



# OFFICE OF THE STATE CORONER

## FINDINGS OF INQUEST

**CITATION:** **Inquest into the death of Gregory McLellan, Yang Sun, Shengqi Chen and Dominic Chen**

**TITLE OF COURT:** Coroner's Court

**FILE NO(s):** 2007/4149, 2007/4152, 2007/4151, 2007/4148

**DELIVERED ON:** 25 November 2011

**DELIVERED AT:** Brisbane

**HEARING DATE(s):** 15 February, 18 April, 8 June, 25-28 July 2011

**FINDINGS OF:** Christine Clements, Deputy State Coroner

**CATCHWORDS:** CORONERS: Inquest – recreational boating fatality; collision at sea; navigating in conditions of reduced visibility; “situational awareness”; recreational boat licensing

**REPRESENTATION:**

Counsel Assisting Driver of Four Winns Maritime Safety Queensland	Mr David Kent Mr Peter Shields Ms Kay Philipson (instructed by Crown Law)
Suncorp (insurers of Four Winns vessel) Recreational Boating Association	Mr Peter Lane (instructed by Barry & Nilsson) Mr Peter Murrell (instructed Wellners Lawyers)
Club Marine (insurers of Haines Hunter vessel)	Ms Trudy Naylor (instructed by McCullough Robertson Lawyers)

## Introduction

At about 4.32pm on the afternoon of 1 September 2007 a collision occurred between two vessels travelling in Moreton Bay near the mouth of the Brisbane River.

The larger of the two vessels was a Four Winns Horizon 230<sup>1</sup> which is a 24 foot long bow rider pleasure craft powered by a Mercruise 350 MPI (300hp) engine. The Four Winns was travelling from the mouth of the Pine River to enter the Brisbane River. The smaller vessel was a 5.4 metre Haines Hunter half cabin runabout<sup>2</sup> with an 115hp Evinrude outboard 2 stroke motor. Aboard the Four Winns were two family groups who had planned to attend the River Fire festivities in the Brisbane River. The Haines Hunter carried a young married couple and another family of three returning from a day's fishing near Moreton Island, heading for Cabbage Tree Point. In what was considered to be perfect sea conditions the two boat drivers apparently failed to observe the presence of the other and came into terrible collision. The larger Four Winns vessel rode up and over the smaller Haines Hunter. Tragically four of the five people aboard the Haines Hunter died that afternoon.

This inquest will confirm the identities of the deceased and what caused their deaths.<sup>3</sup> The inquest will review the circumstances leading to the collision and whether there are any factors which warrant coronial comment aimed to reduce the risk of deaths occurring in similar circumstances.<sup>4</sup> Finally, the inquest will consider whether there is sufficient information for the coroner to reasonably suspect a person has committed an offence<sup>5</sup> and if so, give the information to the relevant prosecuting authority. The information cannot include evidence which has been given after the coroner has given a direction to a witness to provide evidence at the inquest which would tend to incriminate the witness.<sup>6</sup>

### ***Preliminary Matters***

The person driving the Four Winns vessel on the 1 September 2007 was aged 16 and therefore, a child at the time. He was legally entitled to drive the vessel as he had held a recreational boat licence for the preceding 11 months. However, as he was a child at the time, these proceedings do not identify him and an order has been made prohibiting the publication of anything that will identify him or tend to identify him. This order has regard to general principles of law applicable in Queensland which prohibits identification of a person who has not reached the age of adult responsibility at the time when the relevant events occurred. He is referred to as the Four Winns driver.

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1 Registration number FW528Q

2 Registration number JN937Q

3 See ss.45 & 46 *Coroners Act 2003*

4 See s.45 *Coroners Act 2003*

5 See s.48 *Coroners Act 2003*

6 See s.39 *Coroners Act 2003*

## Events leading to the collision of the two vessels

### Haines Hunter

The Haines Hunter was owned by Terrence McLellan (Mr McLellan) and his 36 year old son Gregory McLellan. The boat was a white and green half cabin runabout with a 115 horse power outboard motor together with an auxiliary motor. There was a Navman brand GPS unit mounted on the dash and a depth sounder. The GPS was set to display

- (i) the boat speed in kilometres per hour,
- (ii) the bearings required for a destination, and
- (iii) the actual heading the boat was travelling on.

It also displayed the estimated time of arrival. Father and son used the same setting for the GPS. The driving seat was on the right hand side and the boat had a steering wheel mounted on the dashboard allowing steerage from either a seated or standing position. There were various other gauges including a speedometer which displayed the speed in miles per hour.

There was a passenger seat on the port side of the boat which was a mounted swivel seat like the driver's seat. At the back of the vessel were two individual padded seats in recessed areas on either side of the motor. As well, there was a padded "V" shaped seat in the bow of the boat.

Greg McLellan bought the boat in 1998 with his partner at the time and in 2000 his father paid half of the estimated value to be a co-owner. The boat was registered in father and son's names. The boat was stored at Mr McLellan's home. He maintained the boat and serviced it, performing a full annual service in accordance with the manual.

