

NEW SOUTH WALES STATE CORONER'S COURT

STATE CORONER: J ABERNETHY

FRIDAY 28 JULY 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 WILLIAM DEAN
GLYN RODERICK CHARLES**

Mr A Hill assisting the Coroner
Mr Stanley QC with Mr Santamaria for the Bureau of
Meteorology
Mr R Weber for the Cruising Yacht Club of Australia

PART HEARD

WEBER: Before my learned friend - are you housekeeping or about to--

HILL: No, no, if you want something done.

WEBER: As a result of a conversation I've had with Mr Green your Worship, there's a very small aspect of his evidence which I think might have been left in an incomplete form. Your Worship will recall there was evidence that within his organisation there were seven staff.

CORONER: Yes.

WEBER: That certainly left in my mind that seven staff were equivalent to sailing office staff. That's apparently not the case. I'm instructed that the seven includes Mr Green includes an accountant and includes two receptionists and so if one comes down to sort of sailing office level, the staff including Mr Green is four. Mr Green is available to verify that if it's an issue.

CORONER: I'll accept that from the bar table.

WEBER: I just didn't wish it to be left in the--

CORONER: Yes, thanks very much, Mr Weber.

HILL: Mr Coroner, the first witness I propose to call is Mr Van Kretschmar, then will be Mr Hans Sommer, then Mr Robinson then possibly Mr Elliott, if we get that far.

<JOHANNE CHRISTIAN HUGO VAN KRETSCHMAR(10.37AM)
SWORN AND EXAMINED

HILL: Q. Sir, could you give the Court your full name?
A. Johanne Christian Hugo Van Kretschmar.

Q. And your address sir, professional will be fine?
A. Sorry. 5

Q. Professional address would be fine.
A. 116A Victoria Road Bellevue Hill.

Q. And you are a developer? 10
A. That's correct.

Q. You were the commodore of the Cruising Yacht Club of Australia?
A. That's correct. 15

Q. You are now what's classed as the past commodore?
A. Correct.

Q. You've made two statements in this and it's the second one I'm looking at, 17 July 2000, do you have a copy of that? 20
A. Yes I do.

Q. There are certain pages I'll be taking you to and the first one - first of all, before we go into that, you were in fact in the race itself? 25
A. That's correct.

Q. So you had left at 1 o'clock with the rest of the vessels? 30
A. Correct.

Q. I think you retired sometime on the 27th?
A. That's correct. 35

Q. You set out in your statement what had happened aboard your vessel, certain things had given way under the wind as I understand it on the 27th?
A. Correct. 40

Q. That was about midday though wasn't it, I think?
A. No, at about 7am in the morning we retired from the race. 45

Q. Right, so it was quite early and then you turned back and headed for Sydney and you were out of communications until I think you were just off Wollongong or something?
A. That's correct. 50

Q. When was that?
A. Early hours of the morning, probably about 3am, somewhere around there.

Q. That's the early hours of the 28th? 55
A. Correct.

Q. I understand when you were appraised of the situation,

you finally got back to the CYCA sometime on the 28th?

A. That's correct.

Q. About what time?

A. Best of my recollection 9am, 10am, somewhere around that time. 5

Q. And you were immediately when you came ashore briefed by Mr Peter Bush as to what the circumstances were at that present time and what had occurred? 10

A. That's correct.

Q. I want to take you first of all to page 3 and paragraph 8 and you say despite the Sydney to Hobart yacht race being one of the biggest events on the international sailing calendar it is not in real terms a revenue earner for the CYCA. To the best of my knowledge the Sydney to Hobart yacht race itself has never made a profit. You then go on to say the CYCA subsidises the Sydney to Hobart yacht race out of marina and membership fees and the involvement of sponsors. Notwithstanding this, the CYCA has never considered not hosting the Sydney to Hobart yacht race as the race is an integral part of the CYCA's identity. Now, all of that is correct, especially the profit aspect, it's not as if it's a huge money earner for the CYCA, is that what you're saying? 15
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A. That's correct.

Q. The history of the Sydney to Hobart yacht race, which came first, the club or the race? 30

A. It's hard to separate, they really emerged at the same time. The club itself was formed in 1945 by a small group of sailing enthusiasts who shared a common passion for venturing out to sea on yachts. No sooner had they formed the club than a group of seven I think it was or possibly nine decided to cruise together to Hobart from Sydney, leaving on Boxing Day. I think no sooner had they decided to do that they then decided to turn it into a race. From there on the Sydney Hobart race - the Sydney Hobart race was born, the club was born at the same time and the two have grown together ever since. 35
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Q. So that's what you mean about the integral part of the CYCA?

A. Correct. 45

Q. I'm then going to move on to page 6 and although it's part of paragraph 15 it's the second paragraph on page 6. I note that although the Sydney to Hobart yacht race is strictly speaking a category 2 race, the CYCA conducts it as a category 1, which in effect means the Sydney to Hobart yacht race is conducted with more stringent requirements than required by the RRS. Now, why is it that it's a category 2 in reality to start with? 50

A. One needs to refer to the wording of the racing rules of sailing where races are categorised from I think it's category 8 up to category 0, with category 8 being the - the categories exist to describe if you like the degrees of 55

exposure to which yachts that are competing in the event are likely to be exposed and deals with whether they're in inshore protected waters or offshore and the likes. Category 2 to the best of my recollection is defined in terms of distance from land, the maximum distance from land that the race course-- 5

Q. It says close to the shore. What exactly does that mean? It's a sort of - it's a statement that--

A. It's a fairly loose definition and hard to argue categorically that the Hobart race is category 2 or that it is category 1 for that matter. I'm not sure at what point in time the CYC chose to categorise it as a category 1, certainly as long as I can remember it's been category 1 and certainly it's never been - to my knowledge been considered to downgrade it to category 2 but it has often been pointed out that one can interpret the definition of category 2 and convince oneself that the Hobart race is actually a category 2 race under that definition. 10 15 20

Q. I think the Fastnet is what, a category 1 or a 2?

A. I think it's category 2 but I'm not certain on that.

GREEN: It is category 2 sir. 25

CORONER: Thanks, Mr Green.

HILL: Q. And that goes along the coast as we've seen of southern England and past Cornwall then out into the Irish Sea and back, so they're at a distance of about 120 miles it appears to be. What about when the Sydney to Hobart crosses the gulf, the Tasman-- 30

A. Bass Strait.

Q. Yes, Bass Strait. What's-- 35

A. The maximum - sorry, the minimum distance if you like from land to land across Bass Strait to my knowledge is about 120 or 140 miles, so theoretically one would never be more than in the order of 60 to 70 miles away from the nearest land, be it Tasmania or be it the southeast coast of Australia. 40

Q. But even taking that into account, it's still looked at as a category 1 by the CYC?

A. Correct. 45

Q. You also say there furthermore in addition to the category 1 requirements, the CYC in 1998 required each entrant to have a crew of not less than six people. Perhaps you could explain that to us. Is there - a category 1 doesn't say anything about crew? 50

A. It's my understanding category 1 doesn't stipulate a minimum number of crew.

Q. So that's in addition to that you've said no less than six? 55

A. Correct.

Q. Carry both a VHF and an HF radio. That's not required under category 1?

A. Correct.

Q. Also a current annual liferaft survey certificate. That's not required under category 1?

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A. To the best of my knowledge it's not, no.

Q. An HF radio certificate?

A. Correct.

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Q. That's in addition to category 1 again?

A. I believe so.

Q. Currency dates on flares and fire extinguishers and proof of a \$10 million public liability insurance, so these are in addition to what's normally required for category 1 races?

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A. Yes.

CORONER: Q. Are you saying that only commenced in 1998, or as a result of this, the 1998 race?

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A. No, they were in place already in 1998 your Worship and some of them had been in place for many, many years prior to that.

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CORONER: Many years before that, okay.

HILL: Q. Is it a case that these things were brought in and simply many, many years ago and it just so happens, or is it something that's constantly looked at and updated by the CYCA, that is the requirements?

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A. The CYCA conducts a review of the Hobart race and has a debriefing amongst all of the organisational participants in the event at the end of each year and then during the early part of the year immediately following a Hobart race, those matters are reviewed by the sailing committee and from time to time changes are made to various aspects of eligibility requirements, safety equipment and the likes.

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Q. Now you saw the recommendations in the Peter Bush report, if I can use that term. You agree with those updates?

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A. The vast majority of them, yes.

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Q. There's one or two I understand that maybe people weren't happy about?

A. Correct.

Q. One of those I understand was the - Peter Bush was fairly emphatic about not allowing people under the age of 18 years. Did that cause consternation among some groups?

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A. It certainly caused consternation to myself, yes.

Q. But even though - I take it then you were against that?

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A. I was, yes.

Q. But it's gone ahead and it's been implemented?

A. It was discussed at the board at the time that the entire Hobart review report was presented to the board of the CYC. I raised that particular issue at that meeting and was strongly outvoted by the rest of the board with respect to it.

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Q. So in other words it's not a case of rules being applied by one person alone or anything like that, it's people vote on them and if the majority say yes, then yes it is?

A. Correct.

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Q. Then page 8, if you would go to that. I'm looking at paragraph 19, competitors' and owners' responsibility include the following. First of all I want to find out what it is, competitors' and owners' responsibility. You regard this as a two-way street in regards what the club must do and what owners must do?

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A. This particular statement?

Q. No, just the concept of it's not simply everything going from the club, you expect the yachtsmen themselves to have certain responsibilities, is that how you see it?

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A. Yes, more than expect. I mean there are under the racing rules of sailing, which is the rules and the regulations under which the Sydney Hobart race and in fact all events that the CYC conducts are run, both the organisers' responsibilities and the owner's responsibilities are clearly spelt out.

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Q. I notice there five, deciding whether to start or continue racing. That's their decision as far as you're concerned, as far as the club is concerned?

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A. Correct.

Q. But I take it then if the club is going to supply something, then of course they have to be informed of certain aspects and in particular the weather I'm talking about?

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A. Sorry, I--

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Q. Deciding whether to start or continue racing, one of the witnesses, Mr Moray, Ian Moray, when he first gave evidence, what he said was if you give me bad information, I make a bad decision. If I get good information, I make a good decision. I got bad information. He was talking about the weather. So this expectation as it were of them deciding whether to start or continue racing has to be founded upon something and that is information. What I'm asking you is that that must only come into play when they have a full information - that when they have full information from the club on a particular aspect, would you agree with that?

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A. No.

Q. Or do you expect more from them?

A. No, I wouldn't agree that the owners' responsibility is lessened, abrogated, put aside in the absence of specific information being provided by the race organiser or anyone else.

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Q. So is it a case that the way the club looks at it is that we will supply certain weather forecasts but that doesn't mean that you shouldn't also obtain weather forecasts along the coast and make decisions accordingly?

A. As a yachtsman I would never compete in any event relying on or expecting the race organiser to provide me with all of or in fact any information that I'd need. Certainly I would be aware and in the case of the Hobart race am aware that the organiser has said we will provide certain pieces of information but certainly wouldn't rely on the fact that that information will continue to flow throughout the event. It could be possible that I am unable to receive that information as a yachtsman because my own communications equipment has broken down, for example.

Q. Do I take it then that when the club says we will give weather forecasts, behind that is the thought in the club that they will also do things for themselves in regards to weather?

A. Absolutely.

Q. Seven, and this is one you regard as a responsibility, giving all possible help to any person or vessel in danger, you regard that as fundamental?

A. Fundamental whether it's spelt out under the racing rules or anywhere else, it's a fundamental obligation.

Q. All possible help. I take it that's not just in the physical sense, that would cover communications and everything like that?

A. Absolutely.

Q. And they understand that when they enter the race?

A. They certainly should.

Q. It's in the notice of race I think and--

A. It's in the notice of race, it's in the racing rules of sailing, it's - I think it's embedded in maritime law as well.

Q. Paragraph 20, at various times the owner or their representative is required to sign various documents to acknowledge they are aware of their responsibilities or have complied with those responsibilities. So it's brought to their attention that way as well, is it?

A. Correct.

Q. Those documents include the application for entry form, safety certificate, IMS and CHS certificate. Now, we all know that somehow Business Post Naiad's IMS certificate has slipped through, it's got through?

A. Correct.

Q. Do I take it what you're saying there is that there is an acknowledgment and there would have been on behalf of the owner and it was the master of the Business Post Naiad that he would have signed and said that the IMS certificate complied?

A. Correct.

Q. So do I take it that first of all you expect them to do the right thing and they sign and say we have done the right thing, then you have a checking system within the club itself to make sure they've done the right thing? 5

A. Yes to the first part of your question with respect to requiring owners to sign the relevant documents. With respect to the checking to ensure that they have done the right thing, I think it's probably an over-emphasis to say that we do that checking to ensure that they have done the right thing. 10

Q. You do do the checking?

A. We do. 15

Q. I won't ask the purpose but in other words there's another step in the process besides what occurs within the sailing office, or what should occur in the sailing office and that is the owners themselves putting in and saying I do comply? 20

A. Correct.

Q. I then want to go to page 17 and it's paragraph 48, race management team. That lays out the race management team itself and who they - their positions. Then at 49 you say the race director assumes control of the Sydney Hobart yacht race from the start of the race, although the race committee is available for the race director to consult if any issue of particular importance arises during the race. So it's not a case of simply the race management team taking over and everyone disappears, there is the race committee as well, that's available as a backup for them? 25 30

A. Correct.

Q. So if there was a problem, the race committee could be called upon? 35

A. Correct.

Q. You say as such, the race director and his team have the following responsibilities after the start of the Sydney Hobart yacht race and one of those things, besides monitoring skeds, in (2) is (3), monitoring weather forecasts received from BOM and ensuring that the radio relay vessel broadcasts the most up to date weather forecasts during the skeds. That of course is fairly fundamental to this inquest, we all know that. Is it simply the ones received, the forecasts received from the bureau, or would you expect them to look at other areas for weather forecasting and in particular what - have you seen Mr Honeysett's statement? 40 45 50

A. No I haven't.

Q. What Honeysett says and he's the fellow down in Tasmania, you know of him or know him at all? 55

A. No, I'm sorry I don't.

Q. He was part of the group that was setting up the radio

room at the Royal Tasmanian Yacht Club.

A. Yacht Club of Tasmania, yes.

Q. Okay, right next door?

A. Yes.

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Q. He received at about 6 in the morning a facsimile from the Weather Bureau, he got it by punching in and getting it telexed to him, it wasn't as if it was sent to him as such, he asked for it.

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A. On a polfax type facility.

Q. Yes, something like that. What that showed was that it was 71 knots at Wilsons Promontory. Now, he put that into the tray where the race control centre was, the next room. He also brought it to the attention of Sam Hughes because Honeysett says that he was worried about this, he didn't like that. What I want to know is, would you expect that to also go to the fleet? Is that part of it or would that - would you simply rely upon BOM?

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A. From what I understand of what you've said, that was actually a BOM issued piece of information. We subscribe to the bureau and have a commercial arrangement with them in place and it has been in place for many years for the bureau to provide the club with a tailor-made service and weather forecast at predetermined and agreed intervals, specifically for the purposes of the Sydney Hobart race. So in the first instance I would expect that that information was incorporated within the bureau's information that they provided to us through the arrangements that we had in place with the bureau.

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Q. Although it comes from the bureau, what I'm trying to define is that monitoring weather forecasts received from the bureau, whether you're talking about the package as it were, or are you talking generally the weather when you talk about what they're supposed to do?

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A. If I can answer that in two parts. I would not expect the race management team to be proactively searching for other sources of weather information, given that we have an arrangement in place with the bureau to provide weather information. Having said that, if there is a piece of information such as the facsimile that you spoke about that was made - drawn to the attention of the race management team, I would not expect them to dismiss that because it didn't come from the pre-arranged source. I would expect them to take notice of that particularly given as it was a bureau and I assume bureau identified - bureau sourced piece of information.

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Q. Just while we're on that subject, I understand that there is now a bureau forecaster actually with the race management team?

A. That's correct.

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Q. We haven't actually dealt with that I don't think at this stage through Mr Bush but that was one of the recommendations as well, was it?

A. One of the key issues with respect to weather and you know clearly the differences in interpretation if you like of the bureau's forecasts that were provided that we felt it would be a very positive thing to have a bureau representative permanently alongside our race management team as the same way as we've had an AMSA representative for many years. 5

Q. So in other words rather than having a sheet of paper where you would ring up, you've actually got the person with you? 10

A. Exactly right.

Q. You can then send him - get him to do whatever is necessary? 15

A. Exactly.

Q. Six, liaising and coordinating with the radio relay vessel, media centre and other organisation authorities and personnel involved in. Now, I'm looking at the radio relay vessel. Is this so that you can always have contact with the fleet? It's one of the main functions I take it? 20

A. It's one of the functions. There's a lot of traffic between the radio relay vessel and the race management team, particularly the data that gets transmitted at the end of every sked with respect to position reports and also the weather information. 25

Q. So as far as the radio relay vessel is concerned, that's the conduit with which the race management team can speak to the fleet? 30

A. Correct.

Q. You would receive - rather the race management team would receive back through that what the fleet are doing and what they're saying? 35

A. Correct.

Q. So you have this source of communication and then if there is something out of the ordinary, the race management team could then turn around and speak with the sailing committee and seek further advice? 40

A. Correct.

Q. So that theoretically is the organisation once the race - once they leave Sydney Heads as it were, once they're across the line? 45

A. Yes.

Q. Page 18 paragraph 53, you say this. On 24 December 1998 I attended the pre-race briefing at the CYCA. Whilst I listened to Ken Batt's weather prognosis I did not give a lot of credence to the weather forecast for the race as it was two days out. In my opinion a forecast two days out before the race is interesting and provides some guidance but that is all. I think there's another alteration has been made with regards that, is that correct? 55

A. That is correct.

Q. What have you now done?

A. We now hold a - we still hold the race briefing which is traditionally held on the 24th, whereat a summary prognosis is given and we now hold a specific weather briefing on the morning of the race.

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Q. Is that compulsory?

A. Yes.

Q. And who has to attend that?

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A. From recollection the skipper, the navigator and I believe two others.

Q. So you actually made it so that you've got a skipper, navigator and two other crew members?

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A. Correct.

Q. From each vessel?

A. Yes.

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Q. And that is compulsory?

A. Yes.

Q. That's given once again by the Weather Bureau?

A. Yes.

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CORONER: Q. It's made the 26th a fairly busy morning?

A. It has.

Q. How long does the briefing take?

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A. I think last year it lasted about half an hour, 45 minutes.

Q. About what time do they have it?

A. About 8.30 in the morning.

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HILL: Q. At page 19 paragraph 56 you say I did not hear the 2000 sked and I presume that's on the 26th. You say however shortly thereafter Andrew Buckland discussed with me the weather broadcast during that sked. Mr Buckland was a crew member with you?

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A. He was our navigator.

Q. To the best of my recollection - so in fact when you say I did not hear, you mean you personally but someone was listening to that on your vessel?

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A. That's correct.

Q. To the best of my recollection he advised me that the BOM had forecast two fronts, one coming through later that night, probably around midnight, in the 30 to 35 knot range, then a second from the front late the following day with wind strengths of 45 to 55 knots. I recall thinking that the second front was a lot more intense than had been previously forecast that day. Did you know about this method of putting 40 per cent on top of the winds that are given to you over the--

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A. Not in specific percentage terms, no.

