IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 57

Admiralty in Rem No 246 of 2015

Between

Owner of the ship or vessel
"MOUNT APO"

… Plaintiff

And

Owner and/or Demise
Charterer of the ship or vessel
"HANJIN RAS LAFFAN"

… Defendants

Admiralty in Rem No 195 of 2015

Between

Owner and/or Demise
Charterer of the ship or vessel
"HANJIN RAS LAFFAN"

… Plaintiffs

And

Owner and/or Demise
Charterer of the ship or vessel
"MOUNT APO"

… Defendant

(*Consolidated pursuant to Order of Court dated 2 June 2016*)

JUDGMENT

[Admiralty and Shipping] — [Collision] — [Regulations]
[Evidence] — [Admissibility of evidence]
[Evidence] — [Documentary evidence] — [Proof of contents]

TABLE OF CONTENTS

The "Mount Apo" and the "Hanjin Ras Laffan"

[2019] SGHC 57

High Court — Admiralty in Rem No 246 of 2015 and Admiralty in Rem No 195 of 2015
Pang Khang Chau JC
8-11 May, 14-16 August; 25 September; 8 October 2018

8 March 2019 Judgment reserved.

Pang Khang Chau JC:

Introduction

1 On 8 August 2015, at 9:59 am, the capesize bulk carrier, *Mount Apo* ("*Mt Apo*") collided with a liquefied natural gas ("LNG") carrier, *Hanjin Ras Laffan*.[1] The collision occurred within the westbound lane of the Traffic Separation Scheme ("TSS") in the Singapore Strait. *Hanjin Ras Laffan* was transiting the Singapore Strait from east to west. *Mt Apo* had just left the port of Singapore and was attempting to cross the westbound lane of the TSS in order to reach the eastbound lane to continue its journey eastwards.

2 This case raises issues concerning the obligations of a vessel crossing traffic lanes in a TSS under Rule 10 of the International Regulations for

---

[1] Captain Rajesh Sardarsingh Chauhan's ("Capt Rajesh") affidavit evidence-in-chief ("AEIC") dated 20 February 2018, at paras 6 and 35; Captain Gap Dong Kim's ("Capt Kim") AEIC, dated 22 January 2018, at paras 3 and 23.

Preventing Collisions at Sea (as amended) (1972) incorporated as a Schedule to the Merchant Shipping (Prevention of Collisions at Sea) Regulations (Cap 179, Section 208, Rg 10, 1990 Rev Ed) (the "COLREGS"). It also raises issues concerning crossing situations under Rules 15 and 17 of the COLREGS. In particular, it raises the interaction between a vessel's duty under Rule 10(*c*) to cross a TSS at right angles to the general direction of the traffic flow and that same vessel's duty under Rule 17 to keep her course and speed as a stand-on vessel in a crossing situation arising under Rule 15. Finally, it raises issues concerning the proper use of very high frequency ("VHF") radio communications between passing vessels.

3 Admiralty *in rem* No 246 of 2015 ("ADM 246") is an action brought by the owner of *Mt Apo*, Cisslow Shipping Inc. ("Cisslow") against the owner and/or demise charterer of the *Hanjin Ras Laffan* in respect of the said collision. Admiralty *in rem* No 195 of 2015 ("ADM 195") is an action brought by the owner of the *Hanjin Ras Laffan*, KSH International S.A. ("KSH") and the demise charterer, H-Line Shipping Co. Ltd. ("H-Line") against the owner and/or demise charterer of *Mt Apo* in respect of the same collision.

4 By an order of court dated 2 June 2016, ADM 246 and ADM 195 were consolidated as one action, with ADM 246 designated the lead action and with the plaintiffs in ADM 195 treated as counterclaiming defendants in the consolidated action. For convenience, this judgment will refer to the plaintiff in the consolidated action simply as "Mt Apo" (without italics) and the counterclaiming defendants collectively as "Hanjin Ras Laffan" (also without italics).

5 As both sides have prayed in their respective Preliminary Acts for a reference to the Registrar to assess the amount of damages, losses and/or expenses, the trial before me was on apportionment of liability only.

6 Hanjin Ras Laffan alleged that *Mt Apo* bore the preponderance of the blame for the collision and that liability ought to be apportioned 70% to 30% in *Hanjin Ras Laffan's* favour.[2] Conversely, Mt Apo alleged that *Hanjin Ras Laffan* was "predominantly the vessel at fault for the collision", and submitted that liability should be apportioned 80% to 20% in *Mt Apo's* favour.[3]

Preliminary Issue on H-Line's Title to Sue

7 Mt Apo raised a preliminary issue on H-Line's title to sue. It is common ground that, for H-Line to have title to sue, it has to show that it was the demise charterer of the *Hanjin Ras Laffan* at the time of collision. Mt Apo's position is that, as H-Line has not proven that it was the demise charterer of *Hanjin Ras Laffan*,[4] Mt Apo is only liable for the losses of KSH (if any, and subject to apportionment).[5]

8 In the recent case of *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and anor* [2018] 2 SLR 588, the Court of Appeal decided that the law of negligence in Singapore does not require a claimant to own or have possessory title to the property to sue for loss flowing from damage to that property (at [35]). It is therefore open to question whether H-Line had correctly

---

2 Defendant's Closing Submissions ("DCS"), dated 25 September 2018, at paras 6, 84 and 85.

3 Plaintiff's Closing Submissions ("PCS"), dated 25 September 2018, at paras 130 and 163.

4 PCS, at para 161.

5 Plaintiff's Opening Statement, dated 30 April 2018, at para 31.

conceded that it needed to show that it was the demise charterer in order to have title to sue. Nevertheless, since parties had conducted the case on this basis, I shall assume (without deciding the point) that H-Line needed to do so.

H-Line's case on its title to sue

9 To prove that it was the demise charterer of *Hanjin Ras Laffan*, H-Line relied primarily on the testimony of its deputy manager, Ms Yoo Jin Joo. (Although she had been erroneously referred to as "Ms Yoo" in submissions and some court documents, her surname is actually "Joo".[6]) Ms Joo's role at H-Line concerns the management of vessels. Her responsibilities in respect of *Hanjin Ras Laffan* include regulatory filings with Korean government agencies,[7] liaising with the Panama ship registry,[8] and liaising with insurers.[9]

10 Ms Joo testified generally, from her personal knowledge gained in the course of her duties, that H-Line and KSH are respectively the bareboat charterer and owner of *Hanjin Ras Laffan*.[10] Her evidence is that *Hanjin Ras Laffan* was previously on demise charter to Hanjin Shipping Co Ltd ("Hanjin Shipping") and the demise charterparty was novated to H-Line on 30 June 2014.[11]

11 To corroborate her testimony, Ms Joo exhibited copies of the following documents to her affidavits of evidence in chief ("AEICs"):

---

6 Notes of Evidence ("NE"), 9 May 2018, at 32:4.

7 NE, 9 May 2018 at 59:29–32..

8 NE, 9 May 2018 at 56:9–13..

9 NE, 9 May 2018 at 31:27..

10 Ms Yoo Jin Joo's ("Ms Joo") 1st AEIC, dated 28 February 2018, at paras 6–7; Ms Joo's 2nd AEIC, dated 20 April 2018, at para 17.

11 Ms Joo's 1st AEIC, at paras 3–4.

(a) a Bareboat Charter Hire Purchase Agreement dated 27 October 1997 between KSH and Hanjin Shipping in respect of *Hanjin Ras Laffan* (the "BBCHP");[12]

(b) an Amending and Restating Agreement dated 7 September 2010 between KSH and Hanjin Shipping to amend and restate the BBCHP in accordance with the requirements of a loan agreement dated 27 August 2010 between KSH and its lenders (the "2010 Agreement");[13]

(c) an Amending and Restating Agreement dated 9 September 2013 between KSH and Hanjin Shipping to amend and restate the BBCHP (as amended) in accordance with the requirements of a loan agreement dated 27 August 2013 between KSH and its lenders (the "2013 Agreement");[14]

(d) a Novation and Amendment Agreement dated 30 June 2014 among KSH, Hanjin Shipping and H-Line novating the rights and obligations of Hanjin Shipping under the BBCHP (as amended) in favour of H-Line (the "Novation Agreement");[15]

(e) the continuous synopsis record ("CSR") issued on 15 January 2015 (*ie*, before the date of the collision) by the Panama ship registry recording that *Hanjin Ras Laffan* was operated by H-Line under the terms of a registered bareboat charter; [16]

---

12 Ms Joo's 1st AEIC, at exh-YJY8.

13 Ms Joo's 1st AEIC, at exh-YJY9.

14 Ms Joo's 1st AEIC, at exh-YJY10.

15 Ms Joo's 1st AEIC, at exh-YJY11.

16 Ms Joo's 2nd AEIC, at para 18; exh-YJY18 (at p 20).

(f) CSR issued on 10 March 2017 which continued to record *Hanjin Ras Laffan* as operated by H-Line under the terms of a registered bareboat charter;[17] and

(g) a set of invoices issued by Sembcorp Marine Repairs & Upgrades Pte Ltd to "Captain & Owners of *Hanjin Ras Laffan*, H-Line Shipping" for repairs carried out on *Hanjin Ras Laffan*.[18]

Originals of the documents described in (b) to (d) and (g) above were tendered by Ms Joo in court at trial. Ms Joo explained that the originals of the documents described in (e) and (f) could not be produced as they had to be kept on board the vessel at all times.[19]

12 Recital (C) of the Novation Agreement explained that the background to the Novation Agreement was the transfer of Hanjin Shipping's bulk carrier business to H-Line. Interestingly, while cl 25.01 of the BBCHP specified KSH's address for service of notices as "c/o Hanjin Shipping Co., Ltd.", the Novation Agreement amended this to "c/o H-Line Shipping Co., Ltd.".[20] Ms Joo explained that, as part of H-Line's acquisition of Hanjin Shipping's bulk carrier business, H-Line took over about 40 vessels from Hanjin Shipping and also took over Hanjin Shipping's stake in KSH, as a result of which KSH became wholly owned by H-Line.[21]

---

17 Ms Joo's 2nd AEIC, at para 18; exh-YJY18 (at p 21).

18 Ms Joo's 1st AEIC, at exh-YJY12.

19 NE, 9 May 2018, at 59:12–21.

20 Ms Joo's 1st AEIC, at exh-YJY11 (at Clause 4.1(b)(xvii)).

21 NE, 9 May 2018, at 33:17–19, and 58:30; 10 May 2018, at 7:23–26.

13 There are also two documents in the Agreed Bundle *bearing H-Line's letterhead*, the authenticity of which Mt Apo has accepted. These are *Hanjin Ras Laffan*'s passage plan dated 2 August 2015[22] and *Hanjin Ras Laffan*'s record of passage planning dated 2 August 2015.[23]

14 H-Line submitted that it had conducted itself at all material times as the demise charterer of *Hanjin Ras Laffan*. For example, *six months before the collision*, Ms Joo caused the Panama ship registry to issue a CSR listing H-Line as bareboat charterer of *Hanjin Ras Laffan*. H-Line expended a significant sum of US$1.2 m to repair *Hanjin Ras Laffan* after the collision.[24] Less than two weeks after the collision, solicitors representing both vessels executed a collision jurisdiction agreement which contained a warranty that H-Line was the demise charterer of *Hanjin Ras Laffan*.[25]

15 At the material time, *Hanjin Ras Laffan* was in H-Line's actual possession as the vessel was manned by H-Line. The master of *Hanjin Ras Laffan* testified that he was employed by H-Line.[26]

Mt Apo's case on H-Line's title to sue

16 Mt Apo's approach was to question the admissibility of the documents tendered by Ms Joo and to thereby seek to persuade the court that the demise charter was a sham. Although Mt Apo initially contested the admissibility of all the documents referred to at [11] above, the objections to documents (e) to (g) were dropped during oral submissions.[27] As for documents (a) to (d), which Mt

22 Agreed Bundle, vol 1, at p 150.

23 Agreed Bundle, vol 1, at p 153.

24 Ms Joo's 1st AEIC, at exh-YJY12 (at p 280).

25 Agreed Bundle, vol 1, at p 245.

26 NE, 10 May 2018, at 15:17–23.

Apo referred to in submissions collectively as the "Bareboat Contracts", Mt Apo accepted that these were "business records" which fell within the hearsay exception under s 32(1)(*b*)(iv) of the Evidence Act (Cap 97, 1997 Rev Ed). However, Mt Apo submitted that I should either exclude them in the interests of justice under s 32(3) of the Evidence Act on the basis that they were unreliable[28] or assign them minimal weight under s 32(5) on the same basis.[29]

17 Mt Apo gave the following reasons for considering the Bareboat Contracts unreliable:

(a) There was no one before the court that was familiar with the documents and could attest to the truth of their contents. Ms Joo could not possibly do so, as she had admitted that she did not sign the Novation Agreement, while the BBCHP, the 2010 Agreement and the 2013 Agreement were all signed before she joined H-Line on 2 June 2014.[30] Ms Joo gave inconsistent answers about the arrangement with the Korea Gas Corporation ("KOGAS") to carry LNG on *Hanjin Ras Laffan*.[31]

(b) The "originals" tendered during trial were not identical to the copies exhibited in Ms Joo's affidavits evidence-in-chief. For instance, the word "September" in handwriting on the cover page of the "original" of the 2010 Agreement brought to court looked different from the handwritten word "September" on the cover page of the copy of the 2010 Agreement exhibited in Ms Joo's 1st AEIC.[32] This meant that the

27 NE, 8 October 2018, at 31:16–20, and 36:14–19.

28 PCS, at paras 137–138.

29 PCS, at paras 158.

30 PCS at para 140.

31 PCS, at paras 141–145.

32 Ms Joo's 1st AEIC, at p 67; NE, 9 May 2018, at 52:15–53:6.

documents which Ms Joo brought to court were not the originals of the copies exhibited in her AEIC, and she had failed to produce the originals of those copies. Ms Joo could not adequately explain the discrepancies and she was being untruthful when she stated that the documents she tendered in court were originals.[33]

(c) The fact that the documents were disclosed in dribs and drabs, with copies of the Bareboat Contracts disclosed two years after the action commenced and with the "originals" disclosed just three weeks before the commencement of trial, meant that, until very recently, H-Line did not have the originals or even copies of the Bareboat Contracts. The only explanation is that the demise charter by H-Line was a sham.[34]

(d) A charge was registered at the UK companies registry against Hanjin Shipping on, among other things, the earnings of Hanjin Shipping arising out of the use and operation of *Hanjin Ras Laffan*.[35] Created on 7 September 2010, the status of the charge remained listed on the UK companies register as "outstanding" as at the commencement of trial. This is objective evidence that *Hanjin Ras Laffan* was not demise chartered to H-Line at the time of the collision.[36]

Analysis on title to sue

18 I was a little puzzled that Mt Apo focused its submission entirely on the admissibility of the Bareboat Contracts, to the exclusion of addressing the evidence outlined at [10] and [12]–[15] above. Mt Apo should have been aware

---

33 PCS, at para 148.

34 PCS, at para 156.

35 Plaintiff's Core Bundle ("PCB"), at pp 250–263. NE, 10 May 2018, at 12:16–13:4.

36 PCS, at para 157.

that it is possible to prove title to sue without admitting documents in the nature of the Bareboat Contracts. This point may be illustrated by two cases - *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another* [2005] 4 SLR(R) 417 ("*Jet Holding"*) and *Zweite MS "Philippa Schulte" Shipping GmbH & Co KG & another v PSA Corp Ltd* [2012] SGHC 135 ("*Zweite*").

19 In *Jet Holding*, JHL's title to sue was in issue. To establish title to sue, JHL sought to prove that it purchased the drill ship *Energy Searcher* from JSL and subsequently leased it back to JSL under a bareboat charter. JHL's witness on this issue was a Mr Perret who, at the time of the alleged sale and lease back, was an executive vice-president of JHL and concurrently the president of JSL. Documents purportedly covering the sale between JHL and JSL were not admitted in evidence (at [55]). Despite this, Belinda Ang Saw Ean J found JHL's title to sue proven because "Perret's involvement in the two companies and the drill ship was sufficient to place him in a position to testify generally to the change of ownership of the drill ship and the charter to JSL as demise charterer" (at [57]).

20 In *Zweite*, the two plaintiffs (who were, respectively, the purported shipowner and the purpoted bareboat charterer of the vessel) relied on, *inter alia*, the evidence of one Mr Heidrich to prove title to sue. Mr Heidrich purported to testify based on his personal knowledge. He did not exhibit any documents relating to ownership of the vessel. Tan Lee Meng J rejected Mr Heidrich's evidence on the basis that he did not have sufficient involvement in the two plaintiffs to be able to testify from personal knowledge (at [21]). When the case went on appeal, the plaintiffs succeeded in establishing title to sue,[37]

---

[37] NE, 8 October 2018, at 86:2–26; CA 88/2012 – ORC 1693/2013 (28 February 2013).

thus confirming that non-admission of ownership documents would not prevent a court from finding title to sue based on other evidence.

21 In fairness to Mt Apo, instead of treating its focus on the admissibility of the Bareboat Contracts as a decision not to challenge the evidence outlined at [10] and [12]–[15] above, I decided to construe Mt Apo's four objections to the Bareboat Contracts' reliability at [17] above more broadly as objections to the overall reliability of H-Line's claim to be demise charterer of *Hanjin Ras Laffan*. I will therefore address each of Mt Apo's objections in turn on this basis.

Whether Ms Joo could testify to the novation of the BBCHP from Hanjin Shipping to H-Line

22 Mt Apo pointed out that Ms Joo could not have been present when the BBCHP, the 2010 Agreement and the 2013 Agreement were signed, as she joined H-Line only in 2014. This submission ignores the fact that the BBCHP, the 2010 Agreement and the 2013 Agreement were executed by Hanjin Shipping, not H-Line. The only document among the Bareboat Contracts executed by H-Line is the Novation Agreement.

23 In any event, Mt Apo does not dispute that *Hanjin Ras Laffan* was bareboat chartered to Hanjin Shipping at some point in time.[38] After all, it was Mt Apo who tendered and relied on[39] a public document from the UK companies registry, namely the registration of charge referred to at [17(d)] above, which concerned:[40]

---

38 NE, 8 October 2018, at 38:7–32.

39 NE, 8 October 2018, at 38:16–29.

40 PCB, at p 252.

> …a bareboat charterparty dated 27 October 1997 and entered between the Owner as owner and the Chargor as bareboat charterer, in respect of the chartering of the Ship, as supplemented by a side agreement dated as of 2 December 2009 and as amended by the Amending and Restating Agreement.

In the foregoing passage, "Owner" refers to KSH,[41] "Chargor" refers to Hanjin Shipping[42] and "Ship" refers to *Hanjin Ras Laffan*.[43] As the date of creation of the charge, 7 September 2010, was the date on which the 2010 Agreement was signed, the reference to "Amending and Restating Agreement" in the foregoing passage can only be a reference to the 2010 Agreement. In other words, there is a public document, registered *five years before the collision* with the UK companies registry, which referred to both the BBCHP and the 2010 Agreement and which also referred to Hanjin Shipping as the bareboat charterer of *Hanjin Ras Laffan* under the BBCHP.

