

SUPREME COURT OF QUEENSLAND

CITATION: *Sanrus Pty Ltd & Ors v Monto Coal 2 Pty Ltd & Ors (No 8)*
[2019] QSC 255

PARTIES: First Plaintiff: **SANRUS PTY LTD AS
TRUSTEE OF THE QC
TRUST ACN 097 049 315**

AND

Second Plaintiff: **EDGE DEVELOPMENTS
PTY LTD AS TRUSTEE OF
THE KOWHAI TRUST ABN
26 010 309 529**

AND

Third Plaintiff: **H&J ENTERPRISES (QLD)
PTY LTD AS TRUSTEE OF
THE H&J TRUST ACN 077
333 736**

AND

First Defendant: **MONTO COAL 2 PTY LTD
ACN 098 919 414**

AND

Second Defendant: **MONTO COAL PTY LTD
ACN 098 393 072**

AND

Third Defendant: **MACARTHUR COAL
LIMITED ACN 096 001 955**

FILE NO/S: SC No 8609 of 2007

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 14 October 2019

DELIVERED AT: Brisbane

HEARING DATE: 9 October 2019

JUDGE: Bond J

ORDER: **In relation to the plaintiffs' objections to –
(a) the report of Mr Conroy (D) dated 9 April 2019
[EXP.020.159.0001];**

(b) the supplementary report of Mr Conroy (D) dated 28 August 2019 [EXP.020.251.0001];

(c) the report of Mr Crump (D) dated 2 May 2019 [EXP.020.160.0001]; and

(d) the supplementary report of Mr Crump (D) dated 4 September 2019 [EXP.020.253.0001]

I make the rulings set out in the schedule to these reasons.

CATCHWORDS: EVIDENCE – ADMISSIBILITY – OPINION EVIDENCE – EXPERT OPINION – GENERALLY – where the defendants sought to adduce expert evidence in the form of reports from experts in coal markets and coal pricing – where the plaintiffs objected to parts of some of the reports produced by the experts – where the bases of the objections included: that opinions contained in the report were irrelevant as the nature, content or existence of particular matters was not identified; that the opinions were inadmissible as they were to the state of mind of a third party; that the opinions were inadmissible as the basis of knowledge was not identified and the facts underpinning the assertions were not stated; and that the opinions were hearsay – whether the objections to the expert reports should be upheld

COUNSEL: P L O’Shea QC with A Low for the plaintiffs

J C Sheahan QC with H W D Stowe for the defendants

SOLICITORS: Holding Redlich for the plaintiffs

Allens for the defendants

- [1] In *Sanrus Pty Ltd v Monto Coal 2 Pty Ltd (No 5)* [2019] QSC 210 (*Sanrus No. 5*) and *Sanrus Pty Ltd v Monto Coal 2 Pty Ltd (No 7)* [2019] QSC 241 (*Sanrus No. 7*) I dealt with the extensive objections which had been made during the trial of the present proceeding to expert opinion evidence which the plaintiffs sought to adduce from Mr Freeman (P).¹
- [2] This judgment deals with objections which have been made to the expert opinion evidence which the defendants intend to adduce from Mr Conroy (D) and Mr Crump (D).
- [3] Mr Conroy (D) has produced three expert reports for the purpose of this proceeding:
- (a) report dated 9 April 2019 [EXP.020.159.0001] (**the first Conroy report**);²
 - (b) supplementary report dated 28 August 2019 [EXP.020.251.0001] (**the second Conroy report**); and
 - (c) supplementary report dated 20 September 2019 [EXP.020.255.0001].

¹ In this proceeding, because there are so many expert witnesses, I have adopted the convention of distinguishing between expert witnesses called by the plaintiffs and those called by the defendants by inserting post-nominals “P” and “D”, respectively.

² The trial is being conducted as an electronic trial. Numerical references in this format identify relevant documents with precision.

- [4] Mr Conroy (D) also participated in a joint expert conclave which led to the production of the joint expert report for coal markets dated 15 July 2019 by Mr Browne (P), Mr Crump (D) and Mr Conroy (D) [EXP.500.003.0001_2].
- [5] Mr Crump (D) has produced three expert reports for the purpose of this proceeding:
- (a) report dated 2 May 2019 [EXP.020.160.0001] (**the first Crump report**);
 - (b) supplementary report dated 4 September 2019 [EXP.020.253.0001] (**the second Crump report**); and
 - (c) supplementary report dated 8 October 2019 [EXP.020.257.0001].
- [6] Mr Crump (D) also participated in two joint expert conclaves which led to the production of the following two joint expert reports:
- (a) joint expert report for coal markets dated 15 July 2019 by Mr Browne (P), Mr Crump (D) and Mr Conroy (D) [EXP.500.003.0001_2]; and
 - (b) joint expert report for coal price dated 15 July 2019 by Mr Barkas (D), Mr Browne (P), Mr Crump (D), Professor Gray (D), Mr Gye (D), Mr J Hall (P) and Mr Samuel (D) [EXP.500.013.0001_2].
- [7] Objections have been taken to parts of the first Crump report, the second Crump report, the first Conroy report and the second Conroy report.
- [8] For the oral argument of the objections, the parties provided me with a schedule prepared by them comprising:
- (a) columns 1 to 4, which identified the part of the report to which objection was taken.
 - (b) column 5, which identified the plaintiffs' objection.
 - (c) column 6, which identified the defendants' response to the objection.
 - (d) column 7 (the contents of which were revised after the oral argument was completed), which identified whether the plaintiffs pressed the objection.
 - (e) column 8, which identified whether any other objections would be disposed of by my final ruling in respect of this item, as agreed by the parties.
 - (f) column 9, which contained space for my final ruling for each item.
- [9] After the oral argument was completed, the parties amended column 9 (and some other parts of the schedule) with a view to identifying more precisely the extent to which a ruling was not required, or the manner in which the objection had otherwise been determined. The schedule to this judgment reproduces with minor amendments that schedule and completes column 9 where relevant.
- [10] For the reasons set out in the schedule, I make the rulings set out in the schedule.

RULINGS ON OBJECTIONS TO THE REPORTS OF ROSS CRUMP (D) PRESSED BY THE PLAINTIFFS

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
Irrelevant on the basis that the nature, content or existence of particular matters is not identified (Reliance on phrases or uncertain meaning): Plaintiffs' Submissions, [9]-[20]; Defendants' Submissions, [6]-[15]								
3	Expert report of Ross Crump dated 2 May 2019 (First Crump Report)	EXP.020.160.0001	Paragraph 3.5 (other than the first sentence)	Irrelevant, failure to identify the content of the " <i>boiler design specifications</i> ", failure to prove the existence or the terms of " <i>boiler design specifications</i> ".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(d)]) The evidence is relevant to the marketability of low HGI coal.	PRESSED	Item 21; Item 51;⁴ and Item 65. Item 71, Item 83	<p>1. The plaintiffs' contention under this heading essentially was that the uncertainty of meaning of certain expressions used by the expert was such that the impugned evidence was irrelevant. For this argument to succeed, the uncertainty of the impugned evidence would not only have to exist, but it would have to be such that no relevant probative meaning could be given to the impugned evidence. Unless that position was reached, any uncertainty, ambiguity or lack of precision would go to weight rather than to support a conclusion of inadmissibility on the grounds of irrelevance.</p> <p>2. Evaluating the alleged uncertainty/ambiguity/lack of precision requires a consideration of the impugned evidence in the context of the report as a whole bearing in mind the purpose sought to be served by reliance on the report.</p> <p>3. Ultimately the defendants will seek to rely on the report in support of a submission that in the Asian thermal coal market there was limited demand for (and resistance to) the purchase of low HGI coals like Monto coal. The qualifications of this witness to give expert opinion evidence concerning the Asian thermal coal market at relevant times was not the subject of objection.</p> <p>4. The impugned evidence has, as the defendants suggest, sufficient particularity and clarity to be relevant as part of the expert's explanation for his conclusion. As the defendants submitted, relevance is sufficiently established through Mr Crump's evidence that design specifications were (in part) HGI related, and that the design specifications of the "new thermal coal generating power plants" were typically based an HGI of greater than 47.</p> <p>5. The plaintiffs also seemed to characterise this objection as more than merely an objection as to relevance. They submitted that such uncertainty/ambiguity/lack of precision as existed operated to engage either the "assumption identification rule" or the "statement of reasoning rule" to which I referred in <i>Sanrus No. 7</i> at [98] and [100]. But for that objection to succeed, the uncertainty/ambiguity/lack of precision would have to be such that I could not identify a process of reasoning by reference to some facts. I thought that I could carry out that identification. Any weakness in that process of reasoning which might exist because of any uncertainty, or because of the generality in which a proposition was put, goes to weight, not admissibility.</p> <p>6. For the foregoing reasons, I dismiss the objection.</p>
5	First Crump Report	EXP.020.160.0001	Paragraph 4.1 (final sentence)	Irrelevant, failure to identify the " <i>general practice</i> ".	Pressed. The general practice can be inferred from the specific instance referred to in paragraph 4.1.	PRESSED		<p>1. The plain intention of [4.1] was to identify aspects of a single instance and, by asserting "this was consistent with the general practice", to give evidence as to some aspects of the general practice.</p> <p>2 The defendants submitted, and I agree, that one could construe the paragraph as advancing the proposition that the general practice of Japanese power utilities in the period 1981 – 2005 required of a seller seeking a long term thermal contract from the utilities: (1) multiple trials of sample coal to determine acceptance of combustion capability; (2) demonstration that the thermal coal could be consumed as a single burn coal in each of the buyer's</p>

³ As referred to in the plaintiffs' and defendants' submissions.

