
O N A P P E A LFROM THE SUPREME COURT OF NEW SOUTH WALES
ADMIRALTY DIVISION

B E T W E E N :

CANDLEWOOD NAVIGATION CORPORATION
LIMITEDAppellant
(Defendant)

- and -

MITSUI O.S.K. LINES LIMITED

First Respondent
(First Plaintiff)

MATSUOKA STEAMSHIP CO.LIMITED

Second Respondent
(Second Plaintiff)

RECORD OF PROCEEDINGS

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O N A P P E A L

FROM THE SUPREME COURT OF NEW SOUTH WALES
ADMIRALTY DIVISION

B E T W E E N :

CANDLEWOOD NAVIGATION CORPORATION Appellant
LIMITED (Defendant)

- and -

MITSUI O.S.K. LINES LIMITED First Respondent
(First Plaintiff)

10 MATSUOKA STEAMSHIP CO. Second Respondent
LIMITED (Second Plaintiff)

RECORD OF PROCEEDINGS

No. 1

WRIT OF SUMMONS IN REM

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION No.934 of 1981

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

20 MITSUI OSK LINES LIMITED
- and -
MATSUOKA STEAMSHIP CO. LIMITED
Plaintiffs

No.1
Writ of
Summons
in Rem
16th
September
1981

- and -

THE SHIP "MINERAL TRANSPORTER"
Defendant

WRIT OF SUMMONS IN REM

ELIZABETH THE SECOND by the Grace of God,
Queen of Australia and her other Realms and
Territories, Head of the Commonwealth.

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.1
Writ of
Summons
in Rem
16th
September
1981

(continued)

TO: The Owners and all others interested in
the ship "Mineral Transporter".

WHEREAS the abovenamed Plaintiffs have
commenced an action against you in this Court:

WE COMMAND YOU that if you desire to contest
its claim you do, within ten (10) days after
service of this Writ, file in the office of the
Court a Notice of Appearance in the form
prescribed by the Rules of Court and serve a copy
thereof on the Plaintiffs or their Solicitor.

10

AND TAKE NOTICE that such Notice of
Appearance may be filed on your behalf by a
Solicitor of this Court or by yourself in person,
in which latter case the address given therein
for service of documents upon you must be three
kilometres of the General Post Office, Sydney.

AND TAKE NOTICE that if you fail to file
such Notice of Appearance within the time
limited for your appearance the Plaintiffs may
proceed with the action and judgment may be
given in your absence.

20

WITNESS the Honourable Sir Laurence
Whistler Street, K.C.M.G., KT. St.J., Chief
Justice of our said Court at Sydney this sixteenth
day of September, 1981.

For the Registrar

NORTON SMITH & CO.,
Solicitors,
20 Martin Place,
SYDNEY, 2000

Tel: 232-8833
D.X. 119-SYDNEY
Ref: C.K. Yuill.

30

THIS WRIT was issued by COLIN KEITH YUILL of
Norton Smith & Co., Solicitors, 20 Martin Place,
Sydney. The address for service of documents is
care of Norton Smith & Co., Solicitors, 20 Martin
Place, Sydney.

Particulars of the Plaintiffs' claim are annexed
hereto. The Defendant is required to give
particulars of its defence.

40

(Sd:) C.K.Yuill
Solicitor for the Plaintiffs

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.1
Writ of
Summons
in Rem
16th September
1981

(continued)

10 The Plaintiffs as owners and disponent
owners respectively and all others
interested in the ship "Ibaraki Maru"
claim the sum of Two million seven hundred
and fifty thousand dollars for damage and
loss suffered by the Plaintiffs through
negligence on the part of the Owners and all
others interested in the ship "Mineral
Transporter" in that at about 0300 hours
on 10th July, 1981, the ship "Ibaraki Maru"
was at anchor outside Port Kembla at a
distance of approximately 3 miles from
shore and at the same time the "Mineral
Transporter" was at anchorage at a distance
about 1.2 miles from the "Ibaraki Maru"
and shortly thereafter the "Mineral
Transporter" changed her position and
despite warning signals from the "Ibaraki
Maru" the "Mineral Transporter" began to
20 close in on the "Ibaraki Maru" and in doing
so came into collision with the "Ibaraki
Maru" at approximately 0342 hours on the
10th July, 1981, and as a result thereof
damage was occasioned to the "Ibaraki Maru"
and the claim of the Plaintiffs is in
respect of all such loss or damage as
aforesaid.

And the Plaintiffs also claim interest
pursuant to statute and costs.

30 DATED this sixteenth day of September, 1981.

(Sd:) C.K.Yuill
Solicitor for the Plaintiffs
20 Martin Place, Sydney.

NORTON SMITH & CO.
Solicitor,
20 Martin Place,
SYDNEY

Tel: 232-8833
D.X. 119 - SYDNEY

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No. 2

PLAINTIFF'S PRELIMINARY
ACT

No.2
Plaintiff's
Preliminary
Act
26th November
1981

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION No.934 of 1981

MITSUI OSK LINES LIMITED and
MATSUOKA STEAMSHIP CO. LIMITED
Plaintiffs

- and -

10

THE SHIP "MINERAL TRANSPORTER"
Defendant

PRELIMINARY ACT ON BEHALF OF
THE PLAINTIFFS

1. The names of the ships which came into collision and the names of their Masters: "IBARAKI MARU" - Michihiro Takatani and "MINERAL TRANSPORTER" - Pao Yun Lung
2. The time of the collision: There were three collisions, at about 0342 hours; 10th July, 1981 and at about 0346 and 0349 hours that day. 20
3. The place of the collision: 072 degrees; 3.1 miles from Wollongong flag staff lighthouse.
4. The direction and force of the wind: At 0342 it was south 30 east; Force 5. By 0400 the wind had changed to SSW but remained Force 5.
5. The state of the weather: The weather was fine and clear.
6. The state and force of the tide: The tide was running in a northerly direction at a rate of 1 to 1½ knots. 40

			Part 1
	7.	The course and speed of the vessel when the other vessel was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier, and all subsequent alterations to the course or speed of the vessel up to the time of the collision:	"IBARAKI MARU" was moored with ten (10) shackles in water of star-board anchor. At 0336 hours her chain was slackened to 13 shackles in hawse pipe. Her head was about 142 degrees and she had no speed up to the time of the collision.
10			In the Supreme Court of New South Wales (Admiralty Division) No.2 Plaintiff's Preliminary Act 26th November 1981 (continued)
	8.	The lights, if any, carried by the vessel:	(i) Fore and after anchor lights. (ii) Outside bridge and outside cabin lights. (iii) Fore mast flood lights and working light.
20			
	9.	The distance, bearing and approximate heading of the other vessel when first seen:	Both ships had been at anchor at a distance of approximately 1.2 miles from each other for many days. At 0255 hours on 10th July, 1981 the "MINERAL TRANSPORTER" was observed to be still about 1.2 miles away. "MINERAL TRANSPORTER" was first sighted and recognized as a potential danger when it was approximately $\frac{1}{2}$ mile distant directly in front of "IBARAKI MARU". This distance is the Quartermaster's estimate shortly before 0320 hours. At 0322 hours the distance was confirmed
30			
40			
50			

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.2
Plaintiff's
Preliminary
Act
26th November
1981

(continued)

- by radar to be approximately 0.5 miles. The head of the "MINERAL TRANSPORTER" was pointing about 200°, but she was not moving in the direction she was headed, but rather moving towards the "IBARAKI MARU". 10
10. The lights, if any, of the other ship, other than those first seen: (i) Outside bridge and outside cabin lights. (ii) Mast lights (not navigation light). 10
11. The lights, if any, of the other ship, other than those first seen, which came into view before the collision: No other lights were seen except those referred to in 10(above). 20
12. The measures which were taken and when, to avoid the collision: The Quartermaster of "IBARAKI MARU" called the Master as soon as he realised at about 0320 hours that the "MINERAL TRANSPORTER" was only half a mile distant. The Master was on the bridge by 0322 hours. At 0322 hours the Master ordered all crew to attend at emergency stations. The sound signals listed in 14 below were given. At 0322 hours a search light began to be used to try to attract the other vessel's attention, and its use continued. By 0326 hours the second and third officers, chief and second radio operators and three able seamen had joined the Master on the bridge. By 0333 hours the Chief Officer, Boatswain, carpenter and a sailor were stationed forward. At 0336 hours the "IBARAKI MARU" slackened 30 40 50

10

chain to 13 shackles
in hawse pipe from 10
shackles in water of
starboard anchor which
had been out. At 0337
hours a message was
received from "MINERAL
TRANSPORTER" on VHF
Channel 6 requesting
"IBARAKI MARU" to
slacken to 10 shackles.
At 0338 hours the
Master ordered the crew
from the forecandle
because of possible
danger. At 0340 hours
the Master of "IBARAKI
MARU" was informed by
engine room that engines
were ready. It was
apparent that if
"IBARAKI MARU" used her
engines to go ahead she
would have caused
damage to "MINERAL
TRANSPORTER". It was
also apparent that if
"IBARAKI MARU" used
her engines to go astern
she would have suffered
rudder damage; therefore,
no use of engine or
rudder was made.

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50

13. The parts of
each vessel
which first
came into
contact and the
approximate
angle between
the two vessels
at the moment
of contact:

On the first collision,
the starboard side of
the "MINERAL TRANSPORTER"
came into collision with
the port bow of "IBARAKI
MARU". The "IBARAKI MARU"
was still heading about
142°, and the "MINERAL
TRANSPORTER" about 200°,
making the angle between
the two vessels 58°. The
"MINERAL TRANSPORTER"
then moved astern down the
port side of the "IBARAKI
MARU" and made two
collisions with the port
side, when the vessels
were roughly parallel.

14. What sound
signals, if any,
and when, were
given:

At 0322 hours "IBARAKI MARU"
began to use the air horn
of that vessel and
continued to use it.

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.2
Plaintiff's
Preliminary
Act
26th November
1981

(continued)

15. What sound signals, if any, and when, were heard from the other vessel:
- The "IBARAKI MARU" beginning at 0323 endeavoured to contact the "MINERAL TRANSPORTER" on the VHF on both channel 13 and channel 16, and continued to do so.
- The only reply or sound heard from the "MINERAL TRANSPORTER" was on VHF (Channel 6) at 0337 hours. It was said "10 shackles, slack, slack, slack." 10
16. What fault or default, if any, is attributed to the other ship:
- (i) failing to anchor in a seamanlike manner;
- (ii) failing to give any warning that she was unable to stay at safe anchor at a time when she was moving toward the "IBARAKI MARU"; 20
- (iii) failing to keep a good or proper and adequate lookout;
- (iv) failing to take any appropriate helm and/or engine action to avoid a collision; 30
- (v) failing to make proper and timely use of her radar and/or failing to observe and/or act upon its indications in due time with proper seamanlike skill and care or at all; 40
- (vi) having heard and seen warning signals of the "IBARAKI MARU" failing to properly, and in a seamanlike manner, use and/or maintain use of her engine system to avoid a collision; 50

(vii) failing to drop anchors when the vessel began to move from its anchorage.

Sd: D.Wilson

Solicitor for the Plaintiffs
by his partner

DATED this 26th day of November, 1981.

10 NORTON SMITH & CO.
Solicitors,
11th Floor,
20 Martin Place,
SYDNEY, N.S.W. 2000

DX 119 - Sydney
Tel: 232-8833

(WN:CKY)

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.2
Plaintiff's
Preliminary
Act
26th
November
1981

(continued)

No.3

DEFENDANT'S PRELIMINARY ACT

20 IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION

No. 934 of 1981

MITSUI OSK LINES LIMITED
and
MATSUOKA STEAMSHIP CO.LIMITED Plaintiffs

- and -

CANDLEWOOD NAVIGATION CORPORATION
LIMITED Defendant

No.3
Defendant's
Preliminary
Act
22nd April
1982

PRELIMINARY ACT

30 1. The name of the ships which came into
collision and the names of their Masters :-

(a) (plaintiffs' vessel) "Ibaraki Maru"
Master : not known

(b) (defendant's vessel) "Mineral
Transporter"
Master : Pao Yun-Lung

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.3
Defendant's
Preliminary
Act
22nd April
1982

(continued)

2. The time of the collision :-

The vessels first collided at approximately 0345 on 10th day of July 1981 and again at approximately 0355 on the same date.
3. The place of the collision :-

At a bearing of approximately 250 degrees (T) and a distance of approximately 3.12 miles from Flagstaff Point Lighthouse, Port Kembla.
4. The direction and force of the wind :- 10

Southwest. 20 knots. The Maritime Services Board's Anemometer records at Port Kembla disclosed the following :

Between 0300 and 0400 the wind direction was described as being variable 200 - 270 degs. At 0300 hours the force of the wind was measured at 9 knots and at 0400 hours the force was measured at 8 knots. Gusts of 16kts. were recorded at 0330 hours.
5. The state of the weather :- 20

Fine and clear with wave heights to a probable maximum of approximately 9.0 metres.
6. The state and force of the tide :- 30

There was an ebb tide with a wave train from the southeast. High tide was at approximately 0236 and low tide at 0901 on 10th July. The differences between high and low waters on 9th and 10th July were .6m to .8m.
7. The course and speed of the vessel when the other vessel was first seen or immediately before any measures were taken with reference to her presence, whichever was the earlier, and all subsequent alterations to the course or speed of the vessel up to the time of the collision :-

Both vessels were at anchor during the period after the "Mineral Transporter" anchored at 1642 on 30th June 1981, at position approximately 270 degrees (T) and 3.6 miles from Flagstaff Point Lighthouse and approximately 225 degrees (T) from the conspicuous chimney. The "Ibaraki Maru" was approximately 250 degrees (T) and 3.12 miles from Flagstaff

10 Point Lighthouse. Therefore, generally speaking, both vessels were at all times within sight of each other. However, shortly prior to 0330 hours on 10th July the "Mineral Transporter" lost her anchor and commenced to drift, stern first, towards the "Ibaraki Maru" with her bow on a heading of 190 degrees. At 0330 the helm was ordered hard to port and at 0402 the rudder returned to midships.

The following engine orders were given:

0341 - Full astern
0348 - Stop engines
0348.25 - Full ahead
0348.50 - Stop
0348.75 - Full Astern
0402 - Stop engines

20 8. The lights, if any, carried by the vessel :-

All deck lights which included one fore-anchor light, one stern anchor light, four fore-deck project lights, eight mid-ship project lights and four bridge project lights together with some accommodation lights.

30 9. The distance, bearing and approximate heading of the other vessel when first seen :-

While at anchor the distance between the two vessels was approximately 1.25 miles and the "Ibaraki Maru" bore 330 degrees (T) from the "Mineral Transporter". The heading of the two vessels varied during the period after the anchoring of the "Mineral Transporter" on 30th June 1981 until the time of the collision.

40 10. The lights, if any, of the other ship which were first seen :

At the time of the collision the "Ibaraki Maru" was showing the anchor light, fore-deck lights, bridge lights and accommodation lights.

11. The lights, if any, of the other ship, other than those first seen, which came into view before the collision :-

None.

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No.3
Defendant's
Preliminary
Act
22nd April
1982

(continued)

12. Measures which were taken, and when
to avoid the collision :-

At approximately 0330 hours the helm
of the "Mineral Transporter" was put
hard to port and at approximately 0341
the engines full astern. These steps
were taken prior to the initial contact
between the vessels at approximately
0345. Further contact took place at
approximately 0355 and further engine
movements were made as set forth in
answer 7 above. In addition, the
Master of the "Mineral Transporter"
contacted the "Ibaraki Maru" on the VHF
and requested that that vessel slacken
her chain. The Master of the "Mineral
Transporter" also stood on the starboard
wing of the bridge of his vessel and
called to those on board the "Ibaraki
Maru" to slacken her chain.

10

20

13. The parts of each vessel which first
came into contact and the approximate angle
between the two vessels at the moment of
contact :-

i) The starboard side amidships of
the "Mineral Transporter" came into
contact with the port bow of the
"Ibaraki Maru" at an angle of
approximately 25 degrees.

ii) The starboard bow of the "Mineral
Transporter" came into contact with
the port bow of the "Ibaraki Maru"
at an angle of approximately 25 degrees.

30

14. What sound signals, if any, and when
were they given :-

None.

15. What sound signals, if any, and when
were they heard from the other vessel :-

None.

16. What fault or default, if any, is
attributed to the other ship :-

40

(a) Failing to take early, or any,
action to avoid the collision.

(b) Failing to take any, or any
appropriate, helm and/or engine
action to avoid the collision.

10

- (c) Failing to keep a proper and adequate lookout including by the use of radar.
- (d) Failing properly to observe the course, speed and condition of the "Mineral Transporter".
- (e) Failing to take into account the difficulties in which those on board the "Mineral Transporter" were placed and failing consequently to take reasonable steps to avoid the collision.
- (f) Failing to exercise seamanlike care and diligence.
- (g) Failing to slacken the starboard anchor when so requested.
- (h) Heaving up the starboard anchor.
- (i) Failing to respond on radio to the Master of the "Mineral Transporter".

Part 1
 In the
 Supreme
 Court of
 New South
 Wales
 (Admiralty
Division)

No.3
 Defendant's
 Preliminary
 Act
 22nd April
 1982

(continued)

20

DATED:

Sd: Stuart Hetherington

Solicitor for the Defendant
 2 Castlereagh Street,
 SYDNEY 2000

EBSWORTH & EBSWORTH
 Solicitors,
 2 Castlereagh Street,
 SYDNEY 2000

30

PH: 221.2366 SWH 5150A
 DX. 103 Sydney.

Part 1
In the
Supreme
Court of
New South
Wales
(Admiralty
Division)

No. 4

AMENDED STATEMENT
OF CLAIM

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION No. 934 of 1981

No.4
Amended
Statement
of Claim
28th May
1982

MITSUI OSK LINES LIMITED	<u>First Plaintiff</u>	
MATSUOKA STEAMSHIP CO. LIMITED	<u>Second Plaintiff</u>	10
THE SHIP "MINERAL TRANSPORTER"	<u>Defendant</u>	

AMENDED STATEMENT OF CLAIM

1. The Plaintiffs are duly incorporated and entitled to sue in and by their said corporate names and styles.
2. The ship "Mineral Transporter" was at all material times owned by Candlewood Navigation Corporation Limited (hereinafter referred to as "Candlewood"). 20
3. Candlewood is a company duly incorporated and liable to be sued in and by its said corporate name and style.
4. The first-named plaintiff was at all material times the owner and time-charterer of the motor vessel "Ibaraki Maru".
5. The second-named plaintiff was at all material times the disponent owner of the ship "Ibaraki Maru".
6. Between 0300 and 0400 hours on 10th July 1981, the ship "Ibaraki Maru" was moored at bearing 072 degrees 3.1 miles from Wollongong Flagstaff Lighthouse. 30
7. Between 0342 and 0349, whilst the said "Ibaraki Maru" was moored aforesaid, the starboard side of the "Mineral Transporter" collided with the port bow of the "Ibaraki Maru".

PARTICULARS

Part 1
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Supreme Court
of New
South Wales
(Admiralty
Division)

The "Mineral Transporter", which, prior to the collision, had been at anchorage approximately 1.2 miles from the "Ibaraki Maru" moved from its anchorage and collided with the "Ibaraki Maru".

10 8. The said collision was caused by the negligence of the defendant by its servants and agents in the navigation and management of the "Mineral Transporter".

No.4
Amended
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PARTICULARS OF NEGLIGENCE

(continued)

- (a) Failed to keep any or any proper look-out in that :-
- (i) Failed to be cognizant of the fact that the "Mineral Transporter" was moving from its anchorage.
- 20 (ii) Failed to keep any or any adequate radar watch so as to ascertain whether the "Mineral Transporter" was approaching other vessels including the "Ibaraki Maru".
- (iii) Failed to keep any or any proper visual watch.
- 30 (iv) Failed to keep any or any adequate radio watch so as to hear and/or heed radio warnings from the "Ibaraki Maru" and another vessel moored nearby, namely the "Sankyo Cherry".
- (v) Failed to notice and/or heed warnings given from the "Ibaraki Maru" by way of search light and air horn.
- (b) Failed to anchor in a safe and secure manner so as to avoid the risk of moving whilst anchored.
- 40 (c) Failed to use engines so as to obtain steerage and avoid the collision.
- (d) Failed to drop anchors prior to the collision so as to stop the "Mineral Transporter" prior to the collision.

Part 1
In the
Supreme
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Amended
Statement
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(continued)

- (e) Failed to take any or any adequate
helm action so as to avoid the collision.
- (f) The plaintiffs, in the alternative,
rely upon the doctrine of res ipsa
loquitur.
9. By reason of the collision aforesaid,
the plaintiffs and each of them suffered
damage.

PARTICULARS OF DAMAGE

- (a) Loss of profit: \$875,768.35. 10
- (b) Bunkers: \$50,000.20.
- (c) Cost of repairs: \$535,801.72.
- (d) Port charges: \$99,367.40.
- (e) Sundry: \$8,299.67.

THE PLAINTIFFS CLAIM:

1. Damages.
2. Interest pursuant to Section 94 of the
Supreme Court Act.
3. Costs.

Sd: W.Neville 20

Plaintiffs' Solicitor by
his Associate Partner.

FILED 28th May, 1982

NORTON SMITH & CO.
Solicitors,
11th Floor,
20 Martin Place,
SYDNEY, N.S.W. 2000

DX 119 - Sydney
Tel: 232-8833

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(WN)

No. 5

ANSWER TO AMENDED
STATEMENT OF CLAIM
AND CROSS CLAIM

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION No. 934 of 1981

Part 1
In the
Supreme
Court of
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(Admiralty
Division)

No.5
Answer to
Amended
Statement
of Claim
and Cross
Claim
8th June 1982

10

MITSUI OSK LINES LIMITED
and
MATSUOKA STEAMSHIP CO. LIMITED
Plaintiffs

THE SHIP "MINERAL TRANSPORTER"
CANDLEWOOD NAVIGATION
CORPORATION LIMITED
Cross Claimant

MITSUI OSK LINES LIMITED
First Cross Defendant

MATSUOKA STEAMSHIP CO. LIMITED
Second Cross Defendant

20

ANSWER TO AMENDED STATEMENT
OF CLAIM AND CROSS CLAIM

30

1. The defendant admits that the plaintiffs or one of them has suffered damage by reason of collisions between their vessel "Ibaraki Maru" and the defendant's vessel "Mineral Transporter" but denies that the same was caused by the alleged or any negligence on the part of the defendant its servants or agents. Further the said collisions and damage were solely caused by the fracture of the starboard anchor of the "Mineral Transporter" (without fault on the part of the defendant) and/or the negligence of the plaintiffs their servants and agents in the navigation of "Ibaraki Maru" as hereinafter appears.

40

2. The defendant does not admit paragraphs 4, 6 and 7 of the Statement of Claim.

3. The defendant denies the allegations made in paragraphs numbered 8 and 9 of the Statement of Claim and each of them.

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In the
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No.5
Answer to
Amended
Statement
of Claim
and Cross
Claim
8th June
1982

(continued)

4. The defendant says that the plaintiffs and each of them caused or materially contributed to their own damage and were guilty of contributory negligence, by their servants and agents.

PARTICULARS

- (a) Failing to take early, or any, action to avoid the collision.
- (b) Failing to take any, or any appropriate, helm and/or engine action to avoid the collision. 10
- (c) Failing to keep a proper and adequate lookout.
- (d) Failing properly to observe the course, speed and condition of the "Mineral Transporter".
- (e) Failing to take into account the difficulties in which those on board the "Mineral Transporter" were placed and failing consequently to take reasonable steps to avoid the collision. 20
- (f) Failing to exercise seamanlike care and diligence.
- (g) Failing to slacken the starboard anchor when so requested.
- (h) Heaving up the starboard anchor.
- (i) Failing to respond on radio to the Master of the "Mineral Transporter".

CROSS CLAIM

5. The cross claimant and the first and second cross defendants are duly incorporated and are respectively entitled to sue and be sued in and by their said corporate names and styles. 30
6. The plaintiff was at all material times the owner of the ship "Mineral Transporter".
7. The cross claimant repeats as against the cross defendants the allegations contained in paragraphs, 4, 5, 6 and 7 of the Statement of Claim. 40
8. Shortly prior to 0330 hours on 10th July the "Mineral Transporter" without fault on the part of the cross claimant, its

servants and agents, lost her anchor and commenced to drift, stern first, towards the "Ibaraki Maru" with her bow on a heading of 190 degrees.

Part 1
In the
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10 9. At approx. 0345 hours on 10th July 1981 and again at approx. 0355 on the same date, the vessels collided at a position having an approximate bearing of 250 degrees (T) and being a distance of approx. 3.12 miles from Flagstaff Point Lighthouse.

No.5
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and Cross
Claim
8th June
1982

10. The said collisions were caused by the negligence of the cross defendants by their servants and agents in the navigation and management of the vessel "Ibaraki Maru".

PARTICULARS OF NEGLIGENCE

(a) Failing to take early, or any, action to avoid the collision.

(continued)

20 (b) Failing to take any, or any appropriate, helm and/or engine action to avoid the collision.

(c) Failing to keep a proper and adequate lookout.

(d) Failing properly to observe the course, speed and condition of the "Mineral Transporter".

30 (e) Failing to take into account the difficulties in which those on board the "Mineral Transporter" were placed and failing consequently to take reasonable steps to avoid the collision.

(f) Failing to exercise seamanlike care and diligence.

(g) Failing to slacken the starboard anchor when so requested.

(h) Heaving up the starboard anchor.

(i) Failing to respond on radio to the Master of the "Mineral Transporter".

11. By reason of the collisions aforesaid the plaintiff has suffered loss of damage.

40 PARTICULARS OF DAMAGE

Full particulars of the damage will be furnished.

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Wales
(Admiralty
Division)

12. The cross claimant claims :
- (1) Damages
 - (2) Interest pursuant to Section 94 of the Supreme Court Act.
 - (3) Costs.

No.5
Answer to
Amended
Statement
of Claim
and Cross
Claim
8th June
1982

Sd: Stuart Hetherington
Solicitor for Defendant and
Cross Claimant

FILED: 8 JUN 1982

(continued)

EBSWORTH & EBSWORTH,
Solicitors,
2 Castlereagh Street,
SYDNEY 2000

10

221.2366 SWH 5689A
DX. 103 Sydney

No.6
Reply to
Answer to
Amended
Statement
of Claim
and Answer
to Cross
Claim
2nd July
1982

No. 6

REPLY TO ANSWER TO AMENDED
STATEMENT OF CLAIM AND
ANSWER TO CROSS CLAIM

IN THE SUPREME COURT OF NEW SOUTH WALES
SYDNEY REGISTRY
ADMIRALTY DIVISION No.934 of 1981

20

MITSUI OSK LINES &
MATSUOKA STEAMSHIP CO.LIMITED
Plaintiffs

THE SHIP "MINERAL TRANSPORTER"
CANDLEWOOD NAVIGATION CORPORATION
LIMITED

Cross Claimant

MITSUI OSK LINES LIMITED
First Cross Defendant

30

MATSUOKA STEAMSHIP CO.LIMITED
Second Cross Defendant

REPLY TO ANSWER TO AMENDED
STATEMENT OF CLAIM AND ANSWER
TO CROSS CLAIM

Part 1
In the
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Court of
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Wales
(Admiralty
Division)

- 10 1. As to so much of Paragraph 1 of the answer which alleges the said collisions and damage were solely caused by the fracture of the starboard anchor of the "Mineral Transporter" (without fault on the part of the defendant) and/or the negligence of the plaintiffs, their servants and agents in the navigation of "Ibaraki Maru", the plaintiffs deny each and every allegation.
2. The plaintiffs deny each and every allegation in Paragraph 4 of the answer.
3. Save as aforesaid, the plaintiffs join issue with the defendants.

No.6
Reply to
Answer to
Amended
Statement
of Claim
and Answer
to Cross
Claim
2nd July 1982

(continued)

DEFENCE TO CROSS CLAIM:

- 20 1. As to the allegations made in Paragraph 8 of the Cross Claim, the cross defendants admit that shortly prior to 0330 hours on 10th July, the "Mineral Transporter" commenced to drift towards the "Ibaraki Maru". Save as aforesaid, the cross defendants deny the allegations therein contained.
2. The cross defendants deny each and every allegation made in Paragraphs 10 and 11 of the Cross Claim.

30 FILED: 2nd July, 1982

Sd: W. Neville

Solicitor for the Cross-
Defendants by his Associate
Partner

40 NORTON SMITH & CO.
Solicitors,
20 Martin Place,
SYDNEY, N.S.W. 2000
DX 119 - Sydney
Tel: 232-8833
(WN)

TRANSCRIPT OF EVIDENCE BEFORE HIS HONOUR MR. JUSTICE YELDHAM

Part 1
In the
Supreme
Court of
New South
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IN THE SUPREME COURT
OF NEW SOUTH WALES
ADMIRALTY DIVISION

No.934 of 1981.

No.7
Transcript
of Evidence
before His
Honour Mr.
Justice
Yeldham

CORAM: YELDHAM, J.

MONDAY, 16TH MAY, 1983.

MITSUI-OSK LINES LIMITED & ANOR. V. THE SHIP 'MINERAL TRANSPORTER'

10

MR. GLEESON, Q.C., appeared with MR. OSLINGTON for Plaintiffs.
MR. SHELLER, Q.C., appeared with MR. MACFARLAN and MR. STREET
for Defendant.
No appearance for cross-defendants.

(Affidavit of Eiji Fukuda, sworn 28th April, 1983 filed in Court).

(Mr. Sheller indicated that the defendant would not at this stage, if there was a verdict for the plaintiff against the defendant, seek verdicts against the third and fourth cross-defendants).

20

HIS HONOUR: I will simply leave the third and fourth cross-defendants in the action for the time being and not make any orders yet in relation to the cross claim. I will deal with that in due course.

(Mr. Gleeson outlined the case for plaintiff).

(Certificate of nationality of vessel 'Ibaraki Maru' admitted without objection and marked Ex.A).

30

(Certificate of Registry of vessel 'Mineral Transporter' admitted without objection and marked Ex.B)

(Mr. Sheller indicated he had no objection to Interpreter despite the fact that she had interpreted in conference and was not on the panel).

(Mrs. Moriko Brown of 14/39 Ross Street,
Parramatta, affirmed to interpret
the Japanese and English languages).

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No.7
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Justice
Yeldham

Plaintiffs'
witnesses

TAKATANI
Michihiro
(examined)

10 HIS HONOUR: Mrs. Brown, it is important, as you just heard
Mr. Sheller say, that when you are interpreting you simply
translate from English into Japanese the question and then
translate precisely the answer you get, even if it does
not seem to you to make sense; just translate what you get
and if there is any difficulty, if the witness does not
appear to understand, just let me know and we will deal
with that.

MICHIHIRO TAKATANI
Affirmed, examined:
(Through Interpreter)
(His Honour allowed expert witnesses
to remain in court through evidence).

MR. GLEESON Q. Is your full name Michihiro Takatani? A.Yes,
it is.

20 Q. Do you live at 37/4 3-Chome Koir Ohsaka Nishi-QU, Hiroshima
City, Japan? A. I would like to correct the spelling, it
is 3-Chome Koi -Osaka.

Q. Otherwise the address is correct? A.Yes.

Q. Were you born in 1937? A.Yes.

Q. Are you a ship's captain employed by Matsuoka Steamship
Company Limited? A.Yes.

Q. I think you left school in 1959?

HIS HONOUR: Mrs. Brown, what is happening, is there some
problem?

INTERPRETER: He was not sure of the year, '57.

30 HIS HONOUR: Just ask him what year did he leave school in.

INTERPRETER: 1959.

MR. GLEESON Q. Was the school which you attended a
commercial navigation school? A. Yes, it was a commercial
navigation school.

Q. Upon graduation from the school did you have the
qualification of a second mate? A.Yes.

Q. When you left that school did you join a vessel of about
6,000 tonnes in the capacity of a third mate? A.Yes.

40 Q. Did you then join Matsuoka Steamship Line and continue in

Part 1
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its employment until late 1965? A. Yes.

Q. During that time did you obtain your Master's Certificate?
A. No, it was after that.

Q. When was it that you obtained your Master's Certificate?
A. 1966.

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Yeldham

(Without objection witness granted
permission to refer to notes about his
history and record and other matters).

WITNESS: That is correct, 1966.

MR. GLEESON Q. Between 1966 and 1969 were you employed as 10
the instructor at a Maritime School? A. Yes.

Plaintiffs'
witnesses

Q. In that capacity were you mainly engaged in teaching B Class
Masters and Chief Officers? A. Yes.

TAKATANI
Michihiro
(examined)

Q. In 1969 did you return to service aboard a ship? A. Yes.

Q. Between 1969 and 1980 did you serve in various capacities
aboard various vessels? A. Yes.

Q. And you can give details of that service and those vessels
if asked to do so? (Witness began speaking at conclusion
of Interpretation of question).

Q. I will interrupt there, I am not asking you to give the 20
details, I am just asking you can you give details if
requested? A. Yes.

Q. When did you become the Master of the Ibaraki Maru? A.
January '31st, 1981.

Q. Were you the Master of that vessel on 10th July, 1981?
A. Yes.

Q. Did the Ibaraki Maru anchor of Port Kembla on 26th
June, 1981? A. Yes.

Q. Were you intending to take on board a cargo of coal at 30
Port Kembla? A. Yes.

Q. Did you receive some information from your ship's agent
as to when the cargo was expected to be ready to be taken
on board? A. Yes.

Q. What was the information you received? A. I did receive
information, but I don't remember the date.

Q. Was it some time later than 10th July?

INTERPRETER: I think he just misunderstood the question.

MR. SHELLEN: Could I have the answer?

MR. GLEESON:
What was the answer?

INTERPRETER: He said, "We knew - we had the information before 10th July". I think your question was the date.

MR. GLEESON Q. Were you told a date when it was expected the cargo would be ready, being a date some time after 10th July? A. Yes, it was after 10th July.

10 Q. When you anchored off Port Kembla did you prepare a chart called a "plotting chart"? A. Yes.

Q. Was that a chart which showed, amongst other things, the position of other vessels that were also anchored off Port Kembla? A. Yes.

Q. Was the chart brought up to date daily by marking the position of new vessels which arrived and deleting the position of vessels which had left? A. Yes.

Q. Did the Mineral Transporter arrive on 30th June, 1981? A. Yes.

20 Q. (Approached) Is this document that I show you the original of the plotting chart that you have just described, to which has been added at various times, including times after the collision, information? A. Yes.

Q. I just want to take you through that chart to get you to explain when various things that now appear on it were put there and how they came to be there. There is some matter on the chart which is obviously printed there; may we take it that that was part of the original chart? A. Yes.

30 Q. In addition there is some material on the chart that has been typed and obviously added to the chart at some stage and I want to ask you some questions about that? A. Yes.

Q. Towards the bottom right hand corner of the chart is a piece of paper with some typing on it and it appears in the chart alongside some handwriting in Japanese. Is the material in the typing a translation of the handwriting in Japanese? A. It is not a very correct translation, it is a rather freestyle translation.

Q. Is that your handwriting? A. Yes.

40 Q. So you wrote the handwritten instructions numbered 1 - 8 which are translated on the typed note? A. Yes, it was translated by the second mate.

Q. Who made the various marks and notations that appear in handwriting in the centre of the plotting chart? A. Which position do you mean?

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Plaintiffs'
witnesses

TAKATANI
Michihiro
(examined)

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In the
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Q. First of all, you see that there are various names of vessels which appear on the plotting chart. Who wrote those names there? A. The second mate and myself.

Q. Were those names written there as vessels arrived and took up a position at anchor? A. Can the question be repeated?

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Q. Were the names of the various vessels which appear on the chart put there as the vessels arrived and took up a position at anchor? A. Yes.

Q. Does the chart show the position of each of those vessels relative to the Ibaraki Maru, which is at the centre? A. Yes. 10

Q. Was some of the information that now appears on this chart put there after the collision occurred? A. Yes.

Q. Which was that? A. These two were written in after the collision.
Plaintiffs'
witnesses

MR. GLEESON: The witness indicates the handwriting at the top of the chart, both in the top right hand side and the top left hand side.
TAKATANI
Michihiro
(examined)

Q. If I may return to the information in the centre of the chart, where is the position of the Mineral Transporter when it first took up anchor shown? (Witness indicated). 20

Q. The witness indicates a mark near the words "Mineral Transporter". There is a number "1.2" near that mark, what does that indicate? A. This shows the distance between our vessel and Mineral Transporter.

Q. How was that distance measured? A. By radar.

Q. Was that measurement made on 30th June when the Mineral Transporter arrived at anchor? A. It was measured by the Quartermaster in charge that night.

Q. Did those notations, that is the position of the Mineral Transporter and its distance of 1.2 miles remain on the chart between about 30th June and the time of the collision? A. Yes, it was approximately the same. 30

Q. Now, there is another vessel also shown on the chart as the "Sanko Cherry". How far away from the Ibaraki Maru was the Sanko Cherry located or anchored? A. 1.1 mile.

(Chart admitted without objection and marked Ex.C)

Q. I am going to ask you some questions about the collision and I realize that there are documents and records relating to that matter, but I will ask you some questions about the collision first and then come back to get further details from 40

the documents. At what time did you go to bed on the evening of 9th July, 1981? A. Midnight - about midnight.

Q. What were the wind conditions at the time you went to bed?
A. It was a south-westerly wind of about four to five.

Q. What were the sea conditions? A. The swell was south-easterly and I think the height was about 3.5.

Q. Metres? A. Yes.

Q. When you said before that the wind was 4 to 5 did you mean force 4 to 5? A. Yes, the force.

10 Q. Was the Ibaraki Maru anchored? A. Yes.

Q. How many anchors did the Ibaraki Maru carry? A. Do you mean the number of anchors that were in use or the number that are actually on the vessel?

Q. I mean the number that are actually on the vessel? A. Fourteen and a half shackles.

Q. I am not asking you at the moment what anchor you had out on the evening in question, I am asking you how many anchors there were on board the Ibaraki Maru? A. Rather than the anchor, what I gave was the length of the chain.

20 Q. Yes, I know that. Did you have a starboard anchor on the Ibaraki Maru? A. Yes.

Q. Did the Ibaraki Maru carry a port anchor? A. Yes.

Q. Did it also have a spare anchor? A. Yes.

Q. When you retired on the evening of 9th July was the starboard anchor out? A. Yes.

Q. Was the port anchor out? A. No.

Q. To what length was the starboard anchor out when you retired? A. Ten shackles.

30 Q. What was the state of readiness of the engines of the Ibaraki Maru when you retired on the evening of 9th July? A. The condition was such that it would have taken about 15 to 20 minutes for it to start.

Q. Who was on watch on the Ibaraki Maru from midnight? A. Mr. Sato, the Quartermaster.

Q. Was there radar on the bridge of the Ibaraki Maru? A. Yes, there were two.

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TAKATANI
Michihiro
(examined)

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Q. Was the radar operating constantly? A. It was always on standb .

Q. At what time were you awakened on the morning of 10th July? A. I don't remember clearly, but I received a telephone call and was awoken about 3.20.

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Q. Who awakened you? A. Mr. Sato, the quartermaster who was in charge.

Q. What did Mr. Sato tell you when he awakened you? A. He said that there was a vessel approaching towards the bow of the vessel.

Q. What did you do when he awakened you? A. I went immediately to the bridge.

Plaintiffs'
witnesses

Q. Did you sound any alarm when you went to the bridge? A. Not immediately. I gave an alarm after I looked in the forward direction.

TAKATANI
Michihiro
(examined)

Q. What did you do about the other members of the crew? A. I ordered an emergency call to the whole crew about 3.23.

Q. What did you first do when you arrived on the bridge? A. I immediately looked to the front. That only took about thirty seconds and then I immediately looked at the radar and then gave the emergency call.

Q. What was the purpose of looking at the radar? A. To confirm the distance that the other boat - the vessel and to see the condition of the surrounding vessels.

Q. What did you observe was the distance between the approaching vessel and the Ibaraki Maru? A. About 0.5 miles.

Q. Was there any difference between the weather conditions at the time you went up onto the bridge early on the morning of 10th July and the weather conditions as they had been when you retired at midnight? A. No, I don't think so.

Q. What were the cloud conditions? A. I don't remember clearly.

(Certificate from Bureau of Meteorology
admitted without objection and marked Ex.D).

Q. You told His Honour that you made a radar observations that the vessel was a half a mile away from the Ibaraki Maru. What was the time at which you made that radar observation? A. About 3.22 of 23.

Q. After you called the crew to emergency, what did you next do? A. I began to use the VIF signal, the whistle and the air horn, the search light and also slacken the chain and the engine as well.

Q. Coming to those one by one, first of all was there on the bridge a VHF radio? A. Yes.

Q. Will you look at these four photographs I show you. Are these photographs of the bridge of the Ibaraki Maru and do they show a radio and an air horn? A. Yes.

Q. Is the man in the second of those photographs pressing the button that operates the air horn? A. Yes.

(Four photographs admitted without objection and marked Ex.E).

10 Q. When you operated the VHF radio yourself, was that before the radio operator arrived in response to your emergency call? A. Yes.

Q. On what channel did you operate the radio? A. Channel 13.

Q. When you operated the radio on channel 13 what did you say, what was the message that you broadcast on Channel 13?
A. (In English). "I am flashing vessel, what vessel are you approaching".

Q. Did you get any response to your signal? A. No.

20 Q. When you said that you were the flashing vessel, to what were you referring? A. I meant that our vessel was using a very strong portable searchlight to flash the other vessel.

Q. Did you receive any response to your radio message? A. No, not at all.

Q. Did the radio operator arrive and take over the operation of the radio? A. Yes.

Q. What did you do about the anchor of the Ibaraki Maru?
A. I ordered to slacken it.

30 Q. At what time did you give the order to slacken the anchor?
A. About 3.33.

Q. How much did you order that the anchor be slackened?
A. Three shackles.

Q. Was your order carried out? A. Yes.

Q. Could you tell His Honour what you did about the engines of the vessel? A. Since the time that I gave the emergency call the engine was made ready.

Q. At what time were you told the engines had been made ready?
A. About 3.40.

Q. Between the time you arrived on the bridge and the time of

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Plaintiffs'
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TAKATANI
Michihiro
(examined)

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Yeldham

the first collision, what was done in relation to the air horn and the search light? A. I used the VHF and the air horn myself, and Mr. Sato used the search light

Q. When the radio operator took over the VHF, did he at some time receive a message from the approaching vessel?
A. Yes, there was.

Q. What was the time when he first received the message from the approaching vessel? A. It was after we finished slackening the chain.

Q. What was the message received from the approaching vessel? 10
A. (In English). "Slack chain, slack chain, give me ten shackles."

(Short adjournment).

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witnesses

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(examined)

Q. As you observed the Mineral Transporter drifting towards your vessel did it appear to you that the rate at which the Mineral Transporter was drifting varied or was constant?
A. It did not vary very much.

Q. (Approached) I show you two models of ships and it is not suggested that they in their shape correspond with those vessels. I want you to assume, first of all, that the white vessel is the Ibaraki Maru at anchor. What was the direction in which it was heading at the time? A. It was facing 142 degrees. 20

Q. As the Mineral Transporter approached the Ibaraki Maru can you demonstrate to His Honour the direction in which it was moving? A. The Ibaraki Maru was about 142 degrees and the Mineral Transporter was approximately at about 200 degrees.

Q. Can you demonstrate to His Honour the approach of the Mineral Transporter to the Ibaraki Maru? (Witness complied). 30

MR. GLEESON: The witness demonstrates that the Mineral Transporter, whose bearing he has previously stated, approached the Ibaraki Maru maintaining the same bearing relative to the Ibaraki Maru with the Mineral Transporter at approximately amidships, colliding first with the bow of the Ibaraki Maru on the starboard side, the stern of the Mineral Transporter being at all times closer to the Ibaraki Maru than the bow as the vessel drifted.

HIS HONOUR: Mr. Sheller, are you content with that description as being what the witness demonstrated? 40

MR. SHELLE: Yes.

MR. GLEESON: Q. What was the time of the first collision between the Mineral Transporter and the Ibaraki Maru? A. 3.42.

Q. How many times did the Mineral Transporter collide with the Ibaraki Maru? A. Three times, three times I felt a shock.

Q. Can you demonstrate to His Honour with these models the three collisions that occurred? (Witness complied).

Q. The first one you demonstrate was as you earlier described? A. Yes.

Q. What was the second one? (Witness complied).

10 MR. GLEESON: The witness demonstrates the bow of the Ibaraki Maru in contact with a position on the starboard side of the Mineral Transporter about a third of the distance forward from the location of the original impact towards the bow.

Q. Where was the third? (Witness indicated).

MR. GLEESON: The witness demonstrates a further contact between the bow of the Ibaraki Maru and a position on the starboard side of the Mineral Transporter about another third of the distance towards the bow of the Mineral Transporter.

20 Q. You have told us earlier that there was a point of time prior to the first collision at which the engines of the Ibaraki Maru were ready, is that correct? A. Yes.

Q. Did you give the order to start up the engines of the Ibaraki Maru? A. No.

Q. Why not? A. Because if the vessel moved ahead damages would be worse and also if the stern engine had been started stern would have swung widely to the left, making the damages still worse.

Q. Could you demonstrate that with those two models?
A. That is moving forward.

30 Q. The witness demonstrates the model of the Ibaraki Maru moving forward into collision with the Mineral Transporter. Do you say that would have been the consequence of starting the engines and moving forward? A. So it would move forward and the collision would have been worse.

Q. Can you demonstrate what you said about the stern engine?
A. If the stern engine was operated the vessel would move like this to the left.

40 Q. The witness shows the stern of the Ibaraki Maru moving around towards the left. Was that the direction in which the main part of the Mineral Transporter was located at the time of the collision? A. Yes.

Q. What would have been the consequence of pulling in the

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anchor of the Ibaraki Maru? A. Again, the collision would have been worse.

Q. The witness demonstrates a movement of the Ibaraki Maru towards the Mineral Transporter. From your observation of the Mineral Transporter, did it appear to have its engines operating at any time prior to the first collision? A.No, it didn't.

Q. Would you have been able to tell if the Mineral Transporter's engines had been operating at some time prior to the collision? A.Yes. 10

Q. How would you have been able to tell? A.Sound of the engine and the current caused by the screw.

Q. I want you to assume that the Mineral Transporter was carrying a port anchor, will you assume that, please? A.Yes.

Q. If the Mineral Transporter had dropped the port anchor at some time prior to the collision how long after the dropping of the anchor would the drifting of the Mineral Transporter have stopped? A. I think if they had dropped the anchor 300 metres away from the bow of our vessel then it would have definitely stopped. 20

Q. If you need some paper and pencil, please use it. I want you to make the following assumptions: first of all, assume that at 3.23a.m. the Mineral Transporter was half a mile from the Ibaraki Maru? A. Yes.

Q. The second thing I want you to assume was that the rate at which the Mineral Transporter was drifting towards the Ibaraki Maru was constant? A.Yes.

Q. The third thing I want you to assume is that the Mineral Transporter collided with the Ibaraki Maru at 3.42. On those assumptions at what time/would the Mineral Transporter have been about 300 metres away from the Ibaraki Maru? A. 3.32 or 33. 30

Q. 3.32 or 3.33? A. Yes.

Q. I want to ask you some questions about various documents of the ship. Look at this document that I show you; is this the radar plotting sheet kept by the Ibaraki Maru? A.Yes.

Q. Does it bear your signature? A.Yes.

Q. Who plotted the information contained on that radar plotting sheet? A. The second mate did the final copy.

Q. Was it done under your supervision? A. Yes. 40

Q. When did the second mate do it? A. About 12 hours after the collision.

Q. Was it prepared from notes that had previously been made? A. Yes.

Q. Who had made the notes from which it was prepared? A. I did.

Q. When did you make the notes from which this document was prepared? A. It was after the collision. I wrote it according to what I remembered.

10 Q. So this document in front of you is a record of your recollection of the collision which took its final form about 12 hours after the collision happened? A. The recollection was made very soon after the collision.

Q. Is the Ibaraki Maru the vessel at the centre of this radar -plotting chart? A. Yes.

Q. Does the plotting sheet show the Mineral Transporter in various positions at various times as it moves towards the Ibaraki Maru and then after the collision? A. Yes.

Q. Is the first position recorded of the Mineral Transporter a position near the figure 140? A. Yes.

20 Q. And is the last position of the Mineral Transporter shown as a position towards the figure 270? A. I don't quite understand.

Q. Is the last position of the Mineral Transporter the position shown above the words "course east"? A. Yes, that's right.

Q. Does the plotting sheet also show the position of the vessel Sanko Cherry? A. Yes.

Q. As the Mineral Transporter drifted towards the Ibaraki Maru did the relative bearings of the Mineral Transporter and the Ibaraki Maru remain constant as between one another? A. Yes.

30 (Radar plotting sheet admitted without objection and marked Ex.F).

Q. Was there a deck log book kept by the Ibaraki Maru? A. Yes.

Q. Is this the deck log containing the entries of 10th July, 1981 which record the events that you have described in your evidence? (shown)? A. Yes.

Q. Who prepared those entries? A. The third mate.

Q. Is it the case that he prepared those entries in the course of the business of the company for which you work? A. It is understood that the third mate does the entries while the vessel is at anchorage.

40

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Part 1 (Deck log book admitted without objection
In the and marked Ex.G).
Supreme

Court of Q. Was it the practice on board the Ibaraki Maru to keep a
New South log called the VHF log relating to radio communications?
Wales A. Yes.

No.7 Q. Is the book that I show you the vessel's VHF radio log
Transcript and is the particular entry that I show you on p.37 the
of entries relating to this occurrence? A. Yes.
Evidence

before Q. Just to clarify one matter, the times that are set out in
His Honour these entries are Greenwich Mean Time, I think, is that 10
Mr. Justice correct? A. Yes.
Yeldham

Q. Did the hour 1737 Greenwich Mean Time correspond, for
example, to the hour 3.37 local time? A. Yes.

Plaintiffs Q. So far as the entries below the red line on p.37 are
witnesses concerned, first of all, who made the entries "Captain
called 'I am flashing vessel'" and the words following that
TAKATANI down to but not including the words "collision". Who wrote
Michihiro that? A. I made the entry.
(examined)

Q. When did you make that entry? A. About eight hours after
the collision. 20

Q. Who made the entries relating to various other communications
between 1725 and 1737 and over onto pp.38,39,40,41,42,43,
44,46, and 47? A. The chief radio operator.

Q. Is that Mr. Murao? A. Yes.

Q. When did he make those entries? A. Between eight to twelve
hours after the collision.

(Pages 37 - 47 of VHF log book admitted
without objection and marked Ex.H).

Q. Were those entries in the VHF log book made from rough
notes that had previously been made? A. Yes. 30

Q. When were those rough notes made? A. The rough notes were
taken as incidents were going on, because there was somebody
recording the incidents.

WITNESS: Memo and a tape .

MR GLEESON: would you look at this document that I show you. Is that the weather chart that was on the vessel in relation to this time? A. This is the weather chart for the 9th.

(Weather chart tendered without objection and marked (X.J)

Q. Was the e also kept on board the "Ibaraki Maru" a quarter master's watch book? A. Yes.

Q. Is this book that I show you the quarter master's watch book? A. Yes.

10 Q. Could you open it at the page that relates to the day in question? (witness complied)

Q. (Approached) Did you make the entries on the page to which you refer ? A. No, I didn't.

(Page in quarter master's watch book mfi 1)

Q. (Approached) Is this book that I show you the chief engineer's log book of the "Ibaraki Maru"? A. Yes.

Q. On the page that I show you are there entries relating to this particular occurrence ? A. Yes.

Q. Who made those entries ? A. The chief engineer.

20 Q. I just want you to explain their meaning to us. Under the heading "Engine motion" there is, first of all, the word "trouble" ? A. It means "accident".

Q. Then there is the entry "0340 S/B Eng". Can you tell his Honour what that entry means? A. It means that the engine was ready.

Q. Then there is an entry "0455 F/E Eng ". What does that entry mean? A. It means "Finished with engine".

30 Q. There is an entry "0342 shocked 123". What does that entry mean? A. It means that in the engine room the shock was felt at 342 and there were two more shocks following .

(Above page of chief engineer's log book tendered without objection and marked (X.E)

Q. I think there is a chart on which various marks were made at various times relating to the position of your vessel and other vessels off Fort Kemble and is the document I show you that chart ? A. From the plotting sheet that was shown before, the positions of the other vessels were written on to this chart.

40 Q. But I think there is a great deal of information on that chart that has not got anything to do with this case, is that correct? A. Yes.

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Q. So did you subsequently, for the purpose of these proceedings prepare on a copy of the same chart information which shows the relative positions of the "Mineral Transporter", the "Ibaraki Maru" and the "Banko Cherry" in relation to the events that you have described? A. Yes.

Q. Is this document that I show you the chart that you prepared? A. Yes, this is the chart.

(Original chart which was on vessel tendered without objection and marked Ex.L.)

(Copy chart containing information relating to collision tendered without objection and marked Ex.M.)

10

Q. I want to take you again to the description that you have given of the actual collision. I realise that you have told his Honour that you didn't observe the engines of the "Mineral Transporter" being operated prior to the collision? A. Yes.

Q. But I want you to assume for a moment that immediately prior to the collision the "Mineral Transporter"'s engines were operating and were put to full astern. What would have been the consequence of that? A. The accident would have been worse.

Q. Why is that? A. I would believe that the "Mineral Transporter" would be right-handed, single screw and if that - I would base my supposition on that.

Q. Assuming the "Mineral Transporter" was a right-handed, single screw vessel, what would be the consequence of putting the engines on full astern? A. The stern would have swung widely to the left.

Q. What effect would that have had on the relative position of the "Mineral Transporter" and the "Ibaraki Maru"? A. Do you mean if the engine was operated?

Q. If the engine was on full astern? (witness indicated) 30

MR GLEESON: The witness demonstrates with his hands the bow of the "Mineral Transporter" being moved towards impact with the "Ibaraki Maru" on the starboard side of the "Mineral Transporter".

HIS HONOUR: By consent questions concerning damage are deferred for the time being, in order to ascertain whether or not agreement can be reached on the relevant facts.

MR GLEESON: When I asked you about your experience I omitted to ask you, and I will ask you now, when did you first become the Master of any vessel? A. From 1971. 40

CROSS-EXAMINATION

MR GLEESON: At what time were you woken on the morning of

36. N. Takatsni x,xx

10th July ?A.About 3.20. I'm not very clear, but about 3.20.

Q. The telephone rang in your cabin, did it ?A.Yes.

Q. Did you answer it ?A.Yes.

Q. You didn't go straight to the bridge when you heard the telephone ring?A.I picked up the telephone and listened and then went to the bridge.

10 Q. When you listened you heard Mr Sato speak to you, is that right ?A. Yes. He said that there was a vessel very near-by.

Q. Mr Sato on this night, apart from the engineers, was on watch alone, is that right ?A. Yes, on the whole vessel Sato only was on the watch.

Plaintiffs'
witnesses

Q. On this 63,000 tonne vessel lying at anchor at sea Mr Sato was alone at watch, is that right ?A.Yes, that's right.

TAKATANI
Michihiro
(cross-
examined)

Q. And he was a quarter master, is that right ?A.Yes.

Q. What was the complement of the crew of your vessel, the "Ibaraki Maru"? How many ?A. There were 23.

Q. How long had Mr Sato been at sea ?A.I think over 20 years.

20 Q. And he had risen to the rank of quarter master, is that right ?A. Yes.

Q. You told us that what he said to you was there was a vessel approaching towards the bow. Is that what he said to you?A. Yes.

Q. Is that all he said to you over the telephone?A. Yes, that's all.

Q. And you then went to the bridge ?A.Yes.

Q. What time did you arrive on the bridge ?A.This is just the calculations from later on, but I think it was about 3.22.

30 Q. When you arrived on the bridge was the radar switched on? A.It was on stand-by.

Q. Was the screen illuminated ?A.It was not operating. It was only on stand-by.

Q. From that I take it that the screen was not illuminated, is that right ?A. It was not in operation but there were lamps that showed that it was on stand-by.

Q. Did you switch it on?A. Yes.

Q. You knew how to operate it ?A. Yes.

Q. Were the positions of the other vessels marked on the face of the screen of the radar ?A. Yes.

Part 1 Q. By some sort of chinagraph pencil mark, is that right?
In the A. They were marked using coloured pencils with soft lead.
Supreme
Court of Q. Was the purpose of that to enable the movement,
New South if it took place, of any of the vessels so marked to be
Wales immediately noted when one looked at the radar? A. Yes.

No. 7 Q. When you got to the bridge what was the first thing that
Transcript you did? A. I looked to the front first.
of Evidence
before Q. When you looked to the front you could see this vessel lying
His Honour straight in front of you, is that right? A. Yes.
Mr. Justice
Yeldham Q. Lying on a heading of about 200 degrees? A. Yes. I felt that 10
the other vessel was at 200 degrees.

Q. It was a clear night, was it not? A. Yes, it was.
Plaintiffs'
witnesses Q. You could see the other vessel quite clearly? A. Yes, I could.

TAKATANI Q. After you had observed the vessel visually what next did
Michihiro you do? A. I switched on the radar immediately.

(cross-
examined) Q. That was the next thing you did, was it? A. During that time
I ordered the telephone chief officer, the carpenter
and bos'n to tell them to go to the bow of the vessel.

Q. You gave an order to somebody, did you? A. Yes, to the quarter
master. 20

Q. Mr Sato? A. Yes.

Q. And that was an order, was it, for him to telephone the
various people that you have mentioned? A. Yes.

Q. Was that order given before or after you had looked at the
radar screen? A. Immediately before I looked at the radar.

Q. So that after giving that order the next thing you did was
look at the radar screen, is that right? A. Yes.

Q. When you looked at the radar screen, what did you see? A.
That there was a vessel- I saw that there was a vessel point 5
metres away from the stern and also that the "Mineral" 30
"Transporter" was not at the position that was marked on the rada:

HIS HONOUR: Did he say point 5 metres?

INTERPRETER: Metres.

HIS HONOUR: Or miles?

WITNESS: Point 5 miles.

(Luncheon adjournment)

MR SELLER: Q. Prior to the adjournment you had told his Honour
that you had looked at the radar and you observed that the

other vessel was half a mile away, is that right ?A.Yes, that is correct.

Q. That was half a mile for'ard from the bow of the "Ibaraki Maru", is that right ?A.No, it was half a mile away from the bridge.

Q.But in front of the "Ibaraki Maru"?A.Yes, that is right.

Q. Immediately you looked at the radar screen you were able to see that the vessel was moving towards you, were you not ?
A.No, I couldn't see that immediately.

10 Q.You could see immediately , could you not, that it was the "Mineral Transporter"?A.No. I thought that it was possibly so.

Q. You could see that what was shown on the radar was something that was lying between your vessel and the position marked on the radar for the "Mineral Transporter" could you not ?A. Yes, where there was something between where the "Mineral Transporter" should have been and us.

Q.And the "Mineral Transporter" did not show up in the position where it should have been on the radar, did it ?A.Yes, that's right, it did not show up.

20 Q. You have told us what Mr Sato said to you when he rang you in your cabin. Do you recall telling his Honour that ?A. I don't remember clearly what he said, but he said that there was a vessel nearby" So please come up to the bridge "

Q. Did you say anything to him, or did you just go straight to the bridge ?A.I said that I would go immediately, and did go to the bridge immediately.

30 Q. So that was the whole of that conversation, was it; that Mr Sato said to you there was a vessel either nearby or approaching towards the bow and you said that you would come immediately to the bridge ?That was the whole of that conversation between you and Mr Sato over the telephone?A.Yes.

Q. So that when you arrived on the bridge you did not know the identity of the vessel that was approaching you?A.No,I didn't know

Q. You didn't know its position?

INTERPRETER : I'm sorry, I didn't quite understand what he said. Can I ask him to repeat his answer?

HIS HONOUR:Yes.

WITNESS:I could see approximately how far the approaching vessel was in relation to our vessel.

40 MR SHELTER:Q. That was after you arrived on the bridge you could see that when you looked out in the direction of this vessel. Is that right?A.Yes, that's right.

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Q. But prior to your looking out you had no information from Mr Sato as to the identity of the vessel or where it was?
A.No, I did not get any information.

Q. By that time the vessel had moved about point 7 of a mile from the place where it had been lying at anchor, is that right?
A.Yes.

Q. As I understand you from what you said before the adjournment, after you had observed this vessel and before you went to the radar, you gave an order to Mr Sato, is that right?
A.Yes.

Q. That order was to ring the chief engineer, the carpenter and the bos'n is that right?
A.Yes, that is correct. 10

Q. Then you went to the radar and after you had observed what you have described to his Honour on the radar, what did you do next?
A. While I was looking at the radar I called the crew to emergency station and then while using - I used both the V.H.F. and the whistle and in the meantime Sato had the portable search light giving the other vessel warning.

Q. What did you do to call the crew to emergency stations?
A. I said, "All crew to emergency station".

Q. Was that over some sort of loud speaker?
A. If I dial zero on the telephone that immediately connects to the microphone that broadcasts all over the vessel. 20

Q. So you did that, did you, and then called the crew to emergency stations?
A. I ordered Sato to do this and Sato did this.

Q. Was that after Sato had telephoned the chief officer, the carpenter and the bos'n?
A. Yes, that's right.

Q. When you ordered Mr Sato to telephone the chief officer did you tell him what to say to the chief officer?
A. No, I just told him to wake him up. 30

Q. Did you tell him what to say to the carpenter?
A. I just told him to wake the three of them up.

Q. That's all?
A. At first that was all.

Q. The order to emergency stations, are there various orders that were given on the vessel at the time to deal with different types of emergency?
A. Yes, there are various types.

Q. What was the nature or type of this emergency stations order that you told Mr Sato to give?
A. It means "Engine stand by and all crew up and at their emergency stations".

Q. What did you hear Mr Sato say when he made this call?
A. "All crew emergency stations". 40

Q. That's all he said, was it?
A. I think that was all.

Q. What is the order that you would give if there had been a fire on the vessel and you wanted to call the crew?
A. "General alarm".

Q. You told Mr Sato to call the crew to emergency stations. Did you speak to anybody immediately after that? A. After a while the chief radio officer came up and he took over the radio.

10 Q. So this is the situation, is it: You came to the bridge; you made a visual inspection; you then ordered Mr Sato to ring the chief officer, carpenter and bos'n; you looked at the radar, and when you were looking at the radar you ordered Mr Sato to call the crew to emergency stations. Is that right? A. Yes, that is correct.

Q. You didn't give any other order prior to the radio operator arriving on the bridge? A. No, I didn't.

Q. You have told us that you thought you were woken at about 3.20. What time did you arrive on the bridge? A. About 22 minutes past, but this is a time that I arrive at by calculating backwards from the later time. So this is an approximate time.

20 Q. In calculating backwards, how long did it take you from the time you were woken to the time that you got to the bridge, as best you can recall it? A. I had to put my clothes on and so forth, so it took about one or two minutes.

Q. You have already indicated that the only person on watch prior to your coming to the bridge was the quarter master Sato, is that right? A. Yes, that's right.

30 Q. Have you formed any view as to when the "Mineral Transporter" commenced to drift? A. I looked at the distance on the radar at about 30 minutes past and also about 22 minutes past, and, judging that it was drifting at a constant speed, I would think that it started to drift a little past 2.50.

Q. So that by the time you first observed it it had been drifting in your view, for something slightly over half an hour? (objected to as question is ambiguous; withdrawn)

Q. On the view that you have given to his Honour that the "Mineral Transporter" commenced to drift at about 2.50, if that be correct, it had been drifting for slightly over half an hour when you first observed it at 3.22, is that right?

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Part 1 A. : Yes, that is correct. It did not, however, start
In the drifting at 2.50 exactly. It was a little past 2.50.

Supreme Court of New South Wales Q. It drifted before 3.22, .7 of a mile, approximately?
A. Yes.

No. 7 Trans-cript of Evid-ence before His Honour Mr. Justice Yeldham Q. If you had been on watch on the bridge there is no doubt whatever, is there, that you would have observed a vessel drifting from the position that the "Mineral Transporter" was drifting from to the position that you first observed it at long before 3.20? A. Yes, that is correct.

Q. Indeed, it would be right to say, would it not, that if this vessel had commenced to drift at 10 to 3, at 2.50, in the direction and at the speed that is apparent from the position that it started from, you would have observed it by 3 o'clock, would you not, at the latest? A. It would have taken a little longer. I should have been able to tell a little past 3.

Q. If you had been in any doubt whatever about the matter, a glance at the radar would have revealed to you what was happening, would it not? A. Yes.

Q. In making that observation you would have had the benefit of your training as an officer in observing other vessels? A. Yes.

TAKATANI Q. And in taking bearings? A. Yes.

Michihiro (cross-examined) Q. And in using radar? A. Yes.

Q. And you would have expected any other officer on the "Ibaraki Maru" had he been on watch on that night to have observed the "Mineral Transporter" drifting as quickly as you would have, would you not? A. Yes.

Q. You said, did you not, that if you had been on watch you would have observed the "Mineral Transporter" drifting shortly after 3 o'clock; is that right? A. Yes.

Q. And you would have observed it drifting towards your position? A. Yes, if I had used the radar.

Q. You would have used the radar, would you not? A. I am sorry, could you repeat the question?

Q. You would have used the radar if you had observed the "Mineral Transporter" drifting? A. Yes.

Q. And that would have shown quite clearly that it was drifting towards your position? A. Yes.

Q. If you had observed that shortly after 3 o'clock you would have ordered the engines to stand by immediately, would you not? A. Yes.

Q. And if you had ordered the engines to stand by, they would have been on standby at latest 20 minutes later? A. Yes, that's right.

Q. That is by, say, 25 past 3 at the latest? A. Yes.

Q. And that would have given you plenty of time to get away from the area towards which the "Mineral Transporter" was drifting, would it not? A. Yes, that's right.

Q. It is good practice, is it not, to have an officer on watch at all times when a vessel is lying at anchor at sea? A. I wish that could be the case and that could be done, but generally on Japanese vessels there is only one person on watch.

10 Q. You would prefer, with your experience, that there always be an officer on watch while the vessel lies at anchor at sea; is that correct? A. Yes, that would be preferable.

Q. That is the practice, is it, elsewhere but with Japanese ships? A. The number of people in charge is strictly according to the captain's judgment and according to the situation; for example, whether all of the crew is on the vessel or whether only some are on the vessel, the situation changes.

Q. Were all the crew on the vessel this night? A. Yes, they were.

Q. So there was no reason, so far as the availability of crew, for not having an officer on watch, was there? A. That's right.

20 Q. Would you agree with me that it was reckless of you to allow this vessel to lie at anchor at sea on this night without an officer on watch? A. No, I do not agree with you.

Q. Certainly it was your preferred view, as you told his Honour, that there should be an officer on watch? (Objected to as not being the evidence)

MR SHELTER: I will put it to him again.

Q. You told his Honour, did you not, that it would be preferable to have an officer on watch when the vessel was lying at anchor at sea? A. Yes. If it could be done, yes.

30 Q. There was no reason in the world why it could not be done on this occasion, was there? A. No, there was no reason.

Q. You have already told us that if there had been an officer on watch at least a quarter of an hour would have been saved in getting your engines to stand by? A. Yes.

Q. Would you not agree with me that on this occasion it was quite reckless of you not to have an officer on watch? A. No, I don't agree.

Q. Do you recall what the weather forecast was for that night? A. Yes, I remember approximately.

40 Q. (Exhibit J shown to witness) Can you read the weather forecast that appears typed in English in that exhibit? A. Yes.

Part 1 Q. Were you aware of that weather forecast before you turned
In the in on the night of 9th July, 1981? A. Yes, I knew about the
Supreme weather forecast.
Court of
New South Q. Was this the first occasion that you had ever brought a
Wales vessel to Port Kembla? A. On this route this was the first time.

No.7 Q. On this route? What do you mean "on this route"? A. It was
Transcript the first time for me to go to Port Kembla.
of Evidence
before Q. Had you made any enquiries about weather patterns off Port
His Kembla? A. Enquiries to who?
Honour
Mr. Justice Q. Did you have any information about weather patterns off 10
Veldham Port Kembla? A. Before I arrived there?

Q. Yes. A. No, I did not.

Plaintiffs Q. Did you know that it was susceptible to sudden changes with
witnesses southern fronts coming through? A. Yes, I could tell that.

TAKATANI Q. Going back to Ex. J, there was a warning issued by the
Michihiro Bureau of Meteorology, Sydney at 0530 GMT - that is Greenwich
(cross- Meantime - on 9th July, 1981; is that right? A. Yes.
examined) Q. And that referred to a low 984 millibars near 42 degrees south,
164 degrees east is moving slowly east, area affected. Do you 20
see that? A. Yes.

Q. And then "New South Wales waters south of 34 degrees south
and east of 156 east, south-west winds, force 7 to 8, are
expected in the area with very rough seas and heavy swells.
The area of gales to move slowly east". Do you recall that?
A. Yes, I remember.

Q. You received that warning at about 3.30 on the afternoon of
9th July? A. Yes, I did.

Q. Was that the last weather information that you had received
from the Bureau of Meteorology? A. Yes.

Q. Did that cause you any concern? A. Yes, I did, and I took note 30
and was careful.

Q. Did you consider it a situation where it was appropriate to
leave the vessel with one quartermaster doing watch at midnight?
A. Yes, I was very confident about that.

(Mr Sholler called for discovered document 49,
Captain Takatani's notebook; not produced)

MR SHELLER: I can show a copy to save time. The one I have
is marked but perhaps I can ask the captain and he may have
one amongst the papers he has in front of him.

Q. (Approached) Do you recognise that as a photostat copy of 40
pages taken from your notebook? A. This is not a copy of
my personal notebook. It is the notebook of the master which I
took over.

Q. On those two photostat pages that I show you, the writing in Japanese is your writing; is that right? A. The handwriting in Japanese was written by another captain and the handwriting in English was done myself.

Q. Do you have a copy of that page in the papers that you have in front of you in the witness box? A. Yes, I do.

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MR SELLER: Q. Do you have that in front of you now? A. Yes.

Q. You say, do you, that the translation to English on the lefthand side was a translation made by you of what some other captain had written into the book? (Objected to; withdrawn)

Q. The English written on the lefthand side of that sheet was written there by you, is that correct? A. That is right.

Q. When did you write that? A. I wrote this after the collision.

Q. You did that translation after the collision, did you? A. That is right. 10

Q. There is a heading which says "Translation to English on line part" and then an arrow pointing to the Japanese writing, or part of it, on the righthand side of the page? A. That is right.

Q. Is that intended to be a translation of the Japanese writing that is underlined? A. No, that is not right.

Q. What is its translation of? A. It is not a clear translation, but it shows that at this anchorage nine shackles was safe.

Q. That Japanese writing that is underlined to which the arrow points includes a statement, does it not, that the condition of the bottom is not very good so you have to use more chain? A. Yes. 20

Q. And there is no mention of that statement in the English words that you have set out under the heading "translation to English online part", is there? A. No, there is not.

Q. You knew, did you, amongst other things, that the condition of the bottom was not very good so that you would have to use more chain? A. That is right.

Q. Is there any reason why that part of the Japanese note was omitted from what you wrote in English? A. This translation means that with nine shackles it was able to stand up to wind of 20 metres per second. 30

(Documents entitled "Copies this page only" and "No. 4" m.f.i. 2)

Q. You told his Honour that the state of the machinery as you left it when you turned in at midnight on 9th July was such that the engine could be brought to standby in 15 to 20 minutes, is that right? A. That is correct.

Q. It would be right that if the machinery was left to take that time to get to standby, another vessel drifting towards "Ibaraki Maru" at half a mile distance, there would be small chance of the "Ibaraki Maru" being able to move prior to a collision? A. I do not quite understand the question. Can you repeat it please? 40

Q. (Shown Ex. F) On that exhibit you have shown the positions of the "Mineral Transporter" from 03.22 up to the time of the collision? A. That is incorrect.

Q. Looking at that, the vessel was drifting in a direction and at a speed that you would expect if it was drifting and dragging its anchor. Would you agree with that? A. Yes.

Q. Because it was moving under the influence of the tide and the wind, is that right? A. Yes, and the swell.

Q. In the state of readiness of the machinery on the "Ibaraki Maru", there was little chance of the engine being brought to standby before the point of collision if the order was not given prior to 3.22, would you agree with that? A. I do not really understand.

Q. You needed 15 to 20 minutes to bring the engines to standby? A. Yes.

Q. A vessel in the position of the "Mineral Transporter", as shown at 3.22, simply as a matter of the action of wind, tide and swell, would come to a point of collision in about 20 minutes. That is right, is it not? A. Yes.

Q. So that once a vessel was in the position of the "Mineral Transporter" as shown at 3.22, drifting towards the "Ibaraki Maru", it would not be possible to get the engines to standby much before the time of collision? (Objected to; allowed) A. Yes, it would not have been possible.

Q. (Shown Ex. C) In the righthand bottom corner of that chart there is what I think you have described as a free translation of some Japanese writing that appears on the left, is that correct? A. That is correct.

Q. If one comes down to paragraph 4, how does one translate that from the Japanese? Is that an accurate translation as it appears there? A. No, it is not.

Q. These paragraphs are headed in English "Captain's notice". Are those the captain's standing orders or are they orders for the particular night? A. This something I wrote in on the 26th when the vessel came at anchor.

Q. And they were directions to whomever was keeping watch, is that right? A. That is right.

Q. Does No. 4 read "Call captain when other vessels approach our vessel as close as half a mile"? A. Yes, when another vessel is 0.5 miles away from our vessel.

Q. Whoever is on watch is to call the captain, is that right? A. Yes. But this sentence also says, "If another vessel is 0.5 mile away from our vessel or if it nears our vessel and anchors near the vessel".

Q. That is all part of No. 4, is it? A. Yes.

Q. How is No. 5 translated? A. It says, "If there are any other concerns, call the captain immediately".

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Q. Is this the situation, captain: that so far as your orders were concerned on the night in question to the quartermaster, he was to call you if another vessel approached as close as half a mile or if he was concerned? A. Yes. But the matching of the distances and so forth are coincidences.

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Q. What do you mean by, they are "coincidences"? A. I am saying that the 0.5 mile written here and the 0.5 mile at 3.22 in question matched, and that was a coincidence.

Q. A quartermaster in receipt of this order could take the view, could he not, that he should not call you until another vessel approached as close as half a mile? (Objected to; withdrawn).

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MR. SHELLER Q. Your order to the Quartermaster could be taken, could it not, as an order that if there was nothing that caused him concern he would only call you if another vessel approached as close as half a mile? A. No, it could not be taken that way and the Quartermaster, who has had a lot of experience, would know when there is concern.

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10 Q. Of course, it is right, is it not, that if a vessel had reached the point of half a mile and was drifting towards your vessel uncontrolled, with the tide and wind as the Mineral Transporter was, it was too late for you to get your engines started and get out of the way, that's right, is it not? A. Yes, as far as our vessel goes, it was too late - if our vessel was to move away it was too late.

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20 Q. Just while you have got that notice in front of you, if you come down to No.7, is that a direction to the able seaman that he should keep watch at the bridge and also round inside and outside for checking abnormal situation, is that a correct translation of your order? A. I would like to say this now myself, so please listen. (Witness continued).

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HIS HONOUR: Perhaps you better interpret as far as he has gone.

INTERPRETER: Could I inquire to the witness about the first word he used, because I did not understand.

HISHONOUR: Yes.

30 WITNESS: During the day if it is below fifteen metres per second then you can leave the bridge after notifying the radio operator and during the night the inside and the outside of the vessel must be checked and the watch must be kept at the bridge.

HIS HONOUR: Does he want to add anything to that?

WITNESS: That is all for No.7.

MR. SHELLER Q. So that your order No.7 to the able seaman, or in this case the Quartermaster, involved him leaving the bridge from time to time and going on rounds inside and outside the vessel? A. Yes, during the night he has to check inside and outside of the vessel.

Q. And leave the bridge from time to time to do so? A. Yes, that's right.

40 Q. Where does he go on these rounds away from the bridge, what part of the vessel do you expect him to inspect? A. He has to check the anchor at the bow of the vessel, to check the engine room and also to check fire or light outlets.

Q. If he did that properly how long would you expect those rounds to take? A. Twenty to twenty-five minutes.

Q. How often during the night would you expect him to do that? A. About twice.

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Q. So that, in accordance with your orders with this vessel lying at anchor at sea there would be nobody on watch on the bridge for periods up to twenty-five minutes while the able seaman was doing his rounds, is that right? A. Yes. I feel that that is okay because I check the condition at night and according to that check I make the judgment on that.

Q. Would you not agree that in accordance with good practice there should while a vessel of this size, the size of the Ibaraki Maru is lying at anchor at sea be somebody constantly present on the bridge, would you not agree that that was good practice? A. Yes, I agree. (objected to: allowed).

10

Q. Would you not agree that in the situation of the Ibaraki Maru on 10th July, 1981, prior to this collision it was quite reckless for you to leave an order which amounted to the bridge being abandoned for periods of up to twenty-five minutes? A. No, I don't agree.

Q. The situation was, was it not, that if another vessel dragged its anchor and drifted towards your vessel it could be that nobody on the Ibaraki Maru would know anything about it for 25 minutes? A. Yes, that's true.

20

Q. And you don't say that to allow such a situation by your orders is quite reckless? A. I left my orders as they were because before I went to bed I made sure that things were safe and felt that it was safe to do so.

Q. Of course, this is the very thing that happened on this night, is it not, that this vessel the Mineral Transporter drifted towards you for 25 minutes or more before anybody on the Ibaraki Maru knew anything about it? A. Yes, that was the situation.

Q. When somebody on the Ibaraki Maru did know something about it the state of the machinery was such that you could not get your engines up to get out of the way? A. That's correct.

30

Q. Was there kept on the Ibaraki Maru a radar log? A. Yes.

(Radar log document 46 called for).

Q. Was the radar log a log that was kept by you personally? A. It was written according to our recollections after the collision.

Q. But it was written up by you, is that right? A. It was written by the third mate.

40

Q. Did you sign it as true and correct? A. Yes, I did sign it. This was written according to the recollections.

(Original document 46 not produced).

Q. Could you look at the three photostat sheets I show you. Do you recognize those as photostat copies of pages from the radar log? A. Yes.

Q. That states the date and location and then there is a column headed "Time", do you see that? A. Yes, I see that.

Q. Underneath that there are two words, "on" and "off", do you see these? A. Yes.

10 Q. What is recorded as time on is that when the radar is put on standby? A. No, this indicates when the radar is actually operating.

Q. Time off means when it ceases to operate, is that right? A. Yes, that's right.

Q. There is a heading over in the right hand column "Signature of licensed officer", do you see that? A. Yes.

Q. If you go to p.35 against the entry for 10th July, is that your signature in the right hand column in various places down the column? A. Yes, it is mine and the third officer's signature.

20 Q. Then underneath is written "this copy is true and correct" and that is signed by you, is it? A. Yes, that is my signature.

Q. Then against 10th July the time shown as on is 0318, is that right? A. The times are not clear.

Q. If it were 0318 it would not be correct, would it? A. The Quarter-master noticed the situation at 3.18, so based on that time it was written 3.18.

Q. But in fact you turned the radar on at 0322, is that right? A. That's right.

30 Q. What appears there and then over the page on p.36 is a complete record verified by you as to the times when the radar was on on 10th July? (Question translated).

INTERPRETER: May I repeat the question?

40 MR. SHELLER Q. The entries shown on the log on p.35 and p.36 for 10th July, which are verified by you, are a complete record of the times the radar was on on that date? A. I wouldn't say it was complete. Because of the collision this was written as a reference and this was written by the third officer according to the recollections and then was signed.

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Q. But because of the collision you would make certain as far as you were able that that record for that day was correct, would you not? A. This is a record according to recollection and the accurate times are not there. They are very rough times. However, I often went to the bridge so the third officer, making the basis on that, made this record.

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Q. As far as you know, that record, subject perhaps to the precise times, is true and correct, is that right? A. What has been written are correct, but they are according to recollection. 10

(Copy radar log admitted without objection and marked Ex.1).

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(Master's diary, previously m.f.i.2, admitted without objection and marked Ex.2).

TAKATANI
Michihiro
(cross-
examined)

(Further hearing adjourned until Tuesday,
17th May, 1983 at 10a.m.).

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KG/AH/6.

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OF NEW SOUTH WALES } No.934 of 1981.
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MITSUI-OSK LINES LIMITED & ANOR. V. THE SHIP 'MINERAL
TRANSPORTER'

SECOND DAY: TUESDAY, 17TH MAY, 1983.

Plaintiffs'
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(Errata noted)

TAKATANI
Michihiro
(cross-
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(Photograph of Ibaraki Maru
admitted without objection and
marked Ex.N).

10

(Affidavit of Jong Seob Kim sworn
in Korea on 12/5/83 filed in Court)

HIS HONOUR: I will have it noted that it is common ground
that this witness is ill and cannot attend and, that being
so, there being no objection from Mr. Sheller, his
affidavit may be used in such way as is desired.

20

MR. GLEESON: I believe that we have reached the stage
through discussions between the solicitors that in relation
to the cost of repairs, the cost of repairs which the
plaintiffs seek to recover and which are set out in a
marine surveyor's certificate are agreed and we have a
like agreement for the other side.

30

So far as the economic loss is concerned, we seek no
agreement from the other side, but we have had sworn two
affidavits, one from a Mr. Ogata and one from Mr. Inoue
sworn on 14th May, 1983 which deal with the facts relevant
to the claim for economic loss and the bulk of those
affidavits concern the annexing of copies of business records,
the originals of which are available, and explaining what
they are. Both Mr. Ogata and Mr. Inoue are here in Court
and are available for cross-examination. It would be very
tedious to have to take them, through Interpreters,
through these business records and, in the interests of
saving time and expense, we would seek Your Honour's leave
to give their evidence in chief by way of affidavit.

HIS HONOUR: Mr. Sheller, have you seen the affidavits?

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MR. SELLER: Yes.

HIS HONOUR: Is there any objection to that?

MR. SELLER: No.

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(By consent affidavits of Hirofumi
Ogata and Hiroshi Inoue sworn 14th
May, 1983 filed in Court).

(Mr. Sheller indicated he had no
objection to Mr. Ogata and Mr. Inoue
remaining in Court during the evidence)

MICHIHIRO TAKATANI

On former oath: (Through Interpreter)

10

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witnesses

MR. SELLER Q. You told His Honour yesterday that the
position of other vessels in the vicinity of the Ibaraki
Maru were marked on the radar screen, do you recall saying
that? A. Yes, I remember.

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Q. You would agree, would you not, that the one purpose
for which the radar would be used while the Ibaraki Maru
was lying at anchor was to check the position of other
vessels? A. Yes.

Q. Did you give any instructions as to the times at which
radar checks should be made? A. I did not give any specific
instruction as to the time, but I did give instructions to
check the radar during the time that a person is on duty.

20

Q. Was there a standing instruction that a radar check was
to be made each hour? A. They were to make a check occasionally
while in charge. I would like to add something.

HIS HONOUR Q. Yes? A. By occasionally, that means about
each hour.

MR. SELLER Q. Was that an instruction from your company,
Matsuoka? A. No, this was according to my judgment.

30

Q. Do you recall whether you had given any instructions
to Mr. Sato about radar checks on the night of 9/10th July?
A. From the 9th? Can I have the specific time?

Q. I will put the question again. Do you recall whether on
the night of the 9th/10th July you had given any instruction
to Mr. Sato about radar checks? A. No, but as the Captain's
instructions were written on the plotting chart.

Q. (Witness shown Ex.C) Do you refer to the instructions
which are translated under the heading "Captain's Notice"?
A. Yes.

40

Q. Do you refer amongst those to the item numbered 3? A. Yes, that's right.

Q. Does the item Numbered 3 say, "Check position by radar on bearing or transit over four hours"? A. Yes, that's what it says.

10 Q. Was that your instruction, that a radar check should be made every four hours? A. This was translated by the Second Officer on 15th July to be given to the port authority and this was a free translation done by the Second Officer and there was a mistake in that what the original says is that it should be checked occasionally and the person in charge under normal conditions should check this every hour and, according to the weather or other conditions, the radar should be checked more often than that.

Q. Does your instruction number 3 say that the position will be checked by radar every four hours? A. I would like to read what it says in Japanese and have that translated.

MR. SHELLER: I would ask that the witness answer the question.

20 (Last question read by Court Reporter).

WITNESS: That is what it says in the typewritten sentence, but the original, which is the instruction to be given to the person in charge, it says "check the position of the vessel occasionally".

MR. SHELLER Q. In the original in Japanese is there mention of the position being checked by radar every four hours? A. No, it doesn't say that at all.

Q. Is there any mention of four hours in the original? A. No, not in the original.

30 Q. Is there any mention of any time in the original? A. No, there is no time.

Q. So you say, do you, that this translation 3 is quite wrong when it refers to the position being checked by radar at each four hours? A. That's right, it is wrong.

HIS HONOUR Q. Do you know who made the translation? A. The second officer.

40 MR. SHELLER Q. Of course, would you agree that in the situation in which the Ibaraki Maru was lying at anchor at sea off Port Kembla on 9th/10th July proper practice would have required that the position be checked by radar more frequently than every four hours? A. Yes, I think so. It should be checked about every hour.

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Q. A prudent master would require, would he not, in the situation in which the Ibaraki Maru lay that night, that the position be checked by radar at least once an hour, would you agree with that? A. Yes, that's correct.

Q. There is no record anywhere amongst the ship's records of any radar check having been made between midnight and eighteen minutes past three on 10th July, is there? A. That's correct. The Quartermaster, even if he used the radar to check, he does not record it in the ship's log because he does not have a licence. 10

MR. SHELLER: I would ask that to be struck out, it is not responsive.

HIS HONOUR: I think I will let it stand. What it demonstrates, I don't know, but I will not strike it out.

MR. SHELLER Q. But you yesterday examined the radar log book, which is Ex.1, and you verified that as true and correct, did you not? A. I meant that the copy was exactly the same as the original and in that sense it was correct.

MR. GLEESON: I should have perhaps objected to that question.

HIS HONOUR: It has been clarified now. 20

MR. SHELLER Q. You also signed in the column under "signature of licensed officer", did you not? A. Yes.

Q. Do you suggest that you were not, by so signing, verifying the truth of what appears in that log? (objected to: not pressed).

Q. Were there instructions about keeping the radio open on the bridge at night time? A. Yes, from the arrival there there was instruction from the authority at Port Kembla.

Q. Did you keep the radio open on Channel 13? A. Yes, I did.

Q. Is Channel 16 the designated international calling channel? 30
A. No, I don't remember that clearly.

Q. What is the designated international calling channel? A. Channel 16.

Q. Was any listening watch being kept on Channel 16 at the time that you came to the bridge on the morning of 10th July? A. What time?

Q. When you came to the bridge at about 0322 on the morning of 10th July was any listening watch being kept on Channel 16?
A. No, not Channel 16, Channel 13.

Q. Was 0337 the first time that you or your radio operator 40

changed to Channel 16 on that morning? A. I do not remember clearly, but from the investigations made later it is said that that was the time.

Q. Prior to that time had you heard any messages from the Sanko Cherry? A.No, we did not hear anything.

Q. Did you hear anything from the Sanko Cherry between 0337 and the time of the collision? A. I don't know.

Q. Did you observe any flashing morse light from the Sanko Cherry at any time after you came to the bridge at 0322?

10 A. I was only looking to the front, so I do not know about the Sanko Cherry, which was behind us.

Q. Did you say on Channel 13, "I am flashing vessel, what vessel are you approaching"? A.Yes.

Q. And you got no response to that message? A. That's correct.

Q. Did you send a similar message a number of times between 3.23 and 3.25? A. Yes, I did.

Q. And you got no response? A. That's right.

20 Q. At 3.25 did Mr. Murao, the radio officer, broadcast words to this effect:"You are drifting, this is the Ibaraki Maru, you are drifting"? A. I don't remember the exact words, but he was saying something to that effect.

Q. On Channel 13? A. I did not confirm that because I was giving general instructions.

Q. A message to that effect was broadcast by Mr. Murao from 3.25 continuously, is that right? A. Yes, that's right.

Q. And you received no response? A. That's right.

Q. At that time you were sounding the horn? A. Yes, I was using the air horn.

30 Q. And showing a flashing light? A. Yes. I wasn't using it myself, but I gave instructions to do this.

Q. And that had been happening since about 3.23? A. Yes, that's right.

Q. So that by 3.25 you were well aware that this other vessel was not responding to either radio messages, the horn or the flashing light, is that right? A. Yes, that's right.

Q. And the vessel was still moving towards you, as it were, sideways at 3.25? A. Yes, that's right.

Q. I take it, therefore, that at 3.25, having received no

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response and observing the way in which the vessel was moving towards you, you were aware that you were in a situation of danger? A. Yes.

Q. At that point of time, 3.25, if the engines had been at standby, you would have taken steps to move your vessel, would you not? A. Even if the engine was ready, because the anchor was out ten shackles nothing could have been done.

Q. Do you say that even if the engine had been ready at before His 3.25 because the anchor was out you couldn't have done any-
Honour Mr. thing? A. That's correct.

10

Q. Yesterday I asked you some questions (pp.19 and 20) about the situation, if you had had the engine at standby by twenty-five past three, do you remember me asking you those questions? A. Yes.

Q. I asked you whether, if the engines had been at standby by twenty-five past three, that would have given you plenty of time to get away from the area towards which the Mineral Transporter was drifting, do you recall me asking you that? A. I don't remember that clearly.

Q. Did you not say to me, when I asked you that question, "Yes, that's right"? A. I don't remember clearly.

20

Q. There is no doubt, is there, that if your engines had been at standby by 3.25 you could have got away from the area towards which the Mineral Transporter was drifting and avoided a collision, could you not? A. Because the anchor was out ten shackles, to lift the anchor it would have taken at least 25 minutes to 30 minutes at best.

Q. Do you say that you could not move your vessel at all without first lifting the anchor? A. Yes, that's correct.

Q. It would be quite impossible, would it, for you to steam forward for a distance and then move away to the starboard side with the anchor still out, as it was, ten shackles?

30

MR. GLEESON: I am not clear what that question means. It may be that the witness is. If my learned friend is going to put an assumption about a particular manoeuvre to the witness I would ask that he put it as clearly and as precisely as he can.

HIS HONOUR: It was a little ambiguous.

MR. SHELLER Q. Just so I have this clear as a starting point, you say, do you, that at 3.25, without first taking up the anchor, it was impossible for you to move the Ibaraki Maru from the position in which she lay? A. Even if it could have been moved, it would be nonsense to say that it could have moved out of the way because of the anchor.

40

Q. First of all, do you agree that you could have moved your vessel at 3.25 with the anchor out? A. What kind of movement do you refer to?

Q. Could you or could you not, have moved your vessel in some direction with the anchor out at 3.25?

HIS HONOUR: Mr. Sheller, it is not clear to me whether you are referring to swinging around on the anchor with the anchor firmly embedded or trying to drag the anchor.

10 MR. SHELLER Q. At 3.25 you had the anchor out, is that correct? A. Yes, with the emergency station call everyone was at the front of the vessel and the anchor was out ten shackles.

Q. With the anchor out there was nothing to prevent the vessel moving forward, was there? A. Yes, but no one would move towards a danger.

20 Q. But it was possible, was it not, to move forward and, having started by going forward a certain distance, to swing on the anchor away towards your starboard side, was it not? A. Yes, there is a small possibility, but with a vessel which is 260 metres long it cannot be moved as easily as you could an automobile.

Q. You see, at 3.25 the Mineral Transporter was what, over a third of a mile away, would you agree with that?

MR. GLEESON: I wonder if I could ask my learned friend to indicate - because something may turn on this - whether he is talking about distance from the bow or distance from the radar screen.

HIS HONOUR: Mr. Sheller, perhaps you would put that in the question.

30 MR. SHELLER Q. At 3.25 in your estimation how far was the Mineral Transporter from the point of your bow? A. I have a diagram, but I need to make some calculations.

HIS HONOUR Q. You can do that. Do you want some instruments? A. I need a ruler. (Ruler provided) According to my calculations, about 550 metres.

MR. SHELLER Q. Just let me suggest this as a manoeuvre to you: firstly, I am assuming that the Ibaraki Maru is in the position it was on this morning, with its anchor out ten shackles? A. Yes.

40 Q. And the engines at standby? A. Yes.

Q. The first manoeuvre would be to go full ahead for a distance of say 50 metres and then to swing on the arc of the anchor

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to starboard or in a south-westerly direction until a position was reached, in effect, due west of the line between the Mineral Transporter and the Ibaraki Maru in its original position. Now, firstly, do you agree with me that that is a manoeuvre which your vessel was capable of carrying out with its anchor out on the night of 10th July? A. No, it could not have done it.

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Q. Regardless of time constraints, that manoeuvre is quite impossible, is it? A. Yes.

Q. Is it not perfectly possible for a vessel such as the Ibaraki Maru to swing on the arc of its anchor from a position on a bearing of 142 degrees round to a position on a bearing of 90 degrees? A. It would seem impossible with the anchor out. 10

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Q. So do you say the only way that you could manoeuvre your vessel from the position in which it lay to a position on a bearing of 90 degrees on the arc at the end of the length of the anchor would be by first taking the anchor up? A. Even if the anchor was taken out, to move to 90 degrees would seem impossible. Do you mean to move the vessel 90 degrees? 20

Q. No, to a bearing of 90 degrees? A. I don't know that clearly.

Q. There would be no problem, would there - leaving aside for a moment time constraints, there would be no problem, would there, in the Ibaraki Maru having gone full ahead for a short distance while its anchor was out - (objected to).

Q. Putting aside the presence of the Mineral Transporter, it was possible, was it not, for the Ibaraki Maru, with its anchor out, to move forwards? A. Yes, it was possible. 30

Q. For a distance of say 50 metres? A. Yes, if the engine was ready.

Q. It is possible, is it not, to swing the Ibaraki Maru on the arc of its anchor? A. I think it is almost impossible.

Q. You say it simply cannot be done, whatever the conditions? (objected to).

Q. Do you understand what I mean by a manoeuvre of swinging on the arc of the anchor? A. I understand vaguely, but I would like clarification.

Q. Is it not possible with a vessel like the Ibaraki Maru simply to manoeuvre it round on an arc formed by the anchor chain as it lies out from the vessel? A. It is almost impossible. 40

Q. When you say it is almost impossible, is it possible with the anchor taut to do that? A. Please repeat the question?

Q. Is it possible to swing in the manner that I have described on the arc of the anchor if the anchor is taut? A. Could you come here and draw a diagram to explain what you mean?

10 Q. If your vessel, the Ibaraki Maru was lying at anchor, as it were, pulling on the anchor with the anchor chain taut, would you assume that to be the situation - from that position is it possible to manoeuvre the Ibaraki Maru on the arc of the anchor chain? A. Even if it did move the result of its movement would not be clear. I would know the direction but I would not know how far it would go. If it was a vessel of 2,000 or 3,000 ton it might be easier to tell, but with a vessel of this size, which is 73,000 ton, it is very difficult to tell.

20 Q. Do you mean by that that with the anchor taut, as I have asked you to assume, it would not be possible to do a controlled movement on the arc of the anchor chain? A. I think it would move a little bit, but I would not know what the result would be.

Q. What if you slackened the anchor chain first by steaming or moving forward, say 50 metres? (objected to).

Q. Turning from manoeuvring on a taut anchor, let me ask you to assume that the Ibaraki Maru first moves forward say 50 metres to slacken the anchor. Now, if that were first done, is it then possible to manoeuvre the vessel in an arc from that position until you are on a bearing of 90 degrees? A. I don't know, but I think it would be almost impossible.

30 Q. When you say you don't know, have you never done a manoeuvre with either the Ibaraki Maru or a similar vessel in which you manoeuvred it on the arc of the anchor with the anchor slack? A. No, I have not.

Q. If from that position which I asked you to assume, after you had moved forward for say 50 metres, you had put the Ibaraki Maru full astern and the rudder hard to port, would you not have drawn away on an arc from that position? A. That could be done on a diagram, but a large vessel such as the Ibaraki Maru could not do a manoeuvre like that so easily.

40 Q. Could it do it at all? A. Even if it was done, it would hold no meaning.

Q. Let me put it to you this way: assuming that you had moved forward 50 metres so as to slacken the anchor chain, if you put the Ibaraki Maru full astern and the rudder hard to starboard, would the Ibaraki Maru not draw away in an arc and in a starboard direction? A. If the Ibaraki Maru

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was put to full astern, the stern of the vessel would swing widely to the left.

Q. Even if the rudder was hard to starboard? A. Yes, in this case the rudder would not function very well.

Q. That swing to port would only be momentary, would it not?

A. While the engine is put to full astern, because of the current caused by the screw, the screw discharge current, it would continue to swing to left.

Q. (Approached with model ship) I want you to assume that the vessel as I have placed it is on a heading of 142 degrees with its anchor out ten shackles? A. Yes.

10

Q. And that the vessel is the Ibaraki Maru. Now, I want you then to assume that the engines are put full ahead and it proceeds forward for approximately 50 metres? A. You say 50 metres, but that is only a figure and to move forward it is almost impossible to say how far it would move forward.

Q. I want you to assume for the moment that it has moved forward approximately 50 metres so that, to that extent, the anchor chain has become slack. So that the vessel as it is placed in front of you is in that position, having moved forward 50 metres. Now, I want you to assume at that position that the engines are put full astern and the rudder is put hard to starboard. Now, firstly, how would the vessel first respond in terms of movement to its engines being put full astern and the rudder hard to starboard? (Witness moved model).

20

Q. You describe that by the stern coming round to port? A. Yes, that's right.

Q. With the rudder hard to starboard, that movement would stop at some point of time, would it not? A. When the engine is started and the effect of the current caused by the screw becomes lessened, after some time then this would be the movement of the vessel. (Demonstrating).

