

THE HIGH COURT**[2013 No. 7595 P.]****BETWEEN:****MARY HEANUE****PLAINTIFF****-AND-****THE COUNTY COUNCIL FOR THE COUNTY OF MAYO****AND****CLARE ISLAND FERRIES & CLEW BAY CRUISES LIMITED****AND****CHRISTOPHER O'GRADY****DEFENDANTS****JUDGMENT of Mr. Justice Hanna delivered on 10th day of May, 2016**

1. On the evening of 20th December, 2011, a passenger ferry, the *Pirate Queen*, while endeavouring to berth, struck a rock near Roonagh Harbour in the County of Mayo. One person, the plaintiff, a passenger, suffered not insignificant personal injuries. The vessel was damaged. These were the sum total of the misfortunes which befell those then present. Who bears the responsibility for this (thankfully) comparatively minor nautical calamity? These proceedings seek a determination of liability between the defendants, following settlement with the plaintiff. The second and third named defendants are the applicants in this matter, while the first named defendant is the respondent.

2. The first named defendant was sued as the Local Lighthouse Authority with responsibility for provision and maintenance of aids to navigation at Roonagh Harbour. The ferry is owned by the second named defendant and the third named defendant, Christopher O'Grady, is a director of the defendant company. He was the skipper of the ferry on the night of the accident.

3. The case has proceeded as follows: on 22nd July, 2013, a personal injuries summons was issued, on 4th February, 2014, a full defence was filed by the first named respondent and on 5th February a notice of indemnity and contribution was served on the second and third named defendants. The second and third named defendants filed a full defence and a notice of indemnity and contribution was served on the first named defendant. On 19th February, 2015, a notice of trial was served on the plaintiff's solicitors. The matter was listed for hearing in Galway on 22nd June, 2015, and 11th November, 2015. On the latter date the second and third named defendants compromised the plaintiff's claim which was settled for €73,250, together with costs which were agreed at €47,691.18. The total sum agreed to the plaintiff was €120,941.18. The matter was adjourned to the present proceedings to determine the issue of liability.

Facts of the case

4. There is some disagreement between the parties as to the surrounding facts of the case. Nonetheless, a basic account of what occurred can, with relative ease, be divined and recited.

5. Roonagh Harbour is located in County Mayo on the south of Clew Bay. The harbour is a narrow inlet with a body of water bound by a pier wall to the west and rocks to the east. After some dispute, a measurement of Roonagh Harbour for the purposes of this case was agreed by the parties. The mouth of the harbour from a ladder located at the end of the pier wall to a particular rock on the opposite side of the mouth is 32m. From the ladder to the rock where the boat went aground was measured at 62m.

6. Roonagh Pier is a main transit point for ferries servicing Clare Island and Inishturk. The third named defendant, who is a director of the defendant company, has operated a ferry and mail service between the islands and the mainland for many years.

7. The first named defendant, Mayo County Council as the Local Lighthouse Authority, is responsible for the navigational lights at Roonagh. There were three navigational lights at Roonagh at the time of this incident; the end of pier navigation light ("the green light"), as well as two leading lights. The green light is a flashing light which marks the end of the pier. The two leading lights, which both comprise six lamps mounted on a carousel fixture, are located on poles staggered back from the pier, one higher than the other. The lights are isophase, that is, they flash with five seconds on and five seconds off with an overlap of two seconds when both lights are on together. They aid mariners when approaching the harbour. The lining up of the two lights indicates an approach to the harbour on a bearing at 144°. This bearing is marked as a line on the admiralty charts for the area and was referred to during the case as the acquisition line or the leading line. There were also five light fixings referred to as "working lights" on the pier. Their function was to illuminate the working and pedestrian areas on the pier.

8. A major point of contention in this case revolved around which lights were working on the night of the accident and whether, and when, any lighting failures were, or ought to have been, known to the defendants.

9. It was established that the green light had been damaged by a storm and not operational from 13th to 16th December, 2011, when it was replaced by one Mr. Mark O'Malley, an employee of the first named defendant. This light, an SL70, was apparently replaced, tested and observed as operational. It was accepted that there had been no complaints in relation to the light working in the following days up to 20th December.

10. The navigation lights were checked, on 21st December, 2011, by Mr. O'Malley. The green light was operational. All six lamps on the lower leading light were found to be blown, while three lamps on the upper light were blown. Further, it was found that the

leading lights were at the correct level.

11. On 20th December, 2011, the MV Pirate Queen was skippered by the second named defendant, Mr. Chris O'Grady, with a crew consisting of Mr. Joe O'Malley and Mr. Seamus Concannon. The latter was a passenger but, not uncommon with island people, he stepped in to a crewman's role on the occasion. The ferry left Roonagh at 4:30pm, travelling to Clare Island and then on to Inishturk. The ferry left Inishturk at 5:35pm by which time darkness had fallen. The log recorded the weather; a force 4 south westerly wind was blowing, there was a swell of one metre and light rain. The route taken from Inishturk was on a heading of 45°/48°, the vessel negotiating Caher Island and past Mweelaun and Meemore.

12. During the trip Mr. Joe O'Malley, who at the time was engaged in chat in the passenger cabin, received a text from Mr. Brian O'Grady, son of the skipper and master of the Pirate Queen's sister ship, the Clew Bay Queen, to inform him that the navigation light at the end of the pier ("the green light") at Roonagh was not working. Mr. O'Malley informed Mr. Chris O'Grady of this text shortly thereafter and before the vessel arrived at its destination.

13. The skipper, Mr. O'Grady, was close to Roonagh before he realised, according to him, the lower leading light, in addition, was not functioning.

14. Due to the poor visibility, Mr. O'Grady asked Mr. O'Malley to use the vessel's search light to locate the pier and to stand out on deck as a lookout. The search light can only be manipulated and directed from inside the wheelhouse. Mr. O'Malley did so and identified the pier before stepping out on the port side of the boat. After approximately one minute he called a warning to the skipper that they were too far east. Mr. O'Grady altered his course, but a wave hit the starboard side of the boat and pushed it onto the rocks near the mouth of the harbour.

15. Emergency procedures swung into action. The few passengers (three in all if you include Mr. Concannon) put on life-jackets and plans got underway to evacuate all persons on board. By good fortune, the third named defendant's son, Brian, was at hand in his RIB to which the passengers were transferred and thence to Roonagh Pier. After this had been accomplished, fortuitously, the motion of the sea dislodged the Pirate Queen into a gully in the rocks from which the Skipper was able to navigate the damaged craft to the safety of the pier.

16. The ferry sustained serious damage. Nevertheless, inspection revealed that it was not taking on water and it was navigable. It was transferred to Clare Island where it could be moored in greater safety. Roonagh Harbour was not a suitable location for mooring overnight.

17. I now turn to the evidence. I propose to set it out in some detail.

Mr. Chris O'Grady

18. Mr. Chris O'Grady was the master/skipper of the MV Pirate Queen on 20th December, 2011. He has been involved in the provision of a ferry and mail service between the islands and the mainland for 70 years.

19. He operates Clare Island Ferries Limited with his two sons, Brian and Alan O'Grady. In addition to the MV Pirate Queen, the company also operates another vessel, the MV Clew Bay Queen.

20. On 20th December, 2011, the ferry departed Roonagh at 3.50 p.m., arriving at Clare Island approximately 20 minutes later. The ferry departed Clare Island at 4.30 p.m., heading for Inishturk. This trip usually takes 50 to 55 minutes. The ferry left Inishturk at 5.35 p.m. with two passengers and three crew (including Mr. Concannon in his dual capacity or role). Mr. O'Grady stated that at this point it was dark. The log recorded a west-south-westerly wind, force four, and a slight Atlantic swell.

21. Mr. O'Grady said that he expected the navigation lights at Roonagh to be working.

22. Recounting the route taken, Mr. O'Grady proceeded on a heading from Inishturk at approximately 45°/48°, passing Caher headland to the starboard, and also past Mweelaun, an islet, and Mweemore, a rocky shoal.

23. Ten to fifteen minutes out from Roonagh, Joe O'Malley notified him that he had received a text message from Brian O'Grady, informing him that the pier head light at Roonagh was not working. Mr. O'Grady did not see the text. Mr. O'Grady decided that it was possible to land at Roonagh.

24. On approach he found the lower leading light was also not working. Having slowed down, Mr. O'Grady asked Mr. O'Malley to use the search light and step on deck to identify the pier wall. At this stage, in addition to the west-south-westerly force four wind, there was a swell of approximately four feet and it was drizzling. The ferry moved slowly in the direction of the 144° acquisition line and turned to starboard. The sideways motion of the boat together with a swell brought the ferry into contact with rocks.

25. The passengers were fitted with life jackets. Mr. O'Grady's son, Brian, was returning from Clare Island on a RIB and was at hand to help. He assisted the passengers onto his boat and then transported them to the safety of the pier. Mr. O'Grady remained on the ferry. Subsequently, convulsive movement of the water lifted the boat off the rocks and moved it into a gully. It was now again afloat, and Mr. O'Grady was able to navigate the vessel to the pier where it was tied up. Having checked the engine, bulkhead and bilge pumps, and noting that there was no water ingress, he brought the ferry to Clare Island where it could be safely tied up for the night.

26. Under cross-examination, Mr. O'Grady agreed that on board his vessel there was the following equipment; a VHF radio, a GPS chart plotter, a radar, a GPS navigator, depth sounder and a magnetic compass. He said that all electrical equipment had been turned on upon departing Inishturk and, as such, the radar was on at the time of the accident.

27. The crew on 20th December, 2011, comprised of Mr. O'Grady, Mr. Joe O'Malley and Mr. Seamus Concannon. The ferry also carried two passengers, Mrs. Mary Heanue and Mr. Bill Heanue. Mr. Concannon was asked, upon boarding the ferry, to act as crew on the trip, as per custom in the area. Mr. O'Grady was on the bridge, Mr. O'Malley spent his time between the lounge and the bridge, while Mr. Concannon remained in the lounge for the duration of the trip.

28. Mr. O'Grady maintained that the radar would not have been useful close to Roonagh as it cannot distinguish between the pier and the cliff.

29. Mr. O'Grady said that at approximately 200 metres out from Roonagh, he changed course. He did not approach the acquisition line

from a mile or more out from shore as this was inconsistent with his route, and he proceeded closer to the shore to avoid rocks and shoals.

30. Mr. O'Grady disagreed with the contention of counsel for the first named defendant, Mr. O'Brolchain S.C., that the sole and correct route to Roonagh was to meet the 144° acquisition line from a mile or more from shore and proceed to Roonagh along the length of the line. Indeed, Mr. O'Grady said that he never approaches Roonagh along the full length of the acquisition line. Rather, he approaches from an easterly direction in a more direct route towards the pier. He would then execute a turn to starboard at the harbour mouth. He marked this clearly more direct route on a copy chart for the benefit of the Court.

31. There was half a mile visibility on the night. This was contrary to the assertion by counsel for the first named defendant that visibility was between 2 and 5 miles.

33. Various rocks and shoals were identified to the Court by Mr. O'Grady. He had been aware of a swell before leaving Inishturk. Swells were a very regular occurrence in this area, especially at this time of year.

34. Mr. O'Grady recalled that one light was lighting on the pier. He said that the lights of the car park above the pier were visible. It was emphasised by Mr. O'Grady that eyes' view is paramount when landing at Roonagh at night. The geography of the area and the pier wall render navigational aids of no use when approaching the harbour.

35. Mr. O'Malley stood on the port side of the ferry and once he oriented himself he warned the ferry was too far east. At this point, Mr. O'Grady changed course. He turned to starboard. However, the ferry was hit by a wave and struck rocks.

36. In relation to the use of navigational aids, he said that working off GPS waypoints in a harbour as narrow as Roonagh is unnecessary and a distraction. On the journey from Inishturk the radar was calibrated to about 10 miles and calibrated down on approach to the mainland.