Q. Did you think that that was an average wind and then you'd get gusts beyond that?

A. Normally one would get gusts in excess of whatever the average wind speeds that are quoted but I was not aware that there was a 40 per cent--

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CORONER: Q. Loading.

A. --loading on that.

HILL: Q. As far as you're concerned, would it be better if a forecast said that you will get an average wind of 45 to 55 knots and gusts up to 70 knots? Is that preferable than you having to, if you like, add on gusts to some sort of formula?

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A. I think there's two elements in that. There is more detailed information being provided in the statement that you just made in terms of gusts of up to 70 knots, there's another number been added. More information is better and it is clearer.

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Q. You can't see any detrimental effect of giving the possible gusts?

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A. No.

Q. Did you know about adding I think it's 86 or 87 per cent to the wave height for the highest type wave?

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A. No.

Q. Once again, would that be better if they could say that you could have waves as high as and then give it a height?

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A. Again, the more information that's available, the more informed decisions that competitors can make.

Q. There has been alterations I understand in the package where they now do certain things, that is the Weather Bureau?

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A. That's correct.

Q. Do they now give the maximum gusts?

A. During the course of last year's, the '99 Sydney Hobart race, they did.

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Q. What about the height of waves?

A. I believe that was the same case with wave heights as well.

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Q. Did you have any comment from crews about that?

A. It's been very positively received, the whole response. There's been a visible difference in the nature of the forecasts and the information provided and all the yachtsmen have recognised that as being a positive change.

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Q. So no-one has said that they don't want that?

A. No.

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Q. I think I've taken you through what occurred and you come back after returning.

CORONER: Q. What were your concerns about the - you've set them out in paragraph 61, that particular race. You became concerned about 5 o'clock in the morning of the 27th?

A. Correct.

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Q. What was the wind like then?

A. It was in the order of 30 knots or thereabouts.

Q. You had an ill crew member, or injured crew member, the boat - you already had a lot of water into the boat and you had a radio problem. They were the main reasons you were thinking about pulling out?

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A. Yes, those things in conjunction with the weather forecast that was to hand at that time.

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Q. What were your thoughts about hearing - you're a very experienced sailor, I take it Mr Buckland is a very experienced navigator?

A. Yes.

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Q. What was the gist of the discussions you were having about the weather that you could see was likely to be coming your way later in the day?

A. In the course of the discussion we were working on the forecast in the 45 to 55 knot range, never added anything to it and never expected anything more than that. In the wind conditions we were experiencing at the time, the sea state was already a lot more violent if you like than one would--

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Q. Expect for a 30 knot--

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A. For a 30 knot wind. Our concern was that the breeze was forecast to increase to up to 55 knots, given the sea state that was already there, the sea state was likely to get a lot worse, the heavy winds were forecast to continue for a period of up to 24 hours and particularly given that we didn't have a radio that was capable of transmitting, just felt concerned about carrying on and potentially causing, you know, distress to others because we hadn't been heard from for a period of time. And also that we just didn't think that we were in 100 per cent shape to go and sail in those conditions much less the conditions that actually arose.

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HILL: Q. I'm then going to move to page 25, paragraph 85. There you say that I sailed in the 1999 Sydney to Hobart yacht race and am of the opinion that the implementation of the Hobart race review recommendations resulted in a vast improvement in the management and conduct of the Sydney to Hobart yacht race. You were quite happy with the implementations that were made?

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A. Yes.

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Q. Nothing additional that you could think of at that stage, having gone in the race, or anything like that?

A. Not as a result of having gone in the race, certainly heard lots of interesting things during the course of these proceedings.

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Q. And then you also go on and say I am also of the opinion that the information that has become available during the inquest on issues such as liferafts, stability and harness will be invaluable to the sailing community. These are the tests that were done by the various professionals?

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A. That's correct.

Q. Now, you say that the CYCA plans to make further changes as a consequence but is waiting for the Coroner's report before implementing any changes in those areas. I take it that will be the release especially of some of the Australian Maritime College's work?

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A. That's correct.

Q. Bearing in mind that there will always be those who will try to not carry the equipment they're supposed to carry, what about random checks? Is that used at all?

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A. Yes, we do conduct random checks. To my knowledge I don't think we've ever conducted random checks specifically as part of the Hobart race, certainly in the regatta that we hold in the week leading up to the Hobart race we have on many occasions conducted random checks both on the water immediately after boats cross the finish line, or as soon as they tie up at the dock. My personal view is that there is room for more random checking in the process.

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Q. As I understand the situation, what New York to Bermuda does is that a winner is immediately joined and they look for all those particular things that otherwise if they haven't got them they're disqualified immediately and I notice that certain things have to be supplied, certain information has to be supplied when you reach a point off the mainland?

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A. Uh hmm.

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Q. Is there a system where a winner is actually checked or is that not--

A. We don't currently have a system in place where a winner is checked, or in fact I don't believe we have one where anyone is checked on completion of the event but again I believe that there is room for that and I certainly wouldn't just limit that to a winner.

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Q. Your opinion is important. Can you give any guidance on that, what you would think should be done, if anything at all?

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A. I think an increase in the number of random checks is a good thing from the point of view of just reinforcing the culture of the significance of safety items and if competitors know that they're being checked, they're more likely to take those matters seriously and make sure that they do have the equipment on board.

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Q. I suppose you also have to bear in mind, it was said by Mr Green yesterday, it's not as if you can issue instructions like a statutory body and people have to obey, because they will go off and do their own thing and then you will - so I suppose there's a fine line that you have to

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draw as a club with your regulations, is that how you see things?

A. Yes but in the process of the topic of random checking I don't believe that would be a disincentive to people participating because I actually believe that the incidence of people not actually having all of the specified safety equipment on board is actually very rare.

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Q. Over at page 26, abandoning the race. This is a vexed question.

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CORONER: Q. Which I think you've answered very well. If you go to paragraph 89, you basically are saying that in the most extreme conditions where there's a real risk of safety of the fleet, it may be appropriate to order the abandonment of the race.

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A. Yes.

Q. In the most absolutely extreme conditions?

A. Yes your Worship but with the proviso that those extreme conditions are a real event rather than - a pre-existing event as opposed to one that a forecast considered might happen.

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Q. And your thesis from then is I think, if I'm reading you right, it's really ultimately for the skippers to decide but if you're not going to order abandonment and the conditions are extremely adverse, it's incumbent to keep the fleet abreast of those conditions and you know the warnings?

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A. Absolutely.

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CORONER: I think that's an appropriate answer to that.

HILL: Q. I don't think there's any need to go - I'm at page 30, that there are regrets for the loss of life.

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Undoubtedly it's affected the whole of the community including the club. I think at one stage there - Mr Bush says it ultimately rests with the board, the responsibility for these things. If you appoint people to do certain tasks, I take it that you've relied upon them to do them?

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A. Yes, provided--

CORONER: Q. Because the structure of the club is, with the exception I think of the vice-commodore who chairs the committee, the appropriate committee, the board doesn't get involved, does it, once the race is underway?

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A. That's correct.

Q. So your responsibility is noted in the sense of the Harry Truman the buck stops here type thing, a global picture?

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A. Yes.

Q. But in actuality the board can't really take responsibility - full responsibility for the day to day running of a race under the auspices of the CYCA?

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A. Certainly not the day to day running your Worship but I think it is incumbent on the board to ensure that the

employees and those volunteers that are involved in the day to day operations are armed with the right organisational infrastructure such that they understand their jobs and their roles and that they're appropriately staffed in terms of numbers and skills, albeit through the chief executive of the club but the board does have an incumbent responsibility to make sure that that infrastructure is in place. 5

Q. I understand that.

A. But certainly the day to day running of it, there's a point where you're not there, you can't be responsible. 10

STANLEY: Q. Mr Van Kretschmar, you have given your opinion that the race should only be abandoned in the most extreme conditions and even then only when those conditions are actually being experienced as distinct from being forecast, is that so? 15

A. When I meant (as said) experienced, I didn't mean actually experienced by the fleet, I meant that it was a real time event, albeit it not yet impacting on the fleet, as opposed to an envisaged event. 20

Q. If we look at the Sydney to Hobart race, we look at this race we're concerned with, the storm that was forecast, the storm winds were not forecast until the Sunday afternoon until the race was already well underway. In those circumstances how could you see it ever - the race ever being called off in light of a forecast? It's a difficulty, isn't it? 25

A. It is and I'm sort of tempted to answer your question from the point of view of that from my reading of the forecast being 45 to 55 knots, recognise that those are severe conditions but not conditions that the fleet going to Hobart had not previously experienced and prima facie not a basis to call for an abandonment of the event. 30 35

Q. Perhaps I should use a hypothetical case. In your opinion a storm warning with 45 to 55 knots would not ever be enough on its own to have the race abandoned, that's your view is it not? 40

A. In the 45 to 55 knot range, correct.

Q. And that's despite the fact that you understand from your experience as a sailor that if the bureau forecasts 45 to 55 knots, there will be gusts of up to 70 knots? 45

A. Yes. I have some difficulty in my own experience base of translating what I know to be 45 to 55 knot conditions and the images that I have seen of what the fleet encountered in the Hobart race, they're two very different images in terms of waves, water, wind. 50

Q. Why is it that your view is that you would never agree to abandoning the race simply on the basis of a forecast no matter how extreme that forecast was?

A. I don't think I said no matter how extreme the forecast was. 55

Q. I thought that's what you were saying, that you would

only agree - only advise abandoning the race or a system that involved abandoning the race when the conditions were actually existing and it was therefore reasonable to expect that the fleet would meet those conditions, as distinct from conditions being forecast some day or two in advance? Isn't that what you were saying before? 5

A. Yes it is and if you put it in the context of a day or two in advance, if for example it were two days in advance, then my view would be we've got another day to see whether this thing that is predicted is actually going to happen and whether it is actually going to impact on the fleet. So I mean it's - I don't think there's a defined point or a black and white issue there, there's a continuum of scenarios that could emerge and I think all I'm saying is there are some scenarios that could emerge that would give an overwhelming case to cause a race committee to decide to abandon, but that would be extremely unlikely, unusual and would require a high degree of certainty about those conditions actually emerging and actually impacting the fleet. 10 15

Q. You want a high degree of certainty as distinct from a prediction or a forecast? 20

A. Yes.

Q. Because you know that forecasts are often not accurate? 25

A. Correct.

Q. In fact, they are simply as I think Lieutenant Commander Galletly referred to them as a guide?

A. Correct. 30

Q. That's why you take the view that when you're out there on your boat you are a self-sufficient unit and it's for you to take your own steps to find out as best you can what the weather that you're going to face is likely to be? 35

A. Correct.

Q. You don't want to be spoonfed by anybody, your view is similar to the view expressed by Mr Green as to what happens at the Royal Ocean Club's racing that it's very much up to the individual yacht and their skippers and navigators to find out what the conditions are going to be? 40

A. I think your own Mr Batt puts it very succinctly when he refers to the eyeball mark 1 method. 45

Q. Yes. What are your views, your personal views, as to whether or not the race organisers should take on the task of providing weather forecasts to the fleet at all during the course of the race? 50

A. Given the amount of debate that it's been given during the course of this inquiry I wonder whether it was actually a good idea for the CYC to undertake that task at all. Having said that, I believe that it is a valuable service that a race organiser can provide in the interests of providing the best possible information to the fleet and I think if one looks at the fact that the club many years ago got together with the bureau and recognised the need for a specifically tailored forecast for the fleet, that if the 55

club hadn't taken an involvement in assisting with providing weather information then that would never have emerged.

CORONER: Q. It might also be the case surely that if that service wasn't provided there might have been a lot more casualties in the years of the running of the race than there have been? 5

A. I think that's a fair possibility.

Q. That's likely, surely? 10

A. I think so, yes.

Q. You in your statement deal with one of the responsibilities of the race director and his team, this is at paragraph 49, you say they have the responsibility for monitoring weather forecasts received from the bureau. What do you understand to be meant by the word monitoring. What does monitoring weather forecasts mean? 15

A. I think it's for the race management team to be aware of the sorts of conditions that the fleet is likely to encounter and if it didn't monitor at all and was down the road at the pub or whatever, then - I mean how could it ever decide whether there was an occasion for example to abandon or to issue a message. 20

Q. So can I take it that you see monitoring as involving them actually listening to and then discussing between themselves the import of a forecast as it's given by the bureau? 25

A. Certainly that there is some discussion with respect to it. 30

Q. You then go on and say it's also the responsibility of the race director, that's Mr Thompson, and his team to ensure that the radio relay vessel broadcasts the most up to date weather forecasts during the skeds. Is that your understanding of what should be done? 35

A. Correct.

Q. Do you have any comment as to why it was that the race director only - did not require a more up to date forecast, special race forecast, under the arrangement or contract that was in existence between the CYCA and the bureau, why they didn't require a more up to date special forecast before the 8pm sked on the 26th? Is there any reason? 40 45

A. My understanding that the schedule of when forecasts were to be issued by the bureau was agreed and negotiated between the club and the bureau beforehand and that scheduling was tied in either with the weather modelling schedules that the bureau needs to work with and also the radio skeds of the club, so the intention being that the best possible forecast available to the bureau was made available to the club and to be able to be transmitted to the fleet at the scheduled radio sked times. 50

Q. Mr Van Kretschmar, you indicated to Mr Hill that you were not aware of the specific percentage by which wind speeds given in a forecast should be increased to take into 55

account gusts but you clearly knew from your experience that wind speeds are average wind speeds and that being so there will be obviously - there must be speeds above that average?
A. Correct.

Q. Indeed, in your statement you refer to your experience in the 1993 race where you describe there 50 knot winds with gusts in the 75 knot range. That's a 50 per cent increase, isn't it?

A. Yes.

Q. So that in your own experience in this very race you've had gusts of up to 50 per cent more than the average wind speed?

A. For very short periods of time, yes.

Q. In 1993 and 1977 I suggest you said in your statement you experienced winds of the 45 to 55 knots with gusts up to 70 knots for approximately 24 hours?

A. A period during which brief - very brief gusts of 70 - I'm talking in the order of, you know, maybe a minute or so or possibly a squall over the period of five or ten minutes that might have occurred on occasions during that 24 hour period.

Q. Is that really what you say? If you look at paragraph 12, I suggest what you're really saying there is that in 1977 and 1993 you had winds of 45 to 55 knots with gusts up to 70 knots for approximately 24 hours on one or two occasions you'd experienced gusts and squalls of up to 75 to 80 knots for very short periods. Isn't what you're saying there I'd suggest is--

A. No, no, it's not sir. If I deal with the second sentence first or furthermore on one on two occasions, on one or two occasions other than the 1977 and 1993 Hobart races there have been one or two occasions in the Hobart race where we haven't had 45 to 55 knots for any period of time or if at all but through a thunderstorm activity or typically down in Tasmania in Storm Bay suddenly a squall comes out that lasts for five or ten minutes, no idea where it came from, with wind strengths of up to 80 knots. As distinct from the first sentence that deals with specifically 1977 and 1993 where the weather conditions were such that the winds were in the range of 45 to 55 knots for a period of approximately 24 hours and during that 24 hours there were periods where there were gusts of up to 70 knots. When I refer to gusts, I talk about a wind event that lasts for maybe up to a minute or possibly two minutes.

Q. Can I ask you this then. Generally when you hear yachtsmen talking of winds up to say 50 knots, what do you understand them to be saying?

A. If they say winds up to 50 knots, my impression, my view is they're talking about the biggest number they saw on the wind dial during the course of the period that they're referring to.

Q. So that would mean the highest gust?

A. Yes.

Q. It might only occur for a minute?

A. It might only occur for a minute.

Q. Do you think all yachtsmen would understand the comment winds up to 50 knots in that way, or would some see it as really meaning that's the sort of wind, the higher range of average that we were experiencing with the odd gusts of course being more?

A. No, in my experience yachtsmen when they talk about maximum wind strengths talk about the peak event that they observed during the period.

Q. What about wave heights? Do you say waves of up to - waves of 10 metres, what does that mean to you as a yachtsman?

A. I'm very sceptical of any yachtsman's and my own included ability to accurately assess wave heights. People's impression of what a wave is, is grossly inaccurate largely.

Q. I understand that, that wasn't the point of my question. I'll bring it down to waves of five metres. If a yachtsman says I struck - got waves of five metres, what does that mean to you, that that's the average wave or that that's the highest wave he got or it's the mean of the significant wave heights, what does it mean?

A. I've rarely heard yachtsmen talk in waves in terms of wave heights, it's usually they were bloody big seas or talk about the shape of the wave and its effect on the boat rather than the absolute size of it.

Q. Is there really much value to a yachtsman telling him that he might have seas of two metres and a swell of one and a half metres, or is better off that seas will be very rough and choppy or something to that effect?

A. I think the latter far more so and certainly from a personal perspective. When I listen to a weather forecast, I listen intently to wind strengths and wind directions, the wave heights generally not, because as soon as a wind strength and a wind direction is mentioned, I form my own mental picture in terms of what that translate to in terms of sea state.

Q. So really talking about maximum wave heights can be pretty misleading, can't it?

A. I'm not sure if misleading's the right word but certainly to embellish a description of sea state beyond merely wave heights in terms of metres would be a positive thing.

Q. All sailors I suppose experience what's referred to as the one in a thousand waves that is much higher than the prevailing waves or the surrounding waves. How is that wave to be taken into account if what's required is for the bureau to give the highest wave heights?

A. I don't know how you do because usually that wave's

grown in size by an order of magnitude of two by the time that yacht's reached shore anyway. I really believe that from the bureau's point of view to be able to be more descriptive in terms of the nature of seas to be encountered and certainly the size of seas is an important component of that. If we can come up with a language that adequately conveys the nature of seas that are going to be encountered, that would be useful and in particular whether, you know, waves are going to be steep and breaking as opposed to just large seas. 5 10

Q. Of course remembering all the time that it's a guide, it's a prediction?

A. Absolutely. 15

Q. It's not and cannot be regarded--

A. Absolutely.

Q. --as an accurate and certain situation?

A. I agree with you totally on that. 20

Q. So far as the form of the special race forecast that was provided for last year's race, do you feel that that was a significant improvement, it did give some additional information that was of assistance? 25

A. Yes.

WEBER: Q. Mr Van Kretschmar, in your statement and this is a paragraph Mr Hill took you to, you indicated that the club doesn't run the Sydney to Hobart as a profit making event? 30

A. That's correct.

Q. Are you aware of the financial outcome of the 1999 Sydney to Hobart?

A. In broad terms, yes. 35

Q. In broad terms what was the financial outcome to the club of conducting the 1999 Sydney to Hobart yacht race?

A. Consistent with that statement that it did not make a profit as a result. 40

Q. So the club made a loss?

A. Yes.

Q. If you could just take off your commodore's cap and put on your experienced yachtsman's cap for me-- 45

A. The commodore's cap's been removed permanently.

Q. Touche. I wanted to ask you some questions about your experience of the 1999 race. I believe you were aboard Bumblebee? 50

A. That's correct.

Q. And you were the helmsman?

A. One of. 55

Q. That's your special skill in blue water racing as a helmsman?

A. That's correct.

Q. Bumblebee of course had the satcomsea system aboard, that's correct?

A. Yes.

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Q. What was your impression as an experienced yachtsman of the way that operated in 1999?

