

The trial of Euromin and James Martell for the manslaughter of Simon Jones

The trial of Euromin and James Martell for the manslaughter of Simon Jones took place between 7th and 29th November 2001 at the Old Bailey. The case was held before Justice Stokes with Patrick O'Connor QC appearing for the crown and Mr Walker QC appearing for the defence. On 29th November 2001 the jury cleared general manager Richard James Martell and Euromin of manslaughter by a majority verdict while finding the company guilty of two breaches of health and safety regulations.

These texts are taken from detailed notes taken during the trial and elsewhere but are not formal transcripts. In the texts, the abbreviations J for Justice Stokes, P for Patrick O'Connor, QC for the prosecution and D for Mr Walker, QC for the defence are used. The first text is of the pre-trial hearing held on 8th October 2001.

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1 Pre-trial hearing 8th October 2001

His Honour Judge Stokes, Mr Walker QC (Defence), Mr Patrick O'Connor QC (Prosecution)

D: We are not moving for an Abuse of Process Hearing, in the light of a Court of Appeal decision earlier this year. The only matter to be decided is whether the Prosecution calls Roger Grant as a witness. The judge cannot compel the Prosecution to call a witness, but he can require them to do so.

J (puzzled): He can't compel but can require?

D: Anyone would suppose that Grant is a key witness.

He arranged the system of working that day, he sorted out the banksman, and he saw the operation. He was not an eye-witness to the incident, but he saw the grab before and after. He was present at the "meeting" with the "specialist" re fitting of hooks.

He has been all his life at sea!!

He is not being called because his evidence favours the Defence.

Of Grant's 5 statements, 2 were made before the Divisional Court hearings. These and his 3rd statement were served on 8 March 2001. The 4th and 5th statements were served on 13 July 2001, and were previously unseen by the Defence.

Page 5 of the Prosecution summary includes.... Chains previously wrapped round grab.... Hooks welded inside grab.... Greater and different dangers.... Martell's responsibility... no steps taken to contact the manufacturers (Liebherr).... No evidence that Martell got advice from proper source.

Grant's evidence (page 14): Stallion Testing recommended fitting of hooks and said where to fix them. Stallion specialise in crane safety.

P: That isn't quite correct.

D. (checks notes): Er, maybe not. The final page of Prosecution's Skeleton Argument relies on a conversation between Harris and Grant, of whom one is now dead, and the other is not being called as a witness.

We don't want to call Grant because he may say he just did what he was told by Martell.

Looking at Archbold section 4.2.7.5, if the Prosecution directs its mind to issues of fairness, it will call Grant. The jury should have access to all the available evidence.

So, what can this court do?

Looking at the judgement in the case of Oliver, if the Prosecution is improperly not calling a witness, it is open to the judge to call that witness. The Prosecution should not object to that, as it would be seen as unfair. I invite you to call this witness.

We could call this witness ourselves, or we could do nothing, and then appeal if there were a conviction.

J: You might get a dusty answer from the Court of Appeal if this witness was available for the Defence to call!

D: Finally (for the 3rd time).... Going back to 3.5.8. the judge should rule that the witness is called.

P: This application is an order against the Crown. It should be rejected. The court cannot deal with it today. The Defence can raise this point at any time during the trial, and the trial judge can decide.

The judges at Judicial Review were in no doubt as to the obvious degree of danger in the system at Euromin.

The Prosecution are not under duty to call witnesses who have served statements on the Defence. We have no duty to act as Defence as well as Prosecution! The Prosecution summary contains no statements of Grant.

(Refers to cases of Richardson and Nugent)

The Defence is saying it doesn't want Grant saying anything embarrassing. Is he an unimpeachable witness?

Grant says 2 things which don't help the Prosecution case. The decision was taken by the Prosecution team, including the CPS and the Police.

- He saw no risk in the exercise of this system.
- The changeover from hook to grab was at the instigation of Martell.

Re point 1:

How obvious was the risk, which Grant couldn't see, even with the shortened chains? (shows judge large-scale drawings showing headroom under grab in various conditions)

quite foreseeably, the grab came in below head height. The banksman was critical but he couldn't see the men in the hold because the grab was in the way. Stallard says he was not offering safety consultancy, nor had he seen the system in operation.

Grant's statement is contrary to common sense.

We submit that everyone knew there were safety implications. Grant is the victim of the oppressive regime at Euromin.

Re point 2:

See pages 11 15 and 25: There was no particular policy on changing the grab and the hook. Grant says he and others took the decision. Harris says it was down to Martell; the others wouldn't dare.

We don't wish to be unfair to Grant as he is not here, but he may not tell the truth, out of loyalty to Martell, or because of his own guilt, or because he still works at Euromin and is afraid for his job.

J: The Prosecution is saying that Grant's statements are not worthy of belief. I should not intervene unless I think the Prosecution is being unfair.

D: No witness saw anything wrong with the system before the fatality. Why assume that Grant knew it was dangerous? Harris says that Martell's decision was driven by profit. Conversations between Grant and Harris about changing the hooks are hearsay, and would not be admissible.

J: I shall give my ruling at 2.05 p.m.

Summary of Judge's opinion re application of Euromin's defence counsel to require prosecution to call Roger Grant as a witness.

Mr Walker Q.C. appeared to accept that the Judge could not compel the prosecution to call a witness. He then said, "require" but His Hon. Judge Stokes could see little difference between that and "compel". He could recommend such an action and Mr Walker maintained that the Judge had the jurisdiction to do so. Mr Walker says no-one could say Grant was not a key witness; he was present at the meeting with Martell and Stallard and was in charge of unloading the Cambrook on 24 April 1998. He arranged for Simon to be employed and for the Polish crewman to act as banksman. He witnessed the scene immediately before the incident and afterwards.

Grant still works for Euromin, is of good character and Mr Walker submits that the prosecution is not calling Grant because his evidence does not support their case.

Mr Walker Q.C. says the decision not to call R. Grant seems to have come late in the day. He notes that statements taken from Grant were used during Judicial Review.

He relies on Martell's evidence that he took expert advice from Ronald Stallard of Stallion Engineering although Mr Stallard denies giving such advice.

He remarks on the long experience of ships and docks gained by Roger Grant and he refers to the 5 statements made by Grant.

In the first statement, Grant sets out the origin of fitting the hooks.

In his second statement he relates experience of different ships in similar circumstances and gives further details.

His third statement could be useful to the defence, in it he says Martell was very concerned about Health and Safety and also that any one of three people could make the decision about which hook to use.

Mr Walker Q.C. relies on the meeting between Martell and Stallard, at which Grant was present, where he says Stallard recommended the hooks and where to fit them.

Grant's 4th statement refers to training of staff. He also says that he saw the position of the grab directly after the incident and that he had never seen the grab close inadvertently before.

In his 5th statement he says he had seen the open grab before the incident being used with shortened chains and he believed there was no danger whatsoever.

Mr Walker maintains these statements are not inconsistent and he pours scorn on the fact that Grant being still employed by Euromin could affect the veracity of his statement.

He quoted the case of Russell Jones where it was ruled that the prosecution had discretion on calling witnesses but must disclose all statements of potential witnesses to the defence, also that all witnesses should be called unless the prosecution believes their evidence to be incredible. Lord Justice Kennedy's ruling in the case of Russell Jones includes a quotation from Lord Parker, "The Judge can interfere and invite the prosecution to call a witness."

Mr Walker relies especially on the 4th of a number of Lord Justice Kennedy's statements. He also quotes Stokes who like Lord Justice Kennedy says in his 5th and 6th propositions, "The prosecution has the discretion to decide who is a primary witness and is the primary judge of who is a reliable witness."

A case from the Court of Queen's Bench was quoted before Judge Stuart Smith where it was said, "The question of a witness' credibility should be related to the content of the witness statement generally and not to his character."

Mr Walker maintained that even though the prosecution had not requested Grant as a witness that the Judge should request that they did so.

Mr O'Connor on the other hand says this case mirrors that of Richardson and that he is not required to call a witness if that witness' testimony had never formed a part of his case. It was available to the defence to call a witness that the prosecution could call. Lord Taylor cites a number of authorities – In the case of Balfour, “the prosecution has wide discretion but must call a witness if he is capable of belief”.

At no stage have the prosecution relied on the testimony of Grant.

Further, Mr O'Connor tells me I have no jurisdiction in this case and even if I did, the prosecution team have concluded that Grant's statements are not capable of belief. The principal reason for this is that Grant says he was not aware of any danger in the system being used even though this was contrary to what was stated in the safety manual and defied common sense.

He cites a further three points where Grant is not capable of belief and having anxiously assessed the evidence the prosecution has concluded that they do not have to call Grant.

Judge Stokes agreed that he had no power to compel the prosecution to call a witness. Thus far the case was on a par with Richardson. Secondly that even if he had the jurisdiction he would not request the prosecution to call Grant because even though not all of his evidence is unbelievable, some of it is. The prosecution was not wrong in principle nor have they acted irresponsibly. He did not conclude that they had exercised their discretion improperly. The defence could call Grant if they thought he was a key witness. Therefore the application is refused.

Judge Stokes added that should he not be appointed as trial judge that Mr O'Connor should be prepared to air his reasons again at the start of the trial.

2 Prosecution opening speech

Mr Martell is the senior manager of Euromin Ltd, a company situated in Shoreham in Sussex . It imports building materials and sells them on to customers in this country. Its main activities are unloading ships at the quay side in Shoreham and loading lorries to distribute the materials to customers within Britain .

There is no doubt that Euromin owned and operated the business at Shoreham Docks.

Euromin imported bulk stone and aggregate from ships arriving from Holland

Euromin was the only trading establishment on the dockside unloading aggregate at the quayside.

Mr Martell was not only the general manager but was solely in charge of the site and the business. As such he was a key player and should be held solely accountable.

Simon Jones was a 24 year old Sussex University student who was taking a year out from his studies before sitting his final exams. To finance himself he had signed on for work at an employment agency, Personnel Selection in Brighton . He was physically fit, alert and intelligent.

On the morning of April 24 th Simon was sent by Personnel Selection to the premises of Euromin. He arrived shortly after 8 am. By 10.15 am he was dead.

As Simon arrived at Euromin the MV Cambrook was coming into dock. Simon was sent to join the other men on the quay side and was soon sent into the hold of the ship to act as a stevedore, a job for which he had no experience or training.

The system being used for unloading consisted of a Liebherr 984 excavator. Instead of using a lifting hook the clam shell grab had been modified by welding hooks above it to which chains were attached so that they hung down inside the open grab. The chains were 8 feet long but more than three feet of this was taken up by the distance between where they were attached and the depth of the grab. This meant there was less than five feet between the bottom of the grab and the tops of the bags. Simon was more than a foot taller than the bags so the head room between him and the grab was less than four feet. To these chains Simon and Sean Currey, another casual worker were instructed to attach bags of cobble stones so that they could be unloaded on to the quayside. This placed Simon directly under the grab bucket and placed him in danger of his life.

The raising and lowering of the grab and opening and closing the grab was controlled by a series of joysticks within the excavator cab. The excavator driver could not see into the hold and had to rely on a series of hand signals from a banksman whose job it was to communicate between the men in the hold and the excavator driver. On this day the usual banksman was working elsewhere on the site and due to shortage of staff a Polish crewman, who spoke no English was used to do this.

As Simon was carrying out this task the grab (weighing about 2 tonnes), which had come in too low, suddenly closed about his head and neck crushing his skull and virtually decapitating him. He died almost instantly. The grab closed silently in less than 1 second. There was no warning and no chance of escape.

Mr Martell is guilty of manslaughter due to gross negligence. Although he was not present at the time of Simon's death he was responsible for setting up the dangerous system of work and as such his actions showed a wilful disregard and lack of attention to safety. Because of Mr Martell's position of seniority within the Company, the Company is also culpable.

At this point 2 files (A and B) – 6 of each were handed out to the jury. The files consisted of photographs and plans of the site and other documents.

File A tab 2 shows a plan of the harbour and Euromin's site at Penney's wharf. Euromin's site is outside the lock gates on tidal water. There are aerial photographs of the site and a plan of the premises. There is also a stowage plan of the Cambrook as it was on 24 th April 1998 showing a pile of loose aggregate (2400 tonnes) in the centre of the hold and near the bow – bags of rumble stones. To the left of the aggregate is the automatic discharge machine.

Photographs by Mr Bloomfield, the police photographer show: The Cambrook with retracted hatch covers; the arm of the Liebherr is to the right of these.

1. The bow of the Cambrook with the excavator arm; behind this is the conveyor belt.
 2. The starboard side of the ship is to the quay.
 3. The Liebherr excavator with the driver's cab open, you can see where the driver sits. (The driver Mr Russell Harris was also known as "Jim").
 - 4,5 & 6 These three photographs show the excavator arm extended into the hold and a pile of bags next to the police car (to give an idea of scale).
 7. A full view of the Liebherr with the arm extended to the far side of the hold. You can see the top of the grab. It shows the hold is so deep the driver cannot see people in the hold so a banksman is needed.
 8. The top of the grab.
 9. The depth of the hold with some bags present.
 10. Aggregate, automatic scoop and conveyor belt.
 11. The front of the hold (empty) with bags to the right.
 12. Bags
 - 13,14. The photographer on the hold floor, levels of bags, the open grab.
 15. What happened to Simon in the hold.
 16. Hydraulics
 - 17,18. The open grab – the yellow spot is the improvised hook welded at the instigation of Martell.
 19. Simon under the grab with the chains hanging down. There are 2 sets with the hooks on to the bag they were working on. The photograph was taken 1 hour after death and high tide. The position may have altered as the tide began to fall.
- The next 2 photographs show how much head room there was (or wasn't).
Expert assistance will be given in relation to this point. I would ask you to imagine the jaws of the grab closing and then to imagine how much chain would be left protruding.

It was now 1 pm and the court was adjourned until 2.05 pm.

Please turn to File B. the photographs taken by Miss C Barringer, the Health and Safety Inspector can be found under tab 4.

Photograph Number 7 shows how the chains tighten as the tide falls. We intend to show you a video – not a reconstruction – just to show you the size, power and mechanics of the Liebherr 984.

Page 154 of your files shows the controls in the cab taken from the Liebherr manual. The manual explains the correct use of the Liebherr 984, its equipment and attachments. On the right hand side of the driver's seat is number 3, the joystick. If it is moved to the left it closes the grab, moving it to the right opens it.

We shall introduce eyewitness testimony as to Simon's conduct prior to his death. This will be provided by Mr Sean Currey who was in the hold at the time.

Simon was not given any proper instructions as to the job he was to perform. No training was given to Simon or other casual workers. Sean explained to Simon what to do including safety precautions but he was himself only a casual labourer. He will tell us that the excavator arm with

the grab kept coming in too low. Instead of the chains just touching the bags they were suspended in the air just below the bags.

Therefore Sean and Simon had to reach across the tops of the bags to retrieve the chains. This placed them even closer to the grab. Sean didn't see the grab close; When Harris opened the grab Simon fell out of it. Due to the death of Mr Harris we cannot ascertain what was seen from his vantage point as driver of the Liebherr but from his statement made to the police that day we know that Harris couldn't see into the hold he was dependant on the banksman. Kasprzak was on the port side and didn't see the grab shut.

Why did the grab close? There was no mechanical failure and the controls worked as they should do. Mr Harris didn't deliberately operate the grab to close it. Mr Harris probably inadvertently operated the lever with his clothing as he turned to the left. A possible clue could lie in Mr Kasprzak's statement to the police. In it he said that he ran around to get Mr Harris' attention and noticed he was turned away from the controls.

Miss Barringer's photographs 10 – 12 show the cab controls. Within the cab there is a label showing the safe working load. Any load being lifted would be in addition to the weight of the grab. The weight of the grab was 2500 Kg. There is a television screen now in the cab; it was installed in March 2001. It wasn't there in April 1998.

If it had been installed then, Mr Harris would have been able to see what was going on in the hold and Simon's life could have been saved. Photographs 4 to 10 further illustrate the positions in the cab of the joysticks and the foot pedals. The joystick is deliberately placed close to the seat for ease of use by the operator who may be operating the machine for long periods. Similarly it is very sensitive in order to prevent strain injuries.

Harris cannot be blamed if Martell or Euromin are a significant cause of death; his role is dwarfed by that played by the two defendants.

The indictment Counts 1 & 2 Gross negligence manslaughter contains 4 elements: - A duty on the defendant to take reasonable care; a breach of that duty of care; the breach was a significant cause of death; the breach must be grossly negligent.

Gross negligence must be decided by a jury in fairness to the defendant, the family and other workers. Why was Martell grossly negligent?

1. He created an obvious risk of death.
2. He was indifferent to the risks faced by his workers.
3. He did appreciate the risk, but decided to override them.
4. He failed to protect his workers.
5. He failed to set up safety systems.

The grab was intended for dealing with loose aggregate with no person near. It was obviously dangerous for a person to be near the grab. It was obvious that anyone caught in the jaws of the grab would have been crushed.

The Liebherr safety instructions – file B page 63 (these were inside the cab) state that no person should be within the attachment range. Martell was aware of this and these instructions should have been unconditionally observed in addition to government rules. The manual clearly states

that no-one should be within the range of the attachment i.e. the grab yet Simon had to do this to attach the chains to the bags. The manual showed the correct attachments to be used for particular tasks so as to ensure any task was undertaken safely. Liebherr provided a hook attachment for the lifting of loads such as bags.

This safe hook attachment was available at Euromin. If this attachment had been used that day it would have eliminated the danger of the grab closing. There was plenty of notice that the Cambrook was coming and what its load was. So there was plenty of time to change to the correct attachment.

On February 11th 1998 hooks were welded inside the grab: see Tab 4 photos 13 – 14. This shows Martell chose not to use the correct attachment several weeks before this incident. Before February 11th 1998 Euromin were employing a different unsafe system with the chains wrapped around the grab. It was difficult to attach the chains securely but there was no risk from the open grab. Martell took no steps to consult the manufacturers of the excavator about the safety of his modifications despite regular contact with them. He made no safety assessment of the system.

The joystick controls were finger tip sensitive and Martell knew this. This joystick was not a switch so the grab would keep closing to the extent that the joystick was held. The excavator was stationary but the ship moves up and down with the tide, when other boats pass, with movements of the cargo, the level of bags as they are unloaded causes the ship to rise – the operation was filled with variables and uncertainties.

Because of the noise of the hydraulics, the auto discharge system etc., verbal communication was no good. They relied on hand signals from a banksman. There were no walkie-talkies, television screens, no measures taken by Martell to secure adequate communication. Simon would assume the grab couldn't close.

The banksman was critical to safety. With the proper lifting hook there are no jaws to endanger life and the banksman can see clearly from the deck. With the grab there is an obstruction to the sight line of this 'critical' job.

The regular banksman for 17 years was Trevor Ford but Martell failed to give priority to the role of banksman. On April 24th 1998 Ford was driving the shovel on the quayside. The previous evening it was realised that they were short of staff. They needed 3 extra men but could only get 1 so members of the Polish crew did the other 2 jobs. Kasprzak could not speak English. This once more highlights Mr Martell's lax system.

Three witnesses Mr Ford, Mr Harris and Sean Currey noticed that the signalling was not right. Sean Currey says the chains were often shortened. Tab 4 file A contains Miss C. Barringer's photos 15 – 17 of the chains. Tab 7 shows technical drawings of these.

The chains at full length were 8 feet and they were shortened to 6 feet (1.8 metres) but the jaws take up 3 feet of this. The shortening was not physically done by Martell but he took no precautions against them being shortened.

The expert witnesses Dr Hinks and Mr Clinch with 60 years of experience between them have never seen this type of system used.

The clam shell grab was not even required that day. The loose aggregate was unloaded by the Cambrook's self discharge system. The grab was left on for no good purpose. No other vessel was due in that day. Russell Harris could have changed the grab for the hook but he wasn't allowed to do so on his own initiative. Any delay caused by changing the hook was not serious because the Cambrook was flat bottomed. Missing the tide was not a danger. Low tide was around 4.30 pm and the Cambrook sailed at 8 pm.

Martell was arrested and interviewed on August 17th 1998.

He called it an "accident" and blamed it on the short chains and the grab closing otherwise he said, "The system is perfectly safe".

He was asked, "Who is your deputy?" and he replied, "There isn't one." Martell said he was "unaware" that the chains had been shortened. It would have taken at most 2 hours to change the grab for the hook and to change the hook back to the grab afterwards. Martell used untrained staff in the hold. He failed to prioritise the position of banksman allowing the wrong man to be used. He made no risk assessment of the system he had put in place. He gave no instructions not to shorten the chains. He failed to train Russell Harris in the safety aspects of the Liebherr 984. He failed to train his other staff. He employed no supervisor. He engaged insufficient staff for safety.

On the day Simon was killed the staff available to unload the ship were: Jody Taylor – a 17 year old casual worker employed to unload bags on the quayside. Sean Currey – a casual worker employed alongside Simon (another casual worker) to unload bags in the hold. Russell Harris – the only directly employed member of staff driving the excavator. Two stand in staff from the ship's crew who spoke no English.

Of these Sean Currey had 20 days experience working at Euromin and had worked on the Cambrook 2 or 3 times. So the workers consisted of 1 full time employee, 3 casuals and 2 stand in staff. The Health and Safety assessment carried out in 1997 did not cover dockside unloading and recommended further action by Martell regarding proper planning, training of staff, hand signals etc. warning him that he needed to comply with this.

Counts 3, 4 and 5 of the indictment against Euromin Ltd are: Count 3. A breach of HSWA 1974 in his failure to ensure workers are not exposed to unnecessary risks to their Health and Safety. Count 4. A failure to assess the risks to workers between January 1 st 1993 and April 24 th 1998. No risk assessment had been done for 5 years. Count 5 A failure to ensure Simon was provided with appropriate instruction and training regarding his health and safety.

If you turn to file B you will see an outline of the structure of the Company. Mr Martell is at the top responsible for the day to day operations of the Company. In his police interview he accepted that he was the most senior official in the Company. He was in total charge of Euromin Ltd and therefore can be regarded as the controlling and directing mind of the company. His criminal acts are those of the company. If Mr Martell is guilty of manslaughter then Euromin Ltd is guilty of corporate manslaughter. It is my job to prove the case based on the indictments beyond any reasonable doubt.

3 Evidence of Sean Currey, witness to Simon's death

Sean Currey confirmed that he had previously worked in dockyards for three and a half years and that he was working with Simon on 24 April 1998. He was referred to Euromin Ltd by the agency Personnel Selection and had worked there ten or twelve times before as a casual day worker. He had previously worked on the Cambrook two or three times, both as a lander and in the hold, unloading bags of blocks.

P – What system was being used for unloading bags at Euromin?

SC – Chains wrapped around the crane and two chains attached to that.

P– The excavator with the grab?

SC – Yes.

P– Was the grab open or closed?

SC – For a long job it was closed and the chains were wrapped around it; for a short job it was done any old fashion.

P. – Did you ever see a different attachment with one hook and no grab?

SC – Yes, I was involved in changing the grab for the hook.

P– Why was the change over done?

SC – I'm not sure; we were told to change it so we did.

P– How long did the change over take?

SC – Fifteen to twenty minutes at the most. Trevor did the main work with Jim at the controls.

P– Did you assist?

SC – Yes, I got the tools ready.

P – Did you ever see the hook attachment used?

SC – Yes for the same loads; that's the bags.

P – Was that in 1998 or before?

SC – In the same year; I hadn't worked there long.

P – So it was sometimes the hook, sometimes the grab closed and sometimes the grab open?

SC – Yes.

P – Did you ever notice extra hooks welded to the stem of the grab?

SC – Yes, once; I didn't think much about it.

P – What were they used for?

SC – Two chains were fitted straight onto the hooks.

P – With the new hooks, was the grab open or closed?

SC – Open.

P – Had the hooks been weight tested?

SC – Jim told me they had.

P – When were you first contacted about working on the 24th April?

SC - I can't remember

P – How would it be arranged?

SC – Roger Grant or the agency phoned

P – What sort of notice would you get?

SC – With Roger, a week or two

P- what time did you arrive at Euromin on 24th April?

SC – 7.20

P – Was the Cambrook in?

SC- No

P – Did you see it come in, berth and moor?

SC- Yes, I helped moor it

P- When did you first see Simon?

SC- At 8 or just after. I confused him with the Liebherr engineer

P- Where did the engineer go?

SC- Into the shed (the larger shed shown on the plan)

P- Did you speak to Simon?

SC- Yes, we exchanged pleasantries

P- Did you know he had been sent by the same agency as you?

SC- Yes

P- What happened next?

SC- We just milled around, and talked with Roger Grant

P- What was Grant's role?

SC- Officially ship's agent. We treated him as a foreman or supervisor

P- What was Martell's role?

SC- Main manager

P- Was he there that day?

SC- I didn't see him

P- Was Martell involved in decisions about work?

SC- I don't know, I was rarely in the office

P- Did you ever see him giving instructions?

SC- I can't remember

P- How were jobs allocated?

SC- We gathered on the bank. Jim was in the cab. Trevor was in the area, but not with the group. Roger asked me what I'd be doing, I said in the ship as usual. He asked Jody. I made it clear by looking at Roger that I didn't want Jody working in the hold.

P- Why?

SC- He was a nice lad but he couldn't hold his concentration very well. I had already spoken to Simon about his experience at Newhaven. Roger said is it OK if Simon goes with you? I said yes, whatever.

P- When you were in the hold was there a person to pass signals?

SC- Yes, the banksman

P- How important was the banksman?

SC- He controls the entire operation of the ship

P- Who was normally banksman?

SC- Ford, but Grant could step in

P- Was Ford good at it?

SC- Yes, very good

P- Was Ford there that day?

SC- Yes

P- Was Ford the banksman?

SC- No, he was working with the loading shovel, loading lorries

P- Would the aggregate left in piles for the shovel to collect?

SC- Yes

P- Who normally drives the shovel?

SC- It depends. Most people are capable of driving it

P- Was there a Welsh man who drove the shovel?

SC- Yes, Taffy, a casual, but he wasn't there that day

P- Where was he?

SC- At Pyecroft Engineering

P- Do you understand why?

SC- Yes, he would be paid more there

P- Do you recall any discussion about a banksman?

SC- No

P- What sort of build did Jim have?

SC- He had a big beer belly, he was a bit shorter than me, he used to waddle around

P- What was his clothing like?

SC- His work clothing was shabby, but that didn't matter. It was extra extra large, well padded

P- What happened next?

SC- I went into the ship, Simon followed me into the main hold

P- Were you wearing helmets?

SC- No

P- Was that normal practice?

SC- Nobody bothered, I don't recall anybody wearing one.

P – What could you see in the hold?

SC – The Bobcat at the front, rows of rumble stone bags and aggregate.

P – Did you unload the aggregate?

SC – No.

P – Did you decide what order to unload the bags?

SC – Yes.

P – Did anyone ask you to give Simon instructions?

SC – No.

P – Did you tell him anything on safety?

SC – Not real safety; just what's helpful regarding the movement of the crane. The Liebherr is fast; I showed him where to be and where not to be.

P – Did he appear to listen and understand?

SC – Yes, he was very bright. He understood almost immediately.

P – Did he do anything you regarded as unsafe?

SC – No.

P – Did he help you after you showed him the first few bags?

SC – Yes. We hooked the bags up to be lifted out of the ship.

P – How many hooks were there for each bag?

SC – Four.

P – Was that one hook to each loop?

SC -Yes

P – How many bags per lift?

SC – Normally two, but sometimes three if one of the bags was falling over.

P – When the arm comes down is the grab open or closed?

SC – Open

P – Where were you when the arm was descending?

SC – Well out of the way. When the arm stopped, we moved in to hook the bags

up.

P – How did Jim know how low to take the arm?

SC – The banksman would tell him.

P – Would you signal to the banksman?

SC – Ford would know without me telling him. With this banksman I had to signal.

P – Did you know who he was?

SC – No. I knew he was from the ship.

P – So you go in and attach the hooks?

SC – Yes then signal to take the strain. Then when it's safe, signal to take out.

P – When you were working with Simon, did you work on one bag together or on separate bags?

SC – Separate bags at the same time.

P – How high above the bags should the hooks be?

SC – Done properly, just above the tops of the bags. On this day they were too low, I had to tell him to lift a bit. The hooks and chains were lying tangled on the bags. I signalled to the banksman to lift slowly, to inch up.

P – Are you trained in signalling?

SC – Not formally trained but I picked it up.

P – What is the inch up signal?

SC – Clench and unclench your right hand.

P – What is the lift signal?

SC – Point your right hand and make a circular movement.

P – So you were signalling inch up and he passed on lift.

SC – Yes. The chains jerked up, once nearly out of the hold. After a while we steadied it.

P – How?

SC – Basically I just shouted obscenities at him.

P – Were they Polish or English obscenities?

SC – English.

P – Did he understand them?

SC – He appeared to, I think he understood the tone of my voice.

P – Would the full length of chains always be used?

SC – Not always, it depended on the job.

P – Would they sometimes be shortened?

SC – Yes.

P – Who would do the shortening?

SC – It could be anybody who was about.

P – Where would the excavator arm be when the chains were being shortened?

SC – The grab was resting on the floor on the quayside.

P – How common was it to shorten the chains?

SC – It was a regular occurrence, especially to lift the bobcat.

P – Was everybody aware that chains were often shortened?

SC – Yes.

P – Was there any reason to shorten the chains when working on the Cambrook?

SC – Yes because of the self discharge system.

P - (refers to photograph of ship) The machine moves back and forth along

rails and scoops up aggregate onto the conveyer belt?

SC – Yes, right.

P – If it got near the excavator arm that could cause problems?

SC – Yes you need clearance between the excavator arm and the self discharge system.

P – Did the excavator ever come in contact with the self-discharge machinery?

SC – I never witnessed it myself.

P – Would this problem arise if a proper hook was fitted?

SC – I don't know.

P – Were the chains short on the 24th April?

SC – Yes.

P – How much of the chain extended beyond the closing range of the grab?

SC – I never thought about the grab closing.

P – Did you ever think that it could close?

SC – No, with Jim at the controls I never doubted it was safe.

P – How much shorter than normal were the chains?

SC – Eighteen inches to two feet.

P – Who did the shortening?

SC – I don't know.

P – Can you describe the noise that you could hear in the hold?

SC – The excavator made a squeaking noise; there was a diesel engine noise and the auto discharge system made a lot of noise.

P – Could you make Jim hear from inside the hold?

SC – No.

P – Can you describe the scene immediately before the incident?

SC – We were sat leaning against the bags; the grab came in at the far side of the ship. We walked towards it, me to the outside of the bags by the wall facing the back of the ship, Simon to the inside of the bags.

P – (referring to tab 3 photo 21) This shows the grab over two bags with Simon over the bag further from the wall. Is that how it was?

SC – Yes, I faced the opposite way to Simon. I was stood on the aggregate.

P – You were attaching hooks to loops on the left side of the bags and Simon was working on the one next to you?

SC – Yes. Simon was standing in the gap between the bags as far as I'm aware.

P – (Referring to photos 28 and 29) How many hooks had you successfully attached?

SC – I can't remember, they came down pretty low. One of my hooks had fallen down the opposite side of the bag.

P – Could you reach it?

SC – I grabbed the chain and leaned over, then Simon passed me the hook.

P – How low were the hooks relative to previous occasions?

SC – Not as low as on previous occasions.

P – What did Simon have to do to pass you the hook?

SC – I didn't see what he did, I just saw his arm. I pulled myself back over the bag then I heard a grunting noise.

P – What did you see?

SC – I saw something in his eyes that triggered sheer panic. I knew he was dead. The grab had closed on the back of his head.

P – What did you do?

SC – I shouted to the banksman to open the grab. I was panicking; the message was not getting across. I ran up and signalled to Jim.

P – Had you heard the grab make a noise closing?

SC – No. Until I saw Simon I didn't know it had closed.

P – How high above the top of the bags was the closed grab?

SC – Two to three feet.

P – Was Simon still in contact with the surface or had he been lifted?

SC – I didn't look at his feet. The grab had held him upright but I wasn't aware of it holding his weight.

P – Was the grab open after you signalled to Jim?

SC – It had opened slightly – one or two feet. Simon had slumped out of it. I stayed on top of the aggregate; there was nothing I could do. Then I got onto the quayside to fetch an ambulance then I guided the ambulance in from the weighbridge. I went with the paramedic into the hold over the bags to Simon.

P – Was the scene as in the photos showing the grab open?

SC – Yes.

P – What was the effect on you?

SC – Initially I slept that night; then I didn't sleep for six months. My landlord noticed my drink problem and we sorted it out.

P – Did you return to Euromin?

SC – Yes.

P – On how many occasions?

SC – Twice a week for a month. I finally left just after Christmas 1998.

D – You had been doing dock work for two years before the accident and you had been at Euromin for some months?

SC – Yes.

D – through another agency – Kellett?

SC – Yes. Personnel Selection paid more.

D – Did Dave Hipper go through your previous dock work experience?

SC – Yes.

D – Did the agency provide your jacket and hard hat?

SC – Yes.

D – Did you supply your own boots?

SC – Yes.

D – You reported to Roger Grant?

SC – Yes.

D – You started on the quayside and were kept on?

SC – I can't honestly remember how long I worked on the quayside.

D – Did Grant give you some warning of the dangers involved in the work?

SC – Yes.

D – Did you feel confident to be doing the job that morning?

SC – Yes.

D – The chains were lowered into positions indicated by you; you signal the banksman and he signals Harris until the chains are in the right place?

SC – Yes.

D – The banksman can't see how high the chains are?

SC – Not until the hooks touch the bags. It never rushed in.
D – The excavator should stop with the hooks just touching the bags?
SC – Yes.
D – If they came in too low the chains could tangle and it would be difficult to secure the bags?
SC – Yes.
D – If that happened you'd signal to take it up a bit?
SC – Yes. It only happened on a few occasions if I wasn't working with Trevor Ford.
D – Was Ford a model banksman?
SC – Yes; within an inch.
D – Was the Polish banksman not so good?
SC – That's right.
D – Are the hand signals universally known and few in number?
SC – As far as I knew at the time.
D – Previously you had used chains wrapped around the grab that were unsafe?
SC – I never had much to say about that, I just did the work.
D – Could the excavator with chains be used to lift bags and the bobcat?
SC – The Cambrook had its own Bobcat; other ships didn't.
D – Had you had experience in the hold of any ship at Euromin, lifting with the wrapped chains before February 1998?
SC – Yes two or three times.
D – Had you any previous experience with welded hooks?
SC – Once.
D – Were there no problems?
SC – No.
D – How long had you worked like that – some hours?
SC – Depends.
D – Were you working in the hold?
SC – I can't remember, I would have been in the hold some of the time.
D – Did Simon speak to Grant out of your hearing?
SC – Yes.
D – Did Grant give out the jobs?
SC – It was a group decision; we were all competent.
D – were you confident that Simon was competent to do that job?
SC – Yes.
D – If the chains were the normal length there would have been a gap of three and a half feet between the gap and the ends of the chains?
SC – Yes.
D – So the grab would have been well above the operators' heads?
SC – Yes.
D – If the grab was lowered too far it would have been in range of their heads?
SC – Yes.
D – This would be easy to rectify by signalling to the banksman?
SC – Yes
D – It never occurred to you that the grab would close?

SC – No; the machine was looked after by Jim and by Liebherr.

D – Inadvertently Jim caused the grab to close. It never occurred to you that other levers could be operated?

SC – I never sat in the cab.

D - Were the chains shortened at the start of the operation or at break?

SC – We started with them at full length; we came back from the tea break to find the chains shorter.

D - When did you know that they had been shortened – straightaway?

SC – I noticed afterwards that they had been shortened.

D – Was this done on the initiative of the crane driver?

SC – Yes usually.

D – Was it done to avoid fouling of the automatic discharge system?

SC – Yes.

D – Refer to bundle A, the last document in divider 2.

J – See photo 8, this shows the tracks well.

D – The automatic discharge machinery works progressively along the slag (aggregate) while the excavator moves the bags? In the photo it has got half way along and it has to avoid the crane?

SC – Yes.

D – That's why Harris shortened the chains?

SC – Yes.

D – Couldn't he just move the crane along?

SC – Along the quayside?

D – Yes.

SC – It would foul the hatches. Jim works at 90 degrees to the quayside to be able to see the banksman.

D – It would be possible to move the crane a bit?

SC – Yes, but this system was always used.

D – You'd only done this with the welded hooks once before. With the old system were the chains shortened?

SC – Yes, regularly.

D – So this accident was a combination of the grab being low enough and the man being within range?

SC – Yes.

D – With the man under the grab?

SC – Yes.

D – At the precise moment that the crane driver closes the grab?

SC – Yes.

D – We have been told it would take fifteen or twenty minutes to change the grab for the hook. I suggest it would take one and a half to two hours.

SC – No it would never take that long.

P – In your conversation with Grant were you asked about your familiarity with hand signals?

SC – I can't remember.

P – Did you learn the signals from Trevor Ford while you were working at Euromin?

SC – No, I knew them before.

P – Were you instructed in the new system?

SC – No, there was no specialist training.

P – Who told you how to work the system?

SC – Grant and Ford.

P – Did anyone suggest that you should take particular care?

SC – I can't remember.

P – For instance, not reaching over the bags or keeping your heads down?

SC – No, reaching over the bags was a regular occurrence.

P – Did Jim ever explain why he shortened the chains?

SC – No.

P – The conveyor belt carries aggregate towards the back of the ship – see photo 9. You can see the rail along which the gantry moves. Is that a permanent fixture?

SC – Permanent.

P – does the gantry overhang the side of the hold?

SC – I don't remember. I've only seen it from below.

P – Was there any way to work other than under the open grab?

SC – No.

P – Do you blame Jim for what happened?

D – Objection.

J– Upheld.

P – No further questions.

4 Evidence of Piotr Kasprzak, seaman on the Cambrook

P – You are currently serving as an able seaman?

PK – Yes.

P – On the Cambrook?

PK – No.

P – Were you serving on the Cambrook on 24 th April 1998?

PK – Yes.

P – You got your AB certificate in 1993?

PK – Yes.

P – You were at sea for 30 years before 1998?

PK – No I was working in port on cranes.

P – When did you start working at sea?

PK – I can't remember exactly. 1987 or 1988.

P – You joined the Cambrook in December 1997?

PK – Yes I think so.

P – You were on watch as the Cambrook came into Shoreham on 24 th April 1998?

PK – Yes.

P – You then helped to secure the mooring line?

PK – Yes.

P – Did you open the hatch covers?

PK – Yes.

P – Once they were opened, what did you do?

