# Holland Leedon Pte Ltd (in liquidation) *v* C & P Transport Pte Ltd [2013] SGHC 281

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| **Case Number** | : Suit No 239 of 2009 |
| **Decision Date** | : 31 December 2013 |
| **Tribunal/Court** | : High Court |
| **Coram** | : Lionel Yee JC |
| **Counsel Name(s)** | : Anthony Lee, Gan Kam Yuin, Cheng Geok Lin Angelyn and Eu Li Lian (Bih Li & Lee) for the plaintiff; Jimmy Yim SC, Darrell Low Kim Boon and Ong Yuan Kun (Drew & Napier LLC) for the defendant. |
| **Parties** | : Holland Leedon Pte Ltd (in liquidation) — C & P Transport Pte Ltd |

*Bailment – Negligence*

*Contract – Contractual terms – Unfair Contract Terms Act*

*Damages – Assessment*

*Damages – Contributory Negligence*

31 December 2013 Judgment reserved.

**Lionel Yee JC:**

**Introduction**

1 This dispute arises out of the storage of metal coils in a warehouse.

2 The plaintiff, Holland Leedon Pte Ltd (in liquidation) ("the Plaintiff"), is a company registered in Singapore and is presently in members' voluntary liquidation. Prior to the commencement of the liquidation process, the Plaintiff was in the business of metal stamping, tools and die making, clean room assembly, and manufacturing hard-disk drive covers. In 2004, the Plaintiffs sold its business to a company known as Metalform Asia Pte Ltd. The defendant, C & P Transport Pte Ltd ("the Defendant"), is also a Singapore registered company and is in the business primarily of providing logistics, transportation, and warehousing related services.

**The background facts**

3 As the background facts to the present claim are somewhat drawn-out, I will for the purposes of this introduction only set out the significant events leading up to the trial. In so far as any further details are relevant to my findings, they will be discussed further in my analysis of the evidence.

***The Plaintiff's stock of metal coils***

4 After the Plaintiff sold its business to Metalform Asia Pte Ltd ("Metalform Asia") in 2004, they continued to hold stocks of metal coils and steel sheets, and these were stored in a warehouse owned by Transware Distribution Services Pte Ltd ("Transware"). According to the Plaintiff, it discovered sometime in August 2005 that Metalform Asia was improperly appropriating its stocks. It

therefore decided to move its coils and steel sheets to a different warehouse and the Plaintiff decided on storage of the stocks with the Defendant at its warehouse at 47A Jalan Buroh, Singapore 619492 ("the Defendant's warehouse"). Most of the coils were made of stainless steel and these could be sub-divided into two main categories: Type SUS 304 coils ("SUS 304") and Type SUS 430 coils ("SUS 430"). These differed in the amount of nickel present in the steel – in respect of the former, 8–10%, and in respect of the latter, less than 1%. Within each of these types, the coils could also be sub-divided into differing finishes of their surfaces with the main ones known as 2B and 2D. While most of the stainless steel coils were large so-called "mother coils", there were some coils which were denoted as "small coils". There were also some stainless steel cut sheets which are not the subject of the present proceedings. Apart from stainless steel coils, there were also smaller numbers of carbon steel coils and some aluminium coils known as Type ALUM H24. All the carbon steel and aluminium coils were mother coils.

5 Over a number of days in August and September 2005, the metal coils and steel sheets were transported by the Defendant from the Transware warehouse to the Defendant's warehouse. By the Plaintiff's estimate, these goods were worth a prime value of S$11,667,090. The following quantities and weights of coils and steel sheets were moved:

| Description | Quantity | Weight (kg) |
|---|---|---|
| Mother coils | 716 | 3,130,890 |
| Small coils | 134 | 64,387 |
| Cut sheets | 88 | 40,545 |

6 The warehousing arrangement or contract ("the Warehousing Contract") was, according to the Defendant, governed by a quotation dated 26 August 2005, in which it was stated to be subject to the Defendant's "Standard Terms and Conditions". This quotation was never signed by the Plaintiff. It is not, however, disputed by the parties that the Plaintiff would pay the Defendant warehousing charges of S$11,240.36 per month (before Goods and Services Tax).

***The missing coils and damage to the coils***

7 Sometime in May 2008, 11 mother coils were discovered to be missing from the Plaintiff's stocks kept at the Defendant's warehouse. The Defendant has not denied that these coils were lost. The Plaintiff also alleged that a larger number of the coils were damaged by flooding and handling by the Defendant. There were two known incidents of flooding during periods of rain at the warehouse – on 18 June 2008 and 22 October 2008. The damage to the metal coils was particularised by the Plaintiff as taking the form of water damage, handling or packaging damage, or severe deformation. Some coils were alleged as having suffered only one type of damage, while others suffered a combination of different types of damage.

***The 1st Miller survey and report***

8 Arising from such discovery, the Plaintiff engaged a surveyor, Miller International Loss Adjustors (S) Pte Ltd ("Miller"), to survey the goods at the Defendant's warehouse and to assess any damage by a visual inspection. An inspection was conducted by William Thomas Selby of Miller ("Selby") from 20 to 22 October 2008. A survey report dated 5 January 2009 was produced ("the 1st Miller Report"). In this 1st Miller Report, Selby divided the coils into two categories: "sound" and "unsound" (hereinafter referred to as "the 'sound' coils" and "the 'unsound' coils" or described as "sound" or

"unsound" as the case may be, respectively), with the latter being those where significant damage was identified. He also noted briefly the external condition of the coils he inspected.

9 On 17 March 2009, a writ of summons endorsed with a statement of claim was filed by the Plaintiff. This statement of claim was for the 11 missing coils, and for the 173 coils classified by Selby in the 1st Miller Report as "unsound", and also a further five coils classified as "sound" which were described by Selby as exhibiting "coil damage".

***The move to the Sagawa warehouse***

10 In July 2009, the Plaintiff removed its metal coils and cut sheets from the Defendant's warehouse to another warehouse run by a different warehouseman at 14 Tuas Avenue 1 known as the Sagawa warehouse ("the Sagawa warehouse").

***The joint survey***

11 From 30 November 2009 to 7 December 2009, a joint survey of the coils classified as "unsound" in the 1st Miller Report was conducted by Selby and the Defendant's surveyors, Insight Adjusters and Surveyors Pte Ltd ("Insight"). During this survey, the 173 "unsound" coils were taken out by forklift from the stacks of coils in the Sagawa warehouse and a visual inspection was conducted.

12 From this joint survey, Mohamed Ferdaus bin Mohamed Yusoff ("Ferdaus"), who was then an employee of Insight, produced a report dated 4 March 2010 ("the Insight Report"). Selby also produced a report which was part of what is known as the 2nd Miller Report as described in the next few paragraphs. This report and the Insight Report are identical in so far as the description of the damage to each "unsound" coil inspected is concerned.

***The second Miller survey and report***

13 On 3 December 2009, the Plaintiff's solicitors wrote to the Defendant's solicitors inviting them to also conduct a joint survey of the coils which had been classified earlier as "sound" in the 1st Miller Report, intimating that the Plaintiff might wish to claim damages in respect of those coils as well. The Defendant declined the invitation. The invitation was repeated on 8 December 2009 and 9 December 2009 and the Defendant's position remained unchanged. On 10 December 2009, the Defendant's solicitors wrote to state its position that any deterioration of the coils was due to storage in the Sagawa warehouse, and so they would not participate in the inspection of the "sound" coils.

14 From 10 to 15 December 2009, Selby inspected the "sound" coils by a visual inspection of their external condition. On 19 January 2010, Selby produced a second report ("the 2nd Miller Report") covering his findings from the joint survey (with Insight) of the "unsound" coils as well as his survey of the "sound" coils.

***Laboratory testing***

15 Because the inspections thus far were only based on visual observations, the parties decided that it was necessary to appoint steel experts to determine the "cause, nature and extent" of the damage to the coils. In June 2010, the Plaintiff engaged Dr Qiu Jianhai ("Dr Qiu") of WebCorr Corrosion Consulting Services ("WebCorr") and the Defendant engaged Mr Liam Kok Chye ("Liam") of Matcor Technology & Services Pte Ltd ("Matcor") as their respective experts. Dr Qiu and Liam were both metallurgists.

16 Representatives of both parties participated in a joint inspection at the Sagawa warehouse on 2 September 2010. Seven "unsound" coils (which I will refer to as "Coil No 1", "Coil No 2", *etc*) were selected as representative samples of the "unsound" coils which formed the subject matter of the Plaintiff's claim at that time. Both WebCorr and Matcor used all seven coils to conduct their tests. The selected coils were partially uncoiled in a joint exercise and each side took samples from them for further laboratory tests and analysis. During this exercise, Dr Qiu decided to partially uncoil and take a sample from a coil which was classified as "sound" ("Coil No 8") for testing, and as a result, Liam also took a sample of that same "sound" coil. Expert reports were produced by Dr Qiu and Liam on 30 November 2010 and 20 December 2010 respectively.

***The amendment to the statement of claim***

17 On 21 March 2011, the statement of claim was amended by the Plaintiff to claim for loss and damage for an additional 415 metal coils on the basis of the 2nd Miller Report and the fact that Dr Qiu's report disclosed damage to the eighth ("sound") coil which was alleged to be worse than that sustained by the seven representative "unsound" coils. Due to what the Plaintiff says was a combination of oversight and misunderstanding between it and its solicitors, the 2nd Miller Report was not disclosed to the Defendant when it was produced and this was done only some time later.

***The reports on the quantification of the damage***

18 Finally, on the basis of the data collected from the above mentioned reports, the Plaintiff's expert, Dr Roger Hooper, a consultant in the stainless steel industry, produced a report dated 20 December 2011 ("the Hooper Report") on the quantification of the damage suffered by the Plaintiff. Because Dr Roger Hooper was not available to give evidence at the trial, Peter Wildbore ("Wildbore"), also a consultant in the same industry, was called to give evidence as an expert witness for the Plaintiff. Wildbore agreed with and adopted the Hooper Report and all its findings and conclusions.

19 For the Defendant, Leow Jian Quan Kenneth ("Kenneth Leow"), a trader in the steel industry, produced a report dated 21 December 2011 setting out his opinion on the same issue. Ng Teck Hock Norman ("Norman Ng"), another metal trader, produced a further expert report on 20 December 2012. This report, together with Kenneth Leow's earlier report of 21 December which Norman Ng adopted in full, formed the expert evidence given by Norman Ng for the Defendant at the trial.

**The present suit**

20 The Plaintiff in the present suit claimed damages for the 11 lost coils and for the damage to the coils which it said was caused by the negligence of the Defendant as warehouseman. As I have noted (see above at [7]), such damage consisted of water damage, packaging damage and handling damage which, in some of the coils, took the form of severe deformity sustained by them. The Plaintiff's pleaded particulars of negligence included allegations that:

(a) the warehouse was not sufficiently resistant to water;

(b) water entered the warehouse through the walls and/or the doors during rain;

(c) the coils were stacked on top of one another without regard to the weight of the coils; and

(d) the coils were stacked on top of one another without regard to the fact that some coils in the upper part of the stack were wet.

21 Subject to some concessions which I will set out below, the Defendant denied liability. It also alleged contributory negligence on the part of the Plaintiff. In any event, the Defendant claimed that the metal coils, when they entered its warehouse, were only worth scrap value, or, in the alternative, a value lower than their prime value. The Defendant also pleaded its Standard Terms and Conditions ("the Defendant's STC") and the Singapore Logistics Association's Standard Trading Terms and Conditions ("the SLA Standard Trading T&C") which it claimed were incorporated into the warehousing contract with the Plaintiff. The clauses in the Defendant's STC and the SLA Standard Trading T&C which the Defendant relied on had the effect, the Defendant contended, of excluding and/or limiting its liability to the Plaintiff in the event that it was found liable. The Defendant claimed, in addition, that the Plaintiff had a duty to and failed to mitigate its losses.

22 Because the trial of the matter was not bifurcated, it falls to me to decide both the issues of liability as well as those involving the assessment of damages.

**The structure of my judgment**

23 Given the numerous issues, it is necessary for me at the outset to describe the structure which I will use to analyse the evidence and set out my findings.

24 I start with my analysis of the evidence relating to the issue of the damage to the coils and my findings thereon. This will be under the heading "**Damage to the coils**" (see below at [26]–[130]). I begin first with the stainless steel coils. As I have noted, the present claim involves claims for damage to different types of coils (see above at [4]) and different types of damage, which, in respect of a particular coil, may be of just one type, or of a combination of them (see above at [7]). I therefore categorise the stainless steel coils in question into the following categories:

| | | |
|---|---|---|
| **Category A** | ……. | SUS 430 coils which sustained water damage<br>(see below at [27]–[55]) |
| **Category B** | ……. | SUS 430 coils which sustained water and handling/packaging damage<br>(see below at [56]–[65]) |
| **Category C** | ……. | SUS 430 coils which were severely deformed<br>(see below at [66]–[77]) |
| **Category D** | ……. | SUS 304 coils which sustained water damage<br>(see below at [78]–[86]) |
| **Category E** | ……. | SUS 304 coils which sustained water and handling/packaging damage<br>(see below at [87]–[114]) |
| **Category F** | ……. | SUS 304 coils which sustained handling/packaging damage only<br>(see below at [115]–[121]) |
| **Category G** | ……. | SUS 304 coils which were severely deformed<br>(see below at [122]–[127]) |

The reason for categorising the coils into these categories will become apparent in my analysis of the evidence below. At the close of the hearing of the evidence at the trial which lasted 19 days, I directed counsel for both parties to make their closing submissions on the basis of these categories. This was duly complied with.

25 I deal next with the alleged damage sustained by the carbon steel coils, which I classify as **Category H** (see below at [128]), and the small coils, which I classify as **Category I** (see below at [129]–[130]). This will be followed by an assessment of the damages for which the Defendant is liable in respect of the coils under Categories A-I and this will include the pre- and post-damage valuation of all the damaged coils under the heading "**Assessment of damages for damaged coils**" (see below at [131]–[185]). I turn next to the 11 lost coils under the heading "**The missing coils**" (see below at [186]–[196]), after which the submission by the Defendant of contributory negligence will be discussed under the heading "**Contributory negligence**" (see below at [197]–[202]). I will then summarise the damages which are payable by the Defendant to the Plaintiff (under the heading "**The total damages payable by the Defendant**" (see below at [203])). This will be followed by consideration of the limitation of liability and exclusion clauses relied on by the Defendant (under the heading "**The limitation of liability and exclusion clauses**" (see below at [204]–[239])). Finally, the Defendant's argument that the Plaintiff had failed to mitigate its losses will be dealt with under the heading "**The duty to mitigate loss**" (see below at [240]).

**Damage to the coils**

26 On the evidence before me, there was significant uncertainty over how to reconcile the coils reported by the Plaintiff's expert Selby as having suffered specific categories of damage with, firstly, the report of the Plaintiff's expert Wildbore on the quantification of the damage suffered, and secondly, the number of coils which were the subject of the Plaintiff's claim in its statement of claim. In the course of his oral testimony, Tay Puay Cheng ("Tay"), head of the office of the liquidators of the Plaintiff, provided a list which identified coils by the tag serial numbers used by the Plaintiff and the Defendant, and classified them under the categories of damage which the Plaintiff was claiming ("Tay's List"). [note: 1] I found this list to be extremely helpful and it was partly on the basis of this list that I directed that the evidence was to be dealt with along the categories I have set out earlier (see above at [24]).

***Category A: SUS 430 coils which sustained water damage***

*The coils in question*

27 In respect of the SUS 430 coils alleged to have sustained water damage, Tay's List identified 86 coils weighing a total of 398,883kg. [note: 2] Tay, however, explained that the Plaintiff's claim was limited to only 85 coils with a weight of 391,903kg as set out in his affidavit of evidence-in-chief. [note: 3] Tay admitted that it was not possible to identify 85 specific coils with a total weight of exactly 391,903kg, but he sought to show that there were at least 85 coils with a combined weight exceeding 391,903kg which did sustain water damage. [note: 4] I agree with his approach. I note that none of the coils listed in Tay's list in this category are over 5,000kg and so, regardless of which coil was omitted to bring the number down from 86 to 85 coils, their total weight cannot be less than 391,903kg.

28 With respect to these coils, the Defendant accepted that it was liable for the water damage sustained by all of them except for three coils (namely those bearing the tags CWT639/Tag-112, CWT646/Tag-115 and CWT701/Tag-32). These three coils, it submitted, should be excluded because

they were reported in the 1st Miller Report produced by Selby as being "in apparent satisfactory condition" in October 2008, resulting in their classification by him as "sound" coils. The water damage was only subsequently reported in the 2nd Miller Report, and this inspection was conducted in December 2009, after the coils had left the Defendant's warehouse, and without the participation of the Defendant's expert. The Defendant also pointed out that these three coils were subsequently reported as having sustained both water as well as handling/packaging damage and the fact that the Plaintiff had not classified them as sustaining *both* types of damage in these lists cast doubt on whether any water damage had in fact been sustained.

29 On this latter submission, I am of the view that it is well within the Plaintiff's right to claim for just water damage even if the evidence showed that more than water damage was sustained. The issue is whether there is satisfactory evidence of the specific damage claimed by the Plaintiff to have been suffered by the coils in question, which in this case is water damage.

30 As regards the former submission on the discrepancy between the lack of damage noted in the 1st Miller Report and the damage noted in the 2nd Miller Report, Selby explained that with respect to coils classified as "sound" in the 1st Miller Report but which had been found to be damaged in the 2nd Miller Report, he may have missed out some of the damage the first time round. This was because of the adverse conditions he had to work in during his first inspection in October 2008. According to him, the warehouse was dark and the coils were stacked in a way which made it difficult for him to gain access to them. [note: 5] His testimony on the dark conditions of the Defendant's warehouse, especially its interior, was corroborated by another of the Plaintiff's witness, Ser Sai Kiang Serene ("Serene Ser"). [note: 6] As regards the manner in which the coils were stacked, Selby's testimony is supported by photographs taken of them in May 2008 [note: 7] and on 22 October 2008, which was the last day of Selby's first inspection. [note: 8]

31 In contrast, the conditions under which both the joint inspection with Insight's Ferdaus and the inspection which led to the 2nd Miller Report were conducted were, according to Selby, significantly better. [note: 9] This was not challenged by the Defendant. The methodology used for the inspection of the "sound" coils also appeared to be similar to that of the joint inspection, although Selby's descriptions of the damage sustained were somewhat briefer than those used in the joint inspection. In the circumstances, I find that it was possible for damage, including water damage, to be missed out in the 1st Miller Report and identified only in the 2nd Miller Report. I therefore do not regard this discrepancy in the reporting of the three coils in question as, in and of itself, a sufficient basis to automatically exclude the three coils in question from being the subject of a claim for damage.

*Where was the water damage sustained?*

32 Was the water damage sustained when the coils (including the three disputed coils) were at the Defendant's warehouse? There was very clear and unchallenged evidence of water entering the Defendant's warehouse on at least two occasions, namely, on 18 June 2008 and 22 October 2008. On both occasions, it was observed that the rainwater came into contact with a number of coils. There may, in the light of such evidence, also have been other instances of water ingress into the warehouse during other occasions of heavy rainfall. In contrast, there was no evidence of water entry into the Transware warehouse where the coils were stored prior to their move to the Defendant's warehouse. Nor was there any evidence that the coils sustained any water damage at the Sagawa warehouse where the coils were moved to (from the Defendant's warehouse) in July 2009. I note that by the time the coils were jointly inspected in November 2009, they had been moved to this warehouse for just over four months. Ferdaus, who conducted the joint inspection on behalf of the Defendant, reported that the "unsound" coils which were jointly inspected appeared to

have been in contact with water "sometime ago" [note: 10] and that the signs of water contact were "badly fading by then". [note: 11] He also observed that none of the "unsound" coils inspected were damp so as to indicate recent water contact. [note: 12] There was no evidence that the conditions under which the "unsound" coils (which were the subject of the joint inspection) were stored differed from that of the "sound" coils. In the circumstances, it is unlikely that any of the "sound" coils were damp in a manner consistent with recent contact with water either.

33 I therefore find that the water damage sustained by all the Plaintiff's coils listed in this category was more likely than not to have been sustained while they were stored at the Defendant's warehouse. With respect to the "sound" coils where water damage was reported in the 2nd Miller Report but not in the 1st Miller Report, the damage was either sustained prior to 20–22 October 2008 and missed by Selby in his first inspection or sustained some time after that but before they were moved to the Sagawa warehouse.

*Is the Defendant liable for such water damage?*

34 I turn next to whether the Defendant is liable for such water damage. I have had to undertake this exercise even though the Defendant has accepted liability for the "unsound" coils in this category because no liability has been accepted for the three "sound" coils. There appears to be two possible causes of water damage to the coils, namely direct contact with water during the ingress of rainwater into the warehouse, and the stacking of wet coils on top of dry ones causing the latter to become wet.

(1) Rainwater contact

35 As regards rainwater contact, the Plaintiff's witnesses claimed that they had specifically put the Defendant or its agents on notice that the coils could not come into contact with water before or around the time they were moved to the Defendant's warehouse. [note: 13] This was however denied by the Defendant's then General Manager Leaw Tiew San ("Leaw") although he did recall the Defendant's director Ser Kim Koi Anthony ("Anthony Ser") calling him to complain about the coils being left outdoors during a drizzle in the course of the move to the Defendant's warehouse. [note: 14] Leaw did however accept that it was the Defendant's duty to do prevent seepage of water through the walls of the warehouse, to do its best to make sure the coils were not in contact with water, and to prevent flooding. [note: 15] A bailee's duty includes ensuring that the place where goods are stored is fit and proper (see *Chua Keng Mong v Hong Realty Pte Ltd and others* [1993] 3 SLR(R) 317 at [15], [16] and [20], a case involving dripping water). I am of the view that it is a matter of common sense that a warehouse where goods are stored needs to be kept dry and protected from rain and that some damage was likely to be sustained by the coils if there was contact with rainwater. Had the coils been resistant to water contact, they would have been stored in the open with perhaps a canvas covering, as with the steel frames in the case of *Track-Truss Technologies Pte Ltd v UTi Worldwide (Singapore) Pte Ltd (Lim Guan Teh Transport Contractors (sued as a firm), Third Party)* [2004] SGDC 42. The contract in the present case was, on the other hand, for their storage *inside* the warehouse and the proper storage conditions which the Defendants were bound to provide to the Plaintiff under their contract would accordingly have to include protection from contact with rainwater.

