

PILOTAGE LAW: JACK OF ALL TRADES, MASTER OF NONE

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I. INTRODUCTION

“A collision at sea can ruin your entire day.”² Famously attributed to the ancient Greek historian Thucydides,³ this maxim could not be more fitting for river port pilots. Imagine the scenario of a compulsory river port pilot boarding a vessel to serve in its navigation from a general anchorage⁴ area in the Mississippi River out to sea. What initially seems like a standard job assignment would soon result in a collision with the potential to ruin not only the pilot’s entire day, but also the trajectory of his career. Upon boarding the vessel, the pilot advises its captain to lift the port⁵ anchor in preparation to leave its current station. Because the starboard⁶ anchor is still firm in the river bottom, the vessel’s bow drifted out of the anchorage area into the river’s navigation channel.

The pilot – against the advice of certain rules promulgated by the Coast Guard⁷ – takes phone calls during the vessel’s weigh anchoring⁸ process and ignores concerns of oncoming traffic voiced by the master and crew of the vessel. The pilot evidently had not heeded Thucydides’ prophetic warning; after all, it was merely a routine job. It is far from being a safe and sound office job where he might be shielded from any looming danger by a cozy cubicle, but routine, nonetheless. He also finds security in the fact that if anything were to happen on his watch, he would be protected from liability because of Louisiana’s law that limits pilots’ liability to gross negligence accompanied by a high burden of proof – clear and convincing evidence.⁹ This statute was enacted to encourage pilots to maintain the flow of commerce down the river despite the dangers of challenging navigation or extreme circumstances, rather than keeping the vessel anchored and halting commerce until the relevant danger or circumstance passed.¹⁰

² Rick Spilman, “A Collision at Sea...” *the Most Famous Thing Thucydides Never Said*, THE OLD SALT BLOG (July 8, 2010), <https://www.oldsaltblog.com/2010/07/a-collision-at-sea-the-most-famous-thing-thucydides-never-said/>. Although attributed to him, Thucydides never actually said this quote. It was coined by a Navy captain who told his peers it was a quote from Volume IX of the *Peloponnesian War*; however, Thucydides only wrote up to Volume VIII.

³ *Id.*

⁴ *General anchorage*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/anchorage#:~:text=%3A%20a%20place%20where%20vessels%20anchor,the%20condition%20of%20being%20anchored> (last visited Feb. 24, 2023) (a place where vessels anchor: a place suitable for anchoring).

⁵ *Why do ships use “port” and “starboard” instead of “left” and “right?”*, NATIONAL OCEAN SERVICE, <https://oceanservice.noaa.gov/facts/port-starboard.html#:~:text=When%20looking%20forward%2C%20toward%20the,left%20and%20right%20sides%2C%20respectively> (last visited Mar. 15, 2023).

⁶ *Id.*

⁷ *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea*, No. 19-10927, 2022 U.S. Dist. LEXIS 112165, at *4 (E.D. La. Apr. 1, 2022).

⁸ *Weigh anchoring*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/weigh%20anchor> (last visited Feb. 24, 2023) (to lift the anchor).

⁹ LA. REV. STAT. § 34:1137 (2022).

¹⁰ Brief for the Board of River Port Pilot Comm’rs for the Port of New Orleans as Amicus Curiae, *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgare* (No. 22-30261).

The clear skies on this fateful morning allow the vessel's crew, master, and pilot to take note of a tugboat approaching about two miles down the river. This should warrant the pilot to act or proceed with extra caution, but he has failed to announce to oncoming traffic of the vessel's movement as it shifted from its anchorage area to the navigation channel of the river. As a result of this lack of communication and distracted behavior, the tugboat proceeds on its original navigational path despite the obstruction. The tugboat sounds warnings to the shifting vessel, but to no avail. The two vessels collide, and days are certainly ruined.



Damage was incurred, lawsuits were filed, and questions of liability were debated. Despite years of jurisprudence and statutory law suggesting otherwise, the trial judge concluded that General Maritime Law would govern the claims brought against the pilot rather than Louisiana law.¹¹ Thus, a showing of the pilot's gross negligence need only be proven by a preponderance of the evidence¹² – the standard required by General Maritime Law – rather than clear and convincing evidence, the standard of proof required by the state of Louisiana.¹³ In applying General Maritime Law rather than state law, the trial court altered years of precedent.

For all similar matters predating this decision, Louisiana courts have dutifully followed 46 U.S.C. § 8501(a), which states, "...pilots in the bays, rivers, harbors, and ports of the United States shall be regulated in conformity with the laws of the States."¹⁴ In accordance with this delegation

¹¹ *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea*, No. 19-10927 "G" (2), 2022 U.S. Dist. LEXIS 111747, at *7, *8 (E.D. La. Apr. 1, 2022).

¹² *Preponderance of the evidence*, CORNELL LAW SCHOOL, https://www.law.cornell.edu/wex/preponderance_of_the_evidence (last visited Mar. 17, 2023).

¹³ *Marquette Transp. Co. Gulf-Inland*, 2022 U.S. Dist. LEXIS 112165, at *17.

¹⁴ 46 U.S.C. § 8501(a).

of authority, Louisiana enacted laws pertaining to pilot regulation, including a statute to limit pilots' liability to gross negligence.¹⁵ The statute provides as follows:

Any party seeking to hold a pilot acting under his state commission issued in accordance with this Chapter liable for damages or loss occasioned by the pilot's errors, omissions, fault, or neglect shall be required to prove by clear and convincing evidence that the damages arose from the pilot's gross negligence or willful misconduct.¹⁶

The aforementioned scenario is not one of fiction. In fact, it elucidates a general overview of *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgare* (hereinafter *Marquette*), a recent case that has prompted significant and implicative legal questions involving the relationship between federal General Maritime Law and state law.¹⁷ One question, however, arguably prevails among all others: Is the Louisiana statute governing pilots' liability the applicable controlling law or not?

II. WHAT IS PILOTAGE?

In an abstract sense, pilotage is many things. It is an anomaly, a double-edged sword, a product of both state and federal law¹⁸ – all of which will become clear by the end of this discussion. Concretely, though, a pilot is a person with “specialized knowledge of local conditions and navigational hazards who is generally taken on board a vessel at a specific place for the purpose of navigating or guiding a ship through a particular channel, river, or other enclosed waters to or from a port.”¹⁹ Additionally, pilots are classified as either voluntary or compulsory.²⁰ The latter raises a more complex issue and is the heart of the following discussion.