⁴ Note: Item 51 also contains an objection on the basis that the evidence is inadmissible opinion as to the state of mind of third parties.

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								units; (3) demonstration in multiple boilers across multiple units at the buyer's power station. 3. At least in that way [4.1] has a relevant probative meaning, and no difficulty is caused by the failure otherwise to identify "general practice". 4. For the foregoing reasons, I dismiss the objection.
21	First Crump Report	EXP.020.160.0001	Paragraph 8.7 (second sentence)	Irrelevant, failure to identify the content of the "boiler design specifications". Outside expertise.	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(d)]) The evidence is relevant to the marketability of low HGI coal. Mr Crump has the expertise to opine on the marketing implications of the matters addressed in the paragraph: see Submissions, [25].	PRESSED	Disposed of by 3	Because it was common ground that this objection would rise or fall with the disposition of item 3, and because I dismissed the objection in respect of item 3, I also dismiss this objection.
45	Expert report of Ross Crump dated 4 September 2019 (Second Crump Report)	EXP.020.253.0001	Paragraph 3(c) (second sentence from words "and more importantly...")	Irrelevant, failure to identify the content of the "boiler manufacturer warranties", failure to prove the existence or the terms of "boiler manufacturer warranties".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(e)]) The evidence is relevant to the marketability of low HGI coal.	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 3, it seemed to me that it should have been. 2. The obvious sense of the reference to manufacturer warranties was that if coal was of a character which was inconsistent with the design specifications of the buyer's plant, there might be potential adverse effect to the buyer in the effect of that outcome on boiler manufacturer warranties. 3. There was sufficient clarity to be relevant. And any weakness in that process which might exist because of any uncertainty, or because of the generality in which a proposition was put goes to weight, not admissibility. 4. Accordingly, I dismiss this objection.
51	Second Crump Report	EXP.020.253.0001	Paragraph 4(b) (fourth sentence)	Irrelevant, failure to identify the content of the "boiler design specifications", failure to prove the existence or the terms of "boiler design specifications". Inadmissible opinion as to the state of mind of third parties.	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(d)]) The evidence is relevant to the marketability of low HGI coal. As to the "state of mind objection", Mr Crump is entitled to give evidence concerning industry attitudes: Submissions, [18]-[26]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	PRESSED (as to the "fallback argument" see the plaintiffs submissions, [49] to [56])	Disposed of by 3	1. Because it was common ground that this objection would rise or fall with the disposition of item 3, and because I dismissed the objection in respect of item 3, I also dismiss this objection. 2. The parties were also in dispute as to whether the evidence could also be relevant to the plaintiffs' fallback argument, namely the argument defined by me in <i>Sanrus No. 7</i> at [122]. 3. The plaintiffs contended that the evidence: <ul style="list-style-type: none"> was not framed as expressing the witness' views as to the matters which would have been considered by an appropriately qualified and competent expert who was preparing a hypothetical bankable feasibility study for the Monto Coal Stage 2 project; and could not therefore be characterised as expressing support for an input by way of opinion into a Stage 2 feasibility study. 4. I reject the plaintiffs' argument. For the reasons expressed in the defendants' written submissions (especially at [62] and [65]) it is wrong to say that the impugned evidence cannot be characterised in the requisite way. 5. Accordingly, I also dismiss this part of the plaintiffs' objection. The impugned evidence may also be admitted on the basis that it is relevant to the plaintiffs' fallback argument.
65	Second Crump Report	EXP.020.253.0001	Paragraph 21(d)	Irrelevant, failure to identify the content of the "boiler design specifications", failure to prove the existence or the terms of "boiler design specifications".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(d)]) The evidence is relevant to the marketability of low HGI coal.	PRESSED	Disposed of by 3	Because it was common ground that this objection would rise or fall with the disposition of item 3, and because I dismissed the objection in respect of item 3, I also dismiss this objection.
68	Second Crump Report	EXP.020.253.0001	Paragraph 22(b) (second)	Irrelevant, failure to identify the content of the "preferred coal specifications".	Pressed. Evidence has sufficient particularity and clarity to be relevant see Submissions, [11]-[15] (and in particular [14(f)])	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 3, it seemed

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			sentence)		The evidence is relevant to the marketability of low HGI coal.			to me that it should have been. 2. The "preferred coal specifications" referred to in [22(b)] were specifications having the characteristics described in the balance of the paragraph. The failure more particularly to define the phrase does not go to admissibility. 3. Accordingly, I dismiss this objection.
69	Second Crump Report	EXP.020.253.0001	Paragraph 22(b) (third sentence)	Irrelevant, failure to identify the content of the "design specification restrictions", failure to prove the existence or the terms of "design specification restrictions". Irrelevant, failure to identify the content of "higher energy requirements".	Pressed. Evidence has sufficient particularity and clarity to be relevant). see Submissions, [11]-[15] (and in particular [14(g)]) The evidence is relevant to the marketability of low HGI coal.	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 3, it seemed to me that it should have been. 2. Accordingly, I dismiss this objection for the reasons given in relation to item 3.
71	Second Crump Report	EXP.020.253.0001	Paragraph 22(c) (second sentence)	Irrelevant, failure to identify the content of the "boiler specification requirements", failure to prove the existence or the terms of "boiler specification requirements".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(i)]) The evidence is relevant to the marketability of low HGI coal. Alternatively, admit only as a statement of assumption.	PRESSED	Disposed of by 3	Because it was common ground that this objection would rise or fall with the disposition of item 3, and because I dismissed the objection in respect of item 3, I also dismiss this objection.
83	Second Crump Report	EXP.020.253.0001	Paragraph 36	Irrelevant given the failure to identify the content of coals that meet the boiler design.	Pressed. The reference to "conforming specification coals" is merely an aspect of the scope of the opinion as to the JGI market being a tier 1 or 2 market.	PRESSED	Disposed of by 3	Because it was common ground that this objection would rise or fall with the disposition of item 3, and because I dismissed the objection in respect of item 3, I also dismiss this objection.
88	Second Crump Report	EXP.020.253.0001	Paragraph 49(a) (final sentence)	Irrelevant, failure to identify "pulverising restrictions", to prove the existence or the terms of "pulverising restrictions".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(k)]) The evidence is relevant to the marketability of low HGI coals	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 3, it seemed to me that it should have been. 2. Accordingly, I dismiss this objection for the reasons given in relation to item 3.
89	Second Crump Report	EXP.020.253.0001	Paragraph 49(c)(iii)	Irrelevant, failure to identify the nature of the "suboptimal spot pricing and short term outlook".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(l)]) It is common ground that spot prices were generally lower than benchmark.	PRESSED		1. I agree with the defendants' submission that there was sufficient clarity to be relevant. The expert's report had earlier discussed the significance of spot pricing and spot markets. Similarly, it had also discussed the significance of insecurity of long terms commitments associated with ad hoc spit sales. The impugned evidence in [49(c)(iii)] was just developing a criticism based on an alleged failure by Mr Hartley to consider such matters. 2. A process of reasoning is plainly evident. Any weakness in that process which might exist because of any uncertainty, or because of the generality in which a proposition was put goes to weight, not admissibility. 3. Accordingly, I dismiss this objection.
Opinion as to state of mind (or conduct) of third party: Plaintiffs Submissions, [21]-[26]; Defendant's Submissions, [16]-[30]								
6	First Crump Report	EXP.020.160.0001	Paragraph 7.6 (last sentence)	Inadmissible opinion as to the state of mind of a third party.	The words "As a consequence" not pressed. Otherwise pressed. Mr Crump is entitled to give evidence concerning industry attitudes: Submissions, [18]-[26]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	NOT PRESSED (on the basis that the words "as a consequence" in paragraph 7.6 (last sentence) are not pressed)		No ruling required
13	First Crump Report	EXP.020.160.0001	Paragraph 7.11(a)	Inadmissible opinion as to the state of mind of third parties.	Pressed. Mr Crump is entitled to give evidence concerning industry attitudes: see Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: see Submissions, [32]-[36]. In any event, the preceding paragraphs give direct evidence of particular discussions and events	PRESSED (as to the "fallback argument" see the plaintiffs submissions, [49])	Item 14; Item 15; Item 51;⁵ Item 63	1. In <i>Sanrus No. 7</i> at [105] I repeated a ruling which I had earlier made in <i>Sanrus No. 5</i> , rejecting the proposition that the plaintiffs had advanced that it was permissible for an expert qualified by having specialised knowledge of the industry in which a particular identified corporate person operated, to express an opinion as to what that corporate person would have done in hypothetical

⁵ Note: Item 51 also contains an objection on the basis that the evidence relies on phrases with an uncertain meaning.

