



## STATE CORONER'S COURT OF NEW SOUTH WALES

Inquest:	<b>Inquest into the disappearance and suspected death of Cesar Llanto and Inquest into the death of Hector Collado.</b>
Hearing dates:	28 & 29 May 2015, 22 & 23 June 2015, 17 September 2015, 15, 17, 18, 19 February 2016, 13 & 18 October 2016
Date of findings:	31 May 2017
Place of findings:	State Coroner's Court, Glebe
Findings of:	Magistrate Sharon Freund, Deputy State Coroner
File numbers:	2013/70993 2013/291935

<p>Findings:</p>	<p>I find that Cesar Llanto died on 30 August 2012 as a result of foul play, namely, that Mr Llanto was either thrown overboard or killed on the MV Sage Sagittarius and his body disposed of at a later time, by a person or persons unknown. In relation to the cause of his death, I make an open finding.</p> <p>I find that Hector Collado died on 14 September 2012, in Newcastle Harbour aboard the MV Sage Sagittarius. The cause of his death was multiple injuries which I am satisfied he sustained as a result of being struck over the head by some kind of weapon or instrument by a person or persons unknown and then he was either thrown over the handrail outside the storeroom on the second deck or fell over the handrail to his death.</p>
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<p>Recommendations:</p>	<p><u>Recommendation 1:</u></p> <p>The Japanese police and the Japan Transport Safety Board (JTSB) to be provided with a copy of the findings of this Inquest for their consideration of any further investigation into the death of Mr Monji.</p> <p><u>Recommendation 2:</u></p> <p>Consideration be given to establishing a permanent standing group with members from at least each of the following agencies:</p> <p>NSW Police Force (NSWPF)</p> <p>Australian Federal Police (AFP)</p> <p>Australian Maritime Safety Authority (AMSA)</p> <p>Australian Transport Safety Bureau (ATSB)</p> <p>for the purposes of liaising, contact and assistance in connection with any investigation of the death or suspicious death on board, or disappearance from, an international vessel in or bound for Australian waters (“the vessel”).</p> <p><u>Recommendation 3:</u></p> <p>A principal point of contact, from each of the Agencies mentioned in recommendation 2, be nominated in relation to each investigation of the kind described in Recommendation 2.</p> <p><u>Recommendation 4:</u></p> <p>The principal points of contact should be responsible for providing all available expertise and assistance to ensure the proper downloading, seizure and storage of any Voyage Data Recorder (VDR) system on board the vessel.</p> <p><u>Recommendation 5:</u></p> <p>In any investigation(s) involving both the NSWPF and the AFP, the principal point of contact from the NSWPF and from the APF should regularly liaise for the purpose of ensuring the sharing, between each such agency, of forensic and other evidence (subject to legislative requirements) that may be relevant to each to the investigation(s).</p>
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Catchwords:	CORONIAL LAW – MISSING PERSON – MULTIPLE DEATHS - FOREIGN FLAGGED MARINE VESSEL – INTERJURISDICTIONAL INVESTIGATION
Representation:	<p>Mr P Strickland SC with Mr D Kell SC instructed by Ms N Malhotra, solicitor on behalf of the Crown Solicitor, as Counsel Assisting the Deputy State Coroner;</p> <p>Mr D Dalton SC instructed by Mr P O'Brien for the International Transport Workers' Federation;</p> <p>Mr D McLure SC instructed by Mr T Rout and R Wilson, solicitors of Norton White for Nippon Yusen Kabushiki Kaisha and Hachiuma Steamship Co. Ltd;</p> <p>Mr M Spartalis instructed by Nicholas Regener of Makinson d'Apice for the Commissioner of NSW Police;</p> <p>Ms M Bateman for Captain Venancio Salas Junior.</p>

## Contents

Introduction .....	6
The function and jurisdiction of the Coroner .....	8
The MV Sage Sagittarius .....	9
Dramatis Personae – who was on the Vessel at the relevant time .....	10
Were there any significant issues on board the Vessel? .....	18
a) Was there harassment and bullying about the Vessel? .....	19
b) Was there conflict aboard the Vessel? .....	21
c) Was there a culture of silence and blacklisting of crew? .....	30
d) Did Captain Salas facilitate the sale of guns aboard the Vessel and carry out other questionable activities? .....	30
The disappearance and suspected death of Cesar Llanto.....	32
a) What were the last known movements of Mr Llanto?.....	33
b) Was there any forensic evidence?.....	46
c) What were the responses to the disappearance of Mr Llanto?.....	47
(i) How was Mr Llanto discovered missing? .....	47
(ii) What steps were taken to search for Mr Llanto? .....	48
(iii) Was there an attempt to co-ordinate the statements from the crew? .....	50
(iv) What were the responses to the ‘man overboard’ incident? .....	51
d) What did the data retrieved from the VDR reveal?.....	54
e) Did Mr Llanto take his own life? .....	59
f) Did Mr Llanto suffer a misadventure and fall accidentally from the Vessel?.....	60
g) Was Mr Llanto a victim of foul play and if so by whom?.....	60
The death of Hector Collado .....	64
a) What was Mr Collado’s mental state before he died? .....	64
b) What were the last movements of Mr Collado?.....	69
c) What forensic evidence is available? .....	74
d) What was the state of Mr Collado’s health?.....	78
e) What was the manner and cause of Mr Collado’s death? .....	79
The death of Kosaku Monji .....	81
Findings .....	84
Recommendations .....	84

## FINDINGS

### **Introduction**

- 1) Cesar Llanto was 42 years old when he disappeared on 30 August 2012. At the time he was employed as the Chief Cook on board the Marine Vessel Sage Sagittarius (“**the Vessel**”) and had been on the Vessel for 13 days. Mr Llanto boarded the Vessel at Kudamatsu, Japan on 17 August 2012 and on 20 August 2012 the Vessel departed bound for Newcastle, Australia. The Vessel at the time of his disappearance was in international waters, in the Coral Sea, approximately 450 Nautical Miles North East of Cairns. Extensive searches of the Vessel failed to locate him. He is presumed to have gone overboard. His body has never been recovered. An experienced seaman, having worked on merchant vessels for over 20 years, Mr Llanto’s disappearance and suspected death has left a gaping hole in the lives of his wife Nelia Llanto, and his two children, namely, his son Czar and daughter Czarina.
- 2) A mere fifteen (15) days following the disappearance of Mr Llanto, on 14 September 2012 Chief Engineer Hector Collado fell to his death from the second to the fourth deck as the Vessel was preparing to dock in Newcastle Harbour. Mr Collado was 55 years old when he passed away and was on all accounts an experienced seaman. He was the second in charge on board the Vessel. He is survived by his wife Rebecca and their two sons Bheltor (“Victor”) and Rhonald.
- 3) The focus of this Inquest was to examine the circumstances surrounding the disappearance of Mr Llanto and death of Mr Collado, and make appropriate findings and recommendations. However, the disappearance and deaths of these two experienced seamen **cannot** be examined in a vacuum. On 6 October 2012, 22 days following Mr Collado’s death, while the Vessel was docked at the port of Kudamatsu, Japan, Kosaku Monji was found dead at about 7.25am between a conveyor belt of the self-unloader and a loading assist roller mounted on the Vessel. Mr Monji was 37 years old when he passed away.
- 4) Accordingly, the disappearance and deaths of these men occurred within a period of just over 5 weeks, namely, between the period 30 August 2012 and 6 October 2012.

- 5) I accept the submission of Counsel Assisting, Mr Strickland SC and Mr Kell SC, that the circumstances of the disappearance of Mr Llanto and death of Mr Collado are, at the very least, highly suspicious bearing in mind:
- a) The circumstances surrounding each of the disappearance and death;
  - b) the intense conflict and mistrust amongst the crew on the Vessel at the time of Mr Llanto's disappearance;
  - c) the relationship between each of the three men, namely:
    - i) Mr Collado was reported to be a changed man following Mr Llanto's disappearance; and
    - ii) Mr Monji came on board the Vessel on 3 September 2012 following the disappearance of Mr Llanto for the purpose of either investigating the disappearance and/or supervising or ensuring the safety of the crew;
  - d) the timing of the disappearance and deaths; and
  - e) the lack of eye witnesses to the disappearance of Mr Llanto and deaths of Mr Collado and Mr Monji.
- 6) Accordingly in examining the disappearance and suspected death of Mr Llanto and deaths of Mr Collado and Mr Monji, I have considered the following issues:
- A. Who was on the MV Sage Sagittarius at the time?
  - B. Were there any significant issues aboard the Vessel?
  - C. In relation to the disappearance and suspected death of Mr Llanto:
    - i) What were his last known movements?
    - ii) Was there any forensic evidence?
    - iii) How was he discovered missing?
    - iv) What steps were taken to search for Mr Llanto?
    - v) Was there any attempt to co-ordinate the statements from the crew?
    - vi) What was the response to the man over-board incident?

- vii) What did the data retrieved from the VDR reveal?
  - viii) Did Mr Llanto take his own life?
  - ix) Did Mr Llanto suffer a misadventure and fall accidentally from the Vessel?
  - x) Was Mr Llanto a victim of foul play and if so by whom?
- D. In relation to the death of Hector Collado:
- i) What was Mr Collado's mental state before he died?
  - ii) What were the last known movements of Mr Collado?
  - iii) What forensic evidence is available?
  - iv) What was the state of Mr Collado's health?
  - v) What was the manner and cause of Mr Collado's death?
- E. In relation to the death of Kosaku Monji:
- i) What were the circumstances of his death?
  - ii) Was Mr Monji's death investigated, by the relevant Japanese authorities, in a vacuum or with the knowledge of the disappearance of Mr Llanto and the death of Mr Collado?

I will deal with each of these issues in turn. In doing so, I have had regard to the helpful written submissions of the representatives of all of the interested parties.

### **The function and jurisdiction of the Coroner**

- 7) The role of a Coroner as set out in s. 81 of the *Coroners Act 2009* is to make findings as to:
- a) the identity of the deceased;
  - b) the date and place of a person's death;
  - c) the physical or medical cause of death; and
  - d) the manner of death; in other words, the circumstances surrounding the death.



- 8) A Coroner, pursuant to s. 82 of the *Coroners Act 2009*, also has the power to make recommendations concerning any public health or safety issues that are considered necessary or desirable to make in relation to any matter connected with the death in question.
- 9) In relation to the disappearance and suspected death of Mr Llanto, my jurisdiction arises pursuant to s. 21 of the *Coroners Act 2009* which relevantly states:
- “A coroner has jurisdiction to hold an inquest concerning the ... suspected death of a person if it appears to the coroner that:*
- (a) the person’s death is (or there is reasonable cause to suspect that the person’s death is) a reportable death, or...”*
- 10) The suspected death of Mr Llanto took place in the Coral Sea in international waters, off Cairns. I note that s 18(2)(b) of the *Coroners Act 2009* confers extraterritorial jurisdiction on the NSW State Coroner’s Court where, as in the present case, the suspected death occurred outside the State but in the course of a journey to some place in the State. As Mr Llanto’s suspected death occurred while the Vessel was en route to Newcastle, even though it took place in international waters, it follows that this court has jurisdiction to deal with the matter.
- 11) Mr Collado died while the Vessel was berthed in Newcastle Harbour. This Court clearly has jurisdiction to examine the circumstances surrounding his death.
- 12) Mr Monji’s death occurred whilst the Vessel was in a Japanese port. The NSW State Coroner’s Court does not have jurisdiction to make findings in respect of the death of Mr Monji. However, the circumstances leading up to and surrounding the death of Mr Monji are relevant to the inquests being undertaken by the NSW State Coroner’s Court into the suspected death of Mr Llanto and the death of Mr Collado, in so far as such circumstances may shed light on relevant events.

### **The MV Sage Sagittarius**

- 13) The Vessel is a large bulk carrier that is predominantly used to carry coal between Australia and Japan.<sup>1</sup> It is owned by a Japanese company, Hachiuma Steamship Co Ltd (“HSC”), and is operated by a related Japanese company, Nippon Yusen

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<sup>1</sup> Exhibit 1/1A/1/p 3: report of suspected death to Coroner dated 11 January 2013.

Kabushiki Kaisha (“**NYK**”) Line. NYK is one of the biggest shipping companies in the world, employing 28,500 staff and with revenue in excess of \$20 billion.<sup>2</sup>

- 14) On 20 August 2012, the Vessel departed Kudamatsu, Japan, bound for Newcastle, Australia. The Vessel’s crew comprised 25 men, who were all Filipino nationals. The company that hired the crew was the Japanese Filipino company NYK Philippines.<sup>3</sup>
- 15) The Vessel carried a Panamanian Flag.
- 16) I note that there is no apparent connection between the nationality of the owner of the Vessel, the ordinary geographical operations of the Vessel, nor the nationality of the crew of the Vessel and its flag. The Panamanian Flag is a “flag of convenience” which allows the ship owners to operate principally under the regulatory framework of the flagged nation.
- 17) As is required for all vessels to comply with International Maritime Convention Safety of Life at Sea requirements,<sup>4</sup> the Vessel was fitted with a voyage data recorder, specifically a Samsung S-VDR 3000 (“**the VDR**”), which is an instrument that records vital information related to the operation of a Vessel. It was located on the bridge.
- 18) It is also noteworthy that four of the crew were given a Passenger Analysis Clearance and Evacuation System (PACE) alert status by Australian Customs, namely Captain Venancio Salas Junior (“**Captain Salas**”), Alex Macaso, Vergilio Matunog and Endril Molledo.<sup>5</sup>

### **Dramatis Personae – who was on the Vessel at the relevant times**

- 19) At 30 August 2012, the date of the disappearance of Mr Llanto, the Vessel was operated by twenty five (25) crew, all of whom were Filipino nationals. I think it important to have an understanding of who was on the Vessel at the time of the

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<sup>2</sup> Exhibit 1/1A/3/para 183: statement of Federal Agent Scott Raven dated 5/1/14 (citing NYK 2013 Annual Report).

<sup>3</sup> Written submissions on behalf of the International Transport Worker’s Federation dated 7 February 2017 at [3].

<sup>4</sup> IMO Res A861(20).

<sup>5</sup> Exhibit 1/1B/34B/p 1: Crew List – Sage Sagittarius.

disappearance and death of Messrs Llanto and Collado and their respective roles and responsibilities on board the Vessel.

#### Captain Salas

- 20) Captain Salas was made a captain of a vessel at an early age. He graduated from the Marine Academy in June 1994 and commenced work as an Able Bodied Seaman on board a commercial vessel in October 1994 when he was 26 years old.
- 21) He was 40 years old and clearly an experienced seaman at the time of the disappearance of Mr Llanto. The evidence indicates that Captain Salas had been a crew member on the Vessel on about 56 separate voyages to Australia since 1999, in numerous capacities.<sup>6</sup>
- 22) Consistent with the planned operations of the Vessel, Captain Salas handed over the command of the Vessel to Captain Salaguste once the Vessel was docked at Newcastle on 14 September 2012. Accordingly he had the command of the Vessel when Mr Llanto disappeared and when Mr Collado fell to his death.
- 23) Captain Salas gave evidence during the course of the Inquest.

#### Soloman Layson

- 24) Soloman Layson was the Chief Officer aboard the Vessel. He was 40 years old. He had boarded the Vessel on 27 August 2011 and accordingly had been a crew member of the Vessel for approximately one (1) year at the time of Mr Llanto's disappearance. He was supervised by Captain Salas.<sup>7</sup>

#### Ruperto Garcia

- 25) Ruperto Garcia was the Second Officer on the Vessel. He was 34 years old and had boarded the Vessel on 18 February 2012 at Kudamatsu, Japan. Accordingly, he had

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<sup>6</sup> Exhibit 1/1A/7: record of interview with Captain Salas; Exhibit 2/2B/75: seafarer's service records for Sage Sagittarius crew; Exhibit 3/1/4: record of interview with Captain Salas.

<sup>7</sup> Exhibit 1/1A/6: statement of Solomon Layson; Exhibit 2/2A/25: record of interview (and summary) with Solomon Layson; Exhibit 8: MV Sage Sagittarius hierarchy chart.

been a crew member aboard the Vessel for approximately seven (7) months at the time of Mr Llanto's disappearance. He was supervised by Chief Officer Layson.<sup>8</sup>

#### Jose Visto

26) Jose Visto was the Third Officer on the Vessel. He was 49 years old and had boarded the Vessel on 20 August 2012 at Kudamatsu, Japan. He had been employed by NYK since 1995 and had completed six voyages to Australia on the Vessel. He was supervised by Chief Officer Layson.<sup>9</sup>

#### Gigi Guinanao

27) Gigi Guinanao was the Bosun aboard the Vessel. He had boarded the Vessel on 30 December 2011 at Kudamatsu, Japan, and had been a crew member of the Vessel on about six (6) voyages to Australia. He was supervised by Chief Officer Layson.<sup>10</sup>

#### Hector Collado

28) Hector Collado was the Chief Engineer of the Vessel. He reported directly to Captain Salas and had boarded the Vessel in Kudamatsu, Japan, on 20 August 2012. His service record indicates that he had been a crew member on the Vessel on "many trips to Australia" and had worked with Captain Salas on at least two other of those voyages.<sup>11</sup>

29) Mr Collado died after falling from the second to the fourth deck on 14 September 2012 when the Vessel was docking at Newcastle Port.

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<sup>8</sup> Exhibit 1/1B/23: statement of Ruperto Garcia; Exhibit 2/2A/21: record of interview (and summary) with Ruperto Garcia; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>9</sup> Exhibit 1/1A/9: statement of Jose Visto; Exhibit 2/2A/16: record of interview (and summary) with Jose Visto; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>10</sup> Exhibit 1/1B/27: statement of Gigi Guinanao; Exhibit 2/2B/29: record of interview (and summary) with Gigi Guinano; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>11</sup> Exhibit 1/1A/10: statement of Hector Collado; Exhibit 2/2B/75: seafarer's service records for Sage Sagittarius crew.

### Babbet David

- 30) Babbet David was the First Engineer on the Vessel, which he boarded on 20 August 2012 at Kudamatsu, Japan. He had previously been a crew member on board the Vessel on four voyages to Australia.<sup>12</sup>
- 31) The evidence indicates he was the only crew member on board the Vessel at the time of all three deaths / disappearance.
- 32) Mr David also did not have an alibi for the time of Mr Collado's death.

### Glenn Mercene

- 33) Glenn Mercene was the Second Engineer on the Vessel. He was 37 years old and had boarded the Vessel on 17 August 2012 at Kudamatsu, Japan. Accordingly he had only been on the Vessel for less than one month at the time of Mr Llanto's disappearance. He was supervised by First Engineer David.<sup>13</sup>

### Alex Macaso

- 34) Alex Macaso was the Third Assistant Engineer on the Vessel. He was 28 years old at the time of Mr Llanto's disappearance and had boarded the Vessel on 18 February 2012 at Kudamatsu, Japan. He was supervised by First Engineer David.<sup>14</sup>

### Marlino Pallera

- 35) Marlino Pallera was 40 years old and employed as a Fitter by NYK Shipping Management. He had been a crew member aboard the Vessel on approximately ten (10) voyages to Australia. He boarded the Vessel on this occasion on 20 August 2012 in Kudamatsu, Japan. He was supervised by Second Engineer Mercene and Third Engineer Macaso.<sup>15</sup>

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<sup>12</sup> Exhibit 1/1A/11: statement of Babbet David; Exhibit 2/2B/75: seafarer's service records for Sage Sagittarius crew; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>13</sup> Exhibit 1/1A/12: statement of Glenn Mercene; Exhibit 2/2A/6: record of interview (and summary) with Glenn Mercene; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>14</sup> Exhibit 1/1B/24: statement of Alex Macaso; Exhibit 2/2A/9: record of interview (and summary) with Alex Macaso; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>15</sup> Exhibit 1/1A/15: statement of Marlino Pallera; Exhibit 8: MV Sage Sagittarius hierarchy chart.

Harvey Penoliar

- 36) Harvey Penoliar was a 33 year old Electrician who had boarded the Vessel on 20 August 2012 in Kudamatsu Japan. He had previously been a crew member aboard the Vessel on approximately three or four voyages to Australia. He was supervised by First Engineer David.<sup>16</sup>

Michael Sarita

- 37) Michael Sarita was a 28 year old Apprentice Engineer who had boarded the Vessel on 21 June 2012 at Kudamatsu Japan. He had been a crew member on the Vessel on about two voyages to Australia. He was supervised by First Engineer David.<sup>17</sup>

Raul Vercede

- 38) Raul Vercede was one of three (3) Oilers on the Vessel. The evidence indicates that this was Mr Vercede's second contract as an Oiler and he had held that position for approximately 3 months. He was 34 years old as at the time of Mr Llanto's disappearance and had boarded the Vessel on 20 June 2012 at Kudamatsu, Japan.<sup>18</sup>

Ruel Marcos

- 39) Ruel Marcos was an Oiler on board the Vessel. He was 39 years old at the time of Mr Llanto's disappearance and had boarded the Vessel on 10 May 2012 at Kudamatsu, Japan. He had been a crew member on board the Vessel for at least three (3) voyages to Australia. He was supervised by Second Engineer Mercene and Third Engineer Macaso.<sup>19</sup>

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<sup>16</sup> Exhibit 1/1A/14: statement of Harvey Penoliar; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>17</sup> Exhibit 1/1A/13: statement of Michael Sarita; Exhibit 2/2A/8: record of interview (and summary) with Michael Sarita; Exhibit 3/1/2: record of interview of Michael Dan Sarita; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>18</sup> Exhibit 1/1A/5: statement of Raul Vercede; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>19</sup> Exhibit 1/1B/25: statement of Ruel Marcos; Exhibit 2/2B/75: seafarer's service records for Sage Sagittarius crew; Exhibit 8: MV Sage Sagittarius hierarchy chart.