The classification of compulsory pilotage occurs when a vessel is required by law to take a pilot on board to guide the vessel over “certain well-defined pilotage grounds.”²¹ This particular situation commonly takes place in Louisiana when foreign-flag vessels travel on the Mississippi River.²² Just as an individual might benefit from a tour guide while visiting an unfamiliar country, foreign vessels are required to take on a compulsory pilot in Louisiana to benefit from the pilot's advanced knowledge of the state's waterways and their intricacies.²³ Failing to obtain a pilot when compelled by law to do so could result in a fee or even criminal penalties depending on the pertinent statute.²⁴ Vessels (their owners and/or operators) are not the only ones responsible for obtaining a pilot. Under Louisiana law, a compulsory pilot that “refuses or neglects” his duty to board a certain vessel when called upon is subject to a fine of \$300 (per refusal) as well as a year-

¹⁵ LA. REV. STAT. § 34:1137 (2022).

¹⁶ *Id.*

¹⁷ *Marquette Transp. Co. Gulf-Inland*, 2022 U.S. Dist. LEXIS 111747, at *7, *8.

¹⁸ *Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 93 (1955).

¹⁹ THOMAS J. SCHOENBAUM, *ADMIRALTY AND MARITIME LAW* 741 (5th ed. 2012).

²⁰ *Id.*

²¹ ALEX L. PARKS & EDWARD V. CATTELL, JR., *THE LAW OF TUG, TOW, AND PILOTAGE* 1018 (3rd ed. 1994).

²² *Compulsory Pilots*, CRESCENT PILOTS, <https://www.crescentpilots.com/compulsory-pilotage> (last visited Mar. 7, 2023).

²³ *Id.*

²⁴ *Id.*

long suspension.²⁵ Failure to pay the fine could result in imprisonment for up to three months.²⁶ These precautions are in place partially to reinforce the necessity of pilots, especially when it is in the state's best interest to compel certain vessels to have a navigational expert on board.

Compulsory pilotage is multifaceted; its degree of complexity varies with each issue that it concerns. Generally, compulsory pilotage is quite simple. The primary objective of compulsory pilotage is to ensure safe and efficient navigation.²⁷ In Louisiana, this career was especially necessary along the Mississippi River to optimize the flow of commerce.²⁸ Compulsory pilotage further seeks to achieve a twofold risk management system: it shields vessels from hazards presented by the bodies of water they travel on as well as its ports, while simultaneously shielding the ports and bodies of water (and surrounding environment) from the vessel.²⁹ Further, a pilot's control over a vessel's navigation precludes a shipowner's profit-motivated decisions that could potentially overrule proper safety measures, "whereas Pilots by law are insulated from the economic pressures of the ship. If a state pilot deems it is unsafe to move cargo, the ship doesn't move."³⁰ The contributions made by pilots to preserve what Louisiana holds dear – our waterborne economy, our diverse ecosystem, and our mariners – are some of the many reasons why the independent regulation of the pilotage system is in the state's best interest.

Compulsory pilots – more specifically, state-commissioned river port pilots – are independent contractors; as such, these pilots do not receive compensation from the state.³¹ Rather, each foreign-flag vessel charged with the duty of taking on a pilot will pay for the pilot's services.³² The role of an independent contractor must be considered when questions arise regarding pilots' liability. Because pilots are hired by the vessels that require their service, and since "free choice is absent [...] neither the master nor the owner of the vessel is liable *in personam* for the compulsory pilot's negligence."³³

Not just anyone can become a compulsory river port pilot.³⁴ Only after eight to twelve years of preparation³⁵ and an appointment by the governor may an individual be considered a state-commissioned pilot permitted to aid foreign-flag vessels in navigation.³⁶ This distinct characterization is important in applying pilotage laws and jurisprudence because different laws

²⁵ LA. REV. STAT. § 34:958 (2022).

²⁶ *Id.*

²⁷ *Compulsory Pilots*, *supra* note 22.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Compulsory Pilots*, *supra* note 22.

³² *See id.*

³³ PARKS & CATTELL, *supra* note 21, at 1023. The term "*in personam*" refers to the specific person the claim is against, as opposed *in rem*, which refers to a claim against the vessel.

³⁴ Brief for Crescent River Port Pilots' Ass'n, Inc. as Amicus Curiae Supporting Third-Party Defendant - Appellee/Cross-Appellant Robert Johnson, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgare (No. 22-30261).

³⁵ *Crescent Pilots*, CRESCENT PILOTS, <https://www.crescentpilots.com/crescent-pilots> (last visited Mar. 20, 2023).

³⁶ Brief for Crescent River Port Pilots' Ass'n, *supra* note 34.

will apply to different classifications of pilots.³⁷ This distinction introduces a higher degree of complexity, especially when it comes to deciding which body of law governs, as illustrated in *Marquette*.

A. The Evolution of Pilotage Law

To fully understand the legal position that pilotage regulations hold today, it is imperative to review their origins. Pilotage has existed for as long as mariners have taken to sea.³⁸ The idea of a captain's obligation to take a pilot on board or else bear the responsibility for possible damages was introduced by Roman Law.³⁹ While safe navigation through pilotage has been a priority among mariners since ancient times – whether it was for the safety of a vessel's crew or safety of the cargo on board – the actual organization of pilots began in 1514 with the chartering of Trinity House by King Henry VIII.⁴⁰ The regulation of pilots became just as important as the demand and need for the profession because of the unsafe practices that took place as the industry developed.⁴¹ Originally, pilots would cause traffic and collisions in an effort to reach incoming vessels that required navigational guidance in a “first come, first serve” fashion.⁴² This practice caused unnecessary dangers among pilots, whose very purpose was to eliminate such damages. To resolve this problem, the regulation of pilotage was proposed and subsequently initiated.

Twenty-seven years later, the earliest reported English case against a pilot for negligence transpired.⁴³ In *Re Rumney and Wood*, two pilots were found negligent for the collision of their vessels and faced severe punishments: each pilot was forbidden from piloting and imprisoned for a year.⁴⁴ Oddly enough, the degree of punishment displayed in *Re Rumney and Wood* foreshadows some inquiries that are still discussed today, such as the high standard pilots are held to, their wages, and the overall anomaly that is pilotage law today.

Colonial America eventually followed suit and determined that pilotage laws and regulations were necessary.⁴⁵ In fact, some of the earliest legislation in Colonial America concerned pilotage.⁴⁶ The Act of February 8, 1766, the first piece of pilotage legislation, was enacted by the Pennsylvania colonial legislature and provided a board of wardens for the Port of Philadelphia to hold licensed pilots accountable for their duties.⁴⁷ Rather than requiring the use of a pilot, the act imposed a penalty for those who refused or failed to take a pilot on board making the vessel liable for one half of the original pilotage fee.⁴⁸ The penalty is known as half-pilotage, which is defined as the “penal compensation required by statute when pilotage service tendered by

³⁷ *Id.*

³⁸ David J. Bederman, *Compulsory Pilotage, Public Policy, and the Early Private International Law of Torts*, 64 TUL. L. REV. 1033, *1041 (1990).