30

Q. So you are then saying that the movement would be astern, is that right? A. This would be when the engine was stopped and there was no current caused by the engine and the rudder was taken to the starboard side, then it would move the way that I showed.

HIS HONOUR: You better describe that, Mr. Sheller.

Q.
MR. SELLER:/It was a stern movement with the stern coming back towards its original position, which would be on a heading of 142 degrees. The stern was moving to the starboard, is that right? A. Please go in steps, describe in steps about the manoeuvre of the vessel, when the engine is started,

40

when the rudder is taken to the starboard side and when the vessel is put astern.

Q. You see, you have got a position there with the stern having gone round to the port and I think you described that as the direction in which the stern is moved if the engines were put full astern and the rudder hard to starboard in the position that I asked you to assume after the vessel had moved forward 50 metres. Now, you agree with that? A. Yes.

10 Q. Now, if at that point the engines remained full astern and with the rudder hard to starboard what does the vessel do next? A. So the rudder is taken to the starboard side always?

Q. The rudder stays full starboard and the engines remain full astern? A. With the wind and the swell it would be difficult to say, but with the wind and swell coming on this way it would probably -

Q. It would continue to move astern, would it, still swinging - the stern still swinging to the port side? (Witness demonstrated with model).

20 Q. So that it draws away, does it, till it has reached a position with a heading of around 240 degrees? A. I would not know clearly because you must take the swell and wind into consideration, but I would think that it would move to the right.

30 Q. In that move that you have described, with the engines full astern and the rudder hard to starboard, wouldn't the effect of the drag of the anchor chain be such as to take the vessel round on the arc of that anchor chain? A. When the anchor is slack, with the movement forward, then it would move a little backwards and then to the side, but once the anchor was taut then the movement would be slow, that would be the anchor chain (indicated).

Q. Assuming for a moment that that pencil represents the anchor chain, the manoeuvre or the movement of the ship that you have described, would it, on the basis of the anchor chain being there, involve a movement in an arc like that on the end of the anchor chain?

HIS HONOUR: That is to port?

40 MR. SHELLER: Q. To port? A. I would not know because I have not done it. Please ask the expert. You would have to ask at a University where they study such things.

(Short adjournment).

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 In the I had been asking you about the result of the "Ibaraki Maru"
 Supreme steaming forward for fifty metres and then going full astern
 Court of with the rudder hard to starboard. Do you recall those questions?
 New South A. Yes, I remember.
 Wales

No.7 Q. Would you agree that if that had been done, the "Ibaraki Maru"
 Transcript / have ended up on a bearing on a heading of approximately 240
 of degrees? A. I don't know clearly, and I would certainly not know
 Evidence whether it would be 240 degrees, but it would move a fair
 before His distance with the bow of this ship moving to the right. 10
 Honour

Mr. Justice Q. Would you agree that with the anchor still out, it would tend
 Yeldham to move on the arc of the anchor chain? A. I don't know that. May
 I give some explanations?

Plaintiffs' Q. Yes? A. (Witness drew sketch on piece of paper.) It should
 witnesses be longer than this. This would be the diagram showing the
 vessel at anchor. Then, engine full astern and the rudder
 TAKATANI hard to starboard. First moving forwards about fifty metres,
 Michihiro and from that position the engine full astern and the rudder
 (cross- to the starboard. At first, because the direction would not
 examined) be certain, it would move at an arc at this angle (indicated). 20
 Before the vessel moves backward, the stern of the vessel would
 swing to the left. As the vessel starts to move backward, it
 would move slowly backward and as it is doing so the stern of
 the vessel would swing widely to the left. Therefore, I think
 it would be quite impossible to make an arc with the anchor
 being the centre of the arc. There is sufficient possibility
 that the chain would break before the anchor would actually
 stand. The chain would not be straight and taut. It is very
 difficult to explain, because it is difficult.

Q. You have finished the explanation that you want to give, 30
 is that right, for the moment? A. It would simply be impossible
 for the vessel to move, say, 180 degrees with an arc of the
 anchor.

Q. Would it be possible to move an arc of ninety degrees?
 A. I don't know that either. And there is a possibility that
 the chain would break in that case as well. But what I
 believe is that it would simply be impossible for an arc to be
 made with the ten shackles of the anchor that was out with our
 vessel.

I would like to add that when the vessel is at anchor 40
 it is in a position that it is stopped, with the power of the
 anchor that has dug into the bottom of the ocean and also the
 power that the chain causes in lying on the bottom of the sea
 bed.

(Two sketches made by witness MFI 3 and 4
 respectively.)

WITNESS: The vessel at anchor relies on the power of the chain
 more than on the power of the anchor.

HIS HONOUR: Q. Do you mean the weight of the chain on the sea bed? A. Yes, that is what I mean.

MR. SHELLER: Q. Looking at the sketch MFI 4 (shown), you show within the circle a series of three positions of the vessel, assuming this manoeuvre or movement to have taken place, is that right? A. Yes.

Q. Does that show the centre of the arc being the point at which the anchor touches the sea bed? (Objected to; withdrawn.)

10 Q. The centre of the arc is the point where the anchor first touches the sea bed, is that right? A. That is right.

Q. So what you are showing in that sketch MFI 3 is the vessel coming round on an arc centered at that point? A. I think that with that point as the centre it would move this way, swinging the stern of the vessel, because at first the vessel would not have the motion of moving backward.

Q. Would the vessel then commence to have the motion of moving backwards? A. As the vessel swings to the left, it would gradually gain the power to move backwards.

20 Q. Would it not then drag the anchor chain that was lying on the sea bed across the sea bed? A. Yes.

Q. So that the centre of the arc would become the point at which the anchor itself was lying on the sea bed? A. No. I think before it reaches that stage the chain would break. I think that it would most definitely break.

Q. If the vessel had followed the positions that you show within the circle on the document MFI 4, in your opinion would it have avoided the "Mineral Transporter"? A. NO, it could not have avoided it, and the accident would have been worse.

30 Q. Would you not agree with me that that manoeuvre that you have described would have taken the "Ibaraki Maru" some distance away from the line that the "Mineral Transporter" followed in that morning? a. I don't know. The chain might have broken or the accident itself might have been worse.

Q. It is right, is it not, that the manoeuvre as shown on the document MFI 4 would have taken the "Ibaraki Maru" some distance away from the line that the "Mineral Transporter" followed that night? A. If the engine was used well beforehand and was done, then it could have been done, but I don't know. An experiment would have to be done to tell for certain.

40 Q. If the engine had been on stand-by at twenty-five past three, I suggest to you that that manoeuvre would have moved you some distance out of the line of the "Mineral Transporter" before 3.42? A. I would not know.

Q. I want to put to you another manoeuvre that I will suggest to you could have been performed on this night. There was nothing

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to prevent the "Ibaraki Maru", if the engines were on stand-by at twenty-five past three, steaming straight ahead for, say, fifty to 100 metres and then proceeding ahead with the rudder full to starboard? (Objected to; withdrawn.)

Q. With the anchor out ten shackles, there was nothing to prevent the "Ibaraki Maru" steaming ahead for fifty to 100 metres and then continuing ahead but with the rudder hard to starboard? a. There would have been much to prevent that.

Q. What would have prevented that? A. Do you think that there would be anybody who would move towards a vessel that was approaching so close that there may be a collision? I would like to ask that question. And regarding this incident, and under the situation where we had been trying to make communication and there was no response, a captain of a vessel would certainly not make a judgment whose result is not clear, and this is the truth that is coming from the captain. 10

Q. Would you put aside for the moment the presence of the "Mineral Transporter" and just look at this as a manoeuvre? With the anchor out ten shackles, you could have gone full ahead for fifty to 100 metres and then put the rudder hard to starboard, could you not? A. With the distance fifty to 100 metres, with such a large vessel as the "Ibaraki Maru" it would be impossible to stop at that distance. But supposing that the "Mineral Transporter" was not there, then such a test could be done, but I do not think that such a test would be done. I do not think it would be done at all. 20

Q. Putting aside altogether the "Mineral Transporter" for the moment, there is nothing impossible about the manoeuvre, is there, of going ahead for fifty to 100 metres with the anchor out ten shackles and then putting the rudder hard to starboard? (Objected to; withdrawn.) 30

Q. What I am suggesting to you is that the "Ibaraki Maru" at 3.25 had its engines at stand-by. Putting aside for a moment the presence of the "Mineral Transporter", there was nothing to prevent the engines being put full ahead with the anchor out ten shackles? A. No, there would have been nothing to prevent it. However, because of the inertia it may have been dangerous. In other words, a vessel cannot be stopped immediately, and if it kept moving there could have been danger. 40

Q. I am not asking you to stop it moving. I am just asking you whether, with the anchor out for ten shackles it would be possible to put the engines full ahead and proceed forwards?
A. Yes, that is possible. But there could be danger to that.

Q. What could the danger be to that? A. With the movement forward too much, the chain could be broken. Generally, when a vessel is to be moved a little, it would be moved at a dead slow speed or at a very slow speed and then stopped.

Q. If you had gone full ahead and then after you had proceeded for fifty to 100 metres you had put the rudder hard to starboard,

there would have been no danger to the anchor chain, would there? (Objected to.)

Q. If you had put the engines full ahead with the anchor out ten shackles, and then at fifty to 100 metres, with the engine still full ahead, you had put the rudder hard to starboard, there would have been no danger to the anchor, would there, at that point? A. I don't know that.

10 Q. If you had put the rudder hard to starboard after you had proceeded forward for fifty to 100 metres, with the engine still full ahead, the vessel would have drawn away to the south west from the line of the "Mineral Transporter", would it not? A. I don't know.

Q. You have no idea? a. There would be some movement. Could you draw what you mean? This is very difficult to answer these questions, because these questions are based on assumptions that are not realistic.

Q. I am just asking you about this as a matter of navigating the vessel. Do you understand that? A. Yes. Go ahead, please.

20 Q. On the diagram that I have drawn that is in front of you, would you assume that the outline of a vessel where I have placed it is where the "Ibaraki Maru" was at 3.25? I am asking you to assume that the anchor is out ten shackles and that the engines are put full ahead and remain full ahead. I am suggesting to you that the vessel, if it proceeded along the line that I have drawn, which I asked you to assume to be between fifty and 100 metres, were then put with the rudder hard to starboard, and I suggest to you that in that situation the track of the vessel would be away to the starboard in the general direction that I have shown on that diagram? A. Can I draw something on your diagram?

30 Q. Firstly, could you answer that question? Is it right, making the assumptions that I have asked you to, and if the rudder is put hard to starboard at the point I have suggested, that the direction of the vessel would be in the direction that I have shown of that diagram? A. Yes, it would move to that general direction. But it would move very slowly and at the same time making a very large arc.

40 Q. Would the anchor chain have some effect upon the way in which the vessel moved? A. Yes, because, using the starboard anchor at that time, it would tighten on the left side.

Q. Would the effect of that be to swing the stern to starboard? A. No, the stern would swing to the left, the port.

Q. I have drawn on there another outline of the "Ibaraki Maru" and a line which is intended to show the anchor chain. Would you not agree that if the direction of the vessel is changed by the rudder to a direction shown there by the arrow, that the effect of the anchor chain would be to draw the bow to port and the stern to starboard? A. If the rudder was hard to starboard

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and it was full ahead, then it would not move towards the port.

Q. What would not move towards the port? A. The bow of the vessel would not move to the port, to the left.

Q. But the stern would swing to starboard, would it not?

A. Yes, that is correct. The stern would move to the port and the bow of the vessel would move to starboard.

Q. Again I show you the track that I showed you before on the diagram in front of you. I suggest to you that having proceeded along the line, with the anchor out and at full ahead, putting the rudder hard to starboard at the point fifty to 100 metres along that line as shown there, the vessel first would change direction as shown on that diagram? A. Yes, that is right. 10

Q. That having proceeded along the line of that new direction for a distance, the effect of the anchor chain would begin to make itself felt? A. After a certain distance it could be felt.

Q. As it could be felt, its tendency as the vessel proceeded on that new direction would be to draw the stern to the starboard? A. At that point moving full ahead, the chain would most likely break. 20

Q. I ask you to assume that the chain does not break? A. I understand what you are saying. But in reality, it could not happen and I could not do or say something that only God could do.

Q. Do you say that when the anchor chain was felt, if it were not to be broken the speed of the vessel should be reduced? A. Yes, the speed would drop.

Q. If the speed were dropped, could you not make use of the anchor chain to swing the stern of the vessel to starboard? A. Please look at what I do. Is that what you are saying, that it would move that way? (Indicated.) 30

Q. No. I am suggesting to you that if you proceed down the line of this new direction and the engines are slowed, it is possible to make use of the anchor chain, the presence or pull of the anchor chain, to swing the stern to starboard? A. If the vessel was hardly moving at all, it could be done. But that would be in the case of a small vessel of, say, 10,000 tonnes.

Q. I am asking you about the "Ibaraki Maru". Do you understand that? A. Yes, I understand. 40

Q. And I am suggesting to you that, with the vessel following that line of the new direction that I have shown you, it would be possible on the "Ibaraki Maru" to make use of the anchor chain, which is laid out, to swing the stern to starboard? A. It would simply be impossible for the "Ibaraki Ma-ru".

Q. You say that it is impossible for the "Ibaraki Maru" to do a manoeuvre with the anchor out to ten shackles, changing direction in the manner that I have suggested and then swinging the stern to starboard by use of the anchor chain. You say that is impossible? A. It is definitely impossible. I am definitely not mistaken.

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Q. I take it that that is a manoeuvre of the sort that you have never yourself done? A. That is correct.

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10 Q. I suggest to you that such a manoeuvre was perfectly possible with the "Ibaraki Maru" and that the effect of it would have been to take you well out of the line of the "Mineral Transporter"? A. I reject that.

Q. I further suggest to you that such a manoeuvre would have enabled you to get the "Ibaraki Maru" from the position where it lay at anchor out of the line of the "Mineral Transporter" in a period of between five and ten minutes? A. Could you make that clear once again, please?

Plaintiffs'
witnesses

20 Q. I have suggested a manoeuvre to you which you say is impossible. I merely want to put this to you: that if such a manoeuvre had been done it could have got the "Ibaraki Maru" out of the line of the "Mineral Transporter" within a period of five to ten minutes? A. I say that that is definitely impossible.

TAKATANI
Michihiro
(cross-
examined)

(Sketch drawn by Mr. Sheller MFI 5.)

Q. You say that if the manoeuvre had been done in the manner I described to you, that is turning away to starboard with the engines full ahead, the anchor chain would have broken, is that right? A. Yes, I think it would have.

30 Q. If that had happened, you would be able to continue on and you would have avoided the "Mineral Transporter", would you not? A. I would have to consider the time and position of the "Mineral Transporter" at that time.

Q. In evidence you said that the engines were in a state of readiness from which they could be brought to stand-by in fifteen to twenty minutes, is that right? A. Yes.

Q. It was perfectly possible, was it not, for you to have your engines in a state of readiness from which they could be brought to stand-by in ten minutes? A. No, it would not have been possible.

40 Q. Do you say that the engines in terms of readiness were either at stand-by or fifteen to twenty minutes to stand-by; there was nothing in between? A. It takes fifteen to twenty minutes for the engine to be completely ready to be started.

Q. What I am putting to you, though, is that it is possible for you to have the engines in a state of readiness whereby they could be at stand-by in ten minutes on the "Ibaraki Maru". That is possible, is it not? A. No, it cannot be done.

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Q. The lubricating oil was not running through the engines on the morning of 10th July, 1981, prior to 3.22, was it?
A. I don't think it was used.

(Luncheon adjournment.)

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Q. Just before the adjournment I had asked you whether on the morning of 10th July prior to your coming to the bridge the lubricating oil had been running through the engine system, and you gave me an answer which was, "I don't think it was used." Do you recall saying that? A. Yes.

Q. Are you not sure what the situation was? A. I cannot say, 10
definitely, because I don't know very much about engines.
But I have heard that the lubricating oil was warmed and
was circulated.

Plaintiffs
witnesses

TAKATANI
Michihiro
(cross-
examined)

Q. In some questions that were put to your company prior to the hearing, they were asked whether as at 300 hours on 10th July, 1981, the lubricating oil was running through the engines of the "Ibaraki Maru" and the answer was "No"? A. Yes.

Q. Do you accept that that was the position? a. Yes, since I have heard.

Q. Would you agree that if the lubricating oil was not running 20
through the engines it would take longer than otherwise to bring them to standby? A. The oil is always automatically warmed. Regarding this, if it was cold then it would take time for it to warm up.

Q. Would you not agree that if the lubricating oil was not running through the system prior to your giving the order "emergency stations", it would take longer to bring the engines to stand-by than if the lubricating oil had been running through the system? A. Taking this situation, even if the lubricating oil was not running through the system, in fifteen to twenty 30
minutes' time it should be that the lubricating oil should be running through the engine and the engine can start.

Q. What I am asking you is this. If the lubricating oil was not running through the system at the time that the call to emergency stations was made, that would be a factor that would increase the time to bring the engines to stand-by? A. Yes, I think that could be said as true.

Q. Because if the lubricating oil is not running through the system, the first thing that has to be done is to start the 40
lubricating system. Would you agree with that? A. Yes, I think so. But I don't know very much about engines.

Q. And that it would be necessary after starting the lubricating oil system to ensure that the oil was right through the system?
A. I think so.

Q. And that is a process that takes at least seven or eight minutes? A. I don't know.

Q. Would you agree that by not having the lubricating oil running through the system, the time to bring the engine to

STAND-by would be increased by eight to ten minutes? A. I just know that it takes about fifteen to twenty minutes to have the engine ready to be used, and that is about all I know.

Q. And it is fifteen to twenty minutes if the lubricating oil is not running through the engines. Would you agree with that? A. Possibly so. But I don't know whether the starting of the engine depends wholly on the lubricating oil or the movement of the peripheral equipment. I cannot make any definite statement on that.

10 Q. Would you be able to agree that if the lubricating oil was passing through the system the engines could have been brought to stand-by in about ten or eleven minutes? A. I think that it might be possible, but I still don't know clearly.

Q. Were you aware of any orders from your company in relation to keeping the lubricating oil system operating in the engines when they were not at stand-by? A. No, I don't know.

Q. You do not know whether there were any orders or not?
A. I don't know the functions of the engine or how the oil runs through the engine.

20 Q. Was this a matter, the lubricating oil system being kept in operation, that you discussed with the Chief Engineer on the "Ibaraki Maru" at any time? A. No, I did not talk about that.

Q. In the engineroom after the call to emergency stations, do you know how many engineers were present? A. Yes. I think four engineers, including the Chief Engineer, were at the engine control room.

Q. Does that four engineers include both officers and others?
A. No, just engineers.

Q. How many other persons were present, do you know? A. Four.

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TAKATANI
Michihiro
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MR SELLER: Q. So there were eight altogether? (No answer.)

Q. Did you give an answer? A. There were four people in charge of the machinery, that is in other words one No. 1 oiler and three oilers.

Q. The chief engineer was there? A. Yes, I think he was there.

No.7
Transcript Q. So you had the No. 1 oiler, three oilers, and the chief engineer.
of Evidence Anybody else? A. First engineer, second engineer, and third engineer.
before His

Honour Mr. Q. Do you mean by that captain that altogether after the call to
Justice emergency stations there were eight people in the engine room? A.
Yeldham Yes, in the engine room, and the engine control room. 10

Q. I want to suggest to you that on this night you could, by having the lubricating oil system operating, have had the engine on 10 minutes to standby: would you agree with that? A. No I cannot agree with that.
Plaintiffs' witnesses

TAKATANI Q. And I suggest to you that in the circumstances of that night,
Michihiro good practice would have required you to have done so? A. Judging
(cross- from the result, I wish that everything had been on standby.
examined) And thinking back from after the collision I wish that everything was at standby to be ready. However, judging from the condition of the weather, the weather chart, and the crew of our vessel, there was no need to have a special situation where the engine was ready, and it was also sufficient to just have one person, Toshio Sato, on watch and this is what the captain judged. 20

Q. When you were describing the swell yesterday, you said the height was about 3.5 metres, is that correct, that the height of the swell was 3.5 metres? A. It is not an exact figure, it is an approximate figure. But because it was a moderate swell I would think that it was about 3.5 metres.

Q. Three point five metres is quite a big swell, isn't it? A. No. It is a moderate - about a moderate swell. 30

Q. In any event captain, in making this judgment that you have referred to, you took account, did you, of that swell? A. Yes of course I took it into consideration.

Q. I want to ask you again about the vessels at the point of collision. Is it correct that on the first collision the starboard side of The Mineral Transporter came into collision with the port bow of The Ibaraki Maru? A. Yes that would be correct.

Q. At that point The Ibaraki Maru was still heading about 142 degrees and the Mineral Transporter about 200 degrees? A. Yes, approximately. 40

Q. The Mineral Transporter then moved astern down the port side of The Ibaraki Maru? A. This was not using the engine, but while coming into shock this was naturally going towards the port side.

Q. And made two collisions with the port side when the vessels were roughly parallel? A. Can I describe the situation using my hands?

Q. Just before you do that captain, would you agree that after the Mineral Transporter moved astern down the port side of The Ibaraki Maru it made two collisions with the port side when the vessels were roughly parallel? A. No, there was no situation where the two vessels were parallel to each other. They were a little bit wider apart than parallel.

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Q. You told us yesterday that by 3.36 you had let out 13 shackles, is that right, of the anchor? A. Yes it is.

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Q. And the anchor chain was 14½ shackles long, is that right? A. Yes.

10 Q. So you had a further shackle and a half available to let out?
A. Yes.

Q. And when you communicated with the Master of The Mineral Transporter he called upon you to slack chain, did he not? A. Yes.

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witnesses

Q. Do you recall at approximately what time that was? A. It was after we slackened the chain to 13½ shackles.

Q. You had slackened the chain to 13 shackles, had you not? A. Yes that's right, 13 shackles.

TAKATANI
Michihiro
(cross-
examined)

Q. It took you three minutes to do that? A. Yes.

20 Q. Would you agree that it was shortly after you had completed that slacking of chain that the Master of The Mineral Transporter called upon you to slack chain? A. Yes I think so.

Q. Did your radio operator say to the Master of The Mineral Transporter that you had no more shackles? A. Yes.

Q. And that was not true, was it? A. It is true.

Q. You had a further one and a half shackles, did you not? A. We cannot let out the whole thing.

30 Q. Why couldn't you let out the further one and a half shackles captain? A. With this vessel the chain is rooted in the chain locker and from there it goes up the windlass and then goes to the hawsepipe. It goes up about 15 metres. So from the root to the hawsepipe it is about 25 metres, which is about one shackle.

Q. Captain, you would measure the shackles out from the deck, would you not? A. Generally we say 10 shackles in water, which means that from the surface of the water it is 10 shackles. And if it is from the hawsepipe then it is 10 shackles from the hawsepipe. And if it is 10 shackles from the windlass, then we say it is 10 shackles from the windlass. And in our case all vessels have a shackle closer to the anchor. So when we say 10 shackles or 10 shackles in the water, then it actually means 10½ shackles in the water.

40 Q. You told me only a few minutes ago, did you not, that after you had let out the 13 shackles, you had 1½ shackles left to let out; you told me that, didn't you? A. I would like to make a

Part 1. correction. It actually is only one shackle.

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Plaintiffs witnesses

TAKATANI Michihiro (cross-examined)

Q. You had one shackle left to let out, did you? A. From the hawse pipe through the windlass to the root was one shackle.

Q. Captain, you had one or one and a half shackles left to let out, did you not? A. No. It was let out as much as it can. It cannot be done.

Q. Why did you say a short while ago that you had one and a half shackles left to let out? A. I would like to make a correction on that. I realized that there is half a shackle towards the front.

Q. Of course Captain if you had let out another one and a half shackles when you were called upon by the Master of the Mineral Transporter to slack chain, there is a good chance that the Mineral Transporter would have missed you, is that not right? A. It could not have been slackened more with an anchor of 14½ shackles with 13 shackles out from the hawsepipe; there would only have been maybe a few metres left and it could not have been slackened any more.

Q. Would you look please at this Ex. K (shown). Was it the practice at that time to keep the engine log book written up in pencil? A. Yes. That has been done from long ago. 20

Q. If you look at the entry "0340 SB engine", would you agree that it appears that somebody had rubbed out some figures and written 40 over them? A. Yes I can see that.

Q. You did not write those figures in the engine log book, is that right? A. That's correct.

Q. I take it that you cannot give any explanation for that? A. I think - I feel that this is correct.

Q. You do not know when that was rubbed out and the new figures written in? A. I don't know.

Q. Was it the information from that log book that led to the insertion of the time at which the engine was at standby in the deck log? A. That is possible. 30

Q. I want you to look please at this chart with photographs annexed (shown) (approached). Is that your writing there, "This copy is true and correct"? A. Yes. It is that this copy is not any different from its original.

Q. That is intended to show, is it, the various points of damage on the hull of the Mineral Transporter? A. Yes.

Q. Did you take these photographs? A. Yes.

Q. I take it that you inspected the Mineral Transporter's hull at some time after the collision, did you? A. I had something to do and on the way back I went to the Mineral Transporter to get some records and there took some photographs. 40

Q. In the course of doing that Captain, you observed that so far as the starboard anchor on The Mineral Transporter was concerned, only the shank was left? A. But I think I already found - I already knew that on 10th July when it became light and I used binoculars to see the vessel.

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(Chart with annexed photographs m.f.i.6)

10 Q. YOU gave some evidence and you said that if the anchor of The Mineral Transporter had been dropped at a point three hundred metres for'ard of your bow, the Mineral Transporter would have stopped before it came into collision with you. Do you recall giving evidence to that effect? A. Yes.

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Q. Wouldn't the effect of doing that have been to have risked turning the stern of The Mineral Transporter on to the bow of The Ibaraki Maru? A. With the time taken until the collision being lengthened by that then the engine could have been used.

Plaintiffs'
witnesses

Q. Whose engine are you referring to Captain? A. The engine of The Mineral Transporter.

TAKATANI
Michihiro
(cross-
examined)

20 Q. But would not the situation be that if the engine was not used or was not available for use within the time, the effect of anchoring at 300 metres could well be that the stern of The Mineral Transporter would have struck the bow of The Ibaraki Maru? A. I think that judging from the condition in the area, because the Mineral Transporter was using three shackles of starboard anchor, if further they used the power of the port anchor then it would have stopped.

Q. What I want to suggest to you Captain is that any attempt by The Mineral Transporter to anchor later than 400 metres from the point of collision would not have avoided the collision? A. If there was 400 metres then that is sufficient.

30 Q. And I suggest to you that anything less than 400 metres would not have been sufficient? A. I think that if there was 300 metres that would have been sufficient. But how much is-how much did The Mineral Transporter have of its anchor out is a question.

40 Q. Do you mean by that that the question is whether it let out three shackles or four shackles; is that the question you refer to? A. If the anchor on the starboard side was under normal - about the normal length, this is referring to the chain whose shank had been broken off, if with that condition, the port anchor was drawing three shackles then judging from the condition of the sea in the area it would have stopped.

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MR. SHELLER Q. Was there not a danger of the port anchor, if it was dropped from the Mineral Transporter at 300 metres, fouling the anchor chain of the Ibaraki Maru? A. It would have been very close, but at 300 metres with our vessel with anchor out 10 shackles, I would say that it would have missed it.

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Q. If the Mineral Transporter's anchor had fouled the anchor of the Ibaraki Maru, would that have increased the chances of collision?

INTERPRETER: May I ask for clarification, please?

10

HIS HONOUR: Yes.

Plaintiffs'
witnesses

WITNESS: The chains would not necessarily tangle with each other, but if they did touch each other then it would be somewhat dangerous.

TAKATANI
Michihiro
(cross-
examined)

MR. SHELLER Q. You gave some evidence about what you said would be the consequence if the Captain of the Mineral Transporter had given the order full astern on the engine shortly before the collision, do you remember giving that evidence? A. Yes, I remember.

Q. Would you agree that if the engines had gone full astern 20 on the Mineral Transporter shortly before the collision and you had let out another one and a half shackles of anchor the collision could have been avoided? A. No, I don't agree.

Q. You gave some evidence yesterday when I referred you to the radar log (p.28) - you said in answer to a question I put to you, "The Quartermaster noticed the situation at 3.18 so based on that time it was written 3.18" and that was the entry in the radar log. Firstly, as to that, that means, does it, that from the time that the Quartermaster noticed the situation at 3.18 four minutes, at least, elapsed before any action was taken to call the crew to emergency stations? (objected to: not pressed). 30

Q. When Mr. Sato spoke to you over the telephone while you were in your cabin on this morning, did it occur to you to give any order to Mr. Sato to call the crew to emergency stations? A. While I was in my bedroom?

Q. When he spoke to you on the telephone did it not occur to you to order him to call the crew to emergency stations? A. I felt that the first thing I had to do was to go up and see the situation. 40

Q. Do you not think it would have been prudent to inquire from him what the situation was and give him an order before you went to the bridge? A. At that time I had my mind

set on going and seeing what the actual situation was.

Q. Is it correct that when you were informed of the time at which the Ibaraki Maru would berth at Port Kembla the date you were given was 20th July, 1981? A. Could you please repeat the question?

(Mr. Gleeson indicated that matter could possibly be agreed on in the morning).

RE-EXAMINATION:

10 MR. GLEESON Q. Yesterday afternoon you were asked a number of questions (p.19) about the observation you would have made if you had been on the bridge of the Ibaraki Maru at about 3 o'clock or 3.05 on the morning of 10th July, do you recall those questions? A. Yes, I remember.

Q. I just want to refer you to some questions and some answers you gave to get you to clear up one aspect of the matter? A. Yes.

20 Q. You were asked this question: "Q. You said, did you not, that if you had been on watch you would have observed the Mineral Transporter drifting shortly after three o'clock, is that right? A. Yes." Then you were asked the question, "And you observed it drifting towards your position?" And your answer was "Yes, if I had used the radar." Then you were asked the question, "You would have used the radar if you had observed the Mineral Transporter drifting", and you answered the question "Yes." So that on one occasion you said if you had used the radar you would have observed the Mineral Transporter drifting and then you said if you had observed the Mineral Transporter drifting
30 you would have used the radar. (objected to).

Q. On one occasion you said if you had used the radar you would have observed the Mineral Transporter drifting towards your position and on another occasion you said you would have used the radar if you had observed the Mineral Transporter drifting. Now, what I want to ask you about those questions and answers is this: if you had been on the bridge of the Ibaraki Maru at say 3.05 on the morning of 10th July, in normal circumstances and assuming that
40 you had not noticed anything untoward, would the radar have been operating? A. The radar is used sometimes and sometimes it is not used.

Q. If the radar had not been in use at 3.05 when you were on the bridge and you had been keeping watch, how long would it have taken you from your visual observation to detect that the Mineral Transporter was drifting from its position? (objected to: allowed) A. I think about 20 to 25

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Michihiro
(re-
examined)

minutes. It depends on the situation and I can't give a definite answer, but with a general watch it would take about 20 to 25 minutes.

Q. If the radar had been turned on and you had been looking at the radar screen, how long would it have taken you to observe that the Mineral Transporter was drifting? (objected to: allowed) A. Do you mean that I am constantly looking at the radar?

Q. Yes, if you were constantly looking at the radar how long would it have taken you to observe the drifting of the Mineral Transporter? A. It would depend on the surrounding situation, but in about 15 to 20 minutes I may be able to tell that it may have started to drift. 10

Q. Is it normal practice for a person on watch on a vessel such as the Ibaraki Maru in circumstances such as this to constantly watch a radar screen? A. Depending on weather conditions, the person in charge would check about every thirty minutes or according to the various situations.

HIS HONOUR Q. How many vessels were there at anchor this night within a mile radius of your vessel? A. May I look at my document? 20

Q. Yes, just approximately will do? A. Within one mile, did you say?

Q. Approximately a mile, yes? A. About five.

MR. GLEESON Q. That did not include the Mineral Transporter or the Sanko Cherry? A. This does include it, it is about 1.2 mile.

Q. Yesterday my learned friend asked you some questions about what would have happened if the engines of the Ibaraki Maru had been on standby at 25 past 3, do you recollect that? A. Yes. 30

Q. My learned friend asked you a number of other questions about the same matter this morning, do you recollect that? A. Yes.

Q. When my learned friend asked you his questions yesterday afternoon he didn't make any reference to the anchor of the Ibaraki Maru, but this morning in the questions that he asked about that matter he made extensive reference to the anchor, do you recollect that? A. Yes.

Q. In answering one of the questions this morning you gave some information about the anchor and I want to ask you for some further detail about that? A. Yes. 40

MR. GLEESON: Q. (Approached) By reference to the photograph which is Ex.N can you indicate to his Honour the location of the gear which operates the starboard anchor? (Witness indicated.)

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MR. GLEESON: The witness indicates a point on the deck.

Q. Can you tell his Honour this: I want you to assume that the anchor is down and in the water to the extent of ten shackles?
A. Yes.

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10 Q. Assume, first of all, that the appropriate crewman or crewmen are in a position at the gear which operates that anchor to bring the anchor in. Can you tell his Honour what is involved in the operation of bringing the anchor in and how long that would take? (Objected to; allowed.) A. Under normal conditions it would take about somewhere between 1.5 to 2.5 minutes to wind one shackle or 25 metres of the anchor but if there was wind from the front or tide from the front then engine must be used. Again unless that is done it is difficult to wind the anchor, therefore more time would be needed.

Plaintiffs'
witnesses

20 Q. How many crewmen would be involved in the operation of winding in the anchor? A. Generally at the minimum three would be necessary.

TAKATANI
Michihiro
(re-examined)

Q. What is the distance from the bridge to the bow of the Ibaraki Maru?

INTERPRETER: May I ask for clarification, please? (Permitted.)

WITNESS: A. From the front of the bridge to the bow on the deck, about 220 metres.

30 MR. GLEESON: Q. As we can observe from the photograph there is various equipment on the deck. What would be a reasonable time to allow between giving an order that the anchor be brought in and the arrival of the necessary crewmen at the machinery to carry out that order? A. That would depend on whether it is during the day or at night, whether the crew is awake or asleep.

HIS HONOUR: Q. If they were at emergency stations already, they would be there at the anchor, would they not? A. I think about eight to nine minutes would be needed.

40 MR. GLEESON: Q. Assume at 3.23 an order was given for the crew to go to emergency stations. What would be a reasonable time to allow for the crew to get to the anchor in order to operate it? A. I think about eight or nine minutes. I'm not sure but about that.

Q. What would be the effect on the movement of the vessel Ibaraki Maru of winding in the anchor? A. It would move forward.

Q. In the direction of the Mineral Transporter? A. Yes, of course.

Q. And what would be the distance of the forward movement caused by winding in the anchor? A. It would be very slow, the speed that it is being wound with the windlass, and some time it cannot be wound unless the engine was used.

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Michihiro
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Q. I think your evidence was that at about 3.22 the Mineral Transporter was located at a distance of about half a mile - was that half a mile from the bridge of the Ibaraki Maru or the bow of the Ibaraki Maru? A. From the bridge.

Q. What would then have been the distance of the Mineral Transporter from the bow of the Ibaraki Maru at that point of time? A. According to my calculations, about 700 metres from the bow.

HIS HONOUR: Q. What is the distance from the bridge to the bow? A. About 220 metres. 10

MR. GLEESON: Q. I want you to assume that the Mineral Transporter was drifting towards the Ibaraki Maru at a speed of approximately 1.5 miles per hour. Can you make that assumption? A. Yes.

Q. On that assumption how far from the bow of the Ibaraki Maru would the Mineral Transporter have been at 3.25? A. About 570 metres.

Q. How much towards the Mineral Transporter would the act of drawing in the anchor of the Ibaraki Maru have brought the Ibaraki Maru? A. I don't know.

Q. Can you give an approximation? A. If it was drawn and when would it be drawn? 20

Q. Assuming that the order for the crew to go to the station to draw the anchor was given at 3.25 so that at 3.25 the crew would commence to move towards the anchor and then upon arrival there draw in the anchor? A. Does that mean that the crew has to go to the front of the vessel in one minute?

Q. Let me ask you to assume that at 3.25 the crew is at the anchor, at their stations at the anchor and at 3.25 the order is given to draw in the anchor. How far away do you say at that point of time, on the assumption I asked you to make, the Mineral Transporter would have been from the bow of the Ibaraki Maru? A. At 3.25 it would have been about 570 metres away. 30

Q. Assume that the Mineral Transporter was drifting at the rate of 1.5 miles per hour towards the Ibaraki Maru and at 3.25 the crew being at their anchor stations commenced to heave in the anchor of the Ibaraki Maru. Would that process have been completed before the Mineral Transporter collided with the Ibaraki Maru? A. Wait one moment, please. At best it would take in until about 3.45 to complete the winding of the anchor.

Q. Yesterday you were asked some questions about having an officer on watch when the vessel was lying at anchor at sea. Do you recall those questions? A. Yes, I remember. 40

Q. And you were asked some questions about the observation that you were, or another officer might have made, do you recollect that? A. Yes.

Q. Were you intending to suggest in your evidence that you or another officer would have better powers of observation than Quartermaster Sato? (Objected to.)

Q. On p.19 you were asked about the observations that you might make and you said in making that observation you would have the benefit of your training as an officer in observing other vessels, and you answered the question, yes. Do you recollect that? A. Yes.

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Q. What did you understand the questioner to be referring to when he talked about the benefit of your training as an officer in observing other vessels? A. I'm not quite sure about the word "benefit".

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10 Q. What experience did Quartermaster Sato have in observing other vessels? (Objected to.)

Q. From your knowledge at the time what experience did Quartermaster Sato have in observing other vessels? (Objected to as not arising from cross-examination; allowed) A. At least twentyone years of experience, so over twenty years of experience in doing that.

Plaintiffs'
witnesses

Q. What was your view at the time of the competence of Quartermaster Sato to keep watch on the vessel? A. I trusted him sufficiently.

TAKATANI
Michihiro
(re-examined)

20 Q. It was put to you that it was reckless of you not to have an officer on watch and you disagreed with that suggestion. Can you give his Honour your reason for disagreeing with that suggestion? (Interpreter sought clarification.) A. I go up during the night until twelve occasionally and on the 9th, as I said to you yesterday, the weather forecast was as follows: There was to be heavy swell but the low was moving to the east and where we were the wind, the force of the wind was four to five and it was a sou'westerly wind and the swell was moderate. (Interpreter sought further clarification.) With the weather condition as such we would not have expected the vessel to drift because of wind, that was not a consideration, and also if there was a distance of 1.2 miles then that would have been sufficient; secondly, I felt that the Quartermaster was very competent and also the engine was ready to be operated in 15 to 20 minutes. These were the conditions. Furthermore, the condition of the sea at night was not any different on that night from seven o'clock of the 10th July and a photo has been taken of this weather or the ocean condition and if you would look at this photograph I am sure that you would understand the condition of the sea at that time.

40 Q. It was put to you on p.27 in relation to your orders on Ex.C, your orders to the Watch, that it was reckless for you to leave an order which had the result that there might be nobody on the bridge for periods of up to 25 minutes and you said that you did not agree with that suggestion. Can you give his Honour your reasons for not agreeing? A. This was decided according to the Captain's judgment, based on the weather condition of the sea and the fact that the Quartermaster was very competent.

(Witness stood down.)

(Par.7 of the amended statement of claim altered to read 0349 instead of 1045 as appeared.)

50 (Further hearing adjourned to 10 a.m. Wednesday, 18th May, 1983.)

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KG:FB:6

Part 1 IN THE SUPREME COURT)
In the OF NEW SOUTH WALES) 934 of 1981
Supreme ADMIRALTY DIVISION)
Court of
New South
Wales

CORAM: YELDHAM J.

No.7 MITSUI-OSK LINES & ANOR. v. THE SHIP "MINERAL TRANSPORTER"
Transcript of Evidence

before His Honour Mr. Justice Yeldham

THIRD DAY: WEDNESDAY 18TH MAY 1983

MICHIHIRO TAKATANI
On former oath

Plaintiffs' witnesses

(through interpreter) 10

RE-EXAMINATION CONTINUED

TAKATANI
Michihiro
(re-examined)

MR. GLEESON: What is the turning circle of the Ibaraki Maru?
A. It is different depending on whether it is the starboard or the port. I don't remember clearly, but it is around 600.

HIS HONOUR: Around 600 what? A. For the left 618 and for the right 595.

MR. GLEESON: What? A. Metre.

Q. You were asked some questions yesterday about manoeuvres that it was suggested to you you might have performed in order to avoid collision with the Mineral Transporter, do you recollect those questions? A. Yes.

Q. Is it possible for a vessel the size of the Ibaraki Maru to make a controlled movement forward for a distance of 50 metres?
A. To move forward 50 metres, that is not possible.

Q. Do vessels such as the Ibaraki Maru and the Mineral Transporter normally carry both a port and a starboard anchor? A. Yes, that's right.

Q. Is there a danger involved in having a vessel such as the Ibaraki Maru in a position where it is moving over the anchor chain or moving above the anchor chain?

30

HIS HONOUR: Are you referring to its own chain?

MR. GLEESON: Yes.

WITNESS: There is no danger. But if there is too much speed then it is scary.

MR. GLEESON: You were asked a number of questions about two different manoeuvres that it was suggested to you could have been performed by the Ibaraki Maru, and, in answering those questions, you were asked to assume that the Mineral Transporter

was not in the vicinity of the Ibaraki Maru, do you recollect that? A. Yes, I remember.

Q. I would like you now to assume that at the time each of those manoeuvres was being performed the Mineral Transporter was drifting towards the Ibaraki Maru in the way it was, in fact, drifting on the occasion in question. How would the presence of the Mineral Transporter in those circumstances affect the possibility or safety of the two manoeuvres you were asked about? A. In doing what exactly? I don't quite understand.

10 Q. Do you remember the first manoeuvre that was put to you which, as I recollected, was as follows: that your anchor was out ten shackles, your engines were set full ahead for a distance of fifty metres and you would then swing on an arc created by the anchor to starboard or in a southwesterly direction, do you recollect that manoeuvre being suggested to you? A. Yes, I remember.

Q. You were asked some questions about that manoeuvre upon the assumption that the Mineral Transporter was not there. A. Yes.

20 Q. I want to add to that the assumption that the Mineral Transporter was there and was drifting towards the Ibaraki Maru as it was on the occasion in question. A. Yes.

Q. What effect does the making of that additional assumption have upon your views as to the safety or possibility of the manoeuvre? A. A large vessel cannot do such a manoeuvre at all.

FURTHER CROSS-EXAMINATION (By leave)

MR. SHELLER: Yesterday you were asked some questions about the time that would be necessary to allow the crew to get to the anchor in order to operate it, do you remember being asked about that? A. Yes, I remember.

30 Q. In order to operate the anchor, members of the crew would have to go to the fo'c'sle head, is that correct? A. Yes.

HIS HONOUR: Who is the officer? The second or third officer goes, I suppose, does he? A. The Chief Officer, the Boatswain, carpenter and the sailor go.

MR. SHELLER: Is there communication by telephone or radio between the bridge and the fo'c'sle head? A. Yes, there is a microphone.

Q. In fact, it was by that means that you ordered the crew at the fo'c'sle head to let go three shackles of anchor chain at 3.33? A. Yes.

40 Q. Amongst the people at the fo'c'sle head at 3.33 were the Chief Officer Keaki, Bosun Marita and Able Seaman Komatsu? A. Yes.

Q. In answer to some questions that were put to your company, Matsuoka, it was said that between 3.24 and 3.45 those three members of the crew were on watch on the fo'c'sle, do you accept that as the position?

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TAKATANI
Michihiro
(re-examined
and further
cross-
examined)

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A. At 3.23 "all crew to emergency stations" was called and until 3.33 there were people who were at their stations or on the way to the fo'c'sle and at 3.33, that was a time when everybody just arrived at their emergency stations.

Q. Wasn't this the situation, that by 3.24 or shortly thereafter these three members of the crew were at the fo'c'sle head? A. It takes time to get to the stations and at 3.24 it was that everyone was on their way to getting to their stations and the meaning is that at 3.33 the emergency stations at the front of the vessel was completed. 10

Q. Would you not agree that it would have taken those three members of the crew considerably less than eight or nine minutes to get to their stations at the fo'c'sle head? A. I think it take about that much time.

Plaintiffs'
witnesses' Q. Would it take the same time for the crew that went to the engine room to get to the engine room? A. No, it wouldn't take that long for the engine room.

TAKATANI
Michihiro
(further
cross-
examined
and
retired)

Q. How long for the engine room crew? A. About two to three minutes.

(Witness retired and excused) 20

HIS HONOUR: I note that in accordance with r.102 evidence by consent has been given by Captain Kim, the Master of the "Sanko Cherry" by affidavit and it will be noted that it is common ground that he is ill and for that reason he is not here for cross-examination.

(Affidavit of Captain Jong Seob Kim sworn 12.5.83 noted.)

HIS HONOUR: I will note Mr. Sheller's objection to the last sentence of par.4 and to par.10. I will admit it subject to objection and determine, if necessary, what I should do about it later. 30

EDWARDS
Kenneth
Frederick
(examined)

KENNETH FREDERICK EDWARDS
Sworn and examined

MR. GLEESON: Is your full name Kenneth Frederick Edwards?
A. That's correct.

Q. Do you live at 44 Rathowan Parade, Killarney Heights? A. That's correct.

Q. Are you a marine surveyor employed by the Commonwealth Department of Transport? A. Yes, that's correct.

Q. Were you so employed in July of 1981? A. Yes, I was.

Q. What are your qualifications? A. I held a Master's Certificate, Foreign Going, at the time of the incident. Since the incident I have been overseas and obtained a Master Class 1 Square Rig Sailing Ship Certificate.

Q. Have you been a Sydney Pilot for ten years? A. Yes, prior to my present position I was a Sydney Pilot.

Q. I think on 16th July 1981, being aware of an incident that had occurred on 10th July 1981, you attended upon the vessel The Mineral Transporter when it arrived in Sydney for the purpose of having repairs carried out? A. I was so instructed by my Department to do so.

Q. You went to the vessel? A. That's correct.

10 Q. There you met the Master of the vessel? A. Yes, that was the Master of the vessel.

Q. Also the gentleman from the ship's agent, what was his name? A. Killick.

Q. You made certain observations of the vessel, The Mineral Transporter? A. Yes, I did.

Q. And you had a conversation with the Master in the presence of Mr. Killick? A. That's correct.

Q. And you reduced to a written form information that you were given by the Master about the incident? A. With the master's permission, I did do so.

20 Q. You then had the written statement signed by the Master in the presence of yourself and Mr. Killick? A. Yes, I did.

Q. You also signed the statement? A. Yes.

Q. And Mr. Killick signed the statement as witness? A. That's correct.

HIS HONOUR: Did you use an interpreter, or was there no problem? A. I didn't need to use an interpreter, the English of the Master was quite sufficient to understand the questions.

MR. GLEESON: Do you have the original of the statement there amongst your papers? A. Yes I have.

30 Q. I know that attached to it are some other statements of other people, but I do not want those at the moment. Could you just produce for the Court the statement signed by the Master of the Mineral Transporter and yourself and Mr. Killick? A. The other information which I am removing from here relates to the vessel's particulars and to the anchorage position as I found.

Q. Just the actual statement, could you produce that? (Witness complied).

(Above mentioned statement admitted without objection and marked Ex.O.)

40 Q. Do you see that included in that statement is the statement on the second page by the Master that the engines were put to full stern? A. That's correct.

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EDWARDS
Kenneth
Frederick
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Q. What, in your opinion, is the appropriateness of that action, or was the appropriateness of that action in the circumstances as described in the statement? A. I did ask the Master at the time as to why he had put his engines full astern. It was his opinion.

Q. I am sorry, I am asking you what your opinion is. I am not asking you now about any conversation you had with the Master. I am just asking you to express your opinion of the appropriateness of the Master's action in putting the engine to full astern. A. I feel it would have been an inappropriate action at the time.

Q. Why? A. Well, I feel that he was putting the vessel more at risk by putting his engines full astern. 10

CROSS-EXAMINATION

Plaintiffs'
witnesses

EDWARDS
Kenneth
Frederick
(examined;
cross-
examined)

MR. SHELLER: Were you aware that a subpoena had been addressed to the Department in this matter? A. Yes, I was.

Q. Were you aware that a subpoena had been directed to the Department by the plaintiff? (Objected to; rejected).

Q. Are you aware of the Intergovernmental Maritime Consultative Organisation Resolutions and Recommendations relating to the navigational watchkeeping? A. Yes, I am.

Q. You are aware of the circumstances of the Ibaraki Maru and the Mineral Transporter prior to this collision on the 10th July? A. Yes. 20

Q. You are aware, I take it, of the weather conditions that then obtained? A. Yes.

Q. And of the relative positions of the two vessels and of other vessels in the area on the morning of 10th July? A. Yes.

Q. In your opinion, in those circumstances, should a constant visual watch have been maintained on the Ibaraki Maru? A. According to the Master, a constant visual watch -

Q. No, would you please answer my question. 30

HIS HONOUR: You are not being asked whether it was, in fact, kept or not. But in your opinion as to whether it should have been kept. A. Is this in relation to the I.M.A. document?

MR. SHELLER: I am just asking you whether, in your opinion, a constant visual watch should have been kept in the circumstances as you know them on the Ibaraki Maru on this morning of 10th July 1981?

HIS HONOUR: I think you are being asked as a matter of good seamanship.

MR. GLEESON: My learned friend, with respect, has introduced the problem by, for some reason, making mention of these regulations and then he is not making - 40

HIS HONOUR: Mr. Sheller, are you asking as a matter of good seamanship?

MR. GLEESON: And regardless of the provisions of the recommendations.

(Discussion continued)

HIS HONOUR: You want the witness for the moment to forget the regulations and deal with the question of good seamanship?

MR. SHELLER: Yes.

10 HIS HONOUR: Do you understand that? A. Yes, I do. Yes, it would be prudent to have kept a constant watch.

MR. SHELLER: Would it have been prudent to have/
an officer on watch at all times during the night?

HIS HONOUR: You mean an officer as opposed to somebody else, Mr. Sheller?

MR. SHELLER: Yes.

WITNESS: I think that entirely depends on the Master. It is purely his decision. He is responsible for the safe conduct of the vessel.

20 MR. SHELLER: Would you have had an officer constantly in watch on the situation as you know it on 10th July 1981? (Objected to).

HIS HONOUR: As long as you understand Mr. Sheller is drawing a distinction between an officer and some other member of the crew. A. To answer that question I think I have to go into the relevancy between different country type vessels and the way they operate that vessel under those circumstances.

30 MR. SHELLER: Perhaps I can just put the question again, if it is not plain. What I am asking you is whether, as a matter of prudent seaman-like practice, you, if you had been in the position of the Master of the Ibaraki Maru, and a vessel of that size and the situation as you know it on 10th July, would have had an officer on watch throughout the night? (Objected to: question withdrawn.)

Q. Does a constant visual watch involve somebody constantly being present on the bridge? A. Constant visual watch could mean somebody being present on the bridge or around the decks at any particular time.

Q. What, looking out at all times? A. Within the meaning of vigilance, looking out at all times.

40 Q. In your opinion, should there be any time when there is no one present on watch on the bridge at night in circumstances such as you know them off Port Kembla on this night? (Objected to: question withdrawn.)

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Kenneth
Frederick
(cross-
examined)

Q. I want you to assume that on this night there was one person, a quartermaster of 20 years experience, on watch and no one else, do you understand that? A. Yes, I do.

Q. And that from time to time he was required to go on rounds which involved him going from the bridge for periods of up to 25 minutes and those rounds involved him going to the fo'c'sle, forward end of the vessel and going inside the vessel, do you follow that? A. Yes, I do.

Q. That, of course, would inevitably mean that for periods of up to 25 minutes he would be away from the bridge so that there would be nobody physically present on the bridge. Now, what I want to ask you, in your opinion, would that be good practice on the part of a Master with a vessel like the Ibaraki Maru lying in the situation it was on 10th July 1981? A. If the Master had full confidence in the watchkeeping abilities of the person concerned, I think it would be permissible under those circumstances.

Q. Even though he was a quartermaster and not an officer? A. Yes.

Q. And even though that involved him leaving the bridge for periods of up to 25 minutes? A. Providing he was not inside the vessel for any lengthy period of time and was able to observe the situation from the decks, yes.

Q. If he was inside the vessel, during the period that he was inside the vessel he would be unable to maintain a visual watch? A. During that period of time he would.

Q. Were you aware or are you aware of the weather conditions as forecast by the Bureau of Meteorology on that night? A. No, I was not.

Q. There was a warning issued by the Bureau of Meteorology, Sydney at : 05.30 GMT on 9th July 1981, "A low 984 millibars near 42 degrees south" -

MR. GLEESON: I would ask if the witness is going to be asked about that he be shown the document.

MR. SHELLER: (Exhibit J shown to witness). What I have been reading is the second item on that page, which is headed "Warning issued by the Bureau", do you see that? A. Yes.

Q. Which is at 05.30 GMT, which I think at that time was 15.30 how local time? A. Correct.

Q. "A low 935 millibars near 42 degrees south, 164 degrees east is moving slowly east. Area affected New South Wales water south at 34 degrees south and east of 156 degrees east, southwest winds force 7 to 8 are expected in the area with very rough seas and heavy swells. The area of gales to move slowly east." In addition to that, we have been told by the Master that there was a swell of approximately 3.5 metres at the time that he turned in at midnight. Now, bearing those - (Objected to: allowed).

Q. In his evidence the Master said the wind conditions at the time he went to bed (which was at about midnight) was a south-westerly wind of about 4 to 5 - that is Force 4 to 5 - the sea conditions were that the swell was southeasterly and I think the height was about 3.5 metres. Taking account of that warning and taking account of the sea conditions and the wind conditions as I have just read them to you, do you think that it was prudent for the Master to turn in at midnight leaving one man, namely Quartermaster Sato, on watch? (Objected to: allowed).

10 A. Do I have to give a straight yes or no?

No,

HIS HONOUR: You answer it in your own way. A. I did pose the question to the Master about an officer being on the bridge at the time - (objected to by Mr. Sheller).

Q. When I say you can answer it in your own way, what Mr. Sheller wants is your view about it and you can give that without saying yes or no, not really what the Master said to you, just express if you can your own view as to the wisdom or otherwise in those circumstances of leaving the quartermaster on the deck. A. It would have to be my view then, in that respect, as regards my report, that I consider that an officer should have been on the bridge at the time.

20

MR. SHELLER: Would you agree that as well as an officer there should also have been another member of the crew? A. If there had been an officer, the quartermaster would have been in attendance as well.

Q. Then the quartermaster would have gone on rounds while the officer remained on the bridge? A. That would be correct.

Q. The Master of the Ibaraki Maru described the duty of the crew member who went on rounds as being to check the anchor at the bow of the vessel, to check the engine room and also to check fire or light outlets. He said that that would take about 20 to 25 minutes. If those were, in fact, the duties of the member of the crew who went on rounds would you agree that it was imprudent to leave him alone to maintain watch during the night? A. I think I have already indicated that there possibly should have been another person on watch.

30

HIS HONOUR: You mean in the light of the weather forecast? A. Yes, in the light of the weather forecast.

40

MR. SHELLER: As a result of your investigations, did you form a view which led you to the comment that - in your opinion - (Objected to: allowed).

HIS HONOUR: I will allow that question, but I will have it noted that unless the factual material upon which the view is based is established in this case I propose to disregard that view.

(Mr. Sheller indicated he would not pursue the above question in view of his Honour's remarks.)

MR. SHELLER: The Ibaraki Maru was equipped with radar, you are aware of that, I take it? A. Correct.

Plaintiffs'
witnesses

EDWARDS
Kenneth
Frederick
(cross-
examined)

Q. Again, in the circumstances as you know them about the Ibaraki Maru, on the night of 10th July, do you have an opinion as to the extent to which a watch should have been maintained on radar?
A. Radar plots were shown to me at the time of the interview with the Master. I am afraid I cannot sort of elicit any more information on that. That is some time ago and I haven't seen them since.

HIS HONOUR: I think you are being asked for your view, though, not what they did, as to what frequency radar checks should have been made. A. I am not sure I asked that question of the Master. 10

Q. Forget the Master. You are being asked this now as an expert. What should have been done in your view? A. I see. I would have put the radar on and left it on in that position and I would have taken frequent checks throughout the day and night.

MR. SHELLER: How frequent? A. Depending on weather circumstances, it could be anything from a couple of hours down, in extreme conditions, to half an hour or practically a constant watch.

Q. In the weather conditions as I have put them to you and as described by the Master, what would your view be about the frequency of radar checks? (Objected to). 20

Q. On the basis of the weather forecast which you have looked at and on the basis of the weather conditions as the Master described them at midnight, when he went to bed, what in your opinion should have been the frequency of radar checks? A. If you are asking me my opinion as Ship's Master I would like to have seen them once every hour.

Q. Not more frequently than that? A. No.

Q. Did you observe whether the position of other vessels had been marked on the radar screen on the Ibaraki Maru? A. To my recollection, yes. 30

Q. Would the purpose of that be to enable any movement of any of those vessels to be seen quickly? A. That is the purpose of it.

Q. Would it be correct to say that with such markings on the radar, if the radar was switched on, the movement of any of those vessels could be seen very easily? A. That applies to all vessels in the vicinity.

Q. Do you mean by that that the movement of all vessels in the vicinity could be seen very quickly? A. Well, I am thinking of all vessels; if they have their radar on they monitor each and every vessel within the immediate vicinity. 40

Q. But what I am asking you about is the radar on the Ibaraki Maru, which has the position of other vessels marked on the screen, do you understand that? A. Yes.

Q. In that situation on the Ibaraki Maru when the radar was turned on it would be possible, very easily, to see if any of those vessels had moved? A. If it was constantly monitored, yes.

Q. I am asking you to assume that the radar is turned on, do you understand? A. I do understand.

Q. Then the radar screen is looked at, do you follow that?
A. Is it looked at constantly or is it looked at at intervals, with due respect?

Q. A radar can be kept, as I understand it, on standby but with the screen not illuminated. A. Yes, that's correct.

Q. Were you given any information by the Master of the Ibaraki Maru as to whether the radar was on on this particular night?
10 A. I am going on recollection - I believe it was on.

Q. Were you told that it was on in the sense that it was on standby or in the sense that the screen was illuminated? A. I am not sure.

Q. Assuming that it was on standby and when the screen was illuminated by turning - I take it a switch? A. Yes, bringing up the brightness.

Q. And then the screen was looked at by whoever had turned it on? A. Yes.

Q. It would be immediately apparent, would it not, with the
20 markings of the other vessels on the screen, if any of those vessels had moved? A. Yes, it would.

Q. Also, I take it, it would be readily apparent in what direction any of those vessels had moved? A. Yes.

Q. And the distance they had moved? A. Yes.

Q. Again, assuming the weather forecast and the conditions of weather as described by the Master at midnight, should there have been a constant radio watch maintained? A. No, I would not agree that there should have been a constant radio watch maintained.

Q. Should the radio have been kept turned on on any particular
30 channel? A. Which radio are you referring to in this respect.

Q. The VHF. A. I feel that the VHF should have been turned on, yes.

Q. On the bridge? A. Yes.

Q. If there was not a radio officer in the radio cabin? A. Well, the VHF normally would be in a position on the bridge.

Q. And that should have been kept turned on? A. I would think so, yes.

Q. Would you agree that it should have been kept turned on on Channel 16? A. Yes.

40 Q. Channel 16 is the international something channel isn't it? What is Channel 16? A. Well, it is a calling channel between ships.

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Kenneth
Frederick
(cross-
examined)

Part 1 Q. But it is some sort of recognised international calling
In the channel, is it not? A. Yes.

Supreme Q. Do you know how it is described? Is it described as the
Court of designated international calling channel? A. Well, it is a
New South calling channel between two vessels, yes.
Wales

No.7 Q. Have you ever heard it described as the designated International
Trans- Calling Channel? A. I am not sure of that.
cript of At

Evidence Q. Any rate, in your opinion, that is the channel upon which the
before VHF should have been open on the bridge, is that right? A. Yes.

His Honour HIS HONOUR:- What is Channel 13, do you know? A. It depends from 10
Mr. port to port.

Justice Q. Down in Wollongong? A. I am not sure whether Channel 13
Yeldham covers Wollongong. I know 13 covers Sydney Harbour; if my memory
serves me correctly, upon approaching the port you call up on
16 and then they revert you to 13 and then you request other
Plaintiffs channels for ^{radio} operations and port operations, so they do vary
witnesses from port to port.

EDWARDS Q. In Sydney 13 is to communicate with the Harbour authorities?
Kenneth A. That's correct.

Frederick MR. SELLER: But Channel 16 never varies, is that right? A. 20
(cross- Channel 16 would be an international calling channel between two
examined) ships at sea if they want to call one or each up.

Q. Again, taking this night and the weather forecast and the
weather conditions as described to you, would it be prudent to
have the engines in some state of readiness? A. I believe they
were in some state of readiness.

HIS HONOUR: No, you are not being asked that, you are being asked
would it be prudent to have them in some state of readiness.

MR. GLEESON: I object to the expression "some state of readiness".

MR. SELLER: In a state of readiness? (Objected to: allowed). 30
Can you answer that question or would you like me to put it again?
A. Would you kindly put it again.

Q. Would it be prudent in the weather conditions and with the
weather forecasts that have been described to you to have the
engines in a state of readiness? A. Well, again there are varying
states of readiness.

Q. What state of readiness would you have had the engines in on
this particular night if you had been the master of this
vessel (Objected to: not pressed).

(Re- RE-EXAMINATION 40
examined)

MR. GLEESON: You were asked some questions about various radio
channels. May I inquire what is the state of your knowledge as
to the instructions that Port Kembla Port Authorities had given
to vessels about radio channels in July 1981, do you have any
knowledge about that at all? A. No, I don't.

Q. Would the selection of a particular channel for the purpose of a particular communication be accepted by the current instructions from the port authorities? A. Most assuredly it would.

Q. You were asked some questions about watching requirements and instructions that a master should have given and you were asked some questions about your views on the dictates of good seamanship. Is it the position that practice in relation to that matter varies according to the nationality of particular vessels? A. That's correct. (Objected to; allowed.)

10 *Q. Could you tell his Honour what variations in practice existed in regard to that matter? A. In Australian ships - (Objected to; question withdrawn).

Q. How long have you been with the Department of Transport? A. Going on for six years.

Q. In the ordinary course of your employment by the Department of Transport is it part of your duties to observe and, from time to time, form opinions in relation to the conduct of foreign flagged vessels as they trade with Australia? A. Those are part of our duties, yes.

20 (Question marked * read by court reporter)

WITNESS: Well, with Australian flag vessels it would be prudent for an officer and an AB to be on the bridge for a ship at anchor. It is the custom of the Japanese ships that they will allow a senior man, such as a quartermaster, who would be of a petty officer status, to carry out that duty.

FURTHER CROSS-EXAMINATION (by leave)

30 MR. SHELLER: In the statement that you obtained from the master of the Mineral Transporter there was a statement that the engines were put to Full Astern, that is to say the engines of the Mineral Transporter? A. Yes.

Q. You have expressed some view about the propriety of the Master doing that? A. Yes, I do.

Q. Would you agree that the effect of putting the engines Full Astern on the Mineral Transporter was that the stern of the vessel would have swung to port? A. With the transverse thrust, that is the normal way that the stern would cant, yes.

Q. And the bow to starboard? A. Yes, under ideal conditions.

Q. And that that movement would be more pronounced if the rudder was on hard port? A. It would help the situation, yes.

40 Q. If the Master of the Mineral Transporter in the situation when he gave that order, as described in the statement that you got from him, believed that the Inaraki Maru would slacken its chain, would it not have been appropriate for him to give that order in the belief that his bow might go past the bow of the Ibaraki Maru? A. No, I feel that that was not the correct decision to make.

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Frederick
(re-examined
further
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Q. Do I take it that, in your opinion, in that situation the Master should not have used his engines at all, the Master of the Mineral Transporter? A. Your Honour, this is very hard for me to answer because I was not there at the time. I don't know what the distances were at the exact moment that the decision to put his engines full astern - that is a decision that has got to be made instantly and I find it very hard to answer.

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Q. On that basis, would you not agree that really it is impossible for you to express any critical view of what the Master did in the situation based upon what he said in his statement? (Objected to). Did with his engines based upon what he said in his statement? A. I can only form an opinion that what he told me he had done was an incorrect situation. I would have myself, if you want me to form an opinion here and now, would have tried to put my engines ahead and canter my stern away from the Ibaraki Maru.

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witnesses

Q. In fact, of course, what he was doing, if he put his engines astern, was to canter the stern away from the Ibaraki Maru, was it not? A. He was still bringing his own vessel down to a closing position with Ibaraki Maru.

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Frederick
(further
cross-
examined)

Q. But if he had put his engines ahead he would have been bringing his own vessel down into closing position, would he not? A. Not necessarily.

Q. That all depends on the distances? A. That does.

Q. And you have no knowledge, you say, from the material you had, at what distance he gave this order? A. I have no exact distances, no.

Q. Or the bearing of either vessel? A. Approximate bearings from the Ibaraki Maru.

Q. But not of the other vessel? A. Not of the other vessel.

Q. In fairness, do you not think that it is extremely difficult for you, with the knowledge you have of the situation that the Master then found himself in, to be critical of the order that he gave. A. It was an opinion formed at the time only.

Q. Were you given any information at all as to when the Master said he gave that order to Full Astern? A. I thought it was down on the statement. I would have to look through - (Witness shown Ex.O). I'm sorry, there is no time in the statement, it must have been verbally given.

Q. But you don't recall what it was? A. No, I am afraid I don't. The statement was evolved from questions that were put to the Master at the time of the initial interview.

Q. You see, what you have said to me is that, without knowing times and ~~xxxxxx~~ distances, it is difficult if not impossible for you to say what action you would have taken at the time that that order was given? A. Yes.

Q. All I am suggesting to you is that it is equally impossible or difficult for you to make any criticisms of the order that the Master said he gave? A. My criticism was directed from a prudent point of view of seamanship at the time.

10 Q. You would agree, would you not, that it was prudent to try and keep the stern of the Mineral Transporter away from the Ibaraki Maru? (Objected to; allowed). A. As I understand the situation at the time the order for engines to be put Full Astern was given, the collision was imminent and I disagree that it would have been prudent to put his engines Full Astern at that particular time.

Q. What I am asking you is would you agree that it was prudent for the Master of the Mineral Transporter to try and keep his stern from coming into contact with the Ibaraki Maru if collision was unavoidable? A. It would be best for two ships to have a glancing blow than one steam completely into the other.

20 Q. Can you not answer that question that it would have been prudent for the Master of the Mineral Transporter to try and keep his stern from colliding from the Ibaraki Maru? A. If he had no other resource it would possibly be the most prudent situation.

Q. Would you not agree that one effect of putting his engines astern was to throw the stern of his vessel to port, that's right isn't it? A. That is normally what one would expect.

Q. And a consequence of that, of course, would be that it would be taking it away from the other vessel? A. Depends on the position of the two relevant vessels. I can't state that categorically.

30 Q. As part of the verbal information that you were given by the Master of the Mineral Transporter, did he tell you that at the time this order to put the engine astern was given collision was unavoidable? A. That was the impression he gave me at the time, yes.

(Witness retired and excused)

(Short adjournment)

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MINORU MURAO
3-23, 1-Chome,
Kitakshugaoka, Ibaraki City,
OSAKA, JAPAN.

(Through interpreter :On Affirmation:Examined)

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MR GLEESON:Q. What is your full name ?A. Minoru Murao.

Q. Are you the radio officer employed by Matsuoka Steamship
Co. Ltd. ?A. Yes.

Q. And were you so employed on 10th July 1981 ?A. Yes.

Q. And were you employed as radio officer on board the vessel 10
Ibaraki Maru on 10th July 1981 ?A. Yes, that is correct.

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Q. What time did you go to bed on the evening on 9th July 1981?

A. About 2200 hours.

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Minoru

(examined)

Q. Were you awakened early in the morning of 10th July 1981?

A. Yes.

Q. How were you awakened ?A. I was awakened by the emergency call.

Q. Can you recollect the time at which you heard the emergency
call ?A. I do not remember clearly but it was about 23 minutes past

Q. Past what ?A. 3.23

Q. I should have asked you. For how long have you been at sea 20
as a radio officer ?A. 27 years.

Q. And what is the range of the size of vessels upon which
you have served as a radio officer ?A. From 3,000 tons to 70,000
tons.

Q. When you heard the emergency call at about 3.23 on the morning
of 10th July 1981, what did you do (Interpreter repeated
question) ?A. I woke up immediately.

Q. And did you go somewhere ?A. From my room I ran up to the
bridge.

Q. And who was on the bridge when you arrived there ?A. The 30
captain, able seaman Sato and the second officer Kakura were
there.

Q. Was there located on the bridge a V.H.F. radio ?A. Yes.

Q. Was there also located on the bridge near the V.H.F. radio
an air horn ?A. Yes.

Q. What did you observe was happening on the bridge when you
arrived there ?A. The captain, as he was sounding the air horn was
screaming on the V.H.F.

Q. Did you then take charge of the V.H.F. from the captain? A. Yes

Q. Now, I want to ask you some questions about V.H.F. channels?
A. Yes.

Q. Have you received instructions from the Port Kembla Port authorities in relation to the use of a particular channel? A. Yes, I heard that channel 13 was to be used while at Port Kembla.

Q. When you say , channel 13 was to be used, for what purpose was it to be used (objected to)

10 Q. From whom did you receive your information about channel 13?
A. From the Port radio

Q. And is it normal practice for a vessel to receive instructions from the Port Authority in relation to such a matter ? A. Yes.

Q. And are those instructions normally communicated by radio with the radio officer of the vessel? A. Yes

20 Q. Now, what instructions were communicated by you to the Port authority (interpreter repeated question) A. From the port authority I was told that the berthing schedule of other vessels, any other vessels coming into the port, will be communicated on channel 13, so that channel 13 should be maintained.

Q. What was the significance, if any, of channel 6? A. With vessels communications between - (interpreter requested answer again)
A. Communication between vessels is to be done on channel 6.

Q. Just to explain that. In order to establish such communication between vessels on channel 6, would the normal procedure be for them to communicate on channel 13 and then switch over to channel 6 to have their conversations with one another ? A. Is this in relation to being at anchor in Port Kembla or under normal conditions?

30 Q. Being at anchor or at Port Kembla? A. While at Port Kembla we are to tune into channel 13 according to the Port Authority's instructions ; so, we would first communicate on channel 13 and then change to channel 6.

Q. What if any was the significance of channel 16? A. (Interpreter requested answer again) A. Yes, channel 16 is an international common channel used for emergencies, safety and general callings and responses.

40 Q. (Approached) I want to show you Ex.H . Do you recognise this as part of the V.H.F. radio log kept by the Ibaraki Maru? A. Yes, this is writing by me.

Q. Is that material which appears in that exhibit, from the figure 1725 on p.37 through to p.47, written by you? A. Yes.

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Q. And when did you write that material into that exhibit ? A. 8 to 12 hours after the collision.

Q. And from what did you write that up ? A. From the recollections of myself and the captain and the notes taken by the second radio operator.

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Q. The times shown are Greenwich Mean time is that correct ? A. Yes.

Q. And does that mean that the time, for example, 1725 hours, should be understood as meaning 3.25, local time ? A. Yes.

Q. Now, on what channel or channels - I think you told me earlier that you took over the operation of the V.H.F. radio from the captain when you arrived on the bridge ? A. Yes.

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Q. What did you do when you took over the radio ? A. I immediately called out to the drifting vessel and said "This is Ibaraki Maru"

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Minoru
(examined)

Q. I think Ex. H which is in front of you records various things that were said, is that correct ? A. Because it was based on recollection and notes taken, it is not complete; so there may be some missing, but it is quite correct.

Q. On what channel or channels did you attempt to communicate with the drifting vessel -

Q. I am asking you about what you did upon your arrival on the bridge. On your arrival on the bridge did you attempt to communicate with the drifting vessel by radio ? A. Yes.

Q. And what channel or channels on the radio did you use in attempting to communicate with the drifting vessel ? A. I called them on channel 13 and channel 16.

Q. Now, prior to this incident, had the radio on the Ibaraki Maru been operating satisfactorily ? A. Yes.

Q. And following this incident was the radio on the Ibaraki Maru operating satisfactorily ? A. Yes.

Q. When was it that you first heard any response or any communication at all from the Mineral Transporter ? A. 3.37.

Q. And on what channel did you receive that communication from the Mineral Transporter ? A. I think it was channel 13.

Q. And what was the first thing the Mineral Transporter said to you on channel 13 ? A. "Change, channel 6"

Q. Change to channel 6 ? A. Yes, change to channel 6.

Q. Did you then change to channel 6 ? A. Yes, I did.

Q. And was making contact on channel 13 and then changing to channel 6 in accordance with the ordinary practice as you had earlier described it ? A. Yes, that is right.

Q. When you changed to channel 6, what communication then passed between you and the Mineral Transporter? A. As I to repeat what was said?

Q. Yes, to the best of your recollection-

(Leave granted, by consent, to witness to refresh memory from log book)

10 Q. From your recollection, as refreshed by your use of the log in front of you, what communication was there between you and the Mineral Transporter after you first made contact with that vessel by radio up until the time of collision?
A. After changing to channel 6 I said "Hey, you".

Q. And were you then cut off in mid sentence? A. No. I am not very good at English and that is why I stopped the sentence there.

Q. And what did they say to you? A. They said "Are you ready?"

20 Q. And was anything said about slackening a chain? A. Yes, after that they said "Slack the chain"; two or three times that was repeated and then they said "Do you understand" and in English they were saying, let out 10 shackles of your chain.

Q. And what was your response to them? A. I said, "Our vessel already has 13 shackles out; why are you approaching" and once again I said "Our vessel has 13 shackles already out" and then I said "No more shackle".

Q. Following that, was there any further communication before the collision? A. After that, I heard again, slack shackle chain".

Q. And what did you respond to them? A. I said "I understand; why are you approaching" and asked "Are you having engine trouble"

30 Q. Was there anything further said - I am sorry, did they answer that question? A. No answer.

Q. And was anything further said before the collision? A. That was all.

Q. Were you in a position to observe whether or not the engines of the Mineral Transporter were operating at any time prior to the collision? A. I don't know because I was concentrating on the V.H.F.

CROSS-EXAMINATION

MR SHELLER : Q. (Handed Ex.H) Mr Muraio, what time did you arrive on the bridge? A. Between 24 and 25 past.

40 Q. And when you arrived there, the radio was - the V.H.F. was being used on channel 6 is that right? A. No, it was not.

Q. On channel 13? A. Yes, that is right.

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Q. The captain was speaking on channel 13? A. Yes that is right

Q. And was it your understanding that the radio had been kept open during the night up to that time? A. Yes.

Q. On what channel? A. Channel 13

Q. Is that recorded anywhere in the log, do you know; in the radio log? A. There are certain parts where it has been recorded but there are parts that has not been recorded.

Q. Mr Murao, is this the situation, that when you arrived on the bridge you took over the radio and commenced to communicate on channel 13? A. Yes, at first I commenced with channel 13. 10

Q. And did you broadcast words to the effect, "You are drifting; this is the Ibaraki Maru, you are drifting"? A. Yes, I said something to that meaning.

Q. And you continued to broadcast words to that effect? A. Yes

Q. And you got no response? A. That is right.

Q. And Mr Murao, did you change to channel 16 at about 3.35? A. Because there was no answer I used both channel 13 and 16 alternatively.

Q. Is it not right to say that the first time you used channel 16 was at about 3.35? A. I don't know. I don't remember the time 20 clearly because I was always using channel 13 and 16 alternatively.

Q. Mr Murao, I'd just like you to cast your mind back and see if you would agree with me, whether about 10 minutes past from the time that you commenced broadcasting to the time you first used channel 16.

HIS HONOUR: Will the book help him. Is there some entry in the book that deals with that.

MR SELLER: There are certain entries, and there are times; there are two times mentioned. 30

(Ex.H handed to witness)

MR SELLER: At the moment, I am reading from another document.

(Above question marked with * read)

WITNESS: A. No, until I got that response I used both channel 13 and 16 alternatively.

Q. Mr Murao, do you recall being asked to give some information so that some questions could be answered for the purpose of this case? A. I do not quite understand the meaning.

Q. Do you recall, Mr Murao, some time earlier this year being asked to write some information so that the solicitors in this matter could answer some questions that had been asked of them in writing? A. No, I don't remember.

Q. Mr Murao, it was said in answer to those questions that at 03.23, the Master on V.H.F. 13 said words to the effect, "I am calling vessel. What vessel are you approaching?" I take it, you were not present on the bridge at the time the Master said that? A. I was not there at 3.23.

10 Q. Do you recall the Master broadcasting a message to that effect, "I am calling vessel; what vessel are you approaching"? A. I think he might have been saying that when I got there but I immediately took over the V.H.F. from him.

Q. And then Mr Murao, would you agree with this; that from 03.25, you, the radio officer on V.H.F. 13 constantly broadcast words to the effect "You are drifting. This is Ibaraki Maru, you are drifting"? A. Yes, I agree.

20 Q. And that message was broadcast continuously? A. I do not quite understand the meaning of constantly. Do you mean after 3.25?

Q. From 3.25 you, on V.H.F. 13, constantly broadcast words to the effect, "You are drifting. This is Ibaraki Maru. You are drifting" (objected to: Question allowed)

Q. What I am putting to you is that from 03.25 you on V.H.F. 13 constantly broadcast words to the effect, "You are drifting. This is Ibaraki Maru, you are drifting"? A. Yes, I said that but later I said something else as well.

30 Q. That means that there was some other message you sent as well as "You are drifting. This is Ibaraki Maru, you are drifting"? A. Yes.

Q. And then from about 3.35 you broadcast a similar message alternatively on V.H.F. 13 and V.H.F. 16 (Interpreter requested answer again) A. Yes, something similar but I did not know the name of the vessel, and then I saw two Chinese characters that read "Cori" so I called out "Cori Cori this is Ibaraki Maru".

Q. What is the significance of the words "Cori"? A. I do not know the meaning, but two Chinese characters have meaning on their own; but put together, I do not know the meaning.

40 Q. So, this was your transcription of two Chinese characters you saw, meaning written characters? A. Yes.

Q. Where did you see those characters? A. Near the bridge.

Q. When you say "near the bridge" did you see them written somewhere? A. Yes.

Q. What did you see them written on? A. I do not know whether it was metal or wood but on some sort of board that was wide, it was written on it.

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Q. So, this is a board that was within the bridge or something on the vessel that was drifting, or where was it?
A. Around the bridge on the vessel that was drifting.

Q. So, you saw these two characters on a board around the bridge of the drifting vessel?
A. Yes.

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Q. And was that the time that you saw them, those two characters, was that some time after 3.35?
A. I do not remember that clearly but it was before I got in contact with the other vessel.

Q. And what time did you get in contact with the other vessel?
A. 3.37

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Q. Until you saw those two Chinese characters on the board, you had no information available to you as to the name of the drifting vessel?
A. No, there was no information available to me.

Q. Neither the captain nor Mr Sato had told you the name of the drifting vessel?
A. That is correct.

MURAO
Minoru
(cross-
examined)

Q. Murao, while you were broadcasting were you actually in the wheel house or did you have a cabin, a radio cabin of your own?
A. In the bridge.

Q. And Mr Murao, was the time that you observed those two Chinese characters shortly before you made contact with the drifting vessel, you made radio contact with the drifting vessel?
A. I do not remember clearly. I do not know if it was immediately before or whether it was about a minute before.

20

Q. Would you agree that it was no more than a minute before you made radio contact with the drifting vessel?
A. I do not know.

Q. Mr Murao, I put a statement to you which I will put to you again; that from about 3.35 you broadcast a message similar to the message "You are drifting. This is Ibaraki Maru. You are drifting" or alternatively on V.H.F. 13 and V.H.F. 16. I suggest to you that ~~it~~ was at about 3.35 that you commenced to broadcast or alternatively on V.H.F. 13 and 16?
A. I do not agree; that is not correct.

30

Q. When do you say you commenced broadcasting or alternatively on V.H.F. 13 and V.H.F. 16?
A. After 3.25.

Q. V.H.F. 16 was the emergency channel was it not?
A. It was not only the emergency channel.

Q. But it was the channel to be used in the emergency situations was it not?
A. Yes, it is used.

Q. And Channel 13 was to be used for berthing information, is that right?
A. Yes, that is correct.

40

Q. Was it to be used for no other information but berthing information?
A. No, it is not used; but according to the Port Authorities instructions, it is tuned into channel 13 to watch channel 13.

Q. You say this was some information that was given to you by Port Kembla Port Authority over the radio was it ?A. Yes, that is correct.

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Q. And was it given to you in English?A. Yes.

Q. Is it not correct to say that all that you were told was that was the channel that was to be used for obtaining berthing information?A. Yes.

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Q. Can you say in English what the Port Authority at Port Kembla said to you ?A. (In English)"Keep watch on 13 channel".

10 HIS HONOUR:Anything else ?

MR SHELLER:Q. "Keep watch on 13 channel".What else was said, if anything else, in English ?A. (In English)Keep watch on this channel".

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Q. Anything else in English ?A. That is about all.

Q. Do you recall the word berthing being used ?A. I did hear something like berthing instructions or berthing information.

MURAO
Minoru
(cross-
examined)

Q. What was the English that you heard ?A. I don't remember clearly I have forgotten.

(Ex.H handed to Mr Sheller)

20 Q. Mr Murao, can you tell me, looking at pp.36 and 37 of this radio log, if there is any entry there indicating on what channel the radio should be kept open during the night time ?
A. Can the question be repeated please.

(Above question read)

WITNESS:A.No, there is not.

* Q. Is there any entry, in respect of this time that you were anchored at Port Kembla, relating to the channel that should be kept open for watching purposes, elsewhere in the log-

30 HIS HONOUR: Q. Do you want time during the lunch hour to look through it or can you answer without doing that ?A. Yes, I would like time.

(Access granted to witness to Ex.H during lunch time)

(Luncheon adjournment)

(Question marked * read)

WITNESS:A.No, there is not.

(Ex.H handed to Mr Sheller)

Q. (Approached) Mr Murao, this is part of the log, the line which

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commences 17.25, was written by you, is that right ?A.Yes.

Q.And when was that written ?A.I think it was between 8 and 12 hours after the collision.

Q.And there is a word with a capital D and then a capital R and then a small "r-a-g-i-n-g" which may be dragging, is that right ?A. (Interpreter requested answer again)A.This has been mis-spelt. There should be another G in it .

HIS HONOUR: it is dragging.

INTERPRETER : This is what I suggested to the witness now, he means dragging and he says the English word is dredging. 10

MR SHELLER:it is supposed to be dragging

HIS HONOUR:Yes, he calls it dragging, but it is dredging.

MR SHELLER:Q.When did you write that word there ?A.Between 8 and 12 hours after the collision.

Q. It appears that something has been erased from under that, is that correct ?A.Yes I did erase something.

Q. And was whatever was erased in Japanese characters ?A.I can't remember.

Q.You see that further down on that page, in the same two columns with the word dragging, there are two places where there are some Japanese characters; do you see them?A.Yes. 20

Q.And could you tell me what those two words are ?A.The character is "Cori" as in Japanese; two Chinese characters, in Japanese it would read Cori

Q.So, these are the Japanese equivalent of the Chinese characters that you say you saw, is that right ?A.The characters themselves are the same in Chinese and Japanese.

Q. So those are the characters you say you saw on the other vessel?A.Yes.

Q.Just looking closely at the place where something has been 30 erased under the word dragging, do you recall, looking at it, whether that was something that you wrote there, that was erased? A.Yes.

Q.And looking at it, can you recall what it was that was written A.I can't remember; quite some time has elapsed; I don't know.

Q.After the word "dragging" there is the letter V written in inverted commas?A.This is short for vessel.

Q. There is a column there which says " CH" which I take is short for channel, is that right ?A.Yes.

Q. And then the figure 13 and then the figure 16 ?A. Yes.

Q. Do you recall when the figure 16 was written there ?A. It was written at the time when the log book was written in.

Q. Mr Murao, while you were making these broadcasts which you have described, you were on the bridge; that is right is it? A. Yes.

Q. And was Captain Takatani in the vicinity whilst you were making those broadcasts ?A. Yes, he was.

10 Q. And you remember that after you had made contact with the other vessel, you heard somebody on the other vessel say "Slack chain, slack chain" do you recall that ?A. Yes, I remember.

Q. And do you recall after you first heard that from the other vessel, whether you had any conversation with Captain Takatani? A. The captain heard that as well so he instructed me to tell them that the anchor is slackened.

Q. Do you recall whether he said anything about shackles, Captain Takatani? A. Yes, he said to tell them we have let out 13 shackles.

20 INTERPRETER : I am sorry- could I say that again. Yes, he told me to say that there were already 13 shackles out.

Q. Did he make any other mention of shackles that you can recollect, apart from them ?A. He told me to say that there is no more shackle.

Q. Mr Murao, if you go into the log, the V.H.F. log book, over to p.38, the second last line of that page, the word "Mineral Transporter" appears; do you see that ?A. Yes.

Q. Is that a message set out there which was transmitted by you? A. Yes.

30 Q. And that was a message that was transmitted some time after 17.37, is that right ?A. Yes.

Q. Just from looking at the log, and correct me if I am wrong, but was that the first time that the name, Mineral Transporter, was mentioned in these communications ?A. No, this was a mistake on my part. At that point we called the other vessel, the drifting vessel and at that point we did not know the name of the other vessel.

Q. Then, did you, prior to the collision, know the name of the other vessel? A. No, I did not know.

40 Q. I take it then that wherever in those transmissions that appear on p.39 and then over on 40, the words Mineral Transporter are mentioned, that is a mistake, is that right ?A. Page 39 and p.40?

Q. Yes ?A. The Mineral Transporter is mentioned on p.40. We knew it at that point.

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Q. But you say that was after the collision, is that right?
A. Yes.

(No re-examination)

(Witness retired & excused)

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TOSHIO SATO
On AFFIRMATION: Examined through interpreter.

MR GLEESON: Q. Is your full name Toshio Sato? A. Yes, that is correct

Q. And are you an employee of Matsuoaka Steamship Co.? A. Yes,
that is correct.

Q. And are you engaged as a quarter master on board the
vessel Ibaraki Maru? A. Yes, I was. 10

Plaintiffs'
witnesses

Q. And did you first occupy that position on that vessel on
24th May 1981? A. Yes.

MURAO
Minoru
(cross-
examined
and
retired)

Q. And were you the quarter master of the vessel on the
morning of 10th July 1981? A. Yes, that is correct.

Q. For how long had you served in the Merchant Navy at that
time? A. About 30 years.

Q. And for how long had you been a quarter master? A. 21 years.

SATO
Toshio
(examined)

Q. Now, were you on watch commencing from midnight into the
early hours of the morning on 8th July? A. Yes. 20

Q. Was the bridge of the vessel equipped with radar? A. Yes, there
is.

Q. Did you have a normal practice at that time as to the
making of radar checks, when you were on watch (objected to:
question not pressed)

Q. On the morning of 10th July while you were on watch did you
make radar checks? A. Yes, I did.

Q. How frequently? A. About 30 minutes.

Q. Did you on the morning of 10th July after you took over the
watch at midnight remain on the bridge or did you at any time³⁰
leave the bridge? A. Yes, I was at the bridge until 2.25 and from
2.25 to 3.18 I went around to check the inside of the vessel.

Q. Now, where did you go checking the vessel (Interpreter
requested the answer again)? A. From the bridge I went to the bow
of the vessel and checked in anchor and on the way back I went
to the engine room and also checked the areas where there were
cabins.

Q. What time did you leave the bridge? A. 2.55.

MR. GLEESON: Q. I want to be clear as to the time when you went on your rounds. I think you said you returned from your rounds at about 3.18. Is that correct? A. Yes that is correct.

Q. What time did you commence your rounds, was it 2.25 or 2.55? A. 2.55.

Q. At 2.55 you left the Bridge and went to the anchor, is that correct? A. Yes, that is correct.

10 Q. By what route did you travel to the anchor? A. I used the passageway inside, and used the stairs from the Bridge and went outside from the cabin on deck and walked along the deck on the port side, and then went to the bow of the vessel.

Q. As you were walking along the deck to the anchor, were you in a position to see what was going on around the vessel? (objected to).

Q. (approached). I show you a photograph of the "Ibaraki Maru". Can you indicate on that photograph the route that you took from the Bridge to the anchor? A. I used the stairs inside, the Bridge stairs inside the house, and went down five steps and then went outside onto the deck.

20 Q. When you got outside onto the deck how did you get down to the anchor? A. I went to the port side.

Q. You went to the port side -

(Witness indicated himself walking along the ship's rail).

WITNESS: And then walked at the very front of the bow of the vessel. I stood about there. (witness indicated a point on the bow of the vessel almost immediately above starboard anchor). I used the flashlight to flash the anchor chain.

30 MR. GLEESON: Q. To inspect the anchor chain? A. To see how tight the chain was and to see the direction of the chain.

Q. I want you to pause there please. What was the time that it took you approximately between 2.55 when you left the Bridge and the time when you completed your inspection of the anchor chain? A. Seven or eight minutes. I don't know the exact time.

Q. After you had finished your inspection of the anchor chain, where did you go? A. After I inspected the anchor I looked at the windlass and the stopper. And I looked around the surrounding area of the windlass, and then followed the route that I took and went back that route.

40 Q. Approximately what time did you arrive back after that inspection? A. As I said before about three eighteen.

Q. Did you inspect anything else apart from the anchor chain and the equipment that you have just described? A. During my round?

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Q. During your rounds on that occasion? A. On the way back I entered the engine bar or the engineroom from the steering area, and at the engine bar I checked the water and fire there, and then I went upstairs to the cabins and checked the water and fire there also and then returned to the Bridge.

Q. How long did you spend in the engineroom? A. I wasn't there long because I just looked around.

Q. Can you give us an approximate idea of how long you were there? A. About three or four minutes I think.

Q. How long did you spend looking at the cabins? A. I think 10 about the same time for the cabins too.

Q. During the period that you were on your rounds walking along the deck of the vessel, either walking to the anchor chain or walking back from the anchor chain, were you able to see other vessels in the surrounding area? A. I couldn't see other vessels very well.

Q. Were you able to see the lights of other vessels? A. Yes.

Q. Prior to the time you left the Bridge at 2.55 to commence your rounds, had you made a radar check? A. Yes I did make a radar check. 20

Q. What was the time you made that radar check? A. I began about 2.40.

Q. What time did you finish the radar check? A. About 2.45.

Q. When you made that radar check, did the radar show anything wrong in particular? (objected to).

Q. What did you see when you made the radar check? A. There was no change from the previous radar check that was made.

Q. When you arrived back on the Bridge at about 3.18, did you notice something in relation to another vessel? A. I returned at 3.18 and wrote in the log, "Round okay", and then I went 30 to the front of the Bridge and then noticed a large vessel lying in front of our vessel.

Q. Was that the vessel that you later learned to be the "Mineral Transporter"? A. Yes, that's right.

Q. What did you then do? A. In order to confirm the condition of that vessel, I looked through binoculars.

Q. What did you see when you looked through the binoculars?
A. It was a vessel at anchorage in a normal condition, and no one could be seen.

Q. When you say the vessel was at anchorage in a normal condition, did the vessel appear to be moving? A. No.

Q. Did you do anything about the matter then? A. Yes. I was doubtful of the situation so I notified the Captain.

HIS HONOUR: Q. What were you doubtful about?

INTERPRETER: The situation.

10 HIS HONOUR: Q. What was it about the situation that gave you doubt? A. I had felt doubtful of the situation because normally when vessels are at anchor they face the same direction, but with this vessel it was at an angle from our vessel.

Q. Had you seen it earlier that evening? A. When I made the radar check, the "Transporter" was there.

Q. Had you seen it visibly before? A. Visually I could have only seen the light.

MR. GIBSON: Q. Do you mean the ship's light of the "Mineral Transporter"? A. Yes, that's right.

20 Q. When you said in an earlier answer that when you made the radar check the "Mineral Transporter" was there, what did you mean by the expression, "there"? A. On the chart table of our vessel, the position of the "Mineral Transporter" was marked, and it was, there was a vessel in that direction and in that distance, so I thought that that was the "Mineral Transporter".

Q. After you contacted the Master, did the Master come to the Bridge? A. Yes, he came immediately.

Q. What did you observe the Master do when he came to the Bridge? A. He came to the Bridge and looked at the vessel in front using binoculars.

Q. Did you see him do anything else in relation to the VHF radio? A. Yes I did see him.

30 Q. What did you see him do in relation to the VHF radio?
A. With the VHF he was calling the vessel in front and saying something about wanting to know the name of the vessel.

Q. Did you see him do anything in relation to the radar?
A. Yes. After he used the binoculars when he came to the Bridge, he immediately used the radar and looked at the vessel with the radar.

Q. Did you see him do anything in relation to the air horn?
A. Yes. He sounded the air horn too.

40 Q. Was anything done in relation to a light? (objected to as leading).

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Q. What else was done at that time on the Bridge? A. After the Captain came up, he looked to the front and then he used the radar, operated the radar. Then he told me to wake the three people who are to stand by at the bow of the vessel.

Q. Then what happened? A. I telephoned the chief officer, the Boatswain and the carpenter and woke them up.

Q. Ultimately was there a collision between the approaching vessel, the "Mineral Transporter" and the "Ibaraki Maru"? A. Yes there was.

Q. How many times did the "Mineral Transporter" collide with the "Ibaraki Maru"? A. There were three shocks. 10

Q. Did you make a record of the time at which the first shock occurred? A. I did not record it myself, but the Captain ordered the second radio officer to record it, so he recorded it.

Q. Did you keep a logbook called the "Able Seaman's" or "Quartermaster's Log"? A. Yes I did.

Q. (approached). I want to show you a document which is mfi.l. (shown). Is that the log? A. Yes it is.

Q. I draw your attention to the two entries in the top righthand corner of the page at which it has been opened. Who made those entries? A. At the very top it says - 20

Q. The question was: Who made those entries? A. The top line was written by me. I don't know who wrote the second one.

Q. Is this document that I show you an English translation of what appears on that page of the logbook? (shown). A. I don't understand English.

(Quartermaster's logbook together with English translation tendered, admitted without objection and marked Ex.P).

CROSS-EXAMINATION:

MR SHELLER: Q. Was a vessel called the Sanko Cherry anchored in the vicinity of the Ibaraki Maru on this night?
A. Yes, there was.

Q.Do you recall where it was anchored in relation to the Ibaraki Maru? A.Yes. It was behind the vessel to the left.

Q.Do you recall at what distance? A.May I look at my documents?
HIS HONOUR: Yes.

WITNESS: I don't know.

10 HIS HONOUR: Q. Was it further away from you than the Mineral Transporter was when she was lying at anchor? A.I think it was further.

MR SHELLER: Q. Would you look at Ex.C please? Do you recognise that plotting chart, Ex.C? A.Yes.

Q. Was that on the table in the bridge on the night of 10th July? A.Yes.

Q. Is the Mineral Transporter shown on that chart? A.Yes.

20 Q. At what bearing from the Ibaraki Maru is the Mineral Transporter shown on the chart? A. Wait a moment please. At a bearing of 150 degrees.

Q. At what distance? A.It says 1.2 miles.

Q. Is the Sanko Cherry shown on the chart? A. Yes.

Q. At what bearing is that shown from the Ibaraki Maru? A. Bearing of 5 degrees.

Q. At what distance? A.1.1 mile.

Q. Does the chart show, to the best of your recollection, the position of the Mineral Transporter and the Sanko Cherry at the time prior to your leaving the bridge to go on your rounds on 10th July? A.Yes.

30 Q. You have told us that before you left the bridge you did a radar check, is that correct? A.Yes, that is correct.

Q. Prior to doing a radar check, had you made a visual check of the positions of the other vessels in the vicinity of the Ibaraki Maru? A.Can the question be repeated please?

Q. (Question ^{repeated} / by interpreter) A. Yes, I did.

Q. Did you use binoculars for the purpose of ^{making} that check?
a. Yes, I did.

Q. Were you able to observe the position of the Mineral Transporter?
A.Yes.

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Q. Was it in the position shown on the plotting chart, Ex.C?
A.Yes, it was.

Q. Was the heading of the Mineral Transporter, as you observed it visually, approximately the same as the heading of the Ibaraki Maru? A.When do you mean?

Q. I am asking you about the visual check that you did prior to making the radar check before you left the bridge? A.Yes, the heading of the other vessel was the same as that of ours.

Q. And visibility was good on this night? A.Yes, it was good.

Q. With the aid of the binoculars, could you see the Mineral Transporter quite clearly? A. I could not see it clearly but I saw it and it was very small and the hull is black, so it was hard to see, but the lights could be seen.

Q. You could see quite clearly that it was in the position as marked on the plotting chart, Ex.C? A.Yes.

Q. And you could see quite clearly that it was on the same heading as the Ibaraki Maru? A.Yes.

Q. And when making that visual check, did you also visually observe the position of the Sanko Cherry? A.Yes, I checked the position of the Sanko Cherry as well.

Q. Again could you see quite clearly that the Sanko Cherry was lying in the position as shown on the plotting chart? A.Yes.

Q.Was the Ibaraki Maru lying on a heading of about 142 degrees?
A.No, it was not 142 degrees.

Q. Do you know what heading it was lying on? A. With 160 degrees as its centre, it was facing between 140 degrees and 180 degrees.

Q. Have you seen that document, Ex.F, before? A.This is the first time I have seen it.

Q. When you did the radar check, were the positions of other vessels marked in pencil on the screen of the radar? A.Yes.

Q. Could you see that Mineral Transporter was in the position as shown by the pencil marking on the screen? A-Yes, that's right.

