's found that the harnesses, the tether strap stitching fails at between six and seven kiloneutons below the standard as required, roughly half of what it should be. Now those harnesses were made by Tuff Marine Australia and they have the Australian standards numbers on them, and you will hear evidence from Professor Cross that he considers that the probabilities are that Mr Charles' harness tether actually failed when the yacht rolled to starboard and Mr Charles, who was sat on the port gunnel, would have fallen during this roll and the tether strap would part at that time, so he comes all the way down and the tether simply didn't hold him, that the boom didn't start to move to the port side from the starboard side until it hit the water. We will be calling some of the directors of Tuff Australia and ask them about those particular harnesses. Now within approximately two hours of Mr Charles being lost overboard crew members of the Sword of Orion sighted another vessel, another yacht, and that was the Margaret Rintoul. They set off flares to attract this yacht's attention and to use the words of Mr Cottee, who was the skipper of the Sword of Orion, "there was a boat sighted, we fired a mass of flares at it". However that boat did not stop and Mr Cottee said in his statement "but you know had they stopped it would've meant that a search could've been instituted for Glynn Charles". Now that other yacht, as I have said, was the Margaret Rintoul and she did in fact see the Sword of Orion, and her skipper, Mr Purcell, relayed to the Young Endeavour the Sword of Orion's mayday at that stage, though that was some 25 minutes after the original sighting and the delay, according to Mr Purcell, was because of the radio traffic clogging the frequency.

Now as you are aware, Mr Coroner, there is a fundamental rule of the sea that you render assistance to any person, even those who you are at war with, if they are in danger of being lost. Now that rule is enshrined in statute, however you are only required to render such assistance if you can do so without serious danger to your own vessel, its crew or any passengers that you have. Mr Purcell states that his own yacht was in serious danger and he could not turn around. He says the only assistance he could give was to relay the Sword of Orion's mayday to the Young Endeavour.

So the only question this inquest is interested in is if the Margaret Rintoul had stopped would a search for Mr Charles have been futile in the circumstances and simply put more lives in danger. Only the evidence itself will reveal that.

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Mr Coroner that's where the evidence will take us and the inquiry as such. There are various witnesses to be called. Now there is the two investigators, Detective Senior Constable David Upston and Detective Senior Constable Stuart Gray, and what my intention is at this stage is that we will call them first of all for preliminary matters and to tender the brief as such. At each point in the inquest where we require their evidence to come in I will recall them and they can be asked questions then, but it would be pointless for the next one or two days to ask questions--

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CORONER: Yes, because of that breakup.

HILL: Yes.

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CORONER: Yes, that's probably reasonable.

HILL: Then we will call Mr Robert Rowell and he will show, on the maps and on the screens, where the vessels, that is the yacht fleet itself was, especially on that first sked that was at 8 o'clock on the night of 26th and the next sked at 3 o'clock in the morning. We will then move into the weather aspect and deal with that and then we will deal with the Winston Churchill, the Business Post Naiad, the Sword of Orion then the harnesses, life rafts, stability, the rescuers and finally we will be dealing with the CYCA directors and we'll get their point of view. Because as we are fully aware there has been much criticism about the organisation and they, in fairness, should go to the end so that they can answer such criticism.

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CORONER: I think so.

HILL: And of course if the criticism arises of any one naturally they can be recalled and they can refute that if they so wish.

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SHORT ADJOURNMENT

CORONER: Before we go to the first witness it has occurred to us that we appear to be wrong in the date of death of the three off the Winston Churchill. If that turns out to be the case in due course I'll adjust the date of death from 27th to 28 December. But I think the evidence is going to be that they were alive at midnight on 27th and in that life raft.

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<STUART JOSEPH GRAY (11.25AM)
SWORN AND EXAMINED

HILL: Q. Sir would you give the Court your name, rank and station? 5

A. Stuart Joseph Gray, Detective Senior Constable attached to Bega Detectives.

Q. And you're one of the investigating officers on this inquest? 10

A. That's correct.

Q. And on the bench before the Coroner is the hard copy of the brief? 15

A. That's correct.

Q. And I think the brief has also been put down into various CDs? 20

A. That's correct.

Q. And they've been distributed to the legal representatives? 25

A. That's correct.

Q. And contained therein are the results of your investigations? 25

A. That's correct.

Q. Into the deaths that we're inquiring into? 30

A. That's correct.

EXHIBIT #1 BRIEF OF EVIDENCE TENDERED, ADMITTED WITHOUT OBJECTION

HILL: That's all I have from this officer at this stage. 35

CORONER: Are there any questions at this stage of this officer, bearing in mind that he can be called later if there's a need. 40

<WITNESS STOOD DOWN

<ROBERT JOSEPH ROWELL (11.30AM)
SWORN AND EXAMINED

HILL: Q. Would you give the inquest your full name please? 45

A. Robert Joseph Rowell.

Q. And your address? 50

A. Is care of Suite 9 Bellerive Quay, Bellerive, Hobart.

Q. And your occupation? 55

A. I'm a managing director of a geographic information systems company, Land File Consultancy.

Q. Now you have prepared various, I hate to use the word slides but what do you call them?

A. I think it's called power point display.

Q. So some things will appear on this screen here and the information that allowed you to show these maps or to plot the various things on the maps you obtained that from Senior Constable Upston?

A. That's correct.

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Q. Well perhaps if you could show us the first map?

A. If I may I'll just go through some explanatory notes to begin with.

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Q. Yes, certainly.

A. To begin with as stated the information came from the New South Wales Water Police. Most of the information is based on the CYCA's chronology of events and from the ..(not transcribable).. search and rescue review. Information also was provided by the Bureau of Met on wind and wave depictions and naturally they accept no responsibility if there's been any changes in that. Again information was from CIRO, and I just make note of their disclaimer which can be found on their web page. Other notes is that times have been - are in Eastern Standard time with allowance for daylight savings and any references that we received have been in nautical miles. Just moving onto some additional notes in regards to the waves and the winds. In respect of wave heights they'll be in metres. You'll notice on some of the maps that there is a change in their height and that's represented by a change in colour. So blue waves represent the lowest through to red and then the highest will be in the yellow wave. The white vectors (?) there which because we're dealing in a smaller area then the actual wave heights themselves, because of the nature of the map they actually represent arrows, because we're magnified in there'll be some loss in the clarity there. Finally there'll be wind barbs which represent the locations of the winds that have been calculated. The direction of the barb actually represents the direction of the wind and the start of the barb represents the location and the feathers actually represent the strength.

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Q. Now I see that there's a triangle on the end of one of those barbs. What does that stand for?

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A. That would indicate the strength, and the Bureau of Meteorology may like to confirm that, that that would represent a strength of 50 knots.

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Q. And the others, for instance the one alongside it?

A. Yeah.

Q. That looks to be what, 45, 44?

A. Yeah, each feather there would indicate 10 knots and a half feather would indicate five. To the first map. This indicates general weather conditions at 10 o'clock on the - 10pm on 26th. You have the location of the fleet two hours prior to that, the location of the weather pattern in this area, and you have the winds emanating from the south.

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Q. Just stop there. Let's go back to the fleet. Now the fleet up there, now that is taken from what?

A. That's taken from the sked report that would've been

taken at 20:00 hours, so it's from when the boats radio in their location.

Q. Now you've got winds around there and it appears to be 20 to 25 knots, is that how you read that? 5
A. Yes, that's how I would read it.

Q. And we've got Eden down here and what's happening here, what's going on? 10
A. There would appear to be a low pressure system.

Q. Now all this is obtained from the information that you told us about earlier from those various-- 15
A. That's correct.

Q. If you could move to the next one?
A. This moves into the early hours of 27th. At the moment I have two maps, again just indicating the wind direction and speed on the left and now introducing wave heights on the right. Obviously there's a dominance of red there which indicate a wave height of around 4 metres and then degrading as you get closer to the coast and appears that the waves are coming from the east towards the west. 20

Q. If I can just take you to, that blue area here, that's about what, between zero and 2 metres is it? 25
A. Yes.

Q. Wave height?
A. That'd be correct. 30

Q. And then we get this area here, that appears to be what, about 3 metres?
A. Yes. 35

Q. And then the red area we've got up to five?
A. Yes.

Q. So at this stage we haven't got above five in this area that we can see? 40
A. No.

Q. Now what does this show us again?
A. Again it just shows the general indication of the direction of the wind. 45

Q. And that's in the same area is it?
A. Yes, you can just - there's a ..(not transcribable).. line of the coastline. 50

Q. That there?
A. Yeah.

Q. So the wind's down this area, but it all looks to be about 30, 25 to 30 knots, is that right? 55
A. That would appear to be correct.

Q. And that is at 1 o'clock in the morning of 27th? All right, if you could turn to the next one.

A. The next map is a combination of the wave heights and the wind direction and also of location of the fleet at the sked at 3:00 hours.

Q. Now these red portions here are the fleet?
A. Yes.

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Q. Is that right?
A. That's correct.

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HILL: And I should stop there, Mr Coroner, and say that we've actually made hard copies of these two things that occurred that we've just gone through, and you have those as well.

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Q. Now the fleet appears to be in up to, what is it, two to three metre waves at that stage?
A. That's correct.

Q. And they are in winds of between 20 and 25, there's 30 down below but that's basically it? Now out here the waves are getting much higher but they're still not above 5 metres?
A. That's correct.

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Q. And what's the next--
A. The next one is just again the weather conditions at 7 o'clock that morning.

Q. So that's 7 o'clock on the Sunday morning, okay. And where's the fleet, does it show the fleet on this?
A. No, there's two sked reports, one at 03:00 and one at 14:00, so until that time in the afternoon I've just got weather, just general weather.

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Q. Now first of all these arrows here, what do they represent?
A. They indicate the direction of the waves so there appears to be waves coming out of Bass Strait in a westerly direction and either heading up the coast or in a southerly direction.

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Q. So we've got waves coming down this way, is that right?
A. That's correct.

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Q. And we've got waves coming this way and then meeting these waves?
A. That's correct.

Q. We've got waves going up here?
A. Yeah.

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Q. And some coming across?
A. Yeah.

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Q. And still the highest at this stage is approximately, what is that, is that--
A. Approximately about 4 metres.

Q. And the next one?

A. Again it is at another three hours later on at 10 o'clock that morning.

Q. That's 10 o'clock on the Sunday morning. Now this area here we're starting to get into seven metre waves, is that right? 5

A. I would suggest at the moment it would be between five and 7 metres, yeah. 10

Q. Between five and seven?

A. Yeah.

Q. And once again these show the directions of the waves?

A. That's correct. 15

Q. Now it still seems to be about 30 to 35 knots, is that right?

A. That's correct. 20

Q. The next one?

A. What we have now is at 1 o'clock on that afternoon the wind and wave heights. If I maybe just go through this slide and we're now starting to get a chronology of events happening between about 12.35 and 2 o'clock that afternoon. Firstly Doctel Rager reports ..(not transcribable).. weather ahead with 50 to 60 knots and gusts of 70 knots. Again Sword of Orion at their sked position advise the fleet of extreme winds of 50 to 70 knots gusting to 80 knots ahead. And just included on this particular power point slide the location of Business Post Naiad and Winston Churchill at those skeds. As you can see there's an increase in the wave height where Sword of Orion and Doctel Rager are. 25 30

Q. What's that gone up to, it seems to be up to about-- 35

A. That appears to be up around 7 metres. I was just wondering, I gave some colour slides, would you have them there, it's hard for me to read that. Thank you.

Q. Are they the ones? 40

A. Yes, thank you. On the next slide it's at 4 o'clock that afternoon and again the chronology of events that occurred during that period. We had Stand Aside was rolled and dismasted at 4 o'clock, followed by Sword of Orion retiring and heading to Eden, and then a report 16:50 of a rollover, a dismasted, man overboard, a mayday, EPIRB activated and the loss of sight of the man overboard. We had Winston Churchill's approximate position of her sinking followed by Business Post advise - Business Post Naiad, again he's advising of the mayday from Business Post Naiad and the message that she had rolled over and suffered major hull damage and her position and what she was attempting to steer. And finally there was an incorrect sighting of Winston Churchill by a fixed wing aircraft at that time after. 45 50 55

Q. Now this one here, the Stand Aside, she'd rolled and dismasted. Now the Siena was another yacht and--

A. That's correct.

Q. --that turned around and came back and remained on station to that, that's Mr--

HILL: Mr Coroner, that's Mr Mobray--

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CORONER: Moray.

HILL: Moray, who'll be called later about that particular instance.

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CORONER: Q. The wind there in the - around about Sword of Orion, that's - what do you say about that?

A. Well that appears to be about 50 knots and if you just look to the north west of Business Post Naiad it appears to be at 60, or 55, it's hard to tell.

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Q. And the waves?

A. The waves, where those boats are at the moment with the red it would indicate that it would be at 4 metres and then increasing, if you look northerly and then say westerly, to five and then to 6 metres. And the following slide again the same - we had the same events that occurred plus the addition of the Margaret Rintoul reporting that she'd seen a red flare at 18:45 hours.

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HILL: Q. Now that's - if I could take you back to that. That's the Margaret Rintoul, the position it's given, and that's the Sword of Orion, so she's what, to the north east at that stage?

A. Yep.

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Q. Yes.

A. Okay, we've now moved on, the same events but this is three hours later in respect to the wave height and the wind speed. You'll notice that the wave heights have again increased to around about 7 metres and that's slightly to the west of the events that are occurring. Again it's the same events, because obviously the weather had changed during that period, so this would be an assumption of the weather conditions during those events and the change thereof. Moving on we looked at additional events that occurred during that period, so you had the events that we've mentioned in respect to the three boats, Winston Churchill, Sword of Orion and Business Post Naiad. In addition to that a report the B-52 was dismantled and activated an EPIRB. The Kingurra reported a mayday with a man overboard and EPIRB deployed. Solander was dismantled and Loki had no motor.

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Q. Now what's the winds at - we've got - that there seems to be about what, 55?

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A. Yep, that's correct.

Q. Okay, thank you.

A. Again this is at 22:00 hours some additional events that have been recorded in respect to Tenacious, it was knocked down with no motor, Team Jaguar being dismantled and Mintinta dismantled and sunk.

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Q. Now what's Team Jaguar, that's the first time this one is mentioned, that's dismayed at that time is it?

A. Yes, that's correct. Then we have just an additional weather chart at 1 o'clock that morning followed by again an additional chart which would seem to be indicating that the wave heights have moderated. Then some additional events that occurred at 7:00 hours on 28th in respect to Zeus II, Outlaw and Midnight Special. And then at 10:00 hours an additional weather chart indicating wave heights and wind directions. That essentially is the presentation on the weather conditions, I also have those maps which I'll present--

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Q. Yes, you have some other maps and I have distributed those. Do you have a copy of those?

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A. Yes, thank you.

Q. Perhaps if I pass these down to my friends down there. Perhaps if you could have a look at those, now which one will you deal with first?

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A. I'll deal with map 1, which is the chronology of events. What we have here is depicted in map 1 which is a - is all the events that occurred within the chronology of events in the CYC and OSA review that had a latitude and longitude. It's somewhat difficult to read from the screen at the moment, if you'll just allow me to zoom in and I can just go through some of the events. Sorry about the clarity here, sometimes putting something on paper compared to onto a screen can be different. Again these are the events I showed in the power point display. On the maps what I've attempted to do to give some depiction to the three boats, Winston Churchill, Sword of Orion and Business Post Naiad, they've been colour coded accordingly, so purple represents the Sword of Orion, other boats, in this case Margaret Rintoul, are represented by a red dot, Sword of Orion by a purple. So if I just go through the fleet, blue represents Business Post Naiad, and in this case this tells, if you like, a history of her movements northerly and the various radio reports of what she was steering and her speed. So for example at 19:58 on 27th Tilting Windmills advised that Business Post Naiad was steering at 295 degrees 5 knots and her location was 37 56 south and 150 31 east. Again Winston Churchill, colour coded in green, so in respect to that at 5 o'clock, and that's her approximate position of sinking, we had the incorrect sighting. As we move further north information regarding a general pan pan. that was sent out from race control centre, the position of where two crew were winched from the second life raft, and then just slightly north we have the location of where the two deceased were found on the lift raft.