³⁹ *Ex parte McNeil*, 80 U.S. 236 (1872).

⁴⁰ Bederman, *supra* note 38.

⁴¹ *Compulsory Pilots*, *supra* note 22.

⁴² *Id.*

⁴³ PARKS & CATTELL, *supra* note 21, at 982.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ PARKS & CATTELL, *supra* note 21, at 982.

the pilot is rejected by the master of the vessel.”⁴⁹ The pilotage fee imposed on a vessel that requires a pilot was – and still is – a key tactic in enforcing the “compelling” aspect of compulsory pilotage.

The payment of half or full pilotage is the standard sanction for noncompliance with a state statute. But what makes the statute compulsory? Apparently, it is insufficient for the statute to simply require the use of a pilot with half or full pilotage as a consequence of defiance. The United States Coast Guard has taken the position that a state statute “is not compulsory unless a civil penalty in addition to pilotage or in excess thereof is levied upon the vessel or its owner.”⁵⁰ Following this logic, only then would the foreign vessel owner have an adequate financial disincentive for refusing pilotage services,⁵¹ thus establishing a sufficient system for requiring compulsory pilots. The Coast Guard is the regulating authority of all federal pilotage, so its position on what makes a statute compulsory is not necessarily the same position held by the states.⁵²

One aspect of pilotage law that has not waived throughout its evolution is the fact that Congress has always delegated to the states the great authority to address, legislate, and control pilotage law.⁵³ The Commerce Clause of the Constitution grants Congress this authority to delegate pilotage regulation.⁵⁴ Pursuant to this power, Louisiana has constructed an entire chapter’s worth of state statutes dedicated to pilotage.⁵⁵ This chapter includes the law governing a pilot’s liability as discussed previously, as well as Louisiana Revised Statute § 34:953 which outlines the vessels that are required to take on a pilot and declares the vessel liable to the pilot in the event that the pilot’s services are refused.⁵⁶ Given the longstanding deference that Congress and the Supreme Court have shown to the states in determining pilotage laws, there has not been much confusion in the application of such laws throughout the years – until now.

B. Why Do We Care?

So, why should we care about the standard of proof used to determine a pilot’s gross negligence? First and foremost, any decision that is contradictory to Louisiana jurisprudence⁵⁷ should draw the attention of all state citizens. Because pilots belong to a sort of hierarchy within the maritime industry and are some of the most highly compensated mariners in the state,⁵⁸ altering the laws that apply to them is very important. The absence of pilots would undoubtedly wreak havoc upon river traffic and navigation, causing collisions or delays with the potential to disrupt

⁴⁹ *Id.* at 985.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² SCHOENBAUM, *supra* note 19, at 748.

⁵³ 46 U.S.C. § 8501(a).

⁵⁴ Paul G. Kirchner & Clayton L. Diamond, *Unique Institutions, Indispensable Cogs, and Hoary Figures: Understanding Pilot Regulation in the United States*, U.S.F. MAR. LAW JOURNAL, 168, 171 (2010).

⁵⁵ Avery Cootes, *Riverboat Piloting in Southeast Louisiana: A Legal Monopoly*, 11 LOY. MAR. L.J. 191, 196 (2012).

⁵⁶ LA. REV. STAT. § 34:953 (2017).

⁵⁷ Brief for Crescent River Port Pilots’ Ass’n, *supra* note 34.

⁵⁸ Michael J. D’Albor, *Organized Crime at the Highest Level – A True License to Steal: The Untouchable Mississippi River Pilots of Louisiana*, 50 S.U. L. REV. 100 (2023).

the entire economic life of a state.⁵⁹ With this risk in mind among many others, courts have placed an importance on the laws and regulations relating to pilotage,⁶⁰ as should we.

The *Marquette* decision not only triggers a variety of legal questions, it also prompts the public policy concerns that accompany it. Pilots are exposed to civil liability and even criminal prosecution each time they board a vessel.⁶¹ The smallest mistake can incur mountains of damage, potential loss of life, personal financial loss,⁶² and/or marine pollution.⁶³ Further, the strong possibility for civil and criminal implications “serve as a hindrance to governmental efforts to attract and maintain sufficient numbers of qualified pilots, thereby threatening a government’s ability to maintain an effective compulsory pilotage system.”⁶⁴ Some scholars are of the opinion that the difficulty in acquiring and retaining qualified pilots plays a direct role in a pilot’s wages, which is exceptionally high, exceeding \$700,000.⁶⁵

The strong possibility for civil and/or criminal liability is harsh yet expected. Louisiana pilots who know the Mississippi River like the back of their hands are quite literally raised to become experts in this specific field.⁶⁶ The responsibility given to pilots mirrors the dangers they face each day on the Mississippi River, one of the most difficult rivers to navigate in the Western Hemisphere.⁶⁷ For reference, the Mississippi River could fill the Louisiana Superdome in as little as ninety seconds due to its fast and forceful current.⁶⁸ With great power comes great responsibility. The same is true for pilots but can be expanded: with great compensation, knowledge, and expertise comes great physical, emotional, and legal risk. For this reason, each decision that may alter or solidify the regulation of pilotage must be critiqued and analyzed carefully, considering what is at stake.

Compulsory pilotage is especially important as a matter of public policy because it distributes risk and reward, and it serves as a liability-shifting device.⁶⁹ Many states acknowledge that pilots’ limitation of liability affects public interest. For example, Oregon’s declaration of legislative intent provides that “...pilots are necessary to such stimulation and preservation of maritime commerce and are deemed to be in the public interest.”⁷⁰ The idea of pilotage distributing risk and reward may be best imagined as a pendulum swinging back and forth; however, the force of gravity is not what keeps this particular pendulum in motion. The higher a pendulum is lifted on one side, the higher it will swing on the other. Similarly, the higher the risk for pilots, the higher their reward will be. Following this logic, Louisiana’s “reward” can be compared to the protection

⁵⁹ Bederman, *supra* note 38, at *1042.

⁶⁰ *Id.*

⁶¹ Paul G. Kirchner, *Perils of Piloting: Civil Liability and Criminal Prosecution*, 12 BENEDICT’S MAR. BULL., *91 (2014).

⁶² *Id.*

⁶³ See Brief for Board of River Port Pilot Comm’rs for the Port of New Orleans, *supra* note 10.

⁶⁴ Kirchner, *supra* note 61.

⁶⁵ D’Albor, *supra* note 58, at 100.

⁶⁶ Cootes, *supra* note 55, at *192.

⁶⁷ *Weather Conditions*, CRESCENT PILOTS, <https://www.crescentpilots.com/weather-conditions> (last visited Mar. 20, 2023).

⁶⁸ *Id.*

⁶⁹ Bederman, *supra* note 38, at *1038.