### Vergilio Matunog

- 40) Vergilio Matunog was an Oiler on board the Vessel. He was 45 years old and had been a crew member on board the Vessel for only ten (10) days at the time of Mr Llanto's disappearance, having boarded the Vessel on 20 August 2012 at Kudamatsu, Japan. He was supervised by Second Engineer Mercene and Third Engineer Macaso.<sup>20</sup>

### Erwin Beros

- 41) Erwin Beros was a Fitter Maintenance Assistant who had boarded the Vessel on 27 March 2012 at Kudamatsu Japan. He had been a crew member on the Vessel for two prior voyages to Australia. He was 30 years old at the time of Mr Llanto's disappearance.<sup>21</sup>

### Aldwin Anghag

- 42) Aldwin Anghag was an Able Seaman and had boarded the Vessel on 20 August 2012 in Kudamatsu, Japan.
- 43) The evidence indicates that he had been a crew member of the Vessel for approximately 8.5 months. His immediate supervisors on this voyage were both Second Officer Garcia and Third Officer Visto.<sup>22</sup>

### Irvin Batingal

- 44) Irvin Batingal was a 23 year old Deck Boy who was on his first voyage to Australia having boarded the Vessel on 27 March 2012. His immediate supervisor was Ordinary Seaman Capagalan.<sup>23</sup>

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<sup>20</sup> Exhibit 1/1A/16: statement of Virgilio Matunog; Exhibit 2/2A/7: record of interview (and summary) with Virgilio Matunog; Exhibit 2/2B/75: seafarer's service records for Sage Sagittarius crew; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>21</sup> Exhibit 1/1B/22; Exhibit 2/2B/26; Exhibit 3/1/6.

<sup>22</sup> Exhibit 1/1A/17; Exhibit 2/2A/22; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>23</sup> Exhibit 1/1B/21; Exhibit 2/2B/28; Exhibit 8: MV Sage Sagittarius hierarchy chart.

### John Camarador

- 45) John Camarador held the position of Able Seaman on the Vessel which he boarded on 18 February 2012 at Kudamatsu, Japan. He had been a crew member aboard the Vessel for approximately 6 months when Mr Llanto disappeared.<sup>24</sup>
- 46) The evidence indicates that his supervisors were Second Officer Garcia and Third Officer Visto.<sup>25</sup>

### Marlon Capagalan

- 47) Marlon Capagalan had been a crew member on the Vessel for approximately 11 months prior to the disappearance of Mr Llanto. He was an ordinary seaman and was 26 years old. He was supervised by Buinanao Bosun.<sup>26</sup>

### Mark Encanto

- 48) Mark Encanto was an Ordinary Seaman who had boarded the Vessel on 13 October 2011 at Kudamatsu, Japan. He was supervised by Gigi Guinanao. Mr Encanto was an experienced seaman who had been a crew member of the Sage Sagittarius on a minimum of six voyages to Australia.<sup>27</sup>

### Endril Molleda

- 49) Endril Molleda was employed as the Deck Boy on board the Vessel. He was 23 years old and had previously been a crew member on the Vessel for three (3) voyages to Australia. He boarded the Vessel on 10 May 2012. His supervisor was Ordinary Seaman Encanto.<sup>28</sup>

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<sup>24</sup> Exhibit 1/1B/26.

<sup>25</sup> Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>26</sup> Exhibit 1/1A/18; Exhibit 2/2A/20; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>27</sup> Exhibit 1/1A/19: statement of Mark Encanto; Exhibit 2/2B/27: record of interview (and summary) with Mark Encanto; Exhibit 3/1/7: record of interview of Mark Encanto; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>28</sup> Exhibit 1/1A/20: statement of Endril Molleda; Exhibit 2/2A/23: record of interview (and summary) with Endril Molleda; Exhibit 3/1/8: record of interview of Endril Molleda; Exhibit 8: MV Sage Sagittarius hierarchy chart.



### Brendo Moralde

- 50) Brendo Moralde was a 27 year old, who held the position of Able Seaman. He had boarded the Vessel on about 20 August 2012. He had been a crew member on the Vessel on four voyages to Australia. He was supervised by Second Officer Garcia and Third Officer Visto.<sup>29</sup>

### Jesse Martinez

- 51) Jesse Martinez was the 26 year old Messman on board the Vessel, who at the time of Mr Llanto's disappearance had only been employed by NYK Shipping management for approximately 3 months.<sup>30</sup>
- 52) This was his first voyage on the Vessel and his supervisor was Mr Llanto.<sup>31</sup>
- 53) The evidence indicates that Mr Martinez was subject to harassment and bullying on the Vessel and Mr Llanto, his supervisor, had tried to assist him in that regard.

### Kosaku Monji

- 54) Kosaku Monji was a 36 year old Japanese National who was the Superintendent of the Vessel and employed by HSC. He had held that position for 12 months prior to him boarding the Vessel with Kazuhiro Hayashi off the coast of Australia following the disappearance of Mr Llanto.<sup>32</sup>
- 55) Mr Monji died aboard the Vessel when it was docked in Kudamatsu, Japan, on 6 October 2012.

### Kazuhiro Hayashi

- 56) Kazuhiro Hayashi was the General Manager of HSC who boarded the Vessel with Mr Monji off the coast of Australia following the disappearance of Mr Llanto. He was 52

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<sup>29</sup> Exhibit 1/1A/8: statement of Brendo Moralde; Exhibit 2/2A/18: record of interview (and summary) with Brendo Moralde; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>30</sup> Exhibit 1/1A/4: statement of Jesse Martinez; Exhibit 3/1/1: record of interview of Jessie Martinez.

<sup>31</sup> Ibid; Exhibit 8: MV Sage Sagittarius hierarchy chart.

<sup>32</sup> Exhibit 1/1B/29: statement of Kosaku Monji.

years old at the time and had worked at HSC for approximately 3 years and had been General Manager for about six months when he boarded the Vessel.<sup>33</sup>

#### Richard James

57) Richard James was a consultant security officer for the Corporate Protection Australia Group (“**CPA Group**”). He boarded the Vessel together with Sean Yeates, Superintendent Monji and General Manager Hayashi off the coast of Australia following the disappearance of Mr Llanto.<sup>34</sup>

#### Sean Yeates

58) Sean Yeates was also a consultant security officer for the CPA group. He boarded the Vessel together with Richard James, Superintendent Monji and General Manager Hayashi off the coast of Australia following the disappearance of Mr Llanto.<sup>35</sup>

### **Were there any significant issues on board the Vessel?**

- 59) This Inquest was heard over 11 days, over a period of approximately 18 months.
- 60) It became abundantly clear during the course of this Inquest that the investigating authorities, namely, the Australian Federal Police and NSW Police, had difficulties in obtaining complete and accurate accounts from crew members as to the circumstances surrounding the disappearance of Mr Llanto and death of Mr Collado. Most of the crew told the investigators that they did not wish to provide any further information other than where they were at the time of the disappearance of Mr Llanto or the death of Mr Collado.<sup>36</sup>

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<sup>33</sup> Exhibit 1/1B/28: statement of Kazuhiro Hayashi.

<sup>34</sup> Exhibit 1/1B/30: statement of Richard James dated 7 September 2012; Exhibit 3/1/9: statement of Richard James dated 18 May 2015.

<sup>35</sup> Exhibit 3/1/10: statement of Sean Yeates dated 18 May 2015.

<sup>36</sup> Many statements prepared by crew members in respect of Mr Llanto’s disappearance include a paragraph stating “I do not wish to provide further information about the matter”: Exhibit 1/1A/8; 1A/13-14; 1A/16; 1A/18-20; 1B/21-24; 1B/25; 1B/27. The evidence given by crew members to NSW Police following Mr Collado’s death as recorded in the ERISP transcripts included information about their role and duties on the Vessel, general information about Mr Collado, what they were doing on the morning of Mr Collado’s death and when they last saw him. The transcripts identify that generally the crew members were asked whether they wished to provide further information. When asked, generally the crew members declined or indicated that they had no further information: i.e. Exhibit 2/2A/22-23; 2B/28-31.

- 61) However, a few of the statements from the crew made reference to a conflict on board which principally involved the Messman Jessie Martinez, the Oiler Raul Vercede, the Chief Officer Solomon Layson and the Captain Venancio Salas.
- 62) The investigation into the disappearance of Mr Llanto and death of Mr Collado uncovered a number of complex issues which were occurring on the Vessel at the relevant time that included:
- a) Harassment and Bullying;
  - b) the sale of guns by Captain Salas; and
  - c) culture of silence and blacklisting.

It appears that these issues accounted for the reluctance of the majority of the crew to provide full and frank statements to the investigating authorities.

- 63) Accordingly, it is necessary to deal with these issues by way of background to the disappearance of Mr Llanto and the deaths of Mr Collado and Mr Monji, as they provide important context and may be relevant to the death of one or more of the deceased.

#### **a) Was there harassment and bullying about the Vessel?**

- 64) The evidence before this Inquest clearly indicates that Messman Jessie Martinez was the victim of bullying and humiliation on board the Vessel arising from both his junior status and his homosexuality.
- 65) In April 2013, Mr Martinez told AFP officials that:
- a) There were weekly parties on board the Vessel where the crew would pressure him to drink, when he did not ordinarily drink, and to dance in a provocative manner for their entertainment. Mr Martinez stated that he was treated like a “rag doll” being twisted around by different members of the crew, some of whom tried to undress him.<sup>37</sup> At one party, crew members

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<sup>37</sup> Exhibit 3/1/1/A 307: Record of interview of Jessie Martinez.

staged a fake wedding between him and one of the deck boys.<sup>38</sup> A video of this wedding was played during the Inquest;<sup>39</sup> and

- b) He had been assaulted on three occasions by Captain Salas. The first assault occurred about 2 weeks after he joined the Vessel and involved a forceful push to the chest when he had been standing on the bridge. The second assault, according to Mr Martinez, occurred about 5 days later, when Captain Salas approached him in the galley (in the company of the previous Chief Cook) and punched him hard in the kidney area. Martinez had trouble breathing for days after the punch.<sup>40</sup> The third assault, according to Mr Martinez, occurred during a weekly drinking party on board when Captain Salas hit him on the back of his head with a leather sandal. That was whilst other crew members were trying to take off his clothes.<sup>41</sup>

66) The allegations made by Mr Martinez in my view have been corroborated from the following sources:

- a) A crew member stated that he witnessed Captain Salas, whilst intoxicated, strike Mr Martinez on the chest with an open hand after he had demanded Martinez fetch him some snacks;<sup>42</sup>
- b) According to another crew member, Mr Martinez had been subject to extensive bullying and humiliation on board the Vessel arising from his homosexuality. The crew member referred to this in an email of 4

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<sup>38</sup> Exhibit 1/1A/3/[153]: Statement of Federal Agent Scott Raven, Exhibit 1/1C/43A: photographs of fake wedding; Exhibit 4 - Video of "fake wedding".

<sup>39</sup> Exhibit 4: Video of "Fake Wedding".

<sup>40</sup> Exhibit 3/1/1/A 208: Record of interview of Jessie Martinez.

<sup>41</sup> Ibid A 256-260. By contrast to his 2013 account to the AFP, Martinez told the AFP in his interview on board the Vessel on 7 September 2012 that Captain Salas had slapped him because during what he called his "adjustment period", he had made "mistakes" and he understood that Captain Salas was doing that (i.e. slapping him) to train him: Exhibit 1/1A/4D/409-410. He does not mention Salas punching him.

<sup>42</sup> Exhibit 3/1/3/A 267-277: Record of interview of crew member.

November 2012 to Dean Summers of the International Transport Workers' Federation ("ITF") (underlining added):<sup>43</sup>

*"All I know Sir is the messman approached me and asked help from me as he was being punched for many times by the Captain of MV Sage Sagittarius Capt. Venancio Salas as they all know on this ship that I have a contact in AMSA because last July 23, 2012 Mr Jappie Toyer come on board at Newcastle. Then the messman told me that he was going to pursue his complaint to AMSA or ITF and I told him that we keep this confidential because this is a serious matter I will contact AMSA or ITF when we get alongside and he need to stand his complaint against the Captain. The Chief cook know everything about the condition of his messman and he also agreed to report this to the authority. The Chief cook also told me that he was being forced to sign a letter by the chief officer of the said vessel. This conversation happened last August 28, 2012 before he disappear last August 30, 2012. This is all I know Sir."* [sic]

- c) Captain Salas admitted that he assaulted Mr Martinez on several occasions. Captain Salas said he assaulted Mr Martinez once by throwing a sandal at him when he was dancing in a feminine manner and he slapped him with a slipper. Captain Salas also said that he punched Mr Martinez in the stomach when Mr Martinez, in effect, invited him to punch him in his stomach to show how hard he was.<sup>44</sup>

## **b) Was there conflict aboard the Vessel?**

- 67) The evidence before me indicates that when Mr Llanto joined the Vessel on 17 August 2012 the bullying and mistreatment of Mr Martinez essentially abated. Mr Martinez believed that this was because crew members thought that he was related to Mr Llanto as Mr Martinez's middle name was Llanto.<sup>45</sup> Mr Martinez later told Mrs Llanto, after her husband's disappearance, that her husband had acted as his "big brother figure" and adviser during his stay on the Vessel.<sup>46</sup>
- 68) On about 21 August 2012, Martinez signed a "Promissory letter" (the "**First Promissory Letter**"). It stated:

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<sup>43</sup> Exhibit 1/1D/50: Email correspondence between ITF and anonymous Sage Sagittarius crew member.

<sup>44</sup> Transcript of evidence of Captain Salas, 29/05/2015, T32.23-32.32.42, T34.28-34- 47.

<sup>45</sup> Exhibit 1/1A/3/p 38 [153]: statement of Federal Agent Scott Raven.

<sup>46</sup> Exhibit 1/1B/31/[17]: statement of Nelia Llanto.

*“Dear Captain,*

*With all due respect, I would like to say “sorry” for everything that I causes you, that made you unhappy and disappointed with my performance onboard, sir, with sincere [illegible] I want you to know that I didn’t meant to do those things, I never intend to [illegible] bad inflect problems on even annoying you with my scrambled understanding. I love my work as I love my family and I love everybody here onboard. Things have been so difficult with me the moment I started here but I never lose hope because I am confident that you won’t let me [illegible] nothing bad helpless. I admit, I really had a hard time to figure out the best way to do my responsibilities, I am [illegible] and stagnant, but [illegible] I know I have learned. I don’t like to compromise you with my performance I’m always aiming excellence way of service apparently, things didn’t work the way I want it to be, but I am still hoping that I could make it and [illegible] everything. Tell me please exactly what you want me to do and expecting me to do. I won’t promise anything I’ll just do the best way that I can, I want to stay here long and grow and aim to be a captain like you, I may not possess a little thing yet but I know you can train me and molds me to be.” [sic]*

This First Promissory Letter was countersigned by Mr Llanto and Chief Officer Layson.<sup>47</sup> Captain Salas regarded the letter as not satisfactory and directed Martinez to rewrite the letter.

- 69) That same day a second, differently worded, Promissory Letter, also dated 21 August 2012, was signed by Mr Martinez. He has noted “22/8/12” next to his signature, and so presumably he signed the document on 22 August 2012. Again, the document was counter-signed by Mr Llanto and Chief Officer Layson.<sup>48</sup> It is not apparent on the evidence whether Captain Salas was prepared to accept this version of the Promissory Letter.
- 70) A shorter, one-page typed form of “Promissory Letter” was addressed to Ms Lorela Monoso, the Fleet 6 Manager of NYK-FIL.<sup>49</sup> This letter is also dated 21 August 2012. It is, however, recorded as being received (by NYK-FIL) on 30 August 2012 (“**the Typed Promissory Letter**”). The letter is signed by Mr Martinez, Chief Officer Layson and Captain Salas. For reasons that are not clear, Mr Llanto did not sign this letter. The letter simply states, in typed form, “Noted By” Cesar P. Llanto, Chief Cook.
- 71) It is peculiar, to say the least, that Mr Llanto, as Mr Martinez’ immediate superior,

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<sup>47</sup> Exhibit 1/1B/28B/p 208-209: copies of letters.

<sup>48</sup> Exhibit 1/1B/28B/p 210-211: copies of letters.

<sup>49</sup> Exhibit 1/1C/43H/p 840: statements of incident.

had not signed the Typed Promissory Letter, particularly where he is recorded as having signed the two versions of the handwritten Promissory Letter dated 21 August 2012.

- 72) It is also strange that someone has inserted a typed version of "Noted By" on the Typed Promissory Letter in respect of Mr Llanto. He was presumably readily available, on the Vessel, to sign such a letter, if he were so minded.
- 73) The contents of this Typed Promissory Letter reveal at least some of the flavour of the conflict on board the Vessel. In my view the language of the letter indicates that it was not written by Mr Martinez and that he was forced to sign it. It states:

*"Dear Mam Lala,*

*With all due respect, I would like to inform you regarding my performance on board from the date that I started and the current.*

*These are the following:*

*I am stubborn, I don't have initiative, I am slow. I cannot follow instructions carefully, I don't use my common sense, I am forgetful, I did the same mistakes every day without improvement, I am slow learner, I am a gossip and a liar.*

*With all my difficulties and deficiencies, I am thankful that my captain and the department so patience and understandable with me, giving me a chance to cope up and polish everything. On the other hand, I will respect whatever the consequences that is due with my action. I am still hoping you would consider my fervent request to continue my contract and address all areas of my lapses."*

- 74) I am satisfied on the balance of probabilities that the Promissory Letters relating to Mr Martinez were a cause of, or associated with, significant tension on the Vessel prior to the disappearance of Mr Llanto. The evidence in this regard can be summarised as follows:

- a) Mr Martinez told Mr Vercede about the assaults by Captain Salas. Mr Vercede advised him to complain to the ITF. Mr Vercede strongly counselled Mr Martinez that, once the Vessel was in mobile phone range, he should call the ITF and the Australian Maritime Safety Authority ("**AMSA**") and make a complaint about Captain Salas and his mistreatment of him. Mr Vercede said if he did this, Mr Martinez would still get paid his full employment before going home.
- b) Mr Martinez told the AFP in his April 2013 interview that Mr Llanto appeared to stick up for Mr Martinez as Mr Llanto:
- i) questioned why Mr Martinez was doing work that the deck boys do

such as cleaning and maintaining the crew mess,<sup>50</sup>

- ii) queried whether Mr Martinez was not being paid an extra allowance for the extra work he was being asked to do;<sup>51</sup> and
- iii) about 4 or 5 days after he boarded the ship (i.e. shortly after 22 August 2012) Mr Llanto advised Mr Martinez not to write any more promissory letters, and that he would sort it out with the Captain.<sup>52</sup>

75) The evidence before me indicates that this issue did not end with the Promissory Notes.

76) On 28 August 2012, Captain Salas, Chief Officer Layson, Mr Collado and Mr David met with Mr Martinez.<sup>53</sup> According to Chief Officer Layson, at this meeting Mr Martinez was unrepentant and said that he could talk to the Master and make trouble on the Vessel and cause delay.<sup>54</sup> However, I note that contention is not consistent with the grovelling apologies offered by Mr Martinez in the promissory notes he signed a few days earlier. It was at this meeting that Mr Martinez was issued a "Warning Letter".<sup>55</sup> It stated:

*"Please be advised that we (Master, Chief Engineer, Chief Officer and First Engineer) has been unsatisfied with the performance, behaviour and attitude towards your work you showed disrespect and insulted your superior and questioned the Master's integrity.*

*We hereby giving you another chance and asking you to make a promissory letter stating offences and deficiencies you have done and promising you will not commit these same mistakes again.*

*This letter will serve as a warning to you and failure to comply will be dealt with accordingly under POEA SEC/Sec. 33."*

Alongside the space for signing by "Mess Man Jessie L. Martinez" are the handwritten words "REFUSED TO SIGN!"

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<sup>50</sup> Exhibit 3/1/1/A 371: Record of interview of Jessie Martinez.

<sup>51</sup> Ibid A 387.

<sup>52</sup> Ibid A 442, 460, 462.

<sup>53</sup> Exhibit 1/1A/6/p 258/[11]: statement of Solomon Layson. Neither Mr Collado nor Mr David referred to this meeting in their statements provided to the AFP on 7 September 2012.

<sup>54</sup> Exhibit 1/1A/6C/A 68: record of interview of Solomon Layson; see also Exhibit 1/1A/6/p 258/[12] and Captain Salas' version of meeting Exhibit 1/1A/7/538-541.

<sup>55</sup> Exhibit 1/1C/43H/842: statements of incident.



- 77) According to the statement of Captain Salas provided to the AFP on 7 September 2012, he had received from Chief Officer Layson a promissory letter written by Mr Martinez a few days after Captain Salas had asked Mr Martinez to provide him with one but *“didn’t think it was good enough as I wanted him to acknowledge his mistakes, so I told Mr Layson to get Martinez to do it again.”*
- 78) The evidence of Captain Salas regarding the Warning Letter can be summarised as follows:
- a) After not having received a further letter promissory letter from Mr Martinez he issued the Warning Letter to Mr Martinez.<sup>56</sup> To do this, he required Mr Martinez to attend his cabin together with Mr Layson, Mr Collado and Mr David;
  - b) The Warning Letter was shown to Mr Martinez and Mr Martinez refused to sign it;<sup>57</sup>
  - c) Captain Salas believed that Mr Martinez had been given advice about the promissory letters by another crew member, whom I infer was Mr Vercede;<sup>58</sup>
  - d) Captain Salas said he was trying to help Mr Martinez but he was being insubordinate;<sup>59</sup> and
  - e) Later that day, Mr Martinez apologised to Captain Salas for his behaviour.<sup>60</sup>
- 79) In contrast to Chief Officer Layson’s account, Captain Salas does not say, in his statement to the AFP that Mr Martinez threatened to “make trouble on the vessel”<sup>61</sup> or that he threw his promissory note across the table.<sup>62</sup>

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<sup>56</sup> See Exhibit 1/1A/7B/ [14]: statement of Captain Salas; Exhibit 1/1A/7/p 538: record of interview with Captain Salas.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Exhibit 1/1A/6/p 258: statement of Solomon Layson.