PK – Taking the hatch covers off took a long time. Then I was ordered by the captain to help with unloading.

P – What were you told to do?

PK – Show the crane operator how to get down to the load. Signal how to lower the grabbing mechanism down into the hold.

P – Where did you go at first?

PK – The port side of the ship.

P – Photo 8 shows the port side of the Cambrook, were you somewhere on that photo.

PK – Yes.

P – Was the port side opposite to the quay?

PK – Yes.

P – Look at tab 3 photos 8 and 11. Were you stood in the part shown in photo 8 or photo 11?

PK – Photo 8.

P – Do you remember seeing loose aggregate and bags of stones?

PK – Yes.

P – Were you stood over the aggregate or over the bags?

PK – Over the bags of stones.

P – On tab 4 photo 8 can you mark exactly where you were standing? May we have this as exhibit 64? Was there anyone else to help with the unloading?

PK – Yes.

P – Was that Mr Bigosinski?

PK – Yes, he went to the quay.

P – Would you normally expect to be helping in the discharge of the cargo?

PK – Yes on the captain's orders.

P – Did you see anyone in the hold?

PK – Yes there were two men already unloading the cargo.

P – How familiar were you with the signals that you had to use?

PK – In the past I was trained as a crane operator. I was competent to use hand signals.

P – Had you worked as a crane operator in the previous 10 years?

PK – I had worked as a crane operator for 20 years.

P – What about the 10 years before April 1998?

PK – No.

P – Had you had to use signals on the Cambrook before?

PK – No.

P – Did you do your best to give clear accurate signals?

PK – Yes.

P – With an open clam shell grab, when you looked down could you see what went on under the grab?

PK – Yes if was open.

P – Where would you look?

PK – I would lean over the side the boat.

P – Refer to photo. You see the arm of the excavator extending on your side of the hold. Did you notice how low the chains and hooks were going in relation to the bags?

PK – Yes one person on the starboard side was telling me how low to go.

P – Does a circular motion with the right hand mean go down?

PK – Yes.

P – Does a flat open hand moving across mean stop?

PK – Yes.

P – Did you see Sean Currey giving these signals?

PK – Yes.

P – Did you realise that there were any problems?

PK – No.

P – Did you understand all the signals?

PK – Yes.

P – When the two men were attaching hooks to the bags did you watch them?

PK – No. I was there but I was not looking down all the time.

P – Did you feel any need to watch them?

PK – No.

P – Did it seem to you to be a normal operation?

PK – Yes.

P – Did you see the grab close?

PK – No.

P – What did you see first?

PK – I saw a man running up on the slag (aggregate) shouting and signalling to open the grab.

P – Did the crane operator act when you first signalled to him?

PK – No. He didn't look; he was turned away, I don't remember which side.

P – What did you do?

PK – I ran round so he could see me, but he'd already reacted and opened the grab.

P – Had you been to Shoreham before?

PK – Yes.

P – Had you seen this excavator unloading before?

PK – Yes.

P – Was the grab always attached to the excavator arm?

PK – It was quite normal for loose aggregate but it was not used with hooks.

P – What was the normal set up for hooks?

PK – There should have been no grab; just hooks instead.

P – Had you seen a different hook used with this excavator?

PK – No it was always the grab.

P – With the grab and the hooks and the chains on the opposite side of the hold from you could you see what was under the grab?

PK – If it was open yes.

P – By looking down from directly above the grab?

PK – Yes, but when it was open I could see through the gap in the hinges. I could see the slings and what level to lower them to.

P – Was it being lowered to the right level on this particular morning?

PK – Yes.

P – But sometimes you weren't looking?

PK – That's right; as soon as the grab was at the right level I wasn't looking all the time.

D – You were a crane operator for twenty years?

PK – Yes.

D – You were familiar with signalling?

PK – Yes. I was trained in Poland .

D – From time to time were you asked to help with unloading?

PK – Yes, sporadically, quite rarely but only on the captain's orders.

D – On this particular day were you asked to act as a banksman?

PK – Yes.

D – Were you competent to do so?

PK – Yes.

D – Was it normal to be asked to help in this way?

PK – Yes I knew how.

D – Was it an entirely normal operation?

PK – Yes.

D – The signals are universal?

PK – Yes.

D - You could understand the signals given to you?

PK – Yes.

D – Did the crane operator appear to understand your signals?

PK – Yes.

D – Looking down into the hold you couldn't see the distance between the ends of the hooks and the bags?

PK – When the hooks were resting on the bags I gave the signal to stop.

D – You didn't wait for the stevedores to give you a signal?

PK – No I could see how low the slings needed to be.

D – If the stevedores needed you to lift they would signal?

PK – Yes.

D – But sometimes the crane operator was looking the other way?

PK – Yes.

D – Shouldn't he always be looking at the job?

PK – Yes.

D – Should he keep his arms in the air clear of the controls?

PK – I don't know these particular controls. On other cranes there is a position zero where the crane is stationary.

D – You don't want to move the joystick accidentally?

PK – I don't know the controls on this excavator.

D – What about on the cranes that you have used?

PK – You must be careful not to catch the controls with your arm or your leg.

D – Could the operator get up and walk about the cab?

PK – No. It's impossible; you must sit and control everything.

D – Every crane operator would know that?

PK – Yes especially with people working under the grab. It was not usual practice to have the grab, the chains and the hooks together.

5 Evidence of Marek Cichomski, ship's master

P – You have been at sea since 1984?

MC – Yes

P - You obtained your master's licence in 1994?

MC - Yes.

P – You became chief officer of the Cambrook in June 1997?

MC – Yes.

P – Between June 1997 and April 1998 how many times did you sail to Shoreham?

MC – 25

P – What was the usual cargo?

MC – Furnace slag.

P – was it discharged automatically.

MC – The ship's self discharge system is operated by the ship's crew.

P – So the Cambrook's staff controlled the automated discharge?

MC – Yes.

P – Where would they be to do this?

MC – Inside the moving discharge equipment facing aft.

P – This can be seen on tab 3 photo 11. On 5 occasions between June 1997 and April 1998 you carried bags as well as slag?

MC – Yes.

P – How were they unloaded?

MC – With chain slings attached to the excavator grab.

P – Would members of the crew help discharge the bags?

MC – No.

P – Would you be expected to provide a banksman?

MC – No, it would not generally be a job for the crew.

P – There is a document prepared by the ship's agent. Are the entries accurate?

MC – Yes. The document was prepared while the crew were opening the hatch covers. The discharge started at 9.30 not 9.15.

P – You came from Flushing ?

MC – Yes.

P – Had you expected to arrive earlier?

MC – No. We arrived on time.

P – Did you need to come in on the tide?

MC – Yes the entrance is shallow, we had to wait for the tide and go in 3 hours before high water.

P – Do you remember seeing Roger Grant?

MC – Yes he was on board.

P – Did he ask you to provide anyone to help?

MC – Yes he asked me to provide someone to help discharge the bags.

P – Is that normal?

MC – I can't really say no; it happens often that port agents ask for assistance. It isn't unusual.

P – Did Grant ask for particular job to be done?

MC – No. Just 2 people to help.

P – Was it the normal time to discharge the cargo?

MC – Yes, it was a good time, the tide was still rising. I sent one man to the quayside to unhook the bags and the other to the hold.

P – Did Grant ask for a banksman?

MC – No.

P – Where were you at this time?

MC – In my cabin. I had no view of the hold.

P – Did you stay in the cabin?

MC – Yes I had paper work to complete.

P – What was the first you knew of something going wrong?

MC – Kasprzak came and told me. I took a camera and took some photographs for my reports.

P – Were the photos later handed to the police?

MC – Yes.

P – The bill of lading shows that there was 2419 tonnes of slag and 125 tonnes of bags of stones. The time for loading in Flushing shows 3 hours?

MC – Yes 3 hours for the slag, not for the stones. The stones were loaded after the slag.

P – This was done in Holland – the stones were loaded separately?

MC – Yes.

D – Did you need to discharge the cargo within a time limit to avoid grounding?

MC – Grounding is what happens when the ship is moving. In port it is taking the bottom. In some places it is dangerous. I was interested in keeping the ship afloat as much as possible during discharge to shorten the contact with the ground.

D – Bottoming may cause problems with the automatic discharge?

MC – Yes if the ship is not level. The draft is not the same fore and aft and it could damage the rudder. If the ship bottoms with the fore part first that is safer.

D – The unloading had to continue even after the death?

MC – Yes I asked for permission. The company was interested in leaving the port as soon as possible.

D – You needed to continue discharging?

MC – The cargo operation had stopped. It was restarted around 13.00 hours after the body had been removed.

D – How long did you have to discharge the cargo to prevent bottoming?

MC – 6 hours.

D – Would it normally take 6 hours to discharge that cargo?

MC – Yes. We had lost 3 hours.

D – How much leeway would you have?

MC – On spring tides very little.

D – So time was important?

MC – Yes. We needed to leave as soon as possible.

D – Would the excavator be called in to get some of the loose cargo?

MC – Yes. It could be done.

D – Did you consider Kasprzak to be very capable?

MC – Yes he was a very good seaman.

D – Was it Grant who decided which job Kasprzak did?

MC – Yes.

D – If he was unsuitable Grant would send the man back?

MC – Yes.

P – Was the Cambrook a flat-bottomed boat?

MC – Yes.

P – The discharge was complete at 19.00 and you sailed at 20.00?

MC – Yes.

P – Had there been any damage from bottoming?

MC – No.

P – Did the ship have its own bobcat?

MC – Yes.

P – Was it working?

MC – Yes.

P – Would it normally be used to tidy up while discharging?

MC – Yes.

P – Was the bobcat alone enough for tidying up?

MC – Yes.

P – Would you have need of another one?

MC – No.

P – On previous visits had the bobcat from Euromin ever been used in the hold?

MC – I don't remember but I don't think so.

D – While discharging any movement of the vessel is very slight?

MC – No it was moving quite heavily and bumping against the quayside.

Shoreham is a small port; there was a lot of swell and wind. The ship was not protected because it was outside the lock.

J – Where did you expect your second crew man to go?

MC – Into the hold. This was usually the easiest way.

P – Would the grab ever be used for sweeping?

MC – Yes it is possible. Harris was an excellent operator and would help out.

P – Had he helped previously?

MC – Yes I think so. If we were late he could get a few grabs full of cargo and it would save a lot of time.

6 Evidence of Trevor Ford, Euromin employee

P – Mr Ford, you have been working at the docks since 1976?

TF – That's right.

P – You started working at Euromin as a casual worker, were taken on full time from 1999 and are still employed there?

TF – Yes.

P – In April 1998, what jobs did you do there?

TF – General dock work, yard duties, forklift truck operation, banksman, stevedore, webber, lander.

P – Would you regularly be banksman?

TF – 9 times out of 10 yes.

P – You worked well with Harris?

TF – Yes.

P – He understood your signals?

TF – Yes.

P – A banksman would only be needed for bags of stones?

TF – Yes.

P – As a casual how many days a week did you work?

TF – 4 or 5 days.

P – Were you employed by an agency?

TF – No. I would ask if I was needed next day.

P – Who organised this?

TF – Mick Czaja.

P – He worked in the weighbridge?

TF – Yes.

P – On 23 rd April 1998, you knew you were wanted on Friday?

TF – Yes I was asked by Mick Czaja.

P – Roger Grant the ship's agent/ safety officer, did he do much about safety?

TF – What do you mean?

P – He was called a safety officer?

J – What were his duties as safety officer?

TF – He wasn't very good at it; he didn't know what was involved.

P – Did you know on Thursday April 23 rd that the Cambrook was coming in.

TF – Yes.

P – What job did you expect to do?

TF – Banksman or Stevedore.

P – Did you know on Thursday that there would be bags to unload from the Cambrook?

TF – Yes.

P – How important to the operation is the banksman?

TF – It is the most important job on the boat. You can see better than below; you know what lift to take.

P - You knew hand signals well?

TF – Yes.

P – Could you have shouted to Mr Harris?

TF – Not on the Cambrook.

P – What job did you do that day?

TF – I worked on the loading shovel in the yard, it's a 4- wheel vehicle of 20 tons with a bucket on the front.

P – What would it be loading?

TF – It would be loading in the yard. The weighbridge would tell you what to load into articulated lorries, 8 wheelers or 6 wheelers – whatever was there.

P – Who told you to drive the shovel?

TF – Mick Czaja. Loading is a priority. The lorries needed to go out.

P – Were you involved in planning the day's work, the arrival of lorries etc.?

TF – No it was someone else – Mick Czaja.

P – From the telephone in the weighbridge?

TF – Yes.

P – Did Mick personally decide who was to work where?

TF – No. Mick passes information on. I didn't speak to him personally.

J – Who would be banksman if not you?

TF – The next man down, Sean Currey.

P – Was Roger Grant sometimes the banksman?

TF – Yes. Sometimes.

P – In the past Roger Grant had sustained an injury?

TF – Yes he broke his ankle.

P – Did that affect him going on board?

TF – It stopped him going on quay .

P – The Cambrook came in with the starboard side to the quay?

TF – Yes.

P – Did you know where the normal L551 loading shovel driver was?

TF – We didn't have one. The L551 driver left. Me and Jim shared the duties after that.

P – Had you driven the L551 before while bags were being discharged?

TF – No. If there were bags on the ship I'd be on the ship or acting as banksman. Otherwise I could be driving the L551 loading shovel.

P – Could anyone else have driven the shovel?

TF – No.

P – Was it unusual for there to be insufficient people for all of these jobs?

TF – No, not really. It was sometimes better organised.

J – Normally you would have been taken off the shovel to deal with the ship but not this time?

TF – Yes.

P – Did you see the bags being unloaded onto the quayside?

TF – Yes.

P – Did you see the banksman signalling?

TF – Sort of, he was pointing and waving his hands.

P – Did that make sense to you?

TF – No.

P – Could you see what else was going on?

TF – He was waving his hands but the crane driver must have made some sense of the signals or else he'd have stopped working.

P – What was Mick Czaja doing?

TF – He was driving the forklift truck to move the bags.

P – You were watching your own job. What was it you first saw so that you knew something was wrong?

TF – The banksman was running to the living quarters of the ship...Sean was staggering up the gangway and he didn't look too good.

P – Did you meet the Liebherr fitter by chance?

TF – Yes.

P – Was his a routine visit?

TF – Yes he was booked to do a job on the 541 loading shovel – changing the loading arms. He was working in the bottom shed next to the Pycroft shed.

P – Is it a big job replacing the loading arms?

TF – I imagine so.

P – You saw that the Liebherr grab was open.

TF – Yes.

P – Did you know there was a Liebherr hook attachment intended for lifting bags and similar loads?

TF – Yes. We used the bucket as a lifting frame.

P – By "bucket" I take it you mean what we are calling a grab. Could you understand why the grab was there?

TF – No.

P – Did you know that the correct lifting hook was available at Euromin?

TF – Yes.

P – Do you know why it was not used?

TF – No.

P – Who decided on the use of the hook or the grab?

TF – It's the machine driver's responsibility. He uses whatever tool he needs for the job.

P – Have you ever seen the change over of attachments?

TF – Yes.

P – How long does it take?

TF – 30 to 40 minutes.

P – Was there enough time and enough people there that morning to effect the changeover?

TF – I suppose it could have been done.

P – When you were working as banksman, did you ever see lifting done with the grab on the arm?

TF – Yeah. Many a time.

P – Was the grab always closed or open?

TF – Always open.

P – Did you ever see chains wrapped around the closed grab?

TF – Yes, we have done that.

P – Do you remember the hooks being welded to the stem of the grab?

TF – Yes.

P – After that the grab was always used open?

TF – That depends on what you wanted to do.

P – Could you see as well with the grab in place as with the hook?

TF – Of course not.

P – Could you see what was going on under the grab if it was open?

TF – Yes, usually the other guy in the hold helps you out with signals. You can see more with the hook attachment but you still rely on the guy in the hold.

P – Did you know the chains had been shortened?

TF – Yes I saw them come out of the boat.

P – You were on the shovel when you saw this?

TF – Yes.

P – Did you start with the chains shortened?

TF – I don't know.

P – How common was shortening?

TF – It depends what you are doing. We had shortened chains before.

P – Had the grab ever closed unexpectedly?

TF – Not often. A couple of times. I'm not sure when but we were doing bags. I was in the hold.

P – Where was the grab?

TF – Above our heads.

P – How close?

TF – A few feet above us.

P – Did this happen as the bags were being lifted out?

TF – Yes.

P – Were you hooking?

TF – Yes.

P – Was there any reason to use a grab?

TF – There shouldn't be.

P – Were you worried about it?

TF – No. I thought it was safe. It was a shock but you get over it.

P – Did you keep quiet about it?

TF – No I shouted to the crane driver.

P – Did the grab ever totally close?

TF – No.

P – Did you want to keep it secret?

TF – No.

P – Were you formally trained in signals to British standards?

TF – No.

D – How long had you worked at Euromin?

TF – Since 1994.

D – Were you there before Martell?

TF – No.

D – Did you rely on the man in the hold?

TF – Yes.

D – What responsibilities has the stevedore?

TF – He controls what happens in the hold and he passes instructions to the banksman.

D – The man in the hold must say if the chains are too low?

TF – Yes.

D – If the chains are at the correct height is the grab still well clear of the men?

TF – Yes.

D – Had you ever seen chains shortened to lift bags?

TF – No.

D – Is it best to keep the chains long?

TF – Yes.

D – The decision to shorten must be made by the Liebherr driver?

TF – Yes.

D – If the grab closes this must be either mechanical failure or pilot error?

TF – Yes.

D – Were the machines well maintained?

TF – Yes.

D – Did Harris keep his hands on the levers?

TF- Jim always took his hands off the levers while he was waiting.

D – How much notice did you have when the grab closed when you were in the hold?

TF – I could hear the hydraulics, see the movement, I don't remember.

D – Do you need a certificate to drive the shovel?

TF – Yes.

D – Was no-one else available to drive the shovel?

TF – No.

D – Does it take one to one and a half hours to change the grab for the hook?

TF – No, a lot less than that.

D – Why would you change the grab for the hook?

TF – Lifting bags on the grab does it no good. If there were a lot of bags you would use the hook.

D – Would it be the machine driver's decision to use the grab or the hook?

TF – Yes.

D – On the 24 th April there was a member of Liebherr's staff on site who must have seen how the lifting was being done?

TF – Yes.

D – If they weren't satisfied they would have said something?

TF – No.

D – Was Grant effectively the site foreman?

TF – Yes.

D – Was he worse than useless?

TF – Yes.

D – Martell got in a safety consultant early in 1997?

TF – Yes.

D – Were hooks welded to the grab to make lifting safer?

TF – No to make it easier.

D – Was it easier?

TF – Yes.

D – Were you sent on courses in 1996/97?

TF – Yes.

D – After Simon was killed you couldn't understand how it had happened?

TF – No. Sean must have put Simon in danger but there should still have been a safety margin. It was just an unfortunate accident.

P – Jim made the basic decision on the attachment, was anyone else involved?

TF – Sometimes it was Jim sometimes someone from the office tells him like Roger Grant.

P – When the grab had closed on previous occasions, were the chains at full length?

TF – Yes.

P – Is 102 bags a large amount of bags?

TF – Yes.

P – So that's why you couldn't understand why the grab was being used?

TF – Yes.

P – How many Liebherr people were there that day?

TF – One.

P – Who else was there?

TF – Steve Watson from Pyecroft engineering.

P – He went to the shed, did you see him?

TF – I imagine I did he was in and out of the shed.

P – Are you sure you saw him?

TF- Yes.

P – You left the shovel and went to the toilet and you met the man from Liebherr?

TF – Yes.

P – Did you go anywhere else?

TF – Yes. The canteen.

P – Mr Martell said he was concerned about safety. How concerned was he?

TF – I don't know I just got the instructions from Mick.

P – Where were the instructions from?

TF – From the office – whoever is in charge.

P – Is that where Grant is normally?

TF – Yes every day.

P – If someone gave instructions by phone, who would that be?

TF – James Martell.

J – If the chains were shorter the grab would come closer to the men?

TF – Right.

J – If you were the banksman and you had seen the chains were short and the grab was too low, what would you do?

TF – Get the grab out.

J – Mr Currey didn't know the grab had closed on previous occasions?

TF – No. He wasn't working there then.

7 Evidence of Mick Czaja, Euromin employee

The morning began at 10.15am without the jury present so that time could be given to political argument on whether Russell Harris' evidence was admissible. The problem had arisen because during the protracted investigation and decision to prosecute, Mr Harris (the excavator driver) had died from cancer. It was argued by the defence that as Mr Harris' evidence could not be tested by cross-examination in court that it should not be allowed.

The main argument concerned a conversation between Harris and Roger Grant, which Harris had mentioned during his evidence to the police. In it he states that half an hour or so before work started on the morning of April 24th Roger Grant had asked whether or not they should change the grab for the hook on the excavator. To which Harris had responded, "Have you had permission from James?" (James Martell – the manager). Grant apparently replied, "No." Whereupon Harris said, "You can't change the grab without permission or you'll get a right rollicking." He continued that he believed Roger Grant had indicated that he couldn't contact James Martell. Nothing more was said after that. The argument was that this was hearsay evidence and therefore not admissible.

P – You have been at Euromin since 1989 and have undertaken all sorts of jobs?

MC – Correct.

P – For how long have you worked in the weighbridge?

MC – 5 years.

P – You answer the phone, make phone calls, negotiate prices, deal with distribution etc.?

MC- Yes.

P – You also drive the forklift truck?

MC – In an emergency, yes.

P – Do you communicate with Martell?

MC – With regard to running of the yard, what is going out of the yard, reading the post and so on, yes.

P – It's two way information?

MC – Yes.

P – Do you receive instructions from Martell?

MC – Sometimes.

P – For you or for others?

MC – Both.

P – You pass on queries from the men to Martell?

MC – Correct.

P – On a typical day you would speak to Martell less than once?

MC – Yes.

P – How often would Martell be on the premises?

MC – Perhaps 2 days per week.

P – so he's not in every day?

MC – No, some days he's in for a few hours and some days not at all.

P – Does Euromin use its own lorries?

MC - Most of the lorries are owned by owner drivers but some are hired by Euromin.

P – Do the lorries collect every day or do you have room to store materials?

MC – There is enough room to store the stuff on the quay.

P – Who is mainly responsible for allocating jobs?

MC – The normal men. Martell phones Grant normally as to what men are wanted where.

P – Would you get advance notice of a ship and its cargo?

MC – Yes.

P – Would you discuss in advance how many workers were required?

MC – I don't know. That passed by me.

P – Do you remember any discussions about the grab and the hook?

MC – Yes messages went back and forth.

P – Did these involve Martell.

MC – Possibly Martell via Grant.

P – Mr Grant is in every day?

MC – Yes.

P – Would Mr Grant phone you?

MC – No we work in the same yard.

P - On the morning of the 24th do you remember any phone message?

MC -No.

P – On the morning of the 24th you were in the weighbridge?

MC – Yes, I met Simon and sent him to Roger Grant. I went to drive the forklift.

P – Was this a dire emergency?

MC – We needed a forklift driver.

P – You knew that the day before?

MC – Yes.

P – Who normally drove it?

MC – It depended who was there.

P – The forklift was used on bags?

MC – Yes.

P – You knew there was a substantial number of bags coming?

MC – Yes.

P – You'd pick up bags from the quay?

MC – Yes.

P – Had you taken any bags away before 10.15?

MC – Yes, but not many.

P – What was the first sign to you that something was wrong?

MC – People had stopped working and were rushing on to the ship.

D – How many years experience have you had at Euromin?

MC – 11 years.

D – Were you happy working there?

MC – Very.

D – Was Euromin safety conscious?

MC – As far as I know.

D – How often would you work on the forklift?

MC – Not often.

D - Are you certificated to drive the forklift?

MC - Yes.

D - Have you been on a number of courses, site safety awareness in 1996 etc?

MC - Correct.

D - Have you been on any courses more recently?

MC - I've done a course in first aid.

D - Any other courses?

MC - How to operate the bobcat.

D - Martell joined Euromin in 1994?

MC - Correct.

D - Harris and Grant were already there?

MC - Yes.

D - The Liebherr excavator was already there?

MC - Yes.

D - It was used with chains wrapped around and the grab in place?

MC - Yes.

D - Were you conscious of the system being changed in February 1998?

MC - I wasn't involved in the yard operations.

D - You took cargo to the shed?

MC - Yes.

D - There was a stock of stones of varying sizes?

MC - Yes.

D - So the cargo becomes stock?

MC - Yes.

D - You knew you needed to get the cargo unloaded before the ship grounded?

MC - No.

D - You knew unloading continued after the death?

MC - Yes. I left at 5pm.

D - Which person in the gang did what job was decided on by Grant after consultation with Martell?

MC - Yes.

D - There was a nucleus of Euromin staff and agency staff were taken on as and when needed?

MC - Yes.

D - Euromin staff could do several functions?

MC - Yes.

D - Was this normal in dock work?

MC - Yes.

D - Was the 24 th April a routine day until the accident?

MC - Yes.

D - How well did you know Harris?

MC - Very well.

D - Was he very competent and experienced?

MC - Yes.

D - Did he get on well with Grant?

MC - Yes, we all three started within a year of each other.

D - You had no reservations on Harris' abilities?

MC - No.

D - Was he a loose cannon liable to do things without permission?

MC – No.

J – Who would be on the weighbridge if you were off?

MC – Ryan Stapley came in at 9am.

J – You didn't go in the yard often?

MC – No.

J – The number of workers needed was decided the previous day?

MC – Yes.

8 Evidence of Jody Taylor, worker at Euromin

P You worked at Euromin from May 1997 to April 1998?

JT Yes.

P You worked as a casual?

JT Yes but full time.

P 5 days a week?

JT Yes.

P The job involved working sometimes in the hold, sometimes on the quay?

JT Yes.

P Did you have any training to work in the hold?

JT Not really.

P Did you know Jim?

JT Yes.

P Did Jim explain about working near the grab?

JT Yes.

P Did you have a high vis jacket and a hard hat?

JT Sometimes.

P Did anyone enforce wearing these clothes?

JT There were notices up in the site office.

P If you didn't wear a hat did any one tell you?

JT Not all the time.

P On the 24th April, what time did you start?

JT I arrived at 8am. The Cambrook wasn't in yet.

P Were Harris and Ford already there?

JT Yes.

P Did Sean arrive after you?

JT Yes.

P Did you see Simon arrive?

JT Yes. He came in after me. They were having some difficulty bringing the ship in.

P Who allocated the jobs?

JT Roger Grant was supposed to be in charge.

P Did he exercise control?

JT Not really. It was Jim the crane driver who controlled things.

P How did the allocation of jobs end up?

JT We sorted it out for ourselves.

P Was this normal?

JT Yes.

P Were there enough people to do the jobs?

JT No.

P What was your job?

JT To take the hooks off the bags.

P You had not seen Simon before?

JT No.

P What was the first sign that something had gone wrong?

JT I heard a shout and the crane stopped.

P So you and Grant went into the hold and looked?

JT Yes.

P Were you then told to do something?

JT Yes. I was told to keep out of the way so I went to the sheds.

P Were you later asked to clear up what was left?

JT Yes.

P Were you not happy about that?

JT No.

P Did you work at Euromin again?

JT No.

P Why was that?

JT Because of the incident. I'd seen what the Liebherr could do.

D Your job entailed yard work and unloading?

JT Yes.

D Did this include working in the hold hooking bags?

JT Yes.

D Was this a simple task?

JT Yes.

D Had Jim explained the dangers to you?

JT Yes.

D Had a date for training been arranged?

JT Yes.

D You knew you should wear a high vis jacket and hard hat?

JT Yes.

D Sometimes you'd be told about this and sometimes not?

JT Yes.

D Grant was responsible for supervising the unloading?

JT Yes.

D Was he supervising on the morning of the 24th ?

JT Grant was off arranging things on the Cambrook because they were having difficulty finding enough men.

D Someone must have told you what to do?

JT Yes.

D One of the senior men must have told you?

JT Yes.

D - Was it a normal day's work before the accident?

JT Yes.

Evidence of Brian Fountain, harbour master

P– You have been harbour master at Shoreham since 1995 and were at sea for many years before that?

BF– Yes.

P– There are locks to keep the water level up within the harbour?

BF– Yes.

P– Euromin's wharf is outside the lock gates and so it is tidal?

BF– Yes

P– What is the status of Euromin's land?

BF– It is privately owned. My jurisdiction only covers comings and goings and dangerous cargo.

P– You had no responsibility for safety measures at Euromin?

BF– No.

P– You were informed of ship's arrivals by fax with 24 hours notice?

BF– Yes from the ship's agent.

P– Did you get a fax about the arrival of the Cambrook?

BF– Yes at 9.53 am on Thursday 23 rd April.

P– The fax informs you as to the nature of the cargo?

BF– Yes in this case it was slag and rumble stones.

PO– Did the fax tell you the amount of cargo?

BF– No.

P– Did it inform you of the estimated time of arrival and sailing time?

BF– ETA yes, sailing time no.

P– Was the ETA 2.30am?

BF– Yes.

P– Was it unusual for a ship to arrive late?

BF– No.

P – Would you expect a radio message from the ship's captain?

BF– Yes.

P– Would a pilot be sent out?

BF - Some ships are exempt but if it is more than 50 metres long a pilot is compulsory.

P– Were you on duty at 8.30am on the 24th of April?

BF– Yes but not before 8.30am. The port is open 24 hours a day and pilots are always available.

P– The Cambrook left at 8pm?

BF– Yes.

P– Did it go regularly between Flushing and Shoreham?

BF – Yes, mainly.

P – The Cambrook had a flat bottom. Was this a serious problem?

BF – No. This meant that the Cambrook can take the bottom. In fact all vessels using Turbeville and Penny's wharf must be able to take the bottom. The vessels are called NAABSA, which stands for Not always afloat but safe aground.

Evidence of Gerry Vines, Liebherr regional service manager

P – Mr Vines you were southern regional service manager for Liebherr in 1998?

GV – Yes.

P – Liebherr supply and service equipment including the excavator R984?

GV – Yes.

P – The Liebherr was supplied to Euromin with the attachments?

GV – Yes.

P – Could you look at the diagrams in the Liebherr manual?

GV – It shows the reach of the equipment.

P – It could dig level with the front of the excavator or even underneath it?

GV – Yes

P – Euromin bought the excavator on 9th January 1992?

GV – Yes.

P – Did you service the machine?

GV – Yes.

P – How often?

GV - 4 or 5 times a year until 1995.

P – As service manager did you visit Euromin?

GV – Yes, occasionally.

P - What was the function of the clamshell grab?

GV – To move material. It closes on it and picks it up in the clamshell. It was used mainly for loose aggregate.

P – Did it need anyone working near it?

GV – No.

P – What was the working pressure in the cylinders?

GV – 300 bar maximum.

P – Was there a manual supplied with the machine?

GV – Yes.

P – Does part of it deal with prevention of accidents?

GV – Yes.

P – It says, “Do not allow any person within the attachment range of the machine”. Why is that?

GV – The machine can slew through 360 degrees. It means nobody must be anywhere in that range.

P - Can the excavator be used to lift bags?

GV – Yes

P - What should be used to attach the bags?

GV – A hook.

P - If a customer asked you, “Can I lift items by using a chain hanging down within the open jaws of the grab?” would you approve of that?

GV – No.

P – Why not?

GV - In the book it says, “Do not go within the working range of the machine”.

P – To your knowledge did anyone at Euromin ask you that question?

GV – I don't think so.

P – You have already told us what your answer would be?

GV – Yes.

P – Are you aware of anyone else at Liebherr having being asked that question?

GV – No.

P – If a customer rang Liebherr for information on the equipment, could you give guidance?

GV – Only using the stated guidelines.

P – If the Liebherr demonstrator was asked questions on safety, could he answer them?

GV – I can't answer that. I'm not a demonstrator.

J – The demonstrator would refer the customer to the book?

GV – Yes.

P – Did you go on the 29th of April to Euromin?

GV – Yes.

P – With Chris Ingram the service engineer?

GV – Yes.

P – Was this at the request of the HSE with Mr Hinks?

GV – Yes.

P – Did you examine the excavator R984?

GV – I did.

P – Was the grab attached?

GV – Yes.

P – Did you notice unexpected hooks welded to the grab?

GV – Yes.

P – These were not fitted by Liebherr and you had not seen them before?

GV – That's right.

P - Would Liebherr have approved of working with chains and the grab?

GV – No.

P – Was anyone from Euromin present at this inspection?

GV – I don't recall anyone.

P – Did you understand what the hooks were for?

GV – Yes.

P – Did anyone at Euromin explain?

GV – No.

P – So how did you know?

GV – I had heard about what had happened.

P – If you were using chains, what attachment would you use?

GV – A special; lifting hook.

P – If a customer wants to change the attachment, can they do that themselves?

GV – Yes.

P – How long does this take?

GV – If all goes well roughly an hour.

P – Was the excavator in good working order?

GV – Yes.

P – Were Euromin good at calling out the service engineer?

GV – Yes.

P – Did you go into the cab?

GV – Yes.

P – Did you test the joystick?

GV – Yes.

P – How sensitive was the joystick?

GV – Fairly sensitive.

P – Did it take much force to close the grab?

GV – Not a lot of force.

P – Why is that?

GV – The operator has to sit for a long time and make that movement very often.

P – How long does the grab take to close?

GV – Under three seconds.

P – Was there any special noise that would alert you to the grab closing?

GV – Only if the engine note changes when the grab is completely closed.

P – Did you find the instruction manual?

GV – Yes.

P – Was it complete?

GV – As far as I could tell.

P – Were you aware that there had been a modification to the grab before you saw the hooks on the 29th of April?

GV – I wasn't aware of anything.

P – On purchasing an excavator would a demonstrator always go to the customer?

GV – No.

P – What about with Euromin, did a demonstrator go there?

GV – Yes.

P – Do you know anything about check valves on this machine?

GV – Yes, it had check valves fitted.

P – What is the purpose of the check valve?

GV – If you break off a pipe and oil escapes, the check valve keeps the pressure up.

P – Does this play a part when changing..... Sorry this is the wrong question. Can you tell me what a gate valve does?

GV – It stops oil escaping.

P – Is that its sole purpose?

GV – Normally.

P – Does it have any other purpose?

GV – No.

P – You don't need oil for the hook attachment so the oil can be turned off?

GV – Yes.

P – That is done by a switch under the left arm rest?

GV – Yes there is a safety switch and that turns off the controls. If you lift the arm rest the levers are inoperative. The controls for travel and the attachment become inoperative.

P – So there is one switch to ensure that machine can't travel and the attachments can't move?

GV – Yes.

D – A gate valve is a shut off valve?

GV – Yes.

Mainly to stop oil leaks but it can also isolate the grab?

GV – Yes.

D - The driver knows about this?

GV – Yes.

If the valves were closed he could operate the lever but the grab can't close?

GV – It can't be powered shut.

D – Harris could shut off the valve?

GV – Yes.

D – Is it a roomy cab?

GV – Yes.

D – The attachment range is the range of whatever attachment is fitted?

GV – Yes.

D – So it is not possible for no person to be within the range of the hook when it is stationary?

GV – No.

D – The driver must pull the joystick towards him?

GV – Yes.

D – You don't take your hands off the lever if you're using it and you don't put your hands on if you're not using it?

GV – No.

D – You got to know Euromin well?

GV – Yes.

D – Were they very safety conscious?

GV – Well their machines were kept in perfect condition.

D – It was the best maintained fleet you came across?

GV – Well, possibly.

D – Liebherr don't offer a safety consultancy?

GV – No.

D – When you saw the welded hooks you assumed they were for chains?

GV – No.

D – You have visited Euromin over what period of time?

GV - 7 years.

D – You have been there when unloading has been going on?

GV – Sometimes.

D – You never saw chains around the grab?

GV – I don't remember it being used, mostly I'd be working on broken machines. I never saw the grab in operation.

D – If you were going to weld on a hook, where would be the obvious place to put it?

GV – I don't understand your question.

D – You couldn't put it anywhere other than it was, it couldn't sensibly be any higher?

GV – No.

P – If the grab is open and you then shut off the gate valve, the grab can't close?

GV – It can't be powered shut but if there was a leakage it could fall shut.

P – Barring a mechanical fault it would stay open?

GV – Yes.

P - The grab can trap things. Can the hook do that?

GV – No.

P – Can the grab swivel open or closed?

GV – Yes if powered rotation.

P – The hook can't rotate?

GV – No.

P – When you are doing repairs do you work in the shed or in the open?

GV – With the L984 always in the open because of its size.

P – What about the other machines?

GV – Always in the shed.

J – Referring to the manual, what is meant by “During actual work”

GV – When moving material.

J – When the hook is stationary, is this actual work?

GV – No.

J – After loading a bag on the hook, what should happen?

GV – The men should get out of the working range.

J – If the grab is used is it more difficult to get out of the working range?

GV – Yes, because it's a lot bigger but the hold is big enough for people to be out of its range.

Evidence of Stephen Watson

P – You are the director of Pyecroft Engineering?

SW – I was at the time of the incident.

P – You worked as a welder and fabricator next to Euromin Ltd?

SW – Yes.

P – You did lots of welding jobs for Euromin including repairing machinery and damage to ships?

SW – Yes.

P – Do you have a copy of an invoice dated 11 th February 1998 for welding 2 lifting hooks to the excavator grab?

SW – Yes.

P – You issued the invoice shortly after you had completed the work?

SW – Yes.

P – Do you remember being asked to do the work by Roger Grant?

SW – Yes.

P – How did you know where to weld the hooks?

SW – I was shown by Roger Grant.

P – Were you worried about anything?

SW – Yes I was worried that the chains could be damaged.

P – How?

SW – If the grab closed on them.

P – What else?

SW – That it wouldn't be as effective.

P – What was the reply?

SW – He said it would be O.K.

P – You arranged a welder to do the job?

SW – Yes.

P – What did you think the hooks would be used for?

SW – Lifting equipment.

P – Does the welding have to be tested?

SW – Yes.

P – Can a firm test its own welding?

SW – No. I told him the weld had to be tested by someone else.

P – Did you deal with anyone but Roger Grant?

SW – No.

P – Do you know if the testing was done?

SW – I have no idea?

P – How important is the testing?

SW – Very important: it has been known for welds to fail if they have not been tested by a competent person. The law states that the welding must be tested.

D – Is the testing done to a load greater than the safe working load of the machine?

SW – Yes.

12 Evidence of Chris Ingram

P– You were a service engineer for Liebherr in April 1998?

CI – I was.

P– How long had you been visiting Euromin at that time?