37. Mr. O'Grady agreed with the assertion that, if a vessel was half a mile out, with the radar on it will show the compass bearing being travelled.

38. On being asked why he didn't abandon the approach to Roonagh Pier, Mr. O'Grady said that it was his intention to get his passengers ashore and that it would have been easy to make the landing if the lights had been working. Mr. O'Grady stated that it was the lack of lights, not the non use of navigation aids, which caused the accident. He was aware that the higher leading light was tilted back and thus not fully effective. He said that the leading light was dim and the bright lights of the car park interfered with the ability to take a heading from it.

40. Mr. O'Grady recounted making a gradual turn for Roonagh pier. This turn began approximately two miles from Roonagh from a point southwest of Meemore.

41. The green light was described by Mr. O'Grady as a faint light and he disagreed that it would be visible from two miles out. He insisted that the green light was visible from a half a mile to three quarters of a mile off Roonagh. On the night in question it was not visible at all as it was not working.

42. Mr. O'Grady said that he observed the leading light was not working when the ferry came to the acquisition line, approximately 200 feet from shore.

43. It was asserted by Mr. O'Grady that a GPS, a chart plotter, admiralty charts, depth sounders and a compass are simply aids to navigation, and are not to be primarily relied upon. Such devices are not useful when approaching and entering a location such as Roonagh Harbour and approaching the pier there.

44. He said that the search light was used to identify the pier through the gloom on his approach to Roonagh. There are three front-facing windows in the wheelhouse of the Pirate Queen. The middle window is the only one with wipers. On the night of the accident vision was impaired by drizzle.

45. He accepted that Roonagh Harbour poses challenges to mariners seeking to berth their vessels there. However, he insisted that navigational aids, save sophisticated ISL systems, would not compensate for visual navigation in the particular context of this case.

46. There had been a marine collision investigation subsequent to these events. Mr. O'Grady disagreed with the report of the Marine Casualty Investigation Board ("the MCIB") which stated that the search light was not manned. Nevertheless, he accepted that he had erred in making a landing in Roonagh in the conditions.

47. Mr. O'Grady had contacted the Commissioners for Irish Lights ("the CIL") to complain that the lights were often out of order. Mayo County Council was also notified on many occasions, such notification was usually by telephone call.

48. Information provided by Mr. O'Grady's company, Clare Island and Clew Bay Cruises Limited, the second named defendant, to the Department of the Marine stated that in 2012, 90 sailings did not take place. On none of these occasions were non functional lights cited as the reason for a sailing being cancelled. Mr. O'Grady stated that there may be many reasons for a sailing not taking place – weather and sea swell being typical reasons for cancelling a sailing.

49. Mr. O'Grady rejected the characterisation of the route taken by him as a "shortcut". The route taken is the same route any other boatman in the area would take. When Mr. O'Malley stood out of the wheelhouse, he stood out on the port side as this side was more sheltered. A minute or two after Mr. O'Malley stepped out, he alerted Mr. O'Grady to the fact that the ferry was too far to the east. Mr. O'Grady immediately changed course. At this point in the journey Mr. O'Grady estimated his speed to have been between five and ten knots. He could see the outline of the headland. He could not discern the pier.

50. When he left Roonagh on the morning of day of the accident he did not notice if the green light was lighting.

51. Mr. O'Grady disagreed that, based on the course he took, the leading lights were irrelevant. He stated that the 144° acquisition line indicates where leading lights can be followed, but does not suggest a desired approach to the harbour. If it was not possible to land at Roonagh the alternatives include Clare Island, Old Head and Cloughmore Quay in Achill. Mr. O'Grady said that if the swell had been higher on the night, he would have gone elsewhere. However, he proceeded and upon finding the lighting not working this caused difficulty.

Mr. Joe O'Malley

52. Mr. Joe O'Malley is a farmer and ferry worker who has worked as a crewman for the O'Gradys for eight years and was on the Pirate Queen on 20th December, 2011. He recalled that on the night of the accident the ferry left Inishturk for Roonagh at dusk. It was drizzling and there was a swell.

53. At the beginning of the trip he was in the lounge and, while there, received a text message from Mr. Brian O'Grady warning that the green light was not working. He received this message approximately ten minutes after departing Inishturk. He went to the wheelhouse to inform Mr. O'Grady of the message approximately ten minutes after receiving it. After attending to his duties on deck, Mr. O'Malley then returned to the wheelhouse.

54. He recalls that the ferry was travelling at eight or nine knots in an eastward direction and Mr. O'Grady slowed on approach. Mr. O'Malley recalled seeing light on the pier. When the ferry was approximately 400 metres out, the speed was two to three knots. It was at this point that Mr. O'Grady instructed him to switch on the search light to identify the pier. He turned on the light and pointed it in the correct direction. Mr. O'Malley then stood out on the deck to get a clearer view. A minute or two later he warned Mr. O'Grady that they were too far east.

55. Under cross-examination, Mr. O'Malley said that his role does not involve using the navigational instruments onboard the ferry, and that he was there to assist on deck. He disagreed with counsel's contention that the text referred to the leading lights. He insisted it referred to the green light.

56. Mr. O'Malley recalled that the ferry had left Inishturk at about 5.35 p.m., the text was received at approximately 5.45 p.m. and that he spent another ten minutes in the lounge before he went to the wheelhouse at 5.55 p.m. to inform Mr. O'Grady of the text message.

57. Mr. O'Malley said he had not noticed the lights at Roonagh when leaving earlier that day, and that he did not see the green light on the way toward Roonagh.

58. He said that the ferry came about 500 metres out from the pier and the speed was altered.

59. He did not agree that the ferry was travelling at 7.5 knots when he stood out on deck to identify the pier. Mr. O'Grady had changed course before his warning that they were too far east, and he altered course again following the warning. The boat struck the rocks a minute after his warning and he disagreed that the events happened instantaneously. Mr. O'Malley said that just prior to impact the boat was travelling at two to three knots.

Mr. Tommy Scott

60. Mr. Scott is an employee of Mayo County Council as caretaker and crane operator at Roonagh pier.

61. On 20th December, 2011, he received a call from Joe O'Malley at 6pm, asking him to come to the pier. From the pier he could see the boat was on the rocks. He noted that the outer part of the pier was well-lit but that he had not paid any particular attention to the lights.

62. After the boat departed Roonagh, he began walking home. At the car park above the pier, Mr. Scott turned around to watch the boat. He said that the green light was not flashing.

63. Under cross-examination, Mr. Scott confirmed that the working lights were in operation on the outer part of the pier. He said that Mr. and Mrs. Heanue were on the pier when he came down.

64. He recalled conversing with Mr. Kieran Lynn, senior engineer with Mayo County Council, about the accident. On the night of 21st December, 2011, as instructed by Mr. Lynn, Mr. Scott inspected the lights at Roonagh. The lower leading light was not working. The upper leading light and the green light were working.

65. Mr. Scott would sometimes notify the County Council if a light was not working. However, he usually assumed the boat men would do this. Only if a light was not working for some time would he notify someone. If a navigation light was out of order, he would report this.

66. Mr. Scott had told Mr. Lynn that he was not sure if the green light was working. Having been told there had been no repairs to the light, he thought no more about it. When he gave thought to it he remembered that it was not working on the 20th December. At the time of the accident there was no protocol in relation to reporting broken lights.

Mr. Seamus Concannon

67. Mr. Concannon was a passenger and said that he had not formally acted as crew on the Pirate Queen before 20th December, 2011, but that he was familiar with the boat from travelling on it and would consider himself a crew member when on a boat. His duty as a crew member was to attend to the passengers.

68. It was dark when he boarded the Pirate Queen at Inishturk and he went to the lounge. Mr. O'Malley was in the lounge at the beginning of the journey. He did not recall when Mr. O'Malley left and he had no knowledge of the text message which had been received by him.

69. He described the boat as slowing as it approached land. It was when he felt "a kind of a knock" that he knew something was wrong. He then went out the door and saw, as he put it, that they were in the wrong place. He assisted Mrs. Heanue after falling against the door, as well as assisting her and her husband with their life jackets.

70. Mr. Concannon did not recall anything about the lighting on the night of the accident.

Mr. Brian O'Grady

71. Mr. Brian O'Grady is the son of the third named defendant, Mr. Chris O'Grady. He is a director of the defendant company. Mr. O'Grady is master of the Clew Bay Queen and on the night of the accident was operating the Clare Island passenger service.

72. He had left Clare Island at approximately 5 p.m. and by then darkness had fallen.

73. Mr. O'Grady said that navigational aids are used to within 200 to 300 metres of Roonagh Harbour.

74. He noticed that the green light was not operational when he left Roonagh for Clare Island at 5.40 p.m. He text Mr. Joe O'Malley. This text referred to the "end pier light" or the green light. After bringing the Clew Bay Queen to Clare Island, he returned to Roonagh in a RIB. On the way to Roonagh he saw a light shining up into the sky in a westerly direction. When he got closer he saw it was the search light of the Pirate Queen. When he arrived the ferry was on a rock. At this point his father shouted to him to evacuate the passengers.

75. Mr. O'Grady had taken the Pirate Queen from Inishturk to Roonagh several times. He described the route as passing north of Caher Island, south of Mweelaun and Meemore, north of Blackrock with a lazy loop coming into Roonagh Harbour. On the approach to Roonagh speed would be cut back to five to six knots and slowing. On a normal night one would expect to see the green light at the end of the pier and the leading lights. The bottom leading light was usually brighter and the upper was always faint. He said that from sea the car park lights can be seen. These particular lights are not used to come into Roonagh but give an indication of where the pier is. On the night of the accident two of the lights on the deck of the pier (the working and pedestrian area) were working.

76. Mr. O'Grady identified photographs of the text he sent to Joe O'Malley.

77. On 21st December, Mr. O'Grady went to his father's house and prepared the reports for the Department of Transport and an email was sent to Mayo County Council in relation to lighting. This email set out the O'Grady's complaints in relation to lighting at Roonagh. It outlined that, in September, Mr. O'Grady had telephoned Willy Kelly, Louisburg area manager for Mayo County Council, to inform him that none of the deck lighting was working in Roonagh. Then, in early October, Mr. O'Grady left voicemails for both Ger Reidy and Kieran Lynn, Mayo County Council engineers, stating that the working lights were not functioning. Further, early in November, Mr. O'Grady contacted Joe Kelly, Health and Safety Officer for Mayo County Council, and left a voicemail to say that the working lights in Roonagh were not working. On 10th November, 2011, Mr. O'Grady, while attending a manual handling course, met with Willy Kelly and highlighted his concerns about lighting in Roonagh.

78. Furthermore, over the course of the previous winter, Mr. O'Grady said that they had notified the County Council of concerns about lighting issues. Matters were raised with Mr. Donal O'Shea, the Clare Island Development Officer. Mr. O'Grady said that Mr. O'Shea was in contact with the County Council more often than he was. Mr. O'Grady estimated that he would have contacted the County Council about once every two weeks in the previous year, and he generally contacted Kieran Lynn, Ger Reidy or Willy Kelly.

79. Under cross-examination, Mr. O'Grady said that at the time of the incident he did not have the number of anyone in Mayo County Council to contact in relation to lights at Roonagh. He said that if he wished to alert the County Council about a light, he would contact Mr. Lynn, Mr. Kelly, Mr. Reidy or the office in Westport. There was no designated person to contact and it was the practice of the boatmen to notify the County Council, or else Mr. O'Shea, who would pass the message onto the Council. After the incident a sign was posted to the wall of Roonagh pier giving contact details in the event of a light failing.