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Q. If I could just stop you there. It's my understanding, you used the word pan pan, that's the next distress call down from a mayday, is that your understanding?

A. I would not know, I'm not in a position to comment on that. If I probably move onto the next map which is similar to this one in the sense that, however it only deals with again the three boats, Business Post, Winston Churchill and Sword of Orion. Additional information has been shown on

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this in respect to the EPIRB location for Business Post Naiad, so--

Q. Is that the map numbered 2?

A. Map 2, yes, that's correct. So what this map does here is, if you like, is an extrapolation from the first map just showing, as I said, those three boats. The EPIRB, so we've taken the EPIRB locations that were provided to us and mapped them to create a path if you like of how the EPIRB floated, well the path of the EPIRB on board Business Post Naiad. The important factor here is that due to the accuracy we understand of the EPIRB we've created what's called a 20 kilometre buffer around the EPIRB just to indicate the error that's attached to those particular EPIRBs.

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Q. I think that in fact it'll be within that 20 kilometre buffer somewhere, it's not necessarily the centre of that buffer it's simply--

A. No.

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Q. And you've just mapped it what, as it's been reported, or what?

A. Yeah, what we've done is we've taken the route created by the EPIRB locations and just for each - and taken that route and created a 20 kilometre buffer around that route. The next line I have is in respect of Business Post Naiad, and if you like it's a combination of map 2 and map 3 but with only Business Post Naiad, it's just to give a little bit more clarity in this regard. So what we have here is the various incidents that occurred to Business Post Naiad.

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Q. And which map number is that?

A. If you like it's map 3, it's map 2 and map 3 but with only Business Post Naiad on it. What I've done here is just to, as I said, just to make it clearer to be able to see in respect to the underlying information on the sea surface temperature. So if you look at map 3 and in respect to map 3--

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Q. It's just that the map 3 that we have is that one?

A. Yeah, if you just bear with me, which is now on the screen.

Q. Right.

A. So we have here the movement of Business Post Naiad north and then my understanding she was then drifting after the crew had been left and you can see here that she appears to move easterly and there is a current moving in an easterly direction as well.

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Q. Can you on that map show us where the Winston Churchill would have been?

A. What I'll do is instead of having Business Post Naiad on that particular map I have a map just with Winston Churchill and the sea surface--

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Q. Yes, it's the sea surface temperatures that I'm after.

A. Okay. So these are the particular instances in respect

to Winston Churchill. If I just turn the sea surface currents on and I'll just zoom in to the area in question. So we have the approximate position of sinking here of the Winston Churchill. The next related incident to that would be the two crewmen being winched.

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Q. What's the - going back to the Winston Churchill where - position of sinking?

A. Yep.

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Q. What's the sea temperature around that?

A. The sea temperature going by the map in front of me would indicate a temperature around about somewhere between 18 and 20 degrees.

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Q. Now as we go northward as it were up to the squares that you have there--

A. Yeah.

Q. --what's the temperature as we go north?

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A. As we head further north it appears to get warmer to between 20 and 22 degrees.

Q. So the dark buff colour is the 22 degrees is it?

A. Looking at--

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CORONER: Yes, dark brown.

WITNESS: There, around that area it would indicate 20 to 22 degrees.

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HILL: Q. But what about further up?

A. Where the reddish tinge is occurring it would appear to be warmer, between 22 to 24 degrees.

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Q. Now that sea surface temperature that's the temperature of the water?

A. Yes, that's correct.

Q. Not the air around it?

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A. No.

Q. I'm sorry I had to interrupt, but what else were you saying?

A. Again just noting there is that there appears to be a current flowing in a nor'easterly direction from the sinking up to where the two deceased were found and the life raft. The important thing here is to note that this map represents the sea surface temperatures and depicted are these arrows here which is the indication of the currents of the sea surface, of the sea at the surface.

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Q. So we've got a current going to the north and also--

A. Yeah.

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Q. --a current going to the south, is that right?

A. That's correct, yeah, it appears to be coming down from the south here. These large arrows the CSIRO advise me that would indicate a speed I think of 1 metre per second current

and then they appear to head easterly.

Q. Well what's the smaller arrows?

A. The smaller arrows would obviously indicate a slower speed for the current. The final two maps relate to - do you want me to move on? 5

Q. Yes please.

A. The final two maps relate to EPIRBS. In this regard we've again taken the chronology of events and mapped relevant EPIRBS, or EPIRBS that are identified by the investigating officers that they wanted overlaid on this particular map. If you notice in the top left hand corner they relate to EPIRBS that relate to particular boats, or believe to relate to particular boats, and an additional EPIRB. Again it's unfortunate that the clarity is lost somewhat on the screen. I think a point here noted was that this particular EPIRB was of a different type and the accuracy of that particular EPIRB was in fact 5 kilometres and thus we created a buffer of only 5 kilometres representing the track of that particular EPIRB. 10 15 20

Q. That's the I think at 4.05 isn't it EPIRB, it's a different type of EPIRB?

A. 4.06 I've got here. 25

Q. It has a narrower buffer area.

A. The final map I have is in fact just a map of all the EPIRBs. This was created, or was asked to be compiled and created to indicate the number of EPIRBs that were activated during the period of the race. From the map it appears that there's something like I think nine EPIRBs that were activated so we've indicated here the particular routes that the EPIRBs took and also the respective buffers. It's probably best shown on the maps. 30 35

HILL: The relevance of this map, Mr Coroner, is from the point of view of Air Sea Rescue is that they don't actually know where to go and things can in fact crash. 40

<WITNESS RETIRED

<STUART JOSEPH GRAY (12PM)
RECALLED, SWORN AND EXAMINED 45

HILL: Q. Detective Senior Constable Stuart Joseph Gray is it?

A. That's correct.

Q. I'm going to take you through a statement that you prepared-- 50

HILL: And as I said, Mr Coroner, if there is any questions now I'm quite sure the witness will be glad to answer them, otherwise I will be calling him through the stages of this inquest. 55

Q. Do you have a copy of your statement with you?

A. I do indeed, yes.

Q. Now if I take you to paragraph 6 and you state that "Later that afternoon I went with Constable Stevenson to a vessel which was moored at Eden Wharf" and you spoke to Mr Andrew Murray?

A. That's correct.

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Q. Now he is a witness that's going to be called in regards this?

A. That's correct.

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Q. And it's your understanding he was listening on radio watch, he wasn't part of this race but he was a yachtsman who'd turned back because of the forecast, is that right?

A. That's correct.

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Q. And you then go to paragraph 7 and you say "On this vessel I met Shane Hanson, Mr Peter Keats, Mr Matthew Sheriff, Laurence Rogers, Robert Matthews, Tony Guy and Stephen Walker.". You had a number of conversations and all of the crew were concerned about the length of time the Naiad remained inverted?

A. That's correct.

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Q. That's what they told you at that stage?

A. That's correct.

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Q. Now those are the crew members of the Naiad?

A. That's correct.

Q. Paragraph 10 you had a conversation with Mr Greg Halls at the Eden harbourmaster's office and then you had an interview with him. Who is Mr Halls, Greg Halls?

A. Mr Halls was sent down to Eden by representatives from the CYCA round about 27th to set up a radio link with the yachts and to also liaise with the emergency centre which had been set up at the Eden harbourmaster's office.

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Q. Now I take you to paragraph 21 at page 5. It was on Saturday 2 January and you conducted an electronic interview with Mr Robert Cottee and Mr Carl Watson and they were off the Sword of Orion?

A. That's correct.

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Q. And then at paragraph 23 you spoke with Mr Phillip Thompson, and he is the 1998 Sydney to Hobart yacht race director?

A. That's correct.

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Q. He in fact was the head of that committee, is that correct?

A. That's correct.

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Q. And then if we go over to paragraph 25 at page 6 you spoke to Mr Robert Badinak. Who exactly is he?

A. Mr Badinak is also a member of the - was a member of the 1998 Sydney to Hobart race committee and in fact was basically the race director from the Tasmania side of things.

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Q. Now I understand the situation is that the race committee has two people from Tasmania?

A. That's correct.

Q. Where do they come from? 5

A. From the Royal Yacht Club Tasmania.

Q. That's where the--

A. The finish of the race. 10

Q. They finish the race there?

A. Finish the race there, that's correct.

Q. You then spoke to Darren Senogles in paragraph 27. Now he's off the Sword of Orion? 15

A. Sword of Orion.

Q. He was the last person to see Mr Charles alive?

A. That's correct. 20

Q. Now 28 you say at about 11am on 10 January you received a call from an anonymous male. "This person informed me that Business Post Naiad had failed to meet the entry requirements before the Sydney to Hobart yacht race?"

A. That's correct. 25

Q. Had you any suspicion about this prior to that?

A. Not in relation to enter the race but certainly in relation to the length of time for inversion, initially. I didn't - I wasn't able to at that stage form a relationship between the two. 30

Q. Now as a result of that you contacted the CYCA, this is in paragraph 29?

A. That's correct. 35

Q. And you obtained the IMS certificates for the Business Post Naiad?

A. That's correct. 40

Q. And they were two certificates that you were given?

A. That's correct.

Q. And you were also told about the concept of grandfathering these vessels if they were greater than 110 degrees but less than 115? 45

A. That's correct.

Q. I'll then take you through the various statements. You also, at paragraph 38 page 8 you spoke with Mr Lou Carter? 50

A. That's correct.

Q. And he was the radio operator for the CYCA on board the Young Endeavour?

A. That's correct. 55

Q. Now as I understand the situation they had - it's a naval vessel, the Royal Australian Navy?

A. That's correct.

Q. So they just occupy a cabin or an area on board that vessel, is that right?

A. That's correct, they have nothing to do with the activities of the vessel itself. The navy still run the vessel but they're employed to follow that route down the coast for the Cruising Yacht Club.

5

Q. Well if I sent a fax to the Young Endeavour does it go to the Young Endeavour or are we talking about going to the group who represent the CYC?

10

A. It would go to the vessel as far as I'm aware.

CORONER: Q. So if the vessel's communications officer as opposed to Mr Carter--

A. Yes.

15

Q. --received the fax there's a possibility it won't pass one to the other?

A. That possibility exists but there was a relationship between the CYCA group and the captain of the ship that anything that came to the ship would be taken straight down to the CYCA group, and a few messages did pass between the two.

20

HILL: Q. You say there in paragraph 38 that the CYCA had the HF radio utilised by Telstra control on board the Young Endeavour, it did not have an in-built recording system but a portable cassette recorder was placed alongside the HF radio to record the conversations?

25

A. That's correct.

30

Q. So we're talking about a radio and then a cassette?

A. That's correct.

Q. And that's how they recorded this?

35

A. That's correct.

Q. What sort of cassette, just a--

A. I made a number of inquiries in relation to that and I was told that the cassette was somewhere and the radio was somewhere else. I don't know the brand of the cassette or the radio but that's the way it was recorded.

40

Q. Now you then spoke with Mr Lance Leslie, there at paragraph 40, and Mr David Lyons. Now Lance Leslie is in fact a professor of meteorology at the University of New South Wales but he works with the weather bureau, is that right?

45

A. That's correct.

50

Q. And Mr David Lyons had looked at the stability aspect on the Business Post Naiad?

A. That's correct.

CORONER: And at 39 Mr Lawson.

55

HILL: Q. Yes, and Mr Lawson is the safety officer with the CYCA?

A. That's correct.

HILL: And I think that later on, Mr Coroner, you will also hear that Mr Boyle from the maritime college also spoke with Mr Lawson.

Q. Now at 41 there you went and you interviewed Mr Don Buckley. Who was Mr Don Buckley? 5

A. As far as I recall he was a member on the vessel B-52.

Q. And then Mr Richard Purcell?

A. The Margaret Rintoul. 10

Q. Mr William Riley?

A. Also from the Margaret Rintoul.

Q. And Mr Bob Brannack? 15

A. Yes, Mr Bob Brannack was in fact a person who had previously sailed the Business Post Naiad from Tasmania to Sydney some years earlier.

Q. And then we have a Mr David Wiggin, where does he-- 20

A. I can't recall exactly what boat he was off but--

Q. All right, we'll come back to him. Then at 43 Mr Tony Mooney?

A. That's correct. 25

Q. Now who is Mr Tony Mooney?

A. Mr Tony Mooney works for the Australian Yachting Federation and is in charge of issuing IMS certificates to owners. 30

Q. And he's to be called later on in these proceedings?

A. That's correct.

Q. Now I think that you then spoke with a few people such as Robert Gordon, Mr Emerson, Lisa McKenzie and Tim Messenger? 35

A. That's correct.

Q. And who are they? 40

A. Those three persons are from the vessel Mintinta and Mr Burnett, Mr Eggington and Mr James are from the vessel Team Jaguar.

Q. And I see then you attended Mr Van Kretschmar's place of work where because to subpoena some documents? 45

A. That's correct.

Q. And they were subpoenaed?

A. They were. 50

Q. And you took them into possession?

A. I did.

Q. Now over at 47 you spoke then with Maurice Contessi, who-- 55

A. I recall he was from a vessel called Aspect Computing.

Q. And David Boyes?

A. David Boyes was at the time of the race the commodore of the Royal Yacht Club Tasmania, in 1998.

Q. Was he part of the race committee?

A. He was indeed.

5

Q. Now then at 49 you spoke of Mr Richard Fisher, he was the measurer in Tasmania that measured the Business Post Naiad, is that right?

A. That's correct.

10

Q. And then you spoke with Mr Steve Kulmar?

A. Yes.

Q. Who is he?

A. Mr Kulmar from off the vessel Sword of Orion.

15

Q. And then you spoke with David Key, Barry Barclay, Daryl Jones and Brian Clague is it?

A. That's correct.

20

Q. And I think that they were rescuers?

A. Yes, Mr Key, Mr Barclay and Mr Jones were from the Victorian Police Air Wing, Mr Clague I don't have a recollection of what boat he was from.

25

Q. Now if I could then take you over to page 14, and these were the tests that we will have evidence on from Dr Martin Reynoldson, and this is about the Business Post Naiad?

A. That's correct.

30

Q. And they have done various tests for the stability of that vessel?

A. They have indeed.

35

Q. And you witnessed those tests?

A. That's correct.

Q. And in fact I think that all of those tests were put on video?

A. That's correct.

40

Q. Now you at page 16, paragraph 70, you interviewed Mr Jeff Bascombe?

A. That's correct.

45

Q. And he is the diver that said that he saw the corking missing from the bow of the Winston Churchill?

A. That's correct.

50

Q. And he drew two sketches as well, two diagrams?

A. He did.

Q. Now you also at page 17 you spoke to Mr Young and Mr Anthony Hughes. Now who is Mr Hughes?

A. Mr Hughes was a member of AMSA, and in fact travelled down to race control when it was established in Hobart, after the commencement of the race in Sydney.

55

Q. Now the position was, as I understand it, that when the race started half of the race committee moved down to Hobart, is that right?