Mr McLellan last used the boat on 29 August 2007 with his eldest son, Rodney. On that trip the auxiliary motor was used on the way across to Moreton Island (as Mr McLellan was shepherding his son who was kayaking). On the return journey the main 115 horse power motor was used without any problem. The engines were flushed the next day.

Greg McLellan was involved with boats all his life since age four. The family bought a boat large enough for fishing trips on Moreton Bay in 1989 and Greg was actively involved since then. He was a teenager when he obtained his boat licence while the family still lived at Bundaberg and holidayed at Baffle Creek. The licence authorised him to operate a boat and tow a skier and included a practical test on the Burnett River. From the age of about 19 Greg skippered boats alone and took friends out with him. In all these years his father could not recall an accident or incident where damage was caused. I accept the evidence Greg McLellan was an experienced boat operator with an unblemished boat driving history.

Both Greg McLellan and his father regularly fished in a particular area. They would leave from the Cabbage Tree Creek boat ramp, go out to the "entrance leads" (navigation markers) to the creek and then activate the GPS to a pre-

set fishing spot a kilometre or two off Moreton Island between the big and little sand hills. Mr McLellan routinely drove the course relying on his vision and knowledge of the area but would set the GPS as a guide. He did not know whether his son Greg used the GPS bearings or the “highway” screen mode of the GPS to assist him in his navigation to the fishing spot. Certainly it was clear Greg was experienced travelling to and from the fishing spot which his father estimated he had visited about fifty times over the years.

The trip was 30 kilometres one way and would usually take about 45 minutes to an hour depending on conditions. Mr McLellan indicated in recent years his son would drive when his father was aboard and habitually ran the boat at around 4000RPM in good conditions. The boat planed at 25-27km/hour. The family guide was if the conditions were too rough to travel in comfort at a sufficient speed to plane, then the conditions were too rough to take the boat out. They would not venture out if the forecast was for greater than 15 knot winds.

Greg McLellan was married to Yang Sun. They invited another family to go fishing with them on Moreton Bay on 1 September 2007. That family was Shengqi Chen, his wife Wei Chen, and their twelve year old son, Dominic Chen. Greg McLellan and his wife Yang Sun picked up the Haines Hunter from Mr McLellan’s home and left at about 6.20am to meet their friends at the Cabbage Tree ramp. They were expected home for a family barbecue that evening at around 6.00pm.

It was about 8.00pm when Mr McLellan rang the coastguard and expressed concern that the Haines Hunter had not returned. He was directed to call the Water Police who informed him there had been an accident. About an hour later police officers attended Mr and Mrs McLellan’s home and informed them of the death of their son and daughter-in-law. There had been only one survivor from the boat. That survivor was Wei Chen. She wrote a statement for the court and gave evidence at the inquest.

After considering all of the investigation information and evidence provided at inquest I am satisfied it has been established on the balance of probabilities that

- (i) Greg McLellan, his wife and friends had an uneventful and successful fishing trip on Moreton Bay on 1 September 2007. He navigated from Cabbage Tree Creek across Moreton Bay to a known fishing spot identified by reference to sand hills on Moreton Island.
- (ii) The Haines Hunter was in good order and properly maintained.
- (iii) Greg McLellan was appropriately licensed and a very experienced boat driver, especially on Moreton Bay.
- (iv) Wei Chen recalled he travelled at a constant speed in a straight line on the journey to and from the island. She expressed confidence in

his driving despite not having been on a boat before and stated she was not fearful.

- (v) Greg McLellan had the assistance of a GPS unit aboard although it is unknown whether or not he relied on it to navigate or used his experience to set a course returning towards the mouth of Cabbage Tree Creek from Moreton Bay.
- (vi) Wei Chen thought he was travelling at a constant speed throughout the day and she made enquiry of him about the speed. Her recollection was he told her the speed was 40 kilometres per hour.
- (vii) Investigation after the collision included expert examination of the GPS unit from the Haines Hunter. A download was analysed and I accept the Haines Hunter was travelling at a speed of 22.5 knots at the time of impact. This equates to approximately 41.67 kilometres per hour. The throttle was in a position of being almost fully forward after the collision.
- (viii) Although water conditions were exceptionally smooth, the setting sun caused significant glare ahead of the course taken by the Haines Hunter.
- (ix) Greg McLellan usually wore prescription glasses to correct short-sightedness. Wei Chen's evidence about whether or not Greg was wearing sunglasses and whether or not they were prescription glasses was uncertain. Greg McLellan's father told the inquest his son had prescription glasses which changed with bright light conditions. He could not say his son was definitely wearing them on the day but I consider it is more likely than not that he was, assuming he was likely to need the glasses to read the gauges on board. There was no evidence whether or not the prescription glasses, which darkened in accordance with light conditions, were also Polaroid to reduce glare.
- (x) Irrespective of whether or not Greg McLellan was wearing glasses, I conclude from all of the evidence the conditions when travelling in the direction of the setting sun as he was, were extremely difficult and reduced visibility due to glare.
- (xi) I conclude these conditions seriously restricted Greg McLellan's visibility in a forward direction.
- (xii) Wei Chen did not see or hear any other vessel in the vicinity of the Haines Hunter prior to the collision occurring.
- (xiii) Analysis of the GPS unit confirmed there was no alteration of course immediately prior to the collision.