CI – Since June 1997.

P– When you serviced excavator R984 did it have a grab?

CI – Yes.

P– Were there ever any other attachments?

CI – No.

P– Did you visit every 5 weeks?

CI – The machine had to be serviced at intervals of 250 hours. I was there regularly.

P– You were last there on July 17th 1998?

CI – Yes.

P – Before 24th April 1998 were you aware of extra hooks on the stem?

CI – I had noticed the hooks welded but I had never seen them used. It had always been used as a grab. On many occasions when I visited the machine wasn't working because I was working on it.

P – Did other machines at Euromin need more servicing than the R984?

CI – It was about the same.

P – While you were servicing the other two machines, had you seen the R984 in action?

CI – Yes.

P – What work was it doing?

CI – Unloading ships; used as a grab.

P – Did anyone at Euromin ever ask you about the hooks; would Liebherr approve of them?

CI – No.

P – Did anyone at Euromin phone Liebherr about the hooks?

CI – Not to my knowledge but they wouldn't necessarily tell me.

P – You were at Euromin on the 24th April?

CI – Yes.

P – You were in the workshop working on the loading shovel?

CI – Yes I arrived at 8 am.

P – Did you see any unloading?

CI – I was in the workshop but I was aware that the R984 was working.

P – Were you aware that the hooks and chains were being used?

CI – Not until after the incident. I heard the ambulance and looked outside.

P – If you had seen the excavator being used dangerously, what would you have done?

CI – I would mention it to someone in authority if it was detrimental to the machine or health and safety.

P – Would you mention it to someone at Euromin or at Liebherr?

CI – Both.

P – If you had seen the grab being used as it was on the 24th April, would you have considered it to be dangerous practice?

CI – I'm not certain I'd have needed to bring it to their attention. I don't know how to answer that question.

P – Did you see the system in operation?

CI – No.

P – Were you familiar with the manual?

CI – Yes but I couldn't tell you the contents.

P – Did you attend after the incident?

CI – Yes.

P – Was there anything mechanically wrong with the excavator?

CI – No.

D– Are you sure you never saw the chains being used?

CI – As sure as I can be.

D – If you had seen the chains, would you have been interested?

CI – Not really.

D– You serviced R984 on 17 March 1998. How long did that take?

CI – That depends on what servicing was needed. A minor service would take 3 hours; a major one would take nearly all day.

D– On 19 February 1998, you were on a site visit that took eight and a half hours.

CI – I don't know which machine I was working on.

D– Seeing the hooks excited no curiosity: you never asked anyone about them?

CI – It's not really my brief: I wouldn't know if Liebherr would be interested or not.

D– A modification done by Euromin and not by Liebherr was no concern of yours?

CI – Not particularly.

J – Did you service a number of R984's?

CI – Yes.

J – Did you ever see hooks in that position?

CI – No. I've never seen a machine with hooks welded to the centre column.

13 Statements of Russell Harris

The statements of Mr Russell (Jim) Harris were read out in court. The essence of their content is given here. The first statement was made on May 6th 1998.

I have been a lorry driver for 25 years and have also operated heavy plant and smaller machines for example fork lift trucks. I have had CITB training in plant operation.

I joined Euromin in 1989 as a forklift driver. I started using the loading shovel and they asked me if I'd learn to operate a crane. A trainer came and taught me how to use the Priestman. I used it to unload aggregate from ships.

Around 1991 we started to get bulk bags of paving blocks coming in and we used a hired crane to unload them. Then Euromin got the Liebherr R984. We started using it with chains attached to the hinge bars inside the grab with chains attached to lift the bags from the hold. When we did this the workforce consisted of a crane operator, a forklift driver, a banksman, two men hooking on in the hold, and two men hooking off on the quay. We used to have the same people coming in to do the job.

A few months ago, some hooks were fitted to the centre stem of the grab and the chains were put straight on the hook. I was trained to use the Liebherr 984 when Euromin first got it.

On 24 April I came to work about 7 am. I knew I'd be operating the Liebherr so I went through the routine checks. I carried on with general yard duties until the ship came in then I started the Liebherr to warm it up. I saw Sean and Jody and said I wanted Sean in the hold and Jody on the quay because nobody seemed to have organised them. Roger told me there would be a couple of crew members helping.

One of them went and stood next to the hold for banksman duties and the other joined Jody on the quay. I saw someone else arrive with a high-vis jacket and assumed he was the casual. He went straight on to the ship and into the hold. The grab was already in the hold and I waited for the banksman to give the signal to lift. The banksman wasn't using standard signals, but I could understand him.

After about 45 minutes I swung the grab back into the hold and the banksman signalled me to go down, then across to the far side then lower again and stop. I then got the stop signal again, and didn't understand because I wasn't doing anything. The banksman started waving his arms around.

I saw Sean appear on top of the heap of cargo, signalling to open the grab and shut the engine off. Then he was shouting "ambulance" and I realised there was a problem. I called to Roger who was standing on the quay and he immediately phoned for an ambulance.

The second statement was made on 10 May 1999.

I previously made a statement to the HSE on 6 May 1998 relating to the events on 24 April 1998, which led to the death of Simon Jones while he was unloading the ship MV Cambrook. This took place at Euromin, Turberville Wharf, Shoreham. I was interviewed under caution on 20 August 1998 at Hove Police Station.

Since then I have been informed that I am no longer suspected of involvement in any criminal investigation into the death of Simon Jones. I have been asked if there is any information I may have which might be connected to the death of Mr Jones, which would not have been included in my previous statement or interview.

My belief is this was a bad day for circumstances, which added together resulted in Mr Jones's death. On the day in question the driver of the loading shovel was working elsewhere. I only know him as Taffy. Due to this, Trevor Ford, who is usually the banksman, that is the signaller between the hold and the crane, had to drive the shovel. This left me as the crane driver without my normal banksman. A crew member from the MV Cambrook stood in as banksman and gave signals that I understood but were not as I usually receive from a banksman. I felt a difference in the point where the crane took the strain of loading that made me even more aware that things were different that day. The banksman usually plays a lead part in unloading a ship. The next level is the man in the hold. I knew on this day that it was Sean Currey, who I had worked with before and I was satisfied that he had done the job before. He'd assume control in the absence of the banksman, and give signals to the stand-in banksman. Because of the difference in the point at which the crane was taking the strain, I was unsure whether Sean Currey was signalling

to the banksman as he should be. In the position of crane driver, the only guidance is from the banksman. The crane driver can see nothing so must take instructions from the banksman. I felt the action of unloading was wrong, but could only be guided by the banksman.

The other unusual happening that day was that our casual labour would normally join us about 7 am in the mess room where we'd talk through the work of the day and anyone new would be told not to go near the machinery until it had stopped. This was a briefing, but not a policy of the company. It was an informal thing that had developed as a result of commonsense and the fact that we were working with different and sometimes inexperienced casual labour. On this particular day, Simon Jones arrived after the unloading had started.

I'd like to clarify a point about the type of equipment used on the day. The crane was fitted with a clamshell grab. Roger Grant said to me about half an hour before starting work, "do you think we should change the grab for the hook?" or words to that effect. I answered, "Have you had permission from James?" (meaning James Martell the manager). Roger Grant replied, "no". I said, "you can't change the grab then or you'll get a right rollicking". I believe Roger Grant suggested he couldn't contact James Martell. Nothing more was said. I knew the grab had never caused a problem in the past so I continued with the work of the day.

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permission from James?" (meaning James Martell the manager). Roger Grant replied, "no". I said, "you can't change the grab then or you'll get a right rollicking". I believe Roger Grant suggested he couldn't contact James Martell. Nothing more was said. I knew the grab had never caused a problem in the past so I continued with the work of the day.

14 Evidence of Bruce Field, Liebherr GB

P – You have been the MD of Liebherr GB Ltd since 1995?

BF – Yes.

P – You have been in the company since 1990?

BF – Yes.

P – You supplied a second hand R984 excavator to Euromin in 1992?

BF – Yes.

P – Shut off/ check valves can be fitted to the machine. Are you aware that this shuts off the hydraulic fluid?

BF – The normal purpose is to prevent spillage of fluid when fitting attachments.

P – Where would the valve be operated?

BF – Manually, located at the point of disconnection. You can put them at any point on the machine.

P – If the valve is shut does this prevent hydraulic power?

BF – There would be hydraulic pressure as far as the valve but not beyond it.

P – What would happen if the valve was shut off with the attachment still on?

BF – It would prevent operation of the attachment.

P – Is this an intended purpose of the shut off valve?

BF – It can be.

P – Is it mentioned in the literature?

BF – I don't believe so: it isn't a standard feature.

P – Were you personally aware of any enquiry from Euromin re shut off valves?

BF – No.

P – Are you aware from records dated 8 th November 1995 that the service engineer C.Nelson fitted 2 shut off valves to the R984 at Euromin?

BF – Correct.

P – They were not standard on a new machine but could be fitted on request?

BF – Correct.

P – You have a document in front of you that shows an invoice and time sheet. Does the document show the grab had shut off valves fitted?

BF – Yes.

P – You are a leading manufacturer of construction equipment?

BF – Absolutely.

P – How important is safety to you?

BF – Very important.

P – You participate in safety groups?

BF – Yes, particularly in Europe.

P – On first supplying a machine, would you send a demonstrator?

BF – That would depend on the size of the machine and whether it was a new customer.

P – With an existing customer that you have known for 2 years, if they had a query about change of use of the machine, how would the company deal with that? BF – We would take the inquiry to in-house services and technical support and either deal with it ourselves or pass the inquiry on to the relevant factory.

P – In photograph 19 you can see a bright yellow hook on the stem of the grab. Was your company ever asked about welding a pair of hooks in that position?

BF – No we would never approve such a thing.

P – Why not?

BF – Two reasons. One we would not allow it without an investigation on overall safety. Lifting is done by a separate attachment. Two, welding the hooks there interferes with the structural integrity of that part of the machine. A separate hook attachment can be supplied for that machine.

P – Would you expect a grab to be used for lifting?

BF – No. It's a grab it isn't meant for lifting.

P – How could the hooks affect structural integrity?

BF – The steel column transmits the loads. The hooks could interfere with the design and could weaken the stem. We don't know what the capacity is that the steel column is designed to lift. The original designers are the only people who could answer that.

P – Is there a safety lever in the cab?

BF – Yes.

P – What is it and where is it? Refer to file B, page 154 on the front left hand side of the seat item 10 – lever, item 11 – console lifts up and switches off the hydraulics. This was a second hand machine manufactured in 1988, would it have come complete with a cut off lever?

BF – Yes. It was tested and it was working.

P – If you use the lever and then you want to cancel it, is there a delay?

BF – If the engine is running, the functions are restored immediately.

P – Does the shut off valve operate quickly?

BF – If the pressure is up, yes, but you would need to operate it manually if it was fitted at the end of the boom.

D – The invoice shows 2 valves?

BF – Yes, one for each pipe.

D – Look at photo 18. Where are the valves fitted?

BF – At the front end of the dipper arm on the rigid steel pipe work at the connection of the rubber hose.

D – Does the operator know the valves are there?

BF – Yes.

D – If the excavator is used as a lifting machine, there is a statutory regime for a safe working load?

BF – Yes.

D - Your whole company is concerned with safety?

BF – Absolutely.

D– You are content that the cab is a safe environment? With no undue risks and no undue activation of the controls?

BF – Correct.

D – Can the grab attachment swivel?

BF – I believe this one did.

D – Using the hydraulic circuit the grab can be powered to swivel, can it swivel on its own account?

BF – It is possible if knocked with sufficient force, but it is difficult. The grab weighs 2.5 tonnes.

D – Which joystick swivels it?

BF – Joystick 3 I believe.

15 Evidence of Ronald Stallard

P In 1998 you were a director of Stallion Plant Services Ltd., a company formed by you 25 years ago?

RS Yes.

P You have been in the business for 50 years and the business included testing, advice and certification of lifting equipment, crane and beam testing etc. You have tested over 1300 cranes, beams, excavators etc.?

RS Yes.

P From 1993 you dealt with Euromin?

RS Yes.

P Sometimes you would go to Euromin yourself and at other times one of your employees would go there?

RS Yes.

P You carried out repairs to lifting gear?

RS Yes.

P Did you service the machines?

RS No they were not our concern.

P Lifting gear, chains etc. they were your concern?

RS Yes.

P You advised on webbing slings versus chain?

RS Slings were manmade fibre, polyester and the chains grade 80 steel.

P You met Mr Martell?

RS Only on one occasion.

P Was Euromin a valued customer?

RS Yes over the last 5 years there business was worth on average £750 a year to us. It was always welcome.

P Is Euromin still a customer of yours?

RS Yes.

P In February 1998 were you contacted by Euromin to collect some chain slings to be altered that had been rejected by statutory inspection in January 1998?

RS Yes.

P So did you go to Euromin on 5 th February 1998 to collect the chain slings?

RS Yes.

P Did you meet Martell and Grant?

RS Yes.

P Did Martell ask you to look at something?

RS Yes the grab attachment. They were presently using web slings round the grab. Martell could see a safer and easier way to use the excavator by welding hooks on to the grab. We agreed to supply two of these hooks.

P I'd like to clarify the older system. There were webbing slings over the yoke and the yoke goes across at the bottom of the stem?

RS Yes.

P Can you indicate that on photo 17?

RS The vertical bit and the horizontal bit holds the 2 sides of the grab apart.

P Did you see the old system in action?

RS No.

P It was explained to you verbally?

RS Yes. Obviously if the straps are wrapped over horizontally, it takes longer and its difficult attaching the bags. It was necessary to use a D shackle to get the sides equal length and that wastes a lot of time.

P The system they were using was unsuitable?

RS Yes.

P Who explained the old system to you?

RS I honestly can't remember. Grant or Martell; I think it was Martell.

P So the time taken to wrap the webbing was a concern to Martell?

RS He was concerned on both counts safety and speed.

P Why was the old system unsafe?

RS If the lengths are not equal there is a shock wave when the load is pulled that goes right through the webbing.

P Could the bags ever be lifted safely?

RS There is no suggestion that the old system was unsafe. I concluded that as there had been no problems for years, it was not something of terrible importance.

P I understood that this wasn't a safety consideration?

RS It was simpler, it was safer, it was quicker. It's not right to say that one was more important than another.

P Your suggestion was?

RS Two hooks welded to balance one another.

P Welded near the three silver bits?

RS Yes.

P In the previous system were the jaws of the grab open or closed?

RS As I recall it wasn't mentioned. I understand the grab would have been open. If it had been shut, the cutting edge would have been against the chains or slings hanging under the grab. There was no suggestion of them being on the outside.

P In the new system was the grab open or closed?

RS Open.

P Why do you understand that?

RS If it was closed, anything inside could be cut. If it was open, you could cut off the locking valve so that the grab couldn't close.

P Was the shutting of the valve mentioned?

RS No. We didn't go into graphics or drawings. It was a quick conversation, What do you think of this?

P Did you notice the valves when you were on a visit to Euromin?

RS Yes. They were working right; I tested the grab and the valves. The testing was done a year after the accident.

P How long did it take to shut the valve off?

RS I went up a ladder and couldn't move it. Then a colleague used a bit of strength and shifted it. It took about five minutes.

P Was this with the arm on the quay side?

RS Yes.

P When you are dealing with lifting gear attached to appliances, there are rules on safe maximum loads?

RS Yes.

P How important is it for there to be a secure fixing point for the lifting gear on the appliance.

RS Very important. It must be firm and stable.

P If there is not a secure fixing point the dangers are obvious?

RS Yes. Excavators can be used as cranes but only if there is a secure point of lifting.

P Was that in your mind when you suggested welding the hooks?

RS Yes. I considered the risk assessment; what you put on the grab must be out of the way when moving loose material. The hook must be well up out of the way to avoid contamination.

P Is a secure lifting point the only aspect of safety in the work place?

RS It's more complicated than that but a secure lifting point is a starting place.

P Were you told that Euromin had the proper hook attachment provided by Liebherr?

RS No.

P Had you ever operated the Liebherr excavator?

RS I have tested a number of them; I may well have, but I don't operate them all day.

P Were you aware of the sensitivity of the controls in the cab?

RS I didn't operate the controls in the cab.

P Were you aware of the safety instructions from Liebherr?

RS No. It didn't arise.

P Have you ever seen an excavator operated as a lifting mechanism?

RS Not before the accident.

P Did Martell come back to you and say, I don't think your place for hooks is good; I'll put them lower.

RS No, I was unaware of where they were until after the 24 th April.

P On 8 th February 1998 you supplied two webbing slings separate from the hooks?

RS Yes.

P Did you offer to test the hooks at the time of your visit?

RS No. Martell said he would get a local company to weld them. Construction lifting operations regulations says the hooks need not be tested but in my opinion they should have been.

P You have a test certificate for the hooks?

RS Yes. Supplied to us in November 1997.

P When were they tested?

RS The manufacturer tested them when they were supplied.

J What sort of test would be done?

RS You put a proof load onto the hooks equal to twice the safe working load but that is to test the weld not the hooks.

P It mentions a bucket on the document, what does this mean?

RS A bucket is different from a clam shell, but it means the same thing according to different people's usage of it.

P You understood on 5 th February 1998 what was to be suspended from the hooks?

RS Yes. Chains.

P Was there any discussion on the actual chains, which would be used?

RS No it had already been discussed. They already had the chains, which were satisfactory.

P You regularly supplied chains to Euromin?

RS Yes.

P You knew the length of the chains?

RS I knew the ones he had were three metres, which would be long enough. No-one would be in a position of danger.

P Is this your area of expertise people working under an open grab?

RS You don't unless you are absolutely certain the thing isn't going to move.

P Had you ever asked to see the new system in operation?

RS No.

P Can the chains easily be shortened?

RS Yes, by using a shortening hook.

P Is this commonly done?

RS Yes.

P Is this is what is shown in photos 17 and 18?

RS Yes. The chain runs through and is looped round to shorten it.

P Could you look at page 122. Were you familiar with this document in February 1998?

RS Yes but it has since been revoked.

P On page 124 it refers to a certificate of exemption.

RS This is for when an excavator is used as a crane. It must have a lifting point and check valves.

P On page 122, paragraph 2 we are told that you can only use an excavator as a crane in limited circumstances. e.g. The excavator can only be used in this way when the work is directly concerned with excavation as when lifting pipes into trenches. It would not apply for example to unloading a lorry. Does your company give safety consultancy advice?

RS Yes. In certain circumstances but we charge for it.

P You have not been in business for 50 years for nothing Mr Stallard!

RS We never charge for advice; if we do it's consultancy. We are careful to advise if something is safe but against the law or unsafe but within the law. Only I, no other staff do consultations. We get asked on law and we are careful with this.

P You charged Euromin for safety consultancy?

RS No. The list price for hooks etc. No other charge.

P Have Euromin ever asked you for safety consultancy or advice?

RS No.

P Did you regard the conversation with Martell as safety consultation?

RS No. It was a simple question and an automatic answer. Just an ordinary conversation.

D You have had a lifetime's experience in the field?

RS Yes.

D Your Company is an appropriate place to seek advice with regard to lifting and safety?

RS Yes.

D On the 5 th of February 1998 if there was an easier or safer way of lifting?

RS Yes.

D Your advice was sought?

RS Correct.

D You gave advice?

RS Yes, my opinion was taken up.

D Your advice was to weld 2 hooks to part of the grab?

RS Yes, a particular part of the grab.

D You envisaged bags on hooks, lifted out of the ship and the grab would necessarily be open.

RS Yes.

D You saw nothing wrong in that?

RS They said they had been doing it for years: there was no need to go into doubts in one's mind.

D You had in mind guidance note 122. You interpreted paragraph 2 (b) as prohibiting the use of the machine if there was no lifting point?

RS Yes.

D Your advice to Euromin was given with the view to ensuring it complied with the guidance note?

RS Yes. I think it did.

D You didn't think it infringed statutory regulations?

RS No. That's another contentious point.

D On photo 17, that's where you said to weld the hooks?

RS Sorry but that's incorrect.

D You said you wanted them higher; but that would have fouled the hydraulic pipes. So where you would have had them is much higher up?

RS Yes.

D I suggest you are wrong about that. From a safety point of view they would be better lower.

RS Sorry you are wrong. Hooks can come adrift if contaminated with sand, gravel etc.

D The men hooking the bags on would be further away from the grab if the hooks were lower down.

RS But the grab mustn't close when someone is there!

D Did you carry out a risk assessment?

RS No but I made sure where I said to put the hooks didn't infringe any part of the movement.

D The possibility of the grab closing with men under it didn't occur to you?

RS It must have occurred to everybody.

D It never occurred to you that the grab could close with the men in range?

RS No. Of course if it had that would be a different ball game.

D It would never occur to you that a competent operator could close the grab?

RS No. With the shut off valves closed the grab wouldn't operate.

D You didn't know about the shut off valves?

RS Yes I did.

D You have never mentioned them before today.

RS Yes I have; in briefings in our company.

D I put it to you have never mentioned them. In previous documents, HSE interviews and statement summary they are not mentioned.

J I am not happy on the use of the summary. The summary may not be accurate. It is alright if he sees his exact words.

D There are some notes signed by you.

P It is a proper question if the witness is asked if he ever said X or Y. If he denies it, prior inconsistency may be proved.

D The witness never mentioned the existence of shut off valves before today.

J We can't deal with that without the document going to the jury as an exhibit.

There was a brief adjournment for 20 minutes.

D What is the yoke? Can you show us on photo 17?

RS It is the centre column.

D Does it extend to where you said to put the hook?

RS Yes it's all part of the same casting.

D That is still the yoke above the hydraulic pipes?

RS Yes up to the attachment point.

D Going to previous statements you have made. I purpose to demonstrate that when you gave advice there was certainly no mention of shut off valves. Do you agree?

RS Yes.

D Further I suggest that this was something that had not occurred to you.

RS Sorry but I had handled these valves myself.

D You said the system you suggested was safe and legal because it never occurred to you that the crane driver would inadvertently close the grab when anyone was in a position of danger.

RS Yes. I agree.

D Then you must agree you didn't think the grab would be isolated?

RS Anyone using the excavator as a crane would shut it off.

J With the valves shut off the driver couldn't do anything inadvertently?

RS Euromin must have known what the valves were for.

D I suggest the possibility of using valves has never been mentioned by you to anyone.

RS Looking in the file, so far I haven't seen it. There is the possibility it did occur to me. It is commonly used in other machines.

D I suggest you told Miss Barringer, The use of such methods is quite common. I see no problem with the system of work. The grab can only close if operated by the driver and the chains are long enough that the grab should be clear of the slingers.

RS The driver is in control. That's what I said. Yes.

P Could you read the previous sentence?

RS It is common for people to lift weights with the grab attached. I can't think of many places that take the grab off. The grab weighs 2.5 tonnes. The safe lifting load of the excavator is 6.5 tonnes. Therefore the machine can pick up 4 tonnes. It's normal for excavators like 360s etc to be used with chains attached to the bucket.

D You didn't mention valves to Miss Barringer.

RS No but you are using bits and pieces put together taken out of context.

D You lecture on safety do you?

RS Yes.

The court was adjourned for lunch until 2.05pm. When court resumed, at the request of jury Mr O'Connor Q.C. gave a second reading of the statements of Mr Russell (Jim) Harris. At 2.30pm Mr Stallard took the witness stand again.

D You cleared up the misunderstanding with Miss Barringer about the grab closing automatically?

RS Yes.

D All this is commenting on the system being used without the valves being shut off.

RS That is taking it out of context. To suggest I was unaware of the valves is erroneous and I object to it. I admit my statement makes no mention of valves. I knew after the accident that it wasn't locked off. The excavator has no finesse of control. It's very jumpy. With proper cranes you can control the movement of the load to the inch.

D You are now describing safety precautions?

RS Yes.

D But you don't mention shut off valves. Have you looked through the notes?

RS I have looked at the statements and admit I can't find mention of them but I have handled the valves; there are witnesses.

D At the meeting on 5 th February you made no mention of valves?

RS Quite possibly.

D In 4 statements between 1998 and 2001 there is no mention of them.

RS Possibly but because I didn't write it doesn't mean it wasn't in my mind.

D You are not trying to cover yourself?

RS I've got nothing to cover sir!

D Mr Martell asked you for advice on a safer system?

RS Yes.

D You recommended fitting hooks?

RS That was safer than it was previously.

D What Euromin did was to adopt the advice of you, a specialist.

RS My advice was something a damn sight safer than it was before. The operator shouldn't close the grab without a definite blatant signal from the banksman.

D When you suggested the system you clearly didn't assume the use of the shut off valves.

RS I was influenced by the fact that nothing had happened in previous years.

D In your written witness statement of 14 th June 1999 you say, The previous system had been carried out for many years in the industry. You don't say provided that the shut off valve was used.

RS No, I don't say that. There's lots of things you wish you'd said when someone starts picking holes in it.

D You are not doing this to deflect criticism from yourself?

RS No sir!

P Regarding your visit in February 1998 you said, Euromin rang and asked for Mr Lee, the sales representative to call. He'd retired so I went and saw Mr Grant and the managing director. Is this accurate?

RS No.

P Did Euromin ask to see you?

RS No, for Mr Lee.

P Did Euromin expect to see you or did you just turn up?

RS I just turned up.

P Did Euromin give any notice of what they wanted? Did they ask before you arrived, We've got this issue we need help with, can you advise?

RS No just, Could you pop down?

P How long did the meeting last?

RS About 10 minutes.

P You say they'd used exactly the same system for years without incident?

RS Yes.

P With the grab open?

RS Yes, unless you put the chains over the outside, but that's nonsensical it gives added instability.

P Did Martell tell you the previous system was used with the chains outside?

RS No.

P Did Martell say, the first time we used the jaws of the grab open?

RS It wasn't mentioned.

P When you said, We were never responsible for giving safety advice to this customer nor is any conversation to be regarded as a consultancy. Is this accurate?

RS Yes.

P If it had been a consultancy you would have confirmed that in writing?

RS Yes.

P If you had been aware of risk of injury, would you have suggested hooks?

RS Of course not.

P Were you given the opportunity to assess the operation of the system?

RS No. It didn't arise.

P There was no discussion of the use of the proper lifting hook?

RS No.

P Did you know they had one?

RS No.

P You said, Lugs are attached by some manufacturers to excavators now.

RS Yes and they can only be used with the bucket on.

P A bucket is an attachment that is always open; a grab can close?

RS Yes.

P You refer to a common method of working. How common is it for a lug to be fitted to a permanently open bucket?

RS Quite common, lugs can be attached in different positions.

P Have you ever seen lugs on a clam shell grab?

RS Yes.

P Where were they attached?

RS Different places according to the purpose, generally along the stem of the bucket.

P Have you seen this system in operation?

RS Yes.

P With the grab open or closed?

RS You can't close the grab; it would snap the chains.

P Where have you seen the system used?

RS Scrap yards, Newhaven, Winchester, Jordan's metal merchants. The question has caught me unawares. I've written to HSE for clarification. They say the old construction and lifting regulations have been revoked. I want to know if we should do what we've done in the past.

P It was suggested in evidence that where you suggested to place the hooks was untrue.

RS I said right at the top. 7 feet from ground level with the grab open on the quayside.

P Are you sure?

RS Yes. I showed sergeant Bartlett. He reached up on tiptoe.

J In your conversation you said you noticed valves were fitted?

RS Yes.

J Do some excavators not have valves?

RS Yes, a lot.

J If you'd seen no valves, would you have approved fitting the hooks?

RS How did they get on so long with an incorrect system? I wouldn't necessarily have said you can't do it.

16 Evidence of Andrew Hutchinson

P – For 25 years you have been employed principally in the food industry, you are a graduate horticulturalist and a member of the Institute of Biology. You have been self employed since 1994 providing health and safety management advice and are a member of the Association of Occupational Safety and Health?

AH – Yes.

P – You have worked in the food industry with responsibility for health and safety etc.?

AH – Yes.

P – You were referred to Euromin Ltd in February 1997 to provide a health and safety policy statement on security, staffing etc. A very broad brief!

AH – Indeed.

P – On February 7th 1997 did you see Mr Martell?

AH – Yes.

P – Did you visit the site and observe the work going on?

AH – I visited the site but there was no loading of lorries. This was unusual.

P – You produced a report with photos having identified the risks that concerned you about the things that you actually did see?

AH – Yes.

P – In the section on Hazards – fire precautions, there was no alarm system?

AH – Correct.

P – There was an apparent risk to staff tenants and the public and the environment was not adequately controlled?

AH - Correct

P – You identified further action that should be taken?

AH – Yes.

P – You detailed a schedule of action to be taken by James Martell?

AH – Yes in regard to equipment use, maintenance and repair, staff, crews, visitors. The public were vulnerable. The risks associated with the undertaking were not appropriately controlled.

P – Did you consider evidence of staff training?

AH – Yes.

P – The company health and safety statement was not available for inspection?

AH – No.

P – Staff were not trained in emergency first aid; there was no evidence on staff training on handling of loads and safe use of ladders?

AH – No.

P – Did you ask to see the accident book and identify any potential problems with access and egress, dust, slips, trips and falls and was protective clothing issued?

AH – The staff weren't wearing them when I visited. They didn't segregate pedestrians and vehicles. There were 1500 Kg bulk bags of blocks, some of which were damaged and not safe to lift.

P – There were no lorries being loaded and no ship being unloaded. You couldn't assess these activities, which can take place at night, in inclement weather and at different states of the tide?

AH – Correct.

P –How important is it that no work was going on?

AH – It is essential to see most or all of the operations.

P – Were you ever asked to come back?

AH – Not until after the “accident”.

P – Were you ever approached by Martell to come back and advise on the new system of work with the open grab and hooks?

AH – No.

P – If you had been asked would you have done so?

AH – Yes.

P – Did you identify further action to be taken?

AH – Yes.

P – Did this include a draft discussion for ship unloading?

AH – Correct.

P – Did you issue a health and safety policy statement to be discussed with staff on the training of staff, competence including banksmanship?

AH – Yes.

P – Did you find any evidence of training of banksmen?

AH – No.

P – Were you aware of the importance of banksmen?

AH – Yes.

P – Did you issue a list of points that needed actioning by James Martell?

AH – Yes.

P – For example handling of substances hazardous to health, risks of storage, handling not adequately controlled. No hazard data sheets etc.?

AH - There was one!

P – There were no job descriptions although this is a specific health and safety responsibility?

AH – Correct.

P – The report was provided by you to Jane Baker. What happened then?

AH – The report was passed to Euromin.

P – After the 24th April 1998 was there a full risk assessment?

AH – Yes.

P – Then you saw the vessel being discharged and assessed the safety?

AH – Yes. I made several visits.

P – Were the chains being suspended through an open grab?

AH – No.

P – What method was being used?

AH – A crane had been hired; there was a prohibition notice on the 984.

P – After your visit were lots of health and safety documents produced at Euromin?

AH – Indeed!

P – Look at photo 19. If you had been asked to advise on that system, what would you have said?

AH – I would not have allowed that process to carry on.

P – Why not?

AH – It is inherently unsafe.

P – Is that because of the length of chains or in principle?

AH – Maybe in some circumstances if the grab was isolated. It's difficult to comment with hindsight. I'm not really qualified to do that.

D – Training records at Euromin were taken away by the HSE. For a number of Euromin employees, one for each employee. e.g.

Mr Czaja 27th March 1996 – site safety awareness. 24th June 1996 – fork lift operating. 15th April 1997 – first aid. 16th July 1997 – manual handling. These were issued by ATB land based

training network. Was this your organisation?

AH – No. I was subcontracted by the training network.

D – You wouldn't have run these courses?

AH – No.

D – Euromin organised the courses with the training network?

AH – Yes.

D – The training network contacted you?

AH – Yes, to draft a health and safety policy.

D – What you found at Euromin was it a worse picture than you would normally find or typical?

AH – Typical, not unusual.

D – You cover a wide range of industrial activity?

AH – Yes. Mostly in agriculture, I had never been to a dock before.

D – You would not profess to expertise on dock yard procedures?

AH – No.

D – You are still retained to advise Euromin on health and safety – this is ongoing?

AH – Yes.

D – Is it a safety conscience company?

AH – Yes.

D – How much time do they spend on health and safety?

AH – About 2 days per month.

D – So about £6000 per month on health and safety?

AH – No. That's not possible. It might be a little more than £6000 per year.

D – As it happened there was no loading or unloading going on. Was this fortuitous?

AH – It was a snapshot of what you might find at any point in time.

D – The health and safety report states the Hoekman is the director?

AH – Yes.

P – In February 1997 you produced the report. Did you attend Euromin between February 1997 and April 1998?

AH – No.

P – Were you given an opportunity to observe operations?

AH – No.

P – Were you given an opportunity to review the actions supposed to be done by Martell?

AH – Some had been done e.g. the training.

P – Was the date when you attended agreed by you and Euromin?

AH – Yes in a conversation between me and Martell.

P – If he had said there's not much going to be going on would you have changed the date?

AH – Yes.

P – The February 1997 draft, was this adopted as policy statement by Euromin?

AH – Yes.

P – The operations procedure for vessel discharge signed by James Martell June 10th 1998, was this an example of a safe operations procedure statement?

AH – Yes.

P – Were you aware of an earlier operations procedure before June 1998?

AH – There was an operations procedure because ships were being discharged but there was nothing written.

P – There is a memo stating "all staff are to be provided with training, clothing etc" was this addressed to staff?

AH – Yes.

P – Does staff include casuals?

AH – Yes.

P – Does it say if you are asked to do a new task, ask the supervisor who will arrange training first?

AH – Yes.

P – Does it say conduct regular risk assessments?

AH – Yes.

P – Use competent personnel to ensure compliance with regulations – signed 23rd May 1997 by James Martell?

AH – Yes.

J – After February 1997 would Euromin have called you back?

AH – It was left to Jane to discuss this with the client.

J – Did you think your task was complete?

AH – No. I spoke to Jane about it.

J – Did you say anything to Euromin?

AH – No.

J – And you heard no more until 1998?

AH – No.

17 Evidence of Garratt Applin

P – Mr Applin you were the branch manager of Personnel Selection in April 1998. You dealt with Euromin Ltd supplying them with casual dock labour. Would you refer to exhibit 6, which gives details of Euromin's business.

GA – Yes.

P – What wages does it say were paid to casuals?

GA - £5 per hour.

P – What charge was made to the Company?

GA - £7 per hour.

P – Who was your contact at Euromin?

GA – Roger Grant.

P – The date on the document is 18 th September 1997?

GA – Yes.

P - It specifies that workers must arrive with a hard hat, high vis. jacket and boots.

GA – Yes.

P – Is exhibit 7 – the recruitment service manual and exhibit 8 a form that shows exactly what is expected of a casual labourer under job title stevedore?

GA – Yes – unloading of ships, person must be aged 18+, have a hard hat, high vis. jacket and boots.

P – On April 24 th three labourers were needed and they were to report to Mick Czaja?

GA – Yes.

P – Exhibit 9 confirms that 3 labourers were requested by Euromin. Do you have written terms of business for your customers?

GA – Yes. It's on the back of another exhibit.

P – Paragraph 7 reads client undertakes to supervise agency workers and ensure reasonable standards of workmanship?

GA – Yes.

P – The workers were engaged by you and deemed to be under the control and direction of the client?

GA – Correct.

P – Do you have a master card showing all the dealings with Euromin from September 1997?

GA – Yes. It's exhibit 10.

P – Did the firm always visit the workplace before supplying labour?

GA – No.

P – Did it never visit the workplace?

GA – Sometimes it did, sometimes it didn't.

P – Did anyone from the firm visit Euromin?

GA – No.

P – Do you have a record of registering Simon Jones? (exhibit 12)

GA – Yes.

P – This was dated March 1995 and included references?

GA – Yes.

P – Are the references checked by Personnel Selection?

GA – Yes.

P – This is exhibit 13 dated 20 th March 1998?

GA – Yes.

P – Did you have a record of checking employment history from an agency in Banbury?

GA – Yes.

P – You checked on Simon's qualities and found them "good"?

GA – Yes.

P – The form was signed by Simon on Monday 20 th April 1998?

GA – Yes.

P – Did he work on the 21 st and 22 nd of April for Lewes District Council refuse collection?

GA – He did.

P – On the 23 rd April he missed the early bus and didn't work?

GA – Correct.

P – On 24 th April between 6 and 6.30 am he phoned to say he had missed the bus?

GA – Yes.

P – He came into the office and was told there was work available at Euromin?

GA – Yes.

P – He was issued with a hard hat and a high vis jacket?

GA – As far as I'm aware.

P – He was put in a taxi at 7.45 am to Euromin.

GA – Yes.

P – How long was the journey?

GA – Within 15 minutes.

D – You worked for 17 years in the RAF?

GA – Yes.

D – Your role included flight safety and health and safety?

GA – Yes.

D – You attended courses including health and safety at work?

GA – Yes.

D – You left the RAF in 1996 and did a course with Blue Arrow Recruitment?

GA – Yes.

D – You offered a job as catering consultant at Personnel Selection?

GA – Yes.

D – This offer came from the branch manager?

GA – Yes.

D – You have proceeded to ensure as far as you can that people supplied are adequately trained?

GA – Yes.

D – Euromin contacted you on 18 th September 1997 and R.Grant was recorded as the manager?

GA – Yes.

D – Refer to document GA7, first page of the client master card. This is a record of the occasions that Euromin needed staff?

GA – Yes.

D – On 12 th Dec 1997 it suggests that you contacted Euromin?

GA - Yes.

D – On 14 th April 1998 you spoke to Mick Czaja trying to drum up business?

GA – Yes.

D – On 23 rd April 1998 it refers to a labourer needed for the next day?

GA – Yes.

D – There is another master card for the same date. Why?

GA – One is a revised document.

D – The revised document says that previous dock experience was essential?

GA – Correct.

D – It says other information – unloading fork lift trucks cranes etc. What does this mean?

GA – It means these machines are being used.

D – So you would send someone used to working with cranes?

GA – That's decided according to information received from the client.

D – Simon Jones was assessed and interviewed?

GA – Yes he was.

D – O.K. for working on docks and with bins?

GA – That was assumed from 1995.

D – It was later assessed in 1998 as interested in refuse, dockwork and general labouring?

GA – Correct.

D – Euromin made clear what it wanted in general terms?

GA – Yes.

D – "While every effort is made to ensure conditionsetc. No liability can be accepted.

GA – Yes.

18 Evidence of Gary Hood, Personnel Selection

P You were recruitment consultant at Personnel Selection in April 1998?

GH Yes.

P You interviewed Simon Jones in April 1998 and asked him if he had had experience of dock work?