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					<p>from which the knowledge of industry practice is drawn. See also Submissions, [25].</p> <p>Evidence also admissible under the “fallback argument”: see Submissions, [52]-[68]</p>	to [56])		<p>circumstances.</p> <p>2. I referred with approval to the judgment of Allsop CJ in <i>Gambro Pty Ltd v Fresenius Medical Care Australia Pty Ltd</i> [2007] 245 ALR 15 and to the distinction which his Honour had drawn between expert opinion evidence about how consumers in a market would react in hypothesised circumstances (which he concluded was permissible if the expert was appropriately qualified) and evidence about what any particular individual person would have done on a particular day (which would not be permissible).</p> <p>3. It was evidence of the latter character which I rejected in <i>Sanrus No. 5</i> and <i>Sanrus No. 7</i>. Evidence of that character is not permissible, amongst other reasons because one cannot have specialised knowledge about a single person (whether natural or corporate) which would permit opinion evidence to be given as to their state of mind, including what decision the person would have made in hypothesised circumstances.</p> <p>4. The presently impugned evidence is evidence of the former kind. It is a statement of a general nature about the preferences and attitudes of consumers in the market for thermal coal, the consumers being the major power utilities in Japan, Korea and Taiwan. There was no challenge to the qualification of the witness. Rather the plaintiffs' submission was that it was inadmissible for an expert to advance a proposition which could be characterised as addressing the state of mind of a group of third parties by addressing directly their preferences, attitudes or behavior.</p> <p>4. The discussion in <i>Gambro Pty Ltd v Fresenius Medical Care Australia Pty Ltd</i> at [21] to [27] supported the admissibility of evidence of this kind. Notably Allsop CJ stated (at [26]):</p> <p>“It was submitted on behalf of Fresenius that there was no area of specialised knowledge. It was said that he could speak to features of the market and of market shares, but he cannot speak about specialised knowledge of the states of mind of third party purchasers. It is said that he is speculating on states of mind of third parties, which is not an area of specialisation. With respect, I think that is an oversimplification. He has a body of specialised knowledge of the activity of people, as well as the subject matter of the activity of people, in a reasonably specialised and confined area of human and commercial behavior.”</p> <p>5. The defendants submitted, and I agree, that the admissibility of the impugned evidence was also supported by <i>Cargill Australia Limited v Viterro Malt Pty Ltd</i> [2019] VSC 44 at [50(19)], <i>James Hardie Industries NV v Australian Securities and Investments Commission</i> [2010] NSWCA 332 at [322] – [324], and, by analogy, <i>Myers v The Queen</i> [2015] UKPC 40 at [57] to [59], in relation to evidence of the character described at [7], [21], [34].</p> <p>6. For the foregoing reasons, I dismiss the plaintiffs' objection that the impugned evidence is inadmissible opinion as to the state of mind of third parties.</p> <p>7. The parties were also in dispute as to whether the evidence could also be relevant to the plaintiffs' fallback argument. For the reasons given in relation to item [51] above, I also dismiss this part of the plaintiffs' objection. The impugned evidence may also be admitted on the basis that it is relevant to the plaintiffs' fallback argument.</p>

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14	First Crump Report	EXP.020.160.0001	Paragraph 7.11(b)	Inadmissible opinion as to the state of mind of third parties.	<p>Pressed. Mr Crump is entitled to give evidence concerning industry attitudes: see Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: see Submissions, [32]-[36].</p> <p>In any event, the preceding paragraphs give direct evidence of particular discussions and events from which the knowledge of industry practice is drawn. See also Submissions, [25].</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESEED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>	<p>Disposed of by 13</p>	<p>Because it was common ground that this objection would rise or fall with the disposition of item 13 above, and because I dismissed the objections in respect of item 13, I also dismiss the objections in respect of this item.</p>
15	First Crump Report	EXP.020.160.0001	Paragraph 7.11(c)	Inadmissible opinion as to the state of mind of third parties.	<p>Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: see Submissions, [18]-[26]. Evidence constitutes expert opinion in relation conditions in the market, and (in particular) the difficulties that would be encountered in relation to the sale of low HGI coal based on the matters set out in paragraph [7.11] of the report; see also Submissions, [25]</p> <p>Further, when giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: see Submissions, [32]-[36].</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESEED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>	<p>Disposed of by 13</p>	<p>Because it was common ground that this objection would rise or fall with the disposition of item 13 above, and because I dismissed the objections in respect of item 13, I also dismiss the objections in respect of this item.</p>
27	First Crump Report	EXP.020.160.0001	Paragraph 9.2 (first sentence from "because of the known fact that the market")	Inadmissible opinion as to the state of mind of a third party.	<p>Pressed (other than the words "of the known fact that").</p> <p>Evidence constitutes:</p> <ul style="list-style-type: none"> evidence of fact as to the knowledge of PCTA concerning the market for low HGI coal, which Mr Crump is qualified to give by reason of his position as Managing Director of that company: Crump1, [5.1]; evidence of fact as to PTCA's reasons for accepting a significant discount; expert factual evidence as to prevailing understanding in the market concerning market for low HGI coal (and in particular the "known fact..."). Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36] <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>NOT PRESEED</p> <p>(on the basis that the words "of the known fact that" are not pressed): T79-9, Lines 18 to 23</p>		<p>No ruling required</p>
30	First Crump Report	EXP.020.160.0001	Paragraph 10.2(a) (first sentence)	Inadmissible opinion as to the conduct of third parties.	<p>Pressed</p> <p>Evidence comprises, first, expert factual evidence of the fact of closure in 2002 and the state of mineable reserves at the time of closure. At least this should be admitted. The balance of the first sentence from the words "due to" is not pressed, except in relation to the "fallback argument": T79-50, Lines 18 – 39.</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESEED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>		<p>1. In oral argument the defendants pressed only the first clause of the first sentence, namely the clause ending in "2002", justifying that tender as a statement of fact. I agree. That clause may be admitted as probative of that fact.</p> <p>2. The defendants pressed the tender of the balance of the impugned sentence on the limited basis that it could be relied on in respect of the plaintiffs' fallback argument to which I have earlier referred. The plaintiffs disputed that the evidence could also be relevant to the plaintiffs' fallback argument.</p> <p>3. For the reasons given in relation to item [51] above, I also dismiss this part of the plaintiffs' objection. The impugned evidence may also be admitted on the basis that it is relevant to the plaintiffs' fallback argument.</p>
36	First Crump Report	EXP.020.160.0001	Paragraph 11.3 p. 0015 (second sentence)	Inadmissible opinion as to the state of mind of a third party.	Not pressed.	<p>NOT PRESEED</p> <p>(on the basis that the evidence in paragraph 11.3 p. 0015 (second sentence) is not pressed)</p>		<p>No ruling required</p>
37	First Crump Report	EXP.020.160.0001	Paragraph 11.3 p. 0015 (final sentence)	Inadmissible opinion as to the state of mind of a third party.	Not pressed.	<p>NOT PRESEED</p> <p>(on the basis that the evidence in paragraph 11.3 p. 0015 (final sentence) is not</p>		<p>No ruling required</p>

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						pressed)		
38	First Crump Report	EXP.020.160.0001	Paragraph 11.3 p. 0016 (first sentence)	Inadmissible opinion as to the state of mind of a third party.	Not pressed.	NOT PRESSED (on the basis that the evidence in paragraph 11.3 p. 0016 (first sentence) is not pressed)		No ruling required
42	First Crump Report	EXP.020.160.0001	Paragraph 12.3 (fourth <u>fifth</u> sentence and final sentence) ⁶	Inadmissible opinion as to conduct of a third party. Facts underpinning opinion not identified.	Not pressed.	NOT PRESSED (on the basis that the evidence in paragraph 12.3 (fifth and final sentence) is not pressed)		No ruling required: T79-57, Lines 39 to 46
51	Second Crump Report	EXP.020.253.0001	Paragraph 4(b) (fourth sentence)	Irrelevant, failure to identify the content of the " <i>boiler design specifications</i> ", failure to prove the existence or the terms of <i>boiler design specifications</i> . Inadmissible opinion as to the state of mind of third parties.	Pressed. As to the "state of mind objection", Mr Crump is entitled to give evidence concerning industry attitudes: Submissions, [18]-[26]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	PRESSED (as to the "fallback argument" see the plaintiffs submissions, [49] to [56])	Disposed of by 13	Because it was common ground that this objection would rise or fall with the disposition of item 13 above, and because I dismissed the objections in respect of item 13, I also dismiss the objections in respect of this item.
63	Second Crump Report	EXP.020.253.0001	Paragraph 21(c) (first sentence)	Inadmissible opinion as to the state of mind of third parties.	Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, para 34	PRESSED	Disposed of by 13	Because it was common ground that this objection would rise or fall with the disposition of item 13 above, and because I dismissed the objections in respect of item 13, I also dismiss the objections in respect of this item.
67	Second Crump Report	EXP.020.253.0001	Paragraph 22(a)	Inadmissible opinion as to the state of mind of third parties.	Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	NOT PRESSED: T79-10, Line 16		No ruling required
Facts underpinning opinion not stated: Plaintiffs Submissions, [27]-[30]; Defendants' Submissions, [31]-[36]								
33	First Crump Report	EXP.020.160.0001	Paragraph 10.2(b) (second sentence)	Facts underpinning opinion not identified.	Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. The basis for the opinion appears elsewhere in the report (e.g. para 10.2(a)). See further Submissions, [37]	PRESSED	Item 59.	<p>1. In the impugned sentence, the witness expresses an opinion that four identified mines were by 2004 – 2005 producing more than adequate low HGI coal for the declining demand of the Japanese Power Utilities (JPU).</p> <p>2. This is opinion evidence and the facts and assumptions underlying it are not identified. The plaintiffs correctly submitted that what is missing is some identification of the quantity of production of coal from those mines, and the quantity of low HGI coal demanded by the JPU (as opposed to the quantity supplied to the JPU).</p> <p>3. In their written submissions, the defendants sought to identify aspects of the evidence of the witness which they contended were the facts which underpinned the opinion. But, as I ruled in <i>Sanrus No. 7</i> when upholding some of their objections to the plaintiffs' Mr Freeman, the assumption identification rule must be met by the expression of expert opinion. Failure so to do cannot be remedied after the fact by way of a lawyer's submission attempting to identify the requisite assumptions.</p>