⁷⁰ Kirchner & Diamond, *supra* note 54, at 193.

provided by the statute that requires a pilot's gross negligence to be proved by clear and convincing evidence.⁷¹ The risk warranting this reward not only includes the personal risk that pilots face, but it also includes the risk that Louisiana as well as mariners would face in the absence of pilotage.

III. Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgare

A. Facts

Although the facts of this case were briefly outlined in hypothetical form within the Introduction, there is much more to delve into. The lawsuit arose from a collision between the plaintiff's vessel, the KIEFFER BAILEY (hereinafter BAILEY), and the defendant's vessel, the STRANDJA.⁷² Plaintiff Marquette Transportation alleged in its complaint that as the BAILEY traveled down the Mississippi River near Chalmette, Louisiana, the STRANDJA intercepted its navigational path which resulted in the collision of the two vessels.

The STRANDJA, owned by defendant Balkan Navigation and operated by defendant Navigation Maritime Bulgare, allegedly "swung out of her anchorage" while under the advisement of the compulsory pilot on board and third-party defendant in this case, Pilot Robert Johnson.⁷³ The plaintiff sought damages against Defendants, to which Balkan Navigation responded and asserted a counterclaim.⁷⁴ Marquette answered Balkan's counterclaim and additionally filed a third-party complaint against Pilot Johnson concerning the pilot's negligence.⁷⁵ The issuance of Marquette's third-party complaint is represented by the black arrow in the diagram pictured below.

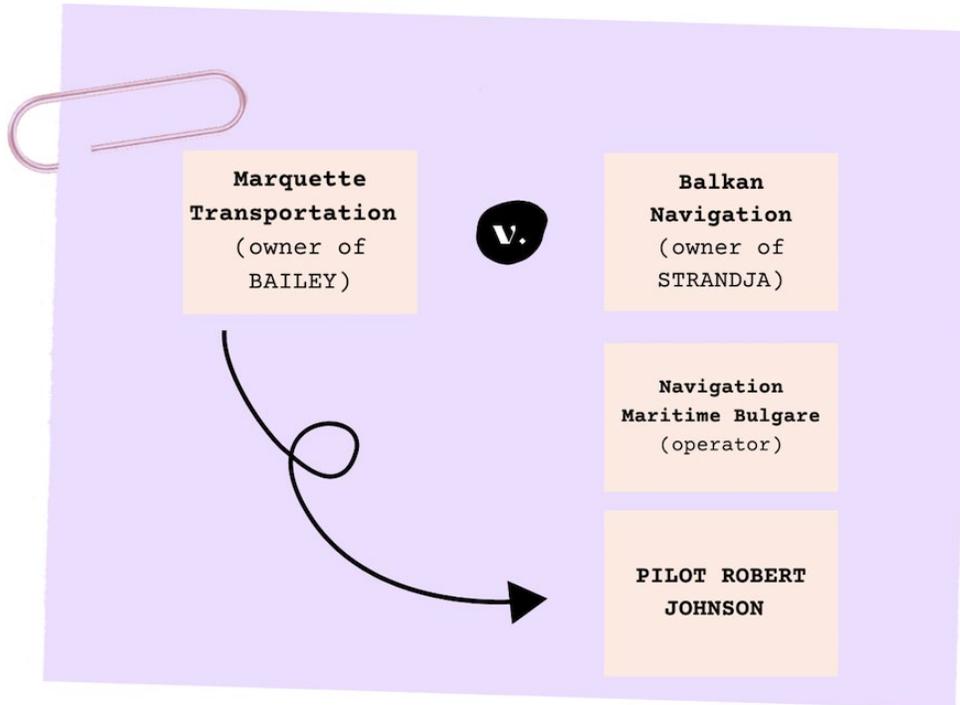
⁷¹ LA. REV. STAT. § 34:1137 (2022).

⁷² Order at 1, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*



B. Legal Issues

This controversy raised several issues of fact as well as law. However, there are two issues that Judge Nannette Jolivette Brown of the United States District Court of the Eastern District of Louisiana addressed on March 31, 2022,⁷⁶ which inspired this topic of discussion. The trial court assessed the issues based on the parties' pre-trial memoranda in order to prepare the proper jury instructions for trial.⁷⁷ The first contested issue of law was whether Louisiana Revised Statute § 34:1137⁷⁸ required the plaintiff to prove by clear and convincing evidence that its damage was caused by Pilot Johnson's gross negligence or willful misconduct.⁷⁹ This issue of law required an inquiry into which law applies: General Maritime Law, or Louisiana law.⁸⁰ The second issue was whether Pilot Johnson's negligence can be imputed to another party.⁸¹

Regarding the first issue, the court resolved an irregularity – or created an irregularity, depending on how you look at it – in the conflicting standards of proof required by state law and federal General Maritime Law.⁸² Given that the third-party complaint against Pilot Johnson was brought under federal admiralty jurisdiction, Judge Brown explained that substantive maritime law

⁷⁶ *Id.*

⁷⁷ Order at 1, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁷⁸ LA. REV. STAT. § 34:1137 (2022).

⁷⁹ Order at 2, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

applies which requires that negligence be proven by a preponderance of the evidence.⁸³ On the contrary, Louisiana's statute requires a pilot's gross negligence to be proven by clear and convincing evidence – a much higher standard of proof.⁸⁴ In her reasoning, Judge Brown opined that a court may apply state law as long as it does not conflict with the fundamental principles of federal maritime law.⁸⁵ Considering that the Louisiana statute is not exactly synonymous with General Maritime Law given its higher evidentiary standard, the trial judge ordered for the preponderance of the evidence standard to apply in its place.⁸⁶

The trial court cited to *Pope & Talbot, Inc. v. Hawk*⁸⁷ in support of its contention that federal courts may apply state law as long as it does not conflict with federal maritime law.⁸⁸ This case essentially holds that while states may occasionally supplement federal maritime standards, a state cannot deprive a person of substantive admiralty rights as defined in certain acts of Congress.⁸⁹ In citing this case, the court was not denying that states such as Louisiana have the right to regulate their own pilotage laws, but rather it alluded to the fact that states are more limited in this regulation than how courts have previously interpreted a state's right.

In her pre-trial order, Judge Brown addressed both parties' positions on the standard of proof to be applied at trial in considering Pilot Johnson's gross negligence.⁹⁰ In ruling on these issues, Judge Brown hinged her decision on the fact that the plaintiff's third-party complaint against Pilot Johnson is brought under the court's admiralty jurisdiction.⁹¹ Thus, "given that federal courts sitting in admiralty are bound to apply admiralty law, the preponderance of the evidence standard governs the claim against Johnson."⁹² Parallel to this reasoning, Marquette's argument emphasized the necessity of national uniformity.⁹³

The second issue in the judge's order considered the parties' negligence further.⁹⁴ General Maritime Law requires joint tortfeasors to be held jointly and severally liable for damages sustained by the claimant.⁹⁵ Accordingly, the plaintiff argued that Defendant Balkan (owner of STRANDJA) was jointly and severally liable for Pilot Johnson's negligence.⁹⁶ However, there is

⁸³ *Id.*

⁸⁴ LA. REV. STAT. § 34:1137 (2022).