A. I think that satcomsea is a very valuable piece of equipment from a tracking point of view and as a tracking device it fulfils two roles, one as a safety device in terms of, you know, if a boat's gone missing or needs to be - needs assistance, there's a permanent position recording device available on shore to know exactly where that vessel is and certainly secondly from a media public interest point of view, it offers all sorts of opportunities.

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Q. And it also offers a facility for constant communication between the shore or the race relay vessel and the fleet?

A. From the communication point of view yes it is a powerful medium in some respects and I was having a discussion with Mr Green earlier this morning. One area where I would be at this stage reluctant to lose the HF radio network that we have established is that to some extent the satcomsea unit is a closed communication network, a bit like a mobile phone, although you can patch in other listeners. You can't actually as conveniently speak to the entire fleet and the entire fleet speak to each other. With the radio communications network, people can be listening in to what is happening and it might be that they hear something that is either of assistance to them or they hear something that they can assist with and a satcomsea is, you know it's a printed dialogue thing, yes, you could send a message to everybody so that everybody receives that message but there's not the same dynamic in my view of hearing it over the open airwaves.

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CORONER: Q. Nevertheless you can see that yachting's going through a transition - going to go through a transition period--

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A. Absolutely.

Q. --whereby on Mr Green's evidence HF radio will eventually be phased out I think over - I might be talking 10 years ahead--

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A. Yes.

Q. --and it'll be replaced by perhaps an enhanced satcomsea type facility and on that basis there is some need to start to get conversant with high technology?

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A. Absolutely agree with that. What I'd be - the only point I'm trying to make is that I'd be reluctant to--

Q. Simply to do away with HF?

A. --to do away with one and replace it with the other. Couldn't agree more that there is clearly all sorts of technologies probably that we're not even aware of yet that will emerge that are far superior.

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Q. And ultimately I suppose it's not too hard to see that they will replace HF radios?

A. Clearly.

WEBER: Q. So your view would be keep the HF radio until such time as the technology evolves to a level where you think that it ceases to have value?

A. Yes until - I mean the HF radio network is tried and proven and has served the Hobart race, you know, extremely well over the years and if I might say did so in 1998 as well, despite some problems that were encountered. I'd be very reluctant to, you know, throw the baby out with the bath water so to speak. Having said that, I think it is very important and it's why we introduced the satcomseas last year, to run it in parallel with the HF system, test it for a few years, see what improvements, what emerging technology arises and phase it in to a point where you're relying on it over a period of time and last year with the satcomsea we made it absolutely clear to competitors that it was not a specified safety device, not a specified communication device, we were testing it, it was compulsory for them to carry it but they were not to rely on it as their primary means of communication or safety positioning and the like. I think it's important that that continues for a few more years.

CORONER: No argument from me.

WEBER: Q. Mr Van Kretschmar, his Worship asked you some questions about the state of Assassin upon which you were aboard in 1998 at the time of the decision to retire, you recall that?

A. Yes.

Q. One of the reasons which you mentioned in your statement which wasn't articulated orally was that because of damage below you only had one bunk left and I take it that you were concerned about the effect that that would have on depriving your crew of rest?

A. That's correct.

Q. What value as an experienced yachtsman do you place on the need for crew to be adequately rested?

A. It's probably number one priority. To me with the forecast that was provided that said there's going to be at least 24 hours of, you know, up to 55 knots, to venture into that without the ability to be able to rest crew properly was not a viable or considerable option as far as I was concerned.

Q. His Worship's heard some evidence from those who propound the view that it would be preferable for the skeds - sorry, I withdraw that, it would be preferable for the yachts to be required to monitor the HF radio on a 24 hour a day basis. What role - what effect do you think that would have on deprivation of rest to crews?

A. If it were strictly adhered to and by monitoring one would mean (a) it's to be on but (b) it's got to be on loud

enough such that it can be heard, then I believe that would be very detrimental from a crew rest point of view, to the point that I don't believe for one moment that other than a very small minority would actually do that and they would satisfy the intent of the rule if you like by keeping it turned down as low as they could and not much would be achieved. I also agree very much with Mr Allan Green's comments yesterday that such a requirement has the clear likelihood of the habitualisation of the practice and that one of I think a rostering system that he suggested was a good one, although it has its failings. And frequency of skeds is a good one. But clearly the satcomsea or other alternative, and there are in fact HF radio alternatives as well of a unit that is left on standby, with a call device so that your radio is activated saying there is a message that you need to listen to. There's a technology called GDDMSS or something in HF radio. Whether that actually ever gets rolled out and put on the system I'm not sure, because quite possibly satellite technology is going to leapfrog and overtake that anyway but certainly the satcomsea units have the opportunity of, you know, where there can be a - there is an incoming call, time to wake up, listen to this message facility very valuable and - a very valuable asset to have that available to all boats.

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Q. So in summary if the decision were yours, in balancing up on the one hand the benefits of - the communication benefits of 24 hour monitoring and the practical effect of 24 hour monitoring on sleep deprivation, you would go unequivocally against 24 hour monitoring?

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A. Yes but primarily not because I don't believe the sleep deprivation would occur because the crew on the boat wouldn't allow it to occur, they'd turn the thing down so that it didn't affect them.

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CORONER: Anything arising?

HILL: Yes, there is something arising out of that.

Q. Following on from what my learned friend has just said, is there a possibility of a compromise and what I'm talking about there is I think that you would agree that if we had a facsimile from the Weather Bureau at 0655 on Sunday 27 December that shows Wilsons Promontory at 71 knots, it's something and I think it's common ground, something that the fleet should know about?

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A. Uh hmm.

Q. The system that was in place at that stage, the whole of the fleet was not contactable until 1400 hours?

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A. Correct.

Q. What about if there was such a thing as a listening watch, that is say every hour for five minutes they had to turn on their radio or every two hours? Follow? So that you do away with the problem but at least someone has to go to the radio on the hour or every two hours and actually listen in, to see whether there is something important, such

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as we've got 71 knots at Wilsons Promontory?

A. I think that is good middle ground, again it's possibly beset with some problems and it might seem strange in this Court environment here but to maintain a strict regime on a racing yacht of every hour listening for a five minute period, very easy to miss those and it's not unusual for boats to miss radio skeds, you know, be they only four times a day, purely because all of a sudden half an hour went by and gosh, we've missed the 3 o'clock sked. Now if you had to do that every hour, there's a likelihood that you'd actually miss a lot of those just through human factor. I think the potential for - the opportunity to introduce technology whereby there is a, you know, message waiting signal transmitted to each vessel, so that even if it isn't seen immediately, it's seen the next time someone walks past and sees the light flashing, and whether that's done through satellite or radio technology is probably immaterial but I think the key is that there is a facility to say there's a message waiting.

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CORONER: Q. That's one of my major concerns is that it seems to me that there has to be some way in which the fleet can be contacted in extreme conditions reasonably quickly. Not instantaneously but certainly we're talking about 6 o'clock till what, 2 o'clock, it's a long, long time.

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A. Yes. I share that, your Worship.

HILL: Q. Five to seven, so how would you see today the race control centre getting that message that came at 5 to 7 on the Sunday morning to the fleet when they don't come up say for a sked until 2 o'clock that afternoon?

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A. At this point in time - what we do at this point in time is have the ability to do that through the Inmarsat units that were fitted on boats in 1999.

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Q. So if the same situation arose today and provided of course we knew about Wilsons Promontory there is a method by which we could get that to the fleet before 2 o'clock?

A. I believe that's so. Sorry, just the reason why I just hesitate is to say whether I believe that's so is that I know that the units that we fitted on yachts last year were fitted with the tracking capability. I don't know whether they were all also fitted with the two-way communication facility.

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Q. Bearing in mind what I've said and what you've said, perhaps if one of the witnesses could come back to us and say this is how we would propose to get that message to that fleet before 2 o'clock, that's the scenario and if that could be resolved so that at least we know what would be done today.

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CORONER: Q. Yes, if I could hear from one of the final witnesses of any proposal that's being contemplated to speed up communications to the fleet in extreme conditions, extreme times, that'd be a help.

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A. Your Worship we'll make sure that comes through Mr Bush's submission.

Q. It'll just help me with any recommendations, may obviate the need for a recommendation.

<WITNESS RETIRED AND EXCUSED

WEBER: I mentioned yesterday the attachment, I don't have the annexures to Mr Bush's statement with me but there is an attachment which deals with satcomsea. 5

CORONER: That may contain it. 10

WEBER: It does, your Worship.

CORONER: We only got this the other day and I haven't read it all. 15

HILL: I haven't gone through it thoroughly either.

WEBER: The witness wasn't - as I understand the attachment, wasn't correct, the yachts not only had the tracking aspect of satcomsea, they also had the text. 20

CORONER: They do or they don't?

WEBER: They do have the text. 25

CORONER: That's your understanding?

WEBER: My understanding and I'm reliant - I've been reliant on conversations but I'm also relying upon the attachment which-- 30

CORONER: As long as that's confirmed, I'll be happy with that. It may be the answer to the whole thing. 35

WEBER: Your Worship can rest assured that I will take Mr Bush to it. I'm sorry, I can't assist your Worship.

CORONER: No, that's alright. 40

WEBER: Has your Worship found the attachment?

CORONER: Not yet but that doesn't mean anything.

GREEN: Your Worship, if I may say, the text facility is a normal part of the satcomsea unit. 45

CORONER: Alright, thanks Mr Green. Okay, Mr Hill.

HILL: Yes, I call Mr Sommer. 50

CORONER: Before Mr Sommer is sworn, attachment 14 does talk a little bit about satcomsea, in fact there's quite a bit about it. There may be more in this but attachment 14. 55

WEBER: Is the document your Worship has before you a document with a yacht on it or specifically related to - I'm not sure that--

CORONER: It's a Telstra Sydney to Hobart document setting out an overview, system operation, distress function, weather, navigation, safety broadcasts. Tells you what to do in distress conditions, situations, it basically tells you briefly how to operate it. And then there's also a Telstra satcomsea pamphlet.

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WEBER: Yes, I think that's it, your Worship. From recollection the white document indicates that it does have the text facility.

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CORONER: Yes it does actually. Telstra satcomsea service provides reliable text and data communications and is accessed through Telstra's sophisticated land earth station ..(not transcribable).. in Perth and it goes on about that. If a yacht's equipped with a laptop PC and suitable software and they give an example of that. And cable system can also be used to send and receive e-mail messages. It might imply that you don't have the full thing but anyway we'll look at that.

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WEBER: We'll fill in the gaps your Worship but that's what we--

<HANS SOMMER(12.00PM)
SWORN AND EXAMINED

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HILL: Q. Sir, would you give the Court your full name?
A. Hans Frederick Sommer.

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Q. And your address?

A. Flat 9, number 12 Kareela Road Cremorne.

Q. And your occupation?

A. Managing director, motor industry.

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Q. You've made two statements in this matter, the last one being 29 June 2000, is that correct?

A. Correct.

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Q. Do you have copies of those with you?

A. Yes.

HILL: I understand my learned friend Mr Weber wishes to make some corrections to those.

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WEBER: Yes, your Worship.

Q. Mr Sommer, do you have your statement with you?

A. Yes.

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Q. Could you go to paragraph 6. Do you have it there?

A. Yes.

Q. You say in the first sentence the board's decisions are generally implemented by the CYCA's general manager who is a member of the board. Do you wish to make a correction to that?

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A. Yes, he attends the board, he's not a member of the board but he attends board meetings.

Q. Paragraph 17 if you don't mind, Mr Sommer. You'll see that that sentence starts in or about February 1998. Do you have any reason to doubt that date? 5

A. I'm not absolutely certain on that date because the committee may have been put in place at that date but I however believe it was probably done after July, because the new board was elected at the beginning of July and I would expect that the decision on who these members should be would be done after that date. 10

Q. And now go down to the bottom subparagraph of paragraph 17 dealing with Mr Rowley. He's again described as a - he's the general manager. He's again described as a member of the sailing committee. Do you wish to make an alteration? 15

A. Yes, that's also incorrect, he sits in on some meetings, in fact most of them but not as a member. 20

Q. Now over on page 6 please sir, the subparagraph dealing with Mr Mark Robinson, it's right to say isn't it that Mr Robinson wasn't a member of the race committee for the entirety of the period? 25

A. I don't understand that question. 25

Q. As I understand it, he was not part of the committee until July 1998?

A. Yes, correct. 30

HILL: Q. Sir, you are presently the commodore of the CYCA? 30

A. Yes.

Q. You were part of the sailing committee in the 1998 Sydney to Hobart? 35

A. Correct.

Q. Were you part of the race management team?

A. No, not of the race management team. Of the race committee. 40

Q. You say at paragraph 18 the race management team were Phil Thompson, the race director?

A. Correct. 45

Q. Mark Robinson and Howard Elliott?

A. Correct.

Q. It should be noted that Sam Hughes from AMSA was with the race control centre and with the race management team throughout the race? 50

A. Correct.

Q. So do I take it that the people who take over the conduct of the race, once the race starts, is Mr Phil Thompson the race director, Mr Mark Robinson and Mr Howard Elliott? 55

A. Correct.

Q. They are directly responsible for the conduct of the race?

A. Correct.

Q. They are the ones who in particular will be monitoring the Weather Bureau forecasts?

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A. Yes.

Q. As outlined by Mr Van Kretschmar?

A. Correct.

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Q. What part do you play in this? Or did you play?

A. As chairman of the race committee, which is an arm of the sailing committee, I'm available to the race management team if I'm needed, if there's any unusual situation arises, they are able to call on me to get the race committee together to deal with the issue as it arises, whatever that may be.

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Q. So in other words, if something unusual arises, you would expect who to contact you?

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A. The race director, Phil Thompson.

Q. If he wasn't available?

A. One of the other people on the race management team such as either Howard Elliott or Mark Thompson (as said).

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Q. So that was your expectation?

A. Correct.

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Q. That if something unusual happened, they would contact you?

A. Correct.

Q. Contact you to tell you that something had happened, or contact you for advice? What I'm trying to find out is whether they simply inform you and they must do that, or they would only come to you when they couldn't handle something unusual?

35

A. It could be each situation.

40

Q. It could be either one, alright. Would you expect to be informed of anything?

A. If it's highly unusual and something I - out of the ordinary, I expect to be informed, yes.

45

Q. I want to take you back to the morning - well, perhaps we'd better - you attended the briefing on the 24th?

A. Yes.

50

Q. And then I think on the 25th, that was Christmas Day, you got together?

A. Yes.

Q. Who was it that got together?

55

A. I can't be absolutely certain of the people. I think it was Phil Thompson, Mark and myself, there could have also been Howard Elliott, I'm not certain of that, in order to do

an IMS course construction for the benefit - for the purpose of handicapping, based on the latest weather forecast we had at that time.

Q. So that was the purpose of that meeting?

5

A. Correct.

Q. And you would look at the forecast?

A. Yes.

Q. Why is the forecast important in regards handicapping for--

10

A. Under the IMS rule, the handicapping system provides a handicap based on the wind speed and wind direction at the time and along the way of the course, so we predict the wind speed and direction along the course between Sydney and Hobart and the system calculates a correct handicap, based on that.

15

Q. Once the handicap is set based on that forecast of wind speeds, is it ever updated or is that the handicap and that's the end of it?

20

A. That is the way it is.

Q. I'm sorry?

25

A. That is the way it is. That's the handicap and it stays that way.

Q. So it doesn't matter if the wind alters downwards to three knots or goes up to 70 knots, what was set on Christmas Day--

30

A. It stays in place and the IMS handicap system doesn't bring wind speeds above 20 knots into it anyway, if it gets beyond 20 it doesn't calculate higher winds, it only calculates up to 20 anyway.

35

Q. So it's not as if there's a continual updating with wind speeds?

A. No, we do review it again on Boxing Day morning prior to the race to confirm that the course construction we did is still reasonably accurate and then may make some changes to it, based on the latest forecast and we did that.

40

Q. I'll just move then to the Boxing Day morning, the morning of the race. You said that you updated it from the latest forecast?

45

A. Correct.

Q. What time would that have been?

A. From memory I expect that Phil Thompson got the latest forecast very early in the morning, perhaps 6 o'clock, I'm not 100 per cent on that and we would have got together prior to the weather briefing. No, there wasn't a weather briefing. Early, maybe 8 o'clock, 7.30, 8 o'clock.

50

Q. You've said there we would have got together prior to the weather briefing, no, there wasn't a weather briefing. Do I understand the situation that normally there was a

55

weather briefing?

A. No, the weather briefing has only come into it in '99, the additional weather briefing. The bureau has a stand.

Q. Yes, I understand that. What I'm talking about is there was evidence from Mr Batt that he used to come and brief the race committee about the weather. That's part of his evidence, that he came and he said to Andrea Holt I'm here to brief - sorry, Mr Gage was it?

5

A. Yes, I don't recall that.

10

Q. What was the position? Did you - you didn't expect anyone from the bureau to come and speak with you about the weather that morning?

A. I can't specifically remember if somebody came. I would rely on Phil Thompson's latest information that he obtained, be it somebody physically or by telephone or fax and I can't recall in which form he got it. It may well have been that somebody from the bureau was there as well but I don't specifically recall that.

15

20

Q. But the only purpose that you were meeting that morning, that is on the 26th, was to just fine tune the handicap?

A. Yes, correct.

25

Q. Do you recall what the weather report was that that was done on?

A. To my recollection it was very similar, it hadn't altered substantially from the two days earlier, there was nothing in it that I recall as being alarming or different.

30

Q. After that was finished, do you recall what time that would have been?

A. It'd be pure speculation, I would suspect between 8 and 9 in the morning.

35

Q. So it was about 9 o'clock you say, 9 o'clock?

A. Yes, probably a bit earlier than 9.

Q. You know that a gale warning was issued that morning? At least you know now?

40

A. Yes.

Q. Did anyone bring that to your attention that morning?

A. No.

45

Q. Would you expect anyone to bring that to your attention?

A. I would expect that Phil or somebody from the race management team would bring that to my attention if they were alarmed about it.

50

Q. But not otherwise?

A. No.

Q. How do you feel as being the director of the race committee not having it brought to your attention, that if someone knew that there had been an upgrade to a gale warning, would that not concern you?

55

A. I have a lot of faith in the race director and his judgment on that and if he didn't bring it to my attention I guess in hindsight it probably - I would have probably liked to hear about it but at the time I didn't hear about it.

Q. I know you may have faith in someone but you held a very responsible position?

A. Yes.

Q. You're the director of the race committee, people report to you, do they not?

A. Normally in a normal race only if something unusual happens. They don't report to me along the way about what is happening except if something out of the ordinary comes up they will report it.

Q. You'd only expect to be informed if Mr Thompson decided to, is that what you're saying?

A. I expect to be informed if something unusual happens.

Q. Is a gale warning not unusual?

A. I think in hindsight I would say yes.

Q. But you weren't informed?

A. No.

Q. What did you do for the rest of the morning?

A. I suppose the majority of the time I spent walking up and down the docks, talking to the individual yachties before the race, just having a chat and talking to some of the sponsors who were at the club and just in general mix around but mainly talking to the yachties on the wharf before they leave - before they left.