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
								4. For the foregoing reasons, I uphold the objection.
39	First Crump Report	EXP.020.160.0001	Paragraph 11.3 p. 0016 (second sentence)	Facts underpinning opinion not identified.	Pressed. The basis for the opinion appears in the third sentence and in paras 7.4 to 7.6.	NOT PRESSED: (on the basis that the supplementary expert report of Mr Crump dated 8 October 2019 is tendered : see T79-7, Lines 45-46 and T 79-8, Line 19)		No ruling required
42	First Crump Report	EXP.020.160.0001	Paragraph 12.3 (fourth fifth sentence and final sentence) ⁷	Inadmissible opinion as to conduct of a third party. Facts underpinning opinion not identified.	Not pressed.	NOT PRESSED (on the basis that the evidence in paragraph 12.3 (fifth and final sentence) is not pressed)		No ruling required: T79-57, Lines 39 to 46
59	Second Crump Report	EXP.020.253.0001	Paragraph 14(c)(iii) (final sentence from words " <i>but (as agreed in the Joint Report)</i> " to the end of the sentence)	Facts underpinning opinion not stated.	Pressed. Mr Crump is entitled to repeat what was agreed in the JER. He can also give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, para 34	NOT PRESSED: T79-59, Line 28		No ruling required
60	Second Crump Report	EXP.020.253.0001	Paragraph 16(c) (third sentence)	Facts underpinning opinion not stated.	Not Pressed.	NOT PRESSED (on the basis that the evidence in paragraph 16(c) (third sentence) is not pressed)		No ruling required
72	Second Crump Report	EXP.020.253.0001	Paragraph 22(c) (third sentence)	Facts underpinning opinion not stated.	Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. The basis for the opinion appears in paragraph 22; see also Submissions, [25]. Further, by analogy from principles related to the extent to which reasoning must be elaborated, it is appropriate to recognize that some matters of expert opinion are inherently impressionistic, which limits the capacity to articulate the precise basis for the opinion. That is the case in relation to the assignment of probability to the prospects of securing a market: see Submissions, [10]	PRESEED	Item 78	1. The impugned sentence states "For these reasons, I consider the probability of those opportunities eventuating was 25%." 2. I accept the defendants' submission that some expert opinions might bear a character which admits of being described as impressionistic and expressing a view which is generalised from experience and which may not admit of the expression of extensive (or in some cases any) reasoning. 3. The problem is that the manner of expression of this particular opinion plainly suggested that reasons did exist, and nothing in the preceding part of [22(c)] or indeed [22] was capable of amounting to an explanation of the reasoning which supported the opinion. A process of reasoning was simply not apparent. 4. For the foregoing reasons, I uphold the objection.
74	Second Crump Report	EXP.020.253.0001	Paragraph 24(a) (from words " <i>had become a mechanism</i> " to the end of the paragraph)	Facts underpinning opinion not stated.	Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, [25]	PRESEED		1. The impugned sentence states "By May 2005, globalCOAL had developed as a platform for the electronic trading of seaborne thermal coal and had become a mechanism for the default pricing of spot sales." 2. I agree with the defendants' submission that this is to be regarded as expert factual evidence generalising from accumulated knowledge and experience and that it is not necessary to identify and prove the particular basis of particular knowledge. 3. And, even if I am wrong in that assessment, and the

⁷ See plaintiffs' submissions, paragraph 7.

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
								evidence is to be regarded as opinion evidence, I would accept that it is opinion evidence of a character which admits of being described as impressionistic and which does not need reasoning to be set out. 4. For the foregoing reasons, I dismiss the objection.
78	Second Crump Report	EXP.020.253.0001	Paragraph 28 (final sentence)	Facts underpinning opinion not stated, <i>alternatively</i> , facts not proved.	Pressed. Mr Crump states that the stated opinion is “for the reasons set out above”, clearly being a reference to matters set out in paragraphs [24]-[27] (which address the spot market. Further, by analogy from principles related to the extent to which reasoning must be elaborated, it is appropriate to recognize that some matters of expert opinion are inherently impressionistic, which limits the capacity to articulate the precise basis for the opinion. That is the case in relation to the assignment of probability to the prospects of securing a market: see Submissions, [10]	PRESEED	Disposed of by 72	Because it was common ground that this objection would rise or fall with the disposition of item 72 above, and because I upheld the objection in respect of item 72, I also uphold the objection in respect of this item.
Facts underpinning assertion not stated: Plaintiffs' Submissions, [31]-[34]; Defendants' Submissions, [39]-[40]								
11	First Crump Report	EXP.020.160.0001	Paragraph 7.7(d) (final sentence)	Facts underpinning the assertions as to “restrictions on capability of blending”, “limited capacity in the stockyard”, “the thermal coal which the Wilkie Creek coal would have to be blended with”, “the rate of productivity of the mills” and “milling costs” not stated.	Pressed. Mr Crump can give evidence as to the understanding he formed based on the “discussions” referred to in the paragraph: see <i>R v Noble</i> [2002] 1 Qd R 432 at [18]. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump’s specialised knowledge is described: Submissions, [25]	PRESEED		1. Paragraph 7.7(d) provided (emphasis added to identify the impugned sentence): I approached the major power utilities in Korea (namely the Gencos KOSEP, KOMIPO, KEWESPO, KOSPO and KOWEPO) and asked each of them whether their companies would purchase the Wilkie Creek coal. Other than Korea South-East Power Corporation (KOSEP), I was told by management in charge of procurement at each of the Gencos that the restrictive HGI limitation and port limitations of Brisbane precluded them buying Wilkie Creek's thermal coal. While I could develop strategies to get around the port limitations of Brisbane (e.g. part loading in Brisbane and topping up in Gladstone), this did not solve the restrictive HGI limitation problem of the major Korean consuming utilities. These power stations are all large capacity stations (ie. greater than 6Mtpa and up to 20Mtpa per station). I was aware from discussions which I had with representative in the various procurement teams that the restriction on the capability of blending was due to limited capacity in the stockyard, the thermal coals which the Wilkie Creek coal would have to be blended with, the rate of productivity of the mills, and milling costs. 2. I agree with the defendants’ submission that the sentence should be regarded as expert factual evidence generalising from accumulated knowledge and experience and that it is not necessary to identify and prove the particular basis of particular knowledge. 3. And, even if I am wrong in that assessment, the facts underpinning the assertion are set out. They are the discussions he had with representatives of the power utilities and he has recorded the substance of what he was told. 4. Accordingly I dismiss the objection.
18	First Crump Report	EXP.020.160.0001	Paragraph 8.6	Facts underpinning the assertions not stated.	Pressed. . The paragraph contains expert <i>opinion</i> evidence about the opportunity of Monto Coal to compete in the markets of South Korea and Taiwan, based on expert <i>factual</i> evidence about the contracting process in those markets and Monto Coal’s conformity with specifications within that contracting process. The expert factual evidence is generalized from accumulated knowledge and experience, and the opinion is based on that accumulated knowledge and experience. When giving evidence generalizing from accumulated knowledge and experience, it is not necessary to identify and prove the particular basis of the knowledge and experience: Submissions, [18]-[26]. In any event, the basis for the knowledge and opinion is identified::	PRESEED		1. The impugned paragraph provided: In respect of the alternative markets of South Korea and Taiwan, in order to secure a trial to the power utilities in those countries would have meant winning competitive bids on a nonconforming quality basis, particularly outside the minimum /maximum specifications. (HGI of Monto Coal was outside the buyer's limits) and with no production history or historical shipment record there would inevitably be