36 The Defendant did not plead an Act of God with respect to the flooding but argued that the flooding which occurred on 18 June 2008 was because of unanticipated rainfall levels beyond its control. It did not however provide evidence, such as the relevant design specifications for the drainage around its warehouse, to demonstrate this. Indeed, the next flooding incident on 22 October

2008 showed that there need not be rainfall to the same extent as that of 18 June 2008 to cause the ingress of water into the warehouse. There may indeed have been other incidents of rainwater entering the warehouse and coming into contact with the coils. While rainfall charts for June 2008 and October 2008 were produced by the Defendant, [note: 16] they only showed the very high rainfall levels of those two days in relation to other days in the two months in question. They did not show that the rainfall was of such an unprecedented magnitude that water ingress could not have been prevented with reasonable care. Moreover, similar to the situation in *OTF Aquarium Farm (formerly known as Ong's Tropical Fish Aquarium & Fresh Flowers) (a firm) v Lian Shing Construction Co Pte Ltd (Liberty Insurance Pte Ltd, Third Party)* [2007] SGHC 122 at [58], the witness in the present case who gave evidence on these rainfall charts was not an expert, and so he could only present the *data*, but could not and did not assist in *analysing the data* to allow me to reach any conclusion that the rainfall on these days was such that the flooding occasioned was clearly beyond the control of the Defendant.

37 Even if I accept that the Defendant's obligation was only to do its best to prevent water from entering the warehouse, I am unable to agree that it had done so. The fact that the 22 October 2008 water ingress occurred about four months after the 18 June 2008 flooding indicated that little, if any, rectification work had been done by the Defendant in the interim. The Defendant had even sent a letter dated 27 November 2008 stating that they "currently do not have any plans to repair the seepage into our warehouse walls. We have considered moving the stocks to another location, however, no space is available". [note: 17] Although Leaw claimed that the ramp at the warehouse entrance was raised after the June 2008 flood incident, he was unable to state when this was done. [note: 18]

38 I therefore find that the Defendant is liable to the Plaintiff for damage caused to all the coils in this category through contact by rainwater.

(2) Stacking wet coils on top of dry ones

39 Turning to water damage caused by the stacking of wet coils on top of dry ones, I note at the outset that the evidence of this occurring at the Defendant's warehouse is not definitive. While Wong Luk Heng Adrian ("Adrian Wong"), an agent of the Plaintiff, testified that the coils were moved a few days after the 18 June 2008 flooding incident, and some coils with tide marks (which would indicate prior water contact) were stacked on top of others, he did not see dripping water, nor did he touch their packaging (to ascertain if they were wet). [note: 19] If indeed some water damage was caused by stacking a wet coil on top of a dry one, the Defendant would likewise be liable for the improper handling and stacking which resulted in this. It is common sense not to stack clearly wet coils on top of dry ones and it was clear that the shifting of the coils within the warehouse, especially in the aftermath of the 18 June 2008 flooding, was done by the Defendant's employees. While the Defendant's Leaw testified that after the flooding, Serene Ser from the Plaintiff had asked for and was provided by the Defendant with a forklift and manpower to shift the coils, he was not present and could not testify on the extent of her actual involvement in the shift [note: 20] and there certainly was no evidence that it was Serene Ser, rather than the Defendant's employees, who operated the forklift to move the coils. I am unable therefore to conclude that she was responsible for stacking wet coils on top of dry ones if this had taken place.

40 I therefore find that the Defendant is liable to the Plaintiff for the water damage caused to the coils in this category if such damage was caused by stacking wet coils on top of dry ones.

*The extent of the water damage caused to the coils*

(1) Not rendered completely unusable

41 What was the extent of the water damage caused to the coils? The Plaintiff's expert witness Dr Qiu opined that the rainwater damage caused both visible damage as well as invisible damage to the coils in the form of microscopic pitting. According to Dr Qiu, the latter was random and widespread and did not decrease as one moved from the outer to the inner layers of the coils. [note: 21] In his view, as long as a coil was deformed, dented or exposed to water, it would be worth only scrap value. [note: 22] This assessment was however premised on the inability of the coil to be used for hard-disk manufacturing purposes. [note: 23] Dr Qiu did not address the possibility of portions of the coil being suitable for *other* uses and he accepted that his expertise did not extend to metal trading or the market prices for metals. [note: 24] Dr Qiu did, however, accept that it might be possible to sort the usable from the unusable portions of the coils, but was careful to state that this would be a "major effort", the costs of which "may well exceed the cost of the coils". [note: 25] Another of the Plaintiff's expert witnesses, Wildbore, who did have significant experience in stainless steel trading, including the resale of stainless steel, opined that while microscopic pitting was extremely detrimental in hard-disk manufacturing, this was not so important for other markets [note: 26] and that traders would not be aware of such pitting and were unlikely to be too concerned about it. [note: 27]

42 On the other hand, the Defendant's expert, Liam, expressed the view that the water damage was only confined to the outer layers of the coils and diminished as one moved further inwards. [note: 28] This was because the coils were tightly wound so that water penetration was limited, even if the straps securing the coils were broken. [note: 29] As far as microscopic pitting was concerned, this could be inherent on the surface of the steel at the time of manufacture as a result of impurities. [note: 30] Liam asserted that there was no clear correlation between rainwater contact and the presence of such pitting and criticised the findings of Dr Qiu attributing the pitting to rainwater through the use of energy dispersive x-ray analysis on samples of the coils. [note: 31] He also asserted that microscopic pitting did not prevent the use of the coils for hard-disk manufacturing because they would be subject to a cleaning process prior to such use. [note: 32]

43 With respect to the extent of the damage caused by contact with rainwater, I note that the visual examination of and the tests conducted on samples from a total of eight coils by both the Plaintiff and the Defendant appear to be confined only to the outer layers of those coils. In no case were more than about the first 15–16 layers of a coil uncoiled for examination and sampling. [note: 33] Moreover, the samples taken by both sides were from approximately similar locations on each of the coils. [note: 34] In Dr Qiu's expert report, the captions on photographs 20 [note: 35] and 24, [note: 36] which describe the sample sites as having water marks, and the captions for photographs 54–57, [note: 37] support this. Even if Dr Qiu was correct about attributing microscopic pitting to rainwater contact, there is no evidence of such microscopic pitting occurring beyond the first few layers of the sample coils where the parties agree that visible water marks were also detected. The Plaintiff, on whom the burden of proving damage lay, had possession of the coils and could easily have undertaken tests to demonstrate that microscopic pitting attributable to rainwater contact could be found beyond those first few layers but they did not do so for even a single coil. In the circumstances, they have not proved, on a balance of probabilities, that such damage did extend beyond those layers which were uncoiled for the purposes of testing.

(2) The percentage weight of the coils rendered unusable

44 I turn next to establishing the specific percentage of the total weight of the coils which was rendered unusable as a result of the water damage. I note that the Defendant's expert Liam was prepared to accept the methodology adopted by the Plaintiff's expert on quantum, Wildbore, namely, that of using the representative average values derived from the small number of coils selected for testing, [note: 38] at least in respect of the "unsound" coils listed by Selby in the 1st Miller Report.

45 However, the Defendant, in its closing submissions, [note: 39] contended that for the "sound" coils, the Plaintiff had to uncoil every single coil to determine the extent of the water damage sustained given the different and varying amounts of the damage suffered, and that the single sample coil selected by the Plaintiff from among the "sound" coils for detailed examination (known as Coil No 8 (see above at [16])) could not be regarded as sufficiently representative of the more than 540 "sound" coils. Unlike the "unsound" coils, where there was an agreement between the parties that seven coils were to be selected as representative samples to determine the extent of the damage, there was no such agreement between them on the "sound" coils. In the circumstances, the Defendant submitted that the Plaintiff had not exerted all reasonable efforts to prove its loss and that it was accordingly not entitled to claim any loss in respect of these "sound" coils, including the three in this Category A. In this regard, the Defendant relied on the Singapore Court of Appeal decision in *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay*"). There, the court stated (at [31]):

> … a plaintiff cannot simply make a claim for damages without placing before the court sufficient evidence of the loss it has suffered even if it is otherwise entitled in principle to recover damages. On the other hand, *where the plaintiff has attempted its level best to prove its loss and the evidence is cogent, the court should allow it to recover the damages claimed*. [emphasis added]

The Defendant submitted that *Robertson Quay* stands for the proposition that where it is possible for a plaintiff to provide clear proof of the extent of damage suffered, it must do so. The Defendant accepted that the Court of Appeal did recognise (at [30]) that:

> On the other hand, there will be instances where such certainty is impossible, for example, where the loss suffered by the plaintiff is non-pecuniary in nature, or is prospective pecuniary loss such as loss of prospective earnings or loss of profits (see generally *McGregor on Damages* at paras 8-003-8-064).

but contended that this was not a case where proof with "complete certainty" of the exact amount of damage suffered was impossible, such that the law accordingly did not require it of the Plaintiff.

46 In my view, the point made in *Robertson Quay* is that the law, in certain circumstances, does not require a plaintiff to prove with absolute certainty the loss suffered. To do so would in some cases lead to the result that no damages would ever be recoverable. This is so because of the *nature* of the damage sought to be proved (examples of which are in the quote from *Robertson Quay* in the preceding paragraph, *viz*, non-pecuniary loss and prospective losses). However, beyond this, the sufficiency of evidence required of a plaintiff to prove loss is, in my judgment, nothing more than a function of the law of evidence. In Harvey McGregor, *McGregor on Damages* (Sweet & Maxwell, 18th Ed, 2009) ("*McGregor on Damages*") at para 8-002 the learned author succinctly states:

> Even if it is said that the damage must be proved with reasonable certainty, the word "reasonable" is really the controlling one, and the standard of proof only demands evidence from which the existence of damage can reasonably be inferred and which provides adequate data for

calculating its amount.

47 I am therefore unable to accept the Defendant's contention that the failure to bring evidence in respect of *each and every* "sound" coil (through uncoiling and testing) means that the Plaintiff's claim in respect of them automatically fails. The question is whether the evidence is sufficient for me to conclude that, on a balance of probabilities, the Plaintiff has proven the loss in respect of the "sound" coils which it claims. As I have indicated earlier, I find that the second inspection undertaken by Selby in December 2009 on the "sound" coils was no less reliable than the inspection of the "unsound" coils undertaken jointly by the experts of both sides a few days before. I have also found that the water damage to these coils was likely to have been sustained while they were at the Defendant's warehouse and not at the Sagawa warehouse. There is no evidence that the nature of the "sound" coils or the conditions in which these "sound" coils were stored, whether at the Defendant's warehouse or elsewhere, differed from those of the "unsound" coils. Given that the experts of both parties agreed to use representative samples for the "unsound" coils, and given that there was no evidence that any water damage sustained by the "sound" coils was different from that of the "unsound" batch, the seven "unsound" coils selected for testing (Coils Nos 1 to 7), together with the one coil chosen from the "sound" group (Coil No 8), are, in my view, sufficiently representative of the entire batch of coils which are the subject of the Plaintiff's claim, whether these are "sound" or "unsound". It is not necessary for the Plaintiff to uncoil every single "sound" coil in respect of which it is claiming.

48 The figures for the unusable percentage of the coils were computed by both parties' experts from the number of layers of the coils which were rendered unusable. The Defendant's expert, Liam, explained that he derived the percentages of the damaged portions of the coils he tested based on the number of layers where he found water marks plus one extra layer beyond those layers. [note: 40] The Plaintiff's expert, Wildbore, derived average percentages of unusable portions from a table in Liam's report [note: 41] but arrived at significantly higher percentages than those of Liam. It appears that he had overlooked certain details in Liam's table. In particular, he overlooked the fact that some figures in Liam's table were marked with a double asterisk which referred to a footnote indicating that for certain coils, the percentage set out in the table was that of the remaining portion of the coil after part of it had been cut away for testing purposes, rather than the actual extent of the damage observed.

49 When this was explained to Wildbore in cross-examination and when he was shown Liam's actual calculations of the unusable portion, [note: 42] Wildbore sought to defend his original percentages (which, as I have noted, were significantly higher than Liam's) by claiming that, in practice, a few more layers of a coil would be removed beyond the damaged ones (as a buffer). [note: 43] While the table in Liam's report which Wildbore relied on was, in my view, easily misunderstood, I am unable to accept Wildbore's adherence to his original percentages. The reality is that in the case of the coils with this computational error (identified as Coils Nos 2, 5 and 7 in the report), the experts from both parties who conducted the tests reported that they uncoiled until about 200kg or 500kg of the coil had been slit. [note: 44] In other words, the portions which were cut out were *fixed lengths* of the coils in question which had been uncoiled for purposes of examination and testing [note: 45] and this had nothing to do with the methodology propounded by Wildbore. It is accordingly not possible to conclude that Wildbore's methodology leads to an accurate computation of the percentage. In any event, Liam's own computation did already add an extra layer beyond the last layer of the coil where damage was detected as a buffer. I therefore prefer the percentages derived by the Defendant's expert Liam to those of the Plaintiff's expert.

50 The general approach taken was to compute the unusable percentage of each of the representative coils, and then to take an average value of them. With respect to the SUS 430 type coils, to which the coils of this category belong, there are two different surface finishes for them known as 2B and 2D. The Defendant's expert Liam conceded that there was no technical difference between these finishes in determining the unusable portion of the coils. [note: 46] Of the three representative coils tested which were of the SUS 430 type, namely Coils Nos 2, 3 and 7, it was not disputed that Coil No 3 was in fact found to be deformed and could not be uncoiled. Liam nevertheless attributed an unusable portion of 1.68% to it on the assumption that it was not so severely deformed when it was jointly examined by Selby and Ferdaus in December 2009. This was because the coil was not described in their reports as "severely" deformed. [note: 47] It is, however, clear from the evidence that because this coil could not be uncoiled, the method of examining it was different and it consisted of cutting through several layers of a small rectangular area of about 20cm by 10cm on the surface of the coil to obtain samples for examination. [note: 48] The Plaintiff in its written closing submissions asserted that this was inaccurate given that each coil had a standard width of 121.9cm, which meant that the observation from a 20cm by 10cm rectangle could not be a reliable basis for drawing conclusions in respect of the damage sustained by the entire coil. [note: 49] However, counsel for the Plaintiff conceded in oral reply submissions that because its expert had also used Coil No 3 to compute the usable and unusable portions of the coils, the Plaintiff would be bound by that. As the unusable portions determined by Liam for Coils Nos 2 and 7 were 1.73% and 1.62% respectively, the average unusable percentage of the three coils representing this group of 85 SUS 430 coils which sustained water damage would accordingly be (1.68% + 1.73% + 1.62%) ÷ 3 = 1.677% which I will round up to 1.68%. I should add that even if I derived the average from only Coil No 2 and Coil No 7 (in other words, excluding Coil No 3), the average unusable portion would be 1.675% which I would also have rounded up to 1.68%.

51 I turn next to whether there should be an additional portion of the coils which should be regarded as unusable because their external sides had sustained water damage and therefore a cross-sectional portion on either side would have to be slit off in addition to removing several layers of the coils.

52 The Plaintiff's expert, Wildbore, testified that this (*ie*, the slitting off of a cross-sectional portion on either side of a coil as described above at [51]) was a "normal recommendation" whenever tide marks (*ie*, water marks) were found on the sides of a coil. [note: 50] He supported the slitting off of 25mm on either side of the coil based on his "experience". While he had in his report translated this into an additional 5% of each coil being regarded as unusable, he accepted Liam's calculation [note: 51] that if this was applied to a standard 1219mm wide coil, the percentage derived would be 4.1%. [note: 52]

53 Liam also conceded that for coils with water marks on the side, slitting off the edges would be helpful [note: 53] but opined 12.5mm on either side would suffice because it was "a shame" to cut off more than that. [note: 54] Having reviewed the testimonies of both witnesses, I prefer the Plaintiff's expert witness Wildbore's recommendation of slitting off 2.5cm on either side of each coil. The reason proffered by Liam for his figure of 1.25cm was not convincing and that number only came up in his re-examination and upon him studying photographs of the damaged coils shortly before that, and even then only very briefly.

54 It follows that I regard a further 4.1% of the SUS 430 coils which have sustained water damage as unusable due to the need to slit off the side edges as a result of the water damage sustained.

When this is added to the 1.68% representing the average number of layers of each coil rendered unusable (see above at [50]), a total percentage of 5.78% is derived.

*Conclusion in respect of Category A*

55 When this percentage is in turn applied to the 391,903kg of coils in this category, 5.78% × 391,903kg = 22,651.99kg of the coils should, in my view, be regarded as unusable as a result of the water damage for which the Defendant is responsible.

***Category B: SUS 430 coils which sustained water and handling/packaging damage***

*The coils in question*

56 In respect of the SUS 430 coils claimed to have sustained a combination of water and handling/packaging damage, Tay's List ([26] *supra*) identified 14 SUS 430 coils weighing 61,827kg. [note: 55] In contrast, in his affidavit of evidence-in-chief, he claimed such damage in respect of the same number of coils but with a higher total weight of 64,501kg. [note: 56] Tay conceded that he was not able to identify the coils with that higher total weight. [note: 57]

57 The Plaintiff argued that it was nonetheless entitled to claim that higher total weight because the difference in question was approximately the weight of one coil, and there were many coils found in Selby's second inspection which had both water and handling/packaging damage but which were described as having suffered only water damage. [note: 58] In oral submissions, it was clarified that the Plaintiff's position was, as Tay had testified, [note: 59] that it had listed 86 coils in Category A (*ie*, the SUS 430 coils for which water damage only was claimed) while claiming such damage for 85 coils, but many of these coils were reported to have sustained both water and packaging damage, so the one additional coil from Category A ought to be moved to and accounted for in Category B in order to arrive at the higher claimed weight, notwithstanding the fact that there had been no exact identification of which coil ought to be moved. Although the Plaintiff's suggested approach is mathematically sound, I am unable to accept it. The Plaintiff pleaded in its statement of claim loss suffered in respect of only 101 SUS 430 coils. [note: 60] It is therefore unable to sustain a claim of 85 Category A coils (see above at [27]), 15 Category B coils (consisting of the original 14 coils and one moved from Category A), and 2 Category C coils (see below at [66]), amounting to a total of 102 SUS 430 type coils. Accordingly, the Plaintiff can pursue a claim for damage of up to only 14 coils amounting to 61,827kg in this category.

*Is the Defendant responsible for the water and handling/packaging damage?*

58 The Defendant accepted liability for water damage as well as handling/packaging damage for all the 14 coils originally designated in this category in so far as they were identified as "unsound" coils. After the close of hearing of the trial, I sought written clarification from the parties as to how each coil in each category was categorised in the 1st and the 2nd Miller Reports. In the Defendant's reply dated 7 October 2013, all 14 coils amounting to 61,827kg in this category were listed as "unsound" coils. [note: 61] The Plaintiff in its reply dated 9 October 2013 [note: 62] disputed certain aspects of the nomenclature adopted by the Defendant in its 7 October 2013 letter, but not the Defendant's clarification as to the categorisation of particular coils. I find that the Defendant is accordingly liable for the 14 coils in this category.

*The extent of the damage to the coils*

59 I turn next to the extent to which the Defendant is liable for water damage sustained by the coils in this category. The treatment of these Category B coils should *prima facie* be the same as that of the Category A coils. The Plaintiff's expert, Wildbore, however, opined that because of the handling/packaging damage sustained (in addition to the water damage), 50% of the coils in this Category B would have been totally damaged, *ie*, 100% of each of these coils would be unusable. [note: 63] I note, however, that in cross-examination, Wildbore acknowledged that the figure of 50% was but an arbitrary "ballpark" one. [note: 64]

60 I am prepared to accept that the Defendant would be responsible for a greater extent of water penetration into the coils if they already had some mishandling or packaging damage and consequently more extensive damage due to contact with water was sustained by such coils. The difficulty with Wildbore's expert opinion is the absence of evidence supporting the conclusion that half of the coils in this category would have sustained such increased damage, let alone the assertion that the damage sustained was throughout the entire coil. As I have indicated earlier, while there were assertions made, there was no empirical evidence that the microscopic pitting, alleged by the Plaintiff to have been caused by contact with rainwater, extended beyond the outer layers of the coils which the experts from both sides examined and tested (see above at [43]). Moreover, in respect of the coils in Category B, while the only one which was selected for testing (Coil No 3, which is identified as CWT705/Tag-552) was found to be incapable of uncoiling [note: 65] and was therefore *unrecoverable*, the experts of both parties agreed that this was because it was *deformed* and not because of water damage. I note further that in respect of the *SUS 304* coils sent for testing, the one coil which fell into the category of coils for which both water damage as well as handling/packaging damage was claimed by the Plaintiff, namely Coil No 5 (CWT424/Tag-329), had the extent of its unusable portion assessed as only 2.97%. [note: 66] This is a far cry from the total damage claimed.

61 I am therefore not satisfied, on a balance of probabilities, that 50% of the coils in Category B suffered total damage as a result of water and handling/packaging damage as claimed by the Plaintiff. The evidence before me does not support a finding that the unusable portion of the coils in this category is any different from the unusable portion of the coils in Category A (see above at [54]).