⁸⁵ Order at 2, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁸⁶ *Id.* at 3.

⁸⁷ 346 U.S. 406, 409-10 (1953).

⁸⁸ Order at 2, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Memorandum of Law on Contested Issues of Law at 8, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 2:19-10927 (E.D. La. Feb. 1, 2022), ECF No. 176.

⁹⁴ Order at 3, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

⁹⁵ *Id.*

⁹⁶ *Id.*

a unique exception for pilots who board a vessel under compulsion of law.⁹⁷ Under the compulsory pilotage defense, the vessel owner will not be held liable *in personam* if the collision is solely due to the fault of the compulsory pilot.⁹⁸ Instead, the vessel itself is personified and held liable *in rem* so that claimants are not left completely without relief.⁹⁹ However, damages are limited to the value of the vessel post-collision.¹⁰⁰ Because Pilot Johnson was a compulsory pilot on the STRANDJA, his negligence can be imputed only to the defendants' vessel *in rem*.¹⁰¹ Here, the plaintiff did not bring a claim against the defendants' vessel *in rem*.¹⁰² Thus, Pilot Johnson's liability could not be imputed to the defendant as a result of Balkan being named *in personam* only.¹⁰³

The policy rationale behind the compulsory pilotage defense stems from the longstanding recognition that “the remedy of the damaged vessel, if confined to the culpable pilot, would frequently be a mere delusion. He would often be unable to respond by payment—especially if the amount recovered were large.”¹⁰⁴ Additionally, this rule tends to favor equity and fairness. Because shipowners are not able to choose which pilot will be assisting the vessel in navigation, it would be inequitable to hold the vessel owner accountable for the actions of a person they are being forced by law to take on board.¹⁰⁵

Ultimately, the trial court ruled in favor of Marquette and against the defendants as well as Pilot Johnson in the amount of \$114,000 in damages.¹⁰⁶ The jury's verdict found that Marquette was not negligent, Balkan was negligent, and Pilot Johnson was grossly negligent (proven by a preponderance of the evidence).¹⁰⁷ The jury also found Balkan and Pilot Johnson were both fifty percent at fault for the collision.¹⁰⁸ Balkan subsequently filed its notice of appeal, and Pilot Johnson filed his notice of cross-appeal thereafter.¹⁰⁹

C. Analysis

On appeal, Marquette relied predominantly on preemption to sustain its position that the evidentiary standard upheld in General Maritime Law applies to Pilot Johnson, a state-licensed compulsory pilot. However, Congress has seemingly anticipated the argument of preemption by carving out an exception to the states' regulatory powers. In other words, “Congress has preempted state regulation only with respect to seagoing vessels in the coastwise trade and Great Lakes

⁹⁷ SCHOENBAUM, *supra* note 19, at 751.

⁹⁸ Bederman, *supra* note 38, at *1053.

⁹⁹ Order at 3-4, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

¹⁰⁰ *Id.*

¹⁰¹ Order at 4, Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ SCHOENBAUM, *supra* note 19, at 749 (quoting *The China*, 74 U.S. 53 (1868)).

¹⁰⁵ *See* Bederman, *supra* note 38, at *1053.

¹⁰⁶ Brief for Crescent River Port Pilots' Ass'n, *supra* note 34.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

vessels.”¹¹⁰ This is a clear expression of Congressional intent; and under the statutory interpretation of the rule “*expressio unius*,” the expression of one is the exclusion of others. Thus, foreign-flag vessels as well as the compulsory pilots among them must comply with state pilotage laws.¹¹¹

There are undoubtedly many legal issues that are brought to light by this case, but perhaps the most prominent issue is not truly a legal issue at all. This leads to a separate inquiry: Do the differing standards for burden of proof present a substantive legal issue, or a procedural evidentiary issue? Due to countless authority that supports the validity of the Louisiana statute limiting a pilot’s liability, a substantive-based strategy arguably leaves too much possibility for reversal by the Fifth Circuit. Instead, a procedural-based argument could be a more realistic rationale for supporting the application of the preponderance of the evidence standard rather than Louisiana’s clear and convincing standard. To make matters more complicated, the trial judge conflated the pertinent Louisiana statute with General Maritime Law, rather than holding that the Louisiana statute is preempted in its entirety.¹¹² While Judge Brown applied the preponderance of the evidence standard of proof, she simultaneously instructed the jury on the gross negligence standard which is required by the Louisiana statute.¹¹³

The Louisiana Supreme Court held in *American Dredging Co. v. Miller* that in admiralty cases filed in state court, the procedure of the forum is not preempted by federal law.¹¹⁴ The Court goes on to mention that the doctrine of *forum non conveniens* does not require a uniform application to “maintain ‘the proper harmony’ of maritime law” and that state legislation may change general maritime law to an extent.¹¹⁵ Likewise, if Marquette were to argue that this appeal is centered around a merely procedural matter rather than substantive, the Fifth Circuit might be more inclined to affirm the trial court’s decision.¹¹⁶

IV. PILOTAGE IN LOUISIANA

As illustrated in the discussion above, pilotage has been the essence of navigational safety and efficiency since the inception of maritime law. To the average eye, Louisiana is likely seen as a culture enriched sportsman’s paradise. To the maritime community, Louisiana is more than the food, music, and festivities; it is home to one of the largest and busiest ports in the world – the Port of New Orleans.¹¹⁷ The Port of New Orleans requires exceptional organization and regulation due

¹¹⁰ SCHOENBAUM, *supra* note 19, at 742.

¹¹¹ *Id.* at 744.

¹¹² Brief for Crescent River Port Pilots’ Ass’n, *supra* note 34.

¹¹³ *Id.*

¹¹⁴ *American Dredging Co. v. Miller*, 510 U.S. 443, 445-46 (1994).

¹¹⁵ *Id.* at 443.

¹¹⁶ In the time since this entry was submitted, the United States Court of Appeals for the Fifth Circuit vacated the district court’s judgment against Captain Johnson and remanded for a new trial. On December 4, 2023, the appeals court held that Louisiana’s statute governing pilots’ limitation of liability “falls within the state’s broad power to regulate pilotage.” *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 683 (5th Cir. 2023).