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					<ul style="list-style-type: none"> Mr Crump gives evidence of the extensive investigations he undertook in relation to Korea and Taiwan: see Crump1, [7.7(c)-(f), [EXP.020.160.0001], at _0011; Crump2, [20], [EXP.020.253.0001], at .0005, where he states that "I...approached all five South Korean Gencos and all Taiwanese utilities, with no success other than with KOSEP"; There is no contest between the parties that there existed "pre-qualification requirements for new coals" with Korean Gencos generally, Taipower (Thailand) and TNB (Malaysia). This was a matter of express agreement in the conclave between Mr Browne (P) and Mr Crump (D): JER 14, [EXP.500.003.0001], at .0002 (page 2, row 7). That fact is not contested by Mr Hartley (P), who states that: "I accept that tenders for the supply of thermal coal to organisations such as Taiwan Power Company and the Korean Gencos require suppliers to meet prequalification requirements", which include a "coal specification requirement": Hartley2, [1.2(f)], [EXP.010.110.0001], at .0006 The general basis for Mr Crump's relevant specialized knowledge for the market for low HGI coal is set out at [25] 			limited opportunity to participate, if any at all. 2. I dismiss the objection for the reasons identified in the second paragraph of column 6 by the defendants in respect of this item. I also think that sufficient factual foundation to support the admissibility of the impugned paragraph is found in the first Crump report.
32	First Crump Report	EXP.020.160.0001	Paragraph 10.2(a) (final sentence)	Facts underpinning assertion not stated.	<p>Pressed.</p> <p>There are 2 relevant assertions.</p> <p>Firstly, the assertion that "This was clearly not the case", in responding to the statement that "HGI had gained wide market acceptance". The basis for that assertion was manifestly Mr Crump's description of the his unsuccessful attempts to market low-HGI coal, set out in Section 7 of the Crump1</p> <p>Secondly, the assertion that "the market share of low HGI had decreased". As to this:</p> <ul style="list-style-type: none"> When giving evidence generalizing from accumulated knowledge and experience, it is not necessary to identify and prove the particular basis of the knowledge and experience; A stated basis appears in 10.2(a) itself (4th sentence) In any event, the general basis for Mr Crump's specialised knowledge is described: Submissions, [25] 	PRESSED	Item 64;	<p>1. Paragraph 10.2 relevant provided (emphasis added to identify the impugned sentence):</p> <p>10.2 With respect to paragraph 67 of Shaun Browne's Report, I disagree with paragraph 67 for the following reasons:</p> <p>(a) Idemitsu's Ebenezer Coal mine, in spite of having circa 16 million tonnes of mineable reserves was closed in 2002 due to the limited demand by JPUs for such thermal coal types and the cost of production versus saleable price. I am aware of economic difficulties of Ebenezer through direct discussions with Mr Rob Mathieson, the Idemitsu executive responsible for their Australian coal operations. Coal production at Ebenezer in about 2002 had become lossmaking at the then prevailing seaborne market prices of US\$ 22-25/tonne FOB & T. Some of the traditional JPU buyers of Ebenezer coal (that is, Hokkaido EPC and Kyushu EPC) had converted to alternate high HGI thermal coal supply from NSW and elsewhere. I disagree with the statement that "low HGI coals had gained wide market acceptance". This was clearly not the case, in fact the market share for low HGI had decreased.</p> <p>2. As to the first of the two assertions in the impugned sentence, I dismiss the objection for the reasons identified in column 6 by the defendants in respect of this item.</p> <p>3. As to the second of the two assertions in the impugned sentence, I dismiss the objection for the reasons identified in column 6 by the defendants in respect of this item.</p>
40	First Crump Report	EXP.020.160.0001	Paragraph 11.3 p. 0016 (final sentence)	Facts underpinning assertion not identified.	<p>Pressed. In paragraph 7.5, Mr Crump gives first hand evidence of conversations with Mr Nagae of EPDC concerning the sale of Wilkie Creek to EPDC.</p>	NOT PRESSED: (on the basis that the supplementary expert report of Mr Crump dated 8 October 2019 is tendered): see T79-6, Lines 41-45		No ruling required
64	Second Crump Report	EXP.020.253.0001	Paragraph 21(c) (second sentence)	Facts underpinning assertion not identified, <i>alternatively</i> facts not proved. Basis of knowledge not identified.	<p>Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].</p> <p>In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, para 34. In particular, the Defendants refer to paragraph 21(a) of Crump2, in which Mr Crump describes marketing activities on behalf of Wilkie Creek, specifically in relation to Japanese General Industry</p>	PRESSED	Disposed of by 32	Because it was common ground that this objection would rise or fall with the disposition of item 32 above, and because I dismissed the objection in respect of item 32, I also dismiss the objection in respect of this item.
77	Second Crump Report	EXP.020.253.0001	Paragraph 27	Facts underpinning assertion not identified, <i>alternatively</i> , facts not	<p>Pressed. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p>	PRESSED (but only from the		1. The impugned paragraph provided (the part pressed is highlighted):

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
				proved.	When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, [25]	words "as such..." to the end of the paragraph Otherwise not pressed.		All sales on the globalCOAL electronic platform into the Spot Market are Free On Board (FOB) loading port and destination unrestricted and as such globalCOAL had become a default pricing mechanism for sellers and buyers, which characteristically traded in the 80- 85% range of JPU benchmark pricing. 2. I dismiss the objection for the reasons identified in column 6 by the defendants in respect of this item.
87	Second Crump Report	EXP.020.253.0001	Paragraph 49(a) (third sentence)	Facts underpinning the assertion not identified.	Pressed. Mr Crump is entitled to express qualified agreement. Mr Crump is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, [25]	PRESSED		1. Paragraph 49(a) provided: (emphasis added to identify the impugned sentence): 49 Mr Hartley refers in his report to several matters with which I disagree. (a) In paragraph 2.5, Mr Hartley states " ... customers are attracted to new mines so as to open new supply lines". My disagreement on this point is that customers are specifically focussed on the type of thermal coal to be produced and their plant capability to consume it. If, for example, the new mine will produce a standard Hunter Valley thermal coal, customers see potential for greater competition. However Monto coal was not a standard coal due to pulverizing restrictions associated with the low HGI and not directly interchangeable with Hunter Valley alternatives. 2. I treat the objection as going to both the third and fourth sentences because they must be taken together. 3. I dismiss the objection for the reasons identified in column 6 by the defendants in respect of this item.
90	Second Crump Report	EXP.020.253.0001	Paragraph 49(d)(ii)(A)	Facts underpinning assertion of "additional capacity" not identified.	Not pressed"	NOT PRESSED (on the basis that the evidence in paragraph 49(d)(ii)(A) is not pressed)		No ruling required
Basis of knowledge not identified: Plaintiffs' Submissions, [35]-[36]; Defendants' Submissions, [42]-[44]								
41	First Crump Report	EXP.020.160.0001	Paragraph 12.3 (third-fourth sentence) ⁸	Basis of knowledge not identified	Not pressed.	NOT PRESSED (on the basis that the evidence in paragraph 12.3 (fourth sentence) is not pressed)		No ruling required
64	Second Crump Report	EXP.020.253.0001	Paragraph 21(c) (second sentence)	Facts underpinning assertion not identified, <i>alternatively</i> facts not proved. Basis of knowledge not identified.	See response to Item 64 in previous section	PRESSED		
91	Second Crump Report	EXP.020.253.0001	Paragraph 49(d)(ii)(B) (final sentence)	Basis of knowledge not identified.	Pressed. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Crump's specialised knowledge is described: Submissions, [25] Further, the Defendants seek leave to rely on the Further Supplementary Report of Ross Crump to further elaborate the basis for the stated knowledge.	NOT PRESSED (on the basis that the supplementary expert report of Mr Crump dated 8 October 2019 is tendered: T79-73, Lines 6 – 9).		No ruling required
92	Second Crump Report	EXP.020.253.0001	Paragraph 50: 1), 2) and 3)	Basis of knowledge not identified.	Pressed, When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].	NOT PRESSED (on the basis that the supplementary expert report of Mr Crump dated 8		No ruling required

⁸ See plaintiffs' submissions, paragraph 7.