62 Lastly, it also falls to me to decide whether the Plaintiff should even be allowed to claim for the water damage sustained by Coil No 3 (mentioned above at [60]). The Defendant conceded through counsel in oral submissions that it should. I agree. From the evidence, it is more likely than not that the deformity rendering the coil irrecoverable would have occurred only after the first flooding incident in June 2008 and after Selby's first inspection in October 2008. This is because the 1st Miller Report (which was the result of Selby's inspection) merely identified the coil as having sustained water and packaging damage, [note: 67] unlike a number of other coils where coil deformation or coil damage was noted. Although the conditions of the first inspection were less satisfactory than those of the second inspection, it is unlikely, in my view, that Selby would have completely missed out on the coil if its condition was as misshapen as was the case by the time it was examined by both parties' experts in November 2009. [note: 68] I therefore allow the Plaintiff to claim for the water damage sustained by Coil No 3 on the same basis as the other coils in this Category B.

63 For the reasons set out under Category A (see above at [54]), I determine that the unusable portions of the coils in this Category B caused by water damage is also 5.78%.

*Conclusion in respect of Category B*

64 As I have determined that the Plaintiff may claim damage to the coils weighing 61,827kg (see above at [57]), this works out to 3,573.6kg (being 5.78% × 61,827kg) of unusable material.

65 The Defendant is also liable to the Plaintiff for packaging damage for the 61,827kg of coils.

***Category C: SUS 430 coils which were severely deformed***

*The coils in question*

66 For this group of coils which were alleged by the Plaintiff as being severely deformed, Tay's List ([26] *supra*) identified two specific coils weighing 8,899kg. [note: 69] Tay conceded that this weight, which was lower than that stated in his affidavit of evidence-in-chief, [note: 70] should be the extent of the Plaintiff's claim. [note: 71] The Plaintiff in its submissions did not contend otherwise. [note: 72]

67 One of these coils, Coil No 2 (identified as CWT704/Tag-550), was tested jointly by the experts of both parties and it was found *not* to be so severely deformed as to be incapable of salvage. [note: 73] In fact, the experts for both sides had used Coil No 2, together with Coils Nos 3 and 7, to obtain the average percentage of unusable portions of the SUS 430 coils (although the percentages they arrived at differed (see above at [50])). In other words, Coil No 2 was in fact not treated by the experts as being totally irrecoverable. The Plaintiff contended in its closing submissions [note: 74] and in oral submissions that there was a risk that this coil was incapable of uncoiling since the damage it sustained appeared to be similar to Coil No 3 which could not be uncoiled and it therefore ought to be regarded as a total loss (discussed above at [60]). I am unable to accept this somewhat curious argument because there is no dispute that Coil No 2 was *in fact* capable of being uncoiled and *was* uncoiled.

68 The parties were also not in agreement on the treatment of the other coil in this category, namely, that identified as CWT653/Tag-103. The Defendant argued in oral submissions that the Plaintiff's expert Wildbore had conceded that this coil had been wrongly classified as severely deformed, but it is clear from his testimony that he also said that it was difficult to assess whether the coil could be uncoiled. [note: 75] In any event, Wildbore's testimony was based on his perusal of photographs of the coil, and so his observations must be treated with some degree of circumspection. I should, however, add that the fact that the representative coil from this category, namely Coil No 2, was found not to have sustained total damage does cast doubt on the extent of the damage sustained by this other coil.

*Is the Defendant responsible for the severe deformity of coil CWT653/Tag-103?*

69 I note that with respect to this second coil (CWT653/Tag-103), the 1st Miller Report did not identify it as suffering deformity damage during the first inspection conducted by Selby in October 2008. The damage described at that point in time was only "water and packaging damage" [note: 76] and it was only in November 2009 (the date when the joint inspection was undertaken at the Sagawa warehouse which was several months after the coils had left the Defendant's warehouse), that some degree of deformity was noted.

70 The experts of both sides agreed that deformity of the coils, whether in this category or in Category G below, was primarily the result of stacking the coils without regard to their weight. [note: 77] This would have been exacerbated if the coils which were stacked below other heavier coils had

also sustained handling damage such as broken strappings as that would increase the risk of deformity. [note: 78]

71 The parties acknowledged in oral submissions that after the first inspection by Selby in October 2008, there was no evidence that the coils were moved again until July 2009 when they were moved out of the Defendant's warehouse to the Sagawa warehouse. They were then stacked for storage in the Sagawa warehouse upon arrival. There was also no evidence that the movement of the coils to the Sagawa warehouse was undertaken by the Defendant's agents or servants, and it was clear that the stacking of the coils upon their arrival was done by Sagawa's staff under the directions of the Plaintiff's Adrian Wong. [note: 79] In addition, they were subsequently moved, probably by personnel of the Sagawa warehouse operator and almost certainly not by the Defendant, to facilitate the joint inspections which took place in November and December 2009.

72 While Adrian Wong claimed that he did not see heavier coils stacked on top of deformed coils at the Sagawa warehouse and that it was "impossible" for heavier coils to have been stacked on top of lighter ones there, [note: 80] he acknowledged that he was not sure if the Sagawa warehouse operator did not re-stack the coils. [note: 81] The evidence of the experts from both sides who conducted the tests on the representative coils in late 2010, which included photographs taken by them, showed clearly that the Sagawa warehouse operator had at some point in time stacked coils without regard to their weight and that there were deformed coils stacked below other coils. [note: 82] The Defendant's expert Ferdaus, who conducted the joint inspection nine months earlier in November 2009, testified likewise. [note: 83] His counterpart Selby recalled that the deformed coils were either under the weight of other coils or were segregated. [note: 84]

73 In the light of the fact that (i) this coil (CWT653/Tag-103) was not reported as having sustained deformity in October 2008 in the 1st Miller Report; (ii) there was no evidence of the coils being moved again by the Defendant prior to their movement out to the Sagawa warehouse; and (iii) there was evidence of improper stacking of the coils at the Sagawa warehouse, it is more likely that the deformity occurred after the coil left the Defendant's warehouse and was brought to the Sagawa warehouse. I am accordingly unable to attribute liability for the severe deformity sustained by this coil to the Defendant.

*The extent of the damage of the two coils*

74 I am, however, prepared to accept that coil CWT653/Tag-103, together with Coil No 2, sustained damage of a lower magnitude, namely, water damage and handling/packaging damage, which can be attributable to the fault of the Defendant. I note that water and handling/packaging damage was identified in both coils by Selby in the 1st Miller Report after his first inspection in October 2008, as well as by the joint inspection which took place in November 2009. Further, counsel for the Defendant also conceded in oral submissions that in so far as these coils suffered water and handling/packaging damage (rather than the severe deformity claimed by the Plaintiff), it was responsible for that damage as it was in respect of the Category B coils. [note: 85]

75 As regards the extent of water damage, my findings with respect to the coils in Category A (see above at [32] *et seq*) apply to these two coils as well. I have in fact accepted the use of Coil No 2 as one of the representative coils to derive the 1.68% average layer damage sustained by the SUS 430 coils in Category A (see above at [50]). Taken together with the 4.1% provision for slitting on either end of the coil (see above at [54]), the unusable portion of Category C coils is 5.78% of their total weight.

*Conclusion in respect of Category C*

76 The total unusable material in Category C is accordingly 5.78% × 8,899kg = 514.36kg.

77 As regards handling/packaging damage attributable to the Defendant, the weight of the coils affected would be 8,899kg.

***Category D: SUS 304 coils which sustained water damage***

*The coils in question*

78 I turn next to the other type of stainless steel coils in respect of which the Plaintiff claimed: the Type SUS 304 coils. The SUS 304 coils which the Plaintiff claimed were damaged by water are placed in Category D. For this category, Tay's List ([26] *supra*) identified 277 coils weighing a total of 1,250,549kg. [note: 86] This was more than the 252 coils with a total weight of 1,133,628kg which he had set out in his affidavit of evidence-in-chief. [note: 87] In its closing written submissions, the Plaintiff accepted that its claim was in respect of the lower weight of 1,133,628kg. [note: 88] The Defendant did not disagree. [note: 89]

*Is the Defendant liable for such water damage?*

79 The Defendant accepted that it was liable for the water damage sustained by the coils in this Category D which were identified as "unsound" in the 1st Miller Report. There are only two such coils, namely, those identified as CWT509/Tag-315 and CWT411/Tag-180. These two coils weighed a total of 9,299kg. [note: 90] As with Category A, the Defendant disputed its liability in respect of the coils which were initially identified as "sound" in the 1st Miller Report (see above at [28]). Because the lower total weight for this category of 1,133,628kg set out in Tay's affidavit of evidence-in-chief is to be used, this would mean that the remaining 1,124,329kg (being 1,133,628kg – 9,299kg) is disputed.

80 When the coils were moved from the Transware warehouse to the Defendant's warehouse, the Plaintiff's Serene Ser produced an inventory list of the coils ("Serene Ser's List"). [note: 91] In this list, three coils out of a group of 12 coils were described by Serene Ser in a handwritten annotation as "shape out", meaning that they were misshapen when they were moved out of the Transware warehouse prior to being loaded on to the trailers bound for the Defendant's warehouse. [note: 92] Out of these 12 coils, seven are found in this Category D, and they are: CWT77/Tag-621, CWT79/Tag-145, CWT80/Tag-150, CWT82/Tag-149, CWT84/Tag-148, CWT86/Tag-153 and CWT87/Tag-146. It is, however, not clear exactly which three coils Serene Ser was referring to. The Plaintiff accepted that these three unspecified coils would be completely irrecoverable, but such loss could not be attributable to the Defendant. [note: 93] The Plaintiff thus sought to give credit to the Defendant by taking the average weight of the 12 coils in this group, multiplying this by three and then deducting the weight derived (being 16,656kg) from the overall unusable weight of the coils in all the SUS 304 categories. [note: 94] I am of the view that it is unlikely that the seven coils in this Category D were among the three coils which were found by Serene Ser to be misshapen. This is because the Plaintiff's expert Selby, in his second inspection of the "sound" coils, did not find in his 2nd Miller Report that these seven coils had sustained any deformity. [note: 95] Instead, as I indicate below, there were four other coils in this group of 12 which were specifically identified as being deformed in the joint inspection (see below at [95] and [125]), and in my view, it is likely that Serene Ser was referring to three of these four coils. I therefore make no reduction in the Plaintiff's claimed weight for coils in this

category to account for the three coils in question.

81 In so far as (a) the existence of water damage to these coils and (b) the Defendant's liability for such damage is concerned, my findings in respect of the Category A coils (see above at [32]–[40]) apply to these Category D coils as well. In other words, I find that the Defendant is liable for the water damage sustained by the coils, whether or not they belong to the "sound" or "unsound" lists in the 1st Miller Report.

*The extent of the water damage caused to the coils*

82 The analysis in relation to the extent of the damage sustained by the coils in this category also mirrors that for Category A above. For the reasons set out earlier (see above at [48]–[49]), I regard the computation used by the Defendant's expert Liam to derive the average percentage of the unusable portion of the water damaged SUS 304 coils to be more accurate than that propounded by the Plaintiff's expert Wildbore. The average of the unusable portions determined for the two representative coils jointly tested (14.58% for Coil No 4 (CWT509/Tag-315) and 2.97% for Coil No 5 (CWT424/Tag-329)) is 8.77%.

83 I note, however, that the experts for both parties examined and tested samples taken from another SUS 304 coil, Coil No 8 (see above at [16]), which was not identified as having sustained water damage in Selby's first inspection and the 1st Miller Report in October 2008, but was found to have sustained such damage in his second inspection in December 2009 and the 2nd Miller Report. [note: 96] The Defendant's expert Liam assessed the unusable portion of this coil to be 3.14% [note: 97] and stated that if this was added to the figures in respect of Coils Nos 4 and 5 (as used in the calculation above at [82]), the average unusable portion would be reduced to 6.9%. [note: 98] In my view, this lower percentage figure should be used. There is no reason why Coil No 8 should be treated differently from Coils Nos 4 and 5 for the purposes of determining the unusable portions. This is especially so since I regard (a) the damage discovered in Selby's second inspection of the "sound" coils to be as reliable as that of the joint inspection, (b) the water damage to be likely to have been sustained while they were at the Defendant's warehouse, and (c) the nature of the "sound" coils and the conditions in which they were stored to be the same as those of the "unsound" coils (see above at [47]). Given that a larger sample size of three coils (as opposed to two coils) will yield a more representative result, the lower average of 6.9% should be applied. While the Plaintiff has only claimed handling/packaging damage for Coil No 8 (as identified in Tay's List), [note: 99] and its claim would accordingly be limited to that extent (as the Plaintiff accepts in its closing submissions), [note: 100] this does not preclude me from using the results of the tests on Coil No 8 to derive a more accurate percentage of the unusable portion of the SUS 304 coils in this Category.

84 I also note that all three of these representative coils had 2B surface finishes. No SUS 304 coils which were selected for testing had 2D surface finishes. This is, however, not material. The Defendant's expert Liam accepted that there was no technical difference between a coil of 2B finish and a coil of 2D finish for the present purposes. [note: 101]

85 My conclusions for Category A with respect to the inclusion of an additional 4.1% of unusable material arising from the need to slit the ends of the coils which have sustained water damage (see above at [54]) also apply to these SUS 304 coils. The total unusable portion of the coils in this Category D is accordingly 6.9% + 4.1% = 11% of their total weight.

*Conclusion in respect of Category D*

86 Applying this percentage to the total weight of the coils (1,133,629 × 11%) yields 124,699.19kg of unusable material.

***Category E: SUS 304 coils which sustained water and handling/packaging damage***

*The coils in question*

87 In respect of the SUS 304 coils alleged as having sustained water and handling/packaging damage, Tay's List ([26] *supra*) identified 153 coils weighing 668,309kg. [note: 102] While the number of coils in the list was the same as that stated in his affidavit of evidence-in-chief, [note: 103] the affidavit stated a lower total weight of 666,740kg. Both parties agreed to use this lower weight as the basis of the Plaintiff's claim in this category. [note: 104]

*Is the Defendant responsible for the water and handling/packaging damage?*

88 The Defendant accepted that it was liable for the water and handling/packaging damage sustained by the "unsound" coils (as listed in the 1st Miller Report), but not those coils listed as "sound". The former subset consists of 27 coils weighing 137,310kg. [note: 105] The latter subset has a total weight of 530,999kg. However, as I will use the lower weight of 666,740kg as indicated in Tay's affidavit of evidence-in-chief (see above at [87]), this means that the water and handling/packaging damage to the remaining 529,430kg (being 666,740kg – 137,310kg) is disputed by the Defendant.

(1) Water damage to the coils

89 In so far as (a) the existence of water damage to the "sound" coils and (b) the Defendant's liability for such damage is concerned, my findings above in respect of the Category A coils (see above at [32]–[40]) apply equally to these Category E coils. In short, given that there was no evidence of contact with rainwater on any occasion other than at the Defendant's warehouse, such liability must, on a balance of probabilities, be attributed to the Defendant.

90 Further, unlike the three "sound" coils in Category A, *all* the "sound" coils in this Category E were in fact recorded by Selby during his first inspection and in the 1st Miller Report as having sustained water damage (described with the label "tide mark" or "water … damage"). [note: 106] This indicates that as at October 2008, these coils had already come into contact with water. It therefore follows that the Defendant would be liable for the water damage sustained by all 529,430kg of "sound" coils in this category.

91 When this is added to the 137,310kg of "unsound" coils for which the Defendant has accepted liability, the Defendant is liable for water damage sustained by coils in this category weighing a total of 666,740kg.

92 In respect of the coils which were damaged before they came into the possession of the Defendant, the Plaintiff has conceded that it should not be allowed to claim for them. [note: 107] As will be seen below (at [93] *et seq*), I would therefore deduct the weights of 5,141kg and 4,942kg from 666,740kg (which is the sum of both the "sound" and "unsound" coils), leaving the weight of 656,657kg of coils in this Category E in respect of which water damage is claimable.

(2) Handling/packaging damage of the "unsound" coils

93 While the Defendant accepts liability for the handling/packaging damage sustained in respect of the "unsound" coils (weighing a total of 137,310kg), handling/packaging damage already sustained by any coils in this category when they entered the Defendant's warehouse in 2005 must also be excluded, because if that is the case, then the damage is not attributable to the Defendant. I therefore consider if any of these coils were identified by the Plaintiff's Serene Ser as either dented, deformed or misshapen when they left the Transware warehouse and before they arrived at the Defendant's warehouse. In this regard, I turn to the inventory list drawn up by Serene Ser (*ie*, Serene Ser's List, [80] *supra*) in which she recorded the damage she observed when the coils were moved out of the Transware warehouse. There are three sub-groups of coils which require consideration. Two of these sub-groups concern "unsound" coils. First, there is a group of three coils, one of which was found by Serene Ser to be dented, [note: 108] but it is not known specifically which coil this was. Of this group of three coils, two are coils found in this Category E (*ie*, coils CWT413/Tag-258 and CWT409/Tag-259) [note: 109] These two coils were examined by the parties' experts in November 2009 and they agreed that both coils were dented, [note: 110] although neither party has claimed that they were "severely deformed". The third coil in this group (*ie*, coil CWT414/Tag-223) is not the subject of any claim in these proceedings. The Plaintiff, in its submissions, conceded to deducting the average weight of these two coils from the claimed weight. [note: 111] I agree and I accordingly deduct the average of 5,321kg and 5,050kg, which is 5,141kg. The Plaintiff's claimed weight for the "unsound" coils in this category is therefore reduced to 137,310kg – 5,141kg = 132,169kg.

94 Secondly, another coil in this Category E (*ie*, coil CWT49/Tag-61) [note: 112] was among a group of four coils, all of which were recorded by Serene as "dented" when they left the Transware warehouse. [note: 113] While the joint examination by the parties' experts in November 2009 did not record any deformity but only water, packaging and strap damage, [note: 114] the Plaintiff conceded to the omission of all four coils for the purposes of computing loss. [note: 115] I therefore deduct the weight of this coil (4,942kg), which further reduces the claimed weight for the "unsound" coils in this Category E to 127,227kg (being 132,169kg – 4,942kg).

(3) Handling/packaging damage to the "sound" coils

95 The third and last group of coils which needs to be examined to determine if they were damaged even before entering the Defendant's possession relates to one more coil (*ie*, coil CWT78/Tag-147) [note: 116] which was among a group of 12 coils, three of which were recorded as "shape out" in Serene Ser's List when the coils left the Transware warehouse. [note: 117] This coil CWT78/Tag-147 is a "sound" coil. I dealt with seven of these coils which fall in this group of 12 in my consideration of the Category D coils above (see above at [80]). As with those seven coils in Category D, it is also unlikely that the coil presently under consideration (*ie*, coil CWT78/Tag-147) was one of the three misshapen coils. This is because Selby's 2nd Miller Report did not describe this coil as having sustained any deformity. [note: 118] By contrast, the remaining four coils in this group of 12 (after excluding the seven in Category D and this single coil in Category E) were specifically identified as being deformed in the inspection jointly undertaken by the experts of both parties. I therefore will not make any adjustments to the claimed weight to take into account this coil. I now turn to consider the "sound" coils in this category generally.

96 In so far as the objection of the Defendant is that the handling/packaging damage of the "sound" coils was *not* described by Selby in his first inspection and the 1st Miller report, it is necessary to consider the evidence as to when, where and how such handling/packaging damage could have occurred.

97 The experts of both parties agreed that such damage was likely to have been caused by mishandling during the movement of the coils. [note: 119] The Defendant's expert witness Ferdaus accepted that this included careless forklifting. [note: 120] From the evidence before me, there were at least four to five movements of the coils prior to them being inspected for the first time by Selby in October 2008. The first was their movement from the Transware warehouse to the Defendant's trailers in 2005. The second was their movement from the Defendant's trailers to the Defendant's warehouse, after which the Defendant stacked them in the warehouse. Third, Serene Ser from the Plaintiff testified that she discovered that the coils had been moved within the warehouse in October 2007. [note: 121] Fourth, there appeared to have been another movement of the coils for the purposes of stocktaking before the flooding on 18 June 2008. [note: 122] Finally, the coils were moved again in the immediate aftermath of the 18 June 2008 flooding incident. [note: 123]

98 With the possible exception of the first move, the movements prior to October 2008 appear to have been done either on the Defendant's own initiative [note: 124] or at the request of of the Plaintiff's Serene Ser. [note: 125] In either case, the actual movement of the coils using forklifts was carried out by the Defendant's agents or servants.

99 After October 2008, as I have noted (see above at [71]), the coils were next moved when they were taken out of the Defendant's warehouse to the Sagawa warehouse, and this did not appear to have been undertaken by the Defendant's agents or servants. They were moved again, probably by personnel of the Sagawa warehouse operator, to facilitate the joint inspection and Selby's second inspection in November and December 2009.

100 All of these pre- and post-October 2008 movements of the coils appear to have been done with a normal forklift. The Plaintiff's Serene Ser testified that a normal forklift with two forks (or tines) was used for the movement from the Transware warehouse to the Defendant's trailer in 2005. [note: 126] She also testified that the same happened when they were moved out of the Defendant's warehouse to the trailers for transport to the Sagawa warehouse in July 2009. [note: 127] The same method of movement was also used when the coils were moved within the Sagawa warehouse in late 2009 for the joint inspection, although the Defendant's Ferdaus testified that the forks of the forklifts had their tines brought together and were protected with impact dampening material. [note: 128]

101 There was no evidence that in any of these movements, a pole attachment was affixed to the forklift used. The Plaintiff's expert witness Wildbore concurred with the Hooper Report prepared for the Plaintiff which stated that: [note: 129]

> … it is very important that movement and handling is done very carefully, using either specialised lifting devices or at least lifting with a pole truck (not fork lift truck), to avoid mechanical or packaging damage.