GH He said he had worked for a couple of days at Newhaven as a casual labourer.

P You went through the normal procedures?

GH Yes.

J Did you ask what work he had done in docks?

GH He said labouring.

P On the evening of 23 rd April 1998 you had a request from Euromin for workers?

GH Yes.

P (refers to document) It says here, send Simon Jones to docks for 8.30, is that your writing?

GH Yes.

P Was the request for 1 or more than 1 worker?

GH It was for 2.

P Was it Grant who made the request?

GH Yes.

P Did you find 2 workers at short notice?

GH No.

P So Simon was given a hat etc and sent by taxi at 7.45?

GH Yes.

D You went through the normal procedures including discussing health and safety with regard to dock work form GA1?

GH Yes.

D This form was tailor made for docks?

GH Yes.

D This was part of the Company's literature?

GH Yes.

D You went through this form with Simon Jones?

GH Yes.

D On the 4 th line up it says, always stand clear of the load being lifted?

GH Yes.

D So you were providing him with safety notes?

GH This form was produced by the Company when dealing with Cocoa boats at Shoreham and was for labourers unloading on the quay side.

D Did it contain specific advice for labourers working in the ship's hold?

GH inaudible.

D You were satisfied that Simon Jones was suitable to send to Euromin?

GH Yes.

19 Evidence of Chris Barringer, Health and Safety Inspector

P: You have been a Health and Safety Inspector since 1991?

CB: Yes

P: You have been responsible for docks and Harbours in South East England since 1995 covering the coast of Kent and as far as Chichester?

CB: Yes

P: You have a BSc in biochemistry, a postgraduate diploma in Health and Safety and have been on lots of training courses while working at the HSE?

P: You have dealt with a large number of accidents?

CB: Yes

P: On 24 April 1998, you were in your office when you heard of an incident?

CB: Yes

P: So you drove quickly to Euromin?

CB: I did.

P: The police and emergency services were there?

CB: There was a number of emergency vehicles there.

P: You saw Simon Jones in the hold with the grab?

CB: Yes

P: Refer to photographs under tab 4; there are 18 photos. Are these yours?

CB: Yes

P: Were you aware that the scenes of crime officer had taken photos?

CB: Yes.

P: In photographs 15 to 18 you can see the full length of chains detached from the arm of the excavator?

CB: Yes.

P: Photo 15 shows a tape measure; is it yours?

CB: Yes.

P: According to your note book, what was the length of the chain?

CB: 1.8metres from the large ring at the top to the middle of the hook at the end of the chain.

P: What was the extra length of the 2 rings?

CB: About 10 cm.

P: So the absolute overall length was 1.9 metres?

CB: Yes.

P: Was the scene as in photo 21?

CB: Yes that was very much as I saw it.

P: To go closer did you have to walk on aggregate or bags?

CB: On bags of stones.

P: Was the surface of the bags even or uneven.

CB: Uneven.

P: Was the weather dry?

CB: It was raining.

P: Was it easy to maintain your footing?

CB: No, it was slippery.

P: What footwear did you have on?

CB: HSE safety shoes with non-slip soles.

P: Was there any work going on?

CB: Aggregate was being unloaded using the conveyer system.

P: Was it noisy?

CB: Yes, very noisy and there were a lot of echoes.

P: Was the engine of the Liebherr excavator going?

CB: No.

P: Were you concerned to speak to someone in overall charge?

CB: Yes.

P: Did you ask to speak to whoever was in charge of the site?

CB: The people on site were taking some control, but there didn't seem to be anyone in charge at the site.

J: Can you clarify that?

CB: There was nobody in overall charge of the site or of the unloading operation.

P: Were lorries arriving and leaving?

CB: Yes.

P: Who arranged for operations to stop to remove the body?

CB: I coordinated that.

P: Did you go back on 25th April to inspect the excavator?

CB: Yes.

P: Were others there including an engineer and a surveyor from the insurance company?

CB: Yes.

P: You made a visual and working inspection of the excavator?

CB: Yes.

P: Did Jim Harris operate the machine?

CB: He did.

P: Did you see him operate the controls in the cab?

CB: Yes.

P: Were you in the cab?

CB: I was in the doorway.

P: Did the operations include using the joystick to operate the grab?

CB: Yes.

P: How sensitive was the joystick?

CB: Extremely, finger touch control.

P: Did you see the grab close?

CB: Yes.

P: Was there any special noise when the grab closed?

CB: It was remarkably quiet; there was no additional noise.

P: Did it close quickly?

CB: In about a second.

P: What is the reason for the sensitive controls?

CB: It is for the benefit of the operator, to avoid strain and stress.

P: On 29th April, did you go back with Dr. Hinks, an HSE specialist inspector and Chris Ingrams, a service engineer from Liebherr?

CB: Yes.

P: Did you inspect the excavator?

CB: Dr. Hinks and Mr Ingrams inspected it; I was not active.

P: On 30th of April, did you see Mr Martell?

CB: Yes.

P: Was this the first time you'd seen him?

CB: Yes, the first time since the incident.

P: Did you obtain documents from Mr Martell?

CB: Yes.

P: Were you given a two page Health and Safety policy statement dated 23 May 1997 and signed by Mr Martell?

CB: Yes.

P: Were you given Mr Hutchinson's report of February 1997?

CB: Yes.

P: Were you given a safety notice re head protection dated May 1997?

CB: Yes; "All staff engaged on the dock are expected to wear hard hats".

P: Did you issue prohibition notices to Euromin regarding the use of the Liebherr?

CB: Yes. the HSE can issue these, if there is immediate danger, prohibiting certain practises.

P: Were these notices signed by you and dated 5 May 1998?

CB: Yes.

P: Did one of the notices forbid the operation of the Liebherr 984 excavator with chains within the grab?

CB: Yes. I served this notice on Euromin.

P: The reason for this notice was that the Liebherr 984 had not been so adapted to be suitable for the purpose for which it is being used?

CB: Correct.

P: Did you serve a second prohibition notice the same day; prohibiting the use of the excavator in an area where other persons might be at risk?

CB: Yes.

P: This was because the sensitivity of the Liebherr 984 controls was such that there was a foreseeable risk of the grab opening or closing?

CB: Yes.

P: This was in breach of the Docks Regulations 1988, regulation 5?

CB: Yes.

P: This was not to be done any more by Euromin?

CB: Correct.

P: This is a separate risk from what happened to Simon Jones?

CB: Yes.

P: Did you specify what the company had to do to comply with the notices?

CB: Yes.

P: Did you serve a third document that day; an improvement notice?

CB: Yes.

P: This stated that Euromin were contravening the Health and Safety at Work Act 1974, section 2(2), in that Euromin as an employer were not providing such information, instruction, training and supervision as was necessary to ensure, as far as was reasonably practicable, the Health and Safety at work of employees?

CB: Yes.

P: You required Euromin to remedy this by 10th June 1998?

CB: Yes.

P: They were required to provide proper induction and training for all permanent staff and casuals?

CB: Yes.

P: Did you carry out inspections and take statements from many people over the next few months?

CB: Yes.

P: You tracked down the Cambrook in Gravesend and interviewed the captain Mr Chichomski?

CB: Correct.

P: On 3rd August 1999, did you go to Euromin with a Mr Sandies with a view to videoing the Liebherr 984 in action?

CB: Yes.

P: Who drove the excavator?

CB: Jim Harris.

P: This was not an attempt to reconstruct the events of 24th April 1998; it was to show the excavator in normal use?

CB: Yes, normal use.

P: Have you ever seen an arrangement for lifting involving hooks on the stem of a clam shell grab?

CB: Never.

P: If you were asked in advance about such a system, what would you say?

CB: It is not a safe system of work in general.

P: Is there an internationally agreed system of signalling by banksmen?

CB: I am not aware of any single international code.

P: Are there British Standard signals?

CB: There are.

P: When you were visiting Euromin, did anyone draw your attention to the stop valve on the excavator?

CB: No.

P: Did anyone mention this valve?

CB: No.

P: In photos 8 and 9 we can see rails above the deck for the conveyor belt. Does the belt system overhang or is it just parallel to the side of the hold?

CB: It overhangs the side of the hold.

D: Refer to page 142; did you make that witness statement dated 8 March 2001?

CB: Yes I made it to the police.

D: That was nearly 3 years after the event was it not?

CB: Yes.

D: Why the delay?

CB: It was the first time I had been asked by the police to make a statement as part of their investigation.

D: What did you have to refresh your memory?

CB: Just my notes; I had no documentation to refer to.

D: We have statements dated 8 March, 15 March and 30 March. How could you remember the details?

CB: There had been discussions of the case and I had gone through my own records.

D: Some of this information came from your own records?

CB: Yes, from the Health and Safety Investigation.

D: You were maybe recollecting for the first time. It says on page 143 that Jim Harris demonstrated the controls to you. When you made this statement about the joystick on the right – see page 154 – your recollection is that the operator moves the stick towards him to open the grab. Do you agree that that is wrong?

CB: Absolutely.

D: Your recollection was based on what?

CB: At the time of the statement, recollection from 3 years before.

D: Did you know that the joystick was spring loaded?

CB: I could not comment on that.

D: Under tab 4, photograph 18 – your measurement of 1.8 metres for the chains is from where to where?

CB: That was the length of the chains as they were in use.

D: They measured 2.44 metres unshortened?

CB: Yes.

J: On photograph 15 – there is a tape by the top set of chains.

CB: There were two sets of chains; the tape measure was moved between photographs 15 and 16. I measured from the mid point of the inside of the hook up to the top of the chains.

D: To get the full length of the drop you need to add on the length of the two rings; how long would they be?

CB: The medium sized rings attached to the single ring – approximately 10 centimetres.

D: It looks more than that.

CB: I said approximately; I didn't measure it at the time.

Court adjourns for lunch

D: Mr Martell and Euromin had not previously been convicted of Health and Safety offences?

CB: Not as far as I am aware.

D: You had not served statutory notices before on Euromin?

CB: No.

D: Are fatal accidents usually caused by human or mechanical error?

CB: It depends on the circumstances.

D: You said there appeared to be no one in charge. Was it not obvious that Roger Grant was in charge?

CB: There was a certain amount of control but there was no overall control of the unloading action or of the site in general.

D: When you arrived the unloading of bags by Euromin had stopped?

CB: Yes but aggregate was still being moved in the yard.

D: With regard to the discharging of the cargo, I suggest that Roger Grant was in charge of this.

CB: No I'm sorry; he wasn't.

D: Did you speak to Mr Harris soon after you arrived?

CB: Yes.

D: Did he deny touching the levers?

CB: I asked in general terms what had happened. He was unaware of anything that he had done.

D: Did he deny touching the levers?

CB: He was in a state of shock; he described the operation; he wasn't aware that he had done anything to cause the grab to close.

D: Did he say his hands were in the air?

CB: We didn't discuss that in detail then.

D: Was he always insistent later that he never touched the joystick?

CB: He was, yes.

D: There is a training record for each employee?

CB: For a number of employees.

D: There have been training and safety awareness courses?

CB: A number of courses.

D: You took statements from Harris in May 1998 and from Grant; how many statements did you take?

CB: I think two.

D: You interviewed Stallard; he gave you some notes and he made statements?

CB: Yes.

D: On the first occasion, when you arrived, the automatic discharge was going on and you stopped it?

CB: Yes at a certain stage.

D: You understood there was a perceived risk of grounding?

CB: Yes.

D: Mechanical failure of the excavator was eliminated?

CB: This was referred to a specialist; there was no failure.

D: Was the Liebherr well maintained?

CB: Yes.

D: Simon Jones had a hard hat, which was found in the mess room?

CB: So I understand.

D: You were not aware of the existence of a shut off valve on the Liebherr?

CB: No.

D: With reference to the shut off valves: "There was no system in place for disconnecting this valve system", what does that mean?

CB: The valve system was intended to make disconnecting the hoses easier; it was not intended as a safety device.

D: Harris had recently been assessed as a competent excavator operator?

CB: Yes.

P: When you made your statement to the police you were able to refer to previous documents that you had written – your notebook from 24th April 1998 and you had previously been obliged to prepare a detailed report extending to 17 pages?

CB: Yes.

P: You visited Euromin on 7th July 1999 and watched Jim Harris operating the Liebherr 984 and made a video. Were the joysticks marked with directions?

CB: There were no obvious markings; I had to ask Jim Harris for directions.

P: Should there be obvious markings?

CB: Yes there should.

P: Were the chains seized, or were they left at Euromin for continued use?

CB: They were subject to notices.

P: They have since been destroyed?

CB: Yes.

P: We now have the original of photograph 18; can you see the tape measure more clearly?

CB: Yes.

P: Is there any reason to change your estimate of approximately 10 centimetres for the length of each ring?

CB: I'd say now that the rings are slightly more than 10 centimetres; probably 11 or 12 cm.

D: At the top are they slightly larger?

CB: Slightly.

J: The stop valves could be used a) when changing the grab to stop oil loss or B) to cut off the hydraulics so the grab could not open or close. What's wrong with doing that?

CB: In my discussions with Harris and Grant it was apparent that they were not aware of the lock off system.

P: In your report of 7th July 1999, was there any change in the evidence? No one mentioned shut off valves on this occasion?

CB: No.

20 Legal argument on the admissibility of the evidence of expert witnesses

The jury were sent out and told to return at 10.30 am the following morning (15:4:01)

Mr Walker informed the Court that he intended to enter a submission of no case to answer on both counts of manslaughter when the prosecution case rested.

The prosecution pointed out that the original Liebherr manual needed to be fetched from the crane, as the one supplied to the police by Liebherr was a later version.

Mr Walker insisted on having D.S.Graham Bartlett present rather than Miss C.Barringer (HSE) when the taped interview with Martell was played because he wanted to ask Bartlett about Martell having being informed that he would be prosecuted. This was ruled irrelevant.

Mr Walker for the defence was objecting to certain aspects of the evidence of expert witnesses arguing that they were merely the opinions of these witnesses. Mr Walker did not ask for editing of the interview tapes apparently the jury were to be given a transcript. However Mr Walker was objecting in particular to the use of the following words/phrases:

Unsafe

Dangerous to take loads above operatives

Highly dangerous

Possibility of clam shell grab closing was foreseeable

Neither I nor others in post (Mr Walker wanted just "I") – it was agreed there should be no references to the opinions of others unless challenged in cross examination.

"I conclude inappropriate system used".

Mr Walker objected to Dr Tom Hinks saying, "unsafe when out of sight of the driver" apparently he could say what could have been done.

He objected to Dr Hinks saying it was not safe to lift loads over persons or to lift loads from the clam shell grab.

Likewise he objected to Dr Hinks saying that the possibility of operatives going within the grab was foreseeable and that it was a patently unsafe system of work.

Mr Walker objected to expert witness Barry Clinch saying, "It was a patently unsafe system of work".

“The system of work was extremely dangerous for workers in the hold because the crane driver can't see”.

“Even with very long chains fitted there would still be a danger”.

Mr Walker submitted it was generally not open to expert witnesses to say what is dangerous. From personal expertise he might be able to identify a potential risk.

He argued that to say something is dangerous is meaningless – crossing the road is dangerous etc.

Road traffic accident statistics define dangerous as standards falling below that of a competent driver.

“The issue is not whether there is a danger – that's obvious as there has been a fatal “accident”. Bear in mind the limits on expert evidence, scientific or technical subjects outside the experience of the jury. Danger is a jury decision not for the expert witness to say. They could say I've never seen this system before but not it's dangerous that is simply a lay opinion”

“The witness can say the grab could accidentally close because of equipment error or inadvertent operator control but to say it is unsafe is a value judgement, not a matter for expertise.

“In my opinion it is not safe to lift loads over operatives”, is again his opinion. British standards says lifting loads over operatives should be minimised. Foreseeability is a relative concept.

Mr O'Connor submitted that this was an artificial limitation on expert witnesses. The nature of certain risks from the operations was well within the range of expert opinion. He said that an expert could take an overview and say e.g. it is dangerous not to have a machine maintained. He could look at it and say:

- a) What is the risk?
- b) What happens if that risk comes to fruition?
- c) How likely is it for the risk to become reality?

We submit that a Health and Safety expert can give evidence on all three.

Walkers opinions on b) and c) are surrendered by his cross examination of Stallard:-

“You are a specialist ..., you have advised, safer system of work”. In the defence speech to the jury he spoke of 50 years experience and “a safe system”.

Miss Barringer this morning expressed a similar opinion to that of Dr Hinks and Mr Clinch and that went unchallenged. The defence has the chance to call expert witnesses to express the contrary view. We submit there are no such witnesses.

The role of the expert is to take an overview of questions a), b) and c) not to take them in isolation.

This sort of evidence is often produced in court. There have been few authorities quoted by the defence.

No-one suggests there is a legally set standard of gross negligence; it is supremely a jury question. The jury creates the standard.

The judge intervened saying, “Mr Walker says the consequences of risk in this case are blindingly obvious”.

Mr O'Connor responded, “The answer to question b) is obvious, but it is legitimate for witnesses to point it out. The answer to question c) is the vital issue.

The reference can be found in Archbold paragraph 1066”.

“ An accountant could give an opinion that transactions could have no legitimate purpose.”
“Dangerous” is not the ultimate issue in cases of gross negligence.

The defence has employed wilful misinterpretation of evidence from Stallard, a man totally unqualified in health and safety. He is qualified solely in the mechanics of safe lifting of loads.

What is sauce for the goose should be sauce for the gander.

Dr Hinks' conclusion is a core of prosecution evidence and should be allowed to stand. Reasons for that conclusion can be brought out in cross examination.

By the same principle Mr Clinch's evidence should proceed. Otherwise the prosecution is being penalised because the expert's opinion is strong. It seems to be O.K. to say, “a bit dangerous” but not, “extremely dangerous”.

The judge said, “Mr Walker objects to a number of passages in the statements of Mr Clinch and Dr Hinks containing the words “dangerous” and “highly dangerous”. They should omit these and confine themselves to identifying the risks.”

Mr O'Connor replied that “dangerous” was the third category of opinion. Stallard was allowed to talk about “safety” as an opinion, the matter was talked about extensively.

The judge said that in his view Mr Walker's submission should stand except the witnesses could say, “It creates a potential risk”. It would be alright to say “It is a potential risk to lift loads over persons”. “Foreseeable” was admissible but not “danger” or “dangerous”.
It was admissible to say, “I have never come across this system before”, but no more than that.
To Dr Hinks' conclusion “The inappropriate lifting attachment creates risks to employees”, the objection is not upheld.

Mr O'Connor then told the judge that he had obtained a statement from Jordan's (the company at which Mr Stallard alleged he had seen a similar system of work using a clam shell grab), which stated that they did not possess a clam shell grab.

The judge replied that Mr Cresdee from Jordan's might need to be called as a witness.

21 Evidence of Dr Tom Hinks, expert witness

This account was written up from detailed notes taken during the trial.

P: Dr Hinks you are one of Her Majesty's specialist inspectors of Health and Safety, specialising in mechanical engineering and you have a B.Sc. in mechanical engineering, an M.Sc. and a Ph.D. in applied mechanical engineering and also have 31 years experience in industry and have worked for the HSE since December 1990 as an inspector?

H: Yes.

P: You have many times investigated accidents and you are familiar with the safe use of lifting equipment?

H: Yes.

P: Would you describe the HSE as a prosecuting authority?

H: It is one of its functions.

P: What happens if somebody wishes to consult the HSE with regard to practice in the work place?

H: We take phone calls, we often advise, we often make visits to the work place. We support good working standards across the country.

P: On the 29th April 1998, you went to Euromin Ltd with Chris Barringer? H: Yes.

P: Were Roger Grant, Jim Harris, Sean Currey and various Liebherr staff also present?

H: Yes.

P: Was James Martell there? H: No.

P: The purpose of this visit was to inspect and investigate the circumstances of the incident, which led to the death of Simon Jones, to gather information and to find out what you could?

H: Yes.

P: Did you inspect the Liebherr 984?

H: Yes.

P: Had it been moved?

H: Yes.

P: Was the boom on the ground?

H: Probably, that would have been a safe position.

P: Did you inspect the stem of the grab and see the lifting hooks welded?

H: Yes.

P: Was it your information that chains were suspended from these hooks?

H: That's how it was described to me.

P: Had you ever come across such an arrangement before?

H: Never.

P: If you were consulted by an employer about setting up such a system, or you saw one in use, what would be your response?

H: In the first instance, I would say on no account should this be done because of the inherent danger or risk; the employer should think again. In the second instance I would advise the relevant HSE inspector to issue a prohibition notice.

P: Which potential risks would concern you?

H: The integrity of the hooks including the parts to which they are attached, the safe working load, whether the chains were the right type and grade for the application. As the chains were going through the grab, you would need to consider the weight of the grab; the grab would need to be isolated from the hydraulics if used. It's not like freely suspending a load from a hook where there is a large latitude for error. The grab may come in too low and hit obstacles or people. There is the possibility of the grab closing on the chains with a force of 13.3 tonnes; this would cause severe damage and could sever the chains.

P: Would your response be the same regardless of the length of the chains?

H: In many ways, yes. A longer chain gives more room, but otherwise the answers would be the same.

P: You are aware that it is normal for the excavator driver not to be able to see directly into the hold?

H: I was told about this; this is quite usual.

P: How is the risk affected by the lack of view?

H: You rely on other forms of communication by somebody else. You need a trained banksman with full knowledge of a code of signals. Both he and the driver must understand each other fully and must have consulted beforehand. Alternatively, you can use a walkie-talkie system.

P: If you expressed all these concerns but an employer said: "But I have a superb driver; I can trust him completely." What would you say?

H: Does he know recognised signals? Is he fully conversant with their use? Is there somebody in overall control of the lifting operation? It is not the job of the crane driver to control the operation.

P: Did you inspect the controls in the cab and observe their sensitivity?

H: Yes. They were very sensitive.

P: Is this normal?

H: Yes, for ergonomic reasons.

P: If the employer said to you that the driver is such a good operator that he would never nudge the joystick; would you agree to the system?

H: No. With jackets etc on a cold day, you cannot guarantee that he won't inadvertently operate the controls.

P: The Liebherr is a hydraulically operated machine; what happens if the hydraulics fail?

H: The grab closes.

P: With what force?

H: It would be the weight of the grab under gravity; there would be no power.

P: What would you say about the presence of workers within the range of the excavator arm?

WALKER –objection on grounds that this is simply opinion – objection over ruled as this is an expert witness.

H: You should endeavour to keep people outside the range of the excavator arm. In some cases you can't, so I would expect method statements and risk analysis of procedures while the hooks and chains are above the ground. Persons should be kept well away until chains are at rest at ground or bag level.

J: If the chains are lowered on to the tops of the bags then the workers could approach but if the grab was too low, they should wait until it was raised to the correct position?

H: If the hooks had cleat plates, and you were using the proper lifting hook without the grab, the chains could be lowered onto the bags, when the chains were not swinging, the driver could stop the machine and the workers could fit the chains on the bags. The workers would then move back and the driver would lift.

J: What should happen if the hook comes into low and the chains are flopping around?

H: Before people access the area, the banksman signals to the driver to raise it again.

P: As to this system, which was being used, was there any way of operating it without the risks you have described?

H: Not to my knowledge.

P: Were there any markings on the joystick to show mode and direction?

H: No.

P: Should there be?

H: Yes.

P: According to what?

H: An Approved Code of Practice, the Docks Regulations and various British Standards.

P: As you understood the system at Euromin, did workers have to go under the jaws of the grab to do the job?

H: Yes, I was told the jaws were open.

P: What was the risk of something happening?

H: A foreseeable risk in my opinion.

P: What is the specific designed purpose of a clamshell grab?

H: To scoop up loose aggregate and to move it from one place to another.

P: Should there be any one near it?

H: With a safe method of working, no.

P: What is the maximum operating hydraulic pressure?

H: 300 atmospheres.

P: Is this equivalent to 4,500lb per square inch?

H: Yes.

P: In reaching your conclusions about the risks, you have borne in mind many statutory regulations and British Standards?

H: Yes and industry Approved Codes of Practice.

P: You obtained from the cab of the Liebherr an instruction manual, which you gave to Miss Barringer?

H: Yes

P: Where was it?

H: Behind the driver's seat.

P: Because of concern that the manual we had as exhibit is not identical with that one, we are obtaining the original manual, which will be brought to court later today.

When you inspected the excavator, was the safe working load marked on the exterior?

H: Not that I could see.

P: Was it marked anywhere on the machine?

H: No.

P: Looking under tab 5, volume (a) photos 1 and 2 which were taken in March 2001, can you see marked under the open cab door: "SWL 6000Kg, including 2,500 Kg grab weight"?

H: Yes.

P: Should this marking be on the machine all the time?

H: Yes.

P: This is a statutory regulation?

H: It is.

P: Making a risk assessment and planning an operation might be thought complicated. Are there statutory duties for example to carry out risk assessments?

H: Yes.

P: Written assessments?

H: Normally.

P: So you start with a risk assessment, then you work out a safe system?

H: Yes.

P: There were ways of avoiding risks. Did you know that Euromin had the proper hook attachment?

H: Yes, I was told by Mr Vines.

P: If this hook had been used, would there still be risks involved?

H: This would eliminate the risks associated with the clamshell grab.

P: If there was a check valve, manually operated at the end of the excavator arm, which would isolate the grab and prevent it from closing, would this remove any of the risks you have identified?

W: Objection, this is not within the witness' report.

JURY SENT OUT

11.40a.m. Jury returned.

P: If a check valve was used, would any risks remain?

H: The risk of the grab closing is removed; the other risks remain.

P: Can you explain better how the hook attachment can be used to lift multiple heavy bags?

H: You can be certain of the weight, you can use single or multi chains or web chains spread to suit the position of the bags.

P: The system that was in use at Euromin, was it appropriate?

H: I don't think it is an appropriate system.

P: Why?

H: It gave the potential for persons to be put in a vulnerable position, with consequent risks to their health and safety.

W: (Began by repeating all of Mr O'Connor's questions about qualifications and received the same answers)

W: In industry, what line were you in?

H: The design of special purpose machine tools.

W: You have been with the HSE since December 1990?

H: Yes.

W: You have investigated incidents arising from various activities?

H: Yes, with specific reference to mechanical engineering.

W: As to your experience of docks, have you seen a ship being unloaded?

H: Once or twice!

W: You made a statement on 6th March 2001, 3 years after the incident. Was this your first statement?

H: I made a draft statement before.

W: Was this based on your visit of the 29th April 1998 and on witness statements?

H: Yes.

W: The only Euromin staff you met on 29th April 1998 were Sean Currey, Jim Harris and Roger Grant?

H: Yes.

W: The Liebherr controls should be marked with directions?

H: Yes.

W: These weren't marked?

H: Not that I could see.

W: So all the Liebherr excavators in the country are deficient?

H: There should be a diagram in the cab at least, a hard copy.

W: There was a diagram in the manual; you say it should have been in the cab?

H: Yes.

W: You are not saying this has anything to do with the "accident"?

H: I'm not saying that at all.

W: The marking of the safe working load is covered by which regulations?

H: Docks Regulations.

W: What, what's that? I haven't got them.

In the guidance notes for certificates of exemption at the top of page 194, it explains about being exempt from regulations.

H: Yes that's what it says.

W: Can you say if the Liebherr needed to comply with construction lifting regulations or did they need to apply for a certificate of exemption?

H: This machine came within the scope of Docks Regulations.

You will find the relevant information in Appendix 9, "Docks Regulations".

W: So construction lifting regulations didn't apply?

H: No.

W: The shut off valve, how long before now did you know it existed?

H: Soon after the "accident".

W: In his evidence, Jerry Vines told me that no check valves were fitted to the clamshell grab. That's the opposite to what you have told the jury.

H: Not at all. I spoke to Jerry Vines just after our visit to Euromin; the valves were fitted to the end of the dipper arm.

W: Under divider 4 can you show me on the photograph where the shut off valves are?

H: They are where the flexible hydraulic hoses.....

J: The photograph under tab 3 is much better.

H: (Pointing to position on photograph) They were fitted somewhere up here – he was referring to the manually operated ball valves. This is totally different from a check valve.

W: The valve fitted was not a check valve?

H: No, not at all.

W: The check valves on the cylinders wouldn't be any help?

H: It's a failsafe system in a hydraulic circuit. There is no ambiguity; check valves and stop valves are different things for different purposes.

W: You realised the stop valves were there?

H: I understood from Jerry Vines that they were check valves.

W: You didn't regard this valve as significant?

H: No. The overall system had inherent weaknesses; there was the potential for harm.

W: Assuming you knew the valve existed, at no point did you recommend the valve as a safety measure?

H: No, because it's just for changing attachments.

W: In your report, you made recommendations; none of these involved the use of a stop valve?

H: No.

W: Using the lifting hook does not eliminate the risk of the excavator operator moving a lever and dropping the hook on somebody's head?

H: No.

W: While the appliance is being operated people shouldn't be under it?

H: Or within the confines around it.

W: While lifting or moving the hook or grab you would take precautions against any one getting near?

H: Yes.

W: People must go under it when it is stationary?

H: Yes. The banksman's role is still crucial; he must understand unambiguously any signals from the hold and convey these to the excavator operator.

P: If the stop valve is turned to "stop" could the grab be closed by movement from the joystick?

H: No.

P: Everything else, including the dipper arm would be workable? H: Yes

P: If you were looking for a safe system of work, would you recommend the system as used at Euromin but with the valve turned to "stop"?

H: Not with the clamshell grab in place.

P: It would not be sufficient and safe practice?

H: The risks of the grab still remain apart from it closing.

22 Evidence of Barry Clinch, health and safety expert witness

P: Mr Clinch, you have a BSc from the London School of Economics, you are a fellow of the Institute of Occupational Health and Safety and you have worked with the HSE – previously the factory inspectorate for 31 years?

BC: Correct.

P: You have worked in the Merseyside area covering wharves and docksides?

BC: Yes.

P: You have seen a wide range of dock operations?

BC: Yes.

P: For 15 years you have been a Principal Inspector and have since moved to Hull?

BC: Yes.

P: You undertake regular inspections of ports and wharves?

BC: Yes.

P: This includes the handling of bulk aggregate etc.?

BC: Yes.

P: On many occasions you have seen grab cranes and excavators used for handling loose materials?

BC: Yes.

P: You have seen a Liebherr excavator in operation?

BC: Yes.

P: You have seen it grabbing loose material and also lifting bags with hooks?

BC: Yes.

P: When bags or packs are lifted by an excavator, how would that normally be carried out?

BC: You would remove the grab; fit a lifting hook, which can also be used with rectangular frames or slings for lifting 4 or 8 bags.

P: Have you ever seen lifting done using chain slings wrapped around a closed grab?

BC: Yes, on rare occasions.

P: Have you seen lifting lugs welded to a single bucket excavator?

BC: Yes very occasionally.

P: Was this a bucket excavator where the jaws can close or open the bucket?

BC: No. It was a single open bucket with no jaws.

P: Have you ever seen an open grab with chains suspended from within the grab?

BC: Never.

P: Have you seen bags of cobblestones being lifted by a Liebherr excavator at a dock near Hull?

BC: Yes.

P: Was a grab used?

BC: No; a hook attachment with a rectangular frame.

P: How many chains were there?

BC: There were two machines; one had 4 and one had 8 chains.

P: Were these subject to safe working load limits?

BC: Yes. They were thoroughly inspected and examined.

P: Are there regulations which govern the marking of safe working load on the exterior of an excavator?

BC: Yes (names them).

P: You have read the witness statements, seen Miss Barringer's report and seen the photos?

BC: Yes.

P: On that information, in your view, did the system involve risk?

BC: It did involve risk.

P: What risks were these?

BC: Consider an excavator versus a crane. The crane is like a fishing rod, with a line and hook; you have good visibility around the hook. This is important for the men in the hold communicating with the banksman. The excavator with the grab is more like a snooker cue. When it is lowered into the hold with the grab on the end, visibility is obstructed. The men in the hold are effectively on a moving platform. The ship moves with the swell, and with the wash from other ships on the harbour. The conventional crane, with a long rope, takes up the movement. The hydraulic arm of an excavator is rigid. As the ship moves, the arm does not take up the movement. A person can be thrown towards, or away from, the arm. If the hydraulic supply to the grab is not shut off, the grab could close. The controls are sensitive, like those on a computer game. The operator is effectively sitting in an armchair and can easily move the controls. The same control spins the bucket, and opens and closes it. It is a very quick action. There is the added danger that inadvertent movement of the operator could cause the grab to open, close or rotate, putting people at risk. With chains wrapped around the outside of the grab, there is the added risk that the chains have unusual forces exerted on them. If the grab tries to open, it stretches the chains and they could fail. With the chains inside the grab, the chains could fail if the grab closes. Working beneath an open grab is like putting your head in the lion's mouth; it may be a very benign lion, it may not want to close its jaws, but it could do so inadvertently. The men still have to attach the chains to the load. The banksman can't see clearly how close the jaws are as they approach the people in the hold. The operation is considered quite risky, as compared with using the hook attachment. It takes about one to one-and-a-half-hours to change the grab for the hook.

P: If the grab closed on the chains, could there be risk to the chains?

BC: They would be damaged. The damage would be greater if the chains were under tension, as when lifting a load. They could break and drop the load.

P: What is the closing force of the grab?

BC: Several tons.

P: You visited Euromin on 26 April 2001, and operated the controls of the Liebherr?

BC: Correct.

P: How easy was it to move the joystick?

BC: Very easy: it was a short movement action, very much like a computer game.

P: Did you try to move it with one finger?

BC: Yes: it was sufficient to operate the grab.

P: How quickly did the grab close?

BC: Almost instantaneously. There were a few seconds at the most between operating the lever and the jaws closing.

D: When was your witness statement made; was it after March 2001?

BC: Yes.

D: Was this your first visit to Euromin?

BC: Yes.

D: You said that you have rarely seen an excavator used with chains wrapped around the outside of the grab?

BC: Correct.

D: When you saw this system, you did not issue prohibition notices?

BC: No.

D: It was easy to move the joystick from side to side and backwards and forwards?

BC: Yes.

D: If the operator knocks the lever forward, this can drop the grab or a hook?

BC: Yes.

D: Which regulations cover this type of operation?

BC: Lifting operations are covered by Lifting Equipment Regulations 1999.

D: Which regulations were in force in 1998?

BC: The Docks Regulations.

D: I want to question you on the forward and backward movement of the joystick; in your statement, you said the right hand joystick moved from left to right to open and close the grab and from front to back to rotate. Was this a mistake?

BC: Yes.

D: Had you forgotten?

BC: No. I misunderstood the notes, which I made at the time.

D: Was the joystick spring-loaded?

BC: Yes.

D: To operate it you have to hold it?

BC: Yes.

J: How long do you need to hold it for?

BC: Less than a second. The movement is almost instantaneous and if you let go of the joystick it stops.

P: How long is the delay between starting to move the joystick to the left and the commencement of the grab closing?

BC: It starts to move almost instantaneously; to close the grab fully takes longer.

23 Evidence of Charles Cresdee

P – Mr Cresdee you are employed by Jordan's transport of Portsmouth, which has sites in Winchester, the Isle of Wight and Newhaven. You have been garage manager for nine years and you visit these sites and carry out repairs at Jordan's premises?

CC – Yes.

P – Have Jordan's ever used a clamshell grab?

CC – No. Not to my knowledge.

P – I understand they have a cactus grab, how does that differ from a clam shell grab?

CC – The cactus grab has five fingers, which close around scrap metal and is used for moving it from one place to another.

P – Do you sometimes use the cactus grab with an electro magnet attachment?

CC – Yes. Sometimes it is used with the magnet attachment and sometimes not.

P – When it is in use is anyone anywhere near the cactus grab when it closes on material.

CC – No.

P – What type of machine is this cactus grab attached to?

CC – An excavator designed specifically for that particular job.

P – Is it used for lifting?

CC – Yes.

P – How is that done?

CC – The grab is detached from the excavator and a lifting eye (hook) or arm is attached.

P – Could you look at photos 18 – 19. Have you ever seen an arrangement with chains on hooks passing through an open clamshell grab?

CC – No I haven't.

D – Do you know Mr Stallard?

CC – No. The name doesn't ring a bell with me.

D – Are you aware of Stallion testing?

CC – Vaguely.

D – Can your premises be observed from the road?

CC – Yes.

D – Were you asked to give evidence two days ago?

CC – Yes.

D – You live in Portsmouth?

CC – Yes

D – You are aware of the fatal accident that happened on 24 April 1998?

CC – Only what I read in the papers.

D – How far is Shoreham from your Newhaven premises?

CC – About 20 miles.

D - Jordan's are scrap metal dealers?

CC – Scrap merchants: we transport our own scrap cars from all over the country to Newhaven. Most of it goes on boats over to Europe.

D - What is the cactus grab used for?

CC – Moving scrap metal from one area to another.

D – How many cactus grabs have you got?

CC – Seven or eight.

D – Are they operated from the cab of an excavator?

CC – Yes.

D – What is the lifting capacity?

CC – I don't know but it's stamped on the machine. The grab weighs one tonne.

D – I suggest that chains are used on the grab.

CC- I can't comment if I'm not there.

D - How often have you been to the Newhaven site?

CC – About a dozen times.

D – How long does it take to change the grab for the hook?

CC – An hour or so.

24 Recording of James Martell's police interview of 17th August 1998

A recording of an interview with James Martell held on 17th August 1998 was played in court during the trial. This text is taken from detailed notes written during the trial but is not a formal transcript.

The interview began with the usual caution, stated that the interview was being conducted in the interview room at Hove Police station and those present were asked to introduce themselves. They were Detective Sergeant Graham Bartlett (GB), HM Health and Safety Inspector Christine Barringer (CB), James Martell (JM) and Peter Thompson, solicitor (PT)

GB: At the end of the interview you will be given details of the procedure for dealing with the tape and how you can have access to it. Should you wish to speak to your solicitor at any time, you've only got to tell us, we will stop the tape, leave the room and you can have a private consultation with him.

JM: Yes.

GB: I'll remind you that you are under caution. You don't have to say anything unless you wish to, but it may harm your defence if you do not mention when questioned something you later rely on in court. Anything you do say may be given in evidence. Do you understand?

JM: Yes.

GB: Mr Martell, to explain what's happened up to now. You came to the Police Station by appointment with your solicitor at 11am this morning, at which point I arrested you on suspicion of the manslaughter of Simon Jones. We have since come to the custody block where your detention has been authorised for the purpose of obtaining evidence by questioning you and I have outlined to your solicitor the facts surrounding a joint investigation between the HSE and ourselves. I'd like to ask you now some basic details about the structure of Euromin, the company of which you are general manager at Shoreham. Could you go through for me how Euromin is set up, where is its head office and what is your role in Euromin?