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					Further, the Defendants seek leave to rely on the Further Supplementary Report of Ross Crump to further elaborate the basis for the stated knowledge.	October 2019 is tendered: T79-73, Lines 6 – 9).		
Hearsay: Plaintiffs' Submissions, [46]-[56]; Defendants' Submissions, [50]-[56]								
7	First Crump Report	EXP.020.160.0001	Paragraph 7.7(a) Paragraph 7.7(b) (second paragraph): T79-79, Lines 16-17	Hearsay	Pressed. The evidence informs Mr Crump's general knowledge and experience concerning the market opportunities for low-HGI coal. The evidence is original evidence of a relevant conversation in which Mr Crump participated, and is admissible and relevant as to the state of mind of Mr Hashimoto as to the fact of and the reasons for Tokyo EPC's unwillingness to take Wilkie Creek coal: see Submissions,[53]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]: T79-78, lines 20-21	NOT PRESSED (on the basis that the third party statements are admitted only as original evidence of state of mind, the response, and the rationale for the response of the potential customer: T79-76, Lines 34-37; T79-77, Lines 14 – 36) PRESESSED in relation to the application of the fallback argument: (as to the "fallback argument" see the plaintiffs submissions, [49] to [56])	Item 10; Item 12; and Item 50.	1. The objection which was pressed concerned whether the evidence could also be relevant to the plaintiffs' fallback argument, namely the argument defined by me in <i>Sanrus No. 7</i> at [122]. 3. The plaintiffs contended that the evidence: <ul style="list-style-type: none">was not framed as expressing the witness' views as to the matters which would have been considered by an appropriately qualified and competent expert who was preparing a hypothetical bankable feasibility study for the Monto Coal Stage 2 project; andcould not therefore be characterised as expressing support for an input by way of opinion into a Stage 2 feasibility study. 4. I reject the plaintiffs' argument for the same reasons I have dismissed similar arguments above. 5. There was, however, a further ingredient in the plaintiffs' argument for this item and also items 10, 12 and 50, namely that the impugned evidence concerned particular discussions had by this witness and even if the evidence could be characterised in the way identified in 3 above, there could be no basis to conclude that appropriately qualified experts would have had the same conversations and obtained the same information. 6. I reject that argument. The conversations were an evidential basis for proof of the attitude of the relevant industry participant to low HGI coal. (No attribution point was taken.) There was evidentiary support for the proposition that appropriately qualified and competent expert would have made inquiries of such participants and given that the conversations were not confidential, I think the evidence is admissible in support of an argument that I should infer that such inquiries would have revealed the same attitudes as were in fact communicated to this witness. Whether I am prepared to draw that inference is a question for another day, but what I have said is sufficient to support a conclusion that the impugned evidence may also be admitted on the basis that it is relevant to the plaintiffs' fallback argument. 7. Accordingly I dismiss the objection which was pressed.
9	First Crump Report	EXP.020.160.0001	Paragraph 7.7(b) (from the words "I understood" to the end of the paragraph)	Inadmissible opinion evidence as to the meaning of the words said. Outside expertise.	Otherwise pressed. Mr Crump has the expertise to opine on the marketing implications of the matters addressed in the paragraph. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	PRESESSED (as to the "fallback argument" see the plaintiffs submissions, [49] to [56])		1. The evidence was not pressed as proof of the truth of the technical propositions advanced, but rather as factual evidence generalised from accumulated knowledge and experience of the attitudes which industry participants conveyed to the witness concerning low HGI coal. It is admissible on that basis. 2. The evidence is also admissible on the plaintiffs' fallback basis for the reasons identified in item 7 above. 3. For the foregoing reasons I dismiss the objections.
10	First Crump Report	EXP.020.160.0001	Paragraph 7.7(c)	Hearsay	Pressed. The evidence informs Mr Crump's general knowledge and experience concerning the market opportunities for low-HGI coal. The evidence is original evidence of a conversation in which Mr Crump participated, admissible and relevant as to the state of mind of the identified persons as to the reasons for not taking Wilkie Creek coal: see Submissions, [53] (and as to the fact of failed attempts to market Wilkie Creek coal) Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]: T79-78, lines 20-21	NOT PRESSED on the basis that the third party statements are admitted only as original evidence of state of mind, the response, and the rationale for the response of	Disposed of by Item 7	Because it was common ground that to the extent that this objection was pressed, it would rise or fall with the disposition of item 7 above, and because I dismissed the objection in respect of item 7, I also dismiss the objection in respect of this item.

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
						the potential customer: T79-76, Lines 34-37: T79-79, Lines 35 – 42. PRESEED in relation to the application of the fallback argument: (as to the “fallback argument” see the plaintiffs submissions, [49] to [56])		
12	First Crump Report	EXP.020.160.0001	Paragraph 7.7(f) (final sentence)	Hearsay	Pressed. The evidence informs Mr Crump’s general knowledge and experience concerning the market opportunities for low-HGI coal. The evidence is original evidence of a conversation in which Mr Crump participated, admissible and relevant as to the state of mind of Mr Chang as to the reasons for not taking Wilkie Creek coal: see Submissions, [53] (and as to the fact of failed attempts to market Wilkie Creek coal). Evidence also admissible under the “fallback argument”: see Submissions, [52]-[68]: T79-78, lines 20-21	NOT PRESEED on the basis that the third party statements are admitted only as original evidence of state of mind, the response, and the rationale for the response of the potential customer: T79-76, Lines 34-37: T79-79, Lines 35 – 42. PRESEED in relation to the application of the fallback argument: (as to the “fallback argument” see the plaintiffs submissions, [49] to [56])	Disposed of by Item 7	Because it was common ground that to the extent that this objection was pressed, it would rise or fall with the disposition of item 7 above, and because I dismissed the objection in respect of item 7, I also dismiss the objection in respect of this item.
50	Second Crump Report	EXP.020.253.0001	Paragraph 4(a) (final sentence)	Hearsay. See the objection identified at item 7.	Pressed. The evidence informs Mr Crump’s general knowledge and experience concerning the market opportunities for low-HGI coal. The evidence is original first hand evidence of a conversation in which Mr Crump participated, admissible and relevant as to the state of mind of Mr Hashimoto as to the willingness to enter contracts for further Wilkie Creek coal: see Submissions, [53] (and as to the fact of failed attempts to market Wilkie Creek coal) Evidence also admissible under the “fallback argument”: see Submissions, [52]-[68]:T79-78, lines 20-21	NOT PRESEED on the basis that the third party statements are admitted only as original evidence of state of mind, the response, and the rationale for the response of the potential customer: T79-76, Lines 34-37: T79-79, Lines 35 – 42. PRESEED in relation to the application of the fallback argument (as to the “fallback argument” see the plaintiffs submissions, [49] to [56])	Disposed of by Item 7	Because it was common ground that to the extent that this objection was pressed, it would rise or fall with the disposition of item 7 above, and because I dismissed the objection in respect of item 7, I also dismiss the objection in respect of this item.
Consequential objections								
43	Second Crump Report	EXP.020.253.0001	Paragraph 3(a)	See the objections identified at items 6, 7 and 9 to 15.	Pressed. See the responses to items 6, 7 and 9 to 15 above.	NOT PRESEED		No ruling required

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					Further, even if those objections are upheld, the exclusion of paragraph 3(a) is not logically consequential to such rulings. <ul style="list-style-type: none"> Alternatively, paragraph 3(a) constitutes evidence of fact as to the extent of the market acceptance obtained by Monto Coal. Evidence of that fact can be given, without specification of the reasons for that evidence. On this basis it is alternatively pressed, except for the words "For the reasons set out in part 7 of my first report" 			
44	Second Crump Report	EXP.020.253.0001	Paragraph 3(b)	See the objections identified at items 8 9 to 15.	Pressed. See the responses to items 9 to 15 above. <p>Further, even if those objections are upheld, the exclusion of paragraph 3(b) is not logically consequential to such rulings.</p> <ul style="list-style-type: none"> Items 9 to 15 are not exhaustive of the evidence in section 7 of Crump1, in relation to the market acceptance of Wilkie Creek Coal in South Korea, to which Mr Crump relies in paragraph 3(b); <ul style="list-style-type: none"> Objection Items 9 to 15 relate to portions of the evidence in paragraphs 7.7(b)-(d), (f) and 7.11 of Crump1 [EXP.020.253.0001]; Substantial evidence relating to marketing to South Korea (which Mr Crump expressly relies on in paragraph [3(b)] of Crump2) is not the subject of objection, including Paragraph 7.7(d), excluding the final sentence; Paragraph 7.7(e). Alternatively, paragraph 3(b) constitutes evidence of fact as to the extent of the market acceptance obtained by Wilkie Creek coal in South Korea. Evidence of that fact can be given, without specification of the reasons for that evidence. On this basis, it is alternatively pressed, except for the words "for the reasons set out in paragraphs 7.7(b), (c), (d), (f) and 7.11 of my first report" 	NOT PRESSED		No ruling required
47	Second Crump Report	EXP.020.253.0001	Paragraph 3(d) (second sentence)	See the objections identified at items- 6, 7 and 9 to 15.	Pressed. See the responses to items 6, 7 and 9 to 15 above. <p>Further, even if those objections are upheld, the exclusion of paragraph 3(d) is not logically consequential to such rulings.</p> <ul style="list-style-type: none"> Alternatively, paragraph 3(d) constitutes evidence of fact as to the extent of the market acceptance obtained by Wilkie Creek in South Korea. Evidence of that fact can be given, without specification of the reasons for that evidence. On that basis, it is alternatively pressed, except for the words: "As set out in paragraph 3.6 and Part 7 of my first report" 	NOT PRESSED		No ruling required
50	Second Crump Report	EXP.020.253.0001	Paragraph 4(a) (final sentence)	Hearsay. <p>See the objection identified at item 7.</p>	See response to Item 50, in the above section	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 7 and 50, it seemed to me that it should have been. 2. Accordingly, I dismiss this objection for the reasons given in relation to items 7 and 50 in the previous section of this schedule.
62	Second Crump Report	EXP.020.253.0001	Paragraph 19	See the objections identified at items 6, 7 and 9 to 15.	Pressed. See the responses to paras 6, 7 and 9 to 15 above. <p>Further, even if those objections are upheld, the exclusion of paragraph 19 is not logically consequential to such rulings.</p> <ul style="list-style-type: none"> Items 6, 7, and 9 to 15 are not exhaustive of the evidence in parts 6 and 7 of Crump1 referred to in paragraph 19, in relation to marketing of Wilkie Creek coal. <ul style="list-style-type: none"> Objection Items 6, 7 and 9 to 15 relate to portions of the evidence in paragraphs 7.6, 7.7(a)-(d), (f) and 7.11 of Crump2 [EXP.020.253.0001]; Those objections do not address all evidence in Parts 6 and 7 of Crump 1 relating to the Mr Crump's experience marketing Wilkie Creek coal: eg, first 2 sentences of paragraph 7.7, which states: "In summary, I (and my marketing colleagues at PCTA) canvassed all possible consumers"; see also paragraph 7.7(d) (excluding the last sentence); see also 7.7(e), 7.7(f) (excluding last sentence), 7.8, 7.9; Paragraph 19 is not a statement of opinion. It is merely a statement of fact concerning the content of Part 6 and 7 of Mr Crump's first report. Even if all the identified objections are upheld, that statement of fact remain accurate (and unobjectionable). The second sentence "In addition to that, Wilkie Creek did test the "wider market" which I conducted and oversaw", is independent of the evidence the subject of objection in objections Items, 7, and 9 to 15 	NOT PRESSED		No ruling required
80	Second Crump Report	EXP.020.253.0001	Paragraph 31 (second sentence)	See the objections identified at items 27.	See the responses to items 27 above. <p>Further, the opinion in paragraph 31 addresses a different subject matter to the evidence in paragraph 9.2 of First Crump Report (to which Objection 27 relates). Paragraph 31 constitutes an expression of expert opinion about the discounts that would be expected to apply, whereas paragraph 9.2 is expert factual evidence about the nature and reasons for discounts that historically</p>	NOT PRESSED		No ruling required