- (xiv) I infer from all of the evidence that no-one aboard the Haines Hunter, including the driver Greg McLellan, saw the approaching Four Winns.
- (xv) At the time of the collision, Greg McLellan was driving the boat with his wife beside him. Wei Chen recalled both were standing up looking forward. Wei Chen was seated on an esky behind them in the middle of the boat. Her husband and son were seated at the rear of the boat on either side of her.
- (xvi) As a result of the collision Greg McLellan, Yang Sun, Shengqi Chen and Dominic Chen died at the scene. Wei Chen sustained injury but survived.
- (xvii) Post mortem testing of Greg McLellan's blood did not reveal the presence of any alcohol or drugs. Wei Chen gave evidence that although there were a small number of beers in the esky aboard, Greg had not consumed any.
- (xviii) No-one aboard the Haines Hunter was wearing a life jacket at the time of the collision. There was no legal requirement to do so.

### **Four Winns**

The Four Winns vessel departed from the Dohles Rocks boat ramp at about 3.45pm. The registered owner of the vessel, her husband and their three children were accompanied by Steve and Tracie Hillyard and their three children. I accept the evidence indicating the boat was in very good condition and the required safety equipment was aboard. Both adult owners of the Four Winns were licensed recreational boat drivers, as was their elder son, who drove the Four Winns that day.

The family had owned a number of boats and the children were familiar with boating.

I accept the evidence of the father that he had supervised and instructed his son in the proper management of the vessel on numerous occasions prior to the son obtaining his licence. Since gaining his licence the son drove the vessel but never without the presence and on board supervision of his parents. All of the information indicates the son was competent and reliable in his management of the boat and had gained his licence after attending an approved boat licence course run by Archies at Morningside. The course included a practical component.<sup>7</sup> The boat was reversed down the ramp by the father and the son drove the vessel and moored it off the bank before returning in the inflatable zodiac tender to pick up his father for the trip. It was then agreed the son would drive the vessel for the trip from Dohls Rocks down the Pine River to the Brisbane River.

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<sup>7</sup> Exhibit B29

The Four Winns proceeded down the Pine River into Moreton Bay, skippered by the 16 year old driver. The four adults were seated immediately astern of the driver while the five other children were initially seated in the bow. In the course of the journey one of the Hillyard children moved from the bow to sit with her parents in the stern seating on the vessel.

After considering all of the investigation information and evidence provided at inquest I am satisfied it has been established on the balance of probabilities that

- (i) The driver of the Four Winns proceeded without incident along the Pine River under the Houghton Bridge and into Moreton Bay.
- (ii) He was appropriately licensed but relatively inexperienced.
- (iii) He moved the seat into the higher bolstered position once he entered the bay.
- (iv) He navigated with the assistance of the GPS unit which was set with half the screen in chart mode and half the screen on a depth reading to avoid marked wrecks towards the entry of the river. He travelled a straight line course with reference to pre-entered markers on the GPS between the North Pine marker and the outer Brisbane marker.<sup>8</sup>
- (v) His father observed him to be travelling at about 35mph before reducing the speed to about 30mph after leaving the Houghton Highway vicinity and proceeding across the bay.
- (vi) Water conditions on the bay were “*like a mill pond*” according to the father with only slight ripples on the water, not breaking the surface.<sup>9</sup>
- (vii) There was no evidence anyone aboard Four Winns observed any other vessels after entering Moreton Bay.
- (viii) The time of day and direction of travel of the Four Winns vessel towards the mouth of the Brisbane River placed the declining sun behind the vessel and meant there was little reflected glare ahead of the Four Winns’ path.
- (ix) Prior to the collision occurring and about three quarters of the way between the two markers, the father spoke with the son indicating he could commence manoeuvring in towards the river mouth as long as he stayed clear of the known wrecks in the area. The father noted the speed of the boat was approximately 30mph.

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<sup>8</sup>T4-20, L10- 40

<sup>9</sup> Exhibit B29, page 6, paragraph 25

- (x) With the exception of one of the children from the Four Winns family who was seated in the bow, there is no evidence anyone aboard the Four Winns vessel saw the Haines Hunter prior to the collision. The young person who saw the Haines Hunter off the port bow prior to impact said he only saw it one or two seconds before impact when it was about 5 metres away. There was no time to yell out.<sup>10</sup>
- (xi) As a result of the collision one adult male person was thrown into the water. Most of those on board, particularly the children in the bow, sustained injuries. Tracie Hillyard called for help via mobile phone. It took about 45 minutes before help arrived. No other boats passed nearby during this time.
- (xii) The adult male thrown into the water found the child Dominic Chen in the water. He attempted to resuscitate the child whilst treading water but realised the child was deceased. He then swam to the Haines Hunter and boarded the boat where he discovered Wei Chen who was alive but injured. The Haines Hunter was sinking. With the help of his son who rowed over in the small zodiac boat, Wei Chen was transferred across to the Four Winns vessel.
- (xiii) The driver of the Four Winns was breath tested by police for alcohol after his return to shore. The test result was zero.
- (xiv) No-one aboard the Four Winns was wearing a life jacket at the time of the collision. There was no legal requirement to do so.
- (xv) The collision occurred in the vicinity of the compass adjustment buoy at the northern end of the Koopa Channel in Moreton Bay.