JM: I'm the general manager of Euromin Ltd, which is a wholly owned subsidiary of Euromin Holdings Ltd, which in turn is a wholly owned subsidiary of Dihoopin Tenssin in Holland. Dihoopin Tenssin are large traders of aggregates, raw materials for the construction industry. Euromin Ltd is based at Shoreham Harbour, Albion Street and is there to handle imported materials, seaborne vessels discharge them onto the quayside and they are distributed inland from Shoreham Harbour.

GB: Who is your direct manager? Who do you report to?

JM: I report to a director in Holland.

GB: So you are the most senior person from Euromin in this country?

JM: Yes

GB: What other operations or facilities do Euromin have in the UK?

JM: None. Just this operation down here and the only employment people we have is in that area.

GB: How long have you been employed by Euromin?

JM: Four and a half years. I started in February four and a half years ago.

GB: What did you do before that?

JM: I worked for a company in Kent looking after an estate for a Saudi Arabian gentleman for two years and prior to that I'd been in the dock industry for - well seventeen years ago. It was really in the recession, four years I was out of it.

GB: You went on to estate management?

JM: Yes.

GB: So what's your history in the dock industry? What level were you working at and what sort of positions did you hold in different companies?

JM: Basically, I set up a grain storage and exporting silo in Shoreham Harbour seventeen years ago and I worked for them for about ten years as a general manager, then I was an estate manager with this Saudi Arabian Gentleman for four years, so I've always been in management.

GB: So far as dock work is concerned, what training have you had in relation particularly to health and safety aspects?

JM: Personal training? I haven't had personal training as such, I mean it's just by literal education and conveying that training to others working underneath me.

CB: As far as Health and Safety actually within Euromin is concerned, as you say you're actually the most senior member of staff in this country, are you given any advice or guidance from Holland from the parent company as regards procedures, health and safety, anything of that sort?

JM: No. Basically it's assumed that, you know, the health and safety of the country in which I'm operating is the health and safety they understand. Whether it's the same in Holland or not; I don't know. I can't exactly remember whether that's in there, cos I haven't looked at it for four years. I couldn't tell you what is written in there now.

CB: O.K.

GB: So far as the people that work under you are concerned, what's the set up there?

JM: As far as who does what you mean?

GB: Yes.

JM: Or health and safety?

GB: No, who does what?

JM: Who does what?

GB: We'll come to the other point in a second.

JM: Well we have an accountant who's sort of office manager. We have a man who acts as ships' agent.

GB: Is that Mr Grant?

JM: Mr Grant, yes. Then we have a man who operates sales and distribution of stone.

GB: What's his name?

JM: Mick Czaja. It's Polish C-Z-A-J-A, that's right. Pronounced SHIRE. Then we have the crane driver, Russell Harris, Jim Harris. We have a shovel driver who looks after the discharging of ships inside as well, Trevor Ford and then we have two casuals, one of which is full time, Sean Currey and the other is part time.

GB: Who's that?

JM: At the moment, it's Gary Porter. We have a salesman selling paving stone; he's out on the road most of the time, with an assistant.

GB: So far as lines of supervision and responsibility are concerned, who, because I'm assuming that you are not at the Shoreham site all the time, who is your deputy?

JM: I don't have a deputy as such, but I have different areas that different people are responsible for, like sales and distribution, Mick Czaja would keep in touch with me, he has a mobile phone and if he's out he would answer directly to me. Anything to do with ships, Roger Grant would liaise with me and so really that's the way we do it, rather than having one foreman on site, because they have different areas of responsibility and can be in different places at different times.

GB: So is Roger Grant actually designated as supervisor, ship supervisor?

JM: He basically, anything to do with ships coming in to the wharf, he as the agent is fully responsible for knowing where the ship is when it leaves where its leaving, which country it's leaving, when it's due to arrive and he would keep me informed. I'd liaise with him more than anybody else.

GB: What about the unloading operation, who supervises that?

JM: Basically the supervision, it's a bit split into the chappie that's actually, like Roger Grant, looking after the ship and telling me and he would liaise with the chaps on the ground as to when it was going to start and then Jim Harris as crane driver, would know that he had to be there an hour before to get his machine ready. He's worked here for a number of years and the procedure has always been basically the same.

GB: You have, by the nature of this enquiry the need to call on the use of casuals?

JM: Yes.

GB: Can you explain how that came about?

JM: Well through the regular employees, there always used to be access to people that were out of work and they were paid to come in for a day or half a day to work for a ship. In the last two years it's been much more difficult to get these chaps because they've got jobs, so we had to use an agency to supply part time people, which you know Personnel Selection is the one we use, so we could just phone up the day before and say we're looking for two people, three people whatever tomorrow to help with a ship.

GB: Would Mr Grant do that?

JM: Yes. He'd phone up and get them down.

GB: O.K.

CB: Was it Roger Grant who initially contacted Personnel Selection....

JM: In this case, yes.

CB: Agreed to use them?

JM: Yes.

CB: Were you actually aware of Personnel Selection's terms of business, the service that they were able to offer you. Did you have any involvement with that?

JM: Yes, basically we stipulated they came ready to work on ships, which we knew they were used in other parts of the port, so we obviously took their labourers. That's how we used them in the first place.

CB: Was there any sort of written agreement with Personnel about the arrangements?

JM: There was a contract came through the day after in the post as to how many hours, who it was, rate per hour that we had to pay. And we stipulated they came with hats, jackets and boots, ready to work on ships. That was part of the agreement.

CB: O.K. and that was actually Roger who agreed that with Personnel Selection?

JM: Yes.

CB: OK. Thanks.

GB: You say ready to work on ships. What would you assume is the minimum competency of the people Personnel Selection were sending?

JM: Well I think without being sexist, you wouldn't send three office temps to work on a ship. You know what I mean, it's dirty work and it's outdoor work and you're dealing with big machinery. So you convey that sort of message to get the sort of person that understands the sort of work they're going to be doing. So by outlining that it was working on a ship's dock, Personnel Selection could make a decision on the sort of people they would send.

GB: Is there any training or experience that you would be looking for these people to have attained before they came to work for you?

JM: Not experience as such, you're looking for somebody who's got average intelligence and know where he is and what he's doing. No two jobs in any port are the same; different ways of doing things and by having the sort of people that knew what dock work was about, they knew to keep away from the wharf edge so it's more common sense. No you couldn't train a man prior to him arriving that's what you do in this situation, because it's different from day to day, from ship to ship, every ship size and shape is different. You can't say that's what we do with this ship because it can be different on any ship any day.

GB: Is there a difference in the skills of working on the dock side and actually working on the ship?

JM: I think it's an operation in itself so the skill really is the operation rather than actually any particular section of it short of driving a machine. The actual dock labour force are people that understand ships and that's really all I can say.

CB: Do you know who would make the decision if you had a number of staff present for a shift for a ship? Who would decide who went where and worked in what area?

JM: Yes, basically we'd have our hard core work force, so if you've got a difficult ship that was difficult shapes, you'd have your usual one or two men on the quayside and then one or two extras that came from the outside and they would explain to them what to do in the operation they were doing on the quayside. Likewise in the ship, one of our chaps would be inside the ship and he would show the extra man what he was supposed to do.

CB: Thanks.

GB: Who would ensure that what was being told to the extra man was correct? You say you have core workers. Who would ensure that I, as the core worker, was telling my mate exactly what was required and all the health and safety implications?

JM: This is obviously a difficult area, how many people do you have looking after one man? We had a hard core of experienced people that had been there for 8 or 9 years, working for the company and through their experience they would make sure whoever came along was doing the right thing. You know I wasn't there all the time to make sure that the experienced man was doing what he was supposed to be doing. This as I say is a grey area. How much supervision do you have up the line? Our company had worked well over a long period of time doing very similar operations. I'm sure you can see by our safety record in the past. This is the first time something terrible has happened; it's only been scratches and bruises.

GB: Do your core work force have any health and safety training themselves?

JM: They've had training over a period of time. They have to have training to operate the machines. Obviously they have a lead in period of experience and they get certificated by the training company we use. We've had site awareness, health and safety, fire programmes, first aid you know to keep them up together. Prior to my arrival the crane driver was on a different training board, I think they use CITB, so yes we've had ongoing training as far as experience and working the machines are concerned, because those critical men can get into bad ways. Jim Harris, the crane driver, had an assessment on his suitability for driving that particular machine about a year ago.

GB: You say the crane drivers had certification from CITB, is that appropriate for dock work, Construction Industry Training Board?

JM: Yes, because we're in the construction industry and you know I think by getting whoever you get, they're competent people to train and assess people that they are doing the job correctly. If you call them in and they assess somebody it reinforces your feeling that he's suitable for driving that machine.

GB: Can you tell me a bit about the site awareness training that you had implemented?

JM: Yes it's a procedure laid down by the HSE. We had one done, from memory, just over a year ago, where an independent person was brought in, looked around the site and identified areas that things needed doing, and that is ongoing. Obviously it's a lot more intense now because we realise what's happened is the loopholes. If there are loopholes they have to be found. That person is coming down every month now and sort of like a pot of paint in a workshop is something that should be ventilated in a workshop, so if these are all the things that we've started to make people more aware of what actually goes on on site.

CB: Can you tell me, I haven't seen any sort of documentation about the site safety training. I believe it was a company called ATB Landbase.

JM: Yes, Landbase yes.

CB: Are they a local company?

JM: They're national but their office is I think in north Kent, I can't remember, somewhere in Maidstone. I can't remember the address but the head office is I think in Bury St Edmonds in Suffolk.

CB: O.K. and are you aware of that particular course, the general site safety awareness, are you aware of what the course actually included, what was covered by the course?

JM: Yes, I believe we've got a copy of their report when they came down, yes, I mean we went through it and we had quite a few items we had to take action on.

CB: I have got a copy of an inspection audit report, but it's particularly - there's a reference to some training which operatives had which was site training, an actual training session of some sort.

JM: Yes, I haven't actually got the records with me now and what the date was.

CB: It was in March last year I believe, it's just, I want to know if you knew what the course actually consisted of, what it actually covered.

JM: Oh yes, I haven't got it sort of right in mind now, but I mean it was very broad.

CB: Right. Do you actually have any documentation, which covers, a sort of syllabus, or might have covered?

JM: Yes, I've got it back at the office. Have you not had a copy of that?

CB: No, I haven't. That's why I want to clarify. I know the plant operatives have had specific training.

JM: I'm not putting everything that's happened here a bit sort of....

CB: O.K.

JM: You know what I mean?

CB: Yes that's fine.

GB: Excuse me; can you introduce yourself? Just for the sake of the tape, despite the sign saying engaged somebody has walked in and walked out again. Can you confirm that that person hasn't stayed in the room Mr Martell?

PT: I will confirm it as well. You had no warning it was going to happen and I saw you put on the warning light that should have precluded it.

GB: Thanks very much. I understand the risk assessment, that was carried out in February of last year, that you were referring to was carried out when there was no loading or unloading of ships.

JM: Correct.

GB: Have you ever had one done when there has been an unloading?

JM: We have had one done since, yes.

GB: Since? What since the "accident"?

JM: Yes.

GB: I see. Occasionally, and it would seem that it was the case in this incident, Mr Grant cannot get sufficient numbers of staff until right at the last minute. You're obviously very shorthanded.

In what, if any circumstances, would you consider it appropriate to use members of the ship's crew to assist?

JM: Very rarely, very rarely. When you refer to difficult to get people, it's difficult to get people if you know exactly when the ship's going to arrive. A ship can, due to weather, be 12, 24 hours late, so you can have a gang of chaps come in at midday and the ship won't arrive till midnight the following night, so you can sort of give notice when you want certain staff and in this case as you're aware we were 2 staff short, but that's very rare, I mean I think from memory, I can't think, unless a ship wanted to get away on a Friday night that a ship's crew would help. I can't remember when it was last used.

GB: From statements given by people who were there, we're led to believe that a crew member of the Cambrook was acting as hatchman.

JM: Correct.

GB: On that occasion, do you know why that was?

JM: Because we were shorthanded and rather than not have a hatchman we asked the ship's master if he could provide two extra people to assist with discharging. He agreed.

GB: How critical do you see the role of the hatchman?

JM: It's as critical as the crane driver himself. The crane driver is an experienced person who's been doing that job for a number of years and it's a relationship between two people. If the crane driver doesn't like the individual, the signs he's giving, he's free to say, "I can't understand what this man is saying".

GB: Would you look for any previous experience or competency in a crew member acting as hatchman in an emergency?

JM: Ship's crew are familiar with shipping operations and you know, backwards and forwards of a ship and discharging and loading of cargo. Obviously they're doing it every day like you're doing your job and I'm doing mine. Really you ask the master if he can provide two people; you assume he's got the intelligence to provide somebody that is, you know, understands what's going on.

GB: Would you consider that the competent use of the English language would be an asset to a hatchman?

JM: No.

GB: You don't?

JM: No, it's all sign language.

GB: O.K. What would you expect, you say it's a relationship between the crane driver, would you expect any liaison between them before the operation started to ensure that the hatchman is familiar with the same sign language that the crane driver is familiar with?

JM: Yes. I mean it's hard to lay down, whilst there is a kind of law from one port to another, you'll find there'll be a different sign language, but as long as the crane driver understands what the sign language is, and in this case I'm led to believe the crane driver was happy with the sign language he was being given, then that is the way it works. It's a relatively simple operation whilst what happened is very severe, don't get me wrong, it's up or down, left or right and that's the limit of the operation.

GB: Sean Currey says that during the course of the unloading, the grab was coming in lower than he thought it should do and he was becoming quite frustrated with the hatchman because of that. Are you aware of any way that that should be communicated to the hatchman and then on to the crane driver?

JM: I wasn't actually aware of this but I have since learnt that the grab was coming in lower than was normally expected because of the length of the chains, that's the only reason I can give for

that but I would normally expect there would be ample distance between the grab and the actual bag. That's the only reason I can give for why it was coming in lower.

GB: What would you say is ample distance?

JM: Well an absolute minimum of 2 metres from grab to bag. I don't know what it was in this case, but I'm led to believe it was a lot less than normal. But then you've got plenty of room to get underneath the grab and hook the chains on the bags.

GB: That may be true, but from Sean Currey it seems the grab was coming in so low that the chains were actually lying on top of the bags, and he and Mr Jones were having to scabble across the bags to get the chains to put on the handles of the bags, which indicates that there wasn't that much distance between the bottom of the grab and the bags, because the chains were slack on top of the bags. Would you consider that was satisfactory?

JM: From what you say, that would be too close.

GB: Whose responsibility is it to correct that, if they see it happening?

JM: Well there again it's the hatchway man telling the crane driver where to stop the grab and you know that's the way they've always worked it. And what actually happened on the distance, I'm not aware what the distance was.

GB: So if we take Mr Currey's account as accurate, because he is the only one who was in the hold who is still around to tell us, the hatchman should have seen that and signalled to lift them up.

JM: To lift them, yeah, I mean if they were that slack, knowing they were short chains, I'm surprised they could even get them on to the bags, because I knew the chains had been shortened so I wasn't aware they were that short. But if that happens more than once I'd assume he would get out of the hold, go and find someone, and say, look here this chap's not doing what he's supposed to be doing, could someone please help and get it right.

CB: Do you know on how many previous occasions Sean Currey had actually been involved in this specific operation in the hold?

JM: I'm not actually aware, but I know he had been involved in that particular operation of lifting bags with that crane, but I don't know how many times. I suppose he'd worked for us 2 or 3 months before this incident.

CB: OK, thanks. Just one question before we go on and talk about the excavator itself, you mentioned before that Personnel Selection were told that any operatives they sent to you should have their own hard hats, jackets and boots.

JM: Yes.

CB: Who was responsible on site for actually enforcing the use of protective equipment?

JM: Well I suppose at the end of the day I am but not being there of course and whilst these chaps are told to bring their hats with them, they bring them and whether they put them on or not is the problem. Well, not the problem is who is, as I say, it must stop with me.

CB: You weren't on site all the time. Did you do any general monitoring; actually walk round the site to see what was going on?

JM: Yeah. I'm sure you understand the hot dusty nature of this. It's how much can you do to ensure to that somebody actually puts his hat on. The minute you go out the gate, he takes his hat off, so you can supply them with jackets, "Please wear this at all times", it lasts 5 or 6 days. Monday morning, forget about it. Put your jacket on if you're walking up the yard, but there's no one specifically responsible to make sure everybody's got hats, boots and coats on all the time.

CB: OK. As far as you were aware, did the operatives generally speaking wear protective equipment?

JM: I believe in this case the person wasn't. I think he'd left it in the mess hut. I think he was wearing a jacket and boots but not his hat.

CB: OK

GB: OK. You say you can't be on site all the time. Were you there on the day of the "accident"?

JM: No I wasn't there.

GB: Not at all?

JM: No. I was in London.

GB: Right. As you can't be there all the time, and you are employing casual workers and people who may not be as familiar as you are with health and safety responsibilities, had you not considered designating somebody to ensure that health and safety obligations are enforced in their absence.

JM: I don't have a specific health and safety officer. It's a very difficult question to answer. You say, "When this sort of situation occurs". £12000 to £15000 a year, I can justify it, but you know it comes down at the end of the day to, how many people do you have or do you need to have, checking what somebody's doing. And I say, always having a hard core of experienced people that have worked in that situation for a long time, because the people that have the experience have told people, "Don't go here, don't go there, I shall be operating at this end of the ship, you go that end of the ship." It's an industry, no 2 days are the same, no 2 ships are the same, no 2 commodities are the same, and you've got a gang of people that you respect their intelligence to operate the machines safely, because nobody wants to injure anybody, so you take diligent care in the operations you're doing. That crane's worth £500,000. The driver has been given responsibility to drive it, he's paid a reasonable salary to drive it safely and carefully, so you rely on the co-operation of your staff. I believe I have a good working relationship with my staff. You rely on them to be sensible, not only safe but sensible to start with, and that must lead to safety, but as for a health and safety inspector employed by the company, we haven't got any.

GB: I wasn't suggesting that you should have somebody permanently employed in that but, for example, couldn't you have given that task to Mr Grant?

JM: I mean he was an assistant that dealt with health and safety matters. If somebody wanted a jacket, he'd be the person to go and get it.

GB: But would he make sure the person was wearing it?

JM: This is the situation we have here. The person involved didn't have his hat on. You know, he was told to bring his hat with him. He brought it with him; do you put it on his head for him? Roger Grant was my assistant in a lot of things. Primarily he's my senior assistant because shipping matters are the thing that matters most, and he's involved with that and he was my liaison man as far as health and safety was concerned.

GB: I think Sean Currey said that the wearing of hats and jackets was at the discretion of the individual.

JM: Yeah.

GB: Is that right?

JM: The law states 1, 2 and 3. As I say, at 9 o'clock at night, a chappie takes off his hat because it's hot or sunny or very dusty or whatever, do you sack him? It's a grey area, a very difficult area, and I'm sure Ms Barringer understands that. In hindsight this chappie didn't have a hat on. I don't think it would have made any difference.

GB: No. I agree.

JM: A bang on the head could be worse than what happened here, where you get a chappie that's injured for life. If Roger Grant's not there, some one takes his hat off. Somebody's got to watch every individual all the time. If somebody takes their hat off, they've got to put it back on again. It's a very difficult grey area to monitor and I don't know how you do it.

GB: We may well have covered this point, but I need to be quite clear: Who would be responsible for allocating specific tasks on a specific unloading operation to specific people?

JM: Jim Harris is the crane driver, so he's informed that a ship is coming in at 8a.m. tomorrow. It's got a certain commodity on it. Roger will tell him that ship is coming in then. He would have his crane ready and would be operating it. Trevor Ford would drive the shovel or the Bobcat. If it was a long ship there would be 2 crane drivers on, 2 different cranes. There could be one relief driver and one who was going to work late into the night. If it arrived at 3p.m. and had to be out by, say, midnight, we would work on till late. There would be 2 drivers who would take it in turns to drive the big crane. Between them they would work it out. Say, I want my meal break at 11 o'clock so you work from 11 till 2. Roger would give the information to them that I would, having liaised with Roger, say right that ship's got to go out by midnight. He would give that information to Jim Harris who would then formulate his plan for unloading the ship, and that was discussed with Roger which came back to me and Jim said he was going to work straight through and finish by 11 o'clock or we'll work so much tonight and finish it off tomorrow morning. I would give yes or no, that would be the overall plan and he would go over to the Bobcat driver, Trevor Ford, and say we're starting at 4, we'll work till 6 tonight, so there's no need for you to come in. I just need one man here with me, then we all come in at 4a.m. tomorrow and you'll be on the Bobcat, I'll be on the crane, and we'll do it this way: I'll work that end, you clear that end out, so it's a question of me, Roger Grant, Jim Harris and the crane driver and him liaising with the shovel driver as to how the operation is going to take place.

GB: So all these people you've mentioned have specific jobs for which they're specifically trained?

JM: Correct.

GB: But when you're talking about having people unhooking the chains on the quay and those that are going in the ship, who would be responsible for saying, "You go and enter the hold, and you stay up here"?

JM: It would be Roger Grant to convey to Jim Harris, and in this case Roger Grant said they were one short in the ship. I asked the ship's master for an extra man to go in the hold and for one on the quayside. Mick Czaja was working on the quayside in this case. He's a forklift driver, so he would be responsible for making sure they took the chains off and which bags he took away from the quayside. So there are different units of operation if you like, but all fed through from me to Roger, to Jim Harris to the forklift driver to the chappie working on the shore, but there's nobody actually in charge of every man doing everything all the time.

GB: So no one has a co-ordination responsibility?

JM: No one is there.

GB: You've got 5 people. "You 2 go down there, you 2 stay up here, you act as hatchman". You don't have anything like that?

JM: Everything revolves around the crane, that's the central operation of the whole thing, discharging the ship from the crane. That crane driver, he can see this is going on or that's going on. If they can't get the bags off quick enough because he can get them out faster, then he can call up the weighbridge, speak to Roger, say, "We need an extra chappie on the bags on the quayside". So he's the focal point, being the largest machine in the operation, that's where everything is gravitating, around that crane.

GB: How long have you had this particular crane, the Liebherr?

JM: I believe it's been there for 6 or 7 years.

GB: So before you were there?

JM: Oh, yeah.

GB: Have you ever used it yourself?

JM: Not actually driven it myself, but I used to own one on a previous operation in Shoreham Harbour.

GB: Right, so you are familiar with its controls?

JM: Yeah.

GB: Or the controls of that model?

JM: Yeah, how it works, what it does, up, down, all the rest of it.

GB: Right. The controls as far as the grab and arm are concerned are on a sort of like sticks on the left and right, levers on the left and right. How sensitive are the levers?

JM: Fairly sensitive.

GB: Do you know the reason for that?

JM: No.

GB: Right, but having used a different machine, you're happy that they are sensitive, and that's backed up by Liebherr as well?

JM: Yeah.

GB: What is your understanding of the use of that excavator with a grab? What's the grab for?

JM: The grab is just for discharging bulk materials out of the hold of a ship.

GB: How? You say bulk materials, loose bulk materials?

JM: Yeah, loose bulk materials. You have up and down and left right and slewing, and then a closing mechanism for the grab, which closes the grab, brings the material out on the quayside.

GB: Right. You are, or have been, using it for a different purpose?

JM: Yes.

GB: Can you explain how that came about?

JM: It's common practice with that type of machine. I'm aware of several other cases where that machine is used for lifting out pieces of machinery, out of the hold. In this case it was used for lifting bags out, with a chain adaptation, from the hold of a ship. I know the machine is used for lifting timber out of ships in other wharves. It's something that I've known has been used for a number of years.

GB: Have you ever read the safety instructions for that particular piece of machinery?

JM: I think I have read them, in the past.

GB: You have?

JM: Yeah.

GB: Right. I have a copy of them here, marked GEV/5. There is a section saying during actual work (this is provided to me by Liebherr), the third point down says, "Do not allow any person within the attachment range of the machine". What do you understand that to mean?

JM: I suppose it's the slewing area of the machine.

GB: In layman's terms, the opening and closing range of the grab?

JM: Yeah.

GB: How do you enforce that in the operation you use where you've got chains and people working beneath it?

JM: Well, I can see what you're getting at. It's an operation that had been carried out on that wharf for a number of years, for lifting up bags out of a ship, and I suppose if that machine is to move left, right, any way, somebody can touch a lever and what happened, happened. Equally, the whole boom could come down on somebody's head. The machine can move like a car, can hit somebody, you know. What is the working area? As far as they were concerned, that was an operation that had been carried out for as long as I can remember, that I've been there and before, quite safely.

GB: It may be something that has been done for years, but Gerry Vines, the service manager for Liebherr, tells me that attachment for that excavator is there to handle and re-handle loose loads. Can you think of any circumstances where a person would need to be in the attachment range when it was being used to handle and re-handle loose loads?

JM: The only time is if the Bobcat is in the bottom of a ship working. As the machine comes round, it can pass over the Bobcat, because the Bobcat is trying to push the last of the bulk material up here, so the crane is slewing around to get to the last of the bulk material. The Bobcat would be here, so it can quite easily slew over that area, which in the strictest sense would be within the slewing area, yes.

GB: Right. I'm not familiar with the Bobcat. Is that enclosed?

JM: Like a mini-bulldozer, it works on the bottom of a ship to push up the materials all the time.

GB: But is the driver enclosed?

JM: Yeah.

GB: So there's a degree of protection there?

JM: Yeah.

GB: This drawing of a lifting hook is marked GEV/1. Have you ever seen one of those before?

JM: Yes, I have.

GB: Where have you seen that before?

JM: I actually had one myself, and we do have something very similar to that at Euromin.

GB: Right. What is that for?

JM: That's for lifting out (inaudible: warning buzzer sounds)

GB: We have 2 minutes. I'll have to change the tape.

JM: And if you were working all day lifting packed timber out of the hold of a ship you'd use that type of hook.

GB: How would you do that? What would you attach to the hook?

JM: You'd have slings on the hook.

GB: Slings?

JM: Yeah.

GB: Could you have chains on the hook?

JM: Yeah. You could have anything on the hook.

GB: Mr Martell, can you confirm that while the tape has been off, we haven't spoken about the matter for which you have been arrested?

JM: Correct.

GB: Can you also confirm that nobody has entered or left the room in that time?

JM: Correct.

GB: I'll remind you that you are still entitled to free legal advice, and if you wish to consult with your solicitor, you have only to tell us and we will leave the room for you to have a consultation. I remind you that you are still under caution. You don't have to say anything unless you wish to do so, but it may harm your defence if you do not mention when questioned something, which you later rely on in court. Do you understand that?

JM: Yes.

GB: OK. We were talking about a lifting hook, and I think my last question was, "Could you attach chains to it?"

JM: Yes.

GB: You mentioned, prior to me asking that question, that you had a similar one.

JM: Yes.

GB: Can you tell me about that one? Where did that one come from? What's that one?

JM: Liebherr make hooks for these types of machines. It takes about 2 hours to take them on and off. In this case, we weren't using this type of hook because there was a small number of bags to get out of the ship. It was something we had made as an adaptation, which I'm sure you're aware of, by welding hooks to the central column of the grab to attach the chains to.

GB: Right. So you've got the hook, but because of the number of bags that were being shifted on this occasion, you didn't use it. Have I got that right?

JM: Correct, a small number of bags.

GB: Have you ever used the hook when you've got a mixed load of loose aggregate and bags?

JM: Yes. If we have a very large number of bags, say 200 or 300, where it will be half a day's work lifting them up, we use a hook.

GB: What is the advantage of using the hook over the adapted grab?

JM: None.

GB: There's no advantage, so why do you use it when you've got a large load?

JM: Well, it's just the central column of the crane has got a hook, so you don't have a central column of the grab itself. If you've got another crane on, it's easier to place them on the quayside, and you can get more chains on a hook than on the small hooks we had welded to the grab.

GB: Right.

JM: So you can lift out more bags per the time.

GB: Is it more or less safe to use the hook than the grab?

JM: Well, obviously in hindsight, it's safer to use the hook.

GB: Why would that be?

JM: Well because of what's happened here.

GB: Because there would be nothing to close on some one's head?

JM: Yeah. There's been a touching of a lever somewhere along the line, that's activated the closing of the grab, so obviously I have to say that.

GB: Right. So by not taking the opportunity to change the hook, the way I see it is that the people in the hold are more likely to have an accident.

JM: If the chains are full length, and some one accidentally operates a lever, it shouldn't have happened. There seem to be two or three things that have occurred to cause this "accident". I say, we put these hooks on. I wouldn't wantonly walk around doing things that I knew were dangerous. I'd never known that grab to close, on its own or by the operator that's used that machine. He's an experienced man, and I wouldn't want to put any one's life in danger by doing something that would do what happened. I mean, there were 2 or 3 things that happened that caused it. As I say, it was a small number of bags, we were using hooks fitted by a competent welder on to the shaft of the grab, and one would not expect them to, no more than somebody would drive some one at a brick wall. The man didn't intentionally operate the lever to close the grab. He could just as easily drop the whole boom on top of some one who was in the hold of a ship, or turn round and hit a lorry that had parked behind him that wasn't anywhere near him at the time. But that operation of the lever, I'm sure it was accidental, and I'm sure you're aware that it can't operate on its own. I believe the machine had been geared, as far as inspectors have looked at it, there's nothing wrong with that machine. We've had meticulous maintenance by the manufacturer. Any slightest thing wrong with it, we call the manufacturer to look at it. I'm sure you've seen all the records to support that. So we've looked after it mechanically. Would you say that some one would intentionally operate the lever? Of course they wouldn't. The man has been assessed as fully competent to drive that machine, so you would not expect him to touch that lever.

GB: There is no suggestion at all, unless Mr Harris tells us differently that he was getting a hand signal from the hatchman, that the lever was operated intentionally, but, as you say yourself, it's an extremely sensitive lever.

JM: Yeah.

GB: The day in question was in late April, but it was a cold wet day and I would presume, I don't know because I haven't interviewed Mr Harris yet, that he was wearing some kind of warm clothing, particularly on that exposed part of the wharf. I'm not saying it could happen every time, but it is reasonable that those levers could be nudged.

JM: I wouldn't accept that would be reasonable, no.

GB: The only alternative is, if he hasn't accidentally nudged that lever, is that he's done it deliberately for some reason. It's not a question of him doing it to hurt some one; that doesn't come into it at all.

JM: In that operation, he would not close the grab. He would be well aware that [the controls] were most sensitive. I'm not trying to push it off on to anyone, don't get me wrong, but I have to question whether he did it, thinking he was doing something else was happening. I don't know, I haven't spoken to him about it purposely, because I don't think it's right to, but there's no question about it. This accidental touching of the lever causes the grab to close, and I think you've done that in your engineer's reports, and we've had ours as well, that machine is A1.

GB: Absolutely.

JM: So, you know, well how could I protect myself in my position, somebody accidentally touching a lever any more than somebody accidentally taking his foot off the clutch of a lorry when there's somebody standing in front of him.

GB: The chains, as you have already mentioned, were shortened.

JM: I wasn't aware of that until 2 or 3 weeks ago.

GB: Do you know why they were shortened?

JM: No.

GB: In what circumstances would they be shortened?

JM: They shouldn't be shortened.

GB: They shouldn't be shortened?

JM: No. That's why they were made the length they were.

GB: Right. I'm going to show you a photograph. I apologise because it does show Mr Jones after the "accident" on the bags, but it's not particularly gruesome. That's photo 16 of an album marked MLB/1. You can see coming from the jaws of the grab there is quite a cluster of chain at the top, which indicates that it's been shortened to some degree. You can see where the hooks are. They are actually hooked round the handles of the bag and fairly taut as well at that time. You know the operation better than I do. How much have those chains been shortened in your estimation?

JM: A metre and a quarter I would think if you double it up, because obviously the shortening is twice that length. Yeah, I'd say a metre and a quarter, more than a metre anyway. I don't know whether it was measured.

CB: The length was measured when we were there. The chains were by then laid on the dockside. A measurement was made on the day of the "accident".

JM: And if you take twice the length up there, you've got the bottom of the grab here.

GB: Right.

JM: But as I say, short of measuring it, I don't know.

GB: Would you say, in your estimation, they're too short?

JM: Well they were made a certain length to do that particular job, they're no more than two months old. I can't say exactly what date they were replaced but we have them checked every year. They were a new set of chains that were made up, I think two or three months before the "accident". I don't know if you've got a record of that, when they were delivered to the site.

GB: If that grab were to close, and as I say, I've not seen it. I've seen a similar grab, but if that grab were to close, would the chain still remain outside the jaws of the grab?

JM: No, inside the jaws of the grab. The chains, if they were at full length would be inside the jaws of the grab.

GB: Sorry the ends of the chains.

JM: Oh they'd be well outside.

GB: They would still be outside?

JM: Oh yeah.

GB: Even though they'd been shortened?

JM: Oh yes.

GB: Right. What's the self discharge unit? Do you know what that is?

JM: On the ship?

GB: I don't know. Sean Currey has said in his statement that the chains were shortened to his knowledge on the instructions of Mr Harris because they were catching on the self discharge unit. Would that be part of the ship?

JM: No, that's on the other side of the ship. It's on the port side.

GB: Right.

JM: The ship was starboard side to and the conveyor belt for self discharge was on the port side.

GB: Right, so it would be unlikely to catch on that particular unit whatever that is? I presume that only Mr Harris can tell us why they were shortened.

JM: Yeah.

CB: Can I just follow up on that point? You mentioned earlier that the hook wasn't used that day on the Cambrook handling a small number of bags. There was also a self discharge unit for the bulk cargo on the Cambrook.

JM: Yes.

CB: Apart from lifting bags out of the hold, what else would the Liebherr 984 have been used for on that day as far as you know?

JM: Nothing. The only thing was to get those, I can't remember how many bags out, so the self discharging mechanism could continue, to get those bags out of the way off the quayside.

CB: And then the Liebherr wouldn't have been used for anything else?

JM: No.

CB: O.k. Thanks.

GB: So in view of that, could the hook have been put on before the Cambrook arrived?

JM: I would say with hindsight from what's happened, one would have to say you should use the hook, but it didn't happen before. You know, it's in retrospect, but I'm not sure what the timing was of the discharge, when the ship came in, did it come in when it was supposed to come in, was there another ship waiting to come in and because of the small number of bags – well an hour and a half's work to get those bags as opposed to three and a half if you change the hook and the grab. But I had those hooks specifically welded on to the shaft of the grab some two to three months prior, by a competent welder – a design of hook which I was led to believe was satisfactory for the job. The company I used were familiar with what we were trying to do. I came down with the man and had a look at what we trying to do. You know, one doesn't expect somebody to somehow or a Liebherr to operate in that operation – it's never happened before. I know you can say once is too much, but it's not a situation you expect to happen.

GB: Do you ever use the Liebherr to unload loose aggregate from ships?

JM: Yeah, that's its prime task.

GB: OK. Do you know when it was last used for that?

JM: No, I'm not aware of that.

CB: Do you know when was the last time that the hook attachment was used on the Liebherr?

JM: No, I'm not aware.

CB: OK

JM: Previously they had always used this chain wrapped round the central shaft, which is why I put the hooks on, to make it safer, so that having put the eye of the chain on the hook, it couldn't come off, that's why I did it. Primarily to make it a safer operation and easier to use, easier for everyone to understand, two separate hooks rather than one hook, the loading was correct I'm led to believe for using those hooks for the job it was used for. Having worked with this type of machine for a number of years, it's an operation lifting the Bobcat in and out of the ship, we'd use those hooks on with those chains on to actually lift the Bobcat in and out, which is done to start and finish the operation, and I believe that's been common practice in a number of other cases using this machine.

CB: If there was a choice of attachments, who would have made the decision on how to use them?

JM: To use..?

CB: Which attachment was going to be used? Jim Harris was obviously brought in as a crane operator...

JM: Yes

CB: ...on this particular day, he knew what the operation was?

JM: Yes.

CB: He came in at a certain time to start the operation, and you're obviously saying that to change over the hook would have taken a couple of hours before that?

JM: Yes.

CB: So who would have made the decision whether or not the hook attachment was to be used?

JM: I don't want to appear to be using anybody else as an excuse for what happened, but Jim Harris is fully competent to drive that machine, and has been assessed as fully competent. He's got years of experience driving it. If he was to say to Roger, "Look, I want to use the hook today", he's quite free to do that at any time. At no time have I ever said, "No, you can't use the hook". If he wanted to use the hook, he could. But the main thing in this case was that those two hooks were welded on, to make it safer and also if they needed to get bags out of a ship quickly, then this delay of two and a half hours, getting the hook on and off, which is not a very pleasant operation in itself, and it's down to Jim Harris to decide. He had a full free hand. If he wanted to do something on that crane like changing a hook, he could do so.

CB: It is fully the crane operator's responsibility for how it's used?

JM: Yeah, he's fully responsible for that machine: greasing it, maintaining it, reporting any faults, which he's always done.

CB: OK, thanks.

GB: We have covered that. You weren't aware of when the hook was last used?

JM: No

GB: But Jim would have been fully aware of what you just explained, it was his decision basically?

JM: Oh yeah, and starting times, finishing times. He was always very aware, because of all his experience, of how the operation works.

GB: Have you ever seen the hook being used?

JM: Yeah, oh yeah.

GB: You have?

JM: Oh, yeah?

GB: When did you last see it being used?

JM: Well, I'm just saying, I can't remember.

GB: You can't remember. Was it a year ago, or more recently than that?

JM: On no, I honestly can't remember and I'm not prepared to say because I don't know.

GB: No, that's fine, I wouldn't ask you to guess. Now from your explanation as to why you had the hooks welded to the inside of the grab, it would seem that you were foreseeing that there was a danger of loads being dropped, which is why you wanted to make it safer than just wrapping them round the inside.

JM: Yeah.

GB: When you were foreseeing that, did you not see that people were, and still would be, needing to work within the operating area of that particular attachment?

JM: Yeah, when you put these hooks on, you bring the grab right down close to the quayside and I felt because of different casuals coming on, that wrapping chains around that area is open to somebody not wrapping it round correctly, so by putting a definitive lock-on device on a hook, you can just put them over the eye and the crane driver can see both sides because he can swivel the grab around, that they're on there correctly and that's safe.

GB: Right, so that side of it is covered. But now you had decided that it was an option to use chains, whether they are thrown over or hooked on as they were on the day, it is critical that the crane driver is aware of the height of the grab as he is lowering it into the hold of the ship.

JM: Yeah.