80. Mr. O'Grady departed Roonagh at 5.40 p.m. on the date of the accident and sent the text message shortly afterwards. He indicated that the time of 5.35 p.m. in the MCIB report was incorrect. He departed Clare Island at 5.05 p.m., arriving at Roonagh at approximately 5.25 p.m. He noticed then that the green light at the end of the pier was not operational.

81. In relation to inaccuracies in the MCIB report, he said that his family had corresponded in reply to the first draft report. However, a second draft report was not received by them to comment upon.

82. On 19th December, the day before the accident, Mr. O'Grady travelled from Clare Island, arriving at Roonagh at 5.20 p.m. He did not recall if the lights were working. He said that they were used to the lights not working at Roonagh and, as such, it was not a notable occurrence.

83. The VHF radio was not used to communicate from boat to boat. The procedure was to listen to radio channel 16 and channel 26, the Coast Guard station's frequency. The O'Grady's use mobile phones to communicate but Mr. O'Grady could not say why he did not communicate directly with his father. Mr. O'Grady denied that the text referred to the lower leading light. He had not taken note of the leading lights that night. He was familiar with the acquisition line.

84. On the approach to Roonagh, he used the radar to a distance of 100 to 200 metres out from Roonagh at which point he turned on the Clew Bay Queen's large forward flood lights, saw the pier and proceeded accordingly. One cannot pick up the pier by radar as at low tide the pier is indistinguishable from the cliff behind it. At night, in conditions which obtained on the night of 20th December, 2011, one would use the radar and chart plotter on the trip from Inishturk to Roonagh. The chart plotter would show a virtual map akin to the admiralty chart and the chart plotter shows the position of the boat. Mr. O'Grady said that he does not operate the chart plotter from way point to way point. He said that it would bring one to the outside of the pier and that it gives a rough indication of the end of the pier. The leading lights would be needed on approach to Roonagh. However, Mr. O'Grady's boat, the Clew Bay Queen, a roll-on roll-off vessel, has large, strong flood lights which aid entry to the harbour. These were more powerful than the search-light on the Pirate Queen.

85. Mr. O'Grady contacted Mr. Iarla Moran on 20th November, 2011. He spoke to Mr. Kelly on 10th November, in relation to working lights.

86. Mr. O'Grady categorised the failure to correct the MCIB report, to specify that the green light was not working on the night of the accident, as an oversight and that it was an oversight on his part that he did not inform the Coast Guard of the malfunctioning light. He did not use the radio to alert vessels to the defect, as it is customary to communicate via mobile phones and radio communication may have been more common in the past. He had no way of knowing if the text had been received and read. He denied the suggestion that he communicated by mobile phone rather than radio because the radio was monitored by the Coast Guard. Mr. O'Grady confirmed that there had been a dispute with one of his family's vessels and that of another company. Counsel for the first named defendant suggested that this was the motivation for not communicating by radio. Disputing this, Mr. O'Grady pointed out that there was no other ferry company operating a service in the area at the time.

87. Radar and chart plotter would not be used to enter a harbour as narrow as Roonagh. When approaching the pier from the west, a loom from the working lights on the pier wall is visible but the end of the pier is not made visible by the loom.

88. He accepted that the green pier light was working on 22nd December, 2011.

89. Mr. O'Grady accepted that the decision to send the text was not optimum and a phone call may have been more appropriate.

Captain David Hopkins

90. Captain Hopkins is a qualified ship's captain and owns two ferries in West Cork. He is a highly qualified and experienced mariner whose expertise, like that of Captain Kavanagh, called by the respondent, was of great assistance.

91. He considered the route as described by Chris O'Grady to be a "perfectly normal route to take". Captain Hopkins disputed the assertion of counsel for the first named defendant that one should only approach Roonagh along the full length of the acquisition line. He said that the line is there to indicate the line of leading lights; one can join it wherever one wishes. The Valentia Island and Caherciveen line both extend inland, rendering this contention patently incorrect. The acquisition line from Cork Harbour extends seven miles out from the harbour and one would not take the full length of this line unless coming from this direction.

92. Radar will show whiteout/greenout when approaching somewhere such as Roonagh. Also, "side lobe effect" blanks out the screen at short distance and it is not recommended to use radar from 200 to 300 metres out. Captain Hopkins is familiar with Roonagh, having visited Clare Island some years previously. He visited Roonagh more recently to meet with Chris O'Grady. He has also sailed in the area.

93. Similar to radar, the chart plotter is useful for open water but not for a narrow channel such as Roonagh. The accepted error in GPS is five to ten metres, meaning it can not to be relied upon in such a harbour. Captain Hopkins stated that, on approach, one's eyes would not be on the "speedometer". One would proceed using your vision with a hand on throttle pulling back, slowing down to a stop.

94. In relation to Mr. O'Grady's actions, Captain Hopkins said that, in spite of Mr. O'Grady's turn to starboard following Mr. O'Malley's warning, with sea swell it only takes seconds for a ship to be rapidly swept aside.

95. If the green light was working, Captain Hopkins said that Mr. O'Grady would have stayed close to the pier and would not have ended up on the rocks. He disagreed with counsel for the first named defendant's argument that navigation is possible using just one leading light together with radar heading. He asserted that a single leading light is useless. You would need two to guide a vessel down the channel. If both leading lights had been working, Mr. O'Grady would have made it into the harbour safely.

96. Navigational aids should be used in addition to navigation lights. Captain Hopkins disagreed that it would have been possible to approach Roonagh by means of a single leading light and a chart plotter way point. He said that if he was making the same journey Chris O'Grady made, he would not rely on radar or GPS from 300 metres out.

97. He accepted that, with the green light not working, making a different approach to Roonagh or else berthing elsewhere would have represented other possible options. Nevertheless, Captain Hopkins refused to make a pronouncement on the approach made to the harbour by Mr. O'Grady. If the master of the vessel felt comfortable with the conditions and the location, Captain Hopkins asserted that, in light of his experience, he would not argue with the decision.

98. Captain Hopkins disagreed with counsel's assertion that the leading lights are irrelevant to the approach taken by Mr. O'Grady. He did not agree that Mr. O'Grady had erred in taking the turn and had erred again in not using the searchlight in time. He categorised Mr. O'Grady's actions as standard shipping procedures.

99. A vessel the size of the Pirate Queen would not be required to prepare a passage plan. Captain Hopkins said that Mr. O'Grady, as per regulations applicable to his vessel, had a safety management system in place.

100. When questioned by the Court, Captain Hopkins said that when setting out, one switches on the electrical equipment. Such aids are useful out in clear water but in close quarters or in a narrow channel they are not and that radar would not identify the pier at Roonagh. He said that, on final approach, one would not use them, when one is that close you look for the light at the end of the pier and you look for the leading lights and that all aids are susceptible to error. Prudence would dictate if there are often problems with the lights, one will use what ever aids are available to the fullest extent and for as long possible.

101. Captain Hopkins said it was strange, assuming the green light was not working on the 20th, that the light would have then been working on the 21st without any repairs being made.

102. Towards the end of the proceedings, Captain Hopkins was recalled to the stand. He presented a graphic produced by the simulator at the National Maritime College in Cork. As Roonagh was not "built into" the simulator, Captain Hopkins and a colleague did so and they produced circumstances similar to Roonagh. The graphic represented what would be seen on radar as one approaches Roonagh. Captain Hopkins explained that one can use the "game switch" or "clutter switch" to remove interference caused by sea and weather. This action will also alter the appearance of the land on the radar screen. He insisted that one leading line, as well as the heading will not give an accurate approach as one could be either side of the line. It was demonstrated that the harbour wall could be seen from a distance out in perfect conditions. Captain Hopkins disagreed with the assertion by counsel for the first respondent that the "clutter" in the images was inserted. He said that this represented the weather conditions that pertained. Side lobe effect was combined with weather, mist and sea.

103. Recalling the simulator representations of a trawler entering Haulbowline in Cork, Captain Hopkins agreed that the images would be similar. GPS may have an error of five to ten metres or up to 100m, unless it is a DGPS where the error is reduced. As such, GPS is not useful in close quarters. There is no requirement under the Merchant Shipping Acts to carry GPS or radar. There is, however, an obligation to have depth sounder and VHS radio. Captain Hopkins insisted that one can join the leading light line at any point and from there one will look for the lights but that there is no value in a single leading light. He said that given the height of the pier (7.5m) and the height of the radar (7m), the pier and rocks behind blend into a mass on the radar screen.

104. At 50 to 100 metres from the pier, Chris O'Grady should have been travelling at about four knots. He said that it is difficult to gauge the speed when approaching such a harbour in such conditions due to the precise navigation required. He said that with 1/2 mile visibility, one would not be using chart plotter or GPS close to Roonagh, and that after turning towards the harbour one looks for the leading lights. Nevertheless, he said that it would "probably" have helped if Mr. O'Malley was asked to step out sooner. If the pier is visible, entry is possible without the leading lights. The pier was not visible as it was a "dark and dirty" night. Captain Hopkins doubted that Chris O'Grady was travelling at 7.5 knots coming into the harbour and disagreed with the assertion that the boat hit the rocks because it was going too fast. With the benefit of hindsight, Captain Hopkins said that Chris O'Grady should have asked Mr. O'Malley to step out sooner. He said that if the green light and the leading lights were working, the accident would not have happened.

105. Captain Hopkins said that knowledge is built up in relation to a local area, including familiarity with lights and landmarks and this information is used for navigating in a local area. He disputed that Mr. O'Grady should not have approached, knowing that the green

light was not working. He disagreed with the assertion that the leading lights are of no use at 100 to 200 metres out. He again said that there is too much interference on radar at this distance.

106. Captain Hopkins said that the radar works up to 40 metres out, depending on conditions. He disagreed with the suggestion by counsel for the first named defendant that side lobe would not occur at Roonagh. Captain Hopkins said that clutter could be removed but this also had the effect of distorting the pier. Within a couple of hundred metres, radar will be distorted and will not give a clear view of the pier. He agreed that the end of the pier would be visible when approaching from the west in certain conditions.

Mr. Donal O'Shea

107. Mr. O'Shea previously held the position of Development Officer for Clare Island.

108. Mr. O'Shea recounted contacting the CIL in relation to navigation lights, following frustration with a lack of response from Mayo County Council. He recalled being informed of issues with navigation lights on numerous occasions. In his dealings, he would not distinguish between working and navigation lights. When he received a complaint, he would use the nomenclature used by the complainant.

109. On 9th December, 2011, Mr. O'Shea met with Peter Hynes, County Manager, to discuss the complaints he had received from ferry operators, fish farms and boat men. The navigation lights were often out of order and it took a considerable amount of time for them to be repaired. Mr. Hynes said that he would follow up on the issues with Mr. Kieran Lynn.

Mr. Alan O'Grady

110. Mr. Alan O'Grady is another son of Chris O'Grady and a director of the defendant company. He is a master of ferries to Clare Island.

111. In the email sent by Brian O'Grady following the accident, outlining grievances with maintenance of the lights at Roonagh, it was stated that Alan O'Grady contacted Iarla Moran at 6.20 p.m. on 14th November, 2011, to inform him that the green light at Roonagh and the working lights at the Clare Island pier were not working. Mr. O'Grady left a message for Mr. Moran. The lights remained out of order for approximately two weeks later. He said that both the navigation and working lights were often off during 2011. Following his contact with Mr. Moran on 14th November, 2011, Mr. O'Grady became frustrated due to the lack of response and spoke to Mr. O'Shea.

112. Mr. O'Grady was on the Pirate Queen in Roonagh on 18th and 19th December, 2011. He did not recall making a complaint in relation to the leading light, but he said he may have informed Mr. O'Shea.

113. Mr. O'Grady disagreed with counsel's contention that it was on 14th December, 2011, that he called Mr. Moran. He also disputed the assertion that it was not possible at that time to leave a message on Mr. Moran's phone. He said that he may have spoken to Mr. Moran in December.