The Defendant's expert witness Ferdaus opined likewise, stating in his expert report that the forklift used by the Sagawa warehouse operator at the end of 2011: [note: 130]

> …did not come fully equipped with the proper attachment; i.e. a pole type attachment which would minimize [*sic*] any handling related damage. …

I note that Ferdaus, under cross-examination, acknowledged that if, during the moving of coils, the tines of the forklift were lowered such that there was sufficient clearance between the forks and the

inner surface of the coil, the forks could be withdrawn from it without causing any damage to the inner surface or to its packaging. He did, however, qualify his remarks by saying that it was hard to achieve that in practice. [note: 131] Moreover, the opinion on the importance of using a forklift pole attachment of the Plaintiff's expert Wildbore, whom I regard as having significantly more expertise in this field than Ferdaus, was not challenged on this issue.

102 Looking at the evidence as a whole, while, as I have indicated earlier in my analysis of the Category A coils, it is possible that Selby may have missed out some handling/packaging damage when he inspected the "sound" coils in October 2008, this has to be weighed against the fact that there was no evidence that the coils were moved again within the Defendant's warehouse after October 2008. For the coils in respect of which handling/packaging damage was reported in Selby's second report but not in his first report, it was therefore at least as likely, if not more likely, that such damage was sustained after the movement of the coils out of the Defendant's warehouse in July 2009, as a result of mishandling or a failure to use the correct forklift pole attachment by persons other than the Defendant's employees or agents when moving the coils. I should add that the evidence with respect to handling/packaging damage is very different from water damage, in respect of which I have found that it was unlikely that the coils would have been in contact with rainwater at the Sagawa warehouse.

103 Finally, I would also add that while the Defendant through counsel conceded that they were liable for any damage due to its failure to use a forklift with the proper pole attachment when the goods were moved by its servants or agents, I am doubtful if this proposition is completely correct. The fact that three different warehouse operators did not use such an attachment indicates that this requirement is not commonly known to the general warehousing industry. Nor was there any evidence that the Plaintiff had communicated this requirement to the Defendant. On the contrary, neither Serene Ser nor Adrian Wong from the Plaintiffs who witnessed and/or supervised some of the movements of the coils appeared to be aware of this. Further, the Plaintiff's director and shareholder, Anthony Ser, testified that using a forklift with two tines was the norm and one had only to be careful not to let the tines touch the straps wrapped around the coils. [note: 132] The Defendant's then General Manager Leaw also recalled the Plaintiff's Anthony Ser telling him that a normal forklift would suffice. [note: 133] I will take this fact into account when considering whether any damages awardable to the Plaintiff ought to be reduced for the Plaintiff's contributory negligence (see below at [200]).

104 This means that for the "sound" coils, while I find that the Defendant is liable to the Plaintiff for the water damage sustained, I am not satisfied, on a balance of probabilities, that the handling/packaging damage claimed by the Plaintiff which was not recorded in the 1st Miller Report occurred when the coils were in the Defendant's custody. The Defendant would accordingly not have been liable for such damage.

105 However, on a closer examination of the damage recorded by Selby in his first inspection and in the 1st Miller Report, most of the coils in the "sound" category *were* in fact determined to have sustained "packaging" damage. The only exceptions were coils CWT91/Tag-65 (weighing 2,268kg), CWT129/Tag-219 (weighing 2,951kg), CWT521/Tag-10 (weighing 5,420kg) and CWT 219/Tag-296 (weighing 5,575kg). I note that for two of these coils (CWT129/Tag-219 and CWT521/Tag-10), "coil damage" was recorded in the 1st Miller report but the parties appear to subsume any consequential loss attributable to this type of damage in their computation of unusable portions of the coils, whether through water damage or deformity. For the reasons set out in the preceding paragraphs (at [97]–[104]), the Plaintiff cannot claim the handling/packaging damage to these four coils. When the weight of the four coils I have excluded earlier is deducted from the weight of all the coils, this leaves a total weight of 513,216kg (being 529,430kg – (2,268kg + 2,951kg + 5,420kg + 5,575kg)) of "sound"

coils in this category to be subject to the next step in the analysis of handling/packaging damage.

(4) Was the handling/packaging damage suffered when these "sound" coils were in the Defendant's warehouse?

106 As regards the remaining "sound" coils, was the handling/packaging damage to these coils suffered at the Defendant's warehouse? On a balance of probabilities, I am satisfied that this was so. First, the handling/packaging damage suffered by the coils is inextricably linked to the movement of the coils (see above at [97]). Prior to October 2008, when Selby recorded handling or packaging damage with respect to these "sound" coils, the evidence before the court was that there were four to five movements of the coils and all but possibly one of these was done by the Defendant's servants or agents, the exception being the move from the Transware warehouse to the trailer (after which they were moved to the Defendant's warehouse) (see above at [97]–[98]). Second, when the coils left the Transware warehouse for the Defendant's warehouse, Serene Ser recorded them in her Inventory List (*ie*, Serene Ser's List, [80] *supra*) [note: 134] as being in satisfactory condition, although she admitted that she was not looking out specifically for missing straps and would not have recorded all instances of missing straps. [note: 135] The Defendant's employees themselves (namely, one Alfred and one Michael) who were present did not, however, contradict Serene Ser when she drew up the list. [note: 136] The Defendant itself had the opportunity to assess the condition of the coils at the time of their entry into its warehouse [note: 137] but was content with leaving the observation of this to Serene Ser. [note: 138] Moreover, in a list subsequently prepared by the Defendant's agent, the condition of the coils was listed as "good" when they entered their warehouse, suggesting *prima facie* that there was no evidence of prior packaging damage. [note: 139] Taken together with the fact that all but possibly one of the known movements of the coils prior to October 2008 were carried out by the Defendants, it is more likely than not that the handling/packaging damage for these coils was sustained when they were in the Defendant's custody and were moved by the Defendant. Moreover, the Defendant accepted liability for handling/packaging damage for the "unsound" coils which was recorded in Selby's first inspection and the 1st Miller Report and subsequently confirmed in the joint inspection. The Defendant's main objection with respect to the "sound" coils in its submission was that the damage was not recorded in Selby's inspection and 1st Miller Report; as I have explained, this is not accurate (see above at [105]). I therefore find that the Defendant is liable for handling and packaging damage sustained by 513,216kg of "sound" coils in this category.

107 I would note further that the handling/packaging damage recorded in relation to these "sound" coils in the first inspection was subsequently confirmed by Selby in his second inspection. As I have indicated, I am satisfied as to the reliability of this second inspection (see above at [31]). It follows that the Defendant's denial of liability for packaging damage for the "sound" coils, other than the four coils identified, cannot be accepted.

(5) Conclusions in respect of weight of coils claimable

108 In conclusion, in respect of the "sound" coils, the weight of the coils in this Category E for which handling/packaging damage is attributable to the Defendant is 513,216kg (see above at [105]). In respect of the "unsound" coils, the attributable weight for handling/packaging damage is 127,227kg (see above at [94]). The total attributable weight for handling/packaging damage is accordingly 513,216kg + 127,227kg = 640,443kg for this category. In respect of water damage, the weight of the coils in this category sustaining such damage for which the Defendant is liable to the Plaintiff is 656,657kg (being 529,430kg of "sound" coils and 127,227kg (137,310kg – 5,141kg – 4,942kg) of

"unsound" coils) (see above at [92]).

*The extent of the damage to the coils*

109 As regards the extent of the water damage sustained by the coils in this Category E, the Defendant's expert Wildbore asserted, as he did with the SUS 430 coils in Category B above, that half of them (50%) would have sustained total damage as a result of the combination of water and handling/packaging damage (see above at [59]). [note: 140]

110 As with the Category B coils (see above at [60]–[61]), I am unable to accept this proposition. First, there is no empirical evidence that 50% of the coils in this category would have sustained such increased damage, let alone that the damage would be sustained throughout the entire coil. As I have observed, there was no actual evidence that the microscopic pitting allegedly caused by contact with rainwater extended beyond the outer layers of the coils which the experts from both sides examined and tested. Wildbore moreover acknowledged in cross-examination that the 50% figure was an arbitrary "ballpark" one. [note: 141]

111 In addition, the one coil in this Category E which was selected for testing and examination by both sides (*ie*, Coil No 5 (CWT424/Tag-329)) showed no indications of total damage. [note: 142] In fact, the Plaintiff's expert Wildbore specifically used the average of Coils Nos 4 and 5 to derive the figure of 11.8% of layer damage which he said was sustained by the SUS 304 coils (albeit that the percentage derived is disputed by the Defendant's expert). In other words, he did not treat Coil No 5 as being totally damaged. [note: 143] This same percentage was in turn adopted by the Plaintiff's Tay in deriving the claim of the Plaintiff. [note: 144] Any water damage which was exacerbated by packaging damage would accordingly have been factored into the percentage derived.

112 I am therefore unable to conclude that the Plaintiff has proved, on a balance of probabilities, that 50% of the coils sustained total damage. On the evidence, the portion of the coils in this category rendered unusable as a consequence of the water damage is no different from that of the Category D coils, which I have ascertained to be a total of 11% (including 4.1% for slitting off at both ends of each coil) (see above at [85]).

*Conclusion in respect of Category E*

113 Applying the percentage of 11% to the weight of 656,657kg (see above at [108]), the weight of unusable portions of the coils is 72,232.27kg.

114 The Defendant is also liable for handling/packaging damage for 640,443kg of the coils (see above at [108]).

***Category F: SUS 304 coils which sustained handling/packaging damage only***

*The coils in question*

115 Category F consists of a group of SUS 304 coils for which the Plaintiff claims only handling/packaging damage. Tay's List ([26] *supra*) identified 36 coils weighing 149,177kg for this category. [note: 145] This was significantly lower than the 62 coils weighing 270,182kg claimed in his affidavit of evidence-in-chief [note: 146] and in the Plaintiff's expert report. [note: 147] Tay conceded that he was unable to identify the remaining coils. [note: 148]

116 Surprisingly, the Plaintiff argued in its submissions that it was nevertheless entitled to claim 270,182kg because its expert Selby's first and second inspections had identified more than enough coils with such handling/packaging damage. Moreover, the Plaintiff contended that there was no double counting in that if a coil had been placed in another category, it would not be put in this category. However, when I queried counsel for the Plaintiff during oral submissions, he was unable to identify the additional 26 coils which ought to be considered as falling within this category.

117 I am unable to agree with the Plaintiff's submission. The Plaintiff has to formulate its case and if it is claiming packaging damage for a certain number of coils of a certain weight, then it is incumbent on it to identify which coils are alleged to have sustained such damage. This is so that the Defendant has the opportunity of determining for each particular coil, if the evidence bears this out, whether such evidence is found in a report prepared by one or both parties, or from photographs or from other documents or testimony. It would, in my view, be prejudicial to the Defendant to have to deal with a sweeping and unparticularised assertion from the Plaintiff that the evidence shows that there are *enough* coils with such damage to sustain the claim. This is very different from the situation in Category B where there was oral testimony to the effect that one of three specifically identified coils had been put among 86 coils in Category A and could be transferred to Category B (see above at [57]) (although I have not allowed the transfer because it would result in the number of coils pleaded by the Plaintiff being exceeded). By contrast, the Plaintiff here is making a bald assertion that a shortfall of more than 40%, whether it is measured by the number of coils or by weight, should be made up by including some other unspecified coils. In this case, the Plaintiff has fallen short of the threshold required of it in proving loss as stated by the Court of Appeal in *Robertson Quay* ([45]–[46] *supra*). What the Plaintiff has brought before the court in this regard is simply not sufficient for me to conclude, on a balance of probabilities, that it is more likely than not that there was loss suffered in respect of the additional 26 coils.

118 I am accordingly unable to allow the Plaintiff to claim beyond the 36 coils weighing 149,177kg set out in Tay' List. [note: 149]

*The extent of the Defendant's liability*

119 As regards these coils, the Defendant accepted that it was liable for the handling/packaging damage sustained by the "unsound" coils in this category. This amounted to 22 coils weighing 97,583kg. [note: 150] The Defendant, however, disputed its liability for the remaining 14 coils which were in the "sound" category. [note: 151] These weighed a total of 51,594kg.

120 As regards the "sound" coils, if counsel for the Defendant in his oral submissions was correct in stating that such damage was not identified by Selby in his first inspection and in the 1st Miller Report but only in the 2nd Miller Report, the Plaintiff would have been unable to prove, on a balance of probabilities, that the handling/packaging damage claimed was suffered while the coils were under the custody of the Defendant for the reasons set out in my analysis of the Category E coils above (see above at [104]). However, this only applied to one out of the 14 coils in the "sound" category (*ie*, coil CWT332/Tag-54, weighing 2,700kg). Packaging damage was, by contrast, specifically identified in the 1st Miller Report for the remaining 13 "sound" coils in this category. For the same reasons set out in relation to the "sound" coils in Category E (see above at [105]), I am therefore only able to exclude the Defendant's liability in respect of the single coil. What this means is that the Defendant is liable for the handling/packaging damage sustained by the remaining 13 "sound" coils weighing 48,894kg (being 51,594kg – 2,700kg).

*Conclusion in respect of Category F*

121 The Defendant is accordingly liable for the packaging damage sustained by (97,583kg + 48,894kg) = 146,477kg of coils in this category.

***Category G: SUS 304 coils which were severely deformed***

122 For this group of coils, that is, the SUS 304 coils which the Plaintiff alleges were severely deformed, Tay's List ([26] *supra*) identified ten coils weighing a total of 42,057kg. [note: 152] While the same number of coils appeared in Tay's affidavit of evidence-in-chief, the stated total weight in the affidavit was higher at 43,578kg. [note: 153] Tay conceded that the lower weight should be taken as the Plaintiff's claim. [note: 154] The Plaintiff in its written submissions did not contend otherwise. [note: 155]

123 I note that one coil from this Category G (*ie*, Coil No 6 (CWT21/Tag-644)) was selected by the experts from both sides for examination and testing in September 2010. Both experts accepted that it could not be uncoiled because it was severely deformed [note: 156] and that if it was incapable of being uncoiled, it could not be recovered. [note: 157]

124 The Plaintiff conceded that a number of coils in this category should be excluded from its claim. First, there were three coils (*ie*, coils CWT41/Tag-72, CWT42/Tag-404 and CWT43/Tag-488) which were part of a group of four coils, all of which were found by the Plaintiff's Serene Ser to have been dented as they were moved from the Transware warehouse to the Defendant's warehouse (*ie*, in Serene Ser's List) (see generally above at [80]). [note: 158] The Plaintiff, in its written submissions, accepted the exclusion of these coils from its claim. [note: 159] The removal of the three coils from the claimed weight reduces it to 29,109kg (being 42,057kg – 4,198kg – 4,398kg – 4,352kg).

125 Second, a further three more coils out of a group of 12 coils were recorded in Serene Ser's List as "shape out". [note: 160] Eight of these 12 coils were put in Category D (seven coils, see above at [80]) and Category E (one coil, see above at [95]) and, for the reasons I have indicated earlier, it is unlikely that any of these eight coils belong to the group of the three misshapen ones. All of the four remaining coils however, are listed in this Category G. They are coils CWT88/Tag-151, CWT85/Tag-152, CWT81/Tag-356 and CWT83/Tag-357. It is not, however, possible to identify which coil amongst these did not belong to Serene's Ser's group of three coils. While the Plaintiff, in its submissions, contended that the average weight of all 12 coils multiplied by three should accordingly be deducted from its claim, the more appropriate approach, in my view, is to deduct the average weight of these four coils in Category G multiplied by three. This works out as (5,597kg + 5,573kg + 5,542kg + 5,548kg) ÷ 4 × 3 = 16,695kg. When this is taken out from the revised total weight claimed in the preceding paragraph (see above at [124]), the net weight would be 12,414kg (being 29,109kg – 16,695kg).

126 The Defendant excluded five coils and accepted liability for the remaining five coils in this category weighing 17,939kg in its written submissions. [note: 161] However, counsel clarified in oral submissions that this was because two coils in the latter group of four (namely, coils CWT81/Tag-356 and CWT83/Tag-357) had not been taken into account (*ie*, the Defendant only excluded two instead of three of that group of four coils) when they should have. The Plaintiff did not dispute this.

127 I accordingly find that the Defendant is liable for a total unusable weight of 12,414kg for the coils in this Category G.

***Category H: carbon steel coils***

128 I turn next to the carbon steel coils which the Plaintiff has claimed were damaged by water. For this group, Tay's List ([26] *supra*) identified seven coils weighing 50,810kg. [note: 162] The Defendant did not dispute that it was liable for the total loss of the coils in this category. [note: 163] This was confirmed during oral submissions before me. In the circumstances, I find all seven coils weighing 50,810kg in Category H to be totally unusable as a result of the water damage attributable to the Defendant.

***Category I: small coils***

129 This group of coils comprises small coils which the Plaintiff alleged were deformed and dented due to the fault of the Defendant. Tay's List ([26] *supra*) identified eight SUS 304 small coils weighing 5,283kg. [note: 164] The deformation and dents to these coils were identified by the Plaintiff's expert Selby in his 1st Miller Report and confirmed by the experts of both sides when they jointly inspected them in November 2009. [note: 165] Selby opined that these damaged coils were "too narrow and/or too thin and/or too small in weight to justify the cost of any recovery and are, therefore only of scrap value". [note: 166] The Defendant's witnesses, including Liam, [note: 167] did not appear to dispute this.

130 The Defendant accepted liability for the damage sustained to the small coils, subject to the issue of valuation and the operation of the contractual exclusion and limitation clauses. [note: 168] I therefore find that the unusable portions of the small coils in this Category I resulting from damage attributable to the Defendant to be 5,283.3kg.

**Assessment of damages for damaged coils**

***The relevant date for assessment***

131 "Where damages are awarded for a loss in relation to property, the normal measure is based upon the market value of the property at the time of the wrong" (see *McGregor on Damages* at para 16-002).

132 The Plaintiff's submissions were premised on the relevant date for the assessment of damages being May 2008. [note: 169] This is the date on which it was first discovered that some coils were missing. This, however, pre-dates the two known incidents of water ingress in June and October 2008. The Defendant submitted that May 2008 should not be used as the date for the assessment of damages, [note: 170] but noted that the Plaintiff had not brought evidence of the value of the coils beyond those which applied as at May 2008, March 2009, March 2011 and November 2011. [note: 171] The Defendant therefore contended that on the basis of it having to choose from these four dates, the most appropriate date was March 2009. [note: 172] Several reasons were given for this, and these included the following:

(a) There were two incidents of water ingress, in June and October 2008, and damages ought to be assessed on a date after the two incidents had happened and not before. [note: 173]

(b) The ideal date should have been July 2009 (a date in respect of which the Plaintiff brought no evidence), which was when the coils were moved to the Sagawa warehouse and the Defendant relinquished custody over them. This would take into account any alleged mechanical damage which occurred up to the time that the coils were moved out of the Defendant's

warehouse. [note: 174]

(c) However, March 2011, which among the four dates in respect of which evidence was provided was the next available date after July 2009, should not be used because it was 20 months after the move to the Sagawa warehouse. [note: 175]

133 In my judgment, of the four dates for which evidence of the value of the coils was available, May 2008 remains the most suitable date to use. As I have indicated earlier, the measure of damages should be based on the value of the property at the date of the breach (see above at [131]). The fact that May 2008 pre-dates the two undisputed incidents of rainwater ingress into the warehouse does not preclude evidence of the value of the coils as of that date being used for this purpose. I note that even the later of these two flooding incidents, namely, that which occurred in October 2008, is still nearer in time to May 2008 than the Defendant's suggested date of March 2009. Evidence in respect of the value of the coils as at May 2008 therefore constitutes the best evidence before the court because it is the most proximate to the date of the breach. This also applies to the handling/packaging damage and deformity damage. All the known incidents during which the coils were stacked and/or re-stacked in the Defendant's warehouse, or were moved by the Defendant's employees or agents took place no later than mid-2008 when the coils were moved after the June 2008 flooding. There was no evidence that the coils were moved again between that time and July 2009.

***The market value of the coils before they were damaged***

*The Plaintiff's case and its submissions*

134 The Plaintiff, in its submissions, made the following arguments:

(a) The court should not make a finding that the coils were worth only scrap value (as argued by the Defendant) just because the Plaintiffs no longer had the mill certificates accompanying the coils (meaning a certification by the steel mills as to the various attributes of the coils produced). This was because:

(i) the link between the lack of mill certificates and the coils being worth only scrap value had not been pleaded by the Defendant; [note: 176]

(ii) the Plaintiff had sold steel to hard-disk drive manufacturers in the past without needing to produce mill certificates; [note: 177] and

(iii) the Plaintiff could obtain duplicate mill certificates and had previously sent samples of the coils to laboratories for testing and thereafter sold the coils to hard-disk drive manufacturers as well as in alternative markets. [note: 178]

(b) In the alternative markets, the coils (if in pristine condition) would have fetched a value close to or equal to the value they would have fetched in the hard-disk drive market; [note: 179] and

(c) The prime prices of the coils as at May 2008 should be used to determine the value of the coils before they were damaged.

135 In the course of the testimony of the Plaintiff's expert witness Wildbore, he appeared to opine

that, in valuing the coils, a discount of 30% from the prime price could be applied to, *inter alia*, coils which were *not* alleged to have sustained damage at all. This view appears to have originated from his affidavit of evidence-in-chief [note: 180] and continued into part of his oral testimony in court. [note: 181] Having carefully considered the evidence before the court, I am prepared to accept that his position, correctly stated, is that the 30% discount on the value of a coil from the prime price applied only to the usable portions of those coils which *did* sustain some damage and that his view was that the value of the coils prior to sustaining damage was the prime price without any discount.

