

**REPORT OF THE
INVESTIGATION INTO THE
COLLISION BETWEEN
THE YACHT "DEBONAIR" AND
CARGO VESSEL "BLUEBIRD"
IN DUBLIN BAY ON
20TH MAY 2001.**

The Marine Casualty Investigation Board was established on the 25th March, 2003 under The Merchant Shipping (Investigation of Marine Casualties) Act 2000

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1. SYNOPSIS

- 1.1 On 20th May 2001 at about 0250 hours, a collision occurred in the entrance channel to Dublin Port between the St. Vincent and the Grenadines registered cargo vessel "Bluebird" and the Irish yacht "Debonair". The collision occurred in a position 0.4 nautical miles to the west of No. 3 buoy in good weather conditions. Visibility was good at the time. There were four fatalities.

2. FACTUAL INFORMATION

(1) DESCRIPTION OF THE "BLUEBIRD"

2.1.1 Particulars of the Vessel

Flag:	St. Vincent and the Grenadines.
Port of Registry:	Kingstown.
Built	1982.
Length overall:	67.42 metres.
Breadth overall:	11.26 metres.
Depth moulded:	5.01 metres.
Gross tonnage:	1115.
Net tonnage:	623.
Draft:	Fwd 4.00m. Aft 4.30m.
Main Engine:	One 6 cylinder Anglo-Belgian Corp. 1192 kW motor engine giving a ballast speed of 11.75 knots.

2.1.2 Description of the Vessel

Steel, single screw, general cargo, motor vessel with two holds and one hatch cover. Vessel was on passage from Cowes, Isle of Wight, to Dublin Port with a cargo of wheat (1521 tonnes). Photographs of the vessel are given in Appendix 12.1

2.1.3 Main Navigation Aids provided on board.

Magnetic Compass:	One John Lilley & Gillie Ltd.
Gyro Compass:	One Sperry.
Autopilot:	One Decca Pilot 450.
Radars:	One Sperry Marine SM 5000R One Kodon MD 3751.
GPS:	One Micrologic ML-250.
VHF:	One Stn Atlas Debeg 6348 One DSC Controller Stn Atlas Debeg 3817R One Sailor RT 144C
MF/HF:	One DSC Controller Stn Atlas Debeg 3818
Depth Recorder:	One Simbad ED 161
Navtex Receiver:	One Furuno NX 500

2.1.4 There were 6 crewmembers on board and the vessel was manned in accordance with the Safe Manning Document on board the vessel.

2. FACTUAL INFORMATION

(1) DESCRIPTION OF THE "DEBONAIR"

2.2.1 Particulars of the Vessel

"Debonair" is a 30 foot Club Shamrock yacht with the sail number IRL 4. Mark Styles purchased the yacht around 1998. The engine on board was a Volvo Penta MD 7A twin cylinder diesel that was reconditioned in 2000. The engine was estimated to give a speed of about 5 knots.

2.2.2 Navigation Aids provided on board.

GPS: One Garmin GPS 38.
One Datamarine Dart 7.
VHF: One Navico RT 6500S
There was also One Dataline Central display and one Dataline Databox.

2.2.3 Lifesaving Appliances on board.

As far as can be established the following lifejackets were on board the "Debonair".

One Baltic Lifejacket 150 newton - manual operation.
One Lalizas Omega CE 150 - manual operation.
One Helly-Hansen buoyancy aid - 10 to 12 stone.
One adult size Slimfit Crewsaver buoyancy aid.
One buoyancy aid - up to 10 stone.
Two children's buoyancy aids.
One adult Helly-Hansen buoyancy aid.

As far as can be established the following pyrotechnics were on board the "Debonair".

One red parachute flare (expired 12/96)
One red hand flare (expired 4/83)
One hand orange flare (expired 4/96)
One red hand flare (expired 12/96)

There was also two horseshoe lifebuoys at the after end of the yacht.

2.2.4 The following crewmembers were on board the "Debonair" at the time of the collision.

Mark Styles Glen Styles Philip Daley Roan Smith Eleanor Cullen
Mark and Glen Styles had considerable sailing experience from a very young age. Mark Styles purchased his first cruiser around 1991. Philip Daley had been sailing for about 15 years. Roan Smith had about 2 years sailing experience. Eleanor Cullen's sailing experience is not known.

3. **FACTUAL REPORT OF THE EVENTS PRIOR TO THE INCIDENT AS TAKEN FROM THE ACCOUNT OF THE PERSONNEL CONNECTED WITH THE "BLUEBIRD"**
- 3.1 At about 0000 hours on 20th May 2001, the "Bluebird" called Dublin Port Radio and advised the Port that she was about two hours away. At 0205 hours the "Bluebird" called again and advised that she was now 30 minutes from the pilot boarding position.
- 3.2 At this time the Dublin Port Radio Operator called the Duty Pilot John McKenna. Mr. McKenna is a Dublin Class 2 Pilot with 35 years experience in all classes of vessels and 28 months in the Dublin Port Pilots at the time of the incident. He is the holder of a First Mates Foreign Going Certificate of Competency with a Master Near Continental Command Endorsement. The Dublin Port pilot roster system operates over a twelve-day cycle, which consists of six days when the pilot is on duty or on standby followed by six days when the pilot is on rest period. Mr. McKenna had returned to work from his rest period on 18th May 2001 at 1000 hours.
- 3.3 On the 19th May 2001, Mr. McKenna came on duty at 1815 hours for a one-hour job. He was in the process of training for a Class I Pilots licence. He went out for the "Bro Traveller" at 2145 hours with a Class I Pilot. They were back in the station at approximately 2300 hours.
- 3.4 He was called at 0210 hrs approx. as the "Bluebird", which was the vessel he was to pilot into the port, was 30 minutes from the boarding area. He left the station at about 0225hrs in the pilot boat "Tolka" to board the "Bluebird". The "Bluebird" was inbound from Cowes in the U.K. with a draft of 4.3 metres approx. and it was intended to berth at berth 29.
- 3.5 The night was clear, with no wind and to all intents and purposes the sea was flat calm. Visibility was excellent. The Met Eireann weather report is included at Appendix 12.2.
- 3.6 After boarding the pilot boat, which had a crew of two, Mr. David Byrne (Coxswain) and Mr. John Murphy (crew), they left the pontoon beside the pilot station and proceeded down the channel. There was no other traffic in the channel. On the way down the river, when abeam of berth 49, the pilot called the "Bluebird" on VHF Channel 12 from the pilot cutter and advised that he would board the "Bluebird" between the Racon buoy and No.1 buoy. A chart extract of the entrance to Dublin Port is given in Appendix 12.3.

- 3.7 As the pilot cutter proceeded down the channel they observed two white lights, apparently from a yacht under power with no sail proceeding seawards. As the pilot cutter passed him by, the lights changed from white to green passing down his starboard side. The yacht was on the North side of the channel, heading east. The pilot cutter continued down the channel and Mr. McKenna boarded the "Bluebird" between the Racon buoy and No.1 buoy.
- 3.8 The "Bluebird" had reduced speed to 5-6 knots to facilitate the pilot boarding. When the pilot arrived on the bridge he spoke to the Master and obtained all relevant information on the ship from him. The pilot reported the draft of the vessel and the last port to the Port Radio. The pilot was advised to proceed to berth 29 and that the channel inbound was clear.
- 3.9 The "Bluebird" proceeded towards the channel entrance. As the vessel approached Nos. 3 and 4 buoys, steering approximately 300° (True), the pilot and the Master observed 2 red lights apparently to the south side of the channel. The pilot immediately remembered that he had passed a yacht on the way out and he assumed the yacht was the same one as seen previously. The course to steer up channel from Nos. 3 and 4 buoys is 270° (True) approx. depending on tidal conditions.
- 3.10 As the yacht was on the south side of the channel the "Bluebird" came around to 290° (True) approx. and at this point, the pilot recalls that the "Bluebird" was on the north side of the channel and then the "Bluebird" came slowly to port to about 285° (True). At this stage the pilot observed the "Debonair" still heading East and about 22.5° off the port bow of the "Bluebird". At this time the pilot realised he needed to alter course to 270° (True) approx. but he observed that the "Debonair" was still showing a red light.
- 3.11 Mr. McKenna decided to wait until the "Debonair" had passed to bring the "Bluebird" around to 270° (True). At this stage the pilot assumed that a normal red-to-red passing of the two vessels would take place, as the "Bluebird" was on the North side of the channel and the "Debonair" was on the South side. The "Bluebird" was proceeding at a manoeuvring speed, which the pilot believes was about 7 knots. The "Debonair" was coming down on the port side with the ebb tide behind her. The situation at all times appeared quite normal and no attempt was made to converse on the VHF, as the pilot did not think it necessary. Pilots do not normally communicate with yachts whilst piloting.

4. **FACTUAL REPORT OF THE EVENTS PRIOR TO THE INCIDENT AS TAKEN FROM THE ACCOUNT OF THE SURVIVOR ON BOARD THE "DEBONAIR" - MR. PHILIP DALEY**
- 4.1 The yacht "Debonair" sailed from Malahide Marina on Saturday 19th May 2001 at approximately 1130 hours. On board were Mark Styles, Glen Styles, Philip Daley, Roan Smith and Ian Bull. The yacht was on route to the marina pontoon on the Liffey adjacent to Jury's Inn. A berth had been booked earlier in the week so as to view the fire-works display that was taking place that night.
- 4.2 Mark and Glen Styles, who had considerable sailing experience from a very young age shared the skipper's duties to Dublin.
- 4.3 A number of automatic and manually inflated lifejackets were on board. They were kept in a wet locker in the galley area. The lifejackets were worn when on deck. There were also 3 or 4 children's lifejackets and some older lifejackets for adults, which were stowed in a bag in the forward cabin. The crew were aware of how to inflate the lifejackets, which were approximately 2 years old. There was no liferaft on board.
- 4.4 There was a Nautical Almanac on board which also covered the U.K. There was also a chart, which covered the area from Carlingford to Bray. The positions of the yacht were not being plotted on a chart.
- 4.5 On arrival at Poolbeg Yacht Club at about 1430 hours they enquired in the club if any information in respect of the bridge opening was available. There was industrial action ongoing with pickets on the Eastlink Bridge and it was suggested the pickets might be taking an extended tea break to allow the Port Authority access to the bridge lifting control area.
- 4.6 The information available to the crew of the "Debonair" was that the bridge was due to open at 1500 hours and again at 1530 hours to allow the many craft enter for the evening's festivities. Mr. Daley recalls that they departed from the Poolbeg Yacht Club at about 1440 hours and took up a holding position just on the sea side of the bridge in anticipation of the bridge opening.
- 4.7 On arrival at the bridge it was clearly visible that reinforcements to the picket line had been called in to prevent any opening of the bridge. After a short time, the crew put Glen Styles ashore on the north side of the river just below the bridge and he tried to reason with the picketers but to no avail. Glen Styles rejoined "Debonair" along with Mark Styles' son. The yacht continued to hold a position at the bridge for a short while and then returned to Poolbeg Yacht Club at about 1600 hours rafting up at the pontoon alongside two other yachts and then proceeded to the Clubhouse at about 1630 hours. They were rafted third boat out.

- 4.8 On arrival at Poolbeg Yacht Club they were joined by various family members and friends. Mark Styles left with his family but planned to return to the "Debonair" later in the evening. They remained in Poolbeg Yacht Club socialising until shortly before 2200 hours when the fireworks display was due to begin. They watched the fireworks from the boat rafted second out. Eleanor Cullen joined them and Ian Bull and others departed for their respective homes sometime after 2300 hours.
- 4.9 Mr. Daley does not recall going back to the clubhouse after the fireworks but he states that some people may have gone back to use the toilets. It proved impractical to try to sleep on board as the pontoon at Poolbeg was quite small and there was a considerable amount of movement so it was felt by those on board that the "Debonair" should return to Howth. Because of the tides the crew estimated that the yacht would have been unable to enter Malahide until 0800/ 0830 hours on Sunday morning. As the crew had planned to collect their respective families and visit the parade in the city centre on Sunday afternoon they felt that they could complete most of the voyage and be ready for an early arrival in Malahide.
- 4.10 The "Debonair" departed from Poolbeg Yacht Club at approximately 0215 hours and having turned into the river, Mark Styles, Roan Smith and Eleanor Cullen retired to their bunks below for the night. Glen Styles was standing at the helm and Philip Daley stayed on deck with him to keep him company, as it was Mr Daley's policy not to leave anybody on their own. Also, somebody would need to assist with the berthing of the boat in Howth, which they expected to reach within approximately 2 hours. As they departed from the clubhouse and commenced their journey down river, Philip Daley was standing in front of the compass between the wheel and the cabin and both Philip Daley and Glen Styles noticed a large ship in the distance. Mr Daley cannot recall its lights or how far away it was. He does not recall seeing any other ships. They carried no sail at that time and were proceeding under power.
- 4.11 It became a little cool and Philip Daley descended into the cabin to get his sailing jacket and also to get lifejackets for both Glen Styles and himself. He estimates that he must have been below deck for at least 5 minutes. He located two lifejackets, fitted one on himself and then returned to deck and handed Glen Styles a lifejacket. At that time, Eleanor Cullen appeared and joined Glen Styles and Philip Daley on the deck with Eleanor Cullen sitting in the aft of the boat on the port side.
- 4.12 At the time that Philip Daley emerged from below and handed the lifejacket to Glen Styles, he was at all times standing between the wheel and the cabin entrance, facing towards the stern of the boat and when Eleanor Cullen came up, she sat down in the after end. Philip Daley remained facing towards the stern of the boat. Philip Daley's return from below and Eleanor Cullen's arrival would have been more or less at the same time. The engine of the "Debonair" is located below the cockpit and is quite noisy. It can accordingly be difficult to hear the VHF radio even though the "Debonair" has an outdoor speaker.

5. THE INCIDENT

(1) FACTUAL REPORT OF THE INCIDENT AS TAKEN FROM THE ACCOUNT OF THE PERSONNEL CONNECTED WITH THE "BLUEBIRD"

- 5.1.1 When about two ships lengths away from the yacht, the pilot and the Master of the "Bluebird" suddenly observed the sidelights of the "Debonair" changing from red to green. The moon was shining and the pilot could actually see the hull outline alter course across the channel. Mr. McKenna told the Master to continuously sound the whistle as a warning without a break and stop engines and then go full astern. The "Bluebird" has engine control from the bridge. The engines responded quickly and the vessel's head slewed slowly to starboard. The yacht continued its alteration to port right across the bow of the "Bluebird".
- 5.1.2 The Chief Officer, who was on the forecastle head of the "Bluebird", looked around when he heard the whistle sounding and saw a yacht on the port side, altering course to port. When the yacht started coming more quickly to port, the Chief Officer shouted at the yacht "what are you doing". He recalls seeing the face of the helmsman and maybe two other persons. When he saw the yacht's mast getting close to him he stepped back and heard a blow as the mast hit the bulwark of the "Bluebird". The yacht disappeared under the forecastle head, the "Bluebird's" engines still going full astern.
- 5.1.3 On the bridge of the "Bluebird" they felt a bump and the yacht came out under the "Bluebird's" starboard bow. At this stage the Captain stopped the engine, in case there were any persons in the water. The yacht was next seen on the starboard bow. However before the yacht reached midships it sank. The Captain saw one person come to the surface of the water. Then the Captain released the starboard bridge wing lifebuoy (fitted with smoke and light). The crew also released a lifebuoy with a light attached. The Captain activated the GPS man overboard button. This was timed at 0252, the position readout was 53° 20.584N 06° 07.367W. This position is given in Appendix 12.3. An aerial photograph of the area is given in Appendix 12.4. Lookouts were posted on the forecastle head, on the poop to port and starboard and on the bridge wings in order to look for survivors.

(2) FACTUAL REPORT OF THE INCIDENT AS TAKEN FROM THE ACCOUNT OF THE SURVIVOR ON BOARD THE "DEBONAIR" - MR PHILIP DALEY

- 5.2.1 Eleanor Cullen and Philip Daley had returned to the cockpit for only a very short time when suddenly Philip Daley heard a ship's siren, turned around to look forward and all he recollects seeing is a 'wall of steel' right off the starboard bow. He had not seen the vessel before this.
- 5.2.2 Philip Daley cannot state with certainty what the exact position of the "Debonair" was in the channel. He does not know what their course was at the time of collision. He was absolutely shocked and had no time to either shout a warning or have any communication with Glen Styles or Eleanor Cullen. He does not have a recollection of the moment of collision but he vividly remembers taking a large breath and is not sure if he jumped into the water or was thrown clear.
- 5.2.3 At the time of collision Roan Smith and Mark Styles were still in their bunks in the main cabin.
- 5.2.4 The next memory Philip Daley has is fighting for his life, looking for the surface of the water and struggling to find the ripcord on the life jacket. Not having found one he presumed he was wearing an automatic life jacket. Both automatic and manual life jackets were on board. Philip Daley recalls that he had no air remaining in his lungs and had to try and breathe.
- 5.2.5 Suddenly Mr. Philip Daley broke the surface of the water. He has no other recollection of the incident and all he recollects is being pulled aboard a boat. He insisted on remaining with his rescuers to assist with the search for his friends, but due to the cold was transferred to the Howth Lifeboat, brought to Dun Laoghaire Harbour and transferred to St. Michael's Hospital.
- 5.2.6 Glen Styles was in charge of the navigation after leaving Poolbeg Yacht Club at about 0215 hours. He was also keeping look-out. The "Debonair" was being steered by eye. Glen Styles was standing at the helm at all times, as it was not comfortable to sit down and steer.
- 5.2.7 Mr. Philip Daley states that the "Debonair" would have stayed, as a matter of course, within the navigation channel out of Dublin Port. They would not intentionally sail outside the channel. He was not aware of Dublin Port Company Notice to Mariners No. 7 of 2001, which states that "small boats sailing, rowing or proceeding under power within the limits of the Harbour are strictly required to keep out of the fairway channel". A copy of this notice is given in Appendix 12.5. The MCIB cannot confirm whether the helmsman or any other crewmember on the "Debonair" were aware of this Marine Notice.
- 5.2.8 Mr. Philip Daley estimates that the speed of the "Debonair" would have been 4 knots up to 4.5 knots maximum.

- 5.2.9 The positions of the boat were not being noted on a chart. Mr. Daley does not recall the course of the "Debonair" at all down the river. The autopilot was not in operation. He does not recall the position of the engine controls at the time of the accident.
- 5.2.10 Mr. Philip Daley does not recall any steering problem with the "Debonair". The steering cables had been replaced in 2000. He was not aware of any equipment malfunctioning.
- 5.2.11 Mr. Daley's recollection is that the navigation lights being displayed at the time of collision were a red and green combined light on the top of the mast and also a red and green combined light forward and a white light aft.
- 5.2.12 Mr. Daley's recollection is that the starboard side of the "Bluebird" and the starboard side of the "Debonair" collided. He is not sure of the angles of contact. The yacht was struck maybe one third of the way back from its bow. He does not recall the yacht altering course to port.
- 5.2.13 Philip Daley thinks that Glen Styles had his lifejacket on but Eleanor Cullen had no lifejacket on.
- 5.2.14 Mr. Daley stated that he had consumed about 4 or 5 pints of beer throughout the day. He does not know how much alcohol Glen Styles, Roan Smith or Eleanor Cullen had consumed. He recalls that Mark Styles had been elsewhere at a party.
- 5.2.15 The decision to leave Poolbeg Yacht Club for Howth was reached by consensus and nobody objected. Mr. Daley stated that he was not unhappy leaving at this time. He would have raised his objections if he was not happy with the decision.
- 5.2.16 The draft of the "Debonair" was about 1.9m. They could only berth in Malahide around two hours each side of High Water.

6. EVENTS FOLLOWING THE INCIDENT

- 6.1 The pilot called Dublin Port Radio and advised them that the "Bluebird" had been in collision with a yacht. He then called Dublin Coastguard Radio on channel 16. MRCC Dublin broadcast a Mayday Relay and tasked a helicopter and Howth and Dun Laoghaire lifeboats. The pilot cutter, which was inbound and approaching the Poolbeg light, returned to the scene to search for survivors. The pilot instructed the Master to put the rudder hard to port and engines dead slow ahead, keeping both lifebuoy lights, which they could clearly see, in view. The vessel was then turned and headed back down the channel towards the two lifebuoy lights.
- 6.2 The pilot boat was returning down the channel at this stage towards the casualty and due to the limited manoeuvrability of the "Bluebird" in confined water, the pilot instructed the pilot boat to search between and close to the two white lifebuoy lights. Both the Master and Chief Officer of the "Bluebird" stated that when they returned to the collision position they heard someone screaming in the water on the port beam. They tried to locate the person using the searchlight, after stopping the engine, but were unable to do so.
- 6.3 When the pilot boat arrived they picked up one survivor, Mr. Philip Daley, who was wearing an uninflated lifejacket. He informed the pilot boat crew that there were a total of 5 persons on the yacht. A second person, who was face down in the water and was also wearing an uninflated lifejacket, was found but the pilot boat crew lost their grip on this person and the body drifted away. Shortly afterwards they came across another person, face down with no lifejacket. This body was recovered at about 0341 hours by the Dun Laoghaire lifeboat, which had arrived at about 0315 hours. One of the lifeboat crew entered the water in order to recover the body, which is now known to be the body of Mr. Roan Smith.
- 6.4 The pilot, Mr. John McKenna, acted as on scene commander until the arrival of the Dun Laoghaire lifeboat, which then carried out these duties. As the box search continued the lifeboat requested the pilot to come off the "Bluebird" to assist with details of the search. The pilot was put on the workboat "Shakespeare", which had also arrived to assist in the search for survivors. The exact location of the collision was identified to the Skipper of the "Shakespeare". The vessel then searched up and down for survivors and the wreckage using the Sonar/Echo sounder on board the "Shakespeare". A number of other vessels, including the Howth lifeboat, "Tolka", "Dodder" and the rescue boat from the "Jonathan Swift" also assisted in the search.
- 6.5 At about 0640 hours the helicopter crew advised that they could see oil bubbling to the surface, close to the collision position. The helicopter marked the position with a dye marker.