114. Mr. O'Grady has often travelled from Inishturk to Roonagh and has done so at night. He uses radar and chart plotter. The radar will not show the pier. He accepted that one would get relatively close to the pier using these aids, close enough to see the pier. Mr. O'Grady, when coming into Roonagh, enters along the acquisition line, joining the line 100 to 200 metres out. He disagreed with the suggestion that such a route is a shortcut.

115. When at sea, Mr. O'Grady communicates using mobile phone, both by call and text. Informing the Coast Guard of the number of crew, number of passengers, and estimated time of arrival was standard practice but that this was not compulsory. He does not use the radio to communicate on channel 16, this was used in years gone by. He denied that this choice was made to withhold information from others. He said that he has not used the radio for many years to communicate with anyone other than the Coast Guard.

Mr. Michael John Connolly

116. Mr. Connolly is a marine surveyor. He visited Roonagh, spent time on the ferry with Chris O'Grady and inspected the navigation lights. Mr. Connolly said that the old pier head light was not really a pier head light, as it was further east than the original indicated position. The old rear leading light was angled backwards and was abaft of the base of the pole.

117. Radar has a bigger area of accuracy than the gap of the entrance to Roonagh harbour. Thus, it is not of any help coming into Roonagh and could, in effect, mislead. He said that as one gets to about 1.5 miles, the screen will show white/greenout. At the pilotage stage of a trip, one will rely more on vision and visual aids, the navigation light at the end of the pier and the two leading lights, rather than on equipment, such as radar. He estimated that Chris O'Grady turned towards the pier at 0.1 miles from the shore, and at this point the chart plotter is of limited use as the accuracy can be questionable. If the navigation lights and pier lights had been working, he said the probability of the accident would have been dramatically reduced.

118. The green light was a photovoltaic bulb. As 21st December is the shortest day of the year and the system was installed on 16th December. Mr. Connolly suggested that it may not have been fully charged. It could have partially charged then gone out.

119. All six lamps on the lower leading light burned out, three of the six on the upper burned out. There was no planned maintenance system in place to maintain the navigation lights at the time. The lamps were incandescent lamps on a carousel system and the relevant recommendations and guidelines say that such lamps should be replaced before working life is exceeded. Mr. Connolly said that inspection should be done at least twice a year, in light of the conditions in the area.

120. Mr. Connolly indicated that the quarterly reports provided by Mayo County Council to the CIL describe a very good system.

121. Mr. Connolly examined the factors which led to the boat going off course, and he found that the lack of the leading lights was the cause.

122. Mr. Connolly said that 7.5 knots would be an excessive speed.

123. When presented with graphic representations of a radar screen displaying Haulbowline in Cork Harbour taken from a simulator, which it was claimed by counsel for the first named defendant showed the pier of that harbour, Mr. Connolly noted that such equipment substantially differed from the radar on the Pirate Queen.

Mr. Camillus Fitzpatrick

124. Mr. Fitzpatrick is an electrician employed by Mayo County Council. His duties include effecting and maintaining electrical installations. He does not, however, involve himself with navigation lights. In 2008, he installed working lights on Roonagh pier. He installed five bulkhead light fittings on the wall of the pier. He described the fitting as a square with a clear Perspex fronting. The lights pointed downwards illuminating the working surface of the pier.

125. Mr. Fitzpatrick kept a diary of subsequent maintenance works to the lights. He said that he would be instructed by the foreman of the County Council Machinery Yard to go to Roonagh to perform maintenance. He attended Roonagh on 24th November, 2011. He recalled that he repaired the lights on these dates. He said that these lights can be broken by waves, storm damage, ingress of moisture and flying debris. When he receives a complaint, a repair would be made on the same day. He was not aware of "constant problems". On 2nd November, 2011, he replaced four of the fittings (the fifth was working). He took down existing fittings and replaced the same with new units similar to what was there already. On 24th November, 2011, he replaced a circuit breaker.

Mr. David O'Malley

126. Mr. O'Malley is an engineer employed by Mayo County Council. His responsibilities include compiling fault reports in relation to navigation lights in the County. He then would submit these to the CIL in the form of quarterly reports. He has been acting in this capacity for approximately five or six years. He said that he received phone calls and emails with reports from the public and council workers.

127. Mr. O'Malley said that there had been an omission in relation to an outage of navigation lights at Roonagh in February 2011. The County Council was aware of faults but due to weather conditions it was not attended to. The fault was subsequently repaired. He said that the fault was overlooked and was not included in the quarterly report for the CIL. He accepted that it should have been recorded and he was not aware of any other omissions.

128. A fault relating to the green light was reported on 13th November, 2011, and was repaired on 16th November, 2011. A fault was reported on 21st December, 2011, related to a lead light. The fault report indicated that it was out of order at 6 p.m., while the report to the CIL states it was at 9 p.m. This was described as a clerical error. The quarterly reports are retyped on an excel spreadsheet and this could result in a transcription error from the fault reports to the quarterly report to the CIL.

129. Mr. O'Malley said that, apart from fault reports FR131 and FR132 (reported by the O'Gradys and Mr. Moran, respectively), there were no reports in relation to navigation lights at Roonagh during the period in question.

130. Referring to FR98, Mr. O'Malley said that this was in relation to Roonagh Pier. The fault was with working lights, not navigation lights. In relation to FR70, a bracket had been bent in a storm. In the case of FR55, the bulbs in both leading lights were replaced.

131. Mr. O'Malley had had email correspondence with Mr. O'Shea. He agreed that he had sent an email on 24th November, 2011, to Mr. O'Shea. This arose in circumstances where lighting faults had occurred at Roonagh Pier. He sent the email, outlining the situation at the time of sending. An electrician attended and replaced four of the fittings and lamps. He referred to the attendance of an electrician and the replacement of a breaker. Mr. O'Malley said that this electrician was Mr. Fitzpatrick.

132. The navigation light fault in February 2011 was not included in the quarterly reports. On 17th February, 2011, Mr. O'Malley emailed Mr. O'Shea, saying that attempts had been made to repair the lights but that the weather situation had hampered these efforts. Mr. O'Malley said his understanding was that the repairs had occurred.

133. Under cross-examination, Mr. O'Malley agreed that the fault reports are not all complete. He agreed that the reports to the CIL were inaccurate.

134. Mr. O'Malley had taken over responsibility for preparing the quarterly reports in 2009. He did not receive training for this task. There is no record of maintenance of the navigation lights and there is no way of knowing the lights are not checked every year.

135. A number of missing fault reports were identified. Mr. O'Malley could not recall where they were, he did not recall what they related to and he could not recall if they referred to Roonagh Pier.

136. LED lights had been ordered for Roonagh in June 2010. These were not installed. Mr. O'Malley asserted that he was not surprised the upgrade did not take place until 2012. He disagreed with the argument that it was "extraordinary" that it took two years to upgrade the lights at Roonagh.

137. An email from Mr. O'Shea in the winter of 2010/2011 stated that the end of pier lights at the end of the piers at Roonagh and Clare Island were out all winter. There was no corresponding fault report. Mr. O'Malley said that he did not remember which lights were out in Roonagh at this time.

138. The CIL base their acceptability ratings on a three-year rolling average, with reference to three categories of navigation lights. Category 2 lights must be available for 99% of the year. This equates to an acceptable outage period of approximately 3.65 days. In February, the navigation lights were out of order for approximately 15 days. Mr. O'Malley was not aware that the averages were calculated over a three-year period. The outage of 15 days, which was not submitted to the CIL, would be sufficient to bring Roonagh below the level of acceptable light availability.

139. Mr. O'Malley suggested that a number of outages, miscategorisations, unreported outages and altered reports may have been due to clerical errors.

Mrs. Mary Heanue

140. Mrs. Heanue is the plaintiff in these proceedings. She recounted that she boarded the Pirate Queen at Inishturk at 5.30 p.m. on the night of the accident. Mrs. Heanue was accompanied by her husband. They were, along with Mr. Concannon, in the lounge. She described Mr. Joe O'Malley as "crew". She recalled that Mr. O'Malley came to the lounge and spoke with Mr. Heanue and Mr. Concannon for some time. When he left he did not return to the lounge.

141. Mrs. Heanue recalled that the weather was relatively good for the time of year, and that the crossing was "good" and "calm". Having made the journey on many occasions, she became aware that they were approaching Roonagh by the sound of the slowing engines. There was a "bang" which she thought was the boat landing at the pier, there was then another "bump" which seemed to come from underneath the boat.

142. Mr. Concannon reassured Mrs. Heanue and instructed her to brace herself on the seat in front of her. Mr. Concannon went out

on deck, before returning to the lounge and helping Mrs. Heanue to put on a life jacket. Mrs. Heanue said that soon afterwards the boat was "thrown" and it tipped to one side. Mrs. Heanue and Mr. Concannon fell, and she sustained an injury to her shoulder. He helped her up and went outside. When he came back he told her that Brian O'Grady was coming in a RIB. Mr. O'Malley came back to the lounge to get Mrs. Heanue. He then assisted her to the RIB. Mr. O'Grady brought the passengers across to the pier, before returning to the boat, along with Mr. Concannon. Soon afterwards the ferry came beside the pier. She said that it all happened in about 20 minutes.

143. Mrs. Heanue's son and family were there to pick them up. They had been in waiting in their car and did not realise what had happened. There was no one else on the pier.

144. There was a shower as they were coming into Roonagh. Her husband had stood out for a few minutes but sheltered inside just before they landed. She said that it was a showery day but she did not know what the weather was like while they were coming across. There were lights on the pier. She could see her son's car and she could see her way around. When the Heanues left, Mr. Concannon, Mr. Brian O'Grady and Mr. Chris O'Grady were still there. She could not recall anyone else on the pier.

Mr. Mark O'Malley

145. Mr. O'Malley is an electrician employed by Mayo County Council. He is responsible, *inter alia*, for navigation lights. Of approximately 170 navigation aids in Mayo, Mr. O'Malley estimated that 150 are lit. Every light is inspected once a year.

146. Mr. O'Malley installed the pier lights at Roonagh in 1998. He replaced the green light on 16th December, 2011, after it was damaged in a storm. To check the light was working, he would cover the light to block the sunlight. This action activates the photo switch which, in turn, powers on the light. He was instructed to go out and check the lights on 22nd December following the accident. He asserted that he found the green light working. Upon examination, it was found that all six bulbs in the front lead light were blown. At the higher lead light, three of the six bulbs were blown. Mr. O'Malley changed four lights: the three blown bulbs and the one that was operational. He found the light to be perfectly level and made no alterations. The bulbs used in the lead lights had a 1,000 hour runtime and were manufactured by a company known as Pharos. The leading light fixtures were Pharos Marine 205s. These units have a carousel which contains six bulbs. When a bulb blows the carousel moves a working bulb into lighting position. The leading lights flash intermittently. The lights at Roonagh are inspected and maintained once a year. This is usually done in the summer but can occasionally occur in February. The normal maintenance procedure involves checking the light, covering the photo cell to make sure it is functioning, changing blown bulbs, cleaning the light, checking voltage, the batteries inside the building, the level of the lights and the mains charger.

147. On 23rd December, 2011, Mr. O'Malley went to Roonagh. He had spoken with Mr. Moran in relation to the working lights being dazzling. He blanked out the light that was furthest out on the pier. This was not the correct light and he returned. He removed the tape and placed it in the correct light. In relation to the storm damage to the green light in February 2011, Mr. O'Malley said he replaced the fitting and painted the pole on 18th February. He said that he may have tried to go out to fix it earlier but the weather was too bad. The light was in a dangerous position, involving the placing a ladder on a wall. Between February and December 2011, the green light was on a pole on the high shoulder of the pier wall.