24 Since it is not seriously disputed that *Hanjin Ras Laffan* was bareboat chartered to Hanjin Shipping, the focus is really on the Novation Agreement dated 30 June 2014, pursuant to which H-Line purportedly derived its title from Hanjin Shipping. As a matter of background, Mt Apo again did not seriously challenge Ms Joo's explanation that, as a result of the transfer of Hanjin Shipping's bulk carrier business to H-Line on 30 June 2014, H-Line took over about 40 vessels from Hanjin Shipping on that day.[44] In my view, it would have been untenable for Mt Apo to do so since the said transfer was well known in the shipping industry and widely reported, including on Lloyd's List. But accepting that the said transfer took place is not the same as accepting that

---

41 PCB, at p 251.

42 *Loc cit*.

43 PCB, at p 258.

44 NE, 8 October 2018, at 39:14–40:20.

Hanjin Ras Laffan was one of the many vessels which H-Line took over from Hanjin Shipping as part of the said transfer. This is where the Novation Agreement comes into issue.

25 *Jet Holding* and *Zweite* were cited to me on whether Ms Joo could testify to the novation of the BBCHP from Hanjin Shipping to H-Line. The comparison is between:

(a) Mr Perret in *Jet Holding*, who held office in both JHL and JSL, and testified that although he was not involved in the financial part of the deal, he was in charge of the "technical part" of the deal and also worked closely on certain commercial aspects of *Energy Searcher*; and

(b) Mr Heidrich in *Zweite*, who was not an employee of either plaintiff and whose role as a technical director of the vessel's technical manager was concerned with the day-to-day running of the vessel.

26 Coming back to Ms Joo, she testified that:[45]

> Although I did not sign the Novation Agreement, I am fully familiar with the circumstances surrounding the execution thereof, and I also have personal knowledge of the running of the bareboat charterparty of the Vessel in accordance with its terms, in my capacity as deputy manager of H-Line since the time I joined the company on 2 June 2014.

27 Ms Joo also testified that:

(a) she was involved in communications with the lawyers during the negotiation process leading to the Novation Agreement;[46]

---

45 Ms Joo's 1st AEIC, at para 6.

46 NE, 9 May 2018, at 33:22–26.

(b) after the Novation Agreement was signed she was responsible for storing copies in the office computer and warehouse;[47] and

(c) even though she was not present at the signing of the Novation Agreement, she was in daily contact with the two H-Line officers who signed the Novation Agreement until they left the company in October 2014.[48]

28 Ms Joo's role at H-Line concerns the management and commercial aspects of vessels. As noted at [9] above, her responsibilities in respect of *Hanjin Ras Laffan* include regulatory filings with Korean government agencies, liaising with the Panama ship registry, and liaising with insurers. She testified that, after the Novation Agreement was signed, she was responsible for declaring the demise charter to the relevant Korean government agency on behalf of H-Line.[49]

29 Mt Apo attempted to show that Ms Joo was actually not familiar with the demise charter and the arrangements surrounding it by reference to certain alleged inconsistencies in her testimony. According to Mt Apo:

(a) Ms Joo initially said H-Line took over Hanjin Shipping's engagement by KOGAS to carry LNG, not that H-Line took over the bareboat charter of *Hanjin Ras Laffan*;[50]

(b) subsequently, in response to a question from counsel for Mt Apo, Mr Chan concerning an e-mail from Hanjin Ras Laffan's former

---

47 NE, 9 May 2018, at 30:2–7.

48 NE, 9 May 2018, 34:1–2.

49 NE, 9 May 2018, at 59:29–32.

50 NE, 9 May 2018, at 41:1–3.

solicitors which contained references to "off-hire" and a contractual obligation "to provide the charterers with a substitute vessel", Ms Joo explained that KOGAS is the charterer referred to in the e-mail. In the course of this answer, she erroneously described KOGAS as "bareboat charterer";[51] and

(c) the next day, Ms Joo clarified that what she meant was, as between KOGAS and H-Line, KOGAS would be the charterer and H-Line would be the owner, while, as between H-Line and KSH, H-Line would be the charterer and KSH would be the owner. Thus the term "charterer" could refer to different parties depending on context.[52]

30 In relation to the exchange at [29(a)] above, since the question posed to Ms Joo concerned KOGAS,[53] I consider it natural for her to focus her answer on H-Line's relationship with KOGAS, especially since she had already explained the novation of the BBCHP earlier in her testimony.[54] As for the exchange at [29(b)] above, I would not put much store by her reference to KOGAS as "bareboat charterer". Ms Joo was giving evidence in the Korean language through an interpreter. As for the exchange at [29(c)] above, if Ms Joo had discovered that what she said the day before was inaccurate, it is entirely right and proper for her to come back the next day and clarify.

31 In my assessment, Ms Joo was not prevaricating. She was merely setting the record straight. Ms Joo's explanation is, in any event, consistent with the terms of the letter of undertaking dated 30 June 2014 issued by KOGAS to

---

51 NE, 9 May 2018, at 45:18.

52 NE, 10 May 2018, a 3:1–7t.

53 NE, 9 May 2018, at 40:14–17.

54 NE, 8 May 2018, at 33:17–27.

KSH.[55] In the letter of undertaking, KOGAS acknowledged the Novation Agreement and the financing arrangements associated with the Novation Agreement, and undertook to ***charter*** *Hanjin Ras Laffan* from H-Line for the carriage of LNG pursuant to a contract of affreightment ("COA"). The letter of undertaking also explained that the COA, originally entered into between KOGAS and Hanjin Shipping on 14 July 2000, was transferred to H-Line by a transfer agreement dated 26 June 2014.[56]

32 I therefore do not accept Mt Apo's submission that Ms Joo is not familiar with the demise charter and its surrounding arrangements. On the contrary, putting aside language barriers and minor points concerning usage of technical terms, I find her explanation of the relevant arrangements clear, cogent and consistent with the available documentary evidence.

33 Going back to the factors listed at [26]-[28] above, while they do not demonstrate that Ms Joo was in as advantageous a position as Mr Perret in *Jet Holdings*, she was clearly in a much more knowledgeable and advantageous position than Mr Heidrich in *Zweite*. After all, she is an employee of H-Line, her responsibilities require her to be familiar with the status of *Hanjin Ras Laffan*, she was involved in the preparations leading to the novation and she remained in constant contact with the officers who signed the Novation Agreement for several months thereafter. I therefore hold that Ms Joo is a person with sufficient familiarity to testify generally to the demise charter arrangements concerning *Hanjin Ras Laffan*.

---

55 Ms Joo's 2nd AEIC, at exh-YJY15 (the "CD Bible"), electronic document no 5.

56 Ms Joo's 2nd AEIC, at exh-YJY15 (the "CD Bible"), electronic document no 5.

Discrepancies between "originals" tendered at trial and copies exhibited in Ms Joo's AEICs

34 I agree with Mt Apo that the "originals" of the Bareboat Contracts produced at trial were not the originals of the copies exhibited in Ms Joo's AEICs. However, the differences are only in the handwritten annotations – *ie,* dates and names of signatories and witnesses. The printed content, *ie,* the legal provisions do not differ at all. Even the differences in the handwritten annotations do not relate to content or substance. For example, in the date "30 June" handwritten on top of the first page of the Novation Agreement, the figure zero in the number "30" on the original tendered in court[57] appears slightly smaller than the figure zero on the copy exhibited in Ms Joo's AEIC.[58] But all the handwritten dates appear throughout both versions as "30 June". Similarly, on the signature page of the Novation Agreement, the handwritten name "Tai Soo Suk" is written with a slightly larger "a" in the original[59] than in the copy exhibited in Ms Joo's AEIC.[60] But the names are spelt in exactly the same way in both versions.

35 Ms Joo's explanation is that, on 30 June 2014, Hanjin Shipping divested its bulk carrier business to H-Line, which involved H-Line taking over about 40 vessels from Hanjin Shipping, as well as the related financing arrangements. More than a hundred agreements were signed on that day.[61] The law firm preparing the agreements, Watson Farley Williams Asia Practice LLP ("Watson Farley Williams"), scanned these agreements into "CD Bibles" and each party to the transactions was given a copy of the relevant "CD Bible". H-Line would

57 Defendants' Bundle of Documents, at p 457.

58 Defendants' Bundle of Documents, at p 466.

59 Defendants' Bundle of Documents, at p 463.

60 Defendants' Bundle of Documents, at p 472.

61 NE, 9 May 2018, at 54:7–11.

not know which of the many parties is in possession of the actual hardcopy from which the scan in the "CD Bible" was made.[62] Ms Joo explained that:

(a) in Korea, the "CD Bible" is regarded as an original;[63]

(b) H-Line's company policy is not to retain hardcopy originals unless required by law to do so;[64] and

(c) the electronic version of the agreements in the "CD Bible" are relied upon and used as the "operative document" for the purposes of operating the *Hanjin Ras Laffan* under a charter.[65]

36 A copy of this "CD Bible" was tendered in evidence.[66] An examination of the electronic copy of the Novation Agreement in the "CD Bible" revealed that the copy of the Novation Agreement exhibited in Ms Joo's AEIC[67] was indeed printed from the "CD Bible".

37 As for discrepancies of the same nature in the handwritten annotations on the 2010 Agreement and 2013 Agreement, Ms Joo gave a similar explanation save that she did not refer to the "CD Bible" in her explanation concerning the 2010 Agreement and 2013 Agreement.[68] This is consistent with the fact that the "CD Bible" does not contain electronic copies of the 2010 Agreement and 2013 Agreement. The "CD Bible" only contains the Novation Agreement and about

---

62 NE, 9 May 2018, at 53:23.

63 NE, 9 May 2018, at 30:27–28, and 55:2–11.

64 Ms Joo's 2nd AEIC, at para 11.

65 *Loc cit*.

66 Ms Joo's 2nd AEIC, at exh-YJY15

67 Ms Joo's 1st AEIC, at exh-YJY11.

68 NE, 9 May 2018, at 52:19–54:5.

30 other legal documents, executed at about the same time as the Novation Agreement, touching upon the financing arrangements in relation to the Novation Agreement.

38 In the light of the foregoing, while I agree with Mt Apo that the original documents which Ms Joo brought to court were not the same originals from which the copies exhibited in her AEICs were made, I think she has satisfactorily explained the discrepancies. With so many parties involved in the agreements, each agreement would necessarily be signed in multiple originals. Since H-Line had been relying on electronic copies of the agreements compiled by external parties, it is not surprising that any hardcopy originals it subsequently located may not have been the same originals as those from which the said electronic copies were made.

39 However, that does not mean that there are no issues with the provenance of the said original documents, a point to which I now turn.

Whether the issues encountered by H-Line in producing the originals of the Bareboat Contract meant that the demise charter was a sham

40 As noted at [17(c)] above, Mt Apo submitted that the only explanation for H-Line's belated disclosure of copies and "originals" of the Bareboat Contracts is that the demise charter was a sham.

41 Ms Joo gave evidence that, in November 2016 (two months after parties exchanged their initial lists of documents), she instructed her staff, Ms Seyeon Cha ("Ms Cha"), to contact Watson Farley Williams and a Korean law firm, Lee & Ko, to ask about originals of the BBCHP, the 2013 Agreement as well as a 2009 side agreement referred to in the Novation Agreement ("the Side Agreement").[69] Ms Cha's e-mail of 9 November 2016 to Watson Farley

Williams asked if they had "kept records of" the said agreements.[70] There was no mention of "originals" in that e-mail. Ms Joo's evidence is that Watson Farley Williams never replied to that e-mail.[71] Ms Cha's e-mail of 10 November 2016 to Lee & Ko, asked for "copies" of the said agreements.[72] Again, there was no mention of "originals" in that e-mail. Two and a half hours after her initial e-mail to Lee & Ko, Ms Cha sent another e-mail to inform Lee & Ko that there was no need to search for the BBCHP as H-Line had located it "in hardcopy".[73] Lee & Ko replied by e-mail half an hour later attaching a copy of the 2013 Agreement.[74] This means that, by 10 November 2016, H-Line was, at the minimum, already in possession of copies of the BBCHP and the 2013 Agreement.

42 Ms Joo was asked in cross-examination about the discrepancy between her AEIC, which claimed she asked Ms Cha to seek the originals of the agreements from the law firms, and the e-mails Ms Cha sent out, which did not mention originals and appeared to be asking merely for copies. Ms Joo first explained that Ms Cha made a mistake in asking for copies instead of originals.[75] Two questions later, Ms Joo supplemented that Ms Cha did not have copies of the agreement with her, even though copies were in H-Line's possession.[76]

---

69 Ms Joo's 2nd AEIC, at paras 13–14.

70 Ms Joo's 2nd AEIC, at exh-YJY16.

71 Ms Joo's 2nd AEIC, at para 13.

72 Ms Joo's 2nd AEIC, at exh-YJY15, with English translation at Ms Seong-Sook Choi's ("Ms Choi")1st Affidavit, at pp 34–36.

73 Ms Choi's 1st Affidavit, at p 35.

74 Ms Choi's 1st Affidavit, at p 34.

75 NE, 9 May 2018, at 36:18

76 NE, 9 May 2018, at 37:1–3.

43 Mt Apo submits that it was incredible that Ms Cha, who was "taking care of matters for external financial institutions" would not have access to documents that "form the core of the very arrangements she was supposed to take care of".[77] I do not agree with Mt Apo. The BBCHP and 2013 Agreement concerned the relationship between H-Line and KSH, not the relationship with external financial institutions. In any event, the fact that Ms Cha located a copy of the BBCHP in H-Line a couple of hours after writing to Lee & Ko tends to corroborate Ms Joo's answer that copies were indeed in H-Line's possession but Ms Cha was not aware of that.

44 During oral submissions, Mr Chan highlighted what he believed to be discrepancies in Ms Joo's evidence about the original of the Novation Agreement. Mr Chan pointed out that:

(a) Ms Choo first said in her 2nd AEIC that H-Line did not possess the original of the Novation Agreement after it was signed;

(b) in court, she explained that she received the original of the Novation Agreement from Mr Yoon Yeoeul (one of H-Line's two signatories for the Novation Agreement, who left H-Line in October 2014);

(c) but she also said in court that she was not in contact with Mr Yoon after he left H-Line.[78]

Mr Chan submitted that it was not possible for Ms Joo to have received the original of the Novation Agreement from Mr Yoon if she had no recent contact with Mr Yoon.

---

77 PCS, at para 155.

78 NE, 9 May 2018, at 34:5.

45 In making the foregoing submission, Mr Chan missed out certain aspects of Ms Joo's evidence. First, at the time Ms Joo filed her 2nd AEIC, H-Line still had not located the original of the Novation Agreement. Secondly, Ms Joo appeared to have said in court that the original of the Novation Agreement was found in H-Line's warehouse.[79] Thirdly, when asked whom she received the original of the Novation Agreement from, her initial answer was that "these documents were received by me from *those parties who came back from the contract entered [sic]*".[80] When asked to identify the said parties, she answered: "I received this document from Yoon Yeoeul."[81]

46 Taking these additional points into account, Ms Joo's evidence appears to be that:

(a) the original of the Novation Agreement was found in H-Line's warehouse after she filed her 2nd AEIC, as opposed to being handed to her by Mr Yoon only recently;

(b) the original of the Novation Agreement was handed by Mr Yoon to her when he returned from the contract signing.

But this still leaves unexplained why Ms Joo said in her 2nd AEIC that H-Line "did not possess the original of the Novation Agreement after it was signed". Perhaps what Ms Joo meant to say was that H-Line was not in possession of the original (because H-Line had up to that point not been able to locate the original).

---

79 NE, 9 May 2018, at 54:7–11.

80 NE, 9 May 2018, at 29:1–2.

81 NE, 9 May 2018, at 29:11–12.

47 From the foregoing, while I agree with Mr Chan that there are some gaps in Ms Joo's evidence concerning the provenance of the original of the Novation Agreement, I am of the view that there are reasonable explanations for such gaps and the gaps do not significantly affect the overall credibility of Ms Joo's evidence concerning the Novation Agreement.

48 This would also be an appropriate juncture to observe that, unlike the Novation Agreement, there was no explanation from Ms Joo on how H-Line obtained the "originals" of the 2010 Agreement and 2013 Agreement which she brought to court.

49 Finally, I do not see how any of the foregoing should lead to the conclusion that the demise charter is a sham. There is evidence that Hanjin Shipping was at one time the demise charterer of *Hanjin Ras Laffan*. It was not disputed that Hanjin Shipping transferred its bulk carrier business to H-Line, pursuant to which H-Line took over a large number of vessels from Hanjin Shipping. Given that the "CD Bible" shows that more than 30 other legal documents relating to the Novation Agreement and involving various parties, including financial institutions, were executed at roughly the same time as the Novation Agreement, any sham would have to be a very elaborate one.

50 When I asked Mr Chan during oral submissions what he thought the commercial purpose of such a sham could be, he moderated his position and submitted that Mt Apo's point was that H-Line did not have any proper documentation in place and, when title to sue was put in issue, they began scrambling to produce the documents.[82] Mr Chan then suggested that it might be open to me to find that there was a demise charter based on "circumstantial evidence" without finding that the Bareboat Contracts tendered in court were

[82] NE, 8 October 2018, at 37:3–8.

authentic. The precise question of whether the legal provisions in those documents were indeed the provisions which were operative between parties (as opposed to the general question of whether the agreements existed) would only be relevant for damages and not relevant for title to sue. Mr Chan submitted that Mt Apo may find difficulties challenging these documents during the damages phase if it were to be said then that I had already found these documents to be authentic during the liability phase.[83]

51 So the final shape of Mt Apo's submission on H-Line's title to sue is no longer that the demise charter arrangement is a sham, but that the specific documents adduced in evidence by H-Line may not have been the actual documents which were operative between the relevant parties.[84]

Whether the registration of charge against Hanjin Shipping meant that H-Line was not the demise charterer at the time of collision

52 As for the charge registered on the UK companies register against Hanjin Shipping on the earnings from *Hanjin Ras Laffan*, Mr Chan suggested that:

(a) no commercially sensible party (*ie*, H-Line) would have taken a demise charter over a vessel with a charge to secure the borrowings of a third party (*ie*, Hanjin Shipping); and

(b) this showed that there had never been a novation of the charterparty from Hanjin Shipping to H-Line.[85]

---

83 NE, 8 October 2018, at 41:21–42:13, and 93:1–10.

84 NE, 8 October 2018, at 37:15–19

85 NE, 8 October 2018, at 44:30–45:1; PCS, at para 158.

53 I did not think that such a conclusion could be drawn from the UK companies registry search results. The mere fact that a charge was registered five years before the collision and had remained registered at the time of collision did not necessarily mean that the charge had *remained* in effect till then. It was undisputed that, while there is a legal duty under UK companies law to register a registrable charge, there is no corresponding legal duty to deregister a charge when it ceases to have effect.[86]

Conclusion on title to sue

54 Given the shape of the evidence and parties' submissions, in order to find that H-Line was the demise charterer at the time of collision, I need to find that:

(a) Hanjin Shipping was, at some stage, the demise charterer of *Hanjin Ras Laffan*; and

(b) Hanjin Shipping novated this demise charterparty to H-Line prior to the collision.

55 In relation to point (a), I find it proven that Hanjin Shipping was the demise charterer of *Hanjin Ras Laffan* prior to the Novation Agreement on the bases that:

(a) Hanjin Shipping had been described as such in a public document, from five years before the collision, filed at the UK companies registry, which document was tendered and relied upon in evidence by Mt Apo;

---

[86] NE, 8 October 2018, at 43:9–44:19.