- 6.6 After the helicopter had marked the position the "Shakespeare" went up and dropped a marker buoy with a weight on it at that position. The vessel then pulled away from the marked position and the Dublin Port divers and Garda divers moved into the area of the casualty.
- 6.7 At 0752 hours, Garda divers entered the water and shortly afterwards located the "Debonair" on the sea bottom in 12 metres of water. The yacht was lying upright on the sandy bottom with its bow pointing west. There was a lot of damage to the stern area of the yacht. Shortly afterwards the body of a female (Eleanor Cullen) was recovered and taken to the surface and transferred to the Dun Laoghaire lifeboat at 0810 hours.
- 6.8 At 0942 hours the body of Mr. Mark Styles, which had been recovered from the yacht, was transferred to the lifeboat by the Garda divers. Further searches of the yacht continued throughout the day for the one remaining missing person, but without success.
- 6.9 On 8th June 2001, a body, wearing an uninflated lifejacket, was sighted in the water one mile from Ireland's Eye by the fishing vessel "Silver Strand". The body, which was subsequently identified to be that of Glen Styles, was recovered and brought to Howth by the local lifeboat.

7. EXAMINATION OF THE WRECK OF THE YACHT "DEBONAIR".

- 7.1 The wreck of the yacht "Debonair" was recovered on Monday 21st May 2001 and was stored in the Engineer's yard in Dublin Port. Over the next two days the wreck was examined by surveyors from the Marine Survey Office, Department of Marine and Natural Resources. Photographs of the damaged yacht are given in Appendix 12.6.
- 7.2 The hull of the yacht, which was of GRP construction, was broken right across from the starboard side to the port side, just aft of midship. From the paint markings on the hull of the yacht it would appear that contact was initially made on the starboard side of the yacht just aft of midship. Also, the mast of the yacht made contact with the bulwark forward on the forecastle head of the "Bluebird".
- 7.3 The impact angle would appear to have been about ninety degrees. Other paint markings would indicate that the yacht was then pushed over onto its port side to an angle of about ninety degrees with the foot of the keel making contact with the starboard bow of the "Bluebird".
- 7.4 At this point it would appear that the hull of the "Debonair" was already broken, as there is evidence of red paint on the broken GRP of the yacht. As there are also red paint markings on the port side of the yacht it would appear that the yacht was then pushed totally over before finally sinking.
- 7.5 The engine and gearbox unit of the "Debonair" were also examined as were the positions of the engine fuel pump lever, the gearbox ahead/neutral/astern positioning lever, the throttle and direction control lever in the cockpit of the yacht and the associated (severed) control cables. Based on the positions of the various controls, after taking into account their positions at the moment that the cables were severed, it would appear that the engine was operating at close to full revolutions and that the gearbox was in the ahead mode when the cables were severed.
- 7.6 Examination of the impact damage to the hull, propeller shaft and other items of equipment would indicate that the severing of the control cables was consistent with the collision damage and probably occurred at the time of collision.
- 7.7 Accordingly, it would appear that the engine on the "Debonair" was operating in the ahead mode and was close to full revolutions at the time of the collision.
- 7.8 The steering gear on the "Debonair" was also examined. Modifications were carried out to the original design but there was no reason to believe from the inspection that the steering malfunctioned. There was damage to the steering but again this was consistent with the collision damage and probably occurred at the time of the collision.

- 8. INFORMATION OBTAINED FROM THE RADAR RECORDINGS FROM DUBLIN PORT.**
- 8.1 Recordings of the events leading up to the incident were obtained from the radars at Dublin Port Company. The following information was obtained directly from real time radar reruns of these recordings and the measurements were electronically calculated. The recordings as indicated are reproduced in Appendix 12.7.
- 8.2 The recordings show that the "Debonair" departed from the Poolbeg Yacht club at 0215 hours.
- 8.3 The recording for the time 02:28:56, given at Appendix 12.7(F1), shows the track history of the yacht from the time of departure up to that time. The measured speed of the yacht at 0228 hours is about 5.92 knots over the ground.
- 8.4 At 0233, the pilot boat, outward bound to the "Bluebird", passes the yacht. At 0235, the pilot boat passes through the breakwater. At 0238, the "Debonair" is abeam of buoys No. 7 and No. 8. Shortly afterwards the yacht passes through the breakwater and at 0243 hours she passes very close to No. 5 buoy.
- 8.5 After this, the yacht steers a course towards the south side of the fairway channel as shown by the track history for 02:45:43, given at Appendix 12.7(F2). The measured speed of the yacht at 02:45:30 hours is about 5.95 knots over the ground.
- 8.6 At 0243 hours, the "Bluebird" passes No.1 buoy as she enters the port with the pilot on board. At this time also the dredger "Krankaloon" is approaching No.1 buoy as she departs the port, with the "Bluebird" on her port side.
- 8.7 A radar recording for 02:48:07 hours is reproduced at Appendix 12.7(F3), which shows the "Bluebird" and "Debonair" approaching each other. The measured speed of the "Bluebird" over the ground at 0249 hours is 9.7 knots on a heading of 290° (True). The speed of the "Debonair" at 02:48:30 hours is measured at 5.93 knots.
- 8.8 The radar recording for 02:50:01 hours is reproduced in Appendix 12.7(F4). This shows the "Bluebird" on a course of 277° (True) with a speed of 8.7 knots, as it appears to have altered to port to follow the course of the channel. The "Debonair" would appear to be passing clear on the port side.
- 8.9 The radar recording for 02:51:01 hours is reproduced in Appendix 12.7(F5). This shows the echoes of the two vessels merging. The "Bluebird" appears to be in a position approximately midway between mid-channel and the northern edge of the channel, whereas the track history of the "Debonair" shows that she has come from the south side of the channel across to the north side.

- 8.10 The radar recording for 02:51:13 hours is reproduced in Appendix 12.7(F6). This shows the track history of the "Debonair" as she departed from the port. Further recordings show the "Bluebird" returning to the collision position and also other craft arriving in order to assist in the search for survivors.
- 8.11 The above details are the best information that can be obtained from the recordings taken into account the size of the echoes and the time scale involved. The times given on the radar recordings are 17 seconds fast.

9. OTHER MATTERS TO BE CONSIDERED.

- 9.1 Both the Garmin GPS 38 and the Datamarine Dart 7 GPS`s were recovered from the "Debonair" and were sent for inspection to C-Map Limited in the U.K. Both units were stripped down and investigated and were both found to have suffered severe seawater corrosion. No information could be obtained from either unit regarding the track of the "Debonair" or its position at the time of the collision.
- 9.2 The tidal flow at the time of the collision would have been in a mainly East North Easterly direction with an estimated rate of 0.8 knots.
- 9.3 Post-mortem examination results of all four victims showed that death was due to drowning. Toxicology examinations were also carried out and these revealed that all four victims were moderately intoxicated by alcohol at the time of their deaths. It was stated by the Deputy State Pathologist at the Coroner's Court that the alcohol levels present might have led to problems with co-ordination.

10. CONCLUSIONS AND FINDINGS.

- 10.1 This collision was caused because the International Regulations for Preventing Collisions at Sea, 1972, as amended, were not observed. Compliance with these regulations is a requirement for all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- 10.2 Rule 5 of the International Regulations for Preventing Collisions at Sea, 1972, as amended, states that *"every vessel shall at all times maintain a proper look-out by sight and hearing as well by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision"*. From the survivor's account it would appear that the crew of the "Debonair" were not aware of the presence of the "Bluebird" until the cargo ship's whistle sounded. Rule 5 is reproduced in Appendix 12.8.
- 10.3 Rule 9 of the International Regulations for Preventing Collisions at Sea, 1972, as amended, deals with the conduct of vessels when navigating in a narrow channel or fairway. The applicable parts of Rule 9 state:
- "(a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway that lies on her starboard side as is safe and practicable.
 - (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
 - (c) Not applicable.
 - (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel".

In compliance with the above the "Debonair" should have kept to the starboard side of the fairway (Rule 9 (a)), due to her length should have kept out of the way of the "Bluebird" (Rule 9 (b)) and should not have crossed the fairway and impeded the passage of the "Bluebird" (Rule 9 (d)). Rule 9 is reproduced in Appendix 12.8.

- 10.4 Dublin Port Company Notice to Mariners No. 7 of 2001 in paragraph 4 states *"that small boats sailing, rowing or proceeding under power within the limits of the harbour are strictly required to keep out of the fairway channel"*. The surviving member of the crew of the "Debonair" was not aware of the existence of this Notice. Prior to the accident the notice was forwarded to the sailing clubs in the Dublin Bay area from Howth to Dun Laoghaire inclusive. Following the accident the notice was forwarded to all sailing clubs from Skerries to Greystones inclusive. A copy of the notice is given in Appendix 12.5. Rule I (b) of the International Regulations for Preventing Collisions at Sea, 1972, as amended, allows Dublin Port to make such rules. Rule 1 is reproduced in Appendix 12.8.
- Also Bye-Law XXXI of the Port and Harbour of Dublin states that *"small boats, sailing or rowing, within the limits of the Harbour, are strictly required to keep out of the fairway channel of the river"*.
 - While the Dublin Port Company Notice to Mariners and Bye-Law regulations pertaining to small craft were in place, it would appear that Dublin Port Company was aware that some small craft from outside the Howth to Dun Laoghaire area did not comply with this Notice or Regulation as they were not aware of same.
 - While the Dublin Port Company Notice to Mariners and Bye-Law regulations pertaining to small craft movements did exist and it was recognised that some small craft were not aware of these regulations, there was no monitoring, controlling and enforcing of its own regulations by Dublin Port Company.
 - Notwithstanding the Dublin Port Company Notice to Mariners and Bye-Law regulations, all small craft are required to comply with Rule 9 of the International Regulations for Preventing Collisions at Sea, 1972, as amended.
- 10.5 It is unclear as to what took place concerning the navigation of the "Debonair" after leaving Poolbeg Boat and Yacht Club, as the helmsman did not survive the accident. From the sole survivor's statement it is not possible to draw any definite conclusions regarding the cause of the alteration of course immediately preceding the collision. Whatever occurred to the yacht would appear to have taken place suddenly and with little or no forewarning to the crew on board, as no time was available in order to raise the alarm or to attempt to take evasive action. It is the Board's view that the helmsman on the "Debonair" was not monitoring the steering progress of the yacht. Some of the possible reasons for lack of monitoring may be:
- (a) that the distance between the two vessels was misjudged.
 - (b) the helmsman may have been distracted by the arrival of the two crewmembers in the cockpit.
 - (c) the helmsman may have had problems with co-ordination, for the reasons as outlined in paragraph 9.3.

- 10.6 Furthermore, the crew of the "Debonair" were not aware of the dangerous position that the yacht had reached, prior to the collision. As visibility was good, any ships or navigation channel buoys should have been visible to them.
- 10.7 The initial divers' survey revealed that there was substantial damage to the stern area of the yacht with the hull cracked open in several places.
- 10.8 From all available information it would appear that all the steering and navigational equipment on board the "Debonair" was operating correctly.
- 10.9 As the "Bluebird" was proceeding inwards and passing the bend in the channel between Buoys 3 and 4, the vessel was near to mid-channel. The respective positions of the "Bluebird" and "Debonair" at this time are shown in Appendix 12.7 (F4). The position of the "Bluebird" at this time appears to have had no bearing on the subsequent collision with the "Debonair". Both vessels were approximately 0.28 nautical miles (510 metres) apart and the "Debonair" was on the southern side of the channel showing port light.
- Appendix 12.7 (F5) shows the position of the vessels at the time of the collision. This shows the "Bluebird" in a position approximately midway between mid-channel and the northern edge of the channel. However it also shows the "Debonair" in this location. It is clear that the "Debonair" had moved from the southern side of the channel across onto the northern side of the channel into the path of the oncoming "Bluebird".
- 10.10 The "Debonair" was not maintaining its position on a navigational chart.
- 10.11 At the Coroner's Court, the survivor - Mr. Philip Daley, was questioned regarding alleged information he had given to Mr. Michael Duffy {a crewmember on board the Howth lifeboat} following his rescue from the water and prior to being put ashore at Dun Laoghaire. The deposition of Mr. Duffy stated that Mr. Daley had described to him, amongst other details, various alterations of course taken by the "Debonair" prior to the collision with the "Bluebird". However when questioned, Mr. Daley stated that he had no recollection of the "Debonair" altering course to port. Furthermore he has no recollection of the conversation with Mr. Duffy.
- 10.12 In his deposition to the Coroner's Court, the survivor - Mr. Philip Daley stated that *"we were in the bar until around one o'clock"*. This conflicts with his recollection to the MCIB Investigator (given at paragraph 4.9) which states *"Mr. Daley does not recall going back to the clubhouse after the fireworks but he states that some people may have gone back to use the toilets"*.

Other findings

- 10.13 The navigation lights being displayed by the yacht at the time of the collision were not in compliance with Rule 23 of the International Regulations for Preventing Collisions at Sea, 1972, as amended. Rule 23 is given in Appendix 12.8. It would appear that the lights being displayed by the "Debonair" were the combined sidelights and stern light in the one lantern at the top of the mast and also sidelights and stern light on the cabin top.
- 10.14 The un-inflated Baltic lifejacket, which was worn by the survivor Mr. Philip Daley, was examined and tested. This was a manually inflatable lifejacket only. The tests revealed that the lifejacket inflated normally when manually operated by pulling the pull cord and did not appear to have any leaks.
- 10.15 The un-inflated Lalizas Omega CE 150 lifejacket, which was found on the recovered body of Mr. Glen Styles, was examined and tested. This lifejacket was found to have two methods of inflation, both of which were manual. The primary method was by means of a standard 33gramme CO2 gas cylinder, which was fired by a manually operated pull chord and attached toggle. The secondary method of inflation was by a simple blow tube with a one-way valve, which allows the wearer to orally inflate the jacket. The inflation tube had its protective cap still attached, which suggests that it had not been used.

The examination revealed that there was no automatic inflation mechanism present. The manual inflation mechanism was found to be in good condition. The plastic toggle was attached to the pull chord, which was properly attached to the inflation mechanism. The green plastic indicator tab was still present in its original position, which showed that the firing mechanism for the CO2 cylinder had not been activated. The tests revealed that the lifejacket inflated normally when manually operated by pulling the pull cord and did not appear to have any leaks.

The pull cord was operated several times and it was found that both the mechanism and the firing pin were in good condition and in working order. Although worn by Mr. Glen Styles the lifejacket had not been inflated, either orally or manually.

- 10.16 The rescue attempts began at once and, although the outcome was tragic, those who took part deserve credit for their prompt and efficient efforts.

11. RECOMMENDATIONS.

- 11.1 It is recommended that the Department of Communications, Marine and Natural Resources highlight the danger of the consumption of alcohol by Masters and crews of any vessel. The Department, after appropriate consultation, should consider the promotion of legislation to introduce a breath test. The legislation should set maximum blood alcohol levels for seafarers on duty.

The International Maritime Organisation has also addressed this issue. Section B of the 1995 revised International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW 78/95) includes the following:

"Drug and alcohol abuse directly affect the fitness and ability of a seafarer to perform watchkeeping duties. Seafarers found to be under the influence of drugs or alcohol should not be permitted to perform watchkeeping duties until they are no longer impaired in their abilities to perform those duties."

STCW 78/95 came into effect in February 1997. Administrations (including Ireland) are asked to consider developing national legislation prescribing a maximum of 0.08% blood alcohol level (i.e. 80 milligrammes of alcohol in 100 millilitres of blood) during watchkeeping duty as a minimum safety standard on their ships and prohibiting the consumption of alcohol within 4 hours prior to serving as a member of a watch. Adequate measures should be taken to prevent alcohol and drugs from impairing the ability of watchkeeping personnel, and administrations should establish screening programmes.

- 11.2 Regular meetings should be convened by all Port Authorities with Sailing Club Officers and other interested parties to discuss and monitor safety issues.
- 11.3 During the course of the investigation, it emerged that there were a number of other incidents involving the movements of small craft and sailing vessels in Dublin Port on the night of May 19th, 2001. It is recognised that Dublin Port Company, in consultation with local yacht and boat clubs, did proceed, in May, 2002, with its stated intention to publish its own set of "Guidance Notes for Leisure Craft" operating within the Port's area of jurisdiction. See Appendix 12.9

It is recommend that ALL ports put in place procedures for the monitoring, controlling and enforcement of any Bye-Laws, Notices to Mariners and Guidance Notes pertaining to leisure craft movements within their area of jurisdiction. All required means including Vessel Traffic Schemes, radar, radio, port company craft, etc. should be utilised for this purpose.

12. LIST OF APPENDICES

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APPENDIX 12.1

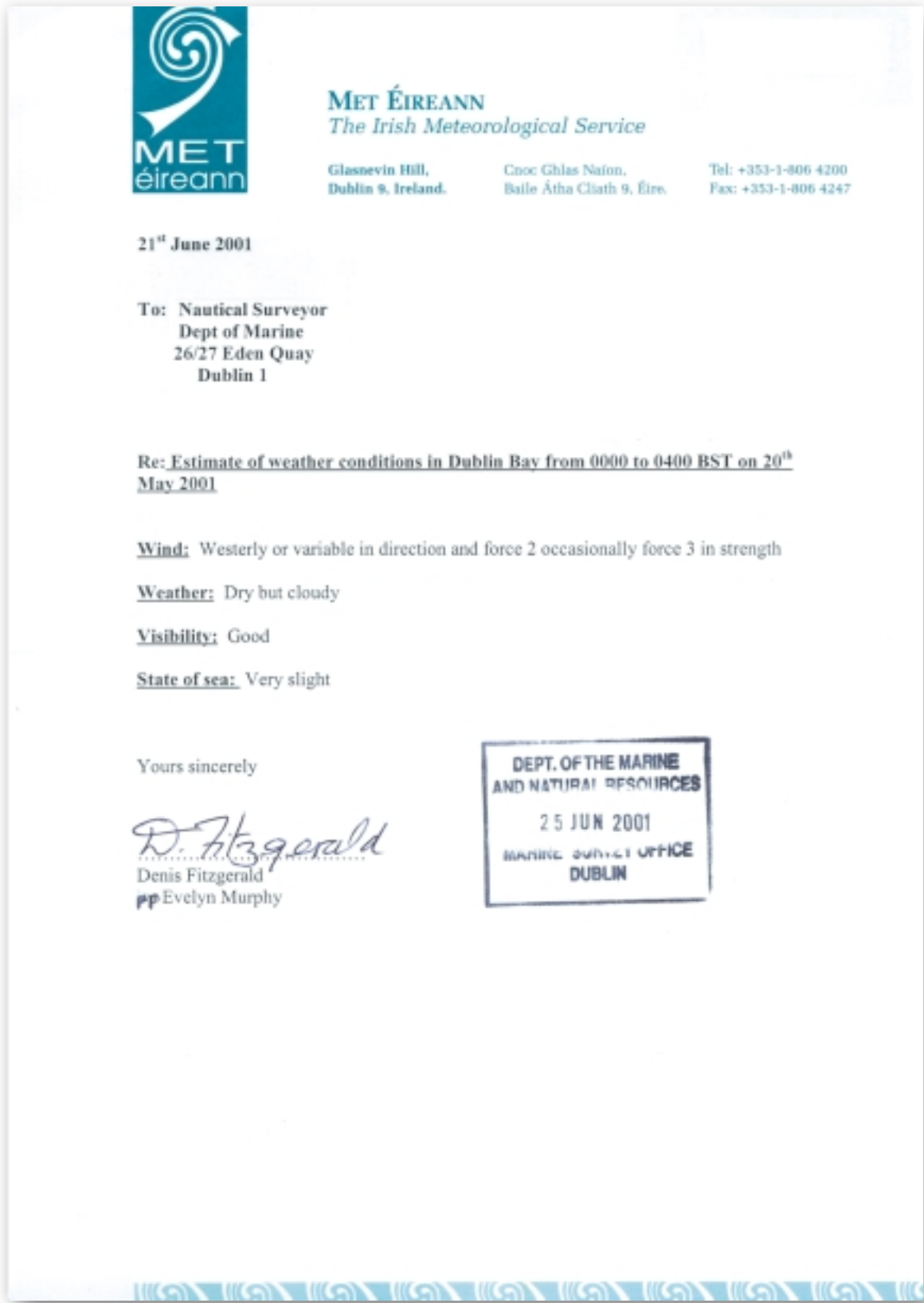
Appendix 12.1

Photographs of m.v. Bluebird



Appendix 12.2

Weather report from Met Eireann



Appendix 12.3

Chart Extract of Dublin Bay



Appendix 12.4

Aerial Photograph of Dublin Port



Appendix 12.5

Notice to Mariners No. 7 of 2001

DUBLIN PORT COMPANY

NOTICE TO MARINERS

NO. 7 OF 2001

**SPEED BOATS ETC. (PORT AND
HARBOURS OF DUBLIN)**

Owners of jet skis and power propelled boats are warned that speeding and navigating without due care, likely to cause danger, injury or damage to persons, vessels or property, are offences making the Master or Owner of the vessel liable to prosecution.

All craft should proceed at a moderate speed within TWO HUNDRED METRES of any bank, jetty, wharf, pier, beach or vessel anchored or moored.

Water SKI-ING OR AQUAPLANING behind speedboats or fast jet-skiing is entirely prohibited when within two hundred metres of any public beach, bathing place or residential property within the jurisdiction of the Dublin Port Company, viz: all the water within the area from Rory O'Moore Bridge over the River Liffey and an imaginary line drawn from the Baily Lighthouse extending through North Burford Bank Buoy to South Burford Bank Buoy to Sorrento Point at Dalkey on the South side, but excluding Dun Laoghaire Harbour.

Attention is also drawn to the fact that small boats sailing, rowing or proceeding under power within the limits of the Harbour are strictly required to keep out of the fairway channel.

The fairway extends to No. 3 bar buoy, No. 1 bar buoy and Dublin Bay buoy at which point ships lining up for their approach to the channel may be restricted in their ability to manoeuvre.

**CAPTAIN RGJ WILTSHIRE,
HARBOUR MASTER.**

1st January 2001.