*The Defendant's case*

136 The Defendant's expert witness Norman Ng contended, on the other hand, that the coils were of scrap value even prior to the damage occurring because:

(a) they did not have accompanying mill certificates; [note: 182]

(b) buyers would prefer new coils to old coils given the ready availability of fresh steel and it was nearly impossible to sell coils which were more than a year old to the hard-disk drive market at prime value; [note: 183]

(c) there was no viable alternative market for the coils other than their being sold to scrap metal traders given the large quantity involved, the diversity of sizes and finishes and the thinness of the coils; [note: 184] and

(d) the coils in question were "dead stock" in that they had been purchased by the Plaintiff as a contingency in case they were needed at short notice; dead stock, in his experience, could only be sold at scrap value. [note: 185]

137 Norman Ng, however, recognised that there might be a limited secondary market for such coils where the transactions were few and often *ad hoc*. In such transactions, the quantities involved were very small, and even then the coils sold could fetch at best 60% of their prime value. [note: 186] He elaborated on the scale of such a secondary market in the witness box: [note: 187]

> I would put it anything maybe for the whole year, if you're lucky and you have a hundred tonnes dead---dead stock, you'll be lucky to clear 5 tonnes, 6 tonnes.

*The Plaintiff's submissions in response*

138 The Plaintiff in its submissions sought to cast doubt on Ng's evidence. It did so on two broad fronts. [note: 188]

139 First, the Plaintiff challenged the credentials of Norman Ng as an expert. It contended that Norman Ng had limited experience in trading steel. The Plaintiff pointed out that the relevant company which he had worked for had been involved more in importing than in exporting steel. [note: 189] Norman Ng's experience in selling steel was moreover largely confined to the Singapore market and he had limited experience in selling to Malaysia and Thailand. [note: 190]

140 Second, on Norman Ng's assessment that fresh steel was readily available, the Plaintiff drew my attention to the following:

(a) There were inconsistencies between Norman Ng's estimate that it would take four to six months from the time of ordering for fresh steel to be delivered [note: 191] and the estimate of 35 to 50 days in the report of the previous expert witness of the Defendant, Kenneth Leow, [note: 192] with which he had concurred.

(b) Moreover, Norman Ng conceded under cross-examination that that time frame was subject to the relevant steel mill's production schedule and other factors. [note: 193]

(c) Norman Ng had not produced any supporting evidence that a steel mill would only produce upon receiving an order from a customer, and he had never worked in a steel mill before. [note: 194]

(d) The Plaintiff's expert Wildbore had testified that the demand and supply of stainless steel was frequently out of balance. [note: 195] Although Norman Ng disagreed and said that in the past 21 years, he had only seen the market out of balance once in 2000 or 2001, [note: 196] the Plaintiff argued that he could only comment on the stainless steel market in Singapore and not the international market.

(e) Norman Ng's testimony was inconsistent as to whether he agreed or disagreed with Wildbore's assertion that there was no technical reason for a manufacturer of hard-disk drives or other electronic products to not buy steel just because it was more than a year old if it was not inappropriately stored. [note: 197]

*My findings*

141 My views of the evidence and the arguments of the parties are as follows.

142 First, the exercise which I have to undertake is a determination of the market value of the coils. My primary inquiry has to be what these particular coils, stored in a warehouse in Singapore, would have fetched had they not been damaged and had instead been sold in the open market.

143 Second, whether it is technically possible for the coils to be used for the manufacture of hard disk drives is not particularly pertinent in demonstrating that they are worth their prime value if no one is prepared to pay that prime value to purchase them whether for that purpose or any other purpose.

144 Third, while the Plaintiff's expert witness Wildbore had significant experience in stainless steel trading, including in the secondary market, he had limited experience trading stainless steel in Singapore and no recent experience doing so (his experience being in the 1980s). [note: 198] Wildbore accepted that in respect of the figures he derived as to the value and prices of the coils from Commodities Research Unit ("CRU"), a company which gathered market information on commodities and which produced bulletins providing such information, [note: 199] actual transactions would still depend on buyers in the market coming forward to make bids. [note: 200] The Defendant's expert Norman Ng, on the other hand, gave much more specific testimony from his experience as a Singapore-based trader who had to sell, *inter alia*, stainless steel stocks not used for purposes for which they were ordered. It is clearly the market value of the coils when sold *in Singapore* which would, in the present case, be more determinative of their value.

145 I then consider the criticisms which the Plaintiff has made against Norman Ng's expert opinion, in particular on his experience and his views on the ready availability of stainless steel in Singapore. In my judgment, these do not affect the persuasiveness of his testimony. First, the fact that Norman Ng's company dealt more with imports rather than exports does not detract from the fact that he did have experience selling in the Singapore market and had some experience in exporting from Singapore. In any event, in so far as his testimony pertains to the sale of dead stock in Singapore, Wildbore testified that the traders who submitted quotes to buy the Plaintiff's coils in 2011 (which I will deal with below, at [151]–[158]) were likely to divide and sell a significant proportion of them outside Singapore. [note: 201] In other words, the potential for onward sales to markets outside Singapore was likely to be factored into the prices purchasers in Singapore were prepared to quote for the stock.

146 Second, the discrepancy pointed out by the Plaintiff in Norman Ng's testimony between four to six months and 35 to 50 days from the ordering to the delivery of steel (see above at [140(a)]) and Norman Ng's concession that this would still be subject to the relevant steel mill's production schedule are, in my view, immaterial. The fact remains that on either account, the time period in question is a relatively short one, and his testimony deals with the norm while accepting that there could be departures from it.

147 Third, as regards the Plaintiff's argument that Norman Ng had produced no supporting evidence that a steel mill would only produce upon receiving an order from a customer (see above at [140(c)]), there was likewise no evidence to the contrary from the Plaintiff's witnesses. As for his never having worked in a steel mill before, I am unable to see how this detracts from his ability to comment on the trading of stainless steel, especially in the secondary market, and the underlying factors which have an impact on this trade.

148 Fourth, as for the assertion by Wildbore that the stainless steel markets were frequently out of balance, the only specific testimony on the Singapore market which was provided to the court was from Norman Ng who said that it was only out of balance once in 2000 or 2001. There was no other evidence adduced on the frequency or severity of such imbalances or on whether there was a steel shortage in the Singapore market at the relevant time such that fresh steel was not available and the coils which were more than one year old in 2005 and more than three years old in 2008 were regarded as substitutes. While the Plaintiff argued that Norman Ng could only comment on the stainless steel market in Singapore and not the international market, what must be more pertinent for the determination of the market value of the coils in question is the demand and supply situation *in Singapore* at the relevant time.

149 For the above reasons, I find that the testimony of the Defendant's expert witness Norman Ng is more persuasive than that of the Plaintiff's expert witness Wildbore, especially in respect of the former's assessment that the vast majority of the coils in question, even if they had not sustained damage, could only have been sold at scrap value.

*The lack of mill certificates and the deficiency in pleading*

150 Given my conclusion in the preceding paragraph, I do not need to deal with the issue of the lack of mill certificates, nor is it necessary for me to make any findings as to the impact of this on the value of the coils. However, I note in passing that the pleadings do not, in my opinion, preclude the Defendant from raising this issue. It is clear from the Defendant's pleadings that what was in issue was, *inter alia*, whether the coils were worth scrap value. [note: 202] The parties (especially the Plaintiff) had in the various affidavits of evidence-in-chief of their witnesses also proceeded on the basis that the absence of mill certificates was relevant to this issue. [note: 203] There is no prejudice

to the Plaintiff in this regard. As noted in *Singapore Civil Procedure 2013* (G P Selvam ed) (Sweet & Maxwell, 2013) ("*Singapore Civil Procedure*") at para 18/10/2, evidence given at trial can overcome defects in the pleadings so long as the other party is not taken by surprise. The Singapore Court of Appeal case of *Deans Property Pte Ltd v Land Estates Apartments Pte Ltd and another* [1994] 3 SLR(R) 804 at [15], on which the Plaintiff relied, [note: 204] has no application in the present case. Further, the Plaintiff left any objection too late; it should have objected to the introduction of any evidence it thought was a departure from the Defendant's pleadings, rather than leaving this to be raised in their closing submissions, depriving the Defendant of seeking leave to amend its pleadings if necessary (see *Superintendent of Lands and Surveys (4th Div) & Anor v Hamit bin Matusin & Ors* [1994] 3 MLJ 185, cited in *Singapore Civil Procedure* at para 18/10/2).

*The evidence of valuation by independent third parties*

151 My conclusion that the coils were largely worth only scrap value even before they were damaged is further supported by the evidence in the form of quotations from independent third parties which both the Plaintiff and the Defendant had obtained for the entire consignment of 839 coils and 88 cut sheets (which included both the coils which were damaged as well as the coils which were not subject to any claim in these proceedings) in late 2010 and early 2011.

(1) The quotations obtained in March 2011

152 In March 2011, the Plaintiff's liquidators sought quotations from four metal traders/dealers [note: 205] for the consignment of coils on an "as-is-where-is" basis. [note: 206] The head of the Plaintiff's liquidation team, Tay, claimed that his office together with the Plaintiff's director and shareholder Anthony Ser, had decided to do so to find out what the selling price of the coils was at that point in time. He said that Anthony Ser had given his office the names of prospective buyers. [note: 207] Anthony Ser, on other hand, denied giving the liquidators these leads. [note: 208] Having heard both Tay and Anthony Ser, I formed the view that the latter was a less reliable witness than the former in this regard. Anthony Ser seemed to be unable to recall many things and often appeared to be asserting what he thought ought to be the case rather than what he could specifically remember the facts to be. He frequently qualified his testimony with "I think"-s or words to that effect. There was also no reason for Tay, a liquidator and a professional, to be lying about such a matter. Be that as it may, even if the sourcing of the quotations was done solely by the liquidators' office, the testimony of its officers as to how they went about doing it indicated that they had done their best to get the highest possible price and that the offers which were obtained were fair indicators of what the market was prepared to pay for the coils.

153 While counsel for the Plaintiff in oral submissions sought to downplay the evidential value of these quotations by suggesting that they were sourced on an "as-is-where-is" basis to be sold as scrap, this was contrary to the testimony of another member of the Plaintiff's liquidators' office. Chan Kwong Shing Adrian ("Adrian Chan") testified that the liquidators were not concerned about whether the coils were to be regarded as scrap metal or to be put to other uses; all they were concerned with was getting the best price. [note: 209]

154 Adrian Chan also testified that when the dealers came to view and inspect the coils, none of them appeared particularly concerned that the coils were damaged. [note: 210] Other than testing the coils for their nickel content with a hand-held device, asking for lists setting out their weight, and enquiring in general terms what the coils were meant for and why they had been stored for such a long time, they were not interested in very much else. [note: 211] In other words, they did not seem interested in whether the coils were usable or unusable in the manner that the parties in the present

action have used these terms.

155 The highest quotation obtained by the liquidators' office was from one First Recycling Industries Pte Ltd, and this was a lump sum of S$8.63m. [note: 212] The next quotation was significantly lower at just over S$7m from one Metal Link Hardware Pte Ltd. [note: 213]

156 The Defendant's expert witness Norman Ng contended that if the Plaintiff's expert witness Wildbore's prevailing scrap value prices for the coils (*ie*, as at March 2011) were applied to the whole consignment of coils and sheets, this would yield S$8,228,150.17. [note: 214] I note that Norman Ng's calculations were not entirely based on Wildbore's numbers. He used a particular US dollar to Singapore dollar exchange rate (as at May 2008) [note: 215] and the scrap value price of the six aluminium coils in the consignment were his own figures rather than those of Wildbore's. These do not, however, significantly affect the total figure generated for the consignment. The difference between the S$8,228,150.17 which Norman Ng derived as the scrap value of the consignment based on the Plaintiff's own figures and the S$8.63m which First Recycling Industries Pte Ltd offered is S$401,849.83. This represents a less than 5% deviation.

(2) The quotations obtained in October 2010

157 Further support for this conclusion can be drawn from the quotations obtained for the same consignment by the Defendant's Ferdaus from three or four companies in October 2010. [note: 216] The highest quotation came from a company called Union Steel Pte Ltd [note: 217] and it was S$8.05m. This is less than the assumed value of the coils using the scrap value prices provided by the Plaintiff's Wildbore by about 2.2%.

(3) Conclusion on these quotations

158 In my judgment, the quotations represent scrap value for all the coils. No distinction was drawn by those who provided quotations between coils which were damaged and those which were not. The fact that the latter were valued as scrap indicates that the value of the coils before they were damaged was scrap value. I would further note that this analysis applies to the carbon steel coils as well.

*Conclusion on the value of the coils before they were damaged*

159 I need to take into account the Defendant's expert witness Norman Ng's testimony that a small quantity of up to between five to six tonnes of every 100 tonnes of dead stock (or an average of 5.5% of the stock) could be sold in the secondary market for 60% of the prime price (see above at [137]). [note: 218] I therefore regard 94.5% of the consignment as being of scrap value, and 5.5% of it as being capable of sale at 60% of the prime price prior to damage. This conclusion of Norman Ng does not appear to be confined to stainless steel coils, [note: 219] so it applies to the carbon steel coils as well.

***The market value of the coils after they were damaged***

160 For the reasons set out above, I regard all the portions of the coils rendered unusable to be of scrap value. As regards the undamaged portions, 94.5% of it would be scrap value while 5.5% of it would be valued at 60% of the prime price.

***The loss attributable to the Defendant***

***The loss attributable to the Defendant***

161 In so far as the undamaged or *usable* portion of the coils is concerned, its value before they were damaged and after they were damaged is the same, *viz*, 94.5% of it would be scrap value while 5.5% of it would be valued at 60% of the prime price. There is accordingly no loss in value occasioned by the damage for which the Defendant is responsible. The loss in value of the coils attributable to the Defendant, *ie*, the difference between the value of the coils before and after they were damaged, is confined to the *unusable* portion of the coils and it is the difference between 60% of the prime price for 5.5% of the unusable weight of the coils and their scrap value.

162 5.5% of the unusable weight of the coils (as I have determined above) is as follows:

(a) For the SUS 430 coils:

| | **Total unusable weight** |
|---|---|
| Category A coils (see above at [55]) | 22,651.99kg |
| Category B coils (see above at [64]) | 3,573.6kg |
| Category C coils (see above at [76]) | 514.36kg |
| **Total** | 26,739.95kg |
| 5.5% of weight | **1,470.70kg** |

(b) For the SUS 304 coils:

| | **Total unusable weight** |
|---|---|
| Category D coils (see above at [86]) | 124,699.19kg |
| Category E coils (see above at [113]) | 72,232.27kg |
| Category G coils (see above at [127]) | 12,414kg |
| Category I coils (see above at [130]) | 5,283.3kg |
| **Total** | 214,628.76kg |
| 5.5% of weight | **11,804.58kg** |

(c) For the carbon steel coils:

| | **Total unusable weight** |
|---|---|
| Category H coils (see above at [128]) | 50,810kg |
| 5.5% of weight | **2,794.55kg** |

*The prime value of the steel coils*

163 The main evidence before the court in relation to the prime value of the steel coils in question

came in the form of figures obtained from CRU which were provided by the Plaintiff's expert witness Wildbore in the course of his cross-examination ("the CRU prices") (see above at [144]). [note: 220] These were figures in respect of Hong Kong, which was said to be representative of Southeast Asia. [note: 221] In this regard, Wildbore departed from the figures used in Appendix 2 of the Hooper Report [note: 222] although I note that the numbers in that Appendix are nevertheless in the same range.

164 The Defendant's expert witness Norman Ng also accepted that the CRU prices were reflective of market prices and could be used as a guide, although he qualified this by saying that they were not a hundred per cent accurate. [note: 223] No evidence of alternative prices was, however, produced by him.

165 I therefore accept that, in accordance with the CRU prices tendered to the court, as at May 2008, the prime price for SUS 430 coils was US$1,850 per tonne, and the prime price for SUS 340 coils was US$4,050 per tonne. Converting this to Singapore dollars, using the exchange rate as at May 2008 provided by Norman Ng (which has not been challenged by the Plaintiff) of US$1 = S$1.37918, [note: 224] the prime price for the SUS 430 coils would be S$2.551 per kg and the prime price for the SUS 304 coils would be S$5.586 per kg.

*The scrap value of the steel coils*

166 The Plaintiff's expert witness Wildbore testified that he had checked the scrap value prices used in the Hooper Report against the Metal Bulletin, which was a magazine that published scrap prices, and he was satisfied that the prices corresponded. [note: 225] The Defendant's expert witness, Norman Ng, opined, in his affidavit of evidence-in-chief, that the scrap value of the coils should be at 35–45% of their prime value. [note: 226] However, in his oral testimony, he said that it should be 30–35% of their prime value instead. [note: 227] In any event, Norman Ng did not proffer any specific numbers in respect of what the scrap value prices should be.

167 Given the somewhat inconsistent testimony of Norman Ng and the fact that no alternative prices were put forward by him, I prefer the evidence in the Hooper Report as adopted by Wildbore in this respect. As at May 2008, the scrap value price for SUS 430 coils was US$831 per tonne and the scrap value price for SUS 304 coils was US$2,363 per tonne. Converting this to Singapore dollars using the exchange rate as at May 2008 provided by Norman Ng of US$1 = S$1.37918 (see [165] above), the price for SUS 430 coils would be S$1.146 and for SUS 304 would be S$3.260.

*Should the small coils be treated differently?*

168 The Plaintiff's expert witness Wildbore ascribed a premium of 50% above the prime price to the small coils in prime condition. However, under cross-examination, he accepted that this conclusion was a mere assertion and an assumption which in any event was not supported by evidence. [note: 228] When I sought clarification in this respect from Wildbore, he explained that the premium for small coils was because of the additional cost of cutting standard sized coils down to the specific size required for the specific end use. [note: 229]

169 In my view, end users may pay a premium for coils which are cut to a size required by them, but this does not mean that this price was the market value of the coils which the Plaintiff already had in its possession. It is the price which the market was prepared to pay for those stocks which is more pertinent. Wildbore appeared to recognise this and opined that the small coils, if they were

undamaged, could be sold at 25% above their scrap value. [note: 230]

170 However, I am not persuaded that this 25% premium should even be applied. First, Wildbore's methodology is undermined by the fact that it leads to an anomalous result, which he himself recognised, where in May 2008, [note: 231] a resale price of 25% above the scrap value for the small coils would be *higher* than the prime value of mother coils. [note: 232] Second, it is contradicted by the testimony of Norman Ng which I find more persuasive on the valuation of the coils in general. Third, when the parties sought quotations in 2010 and 2011 from the independent third parties (see [152]–[158] above), there was no evidence that those third parties treated the small coils in an undamaged condition any differently from the rest of the coils.

171 In conclusion, I am not able to ascribe a value to the small coils which is different from the rest of the steel coils. Because the small coils are SUS 304 coils, they will be treated as such for the purposes of computing the loss in value suffered.

*The prime and scrap values of the carbon steel coils*

172 The only evidence in respect of the value of the carbon steel coils is found in the Hooper Report which Wildbore adopted in his affidavit of evidence-in-chief. [note: 233] Wildbore, under cross-examination, conceded that he was not an expert in carbon steel, but noted that there was a secondary market for this product. [note: 234] The Defendant produced no evidence to the contrary and took the position in its closing submissions that, in order to assist the court in the assessment of damages, it would not contest this issue. [note: 235]

173 I therefore accept the evidence in the Hooper Report that the prime price of the carbon steel coils as at May 2008 was US$1.020 per kg and the scrap price was US$0.46 per kg. Using the same currency conversion rate for the stainless steel coils, this translates to a prime price of S$1.41 per kg and a scrap price of S$0.63 per kg.

***Conclusion on the loss attributable to the Defendant***

174 As I have indicated (see above at [161]), with respect to the 94.5% of the unusable portions of the coils which were of scrap value before and after damage, their diminution in value and therefore loss to the Plaintiff for which the Defendant is liable is nil.

175 As for the remaining 5.5% of the unusable portions of the coils which I have found to be worth 60% of the prime price prior to damage and to be of scrap value after damage, the Plaintiff's loss in respect of which the Defendant is liable is:

(a) For the SUS 430 coils (see [162(a)] above for the relevant weight and see [165] and [167] above for the values before and after damage respectively):

| | |
|---|---|
| Value before damage | 1,470.70kg × S$2.551 × 60% = S$2,251.053 |
| Value after damage | 1,470.70kg × S$1.146<br>= S$1,685.422 |
| **Loss** | **S$565.63** |

(b) For the SUS 304 coils (see [162(b)] above for the relevant weight and see [165] and [167] above for the values before and after damage respectively):

| | |
|---|---|
| Value before damage | 11,804.58kg × S$5.586 × 60% = S$39,564.230 |
| Value after damage | 11,804.58kg × S$3.260<br>= S$38,482.931 |
| **Loss** | **S$1,081.30** |

(c) For the carbon steel coils (see [162(c)] above for the relevant weight and see [173] above for the values before and after damage respectively):

| | |
|---|---|
| Value before damage | 2,794.55kg × S$1.41 × 60% = S$2,364.190 |
| Value after damage | 2,794.55kg × S$0.63<br>= S$1,760.567 |
| **Loss** | **S$603.62** |

176 The total sum of damages which the Defendant is liable to the Plaintiff for (other than handling/packaging damage and recovery costs which will be addressed below) is accordingly S$565.63 + S$1,081.30 + S$603.62 = S$2,250.55.