Q. You left the bridge at 2.55; is that right? A.Yes, that's right

Q. You proceeded on the route you have described to a position above the starboard anchor,; is that right? A.Yes.

Q. During the time that you went from the bridge to the position above the starboard anchor, did you use your binoculars at all? A. On the way from the bridge?

Q. On the way from the bridge, following the route you have described to the starboard anchor, during the time you were on that route, did you use your binoculars at all? A.No, I did not use it.

Q. On the way back from the anchor via the engine room back to the bridge, did you use your binoculars at all? A.No, I did not.

Q.Had you left your binoculars in the bridge? A.That is correct I did not take it out of the bridge.

Q. As you went on that route that you have described, were you able to see the lights of the Sanko Cherry? A.No. I was not watching for it.

Q. Were you able to see the lights of the Mineral Transporter? A.No, I could not see it.

10 Q. You say that you were back on the bridge at 18 minutes past three, is that right? A.Yes, that is correct.

Q. When you arrived on the bridge, what did you do? A. I wrote "Round okay" in the log book.

Q. So the first thing you did was to go to the log book; is that right? A.Yes. I wrote in the quartermaster's log book.

Q. Did you put a time against that? A.I wrote 3 o'clock for a time.

20 Q. Why did you write 3 o'clock for a time? A.The rounds I refer to as rounds at 3.00 hours or rounds at 23.00 hours. This is the way they are entered every day. So that day I wrote 3 o'clock too for the rounds.

Q. It had nothing to do with the time you set out on these particular rounds or returned from them? A.That is correct.

Q.Up to the time that you wrote this in your quartermaster's log book, had you noticed anything unusual? A.No, I did not notice anything.

30 Q. What did you do next then after you had made the entry in the log book? A.After I made the entry in the log book, I went from the chart room to the front of the bridge and looked to the front.

Q. What did you see then? A.As I said before, I saw a large vessel lying at an angle from us.

Q. At what distance was that vessel when you so saw it? A.It seemed a little farther than half a mile.

Q. And you were looking at it through binoculars? A.Yes, I used the binoculars too.

40 Q. On what heading was this vessel as you observed it? A. From our vessel, the other vessel had its stern closer to us with its bow further away from us and it was not at a perpendicular angle from us, it was at an angle that was a little bit wider than that.

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Q. Would you look please at the document, Ex.F? I want you to assume that the outline in the centre of that plotting chart represents the Ibaraki Maru. You will see that at the figures "140" there is an outline of another vessel shown on the plotting chart. Is that outline at "140" at approximately the angle to the outline of the Ibaraki Maru that this vessel was when you first saw it? A.Yes.

Q. You said that when you observed the vessel, it appeared to you as a vessel at anchorage in normal condition; is that right? A. I thought that if it was a vessel at anchorage under 10 normal circumstances, then it was rather unusual.

Q. Wasn't that your reaction to it when you first saw it, that it was a vessel at anchorage in normal condition? A.Yes.

Q.And you say that, to your observation, it did not appear to be moving? A.No.

Q. Do I take it that at that time you had no apprehension of danger to the Ibaraki Maru? A.I did feel apprehension.

HIS HONOUR: Q. That was the reason you woke the captain up, I suppose? A.Yes, that is correct.

MR SHELLER: Q. What was your apprehension? A.All vessels are 20
at anchor facing the tide but only this vessel was at an angle,
so I felt that it was dangerous.

Q. Prior to your going to do your rounds, while you were on the bridge, were you maintaining a constant visual check from the bridge?

A. I wasn't looking out always, but about every five minutes I looked out.

Q. Using the binoculars? A. Yes, I sometimes used the binoculars to

Q. Checking the positions of other vessels in the vicinity? A. Rather than the positions, I was just keeping watch.

Q. To see if they moved or not? A. Yes.

Q. Were your instructions to make a constant visual check while you were on watch? A. Rather than to say constant, there are instructions by the captain written on the plotting chart, and
10 I was keeping watch following those instructions.

Q. You appreciate now, do you not, that the vessel that you saw when you looked out after returning to the bridge was the "Mineral Transporter"? A. Yes.

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witnesses

Q. And you appreciate that it had moved from the position in which you had observed it before you left the bridge? A. I did not know then.

SATO
Toshio
(cross-
examined)

Q. But you appreciate now that it had moved from the position that you observed it then before you left the bridge? A. Yes.

Q. And that it had moved a distance of over half a mile? A. Yes.

20 Q. If you had remained on the bridge instead of going on your rounds, you would have observed the "Mineral Transporter" moving long before 3.18, would you not? A. That is not necessarily so.

Q. Do you suggest that if you had remained on the bridge, maintaining the visual watch that you have described, from 2.55 to 3.18 you would not have observed the "Mineral Transporter" moving before 3.18? (objected to; allowed) A. I am not saying that.

Q. When do you think, if you had remained on the bridge, you would have first observed the "Mineral Transporter" moving? (disallowed)

30 Q. Would you assume that the "Mineral Transporter" commenced to move at about 2.50. If you had remained on the bridge between 2.55 and 3.18, when would you have first observed it move? A. I don't know.

Q. Would you agree with me that it would have been well before 3.18? A. It may have been a little before.

Q. On the assumption that it had moved over half a mile before 3.18, what distance do you think it would have moved before you would have observed it if you had remained on the bridge? A. Can the question be repeated? (Question repeated by interpreter) I don't quite understand the question.

40 Q. When you returned to the bridge, I am asking you to assume that the "Mineral Transporter" had moved over half a mile. I am also asking you to assume that it had commenced that movement at 2.50.

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What distance do you think it would have moved before you, maintaining your watch from the bridge, would have observed the movement? A. I don't know.

Q. You have told the court that you were able, with the aid of your binoculars, before you left the bridge, to observe the "Miner Transporter" in the position as shown on the plotting chart. That is right, is it not? A. Yes.

Q. And you could observe the heading upon which it was lying? A. Do you mean the heading in relation to our vessel?

Q. That heading upon which it was lying you could observe was the same as your vessel when you looked through your binoculars prior to leaving the bridge? A. Yes.

Q. (Shown Ex. F.) If you looked through the binoculars and saw that the "Mineral Transporter" had changed its heading to a heading similar to that shown on the outline at the figures 1, 40 on Ex. F, you would know, would you not, that it must have commenced to move? A. I think it would be difficult to judge.

Q. It would be easy to see, would it not, if it had changed its heading to that? A. Vessels at a distance, their lights appear very small, so it would take time until anything could be noticed.

Q. Can you indicate how much time? A. NO, I don't know.

Q. If you were looking through your binoculars at a vessel 1.2 miles away on this night, you would observe, would you not, if it had started to move towards you? (objected to; disallowed)

Q. If you were looking through your binoculars and observing the "Mineral Transporter" at 1.2 miles and it was moving towards you, you would be able to see that clearly, would you not? A. I can't say that it could be seen clearly.

Q. At what distance would you be able to observe for the first time that the "Mineral Transporter" was on a bearing of 200 degrees if you had been watching it through the binoculars on this night? A. What do you mean by 200 degrees?

Q. I am asking you to assume that the "Mineral Transporter" had changed to a heading of 200 degrees. IF it had done so on this night at what distance would you have first observed that through your binoculars? (objected to; withdrawn)

Q. After you had observed this vessel when you returned to the bridge, did you make any radar check? A. NO, I did not.

Q. You telephoned the Master, is that right? A. Yes.

Q. When you telephoned the Master, did you speak to him? A. Yes.

Q. Did you say to him there was a vessel approaching towards the bow of the "Ibaraki Maru"? A. No, I did not say that.

Q. Do you recall what you said to him? A. I said that there was a strange vessel in the front, "So please come immediately".

Q. As the "Ibaraki Maru" lay at anchor, how many shackles of anchor were out? A. Ten shackles.

Q. Are the shackles of the anchor measured by markings on the anchor cable? A. Yes.

Q. Is that a white mark on the anchor cable? A. Yes, that is correct.

10 Q. Is the method of measuring the number of shackles that are let out by watching the mark go over the windlass? A. When the chain is let out, each shackle is counted by the crew at the anchor and the number of shackles that go out is reported to the bridge by the use of microphone.

Q. If you are letting out ten shackles, at what point is the brake applied in terms of the position of the ten shackle mark? A. When the anchor is let out right from the start?

Q. If a member of the crew is ordered to let out the anchor to ten shackles, where is the ten shackle mark when the brake is applied? A. According to the captain's instructions, the ten shackles would be either at the deck or sometimes it would be at the water.

20 Q. So there were two different instructions, were there; ten shackle at the deck or ten shackles on the water? A. Normally, that is the way the anchor is used.

HIS HONOUR: Q. Which is the normal way? A. Normally, it is put into the water.

Q. The ten shackle mark is at the water level, is it, normally? A. Yes, that is right. The shackle would be under the water.

(Witness stood down)

(Further hearing adjourned to Thursday, 19th May, 1983
at 9.30 am.)

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KG:JLF(6)

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CORAM: YELDHAM, J.

mitsui-osk lines & anor v. the ship 'MINERAL TRANSPORTER'

FOURTH DAY: THURSDAY: 19th May, 1983

TOSHIO SATO

On former oath:

(Cross-examination continued)

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Plaintiffs'
witnesses

SATO
 Toshio
 (cross-
 examined)

MR. SHELLER: Q. At the adjournment yesterday I was asking you about how the ten shackle mark had been measured, do you recall that? A. Yes, I remember.

Q. Do you recall when you were on the bridge an order being given relating to the letting out of the anchor chain? A. Yes, I remember.

Q. Do you recall at what time an order was given relating to the anchor chain being let out? A. I don't know the time.

Q. Who gave that order? A. The captain did.

Q. What was the order he gave? A. He said, "Slack the chain", 20

Q. Did he say by how much? A. Yes, he said, "Slack 13 shackles".

Q. Was that order carried out? A. Yes.

Q. This was on the starboard anchor chain, is that right? A. Yes, that's right.

Q. What was the length of the starboard anchor chain? A. I don't know the whole length of the starboard chain.

Q. Do you recall whether it was 40½ shackles? A. No, it wasn't 40½ shackles.

Q. Was it more or less than that, do you recall? A. It wouldn't be 40 shackles. 30

Q. I meant to say 14. Was it 14½ shackles? A. The half is what is at the end of the anchor.

Q. But was the length of the anchor chain 14½ shackles?
 A. Yes, I think it is about that.

Q. What do you mean when you say the half was at the end of the anchor? A. When it is connected to the buoy the anchor is taken away from the chain and for that purpose half a shackle is connected to the one shackle.

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10 Q. You say when it is connected to the buoy? (After witness answered in Japanese the interpreter was granted permission to refer to a dictionary). A. At port the vessel either berthed at a buoy or at a pier and at that time the anchor is set and the chain is taken off from the anchor and the chain that has been taken off from the anchor is connected to the buoy and in that way the shackle is connected or stopped there.

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Q. After the order had been given to let out 13 shackles, was there further anchor chains available to be let out on the starboard anchor? A. No, there was no more chain on the starboard anchor. In the chain locker the end of the chain was there, but there was none left, I don't think.

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Q. That is after the order was carried out? A. Yes, that's correct.

20 Q. When you first observed the other vessel, which you later found out to be the Mineral Transporter, after you returned to the bridge at 3.18, did you consider calling the crew to emergency stations? A. When the captain came he gave that order, so that order was given.

SATO
Toshio
(cross-
examined)

HIS HONOUR: Q. That is his province, I suppose, rather than yours, is it? A. Yes, my first job is to first tell the captain.

MR. SHELLER: Q. It would not be part of your job in a situation like that to call the crew to emergency stations? A. If it is stated extreme emergency, then the emergency call would be given.

30 Q. But only in a case of extreme emergency so far as the order or call for emergency stations being given by you? A. That's correct.

Q. You have been a quartermaster for 21 years, you have told us, is that right? A. Yes, that's correct.

Q. In the Japanese Merchant Navy is there a system whereby people are certified or licensed as officers? A. Yes.

Q. As a quartermaster, you have not, of course, been certified or licensed as an officer? A. That is correct.

Q. ^{In order to} obtain a certification do officers in the Japanese Mercant Navy undergo particular training? A. There are people who get training.

40 Q. The officers, before they are certified, get training, do they not? A. Yes, that's correct.

Q. I take it they sit for examinations? A. Yes, it is a Government examination.

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Q. Would it be right that you have not undergone any officer training during your career at sea? A. That is correct.

Q. Or undergone any examinations? A. That's correct.

Q. There was a radar log kept on the Ibaraki Maru in July 1981, is that right? A. I did not see the radar log, so I don't know.

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Q. You took no part, did you, in entering or preparing a radar log on the Ibaraki Maru? A. That's correct.

Q. Did you orally report to the master the times at which you switched the radar on and off? A. No, I did not.

Q. Was it not your practice normally to inform the master orally when you switched the radar on and off? A. No, as practice, that was not done.

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Q. Did you make any entry in any other log book or record as to when you turned the radar on and off? A. No, I did not make any entries.

SATO
Toshio
(cross-
examined
retired)

Q. While you were on the bridge prior to 2.55 on 10th July was the VHF radio switched on? A. Yes, it was on.

Q. Did you keep it on constantly? A. Yes, that's correct.

Q. On what channel was it switched on? A. It was channel 13.

Q. Were those your orders to keep it switched on to channel 13? A. Yes.

(Witness retired and excused)

HUGHES
Edwin
Dean

EDWIN DEAN HUGHES
Sworn and examined:

(examined) MR. GLEESON: Q. Is your full name Edwin Dean Hughes? A. That's correct.

Q. Do you live at 8 Ede Close, Charlestown? A. That's correct.

Q. Are you a ship's captain? A. That's correct.

Q. Employed by the Broken Hill Proprietary Company Limited? A. That's correct.

Q. You have been a ship's captain since 1964? A. Yes.

Q. I think you first went to sea in 1948? A. That's correct.

Q. And you have been employed continuously at sea since then? A. That's correct.

Q. From 1948 to 1955 did you sail as a rating in vessels of the Swedish, Norwegian, Canadian, British and American Merchant Navies? A. That's correct.

Q. In 1955 did you obtain your second mate's certificate in London?
A. That's correct.

Q. Did you then return to Australia and join B.H.P. first as a third and then as a second officer? A. That's correct.

Q. I think you obtained your first mate's certificate in 1959?
A. I think it was about 1959, I am just not exactly sure of the year.

Q. And your master's certificate in 1962? A. That's correct.

10 Q. As master have you served on vessels of various sizes up to 106,000 dead weight tonnes? A. That's correct.

Q. How would the size of a vessel of 106,000 dead weight tonnes compare with the size of the Ibaraki Maru? A. It would compare very closely.

Q. I think that as a ship's captain employed by B.H.P. you are engaged or concerned predominantly in the Australian coastal trade? A. That's correct.

Q. Especially with larger vessels operating between Port Hedland in Western Australia and Port Kembla and Newcastle in N.S.W.?
A. Particularly with the larger vessels in the last ten years.

20 Q. B.H.P. has a particular connection with Port Kembla? A. Yes, they have a large steel works there.

Q. Does it follow that you have had substantial experience in operating large vessels in and around the Port Kembla area? A. Yes.

Q. You have heard the evidence that has been given in these proceedings? A. Yes.

Q. And you have read a copy of a statement made by the master of the Mineral Transporter to Captain Edwards of the Department of Transport? A. Yes, I read that this morning.

30 Q. I want to ask you some questions concerning the Mineral Transporter. Do vessels such as the Mineral Transporter normally carry radar? A. Yes, probably two.

Q. Do they also normally carry a VHF radio? A. Almost universally.

Q. Do you have before you Exs. C, L and M, which are the charts containing information of various kinds about the location of vessels around the occasion in question, do you see that?
A. Yes.

Q. Do you see that those charts show the location of the Mineral Transporter before it commenced to drift towards the Ibaraki Maru? A. Yes.

40 Q. And they show the location as being approximately 1.2 miles from the Ibaraki Maru? A. Yes.

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Q. Have you yourself had experience of drifting in a large vessel off Port Kembla? A. Unfortunately, yes.

Q. Are you familiar with conditions on the bottom in that area? A. Yes.

Q. I want you to assume that a vessel located at anchor originally in the position of Mineral Transporter commences to drift, dragging her anchor, and that by the time the vessel has reached a position about half a mile away from the Ibaraki Mru it is drifting at a fairly constant speed. Can you make that assumption? A. Yes. 10

Q. I want to ask you, in those circumstances, would you expect the vessel to have been drifting right from the outset at a constant speed or would you expect it to gradually gather speed over a period of time? A. I would expect it to gather speed at some time through the drift.

Q. Is it possible to say the period of time over which it would have gathered that speed? A. No.

Q. When the vessel is lying at anchor does the capacity to hold the vessel come both from the anchor itself and from the weight of the anchor chain on the sea bottom? A. From both, but predominantly from the anchor flukes being embedded in the sea bottom. 20

Q. I want you to assume that the vessel commences to drift, dragging its anchor, and I want you to assume that there is on watch on the Mineral Transporter a person of reasonable competence exercising reasonable diligence. What is the distance that you would expect the Mineral Transporter to drift before the fact that it was drifting would become apparent to such a person? A. I think possibly about a ship's length.

Q. What is the length of the Mineral Transporter? A. I think she is somewhere near 800 to 850 feet.

Q. By what means would such a person be able to notice that the vessel was drifting? A. By radar distances of known objects, by bearings of known objects and by transits of perhaps unknown objects but which appear on the beam and are quite visible to the eye. 30

Q. You are familiar, I think, with the area in which the Mineral Transporter was lying at anchor? A. Yes.

Q. On the assumption that the Mineral Transporter was lying at anchor with the heading shown in the charts before you? A. Yes.

Q. What are the land marks that would have been visible to somebody on board the Mineral Transporter? A. There are various things which one can use and thus to establish a transit, as we call it. It could be, in daytime, a tree in connection

with the side of a building, perhaps half a mile distant. The main thing is to get two things in line.

10 Q. We are talking about night time? A. At night time it could be looking straight up a street, the street lights; it could be the hospital in line with the colliery on top of a mountain; it could be a number of things like that. The main thing is to - known things, it could even be an "Eat at Joe's" sign on the beachfront in connection with an established amber light or a red light in the bay, but this is just a seaman's practice that you try and pick up a transit on the beam so that if the vessel does drift it is immediately apparent.

Q. I want you to assume that a person on board the Mineral Transporter suspected that he might be drifting or suspected that the vessel might be drifting and wanted to check on that. What are the means that would be available to do that? A. He would immediately check his bearings of known objects and take radar distances.

20 Q. Radar distances from what? A. Any known object, - not a floating object, a fixed object on shore, a headland, a breakwater something like that.

Q. What would be the requirements of prudent and proper seamanship in the event that a person on board the Mineral Transporter suspect that the vessel might have commenced to drift? A. Obviously, to inform his superior officer - taking that it was not the captain. The captain -

Q. I will come to what the captain might have done in a moment, but in terms of steps that he might take to check whether the vessel was in fact drifting, what would be the requirement of proper practice in that regard? A. Well, he would take bearings.

30 Q. Radar bearings? A. Preferably visual bearings, always in preference to radar bearings. There are slight errors that can creep into radar bearings.

Q. How would he take visual bearings? A. Using his pelorus, which is a bearing object on top of a compass, or azimuth ring, using one of his bearing read-outs which are usually on the wings of the bridge, being bearings of known objects - (inaudible).

Q. Known objects? A. When I say objects -

40 Q. Sorry, I am just asking you to repeat a sentence, not to explain it. Taking bearings of known objects? A. Laying off those bearings on the chart and thus establishing a firm position.

Q. Then I want you to assume that the person on watch established to his own satisfaction that the Mineral Transporter was drifting. What would be the proper course for him to take in those circumstances. Assuming that person was not the captain himself? A. Call out the master, turn out his watch, his duty men.

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Q. Assuming the master came to the bridge promptly and accepted or observed for himself that the vessel was drifting and drifting towards the Ibaraki Maru in the manner and in the direction in which the Mineral Transporter drifted, I want to ask you some questions as to the steps that proper practice would require to be taken. But in that regard I want you to make two alternative assumptions: first of all, I want you to assume that the engines of the Mineral Transporter were at instant notice, do you understand that expression? A. Yes.

Q. On that assumption what would be the proper course for the master of the Mineral Transporter to take? A. I'd give a touch ahead on the engines to take the stern way off the ship and at the same time give more scope to the cable. 10

Q. Now, I want you to make the alternative assumption that the engines were not at instant notice and not immediately available for use. What would be the proper course for the Master to take in those circumstances? A. I would give more scope to the cable, perhaps delay a few minutes to see if it was having the desired effect. If it was not having the desired effect, I would drop the other anchor. 20

Q. I want you to assume that it had been dragging the starboard anchor. By 'the other anchor', do you mean the port anchor? A. Yes.

Q. What would be the consequence of dropping the port anchor? A. Almost certainly, it would arrest the drift of the ship.

Q. I will ask you first in terms of certainty and then in terms of possibility? A. Could I just have that repeated?

Q. I will ask you a question first in terms of certainty and second in terms of possibility. You have heard a description of the weather conditions that were prevailing on this occasion? A. Yes. 30

Q. And you have heard a description of the manner and the speed at which the Mineral Transporter was drifting towards the Ibaraki Maru? A. Yes.

Q. On the assumption that that information is correct, is there a point of distance from the Ibaraki Maru up to which it is possible to say with certainty that if the port anchor of the Mineral Transporter had been dropped there would have been no collision? A. Yes, I'd say about 2,800 feet away from the Ibaraki Maru. 40

Q. Now, departing from considerations of certainty and moving to considerations of reasonable likelihood, is there a point in those circumstances up to which it was reasonably likely that if the port anchor had been dropped by the Mineral Transporter the collision would have been avoided? A. The closest it could have dropped perhaps and stopped the Mineral Transporter drifting would be the length of the ship, which is a hundred feet, plus about

ten shackles of chain, say 1700 feet.

Q. Going back to the assumption that the captain of the Mineral Transporter had observed the Mineral Transporter drifting towards the Ibaraki Maru and the engines of the Mineral Transporter had either been made ready or were ready, if the captain of the Mineral Transporter had put the engines on full ahead, what would have been the consequence of that? A. At what distance from the Ibaraki Maru?

10 Q. Well, at any distance up to a ship's length away from the Ibaraki Maru? A. A ship's length is getting very close, but I think if I had been master of the Mineral Transporter I would have tried full ahead movement.

Q. If a full ahead movement had been made say 1½ ship's lengths away from the Ibaraki Maru by the Mineral Transporter, assuming its engines were in a position to enable that to be done, what would the consequence have been? A. Obviously, a bit better than at one ship's length.

20 Q. Is it possible to specify a distance at which you can say that if the engines of the Mineral Transporter had been put full ahead the Mineral Transporter would have cleared or not collided with the Ibaraki Maru? A. No, it is not reasonably possible to tie it down. She is drifting sideways at 1.5 knots, she has got to move 400 feet to clear - there would be a chance of getting out of it at a ship and a half, but a ship, under that I think I would not be going for engines.

30 Q. I think you have observed that in the statement that the captain of the Mineral Transporter made to the Department of Transport he said that at the time he became aware that his vessel was drifting collision was imminent. He also says that he did not hear about it before 3.30 in the morning and he also said that his engines were at instant notice and they were put to full astern. What do you say as to the prudence of that action in those circumstances as described by him? A. Well, it is his judgment that collision was - was the word imminent or unavoidable?

Q. Imminent - they are both used, I am told - yes, he says both things, imminent and unavoidable? A. Because there is a difference. If it is unavoidable I think it would be foolish to use your engines.

40 Q. Why is that? A. Because you can only increase the contact speed and with such large objects as these ships any contact increased has got to create more damage and more threat to life.

Q. I want to go to the matter of radio. I think you have told us that these vessels carry VHF radios and is that normally on the bridge? A. Yes.

Q. In the Port Kembla area is there a requirement as to keeping a particular VHF channel open? A. Yes.

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Q. And was there such a requirement in July 1981? A. Yes.

Q. What was the channel? A. 13.

Q. The requirement of the port authorities, was 13 should be kept open, was it? A. yes, at all times while in port limits or in the vicinity of the port.

Q. I want you to assume that at a time when the Mineral Transporter was drifting another vessel in the area, the Sanko Cherry tried to contact the Mineral Transporter on VHF radio and alternated - first of all, tried to contact her on channel 16 and alternated between VHF 6812 and 16 and got no response. Can you make that assumption? A. Yes. 10

Q. I also want you to assume that over a period between about 3.23 and 3.37 the Ibaraki Maru endeavoured to contact the Mineral Transporter on channel 13, but alternating to channel 16. Can you make those assumptions? A. Yes.

Q. What could be the possible explanation of the inability of either the Sanko Cherry or the Ibaraki Maru to make radio contact with the Mineral Transporter in those circumstances? A. Either that nobody was listening, the set was broken down or that some other unauthorised channel may have been in use and the people might be listening on the incorrect channel. 20

Q. Just in relation to the possibility that the set was broken down, I want you to assume that ultimately, at 3.37, the Mineral Transporter communicated with the Ibaraki Maru on Channel 13. What effect would that have on the possibility that the set was broken down? A. Unless it was an intermittent fault, it sounds as though it was working okay.

Q. In terms of prudence and proper practice, what would you say about a situation where nobody was listening to the radio of the Mineral Transporter over the periods that I have described to you?
A. If an officer was on watch it is one of his primary functions to listen to VHF.

Q. I want to ask you some questions about the Ibaraki Maru. If a vessel of which you were in command was lying at anchor in this area and you observed another vessel that appeared to be drifting in the direction of your vessel, what is the next thing that you would do? A. Try and make contact with the vessel and find out his intended actions.

Q. What would be the significance of making contact with the vessel and trying to find out his intended actions? A. It may affect any subsequent action that I may take. 40

HIS HONOUR: Q. You would want to know whether he was broken down or drifting, or what was happening? A. Correct, he may have been perhaps just shifting anchorage, he may have been doing anything.

- MR. GLEESON: Q. On the assumption that a vessel such as the Ibaraki Maru is lying at anchor off Port Kembla, has been there for a number of days and expects to have to be there for another eight to ten days before it can proceed to Port Kembla and take on a cargo, what would be the proper practice in your view as to the state of readiness of the engines, how long would you expect to be taking before the engines could be made ready for the vessel move? A. It would vary considerably - oh, not considerably through a small range, say 15 minutes to 30 minutes.
- 10 Q. And that is assuming weather conditions of the kind you have heard described in the area? A. I'd say with the weather conditions on this particular night, 15 minutes notice.
- Q. You heard a number of questions put to Captain Takatani by my learned friend Mr. Sheller upon the basis of an assumption that he had or should have had his engines ready at 3.25, do you recollect those questions? A. Yes.
- Q. Some cross-examination then took place as to what the Ibaraki Maru could have done had her engines been ready for use at 3.25, do you recollect that? A. Yes.
- 20 Q. Before coming to the particular manoeuvres that were suggested to Captain Takatani, I want to ask you about the anchor of the Ibaraki Maru. You have heard it said that at the time in question that is 3.25, there were ten shackles out? A. Yes.
- Q. Once crew get into position to bring in the anchor what, in your experience, is a reasonable time to allow for an anchor to be brought in? A. To engage the gear, to line it up, say two to three minutes.
- Q. And then to bring it in? A. To bring it in, in a ship of this size, we would have to talk about two minutes per shackle.
- 30 Q. So that is 22 to 23 minutes for the operation, assuming the crew were at station ready to bring in? A. Yes.
- Q. So that if that operation had commenced at 3.25 it could not have been completed by the time of the collision, whether the time of the collision was 3.42 or 3.45? A. That's correct, because the ship would have also been pulled 900 feet ahead and the collision would have occurred earlier.
- Q. I think in fairness it was not suggested to Captain Takatani that that is what he should have done, but what was suggested to him was that he should have engaged in one of other of two possible manoeuvres, do you recollect those manoeuvres? A. Yes.
- 40 Q. Before coming to the detail of those individual manoeuvres and asking you to comment upon them, is there some general comment that you would make upon the manoeuvres as they were described in relation to the size of the vessel? A. I would say they appear to be small ship manoeuvres being applied to ships of huge dimensions.

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Q. Is either of them a manoeuvre which you would regard as prudent to attempt in a vessel of the size of the Ibaraki Maru? A. Except in the case of life or death, which we could well be in here, I would never think of steaming up full ahead on my anchor cable.

Q. What about manoeuvring around your anchor cable in a vessel of this size, as was described? A. It would have to be a case of life or death.

Q. What are the risks involved in the manoeuvres as they were described to Captain Takstani? A. Great. There is one particular manoeuvre, the moving ahead 50 to 100 metres. The cable would drop to the seabed on the starboard side of the starboard bow. The ship is then turned under full power running over the top of its cable. I think the cable would have to break. The cable anyway has been - the anchor has proved itself to be holding well, it would distort any normal ship movement, it would make a bigger swinging radius for a ship to try and get around, until the anchor broke - when I say the anchor broke, the cable could part, the flukes could go from the anchor, the whole windlass machinery could go over the side applying these huge horsepowers.

Q. What would you say as to the safety of these manoeuvres in terms of the lives of the persons who we are assuming are standing on the bow of the Ibaraki Maru? A. If I had to do a manoeuvre like that I would put over my P.A. for them to run for their lives.

Q. Coming to the first of the two manoeuvres, it is described as follows: The first manoeuvre would be to go full ahead for a distance of say 50 metres and then to swing on the arc of the anchor to starboard or in a southwesterly direction until a position was reached, in effect, due west of the line between the Mineral Transporter and the Ibaraki Maru in its original position. That was the first manoeuvre and I ask you to bear in mind that it is being suggested that that manoeuvre should be performed in the circumstances of the night which includes the Mineral Transporter drifting towards the Ibaraki Maru. What do you say about that in terms of its prudence and practicability? A. At this stage, according to a few mental calculations that I made yesterday I think the Mineral Transporter was three and a quarter cables - which I will translate to feet, about 2,000 feet, 1,900 feet - from the Ibaraki Maru. I don't think that she could have made the turn. It would have resulted in a vessel increasing in power crashing into the Mineral Transporter and perhaps making a worse accident.

Q. The second manoeuvre was described as follows: that the Ibaraki Maru should steam straight ahead for say 50 to 100 metres and then proceed ahead, with the rudder full to starboard. This is steaming full ahead, do you recollect that? A. Yes, in fact I thought it was linked up with the question that I have just had before this.

Q. What do you say as to that second manoeuvre in terms of its safety and practicability? A. Well, this is where I say the anchor

would - the cable would slacken and hang by the starboard side of the bow. The ship then turns on starboard over the top of the anchor cable. The anchor cable would start fouling the billage keels down the starboard side. The anchor, if it held, would restrict or alter seriously the radius of swing to starboard. Then things would start breaking.

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Q. Was that the particular movement that you had in your mind when you said you would tell the crew to run for their lives? A. Yes.

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10 Q. One thing I should make clear with you: it is probably common ground, but when a vessel of this size turns as was described in that manoeuvre can you describe a direction or the motion of the vessel, is it a sudden or sharp turn or is it a wide and gradual arc? A. It is a very large turn. In the case of a ship the size of these ships it would probably run to about 3½ to 4 ship lengths, the action is that the pivot point when you go ahead is about one-third from the bow, the bow tends to come inside the line that the pivot point would take around the periphery of a circle. The stern of the ship, and in other words the two-thirds of the ship from the pivot point aft, tend to stick out over the radius of circle by that amount. The reverse is true if you were doing an astern movement, the pivot point moved off so that the stern of the ship is thrown to port, but the bow is thrown much more rapidly to starboard.

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CROSS-EXAMINATION

30 MR. SHELLER: Q. (Witness shown Ex. F). Having heard the evidence that you have, I would like you to assume that you, as master of the Ibaraki Maru, first observed that the Mineral Transporter was moving on the line shown on Ex. F at about five minutes past three, that that movement had commenced at about ten minutes to three - (objected to: not pressed).

Q. If you would assume that you were the master of the Ibaraki Maru and that five minutes past three you observed the Mineral Transporter moving towards you on a bearing of about 200°, is that clear what I am saying to you? A. No, it is not.

Q. In what respect is it not clear? A. You are asking me to assume it is coming in at a different angle to Ex. F. I think the bearing here is 142.

Q. I am sorry, the Mineral Transporter as shown on Ex.F is on a bearing of 200? A. The ship itself is on a bearing.

40 Q. On a heading, I do apologise. I meant on a heading of 200. At five past three you, as the Master of the Ibaraki Maru see the Mineral Transporter moving towards you, the Mineral Transporter being on a heading of 200°, is that clear? A. Yes.

Q. The Mineral Transporter, at that point, at a distance of approximately one mile? A. Yes.

Q. In that situation what, as master on the bridge observing that, would you have done? A. I would have called the Mineral

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Transporter and asked what she was doing.

Q. If you got no response? A. I would have kept calling. I would have perhaps called channel 13 and informed the port authority.

Q. Assuming you continued to get no response from Mineral Transporter? A. What would I have done?

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Q. Yes? A. I think I would have done many of the same things as Captain - I am sorry, I can't pronounce his name, but the Japanese captain - try to attract the other ship's attention in every way possible.

Q. Would you have called the crew to emergency stations? A. At 10 one mile, no.

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Q. Would you have put or called the engines to stand by? A. I already have my engines on 15 minutes notice, I would have rung the engine room perhaps.

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Edwin Dean
(cross-
examined)

Q. And called the engine to stand by? A. Not necessarily, not at one mile.

Q. When you said that you would have the engines at 15 minutes, does that mean that as a matter of prudence in the weather conditions as they have been described in evidence on this night you would have had the engines in a state of readiness where they could have been called to stand by at no less than 15 minutes' notice? A. Yes.

Q. Assuming that was the situation, at what distance, if the Mineral Transporter continued to move towards you and continued on a heading of 200°, would you have called for the engines to be put on standby? A. I'd say at about .7 of a mile.

Q. If you look at Ex. F, according to that radar plot, the Mineral Transporter was positioned at half a mile from the bridge of the Ibaraki Maru at about 3.22 following the movement that was described as occurring on that night, do you see that? A. Yes. 30

Q. Looking at that and assuming that from .7 of a mile it continues at a constant speed, are you able to calculate at what time the vessel would have been at .7 of a mile from the bow of the Ibaraki Maru? A. That would have been 2½ minutes earlier than three-thirty.

Q. 2½ minutes earlier at what? A. At 03.30.

Q. Perhaps let me ask you this first: when you referred to a distance of .7 of a mile, would that be .7 of a mile from the bow of the Ibaraki Maru? A. No, from the radar.

Q. If you look at Ex. F, it shows that the Mineral Transporter was half a mile from the radar at about 3.22? A. Yes. 40

Q. Now I am asking you to assume a constant speed. At what time on your calculations would it have been .7 of a mile from the

radar? A. Well, I have just done it mentally, two and a half minutes earlier than that 03.30 position, which is half a mile.

Q. According to this, in 20 minutes it travelled less than half a mile, do you see that? A. We have a position here of collision at 03.32.

Q. Yes? A. Right - I am sorry, I am looking at the wrong range rings .

10 HIS HONOUR: Q. Do you want some paper? A. No, I think it is okay. I am sorry, I assumed the central position, I haven't seen this before.

MR. SHELLER: Q. It may assist that it appears, I think, that the Mineral Transporter at that time was moving at a speed of about 1½ knots? A. Yes, from 03.22 to 03.42 is 20 minutes, she's travelled half a mile.

Q. Perhaps a bit less than half a mile, because that is to the bow? A. Yes, so that is 1.5 cables every ten minutes - it would be about 12 minutes prior to that, to 03.22.

Q. So that would put it at about 03.10, is that right? A. That would be right.

20 Q. I take it from what you have said that at .7 of a mile at about 03.10 you would have called your engines to standby? A. Yes.

Q. You would have expected them to be on standby by 3.25? A. Yes.

Q. In the interval, while the engines were coming to standby, from 3.10 to 3.25, what action would you have taken in the circumstances as I have described them to you? That is you as master of the Ibaraki Maru? A. Try in every way possible to make contact with the ship that was coming down on me. I would certainly do other things, like turning out crew and so on.

30 Q. During that time of a quarter of an hour would you give consideration to what plan of action you should take, according to whether or not you made contact with the Mineral Transporter? A. Most certainly.

Q. So that it would be a time of planning as well, is that right? A. Yes.

40 Q. I now want you to assume that the time 3.25 arrives and your engines are reported to be on standby and that in that interval of a quarter of an hour you have still not made contact with the Mineral Transporter. What action would you have taken at 3.25? A. I think I would have stationed somebody on the fo'c'sle head to slack cable. It would be starting to look like a collision situation. The other ship, I have not established contact, although he is underway he is indicating to me that he is firmly at anchor with his lights. That is about all I could do. There is no way

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I can get my anchor up. I don't think I can use my engines in any seamanlike way to lessen the results of this - about the only thing that will lessen damage here is to, shortly before impact, slack my cable.

Q. (Counsel approached with ship models). I want as best I can to put the two vessels into the position that they would have been at 3.25. Is it correct to say that in terms of length the two vessels are approximately the same? A. I believe they are pretty similar.

Q. So let's assume that that is the position of the Ibaraki Maru?
A. Yes.

Q. Again, is it possible by using the position as shown here at 3.22 to give some indication of the position in terms of distance from the bow of the Ibaraki Maru that the Mineral Transporter would have been in at 3.25? A. Using the models?

Q. No, just if you could measure out the distance. It may assist to say that there is some evidence that it would have been about 570 metres but I don't know whether you would agree or disagree with that or have any view about that? A. No, I would agree with that.

Q. Each vessel is what, about 260 metres long? A. Yes.

Q. So if we do an exercise such as this and add a bit on we would have the Mineral Transporter in a position approximately like that, would that be correct? A. That would be correct.

Q. On the heading of 200° - perhaps that one should be slightly more like that, would that be right? A. Yes.

Q. At this point of time you have ten shackles of anchor chain out? A. Yes.

Q. That is a distance of about what, 300 metres or 270 metres?
A. Well, it is 15 fathoms to a shackle, six feet to a fathom, so we are talking about 900 feet, which is about a cable and a half.

Q. Would it be slightly over the ship's length, assuming the length of the ship is 260 metres? A. The length of cable, yes.

Q. Again, if I do this exercise, that would put the anchor at that distance? A. That's correct.

Q. Would it be lying, in the tide situation that you have heard described, would the ship be lying in effect on line with the anchor cable or would it tend to be on one side or the other, assuming it is the starboard anchor? A. The ship has been here now for how many days at anchor?

Q. I think about ten days? A. In that time the ship would have revolved around the anchor several times. The cable could be

snaked in any fashion on the bottom. In other words, the anchor may not necessarily be there, there may be a length of cable going like that, there may be a big length of cable going like that, but somewhere in this region here.

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Q. Would it be something that could be determined by the master, where his anchor lay or how the anchor chain lay out? A. Not really. At the moment of dropping the anchor you can determine where the anchor went down, but with subsequent days at anchor you would not know how the anchor chain lay on the bottom.

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10 Q. In that situation and just for a moment leaving aside what the Mineral Transporter was doing - I will come back to that but in that situation, with your engines on standby and the anchor chain out, it is I take it possible to move the vessel forward? A. Yes.

Q. It is also possible, I take it, to move it forward and turn it to a heading towards starboard? A. It could be possible, yes.

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Q. There is no mechanical or physical difficulty in doing it, is there? A. No.

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20 Q. Assuming that that was done, still with the anchor chain out, is it possible to move forward, gradually turning to starboard? A. Gradually turning to starboard, yes, that would be possible.

Q. Presumably, you would have to get some distance up to get some way so that you could turn to starboard, or can you start making that movement immediately you go ahead? A. I am just not clear as to your meaning of "get some distance up".

Q. Let me try and explain it. Assuming that you wanted to, as it were, drive the vessel in a direction turning to starboard from a stationary position where the Ibaraki Maru was anchored, do you follow that? A. Yes.

30 Q. In order to get some movement of the bow to its starboard is it necessary to move ahead some distance and then go to starboard, or can you start immediately to turn the bow to starboard as the engines start to drive the vessel forward? A. You could start immediately, but the bow would not swing very much to starboard because, as you can see, it is retained by the anchor - the pivot point, instead of being here, would now move to here, so that you would get this sort of a movement.

40 Q. Could you physically perform a manoeuvre, in which, by judgment from the bridge, as the anchor chain slackened so you were able to move forward and move more to starboard? A. In this particular case we have got the starboard anchor out, you are asking me to move one hundred feet forward, the cable is now hanging on the starboard side of the ship. I now start to overrun my cable, taking up the slack. My cable is now from the bow underneath the ship and to the anchor.

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Q. You have perhaps gone a little ahead of me, but first of all is it right that you have to go ahead for 100 feet before you can start swinging the bow to starboard, or can you start swinging the bow to starboard before that and make some perceptible change in the direction, that is what I am trying to find out? A. There would be perceptible change in direction, but because the bow is held by the anchor and because the pivot point is forward the movement inclines more to put the stern out.

Q. Is it a matter that can be controlled from the bridge as to the extent to which the stern goes out and the bow turns to starboard as you move forward? A. No.

Q. In other words, a matter of judgment with the wheel, if you were trying to do a manoeuvre such as I am suggesting, that is to say moving forward and turning the head of the vessel to starboard? A. Here we have put the ship under physical restraint - no, I can't control that.

Q. Of course, as you move forward the anchor chain slackens, does it not? A. Yes.

Q. And as it slackens I take it it reduces the strain on the bow of the vessel? A. I think the chains and the cable would hang slack, yes.

Q. If you did this, would not the position be as you move forward that the chain would in fact hang slack so that, in effect, it was hanging down under the bow of the vessel? A. That's correct.

MR. SHELLER: Q. And if that were the situation the tendency, would it not, would be for the vessel to be able to swing in a more pronounced fashion to starboard? A. Than if it started with cable port, yes. It would definitely - there would be a definite -

Q. And would it not be right to say that as you move forward and to starboard for a time the chain would simply be lying in a loop, as it were, to the seabed? A. Yes, for a time.

10 Q. And not restraining the starboard movement of the bow?
A. For a time, yes.

Q. Just one other thing about that, this vessel, the Ibaraki Maru, had a bulbous nose, is that right? A. Yes, ram bow or bulbous.

Q. Is it possible as a matter of manoeuvring such a vessel on anchor to make use of that bulbous nose in effect to hold the anchor chain? A. I have never ever heard of it being done. I could perhaps think of some hypothetical ways of doing it but I could not see what for.

20 Q. What I am suggesting to you, as you move forward laying the anchor chain over the bulbous nose? A. This does not follow with the question that I was asked. I was told to move my ship ahead, to perform some intricate manoeuvre where I draped the cable over the top of my ram bow. We would have to think about going hard to starboard from the word go if I was trying to do that. It is a very bad technique to get one's anchor at a very sharp angle around the bow because it localises heavy stress. We are talking about big ships and powerful engines.

30 Q. What I perhaps am trying to find out from you is is it a technique to manoeuvre such vessels to drape the chain over its bulbous nose? A. I have never heard of it.

Q. It is something you have never done yourself? A. I have never heard of it and I have certainly never done it myself.

Q. Coming back to what I have been trying to describe to you in coming forward with the chain loop to the sea bed and not straining on the bow? A. Yes.

Q. There is no problem or danger, is there, in conducting a manoeuvre of that sort? A. Yes, there is.

40 Q. What is that? A. Along the side of the ship we have bilge keels which are there to minimise rolling. They are attached to the ship structure. They are very strong because as you can imagine to stop a 106,000 ton ship, stop her rolling, the chain would drag across this obviously doing damage to the bilge keels which were attached to the hull so there would be possible hull damage. It would cut like a knife on the anchor cable.

Q. Would that problem arise immediately you started to move to starboard or is that something that occurs as the anchor chain comes on tension again? A. As the anchor chain comes on tension again.

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Q. What I am trying to understand is this, is it possible to do a manoeuvre which simply involves to some degree such as is necessary to get way moving ahead and then as soon as possible swinging the bow to starboard and continuing to move ahead?
A. Not with a ship this size. It is a small ship manoeuvre and we are talking here about a big ship.

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Q. What is it about this being a big ship that prevents this manoeuvre? A. Because of the huge amounts of kinetic energy that we get moving through the water in various fashions whether it be a turn or ahead movement or an astern movement. If I could illustrate this a little bit more - a ship of 10,000 tons would have an anchor of about four tons. A ship of 100,000 tons would have an anchor weighing about 16 and three quarter tons. It does not go up in proportion of strength of the machinery and the anchor cables because we would finish up with sizes so huge that they just could not be handled so that perhaps with a small ship of 10,000 tons such a manoeuvre as you have illustrated to me could be done - perhaps - but a big ship, it could not successfully be done in my opinion.

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Q. Well I will just come back to that in a moment. Before I do, the manoeuvre that I propose in full involves continuing on this starboard swing until a position is reached where tension is felt again on the anchor chains. Now is that meaningful in this case, that you have a point as you move forward where the anchor chain goes slack and loops to the sea bed? A. Yes.

Q. But as you move forward and to starboard for a period of time that slackening process would continue and then the vessel would start, as it were, to take the anchor chain up again to a point where its tautness could be felt on the bow? A. Yes.

Q. Leaving aside for a moment the other movements, to which I will come back, is that a meaningful description of what would happen as the vessel proceeded forward and to starboard in the fashion that I have described to you? A. We are on full ahead now? 30

Q. Let us assume first of all that we are on full ahead? A. Well, I would think that the weight would go on the anchor cable quite suddenly rather than a gradual thing.

Q. Well then, assuming that it is not full ahead. Assume that it is at some speed designed to bring the tension onto the anchor chain gradually? A. At dead slow. 40

Q. It would be dead slow, would it? A. We could go the ship ahead to do such a situation as you want to do. Dead ahead on the engines, stop and dead ahead.

Q. That involves what, moving through the water at what sort of speed? A. Certainly less than walking speed.

Q. Would you say something in the order of 2 to 3 knots or what are we talking about? A. Possibly 2 knots.

Q. Well then, is what I have described to you as a manoeuvre feasible in terms of the slackening of the anchor chain and then its coming taut again if you ^{ghost} the vessel forward in the manner you have described? A. Yes.

Q. Well now if you follow that out on a starboard swinging movement to the point where you feel the anchor chain influencing the bow or getting taut on the bow? A. Yes.

10 Q. Do I make myself clear? A. Yes.

Q. In that situation is it then possible to swing the stern of the vessel in a manner which makes use of the tension on the anchor chain? A. Yes. This is once again at ghosting speed.

Q. How does one go about doing that? A. One would put the helm to port.

Q. And the engines remain at dead slow or ghosting speed ahead, do they - is that right? A. Yes.

Q. What would the effect of that be in the water, the movement of the vessel - what, would it continue, as it were, to move forward

20 turning as it did? A. Turning back now to port.

Q. As I understood it if we got that out here somewhere and the tension is being felt on the bow? A. Right.

Q. We then want to bring the stern around to starboard. Is that a meaningful proposal? A. Yes.

Q. And to do so you say we put the rudder to port? A. Yes.

Q. And ^{as} that manoeuvre began to take place would the vessel be continuing forward as it swung? A. With an ahead movement on the engines - yes, the cable would come slack again.

Q. The cable is still, as it were, lying back to some point where

30 we have got the anchor? A. Yes.

Q. How would you describe the movement of the ship as that manoeuvre took place? Could you swing the stern right around? A. Yes, I could swing the stern right around and the bow would come back to port.

Q. Would it be possible, as it were, doing that manoeuvre to maintain the tension on the anchor chain so as to make full use of it as you swung to stern? A. To come from a movement to start putting tension on the cable then altering course to port. In my view I could not see any way in keeping tension on the

40 anchor cables. This is with an ahead movement.

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Q. What I want you to consider is that you brought the vessel out to some point where you first feel that tension? A. Yes.

Q. You want to swing the stern to port? A. Yes.

Q. And in doing so you want to make use -

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HIS HONOUR: Is that right, you want to swing the stern to port?

MR. SELLER: Q. You want to swing the stern to starboard? A. Yes.

Q. Can you not do so by making as much use as possible of the anchor chain by keeping it taut? A. No, because the main function of the propeller is to push the ship ahead, not turn the ship, so that the ship would be gathering headway and we would slacken the cable again initially and at some later point we would then pick up that slack.

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Q. Let me try to put it to you another way. Again starting from the position with the anchor there, is it possible to manoeuvre the vessel by commencing with a starboard swing of the bow to a position where it lies approximately south west of the anchor on heading approximately north-east? A. Can you illustrate that please?

Q. What I am trying to do is to just get two positions, you start in a position there with ten shackles of chain out, the anchor there? A. Right.

20

Q. The position that you want to end up without taking up the anchor is a position approximately here, on a heading north-east and in a position more or less south-west of the anchor?

A. To get the ship from there to there is, in my view, impossible with the wind in the south-west 20 knots, the ship in ballast condition and the ship so big.

Q. Is it possible in your opinion to get the vessel out into a position perhaps not as far around as I have suggested, say at a position due west of the anchor? A. We are talking about putting the ship out there, is that what you mean?

Q. Due west but on a heading more or less east and with the anchor chain remaining out? A. No, I do not think I could force the ship that far. I do not think I could force the stern up through the wind.

Q. Would the effect of the wind and the tide be to tend, as the vessel swung in the manoeuvre I have already sought to describe to you, when the anchor became taut would the tendency be to keep the anchor chain taut as you swung? A. Could you explain that again? We have had quite a few movements here and I am starting to lose track of which ones we are talking about.

40

Q. I am going back to the manoeuvre I suggested to you where you swing the bow of the ship to starboard. You have moved a distance until the anchor chain, you can feel the anchor chain at the bow again? A. Yes.

Q. I am then suggesting that you swing the stern to starboard and I am asking you whether, bearing in mind the wind and tide conditions on this occasion the tendency to those would be to keep the anchor chain taut? A. No, not while you have got your engines going ahead. The tendency of the wind would be to act on the huge block of accommodation aft on the Ibaraki Maru. The tide of course would be acting on the hull or the water area.

10 Q. But would it not be tending to draw it away from the anchor?
A. Yes, but we have just used our engines to overcome both those forces.

(Short adjournment.)

Q. (Approached) Just on one matter that I put to you before, I used the expression 'draping the chain over the bulbous nose'. Would it be appropriate if one were attempting a manoeuvre of this sort to in effect, instead of having it lying on the - having the chain lying on the bulbous nose to have it wrapped around - would this be described as the post, the front part of the bow? A. Or the stem.

Q. Stem post, would that be correct? A. Just the stem.

20 Q. Wrapped around the stem, manoeuvring to get the chain in such a position as one can forward assuming that the anchor is lying out ten shackles? A. Would it be possible to do a manoeuvre, to do that?

Q. Yes, as part of a manoeuvre in which you go forward and swing the bow to starboard, taking the chain onto the stem of the vessel?
A. Not without keeping the anchor taut, the anchor cable taut. I think we have talked about slacking the cable fifty metres, whether it is fifty or 100 metres movement ahead the natural tendency would be for the cable to fall down on the starboard side.

30 Q. I want to show you a drawing or a diagram which is designed to lay out what we were doing with these two vessels before the adjournment - what I was seeking to do with the two vessels before the adjournment - in which you have got the Mineral Transporter distant about 570 metres from the bow of the Ibaraki Maru? A. Yes.

Q. And tending in this direction so that if the Ibaraki Maru did not move it would have collided at about 0342? A. Yes.

Q. And of course the position of the Mineral Transporter is shown on that basis out here as at 0325? A. Yes.

40 Q. In your opinion is it possible, was it possible to manoeuvre the Ibaraki Maru into the position which is shown on that diagram as position 2 and which is on a heading on about 165 degrees?
A. No, I do not think so.

Q. Would you say that was impossible, would you? A. Yes.

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Q. And as part of that manoeuvring to that position having the anchor lying in a direction or in an area shown there as a dotted line? A. Yes.

Q. And then running along the line between the bow of the Ibaraki Maru and the Mineral Transporter - the Ibaraki Maru in its original position running along that line to the anchor which is marked on the diagram? A. Could you repeat that please?

Q. What I am asking you is is it possible to manoeuvre - was it possible to manoeuvre the Ibaraki Maru into position 2 with the anchor chain taking up a position shown by the dotted line till it reaches the red line and then follow the red line to the position where the anchor head is shown? A. No. 10

Q. In your opinion that is impossible, is it? A. Yes.

Q. And then moving forward from that position to the position shown at position 3? A. If position 2 is impossible position 3 follows.

Q. You would equally say is impossible? A. Yes.

Q. I take it that you would also say that it would be impossible to swing the vessel bringing the stern to starboard as shown in position 4? A. Yes. 20

Q. Do you say that that manoeuvre would be impossible regardless of what engine speed you used or what rudder speed you used. A. Yes, as shown on this diagram.

Q. You are saying, are you, that it would be simply impossible by any use of engine or rudder, bearing in mind the weather conditions on this particular night, to bring the Ibaraki Maru beyond position 1 as shown to position 2 as shown? A. With the times shown?

Q. We will come back to the times in a moment. Leaving aside the times, just the positions? A. I think it would be impossible. 30 There is a very slight possibility that with unlimited time you could do some manoeuvre like that, yes.

Q. I will ask you about time in a moment. Just leave aside the time if you do not mind. Do you say there is some limited possibility that you could move the Ibaraki Maru from position 1 to position 2? A. Yes, I could go ahead, go astern, go ahead, go astern and move the ship into position 2, yes.

Q. But that would involve you performing the manoeuvre you just described of going ahead and going astern? A. Yes, it would take a lot of time. 40

Q. What I am then asking you is whether it is possible to reach position 2 simply by putting your engines ahead and putting your rudder to starboard? A. No, I do not think so.

Q. Regardless of what speed you put your engines to? A. Yes.

Q. Even if you performed it as a ghosting manoeuvre? A. Yes.

Q. Can you tell me what are the factors which lead you to say that it would be impossible except in the manner you have described to bring the vessel from position 1 to position 2?

10 A. Because starting a vessel from rest with an ahead movement there is an initial movement forward before the vessel starts to swing to starboard. I can illustrate this in a case of where, with a loaded ship, it was one and a half minutes between the time of putting the engines ahead before the vessel's bow started to pay off to starboard and then only very slowly, so that forward motion must be gained before the swing starts to take effect to starboard.

Q. So one factor then is you say that you would have to go, as it were, straight forward before you could start to swing the bow to starboard. Is that correct? A. Not exactly straight forward but there would be forward, some forward component in the move than a swinging component to starboard.

20 Q. And the combination of the movement forward and the slow swing to starboard would lead, in your opinion, would it, to one's not being able to achieve position 2? A. Yes.

Q. Are there any other factors that have to be taken into account in considering that or is it simply a question of not being able to swing the bow within the distance? A. It is a question of not being able to swing within the distance.

30 Q. Would you agree that from position 2 to position 3 would be a possible manoeuvre? A. If there was some way the ship started in position 2, yes. There could be quite easily to shift up to position 3. It would be modified a bit by this huge scope of anchor cable which is out, and, as I say, Port Kembla has a lot of obstructions on the bottom and you are moving around a big bight - a cable lead out fore and aft, dead ahead, has not much resistance. Once you start to swing them in a big bight where you are pulling, as you say with tractors pulling up mulga to some effect, you are getting a tremendous drag so I would say the bow would go more to port.

Q. You would not be able to compensate for that use of engine and rudder? A. One would obviously try and compensate.

40 Q. But you do not think that would be successful? A. It would behighly theoretical even if it would be successful.

Q. Assuming that you are in position 3 and you are moving, in your opinion would it be possible from position 3 to bring the vessel to position 4? A. I think that you would probably come around pretty quickly to that position because at this time the Mineral Transporter would be hitting the ship about here with a hard-over movement. Yes, you could bring it around.

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Q. In saying that you are saying that is based upon a collision, is it? A. Yes.

Q. Leaving aside that for the moment and assuming that the Mineral Transporter does not in fact collide with the Ibaraki Maru and the Ibaraki Maru on its own - ? A. Am I to disregard this part and just look at this part?

Q. Yes, if you just look at position 3 to position 4 and would you tell me please whether as a manoeuvre it is possible to bring or was possible to bring the Ibaraki Maru from position 3 to position 4? A. Is this with unlimited time? 10

Q. At the moment if you just treat it as with unlimited time?
A. That is, I would say, a particularly hard movement because any astern movements would be tending to go to stern to port and the bow rapidly to starboard so that I would not be able to use an astern movement to help me along. I would have to rely entirely on the ahead movement and the pinning effect of the anchor and cable so that I think I would transcribe perhaps a bigger arc around.

Q. A bigger arc around? A. Depending on how the cable was dropped from the bottom, if the cable was caught on something which would be a shorter arc. 20

Q. That was on the basis of unlimited time. If you were to do or attempt such a manoeuvre you would keep the engines ahead, I take it, or stationary, is that right? A. If I was attempting this manoeuvre.

Q. To get from position 3 to position 4? A. It would be an ahead movement.

Q. Is there some problem of time in performing that manoeuvre?
A. Yes, there would be always a problem of time. We have just turned the ship pretty hard to starboard. We have to arrest that starboard swing. If it has not been arrested by the anchor cable it could then turn it back to port again. 30

Q. Would you consider it possible to go from position 3 to position 4 in a period of about four minutes? A. No.

Q. How long do you think it would take? A. It is almost impossible to answer. We are getting into the realms of theory which would be better solved in a ship tech. I think.

Q. You have indicated to me the factors that in your opinion stand in the way of taking the vessel from position 1 to position 2. In your opinion assuming the Mineral Transporter was approaching as shown on this diagram would it not have been possible by manoeuvring the Ibaraki Maru generally in terms of the positions shown on this diagram as it were to bring the bow of the Ibaraki Maru around the front of the bow of the Mineral Transporter and then swing the stern of the Ibaraki Maru clear of the Mineral Transporter as it went by? A. In my opinion, no. 40

Q. What is the reason why you are of that opinion? A. Because the ship starting from rest is going to gather headway first of all and then slowly start to swing to starboard. I would imagine an impact somewhere in this region.

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Q. When you say somewhere in this region what you are talking of is a position about two-thirds of the way from the bow of the Ibaraki Maru in position 1 is that right, to the side of the Mineral Transporter in its position 2? A. Could I have that again?

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10 Q. I am just trying to get the point. Perhaps you can describe it better. You say you would expect a collision in about this region? A. The bow of the Ibaraki Maru would be swinging to starboard. Presumably there is no change in the Mineral Transporter. She has been at 60 degrees to the wind for the last 40 minutes or so. I think in turning she would strike somewhere in this forepart of the ship. The Ibaraki Maru would strike the Mineral Transporter or the Mineral Transporter would strike the Ibaraki Maru.

Plaintiffs'
witnesses

20 Q. Is it possible for you to indicate just with a cross on that diagram - I think you indicated a moment ago somewhere about here - just where you are talking about when you say that? A. Could I have first of all - is this drawn to scale?

HUGHES
Edwin Dean
(cross-
examined)

Q. Yes, it is intended to be? A. What is that 570 metres, what does that mean?

Q. 570 is from that position there to the bow of the Ibaraki Maru in position 1? A. And this is position 1 of the Mineral Transporter?

Q. Yes, at 3.25. Please, with his Honour's permission, if you need to think about that or do a calculation please do because I would like you to think about it carefully? A. I will have to think.

30 HIS HONOUR: Q. Take your time. If you want any instruments? A. I am shown the Mineral Transporter here?

MR. SHELLER: Q. You are shown the Mineral Transporter in its position at 3.25 then in its position at 3.34? A. Can you tell me on what assumption that is, that side of the line?

Q. On the basis that the Ibaraki Maru struck the Mineral Transporter at about midships? A. That to me actually looks a little bit for'ard of the midships so that a bit more of the ship would be sticking out this way.

40 Q. If it was dead midships that would appear to be so? A. Here it looks as though it is midships but here it looks for'ard of the midships.

Q. If you could take account, if it is possible, of an adjustment to that. What I want to know, assuming that proceeded forward and attempted to swing the bow of the Ibaraki Maru to starboard? A. Yes.

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Q. In an attempt to manoeuvre around the bow of the Mineral
Trasporter? A. Yes.

Q. Now you said, as I understand it, that you would expect a
collision in this region. What I am asking you is what is
the region, if you would mark the region on the diagram that
you are referring to, mark it on the diagram by a cross? A. This
is not following your line of positions 2 and 3, it is the line
that you think I think the ship would take. Well I would say
it would take possibly ten minutes to try and swing the ship at
right angles. In ten minutes the Mineral Transporter would 10
have moved a further 1.5 cables along its bearing and I am not
exactly sure how you have worked your scale here but if you
could move the Mineral Transporter down ten minutes in time or
1.5 cables.

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witnesses

Q. The Mineral Transporter is 11 minutes later at that position
there? A. Right.

HUGHES
Edwin Dean
(cross-
examined)

Q. That is position 2? A. O.K., I will accept that. I would say
that the - if I can just use this to illustrate - it is a bit
longer I know but the Ibaraki Maru would be something like
that. 20

Q. When you say something like that, that is the heading upon
which you say it to be lying, is that right? A. Well, this is
highly theoretical but I think it would take about ten minutes
to get the ship around to that position.

Q. That is a position with the Ibaraki Maru approximately at
midships along this line of direction? A. Perhaps something like
that, yes.

Q. Can you just draw a line across where you think that after
ten minutes the Ibaraki Maru would be lying? A. Just a straight
line? 30

Q. A line that is intended to show, as best you can, using
roughly that scale, the Ibaraki Maru from bow to stern? A. Some-
thing like that.

Q. And you have marked that with a black ink line? A. Yes.

Q. In your opinion that would be the position that Ibaraki Maru
would be in ten minutes after 3.25 after it commenced this
manoeuvre that I have sought to describe to you at 3.25?
A. Yes.

Q. Is that right? A. Yes.

MR.SHELLER: Q. And, in your opinion, that would be a consequence of proceeding ahead and putting the rudder to starboard ? A. Something like that.

Q. If you proceeded ahead and put the rudder to starboard -
A. That would be , yes, the manoeuvre -

Q. That is where you would end up, is that right ? A. Yes.

Q. That would be so however successfully you attempted to do the manoeuvre with a purpose of bringing the vessel over into position 3 and 4 ? A.Yes.

10 Q. So that if you as the Master of the "Ibaraki Maru" were trying to get to position 3 or 4 by going ahead and going to starboard, that is where you say you would end up -
A. Yes.

Q. - ten minutes after commencement, is that right ? A. Yes.

Q. It is, in your opinion, quite impossible within that ten minute time scale to get into either position 2 or position 3?
A. Yes.

Q. Or, for that matter, position 4? A.Yes.

20 (Above document tendered without objection and marked ex. 3).

Q. The questions that I put to you up to this point of time have been based on the assumption that, firstly, the master of the "Ibaraki Maru" observed the "Mineral Transporter" drifting towards it at five past three and then after the actions that you described that you would have taken in that position that the engines were on standby by 3.25 on the "Ibaraki Maru" - do you understand that ? A. Yes.

30 Q. Does that mean that in your opinion on those assumptions from 3.25 there was nothing that the "Ibaraki Maru" could have done to avoid the collision? A. In my opinion, yes.

Q. Is that the position, so far as your opinion is concerned, from five minutes past three?

HIS HONOUR: Do you mean by the use of engines or manoeuvres?

* MR.SHELLER: Q. On the assumption that the "Mineral Transporter" was observed by the Master of the "Ibaraki Maru" drifting towards the "Ibaraki Maru" at five past three, from that time on there was nothing that the "Ibaraki Maru" could do to avoid the collision by the use of its engines or rudder? A. Could I have that question, please?

40 (Question marked "*" read).

MR. GLEESON: Is the witness being asked to assume that at five past three nothing has been done in relation to the engines? In other words, the question does not make it clear whether the engines might have been on stand-by at five past three.

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HIS HONOUR: Q. I think what Mr. Sheller is asking you is assuming the engines were available in a reasonable time, was there anything that could have been done from five past three by way of manoeuvres to have avoided the oncoming vessel? A. So that in fact at five past three I cannot move my engines until 20 past 3? No, there was nothing I could do to avoid the collision.

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MR. SHELLER: Q. You would not have attempted, I take it, a manoeuvre of the sort that I have tried to describe to you in the witness box? A. No, sir.

10

Q. Does that question indicate to you that in this situation the engines should have been on a shorter notice for stand-by? (The words "in this situation" objected to).

Plaintiffs'
witnesses

HUGHES
Edwin Dean
(cross-
examined)

Q. In the light of what you have just said to me, does it follow from that that in your opinion, on the conditions that have been described as obtaining in terms of weather on this particular night, and of other vessels in the vicinity, the engines of the "Ibaraki Maru" should have been in a state of readiness which required less time to bring them to stand-by? A. No, definitely not.

20

Q. You would not consider that lying off Port Kembla with the weather such as this you should have been able to bring the engines to stand-by in at most ten minutes? A. No.

Q. Is it true to say that in that area of Port Kembla it is quite common for vessels to drag their anchors? A. Yes.

Q. And, accordingly, to drift as a result of that? A. Yes, change position, yes.

Q. Do you consider that if the "Mineral Transporter" commenced to drift at ten minutes to three and if a competent watch was being maintained on the bridge of the "Ibaraki Maru" it was reasonable that the drifting of the "Mineral Transporter" would not be observed for 15 minutes from the "Ibaraki Maru"? A. Yes.

30

Q. You think that is not an unreasonably long time? A. It isn't an unreasonably long time.

Q. So is this the position: That in your opinion if the "Mineral Transporter" commenced to drift at 10 to 3 from a position approximately 1.2 miles from the radar of the "Ibaraki Maru", and even if a competent visual watch was being maintained on the "Ibaraki Maru," unless some action was taken on the "Mineral Transporter" in the circumstances of this particular night, and with the engine at 15 minutes to stand-by, collision was inevitable? A. Can I have the whole question again, please? (Question read). I would have to do a few mental calculations. 15 minutes to turn out the crew, get them forward, 20 minutes to get the anchor up. So 36 minutes. 36 minutes, 6½ cables - can I write that down somewhere? (Note pad handed to witness) I would say at 9 cables collision was inevitable.

Q. You will have to translate "nine cables" for me? A. 9 x 600 is 5,400 feet.

Q. That is a position of about 1.2 miles from the radar, is that what that amounts to? A. 9 cables from the radar is 1 mile.

Q. You have the chart, I think, exhibit C, in front of you, haven't you? It is a plotting chart? A. I think so.

Q. You are aware of the position of the "Mineral Transporter" and the "Ibaraki Maru" on that plotting chart, is that right? A. Yes.

10 Q. And the distance appears to be 1.2 miles? A. I think that I've got something less than that here. Is this the particular chart? (Indicated).

Q. No, I am asking you to look at exhibit C, which is the plotting chart? A. I am sorry.

Q. You are familiar with the position of the "Mineral Transporter" and the "Ibaraki Maru" as shown on that chart? A. Yes.

Q. Is that right? A. I don't see any range rings on this chart. I am not familiar with these Japanese plotting charts.

HIS HONOUR: Can we assume it is 1.2 miles. The whole case has proceeded on that assumption.

20 MR. SHELLER: Q. What I want you to do is to assume that the "Mineral Transporter" was lying at anchor 1.2 miles from the "Ibaraki Maru" and that at 2.50 the "Mineral Transporter" commenced to drift? A. Yes.

Q. I have understood you to say that it would not be unreasonable for a competent watch on the "Ibaraki Maru" not to have observed that before 5 past 3, is that right - not to have observed the "Mineral Transporter" drifting? A. This depends on at what rate the "Mineral Transporter" was drifting at this stage.

30 Q. You were asked some questions about that and I understood you to say that it would commence drifting and gradually increase speed, is that right? A. Yes.

Q. I want you to assume that by that process it reached a speed of drift of about 1.5 knots? A. Yes.

Q. And it was drifting towards the "Ibaraki Maru"? A. Yes.

Q. And gradually turning from a heading of about 142 degrees to a heading of 200 degrees? A. Yes.

Q. Assuming that, do you say that a competent watch from the bridge of the "Ibaraki Maru" may not have observed the "Mineral Transporter" drifting before 5 past 3? A. Yes.

40 Q. At 5 past 3 it could reasonably have taken 15 minutes to bring the engines of the "Ibaraki Maru" to standby? A. Yes.

Q. I want you to assume that the engines having been called to stand-by at 10 minutes past 3 - which I think you said was reasonable? A. I didn't say that about engines at stand-by.

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Q. I thought you said that if the "Mineral Transporter" had been observed at 5 past 3 at a mile distant you would not have immediately called the engines to stand-by, is that right? A. Yes.

Q. I thought you said that you probably would not have called them to stand-by until 10 past 3? A. Yes.

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Q. And that then there would be 15 minutes before the engines would be at stand-by? A. Yes.

Q. That is 3.25? A. Yes.

Q. And that in that situation at 3.25, with the engines at stand-by, there was no manoeuvre that could reasonably have been performed on the "Ibaraki Maru" to avoid the "Mineral Transporter"? A. To avoid her, no.

10

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Q. To avoid a collision with the "Mineral Transporter"? A. No.

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

HUGHES
Edwin Dean
(cross-
examined)

Q. In the light of those steps do you say that with all reasonable precautions being taken on the "Ibaraki Maru" from the time of 10 to 3, and assuming the "Mineral Transporter" to have commenced to drift at 10 to 3, collision was inevitable unless some action was taken on the "Mineral Transporter"? A. Yes.

Q. So does it amount to this: that the safety of the "Ibaraki Maru" on this night depended upon the action taken by the "Mineral Transporter" or on the "Mineral Transporter" from the moment it started to drift? A. Yes.

20

Q. Do you consider it prudent that the master of a vessel like the "Ibaraki Maru" of 60,000 tonnes or more, with a crew of 23 on board, should be in a position where if another vessel started from a distance of about 1.2 miles to drift towards it the safety of the "Ibaraki Maru" was entirely dependent upon the actions of that other vessel? A. Yes, I think that's reasonable.

Q. Would you not, as a prudent master lying in an area where it is common for vessels to drag their anchors have ensured that if a vessel was observed to be drifting towards you you would be in a position to take steps on your own account to get out of its way? A. It isn't always possible.

30

Q. But would it not be prudent to put yourself in a position where it would be possible? A. It isn't always possible in a crowded anchorage.

Q. Do you say that this has got something to do with the crowding of this anchorage? A. Could you explain that question?

Q. You say it is not always possible in a crowded anchorage? A. The anchorage area in Port Kembla is reasonably limited. The anchorage areas where the vessel will hold, they do tend to group at about a mile distance from each other.

40

Q. It would be quite possible, would it not, to avoid the situation by, for example, keeping the engines at stand-by? A. No, it wouldn't help.

Q. It wouldn't help at all? A. It takes 15 minutes to turn your men out and get them for'ard to the anchor to start heaving. In the same time the engines can be ready.

Q. It takes, you say, 15 minutes to get the crew, what on a call to emergency stations - A. Yes, I think that's a fairly reasonable sort of time to get them for'ard, get them dressed with adequate clothing in the middle of winter, seeing they may be on the fo'c's'le head for several hours in rain, mist, falling snow, etc., to engage the windlass. About 15 minutes is a pretty good time.

Q. Do you mean by that that during the time that the engine was being brought from its state of readiness to standby you would be sending men to the anchor? A. Yes.

Q. And you say that would take 15 minutes? A. Approximately 15 minutes would be a reasonable time.

Q. That would again bring us back to 3.25 on the assumptions about this night that I have asked you to make, would it not? A. Adding it to 3.10, yes.

Q. The master of the "Ibaraki Maru" said it took his men from the time of emergency stations about 7 or 8 minutes to get to the fo'c's'le head? A. That's correct.

Q. Would that not be an amply reasonable time to do that? A. If you remember, he slackened the cable, which takes no time. You release the drag. I am talking about getting a windlass into motion.

Q. You are talking about getting the men to the fo'c's'le head and getting the men to a state of readiness? A. Getting to a state of readiness to heave, which is about 15 minutes.

Q. What about maintaining a constant watch on the radar in the situation like this? Would that not be prudent? A. No.

Q. Why do you say that? A. Because a visual look out is better with occasional references to radar.

Q. If the radar were being constantly watched, you would notice any movement of a ship like the "Mineral Transporter" immediately, would you not? A. No.

Q. How long would the "Mineral Transporter" have to move before you would observe it on the radar, assuming you were keeping a constant watch on it? A. I think that with vessels 800 feet long with 900 feet of cable out that swing to every change of the wind, and so therefore can change their position with their anchor holding them, something like about 3,000 feet, that the ship would need to drift about 3 ship lengths before the possibility of a vessel dragging was established by another vessel.

Q. What if the "Mineral Transporter" was observed on the radar to have been the only vessel that was changing its position? A. I have seen in Port Kemble at various states of the wind as many as ten

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Q. So you say that even if you looked at the radar and saw the "Mineral Transporter" on the radar change its position up to three ship lengths that would not alert you ? A.No, I am saying at three ships lengths I would be alerted.

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Q. If you were maintaining a constant visual watch on the "Mineral Transporter" how soon would you be alerted after it commenced to move ? A.I would say possibly around about the same area. Remember, we would be viewing the "Mineral Transporter" from the stern with one stern light in view. Vessels yaw about at anchor showing occasionally the forward and stern light on either side of the bow. One would tend at first in seeing this to think she was yawing. It would only be as the lights started to get larger that you would appreciate it may be coming towards you. 10

Plaintiffs witnesses
Q. Even if as you looked at her she was swinging from 142 degrees heading to 200? A.Yes. The wind had just changed, I believe, from sou'east to sou'west.

HUGHES
Edwin Dean (cross-examined)
* Q. Really it amounts to this, does it not, in your opinion; that from the very moment that the "Mineral Transporter" commenced to move, assuming that that was at 2.50, there was nothing that could have been done on the "Ibaraki Maru" to avoid a collision unless some action was taken on the "Mineral Transporter" ? A.Just about. 20

Q. When you say "just about" - A. Well, some action, yes.

HIS HONOUR: He said he tried to contact the other ship.

MR.SHELLER:Q. What was your answer to that "just about" ?
A. Well, just about everything that we could do has been done, I think. Could I have the question again?

Q. ~~When~~ you say everything that could be done or had been done, 30
you are referring to radio communication, horns, lights.
Anything else ? A. Could I have the question again, please,
the original question, because my concentration -

(Question marked "*" read).

WITNESS:Yes.

MR.SHELLER:Q. You have also heard the evidence given about a watch being maintained by quartermaster Sato? -A.Yes.

Q. You have heard a description of what his duties were and what he in fact did between 5 to 3 and 18 minutes past 3? A.Yes.

Q. That description involved the bridge of the "Ibaraki Maru" 40
being left unmanned for that period - From five to 3 to 18 minutes past 3 ? A.Yes.

Q. In your opinion, is a practice of watch keeping which involves a person alone on watch leaving the bridge for a period like that in accordance with the requirements of good seamanship ? A. I don't like it.

Q. I am sorry? A. I don't like it.

Q. Would you agree that it is bad seamanship to have a watch maintained in that manner? A.No.

Q. You wouldn't agree that it is bad seamanship to leave a bridge unmanned on a vessel lying at night at anchor at sea in these weather conditions? A.Bridges can be left unmanned for short periods to perform other functions necessary for the safety of the ship and the personnel, in my opinion.

10 Q. Of course, there would be no reason to leave the bridge unmanned if there were two people on watch, would there not? A. That's correct.

Q. Would it not be good practice in this situation to have at least two people on watch? A.It is the practice on my ship.

Q. And to have one of those persons an officer? A. That's the practice on my ship.

Q. Is that, in your opinion, in accordance with the requirements of good seamanship? A.Yes.

20 Q. Would you agree that it is bad seamanship to have one quarter-master left on watch at night at sea, albeit, with the experience of Mr. Sato? A.On my ship it would be bad practice. It may not necessarily be on some other ship.

Q. On what basis would there be any difference? A. My seamen are casual employees without a great deal of training. I have no idea of the experience of Mr. Sato.

Q. You have heard that he has been at sea for 30 years and a quartermaster for 21? A. I could say that with some long-serving seamen that I have sailed with I could trust them perhaps in some situations more than one of my most junior officers.

30 Q. Have you ever in your experience as a master left one man on watch on the bridge when your vessel was lying at anchor at sea at night? A.No.

Q. Have you ever in that situation not had an officer on watch? A.No.

Q. In terms of engine readiness, are you familiar with keeping the lubricating oil running through the engines? A.Familiar, no.

Q. Is that an expression that means anything to you? A.Yes.

40 Q. In lying at anchor at sea in a vessel of which you had command, would you require that the lubricating oil be kept running through the engines? A.My orders to my chief engineer are in time, not as to what he is to do with his engine room.

Q. How he does it is a matter for him? A. That's correct.

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Q. Do you have any knowledge of whether or not if you require the engines to be on stand-by at 15 minutes that would involve the lubricating oil being kept running through the engines?
A. No, I have no particular knowledge of that. I would assume something like that would happen.

Q. Just one thing that you said about the VHF and the Channel to be kept open on watch off Port Kembla. Isn't the position that the Port Kembla authorities require channel 13 to be used only for berthing information? A.No that is incorrect.

Q. Talking about July 1981, was the situation not then that the VHF was to be kept open on Channel 16 other than for purposes of obtaining berthing information? A.My understanding is that when within the peripheries of the Port, which is 5 miles from the port of Port Kembla, a call should be made to the Harbour control and from then on remain on channel 13 so that any shipping movements into or out of the port can be heard by all listening ships.

Q. You, of course, were yourself anchoring vessels off Port Kembla in 1981, is that right? A.Yes.

Q. Can you recall receiving directions from Port Kembla Harbourmaster to keep watch on Channel 13? A.There's a booklet published by the MSB - Maritime Services Board - the Harbour Authorities.

HIS HONOUR:Q. In the form of directions, you mean? A. No, it's a separate little booklet giving directions for Port Kembla, Sydney and Newcastle, which are all inter-linked with slave VHF stations.

MR.SHELLER:Q It is based on that booklet, is it, that you have given evidence as to the requirements of keeping open on Channel 13, A. Yes.

Q. What is that booklet called? A.I can't remember.

Q. What is its general nature? Is it a handbook? A.Yes, a little roneod sheet - not a sheet - a booklet made of roneod sheets setting out operating procedures when within the Port Authority's realm of -

Q. And issued by the Maritime Services Board? A.Yes.

Q. If I could just show you again the document exhibit 3. (Approached). As I understand the evidence you have given, you say that there is a point beyond which the "Mineral Transporter" could not certainly have avoided this collision whatever it had done, is that right? A. The "Mineral Transporter"?

Q. The "Mineral Transporter." Perhaps I can put it this way. on the line that was being followed, the line of the drift of the "Mineral Transporter" did I understand you to say that once it had passed beyond a distance of about five and a half thousand feet from the bow of the "Ibaraki Maru" it could not certainly have taken any action to avoid the collision? A.No, that was with dropping an anchor.

Q. That is just dropping an anchor ? A. Yes. (Question objected to)

Q. Your point of distance up to which the port anchor could have been dropped and you say collision certainly would have been avoided is 2,500 feet. A.Yes.

Q. Is that right ? A.Yes, that would be about right.

Q. And the closest point, you say, was 1,700 feet ? A.About 1,700 feet.

Q. 1,700 feet ? A.Yes.

10 Q. (Approached). 2,500 feet is 2,500 feet, I take it, from the bow of the "Ibaraki Maru"? A.Yes

Q. And is a distance of something abit less than half a nautical mile, is that right? A.That's corr ect.

20 Q. If you come to a position of about 1,700 feet and if the port anchor had been dropped when the "Mineral Transporter" reached that position, in your opinion was there a risk of the "Mineral Transporter"s anchor fouling the anchor of the "Ibaraki Maru" ? A. With this drawing you have here, it looks as though the anchor would drag about half a ship's length to the western side of the track it is making. So the "Ibaraki Maru" is on the track that it is making, sothe anchor should be dropped fairly well outside that line.

Q. Is there a danger that follows from the anchors of vessels fouling in a situation like this ? A.Yes.

Q. What is that danger? A.Well, that the vessels will eventually come together.

(Luncheon adjournment).

30 Q. When you were giving evidence to my learned friend there was reference made to a statement that you said you had read by the master of the "Mineral Transporter" do you recall that reference to that statement? A.Yes.

Q. In that statement appeared this: "Engines were instant notice", and you were asked whether that was a phrase that meant something to you. Does the question "engines at instant notice" have some meaning to you as a master? A.It's not a way that I would phrase it, but I imagine that to mean the engines are instantly available for use.

Q. Would it be the same as stand-by on that basis ? A.Yes.

40 Q. In expressing the view you did about the actions of the master, it was on the basis that that is what the phrase meant, is that right? A.Yes.

Q. You were then asked some questions about the order said to have been given: "The engines were put to full astern". Do you recall being asked about that ? A.Yes.

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Plaintiffs'
witnesses

HUGHES
Edwin Dean
(cross-
examined)

Part 1 Q. If you can picture the position in which the Mineral Transporter
In the was drifting as has been shown to you on that diagram that you
Supreme looked at before the adjournment, would the effect of full astern
Court of on the engines be that the stern of the "Mineral Transporter"
New South would have swung to port? A. That would be one of the three effects.
Wales

Q. Would the bow swing to starboard? A. Yes,

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Transcript Q. Is that another one of the three effects? A. Yes.

of

Evidence Q. What is the third effect? A. The vessel would gain
before sternway.

His Honour

Mr. Justice Q. From the point of view of reducing damage to the "Mineral 10
Yeldham Transporter" itself, was it desirable to swing the stern
away from the other vessel? A. No.

Q. Why do you say that? A. In that statement it says that collision
Plaintiffs was inevitable. The thing would be to minimise contact, speed.
witnesses

HUGHES Q. You look at it as an order given, the effect of which would
Edwin be to swing the bow on to the "Ibaraki Maru"? A. Three things
Dean would happen. It would swing the bow on to the "Ibaraki Maru,"
(cross- the vessel would gain sternway and start to shear as she came
examined) astern. The stern of the "Mineral Transporter" would go a little
to port, not as much as the bow would swing to starboard. 20

Q. When you say "shear", what do you mean by that? A. A shearing
force of two things grinding together.

Q. You also said there was a difference in your understanding
between a statement that collision was imminent and collision was
unavoidable, do you remember saying that? A. Yes.

Q. If the position was described as "collision was imminent"
would that make any difference to your view? A. Between
imminent and unavoidable. I think it just means a difference in
time, does it?

Q. If the collision was described as being imminent by the master 30
could he have been in a situation where if he put the engines
full astern and if he anticipated that at that point the
"Ibaraki Maru" would start to slacken its chain he may have
been moving towards a situation where a collision would be
avoided? A. I think the ships were too close at that stage.

Q. So you are assuming that "collision was imminent"
would put them too close for that to happen? A. Yes.

Q. I take it there would be some distance forward from the bow of
the "Ibaraki Maru" where such a manoeuvre would be effective if
the "Ibaraki Maru" could slacken its chain? A. There would be some 40
distance, yes.

Q. Are you able to give any indication of what that distance would
be? A. It would have to be a long way because the bow paying off
the starboard off the "Mineral Transporter" would be much more
pronounced than the sternway gathered and the movement of the
ship's stern to port.

Q. So you are saying the tendency is for the bow to move ,
to swing morethan for the stern to swing? A.Yes.

Q. Although the transverse thrust effect is at the stern ?
A. Yes. pivoting point in an astern movement moves from
one-third of the ship's length from the bow to about one-third
of the ship's length from the stern. That becomes a new
pivot point.

10 Q. If you are anchored off Port Kembla in a situation such as that
of the "Ibaraki Maru" in terms of the position of other vessels,
would it be prudent to anticipate that those on board other
vessels anchored in the area would not maintain proper standards
of seamanship? A. Could I have the whole question again, please?

Q. Would it be prudent in thatsituation to anticipate that the
crew of other vessels anchored in the vicinity may not maintain
proper standards of seamanship? A. Yes. (question objected to;
pressed; counsel addressed; answer struck out; question rejected).

Q. It would be prudent, would itnot, to anticipate that the
bridge of other vessels in the vicinity may be unmanned for
periods of 25 minutes ? A.Yes.

20 Q. And that visual watch wasnot being maintained during such
a period of 25 minutes ? A.Yes.

Q. And that indeed the period for which the bridge was unmanned
might on other vessels be longer than 25 minutes ? A.Yes.

Q. Would you agree that the route described by Mr. Sato that
he took on this occasion would have required him to move very
quickly to achieve it in 25 minutes ? A. No, I think it's
a reasonable time.

30 Q. I think you indicated that it would take a period taken
up by a movement of about one ship's length before thoseon
board a vessel would necessarily notice that it was drifting.
Was that your evidence ? A.Yes.

Q. So that is a distance of about 260 metres ? A.Yes.

Q. If the maximum rate of drift was 35 metres a minute that would
be a movement that would take about 5 minutes before it was
observed ? A. 25 metres a minute for 260 metres?

Q. Yes. A. It would take you a little bit longer than that.

Q. A little bit longer than 5 minutes ? A. About eight minutes, I
make it.

40 Q. Would it also be prudent to anticipate that there are anchored
in the vicinity of Port Kembla vessels of different nationalities ?
A.Yes.

Q. And that that in itself may cause problems of communication ?
A. Yes.

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HUGHES
Edwin
Dean
(re-
examined;
retired)

MR. SHELLER: And different standards of seamanship? A. Yes.

RE-EXAMINATION

MR. GLEESON: Captain, you were asked whether it is common in the area of Port Kembla for vessels to drag their anchors, and I think you said, "Yes, unfortunately" or something like that? A. Yes. I think I said, "Unfortunately, yes."

Q. I want to ask you whether it is common in that area for vessels to drag their anchors and the master of the vessel not to become aware of that for 40 minutes? A. That is extremely unusual. 10

Q. You were asked some questions about the manoeuvres that my learned friend described to you and that I think appear on Ex.3. Do you recollect that? A. Yes.

Q. You used an expression to describe a movement or a series of movements which was "ghosting"; is that correct? A. That's correct.

Q. I think that you indicated that that expression meant using the engines with a touch forward and then stopping and a touch again and so forth? A. Yes.

Q. I want to get some idea from you about what the time element involved in that kind of operation is. Am I right in thinking that you said to my learned friend that your view was that in the absence of the Mineral Transporter, which he asked you to disregard for the purpose of those questions, the alterations or some of the alterations to the position of the Ibaraki Maru which he described would be possible but only if this ghosting operation you described was used. Do you recollect that? A. Yes.

Q. On another occasion in your answers you said that could be done provided you had unlimited time? A. Yes.

Q. Just so we can have an idea of the time element involved in this ghosting operation, can you give his Honour an approximate idea of how long it would take using these ghosting movements that you describe before the vessel, that is, the Ibaraki Maru, could be taken in a position out of the path of the ongoing Mineral Transporter? A. Perhaps, something like about 45 minutes.

Q. With the existence of the wind which you understand was present on that occasion? A. You may never be able to do it because of the wind on the huge superstructure aft.

(Witness retired)

(Document containing admission about cost of repairs by defendant tendered; admitted without objection and marked Ex.2.) 40

(Mr. Gleeson indicated that if his Honour found for the plaintiff, damages would be sought in Japanese currency.)

(Conversion table dealing with rates of exchange at various times tendered; admitted without objection and marked Ex.R.)

(By agreement read as part of plaintiff's case affidavit of Hiroshi Inoue of 14th May 1983)

(By consent read as part of evidence the affidavit of Mr. Inoue of 19th May, Mr. Sheller objecting to the contents of par.3)

(Paragraph 3 of affidavit of Mr. Inoue of 19th May not pressed)

10

TOMOTSUGU KOBAYASHI
Examined on affirmation (through interpreter)

MR. GLEESON: What is your full name? Tomotsugu Kobayashi.

Q. By whom are you employed? A. Mitsui-Osk Lines.

Q. Is that company the first plaintiff in these proceedings?
A. Yes, that's correct.

Q. Are you an officer of the legal department of that company?
A. Yes, that's correct.

Q. Are you a graduate in law from a university in Japan? A. Yes.

20 Q. And from what university have you graduated in law? A. Tokyo University.

Q. Will you look at the documents that I show you. Do these documents comprise the original of the time charter party and the addendums to the time charter party, a copy of the English translation of which is annexed to the affidavit of Mr. Inoue in these proceedings? (Shown) A. Yes, that's right.

(Above mentioned documents tendered; admitted without objection and marked Ex.S.)

30 Q. Are you aware that cl.14 of the time charter, Ex.S., deals with the matter of off-hire? A. Yes, I am.

Q. Are you aware that addendums to the agreement also deal with the matter of off-hire? A. Yes, I am aware.

Q. (Exhibit S shown). I want you to look at the addendum dated 5th April 1981. A. Yes.

Q. Do you see that the English translation that has been annexed to Mr. Inoue's affidavit of that addendum uses the expression "Off-hireage". Do you see that? A. Yes.

40 *Q. I want you to disregard that translation for the moment. I am going to ask you to direct your attention to the Japanese document. Could you tell his Honour what the original Japanese document in the addendum of 5th April 1981 says about the sum of 1,920,000 yen? (Objected to on the basis that there was not indication that witness had understanding of English language; allowed).

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Tomotsugu
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(Previous question marked * read)

WITNESS: It means that the daily rate of 1,920,000 that is stated here is suspended while and if our vessel is off-hire.

HIS HONOUR: Are you not asking for the translation, not his interpretation?

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MR. GLEESON: I am asking you what the Japanese words say. A. In spite of what is written in Article 1 of this agreement, while this vessel is off-hire the daily rate applied is to be 1,920,000 yen. (Objected to as unresponsive; allowed).

(Witness stood down)

10

(By consent affidavit of Hirofumi Ogata of 15th May read)

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witnesses

(Agreed statement of facts in relation to black ban tendered; admitted and marked Ex.T. and read)

KOBAYASHI
Tomotsugu
(examined
stood
down)

(Noted that it was common ground that both vessels engaged in overseas trade)

(By consent figure under heading "Total Expenses" on p.3 amended to 292,904,607 yen)

(Mr. Macfarlan's objection to the last question asked of Mr. Kobayashi in evidence not pressed. Parties to discuss matter further in an endeavour to see if it can be sorted out.)

20

HIROFUMI OGATA
Affirmed and examined:
(Through interpreter)

MR. GLEESON: Q. Is your full name Hirofumi Ogata? A. Yes, that's correct.

Q. You have sworn an affidavit in these proceedings? A. Yes.

Q. After the Ibaraki Maru returned to Japan and had permanent repairs carried out following the collision, I understand, in this case and up to the present time has the vessel been fully occupied? A. Yes.

Q. Do the rates of freight that are able to be earned by a vessel such as the Ibaraki Maru vary from time to time according to economic conditions? A. Yes, they do change.

Q. Was there a movement in the freight rates of the kind to which I am referring during 1982? A. Yes, there was.

Q. In January and February 1982 how did rates of freight compare with rates of freight in July and August of 1981? A. It was lower at the beginning of 1982.

Q. Did it rise again during 1982? A. No, it did not.

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OGATA
Hirofumi
(examined;
cross-
examined;
retired)

CROSS-EXAMINATION

MR. MACFARLAN: Q. How did freight rates in July and August 1981 compare with rates in November and December 1980? A. I think they were about the same.

Q. I suggest to you that they were substantially higher in November and December 1980 than they were in the middle of 1981, do you agree? A. The end of 1980?

Q. Yes? A. It might be so.

Q. (Approached). Would you have a look at this document and, in particular, at the broken line which appears on it and tell the court whether it represents the trend of freight rates for the transport of coal in the period 1980, 1981, and 1982? A. This shows the freight rate from the United States to Japan, so it does not necessarily reflect the rates from Australia to Japan. However, the trend would probably be similar.

Q. The trend was, in fact, similar, was it not? A. There is some difference, but the way the graph is shaped, for example, where it goes up and where it goes down, that shape is similar.

Q. So the highest point of freight rate was in late 1980, early 1981, was it? A. Yes, that would be right.

(Document shown to witness M.F.I. 7)

(Witness retired)

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TOMOTSUGA KOBAYASHI
On former oath:
(Through interpreter):

MR. GLEESON: Q. You have in front of you Ex. S, is that correct?
A. Yes.

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Q. I want to ask you a question about the meaning and effect of a particular provision in the contract constituted by Ex. S. Is it a case that cl.14 of the agreement Ex. S deals with a matter called "off hire"? A. Yes, that's correct.

Q. Do you see that there is an addendum which is dated 5th April? A. Yes.

Q. Do you also see that there is an addendum of 2nd April? A. Yes.

Plaintiffs
witnesses

Q. Do you see that by reason of the addendum of 2nd April the daily rate of hire while the vessel is operating normally was to be 2,464,000 Yen? A. Yes.

KOBAYASHI
Tomotsugu
(examined
on
former
oath
retired)

Q. Coming back to the addendum of 5th April, do you see that it refers to an amount of 1,920,000 Yen? A. Yes.

Q. Is the amount of 1,920,000 Yen the amount by which the hire is to be reduced when the vessel is off hire or is it the amount to which the hire is to be reduced when the vessel is off hire? (objected to: not pressed).

HIS HONOUR: I will have it noted that the witness will stand down and that Mr. Gleeson will have the opportunity of seeking to adduce evidence by affidavit in relation to this matter, hopefully by next Wednesday, when the matter will be listed for addresses.

(Witness stood down)

(Subject to the abovementioned matter
case for the plaintiffs closed).

Defendant's
witnesses

CASE FOR THE DEFENDANT

KEITH ROBIN LEE THOMPSON
Sworn and examined:

THOMPSON
Keith
Robin Lee
(examined)

MR. SHELLER: Q. Is your full name Keith Robin Lee Thompson?
A. It is.

Q. Do you reside at 12 Duncan Street, Maroubra? A. I do.

Q. Are you senior lecturer at the School of Metallurgy in the University of New South Wales? A. Yes, I am.

Q. Have you set out on a sheet of paper your qualifications and what you have done in the field of Metallurgy? (Shown) A. Yes, that is my document.

(Abovementioned document admitted without objection and marked Ex. 4.)

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Q. In August 1981 were you retained on behalf of the defendant in this matter, Candelwood Navigation Corporation Limited to inspect a failed anchor on the vessel Mineral Transporter and to report upon it? A. I was engaged by Gibson Minto & Aiton, - I don't recognise the other name - to look at a failed anchor, yes

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Q. And to report upon it? A. Yes.

10 Q. Following upon that, I think you visited the Mineral Transporter on a number of occasions while it was berthed in Sydney? A. That's correct, yes.

Q. Were those occasions in August and September 1981? A. To the best of my recollection, yes, August - September.

HIS HONOUR: Q. If you have some note you want to refer to, you can A. I have a report, but I think it was in August I went first - whether it carries on into September, I don't know.

Defendant's
witnesses

MR. SHELLER: Q. Is that a report that was prepared by you following upon your inspection of the failed anchor and then a series of examinations that you made of the fracture surface? A. Yes, it is the case.

THOMPSON
Keith
Robin Lee
(examined)

20

(Report of Dr. Thompson admitted without objection and marked Ex. 5.)

Q. About halfway down the last page in your report it is said "It is apparent from the figure 12 that the shank of the anchor has been manufactured from a ferritic pearlite steel with a carbon content of approximately .4 to .5 per cent." I think that is a mistake, is it not? A. That is a mistake.

Q. It should be .2 to .25 per cent? A. Yes, that's right.

30 Q. Figure 10 to your report consists of two photographs A and B which show at the bottom a defect in the form of a square or what takes up a square pattern, is that right? A. That's correct, yes.

Q. In your conclusions you say the failure of the anchor had occurred as a result of mechanical overload structure initiated by a pre-existing defect at the edge of the shank. Is it that pre-existing defect to which you refer? A. That's correct, yes, it is.

40 Q. Prior to that fracture taking place initiated from that pre-existing defect, do you have any opinion as to whether externally to visual inspection there would have been any sign of that defect? A. It is my opinion that defect would not have been visible.

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HIS HONOUR: Mr. Gleeson, you don't make any case based on any lack of awareness of this, do you?

MR. GLEESON: No.

HIS HONOUR: Mr. Sheller, you are using this against the absent cross-defendants.

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MR. SHELLER: Particularly in the light of what my friend has just said. As we would understand it, that involves a concession that the commencement of the drift was without any fault on our part, it was the fracture of the anchor.

HIS HONOUR: That must obviously be so, I think.

Defendants
witnesses

MR. SHELLER: Q. Would you look at this document, which is a letter of 10th May, 1983. Is that a letter that you sent on 10th May, 1983, to Mr. A. Hoffman, a metallurgist, at 2 Kenneth Street, Wallsend? A. Yes, it is.

THOMPSON
Keith
Robin Lee
(examined
retired)

Q. Does that set out the results of some tests that you carried out at his request? A. Yes, it does.

Q. They were tests that were carried out under your supervision? A. My supervision, yes.

(Letter dated 10th May, 1982, admitted
without objection and marked Ex. 6.)

(Witness retired)

ADRIAN ANTHONY HOFMAN.
Sworn and examined:

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MR.SHELLER:Q. Your full name is Adrian Anthony Hofman? A.Yes.

Q. You are by occupation a consultant metallurgist? A.Yes.

Q. You reside at 2 Kenneth Street, Wallsend. A.Yes.

Q1.You have caused to be set out on two sheets of paper your qualifications, associations and experience, is that right? A.Yes. Your Honour, may I comment that some of those associations are now no longer in existence.

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10 (Document containing qualifications admitted and marked ex. 7).

Q. Were you retained in this matter on behalf of the defendant in March 1983? A.I was.

Defendant's
witnesses

Q. And following upon being retained did you visit Dr. Thompson and examine his report? And some photographs that he had taken?
A. It was after examination of his report that I considered it prudent to consult with Dr.Thompson.