148. Mr. O'Malley is the only person who carries out maintenance of the lights. Under cross-examination he agreed that there are no formal written procedures. He knows what needs to be done and what needs to be checked based on his years of experience. He disagreed with the assertion that 80 to 100 days work a year is devoted to the lights. Mr. O'Malley reports to his foreman and David O'Malley in relation to navigation. He had never been given written instructions, and he received no training.

149. Mr. O'Malley keeps a diary for time sheet purposes but this diary is not complete. There are portions of the year for which he could not account. He keeps track of which lights have been checked based on their division of sea areas and there is no form with all of the 170 lights to be ticked off. Mr. O'Malley disagreed with the assertion that he could not be certain all of the lights had been visited in a year, and that lights may be visited multiple times if there are faults.

150. Mr. O'Malley was unable to give a date upon which he inspected the leading lights in 2011. When doing maintenance on the leading lights in Roonagh, he would replace the blown bulbs as well as the one that was lighting at the time. He accepted that all six would not be replaced a year, unless they were all blown. In different locations bulbs blow at different rates. Weather conditions have some bearing. On average, he would replace four bulbs at each light.

151. In relation to the email between David. O'Malley, Kieran Lynn and Iarla Moran, which noted that the lamps have to be replaced at least once a year, Mr. O'Malley said that they would have to go out and change blown bulbs once a year. Not all the bulbs are changed.

152. Mr. O'Malley said that, of all of the lead lights which were ordered, four were used in Killala as it was a particularly difficult area to access. The original plan had been for two to go there.

153. When replacing bulbs Mr. O'Malley does not rotate the carousel to place the newer bulbs in the read position so that the older bulbs are used first. Rather, he checks each bulb is working.

Mr. Iarla Moran

154. Mr. Moran was the acting senior engineer in the machinery yard with Mayo County Council at the time of the accident. He described the machinery yard as an internal service provider in the County Council. Navigation lights were part of his responsibilities from 2004 until 2013.

155. The quarterly aids to navigation reports, which were earlier referred to, came about following a discussion with CIL in about 2005. Up to then, such information was not passed to CIL. The format of the report was of his own devising, formulated following consultation with CIL. Referring to gaps in the fault reports, Mr. Moran said that if a fault was reported and repaired, it ceased to be continuous in the quarterly reports. Faults, once repaired, no longer featured in the next quarter. This practice highlights the fact that certain lights have not been repaired. After Mr. Moran took over the machinery yard, he asked David O'Malley to take over the mechanicals and electrical section. He discussed the task and explained how it was to be done and David O'Malley took over towards the end of 2009.

156. Mr. Moran said, in relation to the entries of December 2011 (FR131 and FR132), that he must have reported it to David O'Malley. Mr. Moran passed along the information given to him, but he said that this can lead to inaccuracy with dates and times. The FR131 was a report received from Alan O'Grady in relation to the pier light not working, FR132 relates to the complaint after the accident. Mr. Moran said he received the call from Alan O'Grady in December, not November, as claimed by Mr. O'Grady. He was called at 6.20

p.m. on 14th December by Mr. O'Grady. The time and day specified by Mr. O'Grady were correct. However, the month was wrong. Mr. Moran recalled speaking to Mr. O'Grady in relation to the green light not working at Roonagh. The light was found to be broken and a new light was fitted on 16th December by Mark O'Malley. A discrepancy in dates of fault reports between December and January may have been due to the Christmas break. Mr. Moran insists that he did not alter the document. In November 2011, work was done to the working lights. This was "flagged" by the area office rather than ferry operators.

157. Under cross-examination, Mr. Moran was unable to explain the misattribution of dates in the CIL reports by David O'Malley; the fault report says 12th December, the report to CIL says 13th December, Mr. Moran's recollection was the 14th of that month. Mr. Moran said that the nature of the system was that information was being passed along. Mr. Moran accepted that there was no report of the annual maintenance to the lights.

158. Lights for the upgrade of Roonagh were ordered in June 2010, but the upgrade did not occur until 2012. Lead lights in other locations were upgraded as Roonagh was not performing too badly. Mr. Moran accepted that the ordering of lights to Roonagh suggests a decision to upgrade Roonagh. There was no decision not to upgrade Roonagh, but there may have been a decision to do others beforehand.

159. In relation to the outage of the green light in February 2011, Mr. Moran accepted that it was out for at least 11 days. The error only emerged in the last few days but had not been reported to the CIL, and it is not relevant for the current statistics.

160. The email of the 14th was not a formal complaint and he accepted that there was no record of a response between the email of the 14th and Mr. Fitzpatrick's trip out on the 24th. Mr. Moran did not recall Mr. Hynes or Mr. Lynn speaking to him in relation to the lights following Mr. O'Shea's meeting.

161. Mr. Moran accepted that it is his responsibility to ensure there is a proper maintenance system in place. Fault reports and quarterly reports are maintained but there are no records of maintenance. There was no record of the number of bulbs which would blow at Roonagh per year. Incandescent bulbs have been replaced by LED lights. Mr. Moran accepted that the only record of maintenance was that as noted by the operatives involved. Mr. Moran insisted that the record of the fault reports represents a complete record of complaints and rejected the contention that records of phone call complaints should be kept. Mr. Moran accepted that there had been errors in returns to the CIL. Mr. Moran did not accept that the system in place in 2011 was not safe. There were investments in the lighting in Roonagh, such as the improvements to the car park lighting, the access from the roadway to the pier and the installation of LED lead lighting. He said that the County Council still relies on being notified of light outages.

Captain Robert McCabe

162. Captain McCabe is Director of Operations and Navigational Services with the CIL. The CIL provides general aids to navigation and has a superintendence role in relation to lights and aids provided by local authorities. Most county councils in proximity to the sea have light authorities. Captain McCabe said that there had been concern in the CIL that they had not been fulfilling their statutory role with regard to local aids and, consequently, an inspector for local aids to navigation was appointed in 2002. He said that the local aids inspector audits lights and records.

163. Captain McCabe said that Mayo County Council set a good example as a local authority in relation to navigational aids. He described the SL70 – the green light at Roonagh – as a reliable and modern light. Addressing the question as to whether the light being installed on the 16th might not be working on the 20th, he said that it could occur that a light would go out and come on again in the circumstances described. In general, if a light fails, the battery fails due to "solar stress". It will then be re-charged and the light will come on but it will not stay on for a lengthy period.

164. Captain McCabe was familiar with the six lamp carousel fittings used at Roonagh in the leading lights. He said that such a light would be inspected once a year. It would be opened and defective lamps, as well as the lamp in use at the time, would be replaced.

165. The categorisation of lights is drawn from the Convention on Safety of Life at Sea. The categories reflect the importance of the lights. Captain McCabe had been advised of an omission in the reports from February 2011. He said that it would have had the effect of bringing down the average availability figures. The overall performance of the local lighthouse authority is that with which the CIL is concerned. The three-year rolling average gives space to the authority to respond to issues. If a light is consistently falling below the average, it may be considered unviable.

166. The CIL's only correspondence in relation to complaints at Roonagh was received in early 2012. This was the letter from Chris O'Grady on 8th February. This letter was replied to by Mr. Tim Ryan and stated that the Roonagh lights exceeded the required average and noted Mayo County Council's consistent responses and repairs to complaints. Captain McCabe said that he was not familiar with any other such letters.

167. Captain McCabe examined the quarterly reports from Mayo County Council – FR131 and FR132 – which showed that the green light was unlit from 13th to 16th December, 2012, and was subsequently replaced by a SL70 and FR132, which showed the front lead was out. There was, however, a mistake with the dates of this fault report. Captain McCabe said that Tim Ryan would likely have called to enquire about the dates. This information would have been recorded on the database. Captain McCabe said that the gap in the fault reports was likely a continuing report or a fault which has been rectified. Captain McCabe again praised Mayo County Council for their contribution to the provision of navigation aids and their work with the CIL.

168. Under cross-examination, Captain McCabe agreed that there were no other reports of complaints in relation to Roonagh prior to the incident, based on the material in his office. Counsel for the second and third respondents drew his attention to an email from Mr. O'Shea to Tim Ryan making such a complaint. Captain McCabe said that it is possible that the email is not filed on their records and that he had carried out as full a search of their records as he could do. He accepted that the email was genuine and the exchange took place, and surmised that Mr. Ryan did not file the email on the system. He accepted that the records are not "fully comprehensive". Captain McCabe was not surprised that it took two years to upgrade the lights at Roonagh, but he said that it could have been done quicker and that the use of the word "urgency" has to be understood in context. He agreed with the assertion that the CIL would have understood that the lights in Roonagh were to be upgraded, but this was up to the Council and there must have been a reason the lights were put elsewhere.

169. Counsel noted that Mr. O'Shea had said that they had contacted the CIL and proceeded to meet with the County Manager to address the problems with the lights. Captain McCabe said that if Mr. O'Shea had contacted the CIL, he would likely have been directed to Tim Ryan who may have phoned him back. Therefore, there would be no written record. The concern of the CIL is relighting and not recording complaints. It was accepted that it would be a good idea to keep such a record. He accepted that it was entirely possible that there would be no record of such a phone call. Captain McCabe agreed that a local lighthouse authority should

have proper procedures in place. He also agreed that there should be training for maintenance personnel, record of maintenance and risk management. Captain McCabe said that there is a system of "coastal intelligence", whereby CIL consults widely with communities, users and providers. He agreed that user consultation is good practice for local light house authorities.

170. Captain McCabe said that the lights should be checked once a year, and he would expect a detailed inspection. He agreed that he would expect the Council to keep a record of when each aid was inspected, what was done by way of maintenance and he said he is surprised such records do not exist.

Captain Bill Kavanagh

171. Captain Kavanagh is a master mariner and is a lecturer in the National Maritime College. His areas of expertise include ship simulation, electronic navigation systems and ship critical examination.

172. Captain Kavanagh said that the weather conditions on the night of the accident would not be considered bad for the area and time of year. He said that, when navigating anywhere, one never relies on a single means. Leading lights are the primary means but one always cross-checks with other means. Captain Kavanagh said that there was radar on board the vessel. The radar must be set up. It is not simply switched on. He noted that there was some confusion in relation to GPS. There were two GPS systems: one connected to a chart plotter – indicating the position of the ship in relation to its surroundings; the second GPS is independent from the chart plotter. He said that it would be easy to load a route into the chart plotter, and this would appear on the chart plotter showing way points by which to navigate. He said that the second GPS could be used to call up a route and would show latitude and longitude. Typically, GPS is accurate to within plus or minus 10 metres. An echo sounder will give an indication of the depth at the time. These aids would thus assist with visual navigation.

173. In relation to the approach to Roonagh from Inishturk, Captain Kavanagh said that the tracks shown on the Pirate Queen's instruments represent the traditional route used for many years; vessels approach, swing around the pier 50 metres out, and go in to berth. He expressed the view that this was too close. In daylight and clear conditions it may be acceptable but at night with poor visibility and rain, it is not an advisable approach, especially when it is known that the lights are not working. He said that the line should be approached at least a half a mile further out. Thence one should use the leading line to enter the harbour. Once the pier comes into view, adopt the berthing procedure and come aside the pier

174. If one joined the line further out and finds one leading light is out, one could align the vessel along the 144° line onto the remaining leading light.

175. The approach taken was "*high risk low time*". If a vessel joins the line at half or 0.7 miles out, a vessel could use radar and place a marker on the pier. He said that the radar should have a minimum of 50m ability. He said GPS, chart plotter and radar are not used in the berthing procedure. They are used in the approach.

176. Captain Kavanagh said that when approaching from the west and joining the line 100 to 200 feet out, the radar screen would show the outline of the land and the operator would get an estimate of the distance out and would get a bearing from the pier.