GB: Now he can only be communicated that information by the hatchman because he can't see from where he is and obviously the depth that the grab goes down. So it brings me back to the question of the critical nature of the role of the hatchman, from my recollection it was left that the master of the ship would be asked to provide people for specific tasks and therefore you or Mr Grant would be satisfied that the master of the ship would be aware of the particular job that person would be doing and their competency to do it. Is that realistic?

JM: Yes. I would just like to take issue with you on the word critical, once the chains are hanging over there, the men are moved to one side and they just hook the chains on so everything is still, the chains have stopped swirling around. Once they have come to rest, two blokes go in there, hook the chains on to the eyes of the bag, then move back and the grab is lifted up. What's happened here, as I say, is these two unfortunate circumstances, which has made it an unsafe operation. It's not critical how high that grab is, because if you've got the chains laying on the top of the bags, all they've got to do is once the grab has stopped, they go in, hook it on to the eyes, move back, it lifts the bags out, so there's no one underneath the grab because it's still.

GB: Well there is if it's coming too low and the chain is too short.

JM: Yes, but I mean it is still; it's at a level, so it doesn't go up or down.

GB: No, I'm with you on that.

JM: Then they go in and put the chains on, so what's happened here, obviously with the grab closing, you've got a very different scenario with short chains and you'd still expect the chains to be lying on top of the bag. But those men wouldn't go under the grab until it was still, so whatever level, whether it's two foot, three foot, six foot above the bag, it's supposed to stay still.

GB: If it's eight feet above the bag, and it's still, that is arguably safe because

JM: That's what should have happened of course.

GB: Nobody is eight feet tall.

JM: No, exactly.

GB: If it's two feet above the bag, it becomes less safe, despite the fact that it's still, because as happened in this case, for some reason, the grab has closed. Only the hatchman can tell the crane driver when he's gone in too low. Now if the hatchman doesn't understand the signals and as I understand it doesn't even understand English, how is he able to ensure the safety of those in the hold?

JM: I think they are perfectly safe within two or three feet of any height, there's no set height above the bags. Two things have happened here, the chains have been shortened, which has meant the grab is going to come closer to the bags than need be to get the chains to rest top of the bags. As I say, I don't know what the measurement would have been, the difference, but my guess is something like four to five feet difference in the height which was necessary to get , as you can see from that picture, they're not very slack on top of the bag and you know, within two or three feet, it doesn't make any difference to how low the thing is to the bag.

GB: We could argue this point all day, but my view is that if somebody has to put their head within the grab to put a chain on, that is dangerous. If they don't have to put their head within the grab, then that is not dangerous.

JM: Yeah, I don't actually know what happened here, there should have been enough room for that grab to close if anybody is still standing on top of the bag, not that they do because – whether it was operated at the time he was about to lift is the time they should have been out of the way anyway. It strikes me that they have put some chains on but they haven't put them all on in that photograph.

GB: And the grab was still, we presume the grab was still.

JM: Exactly.

GB: So the fact that they've gone in because it's still, didn't save Mr Jones' life.

JM: No, exactly, because of what has happened, obviously with the closing of the grab, which is something – how can I prevent it of having happened? I don't know.

GB: I would say that you could have ensured that you had a properly trained and competent hatchman who was able to tell the crane driver that it's too dangerous with the chains that low because the grab is having to come in too low.

JM: To be fair, that's your opinion; I worked in ships for a long time.

GB: And I offer it only as that.

JM: Exactly, I mean if we'd hit ships and people with the grab, you know from our accident record, you can see it's good. They worked as a team very well for a long period of time. How can you prevent accidents happening unless you watch, three people watching what everybody is doing, you know there are always times when something like this occurs. You can't rectify it. I know it's a life we're dealing with, you know, it's not the sort of thing I take lightly, but two things seemed to have happened here, that shouldn't have happened. How can you blame anyone for it I just don't know. We can all do different things after the event.

GB: I would say there's more than two things that have caused this death, there was a whole chain of things that have happened, which remove any one of them from the equation and Mr Jones would be alive today. That is that there are untrained and inexperienced staff in the hold. The hatchman clearly didn't know what he was doing, the hook was not used when it could have been used and this customised grab was used. The chains were shortened and there was nobody designated to supervise the operation. Now, having looked at the evidence obtained so far, I would say remove any one of those from the equation and Mr Jones would still be here.

You're the general manager of Euromin, there is nobody within the jurisdiction of the criminal courts in this country above you, as far as Euromin is concerned, so there is a responsibility on you to ensure that that operation is safe. There are other people who you have said – O.K. Mr Harris is responsible for what happens with the crane, and if you tell him those chains should not be shortened under any circumstances and he does it, well you can't be there 24 hours a day, 365 days a year. But as I understand it, you've never told him that the chains should not be shortened under any circumstances, so there must be some responsibility on you for allowing all those factors to be in place. I would say that it's more than the fact that the chains were shortened without your knowledge and the grab closed for some other reason.

JM: My reply to that is that if the grab hadn't closed and the chains hadn't been shortened, the "accident" wouldn't have happened.

GB: Of course. But equally if the hatchman had known what he was doing and the people down there had been trained and there had been a supervisor, the "accident" wouldn't have happened. Have you got any more questions?

CB: No. Not as far as I am concerned.

GB: I have asked all the questions I wish to ask at this time. Is there anything you would like to add?

JM: No.

GB: Is there anything you wish to clarify?

JM: Not at this stage.

GB: O.K. here's the notice I told you about explaining what will happen to the tape. It is now 12.51 pm. I shall switch the machine off.

25 Evidence of James Martell

D - How did you get your job at Euromin?

JM - I had a phone call to tell me that a Dutch company had a vacancy in Shoreham for a general manager, so I arranged to go for interview.

D - How many full-time employees were there at Euromin?

JM - 7 to 9.

D - Was the company structure (refers to document) in June 1998 the same as it is today?

JM - Similar.

D - Euromin is a subsidiary of a Dutch company?

JM - Yes.

D - How large is the Dutch company?

JM - More than 1000 employees.

D - What is the annual turnover of Euromin?

JM - About £2 million

D - What is the net profit?

JM- Between £10000 and £40000 per year.

D - Why does a Dutch company want a British subsidiary?

JM- Since the enlargement of the EEC, they want a presence on the ground in the UK . The Dutch are very forward-thinking.

D - What would you do on a typical working day?

JM- Around 8a.m. I phone the office, go through daily deliveries of materials. I go to the office about twice a week to go through paperwork, invoices, etc and for one-to-one with staff. If I am elsewhere, like with customers, I will call or phone the office in the afternoon.

D - What if you don't go to the office?

JM - I work on supply agreements with customers, especially around London and the East Coast. I like to keep in touch: the Dutch are very inquisitive about the UK market. I report to the directors each week.

D - How far is from your home to Shoreham?

JM - About 25 miles.

D - Do you report to a particular director?

JM - I report to Mr Hoekman, in writing once a week, and by phone twice a week. He is interested in pricing and distribution of the products we handle, also our competitors' products, from Northern Europe to the UK .

D - What about operational matters, for instance if you need to buy new plant?

JM- I prepare a budget each year, which goes to the director, we discuss it and he decides.

D - What if you wanted new machinery or more staff?

JM - I would go back to him.

D - You would make recommendations?

JM - Yes.

D - Did you have an immediate predecessor at Euromin?

JM - Yes.

D - Did the structure of the company change when you joined?

JM - Yes, I was one step above him, and he left soon after I arrived.

D - What do you earn?

JM - Around £35000 per year.

D - What about in 1998?

JM - A little less than that.

D - Do you have shares or any financial stake in the company?

JM - No.

D - When you joined the company, was there a safety officer?

JM - No.

D - Did you appoint one?

JM - Yes, Roger Grant.

D - Was there in place any programme for training staff?

JM - There was a skeleton plan; my task was to implement a more rigid training programme.

D - How did you contact Neil Hutchinson, the safety consultant, in 1997?

JM - Where I worked previously, all staff were trained by ATB Landbase. I got in touch with them about courses in machine handling, site safety, etc.

D - How did you get in touch with ATB?

JM - I heard about them from the Agricultural Training Board at my previous workplace near Maidstone . I got in touch with them, and they were very co-operative and helpful.

D - They provide training?

JM - Yes. I said we need somebody to assess the site, and they sent Neil Hutchinson.

D - Why was the assessment needed?

JM - I wanted to feel that I was doing everything I needed to do correctly: I was being proactive.

D - (Refers to document) " M. Brackenby, order confirmation" Was that your contact at ATB?

JM - No, Jane Baker.

D - Was the order based on your instructions?

JM - Yes.

D - Mr Hutchinson carried out an assessment in February 1997?

JM- Yes.

D - He made a large number of recommendations. What did you do?

JM - We set about putting the recommendations into practice. We fitted handrails, etc. Luckily we had Pyecroft Engineering close to us, and they carried out many tasks, including fire extinguishers, fitting handrails around storage areas, doing electrical testing, installing first aid boxes, numerous things.

D - No loading was taking place when the assessment was done?

JM- No.

D - Loading wasn't assessed before April 1998?

JM - No.

D - Why not?

JM - It was a question of time. We set out what work had to be done. Some of it was ongoing; it couldn't be done immediately. So many different things took time to implement.

D - ATB Landbase are continuing their consultancy?

JM - Yes.

D - How much money is involved?

JM - £5000 to £7000 each year.

D - Is it true to say that there was a flurry of activity in February 1997, and then safety was put on the back burner?

JM - No; it is ongoing. We are spending time training staff, and this is increasing year on year.

D - Is this your personal responsibility, or do you delegate?

JM - I appointed Roger Grant as safety officer, and kept in contact with him. There was a two-way flow of information.

D - When you started at Euromin, they had a Liebherr and a Priestman crane?

JM - Yes.

D - Did you buy in more equipment?

JM - Yes, a loading shovel.

D - What about fork lift trucks?

JM - Yes, I bought one a year ago.

D - How often do ships arrive to be unloaded?

JM - We get 200000 to 250000 tonnes per year. Each ship averages 3000 to 4000 tonnes, so it works out as about one and a half ships per week.

D - Was the situation similar in 1998?

JM - Yes.

D - How much notice do you get of the arrival of a ship?

JM - 5 to 7 days.

D - Initially you would know the estimated time of arrival?

JM- Yes.

D - Would ships usually arrive on time, or were they often late?

JM - 75% of ships arrive at a time other than the ETA.

D - Are they usually later rather than earlier?

JM - Yes.

D - How late would they be typically?

JM - From the Mediterranean, 3 to 4 days; from Holland they can be 50% late. There can be head winds, extreme weather...

D - During the voyage, would the ETA be updated?

JM- Yes.

D - When staff are not unloading ships, what are they doing?

JM - Loading lorries, keeping the site tidy, moving products around on the site. For export, we receive materials over 2 to 3 days.

D - So there is plenty of work when no ship is in?

JM - Yes.

D - When a ship arrives, would you also recruit casuals?

JM - Yes.

D - Is it practical to avoid doing this by employing more permanent staff?

JM - No

D - You would be permitted to have more permanent staff on standby?

JM - As far as the company is concerned, yes, but it is governed by the design of the ship. An older ship has more holes so you need more staff.

D - What if you said to Mr Hoekman that you need more staff?

JM - I could justify it, but he would have to decide.

D - What are the arrangements for the inspection and maintenance of the Liebherr?

JM - The drivers keep me informed of when they need a 250 hour service, or if there are any problems, and Liebherr will attend regularly.

D - Are the machines well maintained?

JM - Yes, very.

D - What about statutory inspections?

JM - These were done once a year for the insurance company, and they issue a report.

D - If you needed casuals in 1998, how were they recruited?

JM - Roger Grant knew the ETA and the configuration of the ship. If for instance we needed two men, we would use Personnel Selection.

D - (Refers to document) "Master card, Personnel Selection, September 1997" Was this your first contact with Personnel Selection?

JM- Roger Grant was regularly in touch with them at that time.

D - When was your first contact with Personnel Selection?

JM- I don't know; I rarely saw these documents.

D - Who decided who did what job, with regard to unloading a ship?

JM - Roger Grant and I worked with Jim. We would discuss it. Roger would say, for example, we need 2, 3, or 4 extra men.

D - Who decided who went in the hold, who drove the shovel, and so on?

JM - Jim had certain people he had worked with. He had first crack at who he had where. Roger would keep me informed.

D - You were not necessarily on site. How did they keep you informed?

JM - I am available on my mobile phone 24 hours a day. I would talk to Mick Czaja or Roger during the first hour of the working day.

D - (Refers to document) "Stallion invoice 5 Feb 1998. Supplying slings and hooks" Before that, the excavator was used with webbing slings for lifting bags?

JM - Yes.

D - When you joined the company, was there also a hook attachment on site?

JM - Yes.

D - Between 1994 and February 1998, what was the system regarding the use of slings or hook?

JM - If there was a small number of bags, the web and chains were used; if there was a large number, hundreds of bags, the hook was used.

D - Why was the hook only used for a large number of bags?

JM - Jim had been there before 1994. He had a look at other things that needed to be done that day, like lifting the Bobcat into the hold. We used the same arrangement. It was something we inherited.

D - What is the thinking behind using the hook for a large number of bags?

JM - If there are 600 bags, you can unload 60 bags an hour, that's a day's work. If there is a lot of loose aggregate, it is best to use the grab to unload it.

D - This saved the time needed to change between the hook and the grab?

JM - Yes.

D - How long did the changeover take?

JM - An hour. It's a messy operation as well.

D - In 1995, Liebherr fitted shut-off valves to shut off the hydraulics. How is this done, and why?

JM - The Liebherr had quick-release couplings. In a dusty environment, you get grit in the valves, which can cause oil leaks, and the couplings need replacing more often. I asked Liebherr how to get over the problem. They suggested cut-off valves.

D - When are they used?

JM - When changing between the grab and the hook or other attachments.

D - How was it that Stallion came to supply the hooks?

JM - I had mentioned to Roger to have a word with Stallion about how to make a safer way of working.

D - How did you perceive the system as unsafe?

JM - The slings could slip off. It was untidy, this was a grey area, I needed advice.

J - Slipping off was important?

JM - Yes, things could go wrong. It was safer to eliminate the risk of web straps rubbing against angular metal.

D - With the previous system, was the grab open or closed?

JM - Open, as far as I'm aware.

D - Do you know Mr Stallard?

JM - I've met him once or twice. I don't know him personally.

D - Why did you approach Stallion?

JM - They were local. They were experienced with chains and hooks. They had always inspected our chains, and I valued their advice.

D - Did it occur to you to approach Liebherr?

JM - No, because it was to do with chains, a lifting operation. Stallion are specialists.

D - Mr Stallard came in person to the yard?

JM- Yes.

D - Did he normally do this?

M- No, I've seen him on site 2 or 3 times, normally one of his employees came.

D - What transpired between you and Mr Stallard?

JM - I had previously advised Mr Stallard to come down with the hooks. We met in the yard and discussed what we were trying to achieve. He showed me the hooks and told me they were a type used on other plant, welded on and used for similar operations. He showed me where they should be welded. I asked who should do the welding, he said Pyecroft, and he supplied the two hooks.

D - In your discussion, what did you say you were trying to achieve?

JM - A safer and easier way to attach the chains to the grab. That's all I can recollect of the basis of our discussion.

D - Where did Mr Stallard suggest the hooks should be welded?

JM - On the stem of the grab, in the place where they actually were welded.

D - You heard Mr Stallard's evidence. He says he suggested higher up.

JM - He initially suggested higher, but I said it would foul the hydraulic pipes in that position, so he said, how about here, one either side.

D - What would you have done if you had suggested a different position?

JM - If he'd said, weld them there, I'd have done it.

D - Did Mr Stallard express any reservations about safety?

JM - No.

D - Before April 1998, did anyone express any reservations about safety?

JM- No.

D - Did the Health and Safety Executive ever visit the site?

JM - I can't recall seeing the HSE on site.

D - Liebherr were regular visitors. Did they ever express any reservations about safety?

JM - No, not as far as I'm aware.

D - The cargo on 24 April 1998: was it 2719 tonnes of slag and 135 tonnes of rumble stones?

JM - Yes.

D - Had you had cargoes like this in previously?

JM - Yes.

D - 125tons – How many bags is that?

JM - 100.

D - Is that a large or a small load?

M - A small load, about 2 hours work depending on how they were stowed and the state of the tide.

D - Would the excavator sometimes be used to lift the bobcat?

JM - Yes.

D - Would the excavator also be used to assist in discharging bulk?

JM - Yes.

D - How much notice did you have of the arrival of the Cambrook:?

JM - I can't recall.

D - On page 27, was the first contact with Personnel Selection about requiring labour on the 24th April made on the 23rd April?

JM - Yes.

D - Did Grant contact them on his own initiative or did he discuss it with you?

JM - I can't recall but Grant and I were in regular contact 3 or 4 times a day by phone.

D - Do you recall a discussion with Grant on the morning of 24th April?

JM - Yes.

D - By phone?

JM - Yes.

D - What was said?

JM - Grant mentioned that we were 2 men short and he had a word with the master of the Cambrook. All I can recall saying to Roger is "O.K. as long as the master is satisfied that the men are suitable for the job."

D - Did you have an earlier discussion with Grant?

JM - I can't recall.

D - Was there any later communication?

JM - No not until after the accident. Grant said, "It's serious" and I said, "Do you want me at the office?" and he said, "Yes".

D - Were you unavailable at any time?

JM - I'm led to believe that Grant tried to call me.

D - As far as you were concerned were you unavailable?

JM - No.

D - Was there any discussion the previous day about using the grab or the hook?

JM - I can't recall any detailed discussion.

D - In your opinion was Jim Harris extremely experienced?

JM - He was a very experienced driver. I respected his ability; he was a man I could rely on. He always came to work; he always did his work to the best of his ability. He had a key role and I was always ready to listen to him. I felt I had a good relationship with all my staff.

D - In Jim Harris' statement he says that on a previous occasion he had changed the attachment without your permission. Did this happen?

JM - I always expected staff to keep me informed if I was not there. Jim was working there before me and I had difficulty in getting him to keep me informed. One day I asked Mick Czaja to tell Jim to change the grab for the hook, as we would be needing it and Mick said, "He's already done it." So I told him, " You make him bloody well change it back."

D - Had he previously done things, which were unsatisfactory without telling you?

JM - There had been occasions. For instance, one day he took it upon himself to move a stockpile from the end to the middle of the quay. Roger informed me; I felt things were going on that I was not aware of. I had a right to know what was going on; as a manager I needed to have control.

D - Whose idea was it to weld on the hooks?

JM - I'm not sure. From memory I think Jim Harris asked me if we could have the hooks welded on.

D - In deciding whether to use the grab or the hook, why would you need to know?

JM- I needed to know everything that was going on to be involved in making decisions.

D - Were there operational considerations when deciding whether to use the grab or the hook?

JM - With the Cambrook, because of the self unload system; I had been advised by the ship's owners that they didn't like the ship to take the bottom as it can change the shape of the sides and distort the carriageway of the self unload system. If the Cambrook was late on the tide and there was a chance of taking the bottom with 1500 tons on board we could assist using the grab.

D - Would this be affected by the time taken to change the attachment?

JM - It could be.

D - What would you have done if you had been asked about changing to the hook that morning?

JM - I would expect to consider many factors and have a two-way discussion. If the bags were in a mess, Jim might say it's best to use the hook, or if there was a lot of aggregate, we could use the grab to help unload some of it. I was in a better position to make a decision if Jim kept me informed. I would come to an agreement with Jim.

J - Does this mean that the decision can't be taken until the hold is open?

JM - That could well be true.

J - If the grab was in place, it could take one and a half hours to change?

JM - It could do.

J - Does that mean that you would not give permission to change it?

JM - It depends; there's no consistency; every shipment is different.

D - Had you spoken to the master of the Cambrook that morning?

JM - No

D - That morning, the system included the use of a Polish banksman. If you had been asked about this directly, would you have had any reservations?

JM - No.

D - If there was difficulty in communication between Jim and the banksman, what would happen?

JM - Jim was a very demonstrative character. He would make it clear very quickly that he was not happy. He was quick to express his opinion.

D - We have heard that Jim shortened the chains that day. Did you know if this had happened before?

JM - No. I still don't know why this was done.

D - Can you see any operational reason for shortening the chains?

JM - No.

D - Would you have approved of shortening the chains?

JM- In hindsight, no. I didn't even know you could shorten them.

D - Is it true that the grab was coming in too low, and Sean Currey had to ask for it to be taken higher up?

JM - Yes.

D - If the grab was too low because of some action by the driver or the banksman, what would happen?

JM - Sean Currey would ask the banksman to raise the chains.

D - In some way, Jim seems to have activated the controls to close the grab. Had you ever known this to happen before?

JM - No.

D - Did you ever receive a report of such an incident?

JM - No.

D - Can you understand why or how this could have happened?

JM - No.

D - Had you ever considered the possibility of an accident, such as the one that occurred?

JM - No.

D - It was put to you in your police interview that you could see that the grab was capable of closing with a man under it. Why had this never occurred to you before?

JM - I trusted Jim, and I cannot understand to this day how it happened. I was totally confident of his ability, and I never expected him to accidentally operate that lever.

D - If he did operate the lever, would you expect there to be a man within range?

JM - No.

D - What clearance would you expect there to be?

JM - At least 5 feet.

D - You were interviewed in August 1998, and the jury has the transcript. You have no previous convictions?

JM - No.

D - Euromin's safety record was clean before this accident?

JM - Yes, it was good.

D - What environment did the police interview take place in?

JM - It was somewhat frightening. There was a person there with an alcohol problem, and he was shouting abuse. I was locked in a room with Mr Bartlett, Ms Barringer and my solicitor. It was like a cell.

D - You answered all the questions, and were co-operative?

JM - Yes.

D - The HSE and the police have visited your premises to collect documents?

JM- Yes, on a number of occasions. I was always fully co-operative.

D - Did you always provide all that you were asked for?

JM- Yes.

D - Is it correct that a summons was issued in February 2001 and your interview took place in August 1998?

JM - Yes.

D - Mr Martell, do you have any children?

JM - Yes, I have two sons, aged 32 and 30, and a daughter aged 22.

P - You wouldn't have put them to work in that hold under those conditions on 24 April 1998, would you?

JM - I'm sorry. I didn't hear the question.

P - You wouldn't have put them to work in that hold under those conditions on 24 April 1998, would you?

JM - I'm rather hard of hearing. Could you repeat that?

P - You wouldn't have put them to work in that hold under those conditions on 24 April 1998, would you?

JM - Yes.

P - Is that the truth?

JM- Yes.

P - You have been at Euromin since 1994?

JM- Yes.

P - You are the most senior person in the company in this country?

JM - Yes.

P - Shoreham is the only premises of the company in this country?

JM - Yes.

P - There have been no directors of the company since 1994 who are not Dutch?

JM - As far as I am aware.

P - The picture of the company structure was the same in April 1998 as in May 1998?

JM - Yes.

P - You do not have a deputy?

JM - No.

P - We have heard evidence from Mick Czaja. Does he still work at Euromin?

JM - Yes.

P - You agree that you do 2 relatively full days per week at the site, 2 part days, and for 1 or 2 days you are not at the site?

JM - Yes.

P - You have 2 sales staff?

JM - I did have then.

P - Do you agree that you had full control of working procedures?

JM - Yes. I was kept informed.

P - You said, "I felt things were going on that I was not aware of, and as a manager I felt that I had to retain full control." Is that accurate?

JM - Yes.

P - In your police interviews, you said, "I don't have a deputy as such", "Mick answered directly to me", and "Roger Grant would liaise directly with me." When you were asked who supervised unloading, you said, "It's a bit split, Grant would liaise with the chaps on the ground." Is this accurate?

JM - Yes.

P - (Refers to document) You refer to Harris' and Grant's roles. "I would, having liaised with Roger....came back to me.....I would give yes or no....all fed through from me to Roger to Jim". You were in close control of specific tasks with respect to the discharging of cargo?

JM - I was informed.

P - Answer the question. Are you in control?

JM - As close as I can be on the phone.

P - You're the general manager. You get cross if something happens contrary to your instructions?

JM - Yes.

P - With regard to health and safety: your initials are at the bottom of page 77 of the document to show that you would take action on the recommendations of Mr Hutchinson?

JM - Yes.

P - You signed page 93 and 94 of the Health and Safety policy document drafted by Mr Hutchison on 23 May 1997?

JM - Yes.

P - On page 81 of the policy statement drafted by Mr Hutchinson in February 1997, the name of Mr Hoekman has been typed. Did he sign it?

JM - Not to my knowledge.

P - Have you signed a similar document, dated June 1998?

JM - Yes.

P - You told the police that the parent company has no input on health and safety matters. Is that correct?

JM - Yes.

P - In carrying out your responsibilities, you were aware that if you didn't do your job properly, workers could be injured or killed?

JM - Yes.

P - Did you feel that it was your duty to avoid the dangers of injury and death?

JM - Yes.

P - Is there a recognised Trade Union at your workplace?

JM - No.

P - Do you accept that Personnel Selection trusted you to look after casual workers?

JM - Yes.

P - With regard to your improvised hook arrangement, you didn't ask anyone else for advice, which was your responsibility?

JM - I asked Mr Stallard.

P - Did you ask anyone within Euromin?

JM - No.

P - Within Euromin, it was your decision and no-one else's?

JM - It was suggested by Jim Harris.

P - It was your decision?

JM - With advice from Mr Stallard, yes.

P - Nobody else within Euromin made the decision?

JM - No.

P - In the witness box, you were asked if you had a health and safety officer, and you said, "I appointed one.... Roger Grant." Is that correct?

JM - Yes.

P - In your police interview, you were asked if you hadn't considered delegating health and safety. What was your reply?

JM - "I don't have a specific health and safety officer."

P - Which is the truth?

JM - I called in Neil Hutchinson because of the inadequacies of Roger Grant. I felt he wasn't giving me the support I needed.

P - Did you appoint somebody else?

JM - I was using ATB Landbase. They recommended Neil Hutchinson.

P - Did you appoint anyone within Euromin, with responsibility for health and safety?

JM - Not appointed, no.

P - Mr Hutchinson was not a health and safety officer within the company?

JM - No.

P - Why did you not appoint a health and safety officer before April 1998?

JM - I didn't know I had to.

P - Why did you not tell your counsel, "I didn't have one between February 1997 and April 1998"?

JM - I had Roger Grant, but he was completely inadequate.

P - Between February 1997 and April 1998, you had no health and safety officer?

JM - Mr Hutchinson was on site, not once but several times.

P - You had no designated health and safety officer?

JM - Appointed in writing, correct.

P - Appointed at all?

JM - The only person on site was Grant, and the staff told me he was totally inadequate. He was the health and safety officer, but not appointed in writing.

P - Was he still health and safety officer in April 1998?

JM - He was not of the calibre I expected to have.

P - "I don't have a health and safety officer." The truth?

JM - It's a question of terminology. What do you describe as a safety officer? I felt he wasn't competent.

P - You said that in February 1997, you wanted to be proactive?

JM - Yes.

P - Did you know that you had a legal obligation to do the assessment?

JM - Yes.

P - You were not being proactive; you were complying with your legal obligation?

JM - Yes.

P - You knew it was important to have your operations assessed?

JM - Yes.

P - On pages 93 and 94 of the document, which refers to the Health and Safety at Work Act, you signed?

JM - Yes.

P - It is a criminal offence to conduct your operations without an assessment?

JM - Yes.

P - You were in breach of the criminal law in February 1994?

JM - If you could prove that.

P - You had made no assessment?

JM - No.

P - Why did you leave it for 3 years before making an assessment?

JM - I can't answer that question.

P - Do you take the criminal law seriously?

JM - Yes.

P - So why did you not comply with the criminal law for 3 years?

JM - I can't answer that.

P - The key operations at Euromin are loading and unloading?

JM - If you say so, yes.

P - (Refers to document) The vessel discharge procedures, May 1998, signed by you at page 119?

JM - Yes.

P - It summarises your operations: "loading and unloading of vessels...vehicles...despatch of goods"?

JM - Yes.

P - So why did you not give me a straight answer two minutes ago?

JM - I was trying to think of a quick enough answer.

P - You didn't know there are two key operations?

JM - There are lots of operations.

P - To comply with the law, an assessment must include the 2 key operations?

JM - Yes.

P - Not just key operations economically, but with respect to health and safety?

JM - Yes.

P - Any assessment that didn't cover these 2 key operations was next to useless, wasn't it?

JM - I can't support that.

P - It was a major defect in the February 1997 assessment, wasn't it?

JM - Yes.

P - You knew that when you arranged for the consultant?

JM - Yes.

P - You knew that to be effective, you had to include loading and unloading?

JM - Yes.

P - Why did you not arrange for loading and unloading to be included in the assessment in February 1997?

JM - I can't answer. I don't know.

P - There is a difference between not knowing, and not having a sensible answer. Give me a sensible answer.

JM - I don't know.

P - Did you make any effort to ensure that Mr Hutchinson saw the 2 key operations?

JM - I can't remember.

P - Do you think you made some effort?

JM - I knew we'd move on to the second report.

P - That's irrelevant. I'm talking about February 1997. You knew in advance if a ship was coming?

JM - I could have done, yes.

P - No. You would have done.

JM - I can't remember. It was 4 years ago.

P - A ship arriving unannounced: it never happened, did it?

JM - No.

P - You would know in advance whether a ship would be there?

JM - Yes.

P - Mr Hutchinson made an appointment to arrive on a certain day. Was a ship due?

JM - I can't recall if a ship was due on that particular day. I didn't specifically make an appointment for when a ship wasn't there.

P - Have you finished your answer?

JM - Yes.

P - You have heard Mr Hutchinson's evidence. He was flexible, and could have come on any day. The 7th of February wasn't fixed by him. You could have got him to come when a ship was being discharged. Why didn't you?

JM - I don't know.

P - Mr Hutchinson points out in his report that "at the time of assessment, no lorries were being loaded and no ship being unloaded." Is that correct?

JM - Yes.

P - Why didn't you arrange for him to come back within days or weeks, to carry out that part of the assessment?

JM - I don't know.

P - You could have done these things at any time between February 1997 and April 1998?

JM - Yes.

P - You accept that there is no excuse for not doing so?

JM - In hindsight, I can understand your question, but I don't know why I didn't get him to come in earlier.

P - (Refers to document) At page 81, "the document should be shown to staff....refers to safe working practices....hazards will be assessed, documented and reviewed....I will distribute the findings of the assessment" This is effectively a promise to your staff?

JM - Yes.

P - A broken promise?

JM - It was an ongoing process.

P - Making the working procedure safe couldn't start until there had been a full assessment, could it?

JM - No.

P - It wasn't ongoing; it was frozen.

JM - No, it's still going on.

P - (Refers to document) "Above points need action by James Martell....hard hats, totectors, high-viz jackets...no evidence of effective use of equipment". Correct?

JM - Yes.

P - What you actually did was to put up a notice, which said, "All staff must wear hard hats". This was just window dressing, wasn't it?

JM - No. On numerous occasions, I have spoken to staff, saying, "Why aren't you wearing a hard hat?"

P - Including Mr Currey, Mr Taylor and Mr Harris?

JM - Yes.

P - What was Mr Harris' excuse?

JM - It was too hot, and he'd never worn one before.

P - Mr Harris was still working at Euromin until he died?

JM - Until 2 months before he died.

P - The rule wasn't strictly enforced, then, was it?

JM - I tried to enforce it. It was difficult.

P - You knew the reality in your police interview. On page 212, you said, "Who is responsible for enforcing safety? Well, at the end of the day, I suppose I am....There's no- one specifically responsible. You were asked, "Did employees wear protective equipment?" Did you ever answer that question?

JM - No.

P - Why not?

JM - I'm supposed to tell the police every time someone doesn't wear a hat? I'm not a person to tell lies. I am trying to get people to understand that we're living in a health and safety conscious environment.

P - You were not on site all the time, but no- one was responsible for safety. Why not?

JM - Staff had it written into all their contracts, that they were responsible for their own health and safety.

P - (Refers to document) "Page 215-6....hats off....can't watch everybody all the time...don't know how you can do that." Is that correct?

JM - Yes. I put up 3 signs to say this is a hard-hat area, and to wear high-viz jackets. I saw a lorry driver on site last week, and asked him, "Did you see those signs?" He said, "I didn't read that, guv." How can anyone monitor that 24 hours a day?

P - The answer is, you do your best, and you appoint someone, with responsibility to enforce the rules. Isn't that right?

JM - I haven't had an HSE enforcement notice saying I have to do that.

P - Before you worked at Euromin, you worked with a different company at Shoreham Harbour for 10 years?

JM - Yes.

P - You are familiar with the harbour, and the water conditions?

JM - Yes.

P - You heard Mr Chichomski's evidence about the bumping of the ship in rough water?

JM - Yes.

P - Was Mr Chichomski right in describing those conditions at the quay?

JM - From time to time, it depends on the wind and the tide.

P - Were you aware that the ship sits higher or lower in the water as it is being loaded or unloaded?

JM - Yes.

P - Were you aware that bags could be displaced during a voyage?

JM - Yes.

P - Were you aware that the surface of the bags was uneven?

JM - Yes.

P - Were you aware that the bags were slippery when they were damp?

JM - Yes.

P - Were you aware that if the bags were in layers, the workers would have to walk on top of the bags?

JM - Yes.

P - You would agree that the Liebherr is not a machine for finesse?

JM - Yes.

P - The primary function of the grab is to grab and lift loose materials?

JM - Yes.

P - It's not a machine for finesse, and sometimes it needs to be used more carefully than at others?

JM - Yes.

P - You can't make safe assumptions about distances?

JM - Agreed.

P - It's not like using a fork-lift in IKEA, with a stable platform?

JM - No.

P - You had a Liebherr machine at your previous workplace?

JM - Yes.

P - It was an excavator with a grab and a hook?

JM - Yes.

P - You knew it was a powerful, heavy grab, which could close silently, and that the other machinery was very noisy?

JM - Yes.

P - You knew the joystick was fairly sensitive?

JM - Yes.

P - You saw the former system at Euromin in operation?

JM - Yes.

P - You saw the new system in operation?

JM - Yes.

P - Do you agree with Mr Stallard, when he said, "You don't operate under an open grab unless you're absolutely certain that it's not going to move"?

JM - Yes.

M - You knew that workers would be under an open grab?

JM - Yes, at times.

P - Were you absolutely certain that it wasn't going to close?

JM - I never expected it to close in a million years.

P - Were you absolutely certain that it wasn't going to close?

JM - Yes.

P - That is your evidence? Remember you are on oath.

JM - Yes.

P - You have been a manager for a very long time?

JM - Yes.

P - You knew that workers are not perfect?

JM - I would never expect that grab to close.

P - You knew that workers are not perfect?

JM - I would never expect that grab to close.

P - You knew that workers are not perfect?

JM - Some are not as good as others.

P - You knew that workers are not perfect?

JM - I can't answer that question.

P - Yes you can, you can say yes or no. You knew that workers are not perfect?

JM - You're trying to put words into my mouth. I would never knowingly put people in danger.

P - You know that the basis of health and safety regulations is that people do make mistakes?

JM - I can't answer that question the way you want it answered.

J - Even experienced workers can make mistakes?

JM - Sometimes.

P - You knew Jim Harris was not perfect, and could make mistakes?

JM - Anybody could make a mistake.

P - Here are 3 references to Harris doing potentially wrong things: "Harris had suitability assessment...can get into bad ways...did things you didn't approve of"

JM - Those weren't mistakes; they were actions he took. He knew exactly what he was doing.

P - You were never aware of the 2 incidents of the partial closing of the grab?

JM - It's the first I've heard of it.

P - You were concerned about the safety of the old system in February 1998. You had operated for 4 years with a system you thought was unsafe. Why?

JM - That system was rarely used.

P - Why use it at all?

JM - Jim was happy with that system, that's how he'd always done it.

P - Why allow a system, which you are telling the jury was unsafe, to continue for 4 years?

JM - The new system was safer; I didn't say the old one was unsafe. There was a degree of error that could happen, and make it unsafe.

P - At page 234, you say, "There was a danger of loads being dropped." That's unsafe, isn't it?

JM - Yes.

P - So why did you continue to use an unsafe system?

JM - I don't know when I recognised that it could be unsafe. I must have looked at it at some point.

P - The whole time, you had the Liebherr hook attachment?

JM - Yes.

P - The complete answer to the unsafe system is to use the Liebherr hook, isn't it?

JM - To lift the Bobcat, we had to use this system.

P - Not just to lift the Bobcat, but also to lift loads?

JM - The Bobcat is a load.

P - The system was used to lift the Bobcat, or to lift loads?

JM - It could be either: regularly for the Bobcat; occasionally for loads of bags.

P - Were bags ever dropped?

JM - Not to my knowledge.

P - You were warned in writing that you would need to test the welded hooks?

JM - So I'm led to believe.

P - What did you do about it?

JM - There is an annual inspection, arranged by the insurance company. That would tell me if anything needed doing.

P - You were aware of the need to test the hooks?

JM - Yes.

P - You did nothing between February 1998 and April 1998: for 2 months you used untested hooks?

JM - Yes.

P - You were going to wait for the annual inspection?

JM - Yes, in June or July.

P - With the previous system, was the grab open or closed?

JM - Open.

P - You have always said that the chains were wrapped round the central stem of the grab, and sometimes the chains would hang outside the jaws of the grab?

JM - No, that would get in the way of the hydraulic pipes.

P - The chains always hung between the jaws?

JM - Yes.

P - Were the jaws open or closed?

JM - Partially open, as the chains had to hang inside.

P - You are the general manager and you keep in close control. What was supposed to happen with the old system?

JM - The chains were wrapped round the central column, then shackled, and hung through the grab.

P - And this system was unsafe and insecure?

JM - Yes, that's why I changed it.

P - You let it happen for 4 years, didn't you?

JM - I didn't like it.

P - Is it common practice among other firms to use an excavator for lifting?

JM - Not that common, but I have seen it at other ports.

P - Where have you seen it?

JM - Shoreham Port Authority.

P - Is that the only place?

JM - No, I've seen it at Great Yarmouth: a different excavator, but a similar grab.

P - Anywhere else?

JM - No.

P - Have you seen either kind of excavator used as a lifting machine with the grab open?

JM - Yes, at Shoreham.

P - Where was the load suspended?

JM - From memory, 2 pins were locked into a metal frame, and the chains were suspended from those.

P - How long were the chains?

JM - 10 to 12 feet.

P - When did you see this system in use?

JM - 7 to 10 years ago.

P - I suggest that your new system created four risks. Are you an engineer?