<sup>62</sup> Ibid.

- 80) Interestingly, on 31 August 2012, the day following the disappearance of Mr Llanto, Mr Martinez authored a document titled “*My personal statement to clear my conscience*” (“**Martinez’ personal statement**”) dated 31 August 2012 and signed by Martinez addressed to Mr Monji,<sup>63</sup> That statement states:

*“My name is Jessie I. Martinez messman of MV Sage Sagittarius. Do hereby solemn promised that I will say the truth and nothing but the truth to clear my conscience. I remember the times that I was in the period of my adjustment; I am pressured but eager to cope up what is being expected from me to do, as a new beginner so many questions parked in my mind that seems measuring my patience. I don’t lose hope but I am bothered because I don’t really know if I am doing exactly what they want me to do. I know it is normal that I will be corrected the moment that I did something that they don’t like to avoid problem, cause problems and do the same mistake again. Those days were really hard for me and I admit that it shows on my face my speed is also been disturbed and affected. This man (OLR/B Raul Vercede) approached me seems like a good shepherd telling me that I was being maltreated and verbally harassed with my captain I am unaware that this man has a deep and personal motives, I might be a perfect key point to execute his desperate plan. I am a new beginner I don’t have any idea about anything my focused is how I can improve my job, adjust and please everyone on board. One day he shared with me about AMSA and ITF that time we are bound to Australia from Japan I ignored it because I know that captain is just molding and helping me to become a skilled, matured and strong seafarer I don’t see wrong with it rather, I admire captain for his own accomplishments and the honor that he gave for the vessel for the family of MV Sage Sagittarius as he always said, it is evidently that he is an excellent captain. The day came smoothly until we reached the part of Australia New Castle I was told to prepare for the visitors from AMSA (New Castle) that will visit the ship, I thought we have two auditors from AMSA (New Castle) that time as I am attending them at the officers saloon, and suddenly one of them called the name of OLR/B Raul Vercede and asked for a spare room to talk in private, that was the last day in Australia (New Castle) that I was in conversation with OLR/B Raul Vercede while serving them with coffee. While on our way to Japan from Australia again he talked to me and asked if I am okay and all that I said yes and he grinned at me while saying just if incase you want to sue captain or to file a complaint against him I am just blocked away from your cabin to talk about it. I never realized that time why he is always bringing out captain’s name in our conversation and the ITF. I don’t know where he got the gossip that I am always being harassed verbally by captain as he always reiterating with me to sue captain by calling ITF and my reason is valid. I did not gave full attention with his offering though I am listening to his promising words that I will have a chance to live with him in Australia though we will start as a janitor, and it will happen if the ship will be delayed at Australia New Castle technically, he said the ship owner will pay the charterer for caused day the outcome would be worst and one of the possible things that he highlighted, was captain will be*

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<sup>63</sup> Exhibit 1/1A/4A/360-362: personal statement of Jessie Martinez.

repatriated, his license will be revoke and that he would not have a chance to work with the other company, this detailed things was said to me this month of August, I can't remember the exact date. August 21, 2012 I consulted him about my promissory letter though I have consulted already Chief Cook about it and C/ck said "yes" however, he promised me he will talk to captain and chief officer. They were asking me a letter just to acknowledge my mistakes and promise that I would not do the same mistakes, I admit that I am confused at this time, mixed emotions that is why I showed it to OLR/B Raul Vercede he said I am nuts if I will give it to them it is just like the end of my career and future by writing a letter that can be use against me. He advised me to stop it but it didn't tell him that I saved it at Chief Cook USB modem, he also advised me to do another letter again if incase chief officer would not accept it, I will tell them that I cannot do a promissory letter that would put my career in problem and if they insist, told them that "If you want me to do a letter just do it for me by yourself but I won't sign it". With those detailed things that he said to me I can feel something that is pushing him to use me and grab his offer to complain and I will also have a chance to go home with full payment salary by using ITF or AMSA he added, because my name was already tainted at NYK and that I have to fight at least. He gave me a scratch of paper listed all the things that I have to complain though I didn't asked for it, once we reach or had a signal from Australia will be asking first ITF advised to have a concrete complain against captain. This plan was bothering me so at night I talked to Chief Cook about ITF and AMSA at the very beginning he is clearly against it, he said "MESS" Don't do that I can talk to captain if you have problem can work it out without doing that horrible things, that is a very big problem and many people will be involved, he said in a loud voice "Who advised that to you? I will talk to him maybe I could explain it to him while you were listening to stop him; this was the first involvement of Chief Cook in my situation. August 22, 2012 at night in Raul Vercede cabin, Chief Cook and I get in, we talked about it and OLR/B Raul Vercede gave all assurance if I will pursue ITF I can go home without paying my plane ticket and my reliever, plus I could get my whole salary in the entire duration of my contract while Chief Cook is listening, he even showed to us the calling card of his contacts at Australia New Castle. Chief Cook said to OLR/B Raul Vercede messman can still polish all his deficiencies because I am here I can help him and we ended the conversation. August 28, 2012 the second time we talked about it, Chief Cook told me that "MESS" all crew here will be involved in the case if you will pursue, I said to him directly "Yorz" I have no longer plan to pursue it I am ready to face my consequence, I am ready to go home and he said that's good you can still transfer to other fleet if you want as long as you would not get NFR remarks, I said to him this is my fate "Yorz" maybe seafaring is not for me. At night, I finished my work around 8:00pm I went to my cabin to change clothes, I know OLR/B Raule Vercede knows that I am already at my cabin because he can hear every time I open my cabin's door while changing my clothes suddenly, my phone rang and it was OLR/B Raul Vercede I tried not to talk to him, but he said come in my cabin we'll just talk, I thought it was just a common work related conversation but he open up again about ITF. He said "Anu Tuloy na natin" Don't tell it with mayor that we talked again because he don' like it I just nod my head he also mentioned that we're getting nearer to Australia packed all your things because once we get there or had a signal we'll be calling authorities, for you to easy grabbing your luggage once they

*conducted an investigation onboard and tell them that you want to be interviewed outside the ship and I said, I have to go, I need to wash my clothes and the officers bed sheet, while opening the door Chief Cook was at the entrance and I stop there again, we locked the door and talk silently. Chief Cook reiterate again "MESS" I told you not to pursue it because you will be also detained, I told him "Yorz, I have no longer plan to pursue it because I don't wan't to compromise my classmate who endorsed me at NYK and I realized that captain is just asking me a letter to acknowledge my mistakes, he actually smiled and added your classmate will also be pine P 250,000 to NYK-FIL if incase I did, I looked at OLR/B Raul Vercede face and I know he wants to say something but chief Cook was continued telling all explanation and the consequences that possibly will arise and I replied, right "Yorz" I and then OLR/B Vercede butted-in your so loyal with NYK and he nodded his face to us, then Chief Cook wants me to step out he said to me you have to wake up early tomorrow, better to sleep at this time it was already 10:45pm and we went to our cabin but he warned me not to talk to vercede again. August 29, 2012 at night around 9:30pm I went out from my cabin for pee he was actually waiting me outside already waiting to open my door he said to me come here and I also get into his cabin he showed me again all his calling card and gave me a sample letter about the case with his previous job, after 15 minutes that I stayed inside Chief Cook is knocking the door he was pissed off I know and seems irritated with me, he said I look for you in your cabin and your none there what are you doing here again? Raul Vercede butted-in we're just talking and Chief Cook replied I told you to stop it, "messman won't pursue his plan because he realized that it was wrong and we had talked about it already, I am working this out for him with captain and Chief Officer because I know how it feels to be a messman, and we ended the conversation. I know OLR/B Raul Vercede was embarrassed with the vivid and clear statement of Chief Cook and we went out. August 30, 2012 around 5:25am I am already at the galley waiting for Chief Cook because he commonly arrived early 5:30am. I prepared the galley, cooked rice do the table settings and fetch water, around 6:55am I am done with my preparation and prepared the food for the crew and officers.*

*I would like to say sorry to hachiuma steamship co. ltd. And nyk line because I have approached wrong person to help me with my shortcomings. I don't like to compromise the company's interest; I am not a bad person. I hope you will forgive me!" [sic]*

- 81) Mr Martinez's personal statement in effect indicates:
- a) He had told Mr Llanto that he no longer planned to pursue Mr Vercede's plan to report the harassment and bullying he endured to the ITF;
  - b) He allegedly said to Mr Llanto "*I am ready to face my consequences, I am ready to go home*". Mr Llanto allegedly said to him "*That's good you can still transfer to another fleet if you want, as long as you would not get NFR remarks*". It appears Mr Llanto is saying that he would get a poor rating which would prevent him from working on other vessels. Mr Martinez said:

*"This is my fate. Maybe seafaring is not for me";*

- c) Mr Martinez further said that later that night on 28 August 2012 at around 8pm, whilst in his cabin, Mr Vercede rang him on his cabin phone and asked Mr Martinez to come to Mr Vercede's cabin. Mr Martinez met Mr Vercede who told him that as they were getting nearer to Australia, Mr Martinez should pack all his things and that *"once we get there or had a signal we will be calling authorities and when the authorities conduct an investigation on board you should tell them that you want to be interviewed outside the vessel."* Mr Martinez then spoke to Mr Llanto again who, according to Mr Martinez, repeated that he should not pursue Mr Vercede's plan *"because you will be detained"*. Mr Martinez said *"Yorz (nickname for Llanto) I have no longer plan to pursue it because I don't want to compromise my class mate who endorsed me at NYK and I realise that captain is just asking me a letter to acknowledge my mistakes"*. Mr Martinez says that there was a discussion involving Mr Vercede, Mr Llanto and Mr Martinez about whether they should pursue Mr Vercede's plan; and
- d) On 29 August 2012, according to Mr Martinez's Personal Statement, there was another discussion with Mr Vercede and Mr Llanto on the same issue. Mr Llanto allegedly told Mr Vercede to stop talking to Mr Martinez. Mr Llanto allegedly said to Mr Vercede: *"Mess man won't pursue his plan because he realized that it was wrong, we have talked about it already. I'm working this out for him with captain and chief officer because I know how it feels to be a mess man."*<sup>64</sup> Mr Martinez said that he knew that Mr Vercede was embarrassed by Mr Llanto's statement.
- 82) As submitted by Counsel Assisting, I am treating the contents of what is stated in the Personal Statement with caution as Mr Martinez told the AFP in April 2013 that Captain Salas required him to write this statement and told him to *"add that part where it says that [Mr] Vercede is motivated by trying to live in Australia"*.<sup>65</sup>
- 83) Moreover, in his personal statement to clear his conscience, Mr Martinez indicates that he had saved a promissory letter and various other statements on the Chief

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<sup>64</sup> Exhibit 1/1A/4A/362: personal statement of Jessie Martinez.

<sup>65</sup> Exhibit 3/1/1/A 1204: record of interview of Jessie Martinez.

Cook's USB modem.<sup>66</sup> This may have been the USB that was given to Captain Salas on 29 August 2010. Captain Salas may well have been particularly angry with the Chief Cook, believing that Mr Llanto had conspired with Mr Vercede and Mr Martinez to make complaints about the ship and himself. However, I note that Captain Salas denies this hypothesis and says that he did not record or delete anything on Mr Llanto's USB. Captain Salas did not recall seeing anything on the USB other than material relating to food provisions.<sup>67</sup>

**c) Was there a culture of silence and blacklisting of crew?**

84) Documents produced by NYK exposed a number of fairly incendiary evaluation reports by Captain Salas in respect of many of the crew of the MV Sage Sagittarius in particular in relation to Mr Vercede, Mr Penoliar, Mr Pallera and Mr Marcos. Captain Salas is highly critical of these crew members and refers to the fact that they either participated in or knew about the threat by Mr Vercede to report the Captain and the ship to the ITF. For example the evaluation report with respect to Mr Penoliar states "*putting the vessel, owner, master and crew into trouble in difficult situation by giving assistance in favour of ITF. Recommended not for rehire.*"<sup>68</sup> By contrast, Captain Salas gave a very positive evaluation report of Mr Collado.<sup>69</sup>

**d) Did Captain Salas facilitate the sale of guns aboard the Vessel and carry out other questionable activities?**

85) The AFP became aware in about April 2013, that Captain Salas had been facilitating the purchase of guns by distributing firearms applications and/or licences to crew members on board the Vessel. Further investigation regarding this issue revealed the following:

a) A crew member said that he felt pressured to purchase a 9mm pistol for USD \$625 from a contact of Captain Salas;<sup>70</sup>

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<sup>66</sup> Exhibit 1/1A/4A/361: personal statement of Jessie Martinez.

<sup>67</sup> Transcript of evidence of Captain Salas, 29/05/15, T59.39-60.09.

<sup>68</sup> Exhibit 23/1/pp 270- 273.

<sup>69</sup> Exhibit 23/1/p 274.

<sup>70</sup> Exhibit 3/1/3/A 297-361: record of interview of crew member.

- b) All but 2 of the crew – Mr Vercede and Mr Marcos – purchased guns in order to be in the Captain’s ‘good books’. Accordingly, Captain Salas openly berated Mr Vercede and Mr Marcos in front of the crew;<sup>71</sup> and
- c) Moreover, a crew member reported that on the day that Mr Llanto disappeared, Captain Salas told everyone to throw away the gun brochures because he believed that Mr Martinez was going to report this to the ITF.<sup>72</sup> In his interview, the crew member was very concerned that conveying to the AFP the information about the guns would risk his own safety.<sup>73</sup>
- 86) Captain Salas reportedly had connections in the Philippine Navy. When the crew members returned to Manila, the crew who had paid Captain Salas could obtain their firearms from Captain Salas’ contacts.<sup>74</sup>
- 87) When giving oral evidence at the inquest, Captain Salas admitted that he facilitated the purchase of guns on board the Vessel by making phone calls to a contact he had in the Philippines and organising for the crew to fill in applications for the purchase of the guns. Captain Salas collected the money for the guns and kept a small commission for his administrative efforts. The evidence indicates that a single weapon was purchased for USD\$625 and some crew members paid a few thousand dollars. Captain Salas said most of the crew were interested in purchasing guns and that he did not think that his employer was that concerned about his role in facilitating the purchase of guns because it was not relevant to the “safe navigation of the vessel”.<sup>75</sup> Captain Salas admitted that when he realised the Australian Police were going to investigate Mr Llanto’s disappearance, he requested all the crew to return the brochures relating to guns to him. One of the reasons he did that was because he did not want the Australian Police to know that he was arranging for guns to be purchased on the ship.<sup>76</sup>

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<sup>71</sup> Ibid A 449-456.

<sup>72</sup> Ibid A 382; Exhibit 1/1A/3/[155]: statement of Federal Agent Raven.

<sup>73</sup> Exhibit 3/1/3/A 389: record of interview of crew member.

<sup>74</sup> Exhibit 3/1/1/A 1342-1347: record of interview of Jesse Martinez.

<sup>75</sup> Transcript of evidence of Captain Salas, 29/05/2015, T36.17-T38.15.

<sup>76</sup> Ibid T41.10-41.13.

- 88) There was also evidence that Captain Salas stopped the Vessel on the way to Australia in order to trade liquor for tuna. This was against NYK policy. Captain Salas admitted to trading alcohol on board the ship for fresh fish and that trading occurred when the Vessel slowed down for the trade to occur. According to Mr Martinez, Mr Vercede was going to report that matter to the ITF.<sup>77</sup> There was also an issue about the payment of overtime.<sup>78</sup>
- 89) The conduct of Captain Salas, most of which was conceded by him during the course of his oral evidence, speaks volumes about the manner in which he ran his ship which in my view was through bullying and intimidation.

### **The disappearance and suspected death of Cesar Llanto**

- 90) The evidence before me indicates that Cesar Llanto, the Chief Cook on board the Vessel, went missing at about 8.00am on Thursday, 30 August 2012. Extensive searches of the Vessel failed to locate him. He is presumed to have gone overboard and his body has never been recovered. Accordingly, he is presumed dead.
- 91) At the time of Mr Llanto's disappearance, the Vessel was en route from Japan to Newcastle, Australia. The Vessel was in international waters, in the Coral Sea, about 450 nautical miles north east of Cairns.
- 92) In 2012, namely at the time of his disappearance, Mr Llanto was an experienced seaman, having worked on merchant vessels for over 20 years.<sup>79</sup> He was 42 years old and a Filipino citizen.<sup>80</sup> He was married to Ms Nelia Llanto, and they had two children, a 12 year old boy called Czar and a 7 year old girl called Czarina.<sup>81</sup>

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<sup>77</sup> Exhibit 3/1/1/A 323, 1318-1327: record of interview of Jessie Martinez; Exhibit 3/1/3/A 292,402 record of interview of crew member; Exhibit 1/1A/6C/p285- 287: record of interview of Solomon Layson.

<sup>78</sup> Exhibit 1/1A/6C/285: record of interview of Solomon Layson; Mr Vercede's handwritten notes sent by Captain Salas to AMSA.

<sup>79</sup> Exhibit /1A/1/p 2: report of suspected death to Coroner dated 11 January 2013 (Mr Llanto had been working in the industry since 1989).

<sup>80</sup> Ibid pp 1-2: (Mr Llanto was born on 1 November 1969).

<sup>81</sup> Exhibit 1/1B/31/[3]: statement of Nelia Llanto.



- 93) Mr Llanto boarded the Vessel at Kudamatsu port in Japan on 17 August 2012 and commenced his new employment contract as the chief cook on the Vessel.<sup>82</sup>
- 94) Less than a fortnight later, on 30 August 2012, Mr Llanto disappeared from the Vessel.
- 95) In order to try and ascertain the circumstances surrounding the disappearance of Mr Llanto, it is important in my view to firstly analyse in detail his last known movements as reported by the crew that interacted and saw him on the morning of 30 August 2012. In this regard, I note that there are a number of conflicting versions of those crucial final moments when it is clear that Mr Llanto was still alive. Secondly, I will consider the forensic evidence available and, finally, the response taken by those in charge when Mr Llanto was discovered to be missing.

**a) What were the last known movements of Mr Llanto?**

- 96) The weather conditions on the morning of 30 August 2012 were described by the crew as steady, not rough. The “*winds were a strong breeze with a speed range of 22 to 27 knots*”.<sup>83</sup> The sea was described as rough, but the weather conditions had little to no effect on the Vessel’s stability due to its size and mass.<sup>84</sup>
- 97) The evidence before me indicates that:
- a) At about 5.30am, Mr Martinez started work in the galley.<sup>85</sup> Mr Martinez has given conflicting accounts as to whether Mr Llanto was already there when he arrived for work.<sup>86</sup> Mr Martinez described Mr Llanto’s demeanour as “*normal and happy, no different from previous mornings*”.<sup>87</sup>

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<sup>82</sup> Exhibit 1/1A/1/p3: report of suspected death to Coroner dated 11 January 2013; Exhibit 1/1B/31/[4]: statement of Nelia Llanto.

<sup>83</sup> Exhibit 3/1/3/A 191-197: record of interview of crew member; Exhibit 1/1A/1/p 3: report of suspected death to Coroner dated 11 January 2013; Exhibit 1/1A/3/[52]-[53]: statement of Federal Agent Raven.

<sup>84</sup> Exhibit 1/1A/3/[51]-[53]: statement of Federal Agent Raven.

<sup>85</sup> Exhibit 1/1A/4/353/[7]: statement of Jessie Martinez.

<sup>86</sup> Exhibit 3/1/1/ A 565: record of interview of Jessie Martinez.. In his record of interview of 7 September 2012, Mr Martinez says that Mr Llanto was already there: Exhibit 1/1A/4D/p 444; whereas in his record of interview of 11 April 2013, he says that Mr Llanto arrived at 6:00am: Exhibit 3/1/1/A 565.

<sup>87</sup> Exhibit 3/1/1/A 567-568, 573: record of interview of Jessie Martinez.

- b) Between 7am and 7:45am the majority of the crew members attended the mess room for breakfast. During that time it is reported that Mr Llanto continued preparing food in the galley and Mr Martinez continued serving breakfast. Mr Mercene, the Second Engineer, saw Mr Llanto at about 7.15am wearing white pants and a white shirt.<sup>88</sup> The Oiler Mr Matunog said that between 7:20am and 7:40am, he had breakfast with Able Seaman Mr Angag and saw Mr Llanto and Mr Martinez.<sup>89</sup> Mr Penoliar said that between 7:25am and 7:50am, he had a talk to Mr Llanto about the ice-maker and Mr Llanto appeared his normal self.<sup>90</sup>
- c) At about 7am that day, Mr Martinez saw Oiler Mr Vercede enter the crew mess and have his breakfast alone. Mr Martinez said this was unusual for Mr Vercede to be eating breakfast this early because he normally had breakfast at 8am. According to Mr Martinez, after finishing breakfast, Mr Vercede entered the galley and quietly nudged Mr Martinez and asked where Mr Llanto was.<sup>91</sup> Mr Vercede said to Mr Martinez that they should go ahead with the ITF/AMSA plan but not to tell Mr Llanto. Mr Martinez told Mr Vercede that he was not going to be pressured into complaining and he was not going to pursue it. Mr Martinez said there was no reaction from Mr Vercede when he made that statement. At the time Mr Llanto was in the vegetable store gathering supplies. The vegetable stores were located on "A" deck next to the galley.
- d) After that conversation Mr Vercede is reported to have departed the galley and the First Engineer Mr David arrived and had his breakfast in the officers' mess.<sup>92</sup> About seven minutes after Mr Vercede left, Mr Llanto arrived back from the vegetable store and started to prepare the spring roll mixture in the galley.<sup>93</sup> It was the evidence of Mr Martinez that when he left the galley, Mr Llanto was in the galley and Mr Collado and Mr David were

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<sup>88</sup> Exhibit 1/1A/12/p 452: statement of Glenn Mercene.