***The recovery costs for which the Defendant is liable***

*The cost of recovery*

177 The Hooper Report, which the Plaintiff's expert Wildbore adopted as his evidence, opined that the Plaintiff should be entitled to recover (a) the costs associated with extracting the usable portions of the damaged coils by removing the unusable portions, and (b) the costs of re-packaging coils whose packaging had been damaged. [note: 236] According to the report, the cost of "line processing", which I understand to involve the "examining, discarding [and] slitting" of coils, was US$314 per tonne, [note: 237] the cost of "paper & packaging" was US$20 per tonne [note: 238] and the cost of transporting the coils for such recovery purposes was US$19 per tonne [note: 239] Wildbore explained that these figures were "reasonable" and that it was theoretically possible for the Plaintiff to engage someone in Singapore to undertake such recovery work on the coils. [note: 240] The Defendant challenged Wildbore's testimony, suggesting that it was unsupported because he had not specifically shown who in Singapore was capable of doing such work and at such costs. [note: 241] The Defendant also criticised the Hooper Report for calculating recovery costs based on weight rather than on a per coil basis [note: 242] but provided no evidence on the latter. I am satisfied in the absence of evidence to the contrary from the Defendant, that the figures in the Hooper Report are reliable. Wildbore gave his testimony as an expert in the field, and explained that it was from his experience that he regarded the figures provided in the Hooper Report as reasonable estimates.

*Recovery costs for handling/packaging damage – repackaging*

178 In so far as handling/packaging damage is concerned, the Defendant will be responsible for the repackaging costs of the weights of all the coils which have sustained handling/packaging damage for which it is responsible. I am unable to accept the Defendant's submission that the buyers of the coils would take them as they were and would undertake any re-packaging and transport of the coils themselves, and therefore no recovery costs, whether for repackaging or otherwise, should be allowed. [note: 243] It must be borne in mind that the damage in this context is not damage to the coils but damage to their packaging. Even if the coils sustained no water damage or deformity and no diminution in value (as in the case of those in Category F), if the Defendant had damaged their packaging, it would be liable for the costs of restoring the Plaintiff to the position if the default had not occurred. The Defendant is accordingly liable for the re-packaging costs of 61,827kg of coils in Category B (see above at [65]), 8,899kg of coils in Category C (see above at [77]), 640,443kg of coils in Category E (see above at [114]) and 146,477kg of coils in Category F (see above at [121]). The weight of the coils in respect of which the Defendant is responsible for handling/packaging damage is therefore 857,646kg.

179 The re-packaging costs of US$20 per tonne, together with the US$19 per tonne for associated transport costs, when converted to Singapore dollars using the same conversion rates I have applied above (at [165]), amounts to (US$20 + US$19) × S$1.37918 = S$53.788 per tonne. Applying this cost of repackaging (with transportation) to the weight of the coils set out in the preceding paragraph, the amount for which the Defendant is liable to the Plaintiff for the handling/packaging damage to the coils is 857,646kg/1000 × S$53.788 = S$46,131.06.

*Recovery costs – "line processing"*

180 The Defendant's main argument was that the "line processing" recovery costs should not be allowed because the entire consignment of coils was already only worth its scrap value before the coils were damaged. I have, however, found that about 5.5% of the coils could be sold in a secondary market for 60% of their prime value (see above at [159]). If the water damage had not been sustained, the Plaintiff would not need to remove the unusable portions in order to sell this 5.5% of the coils in the secondary market. But as the coils have sustained water damage, the removal of the unusable portions would be required in order for the 5.5% of the *usable* portion of the coils to be sold at a price above their scrap value. The Plaintiff should *prima facie* be allowed the costs of recovery for this 5.5% of the coils. However, for the reasons set out below, I am unable to allow such costs to be recovered.

181 As regards the SUS 430 coils (Categories A, B and C), the cost of "line processing" is US$314 per tonne (see above at [177]). Using the currency conversion rate of US$1 = S$1.37918 (see above at [165]), this would amount to S$433.06 per tonne or S$0.431 per kg. The price at which the 5.5% portion of the coils could be sold in the secondary market as at May 2008 was (S$2.551 x 60%) = S$1.531 per kg and the scrap value of the coils was S$1.146 per kg (see above at [175(a)]). The difference between the secondary market price and the scrap value is therefore S$0.385 per kg, which is *less* than the cost of "line processing" of S$0.431 per kg. In other words, it is not economically viable to undertake a recovery of the coils through "line processing". Moreover, it should be noted that this comparison has not taken into account the transport costs associated with recovery. Nor does it take into account the fact that the recovery costs should, strictly speaking, apply to the weight constituted by the usable *and unusable* portions of the coils.

182 In the circumstances, what the Plaintiff should be compensated for is instead the fact that prior to damage, it could have sold 5.5% of the usable portion of the coils at 60% of their prime price but it can only sell this portion at scrap value now since it is not economical to undertake "line

processing" to enable that 5.5% to be sold. The following computation should therefore apply:

(a) For the Category A coils, the total weight for which the Defendant is responsible is 391,903kg, of which 22,651.99kg is unusable (see above at [55]), and therefore 391,903kg – 22,659.99kg = 369,243.01kg is usable.

(b) For the Category B coils, the total weight for which the Defendant is responsible is 61,827kg, of which 3,573.6kg is unusable (see above at [64]), and therefore 61,827kg – 3,573.6kg = 58,253.4kg is usable.

(c) For the Category C coils, the total weight for which the Defendant is responsible is 8,899kg, of which 514.36kg is unusable (see above at [76]), and therefore 8,899kg – 514.36kg = 8,384.64kg is usable.

(d) The total usable portions of the SUS 430 coils amount to 369,243.01kg + 58,253.4kg + 8,384.64kg = 435,881.05kg, of which 5.5% or 23,973.46kg can be sold in the secondary market.

(e) Applying the difference between the secondary market price and the scrap value of S$0.385 per kg (see above at [181]) to 23,973.46kg yields a total of S$9,229.78.

183 I therefore find the Defendant liable to pay the Plaintiff S$9,229.78 instead of the "line processing" costs for the SUS 430 coils.

184 The same analysis applies to the SUS 304 coils, which in this case covers only Categories D and E, since the Category F coils sustained no water damage and the coils in the remaining categories sustained total damage. As set out above (at [175(b)]), the price the 5.5% portion would have fetched in the secondary market in May 2008 would be 60% of their prime cost of S$5.586 per kg, or S$3.352 per kg, while the scrap value was S$3.260 per kg. The difference of S$0.092 per kg is significantly less than just the "line processing" cost alone of S$0.431 per kg (see above at [181]). In other words, it is also not economically viable to undertake a recovery of the SUS 304 coils through "line processing". As with the SUS 430 coils, what the Plaintiff should instead be entitled to is the difference between 5.5% of the usable portion of the coils at 60% of their prime price and their scrap value as follows:

(a) For the Category D coils, the total weight for which the Defendant is responsible is 1,133,629kg, of which 124,699.19kg is unusable (see above at [86]), and therefore 1,133,629kg – 124,699.19kg = 1,008,929.81kg is usable.

(b) For the Category E coils, the total weight for which the Defendant is responsible is 656,657kg, of which 72,232.27kg is unusable (see above at [113]), and therefore 656,657kg – 72,232.27kg = 584,424.73kg is usable.

(c) The total usable portions of the SUS 430 coils amount to 1,008,929.81kg + 584,424.73kg = 1,593,354.59kg, of which 5.5% or 87,634.50kg can be sold in the secondary market.

(d) Applying the difference between the secondary market price and the scrap value of S$0.092 per kg to 87,634.50kg yields a total of S$8,062.37.

185 I therefore find the Defendant liable to pay the Plaintiff S$8,062.37 instead of the "line processing" costs for the SUS 304 coils.

**The missing coils**

186 There is no dispute that a total of 11 coils were missing – the Defendant in its closing submissions confirmed this. [note: 244] These coils comprised:

| Type | Quantity | Total Weight |
|---|---|---|
| SUS 304 2B coils | 7 | 17,617kg |
| SUS 304 CSP FH coils | 2 | 2,200kg |
| Aluminium coils | 2 | 4,220kg |

187 The damages in respect of these missing coils are to be assessed as at May 2008, when the coils were reported as missing (see above at [131]).

***The missing SUS 304 coils***

188 There is no evidence that these coils were any different from the other SUS 304 coils which the Plaintiff alleged had sustained damage. In fact, for the seven SUS 304 2B coils and the two SUS 304 CSP FH coils, the Plaintiff applied the same per kg price as that used for the SUS 304 coils in general. [note: 245]

189 For the reasons set out above (see above at [159] and the analysis in the paragraphs preceding), I find that 94.5% of the weight of these missing coils is to be valued at scrap value, and 5.5% is to be valued at 60% of its prime value. In addition, for the same reasons set out above (at [165] and [167] respectively), I accept that as at May 2008, the prime price of SUS 304 coils was S$5.586 per kg as derived by Wildbore from the CRU prices, and the scrap price was S$3.260 per kg.

190 Applying these figures to the weights of the missing SUS 304 coils, the following is derived:

| | |
|---|---|
| Total weight of lost SUS 304 coils | 17,617kg + 2,200kg = 19,817kg |
| 5.5% of weight at 60% of prime value | 5.5% × 19,817kg × 60% × S$5.586<br>= S$3,653.026 |
| 94.5% of weight at scrap value | 94.5% × 19,817kg × S$3.260<br>= S$61,050.232 |
| **Value of lost SUS 304 coils** | S$64,703.258 |

191 In conclusion, the Defendant is liable to the Plaintiff in the amount of S$64,703.26 for the nine missing SUS 304 coils.

***The missing aluminium coils***

192 As for the missing aluminium coils, the Hooper Report (which was adopted by Wildbore) claimed that their value in 2009 was US$2,500 per tonne. [note: 246] Applying this to the weight of missing aluminium coils of 4,220kg, the Hooper Report assessed their value to be US$10,550. However, there

was no clear basis provided for the figure used. Wildbore conceded that he had "no experience" in aluminium [note: 247] although he claimed there was a "secondary market" for aluminium trade. [note: 248] Tay explained that he could not locate the commercial invoices for these two aluminium coils to determine their price. [note: 249]

193 The Defendant's closing submissions contended that the value of these lost aluminium coils should be 30% below their prime value if they were not to be regarded as scrap. [note: 250] There was however also no clear basis for such an assertion. It would have resulted in a price of US$1,750 per tonne which was *lower* than the aluminium *scrap* price of US$1,800 per tonne, or US$1.80 per kg put forward by the Defendant's own expert Norman Ng. [note: 251] Norman Ng explained in his affidavit of evidence-in-chief that this price was estimated from a website. In final oral submissions before me, counsel for the Plaintiff, notwithstanding its objection to these aluminium coils being treated as scrap, accepted that if it was necessary to use the scrap value of the aluminium coils, this price of US$1.80 per kg would be the figure to use. [note: 252]

194 In my judgment, given the fact that:

(a) the entire consignment was the subject of several quotations by traders in 2010 and 2011 and contained aluminium coils which were not the subject of the Plaintiff's claim for damages in this action (see above at [151] *et seq*);

(b) my finding that these quotations were likely to be on the basis that the entire consignment was scrap material (see above at [158]); and

(c) Norman Ng gave at least *some* basis for the numbers he asserted to be the scrap price of the aluminium coils,

I find that the price of the aluminium coils is at their scrap value of US$1.80 per kg. Using the exchange rate as at May 2008 of US$1 = S$1.37918, [note: 253] the price of the aluminium coils is S$2.4825 per kg. The value of the two missing aluminium coils is therefore S$2.4825 × 4,220kg = S$10,476.25.

195 Unlike the stainless steel coils, I have not treated 5.5% of the weight of the aluminium coils as capable of sale in the secondary market at the price of 60% of their prime value. This is because, even if I accept the prime value of US$2,500 per tonne of US$2.50 per kg which is put forward in the Hooper Report, 60% of that would yield only US$1.50 or S$2.07 per kg, which is *lower* than the S$2.48 per kg which I have used.

***Total damages for missing coils***

196 In conclusion, the damages payable by the Defendant to the Plaintiff for the nine missing SUS 304 stainless steel coils and the two missing aluminium coils is S$64,703.26 + S$10,476.25 = S$75,179.51.

**Contributory negligence**

197 The Defendant also argued that if it was found liable in damages to the Plaintiff, such damages ought to be reduced on account of the contributory negligence of the Plaintiff. This is because the Plaintiff was partly responsible for the loss suffered. [note: 254]

198 First, the Defendant submitted that the Plaintiff contributed to the loss suffered as a result of the stacking of heavier coils above lighter ones, causing them to become deformed. [note: 255] I do not agree that the Plaintiff has been contributorily negligent in this regard. There is no evidence that in so far as the stacking of heavier coils on top of lighter ones was by the Defendant's employees or agents, this was done on the instruction of the Plaintiff. As observed earlier (see above at [39]), while Serene Ser from the Plaintiff might have asked for a forklift and manpower to shift the coils after the June 2008 flooding, there was no evidence of the extent of her involvement in the movement and re-stacking of the coils and it is likely that the actual movement of the coils was carried out by the Defendant's employees or agents. [note: 256] Moreover, it is entirely sensible to expect a warehouseman to know not to stack heavier items on top of lighter ones, and the fact that the Plaintiff had not informed the Defendant not to do so cannot be taken as negligence on its part.

199 Second, I will deal with the Defendant's submission that the Plaintiff contributed to the water damage suffered by the coils. [note: 257] It submitted that the Defendant could not have been expected to know that the coils could not come into contact with water and that the Plaintiff ought to have informed the Defendant of this. [note: 258] I do not agree for several reasons. To begin with, it is a matter of common sense that goods stored in an indoor warehouse should be kept dry; if it was otherwise, the goods would not need to be stored in a sheltered area as they were. Further, the contact with water in the present case was primarily one of water seepage and flooding as a result of rainwater entering the warehouse. The Defendant is wholly responsible for damage caused by such an occurrence. Even if it was expressly told that the coils could not come into contact with water, there is no evidence that it would have acted in a manner which would have avoided the resultant damage; the coils would probably still have been kept in the same warehouse and the same damage would have resulted.

200 Lastly, the Defendant submitted that the Plaintiff contributed to the loss suffered as a result of the handling/packaging damage. [note: 259] As I have found, some of the handling/packaging damage was caused by the failure to use a forklift with a pole attachment or a pole truck. I accept the evidence of the Defendant's Leaw, whom I found to be a generally credible witness (see below at [218] for my assessment of Leaw as a witness), that the Plaintiff's Anthony Ser had informed the Defendant that it was sufficient to use a normal forklift when moving the coils in the Defendant's warehouse. [note: 260] This conclusion is further buttressed by the fact that Anthony Ser testified that using a forklift with two tines was the norm [note: 261] and the fact that the Plaintiff's own employees who witnessed the movement of coils using an ordinary forklift, namely Adrian Wong and Serene Ser, likewise did not see anything wrong with it (see above at [103]); they did not themselves appear to think that the use of a pole truck or a pole attachment to the forklift was a more appropriate method of moving the coils. In this regard, I consider that the Plaintiff was contributorily negligent in instructing the Defendant that it was sufficient to use a normal forklift to move the coils.

201 I therefore find that the Defendant's liability to the Plaintiff for handling/packaging damage ought to be reduced by 25%. I find that liability ought to be reduced only to this extent since the greater proportion of the handling/packaging damage was likely to have been caused by the careless operation of the forklift and not simply the failure to use a pole attachment or a pole truck.

202 I have found that the Defendant is *prima facie* liable to the Plaintiff handling/packaging damage amounting to S$46,131.06 (see above at [179]). After reducing this by 25%, I find that the Defendant is liable to the Plaintiff for S$46,131.06 × 75% = S$34,598.30 in damages.

**The total damages payable by the Defendant**

203 I pause to take stock of my conclusions thus far. For the reasons set out in the preceding sections, my findings are that the Defendant is liable to the Plaintiff in damages as follows:

(a) S$2,250.55 for the damage to the coils (excluding handling/packaging damage) (see above at [176]);

(b) S$9,229.78 + S$8,062.37 = S$17,292.15 in lieu of the "line processing" recovery costs of the coils (see above at [183] and [185]);

(c) S$34,598.30 for handling/packaging damage (*ie*, re-packaging costs) (see above at [202]); and

(d) S$75,179.51 for the missing coils (see above at [196]).

The total amount in respect of which the Defendant is liable to the Plaintiff is therefore S$2,250.55 + S$17,292.15 + S$34,598.30 + S$75,179.51 = S$129,320.51.

**The limitation of liability and exclusion clauses**

***The clauses in question***

204 The Defendant made the standalone argument that even if it was found liable for the loss and damage suffered by the Plaintiff, its liability was limited or excluded by certain limitation of liability and exclusion of liability clauses found in the contract between them.

205 The Defendant pleaded in its defence reliance on a number of these clauses. However, in its opening statement, counsel for the Defendant clarified that it was no longer relying on all the clauses pleaded, and that its defence was confined to the following: [note: 262]

(a) Clauses 1.d, 1.e and 1.m of the Defendant's STC, which read as follows:

**1. GENERAL LIABILITY**

Except as otherwise provided in these conditions, the Company shall not be liable in any event for any loss, misdelivery or damage whatsoever and howsoever arising from:-

a. …

…

d. Act or omission of the Customer, Owner or any person acting on their behalf;

e. Compliance with the instructions given to the Company by the Customer, Owner or any person entitled to give them;

…

m. Any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

(b) Clauses 2.a(1)(c) and 2.a(1)(d) of the Defendant's STC, which read as follows:

**2. LIMIT OF LIABILITY**

a. In no case whatsoever, whether for any neglect, default or any other matter or thing whatsoever or howsoever arising, notwithstanding that the cause of the loss or damage be unexplained, shall any liability of the Company exceed:

(1) in respect of all claims, other than those subject to sub-clause (2) below:-

(a) …

…

(c) S$1,500 per package, or

(d) S$10,000.00 in respect of any one claim,

whichever shall be the least;

…

(c) Clause 27 of the SLA Standard Trading T&C, which reads as follows:

**Amount of compensation**

27. Except in so far as otherwise provided by these Conditions, the liability of the Company howsoever arising and notwithstanding that such liability shall have arising from the neglect or default of the Company, shall not exceed

(a) in respect of all claims other than those subject to the provision of Clause 28(b) below, the lesser of

(i) the value of the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises; or

(ii) S$1.00 per gross kilogram of the said Goods,

and shall not exceed S$100,000 in any event whatsoever in respect of any one claim; and

(b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges for the services in respect of the Goods delayed.

In oral submissions, counsel for the Defendant further conceded that it was not relying on cl 2.a(1)(c) of the Defendant's STC. [note: 263] Further, no submissions were made on cl 27(a)(ii) of the SLA Standard Trading T&C and cl 27(b) of the same. The focus therefore is on cll 1.d, 1.e and 1.m of the

Defendant's STC, the overall claim limit of S$10,000 set out in cl 2.a(1)(d) of the same, and the limit of S$100,000 set out in cl 27(a) of the SLA Standard Trading T&C.

***Clauses 1.d, 1.e and 1.m of the Defendant's STC***

206 I deal first with cll 1.d, 1.e and 1.m of the Defendant's STC (reproduced above at [205(a)]). I am of the view that these clauses do not assist the Defendant's case.

207 Clauses 1.d and 1.e purport to exclude liability where loss or damage is the result of the act or omission of the Plaintiff (or its agent), or if it was caused by compliance with the instructions of the Plaintiff (or its agent). In the present case, my findings (see above) are that there was damage and loss suffered by the Plaintiff which are attributable to the acts and omissions of the Defendant. Further, in so far as the handling/packaging damage was due in part to the contributory negligence of the Plaintiff, this has already been factored in the reduction I have given to the damages payable for such handling/packaging damage (see above at [202]).

208 I note that the Defendant pleaded that the Plaintiffs had failed to provide the waterproof plastic covers which the coils would have been wrapped in when they were delivered from the steel mills. [note: 264] Despite pleading this, the Defendant did not make any submission on it. In any event, I do not think that the Defendant is entitled to rely on cl 1.d in this regard (cl 1.e is not relevant here). Exclusion clauses are construed *contra proferentem* (see *Rapiscan Asia Pte Ltd v Global Container Freight Pte Ltd* [2002] 1 SLR(R) 701 at [41]). The Singapore Court of Appeal in *Marina Centre Holdings Pte Ltd v Pars Carpet Gallery Pte Ltd* [1997] 2 SLR(R) 897 at [7] adopted the guidelines laid down by Lord Morton of Henryton in the leading Privy Council decision from Canada of *Canada Steamship Lines Ld v The King* [1952] AC 192 at 208, and these are today an established part of our law:

> Their Lordships think that the duty of a court in approaching the consideration of such clauses may be summarized as follows:
>
> (1) If the clause contains language which expressly exempts the person in whose favour it is made (hereafter called 'the *proferens*') from the consequence of the negligence of his own servants, effect must be given to that provision. Any doubts which existed whether this was the law in the Province of Quebec were removed by the decision of the Supreme Court of Canada in *The Glengoil Steamship Co v Pilkington* (1897) 28 SCR (Can) 146.
>
> (2) If there is no express reference to negligence, the court must consider whether the words used are wide enough, in their ordinary meaning, to cover negligence on the part of the servants of the *proferens*. If a doubt arises at this point, it must be resolved against the *proferens* in accordance with article 1019 of the Civil Code of Lower Canada: 'In cases of doubt, the contract is interpreted against him who has stipulated and in favour of him who has contracted the obligation.'
>
> (3) If the words used are wide enough for the above purpose, the court must then consider whether 'the head of damage may be based on some ground other than that of negligence,' to quote again Lord Greene in the *Alderslade* case [1945] KB 189, 192. The 'other ground' must not be so fanciful or remote that the *proferens* cannot be supposed to have desired protection against it; but subject to this qualification, which is no doubt to be implied from Lord Greene's words, the existence of a possible head of damage other than that of negligence is fatal to the *proferens* even if the words used are prima facie wide enough to cover negligence on the part of his servants.