(b) Hanjin Shipping was described as such in the Novation Agreement, which I have found to be authentic;

(c) Ms Joo, whom I found was in a position to testify generally to the demise charter arrangements concerning *Hanjin Ras Laffan*, gave evidence that Hanjin Shipping was the demise charterer who novated the charterparty to H-Line; and

(d) the point had, in any event, been effectively conceded by Mt Apo (see [23] above).

56 In relation to point (b), I am persuaded by Ms Joo's testimony. Given her roles and responsibilities, I find that Ms Joo is a person who can testify generally to the demise charter arrangements concerning *Hanjin Ras Laffan*. Despite certain perceived inconsistencies in Ms Joo's evidence pointed out by Mt Apo, I find her evidence, viewed as a whole, to be credible. In particular, I find that she had sufficiently explained how the copy of the Novation Agreement in the "CD Bible" came to H-Line and how the original of the Novation Agreement was subsequently located. I find no basis for concluding that Ms Joo was engaged in the dishonest alleged act of cooking up a sham demise charter. In accepting Ms Joo's testimony, I also took into account the matters outlined at [12]–[15] above.

57 Further, I find that H-Line had fulfilled the requirements of s 66 of the Evidence Act to tender primary evidence of the Novation Agreement by producing an original in court through Ms Joo. *Explanation 1* to s 64 of the Evidence Act provides that "Where a document is executed in several parts, each part is primary evidence of the document". Thus the original produced by Ms Joo in court, being one of several originals of the signed Novation

Agreement, is primary evidence of the Novation Agreement, even though it may not be the original from which the scan in the "CD Bible" was made. The obligation under s 66 is to tender primary evidence of *the Novation Agreement*, not primary evidence of the specific copy which Ms Joo happened to have exhibited in her AEIC.

58 Alternatively, given Ms Joo's testimony that the electronic version of the agreements in the "CD Bible" are relied upon and used as the "operative documents" and are treated in Korea as originals, the electronic copy of the Novation Agreement in the "CD Bible" constitutes primary evidence of the Novation Agreement pursuant to *Explanation 3* of s 64 of the Evidence Act, which provides:

> *Explanation 3* —Notwithstanding 2, if a copy of a document in the form of an electronic record is shown to reflect that document accurately, then the copy is primary evidence.
>
> *Illustrations*
>
> (a) An electronic record, which has been manifestly or consistently acted on, relied upon, or used as the information recorded or stored on the computer system (the document), is primary evidence of that document.
>
> …

59 I therefore find the Novation Agreement admissible and authentic.

60 In the light of the above findings, it is no longer necessary for me to rule on the admissibility and authenticity of the BBCHP, the 2010 Agreement and the 2013 Agreement in order to determining title to sue. I therefore make *no finding either way* on this point. Should this point become relevant during the damages phase, it will be up to the court hearing the assessment of damages to

determine the point, and it will also be up to the said court whether to receive further evidence from H-Line concerning the admissibility and authenticity of these documents.

61 Looking at the evidence in totality, I hold that H-Line has established, on the balance of probabilities, that it has title to sue as demise charterer of *Hanjin Ras Laffan* at the time of the collision.

Background facts leading to the dispute

62 I now turn to the facts proper on the collision.

63 Mr William John Ellison ("Mr Ellison"), a naval architect and an expert witness for Mt Apo has provided in evidence plots of the movements of the *Mt Apo* and the *Hanjin Ras Laffan*, as well as those of nearby vessels.[87] As these plots were referred to extensively during trial and there were no objections to their accuracy, I have exhibited one of them at the Annex to this judgment to illustrate the factual narrative and assist in understanding the analysis which follows.

Use of plots and animation reconstructions in the trial

64 These plots were compiled using Automatic Identification System ("AIS") data and data from the Voyage Data Recorders ("VDRs") on board the two vessels. Both sides' experts also provided the court with two-dimensional ("2D") and three-dimensional ("3D") animations reconstructed from AIS and VDR data.[88] The 2D animations provide aerial views of the vessels' movements,

---

87 Mr William John Ellison's ("Mr Ellison") Supplementary AEIC, dated 8 August 2018, at pp 29–30.

88 Agreed Bundle, vol 2, at Tabs 98, 99, and 101–106.

while the 3D animations reconstructed the views from the respective bridges of the two vessels.

65 In terms of evidential value, these plots and animations are merely demonstrative or illustrative evidence. Their preparation involved interpretation and processing of the AIS and VDR data, and the use of software tools to reconcile data obtained from different sources. The need for reconciliation could arise *eg*, from the fact that the internal clocks of the various systems generating and recording data may not be showing the same time. The preparation of the animation reconstructions also involved joining static data points together (a process which necessitated some form of interpolation to fill in the gaps between data points). In other words, these plots and reconstructions are expressions of the skill and judgment of the experts in their attempts to render a close approximation of what had occurred based on the way they processed the available data, subject to various margins of error. The court needs to be mindful not to treat the plots and reconstructions as if they are actual aerial photographs or video footages of the event.

66 In the present case, there was a dispute between Mr Ellison and Hanjin Ras Laffan's expert, Captain Bruce Gordon Ewen ("Capt Ewen"), over the accuracy of the plots and animations prepared by Capt Ewen. Mr Ellison explained that Capt Ewen's plots and animations showed *Mt Apo*'s position to be 17 to 19 seconds ahead of her position based on GPS data recorded in the VDR. Mr Ellison attributed this shift of 17 to 19 seconds to the methodology adopted by Capt Ewen to deal with the differences between the timestamps appended by the systems generating the AIS messages and the timestamps appended by the systems receiving the AIS messages.[89] The matter was

[89] Mr Ellison's Supplementary AEIC, dated 8 August 2018, at pp 11–12.

discussed extensively at trial, at the end of which I agreed with Mr Ellison.[90] What this means is that Capt Ewen's plots and animations have to be viewed and understood with this 17-to-19-second shift in *Mt Apo*'s position in mind, while Mr Ellison's plots and animations can be used without the viewer having to make such mental adjustments. I have therefore relied primarily on Mr Ellison's plots and animations.

The vessels and their crew

67 *Mt Apo* is a single-screw bulk carrier with gross tonnage of 91,792 tonnes, a breadth of 45 metres and overall length of 291.80 metres. She has a minimum steering speed of 5 knots.[91] *Mt Apo*'s bridge was equipped with two Furuno automatic radar plotting aid ("ARPA") radars, with the S-band radar on the port side and the X-band radar on the starboard side of the bridge. Both radars were switched on and working normally.[92] At the material time, *Mt Apo* was travelling in ballast.[93]

68 The only member of *Mt Apo*'s crew who gave evidence was her master, Captain Rajesh Sardarsingh Chauhan ("Capt Rajesh"), an Indian national. The chief officer was Mr Grigorev Yury, a Russian national. The second officer was Mr Babenko Maksym, a Ukrainian national. The third officer, who was also the officer on watch ("OOW") during the lead up to the collision, was Mr Li Wenming, a Chinese national.[94]

---

90 NE, 14 August 2018, at 7:27–23:29.

91 Agreed Bundle, vol 1, at p 203.

92 Capt Rajesh's AEIC, at paras 7 and 26.

93 Mt Apo's Preliminary Act, dated 21 April 2016, at p 2.

94 Agreed Bundle, vol 2, at p 380.

69 *Hanjin Ras Laffan* is a single-screw LNG carrier with gross tonnage of 93,769 tonnes, a breadth of 43 metres and overall length of 280 metres. She has a minimum steering speed of 4 knots.[95] Her bridge was similarly equipped with three ARPA radars (two X-band radars and an S-band radar), which were connected to an AIS. All the equipment was in good working condition.[96] At the material time, she was carrying only 1,600 cubic metres of LNG.[97]

70 Similarly, the only member of *Hanjin Ras Laffan*'s crew who gave evidence was her master, Captain Gap Dong Kim ("Capt Kim"). She had a bridge team consisting entirely of Korean nationals.[98]

Weather, visibility and current

71 The weather was cloudy with intermittent passing showers. Visibility was varied due to the intermittent showers, with visibility reduced to about two nautical miles ("nm") in areas affected by the showers. According to the parties' Preliminary Acts, *Mt Apo* was first seen by *Hanjin Ras Laffan* when the vessels were 4 nm apart, while *Hanjin Ras Laffan* was first seen by *Mt Apo* when the vessels were 2.1 nm apart.

72 There was a south-westerly tidal current of about 0.5 knots.[99] Both sides' experts agree that this was not a strong current and it would not affect the ability of either vessel to take action as required by the COLREGS. However, as the tidal stream was acting on the starboard side of *Mt Apo*, it would have to be taken into account by *Mt Apo* as it may affect her turning circle.[100] In their

95 Agreed Bundle, vol 1, at pp 1, 133–134.

96 Capt Kim's AEIC, at paras 5 and 6.

97 Hanjin Ras Laffan's Preliminary Act, dated 5 May 2016, at p 1.

98 Agreed Bundle, vol 1, p 177.

99 Mt Apo's Preliminary Act, at p 3.

closing submissions, neither side submitted that the tidal current had any effect on any of the actions or turning movements that were taken, or ought to have been taken.

Factual narrative

Mt Apo*'s movements up to 9:54 am*

73 At 9:20 am, *Mt Apo* began sailing out of the Eastern Special Purposes "A" Anchorage, with pilot on board. According to *Mt Apo*'s passage plan, she was to cross the westbound lane of the TSS in the vicinity of Pilot Eastern Boarding Ground "C" (which was about 1.5 nm east of where *Mt Apo* eventually crossed into the westbound lane), before joining the eastbound lane of the TSS to head for Australia.[101] The pilot took *Mt Apo* down the Eastern Fairway. Before disembarking at 9:40 am (C-19), the pilot advised Capt Rajesh to follow *Ocean Sapphire*, which was directly ahead of *Mt Apo* and also on an eastbound journey. (As shown in the Annex, *Ocean Sapphire* would eventually cross into the westbound lane in the vicinity of Pilot Eastern Boarding Ground "C" at 9:59 am.)

74 At 9:43 am, *Frontier Leader*, which had been travelling eastwards along the eastbound lane of the TSS, began turning to port to commence crossing the westbound lane of TSS to head into the Singapore port. She completed her turn and entered the westbound lane at 9:46 am at right angles to the general direction of the traffic flow.[102]

---

100 NE, 14 August 2018, at 70:2–7.

101 Agreed Bundle, vol 1, at p 185; PCB, at p 6.

102 Capt Rajesh's AEIC, at para 27.

75 At 9:50 am (C-9), *Mt Apo* was about 0.5 nm from the northern boundary of the westbound lane of the TSS and slightly less than 1 nm from *Frontier Leader*. (In this part of the TSS, the northern boundary of the westbound lane is also the northern boundary of the TSS. The terms "northern boundary of the westbound lane" and "northern boundary of the TSS" will be used interchangeably in this judgment.) Up to this point, *Mt Apo* had been following *Ocean Sapphire* in turning gradually to port, with its heading changing from 140 degrees at 9:42 am to 100 degrees at 9:50 am. Capt Rajesh testified that it was at 9:50 am that he decided it was no longer possible to continue following *Ocean Sapphire*, as *Mt Apo* was in a crossing situation with *Frontier Leader*. *Mt Apo* had to keep clear of *Frontier Leader* since *Mt Apo* was the give-way vessel in this crossing situation. Capt Rajesh decided to maintain *Mt Apo*'s heading.[103] Although this point was not mentioned in his AEIC, Capt Rajesh supplemented during cross-examination that it was also at 9:50 am that he made the decision to cross the westbound lane of the TSS.[104] At this point, *Mt Apo*'s speed was 7.8 knots and increasing.[105]

76 At 9:52 am (C-7), when *Frontier Leader* was about 0.7 nm from *Mt Apo*, Capt Rajesh decided to alter course to starboard to keep clear of *Frontier Leader*. Immediately after giving the helm orders which resulted in a 2 degree change in course to starboard, Capt Rajesh noticed that the *Frontier Leader* had made a substantial alteration of course to starboard and decided to put the helm amidships to maintain course.[106] *Mt Apo*'s speed at this point was 8.5 knots, but she was beginning to slow down.[107] In Capt Rajesh's view, the crossing situation

103 Capt Rajesh's AEIC, at para 28.

104 NE, 8 May 2018, at 66:27–31.

105 PCB, at p 28.

106 Capt Rajesh's AEIC, at para 30; PCB, at p 30.

107 PCB, at p 30.

with *Frontier Leader* ended by 9:54 am (C-5), when the *Frontier Leader* cleared the bow of the *Mt Apo*.[108] It was at this point that *Mt Apo* got into another close quarters situation with a Malaysian navy vessel, *RMN 1503*, which was travelling westward in the westbound lane near its northern boundary.[109]

Hanjin Ras Laffan*'s movements up to 9:54 am*

77 At the material time, *Hanjin Ras Laffan* was travelling through the Singapore Strait on a westward voyage from South Korea to Qatar. Capt Kim testified that *Hanjin Ras Laffan* entered Sector 8 of the TSS at about 9:40 am (C-19), and duly reported to the Vessel Traffic Information Service ("VTIS") of the Maritime and Port Authority of Singapore ("MPA") on VHF Channel 14.[110]

78 Capt Kim testified that it was about 9:45 am (C-14) when he first visually sighted *Mt Apo* about 4 nm off *Hanjin Ras Laffan*'s starboard bow. Capt Kim stated that his additional deck officer had acquired *Mt Apo* on their S-band ARPA radar and reported a closest point of approach ("CPA") of 0.2 nm and the time to CPA ("TCPA") of 10 minutes.[111] *Hanjin Ras Laffan*'s speed at this time was about 15 knots, with her engine running full ahead.[112]

79 *Hanjin Ras Laffan* then made a number of changes in course and speed in an attempt to overtake *Dalian Venture*, first on the latter's port side and then,

---

108 Capt Rajesh's AEIC, at para 30.

109 NE, 15 August 2018 at 15:1–4; 17:17–25.

110 Capt Kim's AEIC, at paras 8 and 9.

111 Capt Kim's AEIC, at paras 10 and 11.

112 Capt Kim's AEIC, at para 12

when a change in course to port by *Dalian Venture* made that impractical, from its starboard side.[113]

80 Capt Kim stated that at 9:50 am (C-9), he noted that *Mt Apo* was gradually turning to port. He therefore assessed that *Mt Apo* would not cross the TSS ahead of *Hanjin Ras Laffan*. Hence, at 9:52 am, he had put *Hanjin Ras Laffan* from *full ahead* to *navigation full*.[114] However, at 9:53 am (C-6), Capt Kim noticed that the CPA of the *Mt Apo* to *Hanjin Ras Laffan* fell to nearly zero and there was a TCPA of about five minutes.[115] At this point, *Hanjin Ras Laffan's* speed was 12.5 knots.[116]

Mt Apo *crossed into the westbound lane of the TSS*

81 Capt Rajesh's evidence is that *Mt Apo* was at the northern boundary of the westbound lane by 9:54 am.[117] Capt Kim's evidence is that he observed *Mt Apo* cutting into the westbound lane between 9:53 am and 9:54 am.[118] The 2D animation prepared by Capt Ewen shows *Mt Apo*'s bow touching the northern boundary of the westbound lane at 9:54:21 am,[119] while that prepared by Mr Ellison shows *Mt Apo*'s bow doing so at 9:54:42 am.[120] Given my observations at [66] above, I consider the timing taken from Mr Ellison's 2D animation more reliable. I therefore find that *Mt Apo* entered the TSS at 9:54 am (C-5), probably during VHF communication between VTIS and *Hanjin Ras Laffan* from

113 Capt Kim's AEIC, at paras 13 and 14.

114 Capt Kim's AEIC, at para 15.

115 PCB, at pp 145–146.

116 PCB, at pp 66–67.

117 Capt Rajesh's AEIC, at para 31.

118 Capt Kim's AEIC, at para 16.

119 NE, 11 May 2018 at 45:10–12.

120 Agreed Bundle, vol 2, at Tab 98 (at p 390).

9:54:27 am to 9:54:55 am[121] and before the VHF communication between *Hanjin Ras Laffan* and *Mt Apo* commenced at 9:54:57 am.[122]

82 *Mt Apo*'s crossing was done at a shallow angle of 32 degrees from the northern boundary of the TSS,[123] at the speed of 8 knots.[124]

The VHF communication at 9:55 am

83 At 9:53:28 am, VTIS called *Mt Apo* on the VHF radio to advise her to keep a lookout for three more westbound vessels coming on her port side.[125] *Mt Apo* replied with "Ok, thank you ma'am", to which VTIS responded with "Please keep good lookout sir, and you cross safely".[126] At 9:54:27 am, VTIS called *Hanjin Ras Laffan* to inform her that *Mt Apo* was going eastbound and 1.4 nm away from her, and also to advise *Hanjin Ras Laffan* to keep a lookout for *Mt Apo*.[127] Capt Kim acknowledged VTIS' call. He also asked VTIS what *Mt Apo*'s intentions were, and indicated that he wanted a green-to-green (starboard-to-starboard) passing with *Mt Apo*. In response, VTIS asked Capt Kim to contact *Mt Apo* directly.[128] This conversation ended at 9:54:55 am.

84 Within a couple of seconds after the conversation between VTIS and *Hanjin Ras Laffan,* Capt Rajesh ordered *stop engine*.[129] Capt Rajesh explained

---

121 PCB, at pp 150–152.

122 PCB, at p 152.

123 NE, 8 October 2018, at 30:1–10; 50:25.

124 PCB, at p 32.

125 PCB, at p 147.

126 PCB, at p 148.

127 PCB, at p 151.

128 PCB, at p 152.

129 PCB, at p 152.

in his AEIC that he did so because it did not appear that the *Hanjin Ras Laffan* was going to give way.[130] Two seconds after Capt Rajesh ordered stop engine, the *Hanjin Ras Laffan* called *Mt Apo* on the VHF, as suggested by VTIS. The OOW of *Mt Apo*, who was also the third officer, responded to *Hanjin Ras Laffan*'s call on behalf of *Mt Apo.* The conversation, which I shall refer to as the "9:55 Conversation", would become a key focus of parties' submissions. The 9:55 Conversation went as follows:[131]

Hanjin Ras Laffan:	*Mount Apo. Mount Apo.* This is *Hanjin Ras Laffan.*
Mt Apo (OOW):	Yes, *Mount Apo*, go ahead.
Hanjin Ras Laffan:	This is *Hanjin Ras Laffan*, what is your intention? Green-to-green, green-to-green.
Mt Apo (OOW):	We are now stopped our engine already.
Hanjin Ras Laffan:	Are you, are you stopped now, the engine?
Mt Apo (OOW):	Yes sir. Stopped engine to make you pass our bow.
Hanjin Ras Laffan:	Oh very dangerous sir!

85 The phrase "make you pass our bow" in *Mt Apo*'s reply was transcribed as "[inaudible dialogue]" in the transcript provided by Mt Apo[132] and as "make you passing our bow" in the transcript provided by Hanjin Ras Laffan.[133] Mr Leong suggested during his opening statement that the words were "make you pass our bow".[134] I have heard the recording of the VHF conversation myself

130 Capt Rajesh's AEIC, at para 33.

131 PCB, at pp 153–154.

132 PCB, at pp 154–155.

133 Captain Bruce Gordon Ewen's ("Capt Ewen") 1st AEIC, dated 27 March 2018, at p 76.

134 NE, 8 May 2018, at 44:11–20

and found this part of the recording to be not inaudible at all.[135] I could clearly make out the words "make you pass our bow".

