

**Commission of Inquiry into the Construction Works at and near the Hung Hom Station  
Extension under the Shatin to Central Link Project**

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**FIRST WITNESS STATEMENT OF JONATHAN KITCHING**

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I, Jonathan Kitching of 39/F Sun Hung Kai Centre, 30 Harbour Road, Hong Kong, say as follows:

1. I am employed by Leighton Contractors (Asia) Limited ("**Leighton**"), the main contractor for the Hung Hom Station Extension contract (Contract SCL 1112) (the "**Project**") under the Shatin-Central rail link project. The client for the Project is MTR Corporation Limited ("**MTRCL**"). Since September 2017, I have served as Leighton's Project Director for the Project.
2. I hold a degree in civil engineering. I have over 29 years of professional experience as an engineer in the United Kingdom and around Asia.
3. Unless otherwise stated, the facts stated herein are within my personal knowledge and are true. Where the facts and matters stated herein are not within my own knowledge, they are based on the stated sources and are true to the best of my knowledge, information and belief.

**Rectification of the stitch joints at the NAT and the joint at the Shunt Neck**

4. In this statement, I refer to the three stitch joints in the NAT as follows:
  - (a) the stitch joint at the EWL level at the interface of Contract 1111 and Contract 1112 as the "**EWL Stitch Joint**";
  - (b) the stitch joint at the NSL level at the interface of Contract 1111 and Contract 1112 as the "**NSL Stitch Joint 1111/1112**"; and
  - (c) the stitch joint at the NSL level between bay 5 and bays 6/7 of the tunnel structure within Contract 1112 as the "**NSL Stitch Joint 1112/1112**",(together, the "**NAT Stitch Joints**").

5. In late January 2018, I assigned Mr. William Holden to investigate concrete cracking and water seepage at NSL Stitch Joint 1111/1112.
6. In early February 2018, the existing crack became noticeably wider along the perimeter of the NSL Stitch Joint 1111/1112. William Holden reported the crack to me and recommended that we break open a few areas of the concrete along the NSL Stitch Joint 1111/1112 in order to identify the cause of the cracking and water leakage. I agreed and left William to obtain approval from MTRCL and proceed with the investigation.
7. Subsequently, it was agreed with MTRCL that further proactive investigations should be carried out at the EWL Stitch Joint and the NSL Stitch Joint 1112/1112.
8. The details of William's investigations are set out in his first witness statement. William kept me informed of the investigations and obtained my approval for each step, including the submissions for rectification made to MTRCL for their approval and the subsequent rectification works performed by Leighton.

#### **Discussions with Responsible Staff**

9. When I learned of the defects at the NAT Stitch Joints and the joint at the SNJ, I personally sought out and spoke to Leighton's engineer who supervised for these works, Mr. Henry Lai. During that conversation, I asked Henry why the rebar was not properly connected to the couplers at the NAT Stitch Joints and the SNJ and pressed him to explain what happened. I cannot recall the exact words of the conversation but the gist of Henry's response was that he had no idea why the defects had occurred and did not remember anything of note about the NAT Stitch Joints and the SNJ. I also recall that Henry was upset when he heard about the defects.
10. Around the same time, I spoke to Mr. Joe Tam, who was the Construction Manager for the NAT at the time that the NAT Stitch Joints and the SNJ were constructed. Joe was Henry's supervisor at that time. I asked Joe the same type of questions that I asked Henry. I cannot recall the exact words of the conversation but the gist of Joe's response was that he was not personally involved in supervising the works at the NAT Stitch Joints and the SNJ and he did not know anything about the issues.