Appendix 12.6

Photographs showing damaged yacht "Debonair"



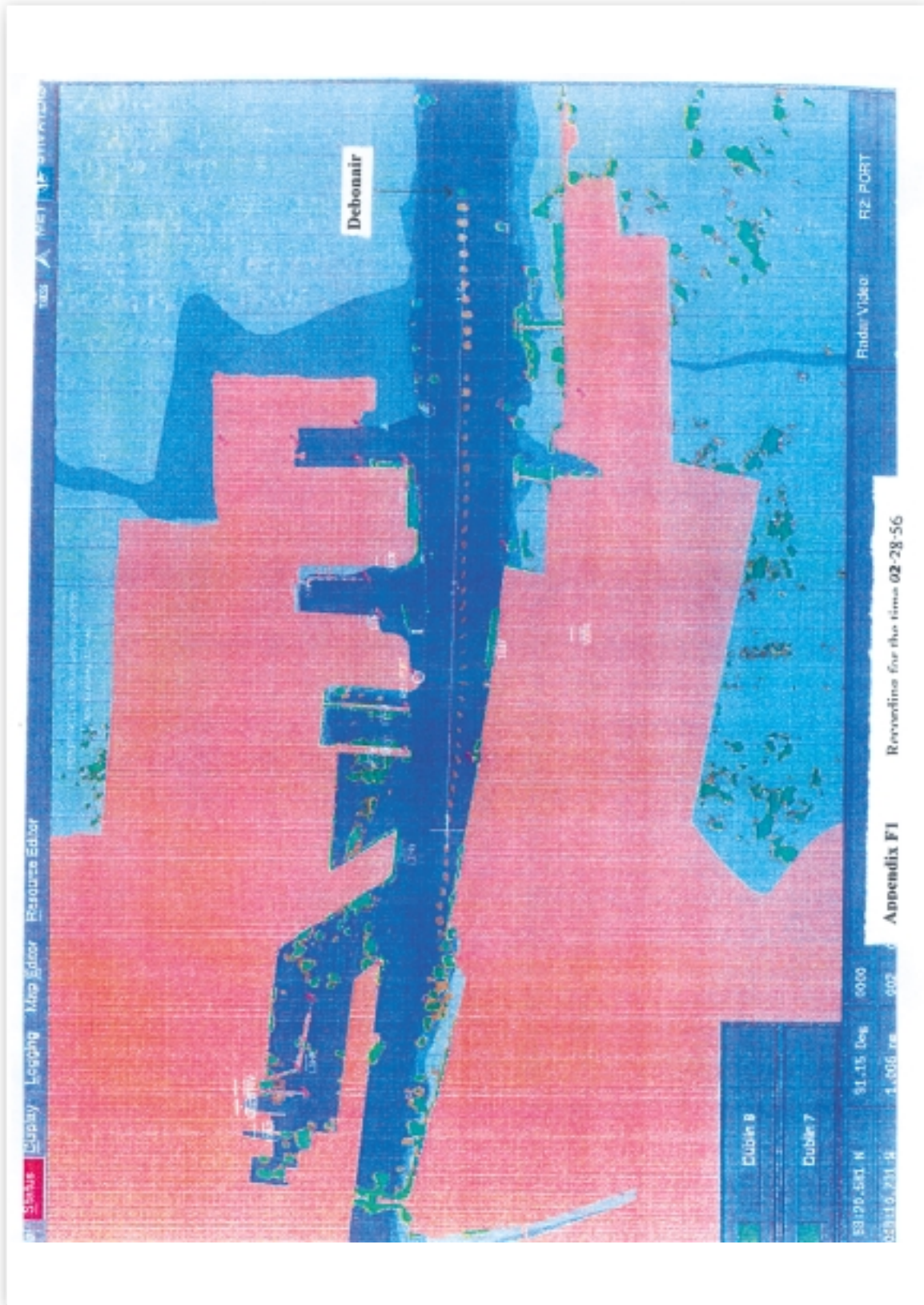
Appendix 12.6

Photographs showing damaged yacht "Debonair"



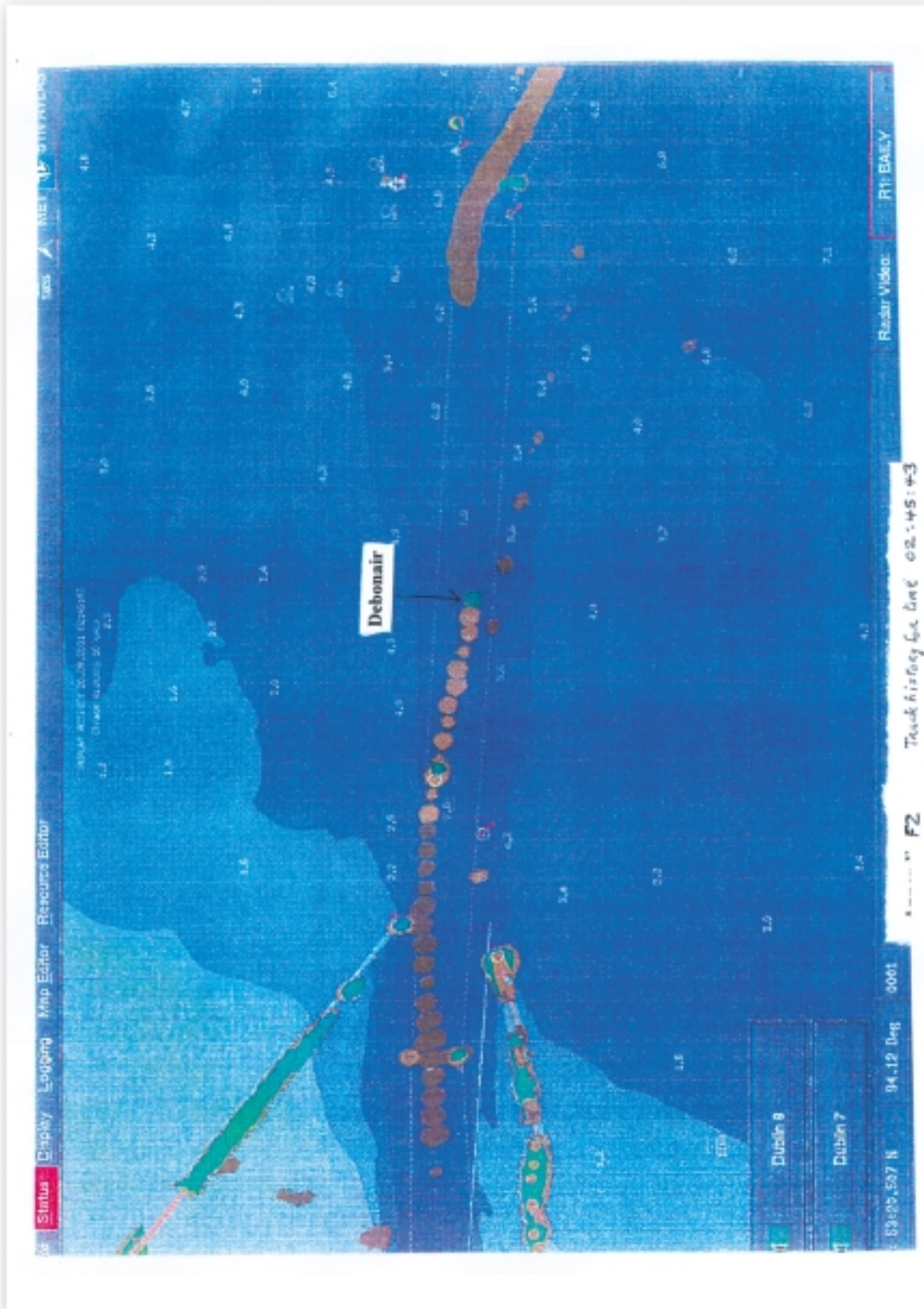
Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:28:56)



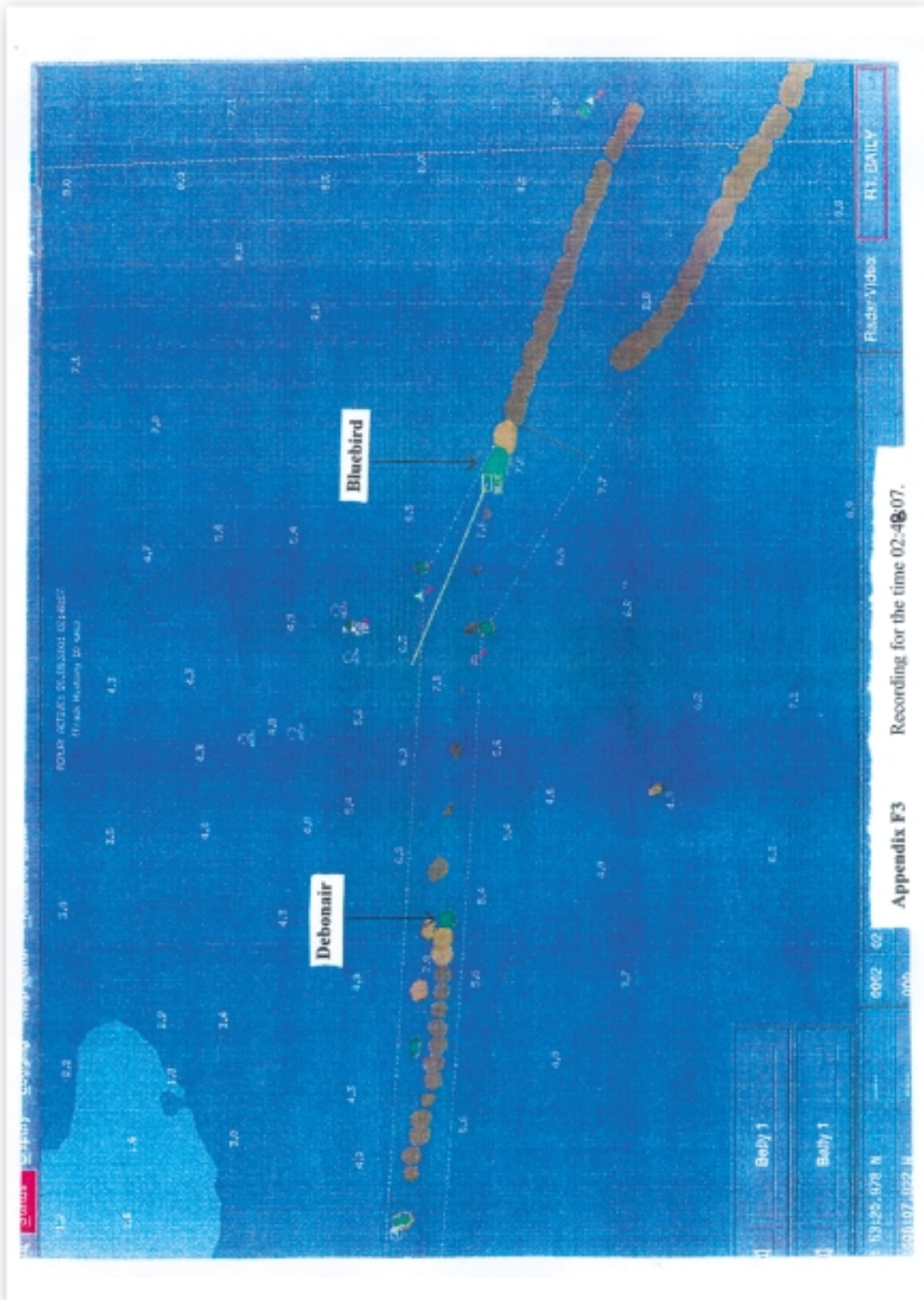
Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:45:43)



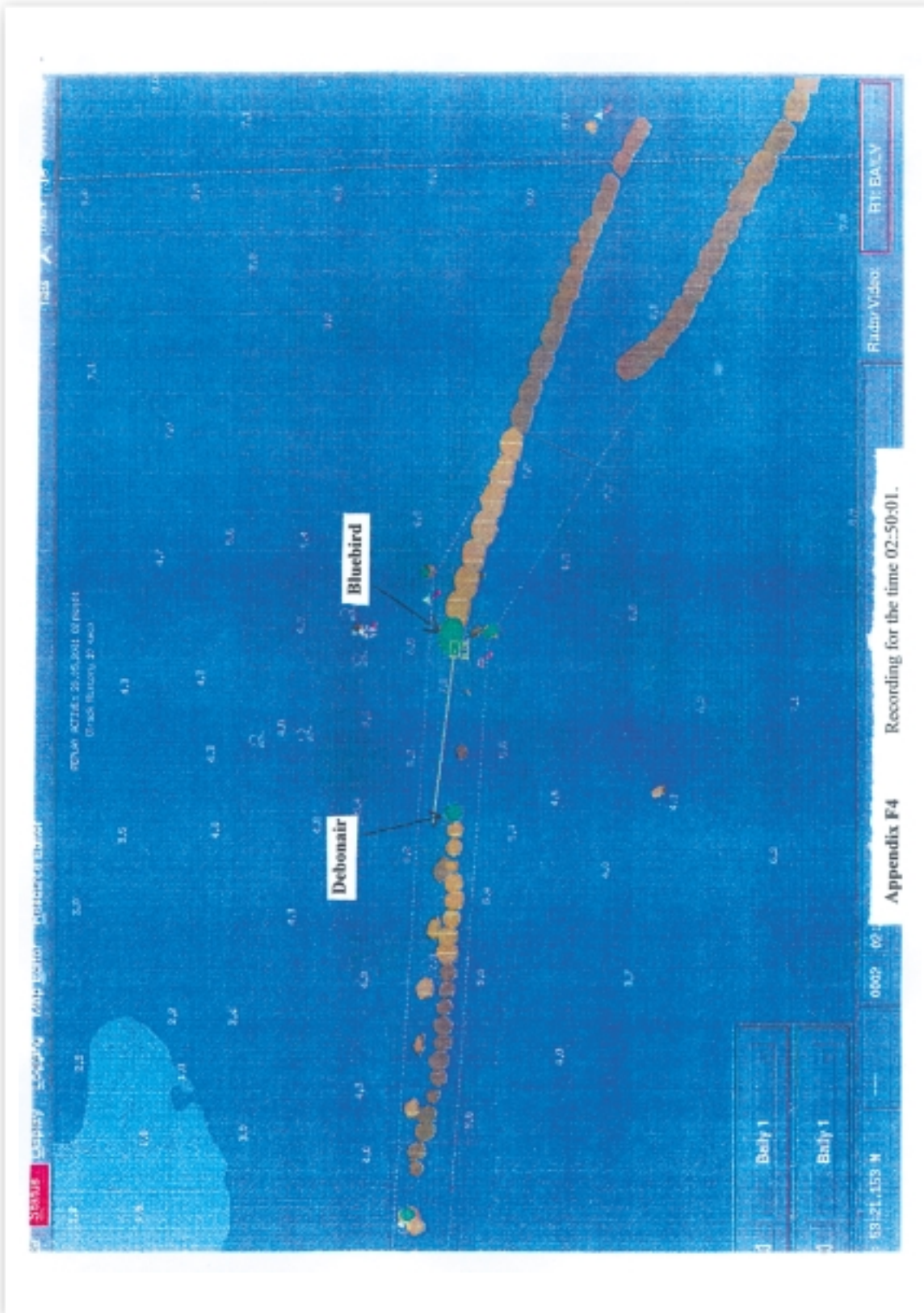
Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:48:07)



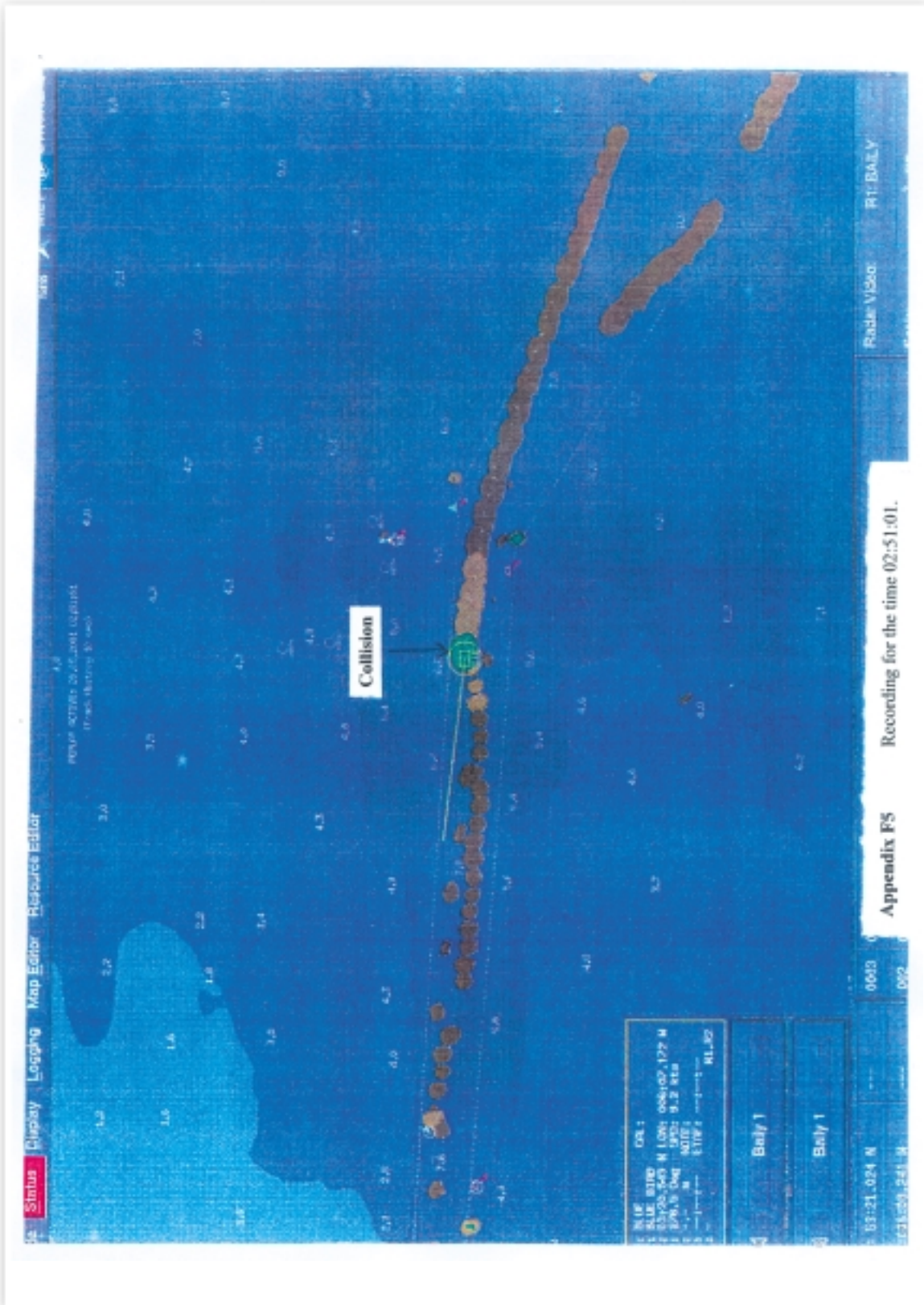
Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:50:01)



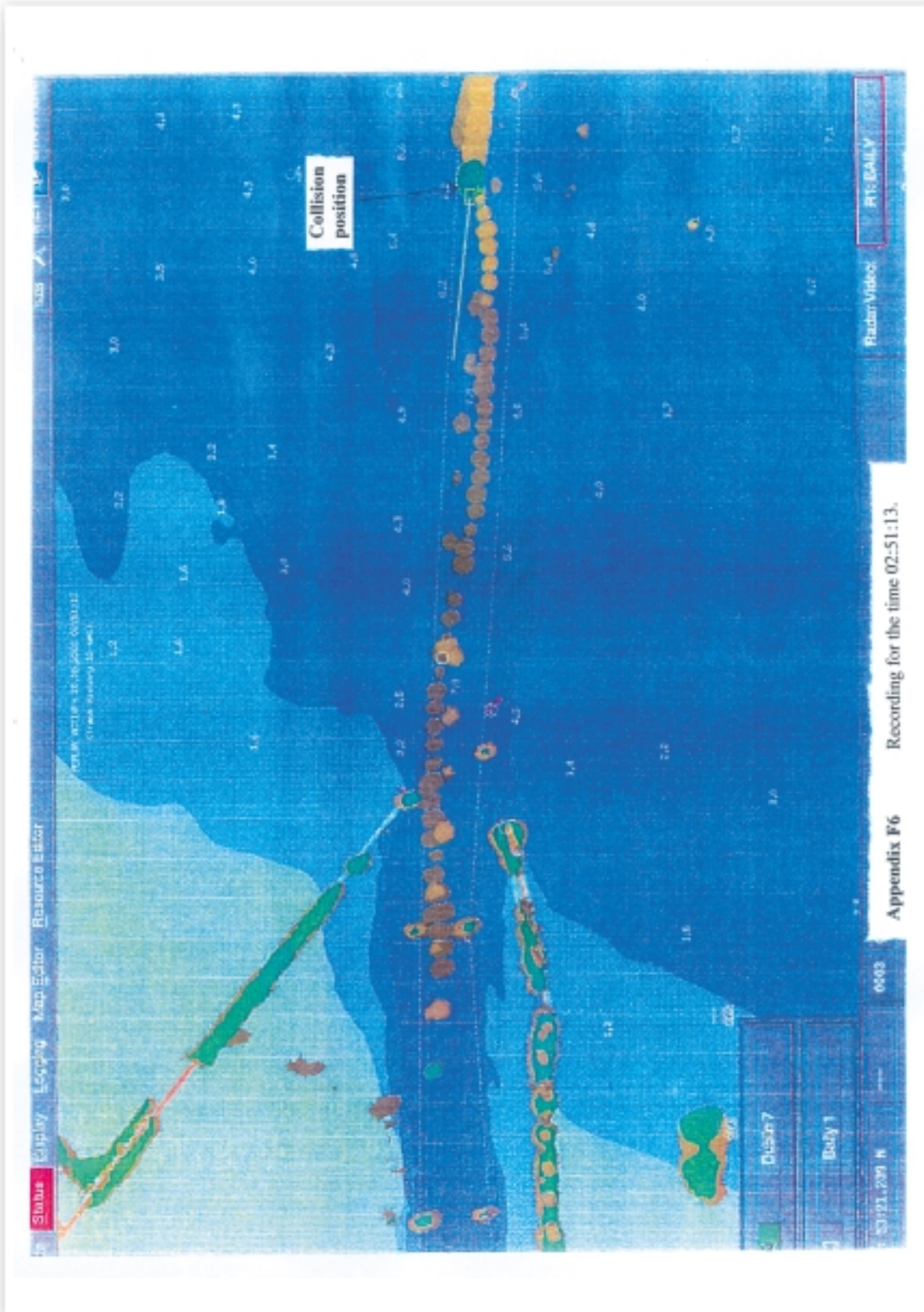
Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:51:01)



Appendix 12.7

Radar Recordings for Dublin Port (recording for the time 02:51:13)



Appendix 12.8

International Regulations for Preventing Collisions at Sea, 1972, Rules 1, 5, 9, 23.