A. That's correct.

5

Q. And then once they were established the rest of the committee moved down there?

A. That's correct.

Q. Now with the race committee was Mr Hughes from AMSA?

A. Yes.

10

Q. Air Sea Rescue?

A. That's correct.

15

Q. And I think he's referred to in some of the statements of Safety Sam?

A. That's correct.

Q. And was there anyone from the weather bureau?

A. I couldn't tell you if anyone - I have a recollection that Mr Batt may have travelled to Hobart.

20

Q. And I see there that you also interviewed a Mr Green, that's at paragraph 77, and Mr Green sailed on the vessel Gundy Grey?

A. That's correct.

25

Q. And the vessel sailed with nine crew but only had an eight man life raft on the vessel?

A. That's correct.

30

Q. And during the race this life raft was washed off the vessel. Was there any explanation as to how they had sailed with nine crew members but only an eight man life raft?

A. I would have to have a look at the safety certificate in relation to that, but I believe that the life raft for nine persons was checked prior to the race. At some stage, for one reason or another, a life raft for eight men has been placed on the vessel.

35

40

Q. By the crew?

A. That's correct.

Q. Now at page 20 you were also - at paragraph 86, you took part and saw the training with regards the life rafts at the maritime college under the supervision of Mr Boyle?

A. Yes.

45

Q. Correct?

A. That's correct.

50

Q. And that's the videos that are on the CDs?

A. That's correct.

55

Q. Now I'm taking you now to page 22, paragraph 95, and you say "On Wednesday 20 October 1999 Senior Constable Upston and I conducted an electronic interview with Mr Hans Sommer and Ms Andrea Holt."?

A. That's correct.

Q. Who's Andrea Holt?

A. Andrea Holt is a member of the sailing office staff.

5

Q. Of where?

A. The Cruising Yacht Club.

Q. That's the CYC of Australia?

A. That's correct.

10

Q. And you say Ms Holt declined to be interviewed and requested the attendance of a solicitor and a short time later Mr Harris attended, "The interview was commenced and I recorded her request not to be interviewed on tape in the presence of Mr Harris."?

15

A. That's correct.

Q. She has never been interviewed?

A. Not since - no, she hasn't, that was the only time that she was spoken to.

20

Q. And she's refused to give you an interview?

A. That's correct.

25

CORONER: Well she'll get a guernsey then. She'll get a guernsey here.

HILL: Yes, she'll be called.

30

CORONER: There's still time to interview her, if she chooses to be interviewed.

WITNESS: Yes sir.

35

CORONER: Q. That can be arranged during the inquest can't it?

A. That can be arranged, yes.

HILL: Q. Now at page 23 at paragraph 99 you had another interview with Mr Richard Fisher and you conducted, or you had conducted a number of experiments on a vessel called Nadia 4?

40

A. That's correct.

45

Q. Now this is the vessel that was, as far as possible it was to duplicate the Business Post Naiad?

A. It was a sister ship of the Naiad.

Q. So she's a sister ship then I think they use various weights and balances--

50

A. Yes.

Q. --to try and achieve a position where 300 kilograms of lead would've been removed out of the bilges?

55

A. Yes.

Q. To see what her stability was?

A. That's correct.

Q. And I think that Mr Fisher and Mr Anderson then both measured it?

A. That's correct, at various weights, that's right.

Q. And the results were given to Mr Andrew Davell the marine architect?

A. Yes.

HILL: We may save some time, Mr Coroner, in this way, that Mr Fisher may very well agree with the measurements that it was out in the first place, we still have to contact him about that.

HILL: Q. Now page 24, at paragraph 104, you spoke with Ms Ruth Plummer, Mr Ken Mitchell, Mr Michael Webb and Mr Len Allen, who are they?

A. Ms Plummer is the director/owner of Tuff Australia Accessories currently, during the period 1986 she was the owner/director of Tuff Marine Australia. Mr Ken Mitchell and Mr Michael Webb were directors of that company Tuff Marine Australia during the period 88 till about 1990. Mr Len Allen purchased, or attempted to purchase the company at around about 1991.

Q. Now I think that your investigations have shown that in fact the harnesses that we're dealing with with regards the Sword of Orion and Mr Charles were made and sold by Tuff Australia when Ruth Plummer was the director?

A. That's correct.

CORONER: Q. When did she finish as the director?

A. She finished - she actually sold the company around 1990, I'd have to look at her sequence of events--

Q. That's all right, roughly?

A. Around 1990 Mr Allen took over and then she repurchased the company round about '91. There've been some changes.

HILL: Q. I think the sequence of events were that these harnesses lay on the shelf as it were until the building of the vessel Sword of Orion about 1992?

A. Yes.

Q. And they were then - the vessel was sold, or found if I can use that term, complete with those harnesses which had been purchased and put onto the vessel, is that correct?

A. Yes, the sequence of events would appear that in 1986 prototype harnesses were made by Ms Plummer and were sent to Techni Search where they were tested to ensure that they complied with the Australian standard. That was reached, Ms Plummer made a number of harnesses, she can't recall, harnesses and lanyards. It appears that the prototypes that she didn't send for testing were in fact placed on a shelf in the business and in 1993 when the Sword of Orion was purchased by Mr Saget he made an order to have the boat kitted out with safety equipment. I'm of the opinion that when that order was delivered to Tuff Marine there were no new harnesses in stock and Ms Plummer has packed the twelve lanyards, which were originally prototypes in '86, along

with a couple of harnesses, to make up the order, which has finally arrived on the Sword of Orion.

Q. Now those harnesses have in fact been tested by the crash lab, I think they're in Rosebery are they not? 5
A. That's correct.

Q. And they in fact - they're supposed to be able to take a weight of 13 kiloneutons, or 12 kiloneutons? 10
A. Twelve kiloneutons.

Q. And they in fact the stitching comes undone at approximately between six and 7 kiloneutons? 15
A. That's correct.

Q. And that's Mr Wayne Ahew, Mr Britos and Mr Turner from the New South Wales WorkCover will give evidence about that?
A. That's correct.

CORONER: Q. And these were ones that were tested? 20
A. Yes, that's correct sir, same batch.

Q. And was said to conform to Australian standard?
A. That's correct. 25

HILL: Q. Now if I could then take you to page 31 of your statement, paragraph 141 you say "During the afternoon of Tuesday 22 February 2000 Senior Constable Upston contacted Mr Peter Bush and Mr Bush directed his call to Mr Thompson."? 30
A. That's correct.

Q. And that's Mr Phil Thompson?
A. That's correct. 35

Q. And is that who was the director of the CYC race committee?
A. That's correct.

Q. And you heard Constable Upston say "We have the check list for the boats, we would like to ask you further questions about that list.", and this was to do with Business Post Naiad, is that correct? 40
A. That's correct.

Q. "Mr Thompson informed Senior Constable Upston that he did not wish to speak with us in relation to that matter."?
A. That's correct. 45

Q. And you say it was your intention to ask Mr Thompson why on the check list the Business Post Naiad had been checked off as complying and the area in question related to certificate, the section was ticked?
A. That's correct. 50

Q. "And as Mr Thompson did not wish to speak to us in relation to this matter we have not been able to determine what the tick actually means."?
A. That's correct. 55

Q. Now that's some large sort of butcher paper with all the vessels, all the yachts listed on it?

A. Yes.

Q. And columns of various items such as life rafts et cetera and ticks beside them and it includes the stability?

A. That's correct.

Q. And what you were asking for is who made that tick?

A. That's correct.

Q. Now have you spoken, or tried to speak with Mr Thompson after his refusal?

A. No.

HILL: Well he will be called Mr Coroner.

CORONER: Yes.

<WITNESS RETIRED

<DAVID CHARLES UPSTON (12.22PM)
SWORN AND EXAMINED

HILL: Q. Can you give the inquest your name, rank and station?

A. David Charles Upston, Senior Constable attached to the Sydney Water Police.

Q. You've made a statement in this matter?

A. That's correct.

Q. And you were also with Senior Detective Gray during various interviews and investigations in this inquest?

A. That's correct.

Q. Now if I can put it to you this way, the reason you came into this inquest was that you were actually on the scene when all this began to happen?

A. Yes.

Q. You were in fact rostered for duty with the water police in Sydney Harbour on 26 December 1998?

A. Yes.

Q. And after the start of the race I think that your vessel, water police vessel, Nemesis, proceeded south, is that correct?

A. That's correct.

Q. Towards the Wollongong area?

A. Yes.

Q. And I think that you were informed that a storm warning had been issued?

A. That's correct.

Q. And winds were expected from the west between 45 and 55 knots?

A. Yes.

Q. You viewed that storm warning issued by the weather bureau?

A. Correct.

5

Q. Therefore you, this is what you say, "I indicated" you spoke to Senior Sergeant Jamison of Sydney Water Police, "I indicated to him that our plans to conduct operations further off the coast will have to be altered to high winds and heavy seas as there were high winds and heavy seas expected. I suggested the trial electronic equipment we had on board would most likely be damaged in those conditions", and he agreed with you and the operation orders were changed?

10

15

A. That's correct.

Q. So the significance of the storm warning meant something to you?

A. Yes, it did.

20

Q. What did it mean to you?

A. Well it meant that the seas and the conditions off the coast as a result of the westerly winds would cause hardship to the crew and also possible damage to the sensitive electronic equipment we had on board in which we were conducting sensitive operations along the coast.

25

CORONER: Q. How big is the Nemesis?

A. It's a 45 foot steel launch.

30

HILL: Q. Now you say "Later that afternoon we were contacted by Sydney Water Police to alter our present course and make for Wollongong Harbour then convey a radio technician and equipment to the HMAS Young Endeavour Telstra Control due to HF radio failure.". Now whose radio was that that had failed?

35

A. In fact that was the radio that Lou Carter was using at the time to be able to receive and dispatch messages through the high frequency radio on the Young Endeavour.

40

Q. So that was the race control?

A. That's correct.

Q. And you rendezvoused with the Young Endeavour about two miles east of Wollongong?

45

A. Yes.

Q. And after repairs the technician was returned to land and both vessels headed south?

50

A. That's correct.

Q. Were you told what the problem was with the radio?

A. I had a brief conversation with the technician, he was unaware of the problems that may have occurred apart from the radio being non-operational. And in fact he had a spare HF radio with him when we picked him up and they replaced the original radio with that of the spare.

55

Q. So really there was no repairs carried out they just simply replaced the radio?

A. That's correct.

Q. Now you said "That evening I set a course for Kiama where we moored for the night.". So that's the night of 26th?

A. Yes.

Q. And on Sunday 27th you conducted operations close in shore headed for Batemans Bay where you moored for the night?

A. That's correct.

Q. And then it was at 7am on Monday 28 December you were contacted, or you contacted Sydney Water Police and you were informed to head directly for Eden as a result of several yachts being in trouble?

A. Yes.

Q. So that would've been the Monday morning?

A. That's correct.

Q. And you ended up continuing on with this?

A. Yes.

Q. And I think it was your vessel that actually picked up and towed in the Business Post Naiad?

A. Yes.

Q. Now I don't intend going through, all the way through, but I will take you to page 11, paragraph 55. And you looked at the safety harnesses, the lanyards, in regards to the types of clips used on those lanyards?

A. That's correct.

Q. Now what seems to be the problem with these clips?

A. Well from my inquiries we've been informed, and in fact I have witnessed, that some of the older style clips would inadvertently release from their fastening point without warning and without the knowledge of the crew member and often it would be the case that some clips would jam and then rendering the clip inoperable as far as opening the harness, opening the clip itself.

Q. So when people go overboard and they're on the end of these clips they can't undo them?

A. That's correct.

Q. Now that's the possibility that happened with Mr Skeggs, is that correct?

A. It's a possibility that may have happened.

Q. You show some hesitation, have you any other views with regards that?

A. No, no, I don't, because I'm unaware exactly what happened, but it's a possibility that he may not have been able to release his harness. However on the same vessel Mr Guy was wearing a harness and in fact on two occasions

that clip on the harness, the fastening device, was forced over its retaining lugs and in fact then that harness was not able to be opened and released.

Q. I think that that's the harness in question is it not, it has a BG on the side of it, is that the one you're talking about? 5

A. Has that got black letters BG on one end of the clip, or both ends of the clip? 10

Q. Yes, it has.

A. Yes, that'd be the harness.

Q. Perhaps if you could--

A. Or lanyard. 15

Q. --just demonstrate to the Coroner what you mean by forced over its lugs and therefore can't be opened?

A. This is a Bourke brand lanyard, which probably would've been sold with the Bourke brand harness. It does not have any Australian Standard labels on it and the idea of the clip would be that it can be released with one hand by, if this was tethered off you can press with your finger the retaining spring and force the clip forward and able to be released. It is a requirement, a later requirement, that these clips are able to be done, or undone with one hand, that is the good end of the clip and the lanyard easily to be undone. In this case Mr Guy mentioned to crew members that he couldn't undo his harness or his lanyard and you can see on this end of the lanyard that the retaining spring has been forced past its holding points and in fact causes the clip not to be able to be undone. In fact one crew member forced this particular clip, I was informed, back over the lugs and in fact allowed the clip to be undone on one occasion and it did happen on two occasions. And after that I believe that the harness was not, or the lanyard was not used again. 20 25 30 35

Q. The reason I bring that up at this stage, Mr Coroner, is that you went down to the Australian Maritime College and you conducted several tests, or saw several tests conducted with these lanyards by a Mr Hugh Hurst? 40

A. That's correct.

HILL: Now he will be called later on, Mr Coroner, because obviously if some of these lanyards can do this then certain recommendations should be made. 45

Q. You've heard the evidence of Mr Gray that you spoke to Mr Thompson? 50

A. That's correct.

Q. Now can you tell us who he is?

A. Mr Thompson is the race director of the 1998 Sydney to Hobart Yacht Race and also the current race director. 55

Q. And what did you say to him?

A. I, after having a conversation with Detective Senior Constable Gray I then made a phone call and spoke to

Peter Bush, who is currently a member of the CYCA and also an executive there, and I then requested to speak to - in fact I asked Peter Bush "I'd like Mr Thompson to attend for an interview.", and Mr Thompson (as said) then informed me that "in fact you would have to speak to Mr Thompson himself". I did so and Mr Thompson indicated to me that he would not like to be interviewed in relation to any other matters and refused to attend the police station and be interviewed.

5

STANLEY: Q. Sir you mentioned that you were informed of the storm was issued on the day of the race. How was it that you came to learn of it?

10

A. We received also a weather fax from the Bureau of Meteorology, we are in fact at the Sydney Water Police on their direct mailing list for those weather faxes.

15

Q. So does it follow from that you would have received it what, at about 2, 2.15 or thereabouts in the afternoon?

A. Well I didn't--

20

Q. Two fifteen?

A. --I didn't initially receive it, my crew received it, and I was on the control vessel and it wasn't till some time later on, approximately about 3 or 4 o'clock I recall, when I returned from my duties and it was handed to by my crew.

25

Q. How frequently do you hear storm warnings being issued in that area?

A. I'm not familiar with storm warnings being issued in that particular area, because it's not my area of operation normally, but I am aware that the Bureau of Meteorology rarely issue storm warnings.

30

Q. It's really a rare event isn't it?

A. It is a rare event.

35

Q. And you understand it to be the most extreme warning that can be given by the weather bureau for the areas of waters that we're concerned with?

A. Indeed.

40

Q. And you, either yourself or in company with Detective Gray, interviewed a large number of the yachtsmen that competed in this race?

A. Yes.

45

Q. And is it fair to say, as was outlined by Mr Hill in his opening, that there were remarkable, there was a remarkable divergence of views or knowledge shown by the yachtsmen as to what was meant by weather bureau forecasts?