86 There are three other points to highlight:

(a) When *Hanjin Ras Laffan* said "green-to-green, green-to-green" over the VHF, Capt Rajesh could be heard in the background saying "starboard-to-starboard" to the OOW.[136] At first blush, it appeared to me that this was an order by Capt Rajesh to the OOW that the two vessels should pass "starboard-to-starboard". However, Capt Rajesh explained in cross-examination that he was merely asking whether, by "green-to-green", *Hanjin Ras Laffan* meant to say "starboard-to-starboard".[137]

(b) When *Hanjin Ras Laffan* asked "are you stopped now, the engine?", Capt Rajesh could be heard saying "yes" in the background.[138] This appears to me to be a direction or guidance from Capt Rajesh to the OOW to reply "yes" to *Hanjin Ras Laffan*'s question.

(c) The 9:55 Conversation lasted a total of 27 seconds.

Events after the 9:55 Conversation

87 The 9:55 Conversation ended at 9:55:24 am. By then, it was less than four minutes before the collision. The distance between the two vessels had closed to less than 1.2 nm.[139] *Mt Apo*, having stopped its engine, had slowed down to 7.8 knots,[140] while *Hanjin Ras Laffan* had slowed down to 12.0 knots.[141]

135 Agreed Bundle, vol 1, at Tab 72 (VHF Recordings from MPA).

136 PCB, at p 153, timestamp 9:55:06.

137 NE, 11 May 2018, at 61:30–61:1.

138 PCB, at p 154, timestamp 9:55:17.

139 Agreed Bundle, vol 3, at p 568.

Both sides' experts agreed that, at this point, there were still sufficient time and sufficient sea room for both vessels to avoid a collision.[142]

88 After the 9:55 Conversation, both vessels continued reducing their respective speeds incrementally. *Hanjin Ras Laffan* made a number of minor course adjustments to port. Capt Kim explained that this was to follow behind *Dalian Venture* and give more space to *Mt Apo*.[143] *Mt Apo* also altered its heading slightly to starboard. Capt Rajesh explained that this was in order to maintain *Mt Apo*'s course in the light of the south-westerly current.[144]

89 At 9:57 am (C-2), *Mt Apo* called *Hanjin Ras Laffan* and requested a port-to-port passing. This request was rejected by *Hanjin Ras Laffan*, and the conversation ended in a mutual agreement to go green-to-green.[145] Unlike the earlier conversation which lasted only 27 seconds, this second conversation lasted almost a full minute (from 9:57:03 am to 9:57:59 am). While the second VHF conversation was taking place, Capt Kim moved *Hanjin Ras Laffan*'s engine from *slow* to *dead slow* and altered course to port in an effort to avert collision with the *Mt Apo*.[146] By the time the second VHF conversation ended, it was one minute and 16 seconds before the collision, and the vessels were 0.3 nm apart. *Mt Apo*'s speed had come down to 6.6 knots,[147] while *Hanjin Ras Laffan* had reduced its speed to 9.8 knots.[148]

---

140 PCB, at p 33.

141 PCB, at p 67.

142 Captain John Nicholas Duncan Simpson's ("Capt Simpson") Supplementary AEIC, dated 27 July 2018, at p 27, para 2.8.3; NE, 16 August 2018, at 69:18–27.

143 NE, 11 May 2018, at 18:26–30; 19:26–30.

144 NE, 8 May 2018, at 84:13–18.

145 PCB, at pp 161–166.

146 Capt Kim's AEIC, at para 20.

147 PCB, at p 35.

90 Capt Rajesh observed that *Hanjin Ras Laffan*'s alteration of course to port had caused her stern to swing towards *Mt Apo*. He thus ordered hard to port shortly before 9:58 am (C-1) to try to avoid *Hanjin Ras Laffan*.[149] Capt Rajesh stated in his AEIC that he gave *several* astern orders from 9:58 am to 9:59 am to arrest *Mt Apo*'s forward momentum. However, the VDR records show that Capt Rajesh only gave two astern orders during this period. The first time was when the Chief Officer advised Capt Rajesh: "Captain we have to run astern", in response to which Capt Rajesh ordered "put astern" at 9:58:06 am.[150] This resulted in the engine telegraph being put first to dead slow astern, then to slow astern and then to half astern.[151] The second order was given when the Chief Officer reported to VTIS that *Mt Apo* was running at half astern. Upon hearing this, Capt Rajesh ordered *full astern*.[152] A mere ten seconds later, Capt Rajesh ordered *stop engine*.[153] The fact that Capt Rajesh ordered "put astern" only after he was reminded by the Chief Officer to do so was captured only in the transcripts provided by Hanjin Ras Laffan and not in the transcripts provided by Mt Apo. I raised this with parties during oral submission.[154] Mr Chan told me that his team tried listening to the recording again but did not hear these remarks while Mr Leong told me that Capt Ewen picked up the remarks by listening to the recording with headphones. I listened to the recording myself and confirmed that Capt Ewen was correct.

---

148 PCB, at p 69.

149 Capt Rajesh's AEIC, at para 34.

150 Capt Ewen's 1st AEIC, at p 171 (Appendix G, at p 5).

151 PCB, at pp 166–168.

152 PCB, at p 168.

153 PCB, at 169; Capt Ewen's 1st AEIC, at p 172 (Appendix G, at p 6).

154 NE, 8 October 2018, at 28:11–25; 76:20–25.

The collision

91 At 9:58:57 am (*ie,* roughly 20 seconds before the collision), *Mt Apo* called *Hanjin Ras Laffan* on VHF again to request that *Hanjin Ras Laffan* go hard to starboard in order to swing her stern away from the *Mt Apo* to minimise collision impact.[155] Capt Kim's testimony is that he had indeed done so before the collision.[156] However, the VDR voice recording did not record any verbal orders from Capt Kim to this effect.[157] In fact, VDR records show that *Hanjin Ras Laffan*'s rudder was not put to starboard until *after* the collision.[158]

92 The collision occurred at 9:59:15 am, with *Mt Apo*'s starboard bow impacting the starboard quarter of *Hanjin Ras Laffan*. The location of the collision was at Latitude 01° 14.8' N, Longitude 103° 57.7' E, which was within Singapore territorial waters, about 3.9 nm from the Singapore coast.

93 In the unlikely event that there remains any doubt today on whether the breadth of Singapore's territorial sea is 3 nm or 12 nm, it may be useful to highlight that any uncertainty arising from the decision in *Trade Resolve* [1999] 2 SLR(R) 107 at [32]–[33] has been put to rest by Government Gazette Notification No 1485 – "Singapore Maritime Zones" dated 28 May 2008, which provides:

> It is hereby notified for general information as follows:
>
> As indicated in the Ministry of Foreign Affairs Press Statement dated 15th September 1980, *Singapore* ***has*** *a territorial sea limit that extends up to a maximum of 12 nautical miles* and an Exclusive Economic Zone.

---

155 PCB, at p 170

156 Capt Kim's AEIC, at para 22.

157 PCB, at p 171.

158 PCB, at p 70.

…

[Emphasis added.]

In *The Fagernes* [1927] 1 P 311, the English Court of Appeal took judicial notice of the UK government's statement on the limits of British territorial waters and treated that statement as conclusive. By the same token, in the light of Government Gazette Notification No 1485, the breadth of Singapore's territorial sea is 12 nm, not 3 nm.

COLREGS, fault and approach for apportionment of liability

94 As neither side contends that the other is solely to blame for the collision, the central issue to be determined in the present case is the apportionment of liability. In this regard, s 1 of the Maritime Conventions Act 1911 (Cap IA3, 2004 Rev Ed) ("Maritime Conventions Act") provides:

> **1**.—(1) Where, by the fault of two or more ships, damage or loss is caused to one or more of those ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault, except that if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.
>
> (2) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which her fault has not contributed.

95 Thus the apportionment of liability depends on fault, and s 1(2) of the Maritime Conventions Act makes clear that only causative fault is relevant. Useful guidance on the approach to apportionment of liability is to be found in the following passage from *The "Nordlake" and The "Seaeagle*" [2016] 1 Lloyd's Rep 656 ("*The Nordlake*") which was cited with approval in *The Dream Star* [2018] 4 SLR 473 (at [126]):

148 In *The Samco Europe and MSC Prestige* [2011] 2 Lloyd's Rep 579 the court summarised the task of apportionment of liability in this way:

> "81 **Apportionment of responsibility for a collision depends upon an assessment of the blameworthiness and causative potency of both vessels**: see *The British Aviator* [1965] 1 Lloyd's Rep 271 at page 277 per Willmer LJ. **The assessment is of the relative degree of responsibility of each vessel**: see *The Mineral Dampier* [2001] 2 Lloyd's Rep 419 at para 39. For that reason Admiralty judges often consider, where one ship is more to blame than the other, how many more times to blame one vessel is than the other…

> 149 … In his article Sir Henry Brandon described **the proposition that both culpability and causative potency must be taken into account as the 'true principle of law applicable'** (see page 1031 and 1032). Whilst there were no universal rules with regard to the assessment of culpability or causative potency he identified ('on the basis of practical experience of apportionment in numerous cases over many years') certain broad lines of approach which can be used when apportioning liability (see pages 1037 to 1041). They may be summarised as follows:
>
> > (i) The number of faults on one side or the other is not decisive. **It is the nature and quality of a ship's faults, rather than their number, that matter.**
> >
> > (ii) Breaches of the obligations imposed on ships in certain defined situations by the Collision Regulations will usually be regarded as seriously culpable…
> >
> > (iii) Causative potency has two aspects. The first is the extent to which the fault contributed to the fact that the collision occurred. The second is the extent to which the fault contributed to the damage resulting from the casualty.
> >
> > (iv) In most cases though not all **it will be right to treat the fault of a ship that creates a situation of difficulty or danger as greater than that of the ship that fails to react properly to such situation after it has been created.**
> >
> > (v) The fact that a fault consists of a deliberate act or omission may in certain circumstances justify the court in treating it as more culpable than a fault which consists of omission only.
>
> 150 The court deals with questions of apportionment in a fairly broad way (or as it was put in *The Volute* [1922] 1 AC 129 at page 144: 'somewhat broadly and on common sense principles') …
>
> [Emphasis added in bold.]

96 Thus the apportionment of liability involves a broad, commonsensical and qualitative assessment of the *culpability* and *causative potency* of both vessels.

97 As noted by Belinda Ang Saw Ean J in *The Dream Star* (at [47]–[49]):

(a) Fault refers to a breach of duty of care that caused or contributed to the collision and damage.

(b) For navigational faults, the standard of care applicable is the exercise of "good seamanship", which is tantamount to the exercise of reasonable skill or care expected of a competent/prudent seaman to prevent the vessel from doing injury.

(c) The duty of good seamanship requires the crew of a vessel to observe the COLREGS or local regulations.

(d) The object of the COLREGS is to prevent collisions and to minimise their effect. The COLREGS are made not merely for the sake of the vessel which has to observe them but for the sake of other vessels which may be approaching or manoeuvring at close quarters, and which have every right and reason to suppose that the COLREGS will be observed, and none to suppose they will be broken.

(e) The mere fact that the rules in COLREGS have been broken or that the vessels have not been navigated in a seamanlike manner does not *ipso facto* give rise to a finding of fault on the part of the breaching party. To give rise to a finding of fault, the breach must have caused or contributed to the collision and damage.

Analysis

98 In analysing whether acts and omissions of the two vessels should give rise to findings of fault, I was assisted by the evidence of two navigation experts.

Evidence of expert witnesses

99 The expert witness for Hanjin Ras Laffan was Capt Ewen while the navigation expert witness for Mt Apo was Captain John Nicholas Duncan Simpson ("Capt Simpson"). Both are master mariners with extensive nautical experience as well as extensive experience as consultants and expert witnesses.[159] In particular, Capt Ewen spent 15 years commanding oil tankers of various sizes while Capt Simpson spent 11 years as a pilot in the busy Humber pilotage district of the UK. Capt Ewen has been practising as a consultant and expert in Singapore since 1999, while Capt Simpson has been practising as a consultant and expert for 15 years in the UK and Hong Kong.

100 The trial was conducted in two tranches, with factual evidence heard in the first tranche and expert evidence in the second tranche. Between the two tranches, the experts were directed to hold a joint conference and then prepare a joint report setting out their areas of agreement and disagreement. Thereafter, the experts were to each file a supplementary report to comment on the areas of disagreement. The joint report listed two areas of agreement and 11 areas of disagreement.[160] As the two areas of agreement were only on technical definitions of the navigational terms used in the experts' reports, the joint report in fact contained no substantive areas of agreement. During the second tranche of the trial, the experts testified concurrently, in a process commonly referred to as "hot-tubbing".

---

159 Capt Ewen's 1st AEIC, at p 125 (Appendix A, at p 3); Capt Simpson's 1st AEIC, dated 9 April 2018, at pp 57–59.

160 Agreed Bundle, vol 3, at p 569–572.

Evidence of factual witnesses

101 As is apparent from the factual narrative, there were aspects of both Capt Rajesh's testimony and Capt Kim's testimony which were inconsistent with the documentary records. Where this occurs, I will prefer the documentary records over either master's testimony. Some of the explanations proffered by the two masters also do not appear to make sense when viewed in the light of the objective facts. In such instances, I will give less weight to their explanations.

Structure of the analysis

102 Having regard to how the experts' evidence unfolded and also to the content of the parties' submissions, I will examine the issues in dispute in the following order:

(a) Whether *Mt Apo* was at fault for crossing the TSS at the time and in the manner she did.

(b) Whether *Mt Apo* and *Hanjin Ras Laffan* were in a crossing situation and, if so, when did the crossing situation arise.

(c) Whether *Hanjin Ras Laffan* was at fault for the way she navigated prior to the 9:55 Conversation.

(d) Whether *Hanjin Ras Laffan* was at fault for initiating the 9:55 Conversation.

(e) Whether *Mt Apo* and *Hanjin Ras Laffan* took proper avoidance actions after 9:55 am.

103 I have not included proper lookout among the foregoing list of issues as it is my view that neither vessel had breached their obligations to keep a proper lookout.

Whether* Mt Apo *was at fault for crossing the TSS at the time and in the manner she did

104 The question whether *Mt Apo* was at fault for crossing the TSS at the time and in the manner she did gives rise to two sub-issues. First, whether it was safe for *Mt Apo* to cross the TSS at the time Capt Rajesh made the decision to cross. Secondly, whether *Mt Apo* was at fault to cross the TSS at the shallow angle of 32 degrees.

Whether it was safe for Mt Apo *to cross the TSS at the time Capt Rajesh made the decision to cross*

105 Since Capt Rajesh claimed he decided to cease following *Ocean Sapphire* and to cross into the TSS because *Mt Apo* was in a crossing situation with *Frontier Leader*, it will be useful to set out Rules 15, 16 & 17 of the COLREGS which deal with crossing situations:

> **Rule 15**
>
> *Crossing Situation*
>
> When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.
>
> **Rule 16**
>
> *Action by Give-way Vessel*
>
> Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

Rule 17

Action by Stand-on Vessel

(*a*) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.

(ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.

(*b*) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.

(*c*) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a)(ii) to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.

(*d*) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

106 Rule 15 of the COLREGS provides that, in a crossing situation "the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel". In the situation between *Mt Apo* and *Frontier Leader*, *Mt Apo* was required to keep out of *Frontier Leader's* way as *Frontier Leader* was on the starboard side of *Mt Apo – ie, Mt Apo* was the "give-way vessel" while *Frontier Leader* was the "stand-on vessel".

107 Since Hanjin Ras Laffan submits that Capt Rajesh's decision to cross was unsafe, it is useful to set out Rule 10(*c*) of the COLREGS, which concerns vessels crossing traffic lanes in a TSS:

Traffic Separation Schemes

> …
>
> (*c*) A vessel shall so far as practicable avoid crossing traffic lanes, but if obliged to do so shall cross on a heading as nearly as practicable at right angles to the general direction of traffic flow.
>
> …

108 It was held by Clarke J in *The "Century Dawn" and "Asian Energy"* [1994] 1 Lloyd's Rep 138 ("*The Century Dawn* (HC)") that Rule 10(*c*) was designed to ensure that "the separation lanes should be left clear for vessels proceeding the correct way along them except to the extent that it is necessary for others to cross them or enter them", and that "no attempt should be made to cross either lane in a traffic separation scheme unless it is safe to do so" (at 150–151). Clarke J's holdings were upheld on appeal in *The "Century Dawn" and "Asian Energy"* [1996] 1 Lloyd's Rep 125 ("*The Century Dawn* (CA)"). In the English Court of Appeal, Hirst LJ added that the question whether it was safe for a vessel to cross should be answered by reference to the conditions prevailing at the time the decision to cross was made and not the conditions prevailing at the time when the vessel entered the TSS (at 132).

109 Capt Ewen's opinion is that *Mt Apo* was not obliged to cross and it was unsafe for her to have done so.[161] He explained that the decision to cross was unsafe because attempting to cross ahead of several westbound vessels carries unacceptable risks.[162]

110 Capt Ewen's view that it would be risky to cross when there were several vessels approaching in the TSS was echoed by Capt Rajesh, who testified in his AEIC that it "did not seem to be prudent" to cross at 9:46 am "when there were several vessels approaching in the westbound lane at that point in time".[163]

161 Agreed Bundle, vol 3, at p 571, para 9.

162 Capt Ewen's Supplementary AEIC, dated 25 July 2018, at p 28, para 2.9(vii).

Picking up on Capt Rajesh's evidence concerning the situation at 9:46 am, counsel for Hanjin Ras Laffan, Mr Leong asked Capt Rajesh whether the same conditions and considerations continued to prevail four minutes later at 9:50 am, in the following exchange:[164]

> Q Of course not. Right? Because at 9.46, you already said that it would not [*be*] prudent to cross. So, same, 9.50 also not prudent to cross?
>
> A Correct.
>
> Q Do you agree?
>
> A Correct.

Thus, *Capt Rajesh admits that it was not prudent to cross the TSS at 9:50 am*, for the same reason he gave for considering it imprudent to cross at 9:46 am.

111 To assist the court in further appreciating the imprudence of Capt Rajesh's decision at 9:50 am to cross, Hanjin Ras Laffan suggested a number of safer options which Capt Rajesh could have pursued. Although Capt Rajesh disagreed with a number of the options suggested to him during cross-examination, he agreed with one of them in the following exchange:[165]

> Q So anyway, I would say that it is possible for you, right, at this point, okay, to join the westbound lane in the shallow angle, and then go down on the westbound lane and then, at the safe opportunity, make a turn back onto the eastbound lane. That is also an option available to you?
>
> A Yes.
>
> Q Do you agree?
>
> A Yes.

---

163 Capt Rajesh's AEIC, at para 27.

164 NE, 8 May 2018, at 81:3–7.

165 NE, 8 May 2018, at 79:32–80:6.

Thus Capt Rajesh agreed that, instead of crossing the westbound lane at that point to immediately join the eastbound lane, an option available to him was to join the westbound lane, travel westwards together with the oncoming westbound traffic, and then make a U-turn into the eastbound lane when it was safe to do so.