177. Considering Capt. Hopkins' simulator graphics, Captain Kavanagh said one would detect by radar, before relying on vision. He stressed that the graphics show the vessel 250 metres out. He asserted that 50 metres is too close to use radar, the pier would be visible at that stage. He said that waves cause "clutter" on radar and when this appears the operator can remove or reduce such echoes.

178. Captain Kavanagh highlighted that the international regulations state that vessels are to maintain a safe lookout in relation to prevailing conditions. He said that this was not done and Mr. O'Malley was called up at the last minute to step out with a search light. It would have been prudent to have a lookout apart from the skipper on the night.

179. International regulations say vessels must travel at a safe speed. This is informed by visibility, traffic, manoeuvrability, lights, weather, draft and depth. Captain Kavanagh categorised a speed between five and seven knots as "excessive". He said that this speed would mean that it was too close for the boat to manoeuvre out of the channel. One must be at least half a mile out to use the leading lights. He said that the course taken was not safe, and that the leading lights are not used from the west. The only way they can be used is when approaching from a reasonable distance. If only one leading light is working, one may align with the light on heading 144°. Captain Kavanagh said that radar could be used up to 50 metres from the pier, the GPS would be used up to 20 metres. Neither would be used for berthing which begins once the pier is visible.

180. Turning to the text message from Brian O'Grady to Joe O'Malley, Captain Kavanagh was of the opinion that it was common for information to be conveyed by text. However, a security message (VHF radio) should have been sent out to alert all vessels in the area of the problem and to take action. If one is alerted to a defect ahead, action should be taken: be more prudent, go slower and post lookouts.

181. Captain Kavanagh refused to express an opinion in relation to the technical capacity of the leading lights.

182. Under cross-examination, Captain Kavanagh noted that he based his evidence on a turn of 100 degrees which had been described as "a long lazy loop". He said that this started some way off out. Chris O'Grady did not turn hard enough to starboard on the loop. The turn was not taken at the right time in a high risk situation.

183. Captain Kavanagh said that the route from Inishturk, north of Caher Island, between Mweemore and Blackrock, and into Roonagh, is an acceptable route on a clear day with normal visibility. At night, however, with visibility issues, it is not a safe route.

184. Captain Kavanagh has never been to Roonagh. To orientate himself with the area, he viewed aerial photographs, local photographs and the charts. He knows the contours of the land from the chart. He said that the pier protrudes far enough to give a good radar echo. He said that the graphics he produced were for illustrative purposes and were not to recreate the incident. He did not recreate Roonagh as it was not within his remit.

185. He disagreed that side lobe effect only occurs from 40 metres out. He said that for side lobes to appear, it would depend on the height of the scanner and the distance from the target. He said that side lobe effect would only occur once the vessel has begun berthing procedure.

186. Captain Kavanagh said that he would agree with an approach taking the 144° line between a mile and half a mile from Roonagh. He is of the opinion that the pier is visible from much further than 50 metres out. Captain Kavanagh disagreed with the suggestion

that Mr. O'Grady could have come into the harbour if the leading lights were working. He said that he came too close and one cannot use the leading lights in the last couple of hundred metres. He said that the angle the boat came in left no time to correct. If Mr. O'Grady had joined the line at 600 metres out with the leading lights working, and, provided he was cross checking with another system, he would have accessed the harbour safely.

187. Sending Mr. O'Malley out and using the search light was the right thing to do, but it was done too late. He said that Mr. O'Grady could have pointed the boat at the single light on a bearing of 144°, and if there is a cross tide or wind, one adjusts course to keep on 144°, adjusting as one approaches. Captain Kavanagh said that, faced with the challenges presented by Roonagh on 20th December, 2011, there were options: abort the voyage, or assess the voyage and proceed. If proceeding, one should use all navigational aids. He did not agree that the course of action taken by Mr. O'Grady was reasonable.

188. Only when your vessel was positioned on the line as marked on the chart could one see if both leading lights were working. He said that, when coming from the west, nothing would preclude using the radar. There were enough radar conspicuous targets. Upon seeing the lower light was not working, Mr. O'Grady would have had about 20 seconds to make a decision. Given that the lights are isophase, this would have reduced the time to identify the acquisition line further.

189. I turn now to the main points of submission advanced by the disputing parties.

Submissions of the Applicant (second and third named defendants)

190. It was submitted by counsel for the second and third named defendants, Mr. Patrick Leonard, S.C., that:

(i) Mayo County Council owed a duty of care to both the plaintiff and the second and third named defendants to maintain the lights at Roonagh Pier;

(ii) the County Council failed in this duty, that the lower leading light would not have failed if it had been properly maintained;

(iii) the green light would have worked properly if it had been installed correctly, that the County Council failed to establish a proper system of maintenance of the navigational lights; and,

(iv) absent of any evidence of procedures, records, training or a proper system of maintenance the Council cannot establish that they fulfilled the duties owed to the plaintiff and the second and third defendants.

191. It was submitted that the second and third named defendants are entitled to seek contribution from the first named defendant, Mayo County Council, as that defendant constitutes a concurrent wrongdoer pursuant to s. 21(1) the Civil Liability Act, 1961.

192. While the second and third named defendants, in their notice of indemnity and contribution of February 2014, set out a variety of particulars upon which their claim is based, these particulars may be summarised as; the pier end light ("the green light") and the lower leading light at Roonagh were not working on 20th December, 2011.

193. It was submitted that, as the Local Lighthouse Authority, Mayo County Council have a duty to maintain the navigation lights at Roonagh Pier in good working order. Counsel argued that this duty was breached by the Council's failure to maintain the lights and that the outage on 20th December, 2011, is partly responsible for the injuries sustained by the plaintiff.

194. In support of this contention, counsel referred to *Gilbert v. The Corporation of Trinity House* (1886) 17 QBD 795, where it was held that where duties are owed, such as in the maintenance of navigational aids, whoever undertakes these duties is liable for the "negligent discharge of those duties". In that case, it was found by the court that the defendant was bound by such a duty and, as it was their negligent care which resulted in an accident, it bore responsibility for the injuries sustained by the plaintiff.

195. In *Stovin v. Wise* [1996] AC 923, Lord Hoffman referred to the dicta of Brennan J. in *Sutherland Shire Council v. Heyman* (1985) 157 C.L.R. 424, where he noted that a statutory power of a local authority would not give rise to a common law duty of care unless there was such an expectation by the plaintiff and the plaintiff had suffered as a result. Lord Hoffman proffered the lighthouse authority as an exception to this rule, whereby building and maintaining a lighthouse authority creates an expectation that the light will warn of danger and, in that case, gave rise to a duty not to extinguish the light without reasonable notice.

196. The second and third named defendants do not abdicate all responsibility for the injuries suffered by the plaintiff. They do accept that, together with the first named defendant, they are jointly responsible for same.

197. It was emphasised that, as the local lighthouse authority, Mayo County Council had a duty to the plaintiff, as well as mariners, to maintain the green light and the leading lights at Roonagh.

198. While noting that none of their arguments permitted the defendant County Council to resist the claim for contribution, counsel for the second and third named defendants rejected the propositions of the first named defendant, namely that the green light was working on the night of 20th December, 2011, that the Master of the *Pirate Queen* knew there was a problem with the leading lights, that he should have taken an alternative course, that he should have used the radar and chart plotter and should not have proceeded with the landing at Roonagh.

199. Counsel was critical of the County Council's system for maintenance of the navigation lights. It was submitted that the Council should have put in place a robust system including staff training and record-keeping.

200. It was submitted that the failure of the green light was as a result of improper installation. Counsel conceded that the defendant County Council would not be in breach of its duties if there were records to show that maintenance of the leading light had occurred and the blowing of all six bulbs in the lower light could be dismissed as an aberration. However, no such records exist.

201. In the circumstances of this case, where the lights did fail, the principle of *res ipsa loquitur* places the burden on the County Council to demonstrate that the failure of the lights were not as a result of any failings on its part. Counsel raised *Mullen v. Quinnsworth* [1990] 1 I.R. 59 to support this contention

202. It was argued by counsel for the first named defendant that Mr. Chris O'Grady's decision to proceed to Roonagh, in the knowledge that there were problems with navigational lights, constituted a *novus actus interveniens*, breaking the chain of causation and freeing the first defendant from liability.

203. This contention was rejected by Mr. Leonard. Quoting McMahon and Binchy, *Law of Torts* (Dublin, 2013) at paras. 2.81-82:

"The courts are no longer obsessed with seeking a single cause for accidents and injuries... the courts are less likely to find that a novus actus is the sole cause of the plaintiff's injury nowadays. It is only in very extreme cases that the nature of the third party's act will break the chain completely..."

204. Counsel referred to the criteria to be considered when assessing the characteristics of an intervening act, set out in the above text, and which were relied upon by the Supreme Court in *Hayes v. Minister for Finance* [2007] IESC 8, [2007] 3 I.R. 190. The criteria consider factors such as the foreseeability of a third party's actions, whether the act of the third party is intended by the original wrongdoer, the nature of the intervening act and whether the defendant had a duty to prevent the actions of the third party.

205. It was submitted, based on the criteria, that berthing at Roonagh by the second and third named defendant was not wholly unforeseeable, the first named defendant should have known that it was likely the second and third named defendants would do so. It was not suggested that this attempt to berth was criminal or reckless. The defendant County Council knew that ferries berthed at Roonagh on a regular basis, and the issues with lighting do not exempt either party from liability.

206. In *Iarnród Éireann & Anor. v. Ireland & Ors.* [1996] 3 I.R. 321, it was held by Keane J. that when apportioning liability among concurrent wrongdoers, the Court is obliged to look to the comparative blameworthiness of the defendants as opposed to issues of causation. In order to apportion liability, counsel for the second and third named defendants presented a number of factors for the court to take into consideration.

Submissions of the Respondent (first named defendant)

207. It was submitted by counsel for the first named defendant, Mr. O'Brolchain, S.C., that for the second and third named defendants' claim for contribution to succeed it is necessary to prove a sufficient causal link between the first named defendant and the injuries suffered by the plaintiff.

208. Counsel submitted that the failure of the navigation lights on the night of the accident, 20th December, 2011, was not causative of the accident.

209. It was argued that it was the decision of the third named defendant to proceed on his course for Roonagh Pier on that night without recourse to electronic aids and without heeding the warning received via text message.

210. Following receipt of the message from Mr. O'Malley, Mr. O'Grady had sufficient time to change course and not proceed to Roonagh in the knowledge that there existed an issue with the navigation lights.

211. The course put forward by counsel for the first named defendant was an approach to Roonagh from the north-west, following the 144° acquisition line, by setting the radar for that heading and orientating with regard to the functioning leading light.

212. Counsel argued that this present case was equivalent to the decision of the Supreme Court in *Conole v. Redbank Oyster Company Limited & Anor.* [1976] 1 I.R. 191, which found that any negligence of the third party was not the *causa causans* of the death. Similarly, counsel relied upon the "*but for*" rule of *Kenny v. O'Rourke & Ors.* [1972] 1 I.R. 339.

213. It was submitted that the third named defendant;

- (i) had sufficient time following receipt of the warning to alter course;
- (ii) in light of this warning, should have utilised all navigational aids as well as sought the assistance of the crew to bring the ferry safely ashore;
- (iii) continued on his course in the knowledge that there was an issue with the navigational lights;
- (iv) was travelling at a speed which was too fast in the circumstances;
- (v) failed to ascertain his correct position until it was too late to avoid collision.