JM - No.

P - Is the Liebherr a very expensive machine?

JM - Yes.

P - Built by an expert company?

JM - Yes.

P - Is the structural integrity of the attachments critical to the safety and usability of the excavator?

JM - Yes.

P - Your use of the attachment leads to loads being suspended from a place, which was not anticipated by Liebherr?

JM - That's why I got Mr Stallard in.

P - What is the weight of one of the bags of stones?

JM - 1.2 to 1.3 tonnes.

P - So 2.5 tonnes was being hung in a place, which was not designed for this purpose?

JM - Yes.

P - You never used Mr Stallard to service your machines?

JM - No, he was not an expert in that field.

P - Experts from Liebherr would know tolerances and strengths?

JM - Yes.

P - So they were the right people to ask?

JM - I asked Mr Stallard, who was an expert on lifting and chains.

P - You didn't ask Liebherr, because you knew there was no chance that they'd approve.

JM - Incorrect.

P - You spent 10 minutes talking with Mr Stallard.

JM - I recall half an hour.

P - Did you ask him if he knew the strengths and the structural design of the attachments?

JM - No.

P - Your new system risked closing the grab on the chains while they were supporting a load?

JM - Yes.

P - You knew that at the time?

JM - Yes.

P - This risk occurred immediately to Mr Watson of Pyecroft Engineering?

JM - Yes.

P - You said to Mr Stallard, "What happens if the grab closes?" What was his reply?

JM - He said, "It won't sever the chains, just damage them."

P - And this answer reassured you?

JM - Yes, if the chains were long enough.

P - You know that you were served with the evidence, and you instructed your lawyer. He asks questions, based on what you have told him about what happened?

JM - Yes.

P - I suggest that no questions were asked of Mr Stallard, because you're making it all up. No questions were asked of Mr Stallard; that is complete nonsense.

JM - Incorrect.

P - You were aware of the risks involved in the new system.

JM - I asked Mr Stallard, "What if the grab closes?"

P - The role of the banksman is critical. Correct?

JM - Yes, and the men in the hold.

P - The grab is a substantial obstruction to vision. Correct?

JM - Yes, if it's closed.

P - Your new system created a 4th risk: that of the grab closing on a worker?

JM - Yes.

P - The part of the worker most likely to come into contact with the grab is the head?

JM - Yes.

P - The risk was obviously one of death?

JM - No, anyone with any sense...Sean Currey was with him...there was a relationship between Mr Currey and the banksman, he could tell him to lift the chains enough for the grab to clear their heads.

P - If the grab closes, it could close on a worker?

JM - If they were standing on the bags, yes.

P - Even if they were bending over, the upper part of the body is still nearest the grab?

JM - Yes.

P - If the grab closes, the head is the most likely part of the body to make contact?

JM - I would never expect anyone to be near that grab.

P - Mr Harris was highly skilled at deliberate, conscious control of the joystick?

JM - Yes.

P - When the grab was in motion?

JM - Yes.

P - When pushing forward or backward, or possibly opening or closing the grab?

JM - I think so.

P - The most likely time for unconscious mistakes is when the grab is still?

JM - I can't say I agree with that.

P - He is least likely to make a mistake when he is deliberately moving the lever?

JM - That's your assumption. He was aware of the men in the hold; there is no reason why he shouldn't be 100% perfect.

P - The time when he is waiting, not consciously doing something, is when the grab is over the heads of the men?

JM - I can't agree.

P - The grab closing was not freakish; it's exactly when a mistake is most likely.

JM - I can't agree.

P - If Mr Harris turned with heavy clothes on, he would not be conscious of operating the lever?

JM - Correct.

P - That's when the danger of inadvertently catching the clothing is most likely?

JM - I can't comment on that.

P - The right time for calling Mr Hutchinson was in February 1998, when you were changing the system, if not before?

JM - It could be.

P - You told the police that it was obvious with hindsight that it was safer to use the Liebherr hook than your new system?

JM - Yes.

P - Only with hindsight?

JM - I would not adopt an unsafe system.

P - You did just that, for 4 years.

JM - I didn't operate an unsafe system.

P - Did you take any additional safety precautions after February 1998?

JM - Not that I recall. I did put up a notice after the accident.

P - You heard Mr Stallard explain that Euromin asked to see a sales rep?

JM - Yes.

P - Euromin asked for a sales rep, and it was only because the sales rep had retired that Mr Stallard came?

JM - Roger Grant made that phone call.

P - Nothing like that was suggested: Mr Stallard gave different evidence, and that was never challenged.

JM - Mr Stallard brought two hooks with him.

P - Mr Stallard had no advance notice of his visit?

JM - Yes, he did.

P - You told us today that there was notice that Mr Stallard was coming?

JM - Yes.

P - Has Mr Stallard ever been asked to give safety consultancy?

JM - Not to my knowledge.

P - Mr Stallard's true expertise is in lifting gear?

JM - Yes.

P - He said, "A good starting point is a secure lifting point." That is all Mr Stallard's expertise, and that is all he advised you on?

JM - Yes, and the hooks. As an expert, I'd expect him to say, "You can't do this" or "Refer back to Liebherr".

P - Mr Stallard was not given a chance.

JM - It doesn't take long to say, "This is unsafe".

P - Did you tell Mr Stallard that you had the proper Liebherr hook?

JM - No.

P - Did you ask him if he had ever operated the Liebherr?

JM - No.

P - Did he ever see your old system in operation?

JM - No.

P - Did he ever see your new system in operation?

JM - No.

P - You reassured Mr Stallard that you had used the system for years with no problems. Do you call that consultancy?

JM - I didn't mention what you just said to Mr Stallard.

P - (Refers to document): page 231...a design of hook which I was led to believe was right for the job. This was all about the design of the hook, and a secure lifting point, and that was all, wasn't it?

JM - Mr Stallard must have known what I was going to use it for. He can't just disappear from his responsibilities.

P - You assured him that you had used the system for years with no incidents.

JM - I wasn't telling him his job.

P - Which was lifting gear?

JM - Yes. We were discussing a design of hook satisfactory for the job I was trying to do.

P - You didn't put the hooks where Mr Stallard suggested?

JM - I put them in the place, which he suggested.

P - You are saying to the jury that Mr Stallard's original suggestion was in a different place but you discussed it, and you agreed where to put the hooks?

JM - He held the hook against the stem of the grab, and showed me where to weld it.

P - None of that discussion was put to Mr Stallard. Your story about your conversation with Mr Stallard was not put to him.

JM - I just recorded the story, which is what took place. Roger Grant was there.

P - Do you agree that changing from the grab to the Liebherr hook would eliminate four risks: the structure and integrity of the grab stem being compromised, the grab closing on the chains, The grab compromising the view of the banksman, the grab closing on a worker?

JM - No.

P - You don't agree?

JM - You say the risks could be eliminated, but the driver could operate the lever and drop the whole boom on somebody's head.

P - There are risks, which are common to the machine, whatever attachment is being used?

JM - Yes.

P - There are extra risks, which you have chosen to create. With the proper Liebherr hook, there is no grab to obstruct the banksman's view?

JM - Yes.

P - There is no grab to close on the chains or on a worker?

JM - Correct.

P - The load would be exactly where Liebherr intended it to be?

JM - It's exactly the same.

P - With the proper hook, there is no unexpected load on the stem. Do you agree?

JM - Yes.

P - So with the proper hook, you have got rid of all 4 risks?

JM - I don't agree with the last one.

P - With the proper hook, the integrity of the stem and grab is not compromised?

JM - No.

P - Thank you. If Jim Harris and Roger Grant had wanted to change to the hook on 24 April, can you think of a reason why?

JM - No.

P - Not for safety reasons?

JM - Jim had asked for the hooks to be welded, to do jobs like the one being done on that day.

P - Is there any reason why they shouldn't have changed to the hook?

JM - No, they'd only have to phone me.

P - In your police interview, you said, "He's quite free to use the hook....It's down to Jim, he had a full free hand." That is not the truth, is it?

JM - In addition, he would have to call me first, explain what he wanted to do, and why."

P - You would decide?

JM - Yes.

P - "Jim had a full free hand." That was a whopping lie, wasn't it?

JM - Not a lie.

P - You had previously learned from Mick Czaja that Jim had changed from the grab to the hook without your authority?

JM - Yes.

P - Referring to your conversation with Mick, he said, "He's already done that." Was it on that occasion that he'd done it without your approval?

JM - Yes.

P - Changing back to the grab was a messy job, which took an hour, but you made him change the attachment, even though the hook was the correct attachment?

JM - There is a radio in the cab of the excavator, the operator can phone me at any time.

P - You wouldn't make a change to safeguard lives, but you will do it to make a point about management control?

JM - This was a very isolated incident; it's not the way I operate.

P - You told the police and the jury that the number of bags on the ship on 24 April was small?

JM - Yes.

P - You say this was the reason for not using the hook. You are telling us that Mr Ford, Mr Harris and Mr Czaja are lying. In the previous year, of 14 bag loads, only 5 of them were bigger. Do you agree?

JM - Yes, but it was small compared with what we'd had in the past.

P - The Liebherr was Euromin's machine?

JM - Yes.

P - Were check valves fitted?

JM - No, it was a gate valve.

P - What was fitted in 1995?

JM - An end-of-boom gate valve, not a check valve.

P - Was this to facilitate changeover?

JM - Yes. If we had to disconnect, there wouldn't be an oil leak.

P - Using the valve wouldn't make the system safe, but didn't it occur to you that as a short cut, you could isolate the grab by using the valve?

JM - I wasn't sure if it could resist full oil pressure, without asking Liebherr.

P - If you had asked Liebherr, or spent more than 10 minutes talking with Mr Stallard, you might have saved a life, but you didn't bother.

JM - That's just supposition on your part.

P - You knew that the chains were regularly shortened at Euromin?

JM - I knew they could be, for instance to lift the Bobcat, but I don't know why they were shortened on that day.

P - Are there other reasons to shorten chains?

JM - No.

P - You knew that it could be done easily?

JM - I knew there were attachments to do it.

P - The chains were specially purchased in February 1998?

JM - I can't recall. It was more than 3 years ago.

P - (Refers to document) Page 228: the chains in Ms Barringer's photographs are those purchased early in 1998?

JM - Yes.

P - You can see 3 rings, the chains, and something else there?

JM - Yes, swivels and shortening hooks.

P - Yes. Shortening hooks. What are they doing there?

JM - They are to shorten the chains for lifting the Bobcat out.

P - You knew that on the specially purchased chains there were shortening hooks?

JM - I was not aware that the chains were shortened on that day.

P - The shortening hooks were only to be used for the Bobcat?

JM - Yes. The chains were renewed every 6 months.

P - They were a standard length?

JM - Yes, 3 metres.

P - No; they were 8 feet.

JM - Whatever.

P - You can't tell us what length they were?

JM - No.

P - Because it doesn't matter?

JM - I always realised that the length of the chains was critical to the clearance between the grab and the workers. I understood they were 3 metres long.

P - Who ordered them?

JM - Roger Grant.

P - Have you got the invoice?

JM - No.

P - Have you looked for it?

JM - Why should I need to?

P - It would help to establish the truth.

JM - That's your assumption. You are incorrect. I am very concerned about the accident. It has preyed on my mind for nearly 4 years. I don't take it lightly.

P - The way you showed concern in your police interview was by unloading blame left, right and centre.

JM - I said in that interview, "It stops with me."

P - At page 211 to 212 of your police interview, you said, "I knew the chains had been shortened."

JM - After the accident, Roger Grant told me they'd been shortened.

P - At page 227, you said, "The chains were shortened....I was not aware until 2 or 3 weeks ago."

JM - You're trying to put words into my mouth. I can't recall the exact date. I must have been made aware some time between 24 April and 17 August.

P - You must have tried to find out as much as you could straight after the incident. You must have found out that the chains had been shortened.

JM - Not before 24 April: it must have been between 24 April and 17 August.

P - You told the jury, "in the hours and days after the accident". You told the police on 17 August 1998, "2 to 3 weeks ago". Why did you lie?

JM - I was not lying. I've been cooperating with the HSE and the police. I take exception to that.

P - The length of chain didn't seem to matter to you at the police interview.

JM - As long as they were full length.

P - At your interview, you said, "there was ample distance from the grab to the bag....2 metres... there was plenty of room to get under the grab area to hook on the chains."

JM - Yes.

P - You foresaw the risk of the chains coming in too low, and you said there was still enough room for the workers to go in?

JM - As long as there was not too much chain resting on the bag. If there was, they would have to signal to the banksman to go up.

P - You were envisaging keeping a lookout, and ducking under the grab?

JM - You can reach from the side of the grab.

P - This was the so-called freakish aspect of what happened: you foresaw it, and thought it didn't matter?

JM - It's easy to say that with hindsight.

P - It shows your true state of mind, which was reckless.

JM - No. I'm not a reckless person.

P - You accepted that the banksman had a critical relationship with the other workers, that Mr Harris and Mr Ford worked well together. You were warned in February 1997 that you needed to use a fully trained banksman. Mr Hutchinson's assessment said that you needed full cover for banksmen?

JM - Yes.

P - You knew that you needed to have a fully trained banksman?

JM - Yes, that was my aim.

P - Your initials appear at the bottom of the assessment document?

JM - Yes.

P - On 24 April, there was a fully trained banksman working on the shovel?

JM - Yes.

P - Did it occur to you, when you were in close contact with Roger Grant, that the ship's captain might not have been able to provide a banksman?

JM - Yes.

P - What would you have done?

JM - Probably left the bags in the ship, and moved them later in the day. There was only 125 tonnes.

P - What about the problem of the ship taking the bottom as the tide went out?

JM - It wouldn't have hurt.

P - The unloading was so badly organised?

JM - I answered your question. We unloaded the bags after 5 pm.

P - Why was Mr Ford driving the shovel?

JM - Because he was competent to do it.

P - Where was the normal shovel driver?

JM - Somewhere else.

P - Working for more money?

JM - Could be, or maybe he had another job to do.

P - The complete answer to this problem would have been to ask Personnel Selection for a shovel driver.

JM - I was not aware that they supplied them.

P - On 23 April, when you were planning the next day's work, having had 5 to 7 days' notice of the arrival of the Cambrook, you could have caused Mr Grant to ask for a shovel driver. You couldn't be bothered, could you?

JM - I can't recall. It wasn't a question of "not bothering."

P - Does a shovel driver cost more than a casual labourer?

JM - It wasn't a question of money; Taffy was doing a job for Pyecroft Engineering.

P - Does the agency charge more for a shovel driver than for a labourer?

JM - Correct.

P - So you could have enquired, obtained a shovel driver, and solved the problem?

JM - Yes.

P - And you didn't bother?

JM - You're telling me that.

P - Were you at Euromin on 23 April?

JM - I don't know.

P - Were you often short of staff?

JM - We were finding it more difficult: there was a hard core of part-timers at the Port Authority, but it was getting harder to find casuals.

P - Did you know that Mr Grant didn't ask Mr Chichomski for a banksman?

JM - I asked Mr Grant, was the master satisfied with the men he was sending?

P - Mr Chichomski was just asked for two men to help out?

JM - Yes.

P - Can you explain your remarks about it being worse for a "chappie" to be injured for life, and why you said it would have been worse if Simon had been wearing a hard hat?

JM - If he'd been wearing a hat, the splinters could have killed Sean Currey as well.

P - And this is what you call being sensitive to the death of Simon Jones?

JM - Yes.

P - Regarding the remarks about injury being worse than death: in August 1998, you had taken legal advice?

JM - Yes.

P - You were thinking about the massive damages, which could be claimed for permanent nursing care, and worked out that it was cheaper to kill someone?

JM - No.

P - On 24 April, you were on your way to London, when you got a phone call from Roger Grant, you could tell from his tone that it was serious, and you asked if you were wanted back in the office?

JM - Yes. I went straight to the office.

P - You went back to Shoreham?

JM - Yes.

P - Are you sure?

JM - Yes. I was at the top of the hill on the way to Gatwick when I got the call.

P - Why did you tell the police that you were in London?

JM - When I was called, I was on the A23 on the way to London, and I turned round and went straight back down the A23.

P - What time did you find out about the incident?

JM - I assume that it was straight away. I was there by 12 o'clock, when Ms Barringer arrived.

P - I suggest that you avoided Ms Barringer that day.

JM - I did not avoid her; I stayed in my office and made myself available. I asked Roger Grant to look after the staff re counselling. I saw Ms Barringer put on her mac outside the office. She walked across to the ship.

P - You heard Ms Barringer's evidence. The first time she saw you was on 30 April.

JM - No. I saw her outside the office. I spoke to her sometime after that about sailing, and the possibility of her mooring her boat at Euromin's Wharf. I was there. Why should I avoid her?

P - Because you bore a huge moral responsibility.

JM - I didn't avoid her.

P - I suggest that you didn't see her on 25 April, 26 April, 27 April, 28 April or 29 April.

JM - Correct.

P - You were looking after number 1.

JM - No. I always made myself available. I wouldn't wrongfully interfere.

P - There is no way that you could be certain that grab wouldn't close?

JM - Is that a question or a statement?

P - A question.

JM - I never dreamed that somebody would operate that lever accidentally. I knew the machine was very well maintained. It wasn't a question of cost.

P - We have shown that Mr Harris was not perfect, that he made mistakes, and that he could well have foreseeably closed the grab.

JM - That is the only way it could have happened; the machine was sound.

P - To assume that it could never happen was grossly irresponsible.

JM - I don't agree.

P - The time that it was most likely to happen was when the grab was over the men's heads.

JM - I can't agree.

P - You foresaw that the grab could come in too low.

JM - Those were my answers. I still refute your suggestion.

P - All the things that happened were predictable?

JM - I can't agree. Mr Harris closed the lever, but he was competent and professional.

P - Do you agree that there were four risks, which you created?

JM - You're telling me that. I didn't deliberately create them. I took advice. I did what I could as a professional man.

P - I'm not suggesting that you deliberately intended those risks, but that is the effect of what you did.

JM - I can't agree.

P - You created a serious risk of death.

JM - I didn't intentionally create the risk.

P - Leave out "intentionally". You created a serious risk of death.

JM - I took professional advice from a specialist, an expert. I can't say that I foresaw the risk of killing that man.

P - I don't suggest intent. The risks were easily avoided, with proper attention. You prevented that from happening.

JM - No, I didn't.

P - The risks were obvious and foreseeable.

JM - That's your opinion.

P - You were grossly negligent.

JM - I can't agree.

P - It cost a life.

JM - I know that. I take it seriously.

P - Do you accept any responsibility for what happened?

JM - I didn't deliberately do anything to endanger life. You'd like that splashed all over the papers tomorrow, wouldn't you?

J - The case will be adjourned until tomorrow morning at 10.30

November 21st 2001

D - (Refers to document) Jury Bundle B, page 81. Policy statement dated 20-2-97. "Health and Safety at Work Act....responsibility with me....some delegated responsible persons." Were these statements distributed or shown?

JM - They were drawn up by Neil Hutchinson, and filed in the office. I kept a copy myself.

D - The name of Mr Hoekman is typed in?

JM - Yes.

D - Whose idea was it to ask for Mr Hoekman's signature? You reported to him, didn't you?

JM - Yes.

D - So whose idea was it?

JM - Neil Hutchinson's.

D - Did Mr Hutchinson know Mr Hoekman, or did he only know his identity through you?

JM - Only through me.

D - Is there any evidence that Roger Grant was appointed as safety officer after February 1994?

JM - Yes.

D - In your police interview in August 1998, at page 214, you said, "I don't have a specific health and safety officer....Grant was an assistant who dealt with health and safety matters". Can you explain this?

JM - My thoughts on Roger Grant's ability were questioned by one or two staff. Carrying out the company's health and safety policy was beyond him, so I called in Mr Hutchinson. His role has increased. He effectively does this.

D - Was Roger Grant's appointment done orally?

JM - Yes.

D - Were the other staff told?

JM - Yes.

D - Did you put up notices to confirm his appointment?

JM - Not as such, but his signature was on all notices about health and safety.

D - Mr Hutchinson attended the site on 7 February 1997?

JM - Yes.

D - By appointment?

JM - Yes.

D - Can you recall how the appointment was made?

JM - I can't: it was so long ago. It would be via ATB Landbase, where he was a consultant. Roger Grant would have made the appointment through Jane Baker. I think I discussed it with Jane Baker, and she assured me that he was competent.

D - We have been told that on when Mr Hutchinson visited the site, no lorries or ships were being loaded or unloaded. Can we assume that this is correct?

JM - Yes.

D - Was he asked to attend specifically when no loading or unloading was going on?

JM - No. It was unusual for no lorries to be there. He may have been there for about 2 hours. We average 40 to 50 lorries per day. He may have been there when there were no lorries.

D - Did you want him to assess some things and not others?

JM - I wanted a complete site assessment.

D - We have heard that visitors and employees didn't always wear hard hats. What steps did you take about this?

JM - Time and time again, I asked all staff to adhere to signs. The whole site was designated a hard hat area. Some staff brought their own hats; I said that they had to conform to British Standards. Also, Mr Grant and Mr Czaja were always telling the staff to wear hard hats. We have spare hard hats on site.

D - Can you see what more you could do, to enforce the rules on hats?

JM - No, not without having an individual in the middle of the yard, watching everybody, and making sure they always wore hard hats.

D - We have heard about the conditions of the water in the dock, and the roughness of the sea, and the movement of the ship. We have heard that under certain conditions, the movement could be as described by the master of the Cambrook. What were normal conditions like?

JM - Normally, there would be no more than one or two inches of up and down movement, on average. It would need a force 6 south-west gale to produce much swell inside our harbour.

D - You were asked, "Were you absolutely certain that grab would not move?"

JM - I was, yes.

D - What led you to that view?

JM - It's an operation similar to a car at traffic lights, with a pedestrian crossing, waiting for people to cross. He was an experienced driver, in full control of the machine. I would see no reason why he should activate that lever.

D - It was put to you that even the best of people can make mistakes.

JM - Yes.

D - Did you envisage this particular mistake?

JM - As far as mistakes are concerned, when discharging a ship, going with the grab and hitting the side of the ship, I'd class that as a mistake. To activate the lever, I wouldn't call that a mistake.

D - Did Mr Harris have a tendency to make mistakes of this kind?

JM - No.

D - When you were asked if the workforce had had any health and safety training, you gave the answer, "Jim Harris had a course a year ago. That was an instance of retraining." Were you intending to say that he had got personally into bad ways?

JM - No. I felt that at his age he needed some training, for reassurance about his competence.

D - What bad ways had he got into?

JM - How he operated the machine: going gradually up and down. Nothing important; he was inclined to go up, sideways and down. He needed to make the operation more fluid.

D - Did he have any bad ways with regard to safety?

JM - No.

D - Did any staff have reservations about Jim Harris?

JM - No.

D - Were any risk assessments carried out before 1994?

JM - Not to my knowledge.

D - You made modifications to the system after your meeting with Mr Stallard. Describe the system when you arrived at Euromin. Were chains wrapped round the grab?

JM - Round the central column of the grab.

D - Where were the chains wrapped?

JM - Round the hinge bars, and secured with a shackle.

D - Were the chains wrapped around the outside of the grab, or inside?

JM - They hung down inside the grab.

D - What did you regard as wrong with this system?

JM - It wasn't wrong; it was untidy. It didn't keep the load to the centre of the column. It was messy; I felt there must be a safer way to attach the loads. Jim mentioned a good idea, and I thought I'd follow it through.

D - Mr O'Connor put it to you that you had allowed an unsafe system to be used for 4 years.

JM - He put it to me, yes.

D - Had there been any incidents of loads slipping?

JM - Not to my knowledge.

D - Before Jim Harris made the suggestion, had it occurred to you to modify the system?

JM - Not to my knowledge. I was always looking for ways to make life simpler for everybody on the site.

D - Why did you approach Stallion Engineering?

JM - Mr Stallard had gained over the years a wealth of experience. The company were using him before 1994. He was a local man, somebody who knew his job, all about slings, webs, hooks and chains. It was an old-fashioned firm, and he was an expert worthy of taking advice from.

D - You met him on site?

JM - Yes.

D - He had the hooks with him?

JM - Yes.

D - What does that indicate?

JM - He knew what we wanted to do. He had a safety hook with a latch that couldn't come undone. I didn't disagree with the design. He knew what he was talking about. There was nothing unusual about it.

D - The meeting was between you, Mr Grant and Mr Stallard?

JM - Yes.

D - Was anyone else there?

JM - No. Just the 3 of us.

D - Who supplied chains to Euromin?

JM - Stallion.

D - All chains?

JM - Yes.

D - Did you receive invoices for chains?

JM - Yes.

D - You said that you were aware of chains being shortened for certain operations, such as moving the Bobcat?

JM - Yes.

D - Had you ever heard of chains being shortened to move bags?

JM - Not that I can recall.

D - At page 227 of your interview, you said that you were not aware "until 2 or 3 weeks ago"?

JM - Yes.

D - It was agreed yesterday that you were told this by Roger Grant after the accident?

JM - Yes.

D - Can you recall when?

JM - I can't give an exact time. I was horrified. My reaction was, "Why on earth did he do that?" It was a very difficult time, May, June and July. It could have been 3 or 4 weeks after.

D - Would you have any reason not to tell the truth?

JM - No, it was immaterial.

D - As to the length of the chains, Mr Stallard would know that?

JM - Yes.

D - The shortened chains were measured by Ms Barringer?

JM - Yes.

D - Were they measured in their unshortened state?

JM - I'm not aware.

D - The extent of shortening is double what you can see in the photograph?

JM - Yes.

D - Would your estimate of the amount of shortening be about one and a quarter metres?

JM - Yes.

D - If the chains were not shortened, and the operation was done in the normal way, how much clearance would there be between the grab and the men's heads?

JM - At least 3 feet.

D - At page 233, when asked who would decide whether to use the hook or the grab, Mr O'Connor suggested that you were dishonestly trying to shift the blame.

JM - No.

D - This passage appears to be critical of Jim Harris.

JM - I was not trying to be critical; the staff were loyal to me; I'm not the kind of person to try to shift the blame. I was just recording the facts, as they happened.

D - You said Mr Harris was free to use the hook. Have you ever said, "No, you can't use the hook"?

JM - Not to my knowledge. There was one day when he wanted to do it, but there was another gravel ship to clear first.

D - You expected to be kept informed?

JM - Correct.

D - You made him change back to the grab?

JM - Yes.

D - Were there any earlier incidents of unauthorised actions?

JM - Yes. There was a heap of aggregate, which Jim took it upon himself to move to the east end of the quay. I said, "We've got to get to grips with this. Let me know via Mick, and let me have my input. I have the right to know what's going on." That's not unreasonable.

D - What harm would it do to change to the hook?

JM - No harm, but for instance, if they were late starting on the Cambrook, they would need to shift the aggregate to avoid the ship bottoming. It was important for me to keep control of what was going on at the site.

D - The isolator valve on the grab was a valve fitted to use when changing attachments. Had you ever considered using it as a safety feature during lifting?

JM - It was a primitive valve, which was not tested at high pressure. It was a shut-off valve, recommended by Liebherr, just to stop leakage of residual oil in the pipe.

D - If the valve had been shut off, would that have prevented the grab from slewing?

JM - Yes.

D - Did the grab need to be slewed?

JM - Yes. If the grab was close to the side of the ship, it had to be revolved by 90 degrees to pick up the bags.

D - Do you know in advance where in the hold the cargo will be?

JM - No.

D - What were you told that morning, in advance of the crew of the ship being contacted?

JM - I was aware that we were two staff short. Roger Grant had seen the master, who said he could supply 2 men. I said that's OK if the master is satisfied that they are competent.

D - You knew what jobs they would be doing?

JM - Yes, Roger told me.

D - If you had known in advance what the banksman's actual experience was, would that have concerned you?

JM - No.

D - Yesterday you were asked why Mr Ford was driving the shovel instead of Taffy. It was put to you that you could have got a shovel driver, but that would have cost more, and you were cutting corners to save money.

JM - No. The difference in salary for a day's work was small, and I wouldn't consider it.

D - On the master card at Personnel Selection, the hourly rate for a labourer was £7 to the company, and £5 to the man. Do you know if a shovel driver costs the same as a labourer?

JM - It was a different rate, higher.

D - Did you ever engage a shovel driver from Personnel Selection?

JM - No. They were difficult to engage. They are few and far between.

D - A shovel driver would need to be certificated?

JM - Yes.

D - It was suggested that if there were a civil claim against Euromin, that would affect their insurers, and be very expensive. Did you have any financial stake in the company?

JM - No.

D - Do you know if any claims have been made?

JM - No. That's not a matter I'd be involved in.

D - There was a line of questioning which suggested that you cut corners to save money.

JM - I take exception to that.

D - Do you have a financial stake in the company?

JM - No.

26 Closing prosecution statement by Patrick O'Connor QC

On Count 1 (Manslaughter) there are 4 requirements for this offence. You must decide if the evidence makes you sure that these requirements are satisfied.

- 1) A duty on the defendant to take reasonable care for the victim (in this case, for the safety of Simon Jones)
- 2) A breach of this duty
- 3) The breach must have caused the death
- 4) The breach must be grossly negligent: this will be the major battleground.

1) In law and in common sense, such a duty exists. Mr Martell accepted that if he didn't carry out his job properly, people could be injured or killed. He felt a sense of responsibility. The duty of care is not a guarantee to protect people from all risks, but to take reasonable care.

2) Deciding whether there has been a breach of the duty should cause little difficulty.

3) The breach must be a cause of death. It does not need to be the only cause. In workplace deaths, there is often not just one cause. We don't have to prove it was the only cause, or even that it was the main cause or the last cause; there may be many contributing causes. We do have to be satisfied that it was a significant cause, not tiny or trivial.

4) Gross negligence: many incidents, which involve momentary lapses, such as ordinary traffic accidents or real workplace accidents, are caused by momentary carelessness. This case is much more serious. "Gross" means flagrant or glaring, when viewed from an objective standard. The jury has a critical role in setting standards for society.

What is not needed, in deciding whether the negligence is gross, is any consideration of the mental state of the defendant. Intentions may be put to one side. Mr Martell said, "I didn't intend to kill or cause any harm." Even a murderer may not intend to kill. The defendant does not even have to deliberately cause the risk: he may be sure that he was as careful as possible. What you must consider is what he actually did.

Gross ignorance is not a defence for gross negligence. For example, even if Mr Martell had got expert advice from a genuine health and safety expert, he could still be convicted of gross negligence manslaughter.

We did refer to state of mind. We alleged that Mr Martell was either indifferent to the risk, or realised the risk and went ahead anyway. We think the latter applies: he's not that stupid. If you do conclude that he had that state of mind, you may more readily conclude gross negligence, because such a person is objectively more likely to show an unacceptable disregard for human life.

How relevant is the fault of others: the exercise in hand-washing, and blaming Mr Stallard and Mr Harris? The fault of others is no defence if a significant cause of the death is the defendant's negligence. This is good sense for it is far too easy for an employer to evade responsibility. Often workplace deaths are blamed on people on the shop floor. Of course, others could be at fault, but that is not relevant. The use of the system by others is still no excuse. For example, if there is concrete evidence that six other businesses are doing the same thing, you could conclude that Mr Martell and the other six businesses are grossly negligent. You may have thought Mr Martell was just "going with the flow." Mr Stallard thought that Mr Cresdee was using the same system, but that was shown not to be true. Mr Martell cites the case of one employer at Shoreham Harbour 10 years ago, using chains 10 to 12 feet long. This is not relevant.

How relevant is the tragedy? You have to put that to one side and go for objective tests. You are obliged to put sympathy aside. It would be as unjust to convict for this reason as to acquit because you know Mr Martell has three children.

You must deal only with the evidence, which has been presented, and ignore what other witnesses, who were not called, might have said. You should not speculate about the reasons why they were not called.

There is one word, which you must avoid, and it has been repeated like a mantra by the Defence. That word is "accident." This word causes ambiguity. It is full of innuendo and unstated meaning. It implies that an accident cannot be a crime. A pure accident cannot be a crime. It is an event without apparent cause, an unfortunate event causing injury or damage. This is an unfortunate event, but not a pure accident. That is why we have avoided using the word. It is not an event without apparent cause. You don't need Sherlock Holmes or Perry Mason to tell you this; there is overwhelming evidence.

Why is this gross and criminal negligence? I have listed it under twelve headings. You do not have to be satisfied with all of them to be able to convict.

- 1) There were positive acts, which created the risks, not just omissions.
- 2) There were a number of risks.
- 3) The seriousness of those risks included the risk of death.
- 4) Martell did not take a single step to reduce those risks or to protect people.
- 5) The risks are easily avoided.
- 6) He stopped others taking steps to avoid the risks.
- 7) The actual events were not freakish; they were predictable.

- 8) These events were not an isolated incident, Martell had previously shown disregard for the criminal law.
- 9) He had been warned in advance, in writing, of his legal duties.
- 10) All other contributing factors can ultimately be laid at the door of Martell, with the exception of Jim Harris' momentary lapse.
- 11) The contributory fault of others was minimal.
- 12) He has manifested indifference, even after the event, to the consequences to Simon Jones.

Detail:

- 1) It can be gross negligence, if someone omits to do things allowing events to happen. This is different; there were positive acts.
- 2) The risks are four in number:
 - (a) The structure and integrity of the clamshell grab stem could be compromised. Mr Field, the managing director of Liebherr, told us this. The equipment is not designed to take a load of several tons on that particular spot on that attachment. Nobody knows for sure if the structure was damaged; Martell was not an expert and he didn't consult one. There was a risk of catastrophic failure.
 - (b) There was a risk of the grab closing on the chains. This risk occurred to Mr Watson of Pyecroft engineering, who raised it with Roger Grant. Mr Clinch told us that there would be more damage if the chains were under tension as they would be when lifting a load.
 - (c) The grab being in place compromises the view of the banksman. He may be able to see something through the gap, but the grab gets in the way. How well the banksman can see depends on his angle of view.
 - (d) There is a risk of the grab closing on a worker. This risk is greatest when the operator is not deliberately operating the joystick. This is the time when the grab is nearest the workers. The driver is waiting for a signal and can be easily distracted.
- 3) The seriousness of the risk is grave. It is obviously a risk of death. The grab moves with great speed and it has great weight and power. The part of the worker's body nearest to the grab is the head.
- 4) It is agreed that no steps were taken; Martell has not suggested or done anything to warn or prepare workers for the extra risks involved in the new system.
- 5) The risk was easily avoided by using a properly designed lifting hook, which was lying in the shed. There was a stop valve, which had been fitted to make it easier to change the attachments. We don't suggest that the system being used could have been in any way safe, but as a short cut, it would have been possible to isolate the grab by using the stop valve. Martell didn't discuss this with Mr Stallard. Closing the stop valve would have made it awkward for the grab to swivel but it would have been easy enough to open the stop valves again. Failure even to attempt this short cut shows his indifference to the risks.
- 6) Martell stopped others from reducing the risks. He created the risks; others who were more safety-conscious wanted to change the grab for the hook. Mr Harris' statement tells us that he couldn't do this off his own bat. He tried it once, and Martell ordered him to change it back. Jim Harris and Roger Grant discussed changing the grab for the hook on the morning of 24 April,

but didn't do it because they didn't have permission. You may have thought that page 233 of Martell's police statement is diametrically opposed to this. He says "Jim is quite free.. at no time have I ever said no you can't.... it's down to Jim, he had full free hand." And this is in August 1998, after 4 months of legal advice. Yesterday in the witness box, the truth came out. Martell accepts that there was a previous incident. In a conversation with Mick Czaja, Mick said "Jim's already changed the grab for the hook" Martell was enraged, said "tell him to change it back", just to make a point about management control. Martell is not prepared to let Jim change it to protect Simon Jones. This gives an insight into Martell's state of mind (which is relevant but not a requirement to show gross negligence). If it had been down to Jim Harris, there wouldn't have been any risk to Simon Jones. There is further misleading evidence, where Martell says that 102 bags were too few to justify changing the grab for the hook. Trevor Ford told us that 110 bags was not a small number and he couldn't understand why the grab had not been changed. Mr Czaja said it was "a substantial number of bags" and in Jim Harris' statement he said that if there were 75 bags or more, they would change to the hook. Mr Martell can't even tell the truth in this respect.

7) The actual events were not freakish. Any worker is not perfect, and can make mistakes. The reason for Jim Harris' retraining was to improve his handling of the machine. The whole point of Health and Safety legislation and good management is to allow for workers' mistakes. It is not freakish that the lever should be operated at the time when the grab is still and Mr Harris is not concentrating. The chains being too low is inherent in the system and is accepted by Martell at pages 235 to 237 of his police statement. He says "2 foot, 3 foot, there's always room underneath" and "Sensible chappies keep their heads down and get on with the job." This workplace was not IKEA, with a smooth floor and level shelves. There were many more variables. It was not safe with "2 foot, 3 foot" or any other amount of clearance. Even with 10-foot chains, this was not a safe system.

8) The events of 24 April were not an isolated instance. Mr Martell wouldn't or didn't or couldn't answer the question as to why he had not had an unsafe system assessed, which was his duty under criminal law.

9) He had been warned in writing of his duties but carried on with the system. In particular, he did not have full cover for trained banksmen.

10) Many other contributing factors can be traced back to Mr Martell. Consider the inadequate banksmen. Mr Martell was always aware of the critical relationship between the banksmen and the crane driver. Martell and Euromin had every opportunity to plan, who did what job. Trevor Ford is one man, not full cover. Mr Ford was put to drive the shovel. Why? We are told that Taffy, the regular shovel driver, just went somewhere else to work, but it would still have been possible to cater for the arrival of lorries. The quayside is like a warehouse or store, where hundreds of bags of stones and piles of aggregate are kept. The business keeps a balance by topping up the supplies and by customers ordering in advance. Lorries do not need to pick up materials as the ship is being discharged; they can come at any time. Mr Martell is responsible for this. The reason they needed a shovel driver on that day was that Mr Martell had arranged affairs that way. He could have found a shovel driver elsewhere but he wasn't interested and didn't try.

He was taking a chance that there would be a banksmen on board the Cambrook. Roger Grant didn't even ask the master of the Cambrook for a banksmen; he just said two men. Jim Harris says in his

statement that the banksman was inadequate: he thought he could understand him, but something wasn't right. Mr Ford couldn't understand the banksman's signals: he talked about him "flapping his arms around." Mr Kasprzak thought he was doing the job right. Ms Barringer and Mr Martell agreed that there is no internationally agreed system of signals.