**International Regulations for Preventing Collisions at Sea, 1972,
as amended.
Rules 1, 5, 9, and 23.**

Rule 1

Application

- (a) These rules shall apply to all vessels upon the high seas and in all waters connected therewith navigable by seagoing vessels.
- (b) Nothing in these Rules shall interfere with the operation of special rules made by an appropriate authority for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by seagoing vessels. Such special rules shall conform as closely as possible to these Rules.
- (c) Nothing in these Rules shall interfere with the operation of any special rules made by the Government of any state with respect to additional station or signal lights, shapes or whistle signals for ships of war and vessels proceeding under convoy, or with respect to additional station or signal lights or shapes for fishing vessels engaged in fishing as a fleet. These additional station or signal lights, shapes or whistle signals shall, so far as possible, be such that they cannot be mistaken for any light, shape or signal authorised elsewhere under these Rules.
- (d) Traffic separation schemes may be adopted by the Organization for the purpose of these rules.
- (e) Whenever the Government concerned shall have determined that a vessel of any special construction or purpose cannot comply with the provisions of any of these Rules with respect to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition and characteristics of sound-signaling appliances, such vessel shall comply with such other provisions in regard to the number, position, range or arc of visibility of lights or shapes, as well as to the disposition of sound-signaling appliances, as her Government shall have determined to be the closest possible compliance with these rules in respect of that vessel.

Appendix 12.8

International Regulations for Preventing Collisions at Sea, 1972, Rules 1, 5, 9, 23.

Rule 5*Look-out*

Every vessel shall at all times maintain a proper look-out by sight and hearing as well by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

Rule 9*Narrow channels*

- (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side as is safe and practicable.
- (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
- (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
- (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) if in doubt as to the intention of the crossing vessel.
- (e)
 - (i) In a narrow channel or fairway when overtaking can take place only if the vessel to be overtaken has to take action to permit safe passing, the vessel intending to overtake shall indicate her intention by sounding the appropriate signal prescribed in rule 34(c)(i). The vessel to be overtaken shall, if in agreement, sound the appropriate signal prescribed in Rule 34(c)(i) and take steps to permit safe passing. If in doubt she may sound the signals prescribed in Rule 34(d).
 - (ii) This Rule does not relieve the overtaking vessel of her obligation under Rule 13.
- (f) A vessel nearing a bend or an area of a narrow channel or fairway where other vessels may be obscured by an intervening obstruction shall navigate with particular alertness and caution and shall sound the appropriate signal prescribed in Rule 34(e).

Appendix 12.8

International Regulations for Preventing Collisions at Sea, 1972, Rules 1, 5, 9, 23.

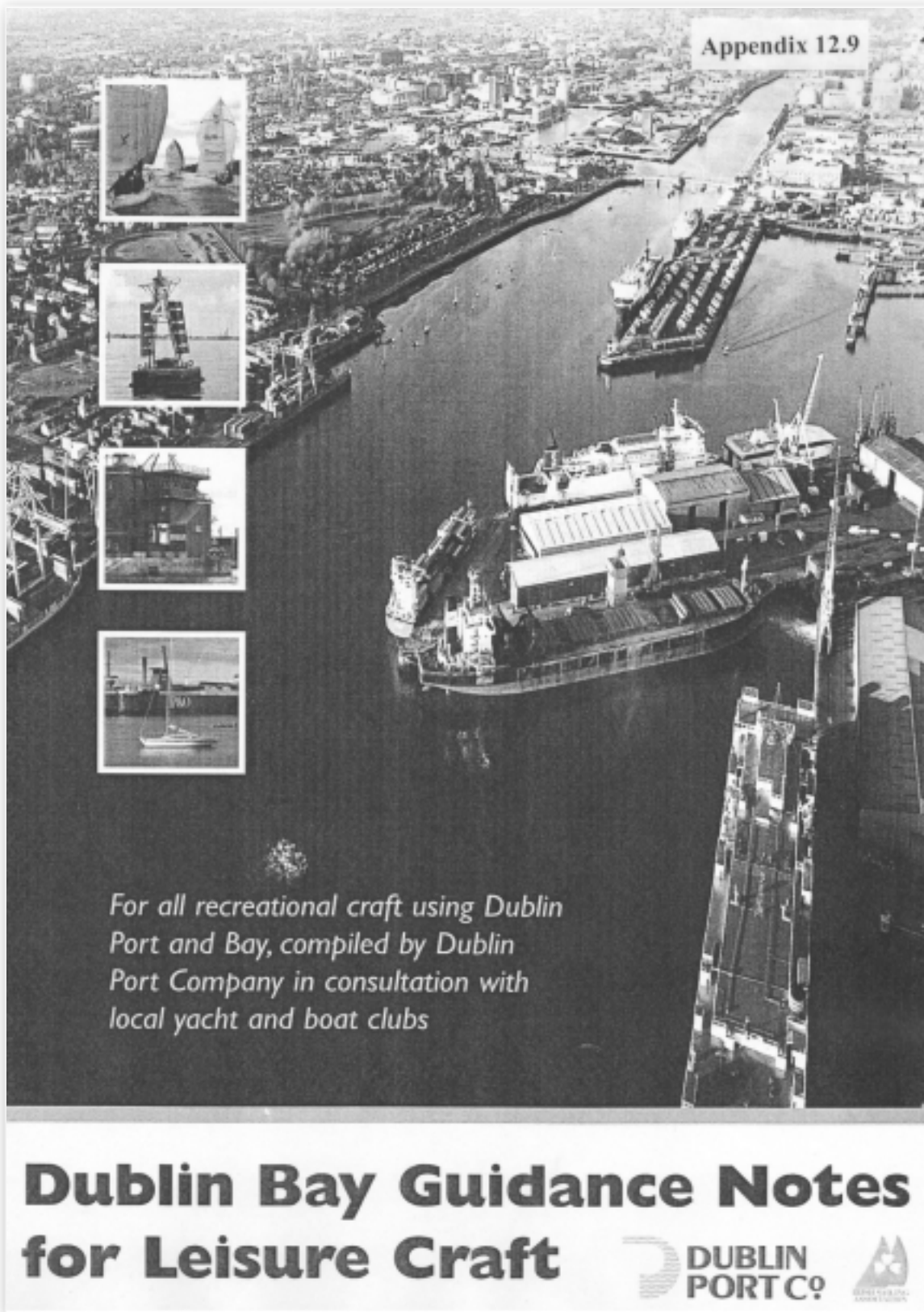
- (g) Any vessel shall, if the circumstances of the case admit, avoid anchoring in a narrow channel.

Rule 23*Power-driven vessels underway*

- (a) A power-driven vessel underway shall exhibit:
- (i) a masthead light forward;
 - (ii) a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 metres in length shall not be obliged to exhibit such light but may do so;
 - (iii) sidelights;
 - (iv) a sternlight.
- (b) An air-cushion vessel when operating in the non-displacement mode shall, in addition to the lights prescribed in paragraph (a) of this Rule, exhibit all-round flashing yellow light.
- (c) (i) A power-driven vessel of less than 12 metres in length may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and sidelights;
- (ii) A power-driven vessel of less than 7 metres in length whose maximum speed does not exceed 7 knots may in lieu of the lights prescribed in paragraph (a) of this Rule exhibit an all-round white light and shall, if practicable, also exhibit sidelights;
- (iii) The masthead light or all-round white light on a power-driven vessel of less than 12 metres in length may be displaced from the fore and aft centreline of the vessel if centreline fitting is not practicable, provided that the sidelights are combined in one lantern which shall be carried on the fore and aft centreline of the vessel or located as nearly as practicable in the same fore and aft line as the masthead light or the all-round white light.


Appendix 12.9

Dublin Bay Guidance Notes for Leisure Craft



Appendix 12.9

Dublin Bay Guidance Notes for Leisure Craft



FACTS TO BEAR IN MIND

1. As both the number of large commercial ships and recreational craft using Dublin Port is increasing it is essential that close quarter situations do not arise.
2. Commercial vessels using Dublin Port or Dun Laoghaire Port normally have a qualified pilot or certified master with proven local knowledge on board. They "listen out" on VHF channel 12 when in Dublin Port's jurisdiction.
3. Commercial vessels will follow the routes designated in the attached illustration. All recreational craft when obliged to navigate within such areas should do so with extreme caution following the Int. Collision Regulations.
4. Large conventional commercial craft travel at a manoeuvring speeds of between 8 to 15 knots whilst within the ports' jurisdiction. The lower limit varies from ship to ship and is "as safe navigation permits".
5. Ships will be traveling faster than you may estimate, even in congested waters.
6. Ships that are light or partially loaded, particularly in windy conditions, will require a higher minimum speed to remain under full control.
7. A large ship visible on the horizon may take no more than 10 minutes to reach you under clear conditions; under hazy conditions this time could be much less. At 10 knots a ship will travel a nautical mile in 6 minutes; at 15 knots it takes only 4 minutes to travel one nautical mile.
8. A large deep draught ship cannot easily avoid small craft in a narrow channel. It is up to leisure craft to keep clear. (See Rule 9 Int. Collision Regs excerpt on page 4.)
9. A ship slowing down does not steer very well. It requires the action of its propeller to respond. When the propeller is going "astern", the ship's steering will be adversely affected.
10. As well as large cargo ships, a variety of working craft also use the port-tugs, pilot cutters, dredgers, fast ferries, barges under tow etc. In particular a towing line may be partly submerged and therefore potentially dangerous to other craft passing too close.

WHAT SHOULD YOU DO?

1. Avoid sailing in the buoyed channel area, avoid sailing within 0.5 nautical miles of the Dublin Bay buoy and in the separation schemes. (see illustration). This is especially critical in periods of reduced visibility. When obliged to cross the fairway, cross at right angles to the traffic flow. Also obey rule 9 of the Collision Regulations by either keeping to the starboard side of the channel or, if the water depth allows, outside the buoyed channel.
2. Keep a good lookout. Be aware of all ship movements, especially astern of you.
3. Do not underestimate the speed of ships. Allow plenty of time to take effective evasive action in the vicinity of large ships.
4. Be visible. At night make sure your navigation lights can be clearly seen. If you see the navigation lights of a vessel approaching and you think that he has not seen you, get out of the way. Also use a torch or search-light to illuminate the sails (if appropriate). Remember (as indicated in the attached illustration), from the bridge of a loaded container ship or large tanker, the captain/pilot may lose sight of you a half a nautical mile ahead, although you can see that ship clearly from your vessel at all times.
5. Keep watch at night. You may have difficulty seeing a large ship approach, even on a clear night. In reduced visibility you may have little warning of its approach. If you see a black shadow against shore lights or as a growing shadow, at that point a close quarter situation is already imminent. Remember you cannot be easily seen at night (particularly in a background of lights) and judging distances at night can prove difficult.
6. Watch the ship's navigation lights. If you see both ship's sidelights you are dead ahead, follow the Int. Collision Regs. and any alteration of course should be early, substantial and be visible to the approaching ship. Be aware that ships alter course at the Dublin Bay buoy and No.3/No.4 buoys. Be aware of your position and the position of other vessels around you at all times.
7. Know the whistle signals (see illustration). Five or more short and rapid blasts on the ships whistle indicates the ship is in doubt about your action or the lack thereof. Check immediately if this signal was meant for you, if so take immediate and appropriate action. Three short blasts means "my engines are going astern", one short blast means "I am altering my course to starboard", two short blasts means "I am altering my course to port".
8. Keep your VHF tuned to channel 12, the port working frequency, and have the volume high enough to hear above the noise of the engine. Listen for traffic information from Dublin Port V.T.S. Only if you are the controlling vessel in a flotilla of other vessels, and you observe a hazardous situation developing, or in the event of an emergency developing within the ports jurisdiction, you should transmit on VHF channel 12.

Remember CH 12 is Dublin Port's primary working channel and used to manage port traffic. No private or unnecessary communications to take place on this channel.

Appendix 12.9

Dublin Bay Guidance Notes for Leisure Craft

DUBLIN PORT COMPANY
Small Craft (Leisure) Regulations

The port area shall be divided into three areas for purposes of small craft.

NOT TO SCALE NOT TO BE USED FOR NAVIGATION.

Area 1 - from Dublin Bay Buoy to Poolbeg Lighthouse
Small craft shall not navigate inside the fairway and should remain outside the line of buoys. If it is necessary to cross the fairway crossing should be at right angles.

Area 2 - Poolbeg Lighthouse to No. 14 Buoy
Small craft shall comply with the International Regulations for Prevention of Collisions at Sea and shall keep as near to the outer limit of the channel which lies on her starboard side as is safe and practicable. Rule 9 does not apply outside the channel and craft may pass outside the buoys when and where it is safe to do so. If it is necessary to cross the channel, e.g. to enter area 3, crossing should be at right angles, at a position abeam of the E.S.B. Jetty (Berth 4B).

Area 3 - No. 14 Buoy to the west
All small craft should pass along the south side of the channel, remaining as far as is practicable to that side.

General
All craft shall operate under power when within areas 2 and 3, but may additionally raise their sails outside the channel but not in the channel.

1. No sailing in the channel, craft should only cross at right angles when it is safe to do so.
2. Maintain a listening watch on channel VHF 12 and avoid unnecessary communication.


Keep a sharp lookout and keep clear of all shipping
Attention of all skippers is drawn to the annual Notice to Mariners No. 7 concerning small craft.

Capt. R. G. J. Wiltshire, Harbour Master
13th May 2002



Appendix 12.9

Dublin Bay Guidance Notes for Leisure Craft



Collision Avoiding Check List

Avoid the busy shipping channels and routes. Cross them at right angles and as quickly as possible after checking that it is safe to do so. Recreational users of the port area are particularly requested to be familiar with the Int. Collision Regulations (particularly Rule 9), Dublin Port Bye Laws, Small Craft (Leisure) Regulations (see chartlet) and Local Notices to Mariners (particularly No.7). Information is also available on the Dublin Port web site, www.dublinport.ie.

Remember


- ✓ Keep a good lookout, particularly at night
- ✓ Do not under-estimate the speed of ships
- ✓ Be visible
- ✓ Watch the lights of other vessels
- ✓ Know the whistle signals
- ✓ Keep your VHF tuned to channel 12

Obey any instructions given by Dublin Port VTS. They are also interested in your safety.

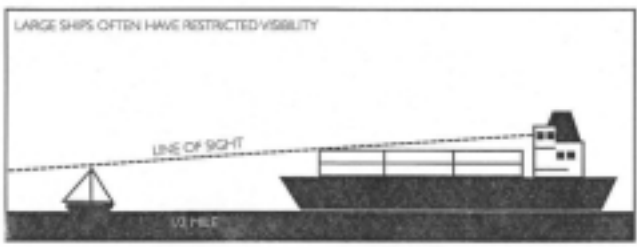
International Regulations for the Prevention of Collisions at Sea

Rule 9 - Narrow Channels (Excerpt)
 (a) A vessel proceeding along the course of a narrow channel or fairway shall keep as near to the outer limit of the channel or fairway which lies on her starboard side, as is safe and practicable.
 (b) A vessel of less than 20 metres in length or a sailing vessel shall not impede the passage of a vessel which can safely navigate only within a narrow channel or fairway.
 (c) A vessel engaged in fishing shall not impede the passage of any other vessel navigating within a narrow channel or fairway.
 (d) A vessel shall not cross a narrow channel or fairway if such crossing impedes the passage of a vessel which can safely navigate only within such channel or fairway. The latter vessel may use the sound signal prescribed in Rule 34(d) or in doubt as to the intention of the crossing vessel.

Rule 10 - Traffic Separation Schemes (Excerpt)
 (i) A vessel of less than 20 metres in length or a sailing vessel shall not impede the safe passage of a power-driven vessel following a traffic lane.



UNDERKEEL CLEARANCE CAN BE AS LITTLE AS 1 METRE



LARGE SHIPS OFTEN HAVE RESTRICTED VISIBILITY

LINE OF SIGHT

CO. FILE

MANOEUVERING AND WARNING SIGNALS
EXCEPT FROM RULE 34

These signals may be supplemented by light signals:

1 Short blast —
Altering to starboard
2 Short blasts --
Altering to port
3 Short blasts ---
Going astern
5 or more short blasts -----
Keep clear

4

45

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0-03:16:15 ;

: 1

2 / 2

1

2 Harbourmaster Place
International Financial Services Centre
Dublin 1

Tel +353-1-829 0000
Fax +353-1-829 0010
email: postmaster@mccannfitzgerald.ie
website: <http://www.mccannfitzgerald.ie>
Dx 31 Dublin

McCann FitzGerald
SOLICITORS

our ref PMD\687255.1

your ref

date 13 October 2003

Marine Casualty Investigation Board
29-31 Adelaide Road
Dublin 2

DRAFT Report into the Collision between the yacht "DEBONAIR" and the cargo vessel "BLUEBIRD" in Dublin Bay, on 20 August 2001

Dear Sirs

We refer to the draft report in respect of the above incident which has been passed to our clients the owners of the Bluebird. On their behalf we confirm that they do not wish to make any observations or comments in relation to any aspect of the report or its conclusions. They would however like to take this opportunity to express their sorrow and condolences to the crew of the Debonair and their families at the tragic loss of life which occurred on the date of the incident.

Yours faithfully



McCann FitzGerald

The MCIB notes the contents of this letter.

Ronan Molony, Richard Rice, Fergus Armstrong, David Clarke, Gerald FitzGerald, Daire Hogan, Guy French, Henry Lappin, Michael S. Roche, Colin Keane, William Earley, Robert Burke, Pezira McDonnell, Timothy Boucher-Hayes, Helen Collins, Mark Pearson, Michael O'Reilly, Lonan McDowell, Michael O'Brien, Julian Conlon, Damian Collins, John Cronin, Vivienne Bradley, Catherine Daine, Paul Helferman, Barbara-Judge, Terence McCann, Muriel Walla, Roderick Bourke, Grace Smith, Ambrose Loughlin, Niall Powderly, Kevin Kelly, Hilary Marran, Eamonn O'Hanrahan, Roy Parker, Patricia Lawless, Barry Devereux, Geraldine Hickey, Helen Kirooy, Judith Lawless, James Murphy, David Lydon, Vanessa FitzGerald, David Byers, Sean Barton, Colin Fanning, Paul Lavery, Yvonne McNamara, Susan O'Halloran, Julie Quin, Susan O'Connell, Emma Crowley, Alan Fuller, Claire Lenny, Maureen Dolan, Michelle Doyle.

Consultants: Max W. Abramson, Michael V. O'Mahony, Brian McLoghlin, Jane Marshall, Michael Ryan (PCA), Ciaran Ramsay (ACA), Peter Osborne. Of Counsel (USA): William P. Clark.
Belfast: North South Legal Alliance with L'Estrange & Brett, Arnott House, 12-16 Bridge Street, Belfast BT1 1LS, Tel +44-28-9023 0426, Fax +44-28-9024 6396
Brussels: Avenue de Cortenbergh 89, Kortenberghaan, 1000 Brussels, Tel +32-2-740 0370, Fax +32-2-740 0371.
London: St. Michael's House, 1 George Yard, Lombard Street, London EC3V 9DF, Tel +44-20-7621 1000, Fax +44-20-7621 9000.



20th October 2003



Calafort Átha Cliath



Mr. Dick Heron,
Secretary,
Marine Casualty Investigation Board,
29-31 Adelaide Road,
Dublin 2.

Dublin Port Company

Port Centre, Alexandra Road, Dublin 1

Telephone (353 1) 887 6000, 855 0888

Fax (353 1) 855 1241

Web www.dublinport.ie

Re: Draft Report - Debonair/Bluebird 20th August 2001

Dear Mr. O'Donnell,

Please find below my comments upon the above draft report. My apologies for the delay in responding which was due to an oversight on our part.

The Report is largely correct with only minor changes.

3.8and the last port to the Port Radio. (Typo).

3.10 This paragraph is confusing and contains the word "observed", too many times. This word indicates that it refers to something that is seen and suggests that the viewer had no control. The pilot did not "observe" that the "Bluebird" was on the north side of the channel, he actually advised the Captain to put the ship in that position.

6.5 I believe that the helicopter spotted the oil approximately one hour earlier, when it returned from refuelling at 0546.

10.13Dublin Port "proceeded" with its stated intention.....(Typo).

11.2 This recommendation is aimed solely at Dublin Port. In fact, if the intent is as stated, it should apply to any port from which or to which, or within which small boats operate.

Yours sincerely,

Capt. R.G.J. Wiltshire
Harbour Master.

Directors: J. Burke (Chairman)
E. Brady, C. Byrre, E. Connelley (Managing), B. Daly, T. Ennis, T. Hickey,
B. W. Kerr, J. Kierney, S. Martin, E. O'Brien, J. Stafford
Secretary: M. Sheary

Registered in Ireland with Limited Liability No. 262367
VAT No. IE062161G

MCIB RESPONSE TO DUBLIN PORT 20-10-'03
Noted and amended where necessary.