<sup>89</sup> Exhibit 1/1A/16A/p 449: statement of fact of Virgilio Matunog.

<sup>90</sup> Exhibit 1/1A/14A: statement of fact of Harvey Penoliar.

<sup>91</sup> Exhibit 3/1/1/A 591-595: record of interview of Jessie Martinez.

<sup>92</sup> Ibid A 758.

<sup>93</sup> Ibid A 758-763.

in the officers' mess room.<sup>94</sup>

- e) It was the evidence of Mr Martinez that he left the galley to see Chief Officer Layson on the bridge. He says he did so because Mr Vercede had shown him "ongoing court documents" which may be AMSA cards that Mr Vercede had shown him on the night of 29 August 2012. Mr Martinez realised that the Vessel was about to come into mobile phone contact range with Australia, which would enable Mr Vercede to contact the ITF.<sup>95</sup>
- 98) I note that Mr Martinez has given different versions of the time when he left the galley, namely, either at 7.45am or 7.55am.<sup>96</sup> Able Seaman Mr Anghag said that at 7:52am he met the Chief Cook at "A Deck door" going upstairs. Mr Llanto asked Mr Anghag if he had seen Mr Martinez. Mr Anghag said he did not see him and proceeded to the dressing room.<sup>97</sup> The account of Mr Anghag is consistent with Mr Llanto arriving at the bridge at between 7.53am-7.55am.
- 99) Mr Moralde stated that he saw Mr Llanto on the bridge at 7.55am, but does not know why he was there as he was busy with other duties.<sup>98</sup> I note that Mr Moralde in his Statement of Fact dated 31 August 2012 does not mention seeing Mr Llanto at all on 30 August 2012.<sup>99</sup>
- 100) Mr Visto stated that he saw Mr Llanto at about 7.55am on the bridge, and that he and Mr Llanto arrived on the bridge at the same time but from different entrances. He says that Mr Llanto was looking for the Messman although he does not indicate in his statement how he knew that. Mr Visto says he saw Mr Martinez talking to

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<sup>94</sup> Ibid A 786-787 (Note A788: translator says in next answer that no-one else was present because everyone had finished eating).

<sup>95</sup> Ibid A 773-780.

<sup>96</sup> Mr Martinez says that he saw Mr Llanto enter the bridge at 7:47am. In his one page statement of facts he states that he was at the bridge with the Chief Officer and AB-C between 7:45am and 7:55am and that between 7:55am and 8:00am he was at the bridge with the Chief Officer, the Chief Cook and Third Officer Jose Visto: Exhibit 1/1A/4C.

<sup>97</sup> Exhibit 1/1A/17/p 88-89/[8]: statement of Aldwin Anghag; Exhibit 1/1A/17B/p 99: statement of fact of Aldwin Anghag.

<sup>98</sup> Exhibit 1/1A/8/p 509/[9]: statement of Brendo Morale (note Mr Moralde says he does not want to provide any more information than his very short statement).

<sup>99</sup> Exhibit 1/1A/ 8A: statement of fact of Brendo Moralde.

Mr Layson but could not hear what they were speaking about.<sup>100</sup> Mr Visto did not see Mr Llanto again.

101) Mrs Llanto gave evidence that her husband would not have left the galley on 30 August 2012 without orders from his superior, namely, Captain Salas.<sup>101</sup> This is consistent with the evidence of [REDACTED] who stated that Mr Llanto went to the bridge shortly before 8am on 30 August 2012 because he was summoned by Captain Salas.

102) The evidence before me indicates that:

a) When Mr Martinez arrived on the bridge, he had a conversation with Chief Officer Layson to the following effect:

Mr Martinez said: *“Chief Officer, can I talk to you please?”*

Chief Officer Layson said: *“What is it regarding?”*

Mr Martinez said: *“I have worked out Vercede’s plan and I am quite scared”.*

Mr Martinez said: *“Once we have a signal [mobile phone signal] Vercede is going to call the ITF and ask for concrete advice to be used against the Captain.”<sup>102</sup>*

b) Chief Officer Layson subsequently called Captain Salas who was in his cabin on E Deck by telephone. The conversation did not last more than a few sentences. According to Captain Salas, Chief Officer Layson told him he would be coming to the Captain’s cabin with Mr Martinez.<sup>103</sup> After the telephone call Mr Martinez continued explaining the ITF/AMSA plan in more detail to Chief Officer Layson.

c) About one or two minutes after the telephone call between Captain Salas and Chief Officer Layson concluded, at approximately 7:58am, Mr Llanto arrived on the bridge via the staircase. I note that the staircase is situated in the centre of the Decks slightly on the port side of the Vessel. Both

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<sup>100</sup> Exhibit 1/1A/9/p 627/[9]-[11]: statement of Jose Visto.

<sup>101</sup> Transcript of evidence of Nelia Llanto, 28/05/15, T39.12-39.14.

<sup>102</sup> Exhibit 1/1A/4/p 353/[9]: statement of Jessie Martinez; Exhibit 1/1A/4D/p 409: record of interview of Jessie Martinez.

<sup>103</sup> Exhibit 1/1A/7B/[17]: statement of Captain Salas.

Officer Layson and Mr Martinez observed that Mr Llanto was wearing a black apron with white pants and had ground meat and vegetables on his hands.<sup>104</sup> According to Mr Martinez, Chief Officer Layson said to the Chief Cook *"Later, we are still talking"*.<sup>105</sup>

- 103) The evidence of Chief Officer Layson can be summarised as follows:
- a) That at 7:57am Mr Llanto arrived on the bridge;
  - b) He noticed food on Mr Llanto's hands; and
  - c) Mr Llanto said he needed to talk to the Messman. Mr Llanto looked angry at the Messman. According to Chief Officer Layson, he told Mr Llanto that he had had an important discussion with the Messman and said he could stay. Mr Llanto said *"It's the messman's problem"* and left the bridge and went down one flight of stairs towards E Deck.
- 104) Whatever the precise time Mr Llanto arrived on the bridge, his presence on the bridge in my view was significant. Mr Llanto clearly believed that he needed to speak to Mr Martinez so urgently that it was necessary to interrupt his duties cooking breakfast in the kitchen to go up five levels from the galley to the bridge. It is also significant that Mr Llanto had not completed cooking the hot dogs and vegetables for breakfast.<sup>106</sup>
- 105) Mr Llanto was never seen again.
- 106) The evidence indicates that Mr Llanto never returned to the galley because the spring rolls mixture Mr Llanto was preparing for breakfast was still on the bench when Mr Martinez came back to the galley 10 or 15 minutes later.<sup>107</sup> Moreover, no-one saw Mr Llanto return to the galley.
- 107) In contrast, it was the oral evidence of [REDACTED] that during the evening of 30 August 2012, after the disappearance of Mr Llanto, he had separate discussions with both Mr Moralde and Mr Martinez. His conversation with Mr Moralde occurred

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<sup>104</sup> Exhibit 1/1A/4D/p 411- 413: record of interview of Jessie Martinez; Exhibit 1/1A/6/p 259/[14]: statement of Solomon Layson.

<sup>105</sup> Exhibit 1/1A/4/[11]: statement of Jessie Martinez.

<sup>106</sup> Exhibit 1/1A/4D/p 426-428: record of interview of Jessie Martinez.

<sup>107</sup> Exhibit 3/1/1/A 958: record of interview of Jessie Martinez.

in the doorway between his own and Mr Moralde's cabins.<sup>108</sup> Mr Moralde told [REDACTED] that:

- a) Captain Salas rang the Chief Cook by telephone when the Chief Cook was in the galley to summon him to the bridge;<sup>109</sup>
- b) Captain Salas had called Mr Llanto to the bridge because the Messman was already there and he had complained about being punched and slapped by the Captain many times; and
- c) He saw Mr Llanto come onto the bridge and he saw Mr Llanto and the Captain quarrelling whilst they were on the bridge,<sup>110</sup> and that the quarrel was about Mr Martinez' complaint.<sup>111</sup>

108) Similarly Mr Martinez said to him that:

- a) Mr Llanto and Captain Salas had had an argument regarding Mr Martinez' complaint, and his decision to "*call the authorities*"; and
- b) This argument took place on the bridge.<sup>112</sup>

109) [REDACTED] gave evidence to the effect that Chief Officer Layson was very angry with him for speaking to Mr Martinez about the matter<sup>113</sup> and following his conversation with Mr Martinez two crew members, one of which was Mark Encanto,<sup>114</sup> were then assigned to guard Mr Martinez so he would not talk to anybody.<sup>115</sup> I note that [REDACTED] denied that he threatened Mr Martinez in any way.<sup>116</sup>

110) [REDACTED] made no mention of these conversations, namely, what he was told by

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<sup>108</sup> [REDACTED]

<sup>109</sup> Ibid T14.12-15; T8.10-8.13.

<sup>110</sup> Ibid T10.50-11.15.

<sup>111</sup> Ibid T11.19-11.22.

<sup>112</sup> Ibid T31.46-32.09.

<sup>113</sup> Ibid T32.12-32.19.

<sup>114</sup> Ibid T32.29.

<sup>115</sup> Ibid T32.18-32.19.

<sup>116</sup> Ibid T33.11-33.16.

Mr Moralde and Mr Martinez in his statement to the AFP. When cross examined about this by Counsel Assisting, he stated that he did not tell the AFP about the conversations because the AFP were simply asking him the sequence of events, the places and times, that he was doing particular things.<sup>117</sup> Moreover, he stated that during the investigation “we were all feeling afraid”,<sup>118</sup> and “we are fearing one of us will be next after the disappearance of Cesar Llanto”.<sup>119</sup>

- 111) On balance I accept that [REDACTED] was afraid of Captain Salas.<sup>120</sup>
- 112) The evidence of Captain Salas came from a number of sources, namely his:
- a) First and second versions of his Statement of Facts;<sup>121</sup>
  - b) First ERISP;<sup>122</sup>
  - c) Second ERISP;<sup>123</sup> and
  - d) Oral evidence.
- 113) The initial evidence of Captain Salas (prior to his oral evidence before this Inquest) in relation to the period leading up to the disappearance of Mr Llanto can be summarised as follows:
- a) That he had a “short meeting” with Chief Officer Layson and Mr Martinez in his cabin at 8.08am;
  - b) During this short meeting, Mr Martinez informed him that:
    - i) Mr Vercede forced him to write a letter detailing his complaints about the Captain, so that Mr Vercede could stay in Australia to work;<sup>124</sup> and

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<sup>117</sup> Ibid T11.43-11.45.

<sup>118</sup> Ibid T12.41-12.42.

<sup>119</sup> Ibid T13.12-13.13.

<sup>120</sup> Ibid T13.19.

<sup>121</sup> Exhibit 12/3, 8: Bundle of documents relating to Captain Salas.

<sup>122</sup> Exhibit 1/1A/7: record of interview with Captain Salas.

<sup>123</sup> Exhibit 3:1/4: record of interview with Captain Salas.

<sup>124</sup> Exhibit 1/1A/7/p 536-537: record of interview of Captain Salas; Exhibit 1/1A/4D/419-420: record of interview of Jessie Martinez.

- ii) Mr Martinez said that the letter was written on Mr Llanto's laptop;<sup>125</sup>
  - c) He ordered Officer Layson to immediately accompany Mr Martinez to his cabin to delete that letter of complaint from his laptop.<sup>126</sup> I note that AFP searches on Mr Martinez's computer reveal that a "complaints ITF letter" had been deleted from Mr Martinez computer on 30 August 2012 at 9.36am AEST, and that attempts to restore this file by the AFP were unsuccessful;<sup>127</sup> and
  - d) That after this "short meeting" he took the elevator down to the galley area for his breakfast where he arrived at about 8.10am<sup>128</sup> where he remained until about 9am.<sup>129</sup>
- 114) Captain Salas provided a very detailed chronology of what he did in the galley area over the period of 50 minutes that he was there for breakfast on the morning of Mr Llanto's disappearance, which included that:
- a) He saw Mr Martinez preparing his food;
  - b) He asked Mr Martinez where the Chief Cook was and that Mr Martinez replied that he did not know.<sup>130</sup>
  - c) He ate his breakfast.
  - d) At about 8.30am, he asked Chief Officer Layson to call Mr Llanto by phone in his cabin;
  - e) He also asked Mr Martinez to check the provision chamber (where the food is kept) to locate Mr Llanto. Mr Martinez went out for 2 minutes and told Captain Salas that the Chief Cook was not there;
  - f) At about 8.40am, Captain Salas asked Chief Officer Layson to page the

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<sup>125</sup> Transcript of evidence of Captain Salas, 29/05/2015, T18.42-18.43; T20.25-20.26.

<sup>126</sup> Exhibit 1/1A/4D/p 419: record of interview of Jessie Martinez.

<sup>127</sup> Exhibit 1/1A/3/[129]: statement of Federal Agent Scott Raven.

<sup>128</sup> Exhibit 1/1A/7/p 546: record of interview with Captain Salas.

<sup>129</sup> Ibid pp 548,554.

<sup>130</sup> Ibid p 547-548.



Chief Cook across the Vessel's paging system;<sup>131</sup>

- g) He continued eating and after about 5 minutes asked Chief Officer Layson to page Mr Llanto again;
  - h) At about 8.50am, Captain Salas then asked Chief Officer Layson to go to Mr Llanto's cabin.<sup>132</sup> Chief Officer Layson went to Mr Llanto's cabin and found it was locked; and
  - i) At about 9am Captain Salas left the mess room.
- 115) In his evidence before this inquest on 17 February 2016, Captain Salas denied that he rang Mr Llanto and asked him to come to the bridge. He also denied seeing Mr Llanto on the bridge at any time on 30 August 2012.<sup>133</sup>
- 116) Moreover in his oral evidence on 29 May 2015 he initially:
- a) Affirmed that his original statement which was to the effect he went to the galley at 8:10am was accurate;
  - b) Denied Mr Martinez's allegation that he did not arrive at the galley until about 8:25am; and
  - c) Stated that he said he was "certain he arrived earlier than that".<sup>134</sup>
- 117) The detailed chronology provided by Captain Salas was clearly inconsistent with the email Captain Salas sent to Captain Franco Serrano at 8:48am on 30 August 2012 in which he advised Captain Serrano that at 8:00am the Messman went to his cabin with the Chief Officer and apologised for all his offences and revealed that Oiler Mr Vercede was the one pushing him not to make an apology.
- 118) When confronted with the email referred to in the preceding paragraph by Counsel Assisting, Captain Salas:
- a) Initially denied that the email was sent at 8:48am and stated that must be GMT time;<sup>135</sup>

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<sup>131</sup> Ibid p 551.

<sup>132</sup> Ibid p 553 (confirmed by Chief Officer Layson: Exhibit 1/1C/431/p 852).

<sup>133</sup> Transcript of evidence of Captain Salas, 17/02/2016, T19.36-19.44.

<sup>134</sup> Transcript of evidence of Captain Salas, 29/05/2015, T45.05-45.13.

<sup>135</sup> Ibid T46.21-46.24.

- b) Later acknowledged that GMT time could not be the case because of the relevant time difference;<sup>136</sup>
  - c) Finally admitted to sending the email from the bridge at 8.48am on 30 August 2012;<sup>137</sup> and
  - d) Admitted that if he had in fact sent the email at 8:48am it meant that he could not have been in the galley for the whole time between 8:10am and 9:00am.<sup>138</sup>
- 119) Captain Salas conceded he sent further emails on 30 August 2012 that in my view further corroborate that the times stamps that the emails bear were correct as opposed to GMT time. These emails include:
- a) At 10.25 (11.25am AEST), he sent an email from the bridge to Mr Monji stating: *"I have returned the vessel to the last position he was seen and now presently searching for him. I have contacted the Response Coordination Centre (RCC) Australia and made a local broadcast already..."*<sup>139</sup> Captain Salas admitted that the timing of this email is consistent with his timeline he provided to NYK on 31 August 2012 that at 10:20am, he made a call to RCC Australia.<sup>140</sup>
  - b) At 2:18pm he sent a further email to Captain Serrano. In that email he stated:
 

*"Please be advised that mess man also revealed now that upon getting signal from coast of Australia oiler Vercedes will contact the ITF or AMSA and will advise his plan against the vessel".* (emphasis added)

I am satisfied that this email was almost certainly sent around about 2:18pm because Captain Salas admitted that it was during the search for Mr Llanto that he was told by Mr Martinez that the chief cook was aware of Mr Vercede's ITF plans. Captain Salas conceded that it was such

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<sup>136</sup> Ibid T49.21-49.35.

<sup>137</sup> Transcript of evidence of Captain Salas, 17/02/2016, T23.21-23.23

<sup>138</sup> Transcript of evidence of Captain Salas, 29/05/2015, T49.35-49.39.

<sup>139</sup> Exhibit 23/1/p 17: NYK documents.

<sup>140</sup> Exhibit 12/3/8: statement of fact signed by Captain Salas; Transcript of evidence of Captain Salas, 18/02/2016, T9.30-9.33.

important news that he needed to immediately forward that information to Captain Serrano.<sup>141</sup> Accordingly, I am satisfied that this email fits entirely with the 2:18pm time the email was sent and inconsistent with the GMT time which would mean he had not sent that email until past midnight.

- 120) Accordingly, I am satisfied on balance that the emails written by Captain Salas on 30 August 2012 were sent at the times which are recorded on the emails and there is no evidence before me which is sufficient to raise doubt about the accuracy of those times and dates.<sup>142</sup>
- 121) It was submitted by Counsel Assisting that the precise movements and whereabouts of Mr Collado and Mr Vercede, and all of the engine crew on the morning of 30 August 2012, are important because:
- a) They are relevant to any possible knowledge or involvement in Mr Llanto's disappearance; and
  - b) They may shed light on Mr Collado's own death 2 weeks later.
- 122) The evidence of Mr Vercede which is found in the statement he provided to the AFP on 7 September 2012<sup>143</sup> (seven (7) days after the disappearance of Mr Llanto), can be summarised as follows:
- a) At about 7:50am on 30 August 2012 he started his handover with Oiler Mr Matunog in the engine control room, which took about 10 minutes;<sup>144</sup>
  - b) At about 8:00am he left the engine control room and went to the upper deck locker via the elevator to change his shoes. He went upstairs to A Deck where the galley is located and had breakfast there. He walked into the galley, which was empty. He took his breakfast to eat in the crew mess;
  - c) Two or three minutes later Mr Collado came into the crew mess from the galley and asked him if the Messman was there, Mr Vercede said:  
*"No, I'm the only one here";*

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<sup>141</sup> Transcript of evidence of Captain Salas, 29/05/2015, T47.23-47.25.

<sup>142</sup> *Evidence Act 1995*, ss. 161(1)(c) and 71(b).

<sup>143</sup> Exhibit 1/1A/5: statement of Raul Vercede.

<sup>144</sup> *Ibid* p 621/[18].

- d) He then said he spent 10 minutes eating breakfast and he was alone the whole time;
  - e) When he finished breakfast at about 8:10am he went to his cabin, used the toilet, brushed his teeth and got ready for his overtime shift; and
  - f) At about 8:30am, he left the cabin and went back down to the engine control room via the changing room on the upper deck. He did not see anyone until he got to the engine control room.
- 123) I note that the account given by Mr Vercede is contradicted by both Mr Moralde and Mr Martinez. Mr Moralde states that he had breakfast in the crew mess between 8:00am and 8.10am and he ate alone.<sup>145</sup> Mr Martinez indicates in his statement that he saw Mr Vercede having at breakfast at 7:00am, which was unusual because he normally had breakfast at 8:00am.
- 124) Mr Mercene corroborates Mr Vercede's account of when he left and returned to the engine control room. His evidence is that:
- a) Mr Vercede worked between 4:00am and 8:00am;
  - b) at 'maybe' a few minutes past 8:00am, Mr Mercene was in the engine control room when he heard Mr Vercede ask Mr Collado if he could take his breakfast; and
  - c) Mr Vercede then left the engine control room and returned by himself when they were assembling the pistons which occurred according to Mr Mercene's time line between 8.21am and 8.30am.<sup>146</sup>
- 125) The only other person who, to a degree, corroborates Mr Vercede's version of events is Mr Collado. In his original statement of fact Mr Collado says that between 7:58am and 8:00am, he went "*Down to engine room passing galley to check ice maker. I saw someone but I'm not sure if Olr [Oiler] Vercede or A/B Brendo Moralde at about 0800H at a distance*".<sup>147</sup>
- 126) The evidence in relation to the movements of the engine crew on the morning of 30 August 2012, is as follows:

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<sup>145</sup> Exhibit 1/1A/8/509/[12]: statement of Brendo Moralde.

<sup>146</sup> Exhibit 3/1/5/A 225-271 record of interview of Glenn Mercene.

<sup>147</sup> Exhibit 1/1A/10A/p 152: statement of fact of Hector Collado.