A. Yes.

50

Q. And in particular many of them, many of the yachtsmen believed that a gale warning was more serious than a storm warning?

A. Some issued that view, yes.

55

Q. And whilst some believed that a forecast of, for

example, 45 to 55 knot winds meant that you would get winds within that range and 55 would be the maximum others did have a true understanding, or a correct understanding, of what you know to be applied by that forecast?

A. Yes, that is the case, but it was more to the other side, that the majority of the crews were quite happy, from what they were saying, to sail through 35, 45 and up to 55 knots of breeze. 5

Q. Some of the yachtsmen you spoke to believed when they were told the forecast was going to be let's say 45 to 55 that the maximum wind that they would strike would be 55 knots? 10

A. That's correct. 15

Q. Others understood that by that same forecast there would be gusts of wind that would be considerably stronger?

A. Gusts, yes.

Q. And similarly with the wave heights, some believed that the wave heights would be up to the maximum that was described by the weather bureau and no further whereas others understood that there would be waves over and above the heights forecast by the bureau? 20

A. Out of the number of people that we interviewed, and it was considerable, I can't recall any of them understanding that they would receive higher wave heights than were indicated. 25

WHEELHOUSE: Q. Senior Constable since the 1998 Hobart have you noticed a change in the manner in which the Bureau of Meteorology issues gale and storm warnings? 30

A. Whilst doing the inquiry over the last 14 months I don't believe that I have once seen a report from the Bureau of Meteorology since the inquiry started. I haven't taken it upon myself to go back and have a look to see if there has been any change. 35

Q. Are you aware now whether or not there is when gale or storm warnings issued by the Bureau of Meteorology there is an explanation as to the meaning or the precise wind pressure or speed given? 40

A. I believe after having conversation with weather bureau personnel that there is a slight change, but I can't recall what that change is. 45

Q. Do you presently have a copy of the facsimile received by your crew on Nemesis at approximately 2.15 on 26 December containing the gale warning?

A. No, I don't have that, that we actually received, but we do have copies of that storm warning in the brief. 50

Q. Now just a matter of clarification of evidence, probably my misunderstanding of it. Senior Constable, the lanyard that you have been shown is that the actual lanyard from Post Business Naiad? 55

A. Yes, that is the actual lanyard that was worn by Bruce Guy and in fact taken, I believe, from his body by one of the other crew members.

Q. And did you check to see whether the other lanyards on the vessel were of the same variety?

A. Yes, I did and they are. Some are of the same variety and others elect to carry their own style of lanyard and harness and I don't recall seeing any of those.

5

Q. And did you check whether the lanyard came from the safety harnesses with which they supplied?

A. I'm sorry, could you repeat that.

10

Q. Did you check whether the lanyard came from the safety harnesses as were supplied with the lanyards?

A. Yes, and I thought that I had a harness but I didn't bring that with me, that is still with the original supplier of that lanyard.

15

<WITNESS RETIRED

<IAN ANDREW GORDON MORAY (1.50PM)
SWORN AND EXAMINED

20

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

A. Ian Andrew Gordon Moray.

25

Q. And your professional address?

A. Banker - I beg your pardon?

Q. Your professional address?

A. Professional address?

30

Q. Yes?

A. 300 George Street, Sydney.

Q. And your occupation?

A. Banker.

35

Q. And sir you made a statement, or you were interviewed and made a statement to the investigating officers in this matter?

A. That's correct sir.

40

Q. Do you have a copy of that statement?

A. I do.

45

Q. Now incidentally your name is pronounced Murray but it's spelt M-o-r-a-y?

A. That is correct.

Q. And you were on board the yacht Siena?

A. That's correct.

50

Q. And you were occupying what position did you hold?

A. I was the nominated skipper.

55

Q. You are a part owner of that vessel?

A. That is correct, there are three partners.

Q. And I believe your navigator was a Mr Evans?

A. Mr Tim Evans, that's correct.

Q. Now your vessel had how many crew aboard her?

A. Seven.

5

Q. What sort of vessel is it?

A. It's a standard production yacht, it's called a North Shore 38, it's 38 feet long, sloop rig.

Q. And I take it it has an engine and everything like that?

A. It has an engine, that's correct.

10

Q. Now you were sailing in the Sydney to Hobart race?

A. Correct.

15

Q. And I think that at page 4 of your statement you say "We enjoyed a great nor'easter which built to about 40 knots till midnight on 26th."?

A. That's correct.

20

Q. No problems in 40 knots?

A. We had quite a bit of seasickness earlier on but apart from that no gear failure, we didn't broach, didn't break anything.

25

Q. Now you say then, you go on to say "I wanted the spinnaker taken down and the number 3 headsail put up and two reefs in the main.". Now that's shortening sail when you talk about reefs in the main?

A. That's correct, yes.

30

Q. And why the others?

A. Why the what?

Q. Why did you want the spinnaker down and the headsail up?

A. We'd been advised from the race authorities that a change from the south west was coming and from my previous experience I thought that might come in about an hour's time and I wanted to be ready for the change, I didn't want to be caught with the spinnaker up.

35

40

Q. And you say "Half an hour later a sou'wester came through and hit us at 35 to 40 knots.". What were you expecting?

A. The forecast was 25 to 35, the fact that we got 40 knots didn't actually surprise me.

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Q. Why didn't it surprise you?

A. Well in the past in that race we've had forecasts which would be say 25 to 35 and I have seen the weather go above the top of the forecasted range slightly.

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Q. Well if I could just stop you there. We've throughout the inquest there have been statements made, certainly by the weather bureau, that when they give a wind speed, such as between 25 and 35 knots, that you then must add on top of that a 40 percent, because what they give you is the mean wind and you have to account for gusts by adding 40 percent. Did you know of that?

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A. No, I did not.

Q. And how long have you been sailing?

A. In this race, 20 years.

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Q. Have you attended the, what they call the briefings on, usually on I think it's Christmas Eve?

A. Yes, I attended the briefing on Christmas Eve.

Q. And you had the weather person tell you about what to expect?

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A. Correct.

Q. But you've never heard this about add 40 percent?

A. It was certainly not said on that briefing or any other briefing I've previously attended.

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Q. Also I think that there is a rule that you apply which is you add 80 percent to a wave height to take into account rogue waves. Have you come across this?

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A. Never heard of this.

Q. So if they forecast 4 metre waves, 4 to 5 metre waves, you wouldn't add 80 percent on top of that, or 86 percent, for a rogue wave?

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A. No, I would not, no, I'd expect 4 to 5 metre waves.

Q. And that I take it was never explained to you at any of these briefings by the weather bureau?

A. That was never explained to me, no.

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Q. Now you say then, and I'm still at page 4, "By midday the wind strength had built to in the order of 55 to 60 knots.". Were you expecting that at all?

A. The second front that was coming through we were told would be in the region of 45 to 55 knots, so the fact that we got 60 knots didn't come as a complete surprise, it was definitely the top end of the range I expected.

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Q. So you ordered the mainsail to be heavily reef and the number 4 jib was up. Come the 2 o'clock sked on Sunday afternoon 27th you being a small boat you don't have weather facs, what is the weather facs?

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A. Well on the bigger boats they have much more sophisticated communications equipment and the weather facs is in fact a machine that receives up to date facsimiles which show the latest weather that's coming through.

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Q. So what were you relying on for the weather?

A. I was relying on my navigator who was relying on the radio and the weather report conveyed to us from Telstra Control.

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Q. And that I believe came up at the beginning of each sked and at the end of each sked, or do you not know that?

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A. Well initially I was on deck practically the whole time and then because I was very seasick I had to stay on deck, so when we had the washboards in I couldn't hear the radio at all, so that was something for the navigator to listen to

and communicate to me.

Q. Now you say that at 14:00 hours, this is still on 27th, they were saying the weather forecast was 45 to 55 knots?

A. Yes.

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Q. And you "looked at the wind speed dial which was a brand new piece of equipment on my boat, at that time it was showing 75 knots"?

A. Correct.

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Q. Now perhaps if you could explain what a wind speed dial is?

A. This is a dial which is mounted on the side of the cockpit and it's an electronic instrument that's connected to the top of the mast where there's a thing that goes around it and it sends a message down to the repeater on the decker and one to the navigator below.

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Q. That's a sort of cross with little cups--

A. Yes, that's the one.

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Q. --at the top that fascinates people?

A. That's right.

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CORONER: Q. And that registered up to seventy five?

A. No, no, it goes higher than that.

Q. No, but on this - at that time?

A. At this time it gusted to seventy five, yes.

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HILL: Q. Now just prior to this you say "I'd taken down all the racing sails and called for a storm jib", you were then doing about 7 to 8 knots. Now is that a reasonable speed for a yacht of your type?

A. In those conditions, with a storm jib, yes.

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Q. And you were also, and I'm looking at about .5 on the page, it's the answer to question 22, you were experiencing white out conditions, and I take it that was the - in other words the foam et cetera from the top of the waves was now blowing off and coming into your faces as you were --

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A. Yes, you couldn't look at it, it was like very powerful sleet and one of the chaps called for some goggles, swimming goggles that he had downstairs to put those on so that while he was helming he could see where he was going. The rest of us couldn't look at it.

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Q. You also say "The waves at this stage were taller than my mast, my mast is 60 feet high, and the waves were breaking.". Now when you say taller than your mast are talking about when your vessel was in a trough?

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A. Correct.

Q. And the top of the wave that was ahead of you?

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A. Yes.

Q. Or to the side or whatever?

A. Yeah. I'm not saying every wave was like that.

Q. No, no, I understand that. But there were 60 foot waves, were you expecting anything--
A. Nothing like it.

Q. --like that?
A. Nothing like it at all.

Q. And over the page--

CORONER: Q. What time was that Mr Moray?
A. This is just after the 2 o'clock sked, let's say 2.30, 3 o'clock, round there.

HILL: Q. And that's on 27th?
A. Correct.

Q. Now at page 6 down the bottom there you were asked about the information you're receiving from Telstra Control and you say "Well in fact they hadn't given us accurate forecasts of the wave conditions expected. It was really the wind that we were worried about and we were told 45 to 55 knots and we've got ample record of that.". Now you were told 45 to 55?
A. Yes.

Q. Now from some perspectives to get up another twenty does seem a great deal, but how is it as far as you were concerned?
A. Well the change in conditions at sea from 50 knots to 70 knots the conditions basically get twice as bad. I'm not technically - we've no doubt got witnesses who can explain it much better than I but it's the effect of the wind on the waves and creating such forces that 70 knots is basically twice as bad as 50 knots.

Q. And you say there that, at the bottom of that page, "The maximum wind speed we recorded on the boat at this time by the way was 86 knots."?
A. Yes.

Q. And that was on the instrument that you've told us about?
A. That's correct.

Q. And you say, page 7 "There was a patch for about 15 minutes when it was over 80 knots. The rest of the time it was between 70 and 80 knots.". And that's as you recall it?
A. Well not for the entire afternoon, it built from that lull in the late morning and it just went steadily over 50, 55, 60 and then it kept building from 60 up to 80, 86 and then much later in the afternoon it abated, in the earlier evening as I remember, but I don't have a perfect memory of it.

Q. That's right, you go on to say at question 30, "This built, I would say we were at 70 to 80 knots from about 1 o'clock in the afternoon till certainly into the night, you know, several hours."?

A. Yes.

Q. That's as you recall it? Now at page 8 you say "At about just after 3 o'clock on the Sunday my navigator, Tim Evans, reported that over the radio he'd picked up a mayday signal from a yacht called VC Offshore Stand Aside and he also reported nobody else had responded to this mayday and he asked me whether we would be able to attend to the mayday."?

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A. That's correct.

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Q. Now - and you asked him what the position was. So can you tell us, as you can recall it, what was said?

A. Well my navigator told me their position, which he had heard over the radio, and I said "Well where is that in relation to us?", and he told me it was fairly close and so I said to him "Well nobody else has answered this mayday, we're pretty close to them, what are our obligations?". My navigator is a solicitor at the Supreme Court who has a reasonable knowledge of these matters as I understand. And he said "Well unless we're in - unless the boat is in serious danger or unless any member of the crew is in serious danger we are legally obliged to attend to assist this yacht.". I didn't at that stage know the yacht in question or any of the people on that yacht.

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Q. So you didn't know who they were or anything like that?

A. No, I didn't.

Q. Was it discussed with your crew?

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A. Yes, it was discussed with the crew. We were still, in our minds, racing, we had the storm due and we were trying to get south, and none of the crew disagreed, they all said "Yes, we've got an obligation to go and help this fellow, whoever he might be", and so we notified Telstra Control that we would attend to assist this yacht.

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Q. What was your opinion if you didn't have a legal obligation to attend?

A. Well certainly I feel that I would have a moral obligation to assist someone in peril, whether that be on the land or at sea. Certainly at sea you can't, you know, ring up the NRMA or something like that and get them to come along and help if you can't assist, so I knew that nobody else had answered this call and that therefore really I was the only person around who could have been of some assistance to this crew and, it was a bigger boat than I was, because it was simply further south than I was so he must've been going faster, so he must've been bigger, and I didn't know how many crew on board but we, to a man, on our boat felt it our duty to go and assist them.

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Q. Now what, did you have to turn around or what was the situation?

A. No, because they were a bigger boat and they had, as it turned out, lost their mast they were being blown back on the storm towards us. We're a much smaller boat, 85 percent I think of our fleet were bigger than our boat. So he was being blown back towards us, and then the issue was, well

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could we find them. The position we were given was, it was fairly old data, we thought, and such were the conditions we didn't know whether we'd be actually able to see them or not, and it was really the ABC helicopter who happened to be in the sky nearby who he found them and he was able to communicate via the radio with our navigator who was able to give us instructions as to how to alter course to intercept them.

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Q. So did you do all that?

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A. Yes, we did all that, and by some miracle we found them, and when we came across them we could see that they had lost their mast, they had - most of the cabin was missing, all the crew were on deck in life jackets. They had launched their raft which was tethered to the stern and whenever waves would break they would break over the boat and they were filling up with water, so they were sinking.

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Q. I think that you have since that time actually spoken with some of the crew of Stand Aside?

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A. The skipper, yep.

Q. And I think that he actually gave you two photographs of your vessel standing off his vessel?

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A. That's correct.

Q. Perhaps if I show you these photographs. Now that's your vessel?

A. That's my vessel, yes.

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Q. Now it seems to be going in different directions, and I'll ask you about that, but first of all if that could be tendered and passed round to my friends.

A. The photo actually does - they look to be taken pretty soon after one another, it does show us moving in the same direction.

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EXHIBIT #2.1 TWO PHOTOGRAPHS SIENA TENDERED, ADMITTED WITHOUT OBJECTION

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Q. Now obviously in weather like that if you try to come alongside another vessel it could be a very dangerous thing?

A. Yes, that's correct.

Q. So what was your purpose?

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A. Well I understand that afternoon there were about fifteen mayday calls issued from various vessels in distress. This was the first mayday of the afternoon, and at that stage the only helicopter in the air was the ABC helicopter. And I understand that rescue helicopters were not in the area and it wasn't known whether they could get to the area or indeed once they got there whether they could actually pick people out of the sea. So what we were trying to do was if the helicopter couldn't get there we would sail over as close as possible to the life raft that they'd launched with a view to a couple of their men getting into the life raft, perhaps two at a time, and if we could pull them out of the raft, or in extreme is if they would jump in the water and we'd pull them out of the water and put them

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onto our boat, because as I said their boat was sinking, and subsequently sank.