### **The deceased**

Four people aboard the Haines Hunter boat died on 1 September 2007. Their identities and a brief reference to each of them follows. I have read the detailed personal information provided by the McLellan family and by Wei Chen and thank them for their assistance in helping the court to know a little about each of their loved ones.

Gregory Thomas McLellan was the driver and co-owner of the Haines Hunter. He was born on 20 March 1971. He was 36 years of age. He was married to Yang Sun who also died on the same day in the boat collision. Greg is survived by his parents, a brother and a sister. He was an active and accomplished sports person, particularly in tennis, but his greatest leisure interest was fishing. He achieved his goal of becoming a qualified accountant and certified practising accountant. He went on to establish his own business.

Yang Sun was born on 9 September 1971. She was originally from China and met Greg McLellan through work as she was also an accountant. She moved to Sydney after qualifying but returned to Brisbane and married Greg. They

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<sup>10</sup> Police interview, page 3, page 15, T4-34, L45 to 4-35, 1 19



worked together in the business. She was welcomed into the McLellan family. She had almost completed her CPA exams at the time of her death.

Shengqi Chen was born on 14 April 1965 and came to Australia from China in 1998 as a visiting scholar. He arranged for his wife Wei Chen and son Dominic to also come to Australia. The family worked hard to establish a happy and successful new life. Shengqi Chen worked as a scientist. Shengqi and Wei had been married for 16 years at the time of his death.

Dominic Mingyang Chen was born on 8 March 1995. He was 12 years old when he died. He was successful at school where he had been elected a school leader. He loved soccer and was learning piano. He was a very energetic person who was also artistically talented.

### **Autopsy findings**

Dominic Mingyang Chen died due to drowning due to multiple injuries sustained in the boating collision. He sustained injuries due to contact by the propeller with his head, chest and abdomen, including fractures of his ribs and left hip as well as internal injuries. The head injuries were very serious and caused bleeding within the brain. The pathologist Professor Ansford stated at inquest that, although drowning would have contributed to his death, the injuries Dominic suffered were non survivable.<sup>11</sup>

Had Dominic been wearing a life jacket and if there was no element of drowning, Professor Ansford still concluded there was no chance of him surviving the injuries he had sustained. I accept this evidence.

Shengqi Chen died due to multiple injuries due to the boating collision. Professor Ansford stated he suffered extremely severe head injuries which would have caused a very rapid death. Drowning was not involved.

Gregory McLellan died due to multiple injuries due to direct trauma likely caused by the other boat in the collision. Drowning was not involved. Toxicology testing showed a zero result for drugs and alcohol.

Yang Sun died due to drowning due to multiple injuries sustained in the boat collision. Again, Professor Ansford explained the head injuries were particularly severe and would have led to inevitable death. Her death would have occurred very quickly.

### **Investigation**

The Brisbane Water Police investigated the incident. On the basis of the information from that investigation, including the download and analysis from the two GPS units, the courses of the two vessels as they approached the collision point was established.

The Four Winns was travelling on a course of 29 degrees (true) prior to impact. The Haines Hunter was travelling on a course of 262 degrees (true)

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<sup>11</sup> T5-6 L15-20

prior to impact. This meant the Four Winns was approaching the Haines Hunter from the right-hand (starboard side) of the Haines Hunter. The Haines Hunter was approaching the Four Winns from the left-hand (portside) of the Four Winns.

This was explained in relative terms from the perspective of the seating position in the Haines Hunter looking forward towards the bow. The Four Winns was approaching from the right-hand (starboard) side at an angle of approximately 47 degrees from the vessel's bow.

Rule 15 of the International Regulations for Preventing Collisions at Sea 1972 states

*“When two power driven vessels are crossing so as to involve the risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.”*

In these particular circumstances this means the Haines Hunter should have kept out of the way of the Four Winns.

Rule 16 sets out the action by the give-way vessel as follows

*“Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep clear.”*

This rule applied to the Haines Hunter.

Rule 17 describes how the stand on vessel (in this case, the Four Winns) shall keep her course and speed, but may take action to avoid collision as soon as it becomes apparent the vessel required to keep out of the way is not taking appropriate action. She shall then take such action as will best aid to avoid collision.

The rule continues with the stipulation a stand-on vessel taking action to avoid a collision shall, if the circumstances admit, not alter course to port for a vessel on her own port side.

I conclude from all the information available that neither boat driver sighted the other prior to collision nor took action to avoid a collision.