Q. Did you go out on the water at all?

A. Yes.

Q. Was that at about 11 o'clock?

A. I had to leave about 10.30 to go to Darling Harbour to go on the start boat with Telstra and I got back from that about 3.30 I think.

Q. What did you see as being your function as the race - sorry, the race committee director?

A. I don't understand what you mean.

Q. What did you see at your job? What was your role? Were you to stand about and look - and speak with people simply from a public relations point of view or what?

A. It also includes to make sure that - the race management team runs the race, the committee doesn't and it would be my role to make sure that the correct people, the right people are in the job and are capable of handling the management of the race. The committee members even as chairman don't take a role, a hands-on role, in the actual running of the race.

Q. No, I understand that but what did you see as your position? What was it you were supposed to do? What was

your function? You've told us about the handicapping. Was that it?

A. No, I'm responsible for the overall running of the race through the race management team.

Q. Would you not expect then Mr Thompson to report things to you, even during the race?

A. Yes.

Q. Did he report to you that there had been a gale warning? 10

A. No.

Q. Would you not expect him to report that?

A. At the time he didn't report it so it didn't occur to me but in hindsight I would say yes. 15

Q. Right, so as far as you're concerned are you saying I should have been told a gale warning had been issued? 15

A. Yes.

Q. The race then starts at 1 o'clock, you came back off the water at 3.30? 20

A. Correct.

Q. Were you told a storm warning had been issued? 25

A. No.

Q. When did you first become informed that a storm warning had been issued? 30

A. After I arrived in Hobart.

Q. When was that? 30

A. That was the following day at somewhere between 4 and 5 o'clock in the afternoon.

Q. In the afternoon? Between 4 and 5 o'clock? What were you doing - you got off the vessel about 3.30, what did you do, where did you go? 35

A. I got back to the club at about 3.30. I had my family with me, I just spent some time socialising, spending time with my family and after that went home. 40

Q. Did you see Thompson at all?

A. I can't specifically recall, if he was there I would have seen him. 45

Q. What about Robinson?

A. The same thing.

Q. Elliott?

A. I can't specifically recall that I saw them but if they were there-- 50

Q. You would have seen them?

A. --I would have seen them.

Q. Did any of them come up to you and discuss the weather? 55

A. Not to my knowledge. Well they didn't, no.

- Q. Did anyone at all discuss the weather with you?
A. No.
- Q. You've said you went home with your family?
A. Yes. 5
- Q. Did you come back to the CYCA at all?
A. No.
- Q. When did you go to Hobart?
A. I think it was around about midday. 10
- Q. And you left from home?
A. Yes. 15
- Q. And you arrived down there between 4 and 5?
A. Something like that.
- Q. Are we talking about arrival at the airport, or are we talking about arrival at the--
A. No, at the airport. I can't recall the exact time. 20
- Q. Did you take your family with you?
A. No, I took a friend. 25
- Q. When did you arrive at the Royal Tasmanian Yacht Club?
A. It would have - whatever time it takes to get from the airport to the hotel, which is on the way, I'm not sure whether I checked in or went straight on to the yacht club. It was one or the other but more or less immediately. 30
- Q. I take it you had your telephone at home?
A. I had my telephone on me the whole time.
- Q. And you had a mobile on you as well?
A. Correct-- 35
- Q. So there's no question that you could have been contacted?
A. Absolutely. 40
- Q. Mr Thompson know your telephone number?
A. It was on the list that is provided to all of us, there is a list of the key personnel and all their phone numbers on it and I believe he would have had that list. 45
- Q. When did you first become aware that the weather had turned foul?
A. It's one of two things and the reason I have to say that, I can't recall the exact sequence. It was either when I walked into the race control centre in Hobart or on my way there in the car when I received a phone call from Peter Bush. He either called me after I got into the centre or just before. That was when I was first aware of the crisis that had arisen. 55
- Q. So no-one had told you from the race management team that a storm warning had been issued?

A. No.

Q. Or that there were problems with the fleet?

A. Not until I arrived there.

5

Q. The only way you became aware of it was you actually walked in and saw the crisis?

A. Correct.

Q. You would have expected to be told about that?

10

A. For a period of time whilst travelling I would have been uncontactable and it may be possible that somebody did try to contact me but I can't be certain of that.

Q. What about the storm warning? That went out on the sked both at 2200 hours or 2000 hours on the 26th and at 3 o'clock in the morning of the 27th, so that was known. Would you not expect to be told about that?

15

A. I would but I wasn't told about it.

20

Q. No-one told you?

A. No.

CORONER: Q. What did Mr Bush ring you about on your arrival in Hobart?

25

A. I think it was in connection with sending somebody to Eden to assist retiring yachts.

Q. Mr Halls?

A. Yes. And I think we agreed on Mr Halls being the right person.

30

HILL: Q. Did you say anything to any of the race management team about not being informed of this?

A. At the time no I didn't.

35

Q. Did you afterwards?

A. I can't recall what discussion I had with them afterwards, I just don't recall.

40

Q. Are you upset that you weren't informed about these things?

A. I don't know if upset is the right word but I should have been informed.

45

Q. Angry?

A. Angry, no. Disappointed perhaps.

Q. Disappointed in what?

A. In not knowing more before I arrived.

50

Q. And that is because you expected to be told about these things?

A. Yes.

55

Q. What's your view if the race control centre knew that they had 71 knots at Wilsons Promontory at 7 o'clock in that morning, the 27th?

A. My expectation of that would be that this information, together with the latest weather update, should go to the fleet as quickly as it can possibly be done, so that the fleet knows about it and make their judgment of how to deal with it.

5

Q. You've said you arrived at about 4 or 5 and you're not quite sure whether that was at the race control centre in the yacht club but it's about 5 approximately, I'm not going to hold you to any specific time--

10

A. Yes, something like that.

Q. --that you get to the race control centre, you find out and this is for the first time that the weather has turned foul, is that right?

15

A. To my knowledge, yes.

Q. What happens then, what do you do?

A. The situation was that there was obviously a crisis on the water and the people in the race control centre appeared to be dealing with it okay and they were recording the incidents that were reported and most of the information we got back through Sam Hughes from AMSA and as he reported incidents on the water, they were recorded on sheets of paper in either missing sked or somebody dismasted or someone retiring, whatever occurred was recorded.

20

25

CORONER: Q. Did the race management team brief you when you arrived, formally brief you on the situation?

A. I wouldn't probably call it a formal briefing but they informed me of the situation.

30

HILL: Q. I note that according to your telephone you spoke to Peter Bush at 5 minutes past 3 on the 27th of the 12th.

A. Yes, that's probably--

35

Q. For six minutes and 39 seconds.

A. That is probably the call that I referred to that I can't recall exactly when I had it. In fact that may have even been in Melbourne while I was on stop-over, I had a stop-over in Melbourne and that call could have been at that time as well.

40

Q. At 25 past 5 that same night, the 27th, you spoke to Phil Thompson for one minute 21 seconds.

45

A. That was probably on the way to the - I don't recall that conversation but I would suspect that would have been on the way in the car or cab going to the race centre.

Q. But you were speaking with Peter Bush because he rang you at 9.32am on the 27th, do you recall what that was about?

50

A. No. That could have been about anything, I don't recall that conversation.

55

Q. He spoke to you again at 10.17am on the 27th.

A. I simply don't recall those conversations.

Q. Peter Campbell was speaking with you - sorry, I withdraw that. Did Peter Bush not tell you that a storm warning had been issued or anything like that?

A. I can't recall him saying that to me. I simply can't recall.

5

Q. Go to paragraph 49 of your statement at page 14 and this deals with the call from AMSA, about calling off the race.

A. Yes.

10

Q. What I want to know is this. Were you present when Sam Hughes said that his counterpart in Canberra had asked did you consider cancelling the race?

A. Yes I believe I was there when that call came.

15

Q. No, I'm not asking you if you believe it--

A. Yes I was.

Q. --I'm asking you do you recall it?

A. Yes, I do.

20

Q. Did you then have a discussion with the rest of the race management team about calling off the race?

A. Yes.

25

Q. So that was a collective decision?

A. Yes.

Q. With who?

A. Most certainly Phil, Howard Elliott, Sam Hughes would have been - was involved, I think Mark Robinson and there could have been some more people such as Bruce Rowley but I can't be dead certain that he - or Robert Badenach may have been there as well but I'm not sure of that.

30

35

Q. And this consensus was arrived at for the following reasons. This is what you say. One, it would make no difference to the majority of the fleet if we called off the race and they were already in the storm and we could not remove them from that situation, that right?

40

A. Yes.

Q. Two, from the weather update Thompson had received on the telephone from BOM we understood that the worst of the storm was heading away from the fleet and hence that continuing in the same direction was probably safer than trying to turn back to Eden.

45

A. Yes.

Q. Each yacht was in the best position to assess how they should respond to the storm, taking into account the condition of their crew and their yacht.

50

A. Yes.

Q. The chances were that if we called off the race the fleet would instinctively turn back towards Sydney and hence into the storm when it was safe for them to keep sailing towards Hobart.

55

A. Possibility, yes.

Q. Did it enter the discussions or anyone's head that perhaps AMSA was stretched beyond their capabilities for rescuing people at sea?

5

A. The way it came to us was that AMSA asked us to consider calling off the race but not make a final decision on it without talking to them afterwards, after we've discussed it.

10

Q. Did it enter anyone's head or did anyone discuss that one of the things you should think about was that AMSA may have reached its limits of capability of rescuing people from the sea?

15

WEBER: I object to the question, your Worship. I don't want to be unduly technical but no-one can be asked what's in someone else's head and I think--

HILL: I withdraw the question.

20

WEBER: It's got two aspects to it.

HILL: I withdraw the question.

25

WEBER: It's important I think--

HILL: Q. Did it enter your head that AMSA may well have reached its limit of capability for rescuing people at sea?

A. I can't recall what entered my head at that time.

30

Q. Were you only thinking of the race continuing and nothing else?

A. Absolutely not.

35

Q. You could have told the crews to cease racing and to continue on to Hobart if you thought that was the correct move or any other safe method that they considered expedient, couldn't you?

A. I could have.

40

Q. You see, you could have told them not to turn back to Eden, couldn't you?

A. Well I believe the yachties - the yachts out there are in the best position to make that judgment in which direction to go.

45

Q. No. The master of the vessel is in the best position to judge how to sail his ship, racing has got nothing to do with that--

A. Exactly.

50

Q. --has it?

A. No.

55

Q. So do I take it that you didn't consider the position of the lifesaving resources of AMSA in coming to your decision to continue the race?

A. No, I don't believe you can say that because I don't know exactly whether that was discussed or not, I just don't remember, it was a long time ago.

Q. You don't remember?

5

A. Whether that particular point was discussed, it may have been.

Q. But you can remember these four items quite vividly. Were there any other items?

10

A. I've recorded those that I can remember.

Q. Did you think of asking anyone else about whether or not the race should be called off?

15

A. Outside the room?

Q. Yes, outside the room?

A. No.

Q. Did you think of contacting Peter Bush?

20

A. No.

Q. Did you think of speaking with anyone from the Tasmanian Yacht Club about whether or not you should call off the race?

25

A. I only recall speaking to the people who were in the control centre at the time. We didn't seek advice from any outside people other than AMSA.

Q. You're sure that you participated in that decision?

30

A. I was part of that decision, yes.

Q. Were you present when the notice to the skippers of the fleet was broadcast?

35

A. I know that it was broadcast but I'm not sure if I was present because the radio room in Hobart is next door to the control centre and you can't hear broadcasts.

Q. Were you present when the decision was made to broadcast that message to the fleet?

40

A. Yes, I believe so.

Q. What do you recall about that? How did that come about?

A. It would have been to reinforce to the fleet to take the appropriate actions under the conditions they are facing and the condition of their boat and their crew was important--

45

CORONER: Q. That's telling us what it was but the question is how did the decision that that broadcast be made come about? What happened? Did you meet someone or did someone - did you get your heads together? How did it come about?

50

A. It would have been - and I don't recall specifically but I - it would have been a discussion that was had between the race management team and myself and whoever was present in the centre, that's where that decision was made.

55

HILL: Q. Look, it's a disclaimer as well, isn't it? A disclaimer of responsibility?

A. I didn't view it that way.

Q. What did you view it as?

A. As giving the fleet the latest information and reminding them to make the right decision. 5

Q. What do you mean, giving them the latest information?

A. Weather information.

Q. It's got nothing to do with the weather. Were you present when it was decided that this should be broadcast to the fleet? 10

A. To my recollection I was present.

Q. Who wrote it down, do you recall? 15

A. No, I certainly didn't write it down but I don't know who wrote it down.

Q. Who was present with you?

A. Phil Thompson, Howard Elliott, Sam Hughes, Mark and possibly some other people. 20

Q. What was the purpose in broadcasting this to the fleet?

A. To remind them of their responsibility to take care of themselves, their crew and make the right decision. 25

Q. Look what it says is, and this is part of it, all those taking part in CYCA races do so at their own risk and responsibility. The CYCA is not responsible of a yacht whose 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 club races. Then it goes on to point out that it's the sole responsibility. But there's a whole disclaimer before that. Whose idea was it to put that in? 30

A. I can't honestly answer whose idea that was specifically. 35

Q. But you agreed with it?

A. Certainly.

CORONER: Q. You didn't put it in?

A. I personally didn't put it in, no.

5

HILL: Q. But you agreed with it being put in?

A. Yes.

Q. Why?

10

A. Obviously at the time I felt it was important.

Q. What, to disclaim any responsibility?

A. No.

15

Q. Well that's what you've done. What other purpose does it have?

A. It's - the second part of the message to me is more important.

20

Q. Yes, but you agreed with the first part and I want to know why you agreed with it being put in.

A. I can't answer here why I agreed with that at the time. It was a long time ago.

25

Q. Was it your suggestion that it be put in?

A. I don't believe it was my suggestion, no.

Q. Who was in charge there?

A. I took the race director as being in charge of the race.

30

Q. Who is that?

A. Phil Thompson.

Q. Was it his idea?

35

A. I don't - I don't remember.

Q. What, are you saying that as far as you were concerned, you took any instructions from Mr Thompson?

A. I didn't take instructions from him but I took his advice.

40

Q. Well if he's in charge as you've just said, he's the one that tells people what will happen. Is that what was occurring or not?

45

A. In most cases, yes.

Q. When you say in most cases, what do you mean by that?

A. Well he was the head of - the race director, he ran the race.

50

Q. And you didn't assume responsibility?

A. I was there in case he needed any further assistance so we can - I could assist him or call the race committee together if needed.

55

Q. So you effectively worked under his control, is that what you say?

A. I don't believe I worked under anybody's control. I was there to assist wherever it was appropriate.

Q. Well were you in charge?

A. Mr Thompson was in charge of the race. 5

Q. And if Mr Thompson decided he was going to do something, did you ever countermand his decision?

A. I could have. 10

Q. No, I've asked you a very direct question. Did you ever countermand any of his decisions?

A. I can't recall whether I did or not.

HILL: I've nothing further from this witness. 15

STANLEY: Q. Mr Sommer, the race committee or members of it had met on the Christmas Day with the forecast for the purpose of setting up the handicaps?

A. Correct. 20

Q. You've told the Court that the committee again had a discussion about the handicaps on the morning of the race.

A. Yes. 25

Q. And at that time it was your understanding as a result of what Mr Thompson had told you that the forecast was substantially the same as it had been the day before?

A. Yes. 30

Q. Do you accept that on the morning of the race, to enable you to do the update of the handicapping or check the handicapping, it is important that you do get an update of the weather forecast?

A. Yes. 35

Q. Were you on the race committee for the previous year?

A. No.

Q. Did you have any role at all in 1997? 40

A. I may, I can't recall. I had a role in '97 I believe, yes, I did.

Q. You see Mr Gage, the senior weather forecaster from the bureau, gave evidence that in 1997 he had attended on the morning of the race and given members of the race committee an up to date briefing on the weather that took about 20 minutes for handicap purposes. 45

A. Yeah, I believe - I can actually recall that. 50

Q. And he then expected the same thing was going to happen on the morning of the 1998 race. Were you aware that he was due to come and give that--

A. I can't remember that specifically. I do recall in the year before. 55

Q. But certainly if there had been an upgrade of the forecast to a gale warning, you would have for handicapping

purposes liked to have known that if it had been available to you?

A. Absolutely.

Q. Are you able to recall now how it was that Mr Thompson got the updated forecast on the morning of the race that you discussed for the handicapping purposes, the one that you said was substantially the same as the--

A. I think it was a fax.

Q. Was that the usual manner of the race committee or the race director obtaining weather forecasts?

A. That's - yes.

Q. So it was expected that the forecasts would come by fax?

A. Yes, and it was a four day prediction.

Q. You mentioned in your statement that you saw the responsibility of the race director being to monitor the weather forecasts. What do you understand by the word monitor?

A. Well it's the special arrangement that the CYC has with the Weather Bureau where you give us regular updates and then if something unusual happens you may give us additional information if there's some major changes in the weather. That's what I understand by that.

Q. I'm not quite sure you answered my question. My question is what do you understand by the requirement that Mr Thompson is to monitor the weather forecasts? What does monitoring mean to you?

A. Well monitoring means more than that. The understanding of the word monitoring the weather would be he's listening in to the radio or other means.

Q. It means that he must make himself aware of the forecasts as they are issued?

A. Yeah.

Q. One way or another.

A. Yes.

Q. Primarily by fax?

A. Yes, because of the arrangement.

Q. Was there any arrangement that you're aware of as to who was to receive faxes that were sent to the sailing office or general office at the club?

A. I would expect that they would be sent to the sailing office of the club.

Q. Yes, but was there any system then within the sailing office or the general office at the club as to what was done with a fax that was received? Did anyone vet the faxes? I mean some of them may have been important, some of them may have been totally unimportant on this busy day.

A. Yes, I'm not certain what the procedure was at that time and who received the fax. It may have gone to the general

office and I would expect that would then be passed on to Mr Thompson or whoever received it.

Q. So your understanding is that whoever received it, whether in the general office or the sailing office, it would be then passed on to Mr Thompson? 5

A. Correct.

Q. The fax number at the sailing office, is that the same as at the general office? 10

A. I don't think it is, I think it's a different fax number, but don't hold me on that, I'm not - I'd have to check it.

Q. Were you at the sailing club at about 4 o'clock on the 26th after the race started? 15

A. Yes, yes, I would believe so, yes.

Q. Would you have made a phone call to the Bureau of Meteorology from the general office at about six minutes past four on that day? 20

A. No, I have never made a phone call to the Weather Bureau.

Q. Have you any idea who made such a phone call? 25

A. No.

Q. Or why such a phone call would have been made at that time?

A. No. 30

Q. You were not aware of the fact that a fax indicating the storm warning had been received - or had been sent and received at the sailing office just over an hour before that, about 2.50? 35

A. No.

Q. You were not aware of that at any time?

A. No. 40

STANLEY: Thank you, Mr Sommers.