HOFMAN
Adrian
Anthony
(examined
and retired)

Q. You did that, did you? A.I did that.

20 Q. Following upon that you suggested a number of further tests be done? A.Yes. I suggested that in the interests of completion of the report that these tests should be carried out.

Q. (Shown ex. 6). Following upon that did you receive that letter from Dr. Thompson setting out the result of certain tests done by him? A.I did.

Q. Having received that information did you cause a report to be prepared? A.I did.

Q. Would you look at the report I now show you and is that the report that you caused to be done? A. That is the report.

(Report admitted and marked ex. 8).

30 (No cross-examination).

(Witness retired).

REGINALD GEORGE FORD.
Sworn and examined:

FORD
Reginald
George
(examined)

MR.SHELLER:Q. Your full name is Reginald GeorgeFord? A.It is.

Q. Do you reside at 121 New Line Road, West Pennant Hills? A.I do.

Q. I think you are now retired are you not? A.Yes.

Q. Did you commence your sea-going career as an ordinary seaman in 1942? A. I did.

Part 1 Q. You progressed to sailor, efficient deckhand and able seaman ?
In the A. Yes.

Supreme Q. You became a fourth officer in 1949 at Liverpool? A.Yes.

Court of Q. And then served as an officer for various owners including
New South Federal Steam Navigation and Ropners Steamships ? A.Yes.
Wales

No.7

Transcript Q. And then did you progress from fourth, to third, to second,
of Evidence to first officer ? A.Yes.

before His

Honour Mr. Q. Did you obtain your British Master's foreign-going certificate
Justice on 28th February 1955? A.Yes.

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Q. You achieved your first command in 1963? A.Yes. 10

Defendant's Q. When did your experience on the Australian coast commence ?
SA. 1947 with the Federal Steam Navigation was the first time
witnesses I came to the Australian coast.

FORD Q. At the time did you hold the position of fourth officer ? A.Yes.

Reginald

George Q. And then from 1952 to 1954 did you work as a second officer for
(examined) Ropners Steamships? A.Yes.

Q. Was that on charter South Australia to New South Wales ? A.Yes.

Q. Did you join BHP in 1955? A.Yes.

Q. As a third officer? A.Yes.

Q. After joining BHP did you serve on various BHP vessels for 20
8 years as a third, second and first officer ? A.Yes.

Q. You got your first job as master with BHP in 1963 ? A.Yes.

Q. As master did you serve on most of the vessels in the BHP
fleet ? A.Yes.

Q. Did that include very large bulk carriers ? A.Yes.

Q. At the time of your retirement from the company were you sixth
in seniority? A. Of 49, yes.

Q. Did you retire in January 1980? A.Yes.

Q. During your service as a BHP master did you become familiar
with most of the Australian coastline? A.Yes. 30

Q. Was one common coastal trip you did as master from North
Western Australian ports, such as Port Hedland, to Port Kembla?
A. Yes.

Q. Did such voyages involve the carriage of iron ore to Port Kembla?
A. Yes.

Q. As well as Newcastle? A.Yes.

Q. During the time you have been involved as a master with BHP _____ master of bulk carriers did you on many occasions anchor off Port Kembla? A. Yes.

Q. Is it possible to give any indication of the number of times you would have done that between 1963 and 1980? A. Yes, I have researched it. Over 200 times.

Q. Can you say, as a matter of experience, anything about the weather conditions that one expects when anchored off Port Kembla? (Objected to; withdrawn).

10 Q. In your experience was there a particular form of weather condition that you can only experienced off Port Kembla. (Objected to; not pressed).

Q. (shown ex. N). That is a photograph of the vessel the Ibaraki Maru. During your time as a master for BHP were you master of vessels of a similar size and layout? A. Yes.

Q. Can you give examples of that? A. Well, the Iron Endeavour has a similar layout, accommodation aft and is slightly smaller and the Iron Sommersby is almost identical in that she would be larger than this one.

20 HISHONOUR: Q. Not the Iron Flinders? A. No, the Iron Flinders, you could put up on it as a life boat.

MR. SHELTER: Q. You, since the case began, have been in court and I think you have heard all the evidence that has been given. Is that right? A. That is correct.

Q. And that includes evidence by the Master of the Ibaraki Maru? A. Yes.

Q. And his evidence as to the state of the weather at the time that he turned in on the night of 9th July? A. Yes.

30 Q. And you have read the weather forecast to which he referred and to which he had received that day? A. The forecast, yes.

Q. (Shown ex. J). That is the weather forecast to which I referred. You have heard that read out in court and I think you have read it, have you not? A. Yes.

Q. Did you hear the evidence that on the Ibaraki Maru on this night there was on the bridge prior to 3.18 on watch only one person? A. Yes.

Q. And there was a quartermaster of 21 years experience as quartermaster? A. Yes.

40 Q. Captain, on the assumption that the evidence as you have heard it reveals the situation in terms of _____ weather and the position of the Ibaraki Maru on that night, if you had been the master of that vessel in that situation what watch would you have left as the

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vessel lay at anchor? A. for that period of time the certified second officer and a minimum of one AB and a watch keep.

Q. When you say for that period of time, what period of time are you referring to? A. Midnight to 4 am. I would have the third officer, would be 8 to midnight.

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Q. As matter of prudent seamanship did you consider it prudent to have left on watch on the bridge in that situation a quartermaster of that experience alone? A. I do not consider it prudent at all. I have never done it and never would do it.

Q. You have heard evidence of the grounds that Mr. Sato went on commencing at 5 to 3 and finishing at 18 minutes past three. 10
You have heard that evidence? A. Yes.

Defendant's
witnesses

FORD
Reginald
George
(examined)

Q. Which involved him leaving the bridge for that period of time. As a matter of prudent seamanship do you consider it to have been prudent, on this occasion with this vessel in the situation it was for the bridge to be left unattended for a period from 5 to 2 to 18 minutes past three? A. It certainly was not prudent to leave the vessel unattended for any period of time and to the extent of 25 minutes which was nothing I would ever do and ever have done.

Q. When you say for any period of time do you mean by that however short? A. However short. If I can expand - 20
the bridge is not merely for visual observation to see whether you are going to drift or another vessel is going to drift on you. It is the nerve centre of the vessel, the fire alarm systems are centred on it with rows and rows of smoke indicators, lights and everything centres up there so that a fire can be located or notified. It is notified to the bridge, nowhere else, and if you are 25 absent that means that the fire is going for 25 minutes. Whereas if a man is always on the bridge he will immediately hear that buzzer. That is one reason why 30
I would never have the bridge unmanned at sea for any time on voyage or at an outside port limit.

Q. Have you, during your experience as master, anchored / for periods of time, up to four or five weeks off Port Kembla? A. Yes.

Q. During those times that you have been so anchored what was your practice as to the watch you maintained on the bridge? A. Continuous officer watch with two ABs was the custom of the ship. In effect there were three men and the watch officer there on the bridge, the able seaman doing various rounds for inspection for fire and oil on the deck. 40

Q. You also have heard evidence given by master of the Ibaraki Maru as to the state of readiness of engines of that vessel? A. Yes.

Q. And the state of readiness was such as to be able to bring them to standby at 15 - 20 minutes? A. Yes.

Q. Again assuming the weather conditions that were described and the position of the Ibaraki Maru on that night what, in your opinion, are the requirements of prudent seamen as to engine readiness? A. I discussed with the chief engineer before making it - taking into account any inhibitions or lack of labour. There is various things that do affect the readiness of the engine. The normal course in that situation has been 20 minutes notice for full power but in an emergency condition I could get reduced revs. which may only be one third but I would get some revs within ten minutes.

Q. Was that ten minutes something that you would require of the engine. That is to say, that it could be a partial state of readiness, as you have described it, as at not more than 10 minutes. A. If that is an agreement I have come to with the chief engineer I would expect it and that was the agreement we usually came to.

HIS HONOUR: Q. Would you come to that sort of agreement say if you were anchored for 10 days at Port Kembla in fair/sort of normal weather conditions? A. Well, we meet daily and the original first after we have anchored would be that and it would ~~only~~ get changed if there was some bad weather coming up, then I would say to him "We are expecting bad weather. It may not eventuate but if it does we'll give you plenty of warning and shorten the times required".

Q. Shorten it to what? A. To whatever seems, that he can manage, without injuring the engine or excessive use of fuel or we might be making water and require the engine to be at a certain temperature to keep us going with fresh water.

MR. SELLER: Q. Just so I understand that, you say that when you come to anchor - when you first anchored off Port Kembla what were your requirements as to engine readiness? A. 20 minutes.

Q. Did you have any requirements about partial power? A. With an adjoiner that if we needed emergency - that is a critical situation of danger - I could get some partial power within ten minutes.

Q. Did that requirement by you change during the time after you first anchored? A. No. The only time it was changed was if we got a severe warning of bad weather then the period would be shortened from 20 minutes down to possibly ten and by severe weather I am talking about the after effects of a cyclone coming down which happens, sending in a very bad swell or extreme southerly came up with gale force winds. Whenever that situation stayed for the four or five weeks, 20 minutes - ten minutes if an emergency situation arose.

Q. I want you to assume that on this night of the morning of 10th July, 1981, you had been the master of the Ibaraki Maru and that the conditions of the weather were such as you have heard described in evidence and that at 5 minutes past 3 you observed the Mineral Transporter drifting towards you and then at

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a distance of approximately one mile from your bow.
In that situation, as master of the Tsuraki Maru what would
you have done? A. Endeavoured to communicate with her was the
very first step.

Q. That would be your first step? A. Yes.

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Q. If you got no response from such communication what would you do?
A. I would get in touch with harbour control and ask them if she
was moving on any orders of theirs. i.e. she might be going to
pick up a pilot or go in and then her radio might not be functioning,
therefore they would know.

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Q. And if the response to that was that she was not, what would you
do? A. I would start to think she was adrift.
I would worry. I would then start flashing lights, the siren,
continuous calling on the VHF. I would also sound my own
alarm and have personnel assemble on the bridge. I would constantly
monitor over the radar to get her speed. I would have another
officer taking continuous bearings of her bow to see if she
was not changing her line of bearing then she was on a collision
course with me. I would then start also figuring out what options
I had and what options she had. I would then start to worry
and getting steadily more worried as she got steadily more
closer.

20

Q. Assuming you have begun those actions and you have received no
response from the other vessel and there is no change in its
movement. What would you have done? A. When I initially
called the crew up I was also calling for my engines to become
ready. Where do we have this ship now?

Q. I started by suggesting to you that at five minutes past three
it was at a distance of approximately one mile from your bow.
You have told me what you would have done. When you say that you
would have had your engines made ready is there any point of time
you can fix after 5 past 3, assuming that you received no
response from the vessel as to when you would do that at latest?
A. I would not do it until I had spoken to the harbour control
and found out she was not moving. I would be standing her
and so would the others with binoculars to see if there were
signs of activity on her anywhere. I should say, when she was
getting to be about point 8 of a mile away from me, somewhere
be around about 12 or 13 minutes past.

30

Q. Past three, the time you are saying? A. I am doing these
various tasks in between time, warming the engine up depending
on how apprehensive I was. But within 5 minutes of initial
worry and getting no response from the ship or shore about her
movements. I would have ordered engines to be brought to
readiness around 10 past, that is 5 minutes - 7 minutes past.

40

Q. When you say ten past you mean ten past three, do you?
A. Yes.

Q. That is five to seven minutes past five past three. Is that
what you are saying? A. Yes.

Q. I want you then to assume that by three-25 you had your engines at standby? A. Yes.

Q. And that the other vessel had continued to drift towards you and stay at about a point of 570 metres from your bow. Now, I did not mention this, but you of course realise that the starboard anchor was out ten shackles on the Ibaraki Maru on the night? A. Yes.

Q. Well now at 3.25 the anchor remained still out at 10 shackles. Do you follow that? A. Yes.

10 Q. Well now in that situation, assuming that you still had not succeeded in making any communication with the other vessel, what would you have done? A. During this time I've been figuring out my options and the options that remained on the vessel that was coming at me and I figure he would only have two. One, use his engines and get away from me. The second, to drop his anchor to stop his drift down upon me. With no sign of activity on the vessel I would know that he would require the minimum of 10 minutes to have engines functioning I could see that option for the Mineral Transporter had expired which left
20 his anchorage weight. As there was no sign by this time I should have been able to see his fo'c's'le height quite clearly with binoculars. No sign of activity on it and still no answer to our calls on the VHF which would be going on continuously. He was getting so close that his second option of dropping the anchor would have been fouled in my case - it would have fouled ours, ours being the Ibaraki Maru and he would have really clamped right on top of me so that if that situation at 3.25, I would realise that there was not anything that he was going to do that was going to stop this collision if it was to
30 be averted. I was the only one that could avoid it if possible.

Q. Then you have so far as I understand you indicated your thought processes, is that right? A. Yes, and taken the Mineral Transporter out in her options.

Q. Then at 3.25 what would you have done? A. I would have endeavoured out of the course the Mineral Transporter's taking and if you neglect the fact that I have got an anchor down with ten shackles for the moment then the manoeuvre is a valid one and which is done in the normal course of events, that is to go to starboard to avoid a vessel coming down on you. Admittedly
40 this is now a -- quite a close quarter situation (Objected to).

Q. What I just want you to do, I think you are explaining around it - what I just want you to do please is to tell his Honour that as at 3.25 what actual action you would have taken, what you would have done and I think you have said something about, you say, steering to starboard or some such expression. Just describe it step by step as to what you would have done? A. I would have figured the various options open to me and the only one that had any chance of success was to use - (Objected to).

HIS HONOUR: Q. You are being asked what in fact you would have done? You are not being asked your reasons for it yet? A. I would have put the engines ahead, I would have endeavoured to steer a course

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since I was at a heading of 142. I would have endeavoured to steer the course of 165 by use of the engine and the rudder, till such time as the vessel's bow was clear of the bow of the oncoming Mineral Transporter vessel, not in space.

Q. You said the vessel not in space ? A. Well in effect you can see the bow ahead of you and I wanted my bow to clear it visually. But not, in effect, it is doing it . . . physically but I mean it is not up to it and then clearing it.

Q. Does that mean that what you are saying, correct me if I am wrong, you are watching your own bow, is that right? A. Yes. 10

Q. And you are also watching the other vessel? A. The other vessel's bow.

Q. Would you just describe to me what you are doing ? A. Then adjusting the helm to bring about that desired state of affairs and adjusting the speed and by that it is necessary to increase the speed if the vessel's bow is not answering to the helm adequately. I would of course increase the velocity of it. She answers it quickly , The propellers going.

Q. Can you give some indication of what sort of power you would put the engine to? A. I would start off with slow ahead and hard to 20 starboard and then observe the effect and then either reduce helm, reduce speed or increase speed. It is all a matter of skill and judgment as to what steps you then take.

(Witness stood down).

(Further hearing adjourned to 9.30 a.m. on Friday, 20th May, 1983).

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KG:JLF (5)

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 934 of 1981.
ADMIRALTY DIVISION)

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CORAM: YELDHAM, J.

MITSUI-OSK LINES & ANOR v. THE SHIP 'MINERAL TRANSPORTER'

FIFTH DAY: FRIDAY: 20th May, 1983

REGINALD GEORGE FORD
On former oath:

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10 MR. SHELLER: Q. At the adjournment I was asking you about what you would have done had you been the master of the Ibaraki Maru at 3.25 in the situation then obtained and you had gone some distance in describing what course you would have taken, do you recall that? A. Yes.

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Q. Would you look please at the document I show you, Ex. 3. Is that a diagram prepared by you? A. Yes.

Q. (Approached) Now, on that diagram you have set out, have you, firstly, the position of the Ibaraki Maru as it lay at anchor prior to 03.25, is that right? A. Yes.

Q. I think you have marked that position - ? A. Position 1.

20 Q. You have also shown an outline with the name Mineral Transporter in the middle of it at a position 1, is that right? A. Yes.

Q. Is that intended to be the position of the Mineral Transporter assuming it at that time to be at a distance of 570 metres from the bow of the Ibaraki Maru? A. Yes.

Q. And the time when it was at 570 metres being 325? A. Yes.

Q. The heading of the Mineral Transporter being 225°? A. Yes.

30 Q. Where was that 225° taken from? A. The master's statement started him at 190° and eventually he said he was heading south-west - that is the master of the Mineral Transporter. The other heading that has been used was 200, but that was the master of the Ibaraki Maru interpretation of his heading, so I took the south-westerly heading, being that the master of the Mineral Transporter would know his heading more than the other master.

Q. And the effect of that is to put the Mineral Transporter more broadside, as it were, to the Ibaraki Maru? A. Yes, making it a more difficult manoeuvre.

Q. From the point of view of the Ibaraki Maru? A. Yes.

Q. Those outlines of the Ibaraki Maru and the Mineral Transporter are drawn to scale, is that right? A. Yes.

Q. Then you show position 2 for the Mineral Transporter at time 03.34, is that right? A. Yes.

Q. How did you arrive at that position? A. Estimated speed of drift of the Mineral Transporter 1.5 knots and that is just slightly under halfway between the point of collision and I divided the - I multiplied at the time 45 metres per minute and also took a mean of the actual time that they did contact and it was 8½ minutes actually, to 9 minutes with the very accurate time that she would have been there.

Q. That is a difference of 11 minutes, is it not, from 2.25 (sic) - I am sorry, 9 minutes from 2.25 (sic) to 3.34? A. Yes.

Q. Have you also shown on the diagram a position of the anchor of the Ibaraki Maru? A. Yes.

Q. How did you place that on the chart - on the diagram, by what calculation? A. I estimated that ten shackles equals 274 metres, but because the vessel was lying in 35 metres of water I subtracted that from the 274, which left 239 metres of effective distance. The distance actually would be slightly longer due to the cable not being directly down to the seabed and then lying, but would lie at anchor, so that this mean is the worst possible option I could obtain.

Q. In terms of the distance of the anchor from the bow of the Ibaraki Maru? A. Yes.

Q. You have assumed that the anchor lies straight out ahead of the Ibaraki Maru? A. Yes.

Q. Is that assumption based upon any opinion or view of yours? A. I think it would be valid, given that the wind velocity of force 5 and the current and the weight of the ship - she would have the cable effectively ahead on a 142 bearing.

Q. You have then shown on that diagram what you have called positions 2, 3 and 4 of the Ibaraki Maru. Yesterday you gave some evidence about actions that you would take in endeavouring to bring the Ibaraki Maru to a heading of 165°? A. Yes.

Q. I think you also said that you would have endeavoured to steer that course of 165 by use of the engine and rudder till such time as the vessel's bow was clear of the bow of the oncoming Mineral Transporter vessel and then you said "not in space". Firstly, in terms of that description of what you would have endeavoured to do, what does position 2 of the Ibaraki Maru on that diagram represent? A. It has got a time mark of 03.30, so that is five minutes into the manoeuvre, and I would assume that

she would be in position 2 - that is heading 165, which would in effect have given me visual clearance of the bow of the Mineral Transporter.

10 Q. But is that a position that, in your opinion, would have been achieved by carrying out the use of engine and rudder that you have described? A. I believe so. Whether I would have remained at slow ahead and hard over to starboard with the rudder is relative in that she was performing as I intended her to do. If she did not, I would of course either increase or decrease or alter the rudder. The effect the exercise is to get to 165, not any further and not any less, and thus this starting position of slow ahead and hard over would be adjusted one way or the other to maintain that position.

Q. But is that position 2 a position that you believe that you could have brought the Ibaraki Maru to? A. Yes.

Q. Had you manoeuvred it in the way you have described? A. Yes.

Q. At that position had you shown on the diagram an outline of the anchor chain? A. Yes.

20 Q. That outline I think you have shown with a series of short dashes, is that right? A. Yes.

Q. Does that represent what, in your opinion, would have been the position of the anchor chain when you achieved that position 2? A. Yes.

30 Q. Then having achieved position 2 what next would you have done? A. I would have endeavoured to maintain her on a course of 165 possibly by again varying the speed of the engine, either ahead or maybe slow it down, all depending on how the vessel reacted to the tide, the wind, the weather and, of course, the rudder, either maintained it hard over or possibly to a lesser degree until she obtained the position of position 3, where the bow are parallel but not touching.

Q. When you say with the bow parallel but not touching, that is on the assumption that you have made on that diagram about the movement of the Mineral Transporter? A. Yes.

Q. Again, in your opinion, could position 3 have been achieved in the circumstances of the night by Ibaraki Maru? A. Yes.

Q. By the master undertaking the manoeuvres and use of the engine and rudder that you have described? A. Yes.

40 (Mr. Gleeson sought clarification as to the manoeuvres).

Q. (Approached) Having achieved position 2 on the Ibaraki Maru what action would have been taken by you as master in an endeavour to achieve position 3? A. Adjustment of the helm, if it was

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required, and adjustment of the speed. At the moment, I am on slow ahead and hard to starboard. If it is necessary to vary the speed or the rudder movement I would do so and I would expect to get to position 3 at 03.34.

Q. What sort of adjustments to the rudder and the engine are you talking about? A. Increase of the velocity of the engine; the rudder, of course - if I have it hard over, the only other adjustment could be to reduce it, as I want to remain in position 3 and not to get further over to starboard.

Q. When you say you want to remain in position 3, does that mean you want to not go beyond a heading of 165? A. That's correct.

Q. So you don't want to swing the bow too far to starboard?
A. No.

Q. As you are on the bridge of the Ibaraki Maru is this to some extent a question of feeling how the vessel responds? A. It is all a feeling of how the vessel responds to the various forces acting on her.

Q. And adjusting the engine and the rudder accordingly? A. To her performance, yes.

Q. Doing that, in your opinion, could the Ibaraki Maru have proceeded from position 2 to position 3? A. Yes.

Q. Again, you have put on the diagram the position of the anchor chain with the vessel at position 3? A. Yes.

Q. Up to that point, position 3, in your opinion would the anchor chain have influenced the course that the vessel followed?
A. No.

Q. You have put on the diagram the time for position 2 of 3.30, is that right? A. Yes.

Q. In your opinion is 3.30 the time that the Ibaraki Maru could have been brought on this night to position 2? A. Yes.

Q. Similarly, the position 3, you put a time of 3.34 for position 3? A. Yes.

Q. Again, in your opinion, could the Ibaraki Maru on this night have been brought to position 3 at that time of 3.34? A. Yes.

Q. As the diagram shows, with the Ibaraki Maru in position 3 at 3.34, the Mineral Transporter would have been at the same time in its position two? A. Yes.

Q. In your opinion, does that represent what the situation would have been if this manoeuvre on the Ibaraki Maru had been carried out? A. Yes.

Q. Having got to position 3, what next would you have done? A. The helm would have been put hard to port, the engine would have been put full ahead.

Q. What effect would that have had? A. It would have brought the bow of the Ibaraki Maru around to port behind the bow of the Mineral Transporter and would have thrown the stern of the Ibaraki Maru to starboard, hence clearing the passing bow of the Mineral Transporter.

Q. That is full ahead and hard to port? A. Yes.

10 Q. You have shown on the diagram a position 4 for the Ibaraki Maru? A. Yes.

Q. In your opinion, putting the rudder hard to port and the engines full ahead, would on this night the Ibaraki Maru have achieved position 4? A. Yes.

Q. Again, in terms of time, you have put that at 3.38? A. Yes.

Q. In your opinion, is that the time that it would have achieved that position? A. Yes.

Q. Again, you have shown on the diagram the position of the anchor chain? A. Yes.

20 Q. If that manoeuvre had been carried out and had followed the course shown on your diagram, what is your opinion as to the chances of the collision or a collision between the Ibaraki Maru and Mineral Transporter being avoided? A. I would expect a reasonable chance of success if my skill and my estimations of the speed and rudder movements had been correct.

Q. Is it possible to put that in percentage terms? A. Well, I'd say an even money chance of it coming off, 50/50.

Q. The vessel having got to position 4 is it still moving? A. Yes.

30 Q. Is it right to say that you don't see any of those positions, apart from position 1, the position of anchorage, as being a stationary position? A. Position 1 is the only stationary position, the others are all fluid movements.

Q. The positions that you have shown of 2, 3, and 4 on that diagram are intended simply to be indications of particular points of time of the vessel in the course of movement? A. Yes.

Q. Taking account of what you have said about the chances of success of this manoeuvre and taking yourself back to the situation of the Ibaraki Maru at 3.25, would you as master have attempted this manoeuvre? A. Yes.

40 Q. Would you, as master, have remained anchored at the position of the Ibaraki Maru without attempting this manoeuvre? A. No.

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Q. Assuming the conditions of this night and assuming that at 3.25 the master of the Ibaraki Maru had his engines at standby and was aware that the Mineral Transporter was drifting towards him at a speed of 1.5 knots and was in the position shown on your diagram as position 1, would you have considered it prudent of him if he had simply remained at anchor without attempting this manoeuvre? A. You are asking me to consider whether I would consider it prudent of another man not to have considered himself to this manoeuvre. Depending on the degree of his skill or his own judgment - it is a hard question. I would not have considered it prudent to remain there and have an inevitable collision. I would consider a prudent master would take some action that had some chance of success other than to lay back and be raped. 10

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witnesses

Q. When you say some action with some chance of success, do you refer to an action other than sounding horns, flashing lights and so on? A. Are you asking whether there is an alternative for a prudent master?

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Q. What I am asking you, when you refer to some action, do you mean by some action an action using engine and rudder and seeking to manoeuvre the vessel - do you follow what I mean? A. This is an alternative which a prudent man could accept, I believe. 20

Q. When you say "this", you mean the manoeuvre that you show on Ex. 3? A. Yes.

CROSS-EXAMINATION

MR. GLEESON: Q. It would be an intricate and difficult manoeuvre, wouldn't it? A. Yes.

Q. And a dangerous one? A. Yes.

Q. May we take it, therefore, that it is not a manoeuvre that you would commence to undertake without having available to you all the resources of your vessel? A. Yes. 30

Q. Including engines at full power, if you required them to be at full power? A. As I understand the situation, I have them at - I have full power.

Q. I just want to get that clear. You are assuming before you commence this manoeuvre, that is before you move from position 1, that you have full power available on your engines if you require them? A. Yes.

Q. Yesterday you said (p.144) that you would have ordered the engines to be brought to readiness at about 10 past 3, do you recollect that? A. Yes. 40

Q. You said on p.143 that the normal course in the situation that applies on this night would be that it would take 20 minutes' notice to get your engines to full power? A. We were not talking

about the Ibaraki Maru, I was talking about a ship that I would command would have 20 minutes' notice.

Q. I understand that, but I just want to look at the time element involved in this. You have been telling us about a manoeuvre that you would have performed if you had been in your ship where the Ibaraki Maru was? A. Yes, but I understood I would have full power at 3.25, because it is a hypothetical situation.

10 Q. What I am putting to you is that yesterday you said that you would have called for the engines to be made ready at 10 past 3?
A. Yes.

Q. You also said that the normal course in that situation would be 20 minutes notice for full power? A. Yes.

Q. But that you could get reduced power, which may be only one-third revs, within ten minutes? A. Yes.

Q. I just want to be clear, when we are talking about this manoeuvre, you are not suggesting that it is something that you would undertake on reduced power? A. No, I'd want full power.

20 Q. So in the position in which you would have been on the night in question you would not have commenced this manoeuvre until 3.30, would you? (objected to: allowed). A. Well, 3.30 I would not have commenced it at all, even if I had full power then, because the Mineral Transporter was now too close for the manoeuvre to be successful.

30 Q. I understand that that is the effect of your evidence, but will you not agree, according to the evidence that you gave yesterday as to the situation in which you would have been if you had been the master of the Ibaraki Maru, you would not have been in the position to commence this manoeuvre until 3.30, by which time it would have been too late? A. In the agony of the moment - and we are now five minutes past my one-third - and the inevitability of collision I feel I must do something to avoid it that has some chance of success. I would have taken, in effect, what is a chance.

Q. I just want to be clear about the effect of your evidence. It is clear, is it not, that you said yesterday at p.144 that if you had been the Master of the Ibaraki Maru in the events as they were described to you, you would have ordered engines to be brought to readiness around ten past three? A. Yes.

40 Q. You also said that, according to the instructions that you give your engineer, you would give him 20 minutes' notice to bring the engines to full power? A. Yes.

Q. So that if you had been in charge of the Ibaraki Maru on the occasion in question you would have had full power available at 3.30? A. Again, I would have been in constant contact with him, urging him to -

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Q. But my question is clear enough, isn't it? On the evidence that you gave yesterday you would have had full power available at 3.30? A. With the possibility that the time element could have been decreased by urging and extra co-operation.

Q. You do agree, don't you, that you would not have attempted to commence this manoeuvre until you had full power available?
A. Correct.

Q. It follows, does it not, that on the description you gave yesterday of the actions that you would have taken if you had been in the situation of the master of the Ibaraki Maru, you would not have attempted this manoeuvre? A. With the engine not being quite ready it is doubtful, yes, but when I commenced this whole situation I did assume that I had full power at 3.25, because it is a hypothetical situation.

Q. Of course, I understand entirely that the questions that you were asked were based upon the assumption that you had full power available at 3.25, but that is not an assumption that squares with your evidence as to what you would have done, is it?
A. No, of course, again, they are probabilities. I might have done earlier, I might have done later, ordering the engines; the engineers might have been more proficient.

Q. You said that if this manoeuvre had been undertaken at 3.25 it would have had a 50/50 chance of success? A. A judgment on the odds, yes.

Q. What would have been the consequences of failure? A. I would have still had a collision - possibly the damage would have been more accentuated.

Q. The damage would have been greater, wouldn't it, because you would have had two vessels under way? A. Possibly it would have been. Again, we are now having the damage inflicted in different spots through a different configuration of meeting. The damage might have been less, it might have been more; I would say the odds would be that it possibly would have been more.

Q. You are aware that in the events that happened the Ibaraki Maru slackened chain and endeavoured to retire from the direction in which the Mineral Transporter was approaching? A. Yes.

Q. Whereas the manoeuvre that you have described involved the Ibaraki Maru proceeding under power in the direction of the Mineral Transporter? A. In the general direction of the Mineral Transporter.

Q. You gave some evidence about your experience in and around Port Kembla in large vessels and may we take it that you are aware or you are familiar with kinds of vessels that regularly use Port Kembla or regularly come into Port Kembla? A. Yes.

Q. They include very large vessels carrying bulk cargoes?
A. Yes.

Q. And vessels operated by various shipping lines, including overseas shipping lines? A. Yes.

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Q. (Ex. N shown). Have you seen this photograph of the Ibaraki Maru? A. Yes, I was shown it.

Q. These various shipping lines that operate vessels in and around Port Kembla have distinctive markings and colourings? A. Usually their funnels.

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10 Q. You are familiar with the markings or colourings of their funnels? A. By familiar, I can occasion recognise a line, but I wouldn't say I am - there's so many, so diverse.

Q. I understand that, but Mitsui-Osk Line is a well-known line? A. Not me.

Q. At all events, vessels of the size of the vessel that you see depicted in this photograph are commonly operating around the Port Kembla area? A. Yes, she's the usual type.

Defendant's
witnesses

Q. The colouring of the funnel of the vessel identifies the line which owns the vessel or operates the vessel? A. Usually.

FORD
Reginald
George
(cross-
examined)

20 Q. If somebody wanted to find out who was the owner of that vessel and knew the colour of the funnel, you would not expect it to be difficult to find out? A. I don't think there is any literature on funnels. It is only by somebody say sailing in a ship or familiar with it who would say "Oh yes, that belongs to the Steinbeck Line" or something like that.

Q. Of course, you would know that vessels are frequently operated under chartering arrangements? A. Yes.

Q. And that sometimes you might have the vessel owned by one company and under a bare boat charter to another company? A. Yes.

Q. Perhaps, in that situation, under a time charter back to the original company? A. Yes.

30 Q. What assumptions did you make in describing the manoeuvres as to the original position of the Mineral Transporter? A. On this diagram, why did I place -

Q. : What assumption did you make as to the original position of the Mineral Transporter before it started to drift, or was not such an assumption relevant to your exercise? A. Well, I was told to assume that the Mineral Transporter was drifting towards the Maru at 1.5 knots and that at 3.25 she was 570 metres from the vessel and I went from there.

40 Q. You have heard evidence in these proceedings that the Mineral Transporter was anchored about 1.2 miles away from the Ibaraki Maru? A. Yes.

Q. And you have seen documents, have you, identifying the location

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and the heading of the vessel at anchor? A. Yes.

Q. You may look at any of those documents which you need to to answer these questions, but you have also heard evidence of the weather conditions on the evening? A. Yes.

Q. The force of the wind and the size of the swell, correct? A. Yes

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Q. Assuming the Mineral Transporter was lying at anchor in the original position as you have heard and seen described in evidence, for it to have been in the position in which it was in as shown on Ex. 3, which is your diagram, at the time there referred to, it would have had to alter its heading from its original position, wouldn't it? A. From its original position at 1.2 miles?

Defendant's
witnesses

Q. Yes? A. Well, the original heading would be before she broke the shaft, in which case she would be 142, the same as the Maru, or literally the same.

FORD
Reginald
George
(cross-
examined)

Q. What I want to bring your mind to is what would have happened at the time the Mineral Transporter broke its anchor shaft, if that is what occurred, and commenced to drift, bearing in mind the conditions of wind and sea on this occasion. First of all, it would have altered heading, wouldn't it? A. Yes.

Q. If, prior to this occurrence, it had been pitching it would have commenced to roll? A. It might be of some assistance to you that I did check out the heading of the vessel at 3 o'clock from its log book -

Q. I am sorry, I am not asking you that. We do not have the benefit of the Mineral Transporter's log book in evidence. If and when the vessel broke anchor and commenced to drag its anchor and alter its heading, in the weather and sea conditions of that evening, if the vessel had previously been pitching it would commence to roll; wouldn't it? A. Yes.

Q. And the relative direction of the vessel in relation to other vessels, ship's lights, wind and shore lights would have changed? A. Yes, relative to somebody else's observation.

Q. If what happened was that the anchor broke and the vessel commenced to drift, dragging its anchor, that change would have been quite sudden, wouldn't it? A. Not necessarily.

Q. You have been asked how long it would have taken you, if you had been the master or on watch on the Ibaraki Maru, to notice that the Mineral Transporter was drifting, do you recollect that? A. I don't think I ever was asked that, actually. I am not sure about that..

Q. You were asked whether you had read the weather forecast on this occasion and you were referred to Ex. J, do you recollect that? A. Yes.

Q. (Approached) It has been suggested to a previous witness that the weather forecast, Ex. J, (shown) showed certain things in relation to the Port Kembla area. Would you agree with me that that weather forecast shows the bad weather moving away from the Port Kembla area, not towards it? A. Yes, the major centre is moving away to the east.

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Q. It is not that there is a low pressure system coming towards Port Kembla, on the contrary there is a low pressure system shown as going away from Port Kembla? A. Yes.

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10 Q. In other words, weather conditions are shown as getting better, not worse? A. If you make a judgment that the low moving away would improve the weather, but according to the statement accompanying it these are the conditions that are prognosticated by the experts.

Q. Let's look at the statement accompanying it. That talks about the area of gales to move slowly east. The area of gales is already east of Port Kembla, isn't it? A. Yes.

Defendant's
witnesses

Q. And the area of gales is moving further east away from Port Kembla? A. True.

FORD
Reginald
George
(cross-
examined)

20 Q. One thing that is not exactly shown on your Ex. 3, with all the assumptions that you made and all the manoeuvres that you have described, assuming them to be practical, is by how much, if this manoeuvre had been performed, the Ibaraki Maru would have missed the Mineral Transporter? A. I have got it marked on the exhibit.

Q. Can you tell me what the answer is to that question? A. My estimate, the closest approach of 15 metres and my best, bearing in mind I am trying to keep the anchor slack all the time, 115 metres.

30 Q. Does it follow from that that if this manoeuvre had been performed successfully the Ibaraki Maru would probably have come within 15 metres of colliding with the Mineral Transporter? A. Yes.

Q. So that the manoeuvre that you say had a 50/50 chance of success was a manoeuvre that, if it had succeeded, would have led to the vessels missing by 15 metres? A. Within the ambit of 15 metres and 115 metres..

Q. Can you describe the manoeuvre that you say would have taken the Ibaraki Maru from position 1 to position 2? A. Well, I have already done that, but -

40 Q. Would you do it again, please? A. Rudder hard to starboard, engine slow ahead and then, depending on the response of the vessel, a continuous monitoring, either an increase of power to the propeller a decrease, or a decrease of rudder movement to effectively bring her there.

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Q. Look, you haven't got any clear idea of exactly what you would do at all, have you? A. Well, I have a clear idea that I want to bring the vessel's head $22\frac{1}{2}^{\circ}$ over and to do it I require the rudder and an engine movement and that is the sole things that affect a ship's heading, movement.

Q. With respect, it is clear what you want to do, but you have said here and given in evidence that the time that it would take to move the vessel from position 1 to position 2 is five minutes? A. Yes.

Q. How did you calculate the five minutes? A. I am assuming a 2 knot, $1\frac{1}{2}$ to 2 knot movement.

Q. What is the basis of that estimate? A. I can vary these times by adjusting the speed of the engine, but those are favourable and optimum times that I want to get to those positions.

Q. We know that those are optimum times that you want to achieve, but how can we test the correctness of your figure of five minutes as against, say, ten minutes? Why do you say five instead of ten or two? A. The object of the exercise is to meet - the Mineral Transporter I have no control of, she is proceeding on a set course at a set speed of $1\frac{1}{2}$ knots, so I can predict approximately where she is going to be and I have chosen at 3.34 as a pivotal and specific place and then manoeuvre according to that. I can control my time and speed.

Q. The times are optimum times which you would hope to achieve? A. They are times which, if I keep on that schedule, the thing will be successful.

Q. But they are not based on any particular calculation which is in turn based upon some clear idea on your part of exactly what you would do, are they? A. They are based on approximately 2 knots - you see, I am ~~estimating~~ ^{estimating} $1\frac{1}{2}$ knots to 2 knots, I am estimating 45 metres per minute and I am also utilising the ship's length, which is 253 metres, so if she moves - and you will notice from the diagram it is not a full ship's length - that is about four minutes working on a knot and a half, but I can increase that knot and a half by increasing the engine speed. I can increase by going to slow ahead or even stop, but that would defeat the purpose of stopping (sic) - of my rudder action, although if she reacted favourably I possibly could stop. The wind is acting on the after structure, helping my bow to come over.

Q. This is all based upon an assumption that the Mineral Transport itself is drifting towards you at the constant speed of 1.5 miles an hour, isn't it? A. Yes.

Q. You would be aware, wouldn't you, from the evidence, that that itself is a very rough estimate and by no means a precise calculation? A. It is not that rough. It has been monitored from

the radar and the radar plot gave 1½ fairly accurately and the times between 1.2 and the actual time of collision, it has lent itself to 1.5 or 1.53, to get really accurate. We did some measurements on it.

10 Q. Bearing in mind the distance of 15 metres that you referred to earlier, the estimate of 1.5 miles an hour would not have to be very wrong for this manoeuvre to result in a collision, would it? A. It is a risky manoeuvre, but one. I am forced to take to avoid a collision and if I missed it by 15 metres that is as good as missing it by 50 miles.

Q. But my question to you is this: your exercise is based upon an assumption of a rate of movement of the Mineral Transporter and I am suggesting to you that there is very little room for error in that assumption, bearing in mind your figure of 15 metres? A. True, but if she is going slower then I have a better chance; if she is going faster my chances are getting less.

20 Q. One of the matters that a prudent master of the Ibaraki Maru would take into account would be any element of uncertainty in his mind as to the rate of the drift of the Mineral Transporter, wouldn't it? A. Yes.

Q. May we take it that another matter that he would take into account would be any element of uncertainty in his mind as to what was going on on the Mineral Transporter? A. Yes, I did make some comments on that before about his options.

Q. But you will agree with me, would you not, that the exercise that you have described, Ex. 3, also proceeds upon the assumption that the Mineral Transporter will continue to do from the time of the commencement of the exercise exactly what you describe on that document? A. Yes.

30 Q. If the master is unable to make contact with the Mineral Transporter, how can he properly assume that? A. He can't, but you must make - take your actions according to your judgment of the position. If you have no information then you proceed on that premise.

40 Q. But the fact that you have no information as to what is going on on board the Mineral Transporter does not justify an assumption that nothing is going on on board the Mineral Transporter, does it? A. There is some evidence that nothing was going on, if it can be used in that - there is no communication but you are visually scanning her and she is now reasonably close so that the scanning would be effective.

Q. It certainly does not justify an assumption that nothing will go on on the Mineral Transporter while you are doing what you have described on Ex. 3, does it? A. The reason I have taken this is that I realise his options have transpired, the two he had.

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Q. But what I am suggesting to you for your comment is that the exercise which you have described on Ex. 3, which you say only has a 50/50 chance of success and which, if it is successful, could bring the vessel within 15 metres of one another, is an exercise which makes certain assumptions about what the Mineral Transporter is doing or is going to do, correct? A. Yes.

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Q. When the master of the Ibaraki Maru decides what action he will take, he does it in a situation where he does not know what is going on on board the Mineral Transporter or what will go on on board the Mineral Transporter, correct? A. Yes, I have expressed an opinion if I was the master this is what I would do and we seem to be skip from what I would do to what some other master -

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witnesses

FORD
Reginald
George
(cross-
examined).

Q. Do you mean to say that you would wish his Honour to understand that you are not suggesting that it would be imprudent of another master not to do that? A. As I mentioned before, it depends on his confidence, the amount of skill or whether he has done something similar to this before as to whether he would attempt it. If he hadn't done anything and he didn't have the necessary skill, then it would not be prudent of him, but if he did have the ability and certain experience in this sort of thing, then it would be prudent for him to do it.

Q. You mean that we are here operating in an area of judgment and risk taking? A. By the man who is actually going to do the judgment and the risk taking.

Q. While you have told his Honour that you would make the judgment to take the risk? A. Yes.

Q. You would not wish to criticise a master who made the judgment that he would not take the risk? A. Yes, that is a fair assessment of the situation.

Q. In relation to the movement of the vessel Ibaraki Maru from position 3 to position 4, have you taken into account the wind prevailing according to the evidence at the time that supposed change in position occurred? A. Yes, from the south-west. It would favour me in the beginning of the manoeuvre and work against me there, but that is when I am going to use my maximum thrust and she will come into the wind.

Q. In what way would the wind work against you at that time? A. It would be pushing the housing of the Ibaraki Maru, giving some resistance to her stern going to starboard.

Q. What would be the operation of the swell and current in relation to that change of position? A. Negligible.

Q. How did you calculate the figure of four minutes as the time to change from position 3 to position 4? A. Again, with the 45 metres per minute and the distance that needed to be traversed

and giving it again a speed of 1½ knots, but I can adjust.

Q. By the way, you were in court when Captain Takatani and Captain Hughes were cross-examined? A. Yes.

Q. You heard various things being put to them about manoeuvres and the way the anchor chain was going to be used and operated in relation to these manoeuvres? A. Yes.

Q. You don't appear to have mentioned that in your evidence?
A. I have the position where I consider the anchors to be -

10 Q. But is there some difference between the manoeuvres that you have been describing and the manoeuvres that were put in cross-examination to Captain Takatani? A. I don't know whether this situation was put to Captain Takatani, was it?

Q. I don't think it was, but I just wanted to be clear about that?
A. I mean, if it wasn't put to him -

Q. According to your understanding, was the manoeuvre that you have described different from the two manoeuvres that were put to Captain Takatani? Perhaps I will remind you of those manoeuvres?
A. I remember one was to go astern, which was not feasible.

20 Q. I will put them to you to remind you. First of all, at p.36 and the top of p.37 there was a manoeuvre as follows described: The first manoeuvre would be to go full ahead for a distance of say 50 metres and then to swing on the arc of the anchor to starboard or in a south-westerly direction until a position was reached, in effect, due west of the line between the Mineral Transporter and the Ibaraki Maru in its original position?
A. Yes.

Q. Is that different from the manoeuvre you have described?
A. It is a variation of it.

30 Q. Well, it is different from it in some respects? A. Different in some respects.

Q. What is the difference? A. There he has got the anchor cable at full tension in that manoeuvre and he is performing an arc with it. The difference with this manoeuvre is that at all times the chain is trying to be made slack or to remain slack and not have an effect on the bow until we get to position 4, where it possibly will have some.

Q. Had you at one time in your consideration of this matter suggested as a possibility the manoeuvre that I just described to you? A. Yes.

40 Q. Did you then abandon that suggestion when you heard the evidence of Captain Takatani? A. No, I abandoned it because this refinement has more chance of success.

Q. Was it because of the danger to the anchor chain that would have resulted from the first manoeuvre suggested to Captain

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Takatani that you were led to modify your thinking? A. No, I considered the breaking of an anchor chain as against a collision by a half loaded very large bulk carrier a reasonable price to pay.

Q. Were you in court when another manoeuvre was suggested, that is that the Ibaraki Maru should steam full ahead for a distance of 50 to 100 metres and then continue ahead but with the rudder hard to starboard? A. Well, that is, in effect, the first manoeuvre of the ^{fulcrum} movement on a stretched chain.

Q. I am sorry, that is quite different from the manoeuvre that you have described in Ex, 3, isn't it? A. It could ^{come in} the 10 manoeuvre in 3 that I would go full ahead by 50 yards, it depends on the way the ship responds to the forces acting upon her at that time. Although I would start it off at slow, if she didn't respond I would possibly go full ahead for 50 metres.

Q. But you heard suggested in cross-examination to Captain Takatani, that he should start off full ahead for 50 to 100 metres, didn't you? A. Yes.

Q. Was that an idea that you had at one stage in considering this matter? A. Yes.

Q. Did you modify or abandon that, either when you heard the 20 evidence of Captain Takatani or Captain Hughes about it? A. No.

Q. It is not now an idea that you would wish to put forward as a possible solution to this problem, is it? A. The action going full ahead for 50 metres with a rudder hard over is still valid and could possibly be necessary to get to position 2. 50 metres is not very far and the vessel at full ahead is still only doing a knot and a half or two knots within the first three or four minutes.

Q. You are not suggesting that that is the first course you would take, is it? A. It could well be - I would start off at slow 30 and within a minute or so, if she is not responding, then I could well put it to full ahead and I would do it for 50 metres, which is one-fifth of the length of the vessel.

Q. But there is a difference between starting off slow and starting off full ahead and steaming for 50 to 100 metres, isn't there? A. I can't see the difference. This position from 1 to 2 is approximately 140 metres, so that it is quite probably only going 50 metres at full ahead.

Q. But it isn't what you would set out to do? A. I have already explained I would start off at slow and go to full or, if I thought at the time, in the agony of the moment, I might go straight into full ahead, I can always come back, taper down to slow or stop.

Q. You have abandoned any idea of swinging on the anchor chain, haven't you? A. I first thought of it as a method and then I thought this is a better method.

Q. After having heard evidence of Captain Takatani? A. No, I had been working on it before then.

Q. At all events, having originally thought of it as a method you don't now put it forward as a method that you would have adopted? A. This is the method I would have adopted; the other still has some possibilities.

Q. But you are not suggesting to his Honour that you would have attempted to swing on the anchor chain? A. Not when I had got a better method in front of me.

10 HIS HONOUR: Q. When you are saying, "This method" you would have adopted, you mean the method in your drawing, Ex. 3? A. Yes.

MR. GLEESON: Q. When did you finally arrive at the view that that was the method that you would have adopted? A. When I was asked what options a master would have to avoid collision.

Q. How many hours did you spend working it out? A. I didn't spend hours working it out, but I did spend hours doing all the measuring.

Q. How long did it take you to work out that as a method that you would adopt? A. About five minutes.

20 Q. After having previously suggested other methods that you subsequently discarded? A. I only suggested one other method.

Q. Swinging on the anchor chain? A. Utilising the arc of the anchor chain, yes.

Q. You don't now regard that as a thing that you would have done? A. Not now I thought that this is a better one, but I could still fall back on that as a fall back position.

Q. Would a prudent master of the Ibaraki Maru be standing there changing his mind about whether to swing on the anchor chain or not while the Mineral Transporter was bearing down on him?
30 A. He would be standing there viewing his options as to what he could do, and they are very limited.

Q. You heard some suggestions put to the witnesses, particularly I think Captain Hughes, about draping the anchor chain over - is it called the bulbous head of the Ibaraki Maru, do you recall those suggestions being made? A. Yes.

Q. Were you the origin of those suggestions? A. The terminology 'draping it over the bulbous bow'. Was not a suggestion of mine. It was, I suppose you could call it, a misinterpretation. It came about that the cable was going to be an obvious hazard
40 and that a method of obviating it as a hazard on ships is to get your anchor cable across the stem post and above, of course the bulbous bow. This can be achieved by judicious manipulation of the engines and the helm and a feedback of information from the officer on the fo'c'sle head as to where the cable is. That is where it came from.

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Q. When did it become apparent to you that the cable was going to be an obstacle? A. It is obvious from the first that the cable - if there was no cable down you have no hindrance, the manoeuvre is quite feasible then, you just bash her ahead, put the helm over and get out of the way.

Q. I want to move to a different subject matter. Are you aware that when both the Ibaraki Maru and the Mineral Transporter put in for repairs to port in Sydney there was a black ban that was imposed? A. Yes.

Q. That delayed the sailing of the vessels? A. Yes. 10

Q. You are aware, are you not, that that black ban was placed as part of a campaign by a particular union to require foreign vessels to undertake repairs in Australia rather than elsewhere? A. Yes, I was aware of that campaign.

Q. That is a longstanding campaign in the shipping industry? A. Yes.

Q. The black ban that was imposed on this occasion was the kind of action in support of such a campaign that has been taken on a number of occasions? A. Yes.

Q. It was the sort of risk that you ran - may be still do run, but ran in July 1981 if you were a foreign vessel and you had to have repairs done in Australia? A. I was aware of it, yes. 20

Q. But you were aware that the risk of running into a black ban of that kind was part and parcel of having to have repairs done in Australia if you were a foreign vessel? (objected to; allowed) A. I would say a master would be aware of that if he was a constant - or not necessarily a constant visitor, but a visitor - if he had been here before; if he was a first arrival he might possibly have no knowledge of our industrial practices. 30

RE EXAMINATION

MR. SHELLER: Q. Prior to July 1981 were you aware of any occasion on which a foreign flag vessel was in fact held in the course of repairs by the union in order to try and ensure that permanent repairs were made in Sydney or Australia? A. I was not aware of any specific ship. My knowledge came from the newspaper reports that ~~were~~ ^{they going} to do that.

Q. Your knowledge of this was based on newspaper reports, was it? A. That this was their campaign. 40

Q. And the evidence you have given about the campaign was based on newspaper reports? A. And word of mouth of various shore people.

Q. Are you aware of any specific instance prior to July 1981 where a foreign flag vessel was held up during repairs in Australia for this reason? A. No, the only ones were held up because of the complaint about low wages by Libyans owners but it wasn't about the repairs.

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(Witness retired)

RONALD ARTHUR RANNARD
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10 MR. SHELLER: Q. What is your full name? A. Ronald Arthur Rannard.

Q. Where do you reside? A. 87 Sims Esplanade, Yorkey's Knob, Queensland.

Q. What is your occupation? A. Consulting engineer and Naval architect.

Defendant's
witnesses

Q. Have you had typed out on a sheet a statement of your qualifications and experience? A. Yes, I believe Mr. Hetherington has it.

FORD
Reginald
George
(retired)

(Agreed that statement of witness' qualifications to be handed up later).

20 Q. You have had made available to you plans of the general arrangement of the engine room of the Ibaraki Maru, is that right? A. That is correct.

RANNARD
Ronald
Arthur
(examined)

Q. You are familiar with the type of engine that was installed in the Ibaraki Maru in July 1981? A. Correct.

Q. Was that a Beirmaister and Wayne Engine? A. Beirmaister and Wayne.

Q. Beirmaister and Wayne 9 cylinder engine? A. Yes.

Q. Is that a type of engine with which you have had experience? A. Yes.

30 Q. Indeed, I think you have sailed on vessels with an engine of that type installed on them? A. With the later model of that particular type of engine, yes.

Q. You have been present in court and have heard the evidence that has been given in this case? A. Yes.

Q. You are familiar with the evidence that has been given about the position at anchor of the Ibaraki Maru on the night of 9/10th July, 1981? A. Yes.

Q. I want you to assume that on that night, as the Ibaraki Maru lay at anchor prior to 3.20 on the morning of 10th July,

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the lubricating oil system was not running through the engines?
A. Yes.

Q. The engines were said to be in a state of readiness to bring them to standby in 15 to 20 minutes? A. Yes.

Q. Could you describe to his Honour what is meant in that situation by the lubricating oil system not running through the engine?
A. Well, it places the engine only in a warm condition, but not preparatory to starting and to start the engine it requires lubricating oil and other functions to be opened up so that the engine can be placed in a position for immediate starting by use of the starting gear.

Q. So that if an order is given to bring the engines to standby in a situation where the lubricating oil system is not running through the engine, one operation that has to be performed is to start the lubricating oil running? A. That would be the first operation, yes.

Q. Is it possible to say, from your experience, how long it takes to get the lubricating oil running through the engines? A. It would take approximately 12 minutes in the case of this particular engine.

Q. To what extent does that 12 minutes starting the lubricating oil system add to the time that it takes to bring the engines to standby? A. Approximately double.

Q. When you say approximately double, what does that mean in terms of minutes? A. If the lubricating oil was running, it would take approximately ten minutes to place the engine in a starting condition.

Q. By a starting condition, do you mean at standby? A. Well, standby is a starting condition it can be started immediately after standby has been made.

Q. You have during your career served as the engineer on vessels both in the merchant navy and in the navy, is that right?
A. That's correct.

Q. I take it that you have on occasions while so serving been in vessels anchored off Port Kembla? A. I have never anchored off Port Kembla at all - just about every other port but Port Kembla.

Q. In vessels anchoring at sea, is that right? A. Yes, in the roads.

Q. Now, on the basis of that experience and having heard the evidence as to the weather conditions and situation of the Ibaraki Maru on this particular night, what as a matter of prudence in your opinion should the state of the lubricating oil system have been while the vessel was lying at anchor? (objected to).

Q. Is there in your experience a usual practice in relation to the lubricating oil system when vessels such as the Ibaraki Maru are at anchor at sea? (objected to; allowed) A. My own experience has been that when a vessel is at anchor in open roads, regardless of the weather conditions, the machinery is kept in a state of immediate readiness for use, that is the shortest time to place it in a position of immediate use.

10. HIS HONOUR: Q. Does that mean though that the lubricating oil is through the system? A. In the case of steam turbine vessels and diesel vessels this means that the lubricating oil would be function.

MR. SHELLER: Q. By 'function', that means running through the system? A. That's correct.

HIS HONOUR: Q. What about if the vessel is just there for ten days in completely calm weather, would that be the same? A. Well, I have laid outside several ports in very calm weather, full watch has been maintained and the engine is ready to go, for up to 30 days.

20. MR. SHELLER: Q. When you say the engine is ready to go, what do you mean by that? A. At minimum period at standby.

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Defendant's
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Ronald
Arthur
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Q. I take it you mean by that with the lubricating oil running through the system? A. That is correct.

CROSS-EXAMINATION:

MR. GLEESON Q: How recent is your experience? A. 1970 was the last occasion I carried out trials.

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Q. Carried out trials; I am talking about - you were asked to give evidence about the practice in relation to engines of vessels lying at sea? A. Yes.

Q. And you answered that question by saying what your experience was? A. Yes. 10

Q. When was it that you had that experience that you described?
A. 1950, I think, or 1951; I am not quite sure.

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witnesses

Q. It would not be unfair to say that your experience is about 30 years out of date? A. No, it is not 30 years out of date.

RANNARD
Ronald
Arthur
(examined;
cross-
examined;
retired)

Q. That is when you last had experience? A. That is when I was last serving at sea on a merchant vessel.

Q. You were invited to give us evidence about your own experience?
A. Yes.

Q. And you were telling us about experience in 1950? A. Yes.

Q. Was it experience prior to 1950 as well? A. Yes. 20

Q. When did it commence? A. 1945.

Q. So it was experience between 1945 and 1950? A. And 1950.

(Witness retired, excused.)

(All witnesses excused.)

(Interrogatories and answers there to by plaintiffs numbered 3, 5, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 24 and 36 tendered; no objection; admitted and marked Ex. 9.)

Interrogatories and answers thereto by plaintiffs numbered 7, 9 and 10 tendered; no objection; admitted and marked as part of Ex. 9.) 30

(Letter dated 16th October 1981 from Patrick Agencies to defendant's instructing solicitors tendered; no objection; admitted and marked Ex. 10.)

(Document previously m.f.i. 7 tendered; objected to.)

(Voyage number 66A and 67A of the "Ibaraki Maru" furnished by plaintiffs tendered; no objection but Mr. Gleeson observed that Mr. Ogata was not cross-examined about them, and Mr. Ogata is still available for cross-examination, if desired; admitted and marked Ex. 12.) 40

(Document previously m.f.i. 7, previously tendered, admitted and marked Ex. 11; noted that Mr. Gleeson objects on the grounds of relevance, but document admitted subject to argument on its admissibility.)

(Document, sketch with photographs, previously m.f.i. 6, tendered; no objection; admitted and marked Ex. 13.)

(Document, sketch with photographs showing damage to plaintiff's vessel to be tendered; no objection; admitted and marked Ex. 14.)

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CASE IN REPLY

MICHIHIRO TAKATANI
Through interpreter,
on former affirmation,
examined:

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in Reply

MR. GLEESON Q: (By leave; approached) Captain Takatani, you have earlier, I think, been shown a picture of the mineral transporter which is Ex. M - I am sorry.

TAKATANI
Michihiro
(further
re-examined)

You have earlier been shown a picture of the "Ibaraki Maru" which is Ex. M? A. Yes.

20 Q. And is that what the vessel looked like prior to the collision on 10th July 1981? A. Yes, that is right.

Q. You will observe that the vessel has an orange funnel? A. Yes.

Q. What does the orange funnel indicate? A. It indicates the company.

Q. And what company does it indicate? A. Merchant vessel -

Q. Does the orange funnel indicate that the vessel is of the Mitsui-OSK line? A. Yes, that is correct.

30 Q. Captain Takatani, you were asked some questions in cross-examination about certain manoeuvres which it was suggested the Ibaraki Maru might have performed in order to avoid the collision. Do you remember those questions? A. Yes.

Q. And you were in court when Capt. Ford was giving evidence; that is the expert called by the defendants, the gentleman with the beard - I am sorry.

You were in court this morning when Capt. Ford was giving evidence and also yesterday afternoon? A. Yes.

Q. And you saw him give evidence about a document that he prepared in relation to a manoeuvre? A. Yes.

40 Q. And may I take it that your English is sufficient to enable you to have understood some of the things that he was saying, but not all of the things he was saying? A. Yes.

Q. (Approached) I show you Ex. 3. I want you to assume that what that document is, amongst other things, four different positions

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of the Ibaraki Maru into which it is suggested it might have moved in the course of the manoeuvre.

I want you to also assume that the figures on Ex. 3 show the times at which it is suggested the Ibaraki Maru might have been able to achieve those positions.

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Do you see that the exhibit also shows the Mineral Transporter in two positions.

I want you to assume that it is suggested that the way to put the Ibaraki Maru through that manoeuvre is to put the engines ahead and to endeavour to steer the course of 165° by use of the engines and the rudder, enabling the Ibaraki Maru's bow to clear the bow of the oncoming Mineral Transporter. 10

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witnesses
in Reply

What I want to ask you is: what do you say as to the reasonableness of that as a manoeuvre to be undertaken by the Ibaraki Maru to avoid collision with the Mineral Transporter?
A. I would like to know whether by engine ahead, whether it means full or slow or half ahead.

TAKATANI
Michihiro
(further
re-examined;
further
cross-
examined)

Q. Can we deal with each possibility please? A. Regarding the movement from position 2 to position 3, such a manoeuvre cannot be done. 20

Q. Why is that? A. If the rudder is due to the right, the hind part of the vessel would move to the left and the bow of the vessel would move to the right and at the same time the whole of the hull of the vessel would go slightly to the left.

Q. (Approached) And in relation to the movement from position 3 to position 4, and the time shown for that movement, what do you say? A. (Interpreter sought clarification) As a manoeuvre it would seem that if it was done very very well and if there was no extreme weight on the chain, it would seem as if the tightness on the chain would enable it to make this movement possible, but even if there was a little extra inertia, within then the stern would swing to the left and adjusting the amount of power that would be on the chain, would therefore be very very difficult; therefore the movement from position 3 to position 4 would need a technique that is Godlike. Further, if there was, if we were to consider the case where there was too much inertia, then the stern of the vessel would swing to the left and if the inertia was to be stopped, and in order to do that it was put to stern, then the stern of the vessel would still swing to the left. 30 40

CROSS-EXAMINATION:

MR. SHELLER Q: (Approached) Captain Takatani, do you agree that it is possible, applying the appropriate speed ahead and rudder, to move the Ibaraki Maru from the position shown as 1 to the position shown as 2? A. Yes, that would be possible. This is possible but at this time I would like to know in position 1 which way the rudder is taken.

Q. Supposing the rudder is taken from amidships hard to starboard?
A. Does that mean to position 1 the rudder is already hard to starboard?

Q. Perhaps I should put it this way. Assuming that the Ibaraki Maru was stationary at position 1. Is it possible by applying the appropriate engine speed and rudder to bring it from position 1 to position 2? A. Yes.

Q. And would you tell his Honour, in order to do that, to bring the vessel from position 1 to position -

10 I suppose, Captain, it would be right, would it, that the precise engine power and rudder angle would depend upon your feel of the vessel as you sought to take it from position 1 to position 2, is that right? A. This is, of course, supposing that there is Mineral Transporter nearby, and it would take a very long time to go from position 2 to 3 and to keep at a steady straight direction.

20 Q. But just on position 1 to 2, would you agree that in terms of navigating the vessel, the precise engine power and rudder direction would depend upon your feel of the vessel as you were doing it? A. Yes, and doing that and taking a lot of time, that would be achieved. That would only be done in a case when there was no Mineral Transporter around and there was sufficient time and place for it.

Q. If you were doing that manoeuvre from position 1 to position 2, it would be a question, would it not, of applying the engine ahead and putting the rudder to starboard? A. Is it position 3?

Q. I am sorry - I meant from position 1 to position 2? A. Yes. The rudder would be put to starboard at position 1 and then the engine would be used.

30 Q. If in the process of that manoeuvre you were into position 2, it would be possible, would it not, then to manoeuvre the vessel straight ahead into position 3? A. It is difficult to get it to position 2.

Q. I am asking you from position 2 to position 3. Having got to position 2, it would be possible, as part of the continuation of the manoeuvre, to go straight ahead to position 3? A. Yes, it is possible.

Q. Again, by using engine and rudder in an appropriate manner? A. Yes, if the engine and rudder was used appropriately.

40 Q. Would you agree that having got into position 3, it would be possible again by use of engine and rudder to swing the vessel to position 4? A. It is difficult to have the proper inertia at that point, especially when wind and swell was there, going from position 3 to 4 would be dangerous.

Q. On the assumption, Captain, that if on this night in question you had taken the vessel to position 3 and the mineral transporter was in the position as shown, position 2, as on that diagram, would it not be possible to swing the stern of the Ibaraki Maru to starboard so as to avoid collision with the Mineral Transporter? A. If operations were done as it is on paper, on paper it could be - it might be possible but in reality the mineral transporter might have dropped its anchor in emergency and with our vessel,

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even if it had a little extra inertia then the stern of the vessel would have swung to the left making the accident a terrible accident - it would have been a very large accident.

Q. Would you agree that there would be a good chance of the Mineral Transporter having avoided the collision if it had, from position 3 -

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Would you agree that there would have been a good chance of the collision being avoided if the Ibaraki Maru had, from position 3, put the engines astern and put the rudder hard to port? A. That would involve great danger; in any case, it would have collided and something that would have made the collision worse. 10

Plaintiffs'
witnesses
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Q. Would not the effect of such a manoeuvre have been to bring the bow of the Ibaraki Maru behind the Mineral Transporter and swing its stern away from the Mineral Transporter? A. While that was being done the other vessel would have drifted.

TAKATANI
Michihiro
(further
cross-
examined)

Q. Yes, and would not the effect of its drifting been to take it away past the Ibaraki Maru as it swung around? A. No, it would not. The collision then would have involved the screw, the rudder and the engine room of the Ibaraki Maru. 20

Q. Is it not right that if the Mineral Transporter was at the position which is shown there as 2, at the same time that the Ibaraki Maru was in the position 3 and the Mineral Transporter had continued to drift at a knot and a half in the direction towards the original position of the Ibaraki Maru, the effect of putting the engines astern and the rudder hard to port would have been to take the Ibaraki Maru behind the Mineral Transporter as it drifted past? A. Do you mean behind or in front of the Mineral Transporter? It would seem like -

Q. Behind the Mineral Transporter. If your bow was shown in position 3 of the Ibaraki Maru, with the Mineral Transporter in that position 2, at the same point of time, would not the effect of going full astern and hard to port have been to take the Ibaraki Maru behind the Mineral Transporter? A. As I said before, the damage would be done to the port of the engine room and to our vessel. 30

MR. SHELLER: Q. (Shows model ships.) Captain, assuming that that is the "Mineral Transporter" which is drifting more or less in that direction? A. Yes.

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Q. And the "Ibaraki Maru" has proceeded to a position approximately there as from position 2 to position 3 in the diagram Ex. 3. Now, from that position is it not possible to manoeuvre the "Ibaraki Maru" so that it comes round more or less like that while the "Mineral Transporter" continues to drift -

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HIS HONOUR: When you say "like that" could you describe that?

10 MR. SHELLER: Q. So that it comes round with its stern swinging to starboard and its bow swinging to port? A. What would the state of the engine be?

Q. I may have put this wrongly to you before, for example if the engine was put full ahead and the rudder was put hard to port. (Witness indicates using models.)

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HIS HONOUR: You had better describe that to Mr. Sheller.

TAKATANI
Michihiro
(further
cross-
examined)

MR. SHELLER: I don't know whether I can describe it quite as dramatic as that.

HIS HONOUR: A violent collision.

20 MR. SHELLER: Q. You tell me? A. When the chain is taut then this is what would happen.

Q. You describe a movement and you say that is when the chain is taut, let it be assumed that at that point, and we will just have to rearrange this again, let us assume that at that point which is intended by me to represent the situation shown as position 2 on the "Mineral Transporter", position 3 on the "Ibaraki Maru"; now, assume that in that position the anchor chain is not taut and follows the line of the anchor chain to the anchor as shown on the diagram. On that assumption, assuming that you go full ahead and put the rudder to port or hard to port, could you not manoeuvre so as to come round behind the "Mineral Transporter" with your stern swinging to starboard and the bow to port as the "Mineral Transporter" drifts on its course? A. If the chain was very slack and there was no weight on it or if the chain was directly below the vessel then that might be possible.

30

Q. Would you agree that with the anchor as shown in the position that it is marked on this diagram that if the "Ibaraki Maru" moved forward from position 1 to position 2 the anchor chain would be lying loose and following the line shown by the dashes and then the straight line to the anchor? A. Yes.

40

Q. If the "Ibaraki Maru" then proceeded from position 2 to position 3 the anchor would still be lying loose but following the line again shown with the dotted line and then the straight line to the anchor? A. Just to get it there would be a God-like manoeuvre.

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Q. I just want to ask you about the anchor chain for the moment, that the anchor chain in that position 3 would be lying loose and following the line shown on the diagram? A. As far as the diagram goes it may be like that.

Q. Would you agree that had the "Ibaraki Maru" proceeded from position 1 to position 3 on this night the anchor chain would have been lying loose at the point when it reached position 3? A. May I have the question again please?

Q. On the night in question, had the "Ibaraki Maru" proceeded in the manner I have sought to describe through position 2 to position 3 when it reached position 3 the anchor chain would have lain loose approximately where it is shown on this diagram? 10

A. If it was taken to position 3 then possibly but it is not clear and I do not really know and it is really a God-like manoeuvre and it is something that is only on paper.

These questions could be continued as something that is far from reality and simply on paper and something that is a supposition of many suppositions.

Q. I think you have told me that it would be possible to manoeuvre the "Ibaraki Maru" from position 1 to position 2? 20

A. Yes.

Q. And that is by the appropriate use of engines and rudder? A. Yes.

Q. I suggest to you that that could have been done even though the starboard anchor was still out ten shackles? A. I think you are talking about when there is no rush as far as feelings and emotions go and if under that sort of situation then it could be done.

Q. And it could have been done with the ten shackles of anchor out in the weather conditions of the morning of 10th July, 1981?

A. It could be done if it was supposed that the "Mineral Transporter" was not nearby and there was much time and we were not emotionally disturbed. 30

Q. Could it have been done at a speed of about one and a half to two knots? A. We cannot increase speed. I am not really sure what speed exactly but probably around that speed.

Q. And I suggest to you it could have been done in such a way as to take about five minutes to get the "Ibaraki Maru" from position 2 to position 3? A. I don't know clearly but it may not even take five minutes; it depends on the engine how it is used.

Q. Then you would agree, I think, that it would be possible again by an appropriate use of engine and rudder to bring the "Ibaraki Maru" from position 2 to position 3? A. I said many times already, on paper it can be drawn but in reality it is impossible.

Q. It is quite possible, is it not, as a manoeuvre with having got the "Ibaraki Maru" by using engine and rudder to position 2 to bring it from position 2 to position 3 -

HIS HONOUR: Haven't we dealt with that, Mr. Sheller?

MR. SHELLER: I thought he had agreed that that was the position.

HIS HONOUR: He said in theory it can. You carry on, I won't stop you but I just think I have heard it before.

MR. SHELLER: Q. Captain, as a manoeuvre you could bring the "Ibaraki Maru" from position 2 to position 3? A. To take it there would require an incredible amount of technique and I can only talk on the supposition that it was taken there.

10 Q. But it would not require a great deal of technique, would it, to take the vessel straight ahead from position 2 to position 3, having started from the position shown as position 1, simply as a navigational manoeuvre? A. We would have to try to stop the inertia move forward and backward. With a heavy vessel such as this which weights 73,000 tons, if it gains too much inertia then it couldn't stop. With such a large vessel whose movement is rather dull such manoeuvre is almost impossible. If there was a tug boat and there was no wind or no tide then it may be possible.

20 Q. Therefore, I take it, captain, that you would say that you could not do that manoeuvre from position 2 to position 3 in the weather conditions that were obtaining on 10th July and with the anchor out ten shackles to the point shown on Ex. 3? A. It cannot be taken to a perfect position as shown on this diagram.

30 Q. And you would not agree, I take it, that on that night you would have been able to bring the vessel from position 2 to position 3 in about four minutes? A. Taking it to position 3 is very difficult. One must be careful that the chain does not become taut, it must stay loose and in order to do that the engine must be put to stern and then there may be too much inertia and by putting the engine to stern then the stern of the vessel would swing. That would make it very difficult to bring it to position 3.

(No re-examination)

(Witness retired)

(Noted: Mr. Gleeson does not seek to recover in this action the moneys referred in par.2 of Ex. Q.)

(Agreed statement of costs in relation to the defendant tendered and marked Ex. 15.)

40 MR. SHELLER: So far as our claim for loss of profits is concerned we have produced a document and there has been some discussion about it, however the document needed to be supported by documents such as has been produced to us by the plaintiff; those documents we still have not got.

The situation is that, as we see it, there is no other way that we can proceed so far as our cross-claim is concerned than to have that referred to the registrar. We would not seek, obviously, to suggest that the whole question of damages should be referred to the registrar, it will just have to be our bit at the moment because we simply do not have the documents.

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HIS HONOUR: What do you say about that if it becomes a relevant issue, Mr. Gleeson?

MR. GLEESON: I really do not see that we can pass that because once we see these documents we might want to interrogate.

(Noted: By consent so far as the cross-claim is concerned and apart from questions of principle which his Honour will be asked to decide, any ultimate calculation of any damages to which the cross-defendant might be entitled will be referred to the registrar. That is not to delay in any way the recovery of any damages to which the plaintiff might be entitled.)

10

(Case in reply closed subject to an affidavit from Japan in relation to the matters dealt with yesterday.)

MR. GLEESON: We expect to have an affidavit from an expert in Maritime Law in Tokyo who will say that he has read a copy of the time charter, the original of which is an exhibit before your Honour; and he has also read a copy of the English translation of the relevant addendum. He will say he speaks the Japanese language and the English language and practises in international commercial transactions and is familiar with drafting and advising about charter parties.

He will say that he has never heard the English word "off-hireage" and such dictionaries as he has been able to consult do not show either that expression or the expression "hireage" for that matter.

HIS HONOUR: He has heard of "off-hire"?

MR. GLEESON: Yes. The meaning of the Japanese word which has been translated as "off-hireage" is clear and it means an amount by which the hire rate is to be reduced, not an amount to which the hire rate is to be reduced; and he will say that the construction, as a matter of Japanese law, of the contract presents no difficulty. It appears that the problem has arisen because in the translation someone has attempted to use a single English word for a single Japanese word and they have used a word that as far as I can see is not part of the English language. I have certainly been looking at dictionaries to see if we can find an expression "hireage" or "off-hireage" but that certainly seems to be what has happened.

HIS HONOUR: We will have to deal with that next Wednesday.

40

MR. GLEESON: I say that so that when that affidavit arrives my learned friends can equip themselves to form a view about it.

HIS HONOUR: Do you propose to argue on the question of negligence on your part, Mr. Sheller?

MR. SHELLER: No.

HIS HONOUR: So from your point of view you will be arguing contributory negligence?

MR. SHELLER: Yes.

(Luncheon adjournment.)

UPON RESUMPTION:

HIS HONOUR: First of all, you do not claim that your client was not negligent?

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10 MR. SHELLER: No, your Honour. We have provided particulars first of all in our statement of cross-claim and while they're all expressed in a general sense - and I will be more particular in a moment - may I just say we rely upon A to F to par.10 of the cross-claim, not G, H and I and some greater particularity was furnished in two letters that we gave to the plaintiff.

May I just hand up to your Honour a document which sets out the particulars which were included in those two letters. Of those we rely on 1 to 7 and some of them are saying more or less the same thing in a slightly different way. We do not rely on 8, we do not rely on 9. We rely on 10 and 11 but not on 12 and 13.

20 In a particular sense what we would be submitting is that the watch on the "Ibaraki Maru" at the critical time between 2.55 and 3.18 was deficient and it was deficient in a number of respects such as the bridge remaining unmanned, no visual watch being maintained, no radar watch being maintained and no one in a position to hear signals.

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MR. SHELLER: It was deficient in the sense that there was only one person on watch and that one person was not a certificated officer. We then say that as a result of that a situation was created whereby it was too late when the Ibaraki Maru became aware that the liner transporter was drifting towards it. It was too late for the Ibaraki Maru to take appropriate evasive action with engine and rudder. So that, your Honour, we would be submitting that there was a situation of danger which was created in part, as we would put it, by the failings of the Ibaraki Maru which created a situation from which it was impossible for the plaintiff to take action which would otherwise have been available to it.

If one looks at it the other way round and one says that even if a proper watch had been maintained and the fact that the liner transporter was drifting had been observed by that watch in due time, there was nothing that could be done about it so far as evasive action using engine and rudder was concerned, then we would submit that the plaintiff was negligent in allowing itself to be anchored in a situation of danger, and in that sense exposing itself to danger. That is in broad terms how we would seek to put it

MR. GLEESON: Could I just enquire which of the particulars covers that last submission?

MR. SHELLER: We would submit that is something that has emerged out of the negligence action on the evidence, your Honour, although not particularised. There is a recent High Court case on this which I had out at lunchtime.

HIS HONOUR: Is that Hammar and somebody?

MR. SHELLER: Yes, I think it is. It is dealt with by the High Court on the basis that provided one is within the cause of action, the evidence does not have to precisely follow the particulars pleaded. This is something we would submit that emerged as the case proceeded. We would not pretend it is included in the particulars submitted.

HIS HONOUR: Mr. Gleeson, if you are prejudiced by that I will give you time to consider it.

MR. GLEESON: I will be commenting, of course, it was not put to Captain Takatani.

(counsel addressed)

(Addresses on liability completed.)

(Counsel to put submissions re damages in writing and on completion of all submissions if either counsel desires to speak to written submissions or to deal with further evidence to be supplied by affidavits from Japan his Honour's associate is to be notified. If no oral argument is desired then decision in the case is reserved and will be given in due course.)

No.8
AFFIDAVIT OF CAPTAIN JONG SEOB KIM

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

ADMIRALTY DIVISION

No. 934 of 1981

MITSUI OSK LINES LIMITED
& MATSUOKA STEAMSHIP CO.
LIMITED

Plaintiffs

THE SHIP "MINERAL TRANS-
PORTER", CANDLEWOOD
NAVIGATION CORPORATION
LIMITED

Defendant

CANDLEWOOD NAVIGATION
CORPORATION LIMITED

Cross Claimant

MITSUI OSK LINES LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO.
LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO. LIMITED

Third Cross Defendant

A F F I D A V I T



17 MAY 1981

Messrs Norton Smith & Company,
Solicitors,
11th Floor,
20 Martin Place,
SYDNEY. N.S.W. 2000.

DX 119, Sydney
Tel: 232.8833
(WN)

On the _____ day of _____, 1983,
I, CAPTAIN JONG SEOB KIM of 1502 Musin
A301 Busan, Korea, Master Mariner,
make oath and say:-

1. I have been at sea for 22 years
and a Master for Sanko Line for
15 years.
2. In July, 1981, I was the Master of
of "Sanko Cherry"; that vessel
was anchored approximately 1½
miles from Wollongong Lighthouse
on 9th and 10th July, 1981.
3. On the evening of 9th July, 1981,
at about 1700 or 1900 hours, the
wind started to strengthen and
I accordingly decided to stay on
the bridge during the evening. The
reason I decided to remain on the
bridge was because the "Sanko
Cherry" was anchored in fairly
shallow water on sand and I was
concerned that it may drag its
anchor. Throughout the evening
of 9th July, 1981, the radar of
my vessel was constantly on and
a constant radar watch was kept of
other vessels anchored nearby.
4. At about 0220 hours on 10th July,
1981, I ordered the Quartermaster
to arrange a meal to be brought to

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Kim

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of Captain
Jong Seob
Kim
12th May
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(continued)

to me on the bridge. That meal arrived about 20 to 25 minutes after I ordered it. Before the Quartermaster arrived with the meal, I was on the bridge with the Second Mate. I was watching the radar and over a space of about 10 minutes, I saw that the "Mineral Transporter" was drifting. At that time, I did not know the name of the vessel. When I saw that it was drifting, I looked at the clock on the bridge and saw that it was before 0300 hours; I cannot remember the exact time. The Quartermaster had not arrived with my food before I saw that the "Mineral Transporter" was drifting. I then looked at the drifting vessel through my binoculars and saw that her deck light was very dull and I could not see anyone on the bridge or forecastle deck of the "Mineral Transporter".

5. I then tried to contact the "Mineral Transporter" many times on VHF Channel 16 but got no response. Therefore I alternated between VHF 6, 8, 12 and 16 but still got no response. I also used our flashing morse light, to which there was no response.

20

6. Before the collision between "Mineral Transporter" and "Ibaraki Maru" I heard a message between "Ibaraki Maru" and "Mineral Transporter" on the radio being a request to transmit on another channel. I also heard radio messages between "Ibaraki Maru" and "Mineral Transporter" after the collision. I was not able to understand the radio messages very well because the English used was not good and was very distorted.

7. I cannot recall hearing an airhorn nor can I recall seeing a flashing morse light from "Ibaraki Maru". The weather conditions were noisy and the doors on Sanko Cherry were closed. Accordingly, I may not have been able to

hear an airhorn from "Ibaraki Maru".

8. "Mineral Transporter" seemed ~~to~~ drift at about the same speed from the time I first observed it until it collided with "Ibaraki Maru".

9. I do not know whether the engines of "Mineral Transporter" were on before the collision.

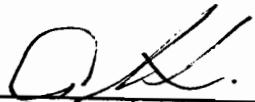
10. The deck lighting on the "Mineral Transporter" was still dull at the time of collision.

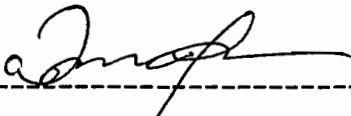
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Kim
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(continued)

SWORN at Busan, Korea)
10 Before me:)


EX. MASTER OF M/V SANKOCHERRY
CAPT. J. S. KIM

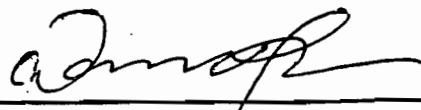


NOTARY PUBLIC/JUSTICE OF THE PEACE

Part 1
In the
Supreme
Court of
New South
Wales

No. 624
Mr. J. S. KIM Subscribed and
Sworn to Before Me.
Day of 17th, May, 1983

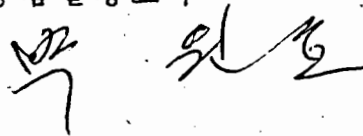
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Kim
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1983



Won Ho, Park
the Notary Public
Busan District Prosecutors Office
10, 2-ga, Bumin-dong, Seogu
Busan, Korea

(continued)

등·부 제 214호
우자등은 본직면전에서 서명하다
본직은 이를 인증함
서기 1983년 5월 17일
부산시 서구 부민동 2가 10번지
부산지방검찰청소속
공증인



No.9
AFFIDAVIT OF HIROSHI INOUE

IN THE SUPREME COURT OF NEW SOUTH WALES

Part 1
In the
Supreme
Court of
New South
Wales

SYDNEY REGISTRY

On the 14th day of May, 1983, I, HIROSHI

ADMIRALTY DIVISION

INOUE of 3-306, Matsugaoka, 5-Chome,

No. 934 of 1981

Akashi-City, Hygo Prefecture, duly affirm:

No.9
Affidavit
of Hiroshi
Inoue
14th May
1983

BETWEEN

1. I am the Deputy General Manager,
General Affairs and Administration
Team of Matsuoka Steamship Co.
Limited ("Matsuoka").

mitsui OSK LINES LIMITED &
MATSUOKA STEAMSHIP CO.
LIMITED

Plaintiffs

CANDLEWOOD NAVIGATION CORPOR-
ATION LIMITED

Defendant

2. I am authorised by Matsuoka to
swear this affidavit.

CANDLEWOOD NAVIGATION CORPOR-
ATION LIMITED

Cross Claimant

3. Annexed and marked with the letters
"A" and "B" respectively, are
copies of a bare boat charter
agreement and addendums between
Matsuoka and Mitsui, and copies
of a time charter agreement and
addendums between Matsuoka and
Mitsui.

MITSUI OSK LINES LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO.
LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO. LIMITED

Third Cross Defendant

TOKYO CHAIN ANCHOR CO.
LIMITED

Fourth Cross Defendant

4. Each of those agreements was in
force during 1981.

A F F I D A V I T

5. For a period of 67.429 days from
10th July, 1981 until 31st August,
1981 and from 12th October, 1981
until 27th October, 1981, Mitsui
suspended payment of portion of the
charter fee under the time charter
agreement. Instead of paying
¥2,464,000 per day, only ¥544,000
per day was paid.

AFFIRMED: 14th May, 1983

DEPONENT: H. Inoue

Messrs Norton Smith & Company,
Solicitors,
Level 11,
20 Martin Place,
SYDNEY. N.S.W. 2000.

DX 119, Sydney
Tel: 232.8833
Ref: WN



Part 1 AFFIRMED on the day and)
 In the year first hereinbefore)
 Supreme mentioned:)
 Court of Before me:)
 New South)
 Wales)
 No.9)
 Affidavit)
 of Hiroshi)
 Inoue)
 14th May)
 1983)
 _____)
 (continued) A SOLICITOR OF THE SUPREME COURT)



W. Neville

I, NORIKO BROWN of 14/39 Ross Street, Parramatta in the
 State of New South Wales, Interpreter, affirm:

- (a) I speak the Japanese and English language.
- (b) I have read the contents of the foregoing affidavit
 in the Japanese language to Hiroshi Inoue prior to
 him signing the affidavit in my presence.

AFFIRMED by Noriko Brown)
 on 14th May, 1983, at Sydney)
 Before me)
 _____)
 A SOLICITOR OF THE SUPREME COURT)

N. Brown

W. Neville

BARE BOAT CHARTERPARTY

THIS CHARTERPARTY made and concluded in the City of Tokyo on the 26th day of June 1979 between the Owners of the Vessel Mitsui O.S.K. Lines, Ltd. (hereinafter referred to as "Owners") and the Charterers thereof Matsuoka Steamship Co. Ltd. (hereinafter referred to as "Charterers"), and consisting of the clauses inscribed on this and reverse side of this paper, has been signed and sealed in duplicate, each party retaining one copy thereof.

Owners: Mitsui O.S.K. Lines, Ltd.

Charterers: Matsuoka Steamship Co., Ltd.

Brokers:

10 Clause 1. Some of the essential terms and conditions of the Charter are as follows:

① Description of the Vessel:

Name of the Vessel: I baraki Maru.
Gross tonnage: 63,139.50 tons.
Net tonnage: 38,926.47 tons.
Number and Call Sign: 111794JHHE
Port of Registry: OSAKA
Qualification and Class: NK
When Built: September 1972
Date of Survey:
20 Intermediate or Annual Survey 23rd April, 1980
Special Survey
Summer Deadweight Capacity: 109,311.2 tons.
Measurement Loading Capacity:
Bale Capacity 127,404.1 cubic metres.
Grain Capacity cubic metres.
Kind and Horse Power of Main Engine: Diesel B 9K84EF 23,000HP
Service Speed (when fully loaded): About 14 knots per hour.
Summer Load Line: 15.62 metres.
30 Fuel Consumption: About 76.0 Japanese superior quality coals/
oil in 24 hours.

② Period: For 12 months from the time of delivery, but Charterers shall be at liberty to extend this period by days and/or curtail this period by days.

③ Date of Delivery: The 10th day of July 1979 or after.

④ Port of Delivery: Between Port of Pohan and Port of to be indicated by Owners.

⑤ Port of Redelivery: Between port of Tokyo and Port of Wakamatsu.

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14th May
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(continued)

THIS AND THE FOLLOWING SEVEN (7) PAGES ARE ANNEXURE "A" REFERRED TO IN THE AFFIDAVIT
40 OF H. INOUE AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. Wevill
Solicitor

Part 1
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Inoue
14th May
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(continued)

- ⑥ Duty of Owners to give Notice: Owners shall give to Charterers a
15 days' previous notice of the port and date of the delivery.
- ⑦ Trade Limits:
world wide within institutewarranted limit
- ⑧ Hire: per calendar month. To be fixed later. _
Time and Place of Payment of Hire: Each months' hire shall be
paid in advance at Tokyo on every 1st and 16th day.
- ⑨ Insurance
- | | |
|-------------------|-----------------|
| 1Hull & Machinery | Insured value ¥ |
| | Sum insured ¥ |
| 1Disbursements | Sum Insured ¥ |
| 1Coverage | |
| 1Insurance period | |

10

Special Condition

- 1 If Owners sell the vessel to third party during the period
of this contract, Owners shall have liberty to cancel this
contract without compensation at any time.

- Clause 2. [Seaworthiness] Owners shall guarantee that the Vessel has a tight and strong hull, is supplied with engines in a thoroughly efficient state and proper equipment, and is fit for making a safe voyage. Owners shall at the expiration of the Charter period re-deliver the vessel in the same condition in which she was delivered.
2. Charterers shall make no claim upon Owners for any equipment which Charterers provided.
 3. Charterers shall not be liable for fair wear and tear to hull, machinery and equipment.
- 10 Clause 3. [Bottom Inspection at delivery and re-delivery] Owners shall at delivery and Charterers shall at re-delivery make bottom inspection at their respective own expense.
2. Expense for repair of damage which is found by bottom inspection shall be borne by the parties who make the inspection.
- Clause 4. [Payment of Hire] When the period of payment does not exceed one calendar month, the hire shall be paid by pro rata.
2. When hire is refunded under clause 11, the preceding paragraph shall apply.
- 20 Clause 5. [Restriction for voyage and cargo] The vessel unless the consent of Owners be obtained in advance shall not be used on any service which will bring her within War Zone or outer institute warrantied limit.
- Clause 6. [Manning] The vessel shall be manned by Charterers.
- Clause 7. [Structural Change] Charterers may with consent of Owners change vessels structure at their expense, in which case at owner request Charterers shall remove such change at time of re-delivery.
- Clause 8. [Repair, Inspection and costs] Charterers shall bear all costs for annual survey, repair, operation, crew and any other costs required for maintenance of the vessel during period of contract.
2. Period for annual survey shall be counted in the period of contract.
 3. Charteres shall make statutory periodical inspection. And Charterers shall bear all cost and expense for the inspection, survey and repair which should have been done within contracting period.
- 30

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Inoue
14th May
1983

(continued)

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of New
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Affidavit
of Hiroshi
Inoue
14th May
1983

(cont'd)

4. Charterers shall inform Owners of the place time and method of inspection and repair in advance.
- Clause 9. [Insurance] During charter period the vessel shall be kept insured by Charterers at their expense and policy thereof shall be submitted to Owners.
 2. Charterers shall be liable for the damage sustained by the third parties in connection with operation of the vessel, unless it is covered by insurance.
 3. Charterers shall be liable for damage to the vessel which is not covered by insurance by the reason of excepted peril. 10
- Clause 10. [Stores, Insurance Premium and Tonnage Due] The charterers and the Owners respectively shall at the time of delivery and re-delivery take over and pay for all stores, bunkers and water at the price decided by mutual concession.
 2. Advanced payment of insurance premium and tonnage due shall be taken over and pay pro rata in calender day at time of delivery and re-delivery.
- Clause 11. [Total Loss] Should the vessel be missing for 60 days or longer, this charter shall terminate at the time when she was last heard.
 2. Should the vessel be lost or unable to repair due to sinking, fire, 20 aground, stranding, collision, breakage of hull and machinery and any the cause whatsoever within charter period, Charter shall terminate at the time of accident.
- Clause 12. [General Average] General Average shall be adjusted according to the York-Antwerp Rules 1974.
 2. Charter Hire shall not contribute General Average.
- Clause 13. [Abandon] Abandon of the vessel due to casualty shall be decided by consent of parties hereto.
- Clause 14. [Sale, Assignment or Mortgage] Owners shall not sell, assign or mortgage 30 to the third party during charter period.
- Clause 15. [Sub-demise] Charterers shall not sub demise the vessel without Owners' consent.
- Clause 16. [Requisition] If the vessel is requisitioned by Japanese government, the party received order shall inform opponents. In such case the vessel shall be requisitioned under Charterers' name and at the expense of Charterers account shall be counted in Charter period.
 2. Charterers shall not be responsible for damage to the vessel due to war risk during Requisition period unless government indemnify it.

Clause 17. [Breach of Contract] The party who breaches this contract shall be responsible for any loss in consequence thereof.

2. If the breach of contract provided in the preceding paragraph arise from wilful misconduct or gross negligence of one party, another party may cancel the contract immediately without pre notice.

Clause 18. [Arbitration.] If any dispute arises concerning this Charter between the parties thereto, either of the parties shall submit the same to arbitration of the Japan Shipping Exchange, Inc., (Tokyo), and the award given by the arbitrators appointed by the said Exchange shall be final and binding on both parties.

2. All matters relating to the appointment of arbitrators and arbitration procedure shall be decided by the Maritime Arbitration Rules of the said Exchange.

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Inoue
14th May
1983

(continued)

Part 1
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of New South Wales

A D D E N D U M

No.9
Affidavit of Hiroshi Inoue
14th May 1983 (cont'd)

T O
M/V "IBARAKI MARU"

BARE - BOAT CHARTER PARTY DATED TOKYO, JUNE 26, 1979

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that :-

1. From 1200 hours 14th July, 1979 to 2400 hours 31st March, 1980 hire shall be paid at the rate of ¥232 monthly per 1.01605 K/T deadweight on summer draft.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

10

14th July, 1979

Owners : Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

A D D E N D U M
T O
M/V "IBARAKI MARU"
BARE-BOAT CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

Part 1
In the
Supreme
Court of
New South
Wales

With reference to the captioned Charter Party it is ^{this day} mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that:-

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of Hiroshi
Inoue
14th May
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1. Charter period shall be extended from 0000 hours on 1st April, 1980 till 2400 hours on 31st March, 1981.
- 10 2. From 0000 hours on 1st April, 1980 to 2400 hours on 31st March, 1981 hire shall be paid at the rate of ¥187 monthly per 1.01605 K/T deadweight on summer draft.
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

(continued)

1st April, 1980

Owners: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

20

Part 1
In the Supreme Court
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A D D E N D U M

T O

M/V "IBARAKI MARU"

Affidavit of
Hiroshi Inoue
14th May 1983
(cont'd)

BARE-BOAT CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

With reference to the captioned Charter Party it is ^{this day} mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that:-

1. Charter period shall be extended from 0000 hours on 1st April, 1981 till 1200 hours on 3rd March, 1982.
2. From 0000 hours on 1st April, 1981 to 1200 hours, hire shall be paid at the rate of ¥544,000 daily. ^(on 31st March, 1982) 10
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1981

Owners: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

Issued by The Kobe Shipping Exchange in 1927.
Amended in 1929.
Adopted by The Japan Shipping Exchange, Inc., in December 1933.
Amended in July 1935.
Amended in December 1938.
Amended in November 1946.
Amended in August 1947.
Amended in August 1951.
Amended in May 1959.
Amended in July 1971.

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Inoue
14th May
1983

10

TIME CHARTER PARTY

(continued)

THIS CHARTERPARTY made and concluded in the City of Tokyo on the 26th day of June 19 79 between the Owners of the Vessel Matsuoka Steamship Co., Ltd. (hereinafter referred to as "Owners") and the Charterers thereof Mitsui O.S.K. Lines (hereinafter referred to as "Charterers"), and consisting of the clauses inscribed on this and reverse side of this paper, has been signed and sealed in duplicate, each party retaining one copy thereof.

Owners: Matsuoka Steamship Co., Ltd.

Charterers: Mitsui O.S.K. Lines, Ltd.

20

Brokers:

Clause 1. Some of the essential terms and conditions of the Charter are as follows:

① Description of the Vessel:

Name of the Vessel: I baraki Maru.

Gross tonnage: 63,139.50 tons.

Net tonnage: 38,926.47 tons.

Number and Call Sign: 111794JHHE

Port of Registry: OSAKA

Qualification and Class: NK

When Built: September 1972

30

Date of Survey:

Intermediate or Annual Survey 23rd April, 1980

Special Survey

Summer Deadweight Capacity: 109,311.2 tons.

Measurement Loading Capacity:

Bale Capacity 127,404.1 cubic metres.

Grain Capacity cubic metres.

Kind and Horse Power of Main Engine: Diesel B 9K84EF 23,000HP

Service Speed (when fully loaded): About 14 knots per hour.

Summer Load Line: 15.62 metres.

40

Fuel Consumption: About 76.0 Japanese superior quality coals/oil in 24 hours.

Cabins: - rooms capable of holding - persons in total.

THIS AND THE FOLLOWING THIRTEEN (13) PAGES ARE ANNEXURE "B" REFERRED TO IN THE AFFIDAVIT OF H. INOUE AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. Weville
Solicitor

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In the
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Court of
New South
Wales

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of Hiroshi
Inoue
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(cont'd)

Standing Bunker: 6,678.5
Wireless Telegraph: Installed/~~XXXXXX~~d.
Kind, Power, and Number of Winches: About
Power and Number of Derricks: About

- ② Trade Limits: world wide within institute warrantied limit "E"
- ③ Port of Delivery: Between Port of Pohan and Port of to be indicated by Owners.
- ④ Date of Delivery: The 10th day of July 1979 or after. 10
- ⑤ Cancelling Date: The - day of - 19 - , 5.00 p.m. If the Vessel is not ready for delivery by this time, Charterers shall be at liberty to put this Charter in force or without paying any penalty cancel it.
- ⑥ Duty of Owners to give Notice: Owners shall give to Charterers a days' previous notice of the port and date of the delivery.
- ⑦ Period: For 12 months from the time of delivery, but Charterers shall be at liberty to extend this period by days and/or curtail this period by days.
- ⑧ Hire: per calendar month. to be decided later 20
- ⑨ Time and Place of Payment of Hire: Each half months' hire shall be paid in advance at Tokyo on 1st and 15th.
- ⑩ Port of Redelivery: At any port between the Port of Tokyo and Port of Wakamatsu, inclusive, at the option of Charterers.
- ⑪ Duty of Charterers to give Notice: Charterers shall give to Owners a 15 days' previous notice of the port and time of redelivery.
- ⑫ Charterers' Notice of extention of Off Hire hours: Within 30 days after the close of Off Hire (see Clause 16).
- ⑬ Charterers' Notice of Rescission owing to a long-time Off Hire: Within 30 days after Off Hire has continued for one third of the remaining period of Charter (see Clause 17). 30
- ⑭ Places of Commencement and Termination of Off Hire owing to Intermediate or Annual and Special Surveys: Between Port of Tokyo and Port of Wakamatsu
- ⑮ Remaining Fuel: To be not less than tons and not more than tons at tons at the time of delivery and redelivery.
- ⑯ The remaining Boiler Water: To be not less than tons and not more than tons at the time of delivery and redelivery.
- ⑰ Cost-of Fuel: To be at the rate of per ton at the time of delivery and per ton at the time of redelivery. 40
- ⑱ Cost of Boiler Water: To be at the rate of per ton at the time of delivery and per ton at the time of redelivery.
- ⑲ Cost of Cooking Fuel: To be for monthly borne by Owners.