Both vessels had the primary responsibility to, at all times maintain a proper look out by sight and hearing as well as by all available means appropriate in the prevailing circumstances.<sup>12</sup>

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<sup>12</sup> Rule 5

As well, both boats were required to travel at a safe speed so as to be able to take proper and effective action to avoid a collision and be capable of stopping within a distance appropriate to prevailing conditions.<sup>13</sup>

The investigation also established the Haines Hunter was travelling on a course which was 24 degrees off being directly into the setting sun, which was low in the sky. Sunset on that day was at 5.34pm. The collision occurred at about 4.32pm.

A re-enactment was arranged when suitably similar conditions were forecast. This took many months by which stage the Four Winns vessel had been released to the owners.

The video of the re-enactment was viewed in the course of the inquest. It did not involve the particular vessels but attempted to replicate the journeys to assist in understanding what occurred. I do not rely on the video as evidence of what conditions were like on the day but consider it was a conscientious effort to assist and inform the families and the court.

### **Evidence at Inquest**

The inquest received all of the investigation material as well as hearing verbal evidence. There was the opportunity for the McLellan family and Wei Chen to voice their issues, speak on behalf of their deceased loved ones and hear the evidence gathered during the investigation.

The inquest heard an account from the driver of the Four Winns vessel. He claimed privilege from providing answers or a statement to police during their investigation and from giving evidence at the inquest. In accordance with the provisions of s.39 of the *Coroners Act 2003* he was directed to answer the questions of counsel assisting.

This provided an opportunity, particularly for Wei Chen and the McLellan family, to hear from the driver of the other boat his recall of the events. The sole survivor from the Haines Hunter boat, Wei Chen, has no memory of what occurred at the point of collision up to the time she awoke in hospital and was informed her husband and son were dead.

The driver of the Four Winns provided his answers in court. He confirmed he did not see the Haines Hunter at any time prior to the collision occurring. There was no evidence contrary to his that he was paying attention to his driving and maintaining a steady course and pace. He used the navigation aids by reference to the preset positions marked on the GPS chart to navigate. His speed was not considered excessive according to the evidence of the Hillyard's as well as his own parents and the investigating Water Police Officer.

The driver confirmed his speed across the bay was 25 to 30 knots. It was the first occasion on which he had driven the particular route from the Pine River

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<sup>13</sup> Rule 6

to the Brisbane River. There had been two previous occasions when he had driven (with his father) to Moreton Island. He confirmed that on the day of this collision he drove the boat for the entire trip. Neither he, nor anyone else aboard the Four Winns consumed any alcohol during the trip. He was breath tested at Pinkenba on disembarkation by a police officer and the reading was zero.

The most significant portion of his evidence related to situational awareness in the context of keeping a proper lookout. His answers to Counsel Assisting, Mr Kent's questions regarding situational awareness gave an insight into how he appreciated what was required of him. He said

*"To me basically it was part of the Rules and awareness guidelines of what you do on the water, similar to if you were driving on mainland, so keeping a lookout, looking forward, giving way to the right."*<sup>14</sup>

Mr Kent asked

*"In terms of situational awareness, apart from looking ahead of the vessel is there anywhere else that you look?"*

He replied

*"You look ahead and to the right and occasionally glance if you can, to the left."*

Mr Kent

*"And this is consistent with the training that you received?"*

Driver

*"That's correct."*<sup>15</sup>

Later, on further questioning, Mr Kent asked

*"What about looking to the left?"*

The driver answered

*"Looking to the left, it's not a prerequisite but you look to the left to see if there were any other markers or boats in the water."*

Mr Kent asked him to explain

*"Is what you're saying that because you have to give way to the right, you have to be particularly aware of any vessel coming from the right?"*

The driver said

*"One would say so."*<sup>16</sup>

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14 T7-19 L31-34

15 T7-19 L47-53

16 T7-24 L1-3

Mr Kent

*“And for the same reason do you direct less attention to your left?”*

The driver said

*“Yes, you’d say so.”*

The driver of the Four Winns went on to explain that over a 10 minute period he would have scanned to his left about five or six times. He did not see any other boats on any of these occasions.

He said he had a clear view ahead and was sufficiently high to have a clear view propped against the seat which was in the higher position. He did not think anything on the dashboard, or any part of the construction of the boat or canopy, or the people sitting in the bow of the boat, had obstructed his view. He had not been distracted by anything or anyone. He denied using his mobile phone during the journey that day. He said it was stored in the glove compartment. He could not say whether or not the other children in the bow had or were using mobile phones during the trip.<sup>17</sup>

The driver of the Four Winns agreed his father spoke briefly with him on three or four occasions during the journey about navigation.

He could not offer any explanation as to why he had not seen the Haines Hunter. With hindsight he conceded it would be prudent to scan more frequently to the left.

He was completely surprised by the collision and after it occurred realised he had come into collision with another boat. He had instinctively throttled back when the impact occurred, although he could no longer remember doing so. He put the boat in neutral but did not drop anchor as it was very calm. He realised his father was not in the boat and he immediately launched the inflatable zodiac tender to retrieve him. He then assisted his father who had retrieved Wei Chen from the other boat and returned with them to the Four Winns.