WEBER: Q. Mr Sommer, Mr Hill asked you some questions - a question to this effect. He said to you within the context of abandoning the race, you could have called off the race and told the skippers not to turn back and told them to continue to Hobart. You recall that question? 45

A. Yes.

Q. And you answered it yes. What power - what was the source of the power that you believed that you had to direct the skippers in that way in the event that the race was called off? 50

A. Can you just repeat that or rephrase it? 55

Q. Yes, certainly. I'll put it to you again. Do you recall that Mr Hill asked you a question to this effect, that you could have called off the race and told the

skippers not to turn back to Eden but rather to continue to Hobart. Now first, do you remember that question?

A. Yes, I do.

Q. And do you recall that your answer to that question was yes? 5

A. Yes.

Q. Your answer carries with it doesn't it the proposition that you had the power to tell skippers not to turn back but rather to continue to Hobart? Do you agree with that? 10

A. Yes.

Q. Where do you believe that you would have derived such a power? 15

A. As race chairman I probably had the - I would have the authority to call the race off.

Q. But did you believe that you had the power to direct skippers about the decisions that they would make on the racetrack? 20

A. No. It would be very unwise for me to make such a suggestion.

Q. Would you have ever intruded into the decision making of skippers in a crisis such as they were confronting as to whether they continued to sail to Hobart or turn back? 25

A. Well absolutely not.

Q. You were asked various questions about where you saw yourself interacting with the race management team and especially how you saw yourself interacting with Mr Thompson. You recall those questions from Mr Hill? 30

A. Yes.

Q. I want to take you back a step. You had a race committee which comprised yourself, Mr Bruce Rowley, Phil Thompson, Mark Robinson, Howard Elliott, Bob Badenach and David Boyce? 35

A. Yes. 40

Q. Did you perceive that that race committee gave you an appropriate mix of skills to oversee the conduct of the Sydney to Hobart? 45

A. Yes.

Q. Did you see that some of the people on the race committee had skills that others didn't? 50

A. Yes.

Q. Did you see that the various strengths and weaknesses put together made an appropriate mix? 55

A. Yes.

Q. Let's start with yourself. Where did you see your skills as lying? 55

A. Largely in communication of people and getting the right team together, the right experts in the various fields so

they could work as a team, and I can take their advice and then based on that make my own decision of how to deal with a situation.

Q. You've been successful in the world of business haven't you? 5

A. Yes.

Q. You gave your occupation earlier as an executive in the motor trade or words to that effect? 10

A. Yes.

Q. Could you be a bit more explicit with his Worship about what you've done in business and what you currently do? 15

A. Well I have two Bob Jane T-Mart tyre retail stores and I employ about 16 people and I've been - I've started the first franchise in Australia myself and I'm still in that same business.

Q. When you came to the task of chairing the RCC, did you in some ways bring to bear your business skills? 20

A. Yes.

Q. In your own business do you try and harness the abilities of people who have skills that you don't have? 25

A. I think that's very important.

Q. And bring them to bear with your own skills?

A. Yes.

Q. Let's continue. Where did you see Bruce - now Bruce Rowley was the general manager of the club wasn't he? 30

A. Yes.

Q. Where did you see this - what did you see were the skills that he could bring to bear on the race committee? 35

A. Well as general manager he had a feel for the whole club function. He was as CEO at the - it was his task to implement all the board decisions, so he had a handle on how the club operates because he is responsible for all the staff. 40

Q. Can I jump back to you. You'd never done a Hobart had you?

A. No. 45

Q. Were you conscious of the need to have people on the race committee with hands-on experience of having sailed Hobarts?

A. Yes. 50

Q. You obviously saw that as a gap in your store of knowledge, agree with that?

A. Absolutely, yeah.

Q. Let's continue down the line. Phil Thompson was the sailing manager and the race director and he was a member of your race committee, correct? 55

A. Yes.

Q. What skills did you see Phil Thompson bringing to bear first at the race committee level?

A. Well he's very experienced. He has - he's done Hobart races, he's done a lot of yachting. He works for the club as sailing manager so he's got a handle on all sailing activities at the club and was very very helpful in all aspects.

5

Q. What view did you have about his experience as a blue water sailor?

A. I believe he's done a lot.

10

Q. By 1998 what view did you have of him as a yachting administrator generally?

A. I was very confident with his ability to run a yacht race.

15

Q. You might have answered my next question. What view did you have about his ability as a race director, somebody that could hands-on run the race?

A. Very comfortable with him.

20

Q. Your next member of your committee was Mark Robinson, correct?

A. Yes.

25

Q. What strengths and skills did you see Mark Robinson bringing to the race committee?

A. Well he's also a member of the sailing office staff, a paid member of the club, and his particular skill is in IMS handicapping and he has a very good understanding of that, and since that is the main handicap system we use we needed somebody like him.

30

35

Q. To your knowledge had Mark sailed Hobarts?

A. I'm not sure if he has or not.

Q. The next member of your committee is Howard Elliott. What skills did you see Howard Elliott bringing to bear on the race committee?

A. Well he is also an expert in IMS. He is a juror, a yachting juror, he is a communications expert and he's also done some Hobart yacht races.

40

45

Q. So you thought you had in Elliott someone with good blue water sailing experience as well, correct?

A. Yes.

50

Q. Then you have the two Tasmanians.

A. Yes.

Q. You have Bob Badenach. He was the immediate past Commodore of the Royal Yacht Club of Tasmania wasn't he?

A. Yes.

55

Q. What skills and what role did you perceive Bob Badenach

as playing on your committee?

A. He - his expertise was dealing with the other end of the race, the Hobart end. He was able to help organising the berthing of the yachts, the finishing, organised the volunteers to look after the yachts as they arrive and deal with all issues on the Hobart end.

5

Q. And similarly David Boyce was a Tasmanian wasn't he?

A. Same role - similar role.

10

Q. I want to ask you some questions about how you perceived the interaction between - I'm talking of the abstract level at the moment - between the race committee and the race management team. You're familiar of course in your business life with the distinction between the board who typically are--

15

CORONER: Don't lead. I've let you lead but I think on this I'd appreciate it if you didn't.

20

WEBER: Q. Is it possible for you to draw an analogy between where you believed you sat as the chairman of the race committee and the race management team from the orthodox world of business?

A. Well it is very similar to a board of directors. It's - the race committee is responsible for the policies of the club, to implement those so the race is run under the correct - under the correct handicapping system, safety, whatever is involved, and the management is the hands-on team to run the race, and the race committee doesn't really interfere with that unless they're asked for advice.

25

30

Q. Can you think of an analogy in the orthodox world of business between the relationship between the race committee and the race management team?

35

A. A board of directors in relation to a management team of a company.

Q. Did you believe that as the chairman of the race committee that you had the power if you chose to use it to override decisions of the race management team?

40

A. I believe so.

Q. Did you perceive that in the normal course that would be a power which you would be likely to exercise?

45

A. Normally not. I couldn't see any reason why I should be, should be doing that.

Q. You indicated to his Worship that you didn't hear that a gale warning had issued from the bureau during the middle of the day on Boxing Day 1998.

50

A. Yes.

Q. And you indicated to his Worship that in hindsight you wished you had have been told. Is that your evidence?

55

A. Yes.

Q. I realise it's difficult for anybody to say what might

have happened if something would have happened, but I'm going to place you in that difficult situation.

A. Thank you.

Q. Assume that Phil Thompson told you at say when you first came back from your duties on the start yacht that there'd been a gale warning issued. What do you believe you would have done? 5

A. Well I would have probably discussed it with him and my concern would have been to make absolutely certain that that information gets to the fleet at the first opportunity, which would have been the next sked. Other than that there wouldn't have been a lot I could have done. 10

Q. When you say you would have discussed it with Thompson, what would you be wanting to ascertain from Thompson? I mean he would no doubt have told you hypothetically of the bare fact of a gale warning and perhaps with some actual projected wind strengths. What would you actually want from him? 15

A. Just from - I would have asked him from his experience to explain to me how he viewed the conditions out there so I have a better understanding of that. 20

Q. And so that you'd have a better understanding of how it will impact on the fleet? 25

A. Yeah.

Q. You were asked questions in a similar vein concerning the storm warning, because as you now know that a 14:14 on Boxing Day a storm warning did in fact emerge from the bureau. 30

A. Yes.

Q. If you hypothetically were told by Thompson during the course of the afternoon on Boxing Day that a storm warning had issued from the bureau, what do you think you would have done? 35

A. Well there would have been a similar discussion to seek from him what he - what his understanding of it was exactly as being on the water in those situations, and then once again to just make certain the information is passed on to the yachts. 40

Q. Following the later hypothesis down another track, if in response to that enquiry Thompson would have said words to the effect of well Hans, it's going to be a reasonably tough Hobart but nothing that they won't be able to handle, is that style of advice something that you would accept from Thompson? 45

A. Yes. 50

Q. And in those circumstances would his Worship be correct in assuming that your only concern thereafter would be that the information be as quickly as practicable conveyed to the fleet? 55

A. Correct.

Q. Finally, you were asked some questions concerning your participation in the decision to send the reminder to the fleet - I'm now on the 27th - concerning the skippers' obligations under fundamental rule 4. Do you recall that?
A. Yes.

5

Q. And your evidence was that to the best of your recollection you did participate?
A. The best of my recollection, yes.

10

Q. Do you think you participated in a face to face way or might the participation have been by some other means of communication?
A. I cannot recall. I don't know, I don't remember.

15

WEBER: Thank you, your Worship.

CORONER: Nothing arising?

HILL: Nothing arising.

20

<WITNESS RETIRED

LUNCHEON ADJOURNMENT

25

STANLEY: Your Worship, can I just deal with some house keeping type matters. There was a letter in fact sent to you by Dr Cresswell back in March. It followed a request of the bureau and of Dr Love in particular to ascertain details of currents. I'm not sure where that letter has got to but it should be tendered in evidence if it hasn't already--

30

CORONER: I don't know that I've ever seen that. Does it ring a bell with you?

35

STANLEY: I could hand up a copy to your Worship.

HILL: I have seen it. I don't believe it's--

EXHIBIT #56 LETTER FROM DR CRESSWELL TENDERED, ADMITTED WITHOUT OBJECTION

40

STANLEY: There's also a further statement from Dr Love. It exhibits the distribution of the storm warnings which in fact already is in evidence, but it also exhibits an extract from the manual on marine meteorological services of the Royal Meteorological Organisation, which is the body that sets out the guidelines and the principles upon which weather forecasts are to be framed.

45

CORONER: Yes, that's worthwhile.

50

EXHIBIT #57 FURTHER STATEMENT OF DR LOVE TENDERED, ADMITTED WITHOUT OBJECTION

STANLEY: Your Worship, I understand there's no objection to me tendering without - at least I haven't raised it with my learned friend but if necessary we can get an affidavit

55

verifying it. It's a chronology of the broadcast of weather information for Saturday 26 December. It sets out the times at which the various warnings, gale warning then storm warnings, were broadcast by all the relevant radio stations. I cross-examined a witness yesterday, I think it was Mr Green, about the fact that I think 16 broadcasts of the storm warning between the time it was issued at 2.14 and the sked at 8 o'clock. So if I can tender that chronology. 5

CORONER: I wondered why you were doing that. 10

WEBER: I'd like to reserve my position your Worship, I haven't seen it.

CORONER: Of course, and at the end of the day it will be a matter of weight. If you want to make a submission about it - if you assert it's incorrect well let me know. 15

HILL: Speaking of that, I'm not sure whether my learned friend was here, Mr Robertson, when that notice of telephone numbers was first tendered. There was supposed to be a letter with it. There was a letter that Mr Thompson had sent to the bureau. I don't think the letter has ever been produced or if it is being produced or whether that's been actually answered. When the list of telephone numbers was put forward originally it was then asserted that this had been sent to the bureau, and there was a letter from Mr Thompson and a search was instigated, whether the letter could be found. It's annexed to all the affidavits as well, this list of telephone numbers. What's it called, the Sydney to Hobart telephone numbers. 20 25 30

CORONER: That was early in the piece.

HILL: It was very very early and it's found its way to all of the staff that's been called saying this is what I was given. It was asserted in cross-examination that this was given or sent to the bureau and by letter, but the letter was never produced, and then a search was instigated for the letter was under way and I think at one stage said we can't find the letter, and I'd like my learned friend to turn his mind to that part of the evidence sort of thing. 35 40

WEBER: I think it was before my time in the good old days. 45

CORONER: It might have been.

WEBER: I'm not quite understanding and I'll take it up with my learned friend probably Friday afternoon. 50

HILL: Something would need to be done by Mr Thompson as to--

WEBER: We'll take it on board, your Worship. 55

HILL: It was the list of the telephone numbers.

CORONER: Yes, I know. There's so many exhibits now, I

can't put my hand on it immediately.

HILL: I will speak with my friend about it.

STANLEY: If it assists, it's at transcript 36 on 15 March. 5

CORONER: Yes, that would be right. I've got it here as an exhibit. Yes, 15 March, I've got it as an exhibit.

<MARK JAMES ROBINSON(2.11PM) 10
SWORN AND EXAMINED

HILL: Q. Would you give the Court your full name please?
A. Mark James Robinson.

Q. And your address? Professional address is fine. 15
A. Professional address, Cruising Yacht Club of Australia, Newbeach Road, Darling Point.

Q. Your occupation? 20
A. I'm the sailing administrator.

Q. I think you are now the deputy IMS measurer for New South Wales, is that right?
A. I'm the chief measurer for this State and the deputy for Australia. 25

Q. The chief measurer of this State?
A. This State.

Q. Who was before you? 30
A. David Kellett.

Q. Perhaps if you could keep your voice up slightly.
A. Sorry. 35

Q. That doesn't amplify, that just records. How long have you been working in the CYC?
A. I've been working for the club since mid-1994. 40

Q. How long in the sailing office?
A. Since June 1996.

Q. Under the sailing manager, working under him?
A. Working under the sailing manager, yes. 45

Q. That's Mr Thompson?
A. Yes, that's correct.

Q. He gives you orders and you obey? 50
A. Yes.

Q. That's basically how it runs?
A. Normal management structure, yeah.

Q. You know that there has been a problem with the Business Post Naiad, its certificate did not meet the requirements? 55
A. I'm aware of that.

Q. Fully aware of that. In your first statement there's a bit of difficulty in what is a valid or a current certificate, you seem to be--

A. This is my police interview?

Q. Yes.

A. I got a bit flustered in the interview and we actually stopped the interview to go and get the appropriate documentation.

Q. One thing that does come through though, and this was at page 52 of that - I'm sorry, do you have copies of this?

A. I don't have the police interview, I have my statement that's been tendered.

Q. I'll try and get you a copy now, I want you to look at this. I want you to go to page 42 first and that's your statement of 19 October 1999, that right?

A. Page 42.

Q. You see there you were being asked about IMS certificates and in answer to question 331, which is yeah, which appears to be a follow-on from various other ones, you say "no, that was not, not my responsibility. That's not your responsibility? The answer is no." That was the chasing up of IMS certificates, do you accept that?

A. Yes.

Q. So it wasn't your responsibility?

A. No.

Q. Then at page 43 you say "but I was not involved in the chasing up of that end so to speak," and again you were talking about IMS certificates?

A. I'm talking about all documentation by the way.

Q. It just wasn't your responsibility?

A. No.

Q. In his latest statement - have you seen the statement of Mr Thompson?

A. No.

Q. No question in your mind that the IMS certificate of the Business Post Naiad should not have been in the race?

A. I was aware of the problem post-race.

Q. Yes, after the race.

A. And I'd have no question.

Q. This is what Mr Thompson says in his latest statement and this is at page 12, paragraph 46. "In the weeks after the close of entries, yachts submitted outstanding entry documentation. As that documentation came into the sailing office, it was the practice in the sailing office for the person who received that documentation to" - he talks about "(1) put safety and radio certificates and any other documentation relating to safety in Lawson's tray for his

review, approval and ticking on the 1998 chart." And "(2) put current IMS and CHS certificates on Robertson's desk for his review, approval and ticking on the 1998 chart." Now what do you say to that?

A. I was of the opinion that they had already gone through some sort of vetting process with Mr Thompson. 5

Q. Then he goes a little step further at paragraph 47. He says "to reduce the risk of errors, only certain persons in the sailing office were allowed to fill in the different columns in the 1998 chart. Only Holt or I" - that's Thompson - "filled in the columns relating to entry fees, advertising, crew lists and class and insurance. Only Robinson ticked the certificate column." 10

A. That's incorrect if you actually look at the chart. 15

Q. What do you mean it's incorrect?

A. There are different ticks from different people on the chart.

Q. Perhaps I'll put it to you quite bluntly. The way I read this is that Mr Thompson is saying that as far as the IMS certificates checking were concerned, you were the person to do it and then you ticked the column. Now what do you say to that? 20

A. I was never instructed to vet certificates by Mr Thompson. 25

Q. So that's wrong?

A. That is my belief. 30

Q. Well in fact if we go back to your original statement, page 52, you were asked this question at 417. "mark with the A3 sheets that were set up to keep a track on the records that came in." That's the ticks isn't it that we're talking about? 35

A. Yes.

Q. "For entries into the race were you given any formal instructions on what to do with the board? Answer, don't tick anything off." 40

A. Yes, that's correct.

Q. "You were told not to tick anything off?" that was the question, you answered "yes." You were asked this question, "okay, who gave you those instructions? Answer, Phil from recollection." 45

A. That's correct.

Q. Your memory would have been much better when you gave this original statement wouldn't it? 50

A. I don't believe so.

Q. 19 October 1999?

A. I believe I went into the interview quite blind and hadn't thought about as much as we have with the current statement that's tendered before the Court. 55

Q. Are you saying that you weren't instructed by Mr Thompson not to tick anything off?

A. No, I do recall that specifically.

Q. You were told not to?

A. Yes.

5

Q. So when Mr Thompson says that it was your job to tick off the IMS certificate column, that's not true is it?

A. No, not to my knowledge.

10

Q. Whose job was it?

A. I believe it was under the instructions of Mr Thompson that we would - and I think it's covered in my statement of 7 July, that at any given time the person who may have been responsible for ticking off things may have asked another member to tick them off for them while they read from a folder or something similar.

15

Q. Whose job was it to check the IMS certificates with regards stability?

A. I don't believe it was my job.

20

Q. I didn't ask you that. Whose job was it?

A. I believe it was Mr Thompson's job.

25

Q. I'm going to move to your latest statement. Before you gave this statement did you discuss the contents of it with anyone?

A. With our legal representation.

30

Q. Did you discuss it with Mr Thompson at all?

A. No, not in detail.

Q. What did you discuss with him about it?

A. I may have gone searching for answers to questions that I wasn't quite sure of from him, to quiz his memory as much as mine.

35

Q. If we go to page 6, I'm looking at paragraph 35. "It was my understanding that Holt and Thompson dealt with the entry forms put on their desks as follows. They would read the entry form and check if an entry fee, insurance certificate et cetera and IMS or CH certificate were included." And then we go down to subparagraph (3), "any current IMS certificates would be given to Thompson who would check they complied with the notice of race and if so either tick the certificate column on the 1998 chart and then put the certificate on my desk for filing in the IMS folder." That is the evidence that's in your statement and that's exactly what was supposed to happen?