¹¹⁷ *Port of New Orleans*, WORLD PORT SOURCE, http://www.worldportsource.com/ports/review/USA_LA_Port_of_New_Orleans_254.php (last visited Feb. 15, 2023).

to its integral role in Louisiana's economy.¹¹⁸ The Mississippi River specifically requires the special regulation and use of pilots due to its relative narrowness, sand bars, and downriver currents.¹¹⁹ These distinct characteristics (among many others) support Congress's rationale for granting not only Louisiana, but every state, the power and responsibility of regulating their own ports and pilots.¹²⁰

Congress has permitted all states to have full authority over pilotage regulation since 1789 when it decided that federal regulation and intervention was unnecessary.¹²¹ Louisiana exercised this authority by crafting its own set of pilotage laws which reflect the state's best interest. Although some of these regulations are not directly cohesive with federal law,¹²² uniformity is not necessary. Congress accounted for the unique circumstances of each state. While national uniformity is important in many matters, completely distinct bodies of water cannot conform to a "one size fits all" set of rules.

This evidentiary standard in Louisiana intentionally makes it harder to prove a pilot's negligence, and limits liability to the point that it is rare to bring a suit against a pilot.¹²³ Lawsuits against pilots are also rare because of the likelihood of the individual pilot not being able to pay, assuming that he or she is not insured by a pilots' association.¹²⁴ Even if the pilot is insured through the respective association, it is unlikely that an individual pilot would be able to afford the insurance premiums to cover such expenses.¹²⁵ It is for these reasons that Louisiana has adopted such a high burden of proof regarding a pilot's negligence.

V. SHARED REGULATION?

Although Congress has delegated pilot regulation to the states, there is a sort of sharing arrangement between federal and state law¹²⁶ that has become more evident as more case law develops. Chapter 85 of Title 46 in the United States Code illustrates this sharing arrangement.¹²⁷ The code states:

Pilots in the waters of the United States shall be regulated in conformity with the laws of the states [...] and if, in a particular port or place, there is no state requirement pertaining to pilotage, the Secretary of Transportation [...] may issue 'gap-filling' regulations requiring employment of federal licensed pilots until the state moves to correct the omission.¹²⁸

¹¹⁸ Cootes, *supra* note 55, at *192.

¹¹⁹ *Id.*

¹²⁰ Cootes, *supra* note 55, at *192.

¹²¹ *Kotch v. Board of River Port Pilot Comm'rs for Port of New Orleans*, 330 U.S. 552, 559 (1947).

¹²² 46 U.S.C. § 8501.

¹²³ PARKS & CATTELL, *supra* note 21, at 1011.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ Kirchner & Diamond, *supra* note 54, at 171.

¹²⁷ 46 U.S.C. § 8501.

¹²⁸ PARKS & CATTELL, *supra* note 21, at 994.

In this excerpt, the term “gap-filling” refers to federal intervention only when there is a lack of a particular state law.¹²⁹ This provision is meant to enforce the notion that states should account for the specific needs of their ports, recognizing that they are all distinct from each other.¹³⁰ Because each pilotage state has such distinct waters and ports, Congress has intentionally and expressly authorized states to control their own ports for the sake of national interest.¹³¹ The real problem exists when there is a state law or regulation that also overlaps with existing federal maritime law, as with Louisiana Revised Statute § 34:1137 and 46 U.S.C. § 8501(a).¹³²

In *Marquette*, the plaintiff primarily argued that 46 U.S.C. § 8501 – the statute requiring gross negligence to be proved by a preponderance of the evidence – preempts Louisiana Revised Statute § 34:1137 pursuant to the Supremacy Clause.¹³³ On the other hand, counsel for Pilot Johnson argued that the pertinent Louisiana statute does not offend the Supremacy Clause because of the express power granted to the states directly from Congress to regulate pilotage matters.¹³⁴ Those who are well versed in constitutional law would likely be inclined to think federal law would preempt state law in this circumstance, and the trial court in *Marquette* would agree.¹³⁵ However, the unique authority granted to states regarding pilotage heavily weakens the argument of preemption, as previously discussed.

While it is true that the effect of 46 U.S.C. § 8502¹³⁶ is to preempt states from regulating pilotage with respect to seagoing vessels in coastwise trade and vessels in the Great Lakes,¹³⁷ the language clearly limits the circumstances in which preemption may occur. Foreign-flag vessels in need of a compulsory, state-licensed pilot – as in the *Marquette* case – objectively do not fit within the classification of vessels engaged in coastwise trade and/or Great Lakes vessels. With respect to the plaintiff-appellee’s argument in support of national uniformity, not only has the federal government delegated pilotage regulations to the states, but the United States Supreme Court has also repeatedly bent the rule of uniformity by allowing state law to apply in maritime claims when Congress has not acted.¹³⁸ But Congress has in fact acted. The Supreme Court in *Cooley v. Board of Wardens*¹³⁹ clearly explains this dynamic:

[T]he mere grant to Congress of the power to regulate commerce, did not deprive the States of power to regulate pilots, and that although Congress has legislated

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Kirchner & Diamond, *supra* note 54, at 175-76.

¹³² Brief for Crescent River Port Pilots’ Ass’n, *supra* note 34.

¹³³ Memorandum of Law on Contested Issues of Law at 6, *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea*, No. 2:19-10927 (E.D. La. Feb. 1, 2022), ECF No. 176.

¹³⁴ *Id.*

¹³⁵ Order at 3, *Marquette Transp. Co. Gulf-Inland v. Navigation Mar. Bulgarea*, No. 19-10927 (E.D. La. Mar. 31, 2022), ECF No. 235.

¹³⁶ 46 U.S.C. § 8502.

¹³⁷ SCHOENBAUM, *supra* note 19, at 742.

¹³⁸ Kirchner & Diamond, *supra* note 54, at 175.

¹³⁹ *Cooley v. Board of Wardens*, 53 U.S. 299 (1851).

on this subject, its legislation manifests an intention, with a single exception, not to regulate this subject, but to leave its regulation to the several States.¹⁴⁰

A Pennsylvania statute implementing a half-pilotage fee upon refusing to take on a pilot when necessary generated this landmark case which interpreted the interrelationship of state and federal regulatory power.¹⁴¹ In *Cooley*, the Supreme Court addressed whether the Pennsylvania statute violated the Commerce Clause.¹⁴² This prompted the discussion of pilot regulation because the “regulation of pilots is a regulation of commerce, within the grant to Congress of the commercial power.”¹⁴³ The Court relied on section four of the Lighthouse Act of 1789 as the crux of its rationale and, in doing so, confirmed its constitutionality.¹⁴⁴ The opinion delivers a powerful explanation of the act:

The act of 1789 contains a clear and authoritative declaration by the first Congress, that the nature of this subject is such, that until Congress should find it necessary to exert its power, it should be left to the legislation of the States; that it is local and not national; that it is likely to be the best provided for, not by one system, or plan of regulations, but by as many as the legislative discretion of the several States should deem applicable to the local peculiarities of the ports within their limits.¹⁴⁵