## ***Findings***

I make the following findings in accordance with s.45 of the Coroners Act.

### **In relation to Gregory Thomas McLellan:**

- (a) The identity of the deceased person is Gregory Thomas McLellan who was born on 20 March 1971.
- (b) He died when the vessel he was driving, his Haines Hunter half Cabin Cruiser, registration number JN937Q collided with and was run over by another vessel, a Four Winns Horizon 230 bowrider, registration number FW528Q.

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<sup>17</sup> T7-35 L 11-30

He did not see the Four Winns vessel prior to the collision occurring due to driving in the direction of the setting sun and reflected glare from extremely calm conditions on Moreton Bay late in the afternoon.

The driver of the Four Winns did not see the Haines Hunter prior to the collision occurring probably due to only occasionally and briefly looking to the left-hand (portside) of the Four Winns. He was concentrating on the course ahead and his responsibility to give way to any vessel approaching from his right-hand (starboard) side.

The two vessels were travelling on converging courses across Moreton Bay.

The Haines Hunter was returning from Moreton Island across Moreton Bay to Cabbage Tree Creek.

The Four Winns was travelling from the mouth of the Pine River across Moreton Bay to the mouth of the Brisbane River.

From the perspective of the driver's seating position in the Haines Hunter looking forward towards the bow, the Four Winns vessel was approaching from the right-hand (starboard) side at an angle of approximately 47 degrees from the vessel's bow.

- (c) The collision occurred at approximately 4.32pm on 1 September 2007 and Gregory McLellan died at that time.
- (d) The place of death was in Moreton Bay, Queensland in the vicinity of the compass adjustment buoy near the mouth of the Koopa Channel, approximately 2.5 nautical miles north of the Brisbane River.
- (e) Gregory McLellan died due to multiple injuries caused by trauma due to the boating accident.

### **In relation to Yang Sun**

- (a) The identity of the deceased person was Yang Sun who was born on 9 September 1971.
- (b) She died when the vessel in which she was a passenger, a Haines Hunter half Cabin Cruiser, registration number JN937Q collided with and was run over by another vessel, a Four Winns Horizon 230 bowrider, registration number FW528Q.

The driver of the Haines Hunter was her husband, Gregory McLellan.

He did not see the Four Winns vessel prior to the collision occurring due to driving in the direction of the setting sun and reflected glare from extremely calm conditions on Moreton Bay late in the afternoon.

The driver of the Four Winns did not see the Haines Hunter prior to the collision occurring, probably due to only occasionally and briefly looking to the left-hand (portside) of the Four Winns. He was concentrating on the course ahead and his responsibility to give way to any vessel approaching from his right-hand (starboard) side.

The two vessels were travelling on converging courses across Moreton Bay.

The Haines Hunter was returning from Moreton Island across Moreton Bay to Cabbage Tree Creek.

The Four Winns was travelling from the mouth of the Pine River across Moreton Bay to the mouth of the Brisbane River.

From the perspective of the driver's seating position in the Haines Hunter looking forward towards the bow, the Four Winns vessel was approaching from the right-hand (starboard) side at an angle of approximately 47 degrees from the vessel's bow.

- (c) The collision occurred at approximately 4.32pm on 1 September 2007 and Yang Sun died at about that time.
- (d) The place of death was in Moreton Bay, Queensland in the vicinity of the compass adjustment buoy near the mouth of the Koopa Channel, approximately 2.5 nautical miles north of the Brisbane River.
- (e) Yang Sun died due to drowning due to multiple injuries sustained in the boating accident.

### **In relation to Shengqi Chen**

- (a) The identity of the deceased person was Shengqi Chen who was born on 14 April 1965.
- (b) He died when the vessel in which he was a passenger, a Haines Hunter half Cabin Cruiser, registration number JN937Q collided with and was run over by another vessel a Four Winns Horizon 230 bowrider, registration number FW528Q.

The driver of the Haines Hunter was, Gregory McLellan.

He did not see the Four Winns vessel prior to the collision occurring due to driving in the direction of the setting sun and reflected glare from extremely calm conditions on Moreton Bay late in the afternoon.

The driver of the Four Winns did not see the Haines Hunter prior to the collision occurring, probably due to only occasionally and briefly looking to the left-hand (portside) of the Four Winns. He was concentrating on the course ahead and his responsibility to give way to any vessel approaching from his right-hand (starboard) side.

The two vessels were travelling on converging courses across Moreton Bay.

The Haines Hunter was returning from Moreton Island across Moreton Bay to Cabbage Tree Creek.

The Four Winns was travelling from the mouth of the Pine River across Moreton Bay to the mouth of the Brisbane River.

From the perspective of the driver's seating position in the Haines Hunter looking forward towards the bow, the Four Winns vessel was approaching from the right-hand (starboard) side at an angle of approximately 47 degrees from the vessel's bow.

- (c) The collision occurred at approximately 4.32pm on 1 September 2007 and Shengqi Chen died at about that time.
- (d) The place of death was in Moreton Bay, Queensland in the vicinity of the compass adjustment buoy near the mouth of the Koopa Channel, approximately 2.5 nautical miles north of the Brisbane River.
- (e) Shengqi Chen died due to multiple injuries sustained in the boating accident.

