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**BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket No. TP-220513

**TESTIMONY OF
Kathy J. Metcalf
ON BEHALF OF
PACIFIC MERCHANT SHIPPING ASSOCIATION**

Foreign Flag Vessels and Industry Safety

FEBRUARY 10, 2023

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

I. INTRODUCTION 1
II. PURPOSE AND SUMMARY OF TESTIMONY 3
III. FOREIGN-FLAGGED VESSEL SAFETY IN THE PUGET SOUND..... 4
IV. RISKS TO PILOTS ARE NOT PERSISTENT AND GROWING..... 17
V. CONCLUSION 23

EXHIBIT LIST

Exhibit No.	Description
Exh. KJM-2	Kathy J. Metcalf Curriculum Vitae
Exh. KJM-3	2022/2023 International Chamber of Shipping, "Shipping Industry Flag State Performance Table" Report
Exh. KJM-4	2021 USCG Port State Control in the United States Report
Exh. KJM-5	USCG's Marine Safety Manual, Volume II: Material Inspection

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1 I. INTRODUCTION

2
3 **Q: Please state your name, occupation, employer, and business**
4 **address.**

5 A: My name is Kathy Metcalf. I am the President of the Chamber of Shipping
6 of America (CSA), the US national shipowner association. Our address is
7 1730 Rhode Island Ave., Suite 506, Washington, DC 20036.

8
9 **Q: Please describe your educational background.**

10 A: I am a 1978 graduate of the US Merchant Marine Academy and a 1988
11 graduate of the Delaware Law School of Widener University.

12
13 **Q: Please summarize your professional background and affiliations**
14 **and awards.**

15 A: After graduation from the US Merchant Marine Academy in 1978, I sailed
16 as third mate on crude and product tankers for Gulf Oil Company and Sun
17 Oil Company. I came ashore with Sun Oil Company (Marine Department)
18 as the Director of Safety and Health and attended Delaware Law School
19 from 1984-1988 in the night school program. After graduation from law
20 school, I was transferred from the Marine Department to the corporate
21 compliance group, advising all business units. In 1993, I was promoted to
22 the Director of Government Affairs for the mid-west business units. In 1997
23 I left Sun Company and accepted a position at the CSA as the Director of
24 Maritime Affairs. In 2015, the CSA Board of Directors unanimously elected
25 me as the President and CEO. In 2018 I received the International
26 Personality of the Year Award from the Women's International Shipping

1 and Trading Association (WISTA). In 2019, I received the Lloyd's List
2 Americas Lifetime Achievement Award. Attached as Exhibit KJM-2 is my
3 curriculum vitae.

4
5 **Q: Please describe the Chamber of Shipping of America, its**
6 **membership, and its mission.**

7 A: The Chamber of Shipping of America represents US-based companies that
8 own, operate or charter oceangoing tank, container, or dry bulk vessels
9 engaged in both the domestic and international trades operating US flag or
10 foreign-flag vessels. Our mission is to represent members' interests
11 regarding US and international legislative, regulatory and commercial
12 interests. We seek to achieve our mission through the primary strategies of
13 education, engagement, collaboration and alignment with both shipping
14 companies and government entities at the US national and international
15 levels. The substantive work of the organization is conducted through our
16 Board of Directors and our Maritime Policy and Operations Committees.
17 CSA is also a member in good standing of the International Chamber of
18 Shipping, serving on its Board as well as the Marine Committee, Shipping
19 Policy Committee and the Maritime Law Committee.

20
21 **Q: Please describe your role with the Chamber of Shipping of America.**

22 A: My role with CSA is as the Chief Executive Officer of the organization. My
23 responsibilities include administration of the organization as well
24 identification and implementation of key issues of impact to the marine
25 industry.

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2
3 **Q: What is the purpose of your testimony?**

4 A: The purpose of and focus of my testimony is to address what I believe are
5 false claims in Mr. Charles Costanzo’s testimony in the section titled “The
6 Unscrupulous Practices of Foreign Flag Shipowners Pose Significant Risk to
7 Puget Sound,” which claims that foreign flag vessels in Puget Sound are
8 unsafe and unscrupulous and present a persistent and increasing risk to the
9 pilots.