SPECIAL CONDITIONS:

- 1 Time lost due to crew strike shall be off-hire.
- 1 Time lost due to crew injure, stowaway shall be off-hire.
- 1 Compensatin money for stevedore's personal injury shall be born by Owners.

- 1 Commercial custom shall be applied to matters not stipulated herein.

[Reverse Side]

10 Clause 2. [~~Seaworthiness.~~] Owners shall guarantee that the Vessel has a tight and strong hull, is supplied with engines in a thoroughly efficient state and proper equipment, manned with an able crew, and is fit for making a safe voyage. Owners shall also keep and maintain the terms and conditions contained in Clause 1 above during the period of Charter.

Clause 3. [Loading Capacity.] Owners guarantee that the Vessel's loading capacity within the summer freeboard including goods, fuel, boiler water (excluding water in boiler), drinking water, stores, and provisions, shall not be less than the summer deadweight capacity indicated in Clause 1; and if the Vessel is incapable of loading thus much, the hire shall be proportionately reduced.

20 Clause 4. [Space available.] Owners shall assign to carriage of the goods indicated by Charterers all holds, cabins, etc., excepting seamen's quarters, and places for rigging, tackle, tools, provisions, and such fixtures and fittings as are necessary for the Vessel.

2 Neither Owners nor the Master shall receive to carry in the Vessel any goods, passengers, or letters without first obtaining the consent of Charterers or their agents.

Clause 5. [Anchorage.] The Vessel must load or unload goods at any wharf or any such other place as Charterers may direct, but it must be a place where the Vessel can safely lie at anchor.

30 Clause 6. [Defrayment of cost.] Owners and Charterers shall respectively bear the following cost and expenses:

Cost and expenses to be paid by Owners: - Wages, provisions, drinking water, and medical and nursing expenses of seamen; expenses needed for employment and discharge of seamen and other servants, and other expenses pertaining to seamen; premium of hull insurance, premium of P. I. A. insurance; repairs; dues and taxes relating to the Vessel; periodical disinfection charge; one half of regular sampan fares, paint, oil, and other consumption goods necessary for the Vessel; ropes and slings necessary for ordinary loading and unloading; port charges, direct disbursements and other expenses on behalf of Owners during off hire.

40 Cost and expenses to be paid by Charterers: - Fuel, boiler water; matting, dunnage, stanchion for timber loaded on deck, and other expenses needed

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of Hiroshi
Inoue
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(continued)

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(continued)

for loading; stevedores' wages, lighterage, tally and winchmen's wages and all other expenses of loading and unloading, dues, taxes, charges, and agency fees relating to the contract of carriage of goods by the Vessel; port dues, tonnage dues, light-house dues, wharfage, towage, canal dues, pilotage, buoy dues, Consular charges (excepting those relating to the crew) and all other expenses owing to Port Regulations; expenses of disinfection of the Vessel and goods, and charges for Certificate of Health of the crew, prescribed by Port Regulations; various expenses relating to passengers; expenses of entertaining Customs and other public officials, other entertainment expenses spent on behalf of Charterers; food, medical and nursing expenses of persons whom Charterers or the owners of goods in transit have put on board the Vessel, and all other expenses relating to such persons; one half of regular sampan fares; landing expenses, boatage, and correspondence expenses of the Master on behalf of Charterers.

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Clause 7. [Overtime.] If Charterers put the crew to overtime or other special labour, compensation therefor shall be paid according to the ~~Ship's Labour~~ Separate Agreement.

Clause 8. [Delivery and Redelivery.] When Owners have or the Master has notified Charterers or their agents that the Vessel is ready for delivery, Charterers must take delivery without delay. When Charterers or their agents have notified Owners or the Master that the Vessel is ready for redelivery, Owners must take redelivery of the Vessel without delay.

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2 Delivery and redelivery of the Vessel shall be made between 7.00 a.m. and 5.00 p.m., but the Vessel may be delivered or redelivered at other hours by mutual consent of the parties.

3 The holds must be cleaned and the Vessel must be kept in readiness for commencement of loading at the time of delivery and also upon expiration of the Charter.

4 The navigation qualification of the Vessel at the time of delivery and at the time of redelivery shall be that which it possesses at such times.

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5 The provisions of the foregoing four paragraphs shall apply *mutatis mutandis* to the case of off hire for the purpose of intermediate or annual, and special surveys.

Clause 9. [Payment of Hire.] Charterers shall pay as hire to Owners or their agents monthly, so much for each calendar month as is provided in Clause 1 till the expiration of the Charter; ~~in computing months the first month of payment shall be from the day and hour of the delivery of the Vessel till the corresponding day and hour of the next following month, and when no such corresponding day exists in such next following month, the last day and hour of that month shall be deemed such corresponding day and hour, and from the third month onward the month of payment shall expire at the day and hour corresponding to the day and hour of the delivery of the Vessel.~~ If there are any disbursements, cost of fuel, or other expenses to be borne by Owners, one half of the same may be paid afterwards.

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(from 0:00 of 1st day to 24:00 of last day of every month)

- 2 When the period of the month of payment does not exceed one calendar month, ~~the period from the day and hour of the delivery of the Vessel till the corresponding day and hour of the next following month (if no such corresponding day exists in such next following month, then the last moment of that following month) shall be deemed one calendar month and~~ the hire shall be paid *pro rata* according to the number of days available. ~~calendar.~~
- 3 The moneys which the Master borrowed at various places for ship's expenses and other disbursements shall be deducted from the hire.
- 10 4 When the day of payment of hire falls on a Sunday or a Holiday, the payment shall be made on the next following day.
- 5 ~~When a high rate of hire is provided for in Clause 1, the commencement and termination of such high rate of hire shall be as follows:~~
- (a) ~~The high rate of hire shall come into force at the moment when the Vessel left the last port of call in the low rate area for the high rate area.~~
- (b) ~~The high rate of hire shall cease to be in force at the moment when the Vessel arrived at the first port of call in the low rate area.~~
- 20 Clause 10. [Delay of Payment of Hire.] If Charterers fail to pay hire, Owners may immediately stay or rescind this Charter ~~without any previous notice~~, and should Charterers suffer any loss therefrom Owners would assume no responsibility whatsoever.
- Clause 11. [Lien on the Goods.] Unless and until Owners receive payment of hire and all other obligations which Charterers owe them, Owners shall have the right to detain the goods in transit or sell them by public auction for the purpose of receiving satisfaction of such obligations.
- 30 Clause 12. [Master and Crew.] Owners must see to it that the Master and crew in compliance with the provisions of Clause 4 carry on navigation as promptly and speedily as possible and do their best in the interest of Charterers pertaining to the operation of the Vessel, goods carried by the Vessel, and other necessary matters.
- 2 At the close of each voyage Owners shall cause the Master to produce to Charterers or their agents logbooks of deck department and engine department.
- 3 If Charterers require Owners to change the Master or any of the crew for reasons of any unsatisfactory conduct, Owners shall immediately make investigation and fulfil the requirement if it is found justifiable.
- 40 Clause 13. [Issue of Bills of Lading, etc.] When the Master has according to the instructions of Charterers or their agents signed and sealed any Bills of Lading (or any similar instruments), taken delivery of, delivered, or taken into custody any goods, or done any other act necessary for cargo service, Charterers shall hold themselves responsible for any consequence of such act.
- Clause 14. [Off Hire.] If any loss of time is caused by the cleaning or breakage of

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hull, machinery, or boiler, or collision, grounding, fire, survey (including intermediate or annual, and special surveys), docking, repair, periodical disinfection, employment and discharge of seamen, strike of seamen, or other accidents involving the Vessel, then the hire, fuel, and boiler water for the period from the commencement of any one of such facts until the resumption of status *quo ante* and of operation of the Vessel and also for the time spent by deviation and extension of sailing distance caused by any of these facts shall be borne by Owners; provided that when the time thus lost continuously at one time is less than 12 hours, this rule does not apply.

2 The proviso in the preceding paragraph does not apply in the case of intermediate or annual, and special surveys and periodical disinfection. 10

3 Where any part of hire has been paid in advance, Owners must refund to Charterers such portion of the prepaid hire as corresponds to off hire time.

4 In case where the Vessel takes refuge or calls at a port for reasons of bad weather or any event concerning the cargoes or passengers, the time lost thereby shall not be deemed off hire.

5 Where owing to any damage to or defect in the hull, engine or equipment, the speed of the Vessel is reduced during the voyage, the hire for any sailing hours extended thereby, and the cost of fuel and boiler water caused by the same reason shall be deducted from the hire; provided that where the hours thus extended are less than 12 hours at one time, this rule does not apply. 20

Clause 15. [Cleaning of Ship's Bottom.] Where 6 months or more have elapsed after docking and the speed provided for in Clause 1 is not maintained, the ship's bottom must be cleaned at the instance of Charterers.

2 The cost of the cleaning prescribed in the preceding paragraph and hire, and the cost of fuel and boiler water for the hours of the cleaning shall be borne by Owners.

Clause 16. [Extension of Off Hire Hours.] The extension of off hire time caused by any of the facts mentioned in Clause 14 (excepting time spent by ordinary intermediate or annual, and special surveys) and the time needed for the cleaning of ship's bottom prescribed in the preceding Clause may take place beyond the day of expiration of this Charter; provided that where the off hire hours in total exceed 30 days, more than one half of the same cannot be extended. 30

2 Where Charterers desire the extension of time provided for in the preceding paragraph, they must each time notify Owners within the period prescribed in Clause 1.

Clause 17. [Rescission of Charter on the ground of Long-time Off Hire.] Where the time of off hire caused by any of the facts mentioned in Clause 14 (excepting time spent by ordinary intermediate or annual, and special surveys) has at one time exceeded one third of the remaining period of charter, Charterers may rescind this Charter without paying any indemnity, but in this case Charterers must notify Owners whether they intend to rescind or not within the period prescribed in Clause 1. 40

Clause 18. [Mutual Exemption.] Both parties to this Charter shall exempt each other from indemnifying for any loss or damage caused by detention or any other act of the governmental or similar authorities, military action, civil war, riot, pirates, bandits, seamen's misbehaviour, strike, fire, collision, grounding, sinking, jettison, or any act of God or force majeure, and/or any negligence in the navigation of the Vessel, *provided that the master shall be responsible*

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Clause 19. [Exemption of Owners from Indemnity.] Owners shall bear no responsibility for any excess or deficiency in the quantities of cargoes or any loss of or damage to them, provided that the same does not arise from any lack of due care on the part of the Master or crew.

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2 Owners shall bear no responsibility for any loss caused to Charterers by the breakage of boiler or shaft, or any loss caused by a latent defect not discoverable by reasonable examination in the hull, engine, or equipment, provided that the same does not arise from any lack of due care on the part of the Master or crew.

(cont'd)

3 Where Charterers have employed stevedores, the stevedores must obey the orders of the Master relating to their work, but Owners shall bear no responsibility for any negligence of the stevedores.

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Clause 20. [Indemnity for Damage.] Where any damage has been caused through the fault of Charterers to the hull or equipment, Owners or the Master shall notify to Charterers the degree of damage, and Charterers shall indemnify Owners for the same if it is deemed reasonable for them so to do. this Charter without paying any compensation to Charterers, provided that when Owners have notice of such compulsory use, they must without delay inform Charterers of the fact.

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Clause 21. [Compulsory Use.] If the Vessel is put to compulsory use by the Japanese Government, Owners may rescind this Charter without paying any compensation to Charterers, provided that when Owners have notice of such compulsory use, they must without delay inform Charterers of the fact.

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2 Where the Vessel is released from the compulsory use referred to in the preceding paragraph during the period of this Charter, Charterers can use again the Vessel in accordance with the terms and conditions of this Charter, but the period of the said compulsory use of the Vessel shall be reckoned into the period of this Charter. Where Owners have notice of the prospective date of the release of the said compulsory use, they must without delay inform Charterers of such date and Charterers must immediately notify Owners whether they will use the Vessel or not.

3 Where there is an offer from any Governmental or other public authorities to charter the Vessel, Owners cannot accept the same offer without the consent of Charterers.

Clause 22. [Restrictions as regards Cargoes.] Charterers shall not load on the Vessel any contraband of war, and shall not without first obtaining the consent of Owners load any ignitable, inflammable, combustible, or any other similarly dangerous goods, unless Owners agree.

(cont'd)

- 2 Charterers may load goods on decks, but they must act under the orders of the Master as to the quantity and stowage of such cargo.
- 3 Charterers shall not without first obtaining the consent of Owners load on the Vessel for carriage any Indian coals from the first day of March till the thirtieth day, inclusive, of June.
- Clause 23. [Restrictions as regards Navigation.] Charterers shall not sail the Vessel to any port involved in a war, riot, or blockade or any place where acts of hostilities are taking place.
- 2 Charterers shall not without first obtaining the consent of Owners sail the Vessel to any ice-bound port or ice drifting area during a season when such act is considered dangerous by navigators in general. This restriction equally applies to sailing to any area for which extra premium is required.
- 3 Charterers shall not without first obtaining the consent of Owners cause the Vessel to tow any ship.
- Clause 24. [Epidemic-infected Area.] Where the Vessel lies at anchor for quarantine or disinfection for reasons of an epidemic, hire during anchorage and expenses of quarantine and disinfection shall be borne by Owners if the quarantine or disinfection is necessitated by the disease of seamen employed by Owners or the Master, and such hire and expenses as are referred to above shall be borne by Charterers if the quarantine and disinfection are caused necessary by the disease of one of the crew employed by Charterers or a passenger; provided that if the cause of disease is that Charterers ordered the Vessel to enter an officially nominated epidemic-infected area, Charterers shall bear the hire and expenses for 20 days after departure from the same area whoever the affected person may be.
- 2 Where the cause of disease is not ascertainable, or where the official nomination of an epidemic-infected area is published while the Vessel lies at anchor at the said area or after she has departed from there, the hire and expenses referred to in the preceding paragraph shall be equally divided between Owners and Charterers.
- Clause 25. [General Average.] General average, if any, shall be adjusted in accordance with the York-Antwerp Rules, 1974.
- 2 No contribution of general average shall be made from the hire.
- Clause 26. [Salvage.] The loss and profit caused by salvage shall be equally divided between Owners and Charterers, after taking into account compensation for the seamen's services, hire for the hours spent, cost of fuel consumed, and all other expenses, provided that the hours spent for the salvage shall be reckoned into the period of this Charter.
- 2 The provision of the preceding paragraph shall apply *mutatis mutandis* to any flotsam found.
- Clause 27. [Remaining Fuel and Boiler Water.] The fuel and boiler water remaining on the Vessel shall be purchased by Charterers from Owners at the time of delivery at the rate provided for in Clause 1, and shall be purchased by Owners from Charterers at the time of redelivery at the said

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- rate.
- 10 Clause 28. [Tonnage Dues, etc.] Where after the delivery or redelivery of the Vessel there is any overpaid portion of Japanese or foreign port dues or light-house dues, it shall be decided by mutual agreement between Owners and Charterers whether the right to such overpaid money may be assigned from one party to the other.
- Clause 29. [Subletting.] Charterers may sublet the Vessel insofar as no provisions of the Charter are infringed thereby, but they shall not by so doing be discharged from any of their liabilities to Owners. Where Charterers have sublet the Vessel, they must without delay inform Owners of the contract of sublet.
- Clause 30. [Loss of the Vessel.] Where the Vessel continues missing for 60 days or more, the Charter shall terminate at the last known point of time of the Vessel's existence. In this case the overpaid portion of the hire, if any, must be returned to Charterers.
- Clause 31. [Nature of Contract.] The Charter, irrespective of its wording, is not a lease (*chintaishaku*).
- Clause 32. [Breach of Contract.] A party breaking this Charter must pay damages to the other party.
- 20 Clause 33. [Arbitration.] If any dispute arises concerning this Charter between the parties thereto, either of the parties shall submit the same to arbitration of the Japan Shipping Exchange, Inc., (Tokyo/~~Kobe~~), and the award given by the arbitrators appointed by the said Exchange shall be final and binding on both parties.
- 2 All matters relating to the appointment of arbitrators and arbitration procedure shall be decided by the Maritime Arbitration Rules of the said Exchange.

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14th May 1983
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M/V "IBARAKI MARU"
TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. From 1200 hours on 14th July, 1979 to 2400 hours on 31st March, 1980 hire shall be paid at the rate of ¥549^(monthly) per 1.01605 K/T deadweight on summer draft. 10
But in case of calculating off-hirage, hire shall be deemed to be at the rate of ¥317.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

14th July, 1979

Charterers: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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M/V "IBARAKI MARU"

TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

No.9
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of Hiroshi
Inoue
14th May
1983
(continued)

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. Charter period shall be extended from 0000 hours on 1st April, 1980 till 2400 hours on 31st March, 1981.
- 10 2. From 0000 hours on 1st April, 1980 to 2400 hours on 31st March, 1981 hire shall be paid at the rate of ¥448^(monthly) per 1.01605 K/T deadweight on summer draft. But in case of calculating off-hirage, hire shall be deemed to be at the rate of ¥261.
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1980

Charterers: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

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Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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M/V "IBARAKI MARU"

TIME CHARTER PARTY DATED TOKYO, JUNE 26, 1979

No.9
Affid-
avit

Of With reference to the captioned Charter Party it is this day
Hiroshi

Inoue mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers
14th

May and Matsuoka Steamship Co., Ltd. as Owners that:-

1983

(con.)

1. Charter period shall be extended from 0000 hours on 1st
April, 1981 till 2400 hours on 31st March, 1982.

2. All other terms and conditions of the Charter Party
shall remain unchanged and in full force.

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1st April, 1981

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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M/V "IBARAKI MARU"

TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

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Inoue
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With reference to the captioned Charter Party and Addendum there~~to~~ dated 2nd April, 1981 it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

(cont'd)

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1. Notwithstanding Clause 1 of the above mentioned Addendum off-hirage shall be calculated at the rate of ¥1,920,000 daily.
2. All other terms and conditions of the Charter Party and above mentioned Addendum shall remain unchanged and in full force.

5th April, 1981

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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(cont'd)

With reference to the captioned Charter Party and Addendum there dated 1st April, 1981 it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. During the period written in Clause 1. of the above mentioned Addendum hire shall be paid at the rate of 10 ¥2,464,000 daily.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

2nd April, 1981

(and above mentioned Addendum)

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

No.10
AFFIDAVIT OF HIROSHI INOUE

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY
ADMIRALTY DIVISION

In the
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No. 10.
Affidavit
of Hiroshi
Inoue

No. 934 of 1981

(continued)

MITSUI OSK LINES
LIMITED AND MATSUOKA
STEAMSHIP CO. LIMITED

Plaintiffs

CANDLEWOOD NAVIGATION
CORPORATION LIMITED

Defendant

CANDLEWOOD NAVIGATION
CORPORATION LIMITED

Cross Claimant

MITSUI OSK LINES
LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO.
LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO.
LIMITED

Third Cross Defendant

TOKYO CHAIN ANCHOR CO.
LIMITED

Fourth Cross Defendant

AFFIDAVIT

AFFIRMED: 19/5/83

DEPONENT: H. Inoue

NORTON SMITH & CO.,
Solicitors,
11th Floor,
20 Martin Place,
SYDNEY, N.S.W. 2000.

DX 119 - Sydney.
Tel: 232-8833.

(WN)

On the 19th day of May, 1983, I, HIROSHI INOUE
of 3-306, Matsugaoka, 5-Chome, Akashi-City,
Hygo Prefecture, duly affirm:

1. I crave leave to refer to my affidavit
affirmed herein 14th May, 1983.

2. The originals of the agreements referred
to in paragraph 3 of my affidavit are in the
Japanese language and are available to be
produced to this Honourable Court if required.

The time charterparty is in (save for the
addendums) a standard form issued by the Japan
Shipping Exchange and, as appears from the
annexure of my affidavit the Japanese Shipping
Exchange also issues an English translation of
this form of charterparty.

~~3. I crave leave to refer to paragraph 5 of
my affidavit and also to clause 14 of the time
charterparty and to the addendums. It has been
pointed out to me that the English translation
of the addendum of 5th April, 1981 is not clear
in that it raises a question whether the term
"off-hirage" refers to the amount by which the
daily rate of hire is to be reduced in the
events described in clause 14 or whether it
refers to the amount to which the rate of hire~~

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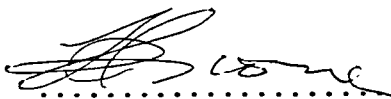
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of Hiroshi
Inoue
19th May
1983

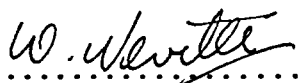
is to be reduced. I say that the reference in the original Japanese document is a ~~reference~~ to the amount by which the daily rate of hire is to be reduced when ~~the vessel is off-hire~~ and the figure of Yen 544,000 referred to in paragraph 5 of my affidavit is arrived at by deducting Yen 1,920,000 from Yen 2,464,000. ~~The sum of Yen 544,000 per day is the amount of hire which the second plaintiff was entitled to receive from the first plaintiff when the vessel was off-hire.~~

(continued)

AFFIRMED at Sydney)

before me:)


.....


.....

Solicitor

No.11
AFFIDAVIT OF HIROFUMI OGATA

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

ADMIRALTY DIVISION

No. 934 of 1981

BETWEEN

MITSUMI OSK LINES LIMITED &
MATSUOKA STEAMSHIP CO.
LIMITED

Plaintiffs

CANDLEWOOD NAVIGATION CORPOR-
ATION LIMITED

Defendant

CANDLEWOOD NAVIGATION CORPOR-
ATION LIMITED

Cross Claimant

MITSUMI OSK LINES LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO.
LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO. LIMITED

Third Cross Defendant

TOKYO CHAIN ANCHOR CO.
LIMITED

Fourth Cross Defendant

A F F I D A V I T

AFFIRMED: 14th May, 1983

DEPONENT: H. Ogata

Messrs Norton Smith & Company,
Solicitors,
20 Martin Place,
SYDNEY. N.S.W. 2000.

DX 119, Sydney
Tel: 232.8833
Ref: (W.N.)

On the 14th day of May, 1983, I,
HIROFUMI OGATA of 3-3 Tomioka, Urayasu,
Chiba Prefecture, Japan duly affirm:

1. I have been employed by Mitsui
O.S.K. Lines Limited ("Mitsui")
for 20 years. I am presently
the Manager of Mitsui's
tramp section, bulk carrier
department.

2. I joined Mitsui in 1963 as a
clerk in the North American
Liner Section. From 1966-
1968, I was on board a number
of Mitsui's ships as a trainee
purser to gain practical
experience in the shipping
industry.

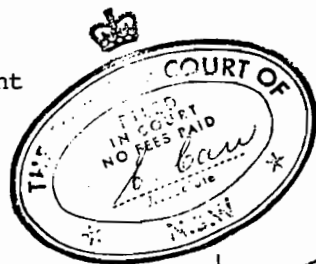
From 1968-1973, I was a clerk
in Mitsui's Latin American
Liner Department.

From 1973-1978, I was Mitsui's
representative in Brazil.

From 1978 until July, 1980, I
was assistant manager of
Mitsui's Iron and Ore Carrier
Section at the head office in
Tokyo.

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H. Ogata

*W. Mervill
Solicitor*

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In July, 1980, I became Manager of Mitsui's Iron and
Ore Carrier Section, the section which controls
Ibaraki Maru.

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In July, 1982, I was appointed to my present position.

I am authorised by Mitsui to swear this affidavit.

(continued)

3. Annexed hereto and marked with the letters "A", "B"
and "C" respectively, are copies of fixture notes
dated 1st October, 1980 and Addendums 1 and 2
dated 17th December, 1980 and 4th March, 1981.
Those fixture notes related to a voyage of Ibaraki 10
Maru which Mitsui named "Voyage 63 B". I crave
leave to refer to Clause 8 of Annexure "A" which
provides for demurrage at the rate of \$US16,000.00
per day. I crave leave to refer to Annexure "C"
which provides for a final freight rate of \$US21.29
per tonne.

4. Part of the expenses incurred by Mitsui in relation
to Ibaraki Maru, are port charges. Records of port
charges are recorded by computer. Annexed hereto
and marked with the letters "D" and "E", are copies 20
of computer printouts. The material on such computer
printouts forms part of the permanent business records
of Mitsui.

5. I give the following explanation of the information
contained on those computer printouts:

- (a) The name of the vessel, Ibaraki-M and the
number of the voyage, 63 B, is at the top of
the computer printout, and the port to which

H. Ogata

*W. Walker
Minister*

the charges relate is also at the top of the computer printout (with reference to Annexure "D", "Newport"). There are eight columns on the computer printout, and the columns record the following information:

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Ogata
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1983

COLUMN 1 - this records the date the vessel sailed from the port to which the charges relate (in the case of Newport, 9th December, 1980).

(continued)

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COLUMN 2 - this is a code reference to the particular item of port charge.

COLUMN 3 - this records the quantum of the charge (in Yen)

COLUMN 4 - this is a currency code for the currency in which the port charges were paid ("75" is the code number for US currency).

COLUMN 5 - this records the exchange rate applied for the conversion of the port charges in US dollars to Yen.

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COLUMN 6 - this is the amount of port charges²⁰ paid (in the case of Newport, in US dollars).

COLUMN 7 - this is a statement number of Mitsui's agents at the port to which the charges relate.

COLUMN 8 - this records the date upon which the information was programmed into the computer.

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W. Merville
revised

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New South
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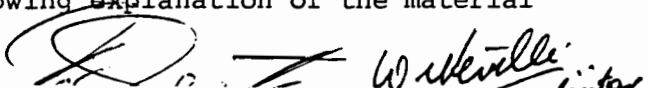
No.11
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of Hirofumi
Ogata
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(continued)

- (b) About half way down Annexure "D" is a sub-headin
"Port Total" and next to that is the number
"2,807,023". This is the total port charges
incurred at Newport.
- (c) Mitsui's practice is to make advances of
money to its agents at ports at which its
vessels are expected to dock, and its agents
pay the port charges from such monies, and
then forward a statement to Mitsui recording
the charges actually paid, and when that
statement is received by Mitsui, the informatior
contained on that statement is programmed into
the computer. It is as a result of such
programming that the information contained
on printouts such as Annexures "D" and "E"
is available.
- (d) The second half of Annexure "D" records the
port charges at Norfolk in the sum of
¥421,667, the first half of Annexure "E"
records the port charges at Wakayama in the
sum of ¥5,468,421 and the bottom half of
Annexure "E" records the total port charges
at Kashima in the sum of ¥3,923,384.

5. Annexed hereto and marked with the letters "F" and
"G" are copies of laydays statement which form part
of the permanent business records of Mitsui, such
records being kept for the purpose of recording the
movements of its vessels at various ports, the quantity
of cargo carried and entitlement to demurrage.

6. I give the following explanation of the material

 W. Strevell

contained in the laydays statement:

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(a) On the top left hand corner is the name of the vessel and the voyage to which the laydays statement relates, in this case, Ibaraki Maru, Voyage No. 63 B.

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(b) Under that is a reference to the date of the charter party or fixture note, in this case, 1st October, 1980.

(continued)

(c) Under that is a reference to the parties to the fixture note.

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(d) Under that is a reference to the cargo carried.

(e) Under that is a reference to the laytime allowed

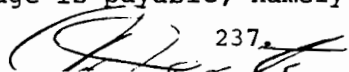
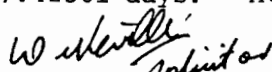
The first page of the laydays statement, Annexure "F", relates to the loading ports, Newport Mews and Norfolk.

Annexure "F" shows that "I.M." arrived at Newport Mews at 0940 on 21st October, 1980, berthed at 1945 on 7th December, 1980, gave a Notice of Readiness at 0940 on 21st October, 1980, that laytime commenced at 1300 on 21st October, 1980, that loading commenced at 0050 on 8th December, 1980 and was completed at 0510 on 11th December, 1980. Annexure "G" contains

20

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similar information for the ports of discharge, Wakayama and Kashima. At the top right hand corner of Annexures "F" and "G", the quantity of coal carried is recorded, namely, 89,142.321 tonnes. At the bottom of Annexure "G", next to the sub-heading "Total", is a record of the days in respect of which demurrage is payable, namely, 47.42361 days. At

 237  *W. Stewart*
indicated

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\$US16,000.00 per day, the total demurrage payable is
\$US758,777.76.

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(continued)

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7. Particulars of the bunkering costs of Mitsui's vessels
are recorded by computer. The information so recorded
forms part of the permanent business records of Mitsui.
Annexed hereto and marked with the letter "H", is a
copy of such a computer printout relating to Ibaraki
Maru on Voyage 63 B. That computer printout contains
13 columns, and the information recorded in those
columns is as follows:

COLUMN 1 - This is a code number for the particular
route of the vessel, namely, Newport Mews / Japan.

COLUMN 2 - This is a code number for Ibaraki Maru.

COLUMN 3 - This is the name of the vessel.

COLUMN 4 - This is the voyage number.

COLUMN 5 - This is the date upon which confirmation was
made of the amount of fuel in the bunkers.

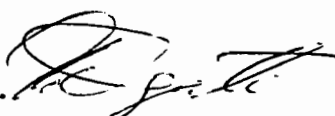
COLUMN 6 - This is a code number for a port, and the
word "Zanyu" means that the vessel reported the amount
of fuel remaining.

20

COLUMN 7 - This is a code number for the supplier of
fuel.

COLUMN 8 - This is a code number for the type of
fuel i.e. diesel oil, fuel oil or a particular grade of
fuel oil.

238.



W. Atterville
Solicitor

COLUMN 9 - This is the price per kilo tonne paid for fuel. The amount therein recorded is assessed by Mitsui with reference to the average price paid by Mitsui for fuel for its vessels.

COLUMN 10 - This records the amount of fuel confirmed by Mitsui on the date referred to in Column 5 and the amount of fuel used on the voyage. The first set of figures are as follows:

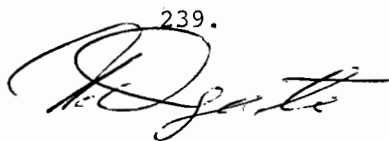
100.50
10 93.79
60.69 -
133.60
133.60 -
.00

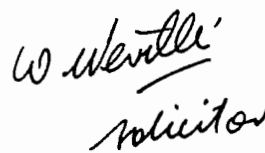
"100.50" is the amount of diesel oil taken on by Ibaraki Maru immediately prior to the commencement of Voyage 63 B.

20 "93.79" is the amount of diesel oil in the bunkers of Ibaraki Maru immediately prior to taking on the additional 100.50kt.

Accordingly, Ibaraki Maru commenced Voyage 63 B with 194.29kt of diesel oil.

"60.69 -" is the amount of diesel oil used by Ibaraki Maru on Voyage 63 B.

239.



W. Wentzell
Solicitor

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(continued)

"133.60" is the amount of diesel oil in the bunkers at the conclusion of Voyage 63 B.

"60.69" is arrived at by deducting 133.60 from 194.29.

The figures in Column 10:

3905.08

1328.88

4562.51 -

671.45

671.45 -

relate to the amount of fuel oil used on Voyage 63 B, namely, 4562.5 kt.

COLUMN 11 - This is the value of the quantity of fuel referred to in Column 10.

COLUMN 12 - This records the date upon which the information was fed into the computer.

COLUMN 13 - "Kurikoshi" means carried over from the previous page relevant to that voyage.

"Kashibunehensen" means "redelivery from previous charter", in other words, the amount of fuel in the vessel at the end of the voyage immediately prior to Voyage 63 B.



W. A. Walker
indicates

"Zanyu Unkohi" means the amount of oil used on the voyage.

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"Kashibunekaishi" means the amount of oil at the beginning of the voyage, namely, the voyage immediately after the conclusion of Voyage 63 B.

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"Hen-chosei" means adjustment of cost. For the purpose of Voyage 63 B, 133.60kt of diesel oil was valued at ¥8,574,266. But for the purpose of the voyage immediately following Voyage 63 B, that 10 133.60kt of diesel oil was valued at ¥9,305,106. The figure of 730,840 in Column 11 is the difference between ¥9,305,106 and ¥8,574,266.

(continued)

8. Included in the expenses incurred by Mitsui in Voyage 63 B, was brokerage. Annexed hereto and marked with the letter "I" is a copy of the invoice received by Mitsui from the broker for ¥250,000. That invoice forms part of the permanent business records of Mitsui.

9. Part of the expenses incurred by Mitsui in voyages 20 undertaken by Ibaraki Maru are sundry expenses, which include items such as drinking water, sanitary inspection, fuel oil additives, communication charges, provision of log books, launches and watchmen, decca navigation charge, insurance premium, and docking expenses when the vessel is put into port for maintenance or repairs. Precise details of such expenses are not maintained, but are assessed at approximately ¥400,000 per month for Ibaraki Maru. Accordingly, for Voyage 63 B which commenced at 1725 on 9th October, 1980 and concluded at 0715 on 4th February, 1981, namely, 30 117.55 days, such expenses were ¥1,567,333.

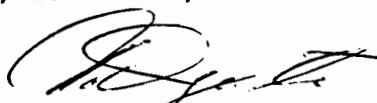
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(continued)

RE VOYAGE 64 A:

10. Annexed hereto and marked with the letter "J", is a copy of a time charter made 28th January, 1980 between Mitsui and Shell Coal International Limited. Clause 4 of that time charter provided for a charter rate of \$US3.90 per calendar month on Ibaraki Maru's total dead weight carrying capacity.
11. Annexed and marked with the letter "K", is a copy of an Addendum to the said time charter.
12. Annexed and marked "L" is the first page of a survey¹⁰ report dated 12th February, 1981. That survey report is part of the permanent business records of Mitsui. I crave leave to refer to the final paragraph on that page which records that Ibaraki Maru was on hire at 0715 on 4th February, 1981.
13. Annexed and marked "M" is a copy of a Certificate of Re-Delivery which forms part of the permanent business records of Mitsui. That Certificate records that Ibaraki Maru was re-delivered to Mitsui by Shell Coal International Limited at 1500 hours on 30th March²⁰, 1981.
14. Clause 27 of the charter party, a copy of which is annexed and marked "J", provides for payment of commission. That commission was ¥2,024,077.
15. Sundry expenses at an average cost of ¥400,000 per month for Voyage 64 A which was for a period of 54.32 days, were ¥724,267.


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(continued)

20. Sundry expenses for Voyage 64 B amounted to ¥800,800
the voyage commencing at 1500 on 30th March, 1981
and concluding at 16.30 on 29th May, 1981, a total
of 60.06 days.

VOYAGE 65 A

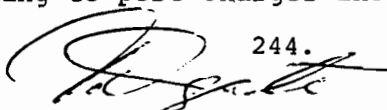
21. Annexed and marked with the letters "V", "W", "X", "Y",
"Z", "AA" and "AB" is fixture note dated 22nd June, 1981,
Addendum 1 dated 2nd September, 1981, Addendum 2 dated
21st September, 1981, Addendum 3 dated 30th September,
1981, Addendum 4 dated 22nd January, 1982, Addendum 5 10
dated 24th May, 1982 and Addendum 6 dated 26 May, 1982.

22. Fixture note dated 22nd June, 1981, Annexure "V",
was the fixture note relating to the voyage "Ibaraki
Maru" was engaged in at the time of the collision.
Because of the delay caused by the collision, that
voyage was cancelled, but when temporary repairs
to the vessel were completed and the black ban was
lifted, Sumitomo Metal Industries Limited agreed to
engage "Ibaraki Maru" for a voyage similar to that
contemplated by fixture note dated 22nd June, 1981. 20
That voyage was called "Voyage 65 A". I crave leave
to refer to Addendum 6 annexed and marked "AB", which
provides for a final freight rate of \$US12.38 per
tonne. Addendum 1 annexed and marked "W", provided
for a different quantity of coal to be carried than
that provided for in the fixture note dated 22nd June
1981.

"AC (a) (b)" "AD (a) (b)"

23. Annexed and marked / and / are computer printouts
relating to port charges incurred on Voyage 65 A. 30

244.



W. Skerrett
Indirector

The port charges therein referred relate only to port charges incurred after 31st August, 1981. The information contained on those computer printouts forms part of the permanent business records of Mitsui.

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(continued)

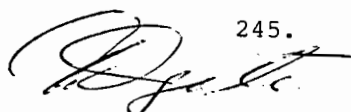
24. Annexed hereto and marked with the letters "AE", "AF", and "AG" are laydays statements for Voyage 65 A. Such statements form part of the permanent business records of Mitsui. Those laydays statements relate only to the period after 31st August, 1981.

10 25. Annexed and marked "AH", is a translated copy of an agreement made 18th March, 1974 between Mitsui and Sumitomo Metal Industries Limited. I refer particularly to Article 4 of that agreement.

26. Pursuant to that agreement, Sumitomo Metal Industries Inc. paid Mitsui ¥20,981,662 for extraordinary delay. Annexed and marked "AI" is part of the permanent business records of Mitsui from which the calculation of extraordinary delay was made. Annexed and marked "AJ" is a translation.

20 27. Annexed and marked "AK" and "AL" is a debit note and a translation thereof dated 11th January, 1983 from Mitsui to Sumitomo Metal Industries Inc. for compensation for extraordinary delay on Voyages 65 A and 66 A.

28. Annexed hereto and marked "AM" is a copy of an invoice relating to brokerage paid by Mitsui on Voyage 65 A.

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W. Skewell
Solicitor

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29. Annexed and marked "AN", is a computer printout relating to bunkering costs incurred by Mitsui on Voyage 65 A. The information contained on that computer printout forms part of the permanent business records of Mitsui. However, that information includes bunkering costs between the date of the collision, namely, from 10th July, 1981 until 31st August, 1981.

30. Annexed and marked with the letter "AO", is a computer printout, the information contained thereon 10 forming part of the permanent business records of Mitsui. That printout indicates the bunkers used 10th July, 1981 until 31st August, 1981, with the exception of the period that the vessel was subject to the black ban. That shows 88.57kt of fuel oil were used and 21.38kt of diesel oil was used.

31. Between 20th July, 1981 until 22nd August, 1981, the vessel was subject to the black ban. Annexed and marked "AP", are part of the permanent business records of Mitsui. Such report is prepared by the Master of Ibaraki Maru, and forwarded to Mitsui. The report records the quantity of fuel in the bunkers at various dates. That report discloses that on 20th July, 1981 there was 173.68kt of diesel oil, and on 22nd August, 1981, 132.86kt of diesel oil, therefore, 40.82kt of diesel oil were used between 20th July, 1981 to 22nd August, 1981. That also records that on 20th July 1981, there were 2054.78kt of fuel oil and on 22nd August, 1981, 1999.84kt of fuel oil, therefore, 54.94 kt of fuel oil was used between 20th July, 1981 and 22nd August, 1981.

Hirofumi Ogata
Witness
Signature

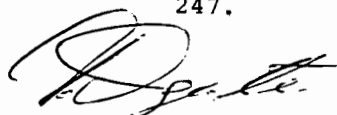
19. (a) Annexed and marked "U(a)" is a computer record which forms part of the permanent business records of Mitsui detailing the bunkering costs relating to Ibaraki Maru for Voyage 64 B.

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32. Annexed and marked "AQ" and "AR" are copies of trans-
lations of the bare boat charter agreement between
Mitsui and Matsuoka (with addendums) and the time
charter agreement between Matsuoka and Mitsui (with
addendums).

33. Whilst Ibaraki Maru was off hire between the date of
the collision until 31st August, 1981, and from 12th
October, 1981 until 27th October, 1981, a period
of 67.429 days, Mitsui suspended payment of portion
of the daily charter fee to Matsuoka, namely, 10
¥1,920,000 per day.

34. All freight payable to Mitsui pursuant to the fixture
notes and time charter agreement relating to the
voyages hereinbefore referred has been paid to Mitsui,
and all demurrage and extraordinary delay payments
have also been paid to Mitsui.

35. Annexed hereto and marked with the letter "AS" is a
Schedule setting out the basis of the plaintiffs' claim
for economic loss.

AFFIRMED by Hirofumi Ogata,)

Before me:)

W. Newville)

-----)
A SOLICITOR OF THE SUPREME COURT)

H. Ogata)

20

THIS AND THE FOLLOWING PAGE IS ANNEXURE MARKED "A" REFERRED TO IN THE AFFIDAVIT AFFIRMED BY H. OGATA BEFORE ME ON 14th MAY, 1983:

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In the
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Ogata
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(continued)



W. Wevelli
Volunte

HEAD OFFICE
MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 1st October, 1980

FIXTURE NOTE

Messrs. Mitsui & Co., Ltd.
Tokyo

Dear Sirs,

M.S. "IBARAKI MARU" Voy.No.63-B

We firmly fixed with you as follows:-

- 1) Name of vessel : M.S. "IBARAKI MARU" Voy.No.63-B
- 2) Cargo & quantity : Coal in bulk; SPRAGUE-HV Coal 20,000 long tons and EAST GULF Coal 20,000 long tons 10% more or less at Owners' option respectively. Which to be loaded together with abt. 50,000 long tons to be loaded at Norfolk.
- 3) Loading port : One safe berth, one safe port of Newport News, Virginia, U.S.A.
- 4) Discharging port(s) : One or two safe port(s) out of Kashima, Wakayama and Sakaide, Japan.
- 5) ETA at loading port : On or about 21st October, 1980
- 6) Freight rate : To be decided later.
- 7) Payment of freight : The freight to be prepaid on B/L quantity by Charterers in Tokyo in cash in U.S. Dollars upon receipt of telegraphic advice of completion of loading.
Whole freight to be deemed to be earned upon completion of loading without deduction and non-returnable ship and/or cargo lost or not lost
- 8) Loading terms & discharging terms : The cargo to be loaded spout trimmed and discharged within a total Seven(7) weather working days of Twenty-Four(24) consecutive hours, Sundays and Holidays included.
Notice of Readiness to be given between business hours of 9 a.m. and 5 p.m. on any day, Sundays and Holidays included.
Time to commence at 1 p.m. if notice of readiness to load is given before noon and at 6 a.m. next working day if notice given in the afternoon unless sooner berthed. Time lost in waiting for berth to count as loading time.
Time to commence at 1 p.m. if notice of readiness to discharge is given before noon and at 6 a.m. next working day if notice given in the afternoon unless sooner worked. Time lost in waiting for berth to count as discharging time.

- to be continued -

Demurrage, if any, at the rate of US\$16,000.00 per day or pro rata for all time lost.

Despatch money, if any, to be paid by Owners to Charterers at the rate of US\$8,000.00 per day or pro rata for laytime saved.

Demurrage or despatch money to be settled between Sumitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd. directly.

- 9) Lighterage & stevedorage = Charterers' account at discharging port.
- 10) Agents = Owners' agents at both ends.
- 11) Other terms = All other terms and conditions to be as per Original Agreement between Messrs. Sumitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd.

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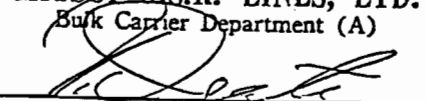
10 (continued)

One original ~~Future~~ Note being made, mutually signed and possessed by Owners.

Charterers:

Owners:

MITSUI & CO., LTD.

 Z. SHIMIZU GENERAL MANAGER OF
 CHARTERING & DISPATCH DEPT.
 TRAFFIC ADMINISTRATION DIV.

MITSUI O.S.K. LINES, LTD.
 Bulk Carrier Department (A)

 Manager
 Coal & Iron Ore Carriers Section (A)

THIS IS THE ANNEXURE MARKED "B" REFERRED TO IN THE AFFIDAVIT AFFIRMED BY
H. OGATA BEFORE ME ON 14TH MAY, 1983:

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In the
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No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
1107 JAPAN

W. Neville Solicitor
MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 17th December, 198

A D D E N D U M No.1

to

Fixture Note dated Tokyo, 1st October, 1980
Per M.S. "IBARAKI MARU" Voy.No.63-B



With regard to the Fixture Note dated Tokyo, 1st October, 1980 covering the shipment of Coal in bulk from Newport News to one or two safe port(s) out of Kashima, Wakayama and Sakaide per M.S. "IBARAKI MARU" Voy.No.63-B, it is this day mutually agreed between Messrs. Mitsui & Co., Ltd. Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

The provisional rate of freight to be US\$17.31 (U.S. Dollars Seventeen Cents Thirty-One only) per ton of 2,240 lbs., and free trimming.

All other terms, conditions and exceptions of the aforementioned Fixture Note to remain unaltered.

One original Addendum No.1 being made, mutually signed and possessed by Owners

Charterers:

Owners:

MITSUI & CO., LTD.
Z. Shimizu
Z. SHIMIZU GENERALMANAGER OF
CHARTERING & OPERATIONS DEPT
TRAFFIC ADMINISTRATIVE DIV.

MITSUI O.S.K. LINES, LTD.
(Bulk Carrier Department (A))
H. Ogata
Manager
Coal & Iron Ore Carriers Section (A)

THIS IS THE ANNEXURE MARKED "C" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. Wevill
Admitted

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO.
7105 JAPAN

mitsui O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 4th March, 1981

Part 1
In the
Supreme
Court of
New South
Wales



ADDENDUM No.2

to

Fixture Note dated Tokyo, 1st October, 1980
Addendum No.1 dated Tokyo, 17th December, 1980
Per M.S. "IBARAKI MARU" Voy.No.63-B

No.11
Affidavit
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Ogata
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1983

(continued)

With regard to the Fixture Note dated Tokyo, 1st October, 1980 and Addendum No.1 dated Tokyo, 17th December, 1980 covering the shipment of Coal in bulk from Newport News to one or two safe port(s) out of Kashima, Wakayama and Sakaide per M.S. "IBARAKI MARU" Voy.No.63-B, it is this day mutually agreed between Messrs. Mitsui & Co., Ltd., Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

Notwithstanding the Addendum No.1 dated Tokyo, 17th December, 1980 the final rate of freight to be US\$21.29 (U.S. Dollars Twenty-One Cents Twenty-Nine only) per ton of 2,240 lbs., F.D.

All other terms, conditions and exceptions of the aforementioned Fixture Note to remain unaltered.

One original Addendum No.2 being made, mutually signed and possessed by Owners.

Charterers:

Owners:

MITSUI & CO., LTD.
Z. Shimizu
Z. SHIMIZU GENERAL MANAGER OF
CHARTERING & OPERATIONS DEPT.
TRAFFIC ADMINISTRATIVE DIV.

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)
[Signature]
Manager
Coal & Iron Ore Carriers Section (A)

Part 1
In the
Supreme
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THIS IS THE ANNEXURE MAKRED "D" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
BEFORE ME ON 14TH MAY, 1983

W. Mervin Solicitor
83/03/24 09:22

HORH PAGE IN: = 83/03/24 09:22 DS01 PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
801209	310011	505,874	75	216.30	2,338.76	7000-1022	8103
801209	310020	996,894	75	216.30	4,608.85	7000-1022	8103
801209	310041	57,320	75	216.30	265.00	7000-1022	8103
801209	310043	1,178,757	75	216.30	5,449.64	7000-1022	8103
801209	310090	18,926	75	216.30	87.50	7000-1022	8103
801209	310090	19,467	75	216.30	90.00	7000-1022	8103
801209	310090	29,785	75	216.30	137.70	7000-1022	8103

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH PAGE IN: = 83/03/24 09:23 DS01 PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M	0063B(0063B)	8BE(8BE)	PORT: NEWPORT NS(7032)			
ITEM TOTAL	310:	2,807,023					
PORT TOTAL:		2,807,023					

HORH PAGE IN: = 83/03/24 09:23 DS01 PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M	0063B(0063B)	8BE(8BE)	PORT: NORFOLK (7050)			
801211	310020	360,410	75	216.30	1,666.25	7000-1022	8103
801211	310090	2,812	75	216.30	13.00	7000-1022	8103
801211	310090	4,326	75	216.30	20.00	7000-1022	8103
801211	310090	13,519	75	216.30	62.50	7000-1022	8103
801211	310090	40,600	75	216.30	187.70	7000-1022	8103
ITEM TOTAL	310:	421,667					
PORT TOTAL:		421,667					

THIS IS THE ANNEXURE MARKED "E" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
BEFORE ME ON 14TH MAY, 1983:

Part 1
In the
Supreme
Court of
New South
Wales

HORH
PAGE IN: =

83/03/24 09:25

*W. Neville
Justice*

DS01
PAGE

*** DISBURSEMENT DETAIL (ACTUAL) ***

S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
810201	310011	1,401,300	00	1.00	0	0321-0006	8104
810201	310012	126,280	00	1.00	0	0321-0006	8104
810201	310020	554,441	00	1.00	0	0321-0006	8104
810201	310030	3,096,850	00	1.00	0	0321-0006	8104
810201	310041	192,850	00	1.00	0	0321-0006	8104
810201	310090	96,700	00	1.00	0	0321-0006	8104

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

ITEM TOTAL
310: 5,468,421

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

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PAGE IN: =

83/03/24 09:25

DS01
PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M	0063B(0063B)	8BE(8BE)	PORT: WAKAYAMA-N(0310)			

PORT TOTAL: 5,468,421

HORH
PAGE IN: =

83/03/24 09:26

DS01
PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
810204	310011	1,401,300	00	1.00	0	0152-0012	8103
810204	310012	126,280	00	1.00	0	0152-0012	8103
810204	310020	667,124	00	1.00	0	0152-0012	8103
810204	310030	1,513,600	00	1.00	0	0152-0012	8103
810204	310041	118,290	00	1.00	0	0152-0012	8103
810204	310071	41,250	00	1.00	0	0152-0012	8103
810204	310090	55,540	00	1.00	0	0152-0012	8103

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

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PAGE IN: =

83/03/24 09:26

DS01
PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M	0063B(0063B)	8BE(8BE)	PORT: KASHIMA (0152)			

ITEM TOTAL
310: 3,923,384

PORT TOTAL: 3,923,384

381-29

MITSUI O. S. K. LINES, LTD.



MAY 21 1981

Date: _____ 19 _____

Part 1
In the
Supreme
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New South
Wales

No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

LAYDAYS STATEMENT

M.S. IBARAKI MARU Voy. No. 63-B

Port: Newport News, Norfolk/Sakayama
Kashima

Charter Party dated: 1st October, 1980

As Charterers

Between MBK SSK SBK Yurubeni

As Owners

And Mitsui O.S.K. Lines, Ltd.

Cargo: Coal

Quantity: 89,142.321 I/T
tons per day ~~XX~~ WDSEINC

Rate of Loading (Discharge) as per Charter Party

Laytime Allowed: 7 Days 00 Hours 00 Minutes

Arrived: 09:40 21st Oct., 1980
Berthed: 19:45 7th Dec., "
Notice of Readiness Tendered: 09:40 21st Oct., "
Notice of Readiness Accepted: 09:40 " " "
Laytime Commenced: 13:00 " " "
Commenced Loading (Discharge): 00:50 8th Dec., "
Completed Loading (Discharge): 05:10 11th " "
Laytime Expired: 13:00 28th Oct., "

THIS IS THE ANNEXURE MARKED "F"
REFERRED TO IN THE AFFIDAVIT
OF H. OGATA AFFIRMED BEFORE ME
ON 14TH MAY, 1983:

W. W. Wille
Policite

Date	Day of Week	Description	Laytime Allowed D. H. M.	Laytime Used D. H. M.	All Laytime Saved Lost D. H. M.
1980					
Oct.					
21st	Tue.	N/R Tendered & Accepted 09:40 Laytime commenced 13:00	0-11-00	0-11-00	0-00-00
22nd	Wed.		1-00-00	1-00-00	0-00-00
23rd	Thu.		1-00-00	1-00-00	0-00-00
24th	Fri.		1-00-00	1-00-00	0-00-00
25th	Sat.		1-00-00	1-00-00	0-00-00
26th	Sun.		1-00-00	1-00-00	0-00-00
27th	Mon.		1-00-00	1-00-00	0-00-00
28th	Tue.	Laytime Expired 13:00	0-13-00	1-00-00	0-11-00
29th (Wed.)-31st (Fri.)			0-00-00	3-00-00	3-00-00
Nov.					
1st (Sat.)-30th (Sun.)			0-00-00	30-00-00	30-00-00
Dec.					
1st (Mon.)-6th (Sat.)			0-00-00	6-00-00	6-00-00
7th	Sun.	Shifting time 1645-1945	0-00-00	0-21-00	0-21-00
8th	Mon.		0-00-00	1-00-00	1-00-00
9th	Tue.		0-00-00	1-00-00	1-00-00
10th	Wed.		0-00-00	1-00-00	1-00-00
11th	Thu.	Loading completed 05:10	0-00-00	0-05-10	0-05-10
Total			7 00 00	50 13 10	43 13 10

Demurrage or Despatch Money

Time: days hours minutes (days)
Amount: @ per day
(@ ex.) Total:

Date: _____ 19 _____

LAYDAYS STATEMENT

M.S. ~~XXXX~~ IBARAKI MARU Voy.No.63-B
 Charter Party dated: 1st October, 1980
 Between MEK SSK SBK Marubeni
 And Mitsui C.S.K. Lines, Ltd.
 Cargo: Coal
 Rate of Loading (Discharge) as per Charter Party
 Laytime Allowed: 7 Days 00 Hours 00 Minutes
 Arrived: 21:00 29th Jan., 1981
 Berthed: 08:00 30th " "
 Notice of Readiness Tendered: 21:00 29th " "
 Notice of Readiness Accepted: 09:00 30th " "
 Laytime Commenced: 21:00 29th " "
 Commenced Loading (Discharge): 08:30 30th " "
 Completed Loading (Discharge): 01:45 4th Feb., "
 Laytime Expired: 13:00 28th Oct., 1980

Port: Newport News/Wakayama, Kashima
 Norfolk
 As Charterers
 As Owners
 Quantity: 89,142.321 L/T
 tons per day ~~XX~~ WWSHINC

Part 1
 In the
 Supreme
 Court of
 New South
 Wales

No.11
 Affidavit
 of Hirofumi
 Ogata
 14th May
 1983

THIS IS THE ANNEXURE MARKED "G"
 REFERRED TO IN THE AFFIDAVIT OF
 H. OGATA AFFIRMED BEFORE ME ON
 14TH MAY, 1983:

W. Neville
Roberts

(continued)

Date	Day of Week	Description	Laytime Allowed D.H.M.	Laytime Used D.H.M.	All Laytime Saved Lost D.H.M.
1981		Newport News, Norfolk	7-00-00	50-13-10	43-13-10
Wakayama					
Jan.					
29th	Thu.	Arrived & laytime commenced 21:00	0-00-00	0-03-00	0-03-00
30th	Fri.	Shifting time 0700-0800	0-00-00	0-23-00	0-23-00
31st	Sat.		0-00-00	1-00-00	1-00-00
Feb.					
1st	Sun.	Discharging completed 06:00	0-00-00	0-06-00	0-06-00
Kashima					
2nd	Mon.	Arrived & laytime commenced 12:45	0-00-00	0-11-15	0-11-15
3rd	Tue.		0-00-00	1-00-00	1-00-00
4th	Wed.	Discharging completed 01:45	0-00-00	0-01-45	0-01-45

Total 7-00-00 54-10-10 47-10-10

Demurrage or Despatch Money

Time: ~~XX~~ days ~~XXXXXX~~ hours minutes (47.42361 days)

Amount: @ 10 per day 10

(@ ex \$16,000. Total:

Charterers:

US\$758,777.76

Owners:

Mitsui O.S.K. Lines Ltd

THIS IS THE ANNEXURE MARKED "H" REFERRED TO IN THE AFFIDAVIT OF N. OGATA AFFIRMED BEFORE ME ON 14th May, 1983.

81-02 *** CHOZO NENRYO MOTOCHO *** LISTED = 81-03-25 PAGE 129

W. Uehara
notaire

Part 1
In the
Supreme
Court of
New South
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No.11
Affidavit
of Hirofumi
Ogata
14th May 1983
(continued)

LINE	VESSEL	VQYAGE	B-DATE	PORT	OILER	COM	TANKA	SURYO (K/T)	KINGAKU (YEN)	F-DATE	DATA-KUBUN
8BW	0328 KINOKUNI-M	0044A	81-02-24			030	37,679	1,032.72-	38,911,857-	81-02	ZANYU-UNKCHI 4-1
				*** ZANYU ***		030		1,722.00	64,882,331		

*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***

8BW	0328 KINOKUNI-M	CC44A				010	68,373	89.00	6,085,156	81-03	
8BW	0328 KINOKUNI-M	CC44A				030	37,678	1,722.00	64,882,331	81-03	

*** TOTAL ***

39,187 1,811.00 70,967,487

8BE	0329 IBARAKI-M	CC63B				010	62,097	100.50	6,240,710	81-02	KURIKOSHI
	0329 IBARAKI-M		80-10-09	4999	Z810	010	66,409	93.79	6,228,519	81-02	KASHIBUNEHENSEN 1-6
8BE	0329 IBARAKI-M	0063B	81-02-04			010	64,178	60.69-	3,894,963-	81-02	ZANYU-UNKOHI 4-1
				*** ZANYU ***		010		133.60	8,574,266		

8BE	0329 IBARAKI-M	0063B	81-02-04			010		133.60-	9,305,106-	81-02	KASHIBUNEKASHI 3-6
8BE	0329 IBARAKI-M	CC63B	81-02-04			010		.00	730,840	81-02	****HEN-CHOSEI****

8BE	0329 IBARAKI-M	0063B				010	48,650	3,905.08	189,982,907	81-02	KURIKOSHI
	0329 IBARAKI-M		80-10-09	4999	Z810	033	38,547	1,328.88	51,224,517	81-02	KASHIBUNEHENSEN 1-6
8BE	0329 IBARAKI-M	0063B	81-02-04			030	46,085	4,562.51-	210,263,273-	81-02	ZANYU-UNKOHI 4-1

				*** ZANYU ***		030		671.45	30,944,151		
8BE	0325 IBARAKI-M	CC63B	81-02-04			030		671.45-	30,260,237-	81-02	KASHIBUNEKASHI 3-6
8BE	0329 IBARAKI-M	0063B	81-02-04			030		.00	683,914-	81-02	****HEN-CHOSEI****
				*** ZANYU ***		030		.00	0		

*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***

8BE	0325 IBARAKI-M	CC63B						.00	0	81-03	
-----	----------------	-------	--	--	--	--	--	-----	---	-------	--

8AJ	0330 ARAFURA-M	0032A				010	65,241	219.00	14,287,860	81-02	KURIKOSHI
	0330 ARAFURA-M		78-05-29	4310	M519	010		.00	4,008-	81-02	HOYU
	0330 ARAFURA-M		78-10-23	4310	M519	010		.00	2,841-	81-02	HOYU
	0330 ARAFURA-M		81-01-22	0310	1010	010		.00	70-	81-02	CHONEN-SHUSEI
8AJ	0330 ARAFURA-M	CC32A				030	38,416	5,308.19	203,918,557	81-02	KURIKOSHI
	0330 ARAFURA-M		78-05-29	4310	M519	033		.00	123,561-	81-02	HOYU
	0330 ARAFURA-M		78-10-23	4310	M519	033		.00	122,188-	81-02	HOYU
	0330 ARAFURA-M		81-01-22	0310	1010	034		.00	1,678,181-	81-02	CHONEN-SHUSEI

THIS IS THE ANNEXURE "I" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON THE 14TH MAY, 1983:

W. Neville
Solicitor

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

請 求 書

昭和 58 年 3 月 20 日

大阪商船三井船舶株式会社 御中

APR 30 1987

中和海事株式会社

東京都千代田区内幸町1-2-2大阪ビル2号館
電話 (591) 4426 番 (代) 4420 番

下記の通り御請求申し上げます

月 日	摘 要	借 方	貸 方
12 9	茨城 舟 Vg.No.63-B H. Roads / 船費 Coal 運賃 手数料		
	19.982 ⁴⁸⁹ / ₄₇ 0817 ³¹ / ₃₁ ¥347,898 ⁶² / ₁₀		
	19.070 ⁴³⁶ / ₄₇ " ¥330,110 ¹⁰ / ₁₀		
	10.000 ⁴⁷ / ₄₇ " ¥173,100 ⁰⁰ / ₁₀		
	19.427 ⁴¹¹ / ₄₇ " ¥338,019 ⁴⁰ / ₁₀		
	20.461 ¹⁸⁶ / ₄₇ " ¥344,924 ¹² / ₁₀		
	御 請 求 額	2,400,000.00	
	(HBK. 55K. SBK. 舟 給)		2,400,000.00
		2,400,000.00	2,400,000.00

ADDITIONAL CLAUSES TO "IBARAKI MARU"
Charter Party dated 28th January, 1980



29. Call Sign: J. H. H. E.

Description: Gearless bulk carrier.

Deadweight: About 109311.28 long tons summer deadweight.

Dimensions: Summer draft: about 15.629 metres.
Length overall: 259.82 metres.
Beam: 39.6 metres.

Capacity: 4,499,277 cubic feet grain capacity including hatches. 10

Speed/Consumption: Normal speed: about 15 knots ballast/
14 knots laden on 70 metric tons maximum viscosity 1,500 seconds plus 0.5 metric tons of diesel oil.

Economical speed: without guarantee about 13.5 knots ballast/12.5 knots laden on 53 metric tons maximum viscosity 1,500 seconds plus 2 metric tons of diesel oil. 20

The Charterers have the option to steam at normal or economical speed.

Holds/Hatches: Nine holds and nine hatches.
Hydraulic hatch covers. (side rolling)

Hatch Sizes: No. 1 12.48 metres by 15.48 metres.
No. 2 13.57 metres by 17.2 metres.
Nos. 3/9 13.44 by 17.2 metres.

Gear: None.

Tons per centimetre 91.25 metric tons on summer draft. Whilst vessel is navigating in ballast Owners' option use No. 5 as ballast tank. 30

30. Bunkers on delivery and redelivery to be a quantity consistent with a voyage Ensted/Hampton Roads at current prices prevailing at ports of delivery and redelivery (or at last discharge port if redelivery is on passing Skaw) at time of delivery/redelivery respectively. In case of redelivery Skaw Owners have option to receive only bunker quantity sufficient to reach Flushing after Charterers quotation of estimated bunker price at last discharge port.

Continued...../

ADDITIONAL CLAUSES TO "IBARAKI MARU"
Charter Party dated 28th January, 1980.

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Continued...../

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Ogata
14th May
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(continued)

31. The vessel is guaranteed suitable for grab discharge. No cargo to be loaded in or on top of deep tanks, nor in tweendecks, nor in bridge space, nor in any other place not suitable for discharge by means of mechanical grabs. Nevertheless, should any cargo be loaded by the vessel in places not accessible to grabs, any time and/or despatch money so lost and all extra expenses over and above the normal grab discharge at port of destination to be for Owners' account.
- 10
32. Charterers are not to be responsible for stevedore or any other damage to the vessel unless such claim is reported in writing to Charterers Agents at the respective port during port of call at which subject damage occurred. If this is impossible owing to damage not being apparent until completion of discharge. Any such claim to be reported in writing to Charterers immediately.
33. Owners guarantee that the minimum terms and conditions of the staff and crew of the vessel both prior to delivery and for the duration of the charter will remain in accordance with the current I.T.F. requirement or with a Bona Fide Trade Union Agreement remaining acceptable to the I.T.F. In the event of boycott and/or discrimination of any kind whatsoever, resulting from the terms and conditions of the employment of the crew restricting or hindering the loading/discharging and/or the service she is required to perform, all time thereby lost and the loss of any extra fuel consumed and all extra expenses shall be for Owners' account.
- 20
34. Prior to delivery and redelivery the parties shall appoint surveyors for their respective accounts, who shall conduct joint on - and off - hire surveys. A single report shall be prepared and signed by both surveyors without prejudice to either one's right to file a separate report setting forth items on which he cannot agree. If either party fails to have a surveyor attend the survey and sign the joint survey report, that party shall nevertheless be bound for all purposes by the findings in any report prepared by the other party.
- 30
35. The vessel to provide valid fumigation and deratisation certificate on delivery and if this does not cover the whole period of the Charter and fumigation is necessary from any cause whatsoever such cost and time to be for Owners' account.
- 40
36. Charterers to redeliver vessel with holds clean/swept, or shovelled clean if last cargo is coal. Charterers have the option of redelivering the vessel upon completion of discharge without hold cleaning in consideration of which Charterers are to pay Owners a lumpsum of U.S.\$5,000 in lieu of hold cleaning.

Continued...../

Part 1
In the
Supreme
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No.11
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Ogata
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(continued)

ADDITIONAL CLAUSES TO "IBARAKI MARU"
Charter Party dated 28th January, 1980.

Continued...../

Page Three.

- 37. Crew to open and close hatches before, during and after stevedoring work, when and where required, and when permitted by shore labour regulations.
- 38. Charterers have the right to withhold from final month's hire sufficient funds to cover bunkers on redelivery.
- 39. Should the vessel be put back whilst on voyage by reason of an accident or breakdown, the hire shall be suspended from the time of her putting back until she be again in the same or equivalent position and the voyage resumed therefrom. 10
- 40. Any additional premium levied against vessel by her war risk Underwriters and any crew war bonus to be for Charterers' account.
- 41. Any taxes on cargo and/or freight to be for Charterers' account.
- 42. In the event of detention of the vessel by authorities at home or abroad in consequence of legal action against Owners (unless brought about by the act of neglect of Charterers), whereby the vessel is rendered unavailable for Charterers' service, the vessel shall be off - hire until the service can again be resumed. 20
- 43. If the nation to which the vessel belongs becomes engaged in hostilities, hire and all other charges shall cease during the continuance of such hostilities if Charterers in consequence of such hostilities find it impossible to employ the vessel and in that event Owners shall have the right to employ the vessel on their own account.
- 44. Charterers are to give a 45 days preliminary notice mentioning the redelivery range. Thereafter Charterers shall give 30 and 20 days notice of vessel's expected date of redelivery and probable port followed by 10 days notice of approximate redelivery date and definite port. Charterers shall further give 7, 5 and 3 days notice of expected redelivery date. 30
- 45. If last cargo is other than coal, after arrival at the loading berth the suppliers or their agents consider that the vessels holds are not clean to receive a coal cargo then Owners shall carry out the necessary cleaning at their expense and the vessel is to be placed off hire for the time required - See Clause 57.
- 46. In the event of the outbreak of war (whether there be a declaration of war or not) between any of the following countries: Germany, Japan, U.S.A., Great Britain, France, U.S.S.R., the Peoples Republic of China and Belgium both Owners and Charterers shall have the right of cancelling this Charter Party. 40
- 47. Watchmen for vessel to be for Owners' account and watchmen for cargo to be for Charterers' account.

Continued...../

Continued...../

Page Four.

No.11
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48. Charterers/Owners have the right to bunker the vessel for their account concurrent with Owners/Charterers discharging operations respectively provided same does not interfere with discharge.

49. PARAMOUNT CLAUSE.

Charterers shall procure that all bills of lading issued under this Charter shall contain the following Paramount Clause:-

(continued)

10

"This bill of lading shall:-

(1) in relation to the carriage of any goods from any port in Great Britain or Northern Ireland to any other port whether in or outside Great Britain or Northern Ireland have effect subject to the provisions of the Carriage of Goods by Sea Act, 1924, and to the Rules contained in the Schedule thereto as applied by that Act and nothing herein contained shall be deemed a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the said Act:

20

(2) in relation to the carriage of any goods from any port of shipment in territory in which legislation similar in effect to the Carriage of Goods by Sea Act, 1924, of the United Kingdom is in force, have effect subject to such legislation and to the Rules contained in the Schedule thereto as applied by such legislation and nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities under the said legislation or an increase of any of his responsibilities or liabilities under the said legislation and

30

(3) in any other case have effect as if the contract of carriage herein contained were a contract of carriage to which the provisions of the Carriage of Goods by Sea Act 1924, of the United Kingdom applied and the carrier shall be entitled to the benefit of the privileges, rights and immunities conferred by the said Act and the rules contained in the Schedule thereto as if the same were herein specifically set out.

If any term of this Bill of Lading be repugnant to the provisions of the said Act or to the said Legislation to any extent, such term shall be void to that extent but no further".

50. This Charter shall be construed and the relations between the parties determined in accordance with the Law of England.

40

51. WAR RISKS.

(1) The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owners in his or their discretion consider dangerous or impossible to enter or reach.

Continued...../

RNB

No.11
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of Hirofumi
Ogata
14th May
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- (2) a If any port of loading or discharge named in this Charter or to which the vessel may properly be ordered pursuant to the terms of Bills of Lading be blockaded or
- b If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owners in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owners in his or their discretion dangerous or impossible for the vessel to reach any such port of loading or of discharge.

10

Charterers shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other port of loading or of discharge ports respectively established under the provisions of the Charter (provided such other port is not blockaded or that entry thereto or loading or discharging of cargo thereat is not in the Master's or Owners' discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from Charterers within 48 hours after they or their agents have received from Owners a request for the nomination of a substitute port, Owners shall then be at liberty to discharge the cargo at any port which they or the Master may in their discretion decide on (whether within range of discharge ports established under the provisions of the Charter or not) and such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharge ports established under the provisions of the Charter, the Charter shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. However, if the vessel discharges the cargo at a port outside the range of discharge ports established under the provisions of the Charter, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by Charterers or cargo Owners. In this latter event Owners shall have a lien on the cargo for all such extra expenses.

20

30

40

- (3) The vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the Government or Local Authority including any de facto Government or Local Authority or by any person or body acting or purporting to act as or with the authority of any such Government or authority or by any committee or person having under the terms of the war risks insurance on the vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations anything is done or is not done, such shall not be deemed a deviation.

Continued...../

RNB

Continued...../

Page Six.

No.11
Affidavit
of Hirofumi
Ogata
14th May
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(continued)

10 If by reason of or in compliance with any such direction or recommendation the vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the vessel may proceed to any port of discharge which the Master or Owners in his or their discretion may decide on and then discharge the cargo. Such discharge shall be deemed to be due fulfilment of the contract or contracts of affreightment and Owners shall be entitled to freight as if discharge had been effected at the port or ports designated or to which the vessel may have been ordered pursuant to the terms of the bills of lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by Charterers and/or Cargo Owners shall have a lien on the cargo for freight and all such expenses.

20 52. Should adjustment of General Average be made in accordance with the law and practice of the U.S.A. the following provisions shall apply:

30 In the event of accident, danger, damage or disaster, before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequence of which, the carrier is not responsible by statute, contract or otherwise, the goods, shippers, consignees or Owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid for as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or Owners of the goods, to the carrier before delivery.

40 Charterers shall procure that all Bills of Lading issued under this Charter shall contain a provision of the foregoing terms, to be applicable where adjustment of general average is made in accordance with the laws and practise of the United States of America.

53. Payment of said hire to be made in New York in cash in United States currency to:-
Mitsui Bank, N.Y. Branch Account of Mitsui O.S.K. Lines Limited.

Continued...../



Part 1
In the
Supreme
Court of
New South
Wales

ADDITIONAL CLAUSES TO "BARAKI MARU"
Charter Party dated 28th January, 1980.

Continued...../

Page Seven.

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

- 54. Laydays/cancelling to be narrowed to a 15 day spread by 4th February, 1980, and further narrowed to a 7 day spread 12 days prior to laydays.
- 55. The cancelling date for the 2nd and 3rd Timecharter Trips to be deemed as a date 110 days after redelivery by Charterers on the previous trip.
- 56. Owners to give Charterers 40/25/10 days approximate and 5 days definite notices of delivery for 2nd and 3rd trips.
- 57. With reference to hold cleaning, if Charterers decide to load a cargo other than iron ore or coal, and additional cleaning beyond clean/swept or shovel clean condition be required, then time and expenses for such additional cleaning shall be borne by Charterers,



RNB

THIS IS THE ANNEXURE MARKED "K" REFERRED TO IN THE AFFIDAVIT OF H. OGATA
AFFIRMED BEFORE ME ON 14TH MAY, 1983:

23rd December, 1980

W. Hewitt
"IBARAKI MARU" *soluto*

ADDENDUM NO. 1

With reference to Charter Party dated 28th January, 1980 (hereinafter referred to as the Charter Party) between Mitsui O.S.K. Line Limited as Owners and Shell Coal International Limited as Charterers:

IT IS HEREBY AGREED THAT:-

With reference to Clause 55 of the Charter Party the cancelling date for the third and final Timecharter Trip shall be amended to the 10th February, 1981.

All other terms, conditions, exceptions and exemptions from liability of the Charter Party shall remain unaltered.

MITSUMI O.S.K. LIMITED
MITSUMI O.S.K. LINES, LTD.

[Signature]
GENERAL MANAGER,
BULK CARRIER DEPARTMENT (A)

SHELL COAL INTERNATIONAL LIMITED

R. N. Broadway

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

THIS IS THE ANNEXURE MARKED "L" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED



BEFORE ME ON 14TH MAY, 1983:
HEAD OFFICE
1-1-1 HONME, HATCHOBORI, CHUO-KU
TOKYO, JAPAN

TEL (03) 552-0141
REG. NO. 4519, A. B. CODE: JAMSMA
NIPPON KAIJI KENTEI TOKYO
BRANCHES
ALL PRINCIPAL PORTS IN JAPAN
OVERSEAS OFFICES
BANGKOK, SINGAPORE, KUALALUMPUR,
MANG. CAGAYAN DE ORO (PHILIPPINES)
LABORATORIES
TOKYO, OSAKA, SINGAPORE.

W. K. W. Solicitor
JAPAN MARINE SURVEYORS & SWORN MEASURERS' ASSOCIATION
LICENSED BY THE JAPANESE GOVERNMENT



NIPPON KAIJI KENTEI KYOKAI
FOUNDED IN 1913

ORIGINAL
(Ref. KMD, MZH, OSR)
hy

International Inspection & Surveying
MARINE CONSULTANT
MARINE SURVEY AND CARGO INSPECTION
PETRO-CHEMICAL SUPERINTENDING
LIQUEFIED GAS INSPECTION
CHEMICAL ANALYSIS
TANK CALIBRATION
SAMPLING AND TESTING
FREIGHT CONTAINER INSPECTION
AUTHORIZED AND LICENSED INSPECTOR FOR
DANGEROUS AND HAZARDOUS GOODS
CARGO WEIGHING AND MEASURING

KASHIMA

Date: Feb. 12, 1981
Report No. HEO 29/80

SURVEY REPORT
("ON-HIRE")

THIS IS TO CERTIFY THAT we, the undersigned General Marine Surveyors,
did, at the joint request of

Messrs. Mitsui O.S.K. Lines, Ltd., as Owner
and

Messrs. Shell Coal International Ltd., as Time Charterer

attend on Feb. 3 & 4, 1981, aboard

10

the M.S. "IBARAKI MARU" 63 B

Master	:	M. Takatani
Owners	:	Mitsui O.S.K. Lines, Ltd.
Nationality	:	Japan
Gross Tonnage	:	63,139.50 Tons
Built in	:	1972, in Japan
Kind and Type of Vessel	:	9 Hatch & 9 Hold Bulk Carrier with aft. Engine
Principal Dimension (Loa x B x D)	:	253.90 x 39.6 x 22.4 (in meter)

20



while she was lying alongside the wharf of the Sumitomo Metal Industries,
Ltd., Kashima Steel Works, Kashima, in order to survey and report on the
apparent condition of her cargo compartments and adjacent area, taking into
account the effect of concerned cargo works, as well as quantity of fuel
oil, diesel oil and fresh water remained on board at the time of "ON-HIRE",
07:15 hrs. (JST) on Feb. 4, 1981.

- to be continued -

THIS IS THE ANNEXURE MARKED "M" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
BEFORE ME ON 14th MAY, 1983:

W. Mervitt
AABENRAA SKIBSAGENTUR ApS
(AABENRAA SHIPPING AGENCY LTD)
KILEN 29 . DK 6200 AABENRAA



Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

CERTIFICATE OF
RE DELIVERY.

Telph.: 04-62 77 00
Telex: 52160 agency dk
P.O.Box: 31
Cables: shipagency aabenraa

This is to certify that the Osaka m/v "Ibaraki Maru"
has been re delivered by timecharterers/~~owners~~,
Messrs. Shell Coal International Ltd.
to the Owners/~~timecharterers~~, Messrs. Mitsui OSK Lines
at Skaw westbound on 30th of March at 1500 hrs.
in accordance with all terms and conditions on the relevant
Time Charterparty dated: as agreed

10

At the time of the re delivery there remained on board:

- 928.15 m/tons of fueloil
- 127.90 m/tons of dieseloil
- 62.00 m/tons of fresh water

As to the conditions of the vessel at the time of re delivery
reference is made to the joint Off- On-Hire Survey Report issued
by: Esbjerg Survey Association, Esbjerg Denmark

Remarks:

On sailing from Ensted following figures were estimated:

- 926.0 m/tons of fueloil
- 127.8 m/tons of dieseloil
- 62.0 m/tons of fresh water

20

Aabenraa/Ensted, 29th March 1981.

Master:

For and on behalf of

For and on behalf of



Agents, unless the loading be commenced earlier, in which case laytime shall count from actual commencement.
 The notice may be tendered after arrival during or outside official office hours, Saturdays, Sundays and Holidays included, whether the vessel is in berth or not. If waiting for a berth in turn exceeds 48 hours, laytime to commence even if vessel not in berth, 48 hours after notice of readiness has been tendered.

Part 1
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 Wales

No.11
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 of Hirofumi
 Ogata
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 1983

For vessels nominated by Buyer, the following rate of demurrage shall be applied, and pro rata portions of a day:

- (a) For the vessel presented empty for loading at Nouadhibou upto the vessel's maximum available quantity, US\$0.05 per day per deadweight long ton for all time lost. No despatch money.
- (b) For the vessel loaded at Nouadhibou less than the Vessel's maximum available quantity
 - (i) If loaded quantity at Nouadhibou does not exceed half of the vessel's deadweight long tons, US\$0.075 per day per long ton loaded for all time lost. No despatch money.
 - (ii) If loaded quantity at Nouadhibou exceeds half of the vessel's deadweight long tons, US\$0.05 per day per long ton loaded for all time lost. No despatch money.

(continued)

- 12) Discharging terms & conditions :To be fixed between Sumitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd.
- 13) Agents :Owners' agents at both ends.
- 14) Remarks :Other loading terms and conditions to be as per relative Nouadhibou Iron Ore Sales Contract between Messrs. Sumitomo Metal Industries, Ltd. and Shipper

One original Fixture Note being made, mutually signed and possessed by Owners.

Charterers:

TOYO MENKA KAISHA, LTD.

Manager, Iron Ore Department

Nichimen Co., Ltd.

Y. TSURUMOTO, Manager
 Iron Ore Section
 Iron & Steel Raw Materials Dept.

Owners:

MITSUBI O.S.K. LINES, LTD.

Bulk Carrier Department (A)

 Manager
 Coal & Iron Ore Carriers Section (A)

Part 1
In the
Supreme
Court of
New South
Wales

THIS IS THE ANNEXURE MARKED "P" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
BEFORE ME ON 14TH MAY, 1983:

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
T105 JAPAN

W. Neville
Mitsui
MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 22nd April, 1981

(continued)



A D D E N D U M No.1

to

Fixture Note dated Tokyo, 18th March, 1981
Per M.S. "IBARAKI MARU" Voy.No.64-B

With regard to the Fixture Note dated Tokyo, 18th March, 1981 covering the shipment of Iron Ore Fine in bulk from Nouadhibou to one or two safe port(s) of Kashima and Wakayama per M.S. "IBARAKI MARU" Voy.No.64-B, it is this day mutually agreed between Messrs. Toyo Menka Kaisha, Ltd. and Nichimen Co., Ltd., Tokyo as Charterers 10 and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

The provisional rate of freight to be US\$13.45 (U.S. Dollars Thirteen Cents Forty-Five only) per ton of 2,240 lbs., F.I.O. and free trimming.

All other terms, conditions and exceptions of the aforementioned Fixture Note to remain unaltered.

One original Addendum No.1 being made, mutually signed and possessed by Owners.

Charterers:

Owners:

TOYO MENKA KAISHA, LTD.

[Signature]
Manager, Iron Ore Department

Nichimen Co., Ltd.

[Signature]
Y. TSUKAMOTO, Manager
Iron Ore Section
Iron & Steel Raw Materials Dept.

MITSUI O.S.K. LINES, LTD. 20
Bulk Carrier Department (A)

[Signature]
Manager
Coal & Iron Ore Carriers Section (A)

THIS IS THE ANNEXURE MARKED "Q" REFERRED TO IN THE AFFIDAVIT OF H. OGATA
AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. Neville
Admiral

MITSUI O.S.K. LINES, LTD.

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

Part 1
In the
Supreme
Court of
New South
Wales

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
T107 JAPAN

TOKYO, JAPAN

ORIGINAL

Tokyo, 31st July, 1983

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

A D D E N D U M No.2

to

Fixture Note dated Tokyo, 18th March, 1981
Addendum No.1 dated Tokyo, 22nd April, 1981
Per M.S. "IBARAKI MARU" Voy.No.64-B

(continued)



10

With regard to the Fixture Note dated Tokyo, 18th March, 1981 and Addendum No.1 dated Tokyo, 22nd April, 1981 covering the shipment of Iron Ore Fine in bulk from Nouadhibou to one or two safe port(s) out of Kashima and Wakayama per M.S. "IBARAKI MARU" Voy.No.64, it is this day mutually agreed between Messrs. Toyo Menka Kaisha, Ltd. and Nichimen Co., Ltd., Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

- 1) Discharging ports: One safe berth, one safe port of Kashima and one safe berth one safe port of Kokura, Japan.
- 2) Notwithstanding the Addendum No.1 dated Tokyo, 22nd April, 1981 the final rate of freight to be US\$15.68 (U.S. Dollars Fifteen Cents Sixty-Eight only) per ton of 2,240 lbs., F.I.O. and free trimming.

All other terms, conditions and exceptions of the aforementioned Fixture Note to remain unaltered.

One original Addendum No.2 being made, mutually signed and possessed by Owners.

20

Charterers:

Owners:

TOYO MENKA KAISHA, LTD.

[Signature]
Manager of Iron Ore Section I
Iron Ore Department

MITSUI O.S.K. LINES, LTD.

Bulk Carrier Department (A)
[Signature]
Manager
Coal & Iron Ore Carriers Section (A)

Nichimen Co., Ltd.

[Signature]
Y. TSUKAOTO, Manager
Iron Ore Section
Iron & Steel Raw Materials Dept.

THIS IS THE ANNEXURE MARKED "U(a)" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

*** CH. O. Z. C. A. E. N. R. Y. U. M. O. I. O. C. H. C. *** LISTED = 81-06-26 PAGE 134

W. Merville
Solicitor

LINE	VESSEL	VISAGE	B-DATE	PORT	GILF	CCM	TANKA	SURYU (K/TL)	KINGAKU (YEN)	F-DATE	DATA-KUBUM
BBW	0328 KINOKUNI-M	0C45A	81-05-04	C31J	M11C	03J	47,915	1,099.29	52,672,894	81-05	KCYU
	0326 KINOKUNI-M	0C45A	81-05-04			03J	41,972	505.73-	23,669,976-	81-05	ZANYU-UNKOHI 4-1
						03J		1,739.50	73,311,334		
											*** ZANYU ***
											*** V E S S E L - Y U S H J B E T U K U R I K U S H I T O T A L ***
BBW	0328 KINOKUNI-M	0C45A				01J	71,406	81.95	6,292,134	81-06	
BBW	0328 KINOKUNI-M	0C45A				03J	41,972	1,739.50	73,311,334	81-06	
											*** TOTAL ***
							43,385	1,827.45	79,291,469		
BA2	0325 IBARAKI-M	CC64B				01J	70,922	127.35	9,031,855	81-05	KUFIKOSHI
BA2	0325 IBARAKI-M	CC64B	81-05-29			01J	70,922	14.75-	1,046,100-	81-05	ZANYU-UNKOHI 4-1
						01J		112.60	7,985,755		*** ZANYU ***
BA2	0325 IBARAKI-M	CC64B				03J	46,168	3,448.27	159,199,504	81-05	KUFIKOSHI
BA2	0325 IBARAKI-M	CC64B	81-05-29			03J	46,168	3,113.57-	143,747,300-	81-05	ZANYU-UNKOHI 4-1
						03J		534.70	15,452,204		*** ZANYU ***
											*** V E S S E L - Y U S H J B E T U K U R I K O S H I T O T A L ***
BA2	0325 IBARAKI-M	CC64B				01J	70,922	112.60	7,985,755	81-06	
BA2	0325 IBARAKI-M	CC64B				03J	46,168	534.70	15,452,204	81-06	
											*** TOTAL ***
							52,199	447.30	23,437,959		
IA9	0330 ARAFURA-M	0C33A				01J	64,120	229.32	14,704,076	81-05	KUFIKOSHI
IA9	0330 ARAFURA-M	0C33A				03J	40,092	4,311.13	172,840,844	81-05	KUFIKOSHI
											*** V E S S E L - Y U S H J B E T U K U R I K U S H I T O T A L ***
IA9	0330 ARAFURA-M	0C33A				01J	64,120	229.32	14,704,076	81-06	
IA9	0330 ARAFURA-M	0C33A				03J	40,092	4,311.13	172,840,844	81-06	
											*** TOTAL ***
							41,305	4,540.45	187,544,920		

Part 1
In the
Supreme
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No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued).

- 2 -

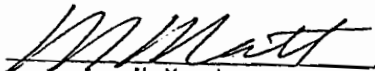
- 11) Agents : Owners' Agents at both ends.
12) Charter Party : All other terms and conditions as per adapted
"HAYATOMO MARU" Voy.No.26 Charter Party dated
Tokyo, 3rd April, 1972 between Mitsui & Co., Ltd.
Mitsubishi Corporation and Sumitomo Corporation
as Charterers and Mitsui O.S.K. Lines, Ltd. as
Owners.

One original Fixture Note being made, mutually signed and possessed
by Owners.

Charterers:

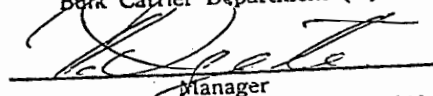
Owners:

on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD
MITSUBISHI CORPORATION



M. Matsuda
Manager, NSW Coal Team
Coal Dept.

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)



Manager
Coal & Iron Ore Carriers Section (A)

THIS IS THE ANNEXURE MARKED "W" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE
ON 14TH MAY, 1983:

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
110 JAPAN

Wakettle
Solinto
MITSUBUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Part 1
In the
Supreme
Court of
New South
Wales

Tokyo, 2nd September, 1983

ADDENDUM No.1

to

Fixture Note dated Tokyo, 22nd June, 1981
Per M.S. "IBARAKI MARU" Voy.No.65

With regard to the Fixture Note dated Tokyo, 22nd June, 1981 covering the shipment of Coal in bulk from Port Kembla and Hay Point to (Each) One safe berth at one or two safe port(s), Kashima, Wakayama and Kokura per M.S. "IBARAKI MARU" Voy.No.65, it is this day mutually agreed between Messrs. Mitsubishi Corporation, Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

10

Cargo & quantity

Port Kembla: COAL CLIFF Coal 55,000 metric tons 10% more or less at Owners' option.

Hay Point : PEARDOWNS Coal 25,000 metric tons and GOCHYELLA Coal 25,000 metric tons 10% more or less at Owners' option respectively.

All other terms, conditions and exceptions of the aforementioned Fixture Note to remain unaltered.

One original Addendum No.1 being made, mutually signed and possessed by Owners.

20

Charterers:

Owners:

on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD
MITSUBISHI CORPORATION

M. Matsuda

M. Matsuda
Manager, NSW Coal Team
Coal Dept.

MITSUBUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

[Signature]

Manager
Coal & Iron-Ore Carriers Section (A)

Part 1
In the
Supreme
Court of
New South
Wales

THIS IS THE ANNEXURE "X" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME
14TH MAY, 1983:

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
1107 JAPAN

W. M. Williams
MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 21st September, 1981

ADDENDUM No.2

to

Fixture Note dated Tokyo, 22nd June, 1981
Addendum No.1 dated Tokyo, 2nd September, 1981
Per K.S. "IBARAKI MARU" Voy.No.65



No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

With regard to the Fixture Note dated Tokyo, 22nd June, 1981 and Addendum No.1 dated Tokyo, 2nd September, 1981 covering the shipment of Coal in bulk from Port Kembla and Hay Point to (Each) one safe berth at one or two safe port(s), Kashima, Wakayama and Kokura per K.S. "IBARAKI MARU" Voy.No.65, it is this day mutually agreed between Messrs. Mitsubishi Corporation Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

Loading terms and conditions at Hay Point:

- 1) Master of the vessel to notify Utah Development Company, Mackay Office, Cable Address: "SHIPSERV UTAHSHIP MACKAY" of the vessel's ETA and the estimated cargo required each 7 days, 48 hours and 24 hours before the vessel is expected to arrival at Hay Point.
- 2) Laytime for loading shall commence twelve(12) hours after Notice of Readiness is tendered unless loading is sooner commenced. Notice of Readiness to load may be presented by the vessel after arrival at the port, whether in berth or not, at any time in or out of office hours, provided the vessel is in free pratique and in all respects ready to load.
- 3) Loading rate to be 16,500 long tons per weather working day of 24 consecutive hours, Saturdays and Sundays included but officially recognized holidays in the State of Queensland, Australia excepted, unless used.
Demurrage: US\$9,500.- per day or pro rata for all time lost.
Despatch money: US\$4,750.- per day or pro rata for laytime saved.
- 4) Notice of Readiness to load shall not be tendered before 0900 hours on September 21st, 1981, unless sooner worked.

All other terms, conditions and exceptions of the aforementioned Fixture Note shall remain unaltered.

One original Addendum No.2 being made, mutually signed and possessed by Owners.

Charterers:
on behalf of Messrs. QUEENSLAND METAL INDUSTRIES, LTD.
MITSUBISHI CORPORATION

A. K. Higgins
A. K. Higgins
Manager of Queensland Coal Team
Coal Dept.

Owners:

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

K. Spate
K. Spate
Manager
Coal & Iron Ore Carriers Section (A)

A-001 (54. 11. 100x500 N)

THIS IS THE ANNEXURE MARKED "Y" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
ME ON 14TH MAY, 1983:

W. M. White

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
T107 JAPAN

MITSUBI O.S.K. LINES, LTD.

TOKYO, JAPAN

ORIGINAL

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22200
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

Part 1
In the
Supreme
Court of
New South
Wales



Tokyo, 30th September, 1981

ADDENDUM No.3

to

Fixture Note dated Tokyo, 22nd June, 1981
Addendum No.1 dated Tokyo, 2nd September, 1981
Addendum No.2 dated Tokyo, 21st September, 1981
Per P.S. "IBARAKI MARU" Voy.No.65

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

10

With regard to the Fixture Note dated Tokyo, 22nd June, 1981
Addendum No.1 dated Tokyo, 2nd September, 1981 and Addendum No.2 dated
Tokyo, 21st September, 1981 covering the shipment of Coal in bulk from
Port Kembla and Wey Point to (Each) one safe berth at one or two safe
port(s), Kashima, Wakayama and Kokura per P.S. "IBARAKI MARU" Voy.No.65,
it is this day mutually agreed between Messrs. Mitsubishi Corporation
Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:

The provisional rate of freight to be US\$10.00 (U.S. Dollars Ten
only) per ton of 2,240 lbs., F.I.C. and free trimming.

All other terms, conditions and exceptions of the aforementioned
Fixture Note shall remain unaltered.

One original Addendum No.3 being made, mutually signed and possessed
by Owners.

20

Charterers:

on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD.

MITSUBISHI CORPORATION

A. Ishiguro
A. Ishiguro
Manager of Queensland Coal Team
Coal Dept.

Owners:

MITSUBI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

T. Kawai
T. Kawai
Manager
Coal & Iron Ore Carriers Section (A)

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

THIS IS THE ANNEXURE MARKED "Z" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE
ON 14TH MAY, 1983: *W. Swell*

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
110 JAPAN

mitsui O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL



Tokyo, 22nd January, 1983

ADDENDUM No.4

to

Fixture Note dated Tokyo, 22nd June, 1981
Addendum No.1 dated Tokyo, 2nd September, 1981
Addendum No.2 dated Tokyo, 21st September, 1981
Addendum No.3 dated Tokyo, 30th September, 1981
Per M.S. "IBARAKI MARU" Voy.No.65

With regard to the Fixture Note dated Tokyo, 22nd June, 1981, Addendum No.1 dated Tokyo, 2nd September, 1981, Addendum No.2 dated Tokyo, 21st September, 1981 and Addendum No.3 dated Tokyo, 30th September, 1981 covering the shipment of Coal in bulk from Port Kembla and Hay Point to (Each) one safe berth at one or two safe port(s), Kashima, Wakayama and Kokura per M.S. "IBARAKI MARU" Voy. No.65, it is this day mutually agreed between Messrs. Mitsubishi Corporation Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

Notwithstanding the clause No.2, No.3 and No.4 of the caption Addendum No.2 dated Tokyo, 21st September, 1981 the loading terms and conditions at Hay Point to be C.Q.D.

All other terms, conditions and exceptions of the aforementioned Fixture Note shall remain unaltered.

One original Addendum No.4 being made, mutually signed and possessed by Owners.

on behalf of Messrs. QUEENSLAND COAL INDUSTRIES, LTD.

Charterers:

mitsubishi corporation

[Signature]
A. Ogata
Manager of Queensland Coal Team
Coal Dept.

Owners:

mitsui O.S.K. LINES, LTD.
Bulk Carrier Department (A)

[Signature]
Manager
Coal & Iron Ore Carriers Section (A)

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

THIS IS THE ANNEXURE MARKED "AB" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE
ME 14TH MAY, 1983:

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO
T105 JAPAN

W. M. Moline
MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 26th May, 1982



ADDENDUM No.6

to

Fixture Note dated Tokyo, 22nd June, 1981
Addendum No.1 dated Tokyo, 2nd September, 1981
Addendum No.2 dated Tokyo, 21st September, 1981
Addendum No.3 dated Tokyo, 30th September, 1981
Addendum No.4 dated Tokyo, 22nd January, 1982
Addendum No.5 dated Tokyo, 24th May, 1982
Port Kembla and Hay Point/Kashima and Wakayama
Coal in bulk

Per M.S. "IBARAKI MARU" Voy.No.65

With regard to the captioned Fixture Note, it is this day mutually agreed between Messrs. Mitsubishi Corporation, Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd. Tokyo as Owners that:-

Notwithstanding the Addendum No.3 dated Tokyo, 30th September, 1981 the final rate of freight to be US\$12.38 (U.S. Dollars Twelve Cents Thirty-Eight only) per ton of 2,240 lbs., F.I.O. and free trimming.

The balance freight between the provisional rate and above final rate to be settled directly between Sunitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd.

All other terms, conditions and exceptions of the aforementioned Fixture Note shall remain unaltered.

One original Addendum No.6 being made; mutually signed and possessed by Owners.

on behalf of Messrs. SUNITOMO METAL INDUSTRIES, LTD.

Charterers:

MITSUBISHI CORPORATION

[Signature]
Manager of Queensland Coal Team
Coal Dept.

Owners:

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

[Signature]
Manager
Coal & Iron Ore Carriers Section (A)

THIS IS THE ANNEXURE MARKED "AC(a)" REFERRED TO IN AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. Neville Solicitor

Part 1
In the
Supreme
Court of
New South
Wales

HORH 83/04/13 17:22 DS01
PAGE IN: = PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	Y E N	0065A(0065A)	CCY.	8BW(8BW)	EX-RATE	PORT: P.KEMBLA	LOCAL AMOUNT	(8924)	S/T NO.	FURI
810917	310000		14,826,501	C	03		262.50		56,481.91	C	2504-9995	8109
810917	310000		14,826,501		03		262.50		56,481.91		2504-9996	8110
810917	310011		2,227,580		03		262.50		8,486.02		8920-1111	8112
810917	310012		4,393,772		03		262.50		16,738.18		8920-1111	8112
810917	310020		682,500		03		262.50		2,600.00		8920-1111	8112
810917	310030		4,971,750		03		262.50		18,940.00		8920-1111	8112
810917	310041		469,626		03		262.50		1,789.05		8920-1111	8112

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH 83/04/13 17:22 DS01
PAGE IN: = PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	Y E N	0065A(0065A)	CCY.	8BW(8BW)	EX-RATE	PORT: P.KEMBLA	LOCAL AMOUNT	(8924)	S/T NO.	FURI
810917	310000		14,826,501	C	03		262.50		56,481.91	C	2504-9995	8109
810917	310000		14,826,501		03		262.50		56,481.91		2504-9996	8110
810917	310011		2,227,580		03		262.50		8,486.02		8920-1111	8112
810917	310012		4,393,772		03		262.50		16,738.18		8920-1111	8112
810917	310020		682,500		03		262.50		2,600.00		8920-1111	8112
810917	310030		4,971,750		03		262.50		18,940.00		8920-1111	8112
810917	310041		469,626		03		262.50		1,789.05		8920-1111	8112

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH 83/04/13 17:22 DS01
PAGE IN: = PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	Y E N	0065A(0065A)	CCY.	8BW(8BW)	EX-RATE	PORT: P.KEMBLA	LOCAL AMOUNT	(8924)	S/T NO.	FURI
ITEM TOTAL	310:		12,745,228									
PORT TOTAL:			12,745,228									

S.DATE	ITEM	IBARAKI-M	0065A(0065A)	8BW(8BW)	PORT: KASHIMA	(0152)			
		Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FUR		
811009	310011	4,204,100	00	1.00	0	0152-0008	8111	Part 1 In the Supreme Court of New South Wales	
811009	310012	126,280	00	1.00	0	0152-0008	8111		
811009	310020	952,648	00	1.00	0	0152-0008	8111		
811009	310030	2,150,000	00	1.00	0	0152-0008	8111	No.11 Affidavit of Hirofumi Ogata	
811009	310041	146,460	00	1.00	0	0152-0008	8111	14th May 1983	
811009	310090	72,610	00	1.00	0	0152-0008	8111		
ITEM TOTAL									(continued)
310:		7,652,098							

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH PAGE IN: = 83/04/13 17:25 DS01 PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	0065A(0065A)	8BW(8BW)	PORT: KASHIMA	(0152)		
		Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI	
811009	310011	4,204,100	00	1.00	0	0152-0008	8111	
811009	310012	126,280	00	1.00	0	0152-0008	8111	
811009	310020	952,648	00	1.00	0	0152-0008	8111	
811009	310030	2,150,000	00	1.00	0	0152-0008	8111	
811009	310041	146,460	00	1.00	0	0152-0008	8111	
811009	310090	72,610	00	1.00	0	0152-0008	8111	
ITEM TOTAL								
310:		7,652,098						

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH PAGE IN: = 83/04/13 17:25 DS01 PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	0065A(0065A)	8BW(8BW)	PORT: KASHIMA	(0152)		
		Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI	
PORT TOTAL:								7,652,098

THIS IS THE ANNEXURE MARKED "AD(a)" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. McNeill
Solicitor

Part 1
In the
Supreme
Court of
New South
Wales

THIS IS THE ANNEXURE MARKED "AD(b)" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED
BEFORE ME ON 14TH MAY, 1983:

W. W. W. W.
W. W. W. W.

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

HORH 83/03/22 11:34 DS01
PAGE IN: = PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

0329 IBARAKI-M 0065A(0065A) 8BW(8BW) PORT: WAKAYAMA-N(0310)

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
811012	310011	1,401,300	00	1.00	0	0321-0031	8112
811012	310012	126,280	00	1.00	0	0321-0031	8112
811012	310020	350,628	00	1.00	0	0321-0031	8112
811012	310030	2,350,100	00	1.00	0	0321-0031	8112
811012	310041	148,475	00	1.00	0	0321-0031	8112
811012	310090	58,390	00	1.00	0	0321-0031	8112
ITEM TOTAL							
310:		4,435,173					

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH 83/03/22 11:35 DS01
PAGE IN: = PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

0329 IBARAKI-M 0065A(0065A) 8BW(8BW) PORT: WAKAYAMA-N(0310)

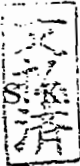
S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
PORT TOTAL:		4,435,173					

THIS IS THE ANNEXURE MARKED "AE" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

Part 1
In the
Supreme
Court of
New South
Wales

W. Akita
S. Akita

MITSUI O. S. K. LINES, LTD.