Based on the forgone precedent, it seems as though the answer should be clear as to which law applies. However, the concern of preemption still lingers. Despite the persuasiveness of case law and statutory language, federal regulations still have an indirect impact on state pilots.¹⁴⁶ Because state licensed pilots are also required to hold a federal license, they are “therefore subject to the federal licensing regulations and some of the disciplinary standards. In this regard, a federal pilot license and the federal pilot regulations serve as a national minimum standard for the state pilot system”¹⁴⁷ When a pilot is working on a foreign-flag vessel in accordance with the state’s compulsory pilotage requirement, that pilot is working under a state license and is subject to the state’s authority.¹⁴⁸

The Crescent River Port Pilots’ Association (CRPPA) asserts that state laws and General Maritime Law can co-exist, as explained in its brief on appeal as Amicus Curiae.¹⁴⁹ Rather than mere coexistence, some scholars explain the nature of state and federal systems as carefully balanced to accommodate both the “comprehensive state pilotage regulation system and the important federal marine safety functions of the Coast Guard.”¹⁵⁰ One way that the two systems overlap is exemplified through certain actions the Coast Guard may take to discipline state pilots,

¹⁴⁰ *Id.* at 320.

¹⁴¹ Kirchner & Diamond, *supra* note 54, at 173.

¹⁴² *Id.*

¹⁴³ *Cooley*, 53 U.S. at 299.

¹⁴⁴ Kirchner & Diamond, *supra* note 54, at 173.

¹⁴⁵ *Cooley*, 53 U.S. at 319.

¹⁴⁶ Kirchner & Diamond, *supra* note 54, at 199.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 200.

¹⁴⁹ Brief for Crescent River Port Pilots’ Ass’n, *supra* note 34, at 15.

¹⁵⁰ Kirchner & Diamond, *supra* note 54, at 200.

who would otherwise be disciplined by the relevant authority within that state.¹⁵¹ When a state-licensed pilot commits an “act of incompetence relating to the operation of a vessel,”¹⁵² the Coast Guard is authorized to suspend or revoke the federal license of the pilot.¹⁵³ However, this authority is extremely limited and extends only to those pilots who have been negligent while acting under the authority of their federal license rather than the state license.¹⁵⁴ Why grant an authority that can hardly be exercised? The answer just might apply to the questions raised by the *Marquette* decision. The limit on authority is, of course, to not undermine a state’s preeminent role in regulating pilotage.¹⁵⁵

Before the *Marquette* decision, there was no federal or state jurisprudence holding that Louisiana Revised Statute § 34:1137 was preempted by General Maritime Law.¹⁵⁶ In *McCrary v. Can Do, Inc.*, the Louisiana Third Circuit Court of Appeals examined whether this Louisiana statute was preempted by General Maritime Law, and their answer was plain and simple: no.¹⁵⁷ The matter arose following a collision involving the plaintiff’s fishing boat, a foreign-flag vessel, and several tugboats that were being used to transport a drilling barge onto the foreign vessel.¹⁵⁸ The plaintiff sustained injuries from the collision and sued Lake Charles Pilots, Inc., the employer of the two pilots aboard the foreign-flag vessel.¹⁵⁹ On appeal, the plaintiff assigned error to the lower court regarding the jury instruction on Louisiana Revised Statute § 34:1137.¹⁶⁰ In doing so, the plaintiff argued that because General Maritime Law only requires an ordinary standard of care, the Louisiana statute requiring a showing of gross negligence must be preempted.¹⁶¹ The Third Circuit sided with the Lake Charles Pilots’ position that Louisiana’s statute could not be preempted because 46 U.S.C. § 8501(a) expressly reserves pilotage regulation to the states.¹⁶²

Although *McCrary* addressed what the appropriate standard of care was rather than burden of proof, it is nonetheless the most analogous case to the one at issue.¹⁶³ As Louisiana Revised Statute § 34:1137 is one cohesive sentence and *McCrary* only analyzed the first requirement therein, it is not a stretch to assume that a court will more than likely treat the second requirement the same. Acceptance of this assumption would mean that the Louisiana statute’s second requirement, the clear and convincing standard, will prevail on appeal in the Fifth Circuit regarding the *Marquette* case.

The discrepancy between jurisprudence and *Marquette* invites uncertainty as to whether this “shared regulation” is as clear as previously presumed. The inconsistencies between federal

¹⁵¹ *Id.*

¹⁵² 46 U.S.C. § 7703(4).

¹⁵³ Kirchner & Diamond, *supra* note 54, at 200.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 201.

¹⁵⁶ Brief for Crescent River Port Pilots’ Ass’n, *supra* note 34, at 24.

¹⁵⁷ See *McCrary v. Can Do, Inc.*, No. 10-16413, 2009 La. App. Unpub. LEXIS 106 (La. App. 3 Cir. 2009).

¹⁵⁸ *Id.* at *3.

¹⁵⁹ *Id.* at *1.

¹⁶⁰ *Id.* at *7.

¹⁶¹ *Id.* at *8.

¹⁶² *McCrary*, 2009 La. App. Unpub. LEXIS 106, at *8.

¹⁶³ Brief of the Crescent River Port Pilots’ Ass’n, *supra* note 34.

and state regulations lead to several issues. The most concerning of these issues is the litigation that can arise out of the “different and conflicting standards of regulation under federal and state laws,” such as the *Marquette* case.¹⁶⁴ On one hand, this issue calls for harmonization of the two regulatory bodies;¹⁶⁵ on the other hand, there exists ample authority from the law and jurisprudence which clearly defines the regulating body in certain situations.

Some scholars hold the position that this inconsistency may be cured through the federal government providing baseline or minimum requirements for states in legislating their own pilotage laws “in the interests of safety as well as to eliminate the economic protectionism that is often abetted under state law.”¹⁶⁶ The standard applied to Pilot Johnson in *Marquette* follows this perspective. By lowering the standard from clear and convincing to a preponderance of the evidence, the trial court judge seems to weigh in on the “interests of safety” by creating a more attainable route to hold pilots accountable for their gross negligence. After all, pilots are held to such a high standard because of their specific knowledge of local conditions, including both seen and unseen obstacles.¹⁶⁷

If the Fifth Circuit chooses to affirm the trial court’s ruling in *Marquette*, a possible upside to an otherwise irregular decision may be that pilotage associations or the Louisiana legislature might require heightened prerequisites (schooling, training, safety courses, etc.) for future pilots as a way of working toward the ever-evolving goal of safer navigation.