The shortening of the chains can also be traced back to Mr Martell. He cannot say "I rely on the chains being full length and calculations of safety are ruined if they are shortened by 2 feet." The only reliable evidence on this point is that of Mr Harris, who says they were shortened from 8 feet to 6 feet. To Mr Martell it is a matter of complete indifference. He cannot find documents to show the length of the chains. Sean Currey tells us that chains were regularly shortened at Euromin. The chains, which Mr Martell "bought specially", were fitted with shortening hooks! He took no steps to ensure that they were not shortened. He says at pages 235 to 237 "within 2 to 3 feet it didn't matter how long they were."

He has twisted himself into contortions of lies, which need carefully examining, as they give an insight into his guilt. He lied about his inhuman conduct after the event, at page 227. In his police interview on 17 August 1998, he said he was not aware of the shortening of the chains "until 2 or 3 weeks ago." This cannot be true; he would have learnt of this from Roger Grant on his first return to Euromin, whenever that was. In his second version, he says he learned of it verbally in the hours or days following Simon's death.

In his third version, he said he was driving to London when he got a phone call from Mr Grant and he returned immediately, in time to see Ms Barringer arriving. He would have seen the chains for himself. Where is the truth? It is difficult to unravel from three different versions. It is no coincidence that he is telling lies about this topic: it is so damning for him.

Ms Barringer's evidence is that he was not there until 30 April. Why did he tell the police he was in London if he returned immediately?

11) If you strip away all the red herrings, and you can see that the only contributory fault of anyone else was Mr Harris' momentary lapse. All the others can be traced back to Mr Martell.

12) In this final section we cover a number of points. Martell showed indifference to the risk to life. The relevant time is when he was setting up the system. We get a clue in his police interview in August 1998. Put aside his remarks on page 215, where he says it is worse if the person is injured for life. This is a remarkably strange comment to make, and is totally inexplicable. In page 220, the theme is developed: "it's an operation that had been carried out.. for a number of years....somebody can touch a lever and what happened happened. Equally the whole boom could come down on somebody's head, the machine can move like a car, can hit somebody." It is not an isolated indifferent sentiment. On page 225 he talks about a small number of bags, a competent welder, and "no more expect the driver to close the grab than drive it into a brick wall." At page 227 he says the machine was well maintained but that was important economically, not a reason for a pat on the back for his concern for health and safety. He asks "how could I protect myself in that position, somebody accidentally operating a lever, any more than somebody taking his foot off the clutch of a lorry when there is somebody standing in front of him?" He asks, "the closing of the grab....how could I prevent it from having happened? I don't know."

He rejects Mr Bartlett's suggestions as to how he could have prevented the grab from closing:

"How can you prevent accidents happening unless you watch, three people watching what everybody is doing?"

Consider his conduct after the event. It is doubtful that he ever went back to the site. What human being would not return immediately? If he did go back, he must have kept his head down. He showed callous indifference and a very carefully concealed immediate sense of guilt and responsibility.

How does Mr Stallard fit into the picture? He was used as a fall guy for Mr Martell to blame. His evidence that he arrived by chance at Euromin in February 1998 was unchallenged by Mr Martell's counsel. Stallard had never before been used for consultancy. There was a safety problem with the old system because there was no secure lifting point, and this is first base for any safe lifting operation. Mr Stallard suggested a secure lifting point, but was given no chance to understand the old system or the proposed new one. He didn't know that Euromin had the safe Liebherr hook.

On page 231, Mr Martell says the hooks "were welded on specifically.....a design of hook that Mr Stallard led me to believe was satisfactory....I came down with the man for him to see what we were trying to do."

Mr Stallard is an expert on hooks, lifting gear, and nothing else. Martell's reliance on Mr Stallard is like the following situation. We know Euromin have a shed with men working in it. Imagine there was a problem with the safety of the roof, and Mr Martell calls in a roofing expert, who sorts out the problem, but in so doing cuts off the fire sprinkler system. This creates a new danger. The roofer shouldn't have done it, but Martell knew about it, and it was his responsibility. If he says, "I made the whole system safer because I cured the roof problem" it would be nonsense, and you would see through it. This case is similar.

Mr Martell's counsel asserted that the hooks were put where Mr Stallard suggested. Mr Stallard said "Not at all, sir" and he was quivering with indignation. He was outraged at the suggestion, as he believed that contact between the aggregate and the hooks could compromise the weld.

Mr Martell can't accept Mr Stallard's evidence, and yet he has to say he followed Mr Stallard's advice. Mr Martell says Mr Stallard came in response to a request, and that he knew that Mr Stallard was coming, because he (Martell) had made a request, in advance, for advice. Mr Martell says that Mr Stallard originally told him to put the hooks "up there", but later agreed to put them lower down. Martell had foreseen the possibility of the grab closing. Imagine Mr Stallard's reaction to Defence counsel telling him that Martell raised with him the possibility of the grab closing, and Mr Stallard had said "Don't worry; it will be OK." The poor man would have had apoplexy! This story has been carefully and assiduously put together by the Defence. It was not put to Mr Stallard. Elaborations on the story were made up after Mr Stallard's evidence.

What you need to remember is what Mr Stallard stated very clearly, "You don't operate under an open grab unless you are absolutely sure it's not going to move".

Mr Martell could not satisfy me that he was sure the grab would not close.

The conclusions of the expert witnesses, Dr Hinks and Mr Clinch went unchallenged. The defence could have called in expert witnesses to contradict them, but they did not do so. Perhaps they couldn't find any to contradict their 60 years combined experience. Mr Clinch, with his extensive docks experience, told us that this event was entirely foreseeable and that it was an entirely inappropriate system.

You could call these personal opinions, but they are the opinions of experts.

Mr Harris on page 69 says, "I decided to shorten the chains because of the overhanging lip... couldn't lift the bags without damaging the ship." It was a physical problem; Mr Martell with his thirst for knowing everything about the operation should have known this. Mr Harris expressed the opinion that there was still 8 feet from the base of the bag to the grab. But you do not have to accept this. The only reliable measurements were made by Chris Barringer. It is also possible that Mr Harris, who was still employed by Euromin, may have had divided loyalties. You should bear this in mind.

Why do people lie? Innocent people may panic under pressure. You must be satisfied that they told lies to conceal guilt.

Mr Martell has told many lies. Some were trivial lies: e.g. he was locked in a room for his police interview. He went there by appointment with his solicitor and you heard during the recording of his interview that someone accidentally walked in. The door cannot have been locked. There was no pressure; you heard the calm, even tone with which Graham Bartlett conducted the interview. It is a nonsense to say he was locked in and felt threatened, but it is not serious. Then there are the lies about a typical working week. Compare Mr Martell's evidence with Mick Czaja's evidence, which when it was put to him Mr Martell accepted.

Then there is Roger Grant; there was no mention in the police interview of Martell's concern about Roger Grant's suitability as a safety officer.

There are much more serious lies about his being in London on the day Simon was killed. This is the equivalent of "Where were you when Kennedy was shot?" He cannot expect us to believe that he does not remember where he was when he received such devastating news that one of his workers had been killed.

Then there are the lies about being proactive. He wasn't being proactive he was simply, albeit belatedly, complying with the requirements of criminal law. He didn't "consult" Stallard. The conversation only lasted ten minutes, nothing was given in writing and there was no fee. Harris didn't have a free hand to change the attachments. What he had was a free hand to phone up and ask for permission. This group of lies raises very important issues.

Has he deluded himself into believing his own lies? In reality he cannot fail to know that these are lies. He feels a need to conceal his own guilt.

The Defence tell us that Euromin was a "safety-conscious company." They couldn't even test the hooks after they had them welded on. They tell us that the wearing of hard hats is relatively trivial, and difficult to police. Why did Martell not delegate responsibility for health and safety to somebody else? The evidence of Sean Currey, Jodie Taylor and Jim Harris shows that where safety is concerned, Euromin were not doing their best. Jim Harris said, "the hats were on site...it was up to the individual...most people in the hold won't wear them." As for the shortage of a banksman being a one-off occurrence, the evidence shows that Euromin were short of men regularly.

If you find Martell not guilty on Count 1, there is no question of the company being guilty on Count 2. The company can only be convicted through Martell. If Martell is guilty of manslaughter, you then have to consider whether Euromin are guilty on Count 2. You have to decide whether Martell was the controlling mind of Euromin. Were his acts

essentially those of the company? The evidence should be sufficient: he was the most senior person in the company in England, Euromin have no other premises, and there are no directors in England. Page 113 shows a tree diagram of the structure of Euromin, with Martell clearly at the top. It is agreed that he is a hands-on manager, who keeps detailed contact with every aspect of working practice. The only reason why Mr Hoekman's name appears on the document prepared by Mr Hutchison, is that he thought this was the correct name, and typed it in himself. The document was later signed by Martell.

Counts 3,4 and 5 as a group are of course not as serious as manslaughter, but do not be misled, they are not alternatives to Count1 or Count 2. They register serious breaches of Health and Safety legislation. Martell and Euromin have defied these for years. These charges are not some kind of soft option or compromise or failsafe.

Count 3 is against the company, which was under a strict obligation to comply with the law. Parliament has decided that this is a criminal offence, with good reason. It seems that no defence has been offered to this charge, which concerns the protection of Simon Jones. There is no issue here of controlling mind; it was the company's duty and the company's breach and Martell is not an issue.

Count 4 states that from 1 Jan 1993 to 24 April 1998 there had been no assessment of risks. This is the first base of health and safety law: to identify the measures which need to be taken to comply with the law. Notice the dates: this went on for more than 5 years. In defence, Martell says he got Mr Hutchison in to do an assessment, but he left out Euromin's key operations, so it cannot be a suitable and sufficient assessment. As for the ten-minute conversation with Mr Stallard, the less said about that, the better.

Count 5 says that on 24 April 1998, Simon Jones was not provided with appropriate instructions with regard to health and safety. The only person who spoke to Simon about health and safety was Sean Currey. He was not an expert, but he took it upon himself to do what he could. The regime was so slack, and showed utter disregard for safety. Martell signed a policy document in May 1997, which referred to the Management of Health and Safety Regulations, 1992.

In convicting, you will get no pleasure. This is a most unpleasant and distressing case. You cannot bring Simon Jones back, but you can carry out your public duty and vindicate the principle that justice has been done.

27 Summing up by Judge Stokes

First, we have to differentiate between "directing" and "reminding". I decide questions of law as they arise during the trial, and ensure that the trial proceeds according to the law. I also summarise the evidence.

You have to decide, on the basis of the evidence, what the facts are: what a particular person did, said or thought at the time. You have a great deal of collective commonsense, and a wealth of experience of life. There are twelve of you. That is the real strength of the jury system. We must accept the facts as decided by you. You must apply my directions as to the law, to the facts as seen by you. I may at times appear to be expressing a view; you are free to accept or reject this view. You are under no pressure as to how you find the facts.

I shall be selective with the evidence. I shall not go over every word: that would not be helpful to you. If you consider that something which I have left out is significant, don't ignore it. Don't speculate as to why a certain witness was not called, or why a witness was not asked a particular question. You may think that this applies to Roger Grant, but the advocates decide who to call. Don't try to guess the reasons; your guesses might be unfair.

Beware of emotion. This was a promising young life that was lost, and it has had a devastating effect on the family. Don't be tempted to say, even to yourself, that for the sake of the family you should convict. You have to approach your decisions, as judges do, with cool heads, and calm, analytical minds. Beware the dangers of hindsight. Risks may be apparent because of what actually happened. It is easy to be wise after the event.

The law states that there is a burden of proof on the prosecution. With regard to the two defendants, Mr Martell and Euromin Ltd, it is up to the prosecution to prove their guilt, never for the defence to prove their innocence. You must be satisfied beyond all reasonable doubt of the defendant's guilt.

Normally if there were two defendants, I would rule that you had to consider each separately, but with corporate manslaughter, it is different: On count 1, you must consider whether Mr Martell is guilty of manslaughter.

Count 2 is a similar offence against the company.

You must consider count 1 first. If you are not sure of Mr Martell's guilt, you must also find Euromin Ltd not guilty. If you find Mr Martell guilty, you can only convict Euromin Ltd if you are sure that Mr Martell was acting as the company, that is, that he was the company's controlling mind.

Ask yourselves if Mr Martell in reality embodied the company's operations at Shoreham. This is not necessarily a question of labels; the controlling mind does not need to be a director. It is possible for a general manager to be the controlling mind. You must decide, and if you are in any doubt, you must find the company not guilty. Counts 3 to 5 I will deal with later.

Manslaughter is the unlawful killing of one human being by another. It can be by gross negligence, that is having and breaking a duty of care. That is what the prosecution are alleging in this case. They have to prove:

1 That Mr Martell owed a duty of care to Simon Jones. There is a general liability for carelessness of people one to another, for instance drivers have a duty of care to other road users. It has been said here that Mr Martell owed a duty of care, to take reasonable care of casual workers on the site, especially with regard to the excavator, which had by his instructions been recently

modified. The facts are capable of giving rise to a duty of care. You must decide whether the duty of care existed in this case.

2 That the defendant was in breach of this duty, by a negligent act or omission. The emphasis here is on the modification of the system.

3 That the breach of duty was a real or substantial cause of death, and

4 That the breach was so serious as to be gross negligence.

On No 2, you must ask whether Mr Martell was careless with respect to Simon Jones's safety. On No 3, the question is, did the negligence cause Simon Jones's death? If Mr Martell was negligent, the defence concedes that there is no doubt as to the cause of death. On No 4, you have to ask whether the conduct was so bad in all circumstances as to be a criminal act or omission. The circumstances must be such that a reasonable and prudent person would have seen an obvious risk of not just injury but death. The degree of negligence must be very high, so grave as to be regarded as manslaughter, and punished accordingly.

The prosecution say that the defendant was either indifferent to the risk, or that he foresaw the risk, and decided to run it anyway, by making the decision to fit hooks where there was an obvious risk of the grab closing. You must look at all the evidence, including that of Mr Martell himself, and consider what he did and who he consulted. You must consider all the evidence, not just that of Mr Martell, and decide if this was gross negligence.

On counts 3 to 5, only Euromin are charged. You must consider the counts separately.

Count 3: Certain statutory provisions govern the operations carried out at Shoreham. Euromin was under a duty to comply with the Health and Safety at Work Act, 1974, in particular to conduct any unloading in such a way that any person was not exposed to a risk to their health and safety. You have to decide whether there was a real and foreseeable possibility of danger to health and safety. Were there risks, and if so, did the company fail to ensure that people were not exposed to the risks?

Count 4 states that from January 1993 to April 1998, Euromin unlawfully (in breach of Regulation 3.1.b of Health and Safety at Work Regulations 1992) failed to make assessment of risks to health and safety to persons not employed by the company. The defence say that an assessment was carried out in February 1997, that Mr Stallard made an assessment in February 1998, and that the company had every intention of carrying out further assessments, but just hadn't got around to it. This is a matter of fact for you to decide.

Count 5 states that appropriate instructions were not given to Simon Jones. You must not guess what Roger Grant did or did not say to Simon Jones. The only evidence is what Mr Currey said to him. Are you satisfied that there was a failure to give appropriate instructions? You do not need to consider the issue of a controlling mind for counts 3 4 and 5.

You have heard that the defendant is of good character, is 59 years old, and has never been in trouble. This is evidence which you should consider in his favour. He has given evidence himself. His good character may mean that he is less likely to commit offences. This is your decision, and you must take into account his age and experience. The company have no convictions recorded against them. Mr Martell speaks for the company (this is not to say that he is necessarily its

controlling mind; you must decide this.) You have heard all the evidence, including that the company maintained its machinery well.

Expert evidence is permitted to provide scientific or other expert knowledge and opinion. It is part of the evidence as a whole, and can help with the consideration of risks, and how obvious these were. Bear in mind that if you don't accept the evidence of an expert, you don't have to act on it. You decide whose evidence and opinions you accept. You must reach a verdict on all the evidence.

It has been alleged that Mr Martell has lied to you, or to the police, or both: Telling the police that he was in London, and saying he was at Gatwick to you, That he was being "proactive" in making his assessment in 1997. Concerning what Mr Stallard did, Concerning the "free hand" that Mr Harris had, and About finding out that the chains had been shortened.

You must consider: if he lied, does that affect the case? You must ask yourself, did he lie? If you are not sure, then you must ignore it. Remember the events were a long time ago. There may be danger of real prejudice to the defendant. Memories fade, and people can't remember with crystal clarity the events of years ago. Are they lies, or are they genuine mistakes? Remember the time lapse. If you decide that he has lied, consider why he lied. It is not in itself evidence of guilt. There are other reasons to lie: to help an innocent defence, to conceal something, in panic, in confusion, or to protect others. If there are innocent reasons for lies, then you must ignore the lies.

My next task is to summarise the evidence. Mr Currey told us that he had worked on that ship before, unloading the same type of cargo. I shall refer to what happened as an accident, because it was not something which was done deliberately. I see no connotations in using that word. Mr Currey told us that the previous system used chains outside the closed grab of the Liebherr. There is a conflict here; most witnesses say the grab was always open, with slings around the centre column. Mr Currey says that for a long job, the chains were outside, and for a short job, they went through the open grab. It was Mr Harris's job to replace the grab with the hook, and it took 15 to 20 minutes. Other witnesses give variations in the time, up to one and a half hours. This is a conflict, which you must resolve if you think it is important.

On 24th April, Mr Currey arrived early for work, and saw Simon Jones arrive. He confused him with the Liebherr engineer. Mr Currey saw Mr Grant, who he treated as a kind of foreman or supervisor. Mr Currey was sent into the hold, with Simon rather than Jodie Taylor. Normally Mr Ford would be banksman, but that day he was driving the shovel. Mr Harris was in the cab of the excavator. He was described as a fat man, with bulky clothing.

Mr Currey and Simon Jones went into the hold with no helmets on, which he told us was normal practice. No-one asked or told Mr Currey to give Simon any instructions on safety. Mr Currey had to indicate to the banksman that the grab was coming in too low. The hooks should have been just resting on top of the bags. Mr Currey had learned the signals from Mr Ford; Mr Kasprzak's signals were not understood. Mr Martell had received assurances that Mr Kasprzak was suitable for the job. Mr Currey explained that chains were sometimes shortened. He had never thought of the grab closing. He had never seen, as Mr Ford had, the grab closing in mid-air. This mirrors Mr Martell's evidence.

It was very noisy in the hold. Mr Currey was standing on the aggregate, the chains had come in too low and had fallen down the side of the bag, and the grab closed, about 2 feet above the bags. Mr Currey had been shown in general terms what to do by Mr Grant. He had been warned of some of the dangers, and felt confident working with Mr Ford and Mr Harris, who he described as "inch-perfect". He knew that if the chains were too low, in range of people's heads, he had to signal to the banksman. Mr Martell said he didn't know that the chains had been shortened, and was horrified when he found out. Mr Currey denied that it took one and a half hours to change the grab for the hook.

Mr Kasprzak told us that he was ordered by the captain to help as banksman. He saw two men working in the hold. He says he knew the signals, and did his best. He could see into the hold. The operation seemed normal. He said the grab was not usual; there should have been a hook. The crane driver appeared to understand his signals. He agreed that the driver would have to be very careful not to touch the controls.

Mr Chichowski, the master of the Cambrook, had visited Shoreham regularly. He wanted to avoid bottoming of the ship. All operations were suspended until Simon's body was removed from the hold. Mr Kasprzak was competent. He said that the ship kept moving because of the swell. The grab had been used in the past to gather the last of the aggregate.

Mr Ford had worked for 25 years in docks, usually as banksman, but had done most jobs at one time or another. Mr Grant was called a safety officer, but he was no good at the job. He had expected to be banksman that day, but Mr Czaja put him on the shovel. Mr Kasprzak as banksman was giving "sort of " signals, but they made no sense to Mr Ford. They must have made some sense to Mr Harris. He didn't know why the grab was being used, not the hook. Changing attachments was the driver's responsibility, and took 30 to 45 minutes. He had previously seen the grab used with chains outside it. He said that you can't see as well with the grab in place as with the hook. He had seen shortened chains in use before, but for machinery, not for bags. He had seen the grab partially close above him. It had been a shock. He had seen Mr Harris about it, there was no secret, but it had not got to the ears of Mr Martell.

Shortened chains were not usually used on bags. You may think this is important. The Liebherr engineer must have seen the lifting operation and not commented. He concluded that Simon Jones must have put himself in danger, as even with shortened chains there should have been enough headroom. 102 bags was a large number, and he didn't know why the hook hadn't been used.

Jody Taylor was a casual worker, who had been given no training for working in the hold. Mr Harris had explained to him the dangers of the grab. He said that people sometimes didn't bother about wearing hard hats. There weren't enough people to do the job. Mr Grant was supposedly in charge, but wasn't controlling anything.

Mr Hills (emergency services) saw three chains attached to one of the bags, the tide was going out and the body had slipped off the bags.

Mr Brian Fountain (harbour master) said that as Euromin was in the tidal part of the harbour, he had no power over Euromin with regard to safety. He confirmed that there would have been 24 hours notice of the arrival of the Cambrook and that the Cambrook was a flat bottomed boat.

Mr Vines (Liebherr service manager) told us that the excavator could be fitted to customer's specifications. Mr Vines serviced the excavator 4 or 5 times per year until 1995. To lift bags the hook should be used and he would not recommend using a grab with chains. He had not been asked about using the grab with chains and was unaware that hooks had been fitted. Liebherr would not approve of men working under the grab. It took about one hour to change the hook for the grab. The excavator was mechanically in good order.

Mr Watson (Pyecroft engineering) is a welder. Mr Grant asked him to weld 2 hooks. Mr Watson was worried that the chains could be damaged if the grab closed.

Mr Ingrams (Liebherr service engineer) serviced the excavator from June 1997 always with the grab in place. On his last visit on 17 March 1998 he noticed the hooks. No one sought his views about these hooks. He was at Euromin on 24 April 1998. He was aware that the excavator was in use but didn't know that the hooks and grab were being used. He is not sure if he would have brought this to Liebherr's attention had he known. It was not his brief to do this though he had never seen hooks in such a position before.

Mr Harris' statement – the defence cannot cross examine Mr Harris to challenge or explore his statement and this is a handicap for the defence. The system in place before Mr Martell arrived was with the chains wrapped around the hinge bars and the chains hanging down. Although Mr Harris said Mr Kasprzak was not using standard signals he could understand him. You will remember that Mr Harris asked Mr Grant if he had permission to change the grab for the hook.

From when Mr Martell arrived at Euromin, he took full control of decisions over working practises. If there were more than 75 bags, normally they would change the grab for the hook. Martell would tell Grant when to change them over. "On one occasion when there were more than 100 bags, I took it upon myself to change the grab for the hook and Mr Martell said to change it back again."

Mr Harris was not told to change the grab for the hook on 24 April 1998. If he had been told, he could have done it. He decided to shorten the chains to avoid damaging an overhanging lip on the self discharge system. This left 3 feet of chain below the grab, which, in his opinion was a safe distance. Nowhere in his statement does he accept or say that he had inadvertently closed the grab.

Mr Field (managing director of Liebherr) said that shut-off valves were to prevent spillage of hydraulic fluid, but this was not mentioned in the literature. The company will always help customers if they have any problems or queries He would not approve of fitting hooks to the grab, because it affects the structural integrity and could weaken the column; also the proper lifting hook had been supplied.

Mr Stallard, you may think, was a very important witness. He is a highly experienced man. In February 1998 he met Mr Martell and Mr Grant. The attaching of hooks was discussed, all agreed that it was safer and easier with hooks fitted. Mr Martell was concerned with speed and safety. The words used were, "simpler, safer and quicker". Mr Stallard indicated that the hooks should be placed high up on the column. He said, "you could lock off the valves and the grab wouldn't close". Mr Stallard was not told that Euromin had the proper lifting hook, nor that the

hooks were actually welded lower down than Mr Stallard had suggested. He said, "You don't work under a grab unless you are absolutely sure it is not going to move".

Stallion gave no advice to Euromin on safety at this meeting: this was not a safety consultation. He denied advising the fitting of the hooks in the position where they were in fact welded, because of the likelihood of damage to the hooks by the aggregate. He also said, "if I thought there was any risk of the grab closing, I wouldn't have suggested using the hooks". He said he had seen a grab and hooks used together at Jordans'. But Mr Cressdee of Jordans' told us they never used a clam shell grab at all. You must ask yourself has Mr Stallard made a mistake? Has he seen this elsewhere or is he just plain wrong?

Mr Hutchinson (ATB Landbase) did an assessment in Feb 1997 and found various deficiencies. Work on the quay was not included in this assessment as no work was taking place there at the time; it did not include the discharge of vessels or loading of lorries. He was never called back and was therefore never asked to assess the safety of the system or the training of the banksman. With the benefit of hindsight he tells us that the system was inherently unsafe. In Feb 1997 there was criticism but the place was no worse than many others. Mr Martell was very concerned with regards to safety but he did not know if the recommendations were carried out. In the policy statement, a duplicate of which was signed by Martell, it states that you will not be asked to undertake any task for which you are not adequately trained or supervised.

Mr Chris Nelson (Liebherr senior service engineer) in his statement tells us the valves were there to switch off the oil supply. If off the grab cannot be opened or closed. The grab can be attached in the opened or closed position. The ball valves are not safety valves as such but they would stop the grab moving.

Garret Aplin (Personnel Selection) – workers were deemed to be under the control of Euromin while they were there. Simon Jones had registered in 1995. They tried to ensure workers were fit and trained. He refers to Roger Grant as the manager of Euromin. Simon was assessed as having relevant experience.

Gary Hood (Personnel Selection) – interviewed Simon Jones and had discussed some safety issues with him e.g. always stand clear of the load, never stand between the cargo and the side of the ship.

Chris Barringer (Health and Safety Inspector) measured the chains as 1.8 metres excluding the rings and hooks giving a total 2m in length. She said it was hard to walk across the cargo and keep her balance. No one seemed in overall charge, lorries were moving to and fro. The controls in the cab were very sensitive. On 30 April 1998 she saw Mr Martell who gave her documents, including Health and Safety documents and notices. Miss Barringer issued 2 prohibition notices referring to the use of the excavator and an improvement notice giving them 5 weeks to train staff. She had never seen this arrangement with a grab and hooks before. It was not a safe system.

Dr Hinks (HSE Mechanical Engineering Expert) said that health and safety inspectors not only enforce the law but also advise. He went to Euromin on 28 April. A number of people were there, but not Mr Martell. He saw the chains and the grab. He had never seen an arrangement like that before; if he had seen it, he would have stopped the work and issued a prohibition

notice. There were risks to the integrity of the hooks and to the chains if the grab were to close. The risks were increased by the inability of the operator to see. There should be a trained banksman with full knowledge of signals. The controls were sensitive, and people should not work under the grab. There is no way that the method used could obviate the risks. Euromin had the proper hook, which would have eliminated the risks. He referred to the Docks Regulations. Mr Walker pointed out that nowhere did he suggest using the valve as a safety measure. Dr Hinks did not recommend the use of the valve.

Barry Clinch (HSE Docks Expert) said to lift bags you would normally use a hook sometimes associated with a rectangular frame. He had occasionally seen chains used around a closed grab but never with an open grab as in the Euromin system. This system involves risks with visibility. The skill of the banksman becomes more important. The deck is a moving platform; the controls for opening and closing the grab are very sensitive; it's like putting your head in a lion's mouth.

There is danger of damage to the chains, which could make the load drop. It is difficult for the banksman to be precise with position of the chain slings because of the size of the grab. The joystick could be operated with one finger like a computer game. It is spring-loaded and responds quickly. The technical drawings omit the extra length of chain taken up by the end rings.

Police interview with Martell - Page (197) Martell is the general manager; he reports to a director in Holland. He is the most senior person in Euromin in the UK. P.198 deals with his experience in the dock industry; for 10 years he was general manager at Shoreham. On p.199 He describes the staff at Euromin; on p.200 he says that he has no deputy as such but different people have responsibility for different areas. P.202 deals with casuals; these come ready to work on ships with hats, jackets and boots; this is part of the agreement. On p.203 he says you couldn't train a man prior to arriving, every ship is different. Mr Bartlett asks who ensures that the men are told properly what to do? Martell replies, "This is a difficult area, how many people do you have looking after one man? There was a hard core of experienced workers; I wasn't there all the time. This is a grey area, how much supervision there should be. You only have to look at my safety record. Site awareness training is a lot more intense now; we realised what happened and that there are loop holes." On p.208 He was asked in what circumstances would ship's crew be used, and he replied, "Rarely".

On p.209, He is asked, "How critical is the banksman?" He replied, "As critical as the driver. You assume the master will provide somebody who knows what's going on."

We must ask, "Why was the grab too low?" There should have been ample distance below it; an absolute minimum of 2 metres. We are led to believe that on this occasion it was less than normal. Martell said there was plenty of room to get under the grab to fit the chains.

D.S. Bartlett asked Martell if the distance available on 24 April 1998 was satisfactory, to which he replied, "From what you say, no. It is up to the hatchway man to see that the grab does not come too low."

D.S. Bartlett asked, "Where were you on 24 April 1998?" and Martell replied, "In London" Asked who was his Health and Safety Officer he replied, "I don't have one, I rely on the cooperation of the staff, I have a good working relationship with them,; I rely on people being sensible". P.219

He says that the use of the excavator with the grab is common practice. At the bottom of p.220 he says that the operation had been carried out on the wharf for years. He says, "How could I know this was going to happen?"

Equally the whole machine could have moved like a car. The operation had been carried out quite safely as long as I was there and even before. If we were going to be lifting bags all day we would use the hook." On p.223 we are told that Liebherr makes and supplies lifting hooks and it takes 2 hours to change over. For lifting a small number of bags, the adaptation of welding hooks inside the bucket was made to save time. Asked what was the advantage of the correct designated hook, he replied, "None, except that you can lift out more bags at a time with it". D.S.Bartlett asked, "Which is safer?" Martell replied, "With hindsight, obviously the hook but I had never known the grab to close before. Harris was a very experienced man; I would not want to put somebody's life in danger. There were two or three things happening together which caused this to happen."

On p227 he says, "How could I have protected myself? It is like someone sitting with their foot on the clutch of a lorry at traffic lights, if the foot slips, the lorry can move forward and kill someone." He says he wasn't aware of the shortened chains until 2 or 3 weeks before his police interview. Asked in what circumstances the chains should be shortened, he says, "They shouldn't be." On p229 he says that even if the chains were shortened the ends of the chains should be well outside the grab. On p233 With regard to changing the grab for the hook, Martell says, "If Harris says to Grant that he wants to change to the hook, he could. At no time have I ever said you can't". Then he says, "2 unfortunate circumstances made this an unsafe operation." He continues, "but 2 foot, 3foot, 6 foot it makes no difference because the grab is supposed to stay still." Bartlett says, "Eight foot is arguably safe?" Martell said, "Yes that's what should have happened."

Martell was cooperative with the police, provided documents they asked for and had no previous convictions

Martell's testimony: He was in daily contact with Grant or Czaja; his mobile phone was always on. He was in contact weekly with Hoekman re budgets. He had no shares or stake in the company, and was paid a salary of £35,000 per year. When he arrived at Euromin he made changes including appointing Roger Grant as safety officer, having more rigorous training involving ATB Landbase and Neil Hutchinson. He said he was being pro-active. He accepted that there had been no assessment of loading or unloading ships in February 1997, and that the programme took some time to implement.

There were on average one and a half ships per week, and they gave up to a week's notice of arrival. 75% of ships arrived late. The machinery was well maintained. Martell was in very close regular contact and knew what was going on. The hook was at Euromin but was only used if there were hundreds of bags; otherwise they used chain slings wrapped around the grab. To increase safety, he asked Grant to approach Stallard. He knew Stallard as experts on chains, and thought it appropriate to consult them rather than Liebherr. Stallard produced the hooks and showed where to weld them - where they were in fact welded. Stallard at first suggested higher, but when Martell said that this would foul the hydraulics, he then put them lower.

There had been no routine visits from the HSE and Liebherr had expressed no reservations about safety. On 24 April he spoke to Grant about using crew men, saying, "OK as long as the master

is satisfied that the men supplied are suitable." He heard about Simon's death when he was on the way to London, and returned. He couldn't recall any discussion about the grab or the hook. There had been a problem with Harris changing it previously without permission, and Martell had told him he could "bloody well change it back."

He was the manager in full control and needed to know everything, and he was always involved in decisions about machinery. He was not happy about the ship bottoming. The grab was sometimes used to help unload aggregate. He thought it was OK to use Kasprzak as banksman. He had never considered the possibility that Harris could close the grab. He had always totally trusted Harris; he expected at least five feet distance between the grab and the men.

Euromin had no previous convictions, and had a good safety record. Martell found his police interview frightening and he felt himself under pressure. The parent company had no control over health and safety. Martell accepted his responsibility to ensure health and safety. It was his decision to install the new system. Grant was an unsatisfactory safety officer, so he brought in Hutchinson. He didn't know that he had to have a safety officer, and he couldn't say why he had done no risk assessments at all in three years.

He agreed that the key operations were loading and unloading ships, and that this needed to be assessed. With hindsight, he accepts there was no excuse for failing to do it. He supplied hard hats, and did his best. He knew that ships move on the swell, and that the uneven surface of the bags was slippery. The excavator lacked finesse with its movements, and you can't make assumptions about the distance that the grab has been lowered. Mr Stallard said, "You don't work under an open grab unless you are absolutely certain that it is not going to move." Martell agreed that he never expected Harris to close the grab. He knew that the hook welds needed testing, but decided to wait until the annual inspection.

Martell had seen an excavator with chains used inside the grab in Shoreham harbour. He denies that he did not consult Liebherr because he knew they wouldn't approve. He had been assured by Stallard that the chains would only be damaged by the grab if it closed. He didn't agree the grab was most likely to close when the workers were underneath it. He did not knowingly operate an unsafe system. Stallard supplied the hooks and he relied in him to say if the proposed system was unsafe. The Liebherr hook eliminated some risks, but not that of the hook dropping unexpectedly. Martell didn't see why the workers hadn't fitted the hook; they should have consulted him.

He said 102 bags was a small load. He denied that he was trying to offload the blame. He said, "Everything stops with me." If they couldn't supply a banksman, this was no problem; the bags could be left in the hold until the aggregate had been discharged. The information he had received was that the banksman was competent. He thought he had taken all reasonable steps. He assumed that Stallard was a professional. In his police interview he said he didn't have a safety officer: this was correct, but Mr Hutchinson was effectively doing this job. He accepts that Harris could make some mistakes, but not this mistake. He had passed his CITB test and didn't have any shortcomings re safety. Martell was not aware the chains had been shortened. He felt it was very important to keep control on site. He did not think of using the shut-off valves to ensure the grab stayed open.

The prosecution must establish that Martell owed Simon Jones a duty of care and that duty of care was breached. This breach must be a substantial cause of the death and must have been grossly negligent. The prosecution do not have to establish deliberate intent to kill. The prosecution alleges that Martell was indifferent to the risk and was trying to shift the blame onto others. Mr O'Connor says that the word "accident" is loaded, but I am going to use it because the act was not deliberate. Mr O'Connor states that an accident is an event without obvious cause, but here the cause exists and he alleges that is the overwhelming negligence of the defendant.

He placed Mr Martell's actions under 12 headings. I shall go through them briefly.

- 1 There were positive acts as well as omissions.
- 2 There were a number of risks.
- 3 These risks included the risk of death.
- 4 Martell took no steps to reduce the risks.
- 5 The risks were easily avoided.
- 6 He prevented others reducing the risks
- 7 The events were not freakish but predictable.
- 8 Martell had shown previous disregard for the law.
- 9 He had been warned in advance of his legal duties.
- 10 All other factors can be laid at Martell's door save the momentary lapse of Jim Harris.
- 11 The contributory fault of others was minimal
- 12 He showed indifference, even after the event, to the consequences to Simon Jones.

The prosecution invites you to convict Martell and Euromin, on the basis that Martell is the controlling mind. As for the consultation with Stallard, this was not a consultation at all.

For the Defence, Mr Walker argues that Martell is not the controlling mind of Euromin; he is simply an employee. Euromin is not a one-man company. He reports to directors in Holland. It is the Prosecution's job to prove guilt. Mr Martell gave evidence, but he does not have to prove anything. It is not for Mr Martell or Euromin to prove their innocence. You must not speculate on what other evidence there might have been. The delay of three and a half years may affect some witnesses' memory.

The Defence does not accept that Martell owed anybody a duty of care; any duty is that of Euromin only. Martell was not negligent; he inherited the system and asked Mr Stallard how to make it safer. Even if he was negligent, was it criminal negligence? There was a freakish combination of circumstances. Under the normal system, the grab would be several feet above the men's heads and there would be no danger. There was no need for the grab to close. The excavator was being driven by a competent man. The banksman was not English, but was competent. His signals were understood by Harris.

For some reason the grab came in too low, Sean Currey should have signalled to the banksman. The chains had been shortened by Harris; this action can't be justified. Harris operated the lever when Simon Jones was under the grab. What are the chances of all these things happening? Remote in the extreme. Martell didn't know about the chains being shortened. Harris didn't explain why he operated the lever. There was negligence, but by Harris. Expert witnesses said they wouldn't approve of the system, but no-one had thought it was dangerous before. Mr Kasprzak said he couldn't understand why it had happened.

Mr Stallard's evidence is completely destructive of the Prosecution's case. Martell asked him for advice on making the system safer. We have been told that Stallard was not an expert on safety, but he gave advice, whether he was asked for it or not. Stallard said to Ms Barringer that the method of operation was common, and that the grab should clear the slingers. The technical drawings were inaccurate; there should have been three metres clearance.

(At this point, Mr O'Connor interrupted to correct this figure to three feet)

No health and safety officer had been appointed: this was true but Martell appointed Hutchinson. What difference does it make whether Harris had a free hand? Martell was being honest when he told us of teaching Harris a lesson.

On Count 3: Of course Simon Jones was exposed to risk, but this must be a reasonably foreseeable risk. As to risk assessments, the HSW act doesn't require these to be in writing. The February 1997 assessment and the consultation with Stallard are adequate.

On Count 5: The Prosecution must prove that Simon Jones was given no training. Personnel Selection gave him instructions, and we have no evidence of what Roger Grant said to him.

You must first consider Count 1, then if necessary, consider the issue of controlling mind. Counts 3, 4, and 5 must be considered separately. Choose a foreman to chair the discussion, and let everyone express their view. Forget what you may have heard about majority verdicts; at this stage you must try to get a unanimous verdict. I cannot accept a verdict between 12.55 and 2.05. There should be no pressure of time. If this is not done today, so be it. I will send for you at 4.15 if there is no verdict by then.

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