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45

50

A. That's what I believe.

Q. No question of any mix-up or anything like that is there?

A. That's what I believe was the process that was happening.

55

Q. Well you were told that that was the process because you'd been told that Mr Thompson was to look at those and he would tick the columns?

A. I'm not sure of what the question--

Q. Well you were sure that that was the system - it's not what you - when you say I believe that that was the system, what do you mean by that?

A. The system has since changed for the 1999 race, so at the time of preparing this statement I delved into my memory to try and recollect what actually happened, and that was the system that I believed was in place.

Q. In the weeks after the close of the entries you would put - and as documents come in you would put current IMS certificates on Thompson's desk for his review and approval. I'm looking at paragraph 37. After Thompson approved the certificates he put them on your desk for filing in the IMS folder. So there's no question in your mind as to who had to do what?

A. No.

Q. Your job, as I understand it, you were part of the race management team?

A. That's correct.

Q. Did you attend the briefing on I think it was the Friday, it was the 24th?

A. Yes, I did.

Q. Then you got together with other people on the 25th, on Christmas Day?

A. Yes, that's correct.

Q. Who was there, can you recall that?

A. From memory I know that Mr Thompson was there. There were other people there but I can't recall specifically who they were.

Q. What was the purpose of getting together on that day?

A. The purpose of getting together on that day is to construct the IMS course, to issue handicaps for the IMS boats in the fleet.

Q. You being skilled in IMS measurement, you were the one that worked out the handicap, is that right?

A. No, it was my skill in IMS scoring--

Q. IMS scoring is it?

A. --that was being utilised.

Q. So you would work out the handicap for each vessel?

A. That's correct.

Q. Do you recall what the weather was?

A. Not specifically, no.

Q. We heard that you don't do anything with the winds if

they're above 20 knots, is that right?

A. Yes. The IMS system, international measurement system, only deals in scoring terms with winds from six to 20 knots.

Q. Having done that, did you do anything else with regards the race on the 25th, or did you go home or what? 5

A. We may have done menial tasks, I'm not sure.

Q. The next day, what time did you come on duty?

A. This is Boxing Day? 10

Q. Boxing Day, yes.

A. Boxing Day, it would have been six or seven in the morning, quite early. 15

Q. As part of the race management team, what position did you occupy?

A. On the 26th?

Q. Yes. What was your tasks? 20

A. My tasks on that day were - we had to sit down and review the course construction and post handicaps prior to 9 o'clock in the morning, which from recollection we did, we do it every year. I'm not sure whether we made any changes or not, I can't recall. I would have been in and out of the office preparing for the start, organising to have the buoys inflated and so forth. 25

Q. Did you go out on the water at all?

A. I did. 30

Q. What time?

A. Eleven-ish.

Q. Did you see the updated weather forecast, the gale warning? 35

A. I knew that the Weather Bureau had brought an updated forecast. I can't recall when and if I read it, but I knew that there was stuff being photocopied, so-- 40

Q. Do you think you read it or you just heard about it?

A. I can't honestly recall.

Q. You were out on the water from about 11 o'clock did you say? 45

A. Mm hmm.

Q. Until when?

A. Two-thirty sort of thing. 50

Q. Where did you go at 2.30?

A. It would have been back into the office.

Q. Which office?

A. The sailing office. 55

Q. What was your specific task with the sailing - the race management team?

- A. Some of the tasks that I was to perform was to produce progressive results at the conclusion of each sked, to liaise with the Telstra website and to provide them with updates, to assist Mr Thompson, Mr Elliott with the overall conduct of the race. 5
- Q. I don't want to appear demeaning or anything, but were you the lowest rung in the ladder as far as that team was concerned?
- A. I was the one that had done the least amount of Hobarts on the race management team. 10
- Q. Were you looked upon as the junior member?
- A. To some degree, yes. 15
- Q. I want to suggest to you primarily your task was to work out the handicap and--
- A. Associated. 15
- Q. Is that correct?
- A. Primarily, yes. 20
- Q. There was nothing after that that was actually set down, you just--
- A. Yes. 25
- Q. --helped as it were when you were told or you saw a need?
- A. Gave my opinion or helped in certain tasks. 30
- Q. When you got back into the office, that is the sailing office--
- A. Yes. 30
- Q. --and I'm talking about the 26th, about 2.30 did you say?
- A. Somewhere around that time, yes. 35
- Q. Round about that time. Did you see an updated weather forecast?
- A. I can't specifically recall right now. Chances are that I would have seen it or I would have heard about it from another member of the race management team. 40
- Q. You know that there was a storm warning?
- A. Yes, I was - I was aware of that. 45
- Q. When did you become aware of that?
- A. I believe it was that afternoon. 50
- Q. Do you recall how you became aware?
- A. No, I don't, whether I physically read it or heard it from someone else. 50
- Q. What does a storm warning mean to you? What did it mean to you then?
- A. Storm warning was actually - obviously meant an impending storm. If a storm warning was issued I was more 55

concerned with the wind speeds indicated in the forecast.

Q. Did you realise that this was the highest warning that the Weather Bureau would give?

A. I thought there was one above, above that, but I-- 5

Q. What did you think was above that?

A. A cyclone warning or something similar.

Q. So is it fair to say you weren't familiar with this warning system? 10

A. Not overly familiar, no.

Q. What was it, you would look at the winds?

A. Yes. 15

Q. And that meant more to you than a title?

A. Yes.

Q. Is that basically it?

A. That's correct. 20

Q. Do you recall anyone discussing the storm warning in the sailing office?

A. On that afternoon? 25

Q. On that afternoon.

A. No, not specifically, no.

Q. There was nothing that springs to mind that caused concern with anyone or anything like that? 30

A. No, not that I recall, no.

Q. Were you there for the sked?

A. Yes. 35

Q. That was at 20:00 hours, is that correct?

A. 20:05.

Q. You listened to that?

A. Yes, I believe I did. 40

Q. The weather that went out didn't mean very much to you or what?

A. In preparing my statement I tried to recall this and I don't actually recall hearing the weather. That could have been for a number of reasons. 45

Q. Did you listen to the 3 o'clock sked?

A. Yes. 50

Q. Again the weather, anything that jumped out at you as it were?

A. No.

Q. Nothing at all, all right. Do you recall what time that would have finished? 55

A. Which sked?

Q. The 3 o'clock sked.

A. The 3 o'clock? Skeds with a 115-boat fleet would generally be 40 minutes to an hour.

Q. Did you remain at the CYC? I take it that's where you were listening to this? 5

A. Yes. At 3am? Yes, I remained at the CYC.

Q. Then what did you do after the sked had finished?

A. Immediately after position reports are done I go straight into producing results. I would have then started packing up and preparing to fly to Hobart that morning. 10

Q. What time did you leave for Hobart?

A. I think we were on a 10 o'clock flight. 15

Q. You say we?

A. I was with Mr Thompson.

Q. Between preparing the scoring as it were and the 10 o'clock, what did you do? 20

A. Just various menial tasks, packing up and preparing to go to Hobart.

Q. Did you check on the weather at all? 25

A. No, I don't believe I did.

Q. Was that because it wasn't your task or what?

A. I believe that the weather that we - the system that we had with the bureau whereby we paid for race forecasts, if they came in they came in by fax, and if Mr Thompson was there he normally read them. If there was anything that gravely concerned him he would mention it to the other people. 30

Q. Do I take it that as far as you were concerned, 35

Mr Thompson as the race director was the boss, that was it?

A. In immediate minute to minute management terms, yes.

Q. You would have left-- 40

CORONER: Q. Before we go to that, can we go back to the 26th. You had a meeting with the race management team about - a second meeting on the update of conditions for the handicapping, is that right? 45

A. Yeah, I believe it would have been more members of the race committee, not necessarily--

Q. Can you remember who was there?

A. Most certainly it would have been myself and Mr Thompson, possibly Mr Sommer. Above that I cannot recall. 50

Q. Was there a representative of the Bureau of Meteorology? 55

A. No.

Q. Was there any discussion about whether the Bureau of Meteorology representative ought to be there or wasn't

needed?

A. No. From memory I believe that Mr Thompson either contacted or - by phone or got a latest fax of the weather. This is prior to 9 o'clock in the morning.

5

Q. And that was used instead of a member of the BOM?

A. You're basically checking to make sure that there's nothing dramatically changed from what we initiated the day before, remembering that IMS only - IMS scoring only goes to 20 knots.

10

HILL: Q. Have you got your latest statement there?

A. Yes, I do.

Q. Could you go to page 11, and I'm looking particularly at paragraph 55. Have you read Mr Sommer's statement?

15

A. No.

Q. There's a certain similarity between the paragraphs. Is this your paragraph?

20

A. By what do you mean?

Q. I mean is this your statement, and you said "the race management team under the direction of the race director had the following responsibilities." Now stop and look up. Tell me what they are?

25

A. The following responsibilities?

Q. Yeah.

A. Sorry, the race management team?

30

Q. Yeah, that's right. See what I'm trying to get at is whether someone's told you to put this down or whether you actually know from your own knowledge what the--

35

WEBER: Is that a question or a speech, your Worship?

CORONER: Wait a second. Go back again. Do you want him to recite them?

40

WITNESS: If you could repeat the question.

HILL: Q. I want to know whether this statement comes out of your own knowledge or whether someone else has put this in for you.

45

A. Okay. This statement was prepared from discussions I had with our legal representation.

Q. Well tell me what the responsibilities were.

A. Of the race management team?

50

Q. Yeah, the race management team.

A. The race management team oversees the day to day, hour to hour conduct of the race. We liaise with regulatory bodies such as AMSA, the police, we liaise with the radio relay vessel, we liaise with the press centre, we produce sked results and just oversee the conduct of the race from minute to minute.

55

- Q. What about monitoring the weather forecasts received from the BOM?
A. Yes, that would be another task.
- Q. What did you do about monitoring them? 5
A. We--
- Q. No, not we.
A. Sorry, not we. What did I specifically do? 10
- Q. Yeah.
A. I relied on the forecast being faxed to the predetermined numbers by the Weather Bureau, the special race forecast. If they were faxed to our race centre in Hobart and I was the only person there, I would have picked it up and read it, and if it caused me concern relayed that to the race director. Conversely if the race director was in the room, normally he would read it and the converse would happen. If he had concerns he would relay that to the rest of the team. 15 20
- Q. And is that what happened?
A. Generally, yes.
- Q. Let's go back to - what time did you leave on the 27th to go to Hobart? 25
A. To Hobart?
- Q. Mm.
A. A 10 o'clock flight I believe. 30
- Q. So you would have left the CYCA at what time?
A. Maybe 8 o'clock.
- Q. Do you recall receiving a radio message from Lew Carter asking for a weather update? 35
A. Not specifically, no.
- Q. Not specifically, but if it appears in his log you'd accept that that actually occurred? 40
A. I can't assume otherwise.
- Q. Well if I recall correctly, I will drag it out shortly, but one of the yachts asked for a weather update, they radioed to you and you came back and said that the next weather update would be at 13:00 or 13:30. Does that ring any bells with you? 45
A. A little bit, yeah.
- Q. A little bit, and this was fairly early in the morning, obviously before you left? 50
A. This is the 27th.
- Q. Yes, on the 27th. Do you recall anything at all about that? I know you've said it rings a bell. 55
A. Mm.
- Q. You see it was 05:45, requested CYC Mark to get weather

update for fleet. 05:50 CYC advised next weather 13:00.
Would you have done that?

A. If that's what the log says.

Q. Would you have phoned the Weather Bureau?

A. No, I don't - I don't think so.

Q. Or would you have tapped into one of the systems that we're told are available to get the latest weather forecast?

A. I might have done that.

Q. What would you have done then if you'd got such a call?

A. Can you repeat the - what they called for?

Q. Requested CYC Mark to get a weather update for fleet, and you've come back five minutes later, CYC advised next weather 13:00.

A. That would have been the next scheduled update from the bureau.

Q. So are you saying that if Carter, relaying something from one of the vessels in the fleet, contacted you at quarter to six in the morning for a weather update, you would come back and tell them that they're not going to have one for some what, seven hours?

A. I can't recall the incident specifically. I may have either polfaxed something or looked up something or I may have just gone back, as I said. I can't recall the incident specifically.

Q. Well were you instructed how to get weather forecasts?

A. I knew how to polfax.

Q. Do you know about Wilsons Promontory?

A. I know where it is.

Q. You know that there's a wind station there? Did you know then?

A. I didn't know specifically. I would have assumed that there was one.

Q. Do I take it then that the only weather knowledge as far as you were concerned was that to be supplied by BOM?

A. My understanding was the reason that we entered into a contact with BOM was for them to provide us the latest and best weather specifically for the fleet.

Q. And you were not told or instructed that you could get weather from other sources?

A. As I said, I knew how to polfax weather from the various BOM sources.

Q. You knew how to do that then?

A. Yes.

Q. You've got a request from Young Endeavour to get a weather update for the fleet and you tell them 13:00. That's not satisfactory is it?

A. I - as I said, I can't recall the incident. I may have polfaxed something and looked at it, compared it to the previously issued special race forecast and said that there was nothing different between the two, but I can't - as I said earlier, I can't specifically recall the incident. 5

Q. I'm going to suggest to you at that stage that had you polfaxed other places you would have seen that the wind was rising, certainly at Wilsons Promontory.

A. That could be the case. 10

Q. Did you consult with anyone? Was Mr Thompson there at 05:45 hours on the 27th?

A. I know he was there early in the morning. He wasn't there for the sked. Exactly what time he arrived I don't - I don't know. 15

HILL: That's exhibit 24C if anyone is--

CORONER: Yes, I know. 20

HILL: Q. Who did you go to Tasmania with, to Hobart?

A. Mr Thompson.

Q. Who was left in race control at CYC? 25

A. I can't recall specifically who was left there. It may have been Miss Holt may have been in that day.

Q. The reality is you don't know?

A. No. 30

Q. Well where was race control centre once you and Thompson had gone, where was race control centre?

A. Mr Hughes and Mr Elliott had previously gone earlier that day to enable - to stop the so-called overlap of people in the air. 35

Q. He'd gone earlier that day? What time?

A. I can't recall specifically. 40

Q. Well when you left you must have left at what, quarter past nine, 9.30?

A. For a 10 o'clock flight?

Q. For a 10 o'clock flight. 45

A. Probably 9 o'clock.

Q. Sorry?

A. Probably 9 o'clock. 50

Q. Well what I want to know is who then or where was race control once you'd left that particular position? Who then is in charge as far as you're concerned?

A. I would still say either Mr Thompson or Mr Sommer. 55

Q. I'm sorry, would--

A. I would still say either Mr Thompson or Mr Sommer.

Q. Either Mr Thompson or Mr Sommer?

A. Yes.

Q. But if you're getting on to an aircraft you can't have your mobile phone.

A. That's true.

5

Q. So you're going to be incommunicado for that period of time.

A. That's true.

10

Q. Well what I'm trying to find out is, if I need to get an urgent message, once you're on your way to the airport and you go in and you switch off your mobile phone as does Mr Thompson, who do I speak to? Who can I contact?

A. Mr Sommer.

15

Q. Mr Sommer. But he's not part of the race management team?

A. No, but if you go up, if you escalate up the scale of the hierarchy of the organisation, he's the next one higher.

20

Q. But I want to deal with the race management team.

A. Okay, you could have contacted Mr Elliott or Mr Hughes.

25

Q. Where were they?

A. They went to Hobart earlier that morning.

Q. But do you know that they're there? If you've left at 9 o'clock--

A. We would have been calling people backwards - we would have been calling them backwards and forwards as we generally do throughout the race.

30

Q. So are you saying on oath that when you left at 9 o'clock, the race control centre under the guide of the race management team was fully set up in Hobart at 9 o'clock?

A. Are you talking personnel or talking the whole setup and equipment?

35

Q. I'm talking - well who are the personnel of the race management team?

A. Myself, Mr Thompson, Mr Elliott and unofficially Mr Hughes.

40

Q. Well let's leave Hughes to one side so we're looking at Mr Elliott, Thompson and yourself. Is that right?

A. Yes.

45

Q. At 9 o'clock when you leave, are you able to say that the race management team was fully set up in Hobart and that was Mr Elliott?

A. No, because the team is a team of three people.

50

Q. Well part of the team.

A. From memory, yes.

55

Q. From memory, yes?

A. Yes, I was of the belief, still of the belief that he flew earlier that morning and therefore would have already been there.

Q. So as far as you were concerned, if anything comes up, Mr Elliott is in charge in Hobart? 5

A. Yes.

Q. So that if there is a facsimile handed to the race management team in Hobart that arrives there at about 7 o'clock that morning which shows 71 knots at Wilsons Promontory, that it will be Mr Elliott who will have that? 10

A. It depends where it comes into. If it came into the race control centre in Hobart I believe it would have been passed to Mr Elliott. 15

Q. So that was how you would see the situation?

A. Yes.

Q. So if Mr Honeysett says that he passed that to the race control centre and also brought it to the attention of Sam Hughes, that would have gone into the race management team member, Mr Elliott? 20

A. I would believe so, yes.

Q. And that's what you would expect to be done? 25

A. Yes.

Q. What time did you arrive in Hobart?

A. We were delayed in Melbourne for some period of time and we arrived either immediately at the beginning of the sked or some time shortly into the 14:00 sked. 30

Q. Through the 14:00 sked. Not before? 35

CORONER: He said maybe just before.

HILL: Maybe just before.

CORONER: Or into it, just into it. 40

WITNESS: I know we were delayed in Melbourne.

HILL: Q. Well what was it like when you arrived? Describe the circumstances. 45

A. When I arrived at?

CORONER: Race control.

HILL: Q. At the race control centre. 50

A. Mr Hughes and Mr Elliott were already there listening to the sked, and we would come in and as with normal with most skeds there's complete silence in the room so you could hear it. People were listening to what was going on on the radio. 55

Q. What's the first thing that struck you that you can recall?

- A. I can recall Sword of Orion's wind speed indication.
- Q. What did that convey to you?
- A. That gave me a little concern. 5
- Q. A little concern?
- A. Mm hmm.
- Q. Why?
- A. One wind speed observation in isolation doesn't mean a lot. It has to be quantified. Well it could be a freak gust. Five miles apart from another yacht with 40 knots. 10
- Q. It was confirmed by someone else though wasn't it, another vessel almost immediately thereafter?
- A. I'm not sure. I don't recall it. 15
- Q. You don't recall that?
- A. No. 20
- Q. Well was there any concern displayed by anyone else in the room?
- A. Yes, I believe so.
- Q. Who? 25
- A. Mr Elliott, Mr Thompson.
- Q. What did they say?
- A. I can't recall specifically what they said. 30
- Q. When you say you can't recall, is it because you weren't part of the discussions or what?
- A. No, we were all in a small room, so any discussions you overhear. It may have been that they had - because the sked was ongoing they might have been whispering in a corner. That could have been the case. 35
- Q. What happened then?
- A. I believe someone, and I'm not sure who, rang Young Endeavour and asked them to remind the skippers to take heed of the weather. 40
- Q. Tell us about how that came about. Were you part of the discussion about that?
- A. I can't recall specifically. As I said, it was a small room and it was likely that I was. 45
- Q. You've heard evidence from Mr Sommer?
- A. Yes. 50
- Q. Says he arrived at about five-ish. Would that accord with your memory?
- A. I can't remember when Mr Sommer arrived.
- Q. Do you recall how it came about that this broadcast was to be given to the fleet? 55
- A. There would have been a discussion within the race management team.