**In relation to Dominic Mingyang Chen:**

- (a) The identity of the deceased person was Dominic Mingyang Chen who was born on 8 March 1995.
- (b) He died when the vessel in which he was a passenger, a Haines Hunter half Cabin Cruiser, registration number JN937Q collided with and was run over by another vessel a Four Winns Horizon 230 bowrider, registration number FW528Q.

The driver of the Haines Hunter was, Gregory McLellan. He did not see the Four Winns vessel prior to the collision occurring due to driving in the direction of the setting sun and reflected glare from extremely calm conditions on Moreton Bay late in the afternoon.

The driver of the Four Winns did not see the Haines Hunter prior to the collision occurring, probably due to only occasionally and briefly looking to the left-hand (portside) of the Four Winns. He was concentrating on the course ahead and his responsibility to give way to any vessel approaching from his right-hand (starboard) side.

The two vessels were travelling on converging courses across Moreton Bay.

The Haines Hunter was returning from Moreton Island across Moreton Bay to Cabbage Tree Creek.



The Four Winns was travelling from the mouth of the Pine River across Moreton Bay to the mouth of the Brisbane River.

From the perspective of the driver's seating position in the Haines Hunter looking forward towards the bow, the Four Winns vessel was approaching from the right-hand (starboard) side at an angle of approximately 47 degrees from the vessel's bow.

- (c) The collision occurred at approximately 4.32pm on 1 September 2007 and Mingyang Chen died at about that time.
- (d) The place of death was in Moreton Bay, Queensland in the vicinity of the compass adjustment buoy near the mouth of the Koopa Channel, approximately 2.5 nautical miles north of the Brisbane River.
- (e) Mingyang Chen died due to drowning due to multiple injuries sustained in the boating accident.

### ***Other Legal Proceedings***

The driver of the Four Winns vessel was appropriately licensed to drive a recreational boat. He had held the licence for 11 months. He was charged pursuant to s.43 of the *Transport Operations (Marine Safety) Act 1994 (Qld)* that he caused the boat to be operated unsafely thereby causing the death of a person. That proceeding commenced with a committal hearing. The driver was not committed for trial.

It has been submitted by Counsel Assisting in this inquest that the coroner would have a reasonable suspicion that an offence was committed by the driver of the Four Winns.<sup>18</sup> Mr Kent submitted the offence of dangerous operation of a vehicle under section 328A of the Criminal Code was pertinent. Essentially he submitted the driver drove at a speed of 30 knots or 30mph with ten passengers aboard in a straight course colliding into another vessel without taking any action to avoid the collision. He said the other vessel was there to be seen had the driver kept a proper lookout. He said, irrespective of whether or not the driver saw the other vehicle, navigation in this way was dangerous.

I note the *Coroners Act 2003* prevents me, when assessing whether I reasonably suspect a person has committed an offence, from having regard to any evidence provided by the driver under the direction given pursuant to s.39 of the *Coroners Act 2003*.<sup>19</sup> This excludes the information explaining the limited lookout kept by the driver and his understanding and rationale for so doing.

Without this evidence I still consider there is sufficient information to conclude he did not see the Haines Hunter prior to the collision occurring. I do not

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<sup>18</sup> see s.48(2), Coroners Act 2003

<sup>19</sup> see s.48(1) & (2), Coroners Act 2003 which preclude consideration and provision of information obtained under direction given under s.39(2) of the Coroners Act.

consider the other circumstances of his driving, together with the fact he failed to see the other boat, give rise to a reasonable suspicion that he drove the vehicle (boat) dangerously.

The terrible result of the collision cannot be part of the assessment of whether or not the operation of the boat was dangerous. It is of course open to the Director of Public Prosecutions (DPP) to review the matter, but I do not propose providing information to the DPP in this matter.

### ***Coroner's Comments***

When a tragedy of such seriousness occurs with the loss of four lives in such a sudden and violent manner, it can only be of some little comfort if surviving family members feel the tragedy will not be repeated. But it is an important part of the coronial process for a coroner to consider any matters connected with the deaths that occurred which could be usefully commented upon. In this matter the areas of public health and safety and ways to prevent deaths from occurring in similar circumstances are the focus of review.<sup>20</sup>

A coroner has the benefit of hindsight and a thorough investigation and review of all the circumstances leading to death. With that hindsight it is trite to state the obvious.

### ***Boats on converging courses***

- (i) When driving in conditions of reduced visibility, for example into a setting sun in very calm conditions when there is significant reflected glare, great care must be exercised.
- (ii) Changing course from a direct course which leads into the setting sun and instead taking a series of tacking manoeuvres to reach a destination is one option.
- (ii) Reducing the speed of the vessel to provide more time to react to any suddenly perceived obstacle is another.
- (iv) Using polaroid lenses to reduce the effect of glare could assist.
- (v) Requesting other people aboard to assist in keeping a lookout may assist. (I note here there was some evidence to suggest Mr McLellan was assisted by his wife Yang Sun who was at the front of the vessel, also standing up and looking forward).