Phone: (+353 1) 8323693
 Fax: (+353 1) 8323693
 Mobile: (+353 86) 6889339
 E. Mail : john.p@esatclear.ie
 : johnpatrickmckenna@hotmail.com

**Cliff House
 44b Balkill Rd. Howth,
 Dublin 13. Ireland**

MEMO



To: Mr. Dick Heron, **From:** John P. McKenna, Dublin Port Pilot
 Marine Investigation Board, **Date:** October 12, 2003
 29-31 Adelaide Road, Dublin 2
Ref: Collision Debonair/ Bluebird MCIB 10
 DRAFT Report in Collision between "Debonair" and "Bluebird" Dublin Bay 20th. August 2001

Dear Mr. Heron,

Rec'd your copy of the above report last month and would like to point out two items in the report that need clarifying.

On page 7 of the report, section 3.2 it states that I am a holder of First Mates Foreign Going Certificate of Competency. My First Mates certificate number is 789 and attached to it is Master Near Continental Endorsement. The minimum requirement for a Pilots position in Dublin Port is a Class 5 Deck Officer certificate + Command endorsement. The way you have it worded, I do not comply with Port Bye Laws.

On page 12, section 5.1.3, line four, the vessel came out from under the starboard bow with bow pointing straight up in the air. When the Yacht came out from under the starboard bow it was bow down in the water as the Bluebird was still making headway at the time.

The rest of the report as far as I am concerned is accurate.

Yours sincerely,

John P. McKenna

MCIB RESPONSE

Noted and amended where appropriate.

AN GARDA SÍOCHÁNA

Oifig an Cheannfoirt
Tacaíocht Oibríúcháin
Na Seirbhísí Naisiúnta Tacaíochta
Ceanncheathrú an Gharda Síochána
Páirc an Fhionnuisce
Baile Átha Cliath 8

Teileafón/Telephone: (01) 66 62067
Facs/Fax: (01) 66 62066

Please quote the following reference no
OS42H.4/03



Superintendent's Office
Operational Support
National Support Services
Garda Headquarters
Phoenix Park
Dublin 8

Website: www.garda.ie

E-mail: suptopsupport@iol.ie

Date: 15th October 2003

Mr. Dick Heron
Secretary
Marine Casualty
Investigation Board
29-31 Adelaide Road
Dublin 2




Re: Draft Report into the Collision between the yacht "Debonair" and the cargo Vessel "Bluebird" in Dublin Bay, on 20th August 2001.

Dear Mr. O'Donnell,

I wish to acknowledge receipt of Draft Report in above matter. I do not wish to make further comments or observations.

Yours Sincerely


Aidan Reid *Superintendent*

Mission Statement

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security

MCIB RESPONSE
Noted.

An Garda Síochána

Oifig an Choimisinéara,
An Garda Síochána,
Páirc an Fhionnuisce,
Baile Átha Cliath 8,
Éire.



Office of the Commissioner,
Garda Headquarters,
Phoenix Park,
Dublin 8,
Ireland.

Tel/Teileafón: (01) 666 0000 / 2026

Fax/Facs: (01) 666 2013

Please quote the following ref. number:

Web site: www.garda.ie

E-mail: comstaff@iol.ie

Date:

P.A. 2.7
Your Ref: MCIB 10.

Mr. Dick Heron,
Secretary,
Marine Casualty Investigation Board,
29/31, Adelaide Road,
Dublin 2.

**RE:- DRAFT REPORT INTO THE COLLISION BETWEEN THE YACHT "DEBONAIR"
AND THE CARGO VESSEL "BLUEBIRD" – DUBLIN BAY – 20TH AUGUST, 2001.**

Dear Mr. Heron

I am directed by the Commissioner to reply to you in relation to correspondence from Mr. John G. O'Donnell, B.L., dated 16th September, 2003 concerning the above.

Since the DPP has already directed no prosecution in the case, the publication of the MC report will not impact on the Garda investigation.

An Garda Síochána is fully supportive of the recommendation outlined at paragraph 11.1 of the draft report that consideration should be given to the promulgation of legislative provisions for the introduction of a breath test for Masters and crew members of any vessel aimed at addressing the consumption of alcohol

Yours sincerely,


DAVID H. ROCHE
CHIEF SUPERINTENDENT
PERSONAL ASSISTANT
TO COMMISSIONER

15th October, 2003.



Mission Statement:

To achieve the highest attainable level of Personal Protection, Community Commitment and State Security.

MCIB RESPONSE
Noted.



**Royal National
Lifeboat Institution**
Registered charity number 2870
Supported entirely by voluntary contributions

From:
Howth Lifeboat Station



30 September 2003

Mr Dick Heron
Secretary
Marine Casualty Investigation Board
29-31 Adelaide Road
Dublin 2

Re: Draft Report into the collision between yacht *Debonair* and cargo vessel *Bluebird*

Dear Mr Heron,

Thank you for the copy of the Draft Report concerning the above.

On a point of accuracy could I request that you consider the following amendments in relation to the involvement of Howth Lifeboat?

Paragraph 5.2.5 The survivor Philip Daley was transferred to the Howth Lifeboat, not the Dun Laoghaire Lifeboat as stated and brought to Dun Laoghaire where he was then transferred to St Michael's Hospital.

Paragraph 6.1 MRCC Dublin tasked a helicopter, and both Dun Laoghaire and Howth Lifeboats. (Howth Lifeboat is not mentioned).

I have no other comments or observations to make.

Yours sincerely

Rupert Jeffares
Lifeboat Operations Manager - Howth



Royal National
Lifeboat Institution
Registered charity number 2678
Supported entirely by voluntary contributions

From:
Dun Laoghaire Lifeboat Station

Mr Dick Heron
Secretary
Marine Casualty Investigation Board
29-31, Adelaide Road
Dublin 2

6th October 2003

Dear Mr Heron,

**Re: Draft Report on the collision between "Debonair" and
"Bluebird" on 20th August 2001**

Thank you for your letter 16th September 2003 enclosing the draft report. I would ask that one amendment be made: Para 5.2.5 Philip Daley was transferred to the Howth Lifeboat, not Dun Laoghaire, and was landed at Dun Laoghaire by the Howth Lifeboat.

Yours sincerely,

Stephen W Wynne
Lifeboat Operations Manager

cc Lifeboat Operations Manager, Howth

MCIB RESPONSE

Noted and amended where appropriate.

29 Mountdown Park,
Limekiln,
Dublin 12.

Mr. Dick Heron,
Secretary,
Marine Casualty Investigation Board,
29-31 Adelaide Road,
Dublin 2.



12th October 2003

Your Ref: MCIB 10

Dear Sir,

**DRAFT REPORT INTO THE COLLISION BETWEEN THE DEBONAIR AND THE
CARGO VESSEL BLUEBIRD IN DUBLIN BAY ON 20th MAY 2001**

I acknowledge receipt of your letter dated 16th September 2003 enclosing draft report into the above collision. I would ask to note my new address.

I would like to state that I have certain matters which I wish to bring to your attention. I wish to make it clear however that an absence by me to make comment on the balance of the report does not and is not to be deemed an admission on my part of agreement to any of the facts set out in the report.

The matters on which I would like to comment specifically are as follows: -

1. With reference to paragraph 5.2.6 - I wish to point out that Mark Styles was the owner of the Debonair and that he agreed with his brother, Glen, that the later would sail the vessel back to Malahide.
2. I am unaware of the relevance that I was not aware of Dublin Port Company Notice to Mariners No. 7 of 2001. I was neither the owner or the helmsman and my state of knowledge accordingly of the Notice must be irrelevant. In my submission, the state of knowledge of the helmsman, Glen Styles, is what is relevant in this regard and I regrettably cannot answer the question as to whether Mr. Styles was aware of this Notice. If the report accordingly states that I had no knowledge of the notice then it should add that the helmsman may have had such knowledge and that this has not been established.
3. Under the section in paragraph 10 entitled "Conclusions and Findings" I am surprised that no reference has been made to Rule 6 of the Collision Regulations as set out in Statutory Instrument No. 29 of 1984 which deals with safe speed

of vessels. This provides as follows: - "Every vessel shall at all times proceed at safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions".

In determining a safe speed the following factors shall be among those taken into account: -

- (a) by all vessels:
 - (i)
 - (ii) the traffic density including concentrations of fishing vessels or any other vessels.
 - (iii) the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions.
 - (iv) the presence of background light such as from shore lights or from back scatter of her own lights.
 - (v)
 - (vi)

Rule 7 also does not appear to have been considered.

It will be recollected that at the Inquest it was put to the pilot, neither the master of the vessel or any crew member giving evidence, that entry into the channel at virtually top speed of 8 knots was potentially dangerous in the light of the knowledge that a small sailing vessel was in the vicinity and in particular at the approach to what is a notorious bend in the channel where previous accidents have occurred. In addition, it was pointed out at the Inquest that according to the charts the Bluebird did not in fact keep to the extremity of the starboard side of the channel at the bend but in effect cut the corner.

I find it surprising that no reference has been made to these matters in the report and that the reports conclusion appears not to have taken these matters into consideration.

- 4. I am also concerned at the content of paragraph 9.3 under the heading "Other Matters To Be Considered".

It is stated in 9.3 that toxicology examinations revealed that all four victims were moderately "intoxicated" by alcohol at the time of their deaths. It goes on

to state that the Deputy State Pathologist at the Coroner's Court stated that the alcohol levels present might have led to problems with co-ordination. In cross-examination, the Deputy State Pathologist stated that alcohol affects different people in different ways and that some people who had consumed the alcohol levels referred to in the reports may not have exhibited intoxication. In other words, you have reiterated only the original evidence given by Dr. Cassidy and not her subsequent qualification in cross-examination. This requires to be addressed.

5. With regard to paragraph 11 and recommendations, I am interested to ascertain whether the MCIB is satisfied that it is perfectly in order for a fully laden cargo vessel to enter Dublin Port via the channel and to come through the bend at buoys 3 and 4 at a virtually top speed of 8 knots in the knowledge that a yacht is in the vicinity and in fact was fully visible to the Bluebird. In addition, the charts produced at the Coroner's Court suggested that the Bluebird did not maintain close proximity to the starboard side of the channel but at the crucial bend where the collision occurred it in fact effectively cut the corner. It seems to me that all these issues have not been taken into consideration, considering that the only recommendation appears to relate to alcohol intake.

Yours sincerely,



PHILIP DALEY

MCIB Response to correspondence received from PHILIP DALEY 12/10/'03

1. Noted
2. Noted and amended where appropriate please see paragraph 5.2.7.
3. There is no evidence to suggest that speed had any bearing on this incident. It is clear that the "Bluebird" was on reduced speed. A speed of between 8 and 9 knots is moderate for a vessel of this size (see paragraphs 8.7 & 8.8).

With regard to Rule 7, the risk of a collision occurring was created by the "Debonair" suddenly altering course to Port. The bend in question is not a "notorious bend". The "Bluebird" altered course by only 13 degrees and this collision took place approx 500 metres from the bend.

The MCIB is aware of 1 other incident that occurred near to the location of this incident prior to the introduction of the new channel and bouyage system. This incident occurred under a different bouyage system and in different circumstances. It is correct that the "Bluebird" did not keep to the extremity of the starboard side of the channel at the bend - See paragraph 10.9.

4. We refer to the evidence of Dr. Marie Cassidy while under cross-examination by Mr. Crosbie as follows: *"The real problem is because we don't have an accurate estimate of the level at the time of death, all I can say is that the level that we had was 169 in Glen Styles at post-mortem examination, whereas in Mark Styles we had a level of 213. So there is a discrepancy between the two of them. The level in Mark is substantially higher. How people react to alcohol depends very much on how used they are to drinking, but certainly as we know, 80 is the limit for driving and above the level of 80 is accepted that there are problems with co-ordination etc. and therefore he would, although he may not be obviously intoxicated or drunk, to use the colloquial term, he may well have had some problem with co-ordination even at a fairly moderate level."*
5. We refer you to our response at 3 above.

VINCENT & BEATTY
S O L I C I T O R S

67/68 FITZWILLIAM SQUARE,
DUBLIN 2, IRELAND
TELEPHONE +353 1 634 0000
FAX +353 1 634 0001
EMAIL POSTMASTER@VBLAW.IE
WEBSITE WWW.VBLAW.IE
I.D.E. 109 021

Mr. Dick Heron,
Secretary,
The Marine Casualty Investigation Board,
29 - 31 Adelaide Road,
Dublin 2.
By email and post
Dick.heron@dcmnr.gov.ie



OUR REF
000/AG/103730
IN REPLY PLEASE QUOTE

5th November 2003

**RE: THE M.V. BLUEBIRD AND THE YACHT DEBONAIR
OUR CLIENT: VIVIENNE CLARKE THE ADMINISTRATRIX OF
MARK STYLES DECEASED**

Dear Sir,

We refer to the above matter. Enclosed for your attention is a document entitled: -

"Observations on the Draft Report of the Investigation into the collision between the yacht "Debonair" and cargo vessel "Bluebird" in Dublin bay on the 20th May 2001 on behalf of the estate of Mark Styles Deceased"

We would be obliged if you could bring these observations to the attention of the board. On behalf of our client please extend our thanks to the board for granting an extension of the time period in which our client's observations could be made.

Yours faithfully

Vincent + Beatty
VINCENT & BEATTY

C:\Documents and Settings\Alec Garbett\Local Settings\Temporary Internet Files\OLK74\Marine Casualty Investigation Board\05.11.03.doc
Page 1 of 1



DAVID SIMPSON (CHAIRMAN)
WALTER BEATTY (HONORARY PUBLIC),
PETER MADUIRE, CIAN O'CATHAIN,
WALTER BEATTY, MIRIAM DELANEY
DAVID IRWIN
ASSOCIATE:
ALEC GARBETT

Observations on the Draft Report of the Investigation into the Collision between the Yacht "Debonair" and Cargo Vessel "Bluebird" in Dublin Bay on 20th May, 2001 on behalf of the Estate of Mark Styles, Deceased.

1. General Observation

- 1.1. As a general observation, it is noted that the Draft Report of the Investigation into the Collision between the Yacht "Debonair" and Cargo Vessel "Bluebird" in Dublin Bay on 20th May, 2001 ("the Report") concentrates on the role of the "Debonair" in that collision but fails to review or comment on the role played by either the "Bluebird" or Dublin Port.
- 1.2. In addition, the Report simply records the factual account given by Philip Daley to the Board without coming to any conclusions regarding the accuracy of that account. The representatives of Mark Style's estate do not dispute that the Report faithfully repeats Philip Daley's account of the collision however they do not accept that that account is necessarily accurate. In particular, the account given by Philip Daley to the Board appears to be at odds with statements which he made at the Inquest and to the account given by the persons on board the life boat.

2. Observations on the factual report of the events prior to the incident as taken from the account of the personnel connected with the "Bluebird"

- 2.1. It appears from this section of the Report that the crew of the pilot boat observed the "Debonair" when going out to board the "Blue Bird". In addition, the pilot observed the "Debonair" from the bridge of the "Blue Bird" and remained aware of her presence. Until such time as the "Debonair" attempted to cross to the north side of the channel it is clear from this section that there was nothing in the manner in which the "Debonair" was being sailed to give rise to any cause for concern.

3. Observations on the factual report of the events prior to the incident as taken from the account of the survivor on board the "Debonair"

- 3.1. At paragraph 4.2, the Report states that Mark and Glen Styles both had considerable sailing experience. As is stated at paragraph 2.2.4 of the Report, Philip Daley also has extensive experience in sailing and had been sailing for approximately 15 years. This paragraph should be amended to reflect this.
- 3.2. Paragraph 4.3 of the Report correctly refers to the fact that it was the practice to wear life jackets while on deck. It should be noted that this is a practice upon which Mark Styles insisted.
- 3.3. Paragraphs 4.5 to 4.7 make reference to the closure of the Port Bridge. However, the role played by the strike action at the bridge in the chain of events leading up to the accident is not clearly developed. Mark Styles had put considerable effort into organising the sailing trip

including pre-booking a berth so as to enable the shipping party to view the fireworks. It was the intention of the party to remain at the berth for the night and at the time the "Debonair" departed from Poolbeg Yacht Club they had every reason to believe that they would be able to do so. The refusal of the picketers to open the bridge meant that the party on the "Debonair" had no option but to return to Poolbeg Yacht club. The refusal of the picketers to open the bridge was thus a significant causal factor in the sinking of the "Debonair" and the four resulting fatalities.

- 3.4. Paragraph 4.8 states that Mark Styles left the Poolbeg Yacht Club with his family during the course of the evening. Mark Styles did not return to the Club until after midnight and the main reason for his return was to ensure that the "Debonair" did not depart from the Pool Beg Yacht Club until the morning. In addition, at 1.50 am, Mark Styles had a telephone conversation with his wife, Vivienne Clarke, in which he confirmed that the "Debonair" would remain in Pool Beg Yacht Club for the night.

4. Observations on the other matters considered

- 4.1. It is important to note that at no stage does the Report identify alcohol consumption as a cause or a probable cause of the marine casualties under investigation but simply reports statements made by the Deputy State pathologist at the Coroners Court. In addition, there is nothing in the facts recited in the Report to suggest that from the time of leaving Poolbeg to the time when the decision was made to cross the fairway, the "Debonair" was being sailed in an erratic or unpredictable manner. In particular, it is clear from the factual account given by the Pilot that, he had ample time to observe the manner in which the "Debonair" was being sailed and did not consider that there was any cause for concern. Furthermore, although the pilot was fully aware that the "Debonair" was sailing in the shipping fairway, the pilot did not consider it necessary to instruct the "Debonair" to move to safer waters.
- 4.2. Moreover, while the Report does not contain an account of the manner in which the "Debonair" departed from Poolbeg Yacht Club it is clear that the crew on board the "Debonair" cast off quickly and competently causing the minimum amount of disturbance.

5. Observations on the conclusions and findings

- 5.1. The principal conclusion of the Report is that the collision was caused because the International Regulations for Preventing Collisions at Sea, 1972, as amended, (the 'Regulations') were not observed. In particular the Report concludes that there was a breach of Rules 5 and 9 of those Regulations. In so far as the breach of Rule 5 is concerned, this is based on statements made by Philip Daley to the effect that the crew of the "Debonair" were not aware of the presence of the "Bluebird" until the ship's cargo whistle sounded. However, paragraph 4.10 of the

Report clearly states that as they departed Poolbeg, both Philip Daley and Glen Styles noticed a large ship in the distance. Moreover, it cannot be deduced from the fact that the crew of the "Debonair" failed to see the "Bluebird" that the crew were not fully aware of the importance of maintaining a look out. As experienced sailors, both Philip Daley and Glen Styles were doubtlessly aware of the dangers of night sailing and of sailing in busy shipping lanes and of the importance of keeping a proper watch.

- 5.2 In relation to Rule 9 of the Regulations, it is noted that this Rule does not prohibit small boats from sailing within the fairway channel. Consequently, sailing the 'Debonair' within this channel was not in breach of this Rule. While Dublin Port Company Notice to Mariners No. 7 of 2001 (the 'Notice') does require small boats to keep out of the fairway channel, this Notice is not consistent with the aforementioned Rule 9. Moreover, this Notice had not been widely circulated to the Yacht clubs prior to the accident, and, as is clear from paragraph 10.4 of the Report, was only forwarded to sailing clubs from Skerries to Greystones after the collision. Furthermore, while the Pilot was aware that the 'Debonair' was sailing within the fairway channel in breach of that Notice, he did not at any stage instruct the 'Debonair' to leave the channel. It would therefore also appear that the Notice was not widely enforced.

6. Observations on other findings

- 6.1 Paragraph 10.9 states that the navigation lights were not in compliance with Rule 23 of the International Regulations for Preventing Collisions at sea. In this respect, it should be noted that it is clear from statements made in the Report that the "Debonair" was clearly visible on the water and the pilot on board the "Bluebird" was fully aware of her presence. No allegation is being made that the non compliance of the navigation lights was in any way a causal factor in the casualties.
- 6.2 It is clear from this Section of the Report that the life jackets worn by Glen Styles and Philip Daley were fully functioning. As stated by Philip Daley at paragraph 4.3 of his account, there were a number of both manual and automatic life jackets on board the "Debonair".
- 6.3 It is noted that the report does not review the conduct of the "Bluebird" or the conduct of Dublin port as against their obligations under rules 5 - 9 of the International Regulations for Preventing Collisions at Sea, 1972 and their failure to do so means that the report lays undue emphasis on the role of the "Debonair". We suggest that the Report should also consider the conduct of both the "Bluebird" and Dublin Port so as to enable the Board to make all appropriate recommendations with a view to avoiding a similar tragedy in the future. .

VINCENT & BEATTY Solicitors 5/11/'03 - on behalf of MARK STYLES (deceased)

The MCIB make the following observations to the relevant issues raised:

- 1.1 Our final Report has addressed these issues, in particular you are referred to paragraphs 10.4, 10.9 and 11.3.
- 1.2 Please see paragraph 10.11

- 2.1 Noted - see reply to 4.1 below.

- 3.1 Please see paragraph 2.2.4
- 3.2 Noted.
- 3.3 The MCIB cannot concur with this conclusion.
- 3.4 The MCIB has received no evidence to suggest that the reason Mr. Mark Styles returned to the Yacht Club was to ensure that the "Debonair" did not depart, however, based on the evidence given to the MCIB Investigator by Mr. Philip Daley, it stated that the "Debonair" departed by general consensus. See paragraph 5.2.15.

- 4.1 Having left its berth at the Poolbeg Yacht Club pontoon on the South side of the Liffey, proceeding down the river in mid-channel, the "Debonair" was tracked moving to the North side of the channel close to North Bull Lighthouse and No. 5 Buoy, before veering to the South side of the fairway channel (see F.2). The "Debonair" subsequently moved back to the North side of the channel (see F.5). Such changes of course are unusual. See also paragraphs 10.4 and 11.3 re: Monitoring, Control and Enforcement.
- 4.2 The MCIB has no evidence to prove or disprove this contention.

- 5.1 The "large" ship noted by Messrs. Philip Daley and Glen Styles was most probably the "KRANKALOON" as referred to in paragraph 8.6. All of the evidence received by the MCIB would suggest that the presence of the "Bluebird" was not noticed by the "Debonair" until such time as the "Bluebird's" ship's whistle sounded, at which time the "Debonair" had turned into the path of the "Bluebird". It may very well be that Mr. Daley and Mr. Glen Styles were aware of the importance of keeping a proper watch, however, in this instance it would appear that they did not do so.
- 5.2 Noted - see paragraphs 10.4 and 11.3.