10
11 **Q: Can you please summarize your testimony?**

12 A: Having been a part of the maritime industry for over 40 years, including
13 sailing on my USCG license as third mate and in shoreside positions, I am
14 very familiar with the subject of this section of Mr. Costanzo’s testimony.
15 His testimony describes the maritime industry as it once was over two
16 decades ago. It does not describe the situation as it exists now or in recent
17 years.

18 Over the past decades, principally through the International Maritime
19 Organization, numerous international treaties have been agreed on that
20 establish global operations, safety and environmental performance
21 standards across a number of issues, all focusing on two critical enforcement
22 programs and responsibilities to ensure global standards are met. The first
23 of these programs is the flag state control program, which requires any
24 country party to these international treaties to meet the commitments
25 contained in those treaties. The second of these programs is the port state
26 control program which requires parties to these treaties to ensure

1 compliance with treaty requirements on all vessels calling in their national
2 ports. In addition, the International Maritime Organization and its member
3 states have instituted a flag state audit program conducted by member
4 states to ensure comprehensive implementation of the treaty obligations of a
5 particular state in their national laws and enforcement programs.

6
7 **III. FOREIGN-FLAGGED VESSEL SAFETY IN THE PUGET SOUND**
8

9 **Q: Have you reviewed pages 34-50 of Mr. Costanzo's testimony at Exh.**
10 **CPC-01T titled "The Unscrupulous Practices of Foreign Flag**
11 **Shipowners Pose Significant Risk to Puget Sound"?**

12 A: Yes.

13
14 **Q: Do you agree with any part of assertion made by Mr. Costanzo at**
15 **page 50 of his testimony that "a very significant percentage of the**
16 **international shipping industry can be fairly characterized as**
17 **fundamentally unscrupulous and exhibiting a serious disregard for**
18 **human safety and environmental protection"?**

19 A: I do not agree with any part of this statement. With 40 years of experience, I
20 have seen first-hand the commitment of shipping companies and their
21 employees, first through my positions in two energy companies (afloat and
22 ashore) and now with the member companies of the Chamber of Shipping of
23 America. In my opinion, Mr. Costanzo's statement is dated, factually
24 incorrect and does not represent the reality of today's shipping industry and
25 its collective commitment to safety and protection of the marine
26 environment. Relative to Mr. Costanzo's testimony and his reference to the

1 two articles submitted with his testimony, Exhibits CPC-17 and CPC-18, it
2 is evident to me that Mr. Costanzo and the authors of the two articles are
3 looking at the marine industry from the “outside” and not from the “inside.”
4 Looking at the marine industry from the inside would allow a better
5 understanding of the commitment of individuals that have worked both
6 afloat and ashore, shipping companies and the international and national
7 regulators that are committed to ensuring compliance with the laws and
8 regulations. Without experience in positions within the shipping industry, it
9 is difficult if not impossible to assess the true commitments to safety and
10 environmental protection that are embraced by the vast majority of
11 shipping companies, their shore-side management and the crews aboard
12 their vessels. Having spent many years in this industry working alongside
13 my colleagues both afloat and ashore who are dedicated to safety and
14 environmentally responsible operations, I can unequivocally state that we
15 are professionals and are truly committed to these goals.

16
17 **Q: Do you agree with any part of the further assertion made by Mr.**
18 **Costanzo at page 50 of his testimony that “shipping companies**
19 **cannot and should not be relied on to prioritize safe navigation on**
20 **Puget Sound, particularly when the state’s fiduciary duty to protect**
21 **Washington’s natural resources and ecology is in conflict with the**
22 **ship’s profit motive”?**

23 **A:** I do not agree with any part of Mr. Costanzo’s statement. While we
24 appreciate Mr. Costanzo’s recognition that not every shipping company or
25 vessel engages in the practices he describes, we believe this statement falls
26 well short of a realistic assessment of the shipping industry as a whole

1 when he further elaborates that “it is clear that a very significant
2 percentage of the international shipping industry can be fairly characterized
3 as fundamentally unscrupulous and exhibiting a serious disregard for
4 human safety and environmental protection.” This is neither a “fair” nor
5 accurate description for several reasons.