Item No. ³	Expert report	Document ID	Part of report objected to	Basis of objection	Defendants' Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					applied Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]			
84	Second Crump Report	EXP.020.253.0001	Paragraph 37	See objections identified in items 67 to 69, 71 and 72.	See responses to items 67 to 69, 71 and 72 above. Further, even if those objections are upheld, the exclusion of paragraph 37 is not logically consequential to such rulings. Paragraph 37 is expert factual evidence about the manner in which the North Asian General Industry market was considered in the industry. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	NOT PRESSED		No ruling required

RULINGS ON THE OBJECTIONS TO THE REPORT OF ASHLEY CONROY (D) PRESSED BY THE PLAINTIFFS

Item No. ⁹	Expert report	Document ID	Part of report objected to	Basis of objection	Defendant's Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
Irrelevant on the basis that the nature, content or existence of particular matters is not identified (Reliance on phrases or uncertain meaning): Plaintiffs' Submissions, [9]-[20]; Defendants' Submissions, [6]-[15]								
1	Expert report of Ashley Conroy dated 9 April 2019 (First Conroy Report)	EXP.020.159.0001	Paragraph 5.1(c)	Irrelevant, failure to identify content of "manufacturers' warranties", failure to prove the existence or the terms of "manufacturers' warranties".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [13]). The evidence is in any case only evidence of the perception of Asian coal customers.	PRESSED		1. The plaintiffs' contention under this heading was essentially the same as that advanced in relation to the first Crump report discussed at item 3 above and I will take the same approach to the resolution of this objection as I took in relation to that objection. 2. Accordingly I dismiss the plaintiffs' objection for the same reasons as I gave in relation to item 3 of the first Crump report.
3	First Conroy Report	EXP.020.159.0001	Paragraph 9.6(a)	Irrelevant, failure to identify content of "equipment warranties". Irrelevant, failure to prove the existence or the terms of "equipment warranties".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(a)]). Again the evidence goes to the willingness of customers to buy and their reasons.	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 1, it seemed to me that it should have been. 2. Accordingly, I dismiss this objection for the reasons given in relation to item 1.
10	Expert report of Ashley Conroy dated 28 August 2019 (Second Conroy Report)	EXP.020.251.0001	Paragraph 1.1	Irrelevant, failure to identify content of "manufacturers' guarantee", failure to prove the existence or the terms of "manufacturers' guarantee".	Pressed. Evidence has sufficient particularity and clarity to be relevant: see Submissions, [11]-[15] (and in particular [14(c)]). The evidence is merely definitional. It does not relate to any particular specification.	PRESSED		1. Although it was not common ground that this objection would rise or fall with the disposition of item 1, it seemed to me that it should have been. 2. I also agree with the defendants' submission that the evidence is definitional. 3. Accordingly, I dismiss this objection for the reasons given in relation to item 1.
Opinion as to state of mind (or conduct) of third party: Plaintiffs' Submissions, [21]-[26]; Defendants' Submissions, [16]-[30]								
7	First Conroy Report	EXP.020.159.0001	Paragraph 15.8(e)	Inadmissible opinion as to the state of mind of third parties.	Pressed. Mr Conroy is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26]. When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36]. In any event, the basis for Mr Conroy's specialised knowledge is described: Submissions, [25] Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	PRESSED (as to the "fallback argument" see the plaintiffs' submissions, [49] to [56])		1. The plaintiffs' contention under this heading was essentially the same as that advanced in relation to item 13 of the first Crump report discussed above and I will take the same approach to the resolution of those objections as I took in relation to that objection. 2. Accordingly I dismiss the plaintiffs' objections for the same reasons as I gave in relation to item 13 of the first Crump report.
8	First Conroy Report	EXP.020.159.0001	Paragraph 15.8(i) (third and fourth sentences)	Inadmissible opinion as to the conduct of third party.	The sentence is not pressed but part needs to be preserved to give meaning to what follows. Press only as follows – (with the succeeding sentence) – "A coal purchase arrangement in which the purchase of one coal brand necessitated the purchase of the other coal brand, for either of the brands to be able to be successfully used, presents a risk to the buyer which is totally unnecessary and avoidable."	NOT PRESSED (on the basis that the defendants accepted that the two sentences		Objection was not pressed on basis that the defendants accepted that the two sentences commencing with: "No buyer would have entered into --" can only be relied upon insofar as they are probative of

⁹ As referred to in the plaintiffs' and defendants' submissions.

Item No.º	Expert report	Document ID	Part of report objected to	Basis of objection	Defendant's Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	<p>commencing with:</p> <p>"No buyer would have entered into --"</p> <p>can only be relied upon insofar as they are probative of the following proposition:</p> <p>"A coal purchase arrangement in which the purchase of one coal brand necessitated the purchase of the other coal brand presents a risk to the buyer which is totally unnecessary and avoidable."</p> <p>Accordingly the two sentences may be admitted subject to that limitation: T79-39, Lines 12-26.)</p>		<p>the following proposition:</p> <p>"A coal purchase arrangement in which the purchase of one coal brand necessitated the purchase of the other coal brand presents a risk to the buyer which is totally unnecessary and avoidable."</p> <p>Accordingly the two sentences may be admitted subject to that limitation: T79-39, Lines 12-26.</p>
9	First Conroy Report	EXP.020.159.0001	Paragraph 18.6	Inadmissible opinion as to the conduct of third parties (both the customers and producers)	<p>Pressed. Mr Conroy is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESSED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>		<p>1. Although it was not common ground that the plaintiffs' objections would rise or fall with the disposition of item 7, it seemed to me that they should have been.</p> <p>2. Accordingly, I dismiss the objections for the reasons given in relation to item 7.</p>
12	Second Conroy Report	EXP.020.251.0001	Paragraph 2.2(c) (first sentence)	Inadmissible opinion as to the state of mind of third parties.	<p>Pressed. Mr Conroy is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESSED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>		<p>1. Although it was not common ground that the plaintiffs' objections would rise or fall with the disposition of item 7, it seemed to me that they should have been.</p> <p>2. Accordingly, I dismiss the objections for the reasons given in relation to item 7.</p>
19	Second Conroy Report	EXP.020.251.0001	Paragraph 5.4 (third sentence)	Inadmissible opinion as to the state of mind of a third party.	<p>Pressed. Mr Conroy is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience (or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].</p> <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	<p>PRESSED</p> <p>(as to the "fallback argument" see the plaintiffs submissions, [49] to [56])</p>		<p>1. Although it was not common ground that the plaintiffs' objections would rise or fall with the disposition of item 7, it seemed to me that they should have been.</p> <p>2. Accordingly, I dismiss the objections for the reasons given in relation to item 7.</p>
Basis of knowledge not identified: Plaintiffs' Submissions, [35]-[36]; Defendants' Submissions, [42]-[44]								
4	First Conroy Report	EXP.020.159.0001	Section 12	Basis of knowledge of data not identified.		<p>NOT PRESSED</p> <p>(on the basis that the supplementary expert report of Mr Conroy dated 20 September 2019 is tendered))</p>		No ruling required
5	First Conroy Report	EXP.020.159.0001	Paragraph 15.8(d) (first sentence)	Basis of knowledge not identified.	<p>Pressed. The basis for the knowledge is set out in paragraph 15.8(d) and 15.8(e).</p> <p>Mr Conroy is entitled to give evidence concerning industry conditions, practices and attitudes: Submissions, [18]-[26].</p> <p>When giving expert factual evidence generalizing from accumulated knowledge and experience</p>	<p>PRESSED</p>		<p>1. I agree with the defendants' submission that in the context of this report, the basis for knowledge of the impugned sentence is that set out in paragraph 15.8(d) and 15.8(e).</p>