Q. So your idea was that you would be on the position to pull people out of the water, either by a life raft or if their vessel had gone down out of the water itself? 5

A. Well we would certainly try.

Q. Now you remained, if I can use the term, on station around the Stand Aside? 10

A. That's correct.

Q. For approximately how long?

A. One hour. 15

Q. And you were doing what, how were you getting around?

A. Well he was being blown back, he had no engine, no mast and no means of propulsion, and he was just being blown back by the wind and pushed back by the breaking waves. And so we, in order to remain as close to him as the photograph shows, we had to go broadside onto the sea in order to remain close to him so that if the rescue authorities told us that the helicopters couldn't get there well then we would be able to get in, we could still see him and we felt we could still get to him to do something about rescuing the men on that boat. 20 25

Q. Now at one stage there I believe that your navigator in fact suffered an injury?

A. That's correct, yeah. 30

Q. And what happened?

A. Well we'd been sailing up and down in a broadside position to the waves and we had another helmsman on the helm at the time, and as I explained to you we couldn't look into the wind conditions because of this white out effect, and he screamed out the word "Wave", which means that a big breaking wave is just about to hit. For those on deck, and we were four on deck as I remember, we all just grabbed onto a winch or - we were all harnessed on of course but - and this wave tipped us over and we knocked down, the mast was in the water. And then the crew below decks, well we had the washboards in to stop water going into the cabin, and unfortunately they didn't hear the call, such was the noise, and I understand Tim was knocked from one side of the boat where he'd been talking on the radio to the rescue helicopter, to the port side of the boat where he collided with the oven, and it broke his ribs and punctured his lung. 35 40 45

Q. Now with that injured person on board what were your views then about remaining on station with the Stand Aside? 50

A. Well I didn't want to remain on station any longer, I now had a seriously injured crew member, and that in my view took precedence over the rescue. We were equally advised that the rescue helicopter was within 5 minutes of reaching the scene and so we explained to Telstra, or the authorities anyway, I wasn't on the radio, but it was explained to them that we had an injured crew member, in fact my navigator was the one who was injured and he told them that we had an 55

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injured crew member, and we sought their permission to leave our stand by situation so that we could get the injured crewman to hospital.

CORONER: Q. So despite that you still took the step of asking permission to leave?

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A. Yes, yes.

HILL: Q. If I can then take you to page 14 of your statement, you were asked a question about the weather, it's at the top of the page, it's question 55?

A. Yes.

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Q. Just on that "If you would've known that the weather conditions were going to be as such what would you - what would your actions be to that, to those conditions?" and you said "I'd never be out there.". Now can you explain, can you expand on that for us--

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A. Well at the end of the day this was just a yacht race and on Sydney Harbour in keel boats for example clubs won't start your keel boat racing if the wind is blowing over 25 knots. I've had experience in these waters and others of conditions of 50-60-65 knots and now on this occasion much more than that. And this is no longer a yacht race this is survival conditions and I don't participate in these events to have my life threatened or my crew's life threatened.

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Q. Well if you had been told at 2 o'clock on the afternoon of the 26th that a storm warning had been issued?

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A. Yes.

Q. And that's an hour after the race, what would you have done?

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A. Pulled out.

Q. And if you'd been told that at 8 o'clock that night?

A. Pulled out.

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CORONER: Q. So a storm warning to you means "I'm out of here."?

A. Well I understand a storm warning to be something in excess of 50 to 60 knots and in my small boat, I mean it's a different thing if you're in a much large yacht and I've helmed maxi yachts and you know you're getting a different ride but on a little 38 footer you're getting a terrible beating so I'm not prepared to suffer that.

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HILL: Q. And indeed I think you went on to say that you had some people with you who are in fact had children and so - not children with you but they had children, they were married--

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A. Yes well of the seven crew six were sort of married and we all had children yeah.

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Q. And had you been warned you would've simply pulled out--

A. Correct yeah.

Q. Now at page 21 of your statement and that's about midway in that page you say "I feel that ocean racing when you get conditions such as 60 knots that it's not longer racing, this is survival and I am very critical that the organised authorities did not become more pro-active when it was abundantly clear that conditions were so extreme that lives were in great danger.". Now you then allude to the forecasting service. What exactly is it that is your criticism there?

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A. Well I suppose I'm fortunate in the sense that my yacht

is a heavier more solid yacht and was able to withstand extended conditions in more than 60 knots but a lot of modern yachts simply break up it seems to me in those conditions and that just seems to be you know a perilous situation and I - and that's just leaving aside the complete discomfort and unpleasantness of being out in conditions like that. It's life threatening, it's uncomfortable, everybody is usually very sick and it's no longer a race in my opinion. 5

Q. You also say that "A failure to relay to us the wind readings from Wilsons Promontory which was some way to the west of us which is now is the new weather come in which recorded over 90 knots." where did you hear that from? 10

A. Well I certainly didn't hear it at the time, I heard it subsequent to the race and I think I heard it from the ABC. 15

Q. Okay and you say "And the failure of the race authorities to notify me as the skipper through the radio that events such as the Melbourne to Hobart Race had been start delayed because of the conditions described by the organising yacht club down there as suicidal."? 20

A. Mm.

Q. You were not told that they had delayed theirs? 25

A. I wasn't told that at the time, not while we were at sea no.

Q. And you say that you were upset because that was not given to the fleet? 30

A. And the relevance of that is that the yacht clubs that compete in that race which starts in Melbourne obviously and goes down the west coast of Tasmania it strikes me that they have probably a better knowledge of the best strait than perhaps we have in Sydney so for me that was very important information that wasn't relayed to me. 35

Q. And you say that the CYC had a minimalist policy of passing on information. What - why do you say minimalist? 40

A. I'm particularly thinking of the warning that went out that afternoon which my navigator told me about and he said "We've just received a message from Telstra Control to say that all yachts are reminded of Rule 7.4." and-- 40

CORONER: Q. So you got your book out do you? 45

A. Well exactly straight off the top of my head I couldn't remember under those conditions what 7.4 was and nor could any of the other crew and we felt that if they just said to us "This rule says or this says that it's a decision of all skippers whether they keep racing or not." would've been more helpful to us. And the fact that they just read out 7.4 I regarded as a minimalist communication. 50

HILL: Q. Now you say that "I'll make a good decision if you give me good information and I'll make a bad decision if you give me bad information and I got bad information and this was the weather report."? 55

A. That's correct.

Q. You then say with regards future organisation of the race, and I'm at page 32 of your statement when you were asked if you have any comments about the organisation, you say "It's just on the future organisation of the race I have some comments that I would like to voice. First of all I believe that in events such as this should have a professional paid director who might for example be an ex-naval officer or army commander someone with experience in making command decisions.". Why do you say that, what happened in this or didn't happen in this race that makes you want that? 5 10

A. Well I didn't know it at the time but later it became quite clear to me that there was certain information that was available to people on shore that could have been analysed and communicated to the fleet which would've caused us to make, if you like, different decisions to the ones that we made. So this now moves to the issue of chain of command so if for example you're looking at a gold tournament and you know lightning and thunder comes along, there's a tournament director who says "Okay ring the siren.", everybody goes back to the club house, takes shelter till the storm goes past. Someone makes a proactive decision to suspend the sporting event until it's safe for the contestants or the participants to recommence whether it's a tennis game or a cricket match or golf tournament or a sailing event. 15 20 25

Q. So nothing like that's happened in this race?

A. No. 30

Q. Now what was the sort of information on shore that should've been passed on that you say would've caused a penalty?

A. Well I didn't see it but I understand on the Saturday night on the television there was a weather forecaster who said "The fleet is going to hit atrocious conditions tomorrow." and I've never heard of the fleet being pre-warned on shore in that way and don't understand why an advice like that isn't communicated to the participants in the fleet. 35 40

Q. So in other words all the people ashore were well aware of what you were heading into but you weren't?

A. I don't know if everybody was, sorry I can't answer that question but all I know is that there was information on shore which if I've had it on the sea would've caused me to make a different decision. 45

Q. Now you also say second of all there should be a mark so that the race can be suspended if necessary? 50

A. Yes.

Q. How do you mean by that, what--

A. Well race, the race basically consists of three sections, you've got 200 miles odd going down the coast of New South Wales and a bit into Victoria where usually your worse weather's coming from the south-west and because you're under that shore, you're protected by it. You've then got about 200 miles where you're exposed to go across 55

the Bass Strait and another 200 odd miles down the coast of Tasmania where generally speaking you don't get too many problems, that's going down the east coast. Now it strikes me if you had a sea mark off Eden for example about 5-10 miles out may be and all boats required to leave that port you've have the fleet tucked up near the coast so that if there were bad conditions starting to occur in the Strait a race director could say "Righto well race suspended, take your time at the mark at Eden and we'll restart things in let's say 24 hours when it's safe to cross the Bass Strait.". Bass Strait is certainly in my opinion one of the worst passages of water in the world and it seems to me that special weather forecasting techniques should apply to that part of the race and there should be an ability of race organisers to suspend things if in fact the light is red. If the light's green just go straight through but if the light's red, stop there.

Q. Well if I can take you back to 26 December 1998 there was an 8pm sked and we have seen a map which shows the majority of the fleet is somewhat north of Eden. Do you recall in any way how far from Eden you were at that time. And I'm not asking for absolute precision or anything like that I mean were you north--

A. We were on the continental shelf, I think we might've been 10 miles out or may be a little bit further on that.

Q. So--

A. Because the rhumb line you see when you're sailing to Hobart you're sailing down a course of about 190-194 which is basically due south so that keeps you fairly close to the coast anyway and indeed if you're expecting a sou-westerly change most people tend to sail further into the west so that when they get hit by the storm or the gale you get driven further east so then you're back on your course again.

Q. So basically if you'd gone in to Eden that night--

A. Mm.

Q. --and then recommenced a few days later would that have caused you any problems other than missing two days of weather?

A. Well no I've had been rather pleased to do that actually.

Q. Now the other thing you say is "Every crew member" and this is at page 34 "Every crew member must have his own personal EPIRB on him at all times and I feel that some of the problems of this race were that guys didn't have EPIRBs." that's your opinion about that is it?

A. Yes.

Q. Now I know it may be trite but I presume you're saying so that if you get washed overboard people will be able to find you?

A. Yes well very much so, I think if you're a cross-country hiker or in a light aircraft or something they often recommend that you take your one personal location device

with you so that you can be picked up if something happens to you.

Q. Now you said that your vessel is a Northshore 38?

A. Yes.

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Q. So it's 38 foot long?

A. Yes.

Q. Weighs what?

A. Fully laden about 6 tonnes.

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Q. Now the 'Margaret Rintoul' have you ever seen that vessel?

A. From a distance.

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Q. What do you know about that vessel?

A. I think she was previously called 'Ragamuffin' and was previously owned by a chap called Syd Fischer and I think she might be about 30 years old, built of wood, very solid boat.

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Q. And idea what the length is?

A. I think she's about 48 feet long but I might be wrong.

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Q. And what does she weigh?

A. I understand she weighs about 25-26 tonnes.

HILL: Yes I've nothing further thank you.

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CORONER: Yes Mr Stanley.

STANLEY: Q. Mr Moray were you particular reliant upon your navigator in terms of assessing what steps should be taken with respect - with regard to weather?

A. Whether what?

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Q. Weather, w-e-a?

A. I see.

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Q. Weather conditions?

A. Yes, yes Tim's got good experience of reading weather charts and so forth. We had just as a matter of interest on that subject because our boat left from Kirribilli that day, we'd been over to the CYC to pick up the latest weather forecasts which we were told would be ready at 8 o'clock that morning and they weren't ready at 8 o'clock so we left without the information was made later available that morning. So based on the information that Tim had he and I consulted closely about what we thought the weather was going to do and basically it was a decision that was made between us.

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Q. So does it follow from that from what you've just said that you and a member of your crew attended at the Cruising Yacht Club on the morning of the race?

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A. I attended the CYC that morning.

Q. And did you see the stand that was there of the Weather

Bureau?

A. Yes we went to get - as I said at 8 o'clock we went to get the latest because were told there'd be a weather update available that morning at 8 o'clock and we went to try and find, I personally went to try and get that information, it wasn't available. 5

Q. And what time did you leave the yacht club?

A. We left just after 8 o'clock, we had to pick up some dry-ice and leave our suitcases there for shipment down to Hobart. 10

Q. And were you subsequently made aware that a gale warning had been issued?

A. No. 15

Q. Did you ever know that?

A. Later on yes.

Q. I'm sorry, ever know it on the day of the race, the 26th? 20

A. I was, yes my navigator told me much later on I think that evening after the sked, I can't remember exactly the time of day. 25

Q. So that would be after what the 8 o'clock--

A. I think so.

Q. --sked, what that there'd been a gale warning?

A. I'm not sure. All I know is we were told and here's a definitional thing, the first front coming through was 25 to 35, second front coming through was 45 to 55 so words such as storm and gale I think are only or mostly in wind speed, when somebody gives me a wind speed that's what I look at mostly. 30 35

Q. Well I appreciate you may have a different state of knowledge now but as best you can, can you tell us what you understood to be covered by the term 'gale warning' as at 26 December, what was your knowledge then? 40

A. Well see it's a very loose definitional thing I mean I would regard a gale as somewhere around 30 to 40 knots and a storm is more than 50.

Q. What it's a very loose definitional thing to you is it? 45

A. Yes it's like the old days we used to have things called the Beaufort Scale and you had scales went from like 1 to 12, they were gradients of wind speed you go up in about 5 knot gradients well I can't remember all of those. 50

Q. Well what did the idea of a storm warning give to you, when you heard there was a storm warning had been issued, what did that mean?

A. 45 to 55 knots. 55

Q. And what did it mean to you in terms of the condition of the seas?

A. That a substantial swell, the wind would most likely be coming from south-west because that's usually where the bad

weather comes from. I knew that the seas would be short and confused because they'd been like that in previous occasions and on previous occasions I'd seen the winds in the Bass Strait go up to 55-60 knots. I knew it'd be nasty and but I knew on previous occasions we'd gotten through.

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Q. Had you ever before sailed in a Hobart to Sydney, Sydney to Hobart race where a storm warning had been issued?

A. Well my role is not navigator, I'm usually a helmsman.

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Q. Well had you ever been on a boat in that race ever when there had been a storm warning issued?

A. I'm not sure about the '86, I know we had winds of 55-60 and I don't know whether they said this is a storm or not.

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Q. That's what I'm endeavouring to direct your attention to Mr Moray?

A. My answer is I don't know.

Q. Have you ever sailed on a boat where there has apart from this occasion where a storm warning had been issued for the waters that you were sailing in?

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A. I don't know.

Q. Well why don't you know--

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A. Why?

Q. --isn't that something that a sailer would want to find out?

A. Well as I said to you before I look at wind speed forecasts that's what I look at and for me what is the definition of a storm, I'm not entirely certain I know what some people refer to as a storm I prefer the more accurate speed in knots.

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Q. Well you say wind speed is the important thing for you simply giving a storm warning really doesn't mean much at all?

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A. I know it's going to be around 50 knots.

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Q. More than 50 knots?

A. Possibly.

Q. 60-70?

A. Possibly 60, I would hope they wouldn't have us racing in over 60 knots.

45

Q. But when you heard it was going to be - that there was a storm warning that had been issued for waters that you were going to meet some 24 hours later, 20 hours or so later, did that concern you?

50

A. Well because it was coupled with this definition of 45 to 55 knots I thought that's what they meant by a storm.

Q. Were you aware that a storm warning was the most extreme warning that could be given by the weather bureau?

55

A. No I thought that they had told me that we were going to go into a grade 3 hurricane but that would've been a more accurate warning.