214. It was submitted that the duty of care expected of the third named defendant is not that of the "reasonable man". Rather, it should be measured against the standard of care to be expected from a master mariner with consequent experience and skill. While the route taken from Inishturk to Roonagh was accepted to be the route habitually travelled by vessels in the area, it was pleaded that at night it would be expected that a responsible skipper would avail himself of all aids available to him. As per Henchy J. in *Roche v. Peilow* [1985] I.R. 232, at p. 254, it is incumbent on the professional man not to automatically and mindlessly follow the practice of others. As such, counsel contended that as an experienced mariner, Mr. O'Grady, on notice of difficulties ahead and cognisant of the overall conditions in the area should have altered course and his decision not to resulted in the injury suffered by the plaintiff. As the outage of the lead light had not been reported to the County Council prior to the 20th December, 2011, the fact that it had not been

repaired cannot amount to negligence. It was submitted that the text message from Brian O'Grady warning of an outage, which was conveyed to Chris O'Grady, broke the chain of causation between the failure of the light and the injury to the plaintiff.

Conclusions

215. If the truth be told, the parties were not greatly in conflict as to the general principles approaching their respective obligations. The respondent is the relevant authority charged with erecting and maintaining illuminated aids to navigation. In this capacity it reported accordingly to the CIL. Mr. Chris O'Grady, as a named party and as servant or agent of the third named defendant, was charged with the duty of care in or about his control and management of the Pirate Queen on the evening in question. It is a weighty obligation, carrying with it protection of the safety and well-being of souls in his care as well as the vessel of which he is skipper.

216. This is not a marine accident inquiry of the type already conducted in this case by the MCIB. That important body has its own function and role separate to that of this court and conducts its affairs not only as an investigative authority but with an all-important eye to upholding and promoting all aspects of marine safety. It is the function of this court to identify and, if appropriate, apportion fault in law. As such, this court operates upon the basis of evidence which it has heard and received. Any findings by the MCIB as to what occurred on the evening in question can have no material influence on the decision of this Court. It should be kept in mind, however, that the nature of evidence received (or not received) by the MCIB undoubtedly can be useful in the critical analysis of evidence offered to this Court.

217. The third named defendant, Christopher O'Grady, was skipper of the Pirate Queen. His experience and general fitness to the task of master of the Pirate Queen has not been called into question. He and his family have for decades past ploughed the waters of Clew Bay from island to island, island to mainland and back again. I feel it may be fairly said that every inch of the seas in and around Clew Bay, every rock or shoal are known to him, his family and that family before him. He is one of the sturdy, able and gifted cohort of citizens who inhabit and work in and around our coastal areas and islands. He would not claim to be superhuman or omniscient in the ways of the sea but would know and respect it much more than most others. He is as prone to error as any other mortal. It is important, however, to make clear that at no point in this case was his vast experience and general expertise as a mariner called into question.

218. On the night of this incident the ferry left Inishturk at 5.35 p.m. Night had fallen. Mr. O'Grady had determined the route he was going to take. As far as he was concerned, this was the route customarily taken by mariners travelling from Inishturk to Roonagh.

219. It is worthy of note that Mr. O'Brolchain S.C. for the respondent had, from an early stage of this case, criticised the course followed by the vessel and posited that the full length of the acquisition line, extending at 144° should be followed when approaching Roonagh. This gave rise to a number of contentious exchanges with a variety of witnesses. Mr. O'Grady's choice of route was supported by Captain Hopkins in evidence. The respondent, ultimately, abandoned its assertion that the full acquisition line ought to have been followed in this approach to Roonagh. Accordingly, it would appear that there was nothing inherently negligent or dangerous about the route up to the approach to Roonagh followed by Mr. O'Grady and, indeed, it would appear also followed by many others.

220. If the route chosen by Mr. O'Grady was not, of itself, inherently dangerous or inappropriate, did it become so? If so, at what point?

221. A significant issue in the case was the text message allegedly sent by Mr. Brian O'Grady not to his father but to Mr. Joe O'Malley, the crew member. There were a number of witnesses relevant to this issue:

(i) the third defendant Mr. Christopher O'Grady. He said that he was notified by Mr. Joe O'Malley of the text to the effect that the pier head light at Roonagh was out of order. He said that he did not see the text message at the point.

(ii) Mr. Joe O'Malley gave evidence that he received the text. At that time he was in the lounge of the Pirate Queen. He said that this was about ten minutes out from Inishturk, and that about ten minutes later he proceeded to the wheelhouse to inform Mr. O'Grady of what it said.

(iii) Mr. Brian O'Grady gave evidence that when he departed Roonagh on 20th December, 2011, he informed the coast guard station of his route and recalled that he had observed that the green pier light was not working. He sent a text conveying this information to Joe O'Malley.

(iv) Photographs were produced in court purporting to show the text. It read as follows:

"the nav light IS not working on the end of roonagh [17:49:13]".

Thus, Mr. O'Grady's case was that the green light was not working, this had been observed prior to the incident by Mr. Brian O'Grady and he had texted Mr. O'Malley accordingly.

222. Counsel for the first named defendant challenged the veracity of this text, questioning both the authenticity of the photographs

and the failure of Mr. Brian O'Grady to bring them to the attention of the MCIB inquiry.

223. Further questions were raised. Why was a text message sent rather than issuing a securité on the radio and why was the text not sent directly to Chris O'Grady? There had been no earlier challenge to the finding of the MCIB report that the text related to the leading lights rather than the pier lights. That report noted that the green light at Roonagh had been observed to be out of order by a passenger on arrival at the pier. No such evidence has been advanced to the Court. Further, the photos of the texts message were first produced on 12th January, 2016, and were not produced at the statutory inquiry hearing in Galway on 22nd June and 11th November, 2015.

224. All this must be viewed in the context of the first named defendant's argument that neither the status of the green light, nor the leading lights, had any bearing on the vessel going aground.

225. There was reference in the evidence to rumbling contention between the O'Grady's and another family concerning the operation of ferry services. The suggestion was to the effect that this dispute was the explanation for the use of a text message communication and failure on the part of Mr. Brian O'Grady to notify the Coast Guard of the alleged failure of the green light at Roonagh pier. Notwithstanding this, I am satisfied that the text message was sent by Mr. Brian O'Grady to Mr. O'Malley. I am persuaded that that message referred to the pier light and not the leading lights. I am further persuaded that the message was conveyed subsequently by Mr. O'Malley to Mr. Chris O'Grady when the former went to the wheelhouse. Finally, I accept that Mr. O'Grady understood that the text message referred to the pier light or green light.

226. Accepting, therefore, that the text was sent, that it referred to the green light or pier light and that it warned that the said light was not functioning, what was the status of the said light on 20th December, 2011?

227. Thus arises a curious aspect of this case. Previously, we know, the light had been out due to storm damage some time prior to these events. It was replaced by Mr. Mark O'Malley, the County Council electrician, who installed an SL70 light on the 16th December, 2011. It was not perceived to be out of order on subsequent nights and was working on nights following the accident. Mr. Leonard S.C. contends that this does not necessarily mean that the light must have been working on the 20th December. There was no evidence that Mr. O'Malley (the electrician) checked that the battery was fully charged after he had installed it. He was, however, satisfied that the light was working after he installed it.

228. How could it be that the pier light ceased to function on the 20th December? Can Messrs. Chris and Brian O'Grady be mistaken? I think not. The O'Grady's' evidence is underpinned by the evidence of Mr. Thomas Scott, the crane driver and caretaker employed by Mayo County Council. His recollection was that he did not see the green light flashing after the Pirate Queen had sailed for Clare Island on 20th December, 2011.

229. I accept that Mr. Mark O'Malley gave me his truthful recollection and I also accept the truthfulness of the two O'Grady's supported as it is by the evidence of Mr. Scott. A resolution of the the apparent conflict is to be found, in my view, in the evidence of Mr. Michael John Connolly, the engineer and marine surveyor who said that as the green light was installed close to the shortest day of the year it may not have been fully charged and could have lit intermittently as it charged during the short days. This would explain how it might have ceased to function on the crucial night. In this he was supported by Captain McCabe from CIL.

230. I am satisfied, on the balance of probabilities, that the green pier light was not functioning when it was observed by Mr. Brian O'Grady and did not function at any material time during the course of the evening up to and beyond the running aground of the Pirate Queen and up to and beyond the departure of the Pirate Queen subsequently for safe harbour in Clare Island. I accept the evidence of Mr. Chris O'Grady also.

231. I am satisfied on the evidence that Mr. Chris O'Grady departed Inishturk Island unaware that the green light was not functioning. I am satisfied that he only became aware of this fact during the course of the voyage from Inishturk to Roonagh at a time when he was in the order of 20 minutes to 30 minutes out from Inishturk and probably at least half way, if not more, to Roonagh. I also accept his evidence that he expected the leading lights to be functioning notwithstanding the state of the green light.

232. What now confronted Mr. O'Grady? We know from the evidence that he was not availing of the navigational aids such as radar and GPS. He was sailing a well accustomed route which he clearly knew extremely well. The weather and sea conditions were certainly challenging. What awaited him was one functioning leading light, the rear light. The lower leading light guiding the approach into the harbour was completely blown. Only part of the lighting system on the "deck" of the pier was functioning and I am satisfied that it was barely visible and of little or no assistance in the approach to the harbour. The rear leading light was only faintly visible. I am not satisfied that it was tilted backwards or distorted to the extent which was suggested during the evidence. However, I am satisfied that with the prevailing conditions of visibility and weather, it was not, of itself, sufficient to offer a clear indicator of the line into the harbour.

233. In addition to the foregoing, the lights of the car park above the pier may have been barely visible. However, I am satisfied that they were of no assistance in guiding the Pirate Queen into the harbour.

234. In my view, notification that the green light was not functioning would have been sufficient to warn Mr. Chris O'Grady that his approach to and berthing at Roonagh pier was going to be somewhat more difficult than would normally be the case because of the absence of this important aid, particularly given the weather and sea conditions. Only as he approached the harbour did he realise that the lower leading light was not working. As he commenced what was described as a "lazy loop", turning in to Roonagh, I am satisfied that he was confronted by extremely poor visibility, so much so that the marine search light on the boat had to be deployed to assist in locating the harbour wall. In addition, Mr. O'Malley was sent out on deck as a look out to assist in guiding the vessel in. All to no avail. The vessel ran aground.

235. Stepping back slightly in time, Mr. O'Grady's failure to avail of the navigation aids on board the vessel, the course taken by him, and the manoeuvre required to point and guide the vessel to berth, were all matters of some contention during the course of the trial.

236. I have set out in some detail above the conflicting arguments for and against Mr. O'Grady's actions on the night in question. Central to the criticism levelled by Captain Kavanagh and by counsel for the first named defendant was the failure on the part of Mr. O'Grady to avail of the extensive electronic navigational aids which were at the disposal of the skipper of the Pirate Queen. As I have already indicated, the case as made by the first defendant when the trial started was to the effect that the Pirate Queen should have been navigated out to a distance of perhaps a mile or more from the harbour until it met what has been referred to as the acquisition line which appears on the Admiralty charts. The harbour should then be approached along this line. Had this been done, even in the absence of the green light and the lower leading light, GPS and/or radar used in conjunction with the rear functioning

leading light would have brought the Pirate Queen into harbour safely. Even absent the darkness and inclement conditions, this particular route was posited as the appropriate course whether approaching from Inishturk or Clare Island.

237. In fairness to the first named defendant, reliance upon this as being the correct line of approach was abandoned particularly because of the compelling evidence of Captain Hopkins called in evidence on behalf of the second and third named defendants and which said evidence demonstrated that the acquisition line should not necessarily be read as the appropriate route into a harbour. In fact, Captain Hopkins was of the view that the route taken by Mr. O'Grady to Roonagh from Inishturk was perfectly normal and indeed was the route often taken by mariners making that trip.