- a) The tool box meeting commenced at either 7:52am or 8:00am or 8:08am, depending on accounts, although it is possible that the people involved may have congregated until Mr Collado arrived to conduct the meeting. Those who attended were Mr Mercene, Mr Sarita, Mr Penoliar, Mr Pallera and Mr Matunog.
- b) Mr Penoliar said that between 7:40am and 8:00am he went to the engine control room and at about 7:50am Mr Vercede and Mr Matunog were there too.<sup>148</sup> He said that there was a tool box meeting at 8:00am with the engine crew for about 20 minutes. However, Mr Penoliar later said that Mr Collado turned up about 5 to 10 minutes late to that meeting.
- c) The fitter Mr Pallera said that he assisted the Second Engineer assemble a piston with Mr Vercede between 8:20am and 9:00am.<sup>149</sup>
- d) Mr Macaso, the Third Assistant Engineer indicated that between 7:00am and 8.15am, he was sleeping in his cabin when the Duty Oiler rang him with a wake-up call at around 8:15am. He had forgotten to synchronise his alarm clock and it was late by one hour. Accordingly, at 8:15am, following the phone call, he immediately proceeded to the engine control room. He said that between 8:20am and 9:00am he was informed that the Chief Cook was missing and he was instructed to go to the bridge.<sup>150</sup> Therefore, Mr Macaso has no alibi at the time of Mr Llanto's disappearance.
- e) Mr Sarita, the Apprentice Engineer states that between 7:48am and 8:16am he was in the engine control room with the engine crew. He said at 8:15am he asked Mr Matunog what time the Third Assistant Engineer Mr Macaso would finish his duties because he was wondering why he was not able to come down to the engine control room earlier for a tool box meeting.<sup>151</sup> He told the AFP in April 2013 that he called the cabin of Mr Macaso but that no one answered.<sup>152</sup>

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<sup>148</sup> Exhibit 1/1A/14A/p 519: statement of fact of Harvey Penoliar.

<sup>149</sup> Exhibit 1/1A/15A/p 515: statement of fact of Marlino Pallera.

<sup>150</sup> Exhibit 1/1B/24B/p 337: statement of fact of Alex Macaso.

<sup>151</sup> Exhibit 1/1A/13A/p 615: statement of fact of Michael Sarita.

<sup>152</sup> Exhibit 3/1/2/A 131-135: record of interview of Michael Dan Sarita.

- 127) On balance I am satisfied that the evidence indicates that Mr Llanto went missing sometime between 7.55 and 8:00am on 30 August 2012.
- 128) I note that the evidence before me indicates that the following people did not have any alibi or any complete alibi as to their whereabouts at the time that Mr Llanto went missing: Mr Macaso, Mr Collado, Mr David, Mr Marcos, who was sleeping between 0700 and 0900, Mr Camarador, and Mr Garcia.

## **b) Was there any forensic evidence?**

- 129) It was not until 7 September 2012, namely seven (7) days after the disappearance of Mr Llanto that AFP investigators executed a search warrant on the Vessel. The search unsurprisingly found little of significance. What was observed and documented was the following:
- a) Both the stern and starboard side of the port side life boat area consisted of sections with 3 removable yellow chains to allow ease of entry in the event that a lifeboat was required. The AFP discovered that the top chain on the starboard side yellow chain section had been removed;<sup>153</sup>
  - b) However, as can be seen from the photographs of the Vessel taken by the AFP, even when a crew passes beyond the railing and the yellow chains, there is plenty of room to move on board the deck of the Vessel;<sup>154</sup>
  - c) Crime Scene Investigator, Samantha Barton, concluded that there were “areas of disturbance” identified in the lifeboat area. A number of swabs were collected from that area, however, no DNA profiles were obtained from those swabs,<sup>155</sup> and
  - d) The area of disturbance referred to by Ms Barton appears to be a contact mark on the upper horizontal beam of the bow lifeboat support on the bow runner guide. There is also a linear mark on the lower horizontal beam of the bow lifeboat support arm.<sup>156</sup>

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<sup>153</sup> Exhibit 1/1B/39/pp 1188, 1189, 1193.

<sup>154</sup> Exhibit 1/1B/39/pp 1170, 1172, 1180, 1182, 1188.

<sup>155</sup> Exhibit 1/1D/44/pp. 1582-1584: biology report; Exhibit 1/1B/38A/p 1142: statement of Crime Scene Investigator Samantha Barton.

<sup>156</sup> Exhibit 12/29.

- 130) It was the evidence of Kazuhiro Hayashi, General Manager at HSC, that on 4 September 2012 he noticed a toothpick about 3 or 4 metres from that hanging chain.<sup>157</sup> He has indicated its whereabouts on a diagram of the top deck next to the life boat on "A" deck right next to the edge of the Vessel.<sup>158</sup>
- 131) In the view conducted on board the Vessel on 29 September 2014 the then Captain was taken to the area of disturbance being the lifeboat deck. He said:
- a) That there was no reason at all for the Chief Cook to have been in the area near the lifeboats, that is on the water side of the chain, by himself; and
  - b) If anyone was in that area, they were required to wear a safety belt which had been issued by the company.
- 132) Moreover Captain Salas also stated in his oral evidence on 29 May 2015 that he could see no reason why Mr Llanto would go to the edge of the ship.<sup>159</sup>
- 133) However, I am cautious in linking the above observations to the disappearance of Mr Llanto. Firstly, there is no evidence before me as to when the yellow chain section was removed; it could well have been removed before or after Mr Llanto's disappearance. Secondly, the toothpick was never preserved so there is nothing linking it to Mr Llanto but pure speculation.

### **c) What were the responses to the disappearance of Mr Llanto?**

#### **(i) How was Mr Llanto discovered missing?**

- 134) The evidence before me indicates that at about 8.10am on 30 August 2012, Mr Martinez was in the galley with Chief Officer Layson<sup>160</sup> where he served Chief Officer Layson his breakfast but his hot dog was missing. Mr Llanto's job was to cook hot dogs so Mr Martinez set out to look for Mr Llanto.
- 135) Mr Martinez said that Captain Salas arrived at the galley for his breakfast at about 8.35am. Mr Martinez served Captain Salas Japanese fish.<sup>161</sup> Thereafter he went to the provisions chamber with Chief Officer Layson to get the vegetables to serve to

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<sup>157</sup> Exhibit 1/1B/28/p 195-196.

<sup>158</sup> Exhibit 1/1B/28A/p 203: marked up Sage Sagittarius deck plan.

<sup>159</sup> Transcript of evidence of Captain Salas, 29/05/2015, T7.7.39-7.41.

<sup>160</sup> Exhibit 1/1A/4D/pp 423-425: record of interview of Jessie Martinez.

<sup>161</sup> Ibid pp 426, 429.

the Captain and look for Mr Llanto. He could not locate Mr Llanto.

- 136) At about 9:30am, Captain Salas told Third Officer Visto that he had an “instinct, a bad feeling” and ordered him to reverse the Vessel to return it to the position (a reciprocal course) where Mr Llanto was last seen. Captain Salas sounded the emergency alarm and announced all hands to proceed to the bridge.
- 137) A crew member said that after 8.30am, Mr Collado told him that Mr Llanto was missing,<sup>162</sup> however, it is not clear who told Mr Collado of that fact.
- 138) Captain Salas said he went back to his cabin at about 9:00am and called Third Officer Visto (who Captain Salas describes in his evidence as a big tall Indian) and asked him to look for the Chief Cook “‘cause I still needed the list on Friday for the order”.<sup>163</sup>
- 139) At about 9:35am, all available hands were assembled on the bridge and Captain Salas gave orders for a comprehensive search of the Vessel to be undertaken to locate Mr Llanto.

**(ii) What steps were taken to search for Mr Llanto?**

- 140) From about 9:35am to 10:15am a comprehensive search was undertaken of the entire Vessel. Mr Llanto could not be found.
- 141) During the time the search was being undertaken, Captain Salas had numerous communications with his superiors in Japan, including with Kosaku Monji, Superintendent at HSC.<sup>164</sup>
- 142) About 10:20am, Captain Salas notified the RCC – Australia, part of AMSA, of the predicament. Captain Salas also broadcast an urgent and distress signal, via VHF, to other vessels in the region.
- 143) About 11:02am, the Vessel arrived in vicinity of the position where Mr Llanto was reportedly last seen alive, and commenced searching.
- 144) Between about 11:02am on 30 August 2012 to 6:22pm on 31 August 2012, the Vessel, together with other vessels in the vicinity and RC aircraft and marine vessels, searched for Mr Llanto without success (“**the Search**”).

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<sup>162</sup> Exhibit 3/1/3/A 187: record of interview of crew member.

<sup>163</sup> Exhibit 1/1A/7/p 556: record of interview of Captain Salas.

<sup>164</sup> Exhibit 1/1B/29: statement of Kosaku Monji.



145) During the Search Mr Sarita spoke to Captain Salas on the bridge. Captain Salas allegedly said to him:

*“Did you know that Vercede and the mess man and A crew member they have a plan - to turn to the authority against me and ... to get the ship detained.”<sup>165</sup>*

146) It was at this time Captain Salas asked Mr Sarita to monitor Mr Vercede in his cabin.

147) At about 6:00pm on 30 August 2012, while the search for Mr Llanto was underway, Captain Salas arranged for Mr Martinez to sleep in another cabin with another seaman.<sup>166</sup> It was the evidence of Mr Martinez, that when he returned to his cabin to collect his personal belongings he saw Mr Vercede coming out of his cabin. He and Mr Vercede both entered his cabin.

Mr Vercede asked Mr Martinez: *“Where is chief cook?”*

Mr Vercede put his arm around Mr Martinez. Mr Martinez said he was scared Mr Vercede might strangle him.<sup>167</sup>

148) During this encounter Mr Vercede said to Mr Martinez that Mr Llanto might be in the Captain or Chief Officer's cabin because they were the only ones that were not searched that morning.

149) Captain Salas was also asked by Counsel Assisting about the statement made by Mr Vercede on 30 August 2012 that “the only cabins not searched were those of [Captain] Salas and [Chief Officer] Layson”. Captain Salas indicated in his evidence that he had heard that rumour, however, he believed that he had asked the crew to search all the cabins including his own.<sup>168</sup>

150) As Mr Martinez was scared of Mr Vercede he used the excuse of needing to go to the toilet to leave the cabin. Shortly thereafter Chief Officer Layson entered Mr Martinez's cabin and confronted Mr Vercede.<sup>169</sup> Thereafter Mr Martinez and Mr Layson met with Captain Salas to report the incident and the conversation they

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<sup>165</sup> Exhibit 3/1/2/ A 259: record of interview of Michael Dan Sarita.

<sup>166</sup> Exhibit 1/1A/4D/p 388-389: record of interview of Jessie Martinez.

<sup>167</sup> Ibid p 390.

<sup>168</sup> Transcript of evidence of Captain Salas, 29/05/2015, T57.50-58.04.

<sup>169</sup> Exhibit 1/1A/4D/p 397: record of interview of Jessie Martinez.

had just had with Mr Vercede.

- 151) In his April 2013 recorded interview, Mr Martinez said that he was told not to speak to any of the engine crew.<sup>170</sup> One issue is whether the protection offered to Martinez was to ensure that he would not speak to other members of the engine crew about things that were embarrassing to Captain Salas.
- 152) It was the evidence of Captain Salas that he kept Mr Martinez under guard because he feared for his personal safety and that he believed that Mr Vercede posed a threat to Mr Martinez's life.<sup>171</sup>
- 153) On Saturday, 1 September 2012 the search for Mr Llanto was ceased. NYK Line directed Captain Salas to proceed to Newcastle.
- 154) On that same day Mr Martinez signed a "Continuation of my previous Statement of Facts" which set out the people whom he knew had been aware of the "ITF plan", namely the plan to make a complaint to the ITF.<sup>172</sup> Those people were: A crew member, Michael Sarita and Fitter Marlino Pallera. Another unsigned version of this document<sup>173</sup> refers to a "*current situation that is even worsening and life threatening*".
- 155) The Vessel was later directed, in conjunction with Australian authorities, to Port Kembla where it was halted while members of the AFP undertook investigations, including interviews with crew members, and execution of search warrants on board the Vessel.
- 156) Mr Martinez says that Captain Salas was constantly on the phone to HSC or NYK over this period and claimed that Captain Salas was concerned that he might be arrested at this time.<sup>174</sup>

**(iii) Was there an attempt to co-ordinate the statements from the crew?**

- 157) On 30 August 2012, while the search for Mr Llanto was still continuing, Mr Monji the Superintendent of Hachiuma/NYK Line directed Captain Salas to arrange for a

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<sup>170</sup> Exhibit 3/1/1/A 1291: record of interview of Jessie Martinez.

<sup>171</sup> Transcript of evidence of Captain Salas, 29/05/2015, T62.05-62.13.

<sup>172</sup> Exhibit 1/1C/43H/p 839: statements of incident.

<sup>173</sup> Exhibit 1/1C/43AB/p 1119: continuation of statement of fact.

<sup>174</sup> Exhibit 3/1/1/A 1228-1234: record of interview of Jessie Martinez.

statement of facts to be obtained from each crew member. The statement was to include details of where they were, and who saw them between 7:00am and 9:00am on the day that Mr Llanto went missing. Such statements were obtained from crew members within 24 hours.<sup>175</sup>

- 158) Captain Salas collected the statements of the crew which he provided to the AFP on 7 September 2012.<sup>176</sup> The statement, which is signed by Captain Salas, appears to have been created, by or on behalf of Captain Salas, by reference to information gathered in the individual statements of fact from various crew members.<sup>177</sup>
- 159) It appears to me that the statements of the crew concerning their whereabouts at specific times were coordinated.
- 160) Captain Salas conceded that he read each of the crew member's statements and sought to check any "discrepancies" in those statements. Captain Salas also admitted that his Statement of Facts sent on 31 August 2012 was a collection of statements or information he received from various crew members.<sup>178</sup>
- 161) Captain Salas made handwritten notes on certain statements including Mr Vercede's statement. He records on Mr Vercede's statement the words:  
*"did not leave engine room as per captain interview, never"*.
- 162) Captain Salas conceded in cross examination that he spoke to Mr Vercede after he had prepared his statement and told him that he had never left the engine room during his watch between 7:00am and 8:00am. However, it is not clear what "*as per captain interview*" means.<sup>179</sup>

**(iv) What were the responses to the 'man overboard' incident?**

- 163) On 1 September 2012 at 10:39am, an internal NYK email was sent from NYK to Jason Glynn, National Marine Services Manager, NYK Line Australia. It stated:

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<sup>175</sup> Exhibit 1/1B/29/p 504-505: statement of Kosaku Monji.

<sup>176</sup> Exhibit 1/1A/7/p 529-530: record of interview of Captain Salas; Exhibit 3/1/4/A 222-224: record of interview with Captain Salas.

<sup>177</sup> Exhibit 1/1A/7/p 529-530: record of interview of Captain Salas.

<sup>178</sup> Transcript of evidence of Captain Salas, 17/02/2016, T17.42-17.44.

<sup>179</sup> Transcript of evidence of Captain Salas, 29/05/2015, T56.

*“One crew of the vessel has been missed from 30<sup>th</sup> on the way to Newcastle.*

*NYK Tokyo has organised Crisis Management (CMC) to fix this incident because there is a few possibility of murder.*

*CMC has requested us monitoring media. Thus please let me know if you see this in any media.”<sup>180</sup>*

- 164) On 1 September 2012 at 3:23pm Yohei Takigami of HSC sent an email to Mr Glynn stating that it was necessary to have an internal investigation as the crew members are really exhausted by the incident.<sup>181</sup> For that purpose Mr Monji and Mr Hayashi were sent to board the Vessel. As we know, Mr Monji was to become the third death on board the Vessel.
- 165) On Sunday 2 September 2012 an AMSA log report (0738H) records a call placed to Mr Glynn requesting up to date details of Vessel movement and any information pertaining to the incident provided to him by the Vessel. The AMSA log records Mr Glynn as having provided information to the effect that “Foul play suspected after conversations with Master and statements provided.”<sup>182</sup>
- 166) On that same day, NYK Line took urgent and extraordinary steps to engage specialist security personnel, from CPA Group, a specialist security company, to be placed on board the Vessel.
- 167) Harley Spark, the Executive Chairman of CPAG, and Mark Prospero, the Chief Executive, met Mr Monji and Mr Hayashi for about 3 hours to be briefed on the situation on the Vessel. The evidence before me is that Mr Monji and Mr Hayashi told the CPAG executives during the course of the meeting the following:
- a) That there had been a robust dispute on board the Vessel prior to the disappearance of the Chief Cook;
  - b) The dispute was between the Oiler Mr Vercede, who was portrayed during this meeting as being an intimidating stand over man, and the Messman, Mr Martinez;
  - c) The Chief Cook had stood up for the Messman; and
  - d) The Japanese officers expressed concern about the continued presence of

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<sup>180</sup> Exhibit 3/2/16/p 1: documents produced by NYK Line.

<sup>181</sup> Ibid p 2.

<sup>182</sup> Exhibit 3/2/18/p 304: documents produced by Australian Maritime Safety Authority.

Oiler Mr Vercede on board the Vessel.

- 168) It is clear that similar information was also conveyed to AMSA at a meeting on 3 September 2012 attended by the Vessel operator, the agent, CPAG and the AFP.
- 169) On 4 September 2012 at 8:24am Len Gillespie, from AMSA, wrote an email stating:-
- “Security contractors have been employed because NYK is concerned about keeping people safe from an oiler who the master has portrayed as a threat on board. He also suggested there may be a flight risk – but did not nominate who, but this has nothing to do with us.”*
- 170) On 3 September 2012, NYK Line arranged for the two specialist security guards, Mr Richard James and Mr Sean Yeates, to be flown by helicopter and placed them on the Vessel. The two security specialists then each worked in separate, 12 hour, shifts to ensure regular patrols of the Vessel.
- 171) Mr Monji told the Australian Federal Police on 11 September 2012 that:
- “The purpose of the boarding was to look after the safety and mental health of the crew.”<sup>183</sup>*
- 172) I note that Mr Hayashi stated in his evidence that it was his belief that Mr Llanto did not fall overboard by accident; he either committed suicide or was killed by somebody, and that he had not heard any reports of Mr Llanto being unwell or unhappy at the time when he was on board the Vessel.<sup>184</sup>
- 173) On 7 September 2012, the AFP conducted interviews with thirteen (13) of the twenty four (24) crew members, plus the four (4) additional persons who boarded the Vessel on 3 September 2012 and the port pilots Mr Duthie and Mr Clarke.
- 174) What is notable about the interviews of 13 of the crew is their brevity. Except for Mr Martinez, Captain Salas, Chief Officer Layson and Mr Vercede, no one wanted to provide any information to the AFP.
- 175) The AFP seized numerous documents from the Vessel including the shipping logs, engine room logs and correspondence. They also seized Mr Llanto’s laptop along with the mobile phones and laptops of Mr Martinez and Mr Vercede.
- 176) It is apparent that the focus of the investigation was Oiler Mr Vercede due to the

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<sup>183</sup> Exhibit 1/1B/29/[15]: statement of Kosaku Monji.

<sup>184</sup> Exhibit 1/1B/28/p 197-198/[24]: statement of Kazuhiro Hayashi.

reports of conflict between Mr Vercede and Mr Llanto concerning the treatment of Mr Martinez and whether that mistreatment should be reported to the ITF or AMSA.

- 177) While giving evidence on 17 February 2016 Captain Salas was played VDR audio recorded on 30 August 2012. Captain Salas confirmed that he was told by Mr Yoshioka or Mr Monji to press the save button on the VDR. Mr Salas confirmed that he did push the save button on the basis of the VDR recording played to him, but did not recall doing so.<sup>185</sup>
- 178) Following the disappearance and suspected death of Mr Llanto, Mr Vercede and a number of other crew members chose to leave the Vessel in Australia, in the middle of their contracts, and be flown back to the Philippines. Upon arrival in Manila, they were met by an NYK driver and taken direct to NYK's Manila office.
- 179) Mr Vercede was picked up by Captain Nacional at the airport.
- 180) The evidence indicates that on 9 September 2012, a meeting there took place between Mrs Llanto, Mr Vercede, together with a number of senior officers from NYK Manila, including Josephine Francisco, the company president, Rogelio Sobremonte, seemingly a chief engineer, and Carla Deles, a company lawyer.
- 181) During the course of this meeting Mrs Llanto was given the opportunity to ask the five crew members in attendance, namely Mr Vercede, Mr Pallera, Mr Marcos, Mr Penoliar and Mr Martinez what had happened on board the Vessel.<sup>186</sup> I note that Mrs Llanto was of the firm view that the crew members had already been pre-oriented as to what they should say regarding the incident.<sup>187</sup> ██████████ reported that he told the meeting that Captain Salas punched Mr Martinez and slapped him with a slipper.<sup>188</sup>

#### **d) What did the data retrieved from the VDR reveal?**

- 182) As previously indicated, in compliance with the International Marine Organisations International Convention SOLAS requirements,<sup>189</sup> the Vessel was fitted with a VDR

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<sup>185</sup> Transcript of evidence of Captain Salas, 17/02/2017, T36-39.

<sup>186</sup> Exhibit 1/1B/31/p 329-330 [14]: statement of Nelia Llanto.

<sup>187</sup> Ibid p 331/[18].

<sup>188</sup> Exhibit 1/1D/50/p 218: Email correspondence between International Transport Workers' Federation and anonymous Sage Sagittarius crew member.

<sup>189</sup> IMO Res.A.861(20).

which was situated on the bridge of the Vessel.