Q. Is the answer to my question that you did not know at the time that the most extreme warning that the weather bureau could give for waters in this area was a storm warning?

HILL: Well I object to that, the reason I'm objecting to that is because that doesn't appear to be what the Weather Bureau's evidence is, they do call hurricanes and if my friend wants me to direct his attention to that I'm quite happy to do so.

CORONER: You say not in those waters.

STANLEY: The point is this my instructions are that for these waters it is not appropriate and it is not done, hurricane can be the forecast, the most extreme warning is storm.

CORONER: Well isn't that a bit of a nonsense, why's that?

STANLEY: Well because storm encompasses anything over 48 knot winds.

CORONER: So it could be anything from 40-50 knots to huge, huge and there's no differentiation, no other gradient up?

STANLEY: No it's the most extreme because once a storm warning has been issued by definition that means the conditions will be dangerous by reason of sea and wind and in fact I was about to put the actual description of storm to this witness in terms of the statement seas.

CORONER: Well what do you say Mr--

HILL: Well if you just allow me--

CORONER: Mr Stanley says in these particular waters--

HILL: Yes I understand that though I was quite sure that - and I'm not looking at cyclone - perhaps I'm looking at--

CORONER: I'll allow the question, I suppose a lot's been lost in the argument anyway but I'll allow the question at this stage. Go on Mr Stanley.

STANLEY: Q. Well is the answer to my question that you were not aware of that a storm warning was the most extreme warning that could be given for these waters?

A. Correct.

Q. Mr Moray are you aware that on the day of the race that documents were handed out and made available to competitors by the Weather Bureau with respect to weather generally?

A. I understand that later in the morning of the 26th documents were made available at the CYC.

Q. And that those documents had been made available to previous Sydney to Hobart races?

A. Yes I don't know what time they were made available on

that morning.

Q. Have you ever read them?

A. Yes.

Q. Did you read them before 26 December?

A. I went to the briefing on the 24th.

Q. So you read these documents did you?

A. I listened to Mr Batt describe the conditions.

Q. Did you read the document--

A. I did not read all the documents.

Q. Did you think it might have been wise to have read the documents you were given about the weather?

A. No because the reason I attended the hearing with my co - the briefing with my co-owner and my navigator was to ensure that the three of us all heard the briefing and that my navigator in particular was able to take the information and analyse it and give me his assessment of it.

Q. I'm not asking you about what was said specifically at the briefing I'm asking you about the documents that were provided of a more general nature in relation to weather forecasting and understanding the weather conditions from a forecast. Now you know the documents I'm talking about don't you?

A. You'll need to remind me.

Q. Perhaps I can hand these to you, each of them is of two pages, these I suggest are amongst the documents that were provided by the Weather Bureau to all competitors in the race and I can ask you to look first at the one entitled 'Marine Weather Services'?

A. Is that this page?

Q. Yes thank you yes, that in fact is of two pages.

STANLEY: Could I hand a copy up to you sir just for my present purposes it does have some highlighting on it.

CORONER: Yes.

WITNESS: On this page it says that the strongest wind warning is hurricane force more than 63 knots is that the one you're talking about.

STANLEY: Q. That's the one I'm talking about, I'm asking you to look at that document?

HILL: That's the point I raised--

CORONER: I'll still allow it, I'll still allow it, I'm sure will become clear. Well I hope all will become clear Mr Stanley.

STANLEY: Q. Mr Moray we look at the left hand column the foot of the page there's definitions and terminology do you

see that?

A. Yes.

Q. And there's a definition of wind speed. Would you mind reading that to the court?

A. Wind speed mentioned in forecasts and coastal observations is measured at an average speed over a 10 knot period, gusts may--

Q. Over a 10 minute period?

A. 10 minute period. Gusts may be 40 percent stronger than the speed.

Q. And do you say you had no idea of that?

A. Yes I certainly haven't seen this before.

Q. And you say that you had no idea at all that there could be wind speeds of 40 percent stronger than the speed quoted by the forecast, in the forecast?

A. Yes I haven't seen that before.

CORONER: Are you going to go back to this bit about hurricanes and clear it up for us all if it's on the document.

STANLEY: Yes.

CORONER: Please.

STANLEY: This document is of a general nature as I said before--

CORONER: I'll take it from the bar table if you could just give us what you - what your client understands to be the position for those waters.

STANLEY: My instructions are as I've put before that for waters that we're concerned with in this inquest the highest warning that could be given by the Bureau was a storm warning, cyclones or hurricanes are not appropriate for waters so far south, they are only appropriate for waters further north.

CORONER: Is that because of the frequency of hurricane forces further south, is that the reason, they'd be doing it all the time or you don't know.

STANLEY: I'm unaware of the reason but I am - I do understand that they're international conventions and it's not just for Australia to go--

CORONER: I understand that.

STANLEY: --making it's own rules as to what should be--

CORONER: I understand that all right okay.

STANLEY: Q. Mr Moray the seas that you experienced would this be a fair description of them that they were very high

waves with long overhanging crests, the resulting foam in great patches is blown in dense white streaks, the surface of the sea takes on a white appearance, the tumbling of the sea becomes heavy with visibility affected is that a fair description?

5

A. Yes.

Q. Would you look please at the other paper I've given you entitled 'Weather Words' and you'll see on the page under 'Wind Descriptions' under the main heading of 'Wind Terms' do you see that part of it?

10

A. Yes.

Q. And you'll see there, there are wind descriptions starting with 'calm' going down through 'light winds' and 'moderate winds' and 'fresh winds' and 'strong winds' then 'gale' and then finally 'storm' and no hurricane and it says effectively that storm is anything in excess of 48 knots?

15

A. Well there are two definitions of storm according to this.

20

Q. There are two sections--

A. Yeah.

Q. --both coming within the description of storm--

25

A. One is 48 to 55 and the other is 56 knots plus.

Q. That's right. Now the description that I read to you a moment ago is the description given for storm is it not?

A. Mm-mm. You could easily read the second description as well and it would be right.

30

Q. Yes but the first one would be right also?

A. Yes.

35

Q. I just take you back to the other, the first document headed 'Marine Weather Services', the right hand column a little below the area that you were reading from before where there's reference to wave and swell height, it's almost half way down the page--

40

A. Yes.

Q. --do you see the forecasts on wave and swell height are meant to represent the average of the highest one-third of the waves hence some waves will be higher and some lower than the forecast wave height?

45

A. Yes.

Q. Now as at 26 December did you understand that?

A. Yes, yes.

50

Q. Did you know that - did you know of the term 'significant wave height'?

A. I've heard it but I don't know exactly what it means in relation to variations if that's what you're talking about.

55

Q. In relation to wave heights?

A. Yes.

Q. A significant wave height, do you know what that term means?

A. Well I think it's about 5 to 7 metres.

Q. Did you discuss it with your navigator Mr Evans or have you ever? 5

A. He told me the size of the swell that had been forecast and that was the discussion we had yeah.

Q. What I'm endeavouring to do Mr Moray is to see what you yourself understood the terms 5 to 6 metres-- 10

A. Yeah.

Q. --and what that entailed--

A. Yeah. 15

Q. --and we read here that the Weather Bureau says that the forecast represent the average of the highest one-third of the waves?

A. Yeah. 20

Q. Did you know that before now?

A. As to the definition of the word 'significant' the answer is no, once again I rely on a description in metres of the size of the waves. You seem to want to talk about words like significant I want to know about is it 5 to 7 or 3 to 5. It's useless to me if someone says "Oh it's a significant swell." I want to know the swell size. 25

Q. If we just read on the next paragraph says "King, freak waves occur when wind waves and/or a combination of swell waves join to form a very high wave. Shape and depth of the sea bed is also important." did you know of king waves? 30

A. I know it, yes I'm familiar with the term a king wave. 35

Q. Or a rogue wave is another word?

A. Yes, yes.

Q. And I think you at one stage did refer to a rogue wave?

A. Well there were series of them that day. 40

Q. And were they the ones that you accede as doing the real damage, the rogue waves?

A. Of course. 45

Q. And they can be double the height of the prevailing wave?

A. And part of the problem is they don't always come from the same direction, they come from different directions that's why they're called rogues. 50

Q. So when you talk about wave being as high as your mast you're really talking about a rogue wave being as high as the mast?

A. Yes. 55

Q. And the problem was as you say they were coming from different directions?

A. Correct.

Q. And you had to watch out for them--

A. Yes.

Q. --and try and anticipate and meet them?

A. Very much yeah.

5

Q. So you clearly understood that with a forecast of 5 to 7 metres of wave heights you were going to get rogue waves weren't you?

A. 5 to 7 metres, well to get a rogue wave those sizes no because they're very much bigger than 5 to 7 metres.

10

Q. Yes but I'm saying if you have a forecast of let's say 4 to 6 metres, 3 to 5 metres?

A. Yes.

15

Q. Whatever, you will still expect there will be or there may well be rogue waves?

A. And there'll be other waves very much smaller.

20

Q. Because at the end of the day the range - what you're given is an average height or a mean height?

A. Yes.

STANLEY: Thanks Mr Moray.

25

CORONER: Right I'm working down the table, Mr Hunt have you any questions.

HUNT: Q. If I can just take you back to 3pm on Sunday the 27th when you were advised by the navigator of the receipt the Mayday, am I right in thinking that the 'VC Offshore Stand Aside' was between you and Hobart when you heard that Mayday?

30

A. It was to the south of us that's right.

35

Q. Yes and you were heading south?

A. Yes, towards it.

Q. And so what you actually had to do was alter direction--

40

A. Correct.

Q. --slightly to a different bearing--

A. Yes we'd--

45

Q. --but still proceeding south?

A. Yes we hardened up.

Q. Okay and at the time when you received the Mayday what was the condition of your boat, was it still in good condition?

50

A. Yes we had the storm gib up and we had four crew on deck, three below, the wash boards in, everybody was tethered it was obviously still day light and the boat was - well we still considered ourselves racing.

55

Q. By racing you mean - would you describe yourself in survival mode at that stage?

A. No I wouldn't say survival mode I mean apart from

seasickness we still figured or you know we had a reasonably heavy boat and we had a pretty good chance of doing well in our division.

Q. And your engine's still operative? 5

A. Well no because if you switch your engine while you're racing you get disqualified.

Q. Yes but it was as far as you were aware at that stage it was still in working order? 10

A. We'd only had occasion to switch on the generator to charge the battery for the purposes of communicating twice a day with the Telstra control.

Q. But as far as you were aware if you needed to rely on your engine at any stage-- 15

A. Well it was fine the day before and we hadn't operated it since so you know the actual engine we hadn't operated it since before the start you're not allowed to.

Q. No I appreciate that but to the best of your knowledge-- 20

A. Yeah.

Q. --if you'd have in an emergency had to it would've been operative. And I think that you mentioned earlier on something about the - some of the crew being family members, 25

or family men how old was the oldest crew member you had on?

A. Fifty-five.

Q. And you also mentioned that you had some difficulty in locating 'Stand Aside' once you approached and that was because of the conditions? 30

A. Well with the waves you couldn't see more than you know a fairly short distance because of the size of the waves and he didn't have a mast or sails so he was very low in the water. 35

Q. And would sort of blending into the waves--

A. Well a white hull and there was so much white foam on the water at that time yeah. 40

Q. And I think that you indicated that you had to rely on the helicopter to guide you there?

A. That's correct yes, he was up there he could see him and he could see us and gave us the course to the vessel. 45

Q. And it may have been difficulty actually locating it without the assistance of the helicopter?

A. Well I can't answer that-- 50

Q. You have the assistance--

A. --because I wasn't in that--

Q. Yes you weren't in that situation?

A. Yeah he was bringing me in. 55

Q. And I think that I've seen some television footage, I don't know if you're seen it where it was suggesting that they actually had to guide you pretty closely though, sort

of you were very close, 100 metres, 50 metres and they were saying it was just over the next wave do you recall that?

A. I remember the helmsman saying "I've got him, I've seen him." and then we all turned around and let's say he was 200 metres away.

5

Q. And I think that you also indicated that whilst you were in the vicinity of 'VC Offshore Stand Aside' your 'Siena' was in fact rolled itself?

A. We were knocked down yeah.

10

Q. Did your mast actually go into the water or--

A. Yes.

Q. And you suffered some damage to the boat?

A. We lost our GPS, that went, the engine was still working.

15

Q. The engine was working at that--

A. Well because when we responded to the Mayday we advised Telstra control that we were going to the assistance of this boat and we would seek relief for the time taken to assist in the rescue.

20

Q. That's relief under the racing rules?

A. Relieve over the racing rules yes and during some time after the start of the manoeuvring around we switched the engine on--

25

Q. Why did you switch the engine on?

A. Why?

30

Q. Mm?

A. We thought it might help us in manoeuvring in those conditions, the facts of the matter were it didn't, the only way we could really tack in those conditions was to pick you know an appropriate wave and then tack the headsail, we've only got a small two bladed prop with a 20 horsepower engine which is basically useless in those conditions.

35

Q. And when you got knocked down I think you've already told the court that some of the crewmen were injured or only one?

A. One.

40

Q. Just one and who was that?

A. Tim Evans the navigator.

45

Q. And what actually happened to you, are you aware of what--

A. Well he was, I understand, I was on deck he was below but he was talking to the helicopter and he was braced in the navigator's compartment and when the wave hit he was flung across the cabin.

50

Q. And do you know what sort of injuries he suffered?

55

CORONER: We've got all that.

WITNESS: I said earlier on that he had three broken ribs and a punctured lung.

CORONER: It's all in his statement and in this man's statement.

5

HUNT: Q. Okay and then you left the - you then left the scene after the injury?

A. No I asked for permission to leave the scene.

10

Q. And then permission was given?

A. Yes.

Q. And then you left. And prior to - and was that prior to the rescue of the crew from 'Stand Aside' from--

15

A. I understand the helicopter arrived five minutes after we left.

Q. And I think you've said that you left at about 6.30?

A. No I didn't say that, we left at 4.30.

20

Q. 4.30, 16.30?

A. Yes.

Q. And so it arrived shortly after. So that - so you left in fact before any of the rescues were exercised?

25

A. Well because I had a man now in serious danger.

Q. And so the net result of you making that decision to go and 'Stand Aside' was that your own boat was actually knocked down--

30

A. Yes.

Q. --in the endeavour to 'Stand Aside'?

A. Yes.

35

Q. And one of your crew members was seriously injured?

A. Correct.

HUNT: No further questions.

40

NO QUESTIONS - MORAHAN

WHEELHOUSE: Q. Mr Moray you gave evidence that if you had known earlier in the race that a storm warning had issued you would have chosen to retire is that correct?

45

A. No what I said was if I had known the winds were going to be in excess of 60 knots I would have retired.

Q. When did you become aware that a storm warning had issued?

50

A. Well I said earlier on that I believed the warning that the winds were going to be 45 to 55 knots was, was a storm warning and I believe we got that I think - well we certainly got it at 2 o'clock on the Sunday afternoon.

55

Q. Well what's your best recollection of when you were first told that there was a storm warning?

A. Well it would be in the notes that my navigator prepared

for me, can I look at those and refresh my memory with those.