112 In Capt Ewen's opinion, this was an option. He had used such an option himself before in the Red Sea. While he did not think *Mt Apo*'s situation required it, he would have had that option in his quiver.[166] Capt Ewen did not elaborate on why he thought *Mt Apo* did not require pursuit of that option. In my view, this was because Capt Ewen's primary recommendation had all along been for *Mt Apo* to reduce speed and avoid crossing if possible.

113 Capt Simpson's comment on this option was:[167]

> 2.9.6. A final option was suggested to the master of 'MA' during his evidence, which was that of making a very large alteration of course to starboard, requiring the use of hard to starboard rudder, to enter the west bound lane at a shallow angle, as required by Rule 10(b)(iii). It would then be necessary to turn to port to make a 'U' turn at some undeterminable later stage in the TSS when circumstances finally became favourable. As 'MA' was in a situation where there was significant activity at 09:50, not least with 'FL' approaching from the south and 'RMN 1503' from the east, and with little indication of what manoeuvres were going to be undertaken, a bold alteration of course to starboard by 'MA' would certainly have caused some confusion, *particularly from a vessel that was expected to be standing-on in a crossing situation in compliance with Rule 17(a)(i).*
>
> 2.9.7. In my opinion, it was not necessary to consider making a lengthy detour from the vessel's route which would unnecessarily prolong the time that 'MA' had to navigate within the TSS. *When the master of 'MA' made the*

166 NE, 15 August 2018, at 91:8–18.

167 Capt Simpson's Supplementary AEIC, at p 29.

> *decision not to continue following 'OS' due to the traffic situation he could not have anticipated that a transiting vessel would not comply with his obligations under the COLREGS and fail to take action as a give-way vessel.*
>
> [Emphasis added.]

114 I have two difficulties with Capt Simpson's explanation. The first is Capt Simpson's suggestion that a bold turn to starboard by *Mt Apo* in order to join the westbound lane is somehow inconsistent with *Mt Apo*'s obligations as a stand-on vessel in a crossing situation with the westbound vessels. The reference to Rule 17(*a*)(i) in the foregoing passage is a reference to the obligation of a stand-on vessel to "keep her course and speed". In my view Capt Simpson's suggestion does not accord with logic and good sense.

115 If Capt Simpson were right that a vessel in *Mt Apo*'s situation at 9:50 am could not legally make a starboard turn to join the westbound lane, it would mean that all vessels leaving the port of Singapore to commence a westward journey along the very busy Singapore Strait will never be able to join the westbound lane of the TSS without breaching Rule 17(*a*)(ii), unless the westbound lane happened to be devoid of traffic. This is because every vessel leaving the port of Singapore on a westward voyage would necessarily be approaching the TSS from the north, tracking a southerly course, with the westbound traffic coming towards her from her port side. In other words, every vessel leaving Singapore on a westward journey would, prior to joining the TSS, be in the same "stand-on" situation in relation to westbound vessel as that which *Mt Apo* found herself in. Capt Simpson's suggestion will lead to the absurd conclusion that a vessel coming out of the port of Singapore may join the westbound lane *only* when there are absolutely no other westbound vessels coming down her port side along the westbound lane.

116 In my view, Capt Simpson's suggestion is based on a misapprehension of a stand-on vessel's duty to keep her course and speed. The limits of this duty was explained by Scrutton LJ in *The Taunton* (1928) 31 Ll. L. Rep. 119 (at 120), in this manner:

> The decisions of this Court have thrown a light on [this] rule which perhaps one would not derive from the rule if one did not know anything about the decisions, because they have said that *when the rule talks about keeping course and speed it means the course you were going to take for the object you had in view - not the course and speed you had at any particular moment.* So you keep your speed although you stop and you keep your course although you alter it 16 points. You keep your course if you are going round the bend of a river although you are altering it to follow the bend. You keep your speed though you stop to pick up a pilot. It follows that if you are crossing the tide your course is to keep diverging; and therefore, according to the authorities, you are keeping your course although you are continually porting.
>
> [Emphasis added.]

Similarly, it was held in *The Topaz and Irapua* [2003] 2 Lloyd's Rep 19 (at [37]) that:

> As is well established, r. 17(a)(i), is subject to the qualification that the obligation of the stand-on vessel to "keep her course and speed" *does not preclude, broadly and neutrally, alterations of course and speed in the ordinary course of navigation.* In short, the "course and speed" are the course and speed that the stand-on vessel *was going to take for the object she had in view, not the course and speed at any particular moment…*
>
> [Emphasis added.]

Summarising the authorities, the authors of *Marsden and Gault on Collisions at Sea* (Sweet & Maxwell, 14th Ed, 2016) ("*Marsden*") conclude (at para 5–403):

> …
>
> *Rule 17 does not require the stand-on vessel must maintain either a constant heading or a constant speed.* A vessel reducing speed to pick up a pilot, a vessel (with her engines put to full speed) which was increasing her speed up to full speed, a vessel

> which was continually altering her heading across a tide, a vessel reducing her speed to run off her way to maintain her course preparatory to anchoring and a tug manoeuvring to pick up her tow, have been held not in breach of this rule.
>
> [Emphasis added.]

117 Thus the authorities make clear that a stand-on vessel is *not* required by Rule 17(*a*)(i) to maintain either a constant heading or a constant speed. The obligation under Rule 17(*a*)(i) for a stand-on vessel to "keep her course and speed" refers to the course and speed which the vessel was going to take for the object she had in view, not the course and speed at any particular moment. In other words, Rule 17(*a*)(i) does *not* preclude alterations of course and speed in the ordinary course of navigation.

118 During the hot-tubbing session, I put the position outlined at [117] above to the experts in the context of the issues discussed at [134]–[136] below.[168] Capt Ewen agreed, explaining that "it's been accepted by Courts in the past [that a stand-on vessel] may use normal navigation".[169] Capt Simpson, on the other hand, was evasive and did not give me a direct answer.[170]

119 From the foregoing discussion, it is apparent that Capt Simpson arrived at the opinion he did because he failed to distinguish between alterations of course and speed by a stand-on vessel *to avoid collision* (which is precluded by Rule 17(*a*)(i)) and alteration of course and speed by a stand-on vessel *in the ordinary course of navigation for the object she had in view* (which is not precluded by Rule 17(*a*)(i)). For these reasons, I cannot accept Capt Simpson's suggestion as outlined at [114] above.

---

168 NE, 15 August 2018, at 119:12–15.

169 NE, 15 August 2018, at 119:16–21.

170 NE, 15 August 2018, at 119:24–121:9.

120 My second difficulty is with Capt Simpson's point that, when Capt Rajesh made his decision at 9:50 am, he "could not have anticipated that a transiting vessel would not comply with his obligations under the COLREGS and fail to take action as a give-way vessel". At best, Capt Simpson's point was an explanation that Capt Rajesh should not be faulted for failing to anticipate that *Hanjin Ras Laffan* was going to ignore her obligations under COLREGS. It is not an explanation for why the option suggested by Mr Leong was unsafe or unworkable. I therefore conclude that there were no valid objections from Capt Simpson to the suggested option.

121 There was no attempt in Capt Simpson's evidence or Mt Apo's submissions to explain why the decision at 9:50 am to cross was a *safe decision*. Capt Simpson's evidence and Mt Apo's submissions were focused only on explaining why the various "safer options" suggested by Hanjin Ras Laffan were either allegedly impractical or not actually safer. Much was made by Capt Simpson and Mt Apo about the presence of *Frontier Leader* and *RMN 1503* causing the options available to *Mt Apo* to be "severely restricted" and that Capt Rajesh was proceeding under "very difficult circumstances".[171] In my view, the approach taken in Capt Simpson's evidence and Mt Apo's submission misses the point. One might ask, if Capt Rajesh's decision to cross was unsafe and if there were also no other safe options available, then was it good seamanship for Capt Rajesh to have allowed himself to get into a position where there were no safe options for him to take? Could he have done something prior to 9:50 am in anticipation of this situation to avoid getting into such a bind? Indeed, Capt Rajesh testified that he noticed *Frontier Leader* crossing the traffic separation zone into the westbound lane at 9:46 am.[172] In my view, it would have been

[171] Capt Simpson's 1st AEIC, at p 39 (at para 4.3.26); Capt Simpson's Supplementary AEIC, at p 29 (at para 2.10.2).

[172] Capt Rajesh's AEIC, at para 27.

within Capt Rajesh's power to take appropriate action between 9:46 am and 9:50 am to avoid *Mt Apo* being put in a position where she had no safe options to pursue.

122 Having said that, I do not agree with Mt Apo that there were no safer options. One available option, as noted at [111] above, was for *Mt Apo* to first go westwards and then U-turn into the eastbound lane later when it is safe to do so. *Capt Rajesh agreed that this could be done*. Capt Ewen agreed that it would have been an option in his quiver. As noted above, Capt Simpson proffered no valid reasons why the option could not be pursued.

123 The other option was for *Mt Apo* to reduce its speed to give more time for the situation with *Frontier Leader* to develop. Capt Rajesh accepted that this could and should have been done.[173] Indeed, doing so would have been consistent with Rule 6 of the COLREGS, which provides:

> **Rule 6**
>
> *Safe Speed*
>
> Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and *be stopped within a distance appropriate to the prevailing circumstances and conditions*.
>
> …
>
> [Emphasis added.]

In my view, this was a logical option. Reduction of speed would have provided more reaction time for *Mt Apo* to make decisions and react to the unfolding situation. Doing so would also be consistent with the requirement of good seamanship, as elaborated at [131] below, to *edge up* to the boundary of the TSS

---

173 NE, 8 May 2018, at 77:1–12.

when crossing traffic lanes and to *cross at a safe speed*. As noted by Capt Ewen:[174]

> [Capt Rajesh] should have had contingency plans. He should have known if his---"If I can't go across, what do I do? If I can't do this, what else do I do?" That---that's part of passage planning.

Evidently, Capt Rajesh had no such plans.

124 In the final analysis, the inquiry into whether it was unsafe to cross must centre on what the traffic condition was in the TSS, and not on whether the vessel intending to cross had other options. An unsafe crossing does not become safe merely because there were no other options open to the vessel at the time. While lack of safer options may affect culpability, it cannot be a reason for re-characterising an objectively unsafe crossing as safe.

125 For the above reasons, and having regard in particular to Capt Rajesh's admission that it was not prudent to cross at 9:50 am and his agreement with at least two of the options suggested by Mr Leong, I find that it was not safe for Capt Rajesh to have decided at 9:50 am to cross the TSS.

Whether Mt Apo *was at fault to cross the TSS at the shallow angle of 32 degrees*

126 Hanjin Ras Laffan submits that, by crossing the TSS at a shallow angle of 32 degrees from the northern boundary of the TSS, Mt Apo had breached the requirement of Rule 10(*c*) to "cross on a heading as nearly as practicable at right angles to the general direction of traffic flow."

---

174 NE, 15 August 2018, at 30:8–11.

127 As a preliminary point, it is not disputed that Rule 10(*c*) is applicable to vessels crossing only one lane of a TSS to join the other lane, and not only confined to vessels crossing the entire TSS to reach the opposite coast. It was held in *Century Dawn* (HC) (at 151) that the "obligation in r. 10(c) applies to vessels crossing any traffic lane whether the purpose of crossing it is to cross the next lane or to join it".

128 Incidentally, *Century Dawn* also concerned a collision in the TSS of the Singapore Strait, at roughly the same location as the collision in the present case. After stating that a crossing at right angles would require a course of 157 degrees, Clarke J held that (at 150):

> … *Century Dawn* was at fault in crossing the westbound lane on a course of 110 deg. or 100 deg. I further hold that she would also have been at fault if she had crossed the lane on a course of 120 deg.

For context, if a crossing at 90 degrees requires a course of 157 degrees, a course of 120 degrees would give rise to a crossing at an angle of 53 degrees from the boundary of the TSS. If a vessel is at fault for crossing at an angle of 53 degrees, then *a fortiori* the even shallower angle of 32 degrees adopted by *Mt Apo*.

129 As explained in *Marsden* (at paras 5–328 to 5–329):

> A crossing angle of 90 degrees is prescribed with the aim of minimising the time a crossing vessel spends in a traffic lane, and so the number of potential encounters with through vessels, irrespective of the conditions of the sea and vessel. The original intention appears to have been that this was, "as nearly as practicable", to be the course steered so that the crossing vessel could also display the maximum possible side aspect to through vessels, which could thus more easily recognise her as a crossing vessel and thereby receive notice that the 1972 Colregs crossing rule (r.15) was likely to apply. The 1987 amendments added the words "on a heading" to make this clear, as some courts had instead required crossing vessels to seek to make good a crossing at 90 degrees to the general

> direction of traffic flow. Crossing at another angle has been held at first instance to be a "vice" against the aim of the rules and a serious breach.
>
> The correct interpretation of para.(c) would appear to be that a master should always seek to follow a heading at 90 degrees to the general direction of traffic flow, except where the safety of navigation requires otherwise, or for any other good reason, including compliance with rr.15 and 17. Good seamanship would also appear to require him to line his ship up very early, to edge up to the boundary of the traffic lane, maintaining the correct broad angle, and then to cross it at a safe speed, when it is clear, even if this adds to the length of the passage.

130 It is also explained in Craig H. Allen, *Farwell's Rules of the Nautical Road* (8th Ed, Naval Institute Press) (at p 329) that:

> Crossing at right angles reduces potential confusion to other vessels regarding the crossing vessel's intentions and minimizes the time the crossing vessel spends in the TSS. A protracted debate over vessels crossing the TSS led to an amendment to Rule 10(c) to make it clear that vessels shall cross on a heading (not a course over the ground) as near possible at right angles to the direction of traffic flow. Although this might cause some extra work for enforcement authorities who measure the course over the ground on their shore-based radar, the revised rule clarifies matters for mariners. Beyond the bare requirements of Rule 10(c), vessels crossing a TSS are also bound to follow all other rules, especially Rule 6. Moreover, compliance with Rule 10(c) and other rules does not relieve a vessel of the duty to exercise precautions required by the ordinary practice of seamen and the special circumstances associated with the TSS.

131 Thus crossing at right angles minimises the distance and hence the time needed for the crossing vessel to complete the crossing. This conduces towards a safe crossing by minimising the number of potential encounters with vessels using the TSS. Crossing at right angles also reduces potential confusion to other vessels regarding the crossing vessel's intention. By displaying the crossing vessel's maximum side aspect, vessels using the TSS will more easily recognise her as a crossing vessel and thereby receive early notice that the crossing rules of the COLREGS (Rules 15, 16 and 17) were likely to apply. Therefore, a

master *should always seek to follow a heading at 90 degrees to the general direction of traffic flow*, except where the safety of navigation requires otherwise, or for other good reasons. It would also be a requirement of good seamanship for a master to line his ship up very early, to edge up to the boundary of the traffic lane, maintaining the correct broad angle, and then to cross it at a safe speed, when it is clear, even if this adds to the length of the passage.

132 When Capt Rajesh was asked during cross-examination about lining up *Mt Apo* for a right-angle crossing, he replied that turning to starboard to effect a right-angle crossing would put *Mt Apo* directly into the path of the general direction of the traffic.[175] The logic of Capt Rajesh's answer escapes me. At the material time, crossing *at any angle* would have put *Mt Apo* in the path of oncoming traffic. In my view, he would have to negotiate this risk irrespective of whether the crossing was done at 90 degrees or 32 degrees. Once a decision is made at 9:50 am to cross the TSS, I fail to see how, in the light of the various considerations outlined at [131] above, a crossing at 32 degrees would be safer than a crossing at 90 degrees.

133 As was apparent from the Annex to this judgment, a crossing at 32 degrees would double the distance which *Mt Apo* needed to cover inside the westbound lane as compared to a crossing at 90 degrees, and consequently double the amount of time *Mt Apo* would be spending in the westbound lane in the path of oncoming traffic. In fact, while Capt Ewen thought the decision to cross at 9:50 am was imprudent, he also thought that the crossing could be negotiated successfully *at right angles* "by manipulating the speed".[176]

---

175 NE, 8 May 2018 at 68:10–12.

176 NE, 14 Aug 2018, at 66:12–14, and 29–31.

134 With the principle enunciated at [97(d)] above in mind, I asked the experts whether it would be safer for the vessels coming down the westbound lane if *Mt Apo* had crossed at a deeper angle in order to present a broader aspect. Capt Ewen agreed. Capt Simpson gave the following long and tentative answer:[177]

> I think, on the first point, Your Honour, if Cpt Rajesh wanted to maintain his---or try to maintain its speed---its course and as a stand-on vessel, I---I'm not surprised that he tried to maintain his course as---as a---as a master. I---I know *it's a very fine balancing act to---to say well, I am a stand-on vessel but I'll make an alteration of course to starboard now with the view of 1 presenting a broader aspect to the westbound vessel*. I could---I can---I can see that but I can see both arguments in that, Your Honour, I can---I---I can understand the master's position thinking well, as long as I stand on, I'm---I'm doing the right thing. The alteration of course to starboard then in that first option would, as I say, I can understand that. The second option, *the broader aspect, I think would have---would have been more apparent to the westbound vessels*…
>
> [Emphasis added.]

In essence, Capt Simpson agreed that turning to starboard to present a broader aspect would have made *Mt Apo*'s intention clearer to the westbound vessels. However, he had a concern about whether it would be appropriate for *Mt Apo*, as a stand-on vessel in relation to the westbound vessels, to make a turn to starboard.

135 For the reasons already discussed at [114]–[119] above, Capt Simpson's concern, that a turn to starboard to cross at right angles would be inconsistent with a stand-on vessel's duty to "keep her course and speed", is based on a misapprehension of Rule 17(*a*)(i). The authorities are clear and unanimous that Rule 17(*a*)(i) does not preclude alterations of course and speed in the ordinary course of navigation. Since a vessel intending to cross a TSS would, in the

---

177 NE, 15 August 2018, at 100:26–101:9.

ordinary course of navigation, line herself up to cross at right angles, Rule 17(*a*)(i) does not preclude such a manoeuvre by a stand-on vessel.

136 Once the concern over Rule 17(*a*)(i) is put to one side, the rest of Capt Simpson's answer constitutes acceptance that presenting a broader aspect would have made *Mt Apo*'s intention clearer to the westbound vessels and consequently made the crossing safer.

137 Finally, as there were no vessels near *Mt Apo*'s starboard side at the material time, a starboard turn would not have brought *Mt Apo* into close quarters situation with any other vessel or give rise to new risk of collision with any other vessels. It was therefore entirely safe for *Mt Apo* to make the turn to starboard in order to cross at right angles.

138 In the light of the foregoing, I find that there were no good reasons for *Mt Apo* to cross at a shallow angle. Consequently, I find that it was practicable for *Mt Apo* to cross at right angles. *Mt Apo* was therefore at fault for crossing the TSS at the shallow angle of 32 degrees, in breach of Rule 10(*c*).