- 183) The VDR is the maritime equivalent of a black box flight recorder fitted to most aircraft. It records and stores continuous nautical information in audio, video and navdata formats. This includes audio recordings, picked up by microphone, from the bridge of the Vessel.
- 184) This inquiry obtained VDR data from two sources, namely:
- a) the AFP; and
  - b) Norton White/NYK Japan.
- 185) On 7 September 2012, as part of the execution of a search warrant, AFP officer Andrew Goodman-Jones boarded the Vessel while it was berthed at Port Kembla. Mr Goodman-Jones is attached to the AFP Digital Forensic Team. Mr Goodman-Jones examined the VDR, took photographs of the unit,<sup>190</sup> and then took a complete image of the data stored in respect of the previous 10 days.<sup>191</sup> The AFP also obtained data from the HRV.<sup>192</sup>
- 186) The relevant VDR data was also provided by Norton White, solicitors for NYK Line on two DVD discs (being discs 4 and 5 of the materials referred to in Mr Sanders' report).<sup>193</sup> This data is said to have been downloaded by Mr Hayashi/NYK and passed on by Mr Hayashi to the AFP.<sup>194</sup> Mr Hayashi gave evidence that he had previously, on 30 August 2012, directed Captain Salas to save any recordings and data on the VDR in connection with when Mr Llanto disappeared.<sup>195</sup>
- 187) On 19 February 2016, I made orders that the data retrieved from the above-mentioned sources be examined by an expert in maritime electronic equipment, and be analysed in order to ascertain what evidence if any the VDR held in relation to

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<sup>190</sup> Exhibit 27.

<sup>191</sup> Exhibit 32: statement of Andrew Goodman-Jones. The oral evidence of Mark Sanders was to the effect that the steps that Mr Goodman-Jones took would be effective to retrieve such data as was then stored on the back-up hard drive of the VDR.

<sup>192</sup> The Hardened Vessel Recorder (or HRV) was designed to save files, at predetermined intervals, from the VDR. Exhibit 29/[5], [7](c): report of Mark Sanders; statement of Federal Agent Scott Raven dated 12 February 2016.

<sup>193</sup> Exhibit 29/[5], [7](b): report of Mark Sanders.

<sup>194</sup> Transcript of evidence of Kazuhiro Hayashi, 22/06/2015, T25.49-26.13.

<sup>195</sup> Ibid T25.10-25.39.

the disappearance of Mr Llanto and also the death of Mr Collado. Accordingly, Mr Mark Sanders, expert electronics technician with particular experience and knowledge of marine electronics, was engaged to carry out such an analysis and provide a report to this inquiry, which was dated 4 September 2016.

- 188) The expert evidence of Mr Sanders can be summarised as follows:
- a) Audio files from the bridge are missing from the VDR for the Vessel for the critical dates of 30 August 2012 and also 14 September 2012. In particular, the audio file for 30 August 2012 at around 8:00am (the time when Mr Llanto was on the bridge) is missing;<sup>196</sup>
  - b) That the VDR was functioning correctly on 30 August 2012 and 14 September 2012, with only two alarms being noted. These alarms related to both the Video 1 and Echo Sounder signals not being present, and the loss of such signals was not significant in and of themselves. Further, the fact the alarms were recorded is itself an indication that the VDR was recording correctly. In Mr Sanders' opinion, there was no apparent reason for the audio files not to be recorded;<sup>197</sup> and
  - c) That the missing files from the VDR were most likely deliberately deleted.
- 189) During the course of his oral evidence before this inquiry on 13 October 2016, Mr Sanders considered the email dated 17 October 2012 of Shibutani Katsuhio of Tokyo Keiki to Hiroaki Yoshioka of HSC, which recorded Mr Yoshioka's assumption that "there is a distinct possibility that the power to the audio unit (audio interface) was temporarily off during the (August 24-30 restart period)".<sup>198</sup> This email did not cause Mr Sanders to alter the opinion in his report that the missing data was likely the result of deliberate deletion. Among other things, if the audio files had not been working on 30 August 2012 this would have resulted in an alarm (a power failure for the audio files would not disable the alarm), which was not recorded in the alarm log. Further, the alarm log for 30 August 2012 was complete for that day.
- 190) Moreover, the fact that the VDR was functioning properly on 30 August 2012 is, as Mr Sanders indicated in his oral evidence, further supported by the fact that there

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<sup>196</sup> Exhibit 29/p 13/ table 2: report of Mark Sanders.

<sup>197</sup> Ibid p 11/[27].

<sup>198</sup> Exhibit 23/2/p 577: NYK documents.



are *some* (limited) audio files from 30 August 2012 that were contained on the VDR data extracted from the Vessel and which I note were played in court.

- 191) It was the unequivocal evidence of Mr Sanders that the VDR data retrieved from the Vessel, namely both the USB and the two discs which he examined, did not include data that he would expect to be present, in particular, audio files from the bridge on 30 August 2012 from midnight to 10.59am on 30 August 2012.<sup>199</sup> This equates to nearly 11 hours of missing audio files on 30 August 2012 which is the period relevantly that Mr Llanto was on the bridge and then disappeared from the Vessel. The omission of such data in my view is highly significant and suspicious.
- 192) In respect of the missing VDR data, in his report Mr Sanders considered three scenarios, namely its:
- a) deliberate deletion;
  - b) accidental deletion; or
  - c) deliberate or accidental omission (in the download process).
- 193) Having regard to the statement of Mr Goodman-Jones dated 6 November 2016,<sup>200</sup> regarding the process by which the AFP extracted data from the VDR back-up hard drive, Mr Sanders rejects the third scenario, namely, the deliberate or accidental omission in the download process. Moreover, there is nothing to indicate that, on 7 September 2012, the AFP did not extract all the data that could be extracted from the VDR on that day.
- 194) In respect of the second scenario, Mr Sanders described the phenomenon of accidental deletion as hard to achieve.<sup>201</sup> In his oral evidence, Mr Sanders described the possibility of the data having been accidentally deleted as “very remote”. His evidence was that, among other things, there were too many steps to go through - and thus too many mistakes to have occurred – to support a thesis of accidental deletion. Furthermore, Mr Sanders gave further evidence that what had occurred in the present case did not bear the hallmarks of accidental deletion.
- 195) Mr Sanders regarded deliberate deletion as the most likely scenario.<sup>202</sup> His

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<sup>199</sup> Ibid p 13/table 2.

<sup>200</sup> Exhibit 32: statement of Andrew Goodman-Jones.

<sup>201</sup> Exhibit 29/p 24/[38](e): report of Mark Sanders.

<sup>202</sup> Ibid p 25/[39].

evidence in this regard can be summarised as follows:

- a) That deliberate deletion of data could be undertaken by a person with access to the password for the VDR;
  - b) The alarm logs do not indicate any significant systems failures that can account for the missing blocks of data, including the missing audio files from 30 August 2012;
  - c) Had there been a systems failure for the audio for 30 August 2012 this would nonetheless have generated an alarm, and no such alarm is recorded in the VDR alarm logs for that day;
  - d) The presence of other types of data (other than audio data) in the VDR data for 30 August 2012 indicates that there was no total failure of the VDR on that day; and
  - e) Finally, the existence of some audio files for 30 August 2012 similarly indicates there was no such systems failure on that day.<sup>203</sup>
- 196) I note that it was the evidence of Captain Salaguste, who boarded the Vessel at Port Kembla on 8 September 2012 and assisted Captain Salas until he took over the control of the Vessel in Newcastle after 14 September 2012, that the recording device on the bridge was out of order.<sup>204</sup>
- 197) It was the oral evidence of Captain Salas on 29 May 2015 to the effect that:
- a) On 14 September 2012 he forgot to direct anyone to preserve the data recorded in the voyage data recorder, as it was not a matter which was upper most in his mind;<sup>205</sup>
  - b) He did not check whether the VDR was working at the time but he believed it was but he did not check;<sup>206</sup> and
  - c) He denied that he instructed Captain Salugaste to inform the AFP that the VDR was not working because he did not want to have any record from the VDR provided to the Australian investigators relating to 14 September

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<sup>203</sup> Ibid pp 18,23-25.

<sup>204</sup> Exhibit 2/2A/19/p 3.

<sup>205</sup> Transcript of evidence of Captain Salas, 29/05/2015, T70.15-70.33.

<sup>206</sup> Ibid T71.31-71.34.

2012.<sup>207</sup>

- 198) Accordingly, having regard to all the evidence, I am satisfied on the balance of probabilities that the data on the VDR for the Vessel, including audio files from 30 August 2012, was deliberately deleted and therefore not available to be examined by Australian investigating authorities, including the AFP.
- 199) It would be remiss of me not to note the following:
- a) It is not possible, on the evidence, to conclusively identify which person or persons deliberately deleted the VDR data; and
  - b) The evidence does not support a conclusion that NYK Line (or HSC) was involved in the deliberate deletion of data from the VDR.<sup>208</sup>

**e) Did Mr Llanto take his own life?**

- 200) There is no evidence whatsoever, to suggest that Mr Llanto took his own life. Indeed, all the indications are strongly to the contrary.
- 201) It was the evidence of Mrs Llanto, who had been married to Mr Llanto for 13 years and had spent earlier years as his childhood friend, that her husband was ‘God-fearing’ and a person who valued life and his two young children. She did not believe he would ever commit suicide.<sup>209</sup> She reported that when Mr Llanto left home to join the Vessel, he was in good spirits, pleased because the Vessel would be one of the largest vessels he would have worked on, and because all the crew would be Filipino nationals.<sup>210</sup>
- 202) Mr Llanto had also told his wife that he would phone her once the Vessel reached Australia, on either 4 or 5 September 2012. In his normal fashion, he had also sent Mrs Llanto an endearing text message from the airport, when flying to Japan to board the Vessel.<sup>211</sup>

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<sup>207</sup> Ibid T71.36-72.03.

<sup>208</sup> Further, the steps taken by NYK Line/HSC to enquire of Tokyo Keiki as to the missing audio data (e.g. Exhibit 23/2/p 580) provides some indication that NYK Line/HSC were not involved in the deliberate deletion of data from the VDR.

<sup>209</sup> Exhibit 1/1B/31/p 329/[12]: statement of Nelia Llanto.

<sup>210</sup> Ibid [7].

<sup>211</sup> Ibid p 327-328/[4].

- 203) On the morning of his disappearance, Mr Martinez described Mr Llanto as having been normal and happy, and no different from previous mornings.
- 204) Mr Llanto's health was not such as to raise concerns. While he had diabetes, he had managed the condition since he was 34 years old. He also took medication for high blood pressure. He had been prescribed sufficient medication for his entire 9 month contact on board the Vessel. His wife describes him as having been health-conscious and self-disciplined. He did not smoke and drank only very occasionally.<sup>212</sup>
- 205) Mr Llanto was a career seafarer who had worked in the industry since 1989. He was 62kg, 163cm and had a normal body mass index. A physical examination revealed that his sight and hearing was adequate. He had prescription glasses for near-sightedness. His records indicate that he had also been subject to a medical examination prior to boarding the Vessel. He passed all the benchmarks required by the examination and was deemed 'fit for sea duty (without restrictions)'.<sup>213</sup>
- 206) Accordingly I am satisfied on the balance of probabilities that Mr Llanto did not take his own life on 30 August 2012.

**f) Did Mr Llanto suffer a misadventure and fall accidentally from the Vessel?**

- 207) In my view, there is no possible or plausible reason why Mr Llanto would have approached the edge of the Vessel and accidentally fallen overboard. He was in the middle of preparing breakfast wearing an apron and with food on his hands when he was last seen leaving the bridge. The weather on the morning was not poor relative to the size of the Vessel.
- 208) Moreover, there is no recorded instance of any person previously having accidentally gone overboard from the Vessel.
- 209) Accordingly, I am satisfied on the balance of probabilities that Mr Llanto did not suffer a misadventure and accidentally fall from the Vessel.

**g) Was Mr Llanto a victim of foul play and if so by whom?**

- 210) Despite 11 days of evidence, it is impossible to conclusively determine what

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<sup>212</sup> Ibid p 329/[11].

<sup>213</sup> Exhibit 1/1A/3/[172]-[177]: statement of Federal Agent Raven.

happened to Mr Llanto or who was responsible for his death in the absence of:

- a) Hearing from the key witnesses on board the Vessel, in particular, Mr Martinez, Mr Moralde and Chief Officer Layson; and
- b) Recovering the audio recordings on the bridge from the Vessel's VDR on the morning of 30 August 2012.

211) However, as I am satisfied on balance that the deletion of the VDR recordings on the morning of 30 August 2012 was deliberate, this fact, in combination with other evidence, suggests strongly to me that Captain Salas caused or authorised the disappearance of Mr Llanto or that he had knowledge about the circumstances of his disappearance beyond that to which he acknowledged at the inquest. I come to that conclusion despite the fact that Captain Salas co-operated with this Inquest by giving evidence on three separate occasions.

212) There are four categories of evidence in my view that suggest some form of involvement by Captain Salas in Mr Llanto's disappearance:

- a) Firstly, Captain Salas finally acknowledged that he was "probably" on the bridge between 8:00am and 8:48am on 30 August 2012. Captain Salas conceded in cross-examination that he probably overlooked that fact when he prepared his various Statements of Facts on 30 and 31 August 2012.<sup>214</sup> The email he wrote to Captain Serrano on or around 8:48am on 30 August 2012 is consistent with and supports that admission.<sup>215</sup> It is inconceivable that Captain Salas overlooked that fact when he prepared his Statement of Facts to his employers at HSC or NYK however, it completely contradicts his numerous statements to investigating police about his whereabouts between 8:00am and 9:00am on 30 August 2012.

Accordingly, I am satisfied on balance that Captain Salas deliberately lied to his employer and the AFP that he was not on the bridge at a critical time either when Mr Llanto was on the bridge or shortly thereafter.

- b) Secondly, there is evidence before me that indicates that Captain Salas was involved in or had knowledge of the deletion of the audio recordings stored on the VDR. Captain Salas originally gave evidence that it did not

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<sup>214</sup> Transcript of evidence of Captain Salas, 17/02/2016, T48.22-48.30.

<sup>215</sup> Exhibit 12/9.

occur to him that when there was an accident or incident on board the Vessel, the VDR could record or save relevant information about that accident/incident.<sup>216</sup> Captain Salas stated that he did not try to save data on the VDR on that day,<sup>217</sup> and gave evidence in effect, that he was distracted by the disappearance of Mr Llanto from focussing on the VDR.<sup>218</sup>

However, after a VDR recording at about 8:59pm on 30 August 2012 was played to Captain Salas, he admitted that he did receive instructions from an officer at NYK about saving data on the VDR.<sup>219</sup> Moreover, Captain Salas further conceded that he “probably” deleted some data on the VDR “probably through operations”.<sup>220</sup> I note that at no time did Captain Salas admit to any deliberate deletions.

Accordingly, in my view Captain Salas had the opportunity to delete the data from the VDR and assuming he had lied about his whereabouts on 30 August 2012, he also had the motivation to delete the material.

I have considered the possibility of others being involved in the deletions of data from the VDR including Mr Vercede, Mr Martinez, Chief Officer Layson or Mr Moralde. From 8:00am on 30 August 2012, there were a number of people on the bridge. For example Mr Martinez was there for hours to draft his statement for Captain Salas.

There is no evidence that Mr Vercede was ever alone on the bridge where the VDR was located so it is very unlikely that he deleted the VDR data.

It is also unlikely that someone like Chief Officer Layson or Mr Moralde, who were on the bridge at the relevant time, would have deleted the VDR data without authorisation from Captain Salas unless that person or persons were involved in the disappearance of Mr Llanto without the authority or knowledge of Captain Salas. I note however, that there is no

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<sup>216</sup> Transcript of evidence of Captain Salas, 170/2/2016, T31.24.31.27.

<sup>217</sup> Ibid T32.40-32.48.

<sup>218</sup> Ibid T33.01-33.03.

<sup>219</sup> Exhibit 33/1/p 2: VDR translations; Transcript of evidence of Captain Salas, 170/2/2016, T38-39.

<sup>220</sup> Transcript of evidence of Captain Salas, 170/2/2016, T39.31-40.03.

evidence to support that hypothesis.

- c) Thirdly, there is evidence that Captain Salas was in conflict with Mr Llanto on 30 August 2012. Admittedly, that evidence is derived from ██████████, whose reliability must be questionable considering that he failed to inform either the AFP or the ITF of key information against Captain Salas and that his explanation for that failure was in my view unconvincing. However, some support for ██████████ is derived from Mr Llanto's wife, who gave compelling evidence that her husband would only have abandoned his breakfast duties if he had received specific orders from Captain Salas, and the fact that Mr Llanto's hands still had food on them when he was last seen.

It is noteworthy that Captain Salas was informed in his short meeting on 30 August 2012 at about 8:00am that Mr Martinez had drafted a written complaint to the ITF and that complaint was stored on Mr Llanto's computer.<sup>221</sup> In other words, Mr Llanto knew of the plot to report Captain Salas for alleged misconduct, but had not told Captain Salas of that plot.<sup>222</sup> In my opinion, that provided Captain Salas with a motivation to order the deletion of the material relating to Mr Martinez from Mr Llanto's computer and was consistent with a desire to conceal that information from his employer and the Australian authorities. Moreover, Captain Salas admitted that he never answered Mr Monji's question that he posed for Chief Officer Layson: "*What is your purpose to come to Messman's cabin at 8:08am?*"<sup>223</sup>

- d) Finally, Captain Salas' captaincy of the Vessel in my view was clearly unorthodox, in that:
- i) There is incontrovertible evidence that he sold guns to the crew, and tried to conceal evidence of that fact,<sup>224</sup>
  - ii) He admitted to assaulting Martinez; and
  - iii) He clearly did not brook any opposition to his style of leadership.

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<sup>221</sup> Transcript of evidence of Captain Salas, 18/02/2016, T14.05-14.08.

<sup>222</sup> Ibid T15.

<sup>223</sup> Exhibit 23/1/p 68: email from Kosaku Monji to Captain Salas dated 31 August 2012; Transcript of evidence of Captain Salas, 18/02/2016, T18.40-19.03.

<sup>224</sup> Transcript of evidence of a crew member, 23/06/2015, T35.27-35.33.

- 213) Despite the evidence referred to in the preceding paragraph, it is important to have regard to the fact that despite the efforts of the AFP and, in particular, Federal Agent Scott Raven, I have not heard evidence from key witnesses (residing outside of Australia and thus not compellable) regarding the disappearance of Mr Llanto, in particular Chief Officer Layson, Mr Moralde, Mr Martinez and of course Mr Collado. These men could have shed light on the events on and before 30 August 2012. Furthermore, as discussed above, the missing VDR audio communications from the bridge from 8:00am has significantly hampered the ability of this Inquest to arrive at the truth of what happened to Mr Llanto after he arrived on the bridge on the morning of 30 August 2012.
- 214) Accordingly I am satisfied on the balance of probabilities that Mr Llanto died as a result of foul play by a person or persons on the Vessel, namely, that Mr Llanto was either thrown overboard or killed on the Vessel and his body disposed of over-board later.

### **The death of Hector Collado**

- 215) At about 8:00am on Friday 14 September 2012, while the Vessel was entering Newcastle Harbour, Hector Collado fell about 11.5 metres to his death from the second deck to the fourth deck . Mr Collado was the Chief Engineer and second in charge on board the Vessel. Mr Collado had two sons: Bheltor ('Victor') Collado and Rhonald G Collado.<sup>225</sup> It appears he also had grandchildren.
- 216) It follows that the possible causes of death for Mr Collado are:
- a) suicide;
  - b) accident/misadventure; or
  - c) homicide.
- 217) The likelihood of each of the hypotheses is affected in my view by the fact that Mr Llanto's had disappeared on 30 August 2012 and Mr Collado's reported reaction to that disappearance.

#### **a) What was Mr Collado's mental state before he died?**

- 218) The evidence before me clearly indicates that the mental state of Mr Collado changed dramatically after the disappearance of the Chief Cook, Mr Llanto. The

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<sup>225</sup> Exhibit 1/2A/5/ [169]: statement of Detective Senior Constable Hall.



evidence in this regard can be summarised as follows:

- a) The Third Engineer, Alex Macaso (previously an oiler) described Mr Collado as “out of his mind”. His evidence was that Mr Collado was deeply affected by the disappearance of the Chief Cook. He also attributed the troubled state of Mr Collado’s mind to the fact that Mr Collado had changed his previous statement and that “he was thinking that he must be liable”.<sup>226</sup> Mr Macaso noted that Mr Collado could not focus on his engineering duties and that he had lost his concentration.<sup>227</sup> Moreover, on the morning of Mr Collado’s death, at about 6:00am, Mr Collado told Mr Macaso that he had no more water and he wanted to bring a jug of water from his cabin even though he could get water on the other deck,<sup>228</sup>
- b) Ruperto Garcia, the second officer, described Mr Collado as being lonely after Mr Llanto’s disappearance,<sup>229</sup> whereas Marlon Capagalan stated that Mr Collado changed from being a happy man to someone who did not greet him;<sup>230</sup>
- c) Another crew member indicated that Mr Collado acted in a paranoid manner after Mr Llanto disappeared, as Mr Collado had asked him if he could accompany him to his room,<sup>231</sup> and
- d) Captain Salas also noticed the changes in Mr Collado. His evidence was that:
  - i) He had a close relationship with Mr Collado, which he would describe as a friendship, and they ate dinner together;<sup>232</sup>
  - ii) After the disappearance of Mr Llanto, Mr Collado had become quieter and less inclined to laugh at the Captain’s jokes, despite the fact that he had given Mr Collado a good work report and had shown it to

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<sup>226</sup> Exhibit 2/2A/9/A 22-29: record of interview with Alex Macaso.

<sup>227</sup> Ibid A 32-33.