238. So too did Captain Hopkins defend Mr. O'Grady's non-use of the electronic navigation aids on board his vessel. It is self-evident that Mr. O'Grady had accomplished the trip from Inishturk to the approach to Roonagh Harbour in complete safety and control of the vessel. However, given the extremely challenging manoeuvre presented to the Pirate Queen by the non-functioning green light and lower leading light, debate did rage between the two expert witnesses as to what assistance, if any, radar and GPS could be. As observed above, Captain Kavanagh produced photographs of a simulated approach to Cork Harbour. Subsequently, a joint simulated approach to Roonagh was produced and still the discussion coursed back and forth as to what might and might not be observed on radar and what the effects, if any, of the distorting effect of surrounding topography might be and whether or not this could be eliminated by devices on the radar in order to ascertain the precise location of the Harbour.

239. In broad terms, I think it fair to say that neither Captain Hopkins nor Captain Kavanagh retreated in any significant way from their respective fundamental positions. Captain Hopkins was very much of the view that from up to two or three hundred meters out radar would cease to be of much assistance. Neither would use of GPS in conjunction with the sole functioning leading light be sufficient to bring the boat safely to berth. He stressed the paramountcy of use of the eyes and, of course, the skill and experience of the skipper in the circumstances. On the other hand, Captain Kavanagh was much more supportive of the use of the electronic equipment as was available to Mr. O'Grady on the occasion and was in disagreement with Captain Hopkins.

240. Both of these extremely distinguished and highly qualified gentlemen gave their evidence with impeccable fairness. Both would, of course, acknowledge the importance of the knowledge, indeed intimate experience, of a local skipper in managing his or her craft. Both Captain Kavanagh and Captain Hopkins were extremely experienced mariners and, as I understand it, would be qualified to command any craft of whatever size anywhere on the globe.

241. It seems to me that I must view Mr. O'Grady's actions in an appropriate context, namely that of an experienced and skilled mariner operating a ferry in a location such as this. Assessing Mr. O'Grady's conduct should not be a sterile, desktop and academic critique conducted in a courtroom and far away from the dark and inclement conditions which met the skipper of the Pirate Queen on that evening. In considering Mr. O'Grady's actions I have, therefore, found greater assistance in the evidence of Captain Hopkins while meaning no disrespect whatsoever to Captain Kavanagh. Unlike Captain Kavanagh, however, Captain Hopkins actually visited Roonagh. Not only that, he knew the area and had sailed in it. Further, he is also an experienced operator of a ferry service off the west coast, West Cork to be precise. All this would add a particular pertinence to his evidence. In my view it would be appropriate to prefer his critique of Mr. O'Grady's action and further, his assessment of the usefulness, or want of it, of electronic navigational aids in the approach to Roonagh Harbour.

242. Returning to what occurred on the night in question, some time was taken up in dealing with assessments of what distance the Pirate Queen was out from the harbour and the speed at which it was travelling. As I have noted in the evidence, there is some variation in the figures given in both respects. I am very conscious of the fact that given the general circumstances which obtained at the time of this particular emergency, and the passage of time since then and the frailties of human recollection, that over-exactitude in the assessment of speeds and distances particularly in dark and unpleasant conditions at sea can give rise to unfairness.

243. Nevertheless, I am satisfied having considered the evidence and accepting the view expressed by Captain Hopkins that Mr. O'Grady was not travelling quite as fast as he thought, I think it probable that, in the following respects, Mr. O'Grady erred on the occasion in question:

- (i) when he became aware that the lower leading light was not functioning
(having previously been made aware that the pier light was not working) he
ought to have slowed to a speed of approximately 2 or 2.5 knots.
- (ii) he should have deployed the marine search light and the crew member
Mr. O'Malley as a look-out outside the wheelhouse when he became aware
that the lower leading light was not functioning.

244. Failure to slow down and delaying the deployments aforesaid caused the ship to be carried too far beyond the line into the harbour. This and the sea and weather conditions caused the boat to be thrown onto the rocks notwithstanding the, alas, too late efforts to manoeuvre the vessel back towards the harbour.

245. I am further satisfied that had the pier light/green light been working this accident probably would not have occurred.

246. I am further satisfied and accept the evidence of Captain Hopkins that had the leading lights both been working Mr. O'Grady would have been afforded a clear line into the harbour and the accident would not have occurred.

247. I am further satisfied that any lighting which was visible at the time was insufficient to provide any useful guide into the harbour. In this regard, I accept the evidence of Mr. O'Grady.

248. I do not fault Mr. O'Grady for "making the call" to bring the ferry into the harbour in the circumstances. His fault, such as it was, rested in a failure to respond to the full extent of the difficulties facing him in bringing the vessel to harbour by failing to slow down sufficiently and to engage the services of Mr. O'Malley and the marine search light in sufficient time.

249. Turning to the responsibility of the first named defendant, I have already outlined the vista encountered by Mr. O'Grady. But one aid to navigation was functioning – the rear leading light. The green light was out (of which fact Mr. O'Grady had short prior notice)

and the lower leading light was gone. The pier was not visible due to the absence of adequate lighting on this "dark and dirty night" to use Captain Hopkins descriptive term. This state of affairs ought not to have confronted the skipper of a public passenger ferry arriving at a harbour controlled and maintained for public use by the first named defendant.

250. Copious evidence was offered concerning the maintenance and upkeep of aids to navigation, most particularly illuminated aids, as I have recounted in the recitation of the evidence. Such testimony was intended to answer the trenchant criticism by the second and third named defendants of the system of maintenance of navigation lights. It was contended that the first named defendant should have put in place a more robust system including staff training and record keeping.

251. Both in evidence and submission, Mr. Leonard, S.C., highlighted the failure of the green light as a consequence of improper installation. He conceded that the first named defendant would not be in breach of its duties if its records evidenced maintenance of the leading lights to the extent that the blowing of all six bulbs in the lower leading light could be characterised as an aberration. However, no such records existed.

252. I accept the submission by Mr. Leonard that, in the circumstances of this case, the principle of *res ipsa loquitur* places the burden on the first named defendant to demonstrate that the failure of the lights were not as a result of shortcomings on the part of the first named defendant (see *Mullen v. Quinnsworth* [1990] 1 I.R. 59). Mr. Leonard condemned the absence of any maintenance records and argued that this dearth of evidence fatally inhibits the first named defendant from discharging the onus placed upon them and, consequently, shouldering the blame for the failure of the lighting and the injury and damage.

253. The evidence demonstrates considerable efforts on the part of employees of the County Council, including Mr. David O'Malley and Mr. Iarla Moran, to maintain and control the navigational aids within their remit. The first named defendant's navigational area of responsibility is extensive in both geographic terms and numerical terms as far as the number of aids to navigation go. The County Council's efforts were, indeed, applauded by Captain McCabe from the CIL.

254. Nonetheless, the system of maintenance and control employed by the first named defendant fell below par in a number of respects. Lighting inspection and repairs were carried out on what was largely an *ad hoc* basis. The principal operative involved in this work was Mr. Mark O'Malley. He received no training nor any written instruction from the first named defendant.

255. No annual report of maintenance to navigation lights was compiled and/or kept. This was confirmed by Mr. Iarla Moran.

256. The only records of maintenance were kept by the operatives who carried out the work. I am satisfied that, prior to the matters complained of, there was a somewhat lackadaisical approach to the maintenance programme. This is illustrated by the number of complaints to the first named defendant relating to broken or non-functioning lights in the area in question before the accident.

257. Of these complaints, it might be argued on behalf of the first named defendant that some related to lights other than navigational lights. For example, there could be failure of working lights on the working or pedestrian surface of a pier that would have no material effect on navigational matters. Further, some complaints about non-functioning lights were responded to. An obvious example was the replacement of the green light in Roonagh days before the incident. In my view, arguments along these lines are not persuasive. They do not confront the *ad hoc* nature of the system of maintenance and inspection. Nor do they answer what I felt was compelling evidence of regular complaints concerning lighting without satisfactory response. Further, it seems to me immaterial that complaints related to non-navigational lights as well. All lighting came under the same Aegis.

258. I do not accept the evidence that an adequate response was available to complaints about defective or absent lighting. The following incidents demonstrate, in my view, a systematic shortfall on the part of the first named defendant.

(i) On 7th February, 2011, Mr. Donal O'Shea emailed Kieran Lynn, Mayo County Council Engineer, complaining that the lights at the end of the Roonagh and Clare Island piers had been "out all winter".

(ii) On 17th February, 2011, Mr. O'Shea emailed Mr. David O'Malley to complain that the end of pier lights at Roonagh and Clare Island were still not working.

(iii) On 14th November, 2011, Mr. O'Shea emailed Mr. Iarla Moran to inform him that the end of pier lights at Roonagh and Clare Island had "not been functioning for some time" and noted that this "seems to be a regular occurrence" which "takes ages to correct".

(iv) Mr. Alan O'Grady gave evidence that he had made a complaint by telephone to Mr. Moran, also on 14th November. The date of this call was contested. Mr. Moran maintained he received a message one month later. I am persuaded neither way and will leave this particular matter as part of the overall pattern which I am describing.

(v) On 4th December, 2011, Mr. O'Shea emailed Mr. Tim Ryan, Local Aids to Navigation Inspector at the CIL, to notify him that the navigation lights on the pier at Clare Island had not been operational for "over three weeks".

(vi) On 7th December, 2011, Mr. Ryan emailed Mr. David O'Malley, Mayo County Council Engineer, to inform him that there was a report that "Roonagh Pier is out".

259. In my view, the foregoing evidence supports the case advanced on behalf of the second and third named defendants. This is, to the effect, that the system of maintenance and control of the lighting at Roonagh fell short of what the plaintiff, as a ferry passenger, and the second and third named defendants, as ferry operators and mariner, were entitled to expect. The green light was not functioning on 20th December, as a matter of probabilities, because the battery had not been properly checked. The lower leading light was not functioning because all of the six bulbs on the carousel had blown. This was not anticipated, detected or repaired. The rear leading light was, as a matter of probabilities, tilting slightly backwards though not to the extent suggested by Mr. O'Grady. However, in the prevailing weather conditions, it failed to provide any material or useful illumination or guidance to Mr. O'Grady.

260. On the balance of probabilities, I am satisfied that absent lighting and a deficient system of repair and maintenance presented a significant danger to the Pirate Queen as it approached Roonagh and materially contributed to the resultant accident.

261. I am of the view that fault is to be found on the part of both applicant and respondent in the issue as between the defendants. On behalf of the first named defendant, Mr. O'Brolchain, S.C., has urged me to follow *Conole v. Redbank Oyster Company & Anor* [1976] 1 I.R. 191, and to hold that the negligence of the second and third named defendants was the *causa causans* of the injury

and loss suffered by the plaintiff. I am not persuaded that a conclusion akin to *Conole* would be either correct or just in this matter.

262. When Mr. O'Grady departed Inishturk, he was not aware of what was to face him at Roonagh. During the course of the voyage, he received the text message. I am not satisfied that this, by itself, would have been sufficient to cause him to turn back or proceed to another destination. I have accepted his evidence that he expected the lower leading lights to be working as well as the rear one. I have already expressed the view that had this been the case, the vessel would have proceeded into harbour without incident. Beyond this, I have already set out my views on the responsibility of Mr. O'Grady for what occurred.

263. In my opinion, the principal cause of this accident was the defective lighting regime which obtained at Roonagh Pier and which presented the *Pirate Queen* with effectively non-existent navigational aid into the harbour at night and in difficult conditions. The outcome was contributed by failure to slow down in time and to deploy both marine search light and crew lookout on the part of Mr. O'Grady. This caused him to "overshoot" the harbour mouth, to bring him too close to the rocks upon which the boat became impaled and left insufficient time for corrective action to steer the vessel to safety.

264. Whereas I make these criticisms of Mr. O'Grady, they must be seen in the context of his having to respond to a dangerous situation that was not of his making and which he could not reasonably have anticipated. Fault for this state of affairs must rest with the first named defendant. In my view, the appropriate apportionment of responsibility for the injuries and damaged suffered by the plaintiff is two thirds as against the first named defendant and one third as against the second and third named defendants.