139 This is a fault with causative potency, as it generated risks and confusion in at least two ways. First, crossing at such a shallow angle meant that, during the crossing, *Mt Apo* would be traveling within the westbound lane for a considerable period of time in an easterly direction, *ie,* effectively against the flow of the traffic. The risk and confusion created by such a manoeuvre should not be underestimated. Secondly, by not presenting a broad aspect *before* crossing into the westbound lane, vessels in the westbound lane were not given early warning of *Mt Apo*'s intention to cross and were thus deprived of valuable reaction time. While this risk could have been mitigated by *Mt Apo* making an early announcement to VTIS by VHF that she was planning to cross despite her

shallow angle, *Mt Apo* did nothing of the sort. Hence, while it was my view at [125] above that it was unsafe at 9:50 am for *Mt Apo* to decide to cross the TSS, having *made that decision*, it would have been incumbent upon her to have begun presenting as broad an aspect as possible to signal her decision to cross. In fact, the failure of *Mt Apo* to present a broad aspect and the uncertainty thereby created probably contributed to Capt Kim's decision to initiate the 9:55 Conversation.

Whether Mt Apo *and* Hanjin Ras Laffan *were in a crossing situation and, if so, when did the crossing situation arise*

140 Rule 15 of the COLREGS, entitled "Crossing Situation" applies when "two power-driven vessels are crossing so as to involve risk of collision".

Clarification of terminology

141 According to Capt Simpson, a "crossing situation" existed between *Mt Apo* and *Hanjin Ras Laffan* from 9:50 am when *Hanjin Ras Laffan* altered its course to starboard, but Rule 15 did not apply until the vessels were in sight of each other at 9:52 am.[178] (Rule 11 of COLREGS provides that Rules 12–18 apply to vessels in sight of one another.)

142 I believe Capt Simpson was using the term "crossing situation" loosely, to describe a *physical* state of affairs which existed independently of whether Rule 15 was *legally* applicable to that state of affairs. But in legal parlance, the existence of a crossing situation is synonymous with the applicability of Rule 15. I highlight this difference in usage of the term "crossing situation" as a point to be borne in mind when considering the evidence of the experts as there may be parts of the experts' written and oral evidence where the term

178 Capt Simpson's AEIC, at p 42, paras 4.3.37–4.3.38.

"crossing situation" was used in its looser sense. For the avoidance of doubt, the term "crossing situation" is used in this judgment to refer to the situation where Rule 15 applies.

Parties' positions

143 In the light of Capt Simpson's evidence, I take Mt Apo's position to be that a crossing situation existed between *Mt Apo* and *Hanjin Ras Laffan* from 9:52 am. Alternatively, Mt Apo submits that a crossing situation would have arisen at the latest by 9:53 am, when *Hanjin Ras Laffan*'s ARPA radar showed that the CPA of *Mt Apo* to *Hanjin Ras Laffan* had fallen to nearly zero.[179] In contrast, Hanjin Ras Laffan's position is that Rule 15 did not apply at all as *Mt Apo*'s conduct was such that *Hanjin Ras Laffan* could not reasonably appreciate *Mt Apo*'s intention.[180] In support of this submission, Hanjin Ras Laffan relied on *The "Alcoa Rambler"* [1949] 1 AC 236, a decision of the Privy Council on appeal from Canada.

Conditions for applicability of Rule 15

144 According to *Alcoa Rambler* (at 248), to constitute a crossing situation, the essential conditions are that the vessels must be:

(a) crossing vessels; and

(b) crossing so as to involve risk of collision.

Since there are two conditions to be fulfilled, it follows that a situation which fulfils only one condition but not the other would not be a crossing situation.

---

179 PCS, at paras 43(j)–(k).

180 DCS, at para 34.

Thus the mere involvement of risk of collision would not give rise to a crossing situation if the vessels are not crossing vessels.

145 With regard to the first condition, vessels are regarded as crossing vessels if they are on a "crossing course". The following passage from *Alcoa Rambler* (at 248–250) elaborates on what "crossing course" means:

> Articles 19 and 21 presuppose as their essential conditions that the vessels must be crossing vessels and crossing so as to involve risk of collision. It is only when these conditions are present that the articles apply, and when they cease to be present the articles cease to apply in the full sense, that is disregarding for the moment art. 27. But the problem does not depend merely on physical circumstances. **As the purpose of arts. 19 and 21 is to impose a duty on the give-way ship to keep clear, that ship must be in a position to appreciate what the situation is and to know what the other ship is doing, and whether it is on a course at all or, if so, on what course**. In the present case the *Rambler* was presented with two alternative possibilities in regard to the *Norefjord*; she might be making for the Narrows or some other place on the east side of the basin or elsewhere; but the *Rambler* could not in the circumstances say which. If the *Norefjord* was going to the Narrows she was clearly not a crossing vessel, if she was making across the basin that would be a different situation. When the vessels first sighted each other, the *Rambler* was left in doubt … **The question whether the two vessels were crossing vessels within the article thus depended on the purpose of the *Norefjord*'s movement, so far as that purpose could be inferred by the master of the *Rambler* from what he saw.** The issue always depends on the reasonable inference to be drawn by the ship which has the other on her starboard side as to the latter vessel's future course deduced from observation of her movement at the relevant moment, making due allowance for the nature of locality where she is at that moment. … Thus there are two questions: 1., was the *Norefjord* on a crossing course, i.e., was she on a course at all, and if so, was it a crossing course so as to be likely to involve risk of collision; 2., was the situation such that the *Rambler,* the give-way ship, could appreciate what the situation was so as to be able to act as the rule prescribes.
>
> It is difficult to define what is meant by "course" in this connexion. It has been said that it does not mean "the actual compass direction of the heading of the vessel at the time the other is sighted"; so it was said by Lord Alverstone C.J. in *The*

> *Roanoke*, citing *The Velocity*, where it was held that the course of a ship going round a bend in a river could not be determined by her heading at the moment when she was at the turn of the bend. … It is only when the give-way vessel is aware or ought to be aware of that fact that the vessels are crossing vessels within arts. 19 and 21. … **The test always is: was what was being done open and notorious to a seaman on the other ship in the ordinary course of navigation**. There is, however, a more general question which has to be considered in this case, namely, whether what the *Norefjord* was doing was being on a "course" when she was making what the pilot called a curved course. The ordinary idea of a course is a sufficiently constant direction of a ship on the same line or heading. This will enable a navigator when he sees the other vessel to know if she is on a crossing course. He can often only become aware of that if he can keep the other vessel under observation for sufficient time to ascertain if she is or is not changing her heading. … A curved or curving course, constantly changing under a port helm would not have enabled the give-way vessel to decide how to act for her. Accordingly, of the two conditions that she should be on a course and that the give-way vessel should be able to ascertain that, neither was fulfilled. It may be that in crowded or congested areas, it may not always be possible to ascertain whether the necessary conditions exist. In such cases arts. 19 and 21 cannot apply. But wherever possible arts. 19 and 21 ought to be applied and strictly enforced because they tend to secure safe navigation.
>
> [Emphases added.]

146 The following principles may be extracted from the foregoing passage:

(a) The purpose of the crossing rules is to impose a duty on the give-way vessel to keep clear. In order to do so, the putative give-way vessel must be in a position to appreciate what the other vessel is doing, including whether it is on a course at all and, if so, what course.

(b) Whether two vessels are crossing vessels depend on the purpose of the putative stand-on vessel's manoeuvres, so far as that purpose could be discerned from reasonable inferences to be drawn by the putative give-way vessel as to the putative stand-on vessel's future course. Such inference is deduced from observation of the putative

stand-on vessel's movement, making due allowance for the nature of the locality.

(c) The test is: was what was being done open and notorious to the seamen on the other ship in the ordinary course of navigation.

147 Going on to the second condition, involvement of risk of collision, Rule 7 of the COLREGS provides:

Rule 7

Risk of Collision

(*a*) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

(*b*) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.

(*c*) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.

(*d*) In determining if risk of collision exists the following considerations shall be among those taken into account:

(i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change; and

(ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

148 There is a minor gap between Rule 7 and Rule 15, in that while Rule 7 provides the criteria for determining whether risk of collision *exists*, Rule 15 speaks of *involvement* of risk of collision instead of *existence* of risk of collision. As noted by Atkin LJ in the *Gulf of Suez* [1921] P 318 (at 332), in a passage

cited with approval by the Court of Appeal in *Ng Keng Yong v PP* [2004] 4 SLR(R) 89 at [40]–[41]:

> … to involve risk of collision … indicates a period before the risk has, so to speak, actually matured; it means a period at which there is a probability that there will be a risk of collision if precautions are not taken.

Thus, in a situation involving vessels *already* on a crossing course, Rule 15 will kick in shortly before the risk of collision comes into existence.

149 Before turning to the facts, I have two further comments about *Alcoa Rambler*:

(a) The two-step approach laid down in *Alcoa Rambler* for determining the existence of a crossing situation is consistent with the way the experts have structured their joint report to deal with the appreciation that *Mt Apo* was going to cross into the TSS and the appreciation of risk of collision as two separate issues.

(b) Although *Alcoa Rambler* is an old case, the footnotes to *Marsden* at paras 5–386–5–387 show that it is still being followed by the English courts.

Application to the facts

150 I will first consider whether the vessels were crossing vessels before turning to consider the risk of collision.

(1) Whether *Mt Apo* and *Hanjin Ras Laffan* were crossing vessels

151 As the plots at the Annex to this judgment show, *Mt Apo* was on a curving course since the pilot disembarked at 9:40 am (C-19). Even though Capt

Rajesh had decided to cease following *Ocean Sapphire* at 9:50 am and to maintain course in the light of the crossing situation with *Frontier Leader*, *Mt Apo*'s course over ground continued to curve to port until 9:51 am, when her course stabilised briefly at 103 degrees for about one minute. She then altered course to starboard at 9:52 am. Her course stabilised again at 9:53 am (C-6). It was also at 9:53 am that *Hanjin Ras Laffan*'s ARPA radar showed that the CPA of *Mt Apo* to *Hanjin Ras Laffan* had fallen to nearly zero, with a TCPA of about five minutes.

152 As noted in *Alcoa Rambler* (at 250):

> A curved or curving course, constantly changing under a port helm would not have enabled the give-way vessel to decide how to act for her. Accordingly, of the two conditions that she should be on a course and that the give-way vessel should be able to ascertain that, neither was fulfilled.

Thus, while *Mt Apo*'s course was curving to port until 9:51 am, the vessels were not on a crossing course. Nor could the vessels be said to be on a crossing course at 9:52 am, when *Mt Apo* was altering her course to starboard.

153 Had the vessels been travelling in the open sea, I would have held that they were on a crossing course by 9:53 am, when *Mt Apo*'s course had stabilised. However, as noted in *Alcoa Rambler*, the problem does not depend merely on physical circumstances but depends on whether the other vessel is in a position to appreciate what the situation was**.** More specifically, as noted at [146(b)] above, whether the vessels were crossing vessels depended on *Mt Apo*'s purpose as inferred from observation of *Mt Apo*'s movement, making due allowance for the nature of the locality. A key feature of the nature of the locality in the present case is the TSS. As *Mt Apo* was proceeding at an oblique angle, she did not present herself as a vessel which was manoeuvring with the purpose of crossing the TSS. In Capt Ewen's words, "the doubt area is[,] is she going to

cross or not".[181] Capt Kim also testified that *Mt Apo*'s heading at the time was not appropriate for crossing the TSS.[182]

154 I therefore hold that, notwithstanding *Mt Apo*'s steady course from 9:53 am onwards, the two vessels were not crossing vessels until the crew of *Hanjin Ras Laffan* was aware or *ought to have been aware* that *Mt Apo*'s purpose was to cross the TSS.

155 Mt Apo's position is that *Hanjin Ras Laffan* ought to have such awareness by the time VTIS radioed *Mt Apo* with the message "Please keep a good lookout … AIS on and you cross safely",[183] as this meant that VTIS could tell from radar plots that *Mt Apo* was going to cross the TSS.[184]

156 Hanjin Ras Laffan's position is that at no point in time ought *Hanjin Ras Laffan* to have such awareness. Capt Kim's testimony is that he understood VTIS's message to *Mt Apo* to be a mere "navigational warning to the effect that there were West-bound vessels".[185] He did not consider that to be an indication that *Mt Apo* was going to cross the TSS there and then. He expected that *Mt Apo* would turn to port (to follow the *Ocean Sapphire*) after clearing *Frontier Leader*, because the traffic situation in the westbound lane was not suitable for a crossing at the time and *Mt Apo* was not on a course to cross.[186] Capt Kim explained that he asked what *Mt Apo*'s intention was over VHF because *Mt Apo*'s intention was not clear.[187] Hanjin Ras Laffan further submits that, after

---

181 NE, 15 August 2018, at 51:6–7.

182 NE, 11 May 2018, at 45:3–5.

183 PCB, at p 148.

184 PCS, at paras 43(l) and 84(b).

185 Capt Kim's AEIC, at para 16.

186 NE, 11 May 2018, at 44:32–45:17.

the 9:55 Conversation, *Hanjin Ras Laffan* could not reasonably be expected to know that *Mt Apo* would continue to cross, since she had been told by *Mt Apo* that *Mt Apo* would allow *Hanjin Ras Laffan* to cross ahead of *Mt Apo*.[188]

157 Hanjin Ras Laffan's alternative submission is that, even if there was a crossing situation prior to the 9:55 Conversation, the crossing situation ceased to exist once *Mt Apo* replied by VHF that *Mt Apo* would let *Hanjin Ras Laffan* pass her bow.[189]

158 Capt Simpson's initial opinion was that, once *Mt Apo* ceased turning to port to follow *Ocean Sapphire* at 9:50 am, it should have been apparent to *Hanjin Ras Laffan* that *Mt Apo* was likely to enter the TSS.[190] At trial, Capt Simpson accepted that *Mt Apo*'s decision to cross would *not* have been apparent to *Hanjin Ras Laffan* at 9:50 am.[191] Capt Simpson was prepared to concede that the latest that *Hanjin Ras Laffan* should have such awareness was when *Hanjin Ras Laffan*'s radar showed that her CPA with *Mt Apo* had fallen to nearly zero.[192] As noted above, this was at 9:53 am.

159 Capt Ewen's evidence is that it was only at 9:54 am that *Hanjin Ras Laffan* would have appreciated that *Mt Apo*'s heading and course had steadied. Even then, *Hanjin Ras Laffan* was unsure of *Mt Apo*'s intention, as evidenced by her response to VTIS at 9:54 am asking what *Mt Apo*'s intention was.[193] As

---

187 NE, 11 May 2018, at 45:21–24.

188 DCS, at paras 3(c) and 56.

189 DCS, at paras 47–51.

190 Capt Simpson's Supplementary AEIC, at p 23, para. 2.5.1.

191 NE, 15 August 2018 at 8:18–26.

192 NE, 14 August 2018 at 107:26–108:7.

193 Agreed Bundle, vol 3, at p 570, para 5.

Capt Ewen puts it during the trial, "[it was] only when [*Mt Apo*] stayed reasonably steady [for] 3 minutes that questions were being asked and that was about 9:54 [am]".[194]

160 As noted at [146] above, the test of awareness is an objective one. The questions to be asked are whether *Hanjin Ras Laffan* was in a position to appreciate that *Mt Apo* was crossing the TSS and whether *Mt Apo*'s intention to cross was open and notorious to the crew of *Hanjin Ras Laffan*. *Mt Apo* could have made her intention open and notorious by crossing at an angle which was close to 90 degrees, thus presenting a broad aspect which would leave vessels in the westbound lane in no doubt that *Mt Apo* was going to cross. Alternatively, *Mt Apo* could have made her intention open and notorious by informing VTIS by VHF that she was crossing despite her shallow angle. This would again have left all other vessels in no doubt of her intention. But *Mt Apo* did neither of those things. As for the VHF conversation between VTIS and *Mt Apo* referred to at [155] above, I agree with Capt Ewen that it was not clear from that conversation that *Mt Apo* was going to cross the TSS there and then.[195] Consequently, I find that the manoeuvre which finally made *Mt Apo*'s crossing of the TSS open and notorious to *Hanjin Ras Laffan* was *Mt Apo*'s actual entry into the westbound lane. In my view, whatever uncertainty there was before should have been dispelled once *Mt Apo* crossed the northern boundary of the westbound lane. This development ought to have alerted those on *Hanjin Ras Laffan* that *Mt Apo* was crossing the TSS, notwithstanding that such a crossing may have appeared unwise to them.

---

194 NE, 14 August 2018, at 107:21–23.

195 NE, 16 August 2018 at 8:27–31.

161 Accordingly, I find that *Mt Apo* and *Hanjin Ras Laffan* were crossing vessels from 9:54 am, when *Mt Apo* crossed the northern boundary of the westbound lane.

(2) Risk of collision

162 Capt Ewen's view is that the time when risk of collision should have been appreciated was 9:54 am, when VTIS radioed *Hanjin Ras Laffan* to warn her about *Mt Apo*.[196] Capt Simpson's initial position was that risk of collision existed from 9:50 am. However, he was prepared to concede that risk of collision arose, at the latest, by the time *Hanjin Ras Laffan*'s radar showed that the CPA with *Mt Apo* had fallen to nearly zero.[197] As noted above, this was at 9:53 am. I find that risk of collision existed at 9:53 am when *Hanjin Ras Laffan*'s radar warned of a possible collision with *Mt Apo*.

Conclusions on existence of crossing situation

163 Given my finding that the risk of collision arose at 9:53 am but the vessels became crossing vessels only at 9:54 am, I find that *Mt Apo* and *Hanjin Ras Laffan* were in a crossing situation from 9:54 am, when *Mt Apo* crossed the northern boundary of the TSS. In this crossing situation, *Mt Apo* was the stand-on vessel while *Hanjin Ras Laffan* was the give-way vessel.

Further observations

164 I have a number of further observations to make. First, the finding that Rule 15 applies from 9:54 am onwards does not mean that the two vessels owed no duty of care to each other prior to 9:54 am. Even when Rule 15 is not

196 Capt Ewen's Supplementary AEIC, at p 16.

197 NE, 14 August 2018 at 107:26–108:7.

applicable, vessels are subject to the duty to maintain a proper look-out, to proceed at a safe speed and to generally take such precautions as are required by the duty of good seamanship. What they are not subject to, prior to Rule 15 kicking in, is the obligation to give way or stand on in accordance with Rules 16 and 17.

165 Secondly, as noted in *The Century Dawn* (CA) (at 132), Rule 15 applies in a TSS even if the vessel crossing the TSS was at fault for crossing at a dangerous angle. Thus, a vessel crossing the TSS at a wrong angle is still entitled to her status as a stand-on vessel in relation to vessels in the TSS coming down her port side, notwithstanding her own fault. This is a consequence of Rule 10(*a*) of the COLREGS, which provides that Rule 10 "does not relieve any vessel of her obligation under any other Rule".

166 Thirdly, it may appear at first blush that the two-step approach in *Alcoa Rambler* which I adopted in the present case is inconsistent with the approach adopted in *The Dream Star*, where the enquiry on the existence of a crossing situation focused on when the risk of collision materialised (at [67]). In fact, there is no inconsistency. In *The Dream Star*, it was clear that the vessels were on a crossing course, as the stand-on vessel had been on a steady course for quite some time and there was no uncertainty as to her intention (at [65]). Thus the first condition in *Alcoa Rambler* – that of determining whether the two vessels were on a crossing course – was not in issue in *The Dream Star*. Consequently, it is also not anomalous that risk of collision could arise before there was a crossing situation – *Alcoa Rambler* being a case in point.