<sup>228</sup> Ibid A 40-42.

<sup>229</sup> Exhibit 2/2A/21/A 51-52: record of interview with Ruperto Garcia.

<sup>230</sup> Exhibit 2/2A/20/A 47: record of interview with Marlon Capagalan.

<sup>231</sup> Exhibit 3/1/3/A 459, 496: record of interview of crew member.

<sup>232</sup> Exhibit 2/2A/17/A 40, 165: statement of and record of interview with Captain Salas.

him,<sup>233</sup> and

- iii) In the days before his death, Mr Collado had lost his focus. He was tired, had not been sleeping and had red eyes. Captain Salas stated *“I think something went bad on his condition. I think he look out there to look for someone who can, this is just what I think and I think he fell down.”*<sup>234</sup>

219) Captain Salas also gave evidence that a few days prior to Mr Collado’s death he had visited Mr Collado in his cabin. At this time, Mr Collado had told him that he believed that there was some threat on his and his family’s life. Captain Salas responded: *Who is threatening? ... Is Raul Vercede threatening you?*” According to Captain Salas, Mr Collado did not really tell him anything.<sup>235</sup> I note that this was the first time that Captain Salas had heard Mr Collado speak about holding any fears for his own safety or that of his family.<sup>236</sup> Mr Collado told Captain Salas that he did not want to go home because he feared for the safety of his family.<sup>237</sup>

220) Moreover, it was the evidence of Federal Agent Scott Raven that the family members of Mr Collado told him the following:

- a) That three (3) days prior to his death, Mr Collado rang his wife Rebecca and said he no longer wished for his children to meet him at Manila Airport upon his scheduled return;
- b) He also told Rebecca and his son Rhonald Collado not to bring his grandchild to meet him at the airport and to use a vehicle which was different from their personal family vehicle;<sup>238</sup>
- c) Mr Collado’s brother Pebito recounted Mr Collado’s sons as having said Mr Collado asked them to bring two separate vehicles to Manila airport to collect him and not tell anyone which of the two vehicles would be used to

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<sup>233</sup> Ibid A 160.

<sup>234</sup> Ibid A 377.

<sup>235</sup> Ibid A 273-274.

<sup>236</sup> Ibid A 309-310.

<sup>237</sup> Ibid A 337.

<sup>238</sup> Exhibit 2/2A/5/ [157]: statement of Detective Senior Constable Hall.

travel home,<sup>239</sup>

- d) Rebecca also indicated that her husband sounded fearful as if he was unable to speak freely. He told her that he was being followed on the Vessel. He did not name names to his wife.<sup>240</sup>
- 221) Captain Salas attended Mr Collado's funeral. At the funeral Captain Salas told Rebecca that:
- a) Her husband may have suffered a mental breakdown as a result of the disappearance of Mr Llanto; and
- b) Mr Collado had thrown his .45 calibre semi-automatic pistol firearm licence, which he had obtained from Captain Salas, overboard before his death.<sup>241</sup>
- 222) I note that Rebecca has disconnected her previous home landline phone because of her perceived fear of NYK<sup>242</sup> and did not wish to give evidence at the Inquest.
- 223) The source of Mr Collado's intense anguish regarding the disappearance of Mr Llanto is a mystery and a cause for grave concern. The suggestion raised by some crew members that his extreme change in personality arose solely because of the alterations made to his statement he gave in relation to the disappearance of Mr Llanto, in my view, seems inadequate.
- 224) Although Mr Collado only provided a brief statement to Federal Agent Andrew McClelland dated 7 September 2012, regarding the disappearance of Mr Llanto, in which he stated that "he had no new information to provide about the matter",<sup>243</sup> it is clear from the following evidence that Mr Collado had more information to provide, but did not do so:
- a) On 1 September 2012 at 4:22am Yohei Takigami of the Marine Personnel Division of HSC sent "disappearance report No. 11" regarding Mr Llanto's disappearance to Taro Matsushige of the NYK Marine Operations Group Crisis Management Team. This was a comprehensive and detailed analysis of the anomalies or inconsistencies between the statements of the

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<sup>239</sup> Ibid [169].

<sup>240</sup> Ibid [155], [158].

<sup>241</sup> Ibid [162].

<sup>242</sup> Exhibit 2/2A/5/[160], [162]: statement of Detective Senior Constable Hall 23/8/13.

<sup>243</sup> Exhibit 1/1A/10: statement of Hector Collado.

crew.<sup>244</sup> In particular, it focused on the inconsistencies between the statements of Mr Collado, Mr Moralde and Mr Vercede at around 8:00am on 30 August 2012. It noted that, according to Mr Vercede's version, when he went to take breakfast at about 8:00am he saw the chief engineer looking for Mr Martinez in the galley. Mr Vercede was asked by the Chief Engineer whether he had seen Mr Martinez and he replied there was no one there but himself. Mr Moralde said he took breakfast at around that time and there was no one but himself there, while the chief engineer said that he noticed someone a bit far away but he was not sure if it was Mr Moralde or Mr Vercede. The report stated that the company's view in response was "*The time at which the Chief Cook who has now disappeared was last seen was around 7:58 and 8:00am, so there is a possibility that there was some connection with these contradictions. We have asked the captain to investigate these contradictions*".<sup>245</sup>

- b) On 1 September 2012 at 6:49am, Captain Salas sent an email to Mr Monji which stated:

*"At 0650h today, Chief Engineer and Oiler B (Vercede) went to the bridge and were given instruction by the Master to re-write their SOF [statement of facts] with only the actual activities and whom they saw on 0700h-0900h 30 August 2012.*

*Master had a conversation with Oiler B in and outside the wheelhouse while waiting for chief engineer to complete his statement. 07400 Oiler B and Chief Engineer left the bridge.*<sup>246</sup>

- c) Captain Salas confirmed in his oral evidence that he spoke to Mr Collado about his statement and that he told Mr Collado "*that the company was confused with his statement and thought there was something wrong with it*".<sup>247</sup> He explained in his evidence that the problem with Mr Collado's statement was that he was not sure whether he saw Mr Vercede or Mr Moralde, whereas Mr Vercede had said that he definitely saw Mr Collado in the mess room and indeed spoke to him.<sup>248</sup> Therefore both

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<sup>244</sup> Exhibit 23/3/pp 16-18.

<sup>245</sup> Ibid p 18.

<sup>246</sup> Exhibit 23/1/p 100.

<sup>247</sup> Exhibit 2/2A/17/A 176: statement of and record of interview with Captain Salas.

<sup>248</sup> Ibid A 202-203.

of them were told to make additional statements to clarify this matter.<sup>249</sup>

- d) Finally, the evidence of Mr Sarita was that:
- i) Mr Collado had expressed his concern about his change of statement;
  - ii) He had told Mr Vercede not to put in his statement that he had seen Mr Collado on the morning of Mr Llanto's disappearance;<sup>250</sup>
  - iii) Mr Vercede had expressed that he was unhappy with Mr Collado because he thought that Mr Collado should stick up for the engineers;<sup>251</sup> and
  - iv) He had asked Mr Collado whether he really saw Mr Vercede to which Mr Collado, replied: "Yes".<sup>252</sup>

225) The above evidence, in my view, allows the following conclusions:

- a) Firstly, Captain Salas had an intimate knowledge of the details of what was in the crew members' statements about the disappearance of Mr Llanto;
- b) Secondly, Mr Monji was advised in detail of those statements; and
- c) Thirdly Mr Monji or another officer from NYK or HSC appeared to request or require that Mr Vercede and Mr Collado make clarifying statements.

226) On the one hand, this may be an innocent and laudable endeavour to ensure accurate contemporaneous records. However, on the other hand, it may have a more disturbing overtone to ensure that everyone got their stories straight.

## **b) What were the last movements of Mr Collado?**

227) According to the log book of Captain Salas, he received a call from the Engineer's Department at 7:52am on 14 September 2012 that Mr Collado had fallen from the second deck to the fourth deck.

228) I note that Captain Salas did not go to see Mr Collado or the scene of his death.<sup>253</sup>

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<sup>249</sup> Ibid A 211.

<sup>250</sup> Exhibit 3/1/2/A 400: record of interview of Michael Dan Sarita.

<sup>251</sup> Ibid A 410.

<sup>252</sup> Ibid A 420.

<sup>253</sup> Exhibit 2/2A/17/A 46-47, 58-59: statement of and record of interview with Captain Salas.

- 229) Captain Salas explained that Mr Collado's job as Chief Engineer was a 24 hour on call position. Moreover, while the Vessel was manoeuvring into the port, Mr Collado, in Captain Salas' view, was supposed to be in the engine control room because he was the Chief Engineer. Accordingly he felt it was unusual that he was on the fourth deck rather than in the engine control room on the third deck, at the time of his death.<sup>254</sup> However, I note that there is conflicting evidence on that point.
- 230) The evidence before me in relation to the last known movements of Mr Collado on the morning of 14 September 2014, can be summarised as follows:
- a) At about 4:00am, Mr Collado was reported to be in the engine control room with a number of other crew members from the engineering department, including Babbet David, Robert Gattoc, Alex Macaso, Simon Albis, JoeMarie Birondo (the fitter) and Rodello Olasiman;
  - b) The oiler Olasiman saw Mr Collado in the engine control room at 4:30am and then saw him leave there at about 7:00am, when Mr Collado told another engineer that he was going out.<sup>255</sup> Mr Olasiman also stated that Mr Collado made entries in the Chief Engineer's log at about 4:30am;<sup>256</sup>
  - c) Between 6:00am and 7:00am, Mr Collado instructed the Third Engineer Macaso to do various jobs;
  - d) Between 5:30am and 6:30am, Chief Officer Layson, saw Mr Collado at the bridge talking with Captain Salas for 2 to 3 minutes.<sup>257</sup> I note that Captain Salas and Mr Collado were due to disembark at Newcastle Port and catch a flight the following morning home to the Philippines; and
  - e) At about 6:30am, Michael Sarita, the apprentice engineer, saw Mr Collado in the officers' mess. At that time Mr Collado asked Mr Sarita and Simon Albis, the electrician, if they had prepared the self-unloader crane.<sup>258</sup>
- 231) Captain Salas confirmed that he last spoke to Mr Collado at about 7:00am on 14 September 2012. It was during this conversation on the bridge that Mr Collado

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<sup>254</sup> Ibid A 228, 235-236.

<sup>255</sup> Exhibit 2/2A/12/A 87: record of interview with Rodello Olasiman.

<sup>256</sup> Ibid A 60-62.

<sup>257</sup> Exhibit 2/2A/25/ A 114-115: record of interview with Solomon Layson.

<sup>258</sup> Exhibit 2/2A/8/ A 79: record of interview with Michael Sarita.

gave him the evaluation of other crew due to disembark at Port Kembla.<sup>259</sup> Captain Salas also had Mr Collado sign his own evaluation.

232) Glenn Mercene gave evidence to the effect that:

a) At about 7:30-7:45am, he was waiting for the elevator at the fourth deck with Mr Collado. Mr Mercene stated:

*“Collado pressed the button up a deck and I pressed the button for third deck. The elevator was going up. Collado got out at upper deck. At upper deck there is the ship’s office and engine room. Nobody worked at the engine room at that time.”*

Mr Mercene did not notice any injuries to Collado’s head.

Mr Mercene and Mr Collado exchanged greetings.

Mr Collado asked Mr Mercene: *“Did you take your breakfast?”*

Mr Mercene said: *“Yes I have.”*

b) Mr Mercene reported that:

i) There was no one else in the area when they entered the elevator;<sup>260</sup>  
and

ii) He did not notice anyone in the area when Mr Collado left the elevator.<sup>261</sup>

c) Thereafter he went to work in the engine control room where he saw Robert Gattoc, Simon Albis, Alex Macaso, Apprentice Engineer Mr Sarita, and Oiler Mr Olasiman. Neither Babbet David nor JoeMarie Birondo were present at this time.<sup>262</sup>

d) Whilst at work, Stephen Doctor, the Messman, entered the control room. He had come from working in the kitchen and he wanted to get rid of some used oil.<sup>263</sup>

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<sup>259</sup> Exhibit 2/2A/17/A250-260: statement of and record of interview with Captain Salas.

<sup>260</sup> Exhibit 2/2A/6/A 58-76, 82: record of interview with Glenn Mercene..

<sup>261</sup> Ibid A 90.

<sup>262</sup> Ibid A 107-142.

<sup>263</sup> Exhibit 2/2A/13/A 127: record of interview with Stephen Doctor.

Mr Mercene asked him: *“Where did you dispose the used oil?”*

Mr Olasiman then accompanied Mr Doctor to the workshop just beside the control room.<sup>264</sup> At about this time Virgilio Matunog entered the control room,<sup>265</sup> where he stayed there for one or two minutes before those in the engine control room “heard a big bang”.<sup>266</sup>

233) It seems that the Oiler, Mr Matunog, was the last known person to see Mr Collado alive. It was his evidence that:

a) At about 7:45am, he met Mr Collado on the boiler side of the stairs on the third deck. Mr Matunog was going down to the third deck and he saw Mr Collado on the second deck. They greeted each other. Mr Collado went up to the boiler room and “we went down”.<sup>267</sup> It is not clear if the “we” was a slip of the tongue or there was another person with Mr Matunog when he greeted Mr Collado;

b) That he was never on the second deck;

c) He stated that the first or third engineer instructed “him” to go to the boiler side to adjust something.<sup>268</sup>

*“They asked me to go and adjust that, just manoeuvring”;*<sup>269</sup> and

d) He never saw blood up there or red marks as he was in a hurry.<sup>270</sup>

234) It was when the Oiler, Mr Olasiman and the Messman, Mr Doctor went to the workshop next to the engine control room to filter some oil, that they heard a loud sound. It was the evidence of Mr Olasiman that:

a) *“When we transferring the oil I heard some big ah, like ah, you know, like,*

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<sup>264</sup> Exhibit 2/2A/6/A 166-169: record of interview with Glenn Mercene.

<sup>265</sup> Ibid A 181.

<sup>266</sup> Ibid A 189-192.

<sup>267</sup> Exhibit 2/2A/7/A 74-82: record of interview with Virgilio Matunog.

<sup>268</sup> Ibid A 95-100.

<sup>269</sup> Ibid A 104.

<sup>270</sup> Ibid A 105.



*like a big sound so I, I think it's a motor, motor ah, explosion ...*<sup>271</sup>

- b) That he left Mr Doctor in the workshop to inquire about the sound, and found Second Engineer Mr Mercene outside the workshop and asked what the sound was; and
  - c) Mr Mercene told him that Mr Collado had fallen down.<sup>272</sup>
- 235) Mr Matunog said he could hear the body hit the deck over the engines because it was a different type of sound.<sup>273</sup> I note that this evidence was echoed by other members of the crew.
- 236) An acoustical experiment was carried out on board the Vessel with the carcass of a pig on 27 February 2015, at a time when the Vessel had returned to Australia. NSW Police Force officers and NSW Environmental Protection Authority (EPA) officers were in attendance. On two separate occasions, a pig carcass weighing 80 kilograms was dropped from the third deck to the bottom deck of the engine control room. An EPA investigator was positioned in the engine control room, with crew members and the engine operating. On each occasion, a “loud clang” was heard that coincided with the dropping of a pig carcass. The increase in sound, on each occasion, was also observed in recorded noise levels that would likely have been audible to the average listener.<sup>274</sup>
- 237) In my view this acoustic experiment clearly indicates that crew members in the engine control room would have heard the noise as a result of Mr Collado having fallen from the second deck to the fourth deck, within the engine control room.
- 238) The evidence indicates that upon hearing the “bang”:
- a) Mr Matunog, who was in the engine control room, then left with Mr Mercene to investigate. They saw someone on the lower ground lying head down. They were carrying a flash light;<sup>275</sup>
  - b) Mr Gattoc, walked out of the engine control room and saw the deceased

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<sup>271</sup> Exhibit 2/2A/12/A 122: record of interview with Rodello Olasiman.

<sup>272</sup> Ibid A 136-138.

<sup>273</sup> Exhibit 2/2A/7/A 123: record of interview with Virgilio Matunog.

<sup>274</sup> Exhibit 3/2/27: Acoustic Investigation report dated 9 March 2015, prepared by Gordon Downey & Kurt Sorensen, EPA.

<sup>275</sup> Exhibit 2/2A/6/A 243-246: record of interview with Glenn Mercene.

on level 2. He went down, checked his pulse and asked the men to get a stretcher. He then took the deceased to the third level outside the engine control room; and

- c) Mr Sarita stated that he did not want to touch Collado “*because maybe we will be suspected so we did not touch the blood*”.<sup>276</sup>

239) I note that with the exception of Babbet David, all the other crew can corroborate that they were in the company of another member of crew at the time Mr Collado fell from the second level.

240) The evidence of Mr David, who was the only crew member on board the Vessel when all three deaths occurred, can be summarised as follows:

- a) That he saw Mr Collado in the engine control room at about 4:30am drinking coffee and eating;
- b) Mr Collado then left the engine control room at 4:30am;<sup>277</sup>
- c) At about 7.30am he was told by Mr Gattoc to have his breakfast;<sup>278</sup>
- d) He ate his breakfast for about 5 minutes; then went to his cabin on D deck; took his vitamins and high blood pressure tablet and went to the toilet. When he entered the toilet, he heard a paging for the Chief Cook and the Messman;<sup>279</sup> and
- e) He admitted that he did not see anyone from leaving for the kitchen to his cabin because everyone was on standby.<sup>280</sup>

### **c) What forensic evidence is available?**

241) The expert evidence of forensic pathologist Dr Brian Beer was as follows:

- a) He concluded that Mr Collado’s death was caused by multiple injuries sustained from the fall;
- b) He observed that Mr Collado sustained a curved 20 mm laceration to the

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<sup>276</sup> Exhibit 2/2A/8/A 107: record of interview with Michael Sarita.

<sup>277</sup> Exhibit 2/2B/33/A 75-76: record of interview with Babbet David.

<sup>278</sup> Ibid A 82-84.

<sup>279</sup> Ibid A 92-93.

<sup>280</sup> Ibid A 110-115.

centre front scalp region with associated bruising;<sup>281</sup>

- c) He also observed the following injuries to Mr Collado's head, namely, left temple scalp subcutaneous bleeding and acute left sided subarachnoid haemorrhage and acute contusions in the brainstem;
  - d) He could not say if the brain injuries were sustained from the fall or at the time of the initial scalp laceration, but the former mechanism was most probable;<sup>282</sup>
  - e) That Mr Collado also sustained rib fractures, a broken left leg, and a fracture of the spine in the engine room fall; and
  - f) He also found that there were no defensive wounds identified on Mr Collado.
- 242) The photographs taken by the crime scene officer show a trail of blood emanating from the engine store room leading to the hand rail on the second deck. The handrail is directly above the point where Mr Collado's body was located on the fourth deck by the engine room crew. The handrail itself was stained with blood.<sup>283</sup> The blood spatter pattern indicates that Mr Collado was slowly moving forward, head bent over, towards the deck railing.
- 243) Detective Sergeant Shawn Harkins provided an expert report regarding the blood stain pattern found on the second deck. His evidence can be summarised as follows:
- a) There was no evidence of any violent struggle involving Mr Collado on the second deck;
  - b) He observed that the blood stains in the engine store room where Mr Collado appeared to have initially sustained the injury, were passive blood stain, that is, there was no evidence that any additional force other than gravity assisted the blood falling to the ground,<sup>284</sup>
  - c) There was no evidence of any alteration of the blood stain patterns as a

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<sup>281</sup> Exhibit 6.

<sup>282</sup> Exhibit 2/2A/3/p 4: Autopsy Report dated 22 May 2013 for the Coroner.

<sup>283</sup> Exhibit 16, Photograph18.

<sup>284</sup> Transcript of evidence of Detective Sergeant Shawn Harkins, 17/09/15, T6.45-6.47.

result of anybody moving through them once the blood had been deposited onto the floor of the store room;

- d) There was no pooling of the blood which might suggest that Mr Collado had been thrown on the ground for any time;<sup>285</sup>
  - e) He would have expected to have seen some disturbance in the blood stain patterns if another person, other than Mr Collado, had been present and Mr Collado was non-compliant as a result of that injury;<sup>286</sup>
  - f) He did observe some flaking away of the central area on one blood stain at marker 2. However, it was his opinion that that had occurred after the passive blood stain had been fully dried. In his view this could be explained by a person having disrupted the blood stain by walking directly on it or immediately adjacent to it or simply, by an air current in the Vessel;<sup>287</sup>
  - g) There was also no evidence of any attempts to clean up the blood after it had been deposited; and
  - h) He does not, however, exclude that Mr Collado received the initial head injury by an assailant in the store room (at marker 1) and that that assailant then stayed out of the way or left the store room without stepping in the blood.<sup>288</sup>
- 244) The blood on the handrail over which Mr Collado fell was tested for DNA deposits and I note that the DNA recovered matched that of Mr Collado.<sup>289</sup> Moreover, the blood stains on the handrail indicate that it had been wiped almost immediately after it had been deposited and that the person most likely to have wiped the blood was Mr Collado himself as he grabbed at and went over the railing.<sup>290</sup>
- 245) There were also passive drops of blood located on the left shoe of Mr Collado. These indicate that Mr Collado was standing at the time they were deposited. There was also blood found on his right shoe. The blood on both shoes was

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<sup>285</sup> Ibid T7.34-7.40.

<sup>286</sup> Ibid T8.21-8.27.

<sup>287</sup> Exhibit 16/ p 15-16/[53].

<sup>288</sup> Transcript of evidence of Detective Sergeant Shawn Harkins, 17/09/15 T16, 15-16.18.