- 6.1 Noted.
- 6.2 Noted.
- 6.3 The MCIB did consider all of these matters and would refer you to paragraphs 10.4, 10.9 and 11.3.

13-NOV-2003 23:19 FROM GILL TRAYNOR SOLICITORS TO 6783129 P.01/04

0035314921323

SOLICITORS
COMMISSIONERS FOR OATHS

39-41 SUNDRIVE ROAD, DUBLIN 12.
Telephone: 492 1222 (5 Lines) Fax: 492 1523
E-Mail: admin@gilltraynor.com DX 111009 Kimmage

Our Ref: GG/PK/S/502

Your Ref: MCIB 10

Date: 13 November 2003

Mr John G. O'Donnell B.L.
Chairman
Marine Casualty Investigation Board
29/31 Adelaide Road
Dublin 2.

BY FAX - 678 3129

RE: DRAFT REPORT INTO THE COLLISION BETWEEN THE YACHT
"DEBONAIR" AND THE CARGO VESSEL "BLUEBIRD"
IN DUBLIN BAY ON 20TH AUGUST 2001.
OUR CLIENT - MRS. SUSAN SMITH
(PERSONAL REPRESENTATIVE OF MR. ROAN SMITH DECEASED).

Dear Mr. O'Donnell,

Further herein, we now enclose herewith Observations and Response in respect of the Board's draft Report.

Yours sincerely,


George J. Gill,
GILL TRAYNOR

George J. Gill, B.C.L. Michael H. Traynor, B.C.L.
Orlaith Traynor

MARINE CASULTY INVESTIGATION BOARD, DRAFT REPORT**FATAL ACCIDENT – "DEBONAIR" and "BLUEBIRD"
COLLISION – 20TH OF MAY 2001****COMMENTS AND OBSERVATIONS**

- 1 It is respectfully submitted that the conclusions and findings at 10.2 lack balance and are unfair in that Rule 5 obliged both vessels to keep a proper look out. The effect of this Rule is that the vessels and their crew whilst keeping a proper look out will act with reasonable care and speed in the situation they are observing.

It is respectfully submitted that the findings does not at all deal with the "Bluebird's" failure to take into account all of the factors that presented themselves prior to the collision.

- 2 The conclusions and findings at 10.5 seem to indicate that an alteration of course immediately preceding the collision was the cause of the collision. This conclusion seems to except the alteration of course as inexplicable in the absence of any satisfactory explanation.

It is respectfully submitted that an alteration of course might reasonably have been expected given the positions of the two vessels and the alteration of courses as dealt with at 3.10 and 8.8 inter alia.

- 3 The conclusions and findings failed to take into account Rule 6 of the Regulations in particular in relation to the speed of the "Bluebird" with regard to a safe speed for proper and effective action to avoid collision.
- 4 The conclusions and findings failed to give any or any due consideration to Rule 7 of the Regulations with regard to the determination of risk if collision existed.
- 5 The conclusions and findings failed to attach sufficient significance to the alterations by the "Bluebird" dealt at 3.10 and 3.11.

- 6 The conclusions and findings failed to thoroughly investigate the assumptions made by the pilot on the "Bluebird" as set out at 3.11.
- 7 The conclusions and findings should have properly investigated the reasons as to why VHF was not used in a situation which might properly have called for its use and moreover without good reason accepted its non use for an inappropriate or invalid reason. (see 3.11).
- 8 The draft conclusions and findings failed to give any or any sufficient consideration to the likely effect on the "Debonair" caused by the alterations or course by the "Bluebird".
- 9 The conclusions and findings failed to consider either adequately or at all Rule 14 of the Regulations with regard to reciprocal courses risk of collision and maintaining the channel.
- 10 The draft conclusions and findings should have highlighted the "Bluebird's" failure in all the circumstances to sound the whistle sooner than it did.
- 11 The draft conclusions and findings attached too much significance to the survivor Philip Daly's assertion that he was not aware Dublin Port Company Notice to Mariners No.7 of 2001.
- 12 The draft conclusions and findings attached too great a significance to evidence given under cross-examination by the Deputy State Pathologist at the Coroner's Court. Any consideration of an impairment of co-ordination is not consistent with the draft conclusions and findings where clearly an impairment of judgment or failure to make proper decisions in a reasonable period of time were the relevant factors.
- 13 The draft conclusions and findings should have attached greater significance to the fact that the pilot was aware from the very onset of the existence of the "Debonair" having regard to the pilot's experience and the comparative characteristics of the two vessels involved.

- 14 The draft conclusions are not consistent with the Board's own findings of fact.

The above submissions are without prejudice. The position is reserved in relation to any further enquiry proceedings and/or reports.

Dated the 13th November 2003

Gill Traynor
Solicitors for the family of Roan Smith deceased
39/41 Sundrive Road
DUBLIN 12

**MCIB RESPONSE TO GILL TRAYNOR SOLICITORS FOR ESTATE OF ROAN SMITH
13TH NOVEMBER, 2003**

1. There is clear evidence that the "Bluebird" saw and kept watch on the "Debonair" on her passage down channel. The pilot gave evidence that they were aware of the presence of the "Debonair" (see paragraphs 3.7, 3.9 and 3.10). It is also clear that the "Debonair" radically changed course across the bows of the "Bluebird" giving the "Bluebird" no chance of avoiding the "Debonair". The "Bluebird", by her actions, did attempt to avoid the collision.
2. The MCIB has no explanation and no evidence has been adduced as to why the "Debonair" radically changed course.

The 13° alteration of course by the "Bluebird" was necessary for her to stay within the channel. The portside light of the "Bluebird" was at all times visible to the "Debonair". There was no apparent reason for the "Debonair" to change course as passing port-to-port would have allowed both vessels to proceed safely.

3. It is the finding of the MCIB that the "Bluebird" was travelling at a safe manoeuvrable speed and was on reduced speed prior to her entry to the port (see 8.7 and 8.8).
4. The MCIB considered this contention and our conclusions are set out in Section 10. See also paras 5.1.1 and 5.1.2. Risk of collision was created by the "Debonair" altering course to port.
5. The MCIB disagrees with this contention - see No. 2 above.
6. The MCIB is of the opinion that the Pilot's assumptions were reasonable in the circumstances.
7. The Pilot's actions were reasonable and when it became necessary to alert the "Debonair" on its sudden change of course, the use of the whistle was the most appropriate and fastest means of warning.
8. See number 2 above.
9. Rule 9 of the International Regulations for Preventing Collisions at Sea, 1972 (as amended) rather than Rule 14, applies in this situation.
10. The whistle on the "Bluebird" was sounded as soon as it became evident that the "Debonair" had radically changed course thus putting herself in a collision situation.
11. The MCIB disagrees with this contention - see paragraph 10.4.

12. The MCIB disagrees that too great a significance has been attached to the evidence of the Deputy State Pathologist, Dr. Marie Cassidy. However an extract of her evidence states:

1 41 Q. Can you offer any opinion of the same kind in relation
2 to Glen Styles?

3 A. The real problem is because we don't have an accurate
4 estimate of the level at the time of death, all I can
5 say is that the level that we had was 169 in Glen Styles
6 at post-mortem examination, whereas in Mark Styles we
7 had a level of 213. So there is a discrepancy between
8 the two of them. The level in Mark is substantially
9 higher. How people react to alcohol depends very much on
10 how used they are to drinking, but certainly as we know,
11 80 is the limit for driving and above the level of 80 is
12 accepted that there are problems with coordination etc.
13 and therefore he would, although he may not be obviously
14 intoxicated or drunk, to use the colloquial term, he may
15 well have had some problem with coordination even at a
16 fairly moderate level.

17 42 Q. Thank you.

18

19 CORONER: Thank you. Members of the Jury. I beg you
20 pardon, Mr. O'hOisin.

21

22 THE WITNESS WAS EXAMINED AS FOLLOWS BY

23 MR. O'HOISIN:

24

25 43 Q. MR. O'HOISIN: Could I just ask you to relate, you have
26 said in driving terms 80 is the limit, that is for
27 blood?

28 A. Yes.

29 44 Q. What is the limit for urine. It is a little higher than
30 that, is it in around 100?

31 A. It is. I think it is 110. I don't work with the drink
32 driving laws, I work mainly with blood.

13. It is the MCIB's consideration that the Pilot was keeping a proper watch and that a normal situation existed until the "Debonair" suddenly altered course to port. See also 1. above.
14. There is nothing to support this contention and the MCIB does not concur with same.

Philip Clarke B.A.

Ledwidge Solicitors,
48A Upper Georges Street,
Dun Laoghaire,
Co. Dublin

Telephone: +353 - 1- 280 8055

Facsimile: 01 280 8088

E-mail: ledwidge@securemail.ie
DX: 6027 Dun Laoghaire

MCIB10-MS14-7817608
7608-1

Mr. John G. O'Donnell B.L.
Chairman,
Marine Casualty
Investigation Board,
29-31 Adelaide Road,
Dublin 2
Fax: 678 3129



31st October 2003

**Re: Draft Report in the Collision between the "Debonair" and cargo vessel
"Bluebird", Dublin Bay, 20th May 2001
Our Client: Martha Feely, The Personal Representative
of Glen Styles deceased**

Dear Sirs,

We refer to the above and to your letter of 16th ultimo herein enclosing draft report into the collision referred to above.

We set out hereunder the submission and comments on behalf of Ms. Martha Feely, the personal representative of Mr. Glen Styles deceased:

1. Knowledge of the existence of the Debonair in the channel

As is indicated at paragraph 3.7 of the draft Report, the pilot had observed a yacht in the channel heading east as he made his way out to the *Bluebird*. Furthermore he would have had some general indication of the speed of the yacht, as he knew his own speed in the pilot boat when he passed the *Debonair*. Based on that knowledge the pilot would have some estimate of how far the yacht could have proceeded at the time he boarded the *Bluebird*. He must have realised that the *Bluebird* would meet it in the channel, unless it left the channel very quickly after passing the lighthouses. At all times the onus lies on the pilot to ascertain where a vessel is – he cannot simply assume that it has left the channel.

It is furthermore clear, as is recorded at paragraph 3.8 that the pilot may have been given some comfort when he called in, having boarded the *Bluebird*, and was advised that "the channel inbound was clear".

2. Knowledge of Dublin Port Co Radio station of the existence of the Debonair in the channel

It is clear that Dublin Port Company have the capacity to track small vessels. At the inquest it was accepted that the *Debonair* would show up on their radar. The radar maps provided at inquest and contained at Appendix 12.7 (F1-F2) of the draft report confirm that the Port company have the capacity to track small vessels. They do not do so, in the sense that they do not monitor, using the vector system, such small vessels, but limit this monitoring to major commercial vessels.

A yacht cannot leave the port by any means other than the shipping channel. While the Notice to Mariners No. 7 of 2001 (App 12.5) requires a small vessel to "keep out of the fairway channel", it is clear that to navigate out between the two lighthouses a small vessel must be in the channel (or dangerously close to the lighthouses). Assuming it passes the lighthouses the intention of Notice 7/2001 is that the small vessel should leave the channel, but depending on its ultimate direction and/or weather conditions this may take a variable time.

In the circumstances of this collision it does not seem to us good practice that the pilot should be advised that "the channel inbound was clear". This allows for only three possibilities, firstly that radio station was not at that stage monitoring the *Debonair*, secondly that while they knew that the *Debonair* was still in the channel, they advised that the inbound channel was clear, anticipating that the *Debonair* would be safely out of the channel before the *Bluebird* reached her, or thirdly that they missed the *Debonair*.

It is submitted that common sense dictates the monitoring of small vessels between the time they clear the Poolbeg/North Bull lighthouse and their clearing the channel. It is submitted that this would be an appropriate recommendation for the final report.

This is particularly important where, as on this occasion, there was an important local event – The Skyfest. The Port Company were aware that there were more small vessels in the vicinity and it was therefore much more important to monitor such vessels – the fact that this collision occurred on the night of the Skyfest does not seem to be considered at all.

3. Communication by VHF radio with yachts

Paragraph 3.11 rightly indicates that a pilot does not normally communicate with a yacht by radio, while piloting. It is submitted that if he feels there is a yacht in the channel in front of him at night that he should have tried to raise the yacht on his radio set. There is no evidence that he even reported the presence of the yacht to the Captain or attempt to communicate with the yacht. It appears he chose not to do so on this occasion as he says that "the situation at all times appeared quite normal", but again it is suggested that where a small vessel is in the channel at all this should be done. It was accepted by the pilot that the channel was "hectic" that evening

following the Sky fest fireworks display. There were lights in the channel but the pilot apparently did not identify the vessel.

In the alternative it is suggested that this should be done from shore by the radio station. In particular they might appropriate raise a yacht by radio to advise that they have just given clearance for a large vessel to come in down the channel.

4. Position of the Bluebird in the channel

Paragraph 3.10 of the draft Report suggests, "at this point, the pilot recalls that he observed that the *Bluebird* was on the north side of the channel". At the Coroners Court there was conflicting evidence as to the position of the *Bluebird*. In charging the jury the Coroner took the view that he should advise the jury that the large chart provided, while being a good representation of the layout of the port entrance and the channel and the buoys and the general direction and position of the vessel, it should not be relied upon by them as to the precise position of the vessels at all times. [Note – we have not yet been provided with the transcript and this is a summary of his ruling based on our own recollection].

It is clear that as it approached and went through buoys No.s 3 and 4 the *Bluebird* came to the middle or the port side of the channel. This was referred to at the hearing as "cutting the corner". This movement from starboard to port can be illustrated by Appendix 12.7 (F4). Furthermore if one compares the vector position in the first blob as compared with the centre of all of the echo blobs, it appears that the echo blobs do not match the centre of the vector and appear to exaggerate the position of the *Bluebird* to the north or starboard side.

5. Position of the Debonair in the channel

If one looks to Appendix 12.7 (F2) it is clear that the *Debonair* has moved from the centre or centre/north of the channel to the right or starboard side. Assuming two vessels were to pass in the channel, this is the correct side to be. Its position between there and the F4 picture (represented by the 8 slightly yellow echo blobs on F4) remains good and it remains constantly at the starboard side of the channel. No reference is made at paragraph 10.6 of the good position of the *Debonair* at that time.

The suggestion is that the *Debonair* then began to move across the channel to the port side. Paragraph 5.1.1. of the report contains reference to the *Bluebird* "observing the sidelights of the *Debonair* changing from red to green". Conclusion 10.3 appears to conclude that the *Debonair* "crossed the fairway".

6. Reasons for the course of the Debonair

What the report does not tackle is why an experienced yachtsman (Para 2.2.4) would take the course he did. Paragraph 10.5 with respect does not deal with this at all and simply says it is not possible to draw any definite conclusions. While it may never be possible draw definite conclusions, it is submitted that there are potential reasons for this, and at the very least we submit that these should be considered in the report.

- (1) As the *Bluebird* approaches and passes buoys 3 and 4 it has moved to the centre and somewhat towards the port (wrong) side of the channel. This could have led a reasonable mariner to believe that the *Bluebird* intended to keep to the port side of the channel, rather than, having passed the buoys correcting its course to the starboard side.
- (2) As is set out at paragraphs 3.9 and 3.10, having passed buoys 3 and 4 and having moved back towards the starboard side, the *Bluebird* makes a turn to port (290°) and a second turn to (285°). These alterations could have led a reasonable mariner to believe that the *Bluebird* was altering drastically to port with an intention of keeping to the port side of the channel, rather than, having passed the buoys maintaining its correction to the starboard side of the channel.

7. Obligations under the International Regulations for preventing Collisions at Sea

(a) Safe Speed

Rule 6 is not dealt with at all in the draft report. This provides that, "Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstance and conditions. The note to Rule 6 points to the dangers of excessive speed of a large vessel, which takes a long time to stop. *Bluebird* was clearly travelling faster than the *Debonair*. It is clear that the full astern order was given only at the last moment and when it was of no benefit. Until that time *Bluebird* continued to press on. This appears to be in breach of Rule 8(e) of the International Regulations. The estimated combined speed at time of collision is suggested to have been 16 knots. It appears that the Port Company may have no speed limit in the channel.

However it is submitted that the Board should consider:

- (i) Whether there should be a speed limit in the channel.
- (ii) Whether when there is a small vessel in the channel and a "close quarter" situation seems clear, that the larger vessel must slow immediately until the position becomes clear. This would be in accordance with Rule 8(e).

(b) Action to avoid collision

The draft report at paragraph 10.3 deals exclusively with Rule 9 of the Regulations. We are most surprised that no reference is made at all to Rule 8, which contains the primary obligations on collision avoidance. Under Rule 8 (a) the first and primary duty is to take decisive action.

It is submitted that the *Debonair* took decisive action by trying to escape the channel on the port side. There is no evidence that the *Bluebird* took such action. Indeed the suggestion is that having made two moves to port, and intending to make a further move to port, the *Bluebird* was indecisive. Indeed this series of short adjustments appears to be in breach of Rule 8(b) of the Regulations which provides that, "a series of small alterations of course should avoided".

Furthermore no comment appears to be made that at the approach to and passing of buoys 3 and 4 the *Bluebird* is in breach of Rule 9(a). It is certainly not at the "outer limit of the channel..... on her starboard side". She is in the centre of the channel somewhat towards the port side. Under Rule 8(f)(iii) of the International Regulations, "A vessel the passage of which is not to be impeded remains fully obliged to comply with the rules of [Part B] when the vessels are approaching one another so as to involve risk of collision".

8. The existence of alcohol

Paragraph 9 contains only part of the evidence of the Deputy State Pathologist. She acknowledged that alcohol affects people in different ways. Glen Styles was a healthy young man whom it is submitted was not affected readily by drink. In addition as accepted at paragraph 6.9 of the draft report his body was recovered from the water only on 8th June some 3 weeks after the sinking. In these circumstances it is submitted that the issue of alcohol consumption is given disproportionate emphasis in the Conclusion and recommendations.

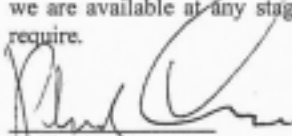
9. Conclusions

We are concerned that the "Conclusions and Findings" are dominated by Rule 9(a) of the International Regulations. Conclusion 10.3 simply states the Board's conclusion that the *Debonair* was not in compliance with Rule 9(a). No weight at all is given to the two moves to port made by the *Bluebird* at the decisive moment and which were immediately followed by a similar move to port by the *Debonair*. In our submissions it is a conclusion or finding open to the Board to conclude that the *Debonair* may have had to move to port to avoid a vessel that moved to port not just once but twice. The *Debonair* was in our submission in compliance with Rule 8(a).

The finding at paragraph 10.3 that the "crew" was unaware of the *Bluebird* is not supported by any evidence. The statement of Mr. Daley's evidence as set out at paragraph 5.2.1 cannot be taken as evidence that the helmsman was unaware of the *Bluebird*. At no stage is it suggested by Mr. Daley that he was on watch or playing an active role in crewing the *Debonair*. The helmsman may well have been aware of the *Bluebird* and taken decisive action to avoid collision. It is submitted that the proper position is that the Board cannot make any clear finding as to the knowledge or observation of the *Bluebird* by the helmsman, and that Mr. Daley's account is only relevant to his own state of knowledge.

In our submission the report should comment to some degree at least about the failure of the *Bluebird* to check its speed until the last possible moment.

We would invite the Board to take these matters on in relation to its final report and we are available at any stage to provide any further information or detail that you require.



Philip Clarke
Lodwidge Solicitors

**MCIB RESPONSE TO LETTER FROM PHILIP A. CLARKE, LEDWIDGE SOLCTRS.,
ON BEHALF OF THE PERSONAL REPRESENTATIVE OF GLEN STYLES.**

1. Based on the evidence adduced, the Pilot and Captain ("Bluebird") did observe the "Debonair" prior to the collision and considered that there would be a 'normal' port-to-port passing until such time as the "Debonair" altered course to port.
2. Noted - see paragraph 10.4 and Recommendation 11.3

However it is also noted that the SKYFEST had finished before 11pm and this incident occurred nearly 4 hours later when no other vessels were in the vicinity.

3. See paragraph 10.4 and Recommendation 11.3.

However it should be noted that the Captain ("Bluebird") and the Pilot saw the "Debonair" approaching and at the time of the collision the fairway was not "hectic". The only lights in that section of the channel were from the 2 vessels concerned - the "Bluebird" and "Debonair".

4. See paragraph 10.9.

As regards Appendix 12.7 (F4) the centre of each "echo-blob" represents the centre of the vessel.

5. See paragraphs 8.8 and 8.9

It is the conclusion of the MCIB that the "Debonair" did cross the channel to the north side immediately prior to the collision.

6. Because of the lack of evidence from the sole survivor on board the "Debonair" there is nothing to indicate that the movements of the "Bluebird" caused or contributed to the sudden alteration of course of the "Debonair".
 - (i) The MCIB does not concur with this contention, the "Bluebird" was not on its port side of the channel at any time, and the red sidelight on board the "Bluebird" was always visible to the "Debonair".
 - (ii) The MCIB disagrees with this contention see (i) above. A course alteration of 13° cannot be considered "altering drastically to port".
- 7(a) There is no evidence to suggest that speed had any bearing on this incident. It is clear that the "Bluebird" was on reduced speed. A speed of between 8 and 9 knots is moderate for a vessel of this size (see paragraphs 8.7 & 8.8).

There is no evidence that the "Bluebird" was in breach of Rule 8(e) of the International Regulations for the Prevention of Collisions at Sea 1972, as the "Bluebird" did go full astern to avoid the collision and gave a full astern order as soon as possible. The exact combined speeds of the 2 vessels at the time of the collision is not known, as the "Bluebird" had reduced speed, see paragraphs 5.1.1, 5.1.2, 5.1.3. The Port Company has no speed limit in the channel. It is the responsibility of each Master to comply with the International Regulations for the Prevention of Collisions at Sea, 1972 (as amended), the speed of any vessel may vary depending on prevailing weather conditions at any given time. In this instance the 'close quarter' situation was created by the "Debonair" altering course to port.