JAN 30 1982

Date: _____ 19 ____

A72-7

LAYDAYS STATEMENT

No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

M.S. IBARAKI MARU Voy.No.65
~~SOX~~

Port: Kashima & Wakayama

Charter Party dated: 22nd June, 1981
Between Mitsubishi Corporation
And Mitsui C.S.K. Lines, Ltd.

As Charterers
As Owners
Quantity: 105,451 L/T
tons per day ~~day~~ WWDSHINC

Cargo: Coal

Rate of Discharging (Discharge) as per Charter Party

Laytime Allowed: 6 Days 10 Hours 16 Minutes

Arrived:	04:00	7th	Oct., 1981	Kashima	43,036 L/T
Berthed:	17:30	"	"	Per day	30,000 L/T
Notice of Readiness Tendered:	04:00	"	"	Allowed	1.43453 d.
Notice of Readiness Accepted:	07:00	"	"	Wakayama	62,415 L/T
Laytime Commenced:	18:50	"	"	Per day	12,500 L/T
Commenced Discharging (Discharge):	18:50	"	"	Allowed	4.99320 d.
Completed Discharging (Discharge):	15:20	12th	"	Total	6.42773 d.
Laytime Expired:	17:36	15th	"		

(continued)

Date	Day of Week	Description	Laytime Allowed D. H. M.	Laytime Used D. H. M.	All Laytime Saved Lost D. H. M.
1981					
Kashima					
Oct.					
7th	Wed.	N/R Tendered 04:00			
		" Accepted 07:00			
		Discharging & Laytime commenced 18:50	0-05-10	0-05-10	0-00-00
8th	Thu.		1-00-00	1-00-00	0-00-00
9th	Fri.	Discharging completed 03:00	0-03-00	0-03-00	0-00-00
Wakayama					
10th	Sat.	Arrived & Laytime commenced 15:30	0-08-30	0-08-30	0-00-00
11th	Sun.		1-00-00	1-00-00	0-00-00
12th	Mon.	Discharging completed 15:20	1-00-00	0-15-20	0-08-40
13th	Tue.		1-00-00	0-00-00	1-00-00
14th	Wed.		1-00-00	0-00-00	1-00-00
15th	Thu.	Laytime Expired 17:36	0-17-36	0-00-00	0-17-36
Total			6-10-16	3-08-00	3-02-16

Demurrage or Despatch Money

Time: 3 days 02 hours 16 minutes (3.09444 days)

Amount: @ _____ per day

(@ ex. ¥3,080,000. - Total: ¥9,530,875. -

Charterers:

SUMITOMO METAL INDUSTRIES, LTD.

Y. Minami
Manager, Ocean Transportation Section

P. 027 (54. 9. 100x100 N)

Owners:

Mitsui O. S. K. Lines, Ltd.
Bulk Carrier Department (A)

K. Murakami
Manager

Coal & Iron Ore Carriers Section (A)

Part 1
 In the
 Supreme
 Court of
 New South
 Wales
 No. 11
 Affidavit
 of Hirofumi
 Ogata
 14th May
 1983
 (continued)

THIS IS THE ANNEXURE MARKED "AF" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

CIORA



MITSUI O.S.K. LINES. LTD.

W. Stewart
White

Tokyo, DATE: APR. 16 1982

P1

LAYDAYS STATEMENT

Name of Vessel M.S. IBARAKI MARU VOY. 88W-65A
 Port PORT KEMBLA
 Charter Party Dated JUN. 22 1981 At TOKYO
 Between MITSUI O.S.K. LINES, LTD. Owners
 And MITSUBISHI CORPORATION Charterers
 Cargo COAL IN BULK Quantity 55,913.000 L/T
 Rate of LOADING as per Charter Party 10,000.000 L/T Per DAY WWSASHEX UU
 Lay time allowed 05 Days 14 Hours 11 Minutes (05.59130 days)

Arrived; AUG. 31 1981 Hour 21:00
 Free Pratique granted; SEP. 14 1981 16:45
 Berthed; SEP. 01 1981 09:00
 N/R tendered; SEP. 01 1981 09:00
 N/R accepted; SEP. 02 1981 09:00
 Lay time Commenced; SEP. 14 1981 17:42
 Commenced LOADING SEP. 17 1981 10:12
 Completed LOADING

DATE	Day of Week	DESCRIPTION	Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time LOST DY-HR-MN
AUG. 31ST	MON	PORT KEMBLA ** LOADING ** 21:00 ARRIVED	0-00-00	0-00-00	
SEP. 1ST	TUE	09:00 N/R TENDERED 09:00 N/R ACCEPTED	0-00-00	0-00-00	
2ND	WED	09:00 LAYTIME COMMENCED	0-15-00	0-15-00	
3RD	THU		1-00-00	1-00-00	
4TH	FRI		1-00-00	1-00-00	
5TH	SAT		0-12-00	0-12-00	
6TH	SUN		0-00-00	0-00-00	
7TH	MON	00:00-08:00 NO COUNT EXPT. HR --- 08-00	0-16-00	0-16-00	
8TH	TUE		1-00-00	1-00-00	
9TH	WED	19:11 EXPIRED	0-19-11	1-00-00	0-04-49
10TH	THU			1-00-00	1-00-00
11TH	FRI			1-00-00	1-00-00
12TH	SAT	12:00-24:00 WORKED WORK. HR --- 12-00 *A		1-00-00	1-00-00
13TH	SUN	00:00-24:00 WORKED WORK. HR --- 24-00 *A		1-00-00	1-00-00
14TH	MON	16:45 ARRIVED AT BERTH **** CONTINUE *****		1-00-00	1-00-00
TOTAL					

Remarks

Charterers;

Owners;

MITSUI O.S.K. LINES. LTD.

290.

THIS IS THE ANNEXURE MARKED "AG" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

CIOBA



MITSUI O.S.K. LINES. LTD. *W. Hewitt*

Tokyo, DATE: _____

P2

LAYDAYS STATEMENT *Polinto*

Name of Vessel _____
 Port _____
 Charter Party Dated _____ At _____
 Between _____ Owners _____
 And _____ Charterers _____
 Cargo _____ Quantity _____
 Rate of _____ as per Charter Party Per _____
 Lay time allowed _____ Days _____ Hours _____ Minutes (_____ days)

Arrived; _____ Hour _____
 Free Pratique granted; _____
 Berthed; _____
 N/R tendered; _____
 N/R accepted; _____
 Lay time Commenced; _____
 Commenced _____
 Completed _____

DATE	Day of Week	DESCRIPTION	Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time LOST DY-HR-MN
SEP. 14TH	MON	17:42 ***** CONTINUE ***** LOADING COMMENCED			
15TH	TUE			1-00-00	1-00-00
16TH	WED			1-00-00	1-00-00
17TH	THU	08:57-09:05 MASTERS INSTRUCTION EXPT.HR --- 00-08 10:12 LOADING COMPLETED.		0-10-04	0-10-04
TOTAL		** DEMURRAGE ** • 6,500.00 X 07.62014 DAYS = 49,530.91 US.\$	5-14-11	13-05-04	7-14-53

Remarks

Charterers;

Owners;

MITSUI O.S.K. LINES. LTD.
Bulk Carrier Department (A)

[Signature]

Manager

Bulk Carrier Department Section

9001

(continued)

No. 11
 Affidavit
 of Hirofumi
 Ogata
 14th May
 1983
 Part 1
 In the
 Supreme
 Court of
 New South
 Wales

291.

Agreement

W. W. W. W.
Mitsui

It is this day mutually agreed between Sumitomo Metal Industries, Ltd. (hereinafter referred to as A) and Mitsui O.S.K. Lines, (hereinafter referred to as B) Ltd. with regards to compensation for loss due to extraordinary detention of the vessels which were built with A's guarantee for cargo and freight and are owned or beneficially owned by B that :

Article 1 Names of vessels to which this agreement is applied.

Santiago Maru, Kishu Maru, Dover Maru, Wakaura Maru,
Tasman Maru, Kimi Maru, Hayatomo Maru, Mifunesan Maru,
Adria Maru, Ibaraki Maru, Unique Harriet, Arafura Maru,
Kinokuni Maru, Laura, Mosnes.

10

Article 2 Period of contract

From 10th February, 1973 to the time when the original transport contract of the respective vessel terminate.

Article 3 Definition of Extraordinary detention

a. When the detention exceeds below-mentioned days due to congestion in loading ports, loss of productive efficiency and any other cause which is not attributable to B (except Act of God), it shall be deemed to be extraordinary detention. 20

laytime used > laytime allowed + 6 days

b. Extraordinary detention shall be recognized by both parties hereto.

Article 4 Compensation for loss due to extraordinary detention in loading ports

a. If the extraordinary detention occurs, A shall pay to B demurrage at the rate of demurrage in discharging ports for the period which exceeds the allowed laytime.

b. Such laytime shall commence from the time when vessel arrives at the port whether in berth or not and tenders N/R after free pratique granted and shall cease at time when discharging or draught survey completes. 30

c. If such compensation money is paid, demurrage for compensated period under contract of Affreightment shall belong to A.

Article 5 Adjustment of loss

Compensation money shall be paid in Tokyo in cash of Yen upon fixing the amount of loss.

If demurrage in discharging port is decided to be paid in foreign currency, such currency shall be exchanged by T.T.S. rate on the day of completion of loading. 40

Article 6 Others

Any other terms than stipulated herein shall be decided by mutual concession of A and B.

IN WITNESS WHEREOF, the parties hereto execute two original copies of this Agreement, each one of which shall be kept by both parties hereto respectively.

18th March, 1974

- A. Kenichiro MORITA (Seal)
General Manager & Managing Director
No. 1 Raw Material Dept.
Sumitomo Metal Industries, Ltd.
- B. Kiichiro AIURA (Seal)
General Manager
Bulk Carrier Dept (A)
Mitsui O.S.K. Lines, Ltd.

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

Part 1
In the
Supreme
Court of
New South
Wales

THIS IS THE ANNEXURE MARKED "A1" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

Wentworth
Mitsui

積地不可抗力・異常滞船補填問

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

83年 / 月 7 日

(continued)

契約先	大阪商船三井船舶(株)		積地	揚地	切 日
船 名	茨城丸 V.65A		PK/HF	底・和	1981-10-12
内地出港日時	(於: 二井戸良) 1981-6-14 09:00 他 V. SYDNEY 出帆(彼理係)				
本船配給時の積地状況	PKで長期滞船予想した。				
停泊中積地状況	予想通り、滞船を余儀なくされた。				
補 填 認 定	不可抗力 ・ 異常滞船				
積地入港日時	81-8-31 21:00	積高 (L/T)	55,913 LT		
N/R 提示日時	81-9-01 09:00	積ラシ (L/T)	10,000 LT WWSASHEX		
積地出帆日時 積地完了	81-9-17 10:12	揚地 Dem Rate	¥ 3,080,000/DAY (倉取元代船)		
総停泊日数	16D 11H 12M (16,500D)				
許容停泊日数	5,59130 D	補填金額	¥ 32,212,796-		
対象日数	10,45870 D		(10,45870 x ¥ 3,080,000)		
積地滞船料	US \$ 49,530.91	換算率	FEP.17 TTS ¥226.	¥ 11,231,134-	
(総補填金額) - (積地滞船料)			¥ 20,981,662-		
PK DEM RATE ¥6,500/DAY. DEM.82年6A30日入金済			第一原料部外航課		
			部長	次長	課長
			副長	担当	

THIS IS THE ANNEXURE MARKED "AJ" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. W. W. Solicitors

Please admit to compensate for extraordinary detention or force majeure at the loading port

Part 1
In the
Supreme
Court of
New South
Wales

No
1983, Jan. 7

No.11
Affidavit
of Hirofuru
Ogata
14th May
1983

(continued)

Carrier	Mitsui O.S.K. Lines	Loading Port	Discharging Port	Completion of Discharge
Vessel	IBARAKI MARU V. 65A	PK/HP	Kashima, Wakayama	1981-10-12
Sailing Time	(from: Mitsui-Yura Dockyard) 1981-6-14 09:00 (After Temporary repair) sailed from SYDNEY			
Circumstances of Loading Port at the time of sailing	Long detention was anticipated at port Kashima ^{Kembla}			
Circumstances of loading port after vessel's arrival	As anticipated, the vessel was detained for a long time			
Cause of Compensation	force majeure - extraordinary detention			
Entrance into loading port	81-8-31 21:00	Cargo Quantity (L/T)	55,913 LT	
Tender of N/R	81-9-01 09:00	Term of loading (L/T)	10,000 LT WWDASHEX	
Completion of loading	81-9-17 10:12	Demurrage Rate at discharging port	¥3,080,000/DAY (same as KATEKI MARU)	
Whole laytime	16 D 1 H 12 M (16,050,000 D)			
Allowed laytime	5,59130 D		Amount of Compensation	¥ 32,212,796 -
Period to be compensated	10,45870 D		(10,45870 x ¥3,080,000)	
Demurrage at loading port	U #	49,530.91	Ex. Rate	SEP. 17 TTS ¥226.95
(Amount of compensation) - (Demurrage at loading port)				¥ 20,981,662 -
PK DEM RATE \$6,500/DAY DEM. was received on 1982-6-30			No. 1 Raw Material Dept. General Manager Deputy Manager Assistant Person in charge Manager General Manager Manager	

Part 1
In the
Supreme
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New South
Wales

No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

No. 83-22

(continued)

THIS IS THE ANNEXURE "AK" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

DEBIT NOTE

(請求書)

Waverille
Adinter



MESSRS. SUMITOMO METAL INDUSTRIES

DATE 11th Jan. 1983

Dr. to MITSUI O.S.K. LINES, LTD.

担当課 税関課

LINE (航路名)	VESSEL (船名)	Voy.No.(次号)	SAILING DATE (出帆日)	LOADING PORT (積地)
				CARGO (品名)
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	Ex. @ JPY JAPANESE YEN (円貨)
	茨城丸	Voy65A, Voy66	異常滞船補填	¥53,932,387-
TOTAL (合計)				¥53,932,387-

- (注) 1. 外貨請求分は Copy 1部を財務部海外課へ回付のこと。
2. 本請求書はタイプにて作成のこと。
3. 感圧紙に付カーボン不要。

MITSUI O.S.K. LINES, LTD.

手次期専用船-部鉄-部原料-部長

DEBIT NOTE

OFFICE
COPY

No 83-2

MESSRS. SUMITOMO METAL INDUSTRIES

DATE 11th Jan. 1983

Dr. to MITSUI O.S.K. LINES, LTD.

Coal & Iron Ore Carrier Sect. (A)
Section in Charge: Bulk Carrier Dept. (A)

LINE	VESSEL	Voy. No.	SAILING DATE	LOADING PORT	CARGO
CARGO					
DESTINATION	TONNAGE	RATE	FREIGHT	By C ¥	JAPANESE YEN
	IBARAKI MARU	Voy 65A Voy 66A	Compensation Money for Extraordinary Detention		¥53,932,387
TOTAL					¥53,932,387

for MITSUI O.S.K. LINES, LTD
Manager, Coal & Iron Ore Carrier Sect. (A)
Bulk Carrier Dept. (A)

KAWAHARA

297.

THIS IS THE ANNEXURE MARKED "AL" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983

W. Shuttleworth

(continued)

No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

Part 1
In the
Supreme
Court of
New South
Wales

THIS IS THE ANNEXURE MARKED "AM" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

Part 1
In the
Supreme
Court of
New South
Wales

W. Weir
White

No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

請求書

昭和56年11月10日

大阪商船三井船舶株式会社 御中

中和海事株式会社

下記の通り御請求申し上げます

東京都千代田区内京町1-2-2 大蔵ビル2号館
電話 (591) 4-4-26 寄(代) 420 番

A21-383

支払済

'81.11.10

月日	摘要	借方	貸方
9.24	茨城丸 No. 64 P. Kambata / H. Point / 船積 Coal 運賃年数料		
	Vt. 913 4t 0.510 ²² 225V49.130 ²²		
	22,182 4t " 48221.820 ²²		
	3,024 4t " 4830.240 ²²		
	21,412 4t " 48214.120 ²²		
	2,920 4t " 4829.200 ²²		
	御請求	350,000.00	
	(MSK.)		350,000.00
		350,000.00	350,000.00

THIS IS THE AFFIDAVIT MARKED "AN" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. W. W. W.
W. W. W. W.

DATA-KUBUN										
*** VESSEL-YUSHU BETU KURIKOSHI TOTAL ***										
BBW	0328	KINOKUNI-M	0048A			010	76,731	133.72	10,260,497	81-11
BBW	0328	KINOKUNI-M	0048A			030	45,742	1,429.76	65,399,749	81-11
*** TOTAL ***							48,392	1,563.48	75,660,246	
*** VESSEL-YUSHU BETU KURIKOSHI TOTAL ***										
BBE	0329	IBARAKI-M	0062B			010	72,096	102.62	7,398,516	81-10
BBW	0329	IBARAKI-M	0065A	81-09-30		010		102.39	7,381,909	81-10
*** ZANYU ***							010	205.01	14,780,425	
BBW	0329	IBARAKI-M	0065A	81-10-12		010	72,096	110.48	7,965,166	81-10
*** ZANYU ***							010	94.53	6,815,259	
	0329	IBARAKI-M		81-10-24	0309	M218		.00	28,948	81-10
	0329	IBARAKI-M		81-10-24	0309	M217		.00	3,902,174	81-10
BBE	0329	IBARAKI-M	0062B			030	46,379	1,321.28	61,279,592	81-10
BBW	0329	IBARAKI-M	0065A	81-09-30		030		1,453.90	67,430,428	81-10
*** ZANYU ***							030	2,775.18	128,710,020	
BBW	0329	IBARAKI-M	0065A	81-10-12		030	46,379	1,865.22	86,507,038	81-10
*** ZANYU ***							030	909.96	42,202,982	
	0329	IBARAKI-M		81-10-24	0309	M218		.00	872,683	81-10
	0329	IBARAKI-M		81-10-24	0309	M217		.00	74,003,533	81-10
*** VESSEL-YUSHU BETU KURIKOSHI TOTAL ***										
BBW	0329	IBARAKI-M	0065A			010	74,478	144.29	10,746,381	81-11
BBW	0329	IBARAKI-M	0065A			030	48,579	2,410.06	117,079,198	81-11
*** TOTAL ***							50,042	2,554.35	127,825,579	
*** VESSEL-YUSHU BETU KURIKOSHI TOTAL ***										
BA9	0330	ARAFURA-M	0036A			010	69,781	170.94	11,928,415	81-10
	0330	ARAFURA-M		81-09-03	0152	M018		.00	33,974	81-10
BA9	0330	ARAFURA-M	0036A	81-09-30		010		36.33	2,535,144	81-10
*** ZANYU ***							010	207.27	14,429,585	
BA9	0330	ARAFURA-M	0036A			030	46,951	2,713.47	127,399,225	81-10
	0330	ARAFURA-M		81-09-03	0152	M018		.00	2,520,022	81-10
BA9	0330	ARAFURA-M	0036A	81-09-30		030		1,231.89	57,838,467	81-10
*** ZANYU ***							030	3,945.36	182,717,670	

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82-01 *** CHDZO NENRYO MOTOCHQ *** LISTED = 82-02-24 PAGE 108

LINE	VESSEL	VOYAGE	B-DATE	PORT	OILER	COM	TANKA	SURYU (K/T)	KINGAKU (YEN)	F-DATE	DATA-KUBUN
BBW	0329 IBARAKI-M	0065A				010	74,478	144.29	10,746,381	82-01	KURIKOSHI
	0329 IBARAKI-M		82-01-13	0720	I117	010	72,634	99.67	7,239,476	82-01	HOYU
	0329 IBARAKI-M		82-01-13	0720	I118	010		.00	21,937-	82-01	HOYU
BBW	0329 IBARAKI-M	0066A	82-01-14			010	73,635	92.96-	6,845,110-	82-01	ZANYU-UNKOHI 4-1
						010		151.00	11,118,810		
	0329 IBARAKI-M		81-01-27			010	84,000	8.17-	686,280-	82-01	CHONEN-DEMPYO
BBE	0329 IBARAKI-M	0063B	81-02-04	0005		010	84,000	8.17	686,280	82-01	CHONEN-DEMPYO
	0329 IBARAKI-M		81-08-31			010	84,000	21.38-	1,795,920-	82-01	CHONEN-DEMPYO
BBW	0329 IBARAKI-M	0065A	81-10-12	0005		010	84,000	21.38	1,795,920	82-01	CHONEN-DEMPYO
BBW	0329 IBARAKI-M	0065A				030	48,579	2,410.06	117,079,198	82-01	KURIKOSHI
	0329 IBARAKI-M		82-01-13	0720	I118	034		.00	242,059	82-01	HOYU
	0329 IBARAKI-M		82-01-13	0720	I117	034	44,240	1,099.77	48,654,067	82-01	HOYU
BBW	0329 IBARAKI-M	0066A	82-01-14			030	47,289	1,586.83-	75,039,604-	82-01	ZANYU-UNKOHI 4-1
						030		1,923.00	90,935,720		
	0329 IBARAKI-M		81-01-27			030	44,400	34.49-	1,531,356-	82-01	CHONEN-DEMPYO
BBE	0329 IBARAKI-M	0063B	81-02-04	0005		030	44,400	34.49	1,531,356	82-01	CHONEN-DEMPYO
	0329 IBARAKI-M		81-08-31			030	44,400	88.57-	3,932,508-	82-01	CHONEN-DEMPYO
BBW	0329 IBARAKI-M	0065A	81-10-12	0005		030	44,400	88.57	3,932,508	82-01	CHONEN-DEMPYO
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***											
BBW	0329 IBARAKI-M	0065A				010	78,635	151.00	11,118,810	82-02	
BBW	0329 IBARAKI-M	0065A				030	47,288	1,923.00	90,935,720	82-02	
*** TOTAL ***							49,207	2,074.00	102,054,530		
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***											
BA9	0330 ARAFURA-M	0036A				010	69,879	211.68	14,791,948	82-01	KURIKOSHI
	0330 ARAFURA-M		81-11-15	4430	M212	010		.00	5,089-	82-01	CHONEN-SHUSEI
	0330 ARAFURA-M		82-01-12	0152	I118	010		.00	10,974-	82-01	HOYU
	0330 ARAFURA-M		82-01-12	0152	I117	010	72,637	49.86	3,621,699	82-01	HOYU
BAJ	0330 ARAFURA-M	0036B	82-01-17			010	70,343	70.50-	4,959,182-	82-01	ZANYU-UNKOHI 4-1
						010		191.04	13,438,402		
BA9	0330 ARAFURA-M	0036A				030	44,481	5,547.10	246,740,382	82-01	KURIKOSHI
	0330 ARAFURA-M		81-11-15	4430	M212	034		.01-	165,491-	82-01	CHONEN-SHUSEI
	0330 ARAFURA-M		82-01-12	0152	I118	034		.00	525,777	82-01	HOYU
	0330 ARAFURA-M		82-01-12	0152	I117	034	44,240	2,388.81	105,681,372	82-01	HOYU
BAJ	0330 ARAFURA-M	0036B	82-01-17			030	44,454	3,967.48-	176,370,356-	82-01	ZANYU-UNKOHI 4-1
						030		3,968.42	176,411,684		

THIS IS THE ANNEXURE MARKED "AO" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14th MAY, 1983:

W. Strevell
Notary

RECORD OF POSITION FOR TEMPORARY REPAIR AT SYDNEY (1)

H.S. "IPARAKI MARU"

DATE: 2nd Sep. 1901

DATE	TIME	LOCATION (FA)	TEMPERARY OIL LUBING	HULL	DISEASE	REMAINING			REMARKS
						DO	KT	FW	
6th June '01	1615	31-51.50 150-50.00				207.71	2132.54	703	Anchored at 0720 J.1 from Wollongong Staff Flag L.P. and waited berthing
10th July '01	0542	34-24.58 150-50.28				109.34	2079.09	503	Collision with dragging Mineral Transporter at above position.
10th July '01	0555	34-24.58 150-50.28				102.33	2079.00	503	Comm'd hoisting S' chain due to check chain and anchor damage.
10th July '01	0415	31-26.01 150-57.00				180.06	2079.63	503	Let go S' anchor at 0427 deg. 2.10 from above L.P.
10th July '01	2015	34-24.58 150-57.28	Temporary oil - 0.150			107.61	2079.37	570	Left Pt. Kembla for Sydney for temporary repairs.
11th July '01	0015	33-54.25 151-20.18				106.13	2072.44	560	Anchored temporarily at 0055 deg. 2.10 from Bacaria L.P. and waited berth.
11th July '01	1000	33-50.20 151-20.11	Temporary oil - 0.150			105.34	2071.09	564	Shifted temporary anchorage to good area.
11th July '01	1100	33-47.40 151-20.20				105.04	2070.09	564	(052 deg. 2.10 from North Point)
13th July '01	0715	33-17.40 151-20.00	Temporary oil - 0.150			105.10	2066.09	545	Weighted anchor 0905 pratique granted.
13th July '01	0945	No. 20 Pyrmont				101.97	2066.60	543	Berthed noonest entering formation, concerned persons embarked.
13th July '01	1030	No. 20 Pyrmont				101.93	2066.56	543	Temporary repairs commenced.
20th July '01	1315	No. 20 Pyrmont				173.50	2054.70	650	Temporary repairs ceased due to A.C.T.U. black ban.
22nd Aug '01	0010	No. 20 Pyrmont				142.84	1999.04	592	Temporary repairs resumed.
27th Aug '01	2130	No. 20 Pyrmont				120.06	1974.35	610	Temporary repairs completed, then waited tug strike solution.
31st Aug '01	0204	No. 20 Pyrmont				120.80	1945.92	664	Tug/pilot strike settled, then waited tug.
31st Aug '01	1600	No. 20 Pyrmont				120.76	1942.76	656	Left for port Kembla.
31st Aug '01	2100	34-24.03 151-00.60				127.14	1936.58	653	Anchored at 073 deg. 5.10 from Wollongong L.P. and waited berthing.

THIS IS THE ANNEXURE "AP" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14th MAY, 1983

W. Neville
Solitor

(continued)
Part 1
In the
Supreme
Court of
New South
Wales
No. 11
Affidavit
of Hirofumi
Ogata
14th May
1983

BARE BOAT CHARTERPARTY

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

THIS CHARTERPARTY made and concluded in the City of Tokyo on the 26th day of June 1979 between the Owners of the Vessel Mitsui O.S.K. Lines, Ltd. (hereinafter referred to as "Owners") and the Charterers thereof Matsuoka Steamship Co. Ltd. (hereinafter referred to as "Charterers"), and consisting of the clauses inscribed on this and reverse side of this paper, has been signed and sealed in duplicate, each party retaining one copy thereof.

Owners: Mitsui O.S.K. Lines, Ltd.

Charterers: Matsuoka Steamship Co., Ltd.

Brokers:

Clause 1. Some of the essential terms and conditions of the Charter are as follows:

① Description of the Vessel:

Name of the Vessel:	I baraki	Maru.
Gross tonnage:	63,139.50	tons.
Net tonnage:	38,926.47	tons.
Number and Call Sign:	111794JHHE	
Port of Registry:	OSAKA	
Qualification and Class:	NK	
When Built:	September 1972	
Date of Survey:		
	Intermediate or Annual Survey 23rd April, 1980	
	Special Survey	
Summer Deadweight Capacity:	109,311.2 tons.	
Measurement Loading Capacity:		
	Bale Capacity 127,404.1	cubic metres.
	Grain Capacity	cubic metres.
Kind and Horse Power of Main Engine:	Diesel B 9K84EF 23,000HP	
Service Speed (when fully loaded):	About 14 knots per hour.	
Summer Load Line:	15.62	metres.
Fuel Consumption:	About 76.0 Japanese superior quality coals/ oil in 24 hours.	

② Period: For 12 months from the time of delivery, but Charterers shall be at liberty to extend this period by days and/or curtail this period by days.

③ Date of Delivery: The 10th day of July 1979 or after.

④ Port of Delivery: Between Port of Pohan and Port of to be indicated by Owners.

⑤ Port of Redelivery: Between port of Tokyo and Port of Wakamatsu.

THIS AND THE FOLLOWING SEVEN (7) PAGES ARE ANNEXURE "AQ" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

W. M. M. M. M.

- ⑥ Duty of Owners to give Notice: Owners shall give to Charterers a 15 days' previous notice of the port and date of the delivery.
- ⑦ Trade Limits: world wide within institutewarranted limit
- ⑧ Hire: per calendar month. To be fixed later. —
 Time and Place of Payment of Hire: Each months' hire shall be paid in advance at Tokyo on every 1st and 16th day.
- ⑨ Insurance
- | | |
|-------------------|-----------------|
| 1Hull& Machinery | Insured value ¥ |
| | Sum insured ¥ |
| 1Disbursements | Sum Insured ¥ |
| 1Coverage | |
| 1Insurance period | |

Part 1
 In the
 Supreme
 Court of
 New South
 Wales

No.11
 Affidavit
 of Hirofumi
 Ogata
 14th May
 1983

(continued)

Special Condition

1 If Owners sell the vessel to third party during the period of this contract, Owners shall have liberty to cancel this contract without compensation at any time.

Part 1
In the
Supreme
Court of
New South
Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

(continued)

- Clause 2. [Seaworthiness] Owners shall guarantee that the Vessel has a tight and strong hull, is supplied with engines in a thoroughly efficient state and proper equipment, and is fit for making a safe voyage. Owners shall at the expiration of the Charter period re-deliver the vessel in the same condition in which she was delivered.
2. Charterers shall make no claim upon Owners for any equipment which Charterers provided.
 3. Charterers shall not be liable for fair wear and tear to hull, machinery and equipment.
- Clause 3. [Bottom Inspection at delivery and re-delivery] Owners shall at delivery and Charterers shall at re-delivery make bottom inspection at their respective own expense.
2. Expense for repair of damage which is found by bottom inspection shall be borne by the parties who make the inspection.
- Clause 4. [Payment of Hire] When the period of payment does not exceed one calendar month, the hire shall be paid by pro rata.
2. When hire is refunded under clause 11, the preceding paragraph shall apply.
- Clause 5. [Restriction for voyage and cargo] The vessel unless the consent of Owners be obtained in advance shall not be used on any service which will bring her within War Zone or outer institute warrantied limit.
- Clause 6. [Manning] The vessel shall be manned by Charterers.
- Clause 7. [Structural Change] Charterers may with consent of Owners change vessels structure at their expense, in which case at owner request Charterers shall remove such change at time of re-delivery.
- Clause 8. [Repair, Inspection and costs] Charterers shall bear all costs for annual survey, repair, operation, crew and any other costs required for maintenanc of the vessel during period of contract.
2. Period for annual survey shall be counted in the period of contract.
 3. Charteres shall make statutory periodical inspection.
And Charterers shall bear all cost and expense for the inspection, survey and repair which should have been done within contracting period.

4. Charterers shall inform Owners of the place time and method of inspection and repair in advance.
- Clause 9. [Insurance] During charter period the vessel shall be kept insured by Charterers at their expense and policy thereof shall be submitted to Owners.
2. Charterers shall be liable for the damage sustained by the third parties in connection with operation of the vessel, unless it is covered by insurance.
3. Charterers shall be liable for damage to the vessel which is not covered by insurance by the reason of excepted peril.
- 10 Clause 10. [Stores, Insurance Premium and Tonnage Due] The charterers and the Owners respectively shall at the time of delivery and re-delivery take over and pay for all stores, bunkers and water at the price decided by mutual concession.
2. Advanced payment of insurance premium and tonnage due shall be taken over and pay pro rata in calender day at time of delivery and re-delivery.
- Clause 11. [Total Loss] Should the vessel be missing for 60 days or longer, this charter shall terminate at the time when she was last heard.
- 20 2. Should the vessel be lost or unable to repair due to sinking, fire, aground, stranding, collision, breakage of hull and machinery and any the cause whatsoever within charter period, Charter shall terminate at the time of accident.
- Clause 12. [General Average] General Average shall be adjusted according to the York-Antwerp Rules 1974.
2. Charter Hire shall not contribute General Average.
- Clause 13. [Abandon] Abandon of the vessel due to casualty shall be decided by consent of parties hereto.
- 30 Clause 14. [Sale, Assignment or Mortgage] Owners shall not sell, assign or mortgage to the third party during charter period.
- Clause 15. [Sub-demise] Charterers shall not sub demise the vessel without Owners' consent.
- Clause 16. [Requisition] If the vessel is requisitioned by Japanese government, the party received order shall inform opponents. In such case the vessel shall be requisitioned under Charterers' name and at the expense of Charterers account shall be counted in Charter period.
2. Charterers shall not be responsible for damage to the vessel due to war risk during Requisition period unless government indemnify it.

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Clause 17. [Breach of Contract] The party who breaches this contract shall be responsible for any loss in consequence thereof.

2. If the breach of contract provided in the preceding paragraph arise from wilful misconduct or gross negligence of one party, another party may cancel the contract immediately without pre notice.

Clause 18. [Arbitration.] If any dispute arises concerning this Charter between the parties thereto, either of the parties shall submit the same to arbitration of the Japan Shipping Exchange, Inc., (Tokyo), and the award given by the arbitrators appointed by the said Exchange shall be final and binding on both parties.

2. All matters relating to the appointment of arbitrators and arbitration procedure shall be decided by the Maritime Arbitration Rules of the said Exchange.

(FREE TRANSLATION OF (31))

A D D E N D U M

T O

M/V "IBARAKI MARU"

BARE - BOAT CHARTER PARTY DATED TOKYO, JUNE 26, 1979

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that :-

1. From 1200 hours 14th July, 1979 to 2400 hours 31st March, 1980 hire shall be paid at the rate of ¥232 monthly per 1.01605 K/T deadweight on summer draft.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

14th July, 1979

Owners : Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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A D D E N D U M

T O

M/V "IBARAKI MARU"

BARE-BOAT CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

No.11
Affidavit
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(continued)

With reference to the captioned Charter Party it is ^{this day} mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that:-

1. Charter period shall be extended from 0000 hours on 1st April, 1980 till 2400 hours on 31st March, 1981.
2. From 0000 hours on 1st April, 1980 to 2400 hours on 31st March, 1981 hire shall be paid at the rate of ¥187 monthly per 1.01605 K/T deadweight on summer draft.
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1980

Owners: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

(FREE TRANSLATION OF (33))

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(continued)

With reference to the captioned Charter Party it is ^(this day) mutually agreed between Mitsui O.S.K. Lines, Ltd. as Owners and Matsuoka Steamship Co., Ltd. as Charterers that:-

1. Charter period shall be extended from 0000 hours on 1st April, 1981 till 1200 hours on 3rd March, 1982.
2. From 0000 hours on 1st April, 1981 to 1200 hours, hire shall be paid at the rate of ¥544,000 daily. ^(on 31st March, 1982)
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1981

Owners: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Charterers: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

THIS AND THE FOLLOWING THIRTEEN (13) PAGES ARE ANNEXURE "AR" REFERRED TO IN THE AFFIDAVIT OF H. OGATA AFFIRMED BEFORE ME ON 14TH MAY, 1983:

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Issued by The Kobe Shipping Exchange in 1927.

Amended in 1929.

Adopted by The Japan Shipping Exchange, Inc., in December 1933.

Amended in July 1935.

Amended in December 1938.

Amended in November 1946.

Amended in August 1947.

Amended in August 1951.

Amended in May 1959.

Amended in July 1971.

W. A. Williams
Molitor

TIME CHARTER PARTY

THIS CHARTERPARTY made and concluded in the City of Tokyo on the 26th day of June 19 79 between the Owners of the Vessel Matsuoka Steamship Co., Ltd. (hereinafter referred to as "Owners") and the Charterers thereof Mitsui O.S.K. Lines (hereinafter referred to as "Charterers"), and consisting of the clauses inscribed on this and reverse side of this paper, has been signed and sealed in duplicate, each party retaining one copy thereof.

Owners: Matsuoka Steamship Co., Ltd.

Charterers: Mitsui O.S.K. Lines, Ltd.

Brokers:

Clause 1. Some of the essential terms and conditions of the Charter are as follows:

① Description of the Vessel:

Name of the Vessel: I baraki Maru.

Gross tonnage: 63,139.50 tons.

Net tonnage: 38,926.47 tons.

Number and Call Sign: 111794JHHE

Port of Registry: OSAKA

Qualification and Class: NK

When Built: September 1972

Date of Survey:

Intermediate or Annual Survey 23rd April, 1980

Special Survey

Summer Deadweight Capacity: 109,311.2 tons.

Measurement Loading Capacity:

Bale Capacity 127,404.1 cubic metres.

Grain Capacity cubic metres.

Kind and Horse Power of Main Engine: Diesel B 9K84EF 23,000HP

Service Speed (when fully loaded): About 14 knots per hour.

Summer Load Line: 15.62 metres.

Fuel Consumption: About 76.0 Japanese superior quality coals/
oil in 24 hours.

Cabins: - rooms capable of holding - persons in total.

Standing Bunker: 6,678.5
Wireless Telegraph: Installed/~~XXXXXX~~
Kind, Power, and Number of Winches: About
Power and Number of Derricks: About

② Trade Limits:

world wide within institute warrantied
limit "E"

- ③ Port of Delivery: Between Port of Pohan and Port of
to be indicated by Owners.
- ④ Date of Delivery: The 10th day of July 1979 or after.
- ⑤ Cancelling Date: The - day of - 19 - , 5.00 p.m. If
the Vessel is not ready for delivery by this time, Charterers shall be
at liberty to put this Charter in force or without paying any penalty
cancel it.
- ⑥ Duty of Owners to give Notice: Owners shall give to Charterers a
days' previous notice of the port and date of the delivery.
- ⑦ Period: For 12 months from the time of delivery, but Charterers
shall be at liberty to extend this period by days and/or curtail
this period by days.
- ⑧ Hire: per calendar month. to be decided later
- ⑨ Time and Place of Payment of Hire: Each half months' hire shall be
paid in advance at Tokyo on 1st and 15th.
- ⑩ Port of Redelivery: At any port between the Port of Tokyo and Port of
Wakamatsu, inclusive, at the option of Charterers.
- ⑪ Duty of Charterers to give Notice: Charterers shall give to Owners a
15 days' previous notice of the port and time of redelivery.
- ⑫ Charterers' Notice of extension of Off Hire hours: Within 30 days
after the close of Off Hire (see Clause 16).
- ⑬ Charterers' Notice of Rescission owing to a long-time Off Hire: Within
30 days after Off Hire has continued for one third of the
remaining period of Charter (see Clause 17).
- ⑭ Places of Commencement and Termination of Off Hire owing to Inter-
mediate or Annual and Special Surveys: Between Port of Tokyo
and Port of Wakamatsu
- ⑮ Remaining Fuel: To be not less than tons and not more than
tons at tons at the time of delivery and redelivery.
- ⑯ The remaining Boiler Water: To be not less than tons and not
more than tons at the time of delivery and redelivery.
- ⑰ Cost of Fuel: To be at the rate of per ton at the time of delivery
and per ton at the time of redelivery.
- ⑱ Cost of Boiler Water: To be at the rate of per ton at the time of
delivery and per ton at the time of redelivery.
- ⑲ Cost of Cooking Fuel: To be for monthly borne by Owners.

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20 Agreement relating to Cargo Handling Gear:

SPECIAL CONDITIONS:

- 1 Time lost due to crew strike shall be off-hire.
- 1 Time lost due to crew injure, stowaway shall be off-hire.
1. Compensatin money for stevedore's personal injury shall be born by Owners.
- 1 Commercial custom shall be applied to matters not stipulated herein.
- [Reverse Side]
- Clause 2. [Seaworthiness.] Owners shall guarantee that the Vessel has a tight and strong hull, is supplied with engines in a thoroughly efficient state and proper equipment, manned with an able crew, and is fit for making a safe voyage. Owners shall also keep and maintain the terms and conditions contained in Clause 1 above during the period of Charter. 10
- Clause 3. [Loading Capacity.] Owners guarantee that the Vessel's loading capacity within the summer freeboard including goods, fuel, boiler water (excluding water in boiler), drinking water, stores, and provisions, shall not be less than the summer deadweight capacity indicated in Clause 1; and if the Vessel is incapable of loading thus much, the hire shall be proportionately reduced.
- Clause 4. [Space available.] Owners shall assign to carriage of the goods indicated by Charterers all holds, cabins, etc., excepting seamen's quarters, and places for rigging, tackle, tools, provisions, and such fixtures and fittings as are necessary for the Vessel. 20
- 2 Neither Owners nor the Master shall receive to carry in the Vessel any goods, passengers, or letters without first obtaining the consent of Charterers or their agents.
- Clause 5. [Anchorage.] The Vessel must load or unload goods at any wharf or any such other place as Charterers may direct, but it must be a place where the Vessel can safely lie at anchor.
- Clause 6. [Defrayment of cost.] Owners and Charterers shall respectively bear the following cost and expenses: 30
- Cost and expenses to be paid by Owners: - Wages, provisions, drinking water, and medical and nursing expenses of seamen; expenses needed for employment and discharge of seamen and other servants, and other expenses pertaining to seamen; premium of hull insurance, premium of P. I. A. insurance; repairs; dues and taxes relating to the Vessel; periodical disinfection charge; one half of regular sampan fares, paint, oil, and other consumption goods necessary for the Vessel; ropes and slings necessary for ordinary loading and unloading; port charges, direct disbursements and other expenses on behalf of Owners during off hire. 40
- Cost and expenses to be paid by Charterers: - Fuel, boiler water; matting, dunnage, stanchion for timber loaded on deck, and other expenses needed

for loading; stevedores' wages, lighterage, tally and winchmen's wages and all other expenses of loading and unloading, dues, taxes, charges, and agency fees relating to the contract of carriage of goods by the Vessel; port dues, tonnage dues, light-house dues, wharfage, towage, canal dues, pilotage, buoy dues, Consular charges (excepting those relating to the crew) and all other expenses owing to Port Regulations; expenses of disinfection of the Vessel and goods, and charges for Certificate of Health of the crew, prescribed by Port Regulations; various expenses relating to passengers; expenses of entertaining Customs and other public officials, other entertainment expenses spent on behalf of Charterers; food, medical and nursing expenses of persons whom Charterers or the owners of goods in transit have put on board the Vessel, and all other expenses relating to such persons; one half of regular sampan fares; landing expenses, boatage, and correspondence expenses of the Master on behalf of Charterers.

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Clause 7. [Overtime.] If Charterers put the crew to overtime or other special labour, compensation therefor shall be paid according to the ~~Ship's Labour Agreement~~ ^{Separate} Agreement.

20

Clause 8. [Delivery and Redelivery.] When Owners have or the Master has notified Charterers or their agents that the Vessel is ready for delivery, Charterers must take delivery without delay. When Charterers or their agents have notified Owners or the Master that the Vessel is ready for redelivery, Owners must take redelivery of the Vessel without delay.

2 Delivery and redelivery of the Vessel shall be made between 7.00 a.m. and 5.00 p.m., but the Vessel may be delivered or redelivered at other hours by mutual consent of the parties.

3 The holds must be cleaned and the Vessel must be kept in readiness for commencement of loading at the time of delivery and also upon expiration of the Charter.

30

4 The navigation qualification of the Vessel at the time of delivery and at the time of redelivery shall be that which it possesses at such times.

5 The provisions of the foregoing four paragraphs shall apply *mutatis mutandis* to the case of off hire for the purpose of intermediate or annual, and special surveys.

(from 0:00 of 1st day to 24:00 of last day of every month)

40

Clause 9. [Payment of Hire.] Charterers shall pay as hire to Owners or their agents monthly, so much for each calendar month as is provided in Clause 1 till the expiration of the Charter; ~~in computing months the first month of payment shall be from the day and hour of the delivery of the Vessel till the corresponding day and hour of the next following month, and when no such corresponding day exists in such next following month, the last day and hour of that month shall be deemed such corresponding day and hour, and from the third month onward the month of payment shall expire at the day and hour corresponding to the day and hour of the delivery of the Vessel.~~ If there are any disbursements, cost of fuel, or other expenses to be borne by Owners, one half of the same may be paid afterwards.

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- 2 When the period of the month of payment does not exceed one calendar month, ~~the period from the day and hour of the delivery of the Vessel till the corresponding day and hour of the next following month (if no such corresponding day exists in such next following month, then the last moment of that following month)~~ shall be deemed one calendar month and the hire shall be paid *pro rata* according to the number of days available. calende
For a period less than one day, payment shall be made by the hour.
- 3 The moneys which the Master borrowed at various places for ship's expenses and other disbursements shall be deducted from the hire.
- 4 When the day of payment of hire falls on a Sunday or a Holiday, the 10 payment shall be made on the next following day.
- 5 ~~When a high rate of hire is provided for in Clause 1, the commencement and termination of such high rate of hire shall be as follows:~~
- (a) ~~The high rate of hire shall come into force at the moment when the Vessel left the last port of call in the low rate area for the high rate area.~~
- (b) ~~The high rate of hire shall cease to be in force at the moment when the Vessel arrived at the first port of call in the low rate area.~~
- Clause 10. [Delay of Payment of Hire.] If Charterers fail to pay hire, Owners may immediately stay or rescind this Charter ~~without any previous notice~~, and should Charterers suffer any loss therefrom Owners would assume no 20 responsibility whatsoever.
- Clause 11. [Lien on the Goods.] Unless and until Owners receive payment of hire and all other obligations which Charterers owe them, Owners shall have the right to detain the goods in transit or sell them by public auction for the purpose of receiving satisfaction of such obligations.
- Clause 12. [Master and Crew.] Owners must see to it that the Master and crew in compliance with the provisions of Clause 4 carry on navigation as promptly and speedily as possible and do their best in the interest of Charterers pertaining to the operation of the Vessel, goods carried by the Vessel, and other necessary matters. 30
- 2 At the close of each voyage Owners shall cause the Master to produce to Charterers or their agents logbooks of deck department and engine department.
- 3 If Charterers require Owners to change the Master or any of the crew for reasons of any unsatisfactory conduct, Owners shall immediately make investigation and fulfil the requirement if it is found justifiable.
- Clause 13. [Issue of Bills of Lading, etc.] When the Master has according to the instructions of Charterers or their agents signed and sealed any Bills of Lading (or any similar instruments), taken delivery of, delivered, or taken into custody any goods, or done any other act necessary for cargo service, 40 Charterers shall hold themselves responsible for any consequence of such act.
- Clause 14. [Off Hire.] If any loss of time is caused by the cleaning or breakage of

10 **matters**

hull, machinery, or boiler, or collision, grounding, fire, survey (including intermediate or annual, and special surveys), docking, repair, periodical disinfection, employment and discharge of seamen, strike of seamen, or ~~other accidents~~ involving the Vessel, then the hire, fuel, and boiler water for the period from the commencement of any one of such facts until the resumption of status *quo ante* and of operation of the Vessel and also for the time spent by deviation and extension of sailing distance caused by any of these facts shall be borne by Owners; provided that when the time thus lost continuously at one time is less than 12 hours, this rule does not apply.

2 The proviso in the preceding paragraph does not apply in the case of intermediate or annual, and special surveys and periodical disinfection.

3 Where any part of hire has been paid in advance, Owners must refund to Charterers such portion of the prepaid hire as corresponds to off hire time.

4 In case where the Vessel takes refuge or calls at a port for reasons of bad weather or any event concerning the cargoes or passengers, the time lost thereby shall not be deemed off hire.

20 5 Where owing to any damage to or defect in the hull, engine or equipment, the speed of the Vessel is reduced during the voyage, the hire for any sailing hours extended thereby, and the cost of fuel and boiler water caused by the same reason shall be deducted from the hire; provided that where the hours thus extended are less than 12 hours at one time, this rule does not apply.

Clause 15. [Cleaning of Ship's Bottom.] Where 6 months or more have elapsed after docking and the speed provided for in Clause 1 is not maintained, the ship's bottom must be cleaned at the instance of Charterers.

2 The cost of the cleaning prescribed in the preceding paragraph and hire, and the cost of fuel and boiler water for the hours of the cleaning shall be borne by Owners.

30 Clause 16. [Extension of Off Hire Hours.] The extension of off hire time caused by any of the facts mentioned in Clause 14 (excepting time spent by ordinary intermediate or annual, and special surveys) and the time needed for the cleaning of ship's bottom prescribed in the preceding Clause may take place beyond the day of expiration of this Charter; provided that where the off hire hours in total exceed 30 days, more than one half of the same cannot be extended.

2 Where Charterers desire the extension of time provided for in the preceding paragraph, they must each time notify Owners within the period prescribed in Clause 1.

40 Clause 17. [Rescission of Charter on the ground of Long-time Off Hire.] Where the time of off hire caused by any of the facts mentioned in Clause 14 (excepting time spent by ordinary intermediate or annual, and special surveys) has at one time exceeded one third of the remaining period of charter, Charterers may rescind this Charter without paying any indemnity, but in this case Charterers must notify Owners whether they intend to rescind or not within the period prescribed in Clause 1.

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Clause 18. [Mutual Exemption.] Both parties to this Charter shall exempt each other from indemnifying for any loss or damage caused by detention or any other act of the governmental or similar authorities, military action, civil war, riot, pirates, bandits, seamen's misbehaviour, strike, fire, collision, grounding, sinking, jettison, or any act of God or force majeure, and/or any negligence in the navigation of the Vessel, *provided that the Master shall be responsible*.

Clause 19. [Exemption of Owners from Indemnity.] Owners shall bear no responsibility for *any excess or deficiency in the quantities of cargoes or* *for stowage and unloading* any loss of or damage to them, provided that ~~the same does not arise from~~ *any lack of due care on the part of the Master or crew.*

- 2 Owners shall bear no responsibility for any loss caused to Charterers by the breakage of boiler or shaft, or any loss caused by a latent defect not discoverable by reasonable examination in the hull, engine, or equipment, provided that the same does not arise from any lack of due care on the part of the Master or crew.
- 3 Where Charterers have employed stevedores, the stevedores must obey the orders of the Master relating to their work, but Owners shall bear no responsibility for any negligence of the stevedores.

Clause 20. [Indemnity for Damage.] Where any damage has been caused through the fault of Charterers to the hull or equipment, Owners or the Master shall notify to Charterers the degree of damage, and Charterers shall indemnify Owners for the same if it is deemed reasonable for them so to do. this Charter without paying any compensation to Charterers, provided that when Owners have notice of such compulsory use, they must without delay inform Charterers of the fact.

Clause 21. [Compulsory Use.] If the Vessel is put to compulsory use by the Japanese Government, Owners may rescind this Charter without paying any compensation to Charterers, provided that when Owners have notice of such compulsory use, they must without delay inform Charterers of the fact.

- 2 Where the Vessel is released from the compulsory use referred to in the preceding paragraph during the period of this Charter, Charterers can use again the Vessel in accordance with the terms and conditions of this Charter, but the period of the said compulsory use of the Vessel shall be reckoned into the period of this Charter. Where Owners have notice of the prospective date of the release of the said compulsory use, they must without delay inform Charterers of such date and Charterers must immediately notify Owners whether they will use the Vessel or not.
- 3 Where there is an offer from any Governmental or other public authorities to charter the Vessel, Owners cannot accept the same offer without the consent of Charterers.

Clause 22. [Restrictions as regards Cargoes.] Charterers shall not load on the Vessel any contraband of war, and shall not without first obtaining the consent of Owners load any ignitable, inflammable, combustible, or any other similarly dangerous goods, *unless Owners agree.*

- 2 Charterers may load goods on decks, but they must act under the orders of the Master as to the quantity and stowage of such cargo.
- 3 Charterers shall not without first obtaining the consent of Owners load on the Vessel for carriage any Indian coals from the first day of March till the thirtieth day, inclusive, of June.
- 10 Clause 23. [Restrictions as regards Navigation.] Charterers shall not sail the Vessel to any port involved in a war, riot, or blockade or any place where acts of hostilities are taking place.
- 2 Charterers shall not without first obtaining the consent of Owners sail the Vessel to any ice-bound port or ice drifting area during a season when such act is considered dangerous by navigators in general. This restriction equally applies to sailing to any area for which extra premium is required.
- 3 Charterers shall not without first obtaining the consent of Owners cause the Vessel to tow any ship.
- 20 Clause 24. [Epidemic-infected Area.] Where the Vessel lies at anchor for quarantine or disinfection for reasons of an epidemic, hire during anchorage and expenses of quarantine and disinfection shall be borne by Owners if the quarantine or disinfection is necessitated by the disease of seamen employed by Owners or the Master, and such hire and expenses as are referred to above shall be borne by Charterers if the quarantine and disinfection are caused necessary by the disease of one of the crew employed by Charterers or a passenger; provided that if the cause of disease is that Charterers ordered the Vessel to enter an officially nominated epidemic-infected area, Charterers shall bear the hire and expenses for 20 days after departure from the same area whoever the affected person may be.
- 30 2 Where the cause of disease is not ascertainable, or where the official nomination of an epidemic-infected area is published while the Vessel lies at anchor at the said area or after she has departed from there, the hire and expenses referred to in the preceding paragraph shall be equally divided between Owners and Charterers.
- Clause 25. [General Average.] General average, if any, shall be adjusted in accordance with the York-Antwerp Rules, 1974.
- 2 No contribution of general average shall be made from the hire.
- Clause 26. [Salvage.] The loss and profit caused by salvage shall be equally divided between Owners and Charterers, after taking into account compensation for the seamen's services, hire for the hours spent, cost of fuel consumed, and all other expenses, provided that the hours spent for the salvage shall be reckoned into the period of this Charter.
- 40 2 The provision of the preceding paragraph shall apply *mutatis mutandis* to any flotsam found.
- Clause 27. [Remaining Fuel and Boiler Water.] The fuel and boiler water remaining on the Vessel shall be purchased by Charterers from Owners at the time of delivery at the rate provided for in Clause 1, and shall be purchased by Owners from Charterers at the time of redelivery at the said

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rate.
Clause 28. [Tonnage Dues, etc.] Where after the delivery or redelivery of the Vessel there is any overpaid portion of Japanese or foreign port dues or light-house dues, it shall be decided by mutual agreement between Owners and Charterers whether the right to such overpaid money may be assigned from one party to the other.

Clause 29. [Subletting.] Charterers may sublet the Vessel insofar as no provisions of the Charter are infringed thereby, but they shall not by so doing be discharged from any of their liabilities to Owners. Where Charterers have sublet the Vessel, they must without delay inform Owners of the contract of sublet.

Clause 30. [Loss of the Vessel.] Where the Vessel continues missing for 60 days or more, the Charter shall terminate at the last known point of time of the Vessel's existence. In this case the overpaid portion of the hire, if any, must be returned to Charterers.

Clause 31. [Nature of Contract.] The Charter, irrespective of its wording, is not a lease (*chintaishaku*).

Clause 32. [Breach of Contract.] A party breaking this Charter must pay damages to the other party.

Clause 33. [Arbitration.] If any dispute arises concerning this Charter between the parties thereto, either of the parties shall submit the same to arbitration of the Japan Shipping Exchange, Inc., (Tokyo/~~Kobe~~), and the award given by the arbitrators appointed by the said Exchange shall be final and binding on both parties.

2 All matters relating to the appointment of arbitrators and arbitration procedure shall be decided by the Maritime Arbitration Rules of the said Exchange.

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(FREE TRANSLATION OF (35))

A D D E N D U M
T O
M/V "IBARAKI MARU"
TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. From 1200 hours on 14th July, 1979 to 2400 hours on 31st March, 1980 hire shall be paid at the rate of ¥549^(monthly) per 1.01605 K/T deadweight on summer draft.
But in case of calculating off-hirage, hire shall be deemed to be at the rate of ¥317.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

14th July, 1979

Charterers: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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(continued) With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. Charter period shall be extended from 0000 hours on 1st April, 1980 till 2400 hours on 31st March, 1981.
2. From 0000 hours on 1st April, 1980 to 2400 hours on 31st March, 1981 hire shall be paid at the rate of ^(monthly) ¥448 per 1.01605 K/T deadweight on summer draft.
But in case of calculating off-hirage, hire shall be deemed to be at the rate of ¥261.
3. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1980

Charterers: Mitsui O.S.K. Lines, Ltd.

N. Nagai, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

(FREE TRANSLATION OF ③)

A D D E N D U M
T O
M/V "IBARAKI MARU"
TIME CHARTER PARTY DATED TOKYO, JUNE 26, 1979

Part 1
In the
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Wales

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

With reference to the captioned Charter Party it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

(continued)

1. Charter period shall be extended from 0000 hours on 1st April, 1981 till 2400 hours on 31st March, 1982.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

1st April, 1981

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsüoka, President

(FREE TRANSLATION OF 38)

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A D D E N D U M
T O

M/V "IBARAKI MARU"

TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

No.11
Affidavit
of Hirofumi
Ogata
14th May
1983

With reference to the captioned Charter Party and Addendum thereto dated 2nd April, 1981 it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

(continued)

1. Notwithstanding Clause 1 of the above mentioned Addendum off-hirage shall be calculated at the rate of ¥1,920,000 daily.
2. All other terms and conditions of the Charter Party and above mentioned Addendum shall remain unchanged and in full force.

5th April, 1981

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

(FREE TRANSLATION OF (37))

A D D E N D U M
T O
M/V "IBARAKI MARU"
TIME CHARTER PARTY DATED TOKYO, 26th JUNE, 1979

With reference to the captioned Charter Party and Addendum there dated 1st April, 1981 it is this day mutually agreed between Mitsui O.S.K. Lines, Ltd. as Charterers and Matsuoka Steamship Co., Ltd. as Owners that:-

1. During the period written in Clause 1 of the above mentioned Addendum hire shall be paid at the rate of ¥2,464,000 daily.
2. All other terms and conditions of the Charter Party shall remain unchanged and in full force.

2nd April, 1981

(and above mentioned Addendum)

Charterers: Mitsui O.S.K. Lines, Ltd.

S. Kondoh, President

Owners: Matsuoka Steamship Co., Ltd.

M. Matsuoka, President

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Ogata
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(continued)

SCHEDULE

W. McNeill
Solicitor

Part 1
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of Hirofumi
Ogata
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(continued)

The following is the basis of the claims made by the plaintiffs for damages due to "Ibaraki Maru" being off hire whilst temporary and final repairs were being carried out, and during the period of the black ban.

The collision occurred at 0342 on 10th July, 1981 and temporary repairs and the black ban delayed the vessel until 2100 on 31st August, 1981, a total period of 52.721 days. Due to the delay in Australia caused by the collision, the vessel was not able to undertake the voyage it had intended to undertake but for the collision. From 2100 on 31st August, 1981, the vessel was on hire until 1530 on 12th October, 1981 and during that period, carried coal from Australia to Japan. 10

From 1530 on 12th October, 1981 to 0830 on 27th October, 1981, the vessel was off hire whilst permanent repairs were carried out in Japan (14.708 days).

Matsuoka bare boat chartered the vessel from the owner, Mitsui, and Mitsui time chartered the vessel from Matsuoka. The time charter fee payable by Mitsui to Matsuoka was ¥2,464,000 per day whilst the vessel was on hire, but whilst off hire as a result of the collision, the time charter fee reduced to ¥544,000 per day. Accordingly, Matsuoka lost ¥1,920,000 per day during the period that the vessel was off hire. This is a total of ¥129,463,680 and Matsuoka claims this amount. 20

Mitsui claims damages for its loss of profit for 67.429 days.

The voyage which "Ibaraki Maru" was engaged in at the time of the collision was the carriage of coal pursuant to a fixture note entered into between Mitsui and Sumitomo Metal Industries Limited. Although that fixture was cancelled due to the collision, a fixture in similar terms with Sumitomo Metal Industries Limited was entered into which resulted in "Ibaraki Maru" carrying a similar quantity of coal from Australia to Japan for Sumitomo Metal Industries Limited after temporary repairs had been carried out and the black ban was lifted. The freight rate was \$US12.38 per tonne of 2,240 lbs. The coal carried was 55,913 long tonnes from Port Kembla and 49,538 long tonnes from Hay Point, the discharging ports being Kashima and Wakayama. The total freight earned was \$US1,305,483.38. Applying the telegraphic transfer rate of conversion of the US\$ to ¥ at the dates of completion of loading, being the dates the freight was earned, the freight earned was ¥296,539,645 (completion of loading at Hay Point 24/9/81 - conversion rate ¥227.60).

10

In addition, demurrage was paid for delay at Port Kembla in the sum of ¥11,231,134 and further compensation was paid for extra ordinary delay in the sum of ¥20,981,662. Neither of those amounts were referable to the collision or the delay caused by the collision.

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Thus, the total earnings of Mitsui from the voyage was:

Freight	¥302,506,018
Demurrage	11,231,134
Extra ordinary delay:	20,981,662
	<hr/>
	¥334,718,814
	<hr/>

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The expenses associated with the voyage were as follows:

Port Charges:	Port Kembla	¥ 12,745,228
	Hay Point	8,056,126
	Kashima	7,652,098
	Wakayama	4,435,173
Bunkers:	Fuel Oil (1865.22 kt @ ¥46,379 per kt)	86,507,038
	Diesel Oil (110.48 kt @ ¥72,096 per kt)	7,965,166

LESS Bunkers used between 10th July, 1981

until 31st August, 1981:

Fuel Oil	6,371,844
Diesel Oil	5,224,800

Therefore, bunkers used on Voyage 65 A:

Fuel Oil	80,135,194
Diesel Oil	2,740,366

Sundries: (This is an estimate based
upon average expenses at
¥400,000 per month) 767,067

Dispatch at discharge points: 9,530,875

Brokerage: 350,000

Charter fees paid to Matsuoka for 67.57 days
@ ¥2,464,000 per day 166,492,480

TOTAL EXPENSES ¥292,904,607

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Expenses:

Port charges:	Newport Mews	¥ 2,807,023
	Norfolk	421,677
	Wakayama	5,468,421
	Kashima	3,923,384
(continued) Brokerage		250,000
	Sundry expenses	1,567,333
	Bunkers:	214,158,236
	Charter fee paid to Matsuoka	289,643,200
	<u>TOTAL EXPENSES</u>	<u>¥518,239,264</u>
	Net profit:	¥ 49,218,919
	Daily profit:	¥ 418,706.2

2. From 0175 on 4th February, 1981 until 1500 on 30th March, 1981, Mitsui time chartered Ibaraki Maru to Shell Coal Limited and \$US3.90 tonne on the vessel's total dead weight carrying capacity. The charter fee earned was ¥160,155,912.

Expenses were:

Brokerage ¥ 2,024,077

Part 1 In the Supreme Court of New South Wales	Sundry expenses	¥ 800,800
	Bunkers:	144,793,400

No.11 Affidavit of Hirofumi Ogata 14th May 1983	Charter fee to Matsuoka @ ¥2,464,000 per day for 60.06 days	147,987,840
	<u>TOTAL EXPENSES</u>	<u>¥306,015,666</u>

(continued)

Net profit:	¥ 47,094,716
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Daily profit (for 60.06 days)	784,127.8
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Accordingly, the average daily net profit earned by Mitsui for the three voyages immediately prior to the collision and one voyage after the collision was as follows:

1.	¥	418,706.2
2.	¥	433,782.9
3.	¥	784,127.8

Voyage after collision:

¥	618,827.9
¥	2,255,444.8 ÷ 4
	<hr/>
¥	563,861.2
	<hr/>

The average daily profit is therefore ¥563,861.2

Mitsui's claim is therefore:

- (a) Loss of profits for 67.429 days at ¥563,861.2
per day - ¥38,020,596
- (b) Charter fee paid to Matsuoka whilst vessel
off hire - ¥544,000 per day for 67.429 days
- ¥36,681,376.

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PLAINTIFFS' WRITTEN SUBMISSIONS
ON DAMAGES

MITSUI O.S.K. LINES LIMITED & ANOR.

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v.

THE SHIP "MINERAL TRANSPORTER"

PLAINTIFFS' WRITTEN SUBMISSIONS ON DAMAGES

Since the claim of the second plaintiff is simpler, that will be dealt with first.

I. CLAIM OF SECOND PLAINTIFF

1. Relevant Facts.

- (a) The second plaintiff was the charterer of the vessel "Ibaraki Maru" under the bareboat charter a copy of the English translation of which is Annexure "A" to the affidavit of Hiroshi Onoue sworn 14th May, 1983. 10
- (b) The second plaintiff, as disponent owner, entered into a time charter of the vessel, the charterer being the first plaintiff (which was also the actual owner). A copy of the English translation of the time charter-party is Annexure "B" to the above affidavit. The original is Exhibit "S". 20

- (c) Under clauses 8 and 9 of the bareboat charter the second plaintiff was, as against the first plaintiff, liable to bear the cost of repairs resulting from the collision.
- (d) Under the time charterparty, especially clause 14 and the Addendum of 5th April, 1981 (properly understood - as to which it is hoped to reach agreement), while the vessel was laid up for repairs as a result of the collision the daily rate payable to the second plaintiff was reduced by ¥1,920,000 from ¥2,464,000 to ¥544,000. The daily amount of ¥544,000 is what was in fact paid to the second plaintiff during the period taken up by repairs. (Affidavit of Mr. Inoue 14th May 1983 para 5).
- (Incidentally, if the amount of ¥1,920,000 is the daily amount to which the hire should have been reduced rather than the daily amount by which it should have been reduced then there would be a consequential reduction in the second plaintiff's claim but an equivalent increase in the first plaintiff's claim: See II.6(a) below).
- (e) The agreed cost of repairs, and incidental expenses resulting from the collision, is set out in Exhibit "Q".
- (f) The time taken for repairs was extended by a "black ban". The relevant evidence as to that is in Exhibit "T" and in the evidence of Capt. Ford at p.164.

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2. SUBMISSIONS

(a) The second plaintiff is entitled to receive, for the cost of repairs, the amounts set out in paragraph 1 of Exhibit "Q".

It is also entitled to interest from the dates of payment, as specified in the Exhibit, at the rates as fixed in the applicable Practice Note 25.

Although the first amount in Exhibit "Q" is expressed in \$A the equivalent in Yen should be awarded as the second plaintiff would have had to 10
expend Yen to acquire the relevant amount of \$A.

(b) i. The second plaintiff is entitled to receive, for loss of hire, the sum of ¥129,463,680 calculated at the rate of ¥1,920,000 per day for 67.429 days.

ii. In the circumstances, the black ban was a foreseeable consequence of the collision resulting from the defendant's negligence and consequently the second plaintiff is entitled to recover the full economic loss 20
(H.M.S. London 1914 P. 72, Home Office v. Dorset Yacht Co. Ltd. (1970) A.C. 1004).

iii. If the days lost as a result of the black ban are not recoverable the relevant number of days is 34.639 and the figure (1,920,000 x 34.639) is ¥66,506,880.

iv. Interest should be allowed from 31st August, 1981 (when the vessel went back on hire after its temporary repairs) in relation to

the loss of hire from 10.7.81 to 31.8.81
and from 27th October, 1981 in relation
to the loss of hire from 12.10.81 to 27.10.81.

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II. CLAIM OF FIRST PLAINTIFF

1. This claim involves a question of principle as to whether the first plaintiff can recover economic loss in the form of loss of the profits it would have made from the use of the vessel during the period when it was laid up as a result of the collision.

10 2. The facts relevant to the determination of that question of principle are as follows:

(a) The first plaintiff was both the owner and the time charterer of the "Ibaraki Maru". (It is contended that on current authority it would be sufficient if it were the time charterer, but the fact that it was also the owner is relied upon).

20 (b) Arrangements involving a bareboat charter and a time charter back to the owner are not unusual and the possibility of their existence would be known to someone in the position of the defendant's owners and master (see evidence of Capt. Ford at T155).

(c) The "Ibaraki Maru" at the time of the collision bore distinctive markings identifying it as belonging to the first plaintiff's fleet (Capt. Takatani T169).

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3. As to this question of principle the first plaintiff submits:

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(a) It is true that under the "old law" according to which purely economic loss, unaccompanied by damage to a plaintiff's property, resulting from a tortious act, was irrecoverable, the inability of a time charterer to recover loss of profits resulting from damage to the chartered vessel was a prime example of what was conceived to be the relevant principle. Even that supposed rule was, however, subject to qualification in relation to cases where the time charterer had a sufficient interest in property that was damaged as a result of the collision (see, for example, The Okehampton 1913 p. 173). Furthermore, the decision of the House of Lords in Morrison Steamship Co. Ltd. v. Greystoke Castle (1947) A.C. 265 involved a substantial inroad in relation to the application of the general principle to maritime cases.

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(b) Even under the old principles a case such as the present would have been resolved in favour of the first plaintiff because:

- i. the first plaintiff was owner as well as time charterer;
- ii. it is appropriate to regard the voyage as, relevantly, a joint venture between the two plaintiffs.

(c) However, this is an area where the law has recently undergone substantial change and

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development, especially since Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd. (1964) A.C. 465. (See also Ross v. Caunters (1979) 3 W.L.R. 605; Junior Books Ltd. v. Veitchi Co. Ltd. (1982) 3 W.L.R. 477).

- (d) The relevant law is that declared in Caltex Oil (Aust.) Pty. Ltd. v. The Dredge 'Willemstad' 136 C.L.R. 592 esp. per Gibbs, C.J. at 555; Stephen, J. at 575; Mason, J. at 593; Jacobs, J. at 602-3, Murphy, J. at 606).

10

The two alternative tests propounded are:

- i. is it foreseeable that the plaintiff as an individual, rather than as a member of some unascertained class of persons, will suffer loss as a result of the defendant's negligence?;
- ii. is there a sufficient degree of proximity between the plaintiff's loss and the defendant's negligence?

20

On either test, the first plaintiff should succeed.

4. A further question of principle that arises is the same as that considered in I.2(b)(ii) above and the submission there made is repeated.

5. If the defendant argues that Mitsui's claim for loss of profits should be reduced by the number of days "Ibaraki Maru" would have been anchored off Port Kembla between the date of the collision until it could berth at Port Kembla, such argument should be rejected

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because in calculating the daily profit for Voyage 65 A,
and the other voyages referred to in Mr. Ogata's affidavit,
the days "Ibaraki Maru" was waiting at various ports to
load and unload has been taken into account. Further, in
respect of Voyage 65 A and the other voyages referred to
in Mr. Ogata's affidavit, Mitsui became entitled to and
was paid demurrage for delay at loading and discharging
ports.

(cont'd)

6. In calculating the first plaintiff's daily loss
of profits two elements need to be added:

10

(a) the daily rate payable by the first plaintiff to
the second plaintiff whilst the vessel was off-
hire (i.e. ¥544,000, subject to the possibility
raised by the defendant that it should be
¥1,920,000);

(b) the daily profit that would have been earned had
Voyage 65 A gone ahead as planned.

As to (b) the chief source of information is in
the affidavit of Mr. Ogata sworn 14th May, 1983. The
plaintiff's contention is that the best evidence of the
profit that would have been earned is the profit that was
in fact earned on Voyage 65 A undertaken immediately after
the completion of the temporary repairs. The evidence
of profits from other voyages is merely corroborative.
The net daily profit on Voyage 65 A was ¥618,827.

20

The first plaintiff says that its total daily
loss was thus $\$618,827 + ¥544,000 = ¥1,162,827$. This
should be multiplied by 67.429 days (or, if the effect
of the black bans is to be disregarded, $67.429 - 32.79 =$
34.639 days).

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7. Interest should be allowed on the same basis as in II.2(b)(iv).

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III. It is respectfully submitted that once the issues of fact and law raised by these and the defendant's submissions, and any reply, are resolved, the parties can then be left to bring in a form of order after calculating the final figure themselves.

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DEFENDANT'S WRITTEN
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THE SHIP "MINERAL TRANSPORTER"

DEFENDANT'S WRITTEN SUBMISSIONS ON DAMAGES

I. CLAIM OF FIRST PLAINTIFF

1. Time charterer unable to recover loss of profits

The first plaintiff has and makes no claim for damages in its capacity as owner of the "Ibaraki Maru". The first plaintiff suffered no injury as a result of the damage to the vessel because, as the plaintiffs assert, ¹⁰ the second plaintiff was liable to reinstate the vessel. The first plaintiff's only claim is in its capacity as time charterer to recover economic loss in the form of loss of the profits it would have made from the use of the vessel during the period when it was laid up as a result of a collision. (See plaintiffs' written submissions at p.4, II, 1.)

In The World Harmony (1967) P. 341 at p.362 Hewson, J. pronounced that as far as he was aware there was no

reported case in the long history of chartering where a time charterer has recovered damages for pecuniary loss because of damage by a third party to the chartered vessel. See also Societe Anonyme de Remorquage a Helice -v- Bennetts (1911) 1 K.B. 243 at p.248 and Chargeurs Reunis Compagnie Francaise de Navigation a Vapeur -v- English and American Shipping Co. (1921) 9 Ll. L.R. 464 at p.465. The distinction between a shipowner as such suing a wrongdoer for temporary loss of the ship's services and a charterer (other than a demise charterer) suing a person who deprives him of the opportunity of earning profits by his contractual rights, is usefully pointed out in the dissenting judgment of Scrutton, L.J. in Elliott Steam Tug Company -v- The Shipping Controller (1922) 1 K.B. 127 at pp.140-1. The former can recover loss of earnings or profits during the time his injury lasts as the direct consequence of the injury; see The Argentino (1889) 14 App. Cas. 519. The charterer in collision cases does not recover profits, not because the loss of profits during repairs is not the direct consequence of the wrong, but because the common law rightly or wrongly does not recognise him as able to sue for such an injury to his merely contractual rights.

The position of the time charterer has not been altered by any decision subsequent to The World Harmony and, in particular, has not been altered by the

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decision of the High Court in Caltex Oil (Australia)
Pty. Limited -v- The Dredge "Willemstad" (1976) 136
C.L.R. 529. At p.555 Gibbs, J. (as he then was),
after reviewing the cases, including the time charter
cases, stated that in his opinion it was still right to
say that as a general rule damages are not recoverable
for economic loss which is not consequential upon injury
to the plaintiff's personal property. He referred to
the position of the charterer at p.546 and to the
decision of the Supreme Court of the United States in 10
Robin's Dry Dock & Repair Co. -v- Flint (1927) 275 U.S.
303. He also referred at p.550 to The World Harmony,
with apparent approval. His Honour's view, and this
states the test for recovery of damages for economic
loss not consequential upon injury to the plaintiff's
personal property, was that there are exceptional cases
in which the defendant has knowledge or means of
knowledge that the plaintiff individually, and not
merely as a member of an unascertained class, will be
likely to suffer economic loss as a consequence of his 20
negligence, and owed the plaintiff a duty to take care
not to cause him such damage by his negligent act. He
went on to say that all the facts of the particular case
will have to be considered. It will be material, but
not sufficient, that some property of the plaintiff
was in physical proximity to the damaged property, or
that the plaintiff, and the person whose property was
injured, were engaged in a common adventure. See

page 555. Mason, J. stated the test in substantially similar terms at p.593:-

"A defendant will then be liable for economic damage due to his negligent conduct when he can reasonably foresee that a specific individual, as distinct from a general class of persons, will suffer financial loss as a consequence of his conduct."

10 The specific individual in the Caltex case was, of course, the owner of the terminal at Banksmeadow connected by the damaged pipeline to the A.O.R. Refinery. It could be said of the defendants that they should have known, if they did not know, that the pipeline carried refined petroleum products from the refinery to the terminal and that the oil was used by Caltex in its business operations as an oil company. Moreover, they should have foreseen, as the primary judge found, that negligence on their part resulting in a severance of the

20 pipeline would involve not only loss of oil from the pipeline but an interruption in supply which would necessitate the expense of making alternative transport and delivery arrangements, which included the expense of modifying the terminal. See p.593. In the present case there is simply no way in which it could be said that the defendant could or should have foreseen that the first plaintiff was a time charterer. Consistent with the statements in Caltex, for the

30 first plaintiff to recover as time charterer it would be necessary to show that the defendant knew or ought

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reasonably to have known that the first plaintiff was using the "Ibaraki Maru" in its business as a time charterer.

But it is further submitted that economic loss in the form of loss of profits from the use of the vessel cannot be recovered under the Caltex test. In his judgment at p.573, Stephen, J. came to consider the need, in the cases of purely economic loss, for some further control of liability apart from that offered by the concept of reasonable foreseeability. At 10 pages 576-7 he referred to a group of salient features and relevant factors which led him in that case to conclude that there existed sufficient proximity to entitle the plaintiff to recover its reasonably foreseeable economic loss. Included amongst these was:-

"(5) the nature of the damages claimed, which reflect that loss of use, representing not some loss of profits arising because collateral commercial arrangements are adversely affected but the quite direct consequence of the detriment suffered, namely the expense directly incurred in employing alternative modes of transport." 20

Such a limitation is inherent in the foreseeability test as expressed by Mason, J. at p.593 in the passage quoted above, where he refers to the expense of making alternative transport and delivery arrangements and is central to the different test propounded by Jacobs, J.

at p.599. Having pointed out that it is necessary in every case to go further and to examine how the so-called economic loss arises, His Honour continued:-

"If it arises in a way which can only be characterised as the loss of the benefit of a contract with a third party it will not be recoverable."

A useful summary of the various views expressed in the High Court is to be found in the judgment of Megarry, V.-C. in Ross -v- Caunters (1980) Ch. 297 at p.319 and following.

It is submitted that the claim by the first plaintiff to recover for economic loss alone must fail, for the reason that it does not fall within the Caltex test either because the defendant could not reasonably have foreseen that the first plaintiff, as a specific individual, as distinct from a general class of persons, would suffer financial loss, in its capacity as a time charterer, as a consequence of the defendant's conduct, or because the damages claimed represent loss of profits arising because collateral commercial arrangements were adversely affected.

2. The claim in respect of the union black ban

(a) The time lost as a result of the union black ban is not recoverable as it has not been shown to be a foreseeable consequence of the collision. The black ban which was imposed for the purpose of

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persuading foreign vessels to undergo repairs and maintenance in Australia (see Exhibit T), was of a totally different character to a union strike called for normal industrial reasons (as to which see H.M.S. London (1914) P. 72).

- (b) The only evidence adduced by the plaintiffs in support of their contention that the black ban was foreseeable was elicited from Captain Ford. He was not aware of any instance prior to July 1981 of such a black ban being imposed (see transcript 165.1).¹⁰ Further, a foreign shipowner's knowledge of any campaign involving the threat of such a black ban would, as Captain Ford pointed out (transcript 164.7), be dependent upon the frequency with which vessels of that foreign shipowner visited Australia, as to which the plaintiffs did not adduce any evidence. In any event, Captain Ford's evidence was based upon newspaper reports and discussions with other people (transcript 164.9) and therefore carries little, if any, weight.

20

- (c) As the loss suffered as a result of the black ban was not of a class or kind as that which was foreseeable (see Rowe -v- McCartney (1976) 2 N.S.W.L.R. 72, especially at 85-6), it is not recoverable.

3. In relation to paragraph 6 of the plaintiffs' submissions:
the daily rate of profit

- (a) The voyage upon which the vessel would have been engaged if the collision had not occurred was cancelled (paragraph 22 of the affidavit of Mr.Ogata of 14 May 1983).
- (b) The first plaintiff's claim (Annexure AS to the same affidavit) recognised that the rate of profit earned on a single and different voyage was not an accurate guide to the profit that would have been earned on the cancelled voyage. The claim was formulated by averaging the rates of profit earned on four voyages (see page 7 of that Annexure). The average so calculated was Y563,861.2 - less than the Y618,827 claimed in the written submissions supplied after the conclusion of the hearing. The second plaintiff's claim should not, in the defendant's submission, be permitted to exceed the former figure as it was on the basis of the claims as identified in Annexure AS that the matter was litigated.
- (c) In any event, the defendants submit that the proper approach is not, as was done in Annexure AS, to average the rates of profit earned on three pre-collision voyages and one post-collision voyage, but to average the rates earned on three pre-collision and three post-collision voyages. The plaintiffs'

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approach unfairly weights the average in favour of a period earlier in 1981 when freight rates were higher (Exhibit 11 and transcript page 135).

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(d) If the two further post-collision voyages are taken into account in calculating the average (the evidence as to these is in Exhibit 10), the time of the cancelled voyage falls in the middle of the period used, that period being one in which there was a relatively constant decline in freight rates (Exhibit 11). The average daily rate of profit calculated on this basis is Y504,404.63.

10

(continued)

II. CLAIM OF SECOND PLAINTIFF

In relation to paragraph 2(a) of the plaintiffs' submissions

Judgment in respect of the first amount in Exhibit Q should be expressed in Australian currency as the second plaintiff has not shown that its operations were conducted in Yen and that in fact it was the second plaintiff's currency "that was used, in a normal manner, to meet the expenditure for which" it claims (The Despina R. (1979) A.C. 685 at 698 A-B).

20

It is noted that the plaintiffs do not press for recovery of the amount referred to in paragraph 2 of Exhibit Q, namely \$A25,765.92.

348.

A large, stylized handwritten signature in black ink, appearing to be 'J. B. M.', is written over the page number 348.

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DEFENDANT'S SUPPLEMENTARY
WRITTEN SUBMISSION ON DAMAGES

MITSUI O.S.K. LINES LIMITED AND ANOR.

-v-

THE SHIP "MINERAL TRANSPORTER"

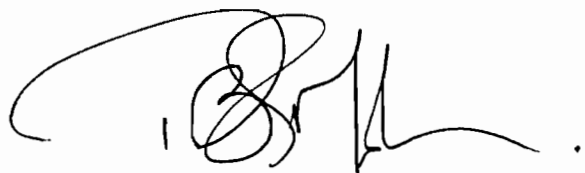
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DEFENDANT'S SUPPLEMENTARY WRITTEN SUBMISSION ON DAMAGES

10

Express reference was not made in the defendant's previous submission to the first plaintiff's claim to recover the reduced time charter fees payable by it to the second plaintiff whilst the vessel was laid up. It is submitted that such amounts are irrecoverable because they constitute economic loss not falling within the Caltex test. The reasons given in the previous submission in relation to the irrecoverability of loss of profit are equally applicable to this claim.



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PLAINTIFFS' WRITTEN SUBMISSIONS
IN REPLY (DAMAGES)

MITSUI O.S.K. LINES LIMITED & ANOR.

Written
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v.

THE SHIP "MINERAL TRANSPORTER"

PLAINTIFFS' WRITTEN SUBMISSIONS IN REPLY (DAMAGES)

1. As to the matter referred to in the plaintiffs' written submissions in chief at paragraphs I.1.(a), I.2.(b)(i) and II.6.(a), (i.e. the rate payable under the time charter while the vessel was off-hire), the parties have now agreed on the true meaning of the charterparty, and Mr. Macfarlan of Counsel for the defendant has authorised Counsel for the plaintiffs to inform the Court that the defendant now accepts that on the true construction of the time charter the daily rate payable by the first plaintiff to the second plaintiff while the vessel was off-hire was ¥544,000. In other words, the amount of ¥1,920,000 is the amount by (not to) which the daily rate was reduced. 10 20

2. As to paragraph I.1. of the defendant's written submissions the plaintiffs make the following reply:

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10

(a) The first plaintiff does not make its claim in any particular "capacity". It simply relies on all the relevant facts. The fact that it is the owner of the vessel is either a relevant fact or it is not. The resolution of the legal issue as to whether that fact is relevant cannot be avoided by some assertion as to the "capacity" in which the first plaintiff sues.

20

(b) In World Harmony (1967) P. 341 neither plaintiff was the owner of the damaged vessel, but were time charterer and sub time charterer respectively (page 359). In Chargeurs Reunis Compagnie Francais de Navigation a Vapeur v. English and American Shipping Company (1921) 9 Ll. L.R. 464, the French Government was neither the owner of the ship which was damaged nor in possession of it (at p. 465). That was also the case in Societe Anonyme de Remorquage a Helice v. Bennetts (1911) 1 K.B. 243.

30

(c) The way in which the defendants' argument in The World Harmony was put (see 1967 P. at 346 C-D) is revealing. Furthermore, the trial judge's remark at 361G indicates that it was recognized that the problem concerned a developing area of the law.

(d) As to the dictum of Scrutton, L.J. in 1922:

(i) his Lordship was not talking of a charterer who also happened to be owner;

(ii) the dictum reflects a view as to the recoverability of purely economic loss which is now out of date.

(e) As to the arguments at the foot of page 4 of the defendant's written submissions, if it is foreseeable that a person will suffer harm as a consequence of wrongdoing then it does not matter whether the particular or precise form of harm is foreseeable. In any event, the evidence supports a conclusion that harm to the first plaintiff as a time charterer was foreseeable. If a vessel carries the marks of the Mitsui O.S.K. Line, 10 then the likelihood of that line suffering damage if the vessel is damaged is foreseeable.

3. It is assumed that in the "defendant's supplementary written submission on damages" dated 3rd June 1983 the terms "first plaintiff" and "second plaintiff" have been transposed. The general principle, even if it otherwise exists, would not debar the claim there referred to because the second plaintiff's claim is not for "purely economic loss". Its undoubted interest to claim for physical injury 20 to the vessel, in the form of cost of repairs, carries a right to claim for any consequential economic loss.

4. In reply to paragraph I.3:
Voyage 65 A was similar to the voyage which the vessel was engaged in at the time of the collision (see paragraph 22 of the affidavit of Mr. Ogata). In other words, if a hypothetical calculation had been carried out to determine the daily profit from the voyage being undertaken at the time of 30 the collision, such calculation would probably have resulted in a similar daily profit as that which was in fact earned on Voyage 65 A.

5. As to paragraph II:
The proper inference is that the second plaintiff conducted its operations in Yen, and this is demonstrated from:
- (a) The fact that the second plaintiff is a Japanese Company.
 - (b) The charter rates for the bare boat and time charters between the first and second plaintiffs are expressed in Yen (Mr. Inoue's affidavit sworn 14th May, 1983).
 - (c) The charterparty agreements between the first and second plaintiffs were made in Japan.

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No.16
REASONS FOR JUDGMENT OF HIS HONOUR
MR. JUSTICE YELDHAM

EM.

IN THE SUPREME COURT)
OF NEW SOUTH WALES) No. 934 of 1981

No.16
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FILE COPY OF JUDGEMENT

Not to be removed from
Court papers

CORAM: YELDHAM, J.

Tuesday 18th October, 19

NOR. v. THE SHIP "MINERAL TRANSPORTEF

JUDGMENT

HIS HONOUR: The motor ship "Ibaraki Maru", whose port of register is Osaka, Japan is of 63,139 gross tons, her length from stem to stern being 253.90 metres, her breadth 39.60 metres, and the distance from bridge to bow is about 220 metres. At the time which the present action is concerned her owner was Mitsui Osk L Limited, the first plaintiff, which was also the time charterer of the vessel from Matsuoka Steamship Co. Limited, the second plaintiff which had entered into a bareboat charter with the first plaintiff on 26th June, 1979. The time charter bears the same date although a number of addenda to it were made. It will be necessary in due course to refer to the terms of both charters.

On 26th June, 1981 the "Ibaraki Maru" anchored about 3.1 miles from Wollongong Flagstaff Lighthouse, intending to take on board cargo of coal from the Port Kembla Coal loader at some time after 10th July. Her master was Captain Takatani who had obtained his master's certificate in 1966 and whose experience was considerable.

The defendant, the "Mineral Transporter", whose owner was Candlewood Navigation Corporation Limited, anchored off Port Kembla in a position about 1.2 miles from the "Ibaraki Maru" on 30th July 1981. Other vessels whose positions are marked on a plotting chart

5. As to paragraph II:

The proper inference is that the second plaintiff conducted its operations in Yen, and this is demonstrated from:

- (a) The fact that the second plaintiff is a Japanese Company.
- (b) The charter rates for the bare boat and time charters between the first and second plaintiffs are expressed in Yen (Mr. Inoue's affidavit sworn 14th May, 1983).
- (c) The charterparty agreements between the first and second plaintiffs were made in Japan.

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IN THE SUPREME COURT)
 OF NEW SOUTH WALES) No. 934 of 1981
 ADMIRALTY DIVISION)

CORAM: YELDHAM, J.

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MITSUI OSK LINES LIMITED & ANOR. v. THE SHIP "MINERAL TRANSPORTER"

JUDGMENT

HIS HONOUR: The motor ship "Ibaraki Maru", whose port of registry is Osaka, Japan is of 63,139 gross tons, her length from stem to stern being 253.90 metres, her breadth 39.60 metres, and the distance from bridge to bow is about 220 metres. At the time with which the present action is concerned her owner was Mitsui Osk Lines Limited, the first plaintiff, which was also the time charterer of the vessel from Matsuoka Steamship Co. Limited, the second plaintiff, which had entered into a bareboat charter with the first plaintiff on 26th June, 1979. The time charter bears the same date although a number of addenda to it were made. It will be necessary in due course to refer to the terms of both charters.

On 26th June, 1981 the "Ibaraki Maru" anchored about 3.1 miles from Wollongong Flagstaff Lighthouse, intending to take on board a cargo of coal from the Port Kembla Coal loader at some time after 10th July. Her master was Captain Takatani who had obtained his master's certificate in 1966 and whose experience was considerable.

The defendant, the "Mineral Transporter", whose owner was Candlewood Navigation Corporation Limited, anchored off Port Kembla in a position about 1.2 miles from the "Ibaraki Maru" on 30th June, 1981. Other vessels whose positions are marked on a plotting chart

(Ex.C) were also anchored, all awaiting access to the coal loader.

10 During the early hours of the morning of 10th July, the shaft of the starboard anchor of the "Mineral Transporter" failed, in circumstances not alleged to amount to negligence on the part of her owners, and thereafter she drifted and collided with the "Ibaraki Maru". The plaintiffs, asserting that those on board the defendant were negligent in a number of respects in failing to avert the collision, have brought the present proceedings to recover damages. On behalf of the defendant it was conceded in argument that negligence had been established but it was alleged that there was negligence also on the part of the "Ibaraki Maru" and that, for this reason, the damages recoverable should be reduced, and also the defendant's owners should succeed in the cross-claim which they had brought for their own damage.

20 The owners of the defendant vessel also brought proceedings by way of a second cross-claim against two Japanese companies, one of whom was alleged to have sold and the other to have manufactured the starboard anchor which failed. In such cross-claim contribution or complete indemnity was sought in respect of any sum which the defendant might be required to pay to the plaintiffs in the proceeding. The Japanese cross-defendants did not appear and the defendant does not, at this stage, seek verdicts against them. That matter may be restored to the list upon one month's notice being given to the two cross-defendants.

The weather at the time in question was fine and clear. The defendant's Preliminary Act said that the wind was coming from south-west at a speed of 20 knots and that the Maritime Service Board's anemometer records at Port Kembla disclosed that "between 0300 and 0400 the wind direction was described as being variable 200-270 degs.

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At 0300 hours the force of the wind was measured at 9 knots and at 0400 hours the force was measured at 8 knots. Gusts of 16 kts were recorded at 0330 hours".

At about 1530 hours on 9th July the master of the "Ibaraki Maru" became aware of a warning issued by the Bureau of Meteorology in these terms:

"A low 984 mbs near 42 degs south, 164 degs east, is moving slowly east area affected. New South Wales waters south of 34 degrees south and east of 156 degrees east SW winds force 7-8 are expected in the area with very rough seas and heavy swells, the area of gales to move slowly east."

Captain Ford, an expert witness called by the defendant, agreed under cross-examination that the forecast "shows the bad weather moving away from the Port Kembla area, not towards it ... the major centre is moving away to the east" and "it is not that there is a low pressure system coming towards Port Kembla, on the contrary there is a low pressure system shown as going away from Port Kembla". He agrees also that "the area of gales is moving further east away from Port Kembla".

I am satisfied that the shank of the starboard anchor of the "Mineral Transporter" failed and the vessel commenced to drift prior to 9300 hours and perhaps as early as "a little past 2.50" the latter being the assessment of Captain Takatani, the master of the "Ibaraki Maru". An affidavit from the master of the "Sanko Cherry" which was anchored in the vicinity, said that he observed on his radar that the defendant was drifting "before 0300 hours". The defendant's Preliminary Act, however, asserts that the drift began "shortly prior to 0330 hours".

No evidence was called from any person who had been on the "Mineral Transporter" that night, but the plaintiffs tendered as part of their case a written statement made by the master in which he said:

10 "The duty AB ... reported to the second officer ... that the Mineral Transporter had dragged anchor and was closing the Ibaraki Maru. This was at 0320 hours. The duty officer took a bearing of the Ibaraki Maru and found no change in bearing. The duty officer did not take a radar distance from the Ibaraki Maru. At no time during the vessel's stay at anchor off Port Kembla were radar ranges obtained from points of land, or distances off other anchored vessels. The second mate was not aware that the Mineral Transporter had dragged anchor and was closing the Ibaraki Maru. The second mate assumed the vessel was in the original anchorage position as the bearing had not appreciably changed to the Ibaraki Maru. He was not aware that the Mineral Transporter was closing the Ibaraki Maru on a steady bearing. Radar was checked and found to be operating satisfactorily. The second mate called the Master by bridge telephone at approximately 0330 hours on 10th July, 1981. The Master immediately proceeded to the bridge and found that the Mineral Transporter had closed to a position with Ibaraki Maru that collision was imminent."

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20 The statement goes on to assert that the engines were at instant notice; the general alarm bells were rung; but as the "Mineral Transporter was so close to the "Ibaraki Maru" "it was decided not to let go the port anchor as the master was concerned that it may foul the anchor of the 'Ibaraki Maru'; engines were put to full astern; the heading of the "Ibaraki Maru" was approximately south-east and that of the "Mineral Transporter" approximately south-west; the engines were deliberately not put full ahead as it was believed that a collision would have occurred between the stern of the "Mineral Transporter" and the port bow of the "Ibaraki Maru"; and "as collision
30 was unavoidable the master stated that it was best if both ships collided at the bows".

The master of the "Sanko Cherry", upon observing the drift of the "Mineral Transporter", endeavoured to contact her many times on VHF Channel 16 but without response. Thereafter he alternated between Channels 6, 8, 12 and 16 and also used his vessel's flashing Morse light, but to all of this there was no reply.

Mr Sato, the quartermaster on board the "Ibaraki Maru", gave evidence which, like that of the master, I accept. He had served in the Merchant Navy for about thirty years and had been a quartermaster

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for twenty-one of these. He was the sole person on watch commencing at midnight. He remained on the bridge until 0255 hours and from then until 0318 hours he "went around to check the inside of the vessel". Whilst on watch he did radar checks approximately every half hour. In evidence he described the route which he took on his rounds between 2.55 and 3.18 a.m.. During much of that time, in his own words "I couldn't see other vessels very well". Before he left the bridge he made a radar check between about 0240 and 0245 hours and "there was no change from the previous radar check that was made". Upon his arrival back on the bridge at 0318 hours he recorded the result of his inspection in the log and he then "noticed a large vessel lying in front of our vessel". This he inspected through binoculars and it appeared to be "a vessel at anchorage in a normal condition, and no-one could be seen". He said that it did not appear to be moving but he had some doubts "because normally when vessels are at anchor they face the same direction, but with this vessel it was at an angle from our vessel" and hence he called the master from his bed. The master thought that the quartermaster "said that there was a vessel approaching towards the bow of the vessel" but the difference of recollection between the two is not material. Captain Takatani went immediately to the bridge and observed the "Mineral Transporter" which according to the radar, was about one-half mile away, and then ordered the crew to emergency stations. He immediately began to endeavour to communicate with the other vessel on the VHF radio, using Channel 13 (until the radio operator arrived soon after and took over the operation of the radio) and he operated also the whistle and the air horn, as well as the searchlights, in an unsuccessful endeavour to attract the attention of those on board the "Mineral Transporter". At about 0333 hours the master gave an order to let out three shackles of the anchor in addition to the ten shackles which

already were out. At about 0322 hours an order to make ready the vessel's engines had been given and by 0340 hours they were in readiness for use.

