



State Statutes Limiting Liability of State-Licensed Compulsory Ship Pilots Held Enforceable As Not Pre-empted by the Federal Maritime Law: *The Continental Insurance Company v. John Joseph Cota*, 2010 AMC 313 (N.D. Ca. 2010)

This decision stems from the allision of the cargo ship M/V COSCO BUSAN with the San Francisco-Oakland Bay Bridge on November 7, 2007. John Cota was the state licensed San Francisco Bar pilot at the conn of the vessel when it struck the bridge. After the allision a number of civil actions were filed against Cota. Continental Insurance Co. ("Continental") appointed, and paid for, defense counsel for Cota pursuant to a policy issued to the San Francisco Bar Pilots Association. Continental filed this lawsuit to recover \$315,321 in legal fees and expenses it incurred in providing Cota's defense. After Continental incurred the legal fees, the vessel's owner assumed the defense of Cota pursuant to the California state pilotage statute which requires every foreign vessel using a compulsory pilot to either (1) defend, indemnify, and hold harmless the pilot, or (2) purchase trip insurance protecting the pilot. A vessel owner that does not provide notice to a pilot association that it intends to purchase trip insurance is deemed by statute to have elected to accept the obligation to defend and indemnify the pilot association and its members. Cal. Harbors & Nav. Code § 1198(c). Having expended \$315,321 in defending Cota prior to the vessel interests accepting his defense and indemnity, Continental sued to recover that amount from the owners in reliance upon the statute.

The principle defense relied upon by the vessel interests was the Supremacy Clause of Article VI of the U.S. Constitution which, they argued, supported preemption of California's pilot statute. The district court conducted a thorough and scholarly examination of many cases pertaining to state pilotage and federal preemption, as well as a survey of the various state statutes providing limitation of liability, and/or defense and indemnity to compulsory state pilots.

State Pilot Statutes Not Preempted by the Federal Maritime Law

The court noted that Congress had historically left the regulation of state pilotage in control of the states and cited the Lighthouse Act of 1789 which provided that "all pilots in . . . ports of the United States shall continue to be regulated in conformity with the existing laws of the states" It



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also cited the many United States Supreme Court cases supporting this proposition over the years, such as *Anderson v. Pac. Coast S.S. Co.*, 225 US 187 (1912) (Congress has authoritatively declared its intent not to regulate state pilotage and thus it is left to the states) and *Kotch v. Bd. Of River Port Pilot Comm'rs*, 330 U.S. 552, 559, 1947 (1947) (states have had full power to regulate pilotage since 1789 when congress decided that the then existing state pilot laws were satisfactory and “made federal regulation unnecessary”). The district court went on to cite the recent Fifth Circuit opinion pertaining to the Lake Charles pilots, *Gillis v. Louisiana*, in which the Fifth Circuit ruled that Congress had expressed an intent not to limit the states’ power to regulate pilotage. The court concluded that the California legislature had exercised its authority to regulate state pilots when it enacted the statute being relied upon by Continental.

Statute Providing for Limitation of Liability and/or Indemnity of Ship Pilots Upheld

The court recognized that there is “some tension” between the general maritime principle that shipowners cannot be held personally liable for negligence of compulsory pilots, and the California statute which requires shipowners that do not purchase trip insurance to defend and indemnify those compulsory pilots for their negligence. The court reasoned this tension is mitigated by the fact that the California statute provides shipowners with a choice, that being while the use of the pilot is compulsory, the owner can chose to purchase trip insurance and avoid the obligation to defend and indemnify. The court then cited Ninth Circuit precedent holding that even though a pilot is compulsory under the state law, “an exculpatory clause [requiring a shipowner to indemnify the pilot’s employer] is not unconscionable The clause is fair and reasonable in light of the customary business practices of pilotage . . . throughout the United States.” *Guangco v. Edward Shipping, S.A.*, 705, F.2d 360, 362 (9th Cir. 1983).

In its survey of state pilotage statutes, the court noted that California is not alone in limiting the liability of its licensed pilots or in providing them indemnity from shipowners. The court found similar protection under the laws of Oregon. The laws of Washington, Maine, and Texas go even further and limit the liability of compulsory pilots.



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