Fundamentally, travelling on the water is different to travelling on marked roads where one can at least presume vehicles are most likely to approach on the same or converging roadway. This is distinct from boating where another vessel can approach from any angle within a 360 degree plane, including from behind. This is particularly important when the range in size, speed and manoeuvrability of varying capacity boats can be significant. This can perhaps be paralleled by the difference

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<sup>20</sup> s.46 of the Coroners Act

between the capacity and speed of a pedestrian crossing a freeway and a laden semi trailer travelling at 100kmh with a small pleasure craft being overtaken from behind by a much faster travelling ship The obligation on every driver on water is described in the language of “keeping a proper lookout” Again, it is trite in these circumstances to emphasize;

- (vi) the obligation to keep a proper lookout involves a constant vigilant observation and awareness in a horizontal plane all around a vessel of any impending obstacle, hazard or other approaching vessel. It has helpfully been described as “*situational awareness*”.

***I do not consider that any change in existing legislation about any of these matters is called for, but, given the evidence of the driver of the Four Winns, a renewed emphasis in training could be beneficial. I suggest it is important to emphasize, particularly to inexperienced boat operators, the true requirement of keeping a proper lookout. It is not satisfied by simple compliance with the give way to the right rule (more properly described as the boat on portside course gives way to the boat on a starboard course, or sometime described as the golden rule). It is not satisfied by cursory observations to the left-hand/portside. It requires constant careful assessment of the total surrounds and adjustment of the manner of driving taking into account those observations. In addition, training should emphasize the importance of reducing speed in circumstances of reduced visibility.***

### ***Licence Changes***

Wei Chen passionately submitted the age of eligibility for operation of a boat as large as the Four Winns should be increased. The McLellan family joined in this submission. I consider the recent changes of boat licensing which require a higher standard of boat skill operation for new licence holders of large recreational boats will improve the safe operation of these craft. I consider the best approach is to require demonstrated higher levels of skill, rather than a rule about minimum age requirements. I note the evidence indicates young people are not over-represented in boating incidents. However, I note the licensing regime for driving a motor vehicle which provides a sequence of licences with various restrictions being lifted over time during which period a new driver gains experience to then demonstrate their capacity and maturity to move to the next stage.

Motor bike riders likewise must commence at a lower capacity machine before progressing over time to a higher capacity bike. This provides the applicant the opportunity to build up skills to be tested and demonstrated over time.

***I would therefore suggest Maritime Safety Qld consider a similar scheme. This should require a demonstration of prescribed skills for particular classes of vessels, but also a progression of licensing at minimum intervals of time to enable the applicant to gain experience and maturity in developing those skills over time. The effect of such a scheme would necessarily increase the age at which a person could apply for a licence for a higher powered vessel. I do not consider the***

**coroner is best equipped to suggest time intervals between applying for types of licences or the range of vessel capacity.**

### ***Flotation devices (life jackets)***

Finally I note the submission that all aboard moving vessels should wear the particular personal flotation device applicable to the water conditions. Although two of the deceased drowned, the evidence was quite clear they had sustained non survivable injuries. In the facts revealed in this inquest, the wearing of a personal flotation device could only have saved Wei Chen, had she not been rescued prior to the Haines Hunter sinking.

***Of course wearing personal flotation devices will save lives when people are thrown into the water unexpectedly. The current deliberate policy of Maritime Safety encourages the use of personal flotation devices and continues the education and safety programs giving this message to the public. This strategy should be continued and education and training programs be properly resourced. Maritime Safety should continue to actively review the circumstances of boating fatalities and consider the incidence of deaths which can be attributed to a failure to wear them. Any consideration of legislative change requiring mandatory wearing of flotation devices must also consider providing capacity for public education and awareness and capacity to enforce such law change.***

### ***Changes undertaken by Maritime Safety***

The inquest heard evidence from Maritime Safety Qld of significant changes made in recent times regarding boat licensing. Maritime Safety has undertaken extensive reviews, some of which follow on from recommendations in other inquests. I note

- i A higher standard of boat operator skills has been set for new licence holders of larger recreational boats.
- ii Advanced training has been introduced for night time and electronic navigation training.
- iii The list of coastal bars where it is required that a person in a small open boat crossing the bar must wear a personal flotation device, has been extended.
- iv The operation of personal watercraft (jet skis) has greater requirements to avoid the risk of collision.
- v Additional safety equipment must be worn by personal watercraft operators when offshore.

All of these changes are vital improvements which should be supported and adhered to if we are to avoid further tragedies for families enjoying the wonderful opportunity our coastline and waterways provide. In particular I commend the continual educational efforts made by Maritime Safety Qld to reinforce safety measures and change behaviour of the boating public.

I now close the inquest in to the tragic deaths of Gregory McLellan, Yang Sun, Shengqi Chen and Dominic Mingyang Chen and thank all those who have helped in this inquest.

Christine Clements  
Deputy State Coroner  
Brisbane  
25 November 2011