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Mr Murao, the radio officer on the "Ibaraki Maru", whose evidence I also accept, said that he had received instructions from the port authority that communication between vessels was to commence on Channel 13 and then to be transferred to Channel 6. He said also that "Channel 16 is an international common channel used for emergencies, safety and general callings and responses". He said that immediately upon taking over the radio from the master he endeavoured to communicate with the other vessel both on Channel 13 and Channel 16. It should here be said that Mr Murao speaks only Japanese. He gave evidence through an interpreter and his English is limited. The crew of the other vessel appear to be of Chinese origin and there was plainly a language problem between the two radio officers. I am satisfied that on a number of occasions before any response was received from the "Mineral Transporter" at 0337 hours, Mr Murao sought to alert the attention of those on board that vessel to the effect that it was drifting. At 0337 hours a message was received from the "Mineral Transporter" asking that they communicate with her on Channel 6 and this was done. Upon communication being established a message came from the "Mineral Transporter" saying "slack the chain" two or three times and saying "let out ten shackles of your chain". To this Mr Murao responded "our vessel already has thirteen shackles out; why are you approaching ... no more shackles". This was followed by repeated requests from the other vessel to let out more chain, notwithstanding what Mr Murao had said. It is plain that the radio operators were not understanding each other.

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As the "Mineral Transporter" drifted towards the "Ibaraki Maru" the heading of the latter was about 142° and that of the "Mineral

Transporter" about 200°. The master demonstrated in evidence that the other vessel approached his, maintaining the same bearing, at approximately midships, colliding first with the bow of the "Ibaraki Maru" on the starboard side at 0342 hours. The "Mineral Transporter" then moved astern down the port side of the "Ibaraki Maru", colliding twice more with her port side, as demonstrated by the master in evidence. Captain Takatani said that he had not ordered the use of his engines when they were available at 0340 hours because, had he done so, the impact would have been substantially more severe and the damage greater. With this assessment I entirely agree.

From the foregoing evidence which I accept it will be apparent that those in control of the "Mineral Transporter" that evening were negligent in the extreme. Captain Hughes, who has had substantial experience in operating large vessels in and around Port Kembla, and whose expert evidence I accept in its entirety and prefer to that of Captain Ford where the two are in conflict, expressed the view that if a proper watch had been kept on the "Mineral Transporter" the fact that she was drifting should have become apparent, by means which he described, by the time the vessel had drifted about a ship's length (which in the case of the defendant was about 800 or 850 feet) I have earlier held that the drift commenced prior to 0300 hours but that fact did not become apparent to those on board the "Mineral Transporter" until much later. Even then it was not ascertained at 0320, when it clearly should have been, that the vessel in fact was drifting and it was only at 0330 hours that any emergency procedures were adopted. In addition, the port anchor of the drifting vessel was at no stage used in an endeavour to arrest her progress as, in my view, it should have been. On this issue Captain Hughes said:

"Q. And you have heard a description of the manner and the speed at which the Mineral Transporter was drifting towards the Ibaraki Maru? A. Yes.

Q. On the assumption that that information is correct, is there a point of distance from the Ibaraki Maru up to which it is possible to say with certainty that if the port anchor of the Mineral Transporter had been dropped there would have been no collision? A. Yes, I'd say about 2,500 feet away from the Ibaraki Maru.

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10 Q. Now, departing from considerations of certainty and moving to considerations of reasonable likelihood, is there a point in those circumstances up to which it was reasonably likely that if the port anchor had been dropped by the Mineral Transporter the collision would have been avoided? A. The closest it could have dropped perhaps and stopped the Mineral Transporter drift would be the length of the ship, which is a hundred feet, plus about ten shackles of chain, say 1700 feet."

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There is no doubt that if those who were charged with the duty of keeping watch on the "Mineral Transporter" had become aware, as they should have, within a reasonable time of the drift commencing, of what had happened, steps which could have been taken and which would almost certainly have avoided the collision included the use of
20 engines or of the port anchor. I have earlier said that no evidence was called from the defendant by way of explanation of the failure to appreciate, until collision was imminent, what was occurring.

(continued)

The critical issue in the case, apart from any problems concerning damages, is whether the defendant has established contributory negligence on the part of those on board the "Ibaraki Maru" and whether, in consequence, the damages to which the plaintiff would otherwise be entitled should be reduced, and also whether, because of any such negligence, the owners of the defendant are entitled to recover damages from the plaintiffs.

30 Section 259 of the Navigation Act 1912 (so far as is relevant) is in these terms:

259. (1) Where, by fault of 2 or more ships, damage or loss is caused to one or more ships, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each ship was in fault:

Provided that, if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally.

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(2) Nothing in this section shall operate so as to render any ship liable for any loss or damage to which its fault has not contributed.

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The above provisions are identical with those appearing in s.1 of the Maritime Conventions Act, 1911 (U.K.). Unlike the situation with which Sheppard, J. was concerned in Schleederer v. The Ship "Red Fin" (1979) 1 N.S.W.L.R. 258 it is s.259 of the Commonwealth Navigation Act which is relevant in the present proceedings and not either s.10 of the Law Reform (Miscellaneous Provisions) Act, 1965 or the Common Law. It was agreed by both counsel that each vessel was at the relevant time engaged in overseas trade.

(cont'd)

Both counsel agreed also that the critical issue on the question of contributory negligence and in the cross-claim was whether, if those on the "Ibaraki Maru" were negligent (a proposition which the plaintiffs denied), that negligence was in any way causally related to the collisions which occurred. The place of causation in cases to which s.10 of the Law Reform (Miscellaneous Provisions) Act, 1965 applies was discussed by the Court of Appeal in Stevenson v. Commissioner for Main Roads & Ors. (unreported, 9th March, 1978) and in Podrebarsek v. Australian Iron and Steel Pty. Limited (unreported, 15th September, 1978). In cases to which s.1 of the Maritime Conventions Act, 1911 or s.259 of the Navigation Act 1912 apply, it is only if the negligence of the plaintiff is causally related to the damage that any apportionment is to be made. A number of the cases are collected in Marsden, Collisions at Sea (British Shipping Laws (1961) Vol. 4 para. 29 ff). See also Admiralty Commissioners v. Owners of S.S. Volute (1922) 1 A.C. 129; and Boy Andrew (Owners) v. St. Rognvald (Owners) (1948) A.C. 140.

The allegations of negligence made by the defendant against those in authority over, and in particular the master of, the "Ibaraki Maru" are summarized in a document in these terms:

1. Failing to have a ship's officer on watch.
2. Failing to have the engine in a sufficient state of readiness.
3. Failing to have any or any proper or adequate standing orders as to the keeping of anchor watches as to the state of readiness of the vessel's engine whilst at anchor.
4. Failing to use the vessel's engines to avoid the collision.
5. Failing between 0230 and 0322 on 10th July 1981 to have on watch on the bridge at least two persons.
- 10 6. Failing during that period to have an officer on watch on the bridge.
7. Permitting the bridge of the Ibaraki Maru to be unattended at and about 0300 on 10th July 1981.
8. Failing to have standing orders to prevent the above-mentioned deficiencies occurring.
9. Having standing orders containing a requirement that the Master of the vessel be notified only when another vessel was 0.5 miles distant."

(continued)

Four other allegations which initially were contained in the
20 document were abandoned, including an alleged failure to use the ship
radio on Channel 16 until after 0330 hours. The defendant relied also
upon the general allegations in par. 10(a)-(f) inclusive of the cross-
claim which are in these terms:

- "(a) Failing to take early, or any, action to avoid the collision
- (b) Failing to take any, or any appropriate, helm and/or engine action to avoid the collision.
- (c) Failing to keep a proper and adequate lookout.
- (d) Failing properly to observe the course, speed and condition of the 'Mineral Transporter'.
- 30 (e) Failing to take into account the difficulties in which those on board the 'Mineral Transporter' were placed and failing consequently to take reasonable steps to avoid the collision
- (f) Failing to exercise seamanlike care and diligence."

During the course of his address Mr Sheller, senior counsel for the defendant, summarized his client's allegations in this way:

"In a particular sense what we would be submitting is that the watch on the 'Ibaraki Maru' at the critical time between 2.55

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and 3.18 was deficient and it was deficient in a number of respects such as the bridge remaining unmanned, no visual watch being maintained, no radar watch being maintained and no one in a position to hear signals.

It was deficient in the sense that there was only one person on watch and that one person was not a certificated officer. We then say that as a result of that a situation was created whereby it was too late when the Ibaraki Maru became aware that the Mineral Transporter was drifting towards it. It was too late for the Ibaraki Maru to take appropriate evasive action with engine and rudder. So that, your Honour, we would be submitting that there was a situation of danger which was created in part, as we would put it, by the failings of the Ibaraki Maru which created a situation from which it was impossible for the plaintiff to take action which would otherwise have been available to it.

If one looks at it the other way round and one says that even if a proper watch had been maintained and the fact that the Mineral Transporter was drifting had been observed by that watch in due time, there was nothing that could be done about it so far as evasive action using engine and rudder was concerned, then we would submit that the plaintiff was negligent in allowing itself to be anchored in a situation of danger, and in that sense exposing itself to danger. That is in broad terms how we would seek to put it."

I am satisfied that there is no substance in the defendant's claim that it was negligent to anchor the "Ibaraki Maru" in the place where she was lying if, assuming a proper watch had been kept on board the vessel of the plaintiffs, nothing could have been done by the use of engine and rudder to avoid a collision with a vessel drifting as the "Mineral Transporter" did on the night in question. The plotting chart tendered in evidence shows that a number of ships were anchored in the general vicinity of the "Ibaraki Maru", all waiting their turn to proceed to the loading berth. The plaintiffs' vessel dropped anchor some four days before the defendant arrived; a number of others, referred to in a letter from Patrick Agencies to the solicitors for the defendant dated 16th October, 1981 (Ex.10), were already waiting for the Port Kembla coal loader prior to the arrival of the "Ibaraki Maru", and some arrived between 26th June and the date of the collision. In the situation such as existed, with a number of vessels anchored in the vicinity, I do not think it can be said that to remain in her

position when the "Mineral Transporter" later anchored about 1.2 miles away constituted any negligence on the part of those in command of the "Ibaraki Maru". Even if, no matter how expert the watch kept, any evasive action to avoid the "Mineral Transporter" in the event that she drifted could not have been taken, it was eminently reasonable in the circumstances for the master of the "Ibaraki Maru" to assume that those on such a drifting vessel would ascertain what had occurred within a reasonable time after the drift commenced, or after action to alert it had been taken by others in the area, and would take steps obviously open to it (principally the dropping of the anchor or the use of engines) to arrest its movement. To say that the act of the "Ibaraki Maru" in remaining where she was after the "Mineral Transporter" had subsequently anchored 1.2 miles away was negligent is to impose altogether too high a standard of care upon those in command of the plaintiffs' vessel.

Nor do I consider that there is any substance in the suggestion that the master of the "Ibaraki Maru" was negligent in failing to use his engines and rudder in an endeavour to perform manoeuvres which may or may not have averted a collision. It is not necessary to recour the various manoeuvres relied upon by the defendant. From time to time during the progress of the case they altered somewhat. Captain Takata said that he did not order the use of the engines of his vessel once he had ascertained that the other ship was drifting and that no apparent response was made by those aboard her "because if the vessel moved ahead damages would be worse and also if the stern engine had been started stern would have swung widely to the left, making the damages still worse (sic)". This assessment by him of the situation I accept. Captain Takatani rejected also the suggestion that if the engines had gone full astern shortly before the collision and he had let out another one and one-half shackles of anchor, the collision could have been avoided. This I also accept.

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Captain Hughes, referring to the various manoeuvres which had been suggested to Captain Takatani in cross-examination, said "I would say they appear to be small ship manoeuvres being applied to ships of huge dimensions". Asked about a manoeuvre which involved the proposition that the "Ibaraki Maru" might have manoeuvred around her anchor cable, he said "It would have to be a case of life or death" adding that the risks involved in all of the suggested manoeuvres were great, for reasons which he gave and which I accept as accurate.

He said also:

"Q. I now want you to assume that the time 3.25 arrives and your engines are reported to be on standby and that in that interval of a quarter of an hour you have still not made contact with the Mineral Transporter. What action would you have taken at 3.25?
A. I think I would have stationed somebody on the fo'c'sle head to slack cable. It would be starting to look like a collision situation. The other ship, I have not established contact; although he is underway he is indicating to me that he is firmly at anchor with his lights. That is about all I could do. There is no way I can get my anchor up. I don't think I can use my engines in any seamanlike way to lessen the results of this - about the only thing that will lessen damage here is to, shortly before impact, slack my cable."

Captain Ford, the defendant's expert, suggested in his evidence-in-chief that at the stage where it had become apparent to those on board the "Ibaraki Maru" that the drifting vessel was either unwilling or unable to take steps which would have averted collision, moves should have been made by the use of engines and rudder in an endeavour to manoeuvre the "Ibaraki Maru" out of the line of drift. These moves he described in some detail but, in view of his answers in evidence to which I will refer, it is not necessary to recount them. In relation to the suggested manoeuvre which he principally advocated, when asked about the possibility of it succeeding, he said "Well, I'd say an even money chance of it coming off, fifty fifty". And further:

"Q. Assuming the conditions of this night and assuming that at 3.25 the master of the Ibaraki Maru had his engines at standby and was aware that the Mineral Transporter was drifting towards him at a speed of 1.5 knots and was in the position shown on you

diagram as position 1, would you have considered it prudent of him if he had simply remained at anchor without attempting this manoeuvre? A. You are asking me to consider whether I would consider it prudent of another man not to have considered himself to this manoeuvre. Depending on the degree of his skill or his own judgment - it is a hard question. I would not have considered it prudent to remain there and have an inevitable collision. I would consider a prudent master would take some action that had some chance of success other than to lay back and be raped."

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In cross-examination he agreed that it would be intricate,
10 difficult and dangerous and that he would not commence to undertake it
without having available to him all the resources of his vessel. He
agreed that the consequences of failure were that "possibly the damage
would have been accentuated". Later he said:

20 "Q. Do you mean to say that you would wish his Honour to understand that you are not suggesting that it would be imprudent of another master not to do that? A. As I mentioned before, it depends on his confidence, the amount of skill or whether he has done something similar to this before as to whether he would attempt it. If he hadn't done anything and he didn't have the necessary skill, then it would not be prudent of him, but if he did have the ability and certain experience in this sort of thing, then it would be prudent for him to do it.

Q. You mean that we are here operating in an area of judgment and risk taking? A. By the man who is actually going to do the judgment and the risk taking.

Q. Whilst you have told his Honour that you would make the judgment to take the risk? A. Yes.

30 Q. You would not wish to criticise a master who made the judgment that he would not take the risk? A. Yes, that is a fair assessment of the situation."

I am clearly of the opinion that, in the light of the foregoing evidence, and in particular that of Captain Hughes, the master of the "Ibaraki Maru" was in no way negligent in failing to undertake any of the suggested manoeuvres after he had observed the other vessel drifting towards him.

The critical question, as Mr Sheller recognized, concerns whether those on board the plaintiffs' vessel were negligent in not having an adequate watch at the critical time and whether, if such a watch had been kept and the drift of the other vessel detected earlier, it might

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have been possible to have averted the collision, and also whether the engines should have been kept at "standby". On this issue reliance in particular was placed upon the evidence of Captain Takatani in cross-examination, which it is necessary to set out in some detail.

"Q. On the view that you have given to his Honour that the 'Mineral Transporter' commenced to drift at about 2.50, if that be correct, it had been drifting for slightly over half an hour when you first observed it at 3.22, is that right?
A. Yes, that is correct. It did not, however, start drifting at 2.50 exactly. It was a little past 2.50.

Q. It drifted before 3.22, .7 of a mile, approximately? A. Yes.

Q. If you had been on watch on the bridge there is no doubt whatever, is there, that you would have observed a vessel drifting from the position that the 'Mineral Transporter' was drifting from to the position that you first observed it at long before 3.20? A. Yes, that is correct.

Q. Indeed, it would be right to say, would it not, that if this vessel had commenced to drift at 10 to 3, at 2.50, in the direction and at the speed that is apparent from the position that it started from, you would have observed it by 3 o'clock, would you not, at the latest? A. It would have taken a little longer. I should have been able to tell a little past 3.

Q. If you had been in any doubt whatever about the matter, a glance at the radar would have revealed to you what was happening, would it not? A. Yes.

...

Q. You would have used the radar if you had observed the 'Mineral Transporter' drifting? A. Yes.

Q. And that would have shown quite clearly that it was drifting towards your position? A. Yes.

Q. If you had observed that shortly after 3 o'clock you would have ordered the engines to stand by immediately, would you not? A. yes.

Q. And if you had ordered the engines to stand by, they would have been on standby at latest 20 minutes later? A. Yes, that's right.

Q. That is by, say, 25 past 3 at the latest? A. Yes.

Q. And that would have given you plenty of time to get away from the area towards which the 'Mineral Transporter' was drifting, would it not? A. Yes, that's right.

Q. It is good practice, is it not, to have an officer on watch at all times when a vessel is lying at anchor at sea? A. I wish that could be the case and that could be done, but generally on Japanese vessels there is only one person on watch.

Q. You would prefer, with your experience, that there always be an officer on watch while the vessel lies at anchor at sea; is that correct? A. Yes, that would be preferable."

And further:

10 "Q. You told his Honour, did you not, that it would be preferable to have an officer on watch when the vessel was lying at anchor at sea? A. Yes. If it could be done, yes.

Q. There was no reason in the world why it could not be done on this occasion, was there? A. No, there was no reason.

Q. You have already told us that if there had been an officer on watch at least a quarter of an your would have been saved in getting your engines to stand by? A. Yes.

Q. Would you not agree with me that on this occasion it was quite reckless of you not to have an officer on watch? A. No, I don't agree."

20 In re-examination he said:

30 "I go up during the night until twelve occasionally and on the 9th, as I said to you yesterday, the weather forecast was as follows: There was to be heavy swell but the low was moving to the east and where we were the wind, the force of the wind was four to five and it was a sou'-westerly wind and the swell was moderate. With the weather condition as such we would not have expected the vessel to drift because of wind, that was not a consideration, and also if there was a distance of 1.2 miles then that would have been sufficient; secondly, I felt that the quartermaster was very competent and also the engine was ready to be operated in 15 to 20 minutes. These were the conditions. Furthermore, the condition of the sea at night was not any different on that night from seven o'clock of the 10th July and a photo has been taken of this weather or the ocean condition and if you would look at this photograph I am sure that you would understand the condition of the sea at that time."

Captain Takatani said also that the state of the ship's machinery as he left it when he turned in at midnight "was such that the engine could be brought to standby in 15 to 20 minutes".

40 At about 0320 hours, when the drifting vessel was first observed by quartermaster Sato, she had drifted about .7 of a mile and was then about .5 of a mile from the "Ibaraki Maru". Assuming the drift had commenced at a little before 0300 hours, it was twenty minutes or a little longer before Mr Sato recognized the possibility of any danger

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Captain Takatani's estimate of the time which it would have taken to have brought in the anchor, which initially was out to the extent of ten shackles, was "at least 25 minutes to 30 minutes at best".

Captain Hughes said that it would take two or three minutes to engage the gearing once the crew on the fo'c'sle head was in position, and that thereafter to bring in the anchor would take about two minutes per shackle, the whole operation involving at least 22 to 23 minutes.

The master estimated that from the time when the crew was called to emergency stations it would take probably about 8 or 9 minutes for men to get to the anchor in order to operate it. Thus the total time involved from the call to emergency stations until the lifting of the anchor could be completed would be of the order of 30-35 minutes. It is in the light of this factor that the answers of Captain Takatani which I have earlier set out, and in particular his concession that if he had ordered engines to standby shortly after 0300 hours there would have been "plenty of time to get away from the area towards which the 'Mineral Transporter' was drifting", must be construed. I have already accepted the evidence of Captain Hughes to the effect that it would be unwise and probably dangerous to endeavour to manoeuvre the "Ibaraki Maru" whilst her anchor was still out; and no suggestions were made in cross-examination of any of the plaintiffs' witnesses that the estimates of time that I have referred to concerning the bringing in of the anchor were erroneous. Captain Takatani, in re-examination, said that,

"without the aid of radar it would probably have taken about 20 to 25 minutes to appreciate by visual observation, and assuming that a constant watch was kept, that the other vessel was drifting. If a constant radar watch was maintained, it would depend on the surrounding situation, but in about 15 to 20 minutes I may be able to tell that it may have started to drift".

Captain Hughes expressed the opinion that it would not be prudent to maintain a constant watch on the radar "because a visual look-out

is better with occasional references to radar". He denied that if radar was being constantly watched any movement of a vessel like the "Mineral Transporter" would be immediately observed. He gave further evidence as follows:

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10 "Q. How long would the 'Mineral Transporter' have to move before you would observe it on the radar, assuming you were keeping a constant watch on it? A. I think that with vessels 800 feet long with 900 feet of cable out that swing to every change of the wind, and so therefore can change their position with their anchor holding them, something like about 3,000 feet, that the ship would need to drift about 3 ship lengths before the possibility of a vessel dragging was established by another vessel.

Q. What if the 'Mineral Transporter' was observed on the radar to have been the only vessel that was changing its position?

A. I have seen in Port Kembla at various states of the wind as many as ten ships, each pointing in different directions.

20 Q. So you say that even if you looked at the radar and saw the 'Mineral Transporter' on the radar change its position up to three ship lengths that would not alert you? A. No, I am saying at three ships lengths I would be alerted.

30 Q. If you were maintaining a constant visual watch on the 'Mineral Transporter' how soon would you be alerted after it commenced to move? A. I would say possibly around about the same area. Remember, we would be viewing the 'Mineral Transporter' from the stern with one stern light in view. Vessels yaw about at anchor showing occasionally the for'ard and stern light on either side of the bow. One would tend at first in seeing this to think she was yawing. It would only be as the lights started to get larger that you would appreciate it may be coming towards you."

Earlier he had said:

"Q. Do you consider that if the 'Mineral Transporter' commenced to drift at ten minutes to three and if a competent watch was being maintained on the bridge of the 'Ibaraki Maru' it was reasonable that the drifting of the 'Mineral Transporter' would not be observed for 15 minutes from the 'Ibaraki Maru'? A. Yes

Q. You think that is not an unreasonably long time? A. It isn't an unreasonably long time."

40 I turn to consider the question whether good seamanship required that two persons should have been on watch, one being an officer. I leave for later consideration the question whether, if it did, any such negligence was causally related to the damage to the plaintiff's vessel. I have already set out the principal evidence in relation to

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the former aspect given by Captain Takatani. In addition he said:

"Q. So that, in accordance with your orders with this vessel lying at anchor at sea there would be nobody on watch on the bridge for periods up to 25 minutes while the able seaman was doing his rounds, is that right? A. Yes. I feel that that is okay because I check the condition at night and according to that check I make the judgment on that.

Q. Would you not agree that in accordance with good practice there should while a vessel of this size, the size of the Ibaraki Maru is lying at anchor at sea be somebody constantly present on the bridge, would you not agree that that was good practice? A. Yes, I agree. (objected to: allowed).

Q. Would you not agree that in the situation of the Ibaraki Maru on 10th July, 1981, prior to this collision it was quite reckless for you to leave an order which amounted to the bridge being abandoned for periods of up to 25 minutes? A. No I don't agree.

Q. The situation was, was it not, that if another vessel dragged its anchor and drifted towards your vessel it could be that nobody on the Ibaraki Maru would know anything about it for 25 minutes? A. Yes, that's true.

Q. And you don't say that to allow such a situation by your orders is quite reckless? A. I left my orders as they were because before I went to bed I made sure that things were safe and felt that it was safe to do so.

Q. Of course, this is the very thing that happened on this night is it not, that this vessel the Mineral Transporter drifted towards you for 25 minutes or more before anybody on the Ibaraki Maru knew anything about it? A. Yes, that was the situation."

In re-examination the master gave his reasons for rejecting the suggestion put to him in cross-examination that it had been reckless not to have an officer on watch.

Captain Hughes, asked about good watch-keeping, said:

"Q. You have also heard the evidence given about a watch being maintained by quartermaster Sato? A. Yes.

Q. You have heard a description of what his duties were and what he in fact did between 5 to 3 and 18 minutes past 3? A. Yes.

Q. That description involved the bridge of the 'Ibaraki Maru' being left unmanned for that period - from 5 to 3 to 18 minutes past 3? A. Yes.

Q. In your opinion, is a practice of watch-keeping which involves a person alone on watch leaving the bridge for a period like that in accordance with the requirements of good seamanship? A. I don't like it.

Q. I am sorry? A. I don't like it.

Q. Would you agree that it is bad seamanship to have a watch maintained in that manner? A. No.

Q. You wouldn't agree that it is bad seamanship to leave a bridge unmanned on a vessel lying at night at anchor at sea in these weather conditions? A. Bridges can be left unmanned for short periods to perform other functions necessary for the safety of the ship and the personnel, in my opinion.

10 Q. Of course, there would be no reason to leave the bridge unmanned if there were two people on watch, would there not? A. That's correct.

Q. Would it not be good practice in this situation to have at least two people on watch? A. It is the practice on my ship.

Q. And to have one of those persons an officer? A. That's the practice on my ship.

Q. Is that, in your opinion, in accordance with the requirements of good seamanship? A. Yes.

20 Q. Would you agree that it is bad seamanship to have one quartermaster left on watch at night at sea, albeit, with the experience of Mr Sato? A. On my ship it should be bad practice. It may not necessarily be on some other ship.

Q. On what basis would there be any difference? A. My seamen are casual employees without a great deal of training. I have no idea of the experience of Mr Sato.

Q. You have heard that he has been at sea for 30 years and a quartermaster for 21? A. I could say that with some long-serving seamen that I have sailed with I could trust them perhaps in some situations more than one of my most junior officers.

30 Q. Have you ever in your experience as a master left one man on watch on the bridge when your vessel was lying at anchor at sea at night? A. No.

Q. Have you ever in that situation not had an officer on watch? A. No."

Captain Ford's view was as follows:

"Q. Did you hear the evidence that on the 'Ibaraki Maru' on this night there was on the bridge prior to 3.18 on watch only one person? A. Yes.

Q. And that was a quartermaster of 21 years experience as quartermaster? A. Yes.

40 Q. Captain, on the assumption that the evidence as you have heard it reveals the situation in terms of weather and the position of the Ibaraki Maru on that night, if you had been the master of that vessel in that situation what watch would you

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have left as the vessel lay at anchor? A. For that period of time the certified second officer and a minimum of one AB and a watch keep.

Q. When you say for that period of time, what period of time are you referring to? A. Midnight to 4 a.m. I would have the third officer, would be 8 to midnight.

Q. As a matter of prudent seamanship did you consider it prudent to have left on watch on the bridge in that situation a quartermaster of that experience alone? A. I do not consider it prudent at all. I have never done it and never would do it.

Q. You have heard evidence of the grounds that Mr Sato went on commencing at 5 to 3 and finishing at 18 minutes past three. You have heard that evidence? A. Yes.

Q. Which involved him leaving the bridge for that period of time. As a matter of prudent seamanship do you consider it to have been prudent, on this occasion with this vessel in the situation it was for the bridge to be left unattended for a period from 5 to 2 to 18 minutes past three? A. It certainly was not prudent to leave the vessel unattended for any period of time and to the extent of 25 minutes which was nothing I would ever do and ever have done.

Q. When you say for any period of time do you mean by that however short? A. However short. If I can expand - the bridge is not merely for visual observation to see whether you are going to drift or another vessel is going to drift on you. It is the nerve centre of the vessel, the fire alarm systems are centred on it with rows and rows of smoke indicators, lights and everything centres up there so that a fire can be located or notified. It is notified to the bridge, nowhere else, and if you are 25 absent that means that the fire is going for 25 minutes. Whereas if a man is always on the bridge he will immediately hear that buzzer. That is one reason why I would never have the bridge unmanned at sea for any time on voyage or at an outside port limit."

In the light of this evidence I am of the opinion that, whatever the nationality of the vessel, the standards of good seamanship require a constant watch being kept on the bridge, which should never be left unattended, the watch consisting of an officer and an able seaman who from time to time would make the necessary inspection of the vessel. In the present case, if that type of watch had been kept, it is probable that the drift of the "Mineral Transporter" would have been observed (assuming it had begun at about ten minutes to three) by about 3.05 a.m. - i.e. about fifteen minutes after it had commenced.

In fact it was not observed until about 3.20 a.m. - i.e. about fifteen minutes after it would have been if a proper and constant watch had been maintained. In arriving at this conclusion I accept the statement of Captain Hughes that it would not have been prudent to have kept a constant radar watch, "because a visual look-out is better with occasional reference to radar".

So far as the state of readiness of the engines of the "Ibaraki Maru" is concerned Mr Rannard, a consulting engineer and naval architect with considerable experience, gave evidence as follows:

10 "Q. I want you to assume that on that night, as the 'Ibaraki Maru' lay at anchor prior to 3.20 on the morning of 10th July, the lubricating oil system was not running through the engines?
A. Yes.

Q. The engines were said to be in a state of readiness to bring them to standby in 15 to 20 minutes? A. Yes.

20 Q. Could you describe to his Honour what is meant in that situation by the lubricating oil system not running through the engine? A. Well, it places the engine only in a warm condition, but not preparatory to starting and to start the engine it requires lubricating oil and other functions to be opened up so that the engine can be placed in a position for immediate starting by use of the starting gear.

Q. So that if an order is given to bring the engines to standby in a situation where the lubricating oil system is not running through the engine, one operation that has to be performed is to start the lubricating oil running? A. That would be the first operation, yes.

30 Q. Is it possible to say, from your experience, how long it takes to get the lubricating oil running through the engines?
A. It would take approximately 12 minutes in the case of this particular engine.

Q. To what extent does that 12 minutes starting the lubricating oil system add to the time that it takes to bring the engines to standby? A. Approximately double.

Q. When you say approximately double, what does that mean in terms of minutes? A. If the lubricating oil was running, it would take approximately ten minutes to place the engine in a starting condition.

40 Q. By a starting condition, do you mean at standby? A. Well, standby is a starting condition it can be started immediately after standby has been made."

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This evidence I accept.

In relation to Mr Rannard's opinion as to whether or not in certain situations engines should be kept in a state of immediate readiness for use, I prefer the views of Captain Hughes because I think the matter is rather one for the expert opinion of an experienced master mariner rather than that of an experienced engineer. Captain Hughes, asked what he would do in the position of Captain Takatani if at 3.05 a.m. he had observed the "Mineral Transporter" moving towards him on a bearing of about 200°, gave this evidence:

"Q. In that situation what, as master on the bridge observing that, would you have done? A. I would have called the Mineral Transporter and asked what she was doing.

Q. If you got no response? A. I would have kept calling. I would have perhaps called Channel 13 and informed the port authority.

Q. Assuming you continued to get no response from Mineral Transporter? A. What would I have done?

Q. Yes? A. I think I would have done many of the same things as Captain - I am sorry, I can't pronounce his name, but the Japanese captain - try to attract the other ship's attention in every way possible.

Q. Would you have called the crew to emergency stations? A. At one mile, no.

Q. Would you have put or called the engines to stand by? A. I already have my engines on 15 minutes' notice, I would have rung the engine room perhaps.

Q. And called the engine to stand by? A. Not necessarily, not at one mile.

Q. When you said that you would have the engines at 15 minutes, does that mean that as a matter of prudence in the weather conditions as they have been described in evidence on this night you would have had the engines in a state of readiness where they could have been called to stand by at no less than 15 minutes' notice? A. Yes.

Q. Assuming that was the situation, at what distance, if the Mineral Transporter continued to move towards you and continued on a heading of 200°, would you have called for the engines to be put on standby? A. I'd say at about .7 of a mile."

In fact the engines of the "Ibaraki Maru" were ready at 0340 hours, eighteen minutes after their readiness was ordered.

Captain Hughes continued:

"Q. I take it from what you have said that at .7 of a mile at about 03.10 you would have called your engines to standby?

A. Yes.

Q. You would have expected them to be on standby by 3.25? A. Yes.

Q. In the interval, while the engines were coming to standby, from 3.10 to 3.25, what action would you have taken in the circumstances as I have described them to you? That is you as master of the Ibaraki Maru? A. Try in every way possible to make contact with the ship that was coming down on me. I would certainly do other things, like turning out crew and so on.

Q. During that time of a quarter of an hour would you give consideration to what plan of action you should take, according to whether or not you made contact with the Mineral Transporter? A. Most certainly.

Q. So that it would be a time of planning as well, is that right? A. Yes."

Captain Ford, asked about engine readiness said:

"Q. Again assuming the weather conditions that were described and the position of the Ibaraki Maru on that night what, in your opinion, are the requirements of prudent seamen as to engine readiness? A. I discussed with the chief engineer before making it - taking into account any inhibitions or lack of labour. There is various things that do affect the readiness of the engine. The normal course in that situation has been 20 minutes notice for full power but in an emergency condition I could get reduced revs. which may only be one third but I would get some revs. within ten minutes.

...

Q. Just so I understand that, you say that when you come to anchor - when you first anchored off Port Kembla what were your requirements as to engine readiness? A. 20 minutes.

Q. Did you have any requirements about partial power? A. With an adjoinder that if we needed emergency - that is a critical situation of danger - I could get some partial power within ten minutes."

Captain Ford said further:

"Q. Assuming the conditions of this night and assuming that at 3.25 the master of the Ibaraki Maru had his engines at standby and was aware that the Mineral Transporter was drifting towards him at a speed of 1.5 knots and was in the position shown on your diagram as position 1, would you have considered it prudent of him if he had simply remained at anchor without attempting this manoeuvre? A. You are asking me to consider whether I would consider it prudent of another man not to have considered himself to this manoeuvre. Depending on the degree of his skill

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or his own judgment - it is a hard question. I would not have considered it prudent to remain there and have an inevitable collision. I would consider a prudent master would take some action that had some chance of success other than to lay back and be raped."

In all the circumstances I do not think that it was negligent for the engines of the "Ibaraki Maru" to be in a situation where it took eighteen minutes to have them available. On Mr Rannard's evidence the additional time involved would be only about eight minutes and in the context of the present case, in view of my conclusions on the question of causation, that would be of little relevance.

Thus it is necessary to determine whether the failure to have a constant watch on the "Ibaraki Maru" and to apprehend the fact that the other vessel was drifting at about 0305 hours was in any way causally related to the impact that occurred at 0342 hours. In this regard it is necessary to take into account the evidence of Captain Hughes as to what a reasonable master would have done on first observing the drifting vessel, the time during which the master of the "Ibaraki Maru" was entitled to assume that those on board the "Mineral Transporter" would themselves take steps to avert the drift, and the time which would be involved in raising the anchor of the "Ibaraki Maru". Captain Hughes said:

"Q. I want to ask you some questions about the 'Ibaraki Maru'. If a vessel of which you were in command was lying at anchor in this area and you observed another vessel that appeared to be drifting in the direction of your vessel, what is the next thing that you would do? A. Try and make contact with the vessel and find out his intended actions.

Q. What would be the significance of making contact with the vessel and trying to find out his intended actions? A. It may affect any subsequent action that I may take.

HIS HONOUR: Q. You would want to know whether he was broken down or drifting, or what was happening? A. Correct, he may have been perhaps just shifting anchorage, he may have been doing anything."

I have earlier set out the answers which he gave in cross-examination as to what, if he had been the master of the "Ibaraki Maru

he would have done. In further cross-examination he said:

"Q. The questions that I put to you up to this point of time have been based on the assumption that, firstly, the master of the 'Ibaraki Maru' observed the 'Mineral Transporter' drifting towards it at five past three and then after the actions that you described that you would have taken in that position that the engines were on standby by 3.25 on the 'Ibaraki Maru' - do you understand that? A. Yes.

Q. Does that mean that in your opinion on those assumptions from 3.25 there was nothing that the 'Ibaraki Maru' could have done to avoid the collision? A. In my opinion, yes."

10 He repeated his view that a competent watch from the bridge of the "Ibaraki Maru" would probably not have observed the drift of the other vessel before 3.05 a.m.; that he would not immediately thereafter have called the engines up to standby but would have done so at about 3.10 a.m.; and that it would be about fifteen minutes before they would be at standby. At this stage there was no manoeuvre that could reasonably have been performed on the "Ibaraki Maru" to avoid the other vessel. With this evidence, which I accept, is to consider the earlier evidence concerning the time which it would take to get a crew to the fo'c'sle and then to raise the anchor, a total of over 20 thirty minutes. So that even if the order to emergency stations and then to raise the anchor had been given at 0305 hours, it would not have been possible for the vessel to have executed any manoeuvres by the use of her engine and rudder until about thirty minutes thereafter. Thus there was nothing which could have been done by the "Ibaraki Maru", assuming the other vessel had been sighted at 0305 ~~less~~ 30 hours, which would have prevented the damage. In such a situation it was only the "Mineral Transporter" which could and should, by means to which I have earlier referred, have kept out of the way and this she did not do. At 0325 hours the "Mineral Transporter" was about 570 metres away from the bow of the "Ibaraki Maru" and approaching her at a rate of at least 1.5 miles per hour. Hence I conclude that the

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failure to maintain a better watch on the "Ibaraki Maru" was in no way causally related to the collision. From this it follows that the defence of contributory negligence fails, as does the cross-claim.

I turn to the question of damages. I propose to deal first of all with the claim of the second plaintiff, which poses fewer problems than that of the first plaintiff. The former was the charterer of the "Ibaraki Maru" under a bareboat charter which, by cl.8 and 9, rendered it liable, as against the first plaintiff, to bear the cost of repairs resulting from collision, and such cost was in fact borne by it.

The second plaintiff also, as disponent owner, entered into a time charter of the vessel, the charterer being the first plaintiff. It was ultimately agreed between counsel that the proper construction of the time charterparty, and particularly cl.14 and the Addendum of 5th April, 1981, was that whilst the vessel was laid up for repairs as a result of the collision, the daily rate payable to the second plaintiff was reduced by 1,920,000 yen from 2,464,000 yen to 544,000 yen. The latter sum was in fact paid by the first plaintiff to the second plaintiff whilst the vessel was off-hire for repairs to be carried out.

The parties agreed also as follows:

- "1. That temporary and final repairs were carried out to 'Ibaraki Maru' as a result of the collision and that the cost of those repairs and incidental costs incurred amounted to:

\$A215,692.97	(Payment: 24th November, 1981)
Plus Yen 104,849,333	(Payment: 31st March, 1982)
Plus Bunkers Yen 13,814,280	(Payment: 12th October, 1981)

and that the said costs are fair and reasonable and were necessarily incurred as a result of the collision."

A further claim envisaged in the same exhibit concerning additional work amounting to \$A25,765.92 was not pursued. The time

taken to effect the repairs was extended by a "black ban", the facts relating to which were agreed and set out in a document reading as follows:

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10 "By reason of a black-ban imposed by the Painters and Dockers Union on the vessels 'Mineral Transporter' and 'Ibaraki Maru' the defendant/cross claimant and the plaintiff/cross defendant respectively in these proceedings were prevented from effecting temporary repairs which would have enabled the vessels to be put back into class in order to proceed on their voyages and have permanent repairs effected elsewhere. The bans placed upon the vessels by the Painters and Dockers Union were designed to persuade the owners of the two vessels to have permanent repairs effected in Australia and were stated to be in support of the Union's campaign to persuade foreign vessels trading regularly to Australia to undergo repairs and maintenance in Australia. Pursuant to the black-ban the 'Mineral Transporter' was delayed in Australia for 55 days and the 'Ibaraki Maru' was delayed in Australia from 1315 hours 20th July, 1981 to 0810 hours 22nd August, 1981 being 32.79 days longer than they would otherwise have been."

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20 The only additional evidence in relation to this aspect of the matter was that given by Captain Ford as follows:

"Q. I want to move to a different subject matter. Are you aware that when both the Ibaraki Maru and the Mineral Transporter put in for repairs to port in Sydney there was a black ban that was imposed? A. Yes.

Q. That delayed the sailing of the vessels? A. Yes.

30 Q. You are aware, are you not, that that black ban was placed as part of a campaign by a particular union to require foreign vessels to undertake repairs in Australia rather than elsewhere? A. Yes, I was aware of that campaign.

Q. That is a longstanding campaign in the shipping industry? A. Yes.

Q. It was the sort of risk that you ran - may be still do run, but ran in July 1981 if you were a foreign vessel and you had to have repairs done in Australia? A. I was aware of it, yes.

40 Q. But you were aware that the risk of running into a black ban of that kind was part and parcel of having to have repairs done in Australia if you were a foreign vessel? (objected to; allowed) A. I would say a master would be aware of that if he was a constant - or not necessarily a constant visitor, but a visitor - if he had been here before; if he was a first arrival he might possibly have no knowledge of our industrial practices.

Q. Prior to July 1981 were you aware of any occasion on which a foreign flag vessel was in fact held in the course of repairs by the union in order to try and ensure that permanent repairs were made in Sydney or Australia? A. I was not aware of any specific ship. My knowledge came from the newspaper reports

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that they were going to do that.

Q. Your knowledge of this was based on newspaper reports, was it? A. That this was their campaign.

Q. And the evidence you have given about the campaign was based on newspaper reports? A. And word of mouth of various shore people.

Q. Are you aware of any specific instance prior to July 1981 where a foreign flag vessel was held up during repairs in Australia for this reason? A. No, the only ones were held up because of the complaint about low wages by Libyan owners but it wasn't about the repairs."

The second plaintiff claimed to be entitled to recover in respect of loss of hire the sum of 129,463,680 yen calculated at the rate of 1,920,000 yen per day for 67.429 days. Mr Gleeson, senior counsel for the plaintiffs, argued that in the circumstances the Union ban was a foreseeable consequence of the collision resulting from the defendant's negligence and that consequently the second plaintiff was entitled to recover its full economic loss. If the days lost as a result of the ban are not recoverable then the relevant number of days is 34.639 and the amount of the second plaintiff's claim for loss of hire would be reduced to 66,506,880 yen. Mr Sheller, senior counsel for the defendant, in his written submissions, argued that the time lost as a result of the Union black ban was not recoverable as it had not been shown to be a foreseeable consequence of the collision. He argued that such ban was imposed for the purpose of persuading foreign vessels to undergo repairs and maintenance in Australia and was hence of a totally different character to a Union strike called for normal industrial reasons.

In H.M.S. London (1914) p. 72, decided before In re Polemis and Furness Withy & Co. Limited (1921) 3 K.B. 560 and, of course, before The Wagon Mound (No. 1) (1961) A.C. 388, the plaintiff's vessel, which had been damaged by the negligence of the defendant, was delayed whilst undergoing repairs in dry dock owing to a strike of workmen.

Objection was taken, on the ground of remoteness, to the allowance by the Registrar of an item in the plaintiff's claim in respect of this delay. Sir Samuel Evens P. held that the item was properly allowed as the loss flowed directly, naturally, and in the usual or ordinary course of things from the proximate cause, namely the negligence of the defendant. The actual principles enunciated in that case in connection with remoteness of damage are no longer good law in view of the decision in The Wagon Mound. But in the course of his judgment Sir Samuel Evans observed that in that case no evidence had been given that the strike was illegal, or even that it was unexpected and "in the ordinary course of business industrial disputes may and do occur, and strikes ensue". The editor of McGregor on Damages (13th Ed.) (at par. 121), after referring to this passage, added "this could well include in these days illegal strikes".

In my opinion, in asking whether the days lost as a result of a black ban are recoverable by the plaintiffs as a foreseeable consequence of the collision resulting from the negligence of the defendant, it is not realistic to examine the precise cause of the strike and to differentiate between those which are concerned with industrial conditions and those which might be described as "political" in character, such as the one in the present case. Whether the problem be regarded as one of causation or of remoteness of damage in which foreseeability is critical (and the distinction between them is drawn in cases such as Chapman v. Hearse 106 C.L.R. 112 at 122), I am of the opinion that the second plaintiff is entitled to recover in respect of the additional delay amounting to 55 days as a consequence of the ban imposed by the Union. The negligence of the defendant was a proximate cause of the loss of use of the vessel during the period of the ban - see H.M.S. London (ante). It was also reasonably foreseeable that from time to time ships requiring repairs would be delayed by reason of

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strikes called or bans imposed by trade unions. The additional loss suffered by the second plaintiff was within the class of loss foreseeable by the tortfeasor as a possible consequence of its negligence. It is not a condition of liability of the wrongdoer that the precise and particular character of the damage should have been foreseen. It is necessary only that the damage suffered should not be different in kind from that which was foreseeable - Mount Isa Mines Limited v. Pusey 125 C.L.R. 383; Rowe v. McCartney (1976) 2 N.S.W.L.R. 72. The second plaintiff is therefore entitled to recover from the defendant, in addition to the cost of repairs, and interest at the rates specified in practice note No. 25 from the respective dates of payment, loss of hire calculated at the rate of 1,920,000 yen per day for 67.429 days. In addition it is entitled to interest from 31st August, 1981, the date when the vessel went back on hire after its temporary repairs, in relation to the loss of hire from 10th July, 1981 to that date, and from 27th October, 1981 in relation to loss of hire from 12th October, 1981.

The second plaintiff, like the first plaintiff, seeks judgment in Japanese currency. The defendant submitted that it should be expressed in Australian currency, claiming that the second plaintiff had not shown that its operations were conducted in yen or that it was the second plaintiff's currency "that was used, in a normal manner, to meet the expenditure for which" it claims (The Despina R. (1979) A.C. 685 at 698). In that case the House of Lords held that where a plaintiff had suffered damage or sustained loss in a foreign currency as a result of a tort committed against him, and had used his own currency to obtain the amount of foreign currency required to make good the damage or loss, or if his loss could only be appropriately measured in his own currency, he was entitled to an award of damages in such

10 currency and not in the foreign currency, provided his own currency was that in which his loss was felt and was the currency which it was reasonably foreseeable he would have had to spend, by virtue of being the money in which he generally operated or to which he had the closest connection. In the present case I am of the opinion that the second plaintiff is entitled to judgment in Japanese yen. The proper inference is that it conducted its operations in yen and that it had expended its normal currency to meet the expenditure on the repairs which were carried out. I consider also that in relation to the claim for loss of hire, the second plaintiff's own currency is that which most truly expresses its loss. These matters I infer from the fact that the second plaintiff is a Japanese company; the charter rates between both plaintiffs are expressed in yen; and both contracts were made in Japan. Thus the second plaintiff is entitled to judgment, in Japanese yen, in an amount calculated as I have indicated. I will leave the precise figure to be agreed upon between the parties, who should bring in short minutes in due course.

20 The claim of the first plaintiff raises questions of greater difficulty. It is to recover economic loss in the form of loss of profits which it would have made from the use of the "Ibaraki Maru" during the period when it was laid up as a result of the collision. It alleges that it is entitled to have taken into account, in the calculation of its daily loss of profits, the daily rate payable by it to the second plaintiff while the vessel was off hire and also the daily profit which it would have earned had Voyage 65A not been cancelled as a result of the delay caused by the need for temporary repairs to be effected. Paragraph 22 of the affidavit of Mr Ogata, a senior officer employed by the plaintiffs, was in these terms:

30 "Fixture note dated 22nd June, 1981, Annexure 'V', was the fixture note relating to the voyage 'Ibaraki Maru' was

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engaged in at the time of the collision. Because of the delay caused by the collision, that voyage was cancelled, but when temporary repairs to the vessel were completed and the black ban was lifted, Sumitomo Metal Industries Limited agreed to engage 'Ibaraki Maru' for a voyage similar to that contemplated by fixture note dated 22nd June, 1981. That voyage was called 'Voyage 65 A'. I crave leave to refer to Addendum 6 annexed and marked 'AB', which provides for a final freight rate of \$US 12.38 per tonne. Addendum 1 annexed and marked 'W', provided for a different quantity of coal to be carried than that provided for in the fixture note dated 22nd June 1981."

It is not necessary to reproduce the annexures.

Mr Sheller argued that the first plaintiff was not entitled to recover damages for what was in reality an injury to its merely contractual rights, and that the fact that it was the owner of the vessel was an immaterial circumstance because of the obligation on the part of the second plaintiff to reinstate the vessel. He submitted that the position of the time charterer had not been altered by any decision subsequent to The "World Harmony" (1967) P. 341 and in particular by the decision of the High Court in Caltex Oil (Australia) Pty. Limited v. The Dredge "Willemstad" 136 C.L.R. 52. Counsel argued that it had not been shown that the defendant could reasonably have foreseen that the first plaintiff, as a specific individual, as distinct from a general class of person, would suffer financial loss, in its capacity as a time charterer, as a consequence of the defendant's negligence. He argued also that it had not been established that the defendant could reasonably have foreseen that the first plaintiff would suffer damage by way of loss of profits because collateral commercial arrangements were adversely affected.

The relevant facts, put shortly, in relation to this issue are that the first plaintiff was both the owner and the time charterer of the "Ibaraki Maru"; arrangements involving a bareboat charter and a time charter back to the owner are reasonably commonplace (an inference which I would draw even without the affirmative evidence of

Captain Ford); and that the "Ibaraki Maru" at the time of the collision bore distinctive markings identifying it as belonging to the first plaintiff's fleet.

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Mr Gleeson argued that even prior to "The Willemstad" decision the time charterer would have had sufficient interest in the damaged property, being its owner as well as, in effect, a joint venturer with the second plaintiff, to enable it to claim for purely economic loss. He argued also that since "The Willemstad" it is plain that the claim should succeed, whether because it was foreseeable that the first plaintiff as an individual would suffer loss, or else because there was a sufficient degree of proximity between that loss and the defendant's negligence.

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I do not need to consider whether, as a result of what was said in the speeches of the majority in Morrison Steamship Company Limited v. Greystoke Castle (Cargo Owners) (1947) A.C. 265, as explained in "The Willemstad", and in Junior Books Limited v. Veitchi Co. Limited (1982) 3 W.L.R. 477, the first plaintiff would be entitled to succeed, taking into account in particular that it was owner as well as time charterer of the vessel and that there was, in substance, a joint venture between the plaintiffs. This is because I have come to the conclusion that on any view of the principles to be derived from "The Willemstad" and, more recently, from Junior Books Limited v. Veitchi Co. Limited the first plaintiff is entitled to the damages which it claims. For that reason also I need not deal with the other cases to which counsel referred in their helpful written submissions.

In "The Willemstad" all the members of the Bench considered that the plaintiff could recover in respect of its economic loss, notwithstanding that the plaintiff's property had not suffered physical damage, but the reasons given for this view did not all correspond.

Gibbs J. (as the Chief Justice then was) at p. 555 said:

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"In my opinion it is still right to say that as a general rule damages are not recoverable for economic loss which is not consequential upon injury to the plaintiff's person or property. The fact that the loss was foreseeable is not enough to make it recoverable. However, there are exceptional cases in which the defendant has knowledge or means of knowledge that the plaintiff individually, and not merely as a member of an unascertained class, will be likely to suffer economic loss as a consequence of his negligence, and owes the plaintiff a duty to take care not to cause him such damage by his negligent act. It is not necessary, and would not be wise, to attempt to formulate a principle that would cover all cases in which such a duty is owed; to borrow the words of Lord Diplock in Mutual Life & Citizens' Assurance Co. Ltd. v. Evatt (44): 'Those will fall to be ascertained step by step as the facts of particular cases which come before the courts make it necessary to determine them.' All the facts of the particular case will have to be considered. It will be material, but not in my opinion sufficient that some property of the plaintiff was in physical proximity to the damaged property, or that the plaintiff, and the person whose property was injured, were engaged in a common adventure."

Stephen J., after referring to the inadequacy of reasonable foreseeability as the sole measure of liability for economic loss, spoke of the need for some control mechanism based upon notions of proximity between tortious act and resultant detriment, saying:

"Its precise nature and the extent to which it should restrict recovery for purely economic loss must depend upon policy considerations just as does the conclusion that for cases of economic loss such an additional control mechanism is necessary."

In determining whether the requisite degree of proximity exists in a particular case there must be asked whether "there exists the degree of proximity between the tortious act and the injury such that the community will recognise the tortfeasor as being in justice obliged to make good his moral wrongdoing by compensating the victims of his negligence" (p. 575). At pp. 576-7 his Honour set out the factors in that case which led to the conclusion that the plaintiff was within the reasonable contemplation of the defendant as a person likely to suffer economic loss if the pipelines were cut and that there was a close degree of proximity between the defendant's conduct in severing such pipelines and the economic loss which the plaintiff suffered. His Honour referred to the knowledge, actual or constructively,

possessed by the defendant about the use of the pipeline to convey products to the plaintiff's terminal, and said (p. 578):

"Not only does it form part of the concept of special relationship necessary to establish liability for negligent mis-statement but it is also relevant in establishing the appropriate degree of proximity in cases of negligence by act ...".

Mason J. who, like other members of the Court, referred to Morrison Steamship Co. Limited v. Greystoke Castle (Cargo Owners) with approval, observed that the most acceptable path to the solution of the problem was to be found through the duty of care and not as a question of proximity of damage. His Honour said (at pp. 592-3):

"It is preferable then ... that the delimitation of the duty of care in relation to economic damage through negligent conduct be expressed in terms which are related more closely to the principal factor inhibiting the acceptance of the more generalised duty of care in relation to economic loss, that is, the apprehension of an indeterminate liability. A defendant will then be liable for economic damage due to his negligent conduct and he can reasonably foresee that a specific individual, as distinct from a general class of persons, will suffer financial loss as a consequence of his conduct. This approach eliminates or diminishes the prospect that there will come into existence liability to an indeterminate class of person; it ensures that liability is confined to those individuals whose financial loss falls within the area of foreseeability ...".

In Junior Books Limited v. Veitchi Co. Limited (ante) Lord Fraser of Tullybelton (with whom Lord Russell of Killowen and Lord Roskill agreed) said (at p. 482):

"The floodgates argument was much discussed by the High Court of Australia in Caltex Oil (Australia) Pty. Limited v. The Dredge 'Willemstad' where the majority of the Court held that there was sufficient proximity between the parties to justify a claim for economic loss because the defendant knew, in the words of the headnote 'that a particular person, not merely as a member of an unascertained class (would) be likely to suffer economic loss as a consequence of his negligence'. Whether the defenders' knowledge of the identity of the person likely to suffer from his negligence is relevant for the present purpose may with respect be doubted and it seems to be contrary to the views expressed in Hedley Byrne & Co. Limited v. Heller and Partners Limited ... But it is not necessary to decide the questions in this appeal because the appellant certainly knew, or had the means of knowing, the identity of the respondents for whom the factory was being built."

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Lord Roskill (with whom Lords Fraser and Russell agreed) applied and adopted, in that case, where the question was whether economic loss simpliciter was recoverable in an action for negligence, what had been said by Lord Wilberforce in Anns v. Merton London Borough Council (1978) A.C. 728 at 751. There his Lordship had enunciated two tests which had to be satisfied: the first was a "sufficient relationship of proximity" and the second, whether there were any considerations which ought to be negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach may give rise.

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I do not understand Gibbs J. or Mason J. in "The Willemstad" to have stated that knowledge of the precise identity of the plaintiff by the alleged tortfeasor was a necessary ingredient. In my opinion a proper reading of the various judgments indicates that it would be sufficient, in a case such as the present, that the defendant knew or should have been aware that it was at least likely that the "Ibaraki Maru", like many other vessels, would be the subject of a time charter and hence the charterer would be likely to suffer economic loss if the ship was damaged. The fact that a tortfeasor may not know the precise identity of the time charterer is irrelevant. As would undoubtedly be known to the owners of the "Mineral Transporter", it is very common for commercial vessels to be the subject of charters of various kinds and in particular time and voyage charters. If in fact evidence is required that the first plaintiff individually, and not merely as a member of an unascertained class of time charterers who are likely to exist, would be likely to suffer economic loss, then it is provided in the present case by the fact that the "Ibaraki Maru" carried the distinctive marks of the first plaintiff. But plainly it was foreseeable that any time charterer would suffer economic loss if the vessel was damaged. In the

present case also, if it be necessary, the first plaintiff had a reversionary interest in the vessel, of which it was owner as well as time charterer and, as I have earlier said, it would be appropriate to regard the voyage as in effect a joint operation between the two plaintiffs.

10 If the appropriate test be whether there was a sufficient degree of proximity between the loss suffered by the first plaintiff and the negligence of the defendant then that proximity does exist in the present case. Matters which are relevant to this conclusion include
the fact that the defendant must necessarily have known that it was likely that a commercial vessel damaged by its negligence would be the subject of a time charter, and that such damage would be productive of consequential economic loss in the form of loss of the profits the charterer would have made from the use of the vessel during the period when it was laid up as a result of the collision; the first plaintiff was in fact both the owner and the time charterer; the "Ibaraki Maru" had a distinctive orange funnel which indicated that it was a vessel of the first plaintiff's line; and, as owner of a boat subject to a bareboat charter and a time charter back, the first plaintiff had a
20 reversionary right to the possession of the vessel.

Thus, in my opinion, whichever of the two tests enunciated in "The Willemstad" is the appropriate one, the first plaintiff is entitled to succeed and to recover its loss of profits for 67.429 days, which period includes the union bans with which I have already dealt in the case of the claim by the second plaintiff. I would reach a similar conclusion in relation to the present claim.

The daily rate which was payable by the first plaintiff to the second plaintiff whilst the vessel was off-hire was 544,000 yen. On behalf of the first plaintiff it was claimed that the best evidence of

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the profit that would have been earned had it been able to utilise the vessel during the period of repairs is the profit that was in fact earned on Voyage 65A, undertaken immediately after the completion of the temporary repairs, namely 618,827 yen per day, thus making the total daily loss 1,162,827 yen per day. The voyage upon which the vessel would have been engaged if the collision had not occurred was cancelled.

An annexure to the affidavit of Mr Ogata of 14th May, 1983, which purports to detail the basis of the claims made by the plaintiffs for damages, sets out that the average daily profit that would have been earned was 563,861.2 yen per day, this being derived from an average of the rates of profit earned on the three voyages immediately prior to the collision and one voyage following it. Mr Sheller argued that not only should the first plaintiff be confined to this lower figure because it was set out in the annexure to the affidavit, but that in any event the proper approach was not to average the rates of profit earned on three pre-collision voyages and one post-collision voyage, but to average the rates earned on three pre-collision and three post-collision voyages. He submitted that the approach of the first plaintiff unfairly weighted the average in favour of a period earlier in 1981 when freight rates were higher. He argued that the average daily rate of profit calculated on the basis which he suggested was 504,404.63 yen. I have come to the conclusion that it is appropriate to take the figure calculated in the annexure to Mr Ogata's affidavit rather than that now claimed by the first plaintiff or that for which the defendant contends. It is true to say that it was on the basis of the claims identified in the annexure to the affidavit that the matter was litigated and, in any event, I think it is probably the most accurate measure of the actual loss of profit. Thus the first plaintiff:

is entitled to the loss of 1,107,861.20 yen per day for 67.429 days which is 74,701,972 yen. It is entitled also to interest from 31st August, 1981 in relation to the loss of profits from 10.7.81 to 31.8.81 and from 27th October, 1981 in relation to the loss of profits from 12.10.81 to 27.10.81, that interest being at the rate specified in practice note No. 25.

10 The result of the foregoing is that each plaintiff is entitled to succeed and there is no contributory negligence. I have indicated the basis upon which damages in each case are to be assessed and I propose to stand the action over to a date to be fixed so that the parties may bring in short minutes of the appropriate orders to be made and the judgments to be entered. Those judgments and orders, which will include orders for costs in favour of the plaintiffs, and the dismissal of the cross-claim brought by Candelwood Navigation Corporation Limited against the first and second plaintiffs, must reflect the fact that the action as between plaintiffs and defendant was an action in rem. I stand over the cross-claim brought by Candelwood Navigation Corporation Limited against the two Japanese companies to a date to be fixed.

Part 1
In the
Supreme
Court of
New South
Wales

No.16
Reasons
for
Judgment
of His
Honour Mr.
Justice
Yeldham
18th
October
1983

(cont'd)

I Certify that this and the
preceding pages are a true copy of
the reasons for judgment herein of
The Honourable Mr. Justice Yeldham.

Date 18-10-83.


Associate

No. 17 Judgment

IN THE SUPREME COURT OF NEW SOUTH WALES

Part 1
In the
Supreme
Court of
New South
Wales

ADMIRALTY DIVISION

SYDNEY REGISTRY

No. 934 of 1981 of

MITSUI OSK LINES
LIMITED AND MATSUOKA
STEAMSHIP CO LTD

Plaintiff

THE SHIP "MINERAL
TRANSPORTER" CANDLEWOOD
NAVIGATION CORPORATION
LIMITED

Defendant

JUDGMENT

1. ___ That the Defendant pay to the First Plaintiff the sum of Yen Ninety eight million five hundred and eleven thousand five hundred and forty eight (Yen 98,511,548)

2. ___ That the Defendant pay to the Second Plaintiff the sum of Yen Three hundred and eighty six million four hundred and thirty six thousand two hundred and forty eight (Yen 386,436,248.)

3. ___ That there be a judgment for the Plaintiffs against the Defendant upon the Defendant's Cross Claim. 10

This Judgment takes effect on 21 October 1983

THE COURT ORDERS that :

4. ___ The Defendant pay interest upon the judgment in favour of the First Plaintiff from 21.10.83 or on any unsatisfied balance thereof at the rate of 15.5% per annum or at such other rate as the Court may order.

5. ___ The Defendant pay interest upon the judgment in favour of the Second Plaintiff from 21.10.83 or on any unsatisfied balance thereof at the rate of 15.5% per annum or at such other rate as the Court may order. 20

6. ___ The Defendant pay the Plaintiffs costs of the Plaintiffs claims and of the Defendant's Cross Claim against the Plaintiff.

ORDERED: 21 October 1983

ENTERED: ^{5 March}~~February~~ 1984

EBSWORTH & EBSWORTH,
Solicitors,
2 Castlereagh Street,
SYDNEY. 2000 DX 103
Tel: 221 2366
Ref: SWH 9074a

By the Court


Deputy Registrar

30

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMIRALTY DIVISION

No. 934 of 1981

MITSUI OSK LINES LIMITED
MATSUOKA STEAMSHIP CO. LIMITED

Plaintiffs

CANDLEWOOD NAVIGATION
CORPORATION LIMITED,
OWNER OF THE VESSEL
"MINERAL TRANSPORTER"

Defendant

and Cross-claims

ORDER

The Court orders that:

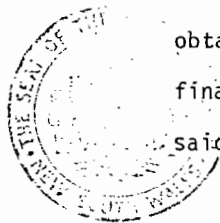
1. Leave to appeal to Her Majesty in Council from the judgment of the Honourable Mr. Justice Yeldham of 21st October, 1983 (reasons for judgment having been handed down on 18th October, 1983) be granted to the Defendant, Candlewood Navigation Corporation Limited.

2. The leave referred to in paragraph 1 hereof is conditional upon:

- (a) The Defendant within 3 months from the date hereof giving security to the satisfaction of the Registrar in the amount of \$1,000 for the due prosecution of the said appeal and the payment of such costs as may become payable to the Plaintiffs in the event of the Defendant not obtaining an order granting it final leave to appeal from the said judgment or of the appeal

MESSRS. EBSWORTH & EBSWORTH,
Solicitors,
2 Castlereagh Street,
SYDNEY, N.S.W. 2000

DX 103, Sydney
Ref: SWH



No.18
Order
granting
conditional
leave to
appeal to
Her Majesty
in Council
2nd November
1983

Part 1
In the
Supreme
Court of
New South
Wales

No. 18
Order
granting
condi-
tional
leave to
appeal to
Her Majesty
in Council
2nd
November
1983

(cont'd)

being dismissed for non-prosecution or of Her Majesty in Council ordering the Defendant to pay the costs of the Plaintiffs and of the said appeal, as the case may be.

- (b) The Defendant within 21 days from the date hereof depositing with the Registrar the sum of \$100 as security for and towards the costs of the preparation of the transcript record for the purposes of the said appeal.
- (c) The Defendant within 3 months of the date hereof taking out and proceeding upon all such appointments and taking all such other steps as may be necessary for the purpose of settling the index to the said transcript record and enabling the Registrar to certify that the said index has been settled and that the conditions hereinbefore referred to have been duly performed.
- (d) The Defendant obtaining a final order of the Court granting it leave to appeal as aforesaid.

10

3. Pending the said appeal all proceedings under the said judgment or otherwise in these proceedings shall be stayed.

4. The costs of the parties of this application and of the preparation of the said transcript record and of all other proceedings hereunder and of the said final order follow the decision of Her Majesty's Privy Council with respect to the costs of the said appeal or to abide the result of the said appeal in case the same shall stand or be dismissed for non-prosecution or be deemed so to be, subject however to any orders that may be made by this Court up to and including the said final orders or under any of the rules next hereinafter mentioned, that is to say, rules 16, 17, 20 and 21 of the Rules of 2nd April, 1909 regulating appeals from this Court to Her Majesty in Council.

20

5. The costs incurred in New South Wales payable under the terms hereof or under any order of Her Majesty's Privy Council of any party to this appeal be taxed and paid to the party to whom the same shall be payable.

6. So much of the said costs as become payable by the Defendant under this order or any subsequent order of the Court or any order made by Her Majesty in Council in relation to the said appeal may be paid out of any moneys paid into Court as such security as aforesaid so far as the same shall extend and that after such payment out (if any) the balance (if any) of the said moneys be paid out of the Court to the defendant, as the case may be.

Part 1
In the
Supreme
Court of
New South
Wales

No.18
Order
granting
conditional
leave to
appeal to
Her Majesty
in Council
2nd November
1983

(cont'd)

Ordered *2 November*, 1983 and entered *5 March*, 1984.

By the Court



No. 19 Order Granting Final leave to Appeal

Part 1
In the
Supreme
Court of
New South
Wales

No.19
Order
granting
final leave
to appeal
to Her
Majesty in
Council
7th March
1984

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMIRALTY DIVISION

SYDNEY REGISTRY

No. 934 of 1981 of

MITSUI OSK LINES
LIMITED AND MATSUOKA
STEAMSHIP CO LTD

Plaintiff

THE SHIP "MINERAL
TRANSPORTER" CANDLEWOOD
NAVIGATION CORPORATION
LIMITED

Defendant

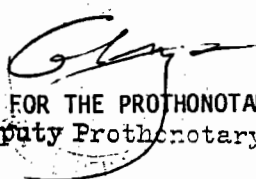
THE COURT ORDERS that :

1. Final leave to appeal to Her Majesty in Council from the judgment of the Honourable Mr Justice Yeldham given and made herein on 21st October 1983 (reasons for judgment having been handed down on 18th October 1983) be granted to the Defendant, Candlewood Navigation Corporation Limited.
2. Upon payment by the defendant of the costs of the preparation of the transcript record the balance 10 of the sum deposited into court by the defendant as security for and towards the cost thereof be paid out of court to the defendant.

ORDERED: 7 March 1984

ENTERED: 15 March 1984

BY THE COURT


FOR THE PROTHONOTARY
Deputy Prothonotary.

O R D E R

EBSWORTH & EBSWORTH,
Solicitors,
2 Castlereagh Street,
SYDNEY. 2000 DX 103
Tel: 221 2366
Ref: SWH 9074a

IN THE SUPREME COURT OF NEW SOUTH WALES

ADMIRALTY DIVISION
SYDNEY REGISTRY

No. 934 of 1981 of

MITSUI OSK LINES
LIMITED AND MATSUOKA
STEAMSHIP CO. LTD.

Plaintiff

THE SHIP "MINERAL
TRANSPORTER" CANDLEWOOD
NAVIGATION CORPORATION
LIMITED.

Defendant

CERTIFICATE VERIFYING
TRANSCRIPT.

I, GEOFFREY ELDON MANSFIELD LAZAR,
Deputy Registrar in Admiralty,
Supreme Court of New South Wales
DO HEREBY CERTIFY as follows:

1. This transcript record contains a true copy of all such orders, judgments and documents as have relation to the matter of this Appeal.
2. The Respondent herein has received notice of the order granting final leave to appeal to Her Majesty in Council AND has also received notice of the dispatch of this transcript record to the Registrar of the Privy Council.

DATED at Sydney in the State of
New South Wales on

March, 1984.

DEPUTY REGISTRAR IN ADMIRALTY
SUPREME COURT OF NEW SOUTH
WALES.

Part 1
In the
Supreme
Court of
New South
Wales

No.20
Certificate
of the deputy
Registrar
verifying
transcript
15th
March
1984

PART 2

EXHIBITS

Exhibit A

A.
Certificate of vessel's
nationality "Ibaraki
Maru"

Part 2
EXHIBITS

Plaintiffs'
Exhibits
A.
Certificate
of vessel's
nationality
"Ibaraki Maru"

CERTIFICATE OF VESSEL'S NATIONALITY

Official Number	Name of Vessel	Signal Letters
1 1 1 7 9 4	IBARAKI MARU	J H H E

Kind of Vessel <u>Motor Ship</u>	Type and Number of Engines <u>Oil Engine, One</u>
Port of Registry <u>Osaka, Osaka-Fu</u>	Kind and Number of Propellers <u>Screw Propeller, One</u>
Material of Hull <u>Steel</u>	Where Built <u>Tamano, Okayama-Ken</u>
Rigging (if a Sailing Vessel) <u>---</u>	Name of Builders <u>Mitsui Engineering & Shipbuilding Co., Ltd.</u>
	Date of Launch <u>July, 1972</u>

MEASUREMENTS	
Length from fore side of stem to aft side of stern post on the upper deck	Metres 253.90
Breadth to outside of frame at the broadest part of the vessel	39.60
Depth from top of upper deck beam at side to top of keel at the middle of the length	22.40

TONNAGE	
Gross Tonnage <u>63139.50</u> <small>Tons</small>	Deducted Capacity <u>68592.152</u> <small>Cubic Metres</small>
Gross Capacity <u>178592.440</u> <small>Cubic Metres</small>	Crew Spaces <u>2812.945</u>
Under Upper Deck <u>173189.266</u>	Ballast Tanks <u>25490.768</u>
Closed-in Spaces above Upper Deck <u>5676.174</u>	Machinery Spaces <u>12403.884</u>
Forecastle <u>---</u>	Sail Room (if a Sailing Vessel) <u>---</u>
Bridge House <u>---</u>	Other Spaces <u>884.555</u>
Poop <u>---</u>	Net Capacity <u>110273.288</u> <small>Tons</small>
Deck Houses <u>3246.668</u>	Net Tonnage <u>38926.47</u>
Excess of Hatchways <u>1035.797</u>	
Machinery Spaces above Upper Deck <u>1389.794</u>	
Other Spaces <u>3.915</u>	

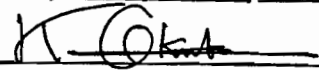
OWNERS	
Mitsui O.S.K. Lines, Ltd.	
6-32, Nakanoshima 3 chome, Kita-Ku, Osaka-Shi, Osaka-Fu	

It is hereby certified that the above described particulars are exact in all respects, and that the above-mentioned vessel is of Japanese Nationality.

Kinki District Maritime Bureau, Japanese Government
The 24th day of April, 1978

It is hereby certified that the above is a true translation of "Certificate of Vessel's Nationality" of the above-mentioned vessel.

The 25th day of May, 1978


(K. OKUBO) (Signature)

Director of Kinki District Maritime Bureau, Japanese Government
(Official Position)

EXHIBITS
B
PERMANENT CERTIFICATE OF REGISTRY
"MINERAL TRANSPORTER"

Exhibit B



Bureau of Maritime Affairs
Permanent Certificate of Registry

187-81

Part 2
EXHIBITS

Plaintiffs'
Exhibits
B.
Permanent
certificate
of registry
"Mineral
Transporter"

OFFICIAL NUMBER	CALL LETTERS	NAME OF VESSEL	SERVICE	HOME PORT
5 8 7 1	6 2 U Q	m.s. MINERAL TRANSPORTER	OIL/ORE CARRIER	MONROVIA

THIS IS TO CERTIFY THAT pursuant to the provisions of Chapter 2 of Title 22 of the Liberian Code of Laws of 1956 (The Liberian Maritime Law), as amended, Derby T. X. Huang having taken and subscribed the oath required by law and having sworn that

Name	Residence	Citizenship	Proportion
CANDLEWOOD NAVIGATION CORPORATION LTD.	Monrovia, Liberia	Liberian	100%

is (check the sole owner) of the herein named and described vessel

GENERAL PARTICULARS

DATE PURCHASED	PLACE OF PURCHASE	FORMER NAME	CLASSED BY	DATE REGISTERED	
December 1980	Tokyo, Japan	White Rose	Nippon Kaiji Kyokai	December 9, 1980	
BUILT BY		YEAR BUILT	PLACE BUILT		
Kawasaki Dockyard Co., Ltd.		1968	Kobe, Japan		
CONVERTED (Altered) BY		YEAR CONVERTED	PLACE CONVERTED		
---		---	---		
NUMBER OF MASTS	NUMBER OF DECKS	MATERIAL	TYPE OF STEM	TYPE OF STERN	HOW PROPELLED
Two	One	Steel	Curved with Bulbous Bow	Round	Motor Single Screw

PARTICULARS OF PROPELLING ENGINES

NUMBER AND TYPE OF ENGINES	HORSEPOWER	DATE MADE	NAME OF MANUFACTURER
One Oil Engine	20,700 BHP	1968	Kawasaki Dockyard Co., Ltd.

REGISTER DIMENSIONS

LENGTH	BREADTH	DEPTH	HEIGHT
806.94 Ft.	127.96 Ft.	68.47 Ft.	---

PARTICULARS OF TONNAGE*

SINGLE TONNAGE VESSEL	GROSS TONS	NET TONS	DUAL TONNAGE VESSELS	GROSS TONS	NET TONS
Tonnage mark not fitted and not required	42,641	29,099	Tonnage mark fitted and submerged	---	---
Tonnage mark fitted and level with uppermost line of load line grid	---	---	Tonnage mark fitted and NOT submerged	---	---

and Nippon Kaiji Kyokai, being duly authorized, having surveyed and measured the vessel and having certified its build, dimensions and tonnages in Certificate of Measurement Number BOHO-277 issued on July 31, 1980 to be as aforesaid and having further certified that the markings required by law have been made, that a tonnage mark is not marked on each side of the vessel, and that the tonnages and location of the tonnage mark, if marked, were determined and located as shown in detail in the said Certificate of Measurement; and S. G. BSA, as owner or on behalf of the owner having countersigned the said Certificate of Measurement, and having agreed to the description and measurements therein set forth; and the owner having complied in all other respects with requirements for the issuance of this Permanent Certificate of Registry, the vessel is therefore duly registered under the Laws and Flag of The Republic of Liberia.

ISSUED by Authority of the Government of The Republic of Liberia under my hand and seal
this 19th day of May 19 81



The Commissioner of Maritime Affairs

By Robert Browder
DEPUTY COMMISSIONER OF MARITIME AFFAIRS, R.L.

By Fred T. Simpson
SENIOR DEPUTY COMMISSIONER OF MARITIME AFFAIRS, R.L.

* Note:
In the case of a vessel fitted with a Tonnage Mark and having two gross and net tonnages,
the lesser tonnages will be applicable when the Tonnage Mark is NOT submerged

EXHIBITS - D
Certificate extract No.141 from meteorological record

Part 2
EXHIBITS

Plaintiffs' Exhibits

D.
Certificate extract No.141 from meteorological record
2nd May 1983



BUREAU OF METEOROLOGY
DEPARTMENT OF SCIENCE AND TECHNOLOGY
POSTAL ADDRESS REGIONAL DIRECTOR, BUREAU OF METEOROLOGY, P O BOX 413, DARLINGHURST N S W 2010

REGIONAL OFFICE N.S.W.
162-166 GOULBURN STREET
DARLINGHURST, SYDNEY, N.S.W.

TELEPHONE 267 6791
TELEX 24640
TELEGM WHR SYDNEY

IN REPLY PLEASE QUOTE 20/0303/30

2nd May, 1983

EVIDENCE ACT 1905 - 1973 - SECTION 6.

CERTIFIED EXTRACT NO. 141 FROM THE OFFICIAL METEOROLOGICAL RECORDS OF THE COMMONWEALTH.

At Wollongong University, N.S.W. the following weather conditions were observed and recorded on the date and at the times shown.

<u>DATE</u>	<u>TIME</u>	
<u>1981</u>		
<u>JULY 7th</u>	<u>9 a.m.</u>	- Temperature 11.1°C. Mean wind West 8 knots. Visibility 40 kilometres. Nil cloud. <u>Present Weather</u> - No change <u>PAST WEATHER SINCE LAST OBSERVATION</u> - No change. Total rainfall recorded 3 p.m. (6th) to 9 a.m. - <u>NIL</u>
	<u>3 p.m.</u>	- Temperature 15.2°C. Mean wind West North West 2 knots. Visibility 40 kilometres. Nil cloud. <u>Present weather</u> - No change <u>PAST WEATHER SINCE LAST OBSERVATION</u> - No change Total rainfall recorded 9 a.m. to 3 p.m. - <u>NIL</u>
		Maximum wind gust <u>West 30 knots at 6.45 p.m.</u>
<u>JULY 8th</u>	<u>9 a.m.</u>	- Temperature 13.1°C. Mean wind South West 8 knots. Visibility 40 kilometres. Nil cloud. <u>Present weather</u> - No change <u>PAST WEATHER SINCE LAST OBSERVATION</u> - No change Total rainfall recorded 3 p.m. (7th) to 9 a.m. - <u>NIL</u>
	<u>3 p.m.</u>	- Temperature 16.6°C. Mean wind North West 12 knots. Visibility 40 kilometres. Sky 1/8th covered with cloud. <u>Present weather</u> - No change. <u>PAST WEATHER SINCE LAST OBSERVATION</u> - Cloud increasing. Total rainfall recorded 9 a.m. to 3 p.m. - <u>NIL</u>
		Maximum wind gust <u>West 25 knots at 6.30 p.m.</u>

I, RICHARD WHITAKER, Officer-in-Charge, Information and Facilities Section, N.S.W. Regional Office, SYDNEY, Commonwealth Bureau of Meteorology, HEREBY CERTIFY that the above extract is a true extract from the A/8 Field Book of Meteorological Observations, Wollongong, which record is an official meteorological record of the Commonwealth of Australia, maintained in the N.S.W. Regional Office of the said Bureau, and I FURTHER CERTIFY that I am the officer to whose custody the said records are entrusted.
SIGNED BY the said Richard Whitaker at Sydney this 2nd day of May, 1983.

Messrs. Norton Smith & Co.,
Box 1629 G.P.O.,
SYDNEY. N.S.W. 2001

OFFICER-IN-CHARGE



BUREAU OF METEOROLOGY

DEPARTMENT OF SCIENCE AND TECHNOLOGY

POSTAL ADDRESS REGIONAL DIRECTOR, BUREAU OF METEOROLOGY, P O BOX 413 DARLINGHURST N S W 2010

REGIONAL OFFICE N S W
162-166 GOULBURN STREET
DARLINGHURST, SYDNEY, N S W

TELEPHONE 267 6791
TELEX 24640
TELEGRAM WHR SYDNEY

Part 2 EXHIBITS

Plaintiffs' Exhibits
D. Certificate extract No.141 from meteorological record 2nd May 1983

(continued)

IN REPLY PLEASE QUOTE 20/0303/30

2nd May, 1983

EVIDENCE ACT 1905 - 1973 - SECTION 6.

CERTIFIED EXTRACT NO. 141 FROM THE OFFICIAL METEOROLOGICAL RECORDS OF THE COMMONWEALTH.

PAGE 2.

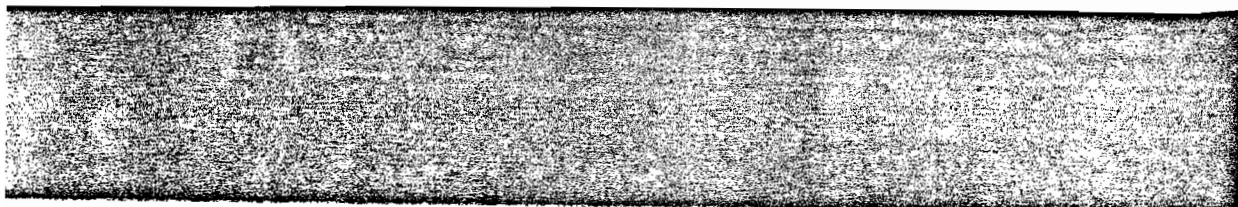
At Wollongong University, N.S.W. the following weather conditions were observed and recorded on the date and at the times shown.

Table with columns DATE and TIME. Entries include weather observations for 1981 JULY 9th and 10th at various times (9 a.m., 3 p.m.), detailing temperature, wind, visibility, and rainfall.

I, RICHARD WHITAKER, Officer-in-Charge, Information and Facilities Section, N.S.W. Regional Office, SYDNEY, Commonwealth Bureau of Meteorology, HEREBY CERTIFY that the above extract is a true extract from the A/8 Field Book of Meteorological Observations, Wollongong, which record is an official meteorological record of the Commonwealth of Australia, maintained in the N.S.W. Regional Office of the said Bureau, and I FURTHER CERTIFY that I am the officer to whose custody the said records are entrusted. SIGNED BY the said Richard Whitaker at Sydney this 2nd day of May, 1983.

Messrs. Norton Smith & Co.,
Box 1629 G.P.O.,
SYDNEY. N.S.W. 2001

Signature of Richard Whitaker
OFFICER-IN-CHARGE



Plaintiffs' Exhibits

O.
Handwritten "Statement of Facts" by Master of "Mineral Transporter" 16th July 1981

MINERAL TRANSPORTER. SYDNEY 16 JULY 1981

Bridge position of

- 1 CHTA MARU. Brg Flagstaff Pt
LH 099 (T) - 3.41 mls
- 2 Oceanic Crest 081 (T) - 4.02 mls

10 July 1981.
The duty AB (SATHURI) reported to the Record office (SUN CHAN - JEN) that the Mineral Transporter had dragged anchor and was closing the IBARAKI MARU. This was at 0320 hours. The duty officer took a bearing of the IBARAKI MARU and found no change in bearing. The duty officer did not take a radar distance from the IBARAKI MARU.

At no time during the vessels stay at anchor off Port Kembla were radar ranges obtained from points of land, or distances off other anchored vessels.

The second mate was not aware that the Mineral Transporter had dragged anchor and was closing the IBARAKI MARU. The second mate assumed the vessel was in the original anchorage position as the bearing had not appreciably changed to the IBARAKI MARU. He was not aware that MINERAL TRANSPORTER was closing the IBARAKI MARU on a steady bearing radar was checked and found to be operating satisfactorily.

The second mate called the master by bridge telephone at approx 0330 hours on 10 July 1981

The master immediately proceeded to the bridge and found that the Mineral Transporter had closed to a position with Kharaki man that collision was imminent.

Engines were at instant notice.

The general alarm bells were rung and crew proceeded to normal working positions.

As the Mineral Transporter was so close to the Kharaki man, it was decided not to let go the port anchor as the master was concerned that it may foul the anchor of Kharaki man.

The engines were put to FULL AHEAD.

Master states that the wind was SW - 25 KTS, swell SE - moderate to rough.

The master states that the heading of Kharaki man was approx SE (true).

Mineral Transporter was heading approx SW.

At this stage the two vessels were so close that the master states that if he had put the engine to Full AHEAD that he would have collided with his stem with the port bow of Kharaki man. As collision was unavoidable, the master stated that it was best if both ships collided at the bows.

The master was endeavouring to the the Transverse thrust of the propeller and the direction of the wind to draw his ship clear of MINERAL.

Collision occurred at 0345 hours.

Engines were stopped.

Mineral Transporter cleared Kharaki man.

Starboard anchor was the hove home and it was found that the sink had been sheared at

Part 2
EXHIBITS

Plaintiffs'
Exhibits

O.

Handwritten
"Statement of
Facts" by
Master of
"Mineral
Transporter"
16th July
1981

(continued)

approx. half length.
The vessel was then manoeuvred with main
engines to clear other vessels at the anchorage.
Mineral Transporter was brought to a
safe anchorage at 0528 hours on 16 July 1981.

These are a statement of facts given by the
Master of Mineral Transport Pro 401202 at
Sydney 16 July 1981

W. Edwards
Master Mineral Transporter

W. Edwards
Master
Mineral Transporter

Witness
John Keller
Agent

EXHIBITS
Q.
AGREED STATEMENT OF REPAIR COSTS
TO "IBARAKI MARU"

Part 2
EXHIBITS

Plaintiffs
Exhibits

Q.
Agreed
Statement
of repair
costs to
"Ibaraki
Maru"

The defendant admits:

1. That temporary and final repairs were carried out to "Ibaraki Maru" as a result of the collision and that the cost of those repairs and incidental costs incurred ~~while,~~ ~~and as a result of such repairs,~~ amounted to:

\$A215,692.97 (Payment: 24th November, 1981)

Plus Yen 104,849,333 (Payment: 31st March, 1982)

Plus Bunkers Yen ~~11,596,644~~ (Payment: 12th October, 1981)
¥ 13,814,280

and that the said costs are fair and reasonable and were necessarily incurred as a result of the collision.

2. That during the period temporary repairs were carried out to "Ibaraki Maru" in Sydney, additional work was carried out which cost \$A25,765.92 such work not being necessary as a result of the collision, and not work which the owners required be carried out, but work which the Painters and Dockers Union and Amalgamated Metal Workers and Shipwrights Union insisted be carried out as a condition of members of their Unions performing the work necessary to complete temporary repairs as a result of the collision.

EXHIBITS

R
Foreign Currency Exchange rates

K.5 EXCHANGE RATES (a)
(units of foreign currency per \$A)

At end of	United States dollar	Japanese yen	U.K. pound sterling	West German mark	French franc	Swiss franc
1973 June	1.4167	375.28	0.5480	3.4808	5.8481	4.2672
1974 ..	1.4875	421.99	0.6221	3.7874	7.1860	4.4469
1975 ..	1.3258	392.13	0.5965	3.1148	5.3406	3.3186
1976 ..	1.2356	366.97	0.6927	3.1817	5.8629	3.0543
1977 ..	1.1155	298.50	0.6482	2.6075	5.4829	2.7415
1978 ..	1.1475	235.46	0.6160	2.3822	5.1457	2.1284
1979 ..	1.1211	242.83	0.5158	2.0682	4.7910	1.8560
1980 ..	1.1576	251.31	0.4917	2.0331	4.7355	1.8733
1981 ..	1.1480	259.51	0.5895	2.7472	6.5407	2.3362
1982 ..	1.0223	260.18	0.5870	2.5059	6.9568	2.1412
1979/80						
Jan.	1.1069	264.46	0.4891	1.9232	4.5018	1.7974
Feb.	1.0987	272.75	0.4814	1.9370	4.5365	1.8398
Mch.	1.0831	270.13	0.4971	2.0909	4.8268	1.9837
Apl.	1.1145	267.31	0.4915	2.0005	4.6764	1.8523
May	1.1426	256.91	0.4896	2.0424	4.7401	1.9041
June	1.1576	251.31	0.4917	2.0331	4.7355	1.8733
1980/81						
July	1.1525	261.13	0.4910	2.0520	4.7472	1.9002
Aug.	1.1656	254.28	0.4879	2.0836	4.8469	1.9172
Sept.	1.1690	248.74	0.4897	2.1209	4.9148	1.9364
Oct.	1.1726	247.07	0.4797	2.2320	5.1377	2.0116
Nov.	1.1643	251.26	0.4924	2.2405	5.1985	2.0212
Dec.	1.1807	239.54	0.4945	2.3183	5.3427	2.0975
Jan	1.1707	239.29	0.4889	2.4585	5.6574	2.2331
Feb	1.1566	240.90	0.5182	2.4508	5.7599	2.2606
Mch	1.1684	245.95	0.5164	2.4139	5.6930	2.1995
Apl.	1.1505	246.78	0.5357	2.5380	6.0108	2.3180
May	1.1385	254.80	0.5498	2.6422	6.2788	2.3578
June	1.1480	259.51	0.5895	2.7472	6.5407	2.3362
1981/82						
July	1.1356	271.38	0.6907	2.7913	6.6052	2.4177
Aug.	1.1508	262.79	0.6190	2.8085	6.7351	2.4483
Sept.	1.1414	265.80	0.6366	2.6509	6.3619	2.2583
Oct.	1.1350	265.93	0.6148	2.5651	6.4298	2.0980
Nov.	1.1514	248.13	0.5862	2.5417	6.4334	2.0365
Dec.	1.1279	247.69	0.5905	2.5389	6.4572	2.0291
Jan.	1.0994	253.93	0.5869	2.5608	6.5112	2.0438
Feb.	1.0740	253.97	0.5872	2.5523	6.5003	2.0234
Mch.	1.0503	259.24	0.5895	2.5359	6.5617	2.0339
Apl.	1.0608	249.50	0.5923	2.4796	6.4682	2.0712
May	1.0482	255.08	0.5872	2.4617	6.4202	2.0927
June	1.0223	260.18	0.5870	2.5059	6.9568	2.1412
1982/83						
July	0.9958	256.07	0.5748	2.4566	6.8262	2.0937
Aug.	0.9643	251.76	0.5644	2.4214	6.7598	2.0670
Sept.	0.9493	255.58	0.5595	2.4015	6.7731	2.0614
Oct.	0.9367	258.46	0.5566	2.3876	6.7489	2.0631
Nov.	0.9548	240.04	0.5933	2.3777	6.7170	2.0418
Dec.	0.9806	229.51	0.6050	2.3348	6.5994	1.9646
Dec. 1	0.9592	238.84	0.5873	2.3604	6.6712	2.0301
8	0.9651	234.71	0.5925	2.3450	6.6351	1.9900
15	0.9625	235.81	0.5951	2.3528	6.6682	2.0049
22	0.9714	234.01	0.6026	2.3278	6.6055	1.9569
29	0.9802	229.66	0.6021	2.3231	6.5673	1.9579

(a) Market rate indications. The rate for the U.S. dollar is the mid-point of the outer limits at which Australian trading banks may deal. Rates for the other currencies have been calculated by crossing this rate with the

mid-points of closing buying and selling rates in New York. These rates could differ from those quoted by Australian banks.

EXHIBITS - T.
AGREED STATEMENT OF FACTS IN
RELATION TO BLACKBAN

Part 2
EXHIBITS

IN THE SUPREME COURT OF NEW SOUTH WALES

SYDNEY REGISTRY

ADMIRALTY DIVISION

No. 934 of 1981

mitsui OSK LINES
LIMITED AND MATSUOKA
STEAMSHIP CO. LIMITED

Plaintiffs

CANDLEWOOD NAVIGATION
CORPORATION LIMITED

Defendant

CANDLEWOOD NAVIGATION
CORPORATION LIMITED

Cross Claimant

mitsui OSK LINES
LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO.
LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO.
LIMITED

Third Cross Defendant

TOKYO CHAIN ANCHOR CO.
LIMITED

Fourth Cross Defendant

AGREED STATEMENT
OF FACT

NORTON SMITH & CO.,
Solicitors,
11th Floor,
20 Martin Place,
SYDNEY, N.S.W. 2000.
DX 119 - Sydney.
Tel: 232-8833.
(WN)

It is agreed that:

By reason of a blackban imposed by the Painters and Dockers Union on the vessels "Mineral Transporter" and "Ibaraki Maru" the defendant/cross claimant and the plaintiff/cross defendant respectively in these proceedings were prevented from effecting temporary repairs which would have enabled the vessels to be put back into class in order to proceed on their voyages and have permanent repairs effected elsewhere. The bans placed upon the vessels by the Painters and Dockers Union were designed to persuade the owners of the two vessels to have permanent repairs effected in Australia and were stated to be in support of the Union's campaign to persuade foreign vessels trading regularly to Australia to undergo repairs and maintenance in Australia. Pursuant to the black-ban the "Mineral Transporter" was delayed in Australia for *55 days* days and the "Ibaraki Maru" was delayed in Australia from 1315 hours 20th July, 1981 to 0810 hours 22nd August, 1981 being 32.79 days longer than they would otherwise have been.

.....
Solicitor for the
Plaintiffs

.....
Solicitor for the
Defendant

DATED: May, 1983.

plaintiffs'
Exhibits
T.
Agreed State-
ment of Facts
in relation
to blackban

Part 2
EXHIBITS

Defendant's
exhibits
1

Copy of pages
34-36 of
radar log
of "Ibaraki
Maru"

DEFENDANTS' EXHIBITS

EXHIBITS

1

COPY OF PAGES 34-36 OF RADAR LOG OF "IBARAKI MARU"

PAGE 34

DATE	LOCATION	TIME		WEATHER & VISIBILITY	WIND & SEA CONDITION	REMARKS	SIG. OF LICENSED OFFICER
		ON	OFF				
26th June	Australia East Coast	0	0410	0-20	-4-4	No. 2 Broad	
"	"	0400	0800	bc 8	4-3	No. 1 Good	9/2
"	NEWCASTLE	0800	1200	bc 8	8-7	No. 1 Radar Good	3/0
"	NPT. KEMBLA Range	2330	2345	b 8	4-4	-bc-	3/0
27th June	"	2000	2015	b 8	4-3	"	3/0
"	"	2340	2355	b 8	5-4	"	3/0
28th June	"	2000	2010	b-8	3-3	"	3/0
"	"	2330	2340	b 8	4-3	"	3/0
29th June	"	2000	2020	b 8	1 cabin	"	3/0
"	"	2345	2400	b 8	2-1	-4-	0.5/1
30th June	"	2345	2400	b 8	2-1	"	3/0
1st July	"	2000	2015	b 8	4-3	"	3/0
"	"	2340	2355	b 8	5-4	"	3/0
2nd July	"	0800	1200	b 8	7-6	"	3/0
"	"	1800	1800	b 8	6-5	"	0.5/1
"	"	2340	2345	b 8	2-1	"	3/0

This copy is true & correct.

96

DATE	LOCATION	TIME			WEATHER & VISIBILITY	WIND & SEA CONDITION	REMARKS	SIG. OF LICENSED OFFICER
		ON	OFF	IN USE				
3rd July	pt. KEMBLA Range	1100	1130	0-20	bc 8	5.4	no 1 Radar good	Capt. [Signature]
" "	" "	2320	2345	0-10	b 8	4.3	" " " " " "	Capt. [Signature]
4th July	" "	0300	0400	0-30	bc 8	8.7	" " " " " "	Capt. [Signature]
" "	" "	0800	1200	1-00	bc 8	9.7	" " " " " "	3/0
" "	" "	1200	1600	1-30	bc 8	8.7	" " " " " "	Capt. [Signature]
" "	" "	2340	2355	0-10	c 8	3.2	" " " " " "	Capt. [Signature]
5th Jul	Port KEMBLA Range	2000	2015	0/0	b-8	5.4	" " " " " "	3/0
" "	" "	2330	2400	0-20	b 8	4.4	" " " " " "	Capt. [Signature]
6th July	" "	1000	1400	1-00	bc 8	8.7	" " " " " "	Capt. [Signature]
" "	" "	2000	2015	0-10	bc 8	5.4	" " " " " "	3/0
" "	" "	2330	2400	0-20	b 8	6.5	" " " " " "	Capt. [Signature]
7th July	" "	2345	2355	0-10	b 8	5.4	" " " " " "	Capt. [Signature]
8th July	" "	2000	2015	0-10	b 8	4.3	" " " " " "	3/0
" "	" "	2340	2355	0-10	b 8	4.3	" " " " " "	Capt. [Signature]
9th "	" "	2300	2330	0-22	b-8	5.4	" " " " " "	Capt. [Signature]
10th "	" "	0318	0600	2-40	bc 8	5.4	" " " " " "	Capt. [Signature]

411.

This copy is true & correct. [Signature]

(contd.)
 "Ibaraki
 Maru"
 Copy of pages
 34-36 of radar
 Log of
 "Ibaraki
 Maru"
 Exhibits
 Defendant's
 Exhibits
 Part 2
 EXHIBITS
 1

12-5-53

EXHIBITS

3.

DEFENDANT'S DIAGRAM

EXHIBIT

10 SHACKLES = 274m
DEPT 35m

Part 2
EXHIBITS

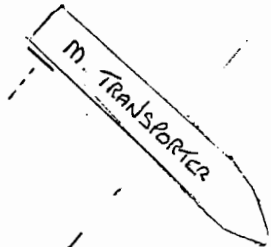
Defendant's
Exhibits
3.
Defendant's
diagram

CORAM: YELDHAM, J.

M. Transporter v. M. Maru

EXHIBIT 3
ASSOCIATE

TIME 0325 POSITION ①
HEADING SW = 225



NORTH

SOUTH

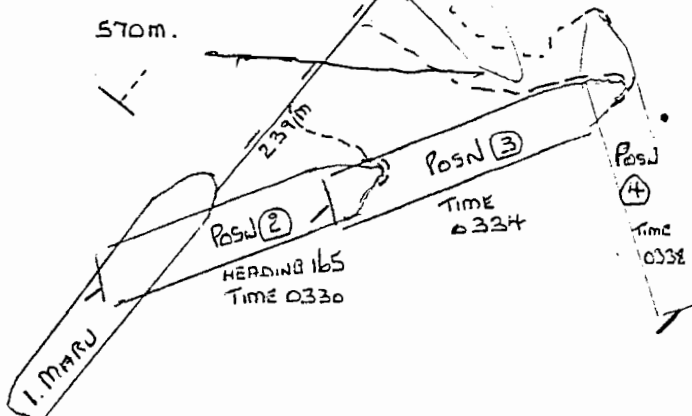
TIME 0334
POSN ②



570m.