## Correspondence with Wing & Kwong

11. While the investigation into the defects was underway, I instructed Leighton's commercial team on the Project to write to all subcontractors that were involved in the NAT stitch joints and SNJ works to put them on notice about the defect. This included Wing & Kwong Steel Engineering Co. Ltd ("**Wing & Kwong**") who were responsible for the reinforcement installation. This is standard practice whenever a defect is identified on a Leighton project. This letter was issued to Wing & Kwong on or around 12 February 2018 [EE271].
12. Around the same time, we conducted an investigation to ascertain if there were any similar areas/sections of work which could have had similar issues. We concluded there were none as these are the only stitch joint locations on the Project.
13. On or around 23 February 2018, Leighton sent a backcharge notice to Wing & Kwong [CC3863] in order to provide Wing & Kwong with an opportunity to rectify the NAT Stitch Joints and SNJ. This notice was also sent to ensure that Leighton could bring a claim to recover the costs of the rectification if Wing & Kwong did not perform the required work. This type of notice is in a standard form.
14. On or around 23 and 26 February 2018, Leighton received letters from Wing & Kwong in response to Leighton's letter and backcharge notice [EE277 and EE290]. These letters essentially alleged that Wing & Kwong were not responsible for the issues at the NAT Stitch Joints and the SNJ because they acted on the instruction of one of Leighton's engineers (Mr. Henry Lai).
15. After receiving those letters, I spoke to Henry Lai again. I do not recall the exact words of the conversation but I remember that Henry gave me a similar response as in our previous discussion.
16. I formed the view at that time that Wing & Kwong's allegations were not credible. There was nothing in the subcontractors instructions issued to Wing & Kwong for the NAT Stitch Joints or the SNJ (exhibited and marked "**JK-1**"), or any other contemporaneous correspondence or record, which referred to a mismatch between the couplers and the rebar or indicated that there was any issue with the rebar fixing. It did not make sense to me that Wing & Kwong would have acted on the instructions of one



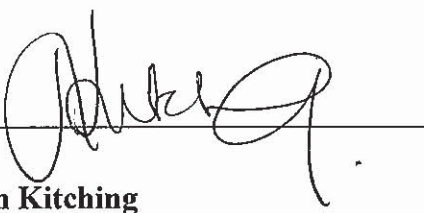
of Leighton's junior engineers to perform defective work. If they did so, I would also have expected them to keep some form of documentary record or other proof. They did not produce or refer to any such record or other proof. Similarly, our site team could not find any documents at that time (nor have any surfaced to date) which supported Wing & Kwong's allegations. In any event, the allegations did not excuse the poor workmanship of Wing & Kwong's workers at the NAT Stitch Joints or the SNJ. Wing & Kwong were contractually obliged to properly install the rebar and connect them to couplers in the NAT Stitch Joints and the SNJ. It seemed obvious to me that they did not satisfy that obligation and were responsible for the rectification of the defects under the subcontract agreement.

17. On or around 26 February 2018, Leighton sent a response to Wing & Kwong's letters [EE293]. This was drafted by Leighton's commercial team on the Project. At that time, we did not address Wing & Kwong's allegation that they were acting on instructions because it was irrelevant and it would not have been productive to debate this matter with them. We treated this matter like any other defect issue with a subcontractor by sending off a short response to maintain Leighton's position, withhold any further payment to Wing & Kwong and by engaging an alternative subcontractor to perform the defect rectification work (all of which Leighton was entitled to do in the circumstances and under the sub-contract agreement).
18. Leighton exchanged further letters with Wing & Kwong in relation to the defect over the following months. The commercial team drafted the letters sent by Leighton. In summary, these letters maintained the same position that was adopted in Leighton's previous correspondence with Wing & Kwong.
19. I was conscious that Leighton's staff on the Project were busy dealing with other important work (including the rectification of the NAT Stitch Joints and SNJ defects). I did not want to distract them from such work by focusing on a potential commercial dispute with Wing & Kwong. For this reason and given that the defects at the NAT Stitch Joints or SNJ would be rectified, I did not carry out any further investigation into the allegations made by Wing & Kwong.
20. I did not consider at the time that the correspondence exchanged with Wing & Kwong would be of any benefit given that the defects in the NAT Stitch Joints were in the

process of being rectified and the defects in the SNJ would be rectified in due course. I also recognized that there was little chance of recovering much of the repair costs from Wing & Kwong as we had limited monies withheld from them. I note that Mr. Cheung Yick Ming of Wing & Kwong has emphasised that Leighton did not deny or dispute the allegations made in Wing & Kwong's letter [EE83, para.73]. He seems to be suggesting that this supports or confirms the truth of the allegations. Any such suggestion is incorrect. For the reasons explained above, it would be unfair to draw any conclusions, or make any inferences, based on the fact that Leighton's correspondence with Wing & Kwong did not address the unsupported allegations made by Wing & Kwong.

21. It would also appear from the statements of Wing & Kwong's witnesses that they were employed by a company called Loyal Ease Engineering Limited. Wing & Kwong are required under their subcontract to obtain approval prior to subcontracting any of the works. The provision of labour is considered to be subcontracting. The engagement of Loyal Ease Engineering Limited was not raised with Leighton and Loyal Ease Engineering Limited is not an approved sub-subcontractor. As a result, Leighton has not had the opportunity to evaluate this company or its workers for their suitability to perform the work for which Wing & Kwong was engaged.

Dated the 23<sup>rd</sup> day of May 2019.

Signed:   
**Jonathan Kitching**