Q. Yes you may.

A. Thank you. It looks like at 3 o'clock on the Sunday morning we received a forecast 40 to 50 knots so that's the time I would've been told. 5

Q. And when did you - well first of all I should ask you this question did you ever receive a forecast that the seas were rising to rough to very rough with the change? 10

A. Well the navigator prepared these notes from the forecast--

Q. Rather than recourse to the notes first could you answer my question from your own knowledge, personal knowledge? 15

A. Please repeat the question.

Q. When did you receive a warning that the seas into which you were sailing were seas rising to rough to very rough with the change? 20

A. Well I suppose that would've been the 3 o'clock sked on the Sunday morning.

Q. What was your position at the 3 o'clock sked on the Sunday morning? 25

A. 36 degrees 14 minutes south, 150 53 minutes east. Due east of Montague Island.

Q. Would you just say that slowly so that I can write that down? 30

A. Yeah 36 degrees 14 minutes south, 150' 53 east which I understand is due east of Montague Island.

Q. I want to suggest to you that you received the storm wind warning and the seas rising to rough to very rough at the sked that occurred at 8 o'clock, 8pm is the recording in here or 200 hours-- 35

A. On the Saturday night?

Q. --given out on the Saturday night? 40

A. On the Saturday night?

Q. And it will assist I'll give your position when you were at position 34 degrees south 55, 151' 04? 45

A. Mm-mm. Yes it looks like, yes I can see now.

CORONER: Q. SO it's probable that you did get that warning at about--

A. Yes it's certainly in these notes when I just quickly turned it up I-- 50

Q. So about 8 o'clock on Boxing Day?

A. Correct. 55

WHEELHOUSE: Q. And Eden is at 37 degrees south isn't it? I'll give you a chart if you need to confirm that?

A. Have you got a chart there.

Q. This is map 5 of the documents that were handed up this morning, you'll see it, 37 degrees?

A. Yes.

Q. So when you got the storm warning and the sea is rising to rough to very rough you were a long way north of Eden weren't you?

5

A. Yes.

Q. But you chose to continue to race notwithstanding that forecast didn't you?

10

A. Yes.

Q. And the reason you chose to continue racing sir is your misunderstanding of the terminology used in the weather forecast is that correct?

15

A. No.

Q. I just want you to confirm for the court what the situation was at 8pm when the weather forecast was received on your vessel, were you helming at that time?

20

A. I was on deck at that time yes and yes I was helming yes.

Q. And how long had you been helming at that time?

25

A. I started helming at 6pm.

Q. And were you seasick at that time?

A. No.

30

Q. It had been a fairly smooth run?

A. For me it had yeah, we had a nor'-easter blowing.

Q. With your spinnaker up?

A. Yep.

35

Q. And were you communicating readily with the navigator?

A. Yes.

Q. And it was the navigator who was receiving the weather forecast?

40

A. Correct.

Q. And can the court assume that the weather forecast that was received on your vessel would have been relayed accurately to you by your navigator?

45

A. Yes.

Q. And would you agree that if the 8 o'clock weather forecast or the 8pm weather forecast said that a storm warning for the south-eastern area had issued at 3.15 your knowledge would have been that there was a storm warning issued into the area into which you were moving?

50

A. Yes and the storm was in the region of 45 to 55 knots.

55

Q. And can the court assume also that if the weather forecast had given a description of the seas for late Sunday afternoon south of 37 degrees south as seas rising to rough to very rough with swell increasing to moderate to heavy

after the change you were clearly aware that 8 o'clock on the Saturday afternoon that you were sailing into seas described as rising to rough to very rough south of Eden?

A. Yes.

5

Q. And you elected to sail into that?

A. Yes.

Q. And you were the skipper of the vessel?

A. Correct.

10

Q. And you elected to sail into that because you were the skipper and responsible for the vessel?

A. Correct.

15

Q. And it was your decision?

A. Yes.

Q. And it was your decision?

A. Yes.

20

Q. And yours alone?

A. Yes.

Q. I want to suggest to you that you sailed into a weather pattern which was accurately described for you by the radio relay vessel relaying to your vessel at 8pm on the Saturday night the appropriate warnings, and I'll read you the weather forecast as I have it recorded on a tape taken by Mr Cardiff so you can confirm that, you'll have to bear with me trying to read it. And this is the commencement of the 8pm sked "Roger, thank you, high seas weather warning issued at 0315 hours this afternoon and a storm warning for the south eastern area, the situation a... (and there's some parts missed out there) front for the western Victoria moving east about 15 knots and expected to be 150 degrees east around 9 or 10 o'clock local time tonight, then east a storm warning for ocean waters to the south east of the area issued by the Bureau of Meteorology Sydney at 0315 hours. Situation western Victoria moving about 15 knots expected 015 degrees east at about 5 to 10pm tonight then 155 degrees about 10am midday Sunday. The area affected ... degrees south, 150 degrees east ... 150 degrees east, 152 degrees east, I repeat 24 degrees south 152 degrees east ... degrees south 153 degrees east, degree south 155 degrees east, degrees south 155 degrees east, degrees south 155 degrees east. Forecast gusty west to south-westerly change 30 to 40 knots in the far south west of area tonight extending to north and east of area by late Sunday morning wind tending west to north-west 45 to 55 knots out of 37 degrees south late Sunday afternoon, seas rising to rough to very rough with the change, swell increasing to moderate to heavy after the change." Do you agree with me that that weather forecast was transmitted to your vessel when your vessel was at 34 degrees south 55 minutes, 151 04, sorry repeat that 34 55', 151 04 degrees south?

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55

A. So this is the 3 o'clock sked on the Sunday morning is it?

Q. This is the 8 o'clock sked on Sunday night?

A. No, no, no--

Q. What I'm putting on Saturday night, what I'm putting to you Mr Moray is that that weather forecast was transmitted to your vessel when you were at the position, I'll get it right this time 34 degrees east 55 minutes, 151 degrees south 04 minutes at a time I suggest to you when you were long way north of Eden?

5

A. Yes the practise on our boat is that the navigator writes down the forecast by hand and then he tells me what it is he's received and from those notes he's prepared this report. He speaks of swells of 3 to 4 metres and waves 1 to 2 metres and winds west to north-west 40 to 50 knots late Sunday then moderating.

10

15

Q. So your navigator failed to record on a piece of paper upon which he wrote the weather forecast that was transmitted at the commencement of the sked at 8pm on Saturday night first that there was a storm warning for ocean waters south of the position that you were sailing and secondly the seas into which you were sailing were rising to rough to very rough?

20

A. No he's got here, no he's got here storm warning--

25

HILL: That's wrong, no just a minute I have an objection to that, I think that this gentleman will find it somewhat hard to speak for the navigator. What he failed to do or he didn't fail to do.

30

WHEELHOUSE: Your Worship I understood the witness to be reading from the note taken by the navigator and I'm putting back to him that the note taken by the navigator didn't reveal that aspect of information supplied by the weather forecaster--

35

CORONER: That's all right--

WITNESS: No, no he's got here storm warning south of Merimbula, there's the word storm warning south of Merimbula.

40

WHEELHOUSE: Q. Is there any recording of the seas description?

A. Yes it says swell 3 to 4 metres, waves 1 to 2 metres.

45

Q. Does he note the words seas rising to rough to very rough?

A. No.

50

Q. Would you agree with me that that would have been an important piece of information for you to have had as a skipper sailing into that area?

A. No for me a swell of 3 to 4 metres, waves 1 to 2 metres is a pretty accurate forecast I mean he must have got that information from somewhere. I'm sure he wouldn't have made it up.

55

Q. I want to suggest to you Mr Moray that notwithstanding

your earlier evidence if you'd known that there was a storm warning prior to Sunday you would have ceased racing is frank - is not correct?

A. The information I received as I've read out to you caused me to continue to race and it caused I think a lot of other boats to continue to race.

5

Q. I put to you Mr Moray that your transmitted to your vessel was a warning that the weather into which you were sailing was subject to a storm warning and the weather into which you were sailing were seas rising to rough to very rough and notwithstanding that you continued racing?

10

A. Well if that's what those words mean, if that's what 3 to 4 metres, is that's your definition of rough yes we decided to keep racing.

15

Q. Are you aware of the circumstances under which the Melbourne to Hobart race was delayed in started?

A. When I returned to land I was told, I don't know how accurate it was that on the morning of the 27th at about 8 or 9 o'clock in the morning a vessel went out to the entrance of Port Phillip Bay to look at the conditions and based on its report, and I wasn't there, that they decided to suspend the start of that race.

20

25

Q. Have you any experience of sailing a vessel through the exit to Port Phillip Bay into Bass Strait?

A. No.

Q. So you'd be unaware of the particular conditions that might prevail at that place?

30

A. I know there's a small inlet and it's rough going out there.

Q. And are you aware that a narrow entrance that's occasionally subject to extremely rough seas?

35

A. I believe so.

Q. You gave evidence that you were unaware of the precise content of Rule 7.4 at a time when it was broadcast to the vessel?

40

A. Correct.

Q. Is it the case that when that broadcast occurred you didn't actually hear the radio broadcast but you were again delegating that responsibility to your navigator?

45

A. Yes that's right. We had the washboards in and we don't have any method of communicating from down below upstairs with the washboards in other than to open the washboards.

50

Q. And at this stage this was on the Sunday you at this stage were experiencing seasickness and tiredness yourself?

A. Yes.

Q. Do you recall being advised by your navigator that 'Sword of Orion' was experiencing winds of 70 to 80 knots?

55

A. Yes.

Q. At 1300 hours on the Sunday that's to say at 1 o'clock

on the Sunday?

A. I thought that he gave that information during the 2 o'clock sked but I might be wrong.

Q. So do you recall, I've got this in little pieces so I'm not making life hard for us all you recall receiving the information? 5

A. That's right.

Q. You recall receiving the information that 'Sword of Orion' was experiencing winds of 70 to 80 knots? 10

A. Yes.

Q. And it's your recollection that you received that during the 2 o'clock sked? 15

A. Thereabouts.

Q. And do you recall your navigator relaying that information to you?

A. Yes. 20

Q. I'm suggesting to you it's not something that you heard personally?

A. He definitely told me. 25

Q. Now at that stage were you still racing?

A. Yes.

Q. And how long did you continue to race after that information? 30

A. Well it was a combination of - I must say it was a combination of racing and surviving, we had the storm gib up, we had - we were no longer trying to sail close to the wind, we were just trying to get through each wave without causing too much danger to the boat or the crew. We had to make a decision as to which direction to head and I decided the safest course was to steer into the conditions rather than turning around and having the waves behind us. 35

Q. But you were continuing to race, you didn't make for Eden? 40

A. No.

Q. What was your position at that time? 45

CORONER: That's 2 o'clock on the 27th?

WHEELHOUSE: Q. Yes.

A. Due east of Cape Howe. 50

Q. Are you able to give a latitude and longitude for that?

A. Yes. 37 degrees 29 minutes south, 150 degrees 45 east.

Q. So your position is south of Eden?

A. Yes we're 35 nautical miles due east of Cape Howe which is well - well south of Eden. 55

Q. And you continued to sail towards Hobart?

A. South certainly.

Q. And you continued racing?

A. Yes.

Q. You didn't change tack and head for the protection of the land?

5

A. Well we couldn't sail the wind was coming from south-west you couldn't tack into it, we were in fact running away from the--

Q. You didn't turn about and reach towards Eden you continued on into Bass Strait?

10

A. Yes I decided that if we turned around we ran the risk of having waves from behind pitch poling us in those conditions.

Q. You knew that 'Sword of Orion' was in front of you?

15

A. Yes.

Q. And it's a very fast boat it would've been a considerable distance in front of you wouldn't it?

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A. I didn't know his position.

Q. Do you know what variety of boat it is?

A. Yes.

25

Q. It's a Nelson Marek 43 wasn't it?

A. I think so.

Q. Very fast boat. So at the time when you had the information relayed to you that 'Sword of Orion' was experiencing winds of 70 to 80 knots at 1300 hours you continued to race into Bass Strait is that correct?

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A. Correct.

Q. And would you agree with me as soon as you get south of Cape Howe you get out into Bass Strait proper on a Sydney-Hobart Yacht Race?

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A. Well where we were it's as good as being in the strait you're not protected from the land there.

Q. And your prior experience I put to you would have been that once you get out into Bass Strait proper providing weather conditions are normally more severe because you're away from the landfall?

40

A. Not necessarily, it depends where the storm is in relation to you and where it's travelling to and where it's come from.

45

Q. Would you agree with me then usually?

A. No.

50

Q. I suggest that at the time when there was transmitted to your vessel the weather conditions that 'Sword of Orion' was experiencing there was also transmitted to you the message which indicated to skippers that the decision to whether they should keep racing was a matter for them do you agree with that?

55

A. I received a message that Rule 7.4 had been advised over from Telstra Control.

Q. Well would you have a look to see what your navigator's note is as to what was transmitted to him at the same time as the 'Sword of Orion' information was transmitted?

A. Okay here he says that in fact it seems to form part of the 2 o'clock sked it says 'note 'Sword of Orion' reports it is recording gusts of 70 to 80 knots' that immediately follows the weather forecast at that time.

Q. I want to suggest to you that when the information was transmitted to your vessel that 'Sword of Orion' was experiencing 70 to 80 knot winds, there was also transmitted to your vessel a message from the race committee indicating that it was your responsibility as skipper whether or not to turn back or continue racing what do you say about that?

A. We definitely received a communication saying we were reminded of Rule 7.4.

Q. And you knew what Rule 7.4 was didn't you?

A. No I didn't not at the time we had to ask amongst the crew what is 7.4.

Q. See as a skipper of the vessel you haven't familiarised yourself--

A. I gave evidence earlier on on this point.

Q. But as skipper of the vessel you hadn't familiarised yourself with one of the fundamental rules of racing that apply to skippers is that what you say?

A. At that particular time I couldn't recall clearly what 7.4 was and I was forced to ask my navigator and the rest of the crew what it meant and we didn't understand why it just wasn't read out en clair.

CORONER: Neither do I understand Mr Wheelhouse, I suppose you'll make it clear in due course.

WHEELHOUSE: Q. If I can just put to you that what was put out was the essence of the rule, I'll read to you what was transmitted to your vessel 'I was just going to pass something on else onto all of the fleet, firstly I would like to draw attention to all yachts competing in the Telstra Sydney-Hobart Yacht Race, page 2 of your racing instructions, paragraph 7. All those taking part in CYCA races do so at their own risk and responsibility. The CYCA is not responsible ... (and there's a transmission drop out) of a yacht who's entry is accepted or the sufficiency or adequacy of its equipment the CYCA is not responsible for any damage or injury either ashore or at sea either to persons or yachts which might result from participating in the club - in club races, the decision to race a boat is solely the responsibility - is solely the responsibility for - is solely responsible for deciding whether or not to start or continue racing. I ask all skippers before proceeding into Bass Strait or whether you're proceeding to give it your utmost consideration as to what you're doing and talk about it with your crew. No problem to call into Eden and perhaps take off again tomorrow, Eden Coastal Patrol if you'd like to go ahead now with the gale warning.". I want to suggest to you at the same time as the information came

in from 'Sword of Orion' your attention as skipper was directed to the fundamental rule of racing what do you say about that?

A. I was certainly directed to the existence of an announcement of 7.4, because of the conditions prevailing at the time as I explained to you I couldn't hear the radio, all communications were coming via my navigator. 5

Q. So your navigator never told you that what was transmitted was a message from Mr Cutter to the effect "I ask all skippers before proceeding into Bass Strait or whether you're proceeding to give it your utmost consideration as to what you're doing and talk about it with your crew. No problem to call into Eden and perhaps take off again tomorrow." that was not - that information was not given to you by your navigator is that correct? 10 15

A. Not in those words and what is more even if it had been in the position I was in I would not have turned around and gone back to Eden because that would've been in my view poor seamanship. 20

Q. And may we take it then if those words were transmitted to your navigator your decision was to proceed into Bass Strait and to continue racing?