VI. IMPLICATIONS

Unfortunately, the lower court’s decision in *Marquette* only intensifies the anomaly that is pilotage law. The implications of whether General Maritime Law preempts state law – thus requiring a much lower standard in proving a pilot’s gross negligence – extends further than what meets the eye. It not only ignites legal disputes, but also affects public policy. The ability of the state government and various pilot associations to maintain pilots is already a challenge,¹⁶⁸ but it could be further affected by the application of a far less burdensome standard when proving a pilot’s gross negligence.¹⁶⁹ Many factors contribute to the challenge of pilot retention, primarily the pilots’ risk of liability. Other factors include their demanding work hours¹⁷⁰ and the dangers pilots face not only while traveling aboard the vessel, but also while boarding and un-boarding the vessel (typically by a hanging rope ladder on the side of the vessel).¹⁷¹

It is not only a challenge to keep the job a satisfactory one, but also a challenge to recruit new pilots largely due to the infamous exclusivity of the industry. To counteract these challenges,

¹⁶⁴ SCHOENBAUM, *supra* note 19, at 742.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 748.

¹⁶⁸ Pilots face immense dangers on the job. They are consistently on call; no matter the time, if a vessel is in need of a pilot to navigate through the Mississippi River, a pilot will render their services.

¹⁶⁹ Kirchner, *supra* note 61.

¹⁷⁰ *Ships, Cargo, Traffic*, CRESCENT PILOTS, <https://www.crescentpilots.com/ships-cargo-traffic> (last visited Mar. 20, 2023).

¹⁷¹ *Pilot Perspective*, CRESCENT PILOTS, <https://www.crescentpilots.com/pilot-perspective> (last visited Mar. 20, 2023).

associations like CRPPA have sought out higher compensation for pilots and implemented diversification campaigns in an effort to include more racial minorities in the extremely exclusive (and lucrative) industry.¹⁷² The association's president, Captain E. Michael Bopp, recently commented on the relatively new public awareness initiative, "Open Waters," stating:

[F]ew [Louisianians] see the river as a link to commerce and career opportunities for themselves and their families. Open Waters will raise public awareness, expand education, and career prospects for those who have never considered the risky yet successful livelihood of working on Louisiana's waterways.¹⁷³

The decision in *Marquette* serves as a potential setback to the effort of gaining and retaining pilots: it makes the job less attractive. Making it more attainable for claimants to successfully prove a pilot's negligence by lowering the burden of proof presents a caveat to current and future pilots by making an already risky job even riskier. Conversely, the *Marquette* decision has potential to set the precedent for what should be expected from pilots in the future. While Louisiana ultimately seeks to protect its pilots, the state should also reprimand pilots who perform below a certain standard of care in order to stress the utmost importance of safety. Ultimately, a balancing act is required when considering what is in the state's best interest. One must balance the concept of protecting those who hold one of the most vital roles in the maritime industry with the concept of placing safety above economic protectionism.

One of Louisiana's legitimate interests in protecting pilots through requiring such a high burden of proof is to ensure that pilots feel secure in their job. As previously discussed, pilots are indispensable in the maritime industry. So, one can imagine why a state such as Louisiana would like to ensure Mississippi River pilots continue to provide their service and expertise. Would anyone want a job with such an enormous chance to make a detrimental mistake without some type of safety net?

If pilot retention does not improve, a domino effect may ensue. For example, with fewer pilots – or more pilots on probation/suspension – there are increased chances for existing pilots to suffer from fatigue due to being overworked.¹⁷⁴ Fatigue creates more room for mistake, and mistake leads to collisions and other possible damages. Collisions, of course, have the power of disrupting wildlife along the Mississippi River as well as the entirety of Louisiana's delicate ecosystem.

Although the final outcome of *Marquette* has the potential to create such a domino effect, it also ensures the safety and efficiency that the pilotage system strives to create. A lower burden in proving a pilot's gross negligence quite obviously makes it easier to hold pilots accountable. Considering that the Mississippi River is responsible for contributing over \$750 billion to the

¹⁷² Blake Paterson, *As river pilots announce new minority recruitment push, internal battle erupts among one group*, THE ADVOCATE (Jan. 19, 2022), https://www.theadvocate.com/baton_rouge/news/politics/as-river-pilots-announce-new-minority-recruitment-push-internal-battle-erupts-among-one-group/article_678a0d6c-797d-11ec-a65c-6f7e2c45e43d.html.

¹⁷³ *Louisiana River Pilots Associations Launch 'Open Waters' Diversity Initiative*, BIZ NEW ORLEANS (Jan. 26, 2022), <https://www.bizneworleans.com/louisiana-river-pilots-associations-launch-open-waters-diversity-initiative/>.

¹⁷⁴ Kirchner & Diamond, *supra* note 54, at 191.

nation's economy,¹⁷⁵ there is no room for a pilot's gross negligence. With that being said, the reasons why pilots might be disincentivized to take the job are the same reasons they are held to such a high standard. This double-edged sword is one that becomes more evident with cases such as *Marquette*.

VII. CONCLUSION

It has been stated time and time again that pilotage is a unique industry and should be judged as such.¹⁷⁶ By applying General Maritime Law where state law has typically played "the preeminent role,"¹⁷⁷ the *Marquette* case draws out the age-old chess match between state and federal regulation and has certainly proved to be unique. This field of law was never meant to produce one overpowering set of rules, standards, or regulations. General Maritime Law has been crafted throughout the years to excel in each pilotage state by molding to the needs and specifications of each distinct port.

Much like a jack of all trades conquering new skills, Pilotage law was intended to proficiently adapt to the many states where such laws are necessary. Pilotage law bears an interesting correlation to this expression in the sense that it has been practiced and regulated under the authority of both state and federal law.¹⁷⁸ This "dual system" has played a large part in the success that pilotage has achieved in Louisiana: "navigation safety, environmental protection, and commerce."¹⁷⁹ And yet, despite clear statutory language that suggests pilotage should be distinctly crafted by each state, uncertainty remains as to who has the final say or who is the ultimate regulating authority.

To be skilled in many trades leaves no room for mastery. Following this analogy, in order for pilotage law to succeed in each state as intended, there must not be one universal "master" law. At the very least, General Maritime Law should not be applied to matters that have been adequately handled by Louisiana's pilotage laws in the past. In other words, if pilotage law is a jack of all trades, how will it become the master of one?

¹⁷⁵ *Maritime Economy*, CRESCENT RIVER PORT PILOTS' ASSOCIATION, <https://www.crescentpilots.com/economy> (last visited Mar. 30, 2023).

¹⁷⁶ *Kotch*, 330 U.S. at 557.

¹⁷⁷ Kirchner & Diamond, *supra* note 54, at 205.

¹⁷⁸ SCHOENBAUM, *supra* note 19, at 742.

¹⁷⁹ *Id.*