Q. Do you recall participating in that discussion?

A. I've answered this question before. I don't recall specifically being involved in that discussion, but it is likely that I was.

5

Q. It's likely that you were?

A. Being in a small room with a small group of people.

Q. Do you recall who instigated this discussion?

A. I believe it was Mr Thompson.

10

Q. Why do you believe that?

A. Because he's the race director. He is for all intents and purposes the head of the race management team.

15

Q. What do you recall him saying?

A. I don't recall the specifics of the conversation.

Q. But do you think he instigated it?

(No verbal reply)

20

Q. And what happened then?

A. As I previously stated, someone from our team contacted Telstra Control on Young Endeavour and asked them to relay to the fleet to take heed, prepare themselves and look out as to whether they are in a fit state to continue.

25

Q. Do you recall the first casualty of this race, which one it was? Sword of Orion, Winston Churchill, what was it?

A. No, it wasn't those.

30

Q. Well when did you start to become--

A. I think - yeah, I think it was immediately after the sked or maybe at the end of the sked.

35

Q. Yeah, what?

A. There was a - there was a call from a boat.

Q. I think later on it was raised by Sam Hughes that perhaps the race should be called off as that was considered the prudent thing to do by Canberra. Is that right?

40

A. I recall it being raised by Sam later that day.

Q. Look, go to paragraph 87. That's the reason that you give for not calling the race off, is that right?

45

A. Yes, that's correct.

Q. I'll just find you - can you tell us what those advantages are? You say there for instance that from the weather update we had received we understand the winds were expected to abate over the next 24 hours. Did you see that weather update?

50

A. Yes, I believe I did.

Q. Well you must have surely. You're basing the reasons--

55

A. I just said yes.

WEBER: I object to this, your Worship. There's an

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underlying premise here that the update is something that's capable of being looked at and that hasn't been established. It's unfair to put to him had you seen the update.

CORONER: Very well.

5

HILL: All right, I withdraw the question.

Q. Did you know of the update?

A. I know that at the time that Mr Hughes asked us to consider it that someone within our team obtained an update.

Q. You then say it was of no advantage to the fleet if we abandoned the race because the fleet was already in the storm and we could not remove them from that situation. 5

A. That's correct, we couldn't turn the wind off.

Q. And the skippers were in the best position to assess their yacht, crew and the weather conditions to make a decision based on their particular circumstances as to the safest manner in which to proceed. 10

A. That's correct.

Q. If we abandoned the race, we may have caused the fleet to act differently than they would have otherwise and as such to their detriment. Such as what? 15

A. They may have instinctively turned around and headed back for mainland which may not have been the best course of action. 20

Q. That's a serious answer, is it?

A. Yes.

Q. Look, go back to 3, the skippers were in the best position to assess their yacht, crew and the weather conditions and to make a decision based on their particular circumstances as to the safest manner in which to proceed. 25

A. That's correct. 30

Q. They're the ones?

A. Yes.

Q. In the next sentence you state that if you'd called it off they might have all done the wrong thing? 35

A. Yes, that's a duty of care that we have to consider.

Q. Look, in number 3 you give to the skippers the knowledge to know what is best in their circumstances? 40

A. Yes.

Q. And to do the correct thing in the preservation of their vessel and their crew, because they are the people on the ground. That's correct, isn't it? 45

A. That's correct.

Q. In the next statement you say that if you'd called off or abandoned the race they might have done the wrong thing. 50

A. Yes, that was a concern.

Q. Look, do you see that in 3 you give them all the common sense in the world and in 4 you say that if you say we abandon the race they somehow lose that common sense? 55

CORONER: Q. Like lemmings, they go over the cliff, all of a sudden? You see the point Mr Hill's putting to you?

A. I sort of see the point. The concern is that yes, at

the end of the day the skippers are (a) ultimately responsible and (b) in the best position to assess that. However, if we changed the goal posts so to speak it may in turn make them act differently.

Q. But you're only telling them that the race is over?
A. That's correct.

Q. You're not telling them to go back or anything?
A. No.

HILL: Q. Did you think at all that perhaps AMSA, the rescue people, had reached a position where they could no longer rescue people? Did that enter into the equation?
A. That didn't enter into my mind because I would have assumed that Mr Hughes, if that was the case, would have told us so as AMSA's representative.

Q. But according to the AMSA representatives and to Mr Hughes they felt so, if you like, concerned about this situation they were going to actually put it in writing?
A. I had no knowledge of that at the time.

Q. Were you actually consulted about whether or not to abandon or call off the race?
A. Yes.

Q. You say you were?
A. Yes.

Q. So you accept responsibility for that decision, is that what you're saying?
A. As part of the team, yes.

Q. As part of the team. Now it wasn't just Mr Thompson's decision?
A. No, I don't believe so, I believe the reasons that I listed in point 87 were the consensus that came out of the discussion we had.

Q. Why didn't you inform the police in your first interview of all those reasons?
A. Why didn't I?

Q. Yes.
A. As I said previously the police interview that I had was reasonably on the spur of the moment and I hadn't had time to sit down and think about my recollection.

Q. Were you flustered or something?
A. I did throughout the interview get a bit flustered, it was the first time I'd been interviewed by the police.

Q. Because it came suddenly?
A. Yes, I hadn't had time to sit down and think out like I had to do in preparing the statement.

Q. You didn't have time to sit down and think when you had

this crisis as part of the team, the race management team, did you?

A. That's true, in any crisis there isn't a lot of time to think.

Q. But you actually sat down and formulated those reasons?

A. Yes.

Q. As to why the race shouldn't be abandoned and then you were flustered so you didn't tell the police about it when they interviewed you some time later and then you brought them out in your latest statement?

A. Yes. I'm not sure whether even that question was asked in my police interview.

HILL: Perhaps if the witness could be shown the statement of Mr Sommer, the latest statement.

CORONER: I've got a copy here.

HILL: I'm also going to show him the latest statement of Mr Thompson.

CORONER: Q. I appreciate that you are unused to dealing with the police in a record of interview situation but you're not suggesting they were playing hardball or anything were you?

A. No, it was a reasonably friendly chat, I just wasn't used to the situation.

Q. We've heard a lot of evidence actually from a number of people that they were anything but like police officers are, the usual concept of police officers interviewing or interrogating people.

A. It was a - not a totally pleasant experience--

Q. I understand that.

A. but I'm not suggesting for one minute that they weren't straightforward.

HILL: Q. You've got your own statement in front of you?

A. Yes.

Q. I'd like you to turn to page 14, paragraph 49. You see that?

A. In my own statement?

Q. In your own statement.

A. Yes.

SPEAKER: ..(not transcribable).. paragraph 49 in my--

CORONER: No.

HILL: I'm sorry?

CORONER: Paragraph 69.

HILL: I might have--

Q. Yes, I do beg your pardon, it's paragraph 87 of your statement.

A. In my statement?

5

CORONER: That's not page 14, that's page 18.

HILL: No, I've got the wrong one.

10

CORONER: Right, the one we were just talking about.

HILL: Q. Do you have Mr Sommer's statement?

A. Yes.

15

Q. Page 14, paragraph 49. See that?

A. Yes.

Q. You've got Mr Thompson's statement, his latest statement?

20

A. Yes.

Q. Page 28, paragraph 125.

A. Yes.

25

Q. Have a look at those, you'll see that they are remarkably similar?

OBJECTION (WEBER).

30

Q. Do you agree or not?

OBJECTION (WEBER). UNFAIR QUESTION. QUESTION ALLOWED.

Q. They're similar, aren't they?

35

A. There are portions within them that do look similar yes but by far - actually there's some reasons in some of these statements that I would wholeheartedly agree with which aren't in mine.

40

Q. You did not tell these - your reasons to the police?

A. I don't believe so at the time of the interview, no. I can't think--

CORONER: You can return those to the court officer and I'll actually have Mr Sommer's back, that's my copy. There you are, you should have faith in the witness you see, Mr Weber. He did pretty well with that, his answer was pretty good.

45

SANTAMARIA: Could I ask the witness to retain them just--

50

CORONER: Mr Sommer's statement as well?

SANTAMARIA: No, just Mr Thompson's.

55

CORONER: Mr Santamaria, do you have some questions?

SANTAMARIA: Yes, I do, your Worship, brief questions.

Q. Mr Robinson, I'm going to ask you some questions on behalf of the Weather Bureau. This question of the preparation of your witness statement, I want to ask you some more questions about that.

A. Yes.

5

Q. When you were asked to prepare the witness statement, how did you go about it?

A. I had numerous conversations with our legal representation, they asked me various questions which - the answers to which are contained in my statement.

10

Q. Did you do a draft in your own words and hand that draft to your legal representatives?

A. No, not my own words, I was handed a draft and made major and minor amendments as I saw the statement should be.

15

Q. Without telling me the content of the discussions between you, because they're privileged, tell me though at what point in the discussions you were handed a draft? At the beginning of your discussions with the representatives?

20

A. I couldn't have been handed a draft at the beginning because we hadn't had discussions.

Q. That's what I'm asking you.

25

A. No, that was not the case.

Q. Did you read the contents of any other witness statement before you signed off on your own?

A. No I did not.

30

Q. You're sure about that?

A. Yes I'm positive.

Q. You said before that you - in answer to Mr Hill's question about whether you had any discussion with others about the contents of your statement, you said you spoke to Mr Thompson but not in detail. What did you mean by that?

35

A. I would have spoken to other people as well.

40

Q. Just Mr Thompson at the moment.

A. With Mr Thompson? I might have been asking him questions about certain things to try and jog my own memory.

Q. With a view to improving the quality of your witness statement?

45

A. No, actually.

Q. For what purpose?

A. Just for the purpose that I'm up here now, try to best recollect the events that happened.

50

Q. So does it follow from your answer that to some extent you've been assisted by Mr Thompson's recollection of the events we're talking about?

55

A. Not directly I don't think. It served to reinforce some things that I had believed had happened.

Q. What did he tell you that was able to reinforce your own beliefs?

A. I might have asked him pointed questions about do you recall that we did this.

5

Q. Did you ask him about do you recall the receipt of the various warnings on the starting day of the race, Boxing Day?

A. I don't believe I spoke to him about weather forecasts.

10

Q. Wasn't that something that interested you in your discussions with Mr Thompson?

A. No, actually I - in preparing my statement I read all forecasts that have been collated for this inquiry.

15

Q. You didn't read them at the time but you read them in the preparation of your witness statement?

A. Yes.

Q. If I suggested to you that there is a remarkable similarity between your witness statement and Mr Thompson's when it comes to the analysis of special race forecasts, would you firstly accept that that was the case?

20

A. I haven't read his statement so--

25

Q. Not having read his statement and accepting what I put to you that there is a similarity, I shouldn't have said remarkable, similarity between the two, you wouldn't be able to assist the Coroner in understanding how that came to be?

A. I think that you have to understand that Mr Thompson and I actually work together 365 days a year and consequently our thoughts on weather forecasts might somehow over a matter of years come to a general consensus where we both agree.

30

35

Q. Would you not have had many, many discussions, given that you work with him 365 days a year, about the weather forecasts in the year that followed the '98 Sydney to Hobart yacht race?

A. I'm sorry, I don't quite follow the question.

40

Q. I said that clumsily. After the conclusion of this race in 1998, would you not have had many discussions with Mr Thompson about the content of the weather forecasts that had been issued at the time of the race and during the race?

45

A. I think immediately post-race we did.

Q. You did?

A. I think we had conversations about what had been forecast immediately post-race.

50

Q. Did you tell him - did you raise with him the question of the storm warning which had been issued?

A. I can't recall specifically.

55

Q. It's a critical weather fact wasn't it at the time?

A. Sorry? That the?

Q. A critical fact that the storm warning had been issued on Boxing Day about an hour after the yachts started the race?

A. Uh hmm.

5

Q. Was that not something that you wanted to talk to Mr Thompson about?

A. Post-race?

Q. Yes.

A. I would think so, I can't recall.

10

Q. You can't recall the conversation?

A. I can't recall specifically, no, about that.

15

Q. Do you recall any discussion with him?

A. I recall that we discussed the weather immediately post-race.

Q. And did you ask him when he became aware of the storm warning?

A. No, I can't remember that exact--

20

Q. Can I suggest to you, given what you said to the Coroner about your becoming aware of the storm warning during the afternoon of the 26th that Mr Thompson became aware of it at roughly the same time as you became aware of it?

25

A. That could well have happened, you'd have to ask Mr Thompson.

Q. You would expect Mr Thompson to have become aware of the storm warning at the same time you became aware of it or roughly at the same time, would you not?

30

A. I would have expected Mr Thompson to be aware of the special race forecasts that were issued to us by fax.

35

CORONER: Q. No, that's not the question.

A. Sorry, could you repeat the question.

SANTAMARIA: Q. I was actually talking about a storm warning that was issued. Would you not have expected Mr Thompson to have been aware of a storm warning at roughly the same time as you became aware of it on Boxing Day?

40

A. If it was faxed to the yacht club, yes. Yes, I suppose that's the case.

45

Q. I'll come back to that in a moment, Mr Robinson. You spoke to the police assisting the investigation in October 1999 and that's the record of interview which you've got.

A. Yes.

50

Q. You said in your witness statement that it was a very stressful experience?

A. That's correct.

55

Q. Why was that?

A. As I've previously stated to the Court I had never been interviewed by the police and it just - for some reason

became a bit stressful.

Q. I think you've said that there was nothing in the demeanour of the two policemen which contributed to that stress on your part? 5

A. Nothing that I would call over and above normal police questioning.

Q. You answered their questions truthfully on that occasion? 10

A. As best my recollection served me, yes.

Q. The fact that you were nervous because of the stress would not have impeded your answering the questions put to you truthfully? 15

A. I don't believe so.

Q. After you spoke to the two members of the Police Force you were given a record of interview? 20

A. No I was not.

Q. Were you offered a tape at the end of the interview?

A. No, I was told I couldn't have a copy of the tape.

Q. At some stage prior to the preparation of your witness statement you were provided with a copy of your record of interview though, weren't you? 25

A. By our own legal representation.

Q. When did you first read your record of interview again? 30

A. After first being provided a copy.

Q. When was that?

A. Earlier this year. 35

Q. Earlier this year meaning about March when this hearing first commenced?

A. When this inquiry first started.

Q. When you read the record of interview, you saw that in fact there were some errors in it? 40

A. Yes, that's correct.

Q. You sought to correct those errors in the witness statement which you've tendered to the Court? 45

A. That's correct.

Q. When you saw that the record of interview contained errors, did it occur to you to contact the police for the purpose of correcting the record of interview? 50

A. I believe I asked that question of our legal representation and was told that it could be corrected as it has been done in my statement.

Q. In any event in your witness statement you have corrected a good number of errors which you recognised in your record of interview. I think in paragraphs 106 to 110 of your witness statement if you'd like to have a look at 55

it, you correct particular answers in your record of interview and you tell the Coroner that wherever there's an inconsistency between your record of interview and your witness statement, you go by the witness statement, is that the case? 5

A. Yes, that's correct.

Q. Have you read the record of interview recently in preparation for giving evidence today? 10

A. Not thoroughly, no.

Q. When did you last read it?

A. A week ago.

Q. Sure about that? 15

A. Yes, I believe so.

Q. Are there any other matters you wish to correct in the record of interview? 20

A. Not that I can think of, no I believe I did that at the time of preparing the statement.

Q. You went through it carefully at that stage because you wanted to make sure that the Court knew where there were errors and what required correction? 25

A. That's correct.

Q. Your responsibilities on 24, 25, 26 December 1998 you describe in your witness statement and as Mr Hill pointed out to you when you were being questioned before, as part of the race management committee, the three of you, there was a joint responsibility for monitoring the skeds and also for monitoring the weather forecasts received from the bureau. That was a responsibility which you took seriously on those days? 30 35

A. Yes, that's correct.

Q. You attended the pre-race briefing given by the yacht club and in particular heard the talk given by Mr Batt? 40

A. Yes.

Q. Do you recall Mr Batt saying to the sailors, the crews that were then present, amongst other things we have a comprehensive listing of all the weather information, whether it is being broadcast by radio or weather fax, so you can be listening to the weather until it sends you stupid, so everything is listed there and he was referring to the Offshore magazine where the different telephone numbers-- 45

A. I don't recall specifically but Mr Batt has done that task for a number of years and I know that he tends to mention those sort of things. 50

Q. It's a constant theme of his isn't it to urge sailors to access the weather whilst they're in the course of the race? 55

A. Yes, I believe so.

Q. Did you believe that that was advice which was

restricted to the sailors themselves, or did you heed that advice as a member of the race management committee?

A. I'm sure that that could have been directed at us equally as the sailors.

Q. On 26 December was there any discussion amongst yourself and other members of the committee about accessing the weather?

A. On the 26th?

Q. On the 26th.

A. I can't recall, no.

Q. When Mr Hill asked you before about your place in the hierarchy of the committee and suggested that you might be the junior person, I think you made reference to Sydney Hobart races. What did you say to Mr Hill before about--

A. The number of races that I've been involved in the management thereof.

Q. In the management of, I see. You've not sailed the Sydney to Hobart?

A. No I have not.

Q. Perhaps you could just pick up your witness statement and I'm going to ask you to go to paragraph 60. You've been asked some questions about the events at the yacht club on the morning of the 26th. I just want to cover a few more questions on that if I could. When you arrived, you saw Messrs Thompson, Elliott, Sommer and Rowley in and out of the sailing office that morning?

A. Yes.

Q. In paragraph 61 you say that early in the morning as there were no major changes in the forecast we decided it was unnecessary to alter the course construction. At approximately 9am we published the handicaps for the race. Now, in the next paragraph you talk about Andrea Holt and the arrival of the bureau representative to set up the weather stand. I want to ask you some questions about this. It became apparent to you that the BOM people were requesting Andrea Holt to photocopy an updated forecast. How did you become aware of it?

A. Because the sailing office had the photocopier in it and she was madly photocopying hundreds of copies.

Q. Did that interest you, to see the updated forecast?

A. Not at the time because I was quite busy.

Q. But you became aware that in fact this was the upgrade from strong wind warning to gale warning?

A. Yes.

Q. We've heard evidence at different times that a gale warning is not something to be sneezed at. Would you agree with that?

A. Yes, I would agree with that.

Q. Would you agree that an upgrade from a strong wind warning to a gale warning on the morning of the Sydney to Hobart yacht race is a very significant weather event?
A. I would not view it as unusual for the Sydney to Hobart.

5

Q. No, perhaps just answer my question. Would you regard it as a very significant--

OBJECTION (WEBER). RESPONSIVE ANSWER.

10

Q. Not unusual?
A. No.

Q. And not dramatic, not something dramatic?
A. No.

15

Q. At some point in that morning did you talk to Mr Thompson about the issue of the gale warning?
A. More than likely.

20

Q. Do you remember what his response was?
A. No, I can't.

Q. Why is it that you can't remember these conversations?
A. (a) It was a long time ago, (b) we were very busy that day.

25

Q. Pretty significant event though wasn't it, on the morning?
A. Yes but things such as having to photocopy a hundred weather - changes in the weather pack as opposed to the specifics of a conversation--

30

Q. Yes, I see, you were very busy, alright. Did you have any discussion with the bureau representatives about the weather while they were at the stand?
A. No.