A. Proceed into the waves, not to turn around and have the waves behind me. 25

Q. Well let's take up your hypothesis of a buoy just off the end of Eden when this information was given, let's take up your hypothesis-- 30

A. It's not a hypothesis it's merely a suggestion.

Q. Let's take up your suggestion that there should be a marked race course say set 5 miles to sea off Eden. Let's take up your hypothesis in the context of where you were at the time when your vessel was advised that there were 70 to 80 knot winds being experienced by a vessel to the south of yours and you are just east of Cape Howe about to enter into Bass Strait? 35

A. So I've gone past this mark. 40

Q. Yes. And if the race committee elected to call of the race would it have been feasible for you to turn back to Eden on your theory?

A. No it wouldn't. And I would also ask the question why would they let us go so far south knowing the conditions. 45

Q. The question of whether to continue racing or continue to retiring would you agree is that of the skipper--

A. Correct. 50

Q. --of the vessel and that person is the person who's best placed to make that decision isn't he?

A. Yes. 55

Q. Because he can best see the conditions, he best understands the condition of his vessel do you agree?

A. Yes.

Q. He best understands the capability of his vessel?

A. Yes.

WHEELHOUSE: No further questions your Worship.

CORONER: Anything arising?

HILL: Q. Had you been told, let's take your suggestion, but had you been told at 2200 hours on the 26th, that's the Saturday night that now they were going to have a suspension of the race and therefore you were to head to the mark 5 miles east of Eden could you have done that from the position you were in?

A. Yeah.

Q. And would you then have got into Eden before you would've been into rough weather?

A. Yes.

Q. So that then falls back to what you'd be directed to do by the race authorities?

A. Yes.

HILL: Yes I've nothing further.

<WITNESS RETIRED

<TIMOTHY ALEXANDER DAVID EVANS (3.33PM)
SWORN AND EXAMINED

HILL: Q. Sir would you give the court your full name?

A. Timothy Alexander David Evans.

Q. And your address sir?

A. What business or personal?

Q. Business would be fine?

A. 8th floor 179 Elizabeth Street Sydney.

Q. And you are a solicitor of the Supreme Court of New South Wales?

A. I am.

Q. Sir you made a statement in proceedings that we have before us?

A. I did.

Q. And that was a record of interview conducted with officers from - who were investigating--

A. Senior Constable Upston yes.

Q. Now you were the navigator aboard the 'Siena'?

A. I was.

Q. You - we've heard about the notes, do you have a copy of your notes?

A. Only the record of interview but not my notes.

Q. They're not your notes?

A. I only have the record of interview, I don't have any other notes no.

Q. If you'll just bear with me a moment I'll get a copy of them. Now is that a copy of the notes that you prepared?

A. It is.

Q. Now were they taken from hand written notes that you had when you were the navigator of this vessel?

A. They were.

Q. Now sir you are one of the regular crew on board this particular vessel?

A. Yes I am yes.

Q. And I think you've sailed in the vessel on previous occasions?

A. Yes.

Q. And you've sailed with Mr Moray?

A. Yes.

Q. And I want you to draw your attention to page 3 of your statement, the weather report, and you'll see there the answer to Q.17, "The weather report that you received at 2000 hours or 8pm that night."?

A. Yes.

Q. What can you tell us about that?

A. Well that particular weather report is in effect a summary of the full weather report. It doesn't contain or purport to contain everything that was said in that weather report but the notes I made indicated that the report was issued by the Bureau of Meteorology at 10 to 3 that afternoon or 1450 hours and in respect of I think coastal waters which seemed to me to be relevant rather than south-eastern sea there was a high near New Zealand, a slow moving low, a cold front over the centre of Victoria, this is once again a summary of what's in my statement, gale warning south of Broken Bay and a storm warning south of Merimbula with a north-north-easterly winds tending to swing around to the west 15 to 20 knots ahead of a west-south-west change 25 to 30 knots with stronger gusts expected near Jervis Bay at around midnight. A further change south to south-west 30 to 40 knots expected later off the Illawarra coast, swells 3 to 4 metres, waves 1 to 2 metres, outlook winds west to north-west 40 to 50 knots late on Sunday until Monday evening and then moderating. At that stage I think we were roughly off Merimbula so.

Q. Now as far as the 40 to 50 knots were concerned did you expect 40 to 50 knots or did you add another 40 percent to take into account gusts?

A. Not 40 percent but I think mentally I would've put about 20 percent onto it to take into account gusts.

Q. So you would've had this knowledge of adding an amount for gusts would you?

A. Yes I would add - I would add an amount for gusts.

- Q. Where did you get that from?
A. I can't say, I don't really recall I don't recall reading it anywhere in particular. I know the wind from the bureau is an average over a 10 minute period so I assume that if there are gusts then they will be stronger than the average-- 5
- Q. I think you say that at page 4?
A. Yes. 10
- Q. "I think wind is average" do you say down the bottom "over a 10 minute span--"
A. Yes. 15
- Q. --I don't understand there to be a variation of anything like 50 percent one way or the other, 20 I would have, I would have expected."
A. Yes. 20
- Q. So that's what you would do, you'd put a 20 percent on top of that?
A. Yes. 25
- Q. So if you were told as you were in that report that you were going to get winds north-west 40 to 50 knots what were you expecting your gusts to get up to?
A. 60-65. 30
- Q. Well what in fact did you get?
A. I couldn't answer that with any certainty. At that stage that was 8 o'clock on Boxing Day night I don't know what the wind strength was at that stage. 35
- Q. No I'm talking about what did you get in the storm that you finally encountered?
A. I didn't notice any wind speeds myself. 40
- Q. Why was that?
A. I guess I wasn't looking at the anemometer or the display, I heard somebody comment that they'd seen a gust get up to 86 knots. 45
- Q. Where were you?
A. Done below. 50
- Q. Were you below all the time?
A. For a goodly part of the times yes though certainly during and around the 1400 hour sked on the next day. 55
- Q. Now so were you surprised or not about an 86 knot wind gust?
A. Yes. 50
- Q. You were surprised?
A. Surprised would be the wrong word. 55
- Q. Well what is the word that comes to mind for you?
A. Alarmed. Although having heard, I know this is jumping, having heard 'Sword of Orion' report 70 to 80, what's 85-86,

it's not that much different.

Q. Now were you alerted to such speeds by the weather reports as far as you were concerned?

A. The 70 to 80 knots?

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Q. Yes?

A. No.

Q. What about seas, did you manage to see the size of the waves?

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A. Not - not at the time I didn't but they were forecast to be 3 to 4 metre swells on 1 to 2 metre waves so you get a swell that's generated from afar and then you get waves that are generated by the local wind and that's fairly high, a fairly high sea state and with the wind you would expect those seas to be rough.

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Q. You heard a Mayday at one stage is that correct?

A. Yeah, yes.

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Q. Now what did you do - well what did you hear that you can recall?

A. At the end of the radio sked at 2 o'clock in the afternoon of the 27th I heard on Channel 16 which is not the high frequency channel but the VHF channel I heard the ABC helicopter trying to make contact with another yacht in the race called 'Wild Thing', they were obviously, the helicopter was obviously out looking for 'Wild Thing' they didn't receive a response. At I estimate to be about 3.15 in the afternoon 'VC Offshore Stand Aside' sent - transmitted a Mayday over VHF channel 16, I heard that Mayday, I noted the position that they gave and observed that it was very close to our then position and at that point the ABC helicopter took the Mayday call from 'VC Offshore Stand Aside', I didn't actually communicate with 'VC Offshore Stand Aside' but communicated with the ABC helicopter.

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Q. What did you tell it?

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A. Well they transmitted that they or said that they saw another yacht in the vicinity and I figured out that it was 'Siena' and asked I think whether we were in fact that other yacht. I can't remember the reply, I remember asking those on deck whether they could see - telling them that a Mayday had been issued whether they could see another yacht. The reply was "No." and then I don't know who - somebody observed that there was a helicopter which I think they said seemed to be right on top of the waves almost directly in front of us. And that was the ABC helicopter which was one assumes above 'Stand Aside'.

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Q. So what did you do with regards the Mayday?

A. I responded to the ABC helicopter and after we'd identified ourselves indicated that I would find out whether we could be of any assistance, I then spoke to those who would ultimately make that decision, I was asked what our obligations were and I expressed my views on those obligations.

55

Q. What did you say?

A. I said that we had an obligation to attend to render assistance if we didn't and I think I used the words 'put ourselves in mortal danger' I'm aware of grave and imminent danger and those expressions but it seemed to me mortal danger was the appropriate word to use. There was some discussion it was then decided that 'Siena' was capable of attempting to render assistance. I think I communicated that to the ABC helicopter.

5

Q. Now did you - were you saying that you had a legal responsibility to go and assist this vessel, is that what you had said?

10

A. I didn't say we had a legal responsibility I don't think I said it was our responsibility, I do happen to believe it is a legal one but that's my opinion.

15

Q. Well suppose - well okay from your opinion supposing there wasn't a legal responsibility?

A. Yes.

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Q. Remove that entirely?

A. I think there is a customary responsibility for those at sea to render assistance to those in distress.

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Q. Well was it--

A. Would attempt to do so I should say.

Q. Attempt to do?

A. Yes to attempt to do.

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Q. Well was it attempted to do so?

A. I believe 'Siena' did yes.

Q. Okay well what happened tell us?

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A. As far as I am aware from down below we managed to sight 'VC Offshore Stand Aside' see her and to maintain somehow a position in her vicinity.

Q. Well was your engine on?

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A. It was yes.

Q. And what gear if anything was it in?

A. I seem to think it was in neutral in readiness for having to be used for manoeuvring purposes but whether or not it was actually used because the helmsman would do that because the controls are at - near the wheel now whether or not it was actually used for forward or reverse propulsion is I can't recall at this stage.

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Q. Now did you know of any plan or anything with regards to the assistance that you would render to 'Stand Aside' if necessary?

A. Very sketchy. In no great detail no I couldn't, I would imagine that - and this would be - this is only what I would imagine that we would be able to either help people if they got into life rafts or had to jump into the water, certainly we were afloat if 'Stand Aside' had sunk we were there, we were a bigger object for somebody to see and we had radio

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communications.

Q. Do you recall how long you remained on station around 'Stand Aside'?

A. I have the impression it was an hour, an hour and a half.

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Q. Though something happened towards the end of that is that correct?

A. Yes.

10

Q. And to you?

A. Yes.

Q. Perhaps if you could relate to the court what happened?

15

A. I was sitting at the navigation table which is on the starboard side, starboard at the bottom of the companionway and the seat is in fact forms a quarter berth in the starboard side, I had my back to the hull, I had my feet braced against the side of the companionway, my knees were bent, I had a chart draped over my knees and I was talking to the ABC helicopter on the radio when all of a sudden the boat tipped on its side and I ended up at the bottom of the companionway steps. It appears that it'd been thrown across the cabin, hit my chest on a metal railing in front of the gimballled stove and broke a couple of ribs.

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Q. Now I think you remained though as navigator--

A. Yes.

30

Q. --of the vessel?

A. Yes.

Q. You asked for permission for your vessel to be relieved of its--

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A. Yes.

Q. --position?

A. Yes.

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Q. Now who ordered you to do that?

A. I spoke to the ABC helicopter.

Q. Well what happened did someone come and say to you "We've got to take you out." or anything or what?

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A. No there was an inquiry as to my state of health. The response would've been very difficult to hear because speaking was very difficult, I had not breath. But at that point I think it was decided that 'Siena' would retire from the race and I spoke to the ABC helicopter and advised it that one of the crew had been injured and that 'Siena' wanted to retire from the race and to leave the scene of - or to be released from standing by 'Stand Aside'. My recollection is that I was informed that the rescue helicopter was nearly there from Mallacoota I think and that we were relieved from standing aside 'Stand Aside'.

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Q. And your vessel made its way back into Eden is that correct?

A. No it was - it headed north, we didn't get into Eden, the engine packed up off Eden and the wind was about 40 knots I think from the west, we wouldn't tack into Eden so we ran up the coast to Bermagui, we got there about midday 1 o'clock the following day.

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Q. You remained though at the navigation station?

A. After a fashion I was more or less propped in the quarter berth, I couldn't sit up, I couldn't move.

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Q. But you heard the 'Winston Churchill's' Mayday?

A. Yes.

Q. So you were still keeping a listening watch?

A. Yes, yes.

15

Q. Now I want to take you to page 22 of your statement and you were asked this question "When you attended the weather briefing at the CYC what were your thoughts on that?" and your answer was "Confused."?

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A. Yes.

Q. What was confusing you?

A. Well firstly the speed with which the weather briefing took place, I thought was a little bit too quick. Secondly it was clear from what Ken Batt was saying that he or the Weather Bureau whoever he was representing at the time was unclear as to which of the various models that were being spoken about were in effect going to generate the right answer and I think the conclusion was that none of them were generating consistent information so in truth it wasn't really a right answer at that stage so you know watch this space. Secondly as I say I thought it was a bit rushed, flimsies were thrown up on the screen and they were a bit hard to see from the back of the room. I didn't realise that things might've been handed out or were being handed out, I didn't see any desks or I don't recall any reference to collecting information from anywhere, although I was aware that you could get a package on the morning of the race which we tried but I gathered failed to get. I just - it left me a bit unclear as to quite what to expect, as a briefing, other than the east coast current was mentioned and being sucked into Bass Strait, the east coast low, these are all understandable and fairly usual things I would imagine.

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Q. I see there at page 23 you say at about .5 in answer to Q.95 "I mean there was I don't think anybody and that was listening to the weather briefing and subsequently talked and observed or heard what was going on was under any illusion at all that the fleet was going to be hit by a storm at some time. In fact I think Ken Batt talked about it being southerly change at about 1600 hours or 4pm on the afternoon of the race which as I say we were looking for it from then on and through to about midnight and it arrived but a bit later.". Now what storm were you talking about there, or what is it that you are actually talking about there?

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A. The front came through which in a normal situation you

would probably think of it as a southerly buster but this one was going to be a storm, ie a bit more than a southerly buster which tend to blow out fairly quickly so.

Q. Now you'll see there at over the page to - is the answer to Q.99? 5

A. Yes.

Q. And you say you have general experience and you've done a meteorology course, getting a Yachting Federation certificate for doing that course? 10

A. That's right.

Q. So with the knowledge that you had and the briefing did you expect what you finally got in the case of the wind and the waves? 15

A. No, firstly in with respect to the wind 60 knots would've been quite consistent with the expectation, anything over that I wouldn't have thought that personally. The sea state no I would think it was probably 30 to 40 percent bigger than I would've anticipated. 20

Q. Now when you said 60 knots were you talking about maximum gusts or what?

A. Yes. 25

Q. That was it?

A. 60-65 knots in the gusts.

Q. That was the top that you would've expected? 30

A. Yes.

HILL: Yes I've nothing further thank you.

CORONER: It's time to close up, I'm sorry you'll have to come back tomorrow. 35

WITNESS: All right your Worship.

<WITNESS STOOD DOWN 40

MATTER ADJOURNED FOR FURTHER HEARING TOMORROW 14/03/00.

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oOo

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 NEW SOUTH WALES STATE CORONER'S COURT in the matter of 1998 SYDNEY TO HOBART YACHT RACE

HEARD: 13 March 2000

Dated at PENRITH
this 21st day of March 2000

NAME	PAGES	SIGNATURE
MC	1 - 47	<i>MC</i>
PM	48 - 80	<i>PM</i>