209 The issue in this case is whether it was intended, under a proper construction of cl 1.d, that the mere fact of the Plaintiff's omission to provide waterproof plastic covers should exclude the Defendant's liability for its own negligence. Any doubt should be resolved against the *proferens*, *viz*, the Defendant in this case. In my view, the proper interpretation of cl 1.d is that the Defendant's liability is to be excluded only if the act or omission of the Plaintiff was the *causa causans* (*ie*, the main cause) of the loss or damage. Given that the main cause of the damage (in respect of water damage) is the fact that the Defendant failed to prevent water seepage or ingress into its warehouse and/or the stacking of wet coils on top of other coils and not the lack of waterproof plastic covers, cl 1.d does not assist in excluding its liability.

210 Clause 1.m, which purports to exclude liability where the loss or damage could not be avoided by the exercise of reasonable diligence by the Defendant also does not apply. As I have found (see above at [36]), the Defendant did not bring sufficient evidence to show that the rainfall on 18 June 2008 and 22 October 2008 was of such an unexpected magnitude that it could not have been avoided even if the Defendant had exercised reasonable diligence.

211 Given my findings that cll 1.d, 1.e and 1.m do not assist the Defendant's case, the analysis which follows on whether or not the clauses were incorporated into the contract between the parties, and their reasonableness, need not be undertaken as far as these particular clauses are concerned. The primary focus of the paragraphs which follows will instead be on the clauses which purport to limit the liability of the Defendant, namely cl 2.a(1)(d) of the Defendant's STC and cl 27 of the SLA Standard Trading T&C.

***Were cl 2.a(1)(d) of the Defendant's STC and cl 27 of the SLA Standard Trading STC incorporated into the contract between the Plaintiff and the Defendant?***

212 Fundamental to the operation of these clauses is their proper incorporation into the contract between the Plaintiff and the Defendant. The Defendant's case was that the contract between the parties was evidenced by a quotation prepared by the Defendant and dated 26 August 2005 ("the Quotation"). [note: 265] While these clauses were not found in the Quotation itself, there were clauses in the Quotation which the Defendant said had the effect of incorporating these clauses. First, cl 1 of the Quotation provided that it was "subject to the condition [*sic*] set out herein and our Standard Terms and Conditions. A copy of which is available upon request and highlights of which are printed overleaf" and cl 10 of the Quotation stated that "All other terms and conditions as per C&P Standard Terms". Clause 2.a(1)(d) (being the clause the Defendant was relying on, see above at [205(b)]) was printed on the overleaf to every page of the Quotation, as part of what was known as the "C & P Standard Trading Conditions (Cargo Handling & Transportation)". It would appear that what was printed on the overleaf was an excerpt of the Defendant's STC, *viz*, the "highlights" referred to in cl 1 of the Quotation. Second, the saving paragraph to cl 2 of the Defendant's STC, which was also printed on the overleaf, stated:

> Save as aforesaid, The Standard Trading Conditions of the Singapore Logistics Association (SLA) – April 1998, save for Clause 26 and 27 shall apply and form part of our Standard Trading Conditions. Highlights of these provisions are set out below.

*Were they fairly brought to the notice of the Plaintiff?*

213 The foundational difficultly for the Defendant in the present case is the fact that the Quotation was never signed. Where a contract is signed by the parties, and the contract contains an explicit incorporating clause, an exclusion clause is validly incorporated notwithstanding the fact that the party resisting its effect did not have the chance to read it (see *Press Automation Technology Pte*

*Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2002] 1 SLR(R) 712 ("*Press Automation*") at [39]).

214 In the present case, where the contract is unsigned, the rule is that where a condition is particularly onerous or unusual, the party seeking to enforce it must show that the condition was "fairly brought to the notice of the other party" before it is validly incorporated (*per* Bingham LJ in *Interfoto Picture Library Ltd v Stiletto Visual Programmes Ltd* [1989] 1 QB 433 ("*Interfoto Picture*"), reading and agreeing with the judgments of Lord Denning MR and Megaw LJ in *Thornton v Shoe Lane Parking Ltd* [1971] 2 QB 163 ("*Shoe Lane Parking*")).

215 The Plaintiff's case was that these onerous clauses were not only not brought to its attention, but it did not have sight of the Quotation.

(1) Did Anthony Ser have sight of the Quotation and the draft quotations?

216 The Defendant's case was that prior to the finalisation of the Quotation, there was a series of draft quotations, which contained cl 1 of the Quotation with the relevant clauses of the Defendant's STC printed on the overleaf, [note: 266] and Anthony Ser had had sight of these. The Plaintiff denied this. [note: 267] Anthony Ser's evidence was that he had never seen the Quotation or the draft quotations which preceded it [note: 268] and that the Plaintiff and its liquidators (who in any event were appointed only after the finalisation of the contract) never saw the Quotation until some time in May 2008 when the incident of the missing coils occurred. [note: 269]

217 The negotiations relating to the conclusion of the contract between the parties was narrated to the court by the Defendant's then General Manager, Leaw. Leaw's testimony was that his subordinate and an employee of the Defendant, one Jasmond Heng ("Heng"), had provided Anthony Ser with previous draft quotations on the overleaf of which were printed the highlights of the Defendant's STC and which included the clauses the Defendant was now relying on. [note: 270] Leaw's evidence was that there were negotiations over the price and terms of the storage contract between Anthony Ser and Heng and, as a result, the substantive terms were varied several times. He claimed that the draft quotations were sent by facsimile transmission to Anthony Ser. These facts, however, were never observed first hand by Leaw himself; they were all based on what Heng had told him. [note: 271] They were therefore hearsay.

218 What I accept, however, is that Anthony Ser was likely to have had in his possession or have had sight of a draft quotation when he and Leaw met on 26 August 2005. Leaw testified that on that day, Heng brought Anthony Ser into his office where they discussed the rate of the storage contract. They also discussed the quotation, using a copy of it they had in front of them, and Leaw brought Anthony Ser through the terms of the quotation, "item by item". [note: 272] I found Leaw to be a generally credible witness and this was evident from both his demeanour in court and his willingness to acknowledge matters which were not necessarily to the advantage of himself or the Defendant.

219 By contrast, I found Anthony Ser's testimony to be less reliable (see above at [152] for another aspect of my assessment of Anthony Ser as a witness) than Leaw's. There is strength in the Defendant's submission that it is difficult to accept that Anthony Ser, being an experienced and very successful businessman, had, as he had claimed, entered into a contract for the storage of a very large quantity of the Plaintiff's coils without having viewed a single document containing the terms of the agreement. [note: 273] It is also more likely than not that the final Quotation was sent to Anthony Ser's residential address, whereupon he would have had, contrary to his attestations otherwise, an opportunity to look at it. In particular, counsel for the Defendant pointed out to him that the

Quotation stated his own telephone number, and was directed to the fax number and address of *his residence* at 5 Leedon Park, and not those of the Plaintiff. [note: 274] Counsel suggested to Anthony Ser that the Quotation was addressed to 5 Leedon Park because he had asked for it to be delivered there. Anthony Ser's evidence was that he had given the Defendant his residential address merely to tell the Defendant where he lived because that was what its officers had asked him. [note: 275] When pressed further, he insisted he could not recall why he had given his residential address. [note: 276] Finally, when it was suggested to him that the Quotation might have been sent to him and that he had seen it but had forgotten about it, he became quite certain that this was not a possibility and that he simply did not receive it. [note: 277]

220 I am of the view that it was likely that Anthony Ser did at some point in time have sight of the final Quotation and possibly some of the draft quotations. I also note that when it was suggested to Anthony Ser that somebody in the Plaintiff's employment must have seen the Quotation, he admitted that there was that possibility. [note: 278]

(2) Had the clauses been fairly brought to the attention of the Plaintiff?

221 That Anthony Ser or another servant or agent of the Plaintiff had had sight of the draft quotations and the Quotation itself is not the end of the matter. The question is whether these exclusion and limitation terms were specifically brought to the attention of the Plaintiff. Assuming, as the Plaintiff argued, that the SLA Standard Trading T&C was the industry standard, then cl 2.a(1)(d) of the Defendant's STC (reproduced above at [205(b)]) would have imposed a limit on the Defendant's liability of S$10,000 which was only one tenth of the industry's standard limit of S$100,000 (see cl 27 of the SLA Standard Trading T&C, reproduced above at [205(c)]). Leaw also pointed out that the monthly rate charged by the Defendant for this storage contract was S$11,240.36, [note: 279] which meant that the Defendant was seeking through cl 2.a(1)(d) to limit its liability to less than the rate it charged for one month's storage. In the light of the above, cl 2.a(1)(d) is, in my judgment, clearly of an onerous nature and it was therefore incumbent on the Defendant to have clearly brought it to the notice of the Plaintiff.

222 The Defendant relied on the District Court decision in *Track-Truss* ([35] *supra*) at [34]–[36] in which the court found that the SLA Standard Trading T&C were incorporated into an *unsigned* contract simply through the existence of legible print on a quotation faxed to the plaintiff stating that "[a]ll business is transacted in accordance with the Standard Trading Conditions of the Singapore Aircargo Agents Association and the Singapore Freight Forwarders Association". The decision, is, with respect, at odds with the orthodox position in *Interfoto Picture* and *Shoe Lane Parking* ([214] *supra*). I note, however, that the District Judge found, in the alternative (and, in my view, on a surer legal footing) (at [37]–[38]), that there was a sufficient course of dealing between the parties in that case to incorporate the SLA Standard Trading T&C, given that there were two out of five previous delivery orders stating the same which were acknowledged and signed by plaintiff's managing director.

223 In the present case, Leaw's evidence was that during his meeting with Anthony Ser, he had gone through with him all the substantive clauses of the quotation. [note: 280] This would include cll 1 and 10 (reproduced above at [212]) which purported to incorporate the Defendant's STC. The fact that only the "highlights" of the Defendant's STC were said to be printed on the overleaf is not, in my view, a significant obstacle since the "highlights" on the overleaf did include cl 2.a(1)(d). However, Leaw admitted that he did not point Anthony Ser to the specific clauses of the Defendant's STC which the Defendant sought to rely on. [note: 281] In other words, the contents of cl 2.a(1)(d) (reproduced above at [205(b)]) were not specifically brought to the notice of the Plaintiff.

*The nomenclature problems vis-à-vis the incorporation of cl 27 of the SLA Standard Trading T&C*

224 In so far as the incorporation of cl 27 of the SLA Standard Trading T&C is concerned, if it can similarly characterised as an onerous clause, the conclusion in respect of cl 2.a(1)(d) (see above at [221]–[223]) applies equally. However, it is unnecessary for me to even embark on this exercise. First, the saving paragraph of cl 2 of the Defendant's STC, which purports to incorporate cl 27 and which is also printed on the overleaf of the Quotation, states:

> Save as aforesaid, The Standard Trading Conditions of the Singapore Logistics Association (SLA) – April 1998, save for Clause 26 and 27 shall apply and form part of our Standard Trading Conditions. Highlights of these provisions are set out below.

when there is no such document as the "Standard Trading Conditions of the Singapore Logistics Association (SLA) – April 1998". In 1998, the document which was in existence was the Singapore Freight Forwarders Association's Standard Trading Conditions 1998. By August 1999, the Singapore Freight Forwarders Association ("SFFA") had changed its name to the Singapore Logistics Association ("SLA"). [note: 282] There is a document known as the SLA Standard T&C, but it is dated May 2004 [note: 283] and not April 1998 as suggested in the above-mentioned words of incorporation.

225 Second, and more significantly, the text of the saving paragraph of cl 2 (reproduced above at [224]), while seeking to incorporate the SLA Standard Trading Conditions, expressly *carves out* cl 27 which the Defendant is relying upon. It does exactly the opposite of what the Defendant is asserting.

*Conclusion on the incorporation of the clauses*

226 In conclusion, my findings are that cl 2.a(1)(d) of the Defendant's STC and cl 27 of the SLA Standard Trading T&C were not properly incorporated into the contract between the parties.

***The Unfair Contract Terms Act (Cap 396, 1994 Rev Ed)***

227 In the event that I am wrong in relation to the issue of incorporation of the exclusion and limitation of liability clauses (in the analysis just preceding, above at [212]–[226]), it is necessary to consider the Plaintiff's arguments that these clauses were unenforceable pursuant to the application of the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) ("UCTA"). The Plaintiff relied on s 3 of the UCTA which reads as follows:

> **Liability arising in contract**
>
> **3**.—(1) This section applies as between contracting parties where one of them deals as consumer or on the other's written standard terms of business.
>
> (2) As against that party, the other cannot by reference to any contract term —
>
> (a) when himself in breach of contract, exclude or restrict any liability of his in respect of the breach; or
>
> (b) claim to be entitled —
>
> (i) to render a contractual performance substantially different from that which was reasonably expected of him; or

(ii) in respect of the whole or any part of his contractual obligation, to render no performance at all,

except in so far as (in any of the cases mentioned in this subsection) the contract term satisfies the requirement of reasonableness.

*Was the Plaintiff dealing as a consumer or on the Defendant's written standard terms of business?*

228 The threshold requirement to the applicability of s 3 of the UCTA is that the Plaintiff must show that it was dealing either as a consumer or on the Defendant's written standard terms of business. If this is satisfied, then the Defendant is not entitled, by reference to contract terms (*viz*, the limitation and exclusion of liability clauses referred to above), to unreasonably exclude or restrict liability in respect of its breach.

229 The Plaintiff is, in my view, unable to bring itself within the definition of a "consumer" under s 3 of the UCTA. Section 12 of the UCTA lays down the test which applies to determine whether a party to a contract "deals as a consumer". The relevant parts of s 12 in the present case are sub-ss (1)(a) and (b), which read as follows:

**Dealing as consumer**

**12**.—(1) A party to a contract "deals as consumer" in relation to another party if —

(a) he neither makes the contract in the course of a business nor holds himself out as doing so;

(b) the other party does make the contract in the course of a business; and

…

In cases where a contracting party is a company, Dillon LJ in *R & B Customs Brokers Co Ltd v United Dominions Trust Ltd* [1988] 1 WLR 321 at 330–331 explained the test as being one of whether the transaction in question was integral to the company's business:

[T]here are some transactions which are clearly integral parts of the businesses concerned, and these should be held to have been carried out in the course of those businesses; this would cover, apart from much else, the instance of a one-off adventure in the nature of trade, where the transaction itself would constitute a trade or business. There are other transactions, however, such as the purchase of the car in the present case, which are at highest only incidental to the carrying on of the relevant business; here a degree of regularity is required before it can be said that they are an integral part of the business carried on, and so entered into in the course of that business.

The Plaintiff in the present case was in the business of fabricating hard-disk covers and the metal coils in question were the raw materials. In such circumstances, the storage of coils pre-manufacture would, in my view, be an integral part of its business. This is further reinforced by the fact that the Plaintiff was regularly engaging warehousemen to store its coils. This conclusion is not changed by the fact that the Plaintiff had sold its business to Metalform Asia and did not envisage carrying on with the manufacture of hard-disk covers.

230 However, the Plaintiff falls within the second limb of s 3(1) of the UCTA because it had dealt

with the Defendant on its written standard terms of business. In *Hadley Design Associates Ltd v The Lord Mayor and Citizens of the City of Westminster* [2003] EWHC 1617 (TCC), Richard Seymour QC, sitting as a deputy High Court judge explained (at [78]) that "written standard terms of business" in s 3 of the Unfair Contract Terms Act 1977 (c 50) (UK) (*in pari materia* to our s 3) envisaged that there be a set of terms in the written form existing prior to the making of the agreement which was intended to be adopted more or less automatically by all transactions of a particular type without any significant opportunity for negotiations. This is the case here. The terms relied upon by the Defendant were pre-existing and printed on the overleaf of the prior quotations and the final Quotation. They were intended to be adopted in all their transactions with all customers. The present case therefore attracts the operation of s 3 of the UCTA.

*The requirement of reasonableness under UCTA*

231 Under s 3 of the UCTA, a party cannot by reference to any contract term exclude or restrict his liability for breach of contract except in so far as the contract term satisfies the requirement of reasonableness. The test of reasonableness is set out in s 11 as follows:

> **The "reasonableness" test**
>
> 11.—(1) In relation to a contract term, the requirement of reasonableness for the purposes of this Part and section 3 of the Misrepresentation Act [Cap. 390] is that the term shall have been a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made.
>
> (2) In determining for the purposes of section 6 or 7 whether a contract term satisfies the requirement of reasonableness, regard shall be had in particular to the matters specified in the Second Schedule; but this subsection does not prevent the court or arbitrator from holding, in accordance with any rule of law, that a term which purports to exclude or restrict any relevant liability is not a term of the contract.
>
> (3) In relation to a notice (not being a notice having contractual effect), the requirement of reasonableness under this Act is that it should be fair and reasonable to allow reliance on it, having regard to all the circumstances obtaining when the liability arose or (but for the notice) would have arisen.
>
> (4) Where by reference to a contract term or notice a person seeks to restrict liability to a specified sum of money, and the question arises (under this or any other Act) whether the term or notice satisfies the requirement of reasonableness, regard shall be had in particular (but without prejudice to subsection (2) in the case of contract terms) to —
>
> (a) the resources which he could expect to be available to him for the purpose of meeting the liability should it arise; and
>
> (b) how far it was open to him to cover himself by insurance.
>
> (5) It is for those claiming that a contract term or notice satisfies the requirement of reasonableness to show that it does.

As can be seen, s 11(5) places the burden of proof on the Defendant to show reasonableness and this was acknowledged by counsel for the Defendant. [note: 284]

232 The fact that a particular clause is found to be reasonable in one case does not necessarily mean that it is also reasonable in another – it depends on the facts of each case (see *Press Automation* at [45]). Therefore, even though in *Press Automation*, cl 27 of the Singapore Freight Forwarders Association Standard Trading Conditions (1986) ("the SFFA 1986 Conditions"), which is identical to cl 27 of the SLA Standard Trading T&Cs in the present case (save that in *Press Automation*, liability was limited to S$5 per kilogram and not S$1 per kilogram), was found by the High Court to be reasonable, this is of little value. It remains for me to decide, on the facts of *the present case*, whether what is being relied on by the Defendant is reasonable. This is because the evidence of the surrounding circumstances will necessarily be different in different cases (see *Phillips Products Ltd v Hyland and Another* [1987] 1 WLR 659n at 669).

233 In *Kenwell & Co Pte Ltd v Southern Ocean Shipbuilding Co Pte Ltd* [1998] 2 SLR(R) 583 ("*Kenwell*") at [61], the High Court expressed the view that "the more unreasonable a contractual provision appears to be, the greater is the burden on the party who seeks to rely on it". This is a sensible observation, and it reinforces the point that whether any particular term in a particular contract is reasonable depends on weighing the effect of the term against all the surrounding circumstances of the case.

234 The Defendant argued that the fact that the Plaintiff "must have had knowledge of the Defendant's STC and the [SLA Standard Trading T&C]" was a factor in favour of the clauses being regarded as fair and reasonable. [note: 285] In particular, the Defendant relied on evidence that prior to the Plaintiff's contract with it, the Plaintiff had entered into a contract with Transware, which was also on the basis of the SLA Standard Trading T&C, and therefore must have been aware that the present contract was subject to similar terms. The fact that the parties had knowingly entered into the contract containing the limitation and exclusion of liability clauses can hardly be dispositive of the reasonableness of such clauses under the UCTA since the Act is premised upon a contract having been entered into in the first place (see *Kenwell* at [58]). Nor does the fact that the party against whom the clause is being used has repeatedly entered into agreements on similar terms without complaint lead *ipso facto* to the conclusion that the terms are reasonable (see *Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd and another* [2013] 1 SLR 1 at [93]).

235 In the present case, where the Defendant is seeking to rely on terms of the contract to restrict liability to a specified amount of money (*ie*, to S$10,000 under cl 2.a(1)(d) of the Defendant's STC and to S$100,000 under cl 27 of the SLA Standard Trading T&C), s 11(4) of the UCTA obliges the court to have regard to (a) the resources which the Defendant had for the purposes of meeting the liability should it arise; and (b) how far it was open to it to cover itself by insurance. In this regard, the Defendant referred to the decision in *Press Automation* where, as I have noted above (at [232]), the High Court considered the reasonableness of cl 27 of the SFFA 1986 Conditions, which was almost identical to cl 27 of the SLA Standard Trading T&C under consideration in this case. [note: 286] In that case, Judith Prakash J (at [76]) took into consideration the fact that the insurance policy taken by the plaintiff owner of the goods "would most likely be cheaper than the liability policy which [the defendant freight forwarder] had taken out" in coming to the conclusion that the clause in question was reasonable. Prakash J also referred to expert evidence adduced from the insurance industry to the effect that without such limitation of liability clauses, transporters of cargos might not be able to obtain liability insurance.

236 The Defendant also relied on the fact that the court in *Press Automation* found that the freight forwarding members of the SLA had an industry-wide practice of trading on the said standard terms and conditions to argue that the same must be so in relation to the warehousing and storage members of the SLA. [note: 287]

237 I am unable to accept these arguments of the Defendant. To begin with, the findings made in *Press Automation* were in respect of the freight forwarding industry. The Defendant brought no evidence to show why they should extend to the warehousing industry beyond suggesting that the two industries fell under the umbrella of the SLA. [note: 288] Further, the finding of reasonableness of cl 27 in *Press Automation* was made on the basis of expert evidence on the workings of and considerations behind insurance arrangements in freight forwarding. No such evidence was adduced in the present case. The Defendant asserted that the cost of insurance purchased by the owner of the goods would be cheaper than the cost of liability insurance of the warehouseman [note: 289] and so drew an analogy to Prakash J's considerations of the same in *Press Automation*, but this again was a bare assertion in respect of which it had not adduced any evidence.