35

Q. Did you have any discussion with members of the crews about the likely weather which they would encounter--
A. No I don't believe so.

40

Q. --prior to your - sorry?
A. I don't believe so.

45

Q. You went out on the harbour at about 11 o'clock and you were laying the starting line?
A. Yes.

Q. You did that with Andrea Holt?
A. Yes.

50

Q. Returned to the sailing office at about 3pm. While you were on the boat, did you become aware of the issue of the storm warning, is that possible?
A. I don't think so.

55

Q. You think it's more likely that you read something when

you came back to the office?

A. More than likely.

Q. I want you to do your best to recall what you did when you came back to the office.

5

A. I would have come into the office and started organising to get all the marks packed away, set up for a sked that afternoon. I would have, you know, just been doing a lot of running around.

10

Q. Following the issue of the gale warning do you believe you made any attempts to access the weather or find out whether anyone else had accessed the latest forecast?

A. No, I believe I was waiting for the special race forecast.

15

Q. Did you think the weather was in fact - I don't mean this disrespectfully, did you in your own mind so far as allocation of tasks regard the weather aspect as something that belonged to someone else?

20

A. Primarily, yes.

Q. It could only be one of two or three people?

A. Yes.

25

Q. Who would that be?

A. Mr Thompson.

Q. And he alone?

A. Primarily I would say he was collecting and/or reading forecasts.

30

Q. On what basis do you say that, that he was collecting and reading forecasts?

A. I think it's actually in my statement but as the forecasts were faxed in, the general practice was for him to read them and if he thought there was something that needed to be shared or escalated higher up the chain of command, he would have done so.

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40

Q. Although it might be a vague recollection given the time, do you recall seeing Mr Thompson with faxes that had come from the Weather Bureau during the course of that afternoon?

A. Not specifically in his hand, no.

45

Q. Without looking at your witness statement, can you tell the Coroner when you became aware of the special race forecast issued at 1450?

A. Would have been that afternoon.

50

Q. Yes, during the afternoon?

A. Yes.

Q. When you got that, did you look at it?

55

A. I believe I did.

Q. Nothing remarkable about the contents of the forecast?

A. Not that - I don't think - I don't think it actually - whether it was the forecast, I can't recall the specifics of each forecast, I think that one may have been the 40 to 50 westerly winds or something along that line.

5

Q. But you think that the storm warning forecast came to you separately from the special race forecast?

A. If it came to us, yes, it would have been separately I think.

10

Q. On receipt of the storm warning, we can piece together the time, strong wind warning Christmas Day/night, gale warning 9 o'clock, 9.30 or so Boxing Day morning, storm warning issued at some point in the afternoon. A weather pattern is developing?

15

A. Uh hmm.

Q. And it's intensifying?

A. Uh hmm.

20

Q. That's right? Would you not agree with me that we're now into the ballpark of highly unusual weather warnings?

OBJECTION (WEBER). PREMISE OF QUESTION NOT FACTUALLY CORRECT. LEGAL ARGUMENT.

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<WITNESS STOOD DOWN

FURTHER LEGAL ARGUMENT ON OBJECTION. QUESTION ALLOWED.

30

<MARK ROBINSON
EXAMINATION CONTINUED

SANTAMARIA: Q. Mr Robinson, you got the storm warning, I'm not asking you about what was in the storm warning, just the fact of the storm warning. You knew that that was an unusual event so far as forecasts go, didn't you?

35

A. Yes.

Q. Having received that and knowing it was unusual and knowing that the boats were in the throws of leaving the harbour no doubt you raised the fact of the issue of the storm warning with others within the yacht club?

40

A. Yes.

Q. Do you remember now to whom you spoke within the yacht club?

45

A. I believe it was Mr Thompson.

Q. Do you remember the substance, if not the detail, of that conversation?

50

A. More of asking what he thought of it.

Q. I'm sorry, I didn't hear.

55

CORONER: What he thought of it.

A. What he thought of it.

SANTAMARIA: Q. And what did he think of it?

A. I can't recall exactly.

CORONER: Q. Roughly?

A. I would say he was a little concerned, given that I know roughly what was in the forecast now, I don't think he was gravely concerned. 5

Q. A little concerned but not gravely. But given the fact of concern did you discuss with him what you would do as a member of the race management committee on receipt of the storm warning? 10

A. No, I think I left it up to him.

Q. Did you? Did you expect that he would do something on receipt of the storm warning? 15

A. I expect he as the race director would have made a decision as to where he went from there.

Q. Did he discuss the options that were available to him with you at any stage during that afternoon? 20

A. No, I don't think so, no.

Q. He didn't?

A. I don't believe so. 25

Q. Did he tell you that he was going to talk to someone else?

A. I don't think-- 30

Q. Don't recall that?

A. No.

Q. Did he tell you that he was going to ring the Weather Bureau? 35

A. I can't recall.

Q. Did you tell him you were inclined to ring the Weather Bureau?

A. No. 40

Q. No?

A. I passed it on to him.

Q. You passed it on to him? 45

A. Yes.

Q. Did you see Mr Campbell about during the course of the afternoon? Do you know Phil - Peter?

A. I know Mr Campbell. 50

Q. Later in the day he issued a press release which referred to the storm warning. Any discussions with Mr Campbell about it?

A. I don't believe so. 55

Q. Was it a topic of conversation amongst people at the bar of the yacht club during the afternoon?

A. I don't believe I was in the bar.

Q. I'm sorry, I don't suggest that you were drinking there but you were in and about?

A. Not necessarily in the bar but around the yacht club, yes. 5

Q. It was discussed?

A. I don't believe so, no. I was busy working, running around organising things. 10

Q. What time did you leave the yacht club that afternoon?

A. It was late that night.

Q. Late that night?

A. It was after the 2005 sked. 15

Q. You listened to the sked?

A. I was there for the sked. 20

Q. Who else was with you at the time? Were you on your own?

A. No, I don't believe so. There may have been some club members or-- 25

Q. Wouldn't the race management committee have been required to listen to the sked?

A. One of us would, yes.

Q. One of you?

A. Yes. 30

Q. Was it you?

A. Probably me, yes. 35

Q. You say probably you, why are you unsure about that?

A. I can't recall whether there was anyone else from the race management team there. I know I was there.

Q. Did you hear the broadcast by Mr Carter that evening?

A. We would have been listening for it otherwise without the position reports we would not have been able to compute results. 40

Q. You heard Mr Carter read out the storm warnings during the 8pm sked which you knew of earlier that afternoon?

A. I believe so, from memory, yes. 45

SANTAMARIA: Thanks, Mr Robinson.

WEBER: Q. Mr Robinson, you were asked some questions by both Mr Hill and Mr Santamaria concerning the manner in which your statement came into existence. Do you recall that? 5

A. Yes.

Q. I think your evidence was that there was at least one meeting with the solicitors prior to the production of the first draft? 10

A. There was a number of meetings.

Q. So you had a number of meetings with the club's solicitors and then they produced a first draft, is that right? 15

A. Yes.

Q. Did you carefully analyse the first draft? 20

A. Yes.

Q. Was it to your satisfaction or did you require changes be made? 25

A. No, it required changes.

Q. Did a further draft emerge as a result of that process?

A. I believe that process repeated twice.

Q. So you rejected - sorry, not rejected, you wished to have your draft refined on how many occasions? 30

A. I believe it was two occasions.

Q. Did the solicitors finally produce to you a draft with which you were content? 35

A. Yes.

Q. Did you read that draft carefully before you signed it?

A. Yes, I did.

Q. Is that the signed statement which is now before the court? 40

A. Yes.

CORONER: I accept that, Mr Weber. 45

WEBER: Q. You were asked some questions by Mr Santamaria concerning discussions that you might have had with Phil Thompson shortly after the ill-fated 1998 Sydney to Hobart concerning his - when he became aware of the storm warning, and I think your evidence was that you couldn't recall any such conversation. Is that right? 50

A. I know immediate post-race we did talk about the weather, but I can't recall specifics.

Q. At that time, at the time of those discussions, did you have any appreciation that when either you or Thompson became aware of the storm warning might become a significant issue? 55

A. No.

CORONER: Q. On that issue didn't you have a little post mortem about what might have gone wrong?

A. We did before we left Hobart and I think it's annexed to my statement. 5

Q. But in the first of those 365 days you and Mr Thompson worked together after the race and after you got back to Sydney, weren't your discussions a bit analytical? 10

A. They were on all aspects of the race.

Q. Surely including what might have gone wrong?

A. Yes. 15

WEBER: Q. But notwithstanding the matters his Worship's put to you, do you still say that at that stage you didn't appreciate that the time at which either you or Thompson became aware of the storm warning was a particularly significant issue? 20

A. No.

Q. Could you go to paragraph 78 of your statement which is on page 16, and I should have cleared this up earlier, I apologise to all concerned. In the second sentence of paragraph 78 you say that you arrived at the RCC about halfway through the 14:00 sked. Do you now think that that might be in error? 25

A. It would have been somewhere between the start and halfway through. 30

Q. So that halfway through would be--

A. It could have been a quarter way through, it could have been anything. 35

Q. It's an unusual and unfortunate situation that you find yourself in, having evidence which is in conflict with one of your workmates.

A. Yes. 40

Q. If you go to page 9 and paragraph 44, is what you set out in paragraph 44 what you would have his Worship conclude concerning that conflict between you and Mr Thompson and to some extent Miss Holt? 45

A. Yes, I believe that to be correct. 45

WEBER: Your Worship, there's a topic which I'm happy to go into if your Worship thinks it's - Mr Sommer touched upon course construction for IMS and that involves within it why the weather is necessary. This gentleman is the most expert. He can talk about pre-constructed handicaps and post-constructed handicaps. If it's a subject that your Worship would-- 50

CORONER: I don't think I need to go into that. I'll take your advice Mr Hill, but I really don't think I need to. If you feel it's germane to anything that I'm looking at, that I should be looking at, well I'll consider it, but I 55

wouldn't have thought that I need to go into handicapping of yachts, course construction.

WEBER: No, possibly not, but it's just that the concept keeps on resonating what through what happened on the 24th and 26th. 5

CORONER: Only because it identifies his role, as Mr Sommer said, on the racing team, the RMT, his primary role I suppose, and a lot of that relates to the 25th and 26th, and then of course the business of deciphering it as the yachts are going down the course. I understand that but I don't know that I need to go much further than that do I? 10

WEBER: I'm entirely in your Worship's hands. I just raise it because if your Worship wanted the evidence, this is the man. 15

CORONER: I don't think so. I understand that, he's obviously very experienced. 20

WEBER: Q. Just one final subject, Mr Robinson. Did you play any part in arranging for the installation of the satcomsea system on the yachts in the 1999 fleet?
A. Yes, I did. 25

Q. What part did you play in that process?

A. I co-ordinated with Telstra and their contractors installing the systems to have the yachts available to have them installed. 30

Q. Have you got a reasonable familiarity with what the system that was placed on each of the yachts entailed?

A. I do. 35

Q. Could you explain that to his Worship?

A. Your Worship, the satcomsea units which we had 20 of in 1997 and 20 of in 1998, Telstra instigated to have the whole fleet carry them. They were the standard satsea system with a printer attached. As I believe you've heard in other evidence, they have inversion alarms, and press two buttons and a message goes off to AMSA. The printers on them enable them to be set up to receive weather at regular intervals, warnings and so forth. The exact time frame of how those came through I don't know except that I know that some yachts had mountains of paper in the boat. They also with the aid of a laptop-- 40 45

CORONER: Q. What do you mean by that? They spewed paper out? 50

A. They just - yep, spewing out weather reports throughout the whole race in '99 and some of them--

Q. This is last year? Last year?

A. Last - yeah, the last race we've just - and some of them actually complained about the amount of waste. 55

Q. Fair enough too. Teething problems perhaps.

WEBER: Q. Was it a teething problem?

A. It wasn't a teething problem, it was just masses of information.

Q. The crews were complaining of getting too much information? 5

A. It was - I think it was a lighthearted comment.

CORONER: Q. It's relevant though. It's the last thing you need I imagine. 10

A. Yes, but the printers print out much like a receipt printer or a EFTPOS machine.

Q. A tiny little--

A. A small narrow - prints out forecasts and warnings as they're issued. They exact where they come from, I believe they're linked to when warnings go to AMSA or they come out on the satellite system as well. With the aid of a laptop, a 3-watt standard com port connection, a cable to a laptop, as I believe you've already heard you can send text messages. 15 20

Q. Were all the boats required to have the laptops as well?

A. No. Approximately 40 per cent of the boats would tend to have them because they use them for tactical navigation. 25

Q. Have there been any discussions about the future, whether to--

A. To make laptops compulsory? 30

Q. Yeah.

A. No.

Q. Because that's necessary to be able to communicate with shore isn't it? 35

A. To be able to communicate with--

Q. By satcomsea.

A. By satcomsea, yes. Because we still have the HF system there's-- 40

Q. Yes, I understand that, okay.

A. --the fact of laptops and water.

WEBER: Q. But if you were going to a system of no radio and pure satcomsea communications-- 45

A. Yes.

Q. --with the current technology it would be necessary for each yacht to in addition to have the satcomsea unit, to have a laptop to which it was attached? 50

A. Yes.

Q. And to your knowledge, in that system that would allow race control to speak to the fleet or an individual craft, correct? 55

A. Yes. Since 1997 we have had the ability to send text messages to those that have had the units fitted, and in

fact the sked data that comes from Telstra Control comes via the Young Endeavour's satcomsea text message. It comes to us, basically they fax it to us via the satcomsea. We can do the same thing.

5

CORONER: Q. Do you talk to a lot of boat owners and skippers about satcomsea in your daily work?
A. Only when it gets to Hobart time.

Q. Is there much interest in getting the laptop component installed? You said about 40 per cent have it?
A. Yeah, there are. The guys that carry - the yachts that carry laptops are all obviously fully into computers and so forth and like it as a good tool to do navigation and other things, and it also aids - they send e-mails to the media and so forth.

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Q. Do you think though there's a move by the sailors themselves to start thinking in terms of--
A. To embrace the technology?

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Q. Yeah.
A. Yes. Slowly but--

WEBER: Q. And just to complete the analysis, if the entire fleet had satcomsea with laptops, the fleet would in turn be able to communicate with the race management team, is that right?

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A. Yes.

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Q. And each yacht in the fleet would be capable of communicating with each other yacht in the fleet?
A. If they had the - it's like if you had the e-mail address type scenario.

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Q. Sure, but you could--
A. You could do that, yes.

WEBER: If the court pleases.

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CORONER: Nothing arising?

HILL: Nothing arising.

<WITNESS RETIRED

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HILL: Mr Coroner, I think it's a 10.30 start on Monday.

CORONER: I'm afraid it is on Monday, I've got to go into the Downing Centre again and I can't afford that, so it's a 10.30 start on Monday. If necessary we can sit through lunch or something, half of lunch.

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HILL: Mr Elliott and then Mr Thompson and then the two Tasmanians, Mr Badenach and--

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CORONER: Yes, we're getting to the end now, and then the work will start won't it? I'd like you to think about -

it's mainly Mr Weber, Mr Stanley and Mr Santamaria, how long you'll need to get me some written submissions. It's a complex and long technical inquest in many ways. I always say this to the point of boring you, but I like them concise and to point rather than verbose, and I think probably you'll appreciate that too in this case. Give me an idea next week about how long you'll need. The sooner you get them to me, the sooner I'll generate a decision and with recommendations, which may or may not help the organisers of this year's yacht race.

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WEBER: Certainly, your Worship. The last time your Worship touched upon the matter your Worship had in contemplation that everybody's submissions would go in together.

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CORONER: Yes. I don't believe in this jurisdiction in crossing submissions. It's my inquest you see, it's inquisitorial, and if it were adversarial you've got to cross and you can read each others'. I really want to know what you and your client are going to submit to me. The only person that will see everything is counsel assisting, and that's the usual way in the inquisition.

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WEBER: I'm wondering whether there might be an intermediate position of at least some limited capacity to put in something to reply. Just say hypothetically that counsel assisting put up--

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CORONER: They did that in Thredbo. I think they allowed an hour. In the end I think he broke his rule and allowed the other submissions to be read and an hour to talk to the other submissions. That's an option.

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WEBER: I've got no particular--

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CORONER: What we might do, and I'll talk to counsel assisting, is receive the submissions, and once they're written they're written, allow you then to see the submissions of the other parties, then give you that hour to talk about them before I finalise things. That's what was done in Thredbo and that's a possibility here, simply because it's such a long inquest.

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WEBER: Just to take a hypothetical example, a proposal for a recommendation emanates from counsel assisting which on its face seems quite reasonable, it might be that to a practical yachtsman they would say well that's all very well but what about--

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CORONER: That's right. Look, I'll make my position very clear. I'm not in the game as a Coroner of making recommendations where they're not necessary to be made. That's number one. Number two, I'm certainly not in the game of making recommendations which are ridiculous or difficult to implement or unreasonable to implement. I would hope that my recommendations will be soundly based, considered and a viable option to the yachting community. If I'm not well I'm hoist on my own petard at the end of the

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day, aren't I?

WEBER: I hope your Worship understands I didn't mean to suggest - to the contrary, but if we hadn't had the discussion over the last week say about the effect of 24 hour radio monitoring down below in reality on crews, that's a--

CORONER: I know that sounds a good submission, but there may be problems with that. I understand that, but that's the beauty of the inquest process really because it does enable that and that sort of evidence and those sorts of discussions. Hopefully at the end of the day I'll generate a submission, or I won't generate a submission, that takes into account the pro and contra arguments. That's why I seek the help of the various interested parties in helping me to formulate realistic recommendations or not making recommendations that aren't worth making, as the case may be.

HILL: In regards to that your Worship, we've asked the AYF representative and other people, including Mr Halls and Badenach, to put a submission forward regards liferafts.

CORONER: That's another big problem.

HILL: If my learned friend's client wants to put someone forward, some submission, we'd be quite happy to accept it.

CORONER: I hope that there will be submissions from interested parties which go to recommendations that I should make. That's the only way we can really make the inquest work, and I'm determined to make it work.

WEBER: Your Worship can rest assured that your Worship will get recommendations from my client.

CORONER: I'll certainly consider receiving your submissions, we'll have a look at them and we'll then post them off each other, let everyone else see everyone else's submissions with a view to giving you a finite time to speak not to your own submissions but against any particular matters in the other ones. I suppose that's a fair sort of a compromise in a long inquest. It's not the usual thing though, I don't like doing it.

ADJOURNED PART HEARD TO MONDAY 31 JULY 2000 AT 10.30AM

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 Coroner's Court in the matter of in the matter of

INQUEST INTO THE DEATHS OF JAMES MICHAEL LAWLER: MICHAEL BANNISTER: BRUCE RAYMOND GUY: PHILLIP RAYMOND CHARLES SKEGGS: JOHN WILLIAM DEAN AND GLYN RODERICK CHARLES

on 28 July 2000

Dated at GOODSELL BUILDING
this 4th day of August 2000

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