- 7(b) The collision was caused by the "Debonair's" alteration to port. Had it continued on its course no collision would have occurred. However for some reason it deviated to port, heading towards the "Bluebird" and when the whistle on the "Bluebird" sounded, the "Debonair" went to port across the bow of the "Bluebird". At this time had the "Debonair" gone to starboard instead of to port, a collision would have been avoided.

The small alteration taken by the "Bluebird" (total of 13°) was not done to avoid a potential collision, but rather to follow the course of the channel. The "Bluebird" took decisive action to avoid a collision when same became apparent and went full astern to avoid the "Debonair". We have addressed the position of the "Bluebird" at the approach to and passing of buoys 3 and 4 in paragraph 10.9. We do not conclude that it was in breach of Rule 8(f)(iii). From the evidence we conclude that the "Bluebird" was given no chance of avoiding this collision.

8 See extract from Deputy State Pathologist Marie Cassidy as follows

1 41 Q. Can you offer any opinion of the same kind in relation
2 to Glen Styles?

3 A. The real problem is because we don't have an accurate
4 estimate of the level at the time of death, all I can
5 say is that the level that we had was 169 in Glen Styles
6 at post-mortem examination, whereas in Mark Styles, we
7 had a level of 213. So there is a discrepancy between
8 the two of them. The level in Mark is substantially
9 higher. How people react to alcohol depends very much on
10 how used they are to drinking, but certainly as we know,
11 80 is the limit for driving and above the level of 80 is
12 accepted that there are problems with coordination etc.
13 and therefore he would, although he may not be obviously
14 intoxicated or drunk, to use the colloquial term, he may
15 well have had some problem with coordination even at a
16 fairly moderate level.

17 42 Q. Thank you.

18

19 CORONER: Thank you. Members of the Jury. I beg you
20 pardon, Mr. O'hoisin.

21

22 THE WITNESS WAS EXAMINED AS FOLLOWS BY

23 MR. O'HOISIN:

24

25 43 Q. MR. O'HOISIN: Could I just ask you to relate, you have
26 said in driving terms 80 is the limit, that is for
27 blood?

28 A. Yes.

29 44 Q. What is the limit for urine. It is a little higher than
30 that, is it in around 100?

31 A. It is. I think it is 110. I don't work with the drink
32 driving laws, I work mainly with blood.

- 9 Having considered these submissions our conclusions are set out in this final Report. It is NOT our conclusion that the "Debonair" had to move to port to avoid the "Bluebird". The "Debonair" headed towards the "Bluebird" and only altered course after the whistle on board the "Bluebird" sounded, it then altered course radically. The red sidelight on the "Bluebird" was at all times showing to the "Debonair" and there should have been no confusion as to the "Bluebird's" course.

The helmsman on the "Debonair" did not take decisive action to avoid collision. He headed towards the "Bluebird". It is a reasonable conclusion in the circumstances that the crew of the "Debonair" did not see the "Bluebird".

PAUL OSHEA

STEPHEN G. AHERN B.C.L.

AHERN O'SHEA
Solicitors
Commissioners for Oaths
36 COLLEGE GREEN
DUBLIN 2

TELEPHONE: 679 4477
679 4488
FACSIMILE: 679 2908
E MAIL ADDRESS:
stephen@ahernoshea.ie

OUR REF: GR/MM

YOUR REF: MCIB 10

6th October, 2003.

By Courier.

MARINE CASUALTY
INVESTIGATION BOARD,
29/31 Adelaide Road,
Dublin, 2.



RE: Draft Report into the Collision between yacht "DEBONAIR" and the cargo vessel "BLUEBIRD" in Dublin Bay, on 20th August, 2001. Our client: Jan Cullen (next-of-kin of Mrs Eleanor Cullen, deceased).

Dear Sirs,

We refer to our letter of 3rd October, 2003, to you by courier with which we enclosed the joint opinion of our Counsel being observations on behalf of Jan Cullen on the Draft Report.

Please note that we have been advised by Counsel that the analysis of the collision in paragraphs 12, 13 and 14 of their opinion is based upon the relative positions of the two vessels at 02:49:07, 02:50:01 and 02:51:01 radar time as shown on Radar Recordings F3, F4 and F5 of the Draft Report.

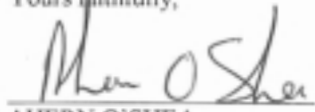
Please note that Counsel have advised that the background scale against which the positions of the vessels in the Radar Recordings are shown is not compatible with the speeds of the vessels and their positions at 02:49:07, 02:50:01 and 02:51:01. Counsel have proceeded on the basis that the positions of the vessels relative to each other and the times in Radar Recordings F3, F4 and F5 are correct.

We note that in our letters of 19th September, 2003, and 2nd October, 2003 that we have asked you for full size Radar Recordings and a Users Manual for the Radar System. However, it is unlikely that these will resolve the incompatibility between Radar Recordings F3, F4 and F5 and the background scale. We expect that you will conduct a full investigation into the matter.

Should it be necessary for you, in the light of such investigation, to amend the Draft Report in any particular we would wish to have the opportunity to have Counsel revise their opinion on behalf of Jan Cullen for submission to you by way of observations.

Please be so good as to include this letter together with our Counsels' opinion in the appendices to the published report.

Yours faithfully,


AHERN O'SHEA

MCIB RESPONSE.

The F3 radar recording time has been amended to read 02:48:07. All radar information given in Section 8 of the Report was obtained directly during real time radar reruns of the incident and the measurements were electronically calculated. The positions of the vessels relative to each other are correct.

GERARD RUDDEN B.A.

STEPHEN G. AHERN B.C.L.

AHERN O'SHEA

Solicitors
Commissioners for Oaths
36 COLLEGE GREEN
DUBLIN 2

TELEPHONE: 679 4477
679 4488

FACSIMILE: 679 5581

E MAIL ADDRESS:

law1@indigo.ie

DX 203017 Wellington Q

OUR REF: GR.MM

YOUR REF: MCIB10

3rd October, 2003.

Marine Casualty Investigation Board,
29/31 Adelaide Road,
Dublin 2.

By Courier.

Re: ***Draft Report of the Collision between the Yacht "Debonair"
And the Cargo Vessel "Bluebird" in Dublin Bay.
On the 20th May 2001.***

Dear Sirs,

We refer to the above and in particular your draft Report furnished to us on the 16th September 2003.

We enclose herewith joint Opinion of Counsel in relation to this matter which you should treat as our observations. We would be most obliged if you would confirm that this Opinion will be appended to the Draft Report.

Yours faithfully,

AHERN O'SHEA

Client: Mr Jan Cullen (next-of-kin of Mrs Eleanor Cullen)
Agents: Ahern O'Shea, Solicitors, 36 College Green, Dublin, 2.
Reference: GR.MM

In the matter of the Marine Casualty Investigation Board letter dated 16th
September, 2003.

And in the matter of the attachment thereto entitled:
"Draft Report of the Investigation into the Collision between the yacht
Debonair and cargo vessel Bluebird in Dublin Bay on 20th May 2001."

**JOINT OPINION OF COUNSEL
BEING COMMENTS AND OBSERVATIONS ON THE DRAFT
REPORT ON BEHALF OF MR JAN CULLEN FOR SUBMISSION
TO THE MARINE CASUALTY INVESTIGATION BOARD**

James O'Reilly, S.C.
John Wilde Crosbie, B.L.
The Law Library,
The Four Courts,
Dublin, 7.

2nd October, 2003.

In the matter of the Marine Casualty Investigation Board letter dated 16th September, 2003.
And in the matter of the attachment thereto entitled:
"Draft Report of the Investigation into the Collision between the yacht *Debonair* and cargo vessel *Bluebird*."

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Client: Mr Jan Cullen (next-of-kin of Mrs Eleanor Cullen)
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In the matter of the Marine Casualty Investigation Board letter dated 16th
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**JOINT OPINION OF COUNSEL
BEING COMMENTS AND OBSERVATIONS ON THE DRAFT
REPORT ON BEHALF OF MR JAN CULLEN FOR SUBMISSION
TO THE MARINE CASUALTY INVESTIGATION BOARD**

I. DOCUMENTS CONSIDERED BY COUNSEL.

1. Counsel is furnished with a letter dated 16th December 2003 from the Marine Casualty Investigation Board addressed to Ahern O'Shea for Mr Jan Cullen (next-of-kin of Ms Eleanor Cullen, deceased) and with the attachment thereto entitled "Draft Report of the Investigation into the Collision between the yacht *Debonair* and cargo vessel *Bluebird* in Dublin Bay on 20th May 2001." Counsel is also furnished with appendices 1 to 8 listed in paragraph 12 of the Draft Report.
2. Furthermore, Ahern O'Shea have furnished Counsel with the depositions and transcript of the Inquest held before Dr Brian Farrell

*In the matter of the Marine Casualty Investigation Board letter dated 16th September, 2003.
And in the matter of the attachment hereto entitled:
"Draft Report of the Investigation into the Collision between the yacht Debonair and cargo vessel Bluebird"*

at the Corner's Court, Store Street, Dublin on Thursday 24th January 2002, Monday 22nd April 2002, and Tuesday 23rd April 2002. The Draft Report refers to certain evidence as having been given at the Inquest so it appears that the author or authors of the Draft Report are aware of the evidence given at the Inquest.

3. Otherwise Counsel is furnished with neither the documents before the Marine Casualty Investigation Board nor with any statements made by witnesses to the Board or the Board's investigators. Ahern O'Shea requested from the Marine Casualty Investigation Board copies of the full statements made to the Board on which the Board relied in preparing the Draft Report. By letter dated the 30th September 2003, the Board replied as follows: "We do not have statements in our possession. Statements were made in confidence to our investigator."

II. INTRODUCTION

4. The conclusions and findings of the Marine Casualty Investigation Board are set out in section 10 of the Draft Report. At paragraph 10.1 the Draft Report states that this collision was caused because the International Regulations for Preventing Collisions at Sea were not observed. Two specific failures, or apparent failures, on the part of the *Debonair* to observe the Regulations are then cited in paragraphs 10.2 and 10.3:-
 - In relation to Regulation 5 (duty to keep a lookout) the Draft Report states: "From the survivor's account it would appear that the crew of the *Debonair* were not aware of the presence of the *Bluebird* until the cargo ship's whistle sounded."

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- In relation to Regulation 9a (duty to keep to the starboard side of a fairway), Regulation 9b (duty of vessel of less than 20 metres in length not to impede a vessel which can safely navigate only within the fairway) and Regulation 9c (duty not to cross a fairway if such crossing impedes the passage of a vessel which can navigate safely only within the fairway) the Draft Report states: "[T]he *Debonair* should have kept to the starboard side of the fairway, due to her length should have kept out of the way of the *Bluebird* and should not have crossed the fairway and impeded the passage of the *Bluebird*".
5. The Draft Report also refers to Dublin Port Company Notice to Mariners No. 7 of 2001 which provides, *inter alia*, "that small boats sailing, rowing or proceeding within the limits of the harbour are strictly required to keep out of the way of the fairway channel". It seems clear that the Marine Casualty Investigation Board consider that there was a failure to observe this rule but it is not clear whether the Board attribute this failure to the *Debonair* or to the failure of Dublin Port Company to promulgate the rule to sailing clubs north of Howth such as that in Malahide to which port the *Debonair* belonged. The finding in this respect in paragraph 10.4 of the Draft Report reads as follows:-
- "The surviving member of the crew of the *Debonair* was not aware of the existence of the Notice. Prior to the accident the notice was forwarded to all sailing clubs in the Dublin bay area from Howth to Dun Laoghaire inclusive. Following the accident the notice was forwarded to the sailing clubs from Skerries to Greystones inclusive."

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III. THE PERSPECTIVE OF THE NEXT-OF-KIN OF MRS ELEANOR CULLEN

6. From the perspective of the next-of-kin of Mrs Eleanor Cullen, the Marine Casualty Investigation Board was right to focus initially on the actions and failures of those in charge of the *Debonair*. She was only involved in sailing as a recreation and was a relative novice compared to those in charge of the *Debonair*. She was on board in much the same capacity as a working passenger though she had no role in the events leading to the collision. Her body was found trapped in the cabin after the collision and (notwithstanding the later evidence of Philip Daly, the sole survivor) it seems clear in this circumstance that it would have been impossible for her to have been in the open cockpit at the time of the collision. Mrs Cullen was in much the same position as any member of the public would have been had they accepted an invitation to go on an excursion on a boat from Dublin to Malahide.

7. In the first instance, Mrs Cullen was entitled to expect those in charge of the *Debonair* to have regard to her safety and to deal properly with other ships such as the *Bluebird*. However, she was also entitled to expect other ships such as the *Bluebird* to likewise have regard to her safety and to have regard to the presence of the boat on which she was travelling and take all reasonable precautions to avoid running her down. In so far as the boat on which she was travelling would have to meet other ships, such as the *Bluebird*, in the fairway of a harbour and share confined waters with her, Eleanor Cullen was entitled to expect that the port authority would regulate the traffic so as to avoid the danger of collision. In particular, she was entitled to rely upon Dublin

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Port Company, the harbour master and the radio, radar, and pilotage services which they provided, to have regard to her safety and to treat the *Debonair* as a real vessel and not to ignore her presence in the fairway as if she did not exist.

8. From this perspective, the next of kin of Eleanor Cullen have a right to expect that the Marine Casualty Investigation Board would go on to assess both the actions of the *Bluebird* and the performance of the traffic system which Dublin Port Company had in place at the time of the collision. In fact, the Draft Report makes no findings and reaches no conclusions in relation to the actions of the *Bluebird* leading up to the collision. Likewise, in relation to Dublin Port Company, the Draft Report does not assess the performance of the traffic system in place at the time of the collision.

IV. ASSESSMENT OF THE ACTIONS OF THE BLUEBIRD AND OF THE EFFECT OF THEM UPON THE DEBONAIR

9. The failure of the Draft Report to assess the involvement of the *Bluebird* in the events leading up to the collision is all the more inexplicable when regard is had to the findings and conclusions (or rather the lack of findings and conclusions) in paragraph 10.5 which reads:-
 - "It is unclear as to what took place concerning the navigation of the *Debonair* after leaving the Poolbeg Boat and Yacht Club, as the helmsman did not survive the accident. From the survivor's statement it is not possible to draw any definite conclusions regarding the cause of the alteration of course immediately preceding the collision. Whatever occurred to the yacht would

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appear to have taken place very suddenly and with little or no forewarning to the crew on board as no time was available in order to raise the alarm or to attempt to take any evasive action."

10. What was occurring to the yacht immediately before her disastrous alteration of course was that she was coming into close proximity with the oncoming *Bluebird*. This is as plain as day. Long before making the disastrous alteration of course, the *Debonair* had set herself up on a course on the correct side of the fairway for an outgoing ship. She had every reason to believe, if she held her course and speed, that any incoming ship would pass clear of her by keeping to the north of the fairway. They would pass red light to red light. The fact that the *Bluebird* was getting closer would not be enough in itself to justify the *Debonair* changing her mind about a red-to-red passing. The very nature of the fairway meant that they would have to pass close. It behoves a careful investigator, therefore, to ask what else (if anything) was the *Bluebird* doing at this critical time which might compel an objective observer on the *Debonair* to believe that she must attempt escape by altering course to port. The answer is that the *Bluebird* was altering course to port, towards the *Debonair*, at very close quarters to her, thereby threatening the *Debonair* since the *Debonair* had no way of knowing that the *Bluebird* would steady up and check the alteration. Time was too short to wait and see and in the agony of that moment the *Debonair* made an attempt to escape which ended in disaster.
11. What evidence do we have that the *Bluebird* was altering course to port at this critical time? We now have the account in paragraph 3 of the Draft Report from the personnel connected with *Bluebird* and this

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account appears to be the account of the pilot himself. This account contains the admission that the *Bluebird* approached Nos. 3 and 4 buoys, steering approximately 300°(True). Paragraph 3.10 then takes up the story:

- "As the yacht was on the south side of the channel the *Bluebird* came around to 290°(True) approx. and at this point the pilot recalls that he observed the *Bluebird* was on the north side of the channel and then the *Bluebird* came slowly to port to about 285°(True). At this stage the pilot observed the *Debonair* was still heading East and about 22.5° off the port bow of the *Bluebird*. At this time the pilot realised he needed to alter course to 270°(True) approx. but he observed that the *Debonair* was still showing a red light."

12. We know from the information obtained from the radar recordings from Dublin Port (at paragraph 8.7 of the Draft Report) that what the pilot describes as "about 285°(True)" was, in fact, 277°(True); that the alteration from 290°(True) to 277°(True) was made by the *Bluebird* between 02:49:07 hours and 02:50:01 hours radar time as stated in paragraph 8.7 of the Draft Report. In fact, if the 277°(True) radar vector is extended backwards through the 10 sec. plots of her track on both Radar Recording F4 and F5 we see that the alteration from 290°(True) to 277°(True) was made over the period from 02:49:31 to 02:50:01

13. This was the penultimate 30 seconds before the collision and the very moment after which the *Debonair* commenced her own disastrous alteration to port and began her final 30 seconds of run under port-

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rudder in under the bows of the *Bluebird*. The plots of the *Debonair* at 02:50:01, 02:50:11 and 02:50:21 are shown in orange in Radar Recording F5. The final plot of the *Debonair* at 02:50:31, immediately before the collision at about 02:50:35 radar time, has been obliterated by the current plot of the *Bluebird* at 02:51:01. These last visible plots of the *Debonair* show that she is distinctly going to port of the track she had followed up to 02:50:01 radar time.

14. The coincidence between the *Bluebird's* 13° turn towards the *Debonair* between 02.49.31 and 02.50.01 radar time and the *Debonair's* own track to port in under the bows of the *Bluebird* after 02.50.01 is just too much to ignore in the circumstances. There is no other rational explanation for the *Debonair's* alteration to port. The Draft Report is unable to suggest any explanation other than the unlikely one that the helmsman did not see the *Bluebird* at all and, therefore, infers that his alteration to port at this crucial moment was an act of pure coincident, done by chance and without knowledge of the presence of the *Bluebird*.
15. However, before concluding that the *Debonair's* alteration to port was precipitated by the threatening action of the *Bluebird*, a careful investigator will ask himself the question: would the *Bluebird's* 13° turn towards the *Debonair* have been observable by an objective observer on the *Debonair*. The answer to this question would appear to be an emphatic "yes" because the *Bluebird* is fitted with navigation lights whose purpose is specifically to show such an alteration of course. The geometry can be done by any schoolboy. The lights referred to by Counsel are those described in Appendix 12.8 of the

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Draft Report which quotes the International Rules for the Avoidance of Collisions at Sea as follows:

"Rule 23

(Power-driven vessel underway)

- a) A power-driven vessel under way shall exhibit:
- i. a masthead light forward;
 - ii. a second masthead light abaft of and higher than the forward one; except that a vessel of less than 50 metres in length shall not be obliged to exhibit such light but may do so."

16. These two masthead lights on the *Bluebird* are often called ranging lights. They were first adopted into the International Regulations for Preventing Collisions at Sea at the International Marine Conference of 1889 held in Washington. The reason for adopting these lights is recorded in the *travaux preparatoires* of the Conference published by the Government Printing Office under the auspices of the State Department of the United States of America in Volume III (Reports of Committees) at page 75 as follows:-

"The greatest advantage of the above system, in the opinion of the committee, is that a small change in the course of a steamer approaching end on, or nearly end on, is at once and unmistakably indicated."

V. RECONCILING THE ACTIONS OF THE *BLUEBIRD* AND THE *DEBONAIR* WITH THE ACCOUNT OF THE SURVIVOR

17. It is submitted by Counsel that in these circumstances there is no foundation for the conclusion or finding of the Marine Accident

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Casualty Board at paragraph 10.2 (quoted above in full) of the Draft Report that: "From the survivor's account it would appear that the crew of the *Debonair* were not aware of the presence of the *Bluebird* until the cargo ship's whistle sounded." There is no evidence from the survivor, Mr Philip Daly, that the helmsman of the *Debonair*, Mr Glen Styles, did not see the *Bluebird*. Indeed, until the making of the fatal alteration of course, there is no evidence from Mr Daly that Mr Glen Styles was carrying out his duties as helmsman other than in a perfectly competent manner. Indeed, apart from his breach of the fairway rule referred to in Notice No. 7 of 2001, both Mr Daly's account and the Radar Recordings in the Draft Report suggest that the helmsman was carrying out his duties in an impeccable manner until his fatal alteration to port. The better conclusion or finding in regard to the survivor's statement is that recorded in paragraph 10.5 (quoted above in full) of the Draft Report where it is stated that: "From the survivor's statement it is not possible to draw any definite conclusion regarding the cause of the alteration of course immediately preceding the collision."

18. Nothing, then, turns upon Mr Daly's evidence in the Draft Report in relation to the actions of the pilot of the *Bluebird* or the helmsman of the *Debonair*. However, Mr Daly's evidence does not rest there. It is a remarkable omission in the Draft Report that, though drawing inferences from his evidence, there is no mention of the fact that Mr Daly had an entirely different recollection of the events immediately after the accident. He had given a different account to his rescuers than that recorded as his account in the Draft Report. At the Inquest before the Coroner he was effectively treated as a hostile witness. No

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disrespect is intended to Mr Daly by the use of the term "hostile witness". It is a technical term to describe the legal process by which a witness who gives evidence which contradicts a statement made by him on a previous occasion may be cross-examined on the statement provided the statement is also proved in evidence. In this respect the depositions of Mr Michael Duffy, skipper of the Howth lifeboat, and Mr Lorcan Duignan, volunteer lifeboatman, were sworn into the record of the Coroner's Court.

VI. BREACHES OF THE REGULATIONS FOR PREVENTING COLLISIONS AT SEA BY THE BLUEBIRD

19. In the opinion of Counsel, the alteration to port by the *Bluebird* at such close quarters to the *Debonair* was in clear breach of Rule 8 of the Regulations for Preventing Collisions at Sea. Rule 8 is not cited by the Draft Report and, accordingly, is set out hereunder for reference:-

"Rule 8

Action to avoid Collision

- a) Any action to avoid collision shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.
- b) Any alteration of course and/or speed to avoid collision shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.
- c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation

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provided that it is made in good time, is substantial and does not result in another close-quarters situation.