Item No. ⁹	Expert report	Document ID	Part of report objected to	Basis of objection	Defendant's Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
					(or opinion evidence based on that accumulated knowledge and experience), it is not necessary to identify and prove the particular basis of particular knowledge: Submissions, [32]-[36].			2. Accordingly, I dismiss the objection.
Consequential objections								
11	Second Conroy Report	EXP.020.251.0001	Paragraph 1.7	See the objection identified at item 3.	<p>See the response to item 3 above.</p> <p>Further, even if the objection in Item 3 is upheld, the exclusion of paragraph 1.7 is not logically consequential to such ruling. The relevance and admissibility of paragraph 1.7 does not depend exclusively upon the ruling on Item 3 of the objections.</p> <ul style="list-style-type: none"> Item 3 of the Plaintiffs objections relates to paragraph 9.6(a) of Conroy1 [EXP.020.159.0001], which states: "The use of coals with properties outside the design envelope may have breached the terms of equipment warranties" Paragraph 9.6(a) (to which Item 3 relates) is only material to the statement in the final sentence of paragraph 1.7 of Conroy2 [EXP.020.252.0001]: "...however, in my opinion, any such willingness is subject to the practical matters set out in paragraphs 9.6, 11.12 and 14.3(i) of my first report"; Even with respect to that limited statement in the final paragraph of 1.7 of Conroy2, paragraph 9.6(a) constitutes only a small part of the stated reasoning for the conclusion. Apart from paragraph 9.6(a), Mr Conroy identifies substantial additional reasoning to support his stated conclusion in relation to the "practical limits" of customer willingness to purchase coal below design specification: namely, the matters set out in 9.6(b)-(d); 11.12 and 14.3(i) of Conroy1 [EXP.020.159.0001]; Apart from the statement at the end of the final sentence, the Item 3 objection is immaterial to the balance of paragraph 1.7 of Crump2. 	NOT PRESSED		No ruling required
13	Second Conroy Report	EXP.020.251.0001	Paragraph 2.2(e) (first sentence)	See the objection identified at item 8.	<p>See the response to item 8 above.</p> <p>Further, even if the objection in Item 8 is upheld (relating to paragraph 15.8(i) of Conroy 1), the exclusion of paragraph 2.2(e) is not logically consequential to such ruling. The relevance and admissibility of paragraph 2.2(e) does not depend exclusively upon the ruling on Item 8 of the objections,</p> <ul style="list-style-type: none"> Objection Item 8 relates to paragraph 15.8(i) of Conroy1 [EXP.020.159.0001], which states: "No buyer would have entered into a coal purchase arrangement in which the purchase of one coal brand necessitated the purchase of the other coal brand, for either of the brands to be able to be successfully used". It comprises one paragraph in Conroy1, in which Mr Conroy identifies difficulties with blending; Paragraph 2.2(c) of Conroy2 is not stated to be based exclusively on paragraph 15.8(i); The reasons for the statement of opinion in paragraph 2.2(c) are explicitly stated in the body of the paragraph: namely, "It involves an increased level of complexity around stockpile management, scheduling of vessels to ensure the availability of coals for the blend, deployment of additional equipment for the reclaim of coals and the management of operational issues". This summarises matters addressed in his first report at section 9, 11 In any event, the statement in paragraph 2.2(c) is a statement of expert factual evidence, in respect of which there is no need to particularise and substantiate the basis for the accumulated knowledge and experience: see Defendants' Submissions, [32]-[36] <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	NOT PRESSED		No ruling required
16	Second Conroy Report	EXP.020.251.0001	Paragraph 2.4 (third sentence)	Reasoning by which the conclusion flows from facts not stated. See the objections identified at items 4 and 8.	<p>Pressed The basis for the opinion and the reasoning appears in paragraph 2.2 and in section 11 and paragraph 12.8 and 1.58(i) of the First Conroy Report.</p> <p>As to the consequential objection based on objections identified in Items 4 and 8:</p> <ul style="list-style-type: none"> Item 4 is no longer pressed by the Plaintiffs; Item 8 only relates to paragraph 15.8(i) of Conroy 1 (see item 13 above). The exclusion of paragraph 2.4 (third sentence) is not logically consequential to ruling on Item 8. The relevance and admissibility of paragraph 2.4 (third sentence) does not depend exclusively upon the ruling on Item 8 of the objections. Apart from paragraph 15.8(i), Mr Conroy expressly identifies in paragraph 2.4 substantial additional reasoning to support his conclusions. 	NOT PRESSED		No ruling required
17	Second Conroy Report	EXP.020.251.0001	Paragraph 2.5	See the objections identified at items 7, 8 and 19 to 22 and 24.	<p>See the responses to items 7, 8 and 19 to 22 and 24 above. Further:</p> <ul style="list-style-type: none"> Paragraph 2.5 relates to the technical question as to the technical merits of Monto Coal, allegedly identified in various ACIRL/ACTC/UST reports; Item 7, 8, 19 to 22 and 24 do not relate to that technical question <p>Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]</p>	NOT PRESSED		No ruling required
20	Second Conroy Report	EXP.020.251.0001	Paragraph 5.14 (first and second)	See the objections identified at items 7 and 8.	<p>See the responses to items 7 and 8 above. Further:</p> <ul style="list-style-type: none"> Paragraph 5.14 relates to the "relevance and reliability" of certain technical reports; 	NOT PRESSED		No ruling required

Item No.º	Expert report	Document ID	Part of report objected to	Basis of objection	Defendant's Response	Plaintiffs' position	Objections disposed of by this ruling (as agreed by the parties)	Final Ruling
			sentence)		<ul style="list-style-type: none"> Item 7, 8, do not relate to the subject matter of paragraph 5.14 Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]			
21	Second Conroy Report	EXP.020.251.0001	Paragraph 5.15 (final sentence)	See objection identified at item 19.	Limited to statement of assumption (assumption proved by Mr Crump). As to the statement "assumption proved by Mr Crump": <ul style="list-style-type: none"> the subject matter of the assumption is the rejection by Tokyo Electric of Wilkie coal; Mr Crump's evidence in relation to that matter is at Crump2 [EXP.020.253.0001], [4] Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	NOT PRESSED		No ruling required
22	Second Conroy Report	EXP.020.251.0001	Paragraph 5.21	See objection identified at item 3.	See the response to item 3 above. Further, even if the objection in Item 3 is upheld, the exclusion of paragraph 5.21 is not logically consequential to such ruling. The relevance and admissibility of paragraph 5.21 does not depend exclusively upon the ruling on Item 3 of the objection: <ul style="list-style-type: none"> Item 3 of the Plaintiffs objections relates to paragraph 9.6(a) of Conroy1 [EXP.020.159.0001], which states: "The use of coals with properties outside the design envelope may have breached the terms of equipment warranties" Apart from paragraph 9.6(a), Mr Conroy identifies substantial additional reasoning to support his stated conclusion in [5.21]: namely, the matters set out in sections 7, 8, 9 of Conroy1 [EXP.020.159.0001]. Evidence also admissible under the "fallback argument": see Submissions, [52]-[68]	NOT PRESSED		No ruling required
24	Second Conroy Report	EXP.020.251.0001	Paragraph 5.23	See objections identified at items <u>12, 13 and 17</u> .	See the responses to items 12, 13 and 17. Further, even if the objections to Items 12, 13 and 17 are upheld, the exclusion of paragraph 5.23 is not logically consequential to such ruling. The relevance and admissibility of paragraph 5.23 does not depend exclusively upon the ruling on those items. <ul style="list-style-type: none"> Objection Items 12, 13, and 17 relate (respectively) to paragraphs 2.2(c), 2.2(e) (first sentence) and 2.5 of Conroy2; Mr Conroy expressly states that his opinion in paragraph 5.23 is "as set out in section 2". Section 2 identifies substantial additional reasoning to support that conclusion, beyond the matters the subject of Objection Items 12, 13, and 17. 	NOT PRESSED		No ruling required