239m

POSN ②
HEADING 165
TIME 0330



TIME 0334

POSN ④
TIME 0338

TIME 0325
POSITION ①
HEADING 142

THIS IS USING THE WORST OFFERS
I SAW HAD 3 TO 4 CABLES TO LET OUT
IN A LAST RESORT
MY SPEED 12 KNOTS
CLOSEST APPROX 150M - DIST 115M

West

EXHIBITS - 9
PLAINTIFF'S ANSWERS TO INTERROGATORIES
NOS. 3,5,10 to 20, 24 and 36 AND TO FURTHER
INTERROGATORIES 7,9 and 10

Part 2
EXHIBITS
Defendant's
Exhibits
9.
Plaintiff's
answers to
interroga-
tories
Nos 3,5,10
to 20,24 and
36, and to
further
interroga-
tories 7,9
and 10

IN THE SUPREME COURT OF

NEW SOUTH WALES

SYDNEY REGISTRY

ADMIRALTY DIVISION

No 934 of 1981

MITSUI OSK LINES LIMITED

and MATSUOKA STEAMSHIP

CO LIMITED

Plaintiffs

CANDELWOOD NAVIGATION

CORPORATION LIMITED

Defendant

CANDELWOOD NAVIGATION

CORPORATION LIMITED

Cross Claimant

MITSUI OSK LINES LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO

LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO LIMITED

Third Cross Defendant

PLAINTIFFS VERIFIED

STATEMENT IN ANSWER TO

INTERROGATORIES

EBSWORTH & EBSWORTH

Solicitors

2 Castlereagh Street,

SYDNEY. 2000

PH: 221.2366 SWH 8599A

DX. 103 Sydney.

The Plaintiffs MITSUI OSK LINES LIMITED and MATSUOKA

STEAMSHIP CO LIMITED answer the defendant's

interrogatories specified in the undated Notice received

in our solicitors office on 9th March 1983 as follows

3A. Between 0300 and 0330 on 10th July 1981 who was on
watch on board the "Ibaraki Maru"?

3B. Until 0322, Toshio Sato, the quartermaster, was on
watch. At 0322, the master of the "Ibaraki Maru",
Michihiro Takatani, came onto the bridge, and at about
0323, the whole crew of "Ibaraki Maru" were at emergency
stations.

5A. What instructions had been given to those persons as
to the frequency with which they were to make checks as to
the relative positions of the "Ibaraki Maru" and other
vessels at the anchorage?

5B. A constant visual check was to be made, and radar
checks were to be made, the frequency of such radar checks
being dependent upon the weather conditions. In the
weather conditions prevailing at the relevant time, a
radar check was to be made each hour, or, at the
discretion of the person on watch, at more frequent
intervals.

10A. When immediately prior to the ascertainment of that
fact had any person on board the "Ibaraki Maru" last check
to ascertain whether the relative positions of the
"Ibaraki Maru" and the "Mineral Transporter" had changed?

10B. A radar check was made at about 0240 and a visual
check was made at or shortly before 0255.

11A. Who did that check?

11B. Toshio Sato.

12A. By what means did he do that check?

12B. Refer to the answer to 10.

13A. What did he ascertain from such check?

- 13B. That "Mineral Transporter" had not moved from its anchorage.
- 14A. When was the radar of the "Ibaraki Maru" first turned on on 10th July 1981.
- 14B. The radar was constantly on stand-by, and the time at which it was used prior to "Mineral Transporter" drifting was at 0240.
- 15A. Who turned it on?
- 15B. Toshio Sato used the radar at 0240, it was on constant standby.
- 16A. Why was it turned on at that time?
- 16B. To check the position of other vessels.
- 10 17A. What did it disclose as to the relative positions of the "Ibaraki Maru" and the "Mineral Transporter"?
- 17B. At 0240, that check revealed that "Mineral Transporter" had not moved from its anchorage.
- 18A. At what time did the "Mineral Transporter" first commence to move from its anchorage?
- 18B. The plaintiffs believe that it first commenced to move from its anchorage at or shortly after 0250.
- 19A. How far has the "Mineral Transporter" moved from its anchorage when a person on board the "Ibaraki Maru" first became aware that the "Mineral
- 20 Transporter" had or might have moved from its anchorage?
- 19B. Approximately .7 of a mile.
- 20A. How far away from the "Ibaraki Maru" was the "Mineral Transporter" at that time?
- 20B. .5 of a mile.
- 24A. At precisely what time was each such step taken?
- 24B. From 0323, the radio, air horn and flashing morse light were used, at about 0323, the crew were called to emergency stations, and from 0324, the engineer started to get the engines ready. At about 0333, the order was given to lengthen the anchor chain, and the anchor chain had
- 30 been lengthened by 0336. The engine was ready at 0340.

Part 2
EXHIBITS

Defendant's Exhibits 9.
Plaintiff's answers to interrogatories Nos. 3,5,10 to 20,24 and 36 and to further interrogatories 7,9 and 10

(continued)

Part 2
EXHIBITS

Defendant's Exhibits 9.
Plaintiff's answers to interrogatories Nos. 3, 5, 10 to 20, 24 and 36, and to further interrogatories 7, 9 and 10

36A. If so:

- (a) Who used the radio?
- (b) Precisely when was it used?
- (c) What channel or channels were used?
- (d) What was said?
- (e) Was any response received from the "Mineral Transporter" and, if it was, what response was received?

36B. (a) The Master and Mr Murao, the radio officer.

- (b) From 0323.
- (c) Channels 13, 16 and 6.
- (d) and (e)

10

At 0323, the Master on VHF 13, said words to the effect :
"I am flashing vessel, what vessel are you approaching".

A similar message was sent by the Master a number of times between 0323 and 0325.

From 0325, Mr Murao, the radio officer, on VHF 13 broadcast words to the effect :

"You are drifting, this is "Ibaraki Maru", you are drifting".

A similar message was broadcast continuously.

From about 0335, Mr Murao broadcast a similar message alternatively on VHF 13 and VHF 16.

20

At 0337, "Mineral Transporter" broadcast on VHF 13 words to the effect :

"Mineral Transporter" responds and suggests that VHF 6 be used to communicate."

Immediately following that, Mr Murao broadcast on VHF 13 words to the effect that "Ibaraki Maru" was agreeable to broadcasting on channel 6.

On channel 6, Mr Murao broadcast words to the effect :

"Why you".

30

Thereafter, all communications between the two vessels was on VHF

6. Mr Murao intended to say words to the effect :

(continued)

"Why are you coming so close to us?"

but as his native language was Japanese and he was communicating in English, he could not at that instant, find the correct English words to finish that which he intended to communicate.

"Mineral Transporter" broadcast words to the effect :

"Are you ready to transmit on VHF 6, slacken your chain, slacken your chain".

"Mineral Transporter" broadcast words to the effect :

10 "Slacken your chain, slacken your chain, do you understand, give me 10 shackles slacken your chain to 10 shackles".

Mr Murao broadcast words to the effect :

"We have already let out 13 shackles, why do you approach our vessel. 13 shackles already out and there are no more shackles to let out".

"Mineral Transporter" broadcasted words to the effect :

"Slack chain, slack chain do you understand?"

Mr Murao broadcasted words to the effect : ..

"Roger, why you charge my vessel, do you have engine trouble?"

20 Thereafter the radio messages were between "Ibaraki Maru" and the Port Authorities at Port Kembla, and are disclosed in the VHF log.

Part 2
EXHIBITS

Defendant's
Exhibits

9.

Plaintiff's
answers to
interrogatories

Nos. 3, 5, 10
to 20, 24

and 36

and to

further
interrogatories

7, 9 and 10

(continued)

Part 2
EXHIBITS

Defendant's
Exhibits
9.

Plaintiff's
answers to
interrogator-
ies Nos.
3,5,10 to
20,24 and 36
and to
further
interrogator-
ies 7,9
and 10

(continued)

IN THE SUPREME COURT OF
NEW SOUTH WALES

SYDNEY REGISTRY

ADMIRALTY DIVISION

No 934 of 1981

MITSUI OSK LINES LIMITED

and MATSUOKA STEAMSHIP

CO LIMITED

Plaintiffs

CANDELWOOD NAVIGATION

CORPORATION LIMITED

Defendant

CANDELWOOD NAVIGATION

CORPORATION LIMITED

Cross Claimant

MITSUI OSK LINES LIMITED

First Cross Defendant

MATSUOKA STEAMSHIP CO

LIMITED

Second Cross Defendant

TOKYO SHUKOSHO CO LIMITED

Third Cross Defendant

PLAINTIFFS VERIFIED

STATEMENT IN ANSWER TO

FURTHER INTERROGATORIES

EBSWORTH & EBSWORTH

Solicitors

2 Castlereagh Street,

SYDNEY. 2000

PH: 221.2366 SWH 8599A

DX. 103 Sydney.

The Plaintiffs MITSUI OSK LINES LIMITED and MATSUOKA STEAMSHIP CO LIMITED answer the defendant's further interrogatories specified in the undated further Notice received in our solicitors office on 30th March 1983 as follows

7A. Between 0300 hours on 10th July 1981 was lubricating oil running through the engines of the "Ibaraki Maru"?

7B. No.

9A. As at 0300 hours on 10th July 1981 was there an anchor watch on the forecastle of the "Ibaraki Maru"?

9B. No.

10A. If so please identify the person or persons who were on watch between 0300 and 0345 on 10th July 1981.

10B. Between 0324 and 0345, Chief Officer Shoichi Keaki, boatswain Toku Morita and able seaman Yoshikazu Komatsu were on watch on the forecastle.

EXHIBITS - 10.
LETTER FROM PATRICK AGENCIES TO
EBSWORTH & EBSWORTH

PATRICK AGENCIES

OF PATRICK OPERATIONS PTY LIMITED
(In New South Wales)

SOLE AGENTS

FORESHORE ROAD, PORT KEMBLA N.S.W. 2505 • Telephone 74 0335 • Telex AA29025
Postal Address: P.O. Box 83, Port Kembla, N.S.W. 2505, Australia • Cables: RIKPAT

22 OCT 1981

Your Reference

Our Reference

BD:HJ

Date:

October 16, 1981.

Messrs. Ebsworth & Ebsworth,
Solicitors,
Box 713, G.P.O.,
SYDNEY, N.S.W. 2001.


Dear Sirs,

"MINERAL TRANSPORTER"

We refer to your letter to our Sydney Office, reference SWH:K:3947, and as requested detail below berthing and sailing times of vessels which were waiting for the Port Kembla Coal Loader prior to the arrival of "Ibaraki Maru". All times are as recorded by The Maritime Services Board of N.S.W.

"Fukukawa Maru"	Berthed 0750 hours 26.6.81 sailed 0920 hours 28.6.81
"Oceanic Victory"	Berthed 1125 hours 28.6.81 sailed 2005 hours 1.7.81
"Delwind"	Berthed 0935 hours 2.7.81 sailed 2325 hours 5.7.81
"Tectus"	Berthed 0853 hours 6.7.81 sailed 1715 hours 12.7.81
"Hoegh Rover"	Berthed 0745 hours 13.7.81 sailed 1850 hours 15.7.81
"Sanko Cherry"	Berthed 2020 hours 15.7.81 sailed 1825 hours 17.7.81
"Ogden Amazon"	Delayed berthing due to maritime ban on the berthing of F.O.C. vessels
	Berthed 2050 hours 24.7.81 sailed 0435 hours 27.7.81
"Eredine"	Berthed 2005 hours 17.7.81 sailed 2220 hours 19.7.81
"Ibaraki Maru"	Arrived 1615 hours 26.6.81 would have berthed daylight 20.7.81.

Yours faithfully,
PATRICK AGENCIES
AS AGENTS


BRANCH MANAGER

Part 2
EXHIBITS

Defendant's
Exhibits
10.
Letter from
Patrick
Agencies to
Ebsworth
& Ebsworth
16th October
1981

Part 2
EXHIBITS

Defendant's
Exhibits
11.
Graph of
trends in
cargo
rates

CORAM: YELDHAM, J.

Master Dick v. *Marshall*
Shanofaster

EXHIBITS

11.
GRAPH OF TRENDS
IN CARGO RATES

EXHIBIT 11

B. Carr
ASSOCIATE

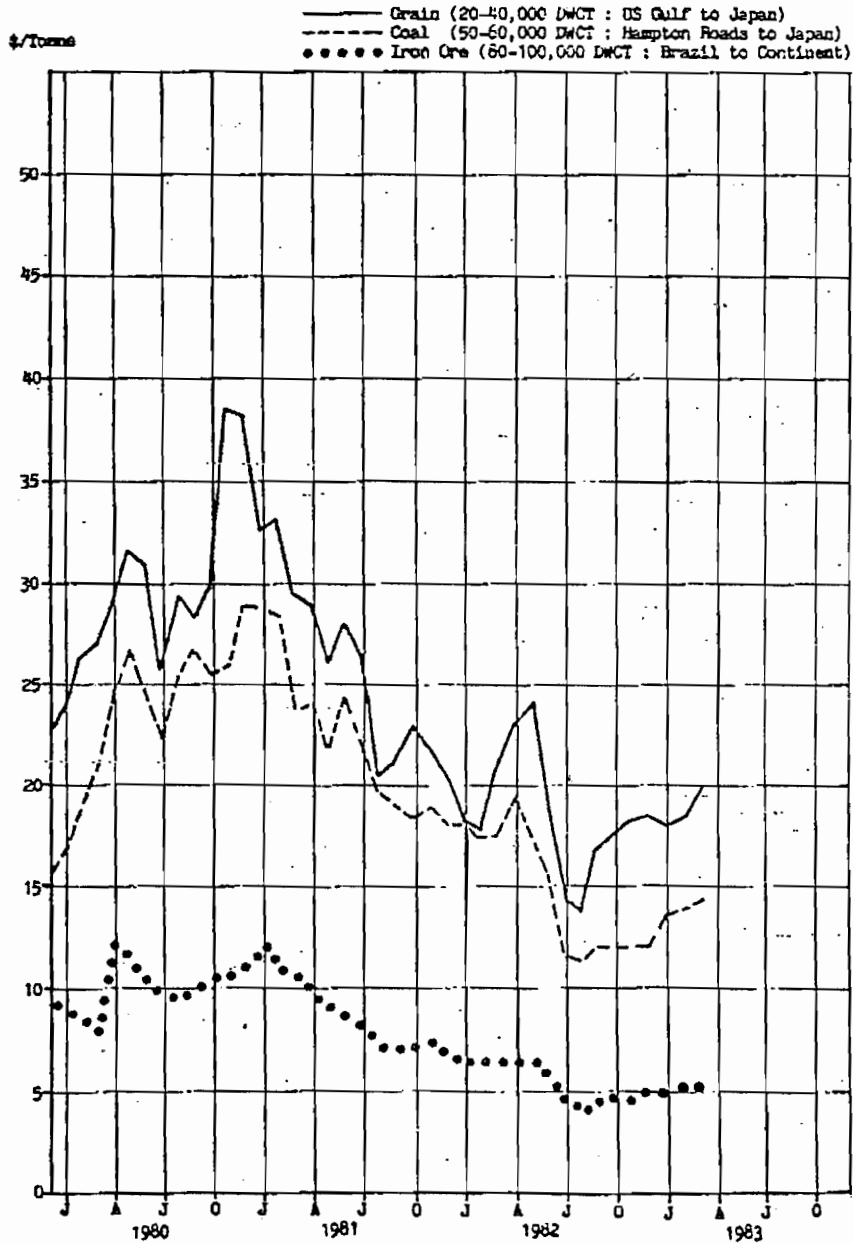
20-5-83

TO AH SYDNEY.
FROM RICHARD STRACHAN

Dry Cargo

Market Trends

Figure 7. DRY CARGO VESSELS VOYAGE RATES 1980-1983



EXHIBITS - 12
PARTICULARS OF VOYAGES 66A AND 67A
OF "IBARAKI MARU"
VOYAGE 66 A

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

Commenced 09.00 27/10/81

Concluded 15.00 14/1/82

TOTAL 79.25 days

Annexed "A"

Fixture note 28/10/81

Addendum

1. 15/12/81
2. 24/12/81
3. 24/5/82 - Demurrage \$US6,500.00
- Despatch \$US3,250.00
4. 26/5/82 - freight \$US13.29 per tonne

Carriage of coal from Port Kembla (49,589 LT), Hay Point
(56,757 LT) to Kashima, Wakayama and Kokura.

Annexed "B"

Computer printouts re port charges

Annexed "C"

Computer printouts re bunkering

Part 2
EXHIBITS

Annexed "D"

Defendant's Exhibits 12. Particulars of voyages 66A and 67A of "Ibaraki Maru"

Brokerage invoice

Annexed "E"

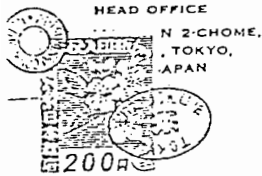
Laydays statements

Annexed "F"

(cont'd)

Statements re demurrage and payment for extra ordinary delay.

Freight earned	¥306,422,599
Demurrage	¥ 42,337,891
Extra ordinary delay	¥ 32,950,725
Expenses: Port charges	¥ 32,401,389
Despatch	¥ 9,646,047
Commission	¥ 350,000
Bunkers	¥ 81,884,714
Sundries	¥ 1,056,667
Charter to Matsuoka	¥195,272,000
Total Earnings:	¥381,711,215
Expenses :	¥320,610,817
	¥ 61,100,398
Daily Profit:	¥ 770,983



NETSUHI O.S.K. LINES, LTD.

TOKYO, JAPAN

ORIGINAL

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

Tokyo, 28th October, 1981

FIXTURE NOTE

Messrs. Mitsubishi Corporation
Tokyo

Dear Sirs,

Per M.S. "IBARAKI MARU" Voy.No.66

We firmly fixed with you as follows:-

- 1) Name of vessel : M.S. "IBARAKI MARU" Voy.No.66
- 2) Loading ports : One safe berth, one safe port of Port Kembla and one safe berth one safe port of Hay Point, Australia.
- 3) Cargo & quantity : At Port Kembla:
COAL CLIFF Coal 45,000 metric tons 10% more or less at Owners' option.
At Hay Point:
PEAKDOWN Coal 37,000 metric tons and GOCNYELLA Coal 26,000 metric tons 10% more or less at Owners' option respectively.
- 4) Discharging port(s) : (Each) One safe berth at one or two safe port(s), Kashima, Wakayama and Kokura, Japan.
- 5) ETA at loading port : First loading port, on or about 9th November, 1981.
- 6) Freight rate : To be decided later.
- 7) Payment of freight : The freight to be prepaid on B/L quantity by Charterers in Tokyo in cash in U.S. Dollars upon receipt of telegraphic advice of completion of loading.
Whole freight to be deemed to be earned upon completion of loading without deduction and non-returnable ship and/or cargo lost or not lost.
- 8) Lighterage & stevedorage : Charterers' account at both ends.
- 9) Loading terms & conditions : At Port Kembla:
10,000 long tons per weather working day of 24 consecutive hours Sundays, Holidays and the afternoons of Saturdays and up to 08:00 a.m. Mondays and the day following a Holidays are excepted unless used, if used, only time actually used to count as laytime.
Demurrage or despatch money to be fixed later.
At Hay Point:
Master of the vessel to notify Utah Development Company, Mackay Office, Cable Address: "SEIPISEV UTAHSHIP MACKAY" of the vessel's ETA and the estimated cargo required each 7 days, 48 hours and 24 hours before the vessel is expected to arrival at Hay Point.

- to be continued -

Part 2
EXHIBITS

Defendant's Exhibits

12.
Particulars of voyages 66A and 67A of "Ibaraki Maru"

(continued)

Laytime for loading shall commence twelve(12) hours after Notice of Readiness is tendered unless loading is sooner commenced. Notice of Readiness to load may be presented by the vessel after arrival at the port, whether in berth or not, at any time in or out of office hours, provided the vessel is in free pratique and in all respects ready to load.

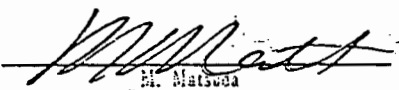
Loading rate to be 21,500 long tons per weather working day of 24 consecutive hours, Saturdays and Sundays included but officially recognized holidays in the State of Queensland, Australia excepted, unless used.

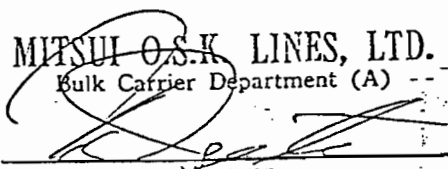
Demurrage: US\$9,500.- per day or pro rata for all time lost.
Despatch money: US\$4,750.- per day or pro rata for laytime saved.

- 10) Discharging terms & conditions : To be fixed between Sumitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd.
- 11) Agents : Owners' Agents at both ends.
- 12) Remarks : All other terms and conditions as per adapted "HAYATOKO MARU" Voy.No.26 Charter Party dated Tokyo, 3rd April, 1972 between Charterers, Mitsui & Co., Ltd., Mitsubishi Corporation and Sumitomo Corporation, Tokyo and Owners, Mitsui O.S.K. Lines, Ltd., Tokyo and as per relative Sales Contract between Messrs. Sumitomo Metal Industries, Ltd. and Shipper.

One original Fixture Note being made, mutually signed and possessed by Owners.

Charterers:
on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD.

mitsubishi corporation

M. Matsuda
Manager, NSW Coal Team
Coal Dept.

Owners:

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)
Manager
Coal & Iron Ore Carriers Section (A)

HEAD OFFICE
1-1 TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
TIOS JAPAN



MITSUBI O.S.K. LINES, LTD.

TOKYO, JAPAN

ORIGINAL

CABLE ADDRESS
THEMCLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

Tokyo, 15th December, 1961

ADDENDUM No.1

to

Fixture Note dated Tokyo, 28th October, 1961
Per M.S. "IBARAKI MARU" Voy.No.65

(continued)

With regard to the Fixture Note dated Tokyo, 28th October, 1961 covering the shipment of Coal in bulk from Port Kembla and Hay Point to (Each) One safe berth at one or two safe port(s), Kashima, Wakayama and Kokura per M.S. "IBARAKI MARU" Voy.No.65, it is this day mutually agreed between Messrs. Mitsubishi Corporation, Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

1) Cargo & quantity:

Port Kembla: COAL CLIFF Coal 50,000 metric tons 10% more or less at Owners' option.

Hay Point : SARAJE Coal 32,000 metric tons and COFFEEHILL Coal 25,000 metric tons 10% more or less at Owners' option respectively.

2) Loading terms and conditions at Hay Point:

a) Notice of Readiness to load shall not be tendered before 0900 hours on December 16th, 1961, unless sooner worked.

b) Loading rate to be 15,500 long tons (Actual loading quantity: Over 45,000 L/T up to 60,000 L/T) and 21,500 long tons (Actual loading quantity: Over 60,000 L/T up to 75,000 L/T) per weather working day of 24 consecutive hours, Saturdays and Sundays included but officially recognized holidays in the State of Queensland, Australia excepted, unless used respectively.

c) Demurrage or despatch money to be settled in Australia in cash between the Shippers' agents and the Owners' agents.

3) Demurrage or despatch money at discharging port(s) to be settled between Sumitomo Metal Industries, Ltd. and Owners.

All other terms and conditions of the abovementioned Fixture Note shall remain unaltered.

One original Addendum No.1 being made, mutually signed and possessed by Owners.

on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD.

Charterers:

MITSUBISHI CORPORATION

A. Ishiguro
Manager of Queensland Coal Team
Coal Dept.

Owners:

MITSUBI O.S.K. LINES, LTD
Bulk Carrier Department (A)

Manager
Coal & Iron Ore Carriers Section (A)

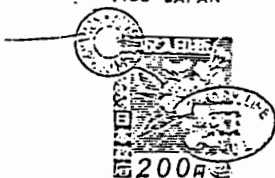
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Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

HEAD OFFICE
1-1 TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
TIOS JAPAN



MITSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

ORIGINAL

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

Tokyo, 24th December, 1981

ADDENDUM No.2

to

Fixture Note dated Tokyo, 28th October, 1981
Addendum No.1 dated Tokyo, 15th December, 1981
Per M.S. "IBARAKI MARU" Voy.No.66

With regard to the Fixture Note dated Tokyo, 28th October, 1981 and Addendum No.1 dated Tokyo, 15th December, 1981 covering the shipment of Coal in bulk from Port Kembla and Hay Point to (Each) one safe berth at one or two safe port(s), Kashima, Wakayama and Kokura per M.S. "IBARAKI MARU" Voy.No.66, it is this day mutually agreed between Messrs. Mitsubishi Corporation, Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

The provisional rate of freight to be US\$10.50 (U.S. Dollars Ten Cents Fifty only) per ton of 2,240 lbs., F.I.O. and free trimming.

All other terms and conditions of the abovementioned Fixture Note shall remain unaltered.

One original Addendum No.2 being made, mutually signed and possessed by Owners.

Charterers:

MINAMI SUITONG METAL INDUSTRIES, LTD.

NETSUBISHI CORPORATION

M. Matsuda
Manager, NSW Coal Team
Coal Dept.

Owners:

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

Manager
Coal & Iron Ore Carriers Section (A)

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

HEAD OFFICE
1-1 TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
JAPAN

NETSUI O.S.K. LINES, LTD.

TOKYO, JAPAN

ORIGINAL

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (034) 3111

Tokyo, 24th May, 1982

A D D E N D U M No.3

to

Fixture Note dated Tokyo, 28th October, 1981
Addendum No.1 dated Tokyo, 15th December, 1981
Addendum No.2 dated Tokyo, 24th December, 1981
Port Kembla and Hay Point/Kashima, Wakayama and
Kokura: Coal in bulk
Per M.S. "IBARAKI MARU" Voy.No.66

With regard to the captioned Fixture Note, it is this day mutually agreed between Messrs. Mitsubishi Corporation Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

Loading terms & conditions at Port Kembla.

Demurrage : US\$6,500.- per day or pro rata for all time lost.
Despatch money: US\$3,250.- per day or pro rata for laytime saved.

All other terms, conditions and exceptions of the aforementioned Fixture Note shall remain unaltered.

One original Addendum No.3 being made, mutually signed and possessed by Owners.

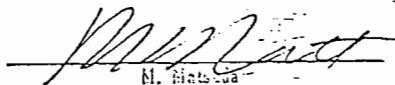
Charterers:

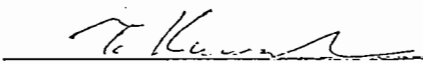
Owners:

on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD.

NETSUI CORPORATION

NETSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)


M. Matsuda
Manager, NSW Coal Team-
Coal Dept.


Manager
Coal & Iron Ore Carriers Section (A)

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

HEAD OFFICE
1-1, TORANOMON 2-CHOME,
MINATO-KU, TOKYO,
1105 JAPAN



MITSUBI O.S.K. LINES, LTD.

TOKYO, JAPAN

CABLE ADDRESS
THEMOLINE TOKYO
TELEX J22266
AAB MOLINE
TELEPHONE
TOKYO (584) 5111

ORIGINAL

Tokyo, 26th May, 1982

ADDENDUM No.4

to

Fixture Note dated Tokyo, 26th October, 1981
Addendum No.1 dated Tokyo, 15th December, 1981
Addendum No.2 dated Tokyo, 24th December, 1981
Addendum No.3 dated Tokyo, 24th May, 1982
Port Kembla and Hay Point/Kashima, Wakayama and
Kokura: Coal in bulk
Per M.S. "IBARAKI MARU" Voy.No.66

With regard to the captioned Fixture Note, it is this day mutually agreed between Messrs. Mitsubishi Corporation, Tokyo as Charterers and Mitsui O.S.K. Lines, Ltd., Tokyo as Owners that:-

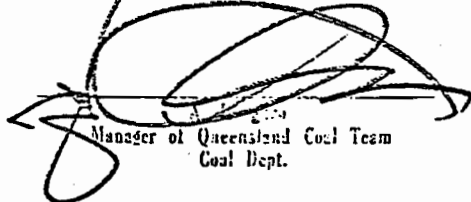
Notwithstanding the Addendum No.2 dated Tokyo, 24th December, 1981 the final rate of freight to be US\$13.29 (U.S. Dollars Thirteen Cents Twenty-Nine only) per ton of 2,240 lbs., F.I.C. and free trimming.

The balance freight between the provisional rate and above final rate to be settled directly between Sumitomo Metal Industries, Ltd. and Mitsui O.S.K. Lines, Ltd.

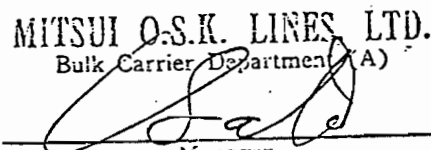
All other terms, conditions and exceptions of the aforementioned Fixture Note shall remain unaltered.

One original Addendum No.4 being made, mutually signed and possessed by Owners.

Charterers:
on behalf of Messrs. SUMITOMO METAL INDUSTRIES, LTD.
MITSUBISHI CORPORATION


Manager of Queensland Coal Team
Coal Dept.

Owners:

MITSUBI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

Manager
Coal & Iron Ore Carriers Section (A)

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

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HORH                               83/03/22  11:41                               D301
PAGE IN: =                               PAGE      1

      *** DISBURSEMENT DETAIL (ACTUAL) ***
      0329 IBARAKI-M 0066A(0066A) 88W(88W) PORT: KOKURA (0720)
S. DATE ITEM      Y E N      CCY. EX-RATE  LOCAL AMOUNT  S/T NO.  FURI
820114 310011      1,401,300    00      1.00          0  0730-0055 8202
820114 310012           145,222    00      1.00          0  0730-0055 8202
820114 310020      1,907,903    00      1.00          0  0730-0055 8202
820114 310030      2,227,200    00      1.00          0  0730-0055 8202
820114 310041           76,900     00      1.00          0  0730-0055 8202
820114 310070           17,240     00      1.00          0  0730-0055 8202
820114 310090           22,990     00      1.00          0  0730-0055 8202

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NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

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HORH                               83/03/22  11:41                               D301
PAGE IN: =                               PAGE      2

      *** DISBURSEMENT DETAIL (ACTUAL) ***
      0329 IBARAKI-M 0066A(0066A) 88W(88W) PORT: KOKURA (0720)
S. DATE ITEM      Y E N      CCY. EX-RATE  LOCAL AMOUNT  S/T NO.  FURI
ITEM TOTAL
310:           5,798,655
PORT TOTAL:    5,798,655

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**Part 2
EXHIBITS**

**Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"**

(continued)

HORH		83/03/22		11:40		DS01	
PAGE IN: =						PAGE 1	
		*** DISBURSEMENT		DETAIL (ACTUAL)		***	
S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M 0066A(0066A)	SBW(SBW)	PORT: KASHIMA	(0152)			
820107	310012	126,280	00	1.00	0	0152-0011	8202
820107	310020	626,416	00	1.00	0	0152-0011	8202
820107	310030	1,632,000	00	1.00	0	0152-0011	8202
820107	310041	82,000	00	1.00	0	0152-0011	8202
820107	310090	12,500	00	1.00	0	0152-0011	8202
820107	310090	66,510	00	1.00	0	0152-0011	8202
820107	310090	12,810	00	1.00	0	2009-5074	8206

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HORH		83/03/22		11:40		DS01	
PAGE IN: =						PAGE 2	
		*** DISBURSEMENT		DETAIL (ACTUAL)		***	
S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M 0066A(0066A)	SBW(SBW)	PORT: KASHIMA	(0152)			
ITEM TOTAL		310:	2,558,516				
PORT TOTAL:			2,558,516				

HORH		83/03/22		11:51		DS01	
PAGE IN: =						PAGE	
		*** DISBURSEMENT		DETAIL (ACTUAL)		***	
S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M 0066A(0066A)	SBW(SBW)	PORT: WAKAYAMA-N(0310)				
820111	310011	1,401,300	00	1.00	0	0321-0057	8203
820111	310012	126,280	00	1.00	0	0321-0057	8203
820111	310020	538,617	00	1.00	0	0321-0057	8203
820111	310030	3,054,875	00	1.00	0	0321-0057	8203
820111	310041	163,100	00	1.00	0	0321-0057	8203
820111	310090	68,440	00	1.00	0	0321-0057	8203
ITEM TOTAL		310:	5,352,612				

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH		83/03/22		11:51		DS01	
PAGE IN: =						PAGE 2	
		*** DISBURSEMENT		DETAIL (ACTUAL)		***	
S. DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FURI
0329	IBARAKI-M 0066A(0066A)	SBW(SBW)	PORT: WAKAYAMA-N(0310)				
PORT TOTAL:			5,352,612				

Part 2
EXHIBITS

Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki Maru"
(cont'd)

*** END ***
NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY ##
83/03/22 10:55

HORH
PAGE IN: =2

DS01
PAGE 111

*** DISBURSEMENT DETAIL (ACTUAL) ***
0329 IBARAKI-M 0066A(0066A) SBW(SBW) PORT: P.KERBLA (8924)
S. DATE ITEM Y E N CCY. EX-RATE LOCAL AMOUNT S/T NO. FURI
811218 310011 1,229,971 03 248.47 4,950.18 8920-2011 8202
811218 310012 4,158,936 03 248.47 16,738.18 8920-2011 8202
811218 310020 646,032 03 248.47 2,600.00 8920-2011 8202
811218 310030 4,706,022 03 248.47 19,940.00 8920-2011 8202
811218 310041 340,764 03 248.47 1,371.45 8920-2011 8202
ITEM TOTAL
310: 11,081,715
PORT TOTAL: 11,081,715

*** END ***

*** DISBURSEMENT DETAIL (ACTUAL) ***
0329 IBARAKI-M 0066A(0066A) SBW(SBW) PORT: HAYPOINT (8936)
S. DATE ITEM Y E N CCY. EX-RATE LOCAL AMOUNT S/T NO. FURI
811223 310011 1,568,840 03 248.47 6,314.00 8920-2011 8202
811223 310020 1,001,334 03 248.47 4,030.00 8920-2011 8202
811223 310030 3,975,520 03 248.47 16,000.00 8920-2011 8202
811223 310041 248,470 03 248.47 1,000.00 8920-2011 8202
811223 310043 784,420 03 248.47 3,157.00 8920-2011 8202
811223 310090 31,307 03 248.47 126.00 8920-2011 8202
ITEM TOTAL
310: 7,609,891

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY ##
83/03/22 11:39

HORH
PAGE IN: =

DS01
PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***
0329 IBARAKI-M 0066A(0066A) SBW(SBW) PORT: HAYPOINT (8936)
S. DATE ITEM Y E N CCY. EX-RATE LOCAL AMOUNT S/T NO. FURI
PORT TOTAL: 7,609,891

Part 2
EXHIBITS
Defendant's
Exhibits
12.
Particulars
Of Voyages
66A and 67A
Of "Ibaraki
Maru"
(cont'd)

LINE	VESSEL	VOYAGE	B-DATE	PORT	OFFER	CLM						
8BW	0329	IBARAKI-M	0065A			010	74,478	144.38			82-01	KURIKOSHI
	0329	IBARAKI-M		82-01-13	0720	1117	010	72,634	99.67	7,239,476	82-01	HOYU
	0329	IBARAKI-M		82-01-13	0720	1118	010		.00	21,937	82-01	HOYU
8BW	0329	IBARAKI-M	0066A			010	73,635	92.96	6,845,110		82-01	ZANYU-UNKOHI 4-1
				*** ZANYU ***			010		151.00	11,118.810		
	0329	IBARAKI-M		81-01-27		010	84,000	8.17	686,280		82-01	CHONEN-DEMPYO
8BE	0329	IBARAKI-M	0063B			010	84,000	8.17	686,280		82-01	CHONEN-DEMPYO
	0329	IBARAKI-M		81-08-31		010	84,000	21.38	1,795,920		82-01	CHONEN-DEMPYO
8BW	0329	IBARAKI-M	0065A			010	84,000	21.38	1,795,920		82-01	CHONEN-DEMPYO
8BW	0329	IBARAKI-M	0065A			030	48,579	2,410.06	117,079,198		82-01	KURIKOSHI
	0329	IBARAKI-M		82-01-13	0720	1118	034		.00	242,059	82-01	HOYU
	0329	IBARAKI-M		82-01-13	0720	1117	034	44,240	1,099.77	48,654,067	82-01	HOYU
8BW	0329	IBARAKI-M	0066A			030	47,288	1,586.83	75,039,604		82-01	ZANYU-UNKOHI 4-1
				*** ZANYU ***			030		1,923.00	90,935,720		
	0329	IBARAKI-M		81-01-27		030	44,400	34.49	1,531,356		82-01	CHONEN-DEMPYO
8BE	0329	IBARAKI-M	0063B			030	44,400	34.49	1,531,356		82-01	CHONEN-DEMPYO
	0329	IBARAKI-M		81-08-31		030	44,400	88.57	3,932,508		82-01	CHONEN-DEMPYO
8BW	0329	IBARAKI-M	0065A			030	44,400	88.57	3,932,508		82-01	CHONEN-DEMPYO
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***												
8BW	0329	IBARAKI-M	0065A			010	78,635	151.00	11,118,810		82-02	
8BW	0329	IBARAKI-M	0065A			030	47,288	1,923.00	90,935,720		82-02	
*** TOTAL ***							49,207	2,074.00	102,054,530			
8A9	0330	ARAFURA-M	0036A			010	69,879	211.68	14,791,948		82-01	KURIKOSHI
	0330	ARAFURA-M		81-11-15	4430	M212	010		.00	5,089	82-01	CHONEN-SHUSEI
	0330	ARAFURA-M		82-01-12	0152	1118	010		.00	10,974	82-01	HOYU
	0330	ARAFURA-M		82-01-12	0152	1117	010	72,637	49.86	3,621,699	82-01	HOYU
8AJ	0330	ARAFURA-M	0036B			010	70,343	70.50	4,959,182		82-01	ZANYU-UNKOHI 4-1
				*** ZANYU ***			010		191.04	13,438,402		
8A9	0330	ARAFURA-M	0036A			030	44,481	5,547.10	246,740,382		82-01	KURIKOSHI
	0330	ARAFURA-M		81-11-15	4430	M212	034		.01	165,491	82-01	CHONEN-SHUSEI
	0330	ARAFURA-M		82-01-12	0152	1118	034		.00	525,777	82-01	HOYU
	0330	ARAFURA-M		82-01-12	0152	1117	034	44,240	2,388.81	105,681,372	82-01	HOYU
8AJ	0330	ARAFURA-M	0036B			030	44,454	3,967.48	176,370,356		82-01	ZANYU-UNKOHI 4-1
				*** ZANYU ***			030		3,968.42	176,411,684		

Part 2
EXHIBITS

MITSUI O. S. K. LINES, LTD.
APR 70

MAR 31 1982

Date: 19

LAYDAYS STATEMENT

Defendant's Exhibits 12. Particulars of voyages 66A and 67A of "Ibaraki Maru"

(continued)

M.S. IBARAKI MARU Voy.No.66

Port: Washima, Wakayama and Kokura

Charter Party dated: 28th Oct., 1981
Between Mitsubishi Corporation
And Mitsui O.S.K. Lines, Ltd.
Cargo: Coal

As Charterers
As Owners
Quantity: 106,346 L/T
tons per day WEDSHING

Rate of Loading (Discharge) as per Charter Party

Laytime Allowed: 7 Days 04 Hours 48 Minutes

Arrived: 14:15 6th Jan., 1982
Berthed: 14:15 " " "
Notice of Readiness Tendered: 14:15 " " "
Notice of Readiness Accepted: 14:15 " " "
Laytime Commenced: 15:10 " " "
Commenced Loading (Discharge): 15:10 " " "
Completed Loading (Discharge): 13:00 14th " "
Laytime Expired: 21:38 16th " "

Washima: 28,016 L/T
Per day 30,000 L/T
Allowed 0.93387 d.
Wakayama: 39,784 L/T
Per day 12,500 L/T
Allowed 3.18272 d.
Kokura: 38,546 L/T
Per day 12,500 L/T
Allowed 3.08368 d.

Date	Day of Week	Description	Total Laytime Allowed D.H.M.	Laytime Used D.H.M.	All Laytime Saved Lost D.H.M.
1982					
Washima					
Jan.					
6th	Ted.	Discharging & laytime commenced			
		15:10	0-08-50	0-08-50	0-00-00
7th	Thu.	Discharging completed	10:10	0-10-10	0-00-00
Wakayama					
9th	Sat.	Arrived & laytime commenced			
		08:00	0-16-00	0-16-00	0-00-00
10th	Sun.		1-00-00	1-00-00	0-00-00
11th	Mon.	Discharging completed	05:10	0-05-10	0-00-00
Kokura					
12th	Tue.	Arrived & laytime commenced			
		09:00	0-15-00	0-15-00	0-00-00
13th	Wed.		1-00-00	1-00-00	0-00-00
14th	Thu.	Discharging completed	13:00	0-13-00	0-11-00
15th	Fri.		1-00-00	0-00-00	1-00-00
16th	Sat.	Laytime Expired	21:38	0-21-38	0-21-38
Total					

Demurrage or Despatch Money

Time: XXXXXXXX days hours minutes (days)

Amount: @ 00 per day 30 2,35570

(@ ex) Total:

Charterers: 000.- 47,867,937.-

SUMITOMO METAL INDUSTRIES, LTD.

Y. M. M. M.
Manager, Ocean Transportation Section

P. 027 (54. 9. 100x100 N)

Owners:

Mitsui O. S. K. Lines, Ltd.
Bulk Carrier Department (A)

T. K. M.
Manager
Coal & Iron Ore Carriers Section (A)

GIORA



MITSUI O.S.K. LINES. LTD.

Tokyo, DATE: _____

P3

LAYDAYS STATEMENT

Name of Vessel _____
 Port _____
 Charter Party Dated _____ At _____
 Between _____ Owners _____
 And _____ Charterers _____
 Cargo _____ Quantity _____
 Rate of _____ as per Charter Party _____ Per _____
 Lay time allowed _____ Days _____ Hours _____ Minutes (_____ days)

Arrived; _____ Hour : :
 Free Pratique granted; _____ " : :
 Berthed; _____ " : :
 N/R tendered; _____ " : :
 N/R accepted; _____ " : :
 Lay time Commenced; _____ " : :
 Commenced _____ : :
 Completed _____ : :

DATE	Day of Week	DESCRIPTION			Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time LOST DY-HR-MN
DEC. 9TH	WED	**** CONTINUE *****				1-00-00	1-00-00
10TH	THU					1-00-00	1-00-00
11TH	FRI					1-00-00	1-00-00
12TH	SAT	12:00-24:00	WORKED	WORK.HR --- 12-00	*A	1-00-00	1-00-00
13TH	SUN	00:00-24:00	WORKED	WORK.HR --- 24-00	*A	1-00-00	1-00-00
14TH	MON					1-00-00	1-00-00
15TH	TUE					1-00-00	1-00-00
16TH	WED	16:10	ARRIVED AT BERTH			1-00-00	1-00-00
		16:23	F.P. WAS GRANTED				
		17:05	LOADING COMMENCED				
17TH	THU	23:32-23:55	DRAFT CHECK	EXPT.HR --- 00-23		0-23-37	0-23-37
18TH	FRI	06:43-07:10	DRAFT CHECK	EXPT.HR --- 00-27		0-07-16	0-07-16
		07:43	LOADING COMPLETED				
TOTAL		** DEMURRAGE ** @ 6,500.00 X 29.79653 DAYS = 193,677.45 US.\$			4-23-01	34-18-08	29-19-07

435.

Remarks

Charterers;

Owners;

Mitsui O.S.K. Lines Ltd. (A)

 Mitsui O.S.K. Lines Ltd. Manager
 Coal & Iron Ore Carriers Section (A)

(continued)


Particulars of voyages of 66A and 67A of "Ibaraki Maru"
 12. Exhibits
 Defendant's Exhibits

Part 2 EXHIBITS

Defendant's
Exhibits
12.
Particulars
of Voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

CIORA

 **MITSUI O.S.K. LINES. LTD.**
LAYDAYS STATEMENT

Tokyo, DATE: _____

Name of Vessel _____
Port _____
Charter Party Dated _____ At _____
Between _____ Owners _____
And _____ Charterers _____
Cargo _____ Quantity _____
Rate of _____ as per Charter Party _____ Per _____
Lay time allowed _____ Days _____ Hours _____ Minutes (_____ days)

Arrived; _____ Hour _____
Free Pratique granted; _____
Berthed; _____
N/R tendered; _____
N/R accepted; _____
Lay time Commenced; _____
Commenced _____
Completed _____

DATE	Day of Week	DESCRIPTION			Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time LOST DY-HR-MN
NOV. 24TH	TUE	**** CONTINUE *****				1-00-00	1-00-00
25TH	WED					1-00-00	1-00-00
26TH	THU					1-00-00	1-00-00
27TH	FRI					1-00-00	1-00-00
28TH	SAT	12:00-24:00	WORKED	WORK .HR --- 12-00 *A		1-00-00	1-00-00
29TH	SUN	00:00-24:00	WORKED	WORK .HR --- 24-00 *A		1-00-00	1-00-00
30TH	MON					1-00-00	1-00-00
DEC. 1ST	TUE					1-00-00	1-00-00
2ND	WED					1-00-00	1-00-00
3RD	THU					1-00-00	1-00-00
4TH	FRI					1-00-00	1-00-00
5TH	SAT	12:00-24:00	WORKED	WORK .HR --- 12-00 *A		1-00-00	1-00-00
6TH	SUN	00:00-24:00	WORKED	WORK .HR --- 24-00 *A		1-00-00	1-00-00
7TH	MON					1-00-00	1-00-00
8TH	TUE					1-00-00	1-00-00
9TH	WED	**** CONTINUE *****					
TOTAL							

Remarks

Charterers;

Owners;

MITSUI O.S.K. LINES. LTD.

436.

CIORA



MITSUI O.S.K. LINES, LTD.

Tokyo, DATE: MAY, 26 1982

P 1

LAYDAYS STATEMENT

Name of Vessel M.S. IBARAKI MARU VOY. 88W-66A
 Port PORT KEMBLA
 Charter Party Dated OCT. 28 1981 At TOKYO
 Between MITSUI O.S.K. LINES, LTD. Owners
 And MITSUBISHI CORPORATION. Charterers
 Cargo COAL CLIFF IN BULK Quantity 49,589.000 L/T
 Rate of LOADING as per Charter Party 10,000.000 L/T Per DAY WWSASHEX UU
 Lay time allowed 04 Days 23 Hours 01 Minutes (04.95890 days)

Arrived; NOV. 10 1981 Hour 16:45
 Free Pratique granted; DEC. 16 1981 " 16:23
 Berthed; DEC. 16 1981 " 16:10
 N/R tendered; NOV. 10 1981 " 16:45
 N/R accepted; NOV. 10 1981 " 16:45
 Lay time Commenced; NOV. 11 1981 " 16:45
 Commenced LOADING; DEC. 16 1981 " 17:05
 Completed LOADING; DEC. 18 1981 " 07:43

DATE	Day of Week	DESCRIPTION	Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time LOST DY-HR-MN
NOV. 10TH	TUE	PORT KEMBLA ** LOADING ** 16:45 ARRIVED 16:45 N/R TENDERED 16:45 N/R ACCEPTED	0-00-00	0-00-00	
11TH	WED	16:45 LAYTIME COMMENCED	0-07-15	0-07-15	
12TH	THU		1-00-00	1-00-00	
13TH	FRI		1-00-00	1-00-00	
14TH	SAT		0-12-00	0-12-00	
15TH	SUN		0-00-00	0-00-00	
16TH	MON	00:00-08:00 NO COUNT EXPT. HR --- 08-00	0-16-00	0-16-00	
17TH	TUE		1-00-00	1-00-00	
18TH	WED	11:46 EXPIRED	0-11-46	1-00-00	0-12-14
19TH	THU			1-00-00	1-00-00
20TH	FRI			1-00-00	1-00-00
21ST	SAT	12:00-24:00 WORKED WORK. HR --- 12-00 *A		1-00-00	1-00-00
22ND	SUN	00:00-24:00 WORKED WORK. HR --- 24-00 *A		1-00-00	1-00-00
23RD	MON			1-00-00	1-00-00
24TH	TUE	**** CONTINUE *****			
TOTAL					

437.

Remarks

Charterers;

Owners;

MITSUI O.S.K. LINES, LTD.

(continued)

Part 2
 EXHIBITS
 Defendant's
 Exhibits
 12.
 Particulars
 of voyages
 66A and 67A
 of "Ibaraki
 Maru"

"IBARAKI MARU"

VOY. 66. LOADED AT HAY POINT,
QUEENSLAND, AUSTRALIA.

Part 2
EXHIBITS

Defendant's Exhibits 12. Particulars of voyages 66A and 67A of "Ibaraki Maru"

CHARTER PARTY/ FIXTURE NOTE DATED : 28th October, 1981.
 ARRIVED/ANCHORED OFF MACKAY : ---- HOURS ----
 ARRIVED/ANCHORED OFF HAY POINT : 1330 HOURS 21st December, 1981.
 BERTHED HAY POINT : 0600 HOURS 22nd December, 1981.
 GRANTED PRATIQUE (AT ANCHOR/AT BERTH) : ---- HOURS PORT KEMBLA,
 NOTICE OF READINESS TENDERED : 1615 HOURS 21st December, 1981.
 NOTICE OF READINESS ACCEPTED : 1615 HOURS 21st December, 1981.
 LAYTIME COMMENCED TO COUNT : 0415 HOURS 22nd December, 1981.
 LOADING COMMENCED : 0625 HOURS 22nd December, 1981.
 LOADING COMPLETED : 0750 HOURS 23rd December, 1981.
 BILL OF LADING TONNAGE LOADED : 56,757 LONG TONS GOONYELLA AND SARAJI CO.
 LOADING RATE (AS PER FIXTURE NOTE) : 16,500 LONG TONS PER WEATHER
) : WORKING DAY
) :
) :
 TIME ALLOWED : 3 DAYS 10 HOURS 33 MINUTES

DAY	DATE	FROM	TO	TIME USED			TIME NOT TO COUNT AS PER C/PARTY		
				DAYS	HRS.	MINS.	DAYS.	HRS.	MINS.
Tuesday	22.12.81	0415	2400	0	19	45	0	00	00
Wednesday	23.12.81	0000	0750	0	7	50	0	00	00
				1	3	35	0	00	00

TIME SAVED: 2 DAYS 6 HOURS 58 MINUTES

DESPATCH AT U.S.\$4,750.00 PER DAY OR PRO RATA = U.S.\$10,878.82


UTAH DEVELOPMENT COMPANY

DEBIT NOTE

(請 求 書)

(控)

MESSRS. MITSUBISHI CORPORATION

Part 2
EXHIBIT 1

Dr. to MITSUI O.S.K. LINES, LTD.

担当課 不定期船部

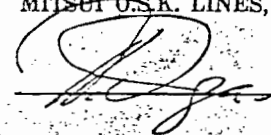
Defendant's Exhibits 12. Particulars of voyages 66A and 67A of "Ibaraki Maru"

LINE (航路名)	VESSEL (船名)	Voy.No.(次号)	SAILING DATE (出 発 日)	LOADING PORT (積地)	
	IBARAKI MARU	66A	81-12-18	PORT KEMBLA	
				CARGO (品名)	
				COAL IN BULK	
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
	*** LOADING DEMURRAGE ***				
	LAY TIME LOST	29D-19H-7M	(29.79653 days)		
	@6,500 x 29.79653 days =		US\$193,677.45		
TOTAL (合計)			US\$193,677.45		¥ 47,906,117.-

@4 35
247 UTP-10

- (註) 1. 外貨請求分は Copy 1部を財務部海外課へ回付のこと。
 2. 本請求書はタイプにて作成のこと。
 3. 感圧紙に付カーボン不要。

MITSUI O.S.K. LINES,



8x15x320N

Part 2
EXHIBITS

Defendant's Exhibits
12.
Particulars of voyages 66A and 67A of "Ibaraki Maru"

(continued)

入金通知書

入金先 MITSUBISHI CORPORATION

請求

通知先

(入金期日 月 日)

担当課 3703 不定期専用第一号 鉄鋼原料

LINE (航路名)	VESSEL (船名)	Voy.No.(次航)	SAILING DATE (出帆月日)	LOADING PORT (積地)
	FRANKLIN		6-17-57	LONG BEACH
				CARGO (品名)
				COAL IN BULK
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨) Ex. @ 円	JAPANESE YEN (円貨)
LONG BEACH	10,000	DISBURSED		
LAY TIME LAST	200-1-10-57	20.0000 days		
	10,500 x 20.7653 days		US\$109,67.45	¥47,906,117 (TTB on 10th Jan '58)
TOTAL (合計)			US\$109,67.45	¥47,906,117

上記請求金額は 57年 6月30日 表示円貨 で入金致しました
表示円貨

財務部 出納課長

440.

入金通知書

入金先

通知先

(入金期日 月 日)

担当 3703 不明等用第一節 鉄鋼原料

LINE (航路名)	VESSEL (船名)	Voy.No.(次号)	SAILING DATE (出帆月日)	LOADING PORT (積地)	CARGO (品名)

DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	Ex. @ Y	JAPANESE YEN (円貨)
TOTAL (合計)					¥50,000,000-

上記請求金額は 58年 / 月 3 / 日 ~~先金~~ で入金致しました
表示円貨

財務部出納課長

Part 2
EXHIBITS

請求
Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

DEBIT NOTE

(請求書)

(控)

No. 83-22

MESSRS. SUMITOMO METAL INDUSTRIES

DATE 11th Jan. 1983

Dr. to MITSUI O.S.K. LINES, LTD.

担当課 不定期専用船一部鉄鋼原料一課

LINE (航路名)	VESSEL (船名)	Voy.No.(次號)	SAILING DATE (出帆月日)	LOADING PORT (積地)	
CARGO (品名)					
DESTINATION (揚地)	TONNAGE (噸數)	RATE(貨率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
	天城丸	Voy65A, Voy66A	異常滞船補填		¥53,932,387-
TOTAL (合計)					¥53,932,387-

AA2.

- (注) 1. 外貨請求分は Copy 1 部を財務部海外課へ回付のこと。
2. 本請求書はタイプにて作成のこと。
3. 感圧紙に付カーボン不要。

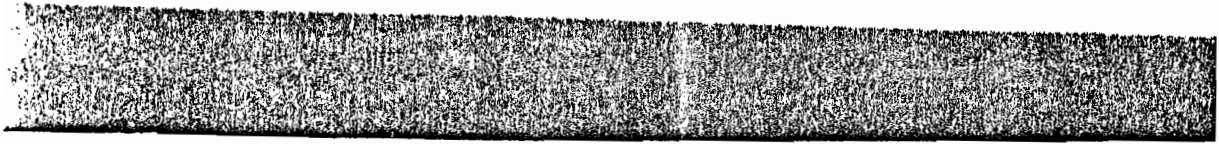
MITSUI O.S.K. LINES, LTD.

不定期専用船一部鉄鋼原料一課長

(印)

Defendant's
Exhibits
12.
Particulars
of Voyages
66A and 67A
of "Ibaraki
Maru"

(continued)



入金通知書

No. 32-102

入金先 株式会社 船橋造船

請求年月日 1957 APR. 14 02

通知先

(入金期日 月 日)

担当課 3703 不定期専用船一部 鉄鋼原料課 課長殿

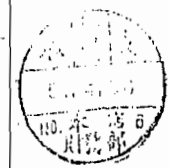
LINE (航路名)	VESSEL (船名)	Voy.No.(次載)	SAILING DATE (出 航 日)	LOADING PORT (積地)	備 考
			1-13-53	YOKOHAMA HAYASHI	
				CARGO (品名)	
				CRUDE OIL	
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	JAPANESE YEN (円貨)	
YOKOHAMA	10,348.0	13.2	137,413.20	137,413.20	
YOKOHAMA	1,348.0	10.5	14,154.00	14,154.00	
YOKOHAMA	1,348.0	10.5	14,154.00	14,154.00	
TOTAL (合計)				165,721.20	

443.

入金部 店
収文日付印

上記請求金額は 57年 4月 30日 表示外貨 で入金致しました
表示円貨

財務部 出納課 長



Defendant's
Exhibits
12.
Particulars
of voyages
66A and 67A
of "Ibaraki
Maru"

(continued)

No. 82-182

DATE 1st Apr. 1982

DEBIT NOTE

(請求書)



MESSRS. SUMITOMO METAL INDUSTRIES

Dr. to MITSUI O.S.K. LINES, LTD.

担当課 不定期専用船一部鉄鋼原料課

LINE (航路名)	VESSEL (船名)	Voy.No.(次号)	SAILING DATE (出帆月日)	LOADING PORT (積地)
	IBARAKI MARU	66A	81-12-23	P. KEMBLA HAY POINT
				CARGO (品名)
				COAL IN BULK
DESTINATION (揚地)	TONNAGE (吨数)	RATE (貨率)	FREIGHT (外貨)	Ex. @ ¥ JAPANESE YEN (円貨)
FINAL PAYMENT : B/L 106,346LT			\$13.29 = \$1,413,338.34 ...A	
PROV. PAYMENT : B/L 106,346LT			\$10.50 = \$1,116,633.00 ...B	
BALANCE A-B : \$296,705.34				¥220.60 (TTBRATE ON 23rd Dec. 1981
TOTAL (合計)				¥65,453,198-

- (註) 1. 外貨請求分は Copy 1部を財務部海外課へ回付のこと。
2. 本請求書はタイプにて作成のこと。
3. 感圧紙に付カーボン不要。

MITSUI O.S.K. LINES, LTD.

不定期専用船一部鉄鋼原料課長 靖方

444

718221

入金通知書

No.91-

入金先 Mitsubishi Corporation

請求年月日 56.12.29

通知先

(入金期日 月 日)

担当課 3703 不定期専用船一部課長殿
燃料原料課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(航次)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備
	IPARAKI MARU	66	23rd Dec.	Bay Point	
				CARGO (品名)	
				Coal (Yoriji)	
DESTINATION (揚地)	TONNAGE (吨数)	RATE(賃率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
Kashima and Yokura	(4,043 N/T) 3,979 L/T	US\$ 10.50 (Pro.)	US\$41,770.50		
					@7215.80
TOTAL (合計)			US\$41,770.50		¥9016016

445.



入金部
収支日付用

上記請求金額は 住友 56.12.29 表外費 で入金致しました
表示円貨

財務部出納課長

収
58.12.31
No.本店
財務部

(continued)
Part 2
EXHIBITS
Defendant's
Exhibits
12.
Particulars
of Voyages
66A and 67A
of "Ibaraki
Maru"

Defendant's Exhibits
12.
Particulars of Voyages of 66A and 67A of "Ibaraki Maru"
(continued)

入金通知書

No. 31-227

入金先 Mitsubishi Corporation

請求年月日 25th Dec., 1956

通知先

(入金期日 月 日)

担当課 3703 不定期専用船一臨 鉄鋼原料部課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次號)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備考
	IBARAKI MARU	66	23rd Dec.	Hay Point	
				CARGO (品名)	
				Coal (Goonyelle)	
DESTINATION (揚地)	TONNAGE (吨数)	RATE (賃率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
Kashima and Kokura	(21,102 F/T) 20,769 L/T	US\$ 10.50 (Pro.)	US\$ 218,074.50		
					@ ¥ 215.80
TOTAL (合計)			US\$ 218,074.50		¥ 47,060.477

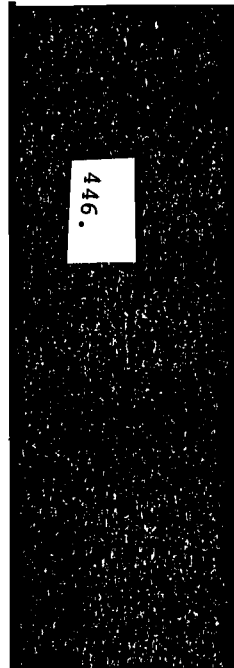


入金部店
収支日付印

50.12.31
No.

上記請求金額は 俵友 月 56. 12. 29 表外貨 表内貨 で入金致しました

財務部出納課長



入金通知書

No. 81-77

入金先: Mitsubishi Corporation

請求年月日 25th Dec., 1956

通知先

(入金期日 月 日)

担当課 3703 不定期専用船一部 鉄鋼原料課 課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次順)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備
	IBARAKI MARU	66	23rd Dec.	Hay Point	
CARGO (品名)					
Coal (Geonyella)					
DESTINATION (目的地)	TONNAGE (吨数)	RATE (貨率)	FREIGHT (外貨)	Ex. @ Y	JAPANESE YEN (円貨)
Kashima and Yokura	(2,878 M/T) 2,832 L/T	10.50 (Fr0.)	10,29,736.00		
TOTAL (合計)			10,29,736.00		4721.80

入金部店
収支日付印



上記請求金額は

年 月 日
住友 56. 12. 29

表外外貨 表内円貨
で入金致しました

財務部出納課長

447.

(continued)
Part 2
EXHIBITS
Defendant's
Exhibits
12.
Particulars
of Voyages
66A and 67A
Of "Ibaraki
Maru"

Part 2
EXHIBITS
Defendant's
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12.
Particulars
of Voyages
66A and 67A
Of "Ibaraki
Maru"
(continued)

No. 81-

入金通知書

入金先 Mitsubishi Corporation

請求年月日 25th Dec., 1

通知先

(入金期日 月 日)

担当課 703 不定期専用船一部 鉄鋼原料一課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次順)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備考
	IBARAKI MARU	66	18th Dec.	Port Resble	
				CARGO (品名)	
				Coal (Coal Cliff)	
DESTINATION (揚地)	TONNAGE (噸數)	RATE(貨率)	FREIGHT (外貨)	Ex. @ 円	JAPANESE YEN (円貨)
Kashima and Kokura	(50,385 M/T) 49,589 I/T	US\$ 10.50 (Pro.)	U. 3520,684.50		
					@ 12.15.80
TOTAL (合計)			US\$520,684.50		¥ 112,363.75



入金部店
収支日付印



上記請求金額は 年 住友 月 56. 日 表外貨 56.12.29 表内貨 で入金致しました

財務部出納課長



448.

VOYAGE 67 A

Part 2
EXHIBITS

Commenced 15.00 14/1/82

Concluded 09.00 20/2/82

Total Duration: 36.75 days

Defendant's
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12.
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(continued)

Annexed "A"

Charter party dated 21/12/81

Addendum 1 22/12/81

Loaded Visakhapatnam (India)

Discharged Tobata and Nagoya

Annexed "B"

Computer printouts for port charges

Annexed "C"

Computer printouts for bunkers

Annexed "D"

Invoice re brokerage

Annexed "E"

Laydays statement

Freight earned

¥141,880,234

Part 2 <u>EXHIBITS</u>	Expenses:	Port charges	¥ 19,076,971
Defendant's Exhibits 12. Particulars of voyages 66A and 67A of "Ibaraki Maru"		Bunkers	¥ 57,045,474
(cont'd)		Despatch	¥ 285,435
		Sundry	¥ 490,000
		Commission	¥ 250,000
		Charter fee to Matsuoka	¥ 90,552,000
		Total Earnings:	¥142,039,212
		Total Expenses:	¥167,699,880
		Loss :	¥ 25,660,668
		Daily loss :	¥ 698,249

Part 2
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(continued)

RIDER TO CHARTER PARTY IN TOKYO, DEC., 1981 - M.S. "IBARAKI MARU" V-67
.....
21ST

28) Loading rate to be 60,000 long tons per weather working day of 24 consecutive hours, Sundays and Holidays included but statutory holidays excepted unless used and if used, ~~the time actually used~~, the time actually used to count. Discharge rate to be 30,000 long tons per weather working day of 24 consecutive hours, Sundays and Holidays included.

29) Laytime at loading port:

a) Tender of Notice of Readiness:

Notice of Readiness to load shall be tendered on any days, at any time in or out of office hours and even before commencement of laydays when the vessel is in free pratique with clean holds, and is ready in every respect to load, whether in berth or not. 10

b) Commencement of Laytime:

i) Laytime for loading shall commence 12 running hours after tender of Notice of Readiness unless loading is sooner commenced, in which case, the time actually used before commencement of laytime, to count.

ii) In case Notice of Readiness is tendered and loading commences before commencement of laydays, the computation of time-sheet will be done on the following basis:

time
ii-1) If turn of 12 hours expires prior to the first day of the stipulated laydays, then laytime will begin to count from 00:00 hours of the first day of the laydays and the time actually used till then will be counted. 20

ii-2) If turn time of 12 hours expires after 00:00 hours of the first day of the stipulated laydays, then the laytime will begin to count from such time that the turn time expires and the time actually used till then will be counted.

ii-3) In case the turn time of 12 hours expires on the statutory holiday, then laytime will begin to count from 00:00 hours of the next day unless sooner worked, in which case the time actually used till then will be counted.

iii) In cases where Notice of Readiness is tendered before commencement of laydays and vessel is not worked, the laytime shall count only after expiry of 12 hours turn time from 00:00 hours of the first day of the stipulated laydays.

iv) In the event that loading of vessel nominated by Buyer under this Contract is in progress and other vessel(s) are obliged to wait for commencement of loading, the commencement of laytime for such waiting vessels shall be as follows:

iv-1) Laytime for the first waiting vessel shall commence 12 running hours after tender of Notice of Readiness. 40

iv-2) Laytime for the second waiting vessel shall commence 18 running hours after tender of Notice of Readiness.

iv-3) Laytime for the third and subsequent waiting vessels shall commence 24 running hours after tender of Notice of Readiness or from the time of berthing, whichever is earlier.

v) In case the vessel is found not ready to load in all respects for any of the reasons stipulated in 29)-a) of this Article hereinabove, only actual time lost in fulfilling the required conditions of readiness to load shall not count as laytime.

vi) If the hatches are not opened and hatch beams not removed on berthing, the time lost in opening of the hatches and removal of hatch beams shall not be counted as laytime.

c) Counting of laytime:

Time taken in waiting for tide by a vessel with sailing draft of 15.30 meters or less shall count as laytime except in the case of abnormally low tide and/or in the case of abnormal sea and weather conditions. Shifting time and expense for shifting of vessel from waiting berth to loading berth shall be to the account of the vessel. Time lost in waiting for berth to count as laytime unless otherwise stipulated in this Contract. In any case running of laytime shall not be interrupted for any vessels on demurrage unless loading is actually hindered due to the fault of such vessels.

d) Completion of laytime:

Laytime shall cease to count immediately on completion of loading and trimming.

e) The vessel shall vacate loading berth as soon as loading is completed, weather and tides permitting.

30) Laydays Statement:

Laydays statement at the loading port shall be prepared on the relative Bill of Lading quantity, which shall be the quantity as defined a licensed marine surveyor duly appointed by Seller and approved by Buyer and, on the basis of the "statement of facts" made out and signed by Seller and the Master of the vessel and/or the shipowner's agent Demurrage or despatch money calculated on the basis of this statement shall be settled in accordance with the provision as set forth in 33) of this Article.

31) Stoppage of loading due to breakdown of Mechanical Ore Loading Plant:

In the event of breakdown of the mechanical ore loading plant, owing to cause or causes which could not be prevented with all the reasonable care of the plant authorities, the laydays statement of the vessel then working and whose loading is made impossible to such breakdown shall be prepared in the following manner: due

a) Laytime shall provisionally be calculated by counting such time lost as laytime.

b) In case the vessel is on despatch as a result of the calculation as per a) above, the laydays statement shall be prepared on basis of such calculation and shall be deemed as final.

Part 2
EXHIBITS

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Defendant's
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(continued)

- c) In case, the vessel is on demurrage as a result of calculation as per a) above, such time lost during the laytime allowed shall be deducted from laytime lost. In case, however, the vessel turns out to be on despatch as a result of this adjustment, the vessel shall be deemed to be on no despatch/nodemurrage.
- d) No such stoppage of loading shall be admitted once the vessel is on demurrage. Shipper, however, shall perform its obligations to acquaint Charterer with such event(s) in the same manner as provided in General Strike Clause.

32) Laytime for discharge at first discharge port to commence 12 hours after the vessel is ready in all respects to discharge and notice of readiness is given on arrival any time day and night whether in berth or not after free pratique. Actual time occupied in moving from place of waiting to discharge berth not to count as laytime. At second discharge port laytime to commence upon arrival whether in berth or not.

33) Demurrage to be paid to the Owners at the rate of US\$6,000 as to loading and US\$7,500 as to discharge per day of 24 running hours or pro rata for any part thereof for all time used in excess of laytime at the port of loading and/or port or ports of discharge. Despatch money to be paid to the Charterers at the rate of US\$3,000 as to loading and US\$3,750 as to discharging per day of 24 running hours or pro rata for any part thereof for laytime saved at the port of loading and/or port or ports of discharge.

At loading port, despatch money shall be paid by Owners to Charterer and demurrage by Charterer to Owner in cash in U.S. Currency for this shipment within 50 days after the mutually confirmation of the respective laydays statement

At discharging port, demurrage or despatch money to be settled in Tokyo in Yen in cash. Exchange rate to be T.T. Selling rate on demurrage or T.T. Buying rate on despatch money at The Bank of Tokyo, Ltd., prevailing on the last day of the next month after completion of discharge.

34) 95% of freight based on Bill(s) of Lading quantity shall be paid within 7 working days after completion of loading and balance of freight to be adjusted on outturn quantity decided by draft survey at discharging port by licensed independent surveyor and payable after completion of discharge both in cash in U.S. Dollars, Whole freight to be deemed to be earned upon completion of loading without deduction and non-returnable, ship and/or cargo lost or not lost.

or Yen

Owners to release prepaid B/L to Shipper or their Agents on completion of loading. Charterers shall hereby indemnify Owners against all consequences resulting from such releasing B/L.

Owners Bank is:

MITSUI O.S.K. LINES, LTD.
U.S. DOLLAR ACCOUNT
MITSUI BANK A/C No. 4315160
1 - 1 - 2 YURAKUCHO CHYODAKU TOKYO

35) Loading/Arrival Notice:

Master/Owners to cable following notice to Shippers (Cable Address : "EMENTICI VISAKHAPATNAM") and Charterers (Cable Address : "NIPPOLINE TOKYO")

- 5 days notice of ETA with stowage plan
- 48 hours notice of ETA
- 24 hours notice of ETA with loadable cargo quantity

Discharge Notice:

Master also to give notice of Charterers ("NIPPOLINE TOKYO") on sailing from loading port with Bill of Lading quantity and ETA South Japan, 5 days 48 hours and 24 hours ETA.

- 36) Claims for stevedore damage are to be settled directly between Owners and Stevedores. It is understood Charterers will cooperate between Owners and Stevedores to settle damage if any.
- 37) Time lost for opening and closing hatches provided local regulations permit this operation carried out by crew, at both loading and discharge port not to count as laytime and such opening and closing hatches shall be at the Owners' risk and expenses. Laytime for loading and discharge to be non-reversible.
- 38) At the loading port laytime shall cease at the completion of loading and at the discharging port laytime shall cease at the completion of discharging.
- 39) Overtime expenses to be paid by the party ordering same, except for overtime expenses for vessel's officers and crew which are to be borne by Owners, should overtime work be ordered by Port Authorities or outside bodies, extra expenses to be paid by Charterers.
- 40) At loading port, if vessel is boycotted due to her flag, crew, nationality etc., such time will not be counted.
- 41) Indian freight tax and aged premium, if any, and/or any dues on the vessel to be for the account of Owners, but any taxes and/or dues on cargo to be for the account of Charterers.
- 42) Cargo not to be loaded in wingtanks, deeptanks and/or other compartments inaccessible and unsuitable for grab and bulldozer discharging.
- 43) Vessel to sail from Shippers' wharf as soon as loading is completed weather and tide permitting.
- 44) Vessel's description:
M/S "IBARAKI MARU" Ore/Bulk Carrier, Japanese Flag
Built 1972
109,311 LT DWT, LOA 259.82 M, Beam 39.60 M , 9 Holds/9 Hatches
- 45) Arbitration, if any, to be settled in Tokyo.
- 46) New Jason Clause, Both-to-Blame Collision Clause, War Risks Clauses Nos. 1 and 2 and 3, Exception Clause and P. and I. Club Bunkering Clause, as attached, to be fully incorporated in this Charter Party.
- 47) All other terms and conditions at loading port to be as per Contract for Sale and Purchase of Hematite Iron Ore of Bailadila, India Origin dated 17th April, 1981.

Part 2
EXHIBITS

Defendant's
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12.
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(continued)

Part 2
EXHIBITS

Defendant's
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12.
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of voyages
66A and 67A
of "Ibaraki
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(continued)

NEW BOTH-TO-BLAME COLLISION CLAUSE

If the liability for any collision in which the vessel is involved while performing this Bills of Lading falls to be determined in accordance with the laws of the United States of America, the following clause shall apply :-

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Carrier in the Management of the ship, the Owners of the goods carried hereunder will indemnify the Carrier against all loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the Owners of said goods, paid or payable by the other or non-carrying ship or her Owners to the Owners of said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the carrying ship or Carrier."

The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships or objects other than, or in addition to, the colliding ships or objects are at fault in respect to a collision or contact.

NEW JASON CLAUSE

In the event of accident, danger, damage or disaster before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Carrier is not responsible by statute, contract or otherwise, the goods shippers, consignees, or owners of the goods shall contribute with the Carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned or operated by the Carrier, salvage shall be paid for as fully as if such salving ship or ships belong to strangers. Such deposit as the Carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods shippers, consignees or owners of the goods to the Carrier before delivery.

SHEDER OF SHIPPING WAR RISKS CLAUSES (TANKERS) 1952

1. The Master shall not be required or bound to sign Bills of Lading for any blockaded port or for any port which the Master or Owner in his or their discretion consider dangerous or impossible to enter or reach.
2. (A) If any port of loading or of discharge named in this Charter Party or to which the Vessel may properly be ordered pursuant to the terms of the Bills of Lading be blockaded, or
- (B) If owing to any war, hostilities, warlike operations, civil war, civil commotions, revolutions or the operation of international law (a) entry to any such port of loading or of discharge or the loading or discharge of cargo at any such port be considered by the Master or Owner in his or their discretion dangerous or prohibited or (b) it be considered by the Master or Owner in his or their discretion dangerous or impossible for the Vessel to reach any such port of loading or of discharge — the Charterer shall have the right to order the cargo or such part of it as may be affected to be loaded or discharged at any other safe port of loading or of discharge within the range of loading or discharging ports respectively established under the provisions of the Charter Party (provided such other port is not blockaded or that entry thereto or loading or discharge of cargo thereat is not in the Master's or Owner's discretion dangerous or prohibited). If in respect of a port of discharge no orders be received from the Charterer within 48 hours after they or their agents have received from the Owner a request for the nomination of a substitute port, the Owner shall then be at liberty to discharge the cargo at any safe port which they or the Master may in their or his discretion decide on (whether within the range of discharging ports established under the provisions of this Charter Party or not) and such discharge shall be due fulfillment of the contract or contracts of affreightment so far as cargo so discharged is concerned. In the event of the cargo being loaded or discharged at any such other port within the respective range of loading or discharging ports established under the provisions of this Charter Party, the Charter Party shall be read in respect of freight and all other conditions whatsoever as if the voyage performed were that originally designated. In the event, however, that the Vessel discharges the cargo at a port outside the range of discharging ports established under the provisions of this Charter Party, freight shall be paid as for the voyage originally designated and all extra expenses involved in reaching the actual port of discharge and/or discharging the cargo thereat shall be paid by the Charterer or cargo owners. In this latter event the Owner shall have a lien on the cargo for all such extra expenses.
5. The Vessel shall have liberty to comply with any directions or recommendations as to departure, arrival, routes, ports of call, stoppages, destinations, zones, waters, delivery or in any otherwise whatsoever given by the government of the nation under whose flag the vessel sails or any other government or local authority including any de facto government or local authority or by person or body acting or purporting to act as or with the authority of any such government or authority or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such directions or recommendations. If by reason of or in compliance with any such directions or recommendations, anything is done or is not done such shall not be deemed a deviation.
- If by reason of or in compliance with any such direction or recommendation the Vessel does not proceed to the port or ports of discharge originally designated or to which she may have been ordered pursuant to the terms of the Bills of Lading, the Vessel may proceed to any safe port of discharge which the Master or Owner in his or their discretion may decide on and there discharge the cargo. Such discharge shall be due fulfilment of the contract or contracts of affreightment and the Owner shall be entitled to freight as if discharge has been effected at the port or ports originally designated or to which the Vessel may have been ordered pursuant to the terms of the Bills of Lading. All extra expenses involved in reaching and discharging the cargo at any such other port of discharge shall be paid by the Charterer and/or cargo owners and the Owner shall have a lien on the cargo for freight and all such expenses.

Part 2
EXHIBITS

Defendant's
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12.
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P & I BUNKER CLAUSE

(continued)

The vessel in addition to all other liberties shall have the liberty as part of the contract voyage and at any stage thereof to proceed to any port or ports whatsoever whether such ports are on or off the direct and/or customary route or routes to the port of loading or discharging named in this charter and there take oil bunkers in any quantity in the discretion of Owners to the full capacity of fuel tanks, deep tanks, and any other compartment in which oil can be carried whether such amount is or is not required for the chartered voyage.

EXCEPTION CLAUSES

Notwithstanding anything herein contained no absolute warranty of seaworthiness is given or shall be implied. Owners, in all matters arising under or affecting this Contract shall be entitled to the like rights and immunities as are contained in Article IV of the Hague Rules dated Brussels August 25, 1924, the term "Carrier" in the said Article being taken to mean Owners. Neither Owners, nor Charterers shall, saved to extent otherwise in this Contract expressly provided, be responsible for any loss or damage or delay or failure in performance hereunder arising or resulting from Act of God, seizure under legal process, quarantine restrictions, boycotts, riots; and arrest or restraint princes, rulers or peoples or any cause whatsoever beyond control of Charterers. Any time lost due to any or all of the above reasons shall not count as laytime.



ORIGINAL

Tokyo, 22nd December, 1981



ADDENDUM NO.1

to

Charter Party dated Tokyo, 21st December, 1981
Visakhapatnam, India/Tobata-Muroran range, Japan
- Iron Ore in bulk(Bailadila) -
M.S. "IBARAKI MARU" V-67

Part 2
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(continued)

With reference to the above Charter Party, it is this day mutually agreed between the Charterers, Nippo Kisen Co., Ltd. and the Owners, Mitsui O.S.K. Lines, Ltd. that:-

1. The rate of freight to be as follows:-

Tobata/Kimitsu range: US\$5.50 (U.S. Dollars Five and Cents Fifty only) per ton of 2,240 lbs., F.I.O.T.

Muroran : US\$5.90 (U.S. Dollars Five and Cents Ninety only) per ton of 2,240 lbs., F.I.O.T.

In case an additional discharging port is used extra charge shall be US\$0.45 (U.S. Cents Forty-Five only) per ton of 2,240 lbs., on entire cargo.

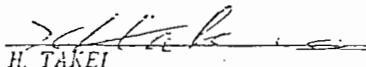
2. All other terms and conditions of the afore-mentioned Charter Party shall remain unaltered.

One original Addendum No.1 being made, mutually signed and possessed by Owners.

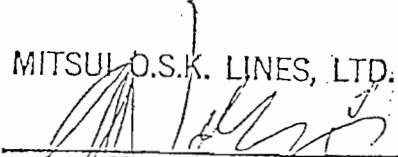
CHARTERERS:

OWNERS:

NIPPO KISEN CO., LTD.


H. TAKEI
Director & General Manager of
Business Dept.

MITSUI O.S.K. LINES, LTD.


GENERAL MANAGER,
BULK CARRIER DEPARTMENT (A)

Part 2
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HORH 83/04/11 13:17 DS01
PAGE IN: = PAGE

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	0067A(0067A)	8AQ(8AQ)	PORT: VIZAGAPATH(2455)	LOCAL AMOUNT	S/T NO.	FUR		
		Y	E	N	CCY.	EX-RATE				
820129	310011				2,292,586	37	24.54	93,422.40	2431-2021	8203
820129	310012				1,432,866	37	24.54	58,389.00	2431-2021	8203
820129	310020				3,711,123	37	24.54	151,227.50	2431-2021	8203
820129	310030				463,070	37	24.54	18,870.00	2431-2021	8203
820129	310043				490,800	37	24.54	20,000.00	2431-2021	8203
820129	310043				1,289,773	37	24.54	52,558.00	2431-2021	8203
820129	310090				7,362	37	24.54	300.00	2431-2021	8203

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH 83/04/11 13:19 DS01
PAGE IN: = PAGE 2

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	0067A(0067A)	8AQ(8AQ)	PORT: VIZAGAPATH(2455)	LOCAL AMOUNT	S/T NO.	FUR
		Y	E	N	CCY.	EX-RATE		
310:					9,687,580			
PORT TOTAL:					9,687,580			

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY

HORH 83/04/11 13:21 DS01
PAGE IN: = PAGE 1

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	IBARAKI-M	0067A(0067A)	8AQ(8AQ)	PORT: TOBATA	LOCAL AMOUNT	(0740) S/T NO.	FUR	
		Y	E	N	CCY.	EX-RATE			
820215	310011				1,401,300	00	1.00	0730-0059	8203
820215	310012				145,222	00	1.00	0730-0059	8203
820215	310020				1,210,018	00	1.00	0730-0059	8203
820215	310030				2,762,980	00	1.00	0730-0059	8203
820215	310041				162,840	00	1.00	0730-0059	8203
820215	310090				47,480	00	1.00	0730-0059	8203
ITEM TOTAL					5,729,840				
310:					5,729,840				

Part 2
EXHIBITS

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(continued)

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY ##
83/04/11 13:22

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*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FUR
820220	310011	1,401,300	00	1.00	0	0210-0062	820
820220	310012	145,222	00	1.00	0	0210-0062	820
820220	310020	1,053,069	00	1.00	0	0210-0002	820
820220	310030	771,900	00	1.00	0	0210-0002	820
820220	310041	139,250	00	1.00	0	0210-0002	820
820220	310043	110,250	00	1.00	0	0210-0062	820
820220	310090	38,560	00	1.00	0	0210-0002	820

NEXT PAGE ==> PA1-KEY, END ==> CLEAR-KEY ##
83/04/11 13:22

HDRH PAGE IN: = D501 PAGE

*** DISBURSEMENT DETAIL (ACTUAL) ***

S.DATE	ITEM	Y E N	CCY.	EX-RATE	LOCAL AMOUNT	S/T NO.	FUR
0329	IBARAKI-M	0067A(0067A)	8AQ(8AQ)	PORT: NAGOYA	(0210)		
ITEM TOTAL	310:	3,659,551					
PORT TOTAL:		3,659,551					

LINE	VESSEL	VOYAGE	DATE	PORT	QUANTITY	UNIT	PRICE	TOTAL	DATE	DESCRIPTION
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***										
BAK	0327	KOHJUS-M	0090A			010	65,676	347.24	22,805,344	82-03
BAK	0327	KOHJUS-M	0090A			030	37,304	5,726.43	213,619,005	82-03
*** TOTAL ***							38,926	6,073.67	236,424,349	
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***										
BBW	0328	KINOKUNI-M	0048A			010	77,223	136.40	10,533,149	82-02 KURIKOSHI
	0328	KINOKUNI-M	81-11-28	0749	N318	010		.00	15,945-	82-02 CHONEN-SHUSEI
BBW	0328	KINOKUNI-M	0048A			030	47,593	1,535.20	73,064,677	82-02 KURIKOSHI
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***										
BBW	0328	KINOKUNI-M	0048A			010	77,106	136.40	10,517,704	82-03
BBW	0328	KINOKUNI-M	0048A			030	47,593	1,535.20	73,064,677	82-03
*** TOTAL ***							50,001	1,671.60	83,581,081	
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***										
BBW	0329	IBARAKI-M	0065A			010	73,635	151.00	11,118,010	82-02 KURIKOSHI
	0329	IBARAKI-M	81-10-24	0309	M218	010		.00	68,700-	82-02 CHONEN-SHUSEI
BAQ	0329	IBARAKI-M	0067A	82-02-20		010	73,182	21.08-	1,542,677-	82-02 ZANYU-UNKOHI 4-1
*** ZANYU ***							010	129.92	9,507,853	
BAQ	0329	IBARAKI-M	0067A	82-02-20		010		129.92-	9,805,192-	82-02 KASHIBUNEKAIISHI 3-6
BAQ	0329	IBARAKI-M	0067A	82-02-20		010		.00	297,339	82-02 ***HEN-CHOSEI***
*** ZANYU ***							010	.00	0	
BBW	0329	IBARAKI-M	0065A			030	47,288	1,923.00	90,935,720	82-02 KURIKOSHI
	0329	IBARAKI-M	81-10-24	0309	M218	034		.00	1,543,028-	82-02 CHONEN-SHUSEI
	0329	IBARAKI-M	82-02-18	0210	1118	034		.00	297,100-	82-02 HOYU
	0329	IBARAKI-M	82-02-18	0210	1117	034	43,567	2,598.86	113,225,443	82-02 HOYU
BAQ	0329	IBARAKI-M	0067A	82-02-20		030	44,743	1,240.48-	55,502,797-	82-02 ZANYU-UNKOHI 4-1
*** ZANYU ***							030	3,281.38	146,817,358	
BAQ	0329	IBARAKI-M	0067A	82-02-20		030		3,281.38-	147,080,515-	82-02 KASHIBUNEKAIISHI 3-6
BAQ	0329	IBARAKI-M	0067A	82-02-20		030		.00	271,157	82-02 ***HEN-CHOSEI***
*** ZANYU ***							030	.00	0	

463.

LINE	VESSEL	VOYAGE	D-DATE	PORT	DILER	COM	TANKA	SURYO (K/T)	KINGAKU (YEN)	F-DATE	DATA-KUBUN
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***											
8AQ	0329	IBARAKI-M	0067A			*** TOTAL ***		.00	0	82-03	
8AJ	0330	ARAFURA-M	0036B				010	70,343	191.04	13,438,402	82-02 KURIKOSHI
8AJ	0330	ARAFURA-M	0036B				030	44,454	3,968.42	176,411,684	82-02 KURIKOSHI
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***											
8AJ	0330	ARAFURA-M	0036B				010	70,343	191.04	13,438,402	82-03
8AJ	0330	ARAFURA-M	0036B				030	44,454	3,968.42	176,411,684	82-03
*** TOTAL ***								45,643	4,159.46	189,850,086	
5AW	0339	KISHU-M	0008A				010	73,576	82.37	6,060,414	82-02 KURIKOSHI
5AW	0339	KISHU-M	0009A	82-02-14			010	73,576	7.06	519,447	82-02 ZANYU-UNKOHI 4-1
*** ZANYU ***								010	75.31	5,540,967	
5AW	0339	KISHU-M	0008A				030	45,761	1,279.84	58,567,333	82-02 KURIKOSHI
	0339	KISHU-M		81-11-02	0321	1118	034		.00	114,366	82-02 CHONEN-SHUSEI
	0339	KISHU-M		81-11-28	0321	5118	034		.00	97,277	82-02 CHONEN-SHUSEI
	0339	KISHU-M		82-02-13	0321	N110	034	44,597	970.10	43,263,065	82-02 HOYU
5AW	0339	KISHU-M	0009A	82-02-14			030	45,353	902.55	40,933,350	82-02 ZANYU-UNKOHI 4-1
*** ZANYU ***								030	1,347.39	61,108,691	
*** VESSEL - YUSHU BETU KURIKOSHI TOTAL ***											
5AW	0339	KISHU-M	0009A				010	73,575	75.31	5,540,967	82-03
5AW	0339	KISHU-M	0009A				030	45,353	1,347.39	61,108,691	82-03
*** TOTAL ***								46,847	1,422.70	66,649,658	

(continued)
 Part 2
 EXHIBITS
 Defendant's
 Exhibits
 12.
 Particulars
 of voyages
 66A and 67A
 of "Ibaraki
 Maru"

Part 2
EXHIBITS

Defendant's Exhibits
12.
Particulars of voyages
66A and 67A
of "Ibaraki Maru"

(cont'd)

請求書

No. 11

昭和 7 年 3 月 8 日

大阪商船三井船務株式会社 御中

882-21 MARU/Itan

月 日	摘 要	金 額
1 29	出巻 炭 三戒 21 P-67 VISAKHAPATNAM / 戸崎, 石崎屋 (共 2 航区) 揚高 103.521 282 竹	
	仲立手数料	¥250,000.-

上記の通り御請求申し上げます

平安海事株式会社

〒103 本 社 東京都中央区本町四丁目4番地

(電話) 四七 7 階)

電 話 番 号 (667) 8522・8523

CIORA



MITSUI O.S.K. LINES. LTD.

Tokyo, DATE: FEB. 22 1982

P1

LAYDAYS STATEMENT

Name of Vessel M.S. IBARAKI MARU VOY. 8AQ-67A
 Port VIZAGAPATAM (VISAKHA)
 Charter Party Dated DEC. 21 1981 At TOKYO
 Between MITSUI O.S.K. LINES, LTD. Owners
 And NIPPON KISEN Charterers
 Cargo IRON ORE IN BULK Quantity 103,456.000 L/T
 Rate of LOADING as per Charter Party 60,000.000 L/T Per DAY WWD SHINC
 Laytime allowed 01 Days 17 Hours 23 Minutes (01.72427 days)

Arrived: JAN. 28 1982 Hour 05:45
 Free Pratique granted: " " " "
 Berthed: JAN. 28 1982 " 08:05
 N/R tendered: JAN. 28 1982 " 05:50
 N/R accepted: JAN. 28 1982 " 05:50
 Laytime Commenced: JAN. 28 1982 " 09:45
 Commenced LOADING: JAN. 28 1982 " 09:45
 Completed LOADING: JAN. 29 1982 " 17:20

DATE	Day of Week	DESCRIPTION	Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	LAY Time SAVED DY-HR-MN
JAN. 28TH	THU	VIZAGAPATAM (VISAKHA ** LOADING ** 05:45 ARRIVED 05:50 N/R TENDERED 05:50 N/R ACCEPTED 08:05 ARRIVED AT BERTH 09:45 LAYTIME COMMENCED	0-14-15	0-14-15	
29TH	FRI	17:20 LOADING COMPLETED	1-00-00	0-17-20	0-06-40
30TH	SAT	03:08 EXPIRED	0-03-08		0-03-08
TOTAL		** DESPATCH MONEY ** * 3,000.00 X 00.40833 DAYS * 1,224.99 US.\$	1-17-23	1-07-35	0-09-48

Remarks

Charterers:

Owners;

MITSUI O.S.K. LINES. LTD.

9001

(continued)
 Defendant's Exhibits 12.
 Particulars of Voyages 66A and 67A of "Ibaraki Maru"
 EXHIBITS
 Part 2

465.

CIORA



MITSUI O.S.K. LINES. LTD.
LAYDAYS STATEMENT

Tokyo, DATE: MAR. 25 1982

Name of Vessel M.S. IBARAKI MARU VOY. 8AQ-67A
Port TOBATA, NAGOYA
Charter Party Dated DEC. 21 1981 At TOKYO
Between MITSUI O.S.K. LINES, LTD. Owners
And NIPPO KISEN CO., LTD. Charterers
Cargo IRON ORE IN BULK Quantity 103,521.782 L/T
Rate of DISCHARGE as per Charter Party 30,000.000 L/T Per DAY WWD SHINC
Lay time allowed 03 Days 10 Hours 49 Minutes (03.45073 days)

Arrived; FEB. 13 1982 Hour 18:00
Free Pratique granted;
Berthed; FEB. 14 1982 09:45
N/R tendered; FEB. 13 1982 18:00
N/R accepted; FEB. 13 1982 18:00
Lay time Commenced; FEB. 14 1982 06:00
Commenced DISCHARGE : FEB. 14 1982 10:50
Completed DISCHARGE : FEB. 20 1982 04:40

DATE	Day of Week	DESCRIPTION	Lay Time Allowed DY-HR-MN	Lay Time Used DY-HR-MN	ALL Time LOST DY-HR-MN
FEB. 13TH	SAT	TOBATA ** DISCHARGING ** 18:00 ARRIVED 18:00 N/R TENDERED 18:00 N/R ACCEPTED	0-00-00	0-00-00	
14TH	SUN	06:00 LAYTIME COMMENCED 08:00-09:45 SHIFTING EXPT. HR --- 01-45 09:45 ARRIVED AT BERTH 10:50 DISCHARGING COMMENCED	0-16-15	0-16-15	
15TH	MON	03:20 LAYTIME STOPPED	0-03-20	0-03-20	
17TH	WED	NAGOYA ** DISCHARGING ** 11:15 LAYTIME RESUMED	0-12-45	0-12-45	
18TH	THU		1-00-00	1-00-00	
19TH	FRI		1-00-00	1-00-00	
20TH	SAT	02:29 EXPIRED 04:40 DISCHARGING COMPLETED	0-02-29	0-04-40	0-02-11
TOTAL		** DEMURRAGE ** @ 7,500.00 X 00.09097 DAYS = 682.28 US.\$	3-10-49	3-13-00	0-02-11

Remarks

Charterers: NIPPO KISEN CO., LTD.

Owners:

MITSUI O.S.K. LINES, LTD.
Bulk Carrier Department (A)

[Signature]
N. Ozawa
Deputy General Manager,
Business Dept.

[Signature]
Manager

466.

入金通知書

No. _____

入金先 Hiroshima Kisen Co., Ltd.

請求年月日 2nd Feb., 1957

Tokyo

通知先

(入金期日 月 日)

担当 703 不定期専用船一部 鉄鋼原料一課 課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次番)	SAILING DATE (出帆期日)	LOADING PORT (積地)	備 考
	H.S. "IBARAKI MARU"	7	25th FEB 57	Yokohama	
<u>05 FREIGHT:</u>				CARGO (品名)	
				Iron Ore in bulk (Ball-dill)	
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
Japan	103,450 L.T.	\$5.20	\$540,557.00		
			\$540,557.00		(95)
				@ 228.70	
TOTAL (合計)			\$540,557.00		¥ 123,625,523

467.



入金部 店
収文日付印



上記請求金額は 昭和57年2月5日 日 表示外貨 入金致しました 表示円貨

財務部 出納課 長

(continued)

Part 2
EXHIBITS
Defendant's
Exhibits
12.
Particulars
Of Voyages
66A and 67A
Of "Ibaraki
Maru"


Defendant's
Exhibits
12.
Particulars
Of Voyages
66A and 67A
of "Ibaraki
Maru"
(continued)

No. _____

入金通知書

入金先 Nippo Kisen Co., Ltd.
Tokyo

請求年月日 23rd Feb., 1952

通知先 

(入金期日 月 日)

拒3703 不定期専用船-部 鉄鋼原料-課 課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次期)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備考
	N.S. "IBARAKI MARU"	67	23rd Jan., 1952	Visakhapatnam, India	
<u>95% ADDITIONAL FREIGHT:</u>				CARGO (品名) Iron Ore in Lumps (continued)	
DESTINATION (揚地)	TONNAGE (吨数)	RATE(貨率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
Fobata & Nagoya	105,456 1/2	US\$1.45	US\$46,575.21		
		(US\$5.51 - US\$5.5)	US\$44,227.44	24/10	(15%) 10,811.487
TOTAL (合計)			US\$44,227.44		410,906.487



入金部店
収支口付印



上記請求金額は 昭和57年4月20日

表示外貨 で入金致しました
表示円貨

財務部出納課長

468.

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入金通知書

No. 100-4

入金先 Nippon Kisen Co., Ltd.
Tokyo

請求年月日 23rd Feb., 1939

通知先

(入金期日 月 日)

担当 703 不定期専用船一部 課長殿

LINE (航路名)	VESSEL (船名)	Voy.No.(次順)	SAILING DATE (出帆月日)	LOADING PORT (積地)	備 考
	H.S. "IBARAKI MARU"	67	27th Jan., 1939	Visakhapatnam, India	
BALANCE FREIGHT:				CARGO (品名)	
				Iron Ore in bulk (Wooledils)	
DESTINATION (揚地)	TONNAGE (噸數)	RATE(貨率)	FREIGHT (外貨)	Ex. @ ¥	JAPANESE YEN (円貨)
Tobata & Nagoya	103,521.782	US\$5.95	US\$615,954.67		
		(final)	US\$584,785.84		(Prepaid)
			US\$1,169.56		(Balance)
TOTAL (合計)			US\$1,169.56	@ 423.52	77,348.224



入金部 店
収支口付印



上記請求金額は 昭和57年5月19日 日 表示外貨 で入金致しました
表示円貨
財務部出納課長

469.

(continued)
Part 2
EXHIBITS
Defendant's
Exhibits
12.
Particulars
of Voyages
66A and 67A
of "Ibaraki
Maru"

Part 2
EXHIBITS

EXHIBITS

Defendant's
Exhibits

15.
AGREED STATEMENT OF REPAIR
COSTS TO "MINERAL TRANSPORTER"

15.
Agreed
Statement
of Repair
costs to
"Mineral
Transporter"

The plaintiffs admit:

1. That temporary and final repairs were carried out to "Mineral Transporter" as a result of the collision and that the cost of those repairs and incidental costs incurred whilst, and as a result of such repairs, amounted to: 10

\$A282,693.30

and that the said costs are fair and reasonable and were necessarily incurred as a result of the collision.

2. That during the period temporary repairs were carried out to "Mineral Transporter" in Sydney, additional work was carried out which cost \$165,338.34 such work not being necessary as a result of the collision, and not work which the owner required be carried out, but work which the Painters and Dockers Union and the Amalgamated Metalworkers and Shipwrights Union 20 insisted be carried out as a condition of members of the Union performing the work necessary to complete temporary repairs as a result of the collision.

3. That whilst the "Mineral Transporter" was undergoing temporary repairs in Sydney, the Department of Transport and the Unions referred to in paragraph 2 herein required 30 work to be carried out on the "Mineral Transporter" so that the "Mineral Transporter" would comply with the safety requirements of that Department. That work was not required by the owners of "Mineral Transporter" and was not necessary as a result of any damage caused in the collision. The cost of that work was :

(a) Safety Convention Requirements: \$49,033.40

(b) Load Line Survey and Repair :\$100,923.06 40

(c) S.O.L.A.S. Repairs : \$39,623.02