<sup>289</sup> Exhibit 16/p 33/[87].

<sup>290</sup> Transcript of evidence of Detective Sergeant Shawn Harkins, 17/09/15, T18.42-18.48.

analysed and was a match to Mr Collado's DNA.<sup>291</sup>

- 246) There were also blood stains found on the palms of Mr Collado, which indicate that he either:
- a) touched a bloodied surface, such as the handrail; or
  - b) that the palms of his hands had direct contact with his wound at some point in time.<sup>292</sup>
- 247) Detective Sergeant Harkins concluded that there were no blood stains within the scene to support an intentional violent act taking place. However, he qualified that conclusion by stating that he would not expect any blood stain evidence if the initial head injury to Mr Collado was caused by a single blow.<sup>293</sup> There was no disturbance to the drip trail that would indicate a scuffle or fight took place, and if multiple persons were involved in a scuffle he would expect a drip trail to show some disturbance.<sup>294</sup>
- 248) I note that the handrail that I inspected during the view in September 2014<sup>295</sup> had had its height raised since the death of Mr Collado. The height of the original handrail was only 880 mm,<sup>296</sup> which was sufficient for someone to accidentally topple over.
- 249) There was a skylight in the engine store room. There is evidence that the skylight was open when crew entered the engine store room, but was closed when the police arrived to investigate Mr Collado's death.<sup>297</sup> There was also a hoist, which could be used to lift items from the engine store room. I note that the position and height of the hoist from the ground meant that it could not have been the cause of the injury to Mr Collado's head.

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<sup>291</sup> Exhibit 16/p 17/[55].

<sup>292</sup> Exhibit 16/p 18/[56].

<sup>293</sup> Exhibit 16/ p 26/[71].

<sup>294</sup> Exhibit 16/ p 26/[72].

<sup>295</sup> Exhibit 18, Photograph 1.

<sup>296</sup> Exhibit 2/2A/5/p 40/[149]: statement of Detective Senior Constable Hall; Exhibit 3/2/18/p 282: documents produced by Australian Maritime Safety Authority.

<sup>297</sup> Mr Sarita says when he went into the storeroom, it was open: Exhibit 2/2A/8/A 146: record of interview with Michael Sarita; Senior Constable Bec Wolf says that when she arrived it was closed: Exhibit 2/2B/40/[8]: statement of Senior Constable Bec Wolf.

- 250) Dr Beer also gave evidence that there was nothing in the engine store room which indicated how Mr Collado could have sustained that curved scalp laceration.<sup>298</sup> In my view this is of real significance because if there was nothing in the store room that could have caused the injury and he was injured in the store room, the logical conclusion is that the injury was inflicted by another person.
- 251) Glenn Mercene's fingerprints were located on the shelving in the store room. Of course, it cannot be established when they were deposited.
- 252) I note that there was also an unidentified fingerprint found on the safety rail near where Mr Collado fell.<sup>299</sup> The fingerprint is mistakenly referred to as W1 in the caption of the photograph, but it is clear from the label in Photograph 3, that it is B1. This is one of the fingerprints that were not identified by the fingerprint experts.<sup>300</sup> It was definitely not a fingerprint of Mr Collado. However, it follows that we cannot establish when this fingerprint was deposited. Even if the fingerprint could have been identified, it would only have been relevant evidence to this Inquest if it belonged to a crew member who would not ordinarily be expected to have visited that area of the ship.
- 253) Federal Agent Scott Raven gave evidence that fingerprints of thirteen (13) of the crew members were taken on 7 September 2012, and the fingerprints of the remaining 11 crew members were taken on 14 September 2012.<sup>301</sup>
- 254) However, in relation to the death of Mr Collado a number of crew who were on board the Vessel on 14 September 2012 did not have their fingerprints taken by the NSW Police who were the investigating police, and the AFP could not provide those missing fingerprints to the NSW Police for fingerprint analysis.

#### **d) What was the state of Mr Collado's health?**

- 255) There is no evidence that Mr Collado suffered from any serious physical issues prior to his death. The only medication which Mr Collado received whilst on the Vessel was on 27 July 2012 when he was given cough syrup.<sup>302</sup>

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<sup>298</sup> Exhibit 6, Photographs 5-7.

<sup>299</sup> Exhibit 18.

<sup>300</sup> Exhibit 3/2/28/[6]: statement of Detective Senior Constable Technical Pitt.

<sup>301</sup> Exhibit 1/1A/3/p 26, 32-33: statement of Federal Agent Scott Raven.

<sup>302</sup> NYK documents.

- 256) I note that his Seafarers Medical Certificate dated 4 November 2011, which was effective for the period to 3 November 2013, recorded him as being “Fit for Sea Duty (Without Restriction)”.<sup>303</sup>
- 257) The evidence indicates that there were rumours that Mr Collado had an attack of high blood pressure but there does not appear to be any evidence in support of those rumours. Chief Officer Layson stated that he believed Mr Collado had “previously complained about his heart after working a long shift”.<sup>304</sup>

### e) What was the manner and cause of Mr Collado’s death?

- 258) As for the disappearance and suspected death of Mr Llanto, but for somewhat different reasons, I find it appropriate to exercise caution in making any finding about the death of Mr Collado. The absence of key witnesses at the Inquest makes any conclusive finding about the precise circumstances of Mr Collado’s death impossible. Furthermore, the forensic evidence does point to the absence of a struggle outside the storeroom. Accordingly, a finding that Mr Collado died as a result of misadventure or an accident is a real possibility.
- 259) However, I am satisfied, on the balance of probabilities, that Mr Collado died as a result of foul play, in that he was either thrown over the handrail outside the storeroom on the second deck or he was hit on the head with some kind of weapon or instrument and thereafter fell over the handrail to his death, as a result of the following:
- a) **Firstly**, in my view it is plausible that the fears Mr Collado expressed for his safety and/or his family’s safety had a rational and well-founded basis. It follows therefore that Mr Collado had been threatened or had felt threatened and he clearly felt that the person or persons whom he feared had a long reach or had the capacity to monitor his family. Hence, the elaborate precautions he urged his family to take about bringing two separate vehicles to collect him at Manila airport.
- In my view, the evidence is overwhelming that there was a climate of fear on board the Vessel after the disappearance of Mr Llanto. For example, Michael Sarita stated in evidence that he did not ask any questions about what happened because *“maybe it would reduce my luck also. I prefer not*

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<sup>303</sup> Exhibit 2/2B/77: Seafarers Medical Certificate – Hector Collado.

<sup>304</sup> Exhibit 2/2A/5/p 28/[105]: statement of Detective Senior Constable Daniel Hall.

to ask anyone". He also said that he was "afraid".<sup>305</sup> Moreover, the steps NYK took to place security guards on board the Vessel speaks volumes as to the atmosphere aboard the Vessel as does the request of many of the crew members to leave the Vessel at Newcastle before the expiry of their contracts.

- b) **Secondly**, the injury that Mr Collado sustained before he fell over the handrail on the fourth deck is consistent with someone hitting him forcefully over the head in or outside the storeroom. The telling point in my view, in that regard, is that there does not appear to be any object in the storeroom that could have caused the particular curved shaped injury on Mr Collado's scalp. Furthermore, it is my opinion that the absence of interference with the blood spatter does not prove that no-one struck Mr Collado. Indeed, Detective Sergeant Harkins does not exclude the reasonable possibility that Mr Collado received an initial injury by an assailant in the store room (at marker 1) and that that assailant stayed out of the way or left the store room without stepping in the blood.
- c) **Thirdly**, in my view there is the obvious inference that there was a connection between Mr Llanto's disappearance and Mr Collado's death in that:
- i) There was the temporal connection, namely that Mr Collado died two weeks after Mr Llanto disappeared and that apart from one suicide 10 years ago, the senior executives at NYK and HSC had never experienced any such deaths before or since these incidents; and
  - ii) The fact that Mr Collado was potentially a key witness in Mr Llanto's disappearance. I note that Captain Salas had a particular interest and indeed was "instructed" to speak to Mr Collado about the need to change his statement. The alleged controversial part of Mr Collado's statement was the fact that he may have seen Mr Vercede in the galley at about 8:00am. It is not clear what Mr Collado was doing in the galley at that time and why he was looking for Mr Martinez if that were in fact the case.
- d) **Finally**, and significantly in my view there was, according to the expert

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<sup>305</sup> Exhibit 2/2A/8/A 132-133: record of interview with Michael Sarita.



evidence of Mr Sanders, about a total of 50 minutes of audio recording that was deliberately deleted on 14 September 2012 between 10:53pm and 11:07pm, and between 11:16pm and 11:58pm<sup>306</sup> from the VDR.

- 260) There is no direct evidence as to who was responsible for the death of Mr Collado. However, in my view it would be an extraordinary coincidence if the person(s) who caused Mr Llanto's death were not also responsible for Mr Collado's death.

## **The death of Kosaku Monji**

- 261) Mr Kosaku Monji was a Japanese citizen and a superintendent working for NYK. He had requested and received written accounts of all the crew members as to their whereabouts on the morning that Mr Llanto disappeared. He boarded the Vessel, together with two security guards, approximately four days after Mr Llanto had gone missing.
- 262) The evidence before me in relation to the death of Mr Monji can be summarised as follows:
- a) On 17 September 2012 the Vessel departed Newcastle, loaded with coal and bound for Japan. It had an all Filipino crew of 24, Mr Monji and one other person on board;<sup>307</sup>
  - b) On 3 October 2012, the Vessel arrived in the port of Kudamatsu, Japan;
  - c) On Saturday 6 October 2012, the Vessel was undertaking discharging operations for its coal cargo;
  - d) At 7:25am that day, Mr Monji was found dead between a conveyor belt of the self-unloader and a loading assist roller mounted on the Vessel; and
  - e) An autopsy revealed that he died of suffocation caused by chest compression.
- 263) The death of Mr Monji was investigated by the Japanese Coast Guard. It found that Mr Monji died from suffocation after part of his body or clothing was caught between the belt conveyor and the loading assist roller, while he was pouring some

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<sup>306</sup> Exhibit 29/p 20: report of Mark Sanders dated 4 September 2016.

<sup>307</sup> Exhibit 3/2/23/p 4.

lubricating oil into the loading assist roller.<sup>308</sup>

- 264) The Japanese Coast Guard reportedly found that there were no suspicious circumstances surrounding Mr Monji's death and that he died as a result of 'self-fault', that is, an accident.<sup>309</sup>
- 265) Inquiries with Interpol have revealed that the Japanese Coast Guard was not informed and was therefore unaware of the disappearance of Mr Llanto and the death of Mr Collado, in the weeks prior to Mr Monji's death.<sup>310</sup>
- 266) In December 2013, the Japan Transport Safety Board (JTSB) appointed investigators to investigate the incident. The JTSB later published a report dated 27 September 2013.<sup>311</sup> The JTSB report can be summarised as follows:
- a) While the Vessel was unloading at Kudamatsu, a local stevedore informed Mr Monji that the feeder conveyance of the no. 1 unloader was making an abnormal sound;
  - b) Mr Monji identified the feeder conveyor roller as the source of the abnormal noise;
  - c) Without stopping the operation of the loader, Mr Monji was able to lubricate the roller so that the abnormal noise ceased;
  - d) Mr Monji told the stevedore that he would lubricate the roller about every 3 hours;
  - e) At about 2:00am on 6 October 2012 Mr Monji was informed, by a stevedore, that the roller was making an abnormal noise. Mr Monji said he would check the situation later;
  - f) At about 3:15am, Mr Monji was seen, by an able seaman of the Vessel, walking towards the no. 1 unloader with a torch lamp;
  - g) At about 7:25am, a human leg was seen protruding above the feeder conveyor passage of the no. 1 unloader. The operation in the operation

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<sup>308</sup> Exhibit 1/1D/49/p 213: Email correspondence between Interpol Canberra and Interpol Tokyo. I do not have copy of any report by Japanese Coast Guard other than Tokyo Interpol information.

<sup>309</sup> Ibid.

<sup>310</sup> Ibid.

<sup>311</sup> Exhibit 3/2/23: Japanese Transport Safety Board report.

room for that unloader activated an emergency stop and radioed to a deckman. That deckman found Mr Monji trapped in the roller. A Kudamatsu ambulance crew boarded the Vessel at about 7:42am and confirmed Monji's death;<sup>312</sup>

- h) A broken lubricating oil can was found near the feeder conveyance of the unloader;
  - i) The operating manual for the unloading device advised that the device should be stopped when an abnormal noise is heard and the cause determined;
  - j) There were no witnesses to the accident; and
  - k) Following the incident, HSC implemented measures including the provision of gratings for preventing a person from getting trapped in the feeder conveyor rolls.<sup>313</sup>
- 267) The JTSC found that the cause of death was suffocation by chest compression and that it was probable Mr Monji had become trapped in the roller when he was lubricating it in the feeder conveyor passages without stopping the unloader.<sup>314</sup>
- 268) The able seaman who was reportedly the last person to see Mr Monji alive was not identified by name. He was, it seems, interviewed by Japanese Coast Guard officers.<sup>315</sup> This Inquest was not provided with a transcript of that interview if in fact the interview was recorded.
- 269) A report of the Panama Maritime Authority, the flag state, found that Mr Monji was fatigued and overworked at the time of the incident. It found that the primary cause of the death was human error by Mr Monji who had decided to lubricate the roller without stopping the device.<sup>316</sup>

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<sup>312</sup> Ibid p 4.

<sup>313</sup> Ibid p 7.

<sup>314</sup> Ibid p 6.

<sup>315</sup> Exhibit 3/2/21/p 32: Panama Maritime Authority report.

<sup>316</sup> Ibid pp 45, 48.

## Findings

- 270) Accordingly, I now turn to the findings I am required to make pursuant to s. 81 of the *Coroners Act 2009*.

**I FIND THAT CESAR LLANTO DIED ON 30 AUGUST 2012 AS A RESULT OF FOUL PLAY, NAMELY, THAT MR LLANTO WAS EITHER THROWN OVERBOARD OR KILLED ON THE MV SAGE SAGITTARIUS AND HIS BODY DISPOSED OF AT A LATER TIME, BY A PERSON OR PERSONS UNKNOWN. IN RELATION TO THE CAUSE OF HIS DEATH I MAKE AN OPEN FINDING.**

**I FIND THAT HECTOR COLLADO DIED ON 14 SEPTEMBER 2012, IN NEWCASTLE HARBOUR ABOARD THE MV SAGE SAGITTARIUS. THE CAUSE OF HIS DEATH WAS MULTIPLE INJURIES WHICH I AM SATISFIED HE SUSTAINED AS A RESULT OF BEING STRUCK OVER THE HEAD BY SOME KIND OF WEAPON OR INSTRUMENT BY A PERSON OR PERSONS UNKNOWN AND THEN HE WAS EITHER THROWN OVER THE HANDRAIL OUTSIDE THE STOREROOM ON THE SECOND DECK OR FELL OVER THE HANDRAIL TO HIS DEATH**

## Recommendations

- 271) This Inquest has highlighted the fact that there are very significant practical impediments created by a disappearance or a death on board a foreign flagged vessel. Many thousands of foreign seafarers, including many Filipinos, work on foreign flagged vessels that venture into Australian waters in the course of trade.
- 272) Almost two decades ago, a Commonwealth Parliamentary Inquiry published a landmark report on "Ships of Shame". Some of the difficulties recognised by that inquiry are clearly still a problem today.
- 273) The "Ships of Shame" inquiry recognised that there were significant practical impediments to investigating suspected lawlessness that may take place on a foreign flagged vessel. These include that:
- a) Crew members will typically remain in or be returned to the place at which the lawlessness took place.
  - b) Crew members may be very concerned that speaking up, to investigators, may cause them and their families' significant difficulties, including in terms

of their ability to obtain future contracts in the industry.

- c) A culture of silence may reflect a number of factors, including fear for the wellbeing of one's family, and not just a suspicion of authorities.
- 274) The factors outlined in the preceding paragraph, make a proper investigation even more difficult. It is essential however that such investigations take place and be done thoroughly. Lawlessness, wherever it takes place, should always be investigated. Persons at fault should be brought to account wherever the jurisdiction.
- 275) In the present case, both investigating authorities, namely, the AFP and the NSW Police Force, in my view, used their best endeavours to investigate the disappearance and deaths that occurred on board the Vessel.
- 276) The disappearance of Mr Llanto and the deaths of Mr Collado and Mr Monji were particularly difficult investigations. The investigators faced numerous difficulties and challenges, including:
- a) Firstly, they did not have the benefit of hindsight that this Inquest now has looking at all the evidence which may suggest links between the three deaths;
  - b) Secondly, the investigations were bifurcated between AFP, whose officers investigated the disappearance of Mr Llanto pursuant to its powers under the *Crimes at Sea Act 2000* (Cth), and the NSW Police Force, who had jurisdiction to investigate the death of Mr Collado;
  - c) Thirdly, there were actual or perceived time pressures on the investigators to conduct a quick investigation on board a commercial coal loading ship which had pressing commercial engagements. The investigators could not easily go back to witnesses after more information came to hand;
  - d) Fourthly, all the relevant people/witnesses who were subject to investigation were Filipino nationals and most of them required an interpreter.
  - e) Fifthly, investigators were interviewing members of the crew, at least some of whom apparently felt intimidated or scared as a result of what had happened on the Vessel. In that regard:
    - i) the crew were aware that the Police interviewing them could not offer them any adequate protection if they either returned to the

Vessel or returned to Manila; and

- ii) some of the crew members may have been concerned about their future position as seamen.

It is abundantly clear from the evidence gathered for this Inquest that a number of crew members did not disclose everything they knew to authorities.

277) NYK and HSC attempted to carry out their own investigation into the disappearance of Mr Llanto and, despite not being able to be compelled to cooperate with this Inquest, they did so voluntarily and provided a wealth of material that has shed further light on the circumstances of Mr Llanto's disappearance and the death of Mr Collado. The material produced by NYK includes:

- a) Extensive reports and draft reports into the disappearance and deaths of those men;
- b) Reports from insurance companies and various authorities in Australia and Japan; and
- c) Correspondence, including emails between the companies and between the companies and Captain Salas (the companies being NYK and HSC).

278) Mr McLure SC, Counsel for Hachiuma Steamship Co Ltd and NYK, submitted inter-alia that it is outside my jurisdiction to make a finding about reasons why his client did not notify the JTSB or the Japanese Coast Guard about the disappearance of Mr Llanto and the death of Mr Collado. Moreover, it was submitted that whether or not Superintendent Mr Monji's death was an accident (as ruled by the Japanese Coast Guard and the JTSB) is not a matter for this Inquest and, finally, that I should find that there were legitimate reasons for that conclusion.

279) It is a matter of fact, that the disappearance of Mr Llanto and the death of Mr Collado were not reported to the JTSB or the Japanese Coast Guard. I do not accept that there were any good reasons for the failure to inform the JTSB or the Japanese Coast Guard about these matters. As indicated at the beginning of these findings, each of the three deaths that occurred on the Vessel between 30 August 2012 and 6 October 2012 cannot be considered in isolation and that includes the death of Mr Monji. It will ultimately be up to the JTSB or the Japanese Coast Guard as to whether they re-open their respective investigations into the death of Mr Monji upon receipt of this information as a result of a recommendation by me that a copy of these findings be provided to both these authorities.

- 280) Based upon all the material that has come before me, in relation to NYK and HSC, I have concluded, on balance, that:
- a) The companies engaged in an appropriate investigation of the disappearance of Mr Llanto and the death of Mr Collado;
  - b) A great deal of effort was put into trying to find Mr Llanto after he was reported missing, including:
    - i) an extensive search of the Vessel; and
    - ii) the Vessel returning to the location where Mr Llanto first went missing to participate in the search which involved aircraft;
  - c) The companies made timely reports to the relevant authorities including AMSA and the NSW Police Force;
  - d) There is no evidence at all that anyone in NYK or HSC was a party to or was involved in or covered up any foul play on the part of crew members; and
  - e) NYK did not alert either the JTSB or the Japanese Coast Guard about the disappearance of Mr Llanto and the death of Mr Collado, and there was no good reason to fail to inform those investigating bodies of those two deaths and every good reason to so inform them.
- 281) For the reasons set out in these findings, I make the following recommendations pursuant to s. 82 of the *Coroners Act 2009*:

**Recommendation 1:**

**The Japanese police and the Japan Transport Safety Board (JTSB) to be provided with a copy of the findings of this Inquest for their consideration of any further investigation into the death of Mr Monji.**

**Recommendation 2:**

**Consideration be given to establishing a permanent standing group with members from at least each of the following agencies:**

**NSW Police Force (NSWPF)**

**Australian Federal Police (AFP)**

**Australian Maritime Safety Authority (AMSA)**

**Australian Transport Safety Bureau (ATSB)**

for the purposes of liaising, contact and assistance in connection with any investigation of the death or suspicious death on board, or disappearance from, an international vessel in or bound for Australian waters (“the vessel”).

**Recommendation 3:**

A principal point of contact, from each of the Agencies mentioned in recommendation 2, be nominated in relation to each investigation of the kind described in Recommendation 2.

**Recommendation 4:**

The principal points of contact should be responsible for providing all available expertise and assistance to ensure the proper downloading, seizure and storage of any Voyage Data Recorder (VDR) system on board the vessel.

**Recommendation 5:**

In any investigation(s) involving both the NSWPF and the AFP, the principal point of contact from the NSWPF and from the APF should regularly liaise for the purpose of ensuring the sharing, between each such agency, of forensic and other evidence (subject to legislative requirements) that may be relevant to each to the investigation(s).

I close this inquest.

**Magistrate Sharon Freund**

**Deputy State Coroner**

31 May 2017