- d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.
- e) If necessary to avoid collision or allow more time to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.
- f)
 - i. A vessel which, by any of these rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.
 - ii. A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the rules of this part.
 - iii. A vessel the passage of which is not to be impeded remains fully obliged to comply with the rules of this part when two vessels are approaching one another so as to involve risk of collision."

20. There was a clear breach of Rule 8 by the *Bluebird* because her pilot's intention to keep to or to get to his own side of the fairway was not positively indicated to the *Debonair* by his actions but, rather, was counter indicated by his 13° alteration towards the *Debonair*.

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21. There is also the question of the speed at which the *Bluebird* came into the close quarters situation with the *Debonair*. This is especially pertinent since the pilot intended to make an alteration of course towards the *Debonair* in that close quarters situation. This was not considered by the Marine Casualty Investigation Board and Rule 6 of the International Regulations for Preventing Collisions at Sea relating to safe speed is not quoted in the Draft Report. Again it is set out hereunder for reference.

"Rule 6

Safe Speed

Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

In determining a safe speed the following factors shall be among those taken into account:

- a) By all vessels:
 - i. the state of visibility;
 - ii. the traffic density including concentrations of fishing vessels or any other vessels;
 - iii. the manoeuvrability of the vessel with special reference to stopping distance and turning ability in the prevailing conditions;
 - iv. at night the presence of background light such as from shore lights or back scatter of her own lights;
 - v. the state of the wind, sea and current, and the proximity of navigational hazards;

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- vi. the draft in relation to available dept of water.
- b) [not applicable – refers to operational radar]"

22. The increasing speed and variation of course at which the *Bluebird* approached the *Debonair* is all the more in breach of the International Regulations for Preventing Collisions at Sea in that, on the pilot's own account in the Draft Report, the *Debonair* was only seen by the master and pilot as they approached Nos. 3 and 4 buoys, that is to say, during the elapse of the penultimate minute before the collision. The pilot conducted the *Bluebird* on the basis that the *Debonair* was showing a red light and assumed a safe passing red-to-red though, even if that red light was to remain unchanged, he had no idea how close he would shave the *Debonair*. He did not have the benefit of ranging lights since the *Debonair*, because of her small size, was not required to be fitted with these. No attempt was made by the *Bluebird* to use shipborne radar to monitor the progress of the situation by vector plotting or parallel indexing techniques. The *Bluebird* was in clear breach of Rule 7 of the International Regulations for Preventing Collisions at Sea which provides:

"Rule 7

(Risk of Collision)

- a. Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- b. Proper use shall be made of radar equipment if fitted and operational, including long range scanning to obtain early warning

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of risk of collision and radar plotting or equivalent systematic observation of detected objects.

- c. Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- d. In determining if risk of collision exists the following considerations shall be taken into account:
 - i. Such risk shall be deemed to exist if the compass bearing of the approaching vessel does not appreciably change;
 - ii. Such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range."

23. Finally, in relation to the *Bluebird*, there is the question of her position in the fairway from time to time and her compliance with Rule 9 of the International Regulations for Preventing Collisions at Sea. Rule 9 (*Narrow Channels*) is cited in the Draft Report and is the rule which, *inter alia*, requires a vessel to keep as near to the outer limit of the fairway which lies on her starboard side as is safe and practicable. The radar vector recording for 02.50.01 radar time in Appendix F4 of the Draft Report shows the *Bluebird* practically in mid-channel (though biased to her own side), she was in fact cutting the corner. She was not following the fairway which provides for a course over the ground of about 300°(True) inwards to No. 3 buoy and about 273°(True) thereafter.

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24. Furthermore, it is clear from the Radar Recording F5 made at 02:51:01 radar time, some 30 seconds after the collision, that the *Bluebird* had only reached a position about halfway between mid-channel and the outer limit of the fairway by the time of the collision.
25. For the avoidance of confusion it should also be noted that it is clear from these radar pictures of Dublin Port Company that at the time of the collision the *Bluebird* was not at the position marked "GPS Position of Collision" on the chart in Appendix 12.3 of the Draft Report. This may well have been the GPS position in which the Captain of the *Bluebird* activated the GPS man overboard button (as recorded in paragraph 5.1.3) but in so far as it purports to be the position of the collision or suggests that the collision occurred on the outer limit of the fairway it is incorrect.

VII. ASSESSMENT OF THE PERFORMANCE OF THE TRAFFIC SYSTEM IN PLACE AT DUBLIN PORT AT THE TIME OF THE COLLISION

26. Counsel now return to the Draft Report's reference to the Dublin Port Company Notice to Mariners No. 7 of 2001. As stated above, this notice provides that "small boats sailing, rowing or proceeding within the limits of the harbour are strictly required to keep out of the way of the fairway channel". The Marine Casualty Investigation Board's finding or conclusion in respect of this notice, in paragraph 10.4 of the Draft Report, reads as follows:-
- "The surviving member of the crew of the *Debonair* was not aware of the existence of the Notice. Prior to the accident the notice was forwarded to all sailing clubs in the Dublin bay area from Howth to

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Dun Laoghaire inclusive. Following the accident the notice was forwarded to the sailing clubs from Skerries to Greystones inclusive."

27. Counsel read into this paragraph an implied finding or conclusion that Dublin Port Company failed to promulgate the rule to sailing clubs north of Howth such as that in Malahide to which port the *Debonair* belonged. This is as far as the Marine Casualty Investigation Board's assessment goes in relation to the traffic system of Dublin port.
28. There is no assessment in the Draft Report of the enforcement by Dublin Port Company of the rule in Notice No. 7 of 2001; and there is neither an assessment of the performance of the pilot nor of Dublin Port radio information and radar monitoring service in their treatment of the *Debonair* either in relation to her own safety or as a threat to the safe passage of the *Bluebird*. The failure of the Marine Casualty Investigation Board to assess the treatment of the *Debonair* by Dublin Port Company is difficult to understand in the light of the finding or conclusion in paragraph 10.6 of the Draft Report that "the crew of the *Debonair* were not aware of the dangerous position that the yacht had reached, prior to the collision." The position which the *Debonair* had reached prior to the immediate events of the collision was that shown in the Radar Recording F3 and F4 where she is shown proceeding outwards on her own correct side of the fairway holding a steady course and speed and during which time she passed the incoming pilot-boat *Tolka* at 02:48:50 radar time. If this was considered a dangerous position on a clear night by either the pilot or Dublin Port

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Radio then she ought to have been told about it and been radioed to this effect.

29. It is submitted that the following points are relevant to an assessment of the performance of the Dublin Port regulatory regime or traffic system in its treatment of the *Debonair* both in relation to her own safety and as a threat to the safe passage of the *Bluebird*:

- A. At paragraph 4.1 of the Draft Report it appears, that in preparation for her excursion from Malahide to Dublin, the *Debonair* had booked a berth earlier in the week. The opportunity was not taken at the time of that booking to bring the *Debonair's* attention to the requirements of Dublin Port Company's Notice to Mariners No. 7 of 2001 (referred to above).
- B. When *Debonair* was entering Dublin port and again when she was leaving, there was no procedure in place to make use of V.H.F radio by the Dublin Port Radio to draw the attention of the *Debonair* to the requirements of Dublin Port Company's Notice to Mariners No. 7 of 2001 and there appears to have been no general broadcast to this effect either.
- C. At paragraph 3.7 of the Draft Report, "as the pilot cutter proceeded down the channel they observed two white lights apparently from a yacht under power with no sail proceeding seawards....the yacht was on the North side of the channel". No attempt was made to communicate with the *Debonair*.
- D. At paragraph 3.8, "The pilot reported the draft of the vessel and the last Port-to-Port Radio (*sic*). The Pilot was advised

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to proceed to berth 29 and that the inbound channel was clear." The latter information was manifestly incorrect as the *Debonair* was in the channel outward bound – see the Radar Recordings from Dublin Port in Appendix 12 marked F2 and F3.

The failure of Dublin Port Radar to advise the *Bluebird* of the presence of the yacht was all the more remarkable in that the yacht was in the fairway in breach of Notice to Mariners No. 7 of 2001.

- F. At paragraph 3.9 of the Draft Report, "As the vessel approached Nos. 3 and 4 buoys, steering approximately 300°(True), the pilot and the Master observed 2 red lights apparently to the south of the channel. The Pilot immediately remembered that he had passed a yacht on the way out and he assumed that the yacht was the same as the one seen previously." It seems clear that, though the pilot had passed the *Debonair* on the way out, he gave no further thought to her presence until he and the Master observed her lights as they approached No. 3 and 4 buoys, this would have been less than two minutes before the collision.
- G. At paragraph 3.11, the pilot "decided to wait to until the *Debonair* had passed to bring the *Bluebird* round to 270°(True)." ["270°(True) approx." previously been described in paragraph 3.9 as the course to steer up channel from No. 3 and 4 buoys depending on tidal conditions]. However, it appears from the Draft Report that the pilot did not wait. Paragraph 8.8 states: "The radar recording for 02.50.01 hours is reproduced at appendix 12.7(F4). This

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shows the *Bluebird* on a course of 277°(True) with a speed of 8.7 knots, as it appears to have altered to port to follow the course of the channel. The *Debonair* would appear to be passing clear on the port side."

- H. At paragraph 3.11 the Draft Report, apparently quoting the pilot, states: "...The situation at all times appeared normal and no attempt was made to converse on the VHF, as the pilot did not think it necessary. The pilots normally do not communicate with yachts whilst piloting."
- I. Paragraph 4.12 the Draft Report, in relating the survivor's account, states: "The engine of the *Debonair* is located below the cockpit and is quite noisy. It can accordingly be difficult to hear the VHF radio even though the "" (sic) has an outdoor speaker."
- J. Though Dublin Port Radio was monitoring and keeping a vector plot of the *Bluebird* no attempt was made to warn her that at 02.50.01 as shown on Radar Recording F4, she was in mid-channel and was not keeping to her own correct side as required by Rule 9.
- K. Again, between 02.49.07 and 02.50.01 (Radar Recordings F3 and F4) no attempt was made by Dublin Port Radio to warn either the *Bluebird* or the *Debonair* that the *Bluebird* was altering course towards the *Debonair*.
- L. As appears from the Radar Recordings, Dublin Port Radio treated the *Bluebird* and the *Debonair* differently in that a vector plot was maintained for the *Bluebird* but not for the *Debonair*. Thus, it would appear that an important opportunity was lost by Dublin Port Radio to make an

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immediate detection of the fatal alteration to port of the *Debonair* and to give warning of it.

M. The bend in the fairway at which the accident occurred was the *locus* of a previous accident between the *Hasselwerder* and the *Kilkenny* and ought to have been a point of special care in the subsequent operation of the traffic system.

30. Consideration of these points lead Counsel to the conclusion that the traffic system in place in Dublin port at the time of the collision did not, in general, have regard to the presence of yachts in the fairway and, in particular, simply did not treat the *Debonair* as a real vessel. The system ignored her presence in the fairway as if she did not exist.

2nd October, 2003.

James O'Reilly, S.C.

John Wilde Crosbie, B.L.

The Law Library,
The Four Courts,
Dublin, 7.

MCIB RESPONSE TO LETTER AND COUNSEL'S OPINION FROM AHERN O'SHEA SOLICITORS ON BEHALF OF THE PERSONAL REPRESENTATIVE OF ELEANOR CULLEN (DECEASED).

This response uses the same paragraph numbers used by Ahern O'Shea's submission.

5. See paragraph 10.4 of the Final Report.
6. In accordance with evidence given by Mr. Philip Daley (survivor) to the MCIB Investigator, Ms. Cullen was in the cockpit area at the time of the collision, we cannot conclude that "it would have been impossible for Ms. Cullen to have been in the open cockpit at the time of the collision". See paragraph 5.2.1.
7. There is no evidence that the "Bluebird" did not take all safe actions whilst in the fairway channel. There is clear evidence that the "Bluebird" was aware of, and kept watch on, the "Debonair" until such time as the "Debonair" radically altered course to port into the path of the "Bluebird". It is the responsibility of vessels and their Masters to comply with the International Regulations for the Prevention of Collisions at Sea, 1972 (as amended), and to comply with local bye-laws. The evidence indicates that the "Debonair", and those on board, were not ignored by the Dublin Port Authorities or by those on board the "Bluebird". There is no evidence to suggest that the Port Company, its servants or agents, ignored the presence of the "Debonair" in the fairway channel. The "Debonair" should not have been in the fairway channel in the first instance. There is a responsibility on every person on board any vessel to have regard for their own safety. It would appear from your paragraph 6 that the late Ms. Cullen was a voluntary crewmember. See paragraph 10.4 and Recommendation 11.3 in the Final Report.
8. The MCIB does not agree with this contention. A careful and full examination of all evidence and contentions made in writing have been considered and assessed. This is evident from both the Draft Report and this Final Report.
- 9/10. The MCIB rejects the contention that the Draft Report/ Final Report have failed to assess the involvement of the "Bluebird" in the events leading up to the collision.

The contentions in paragraph 10 are not based on any facts known to the MCIB, nor is any evidence recited or adduced to support these contentions. The MCIB's conclusion is that the "Bluebird" did nothing to cause this collision, which took place on the North side of the channel. The "Debonair" should have seen the port sidelight on the "Bluebird" and had the "Debonair" maintained its course, it would have passed port-to-port safely.

The "Bluebird" had completed its slight turn (13° alteration to port) and was in excess of 500metres from the "Debonair". There is no evidence that the "Bluebird" threatened the "Debonair" nor is there any evidence that the "Debonair" made any attempt to "escape", until such time as the "Bluebird" whistle sounded, at which time the "Debonair" radically altered course into the path of the "Bluebird". See paragraphs 5.1.1 and 5.1.2. of the Report

It is quite clear that insufficient watch was being kept on board the "Debonair". The fairway in question was 180 metres wide; the "Bluebird", which was on the north side of the fairway, was 11.2 metres in wide and the "Debonair" was approximately 2.5 metres wide. There was ample room for the vessels to pass by safely. The "Debonair" should not have been in the fairway at any time. When the "Debonair" left Poolbeg Yacht Club, it proceeded downriver in the channel, veered over to the North Bull Lighthouse and No. 5 buoy, before altering course to the South side of the channel. The correct course of passage for the "Debonair" to take on leaving the shelter of the breakwater was to move out of the fairway where there is ample depth for a vessel of its size. The fairway is adequately lit so as to allow passage outside of it.

11. It was to be expected that the "Bluebird" would alter course to port to follow the course of the channel. This would have been evident to the "Debonair" if it had been maintaining its position on a navigational chart.
12. The orange echoes are similar to the afterglow of a radar target and are not given every 10 seconds. From a real time radar rerun of the incident the MCIB estimate that the 13° alteration by the "Bluebird" was made between 02:49:20 and 02:49:40. At Appendix F4 the vessels are about 510 metres apart.
13. As stated above the orange echoes are not given every 10 seconds. The MCIB estimate that the collision occurred at approximately 02:51:01. The "Bluebird" maintained a steady course between 02:49:40 and 02:51:01. The "Debonair" headed into the path of the "Bluebird". This is not the action of a vessel trying to escape. After the whistle signal there was a large alteration of course to port by the "Debonair" across the bow of the "Bluebird".
14. It is a reasonable conclusion that the crew of the "Debonair" did not see the "Bluebird" before the whistle signal for the following reasons:
 - (a) The helmsman on the "Debonair" headed towards the "Bluebird". He did not take decisive action and attempt to escape in order to avoid collision. He altered course into the path of the "Bluebird" after the whistle signal. Even at this stage if he had altered course to starboard the collision may have been avoided.
 - (b) There should have been no confusion regarding the course of the "Bluebird" as the red sidelight of the "Bluebird" was always visible to the "Debonair".

(c) According to the survivor Philip Daley, he was not aware of the presence of the "Bluebird", although he was on deck. It is reasonable to expect that the presence of the "Bluebird" would have been commented upon by the crew of the "Debonair", present on deck, if it had been seen prior to the whistle signal, as the "Debonair" was heading towards the "Bluebird".

- 15/16. The MCIB cannot accept that the "Debonair" was threatened by the "Bluebird". As stated above the "Debonair" headed towards the "Bluebird". An alteration of 13° is small and if the "Debonair" had been maintaining its position on a navigational chart it would have expected this alteration as the "Bluebird" was being navigated inwards in the channel. Furthermore if the "Debonair" was aware of its actual position in the channel it would have expected the "Bluebird" to make the course alteration at the time it did. The purpose of the sidelights on a vessel is to indicate the direction in which a vessel is heading. As the red sidelight of the "Bluebird" was always visible to the "Debonair", there should have been no doubt as to the direction in which the "Bluebird" was heading.
17. We cannot accept that the helmsman was carrying out his duties in an impeccable manner. The circumstantial evidence indicates otherwise. See MCIB response at 9 / 10 above.
18. We have considered the evidence given by Mr. Philip Daley at the Coroner's Inquest. However, the Draft Report and this Report accurately recite the version of events given by Mr. Daley to the MCIB Investigator. However, see paragraphs 10.11 and 10.12.
- 19/20. We do not accept that the slight alteration to port by the "Bluebird" (13°) was a breach of Rule 8 of the International Regulations for the Prevention of Collisions at Sea, 1972 (as amended). There was no risk of a collision occurring when the alteration was made. Action taken by the "Bluebird" in navigating the shipping channel was not action taken to avoid collision.

When a risk of collision subsequently arose because of the "Debonair's" movements, the "Bluebird" took appropriate action by sounding its whistle and going full speed astern. The red light on the "Bluebird" was at all times visible to the "Debonair" yet it turned to port across the bow of the "Bluebird". The "Bluebird" was following the course of the channel and the "Debonair" did not abide or comply with Rule 9 of the International Regulations for Preventing Collisions at Sea, 1972.

- 21/22. The speed at which the "Bluebird" was travelling was not a contributory factor in this collision. There is no evidence to suggest that speed had any bearing on this incident. It is clear that the "Bluebird" was on reduced speed. A speed of between 7 and 9 knots is moderate for a vessel of this size. In this instance the 'close quarter' situation was created by the "Debonair" altering course to port.

It is not correct to assert that the Pilot "had no idea how close he would 'shave' the "Debonair"". The Pilot kept watch and correctly assumed a red-to-red passing as the red light was showing on the "Debonair" and was visible to him at all times until it changed to green when it cut across the "Bluebird's" bow. Thus a risk of collision did not exist until that point in time. The Pilot and the Master of the "Bluebird" took appropriate action in sounding the whistle and going full speed astern.

As regard the 'radar' point, it should be noted that in clear visibility an alteration of course will be observed quicker by eye than on radar.

It should also be remembered that the red port light was also showing on the "Bluebird" and should have been seen by the "Debonair". To alter course across the bow of the "Bluebird" in such circumstances was fatal and caused this tragic collision.

23/24. This is dealt with in paragraph 10.9 of the Final Report. The MCIB estimate that the collision occurred at approximately 02:51:01.

It should also be recalled that the "Debonair" should not have been in the fairway at this location. The course taken by the "Debonair" from the time it left Poolbeg marina was erratic.

25. All the evidence presented to the MCIB indicates that the Master of the "Bluebird" activated the GPS "Man Overboard" button almost immediately after the collision. The GPS position of collision in Appendix 12.3 is approximate. The more reliable position of the collision is shown in Appendix 12.7 (F5). See also paragraph 10.9 of the Final Report for the MCIB's findings in this regard.

26/27. See paragraph 10.4 and Recommendation 11.3 of the Final Report.

28. The MCIB has considered the conduct of the Pilot on the night and concludes that the Pilot did nothing wrong.

The MCIB's comments regarding the Dublin Port Authority are set out in paragraphs 10.4 and 11.3 of the Final Report.

It should also be noted that there was no problem with the "Debonair's" position at F3 or F4. It is after this however that the "Debonair" moves to port towards the "Bluebird" thus creating a close-quarter situation and ultimately a collision. Prior to the collision the Pilot tried to alert the "Debonair's" crew by sounding the whistle which was an appropriate response in the circumstances and was more expedient than radio contact.

29 (a) Noted. However the "Debonair" crew should have ascertained what Marine Notices and/or Bye-Laws applied as part of their passage plan.

(b) Noted. But see (a) above. The MCIB's conclusion is that Mr. Daley was not aware of Dublin Port Company's Marine Notice to Mariners No. 7 of 2001. We cannot and do not conclude that all or any of the other crewmembers were not aware of this Marine Notice. However it is clear that the "Debonair" did not comply with this Marine Notice as it was in the fairway channel when it should not have been.

Also notwithstanding the Dublin Port Company Notice to Mariners and Bye-Law regulations, all small craft are required to comply with Rule 9 of the International Regulations for Preventing Collisions at Sea, 1972, as amended.

(c,d,e) Noted. See paragraphs 10.4 and 11.3 of Final Report.

(f) Noted.

(g) It is not correct to conclude that the Pilot did not wait. Your paragraph 12 recognises that the Pilot's estimate of about 285° (True) was in fact 277° (True). Also between 02:49:40 and 02:51:01 the "Bluebird" maintained a steady course of 277° (True).

(h, i) Noted.

(j) The "Bluebird" was in mid-channel tending towards its starboard side. (see Paragraph 10.9).

(k) Between 02.48.07 and 02.50.01 the course taken by the "Bluebird" was normal for a vessel following the course of the channel (13° alteration) and there was no danger in existence at this time. It was after F4 that the risk of a collision was created by the "Debonair" altering course to port.

(l) We disagree. Both vessels were tracked and the track history of both vessels was recorded. We don't accept that Dublin Port could have anticipated the sudden alteration of course by the "Debonair" in time to avoid this collision and also ultimate responsibility rests with the Master of each vessel for his/her vessel's movements.

(m) This accident did not happen at a bend.

The risk of a collision occurring was created by the "Debonair" suddenly altering course to Port. The bend in question is not a "notorious bend". The "Bluebird" altered course by only 13 degrees and this collision took place approx 500 metres from the bend.

The MCIB is aware of 1 other incident which occurred near to the location of this incident prior to the introduction of the new channel and bouyage system. This incident occurred under a different bouyage system and circumstances.

30. We cannot accept these conclusions. See above.