Whether* Hanjin Ras Laffan *was at fault for the way she navigated prior to the 9:55 Conversation

167 Mt Apo submitted that *Hanjin Ras Laffan*'s decision to overtake *Dalian Venture* on her starboard side at 9:49 am was unseamanlike. Mt Apo further submitted that Capt Kim should have slowed down and ought to have been monitoring the *Mt Apo* carefully from 9:51 am to 9:54 am. Instead, Capt Kim placed the *Hanjin Ras Laffan* at *navigation full* at 9:52 am, allegedly to deal with an alarm.[198]

168 Given my finding that a crossing situation existed only from 9:54 am, I do not consider any of *Hanjin Ras Laffan*'s manoeuvres prior to 9:54 am to be inconsistent with the crossing rules. Mt Apo submitted in the alternative that, even before a crossing situation had arisen, *Hanjin Ras Laffan* ought to have been carefully monitoring the movements of the *Mt Apo* from 9:51 am.[199] While I agree with Mt Apo's submission, I also accept Capt Kim's evidence is that he had indeed been monitoring *Mt Apo* throughout this period.

169 In any event, since it is my finding that *Hanjin Ras Laffan* could not have been expected to know before 9:54 am that *Mt Apo* was going to enter the TSS, I do not find that *Hanjin Ras Laffan*'s actions in attempting to overtake *Dalian Venture* up till then to be a breach of the duty of good seamanship in relation to *Mt Apo*.

198 PCS, at paras 85–86.

199 PCS, at para 86.

Whether* Hanjin Ras Laffan *was at fault for initiating the 9:55 Conversation

Applicable principles

170 The use and misuse of VHF communication by vessels which are passing each other or approaching a close quarters situation was considered recently in *The Dream Star* (at [90]–[93]), where Belinda Ang Saw Ean J extracted the following principles from the English authorities:

(a) Vessels should navigate in accordance with the COLREGS and not make arrangements over the VHF that are contrary to the scheme of the regulations.

(b) Use of VHF to agree on manner of passing is fraught with the danger of misunderstanding and may distract mariners from paying attention to their radars.

(c) Misuse of VHF is a factor that goes towards the degree of culpability of the respective vessels.

(d) Good seamanship does not mandate an embargo on all VHF communications as VHF communications remain helpful for information dissemination in some circumstances.

171 The proposition at [170(d)] above is inspired by the following passage in *The "Mineral Dampier" and "Hanjin Madras"* [2001] 2 Lloyd's Rep 419 ("*Mineral Dampier"*) (per Lord Phillips, MR):

> 36. The Admiralty Court, has, on many occasions, warned against the dangers of navigators of vessels resorting to VHF in order to assist in navigating safely past each other. In the *Maloja II* Mr. Justice Sheen said at p. 52:

> Any attempt to use VHF to agree the manner of passing is fraught with the danger of misunderstanding. Marine superintendents would be well-advised to prohibit such use of VHF radio and to instruct their officers to comply with the Collision Regulations.
>
> 37. **If this passage is read as a warning against agreeing on the VHF a course of navigation which is in conflict with the collision regulations, we would endorse it**. It is consistent with other statements to that effect in recent years: see e.g. *The Angelic Spirit*, [1994] 2 Lloyd's Rep, 595 at p. 608. Circumstances must be quite exceptional before good seamanship will justify such conduct. **But we do not think that Mr. Justice Sheen's comments should be read as an embargo on all VHF communications about navigation between two vessels which are passing or are approaching a close quarters situation.** The Admiralty Court tends to experience cases where VHF conversations have led to disastrous misunderstanding. It does not become aware of cases where an exchange of VHF information has assisted safe navigation. As the Judge observed in this case, in some circumstances VHF conversations can be useful in order to exchange information between vessels.
>
> …
>
> [Emphasis added in bold.]

172 *Mineral Dampier* is the first reported decision by an English appellate court on the use of VHF by vessels approaching a close quarters situation. All previous reported cases from England on this issue were first instance decisions. (*The "Maloja II"* [1993] 1 Lloyd's Rep 48 (*"Maloja II"*) was affirmed on appeal, but the Court of Appeal's decision, reported as *The "Maloja II*" [1994] 1 Lloyd's Rep 374, made no reference to VHF communications at all.)

173 The English Court of Appeal took the opportunity in *Mineral Dampier*, at [37], to moderate what might previously have been interpreted as the very strict position taken by Sheen J in *Maloja II* and other cases against the use of VHF communication. Specifically, the Court of Appeal took Sheen J's admonition against "[a]ny attempt to use VHF to agree the manner of passing" and qualified it as an injunction against "agreeing on the VHF a course of

navigation *which is in conflict with the collision regulations*" (emphasis added).

174 Particularly instructive is Lord Phillips, MR's explanation that: "The Admiralty Court tends to experience cases where VHF conversations have led to disastrous misunderstanding. It does not become aware of cases where an exchange of VHF information has assisted safe navigation". In my view, Lord Phillips, MR was alluding to the possible existence of a type of cognitive bias described by psychologists as "selection bias". Put simply, since only cases which result in collisions reach the admiralty court while cases where collisions were successfully avoided do not, this would result in a "selection bias" in the type of information concerning VHF communication presented to admiralty judges. In other words, only cases which result in collisions are "selected" for exposure to judges by virtue of the fact that only unresolved disputes would reach the courts. As a result, admiralty judges are only exposed to cases where VHF communication had contributed to a collision and not exposed to cases where VHF communication may have successfully assisted in collision avoidance. Lord Phillips, MR was thus hinting that this phenomenon could lead to admiralty judges forming a more negative view about the utility of VHF communication than real-life experience would suggest.

175 To appreciate the true purport of the *Mineral Dampier* decision, it is necessary to go into the facts of that case. The case involved two VHF conversations. According to the facts as found by Aikens J in the court below (*The "Mineral Dampier" and "Hanjin Madras"* [2000] 1 Lloyd's Rep 282 ("*Hanjin Madras*") at [12] and [14]):

(a) The first conversation was initiated by *Mineral Dampier* about 20 minutes before the collision, when the vessels were six to seven miles

apart. At this time, the crossing rules had not kicked in as the vessels were still not in sight of each other. *Mineral Dampier* suggested that the two vessels should pass "red to red". *Hanjin Madras* replied "OK. Red to Red passing; repeat Port to Port passing. … I will alter course to starboard".

(b) The second conversation took place about 13 minutes before the collision, when the vessels were about two to three miles apart. By this time, the crossing rules have kicked in because the vessels were in sight of each other. The second conversation was initiated by the give-way vessel, *Hanjin Madras*, who asked *Mineral Dampier*, the stand-on vessel, to "keep your present course and speed", to which *Mineral Dampier* replied "understand your message".

176 The advice given to Aikens J by the nautical assessors were (at [25]):

(a) The first conversation was prudent as an *exchange of information of intention*.

(b) The second conversation was not prudent because it could curtail possible prudent action by *Mineral Dampier*.

Aikens J accepted the nautical assessors' advice on both conversations (at [26]).

177 The Court of Appeal affirmed Aiken J's finding on the first conversation but took a more charitable view of the second conversation. On the first conversation, Lord Phillips, MR, in delivering the judgment of the court, noted that the port-to-port passing agreed in the first conversation was consistent with the crossing rules, and held that "neither vessel is to be blamed for the first VHF

conversation". However, the content of that conversation made the subsequent failure of *Hanjin Madras* to alter course to starboard in time all the more culpable (*Mineral Dampier* at [34]). On the second conversation, Lord Phillips, MR said:

> 41. … Under r. 15 *Hanjin Madras* was under a duty to give way and under r. 17(a)(i) *Mineral Dampier* was under duty to maintain her course and speed. Had *Hanjin Madras* been putting in hand the appropriate manoeuvre to perform her obligation, **we do not consider that she could have been criticised for advising *Mineral Dampier* to stand on**, although it would have been more helpful if she had informed *Mineral Dampier* of the action that she was taking. **Her fault lies in suggesting a course of action to *Mineral Dampier* which was predicated on appropriate action on her part which she then failed to take**.
>
> 42. **So far as *Mineral Dampier* is concerned, we have some difficulty with the proposition that her reply "understand your message" constituted the exchange of an agreement for which she should be blamed. It was, at this point, the duty of *Mineral Dampier* to maintain her course and speed.** *Hanjin Madras* instructed her to do just that. What is it suggested that she should have answered? With hindsight "I shall do so provided that you take appropriate action to keep clear of me" might have been preferable, but we feel that it would be unrealistically censorious to hold *Mineral Dampier* to have acted culpably in failing to respond in this way.
>
> 43. Where *Mineral Dampier* was at fault was in our judgment in failing to exercise her right under r.17(a)(i) to take appropriate evasive action soon after this conversation, when it should have become apparent that *Hanjin Madras* was not taking appropriate action to keep out of her way in accordance with r.15. We consider that this failure was somewhat the less blameworthy as a result of the VHF exchange as this had been calculated to reassure her that *Hanjin Madras* had well in mind her duty to give way.
>
> 44. Accordingly our approach to the second VHF conversation is not the same as that of the Judge. **We are not persuaded that it amounted to an agreement, or that *Mineral Dampier* is to be criticized for her VHF response to the *Hanjin Madras*' communication**.

178 From the foregoing review, four observations may be made:

(a) Despite the nautical assessors describing the first VHF conversation as "an exchange of information on intent", it is clear from the facts as found by Aikens J (and left undisturbed by the Court of Appeal) that the content of the VHF conversation was an *agreement* to pass port-to-port. Yet both the court below and the Court of Appeal did not criticise the first VHF conversation. The reason given by the Court of Appeal was that the agreed course of action was consistent with the COLREGS.

(b) The fault of *Hanjin Madras* laid, not with the VHF conversation itself, but with the fact that, after giving *Mineral Dampier* information that *Hanjin Madras* would alter course to starboard, she failed to follow through with the course alteration.

(c) No blame was assigned to either vessel for the second VHF conversation. The Court of Appeal held that *Hanjin Madras* could not be criticised for advising *Mineral Dampier* to do what the COLREGS already required *Mineral Dampier* to do, while *Mineral Dampier* could not be criticised for simply acknowledging *Hanjin Madras*' message.

(d) *Mineral Dampier*'s fault laid in not taking avoidance action pursuant to Rule 17(*a*)(ii) when it became apparent that *Hanjin Madras* was not taking appropriate action to keep out of the way. However, this fault is made less culpable by the second VHF conversation during which *Hanjin Madras* assured *Mineral Dampier* that *Hanjin Madras* was giving way.

179 It would appear from the decision in *Mineral Dampier* that the use of VHF does not deserve criticism if the course of action contemplated in the VHF conversation is consistent with the COLREGS. Where a navigational fault

results from a VHF conversation, the direct cause of the collision is that navigational fault and not the use of VHF. Thus the fault of *Hanjin Madras* laid in the failure to follow the course of action which she had led *Mineral Dampier* to believe *Hanjin Madras* would take, and not in the use of VHF *per se*.

180 In a similar vein, if the use of VHF caused a mariner to not pay proper attention to the vessel's radar, the fault laid in the mariner's failure to keep a proper look-out, and not in the use of VHF *per se*. To give yet another example, if the use of VHF resulted in loss of time which could have been used to effect early avoidance action, the fault laid in the failure to take early avoidance action. Having said that, the culpability to be assigned to any of the abovementioned faults would have to be adjusted upwards or downwards if the fault is related to the misuse of VHF by one side or the other side.

181 Lest the foregoing analysis be misunderstood, I should emphasise that although *Mineral Dampier* moderated the stricter views against VHF communication espoused in earlier cases such as *Maloja II*, it is not an encouragement for mariners to resort to VHF communication in close quarters situation without caution. Mariners ought to be aware of the risks associated with the use of VHF (such as uncertainty over the identity of vessels, uncertainty over the interpretation of messages, distraction from keeping a proper look-out and loss of time to take avoidance action), before resorting to VHF communication when passing other vessels or approaching a close quarters situation. Given these risks, it is clear that compliance with the COLREGS should remain the primary means for averting collision. Conversely, misuse of VHF may affect the relative culpability of one side or the other for subsequent navigational faults causing the collision. Finally, the use of VHF to agree on a course of action contrary to COLREGS remains blameworthy.

182 Before turning to the facts, I would add that the summary at [181] above is consistent with MPA's Port Marine Circular No 18 of 2005 – "Caution on the use of VHF radio in collision avoidance", which was brought to my attention by the experts. The circular advised that compliance with the COLREGS will be more effective to avert a collision than the use of VHF communication, but did not mandate an embargo on the use of VHF. Instead, the circular sets out a list of risk factors which mariners should consider before resorting to VHF communication.

Application to the facts

183 At 9:54:27 am, VTIS contacted *Hanjin Ras Laffan* over the VHF and the following conversation took place from 9:54:27 am to 9:54:55 am:[200]

VTIS:	*Hanjin Ras Laffan,* VTIS, *Hanjin Ras Laffan.*
Hanjin Ras Laffan:	Yes, this is *Hanjin Ras Laffan.* Go ahead.
VTIS:	Sir you have this one vessel eastbound, *Mount Apo*, *Mount Apo*, please look out for her. She's about 1 decimal 4 miles away, bearing 270 sir.
Hanjin Ras Laffan:	Ok copy that. I…I have one question. What is her intention? I want the green to green, green to green, over.
VTIS:	Call her sir, she is on this channel, you can call her. Over.
Hanjin Ras Laffan:	Copy that.

184 As noted above, *Mt Apo* crossed the northern boundary of the TSS while the conversation between VTIS and *Hanjin Ras Laffan* was going on, and *Mt Apo* and *Hanjin Ras Laffan* were in a crossing situation from then on. It is Capt Kim's evidence that he observed *Mt Apo* cutting into the TSS.

---

200 PCB, at pp 150–152.

185 Since Capt Kim had already observed *Mt Apo* going across the northern boundary of the TSS, Capt Kim should have decided by then that *Mt Apo* would be crossing the TSS. Consequently, he should also have decided at the same time that there was no longer any need to take up VTIS' suggestion to call *Mt Apo*, as there was nothing left for him to ascertain. Capt Kim should have simply proceeded to take appropriate action as a give-way vessel.

186 Hanjin Ras Laffan submits that the 9:55 Conversation was merely to seek information about *Mt Apo*'s intention in the light of the confusion arising from the shallow angle at which *Mt Apo* approached the TSS.[201] I accept that *Mt Apo*'s angle of approach had indeed caused confusion to Capt Kim and delayed the moment when Capt Kim ought to realise that *Mt Apo* was crossing the TSS. However, despite Capt Kim's confusion over what *Mt Apo*'s intention was, I am of the view that, when it comes to assessing whether a vessel approaching a TSS was going to cross the TSS notwithstanding her wrong angle of approach, a bright line must be drawn at the moment the vessel crosses the boundary of the TSS. If that were not the case, there would be no room for applying the rule laid down in *Century Dawn* (CA) that a vessel crossing the TSS at a wrong angle is still entitled to her status as a stand-on vessel, notwithstanding her fault.

187 Mt Apo submits that Capt Kim was not simply seeking information about *Mt Apo*'s intention – Capt Kim also asked for a green-to-green passing, which amounted to an attempt to agree on a passing arrangement contrary to the COLREGS.[202] Hanjin Ras Laffan submits that Capt Kim was merely stating his own intention while asking for *Mt Apo*'s intention.[203] I find that Capt Kim was indeed arranging an agreement for a green-to-green passing. This is clear from

201 DCS, at para 52(h).

202 PCS, at paras 98 and 103.

203 DCS, at para 52(g).

Capt Kim's reference to his "offer" to pass green-to-green in his AEIC.[204] As a green-to-green passing at this stage would be contrary to the COLREGS, I find that Capt Kim had acted in an unseamanlike manner in attempting to arrange a crossing contrary to the COLREGS.

188 A direct consequence of Capt Kim initiating the 9:55 Conversation was the loss of 27 seconds during which both vessels could have taken avoidance action. While 27 seconds is a short time in absolute terms, it is not an insignificant period when viewed in the context of the amount of time left to the collision (four minutes).

189 On her part, *Mt Apo* was not blameless for Capt Kim's decision to initiate the 9:55 Conversation. Had *Mt Apo* signalled her intention to cross properly, either by presenting a broad aspect or by announcing her intention to VTIS over the VHF, there would have been no room at all for the confusion which led to the 9:55 Conversation.

190 After receiving *Hanjin Ras Laffan*'s VHF communication, *Mt Apo* could have responded in a manner consistent with her obligations as a stand-on vessel under Rule 17. This would include responses such as "I am crossing", "I am standing on", "please keep clear and pass astern of me". Had *Mt Apo* responded in this way, *Hanjin Ras Laffan* would have been left in no doubt about *Mt Apo*'s intention and would have no choice but to take action to keep clear of *Mt Apo*.

191 Instead, *Mt Apo* responded that she had stopped engine to let *Hanjin Ras Laffan* pass her bow. During cross-examination, Capt Rajesh agreed that the purpose of the reply was to allow *Hanjin Ras Laffan* to pass *Mt Apo*'s bow.[205]

---

204 Capt Kim's AEIC, at para 18.

205 NE, 11 May 2018, at 62:20–22.

Capt Rajesh also agreed that the message implied that *Mt Apo* was not going to cut across *Hanjin Ras Laffan*'s bow.[206] This response contemplates a course of action inconsistent with Rule 15 as *Mt Apo* was telling *Hanjin Ras Laffan* that *Mt Apo* would be giving way, notwithstanding that she was the stand-on vessel. However, Capt Ewen appeared to accept that *Mt Apo's* decision to stop engine and give way could possibly be justified under Rule 17(a)(ii), which provides that a stand-on vessel could take action to avoid collision "as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliances with these Rules".[207] As noted at [84] above, Capt Rajesh explained that he order *stop engine* at 9:54:57 am because it did not appear that *Hanjin Ras Laffan* was going to give way.

192 It was suggested to Capt Kim during cross-examination that his remark "oh very dangerous sir", was to tell *Mt Apo* that it would be very dangerous for *Hanjin Ras Laffan* to pass *Mt Apo*'s bow and it therefore was a rejection of *Mt Apo*'s suggestion for *Hanjin Ras Laffan* to pass *Mt Apo*'s bow. Capt Kim disagreed.[208] He explained that he was merely remarking generally that the entire situation was dangerous.[209] Capt Rajesh was not asked during the trial whether he thought those words amounted to a rejection of *Mt Apo*'s "offer" to let *Hanjin Ras Laffan* pass her bow. There is therefore no evidence that *Mt Apo* treated Capt Kim's remarks as releasing her from following through with the course of action she had informed *Hanjin Ras Laffan* she would take.

193 Having said that, I would still hold that Capt Kim acted in an unseamanlike manner in ending the 9:55 Conversation in the manner he did.