238 The Defendant has also not brought sufficient evidence to prove its assertion that the use of these terms was widespread in the warehousing industry. In his affidavit of evidence-in-chief, the Defendant's Leaw annexed a copy of what he claimed was the GKE Warehousing & Logistics Pte Ltd's "Warehouse and General Trading Conditions" as an example of another company in the industry using a similar limitation of liability clause to cap liability at S$10,000. [note: 290] The Plaintiff disputed the authenticity of this document [note: 291] and the Defendant has not proved its authenticity. In any event, evidence of *one* other instance of a similar standard term used in a contract by another player in the industry can hardly be satisfactory proof of an industry-wide practice.

239 For all the above reasons, even if cl 2.a(1)(d) of the Defendant's STC and cl 27 of the SLA Standard Trading T&C were validly incorporated into the contract between the Plaintiff and the Defendant, the Defendant has not satisfied its burden of proving that they are "reasonable" under s 3 of the UCTA.

**The duty to mitigate loss**

240 Because of my finding that the consignment of coils was largely worth scrap value before and after they were damaged, the Defendant's arguments that the Plaintiff had failed to mitigate its losses do not need to be considered. There is no evidence that the damage had worsened over time or that selling the damaged coils earlier would have fetched a higher price than they would now.

**Conclusion**

241 For all the above reasons, final judgment is entered for the Plaintiff in the sum of S$129,320.51. If the parties are unable to agree on costs, they are to write to the Registry within 14 days of this judgment for a date to be fixed to be heard on costs.

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[note: 1] Exhibits P100–P118.

[note: 2] Exhibits P100–P101.

[note: 3] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 20.

[note: 4] PW9 Notes of Evidence 25 Apr 2013 22/12–22/18. [The abbreviation adopted is, *eg*, "PWX NE XX Apr 2013 [page]/[line]–[page]/[line]".]

[note: 5] PW5 NE 9 Apr 2013 37/25 *et seq*, 30/17 *et seq*.

[note: 6] PW6 NE 10 Apr 2013 50/26–31, 86/23–87/13.

[note: 7] Affidavit of Evidence-in-Chief of PW7 Wong Luk Heng Adrian at pp 37–39.

[note: 8] Exhibits P8–P45.

[note: 9] PW5 NE 9 Apr 2013 43/7–12

[note: 10] Affidavit of Evidence-in-Chief of DW2 Mohamed Ferdaus bin Mohamed Yusoff at MF-2 p 16.

[note: 11] DW2 NE 29 Apr 25/32 *et seq*.

[note: 12] DW2 NE 29 Apr 69/2 *et seq*.

[note: 13] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 14; Affidavit of Evidence-in-Chief of PW10 Ser Kim Koi Anthony at para 22.

[note: 14] DW1 NE 25 Apr 2013 67/13–19; DW1 NE 24 June 2013 3/14–16, 4/9–8/22.

[note: 15] DW1 NE 26 Apr 68/9–27.

[note: 16] Affidavit of Evidence-in-Chief of DW1 Leaw Tiew San at pp 59–61, Tab E.

[note: 17] Agree Bundle of Documents Volume 1 at p 53.

[note: 18] DW1 NE 24 Jun 2013 50/1–51/26.

[note: 19] PW7 NE 18 Apr 2013 19/3–20/7, 22/16–26.

[note: 20] DW1 NE 26 Apr 2013 69/22–31; DW1 NE 24 Jun 2013 42/14–25, 122/28–123/13.

[note: 21] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at paras 14(a) and (b).

[note: 22] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at para 21(f).

[note: 23] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at para 21(e).

[note: 24] PW4 NE 8 Apr 2013 5/12–16.

[note: 25] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at para 21(f).

[note: 26] PW8 NE 18 Apr 2013 109/2–7.

[note: 27] PW8 NE 19 Apr 2013 46/22–48/4.

[note: 28] DW2 NE 25 Jun 2013 50/2–18.

[note: 29] DW2 NE 25 Jun 2013 47/15–24.

[note: 30] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at 151; DW2 NE 25 Jun 2013 101/21–103/11.

[note: 31] DW2 NE 25 Jun 2013 58/25–31, 60/5–24, 89/16–20, 98/18–99/2, 101/21–102/10, 113/25–114/19/

[note: 32] DW2 NE 25 Jun 2013 65/23–66/15.

[note: 33] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 8 para 2.2.

[note: 34] DW2 NE 25 Jun 2013 41/31–42/14, 128/18–23; Plaintiff's Closing Submissions at para 47.

[note: 35] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 61.

[note: 36] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 63.

[note: 37] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at pp 82–83.

[note: 38] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 158 para 57 and p 186 paras 139–140.

[note: 39] Defendant's Closing Submissions at paras 13(a) and 14(b).

[note: 40] DW3 NE 25 Jun 2013 50/8–18, 129/2–7.

[note: 41] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 5.

[note: 42] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 17 para 5.5.

[note: 43] PW8 NE 19 Apr 2013 58/22–59/5.

[note: 44] Affidavit of Evidence-in-Chief of Qiu Jianhai at pp 52–61; Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 8 para 2.2.

[note: 45] DW3 NE 25 Jun 2013 94/25–30.

[note: 46] DW3 NE 25 2013 130/11–21.

[note: 47] DW3 NE 25 Jun 2013 73/25–30, 116/11–118/22.

[note: 48] DW3 NE 25 Jun 2013 132/4–5.

[note: 49] Plaintiff's Closing Submissions at para 113.

[note: 50] PW8 NE 19 Apr 2013 75/11–19.

[note: 51] PW8 NE 19 Apr 2013 74/26–28.

[note: 52] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at 140 p 166 para 73.

[note: 53] DW3 NE 25 Jun 2013 84/23–25.

[note: 54] DW3 NE 25 Jun 2013 109/25–110/4.

[note: 55] Exhibit P102.

[note: 56] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 20.

[note: 57] PW9 NE 25 Apr 2013 49/7.

[note: 58] Plaintiff's Closing Submissions at para 120.

[note: 59] PW9 NE 25 Apr 2013 50/16–18.

[note: 60] Statement of Claim (Amendment No 1) at p 5.

[note: 61] Defendant's Letter of 7 October 2013 at Annex B.

[note: 62] Plaintiff's Letter of 9 October 2013.

[note: 63] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 38.

[note: 64] PW8 NE 19 Apr 2013 2013 87/27–29.

[note: 65] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 49.

[note: 66] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 17, para 5.5.

[note: 67] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 39.

[note: 68] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 53, Figure C1.

[note: 69] Exhibit P103.

[note: 70] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 20.

[note: 71] PW9 NE 25 Apr 2013 47/25–48/3.

[note: 72] Plaintiff's Closing Submissions at para 189.

[note: 73] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 52.

[note: 74] Plaintiff's Closing Submissions at para 223.

[note: 75] PW8 NE 19 Apr 2013 85/3–24.

[note: 76] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at pp 38–39.

[note: 77] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at para 21(a); Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 15 para 4.18; Affidavit of Evidence-in-Chief of DW2 Mohamed Ferdaus bin Mohamed Yusoff at MF-2 p 9.

[note: 78] PW4 NE 8 Apr 2013 16/21–17/1.

[note: 79] Affidavit of Evidence-in-Chief of PW7 Wong Luk Heng Adrian at para 19.

[note: 80] PW7 NE 17 Apr 2013 31/10–19.

[note: 81] PW7 NE 17 Apr 2013 31/31–32/2, 33/3–20, 33/24–34/16.

[note: 82] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at paras 9(k); Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at pp 22, 42 and 53, DW3 NE 25 Jun 2013 7/21–11/20.

[note: 83] DW2 NE 29 Apr 2013 20/13–18.

[note: 84] DW5 9 Apr 2013 81/1.

[note: 85] Oral Reply Submissions NE 4 Oct 2013 64/7–32.

[note: 86] Exhibits P104–P110.

[note: 87] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 21A.

[note: 88] Plaintiff's Closing Submissions at para 227.

[note: 89] Defendant's Closing Submissions at para 66.

[note: 90] Defendant's Letter of 7 October 2013 at Annex D.

[note: 91] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 12.

[note: 92] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at p 23.

[note: 93] Plaintiff's Closing Submissions at para 314.

[note: 94] Plaintiff's Closing Submissions at paras 310–314.

[note: 95] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at pp 276 and 285.

[note: 96] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 280.

[note: 97] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 23, para 23.

[note: 98] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 164, para 68.

[note: 99] Exhibit P115.

[note: 100] Plaintiff's Closing Submissions at para 242.

[note: 101] DW2 NE 25 Jun 2013 129/28–130/20.

[note: 102] Exhibits P111–P114.

[note: 103] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 21A.

[note: 104] Plaintiff's Closing Submissions at para 232; Defendant's Closing Submissions at para 69.

[note: 105] Defendant's Letter of 7 October 2013 at Annex E.

[note: 106] Defendant's Letter of 7 October 2013 at Annex E.

[note: 107] Plaintiff's Closing Submissions at para 312 and 314.

[note: 108] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 12.

[note: 109] Exhibit P112.

[note: 110] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at pp 27 and 158.

[note: 111] Plaintiff's Closing Submissions at para 312 and 314.

[note: 112] Exhibit P111.

[note: 113] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 12.

[note: 114] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 162.

[note: 115] Plaintiff's Closing Submissions at para 311 and 314.

[note: 116] Exhibit P111.

[note: 117] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at p 23.

[note: 118] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 276.

[note: 119] Affidavit of Evidence-in-Chief of DW2 Mohamed Ferdaus bin Mohamed Yusoff at MF-2 p 15, MF-3p 67–68, p 117 para 32(f); Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at pp 27 and 158.

[note: 120] DW2 NE 30 Apr 2013 13/2–4, 15/28–16/10.

[note: 121] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 21.

[note: 122] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 28.

[note: 123] PW6 NE 10 Apr 2013 94/30–31.

[note: 124] DW1 NE 24 Jun 2013 31/19–32/4.

[note: 125] DW1 NE 26 Apr 2013 69/3–31, DW1 NE 24 Jun 2013 42/22–32, 122/10–123/13.

[note: 126] PW6 NE 10 Apr 2013 9–106, but especially 12/7–11.

[note: 127] PW6 NE 10 Apr 2013 106/10–21.

[note: 128] Affidavit of Evidence-in-Chief of DW2 Mohamed Ferdaus bin Mohamed Yusoff at MF-2 p 15.

[note: 129] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 51, para 8.1.

[note: 130] Affidavit of Evidence-in-Chief of DW2 Mohamed Ferdaus bin Mohamed Yusoff at MF-2 p 15.

[note: 131] DW2 NE 30 Apr 2013 10/23–11/18.

[note: 132] PW10 NE 23 Apr 2013 55/23–30; NE 24 Apr 2013 33/14–28.

[note: 133] DW1 NE 26 Apr 2013 72/9–30.

[note: 134] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 11.

[note: 135] PW6 NE 10 Apr 2013 33/31–35/16.

[note: 136] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 11.

[note: 137] DW1 NE 24 Jun 2013 9/14–21.

[note: 138] DW1 NE 24 Jun 2013 14/24–15/1.

[note: 139] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at pp 40 *et seq*.

[note: 140] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 42.

[note: 141] PW8 NE 19 Apr 2013 2013 87/27–29.

[note: 142] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 61.

[note: 143] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 41.

[note: 144] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 21A.

[note: 145] Exhibit P115.

[note: 146] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 21A.

[note: 147] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 42.

[note: 148] PW9 NE 25 Apr 2013 55/26–29.

[note: 149] Exhibit P115.

[note: 150] Defendant's Letter of 7 October 2013 at Annex F.

[note: 151] Defendant's Letter of 7 October 2013 at Annex F.

[note: 152] Exhibit P116.

[note: 153] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 21.

[note: 154] PW9 NE 25 Apr 2013 57/30–58/1.

[note: 155] Plaintiff's Closing Submissions at para 73.

[note: 156] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at para 2.1(e); Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 8 para 2.2.

[note: 157] Affidavit of Evidence-in-Chief of PW4 Qiu Jianhai at p 16 para 12(b); Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 167 para 76.

[note: 158] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at para 12.

[note: 159] Plaintiff's Closing Submissions at paras 311 and 314.

[note: 160] Affidavit of Evidence-in-Chief of PW6 Ser Sai Kiang Serene at p 23.

[note: 161] Defendant's Closing Submissions at para 74(e).

[note: 162] Exhibit P 117.

[note: 163] Defendant's Closing Submissions at para 87.

[note: 164] Exhibit P118.

[note: 165] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 178.

[note: 166] Affidavit of Evidence-in-Chief of PW5 William Thomas Selby at p 44.

[note: 167] Affidavit of Evidence-in-Chief of DW3 Liam Kok Chye at p 197.

[note: 168] Defendant's Closing Submissions at para 87.

[note: 169] Plaintiff's Closing Submissions at paras 261–265, 303.

[note: 170] Defendant's Closing Submissions at para 141.

[note: 171] Defendant's Closing Submissions at para 142.

[note: 172] Defendant's Closing Submissions at para 147.

[note: 173] Defendant's Closing Submissions at para 147(a).

[note: 174] Defendant's Closing Submissions at para 147(b).

[note: 175] Defendant's Closing Submissions at para 147(b).

[note: 176] Plaintiff's Closing Submissions at paras 266–269.

[note: 177] Plaintiff's Closing Submissions at paras 270–272.

[note: 178] Plaintiff's Closing Submissions at paras 276–281.

[note: 179] Plaintiff's Closing Submissions at paras 282–289.

[note: 180] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 38–39, 42–43.

[note: 181] PW8 NE 18 Apr 2013 101/28–104/32; NE 19 Apr 2013 18/17–23/11; and *contra* NE 19 Apr 2013 98/27–99/9.

[note: 182] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 16 para 29.

[note: 183] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 19 para 37.

[note: 184] DW4 NE 26 Jun 2013 24/29–25/2.

[note: 185] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at pp 19–21 paras 38–42.

[note: 186] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at pp 22–23 paras 48–50; DW4 NE 26 Jun 2013 60/14–16, 26–28.

[note: 187] DW4 NE 26 Jun 2013 69/17–19.

[note: 188] Plaintiff's Closing Submissions at paras 290–302.

[note: 189] DW4 NE 26 Jun 2013 8/30–32.

[note: 190] DW4 NE 26 Jun 2013 36/3–6, 64/5–7.

[note: 191] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 18 para 33(c).

[note: 192] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 45 para 21.

[note: 193] DW4 NE 26 Jun 2013 20/31–21/5.

[note: 194] DW4 NE 26 Jun 2013 18/1–5.

[note: 195] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at pp 18–19 para 33.

[note: 196] DW4 NE 26 Jun 2013 35/28–32.

[note: 197] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 23 para 49; DW4 NE 26 June 2013 63/25–29.

[note: 198] PW8 NE 18 Apr 2013 70/6–28.

[note: 199] PW8 NE 19 Apr 2013 2/13–31.

[note: 200] PW8 NE 19 Apr 2013 44/16–20.

[note: 201] PW8 NE 18 Apr 2013 89/28–32.

[note: 202] Defence (Amendment No 3) at para 16.

[note: 203] See, *eg*, Affidavit of Evidence-in-Chief of PW10 Ser Kim Koi Anthony at paras 10–11; Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 14 paras 14–15.

[note: 204] Plaintiff's Closing Submissions at para 266.

[note: 205] PW3 NE 4 Apr 2013 89/24–26.

[note: 206] Affidavit of Evidence-in-Chief of PW3 Chan Kwong Shing Adrian at paras 5–9.

[note: 207] PW9 NE 22 Apr 2013 94/17–96/29.

[note: 208] PW10 NE 24 Apr 2013 24/31–32.

[note: 209] PW3 NE 4 Apr 2013 100/11–30.

[note: 210] PW3 NE 4 Apr 2013 90/13–17.

[note: 211] PW3 NE 4 Apr 2013 91/1; Affidavit of Evidence-in-Chief of PW3 Chan Kwong Shing Adrian at para 6.

[note: 212] Affidavit of Evidence-in-Chief of PW3 Chan Kwong Shing Adrian at p 22.

[note: 213] Affidavit of Evidence-in-Chief of PW3 Chan Kwong Shing Adrian at p 62.

[note: 214] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at pp 21–22 para 55.

[note: 215] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 71 para 71 fn 25.

[note: 216] DW2 NE 26 Apr 2013 128/28–129/21.

[note: 217] Exhibit D8; DW2 NE 26 Apr 129/24–27.

[note: 218] DW4 NE 26 Jun 2013 69/17–19.

[note: 219] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at pp 22–23.

[note: 220] Exhibit P80–81.

[note: 221] PW8 NE 19 Apr 2013 3/11–4/17.

[note: 222] PW8 NE 18 Apr 2013 105/11–14.

[note: 223] DW4 NE 26 Jun 2013 40/2–4.

[note: 224] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 71 para 71 fn 25.

[note: 225] PW8 NE 19 Arp 2013 109/1–29.

[note: 226] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 13 para 30.

[note: 227] DW4 NE 26 June 2013 76/28–29.

[note: 228] PW8 NE 19 Apr 2013 15/10–14.

[note: 229] PW8 NE 19 Apr 2013 109/22–110/13.

[note: 230] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 44.

[note: 231] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 47.

[note: 232] PW8 NE 19 Apr 2013 16/27–17/11.

[note: 233] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 49.

[note: 234] PW 8 NE 18 Arp 2013 100/23–31.

[note: 235] Defendant's Closing Submissions at paras 130 and 157.

[note: 236] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 27 *et seq*.

[note: 237] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at pp 45–46.

[note: 238] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 46.

[note: 239] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 46.

[note: 240] PW8 NE 19 Apr 2013 104/13–105/12.

[note: 241] Defendant's Closing Submissions at para 133(d).

[note: 242] Defendant's Closing Submissions at para 133(e).

[note: 243] Defendant's Closing Submissions at para 133(a).

[note: 244] Defendant's Closing Submissions at para 131(a).

[note: 245] Affidavit of Evidence-in-Chief of PW9 Tay Puay Cheng at p 25A.

[note: 246] Affidavit of Evidence-in-Chief of PW8 Peter Wildbore at p 50 at para 7.3.

[note: 247] PW8 NE 18 Apr 2013 100/8–9.

[note: 248] PW8 NE 18 Apr 2013 100/15–21.

[note: 249] PW9 NE 22 Apr 2013 115/6–18.

[note: 250] Defendant's Closing Submissions at para 132.

[note: 251] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at pp 21–22 para 55.

[note: 252] Oral Reply Submissions NE 4 Oct 2013 131/12–31.

[note: 253] Affidavit of Evidence-in-Chief of DW4 Ng Teck Hock Norman at p 71 para 71 fn 25.

[note: 254] Defendant's Closing Submissions at para 162 *et seq*.

[note: 255] Defendant's Closing Submissions at paras 168–172.

[note: 256] DW1 NE 26 Apr 2013 69/22–31; DW1 NE 24 Jun 2013 42/14–25, 122/28–123/13.

[note: 257] Defendant's Closing Submissions at paras 179–183.

[note: 258] Defendant's Closing Submissions at paras 180–182.

[note: 259] Defendant's Closing Submissions at paras 173–178.

[note: 260] DW1 NE 26 Apr 2013 72/9–30.

[note: 261] PW10 NE 23 Apr 2013 55/23–30; NE 24 Apr 2013 33/14–28.

[note: 262] Defendant's Closing Submissions at paras 186–187.

[note: 263] Oral Reply Submissions NE 4 Oct 2013 136/29–137/4.

[note: 264] Defence (Amendment No 3) at para 14.3(b).

[note: 265] Affidavit of Evidence-in-Chief of DW1 Leaw Tiew San at pp 23–26, Tab A; Agreed Bundle (Volume 5) at pp 1843–1846.

[note: 266] Defendant's Closing Submissions at para 198(d)(v); DW1 NE 30 Apr 2013 82/7–12.

[note: 267] Plaintiff's Closing Submissions at para 330.

[note: 268] PW10 NE 23 Apr 2013 49/18–70/4 generally.

[note: 269] PW10 NE 23 Apr 2013 66/10–12.

[note: 270] Affidavit of Evidence-in-Chief of DW1 Leaw Tiew San at para 5.

[note: 271] DW1 NE 30 Apr 2013 82/24–83/12; DW1 NE 26 Apr 2013 82/11–16.

[note: 272] DW1 NE 25 Apr 2013 92/18–32.

[note: 273] Defendant's Closing Submissions at para 193.

[note: 274] PW10 NE 23 Apr 2013 60/4–61/19.

[note: 275] PW10 NE 23 Apr 2013 59/1–14.

[note: 276] PW10 NE 23 Apr 2013 61/2–9.

[note: 277] PW10 NE 23 Apr 2013 61/23–29.

[note: 278] PW10 NE 24 Apr 2013 2/20–4/8.

[note: 279] Affidavit of Evidence-in-Chief of DW1 Leaw Tiew San at para 34.

[note: 280] DW1 NE 25 Apr 2013 92/18–32.

[note: 281] DW1 NE 24 Jun 2013 118/20–22.

[note: 282] Exhibit P120.

[note: 283] Exhibit P121.

[note: 284] Oral Reply Submissions NE 4 Oct 2013 136/17–23.

[note: 285] Defendant's Closing Submissions at para 217(c).

[note: 286] Defendant's Closing Submissions at paras 214–216.

[note: 287] Defendant's Closing Submissions at para 217(d).

[note: 288] Defendant's Closing Submissions at para 217(d).

[note: 289] Defendant's Closing Submissions at para 217(f).

[note: 290] Affidavit of Evidence-in-Chief of DW1 Leaw Tiew San at para 33, pp 65–83, Tab G.

[note: 291] Plaintiff's Closing Submissions at para 388.