206 NE, 11 May 2018, at 62:25–27.

207 NE, 16 August 2018, at 72:21–28.

208 NE, 11 May 2018, at 27:21–25.

209 NE, 11 May 2018, at 26:10–16.

Unlike the first VHF conversation in *Mineral Dampier*, where one vessel suggested "red to red" and the other responded unequivocally with "OK. Red to Red passing; repeat Port to Port passing", there was no such acknowledgment or response from *Mt Apo* to *Hanjin Ras Laffan*'s suggestion to pass "green to green". *Mt Apo*'s response of "make you pass our bow" is equivocal. The words "green to green" or "starboard to starboard" are nowhere to be found in *Mt Apo*'s reply. If Capt Kim thought that "make you pass our bow" was an agreement to a green-to-green passing, he should have been alert the fact that *Mt Apo* did not repeat "green to green" back to him, and verified with *Mt Apo* that she was indeed going to pass green-to-green before ending the conversation. Conversely, if Capt Kim had understood "make you pass our bow" as a different suggestion from a green-to-green passing, he should have responded by explicitly accepting or rejecting the suggestion or, at the minimum, verify with *Mt Apo* that his understanding of *Mt Apo*'s suggestion was correct.

194 To sum up:

(a) There was no need for Capt Kim to have initiated the 9:55 Conversation since he had already observed *Mt Apo* entering the TSS before that. However, if Capt Kim's purpose had been to just seek information, his decision to initiate the call would not have been unreasonable, given the very short interval between *Mt Apo* entering the TSS and the initiation of the conversation.

(b) Capt Kim's attempt to arrange an agreement for a green-to-green passing was a misuse of VHF.

(c) *Mt Apo* replied with a suggested course of action which was inconsistent with her status as a stand-on vessel, although that reply

could arguably be justified as informing *Hanjin Rass Laffan* that *Mt Apo* was taking action pursuant to Rule 17(*a*)(ii).

(d) Capt Kim had not ended the conversation in a manner which gave assurance that both sides understood what the other side was planning to do.

195 I will return to consider how the relative culpability of the parties are affected by the 9:55 Conversation after considering the action of both vessels in the final minutes leading up to the collision.

Whether Mt Apo *and* Hanjin Ras Laffan *took proper avoidance actions after 9:55 am*

196 Before considering the actions taken by both vessels after the 9:55 Conversation, it will be useful to highlight that there appeared to be a misunderstanding between Capt Kim and Capt Rajesh as to what *Mt Apo*'s reply meant. Capt Kim interpreted *Mt Apo*'s reply as confirmation that *Mt Apo* would effect a green-to-green passing.[210] In Capt Kim's view, a green-to-green passing would involve *Mt Apo* turning to port to follow *Ocean Sapphire*.[211] Capt Rajesh's evidence is that he did not agree to a green-to-green passing, as turning to port while *Mt Apo* was already inside the westbound lane would be a dangerous manoeuvre as it would result in *Mt Apo* going directly against the westbound traffic.[212] All that *Mt Apo* offered to do was to slow down to let *Hanjin Ras Laffan* pass his bow. This would not involve *Mt Apo* turning to port.

---

210 Capt Kim's AEIC, at para 20.

211 NE, 11 May 2018, at 11:13–14.

212 Capt Rajesh's AEIC, at para 33; NE, 9 May 2018, at 21:16–19.

197 In other words, both Capt Kim and Capt Rajesh shared the same understanding as to what a green-to-green passing meant – it entailed *Mt Apo* turning to port. However, while Capt Kim thought *Mt Apo* had agreed to pass green-to-green and would thus turn to port, Capt Rajesh thought that *Mt Apo* had merely agreed to give way and therefore she had no intention to turn to port.

Hanjin Ras Laffan*'s actions from 9:55 am to 9:57 am*

198 After the 9:55 Conversation, from 9:55 am to 9:57 am, *Hanjin Ras Laffan* made a series of minor alterations of course to port[213] as well as incremental reductions of speed from 12 knots to 10.7 knots.[214] Mt Apo submits that these incremental alterations to course and speed are contrary to Rule 8(*b*) of the COLREGS, which provides that:

> Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

199 Capt Kim explained he made the alterations of course and speed to follow behind *Dalian Venture,*[215] so as to provide more space on *Hanjin Ras Laffan*'s starboard side for *Mt Apo* to turn to port for a green-to-green passing.[216]

200 I can understand Capt Kim's explanation and accept that these manoeuvres would be consistent with Capt Kim's perception that *Mt Apo* had agreed with *Hanjin Ras Laffan* to effect a green-to-green passing. (Whether Capt Kim was justified to believe that *Mt Apo* had so agreed is quite another

---

213 PCS, at para 18.

214 PCS, at para 108.

215 NE, 11 May 2018, at 52:30–53:7.

216 NE, 11 May 2018, at 17:14–18:30.

matter.) Nevertheless, I agree with Mt Apo that it would have been more prudent for Capt Kim to make bolder alterations of course and speed to tuck in quickly behind *Dalian Venture*.[217] Capt Kim's failure to do so would have caused confusion to *Mt Apo* about his intentions.

Mt Apo*'s actions from 9:55 am to 9:57 am*

201 From 9:55 am to 9:57 am, *Mt Apo* continued moving forward on a constant course of 100 to 101 degrees with her engine stopped. During this period, her speed reduced only very slightly, from 7.8 knots to 7.1 knots.[218] Assuming *Mt Apo*'s plan was indeed to slow down for *Hanjin Ras Laffan* to pass her bow as indicated in her VHF reply, this very gradual rate of reduction in *Mt Apo*'s speed would not have been sufficient for *Hanjin Ras Laffan* to pass *Mt Apo*'s bow safely even if *Hanjin Ras Laffan* had maintained her speed at 12 knots the entire time.

202 To act consistently with her message to *Hanjin Ras Laffan* that she would let *Hanjin Ras Laffan* pass her bow, *Mt Apo* should have taken whatever reductions in speed necessary to give effect to her stated intention. Capt Ewen described Capt Rajesh's failure to give any astern orders until 9:58:07 am as "3¼ minutes of inactivity on the bridge"[219]. As noted in *Mineral Dampier*, a vessel is at fault for not acting in accordance with information she had provided to the other vessel about her intended course of action. I therefore find *Mt Apo* at fault for failing to act consistently with the information she had provided to *Hanjin Ras Laffan*.

---

217 NE, 16 August 2018, at 82:12–27.

218 PCB, at pp 32–35.

219 NE, 16 August 2018, at 86:23–27.

203 At 9:57:03 am, *Mt Apo* called *Hanjin Ras Laffan* over VHF to arrange a port-to-port passing. Capt Kim was surprised by the call as he thought there was already an earlier agreement to pass green-to-green and *Mt Apo* was reneging on that agreement.[220] I do not regard *Mt Apo*'s action as a misuse of VHF. By then, the vessels were only 0.7 nm apart and about two minutes away from collision. *Hanjin Ras Laffan*'s incremental alterations to her course and speed had made it impossible for *Mt Apo* to predict what *Hanjin Ras Laffan* was going to do next. In the circumstances, arranging a safe passing by VHF was not unreasonable. The suggestion of a port-to-port passing was also reasonable as, notwithstanding her indication to *Hanjin Ras Laffan* she was giving way, *Mt Apo* remained a stand-on vessel in relation to *Othoni.* A turn to port by *Mt Apo* risked putting her into a close quarters situation with *Othoni*. At the end of the conversation, the vessels reached agreement to effect a green-to-green passing which, although contrary to the COLREGS, must have appeared to both masters in the agony of the moment to be the only viable option. Unlike the 9:55 Conversation, the second VHF conversation ended at least with both sides agreeing on what should be done.

The situation from 9:58 am till the collision

204 As noted above, it was only at 9:58:06 am that Capt Rajesh gave an order to put the engine astern, after being reminded by the Chief Officer to do so. This was too little too late. According to Capt Simpson, if *Mt Apo* had gone astern at 9:56 am (C-3), she would possibly have avoided the collision.[221]

205 To carry out the arrangement to pass green-to-green, *Hanjin Ras Laffan* began turning to port. Noticing that *Hanjin Ras Laffan*'s rapid turn to port was

---

220 Capt Kim's AEIC, at para 20.

221 NE, 16 August 2018, at 103:8–13.

exposing *Hanjin Ras Laffan*'s starboard side to *Mt Apo*'s approaching bow,[222] *Mt Apo* called *Hanjin Ras Laffan* to ask the latter to turn to starboard in order to minimise the collision impact.[223] Again, I do not regard this as a misuse of VHF. Both Capt Ewen and Capt Simpson agreed that putting *Hanjin Ras Laffan*'s rudder to starboard in the final seconds before the collision to swing her stern away from *Mt Apo* would have been the correct thing to do.[224] Capt Simpson considered that *Hanjin Ras Laffan*'s failure to do so was unseamanlike.[225] I accept Capt Simpson's view and consider *Hanjin Ras Laffan* at fault for failing to put her rudder to starboard just before the collision.

Summary of findings

206 In summary, I made the following findings:

(a) *Mt Apo* was at fault for deciding to cross the TSS at 9:50 am when it was unsafe to do so, contrary to Rule 10(*c*) of the COLREGS.

(b) *Mt Apo* was at fault for entering the TSS at the shallow angle of 32 degrees, contrary to Rule 10(*c*).

(c) *Hanjin Ras Laffan*'s initiation of the 9:55 Conversation was a misuse of VHF because she used the conversation to arrange a green-to-green crossing contrary to Rule 15 of the COLREGS.

(d) *Mt Apo* suggested a course of action contrary to Rule 15 when she informed *Hanjin Ras Laffan* that she could pass *Mt Apo*'s bow, but

---

222 Capt Rajesh's AEIC, at para 34.

223 PCB, at p 170.

224 Capt Ewen's AEIC, at p 119, para 12.14; Capt Simpson's Supplementary AEIC, at p 30, para 2.11.4 and p 33, para 2.12.15.

225 Capt Simpson's Supplementary AEIC, at p 30, para 2.11.4

the suggested course of action could arguably be justified under Rule 17(*a*)(ii).

(e) *Hanjin Ras Laffan* was at fault for misinterpreting *Mt Apo*'s response and assuming wrongly that *Mt Apo* had agreed to a green-to-green passing when *Mt Apo* said nothing about a green-to-green passing in her reply.

(f) *Hanjin Ras Laffan* was at fault for her incremental alterations to course and speed after the 9:55 Conversation, contrary to Rule 8(*b*), which would have caused confusion to *Mt Apo* as to what action *Hanjin Ras Laffan* was taking.

(g) *Mt Apo* was at fault for not reducing her speed more decisively after informing *Hanjin Ras Laffan* in the 9:55 Conversation that she would let *Hanjin Ras Laffan* pass her bow.

(h) *Hanjin Ras Laffan* was at fault for not turning to starboard in the final seconds before the collision in order to minimise the impact of the collision.

Apportionment of Liability

207 As noted at [95]–[96] above, the apportionment of liability is a broad, commonsensical assessment of the culpability and causative potency of both vessels. The assessment is of the relative degree of responsibility of each vessel. It is the nature and quality of a ship's faults rather than their number that matter. The fault of a ship that creates a situation of difficulty or danger is generally greater than that of the ship that fails to react properly to such a situation after it has been created.

Causative potency

208 I do not assign significant causative potency to the decision of *Mt Apo* to cross at 9:50 am, as the opinion of Capt Ewen is that, even though it was unsafe to cross at the time, the crossing could have been negotiated successfully if it had been done at right angles. Instead, the event of significant causative potency is *Mt Apo*'s decision to cross the TSS at a shallow angle in breach of Rule 10(*c*). I consider this the primary cause of the difficult situation which follows. It delayed the moment when *Mt Apo*'s intention to cross the TSS became apparent to other vessels, thus depriving *Hanjin Ras Laffan* of valuable reaction time. The confusion this created contributed significantly to *Hanjin Ras Laffan*'s decision to initiate the fateful VHF conversation.

209 *Hanjin Ras Laffan*'s inappropriate suggestion of a green-to-green passing in the 9:55 Conversation led to *Mt Apo*'s ambiguous reply and the ensuing confusion over what actions each vessel ought to take. I accept Capt Ewen's view that the direct cause of the collision was *Mt Apo*'s failure to reduce speed decisively to carry to give effect to her stated intention to let *Hanjin Ras Laffan* pass her bow.[226] The collision was also contributed to by *Hanjin Ras Laffan*'s misinterpretation of *Mt Apo*'s reply and her incremental alterations of course and speed thereafter. Overall, the causative potency of *Mt Apo's* failure to reduce speed decisively was higher.

210 Finally, although *Hanjin Ras Laffan*'s failure to make a final turn to starboard just before the collision did not contribute to the collision, it would have contributed to the extent of the collision damage.

---

226 Capt Ewen's AEIC, at p 119, para 12.12.

211 Having regard to the matters stated above in relation to causative potency, I am satisfied that the *Mt Apo* is more to blame for the collision.

Culpability

212 In terms of culpability, *Mt Apo*'s violation of Rule 10(*c*) when she crossed into the TSS at a shallow angle of 32 degrees was highly culpable. Consequently, I assign less culpability to *Hanjin Ras Laffan*'s initiation of the 9:55 Conversation to suggest a green-to-green passing as I consider it a reaction to the difficult situation created by *Mt Apo*'s crossing at a shallow angle. *Mt Apo's* culpability is exacerbated by her failure to reduce speed decisively to give effect to her stated intention to let *Hanjin Ras Laffan* pass her bow. In particular, I find inexplicable Capt Rajesh's omission to put *Mt Apo's* engine astern for almost three minutes after the 9:55 Conversation, until he was reminded by the Chief Officer that "Captain we have to run astern". In comparison, *Hanjin Ras Laffan*'s incremental alterations of course and speed following the 9:55 Conversation, while culpable, were slightly less culpable as they were at least consistent with her declared intention to effect a green-to-green passing.

213 Finally, the culpability to be assigned to *Hanjin Ras Laffan*'s failure to make a final turn to starboard would be slight given that this was in the final moments before the collision, with many issues vying for the bridge team's attention at the same time.

Conclusion on apportionment

214 Taking the totality of the circumstances into account, I am of the view that *Mt Apo* must bear the majority of the fault for the collision. An appropriate and fair way to apportion liability in this case would be 60:40 in favour of *Hanjin Ras Laffan*.

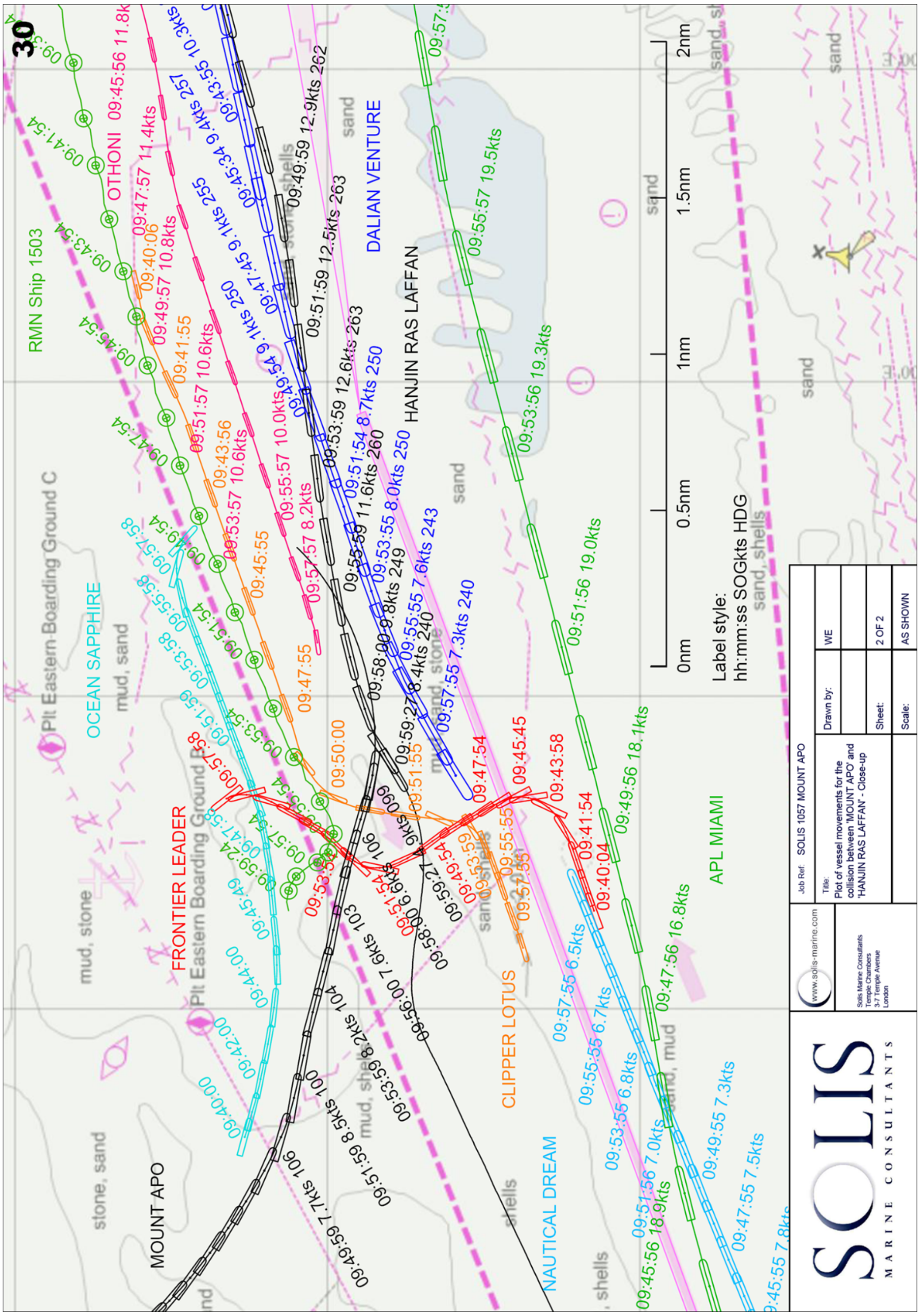
Conclusion

215 For the above reasons, I conclude that responsibility for the collision is to be apportioned 60:40 in favour of *Hanjin Ras Laffan*. There will be judgment on the claim and counterclaim accordingly. As the issues in the claim and the counterclaim overlap, there ought to be one set of costs. The parties are to file written submissions on costs, bearing in mind that damages have to be assessed before the Registrar. The submissions on costs are due two weeks from this judgment.

Pang Khang Chau
Judicial Commissioner

Chan Leng Sun SC and Muhammad Muzhaffar bin Omar (Wong & Leow LLC) (instructed) Mohamed Goush s/o Marikan and Syed Isa bin Mohamed Alhabshee (Goush Marikan Law Practice) for the plaintiff by original action and defendant in the counterclaim;
Leong Kah Wah, Dedi Affandi bin Ahmad, and Tay Jia En (Rajah & Tann Singapore LLP) for the defendant by original action and plaintiff in counterclaim.

Annex


30
RMN Ship 1503
OTHONI
DALIAN VENTURE
HANJIN RAS LAFFAN
OCEAN SAPPHIRE
FRONTIER LEADER
CLIPPER LOTUS
APL MIAMI
NAUTICAL DREAM
MOUNT APO
Plt Eastern Boarding Ground C
Plt Eastern Boarding Ground B
0nm
0.5nm
1nm
1.5nm
2nm
Label style:
hh:mm:ss SOGkts HDG
Job Ref: SOLIS 1057 MOUNT APO
Title: Plot of vessel movements for the collision between 'MOUNT APO' and 'HANJIN RAS LAFFAN' - Close-up
Drawn by: WE
Sheet: 2 OF 2
Scale: AS SHOWN
www.solis-marine.com
SOLIS
MARINE CONSULTANTS