6 First, a very significant percentage of the international shipping
7 industry operates to the highest standards, often exceeding global and
8 national standards, as evidenced by flag state and port state control
9 statistics. As with any group, there are over performers, average performers
10 and under performers. However, Mr. Costanzo’s statement implies that a
11 majority of the international shipping industry falls in the under-performer
12 category, which is a blatantly false statement. In fact, a significant majority
13 of the shipping industry conduct their operations in the over- and average-
14 performer categories. We will provide additional data to support our
15 position in the section below relating to port state control.

16 Second, we strongly disagree with Mr. Costanzo’s statement that
17 “shipping companies cannot and should not be relied on to prioritize safe
18 navigation on Puget Sound, particularly when the state’s fiduciary duty to
19 protect Washington’s natural resources and ecology is in conflict with the
20 ship’s profit motive.” Safe and environmentally responsible operations are
21 the responsibility of all stakeholders, including the shipping company, the
22 vessel and crew and the national and state governments who oversee these
23 operations. Suggesting the state’s fiduciary duty to protect Washington’s
24 natural resources and ecology conflicts with the ship’s profit motive makes
25 no logical sense because the shipping company and the vessel has a duty to
26 protect natural resources and ecology anywhere they operate. One only

1 needs to look at the costs associated with marine casualties to appreciate
2 the impact of a casualty on a shipping company's bottom line. So in reality,
3 prioritizing safe navigation of a vessel, regardless of location, is not only
4 consistent with but indeed supportive of assuring vessel operations
5 positively contribute to a company's bottom line or, as described in Mr.
6 Costanzo's testimony, the "profit motive."

7
8 **Q: Did you specifically review page 40 of Mr. Costanzo's testimony**
9 **where he alleges that the shipping industry participates in an**
10 **"evasion of corporate responsibility" through the "tactic" of "flags**
11 **of convenience"?**

12 A: Yes.

13
14 **Q: Do you agree that the vessels that call on the Puget Sound can**
15 **evade their legal responsibilities through the use of foreign flags?**

16 A: The vast majority of vessels cannot and will not evade their legal
17 responsibilities. The current structuring of shipping companies with
18 individual subsidiaries for each vessel is not only legal but is necessary for
19 the parent corporation to meet its responsibilities to its
20 owners/shareholders. Risk management is not an illegal activity. A vessel
21 owner's responsibilities to operate in full compliance with both international
22 and national laws, regardless of corporate structure, is not negotiable or an
23 option for responsible shipowners. Vessels are required by law to carry
24 insurance in accordance with international and national laws and, but for a
25 few exceptional cases, have covered the expenses associated with a marine
26 casualty. For example, they do not shelter or reduce their legal

1 responsibilities by placing the burden on the public, as alleged in Mr.
2 Costanzo's testimony.

3
4 **Q: Did Mr. Costanzo mention at any point in this testimony the role of**
5 **the United States Coast Guard in the protection of safety and the**
6 **environment while vessels are in US waters?**

7 A: No. Mr. Costanzo's testimony is lacking in any real discussion about the
8 enforcement of safety and environmental regulations by flag and port state
9 control programs. (In US waters, the United States Coast Guard (USCG) is
10 the port state control enforcement agency.) In my opinion, not discussing
11 this results in an incomplete picture as to how vessels are regulated and
12 how laws/regulations are enforced.

13
14 **Q: What is your opinion of the omission of a discussion of the United**
15 **State Coast Guard as the Port State Control enforcement agency of**
16 **the Puget Sound in Mr. Costanzo's testimony?**

17 A: Mr. Costanzo's omission of a full discussion of the USCG's port state control
18 program is material in that he never fully explains the actual enforcement
19 of safety and environmental regulations and the programs by which the
20 USCG oversees compliance and enforcement of vessels calling in US ports,
21 regardless of flag.

22
23 **Q: Does Mr. Costanzo in this testimony ever mention the role of Port**
24 **State Control and Flag State Controls?**

25 A: While Mr. Costanzo briefly mentions on page 46 of his testimony that
26 "certain flags of convenience are recognized and targeted more frequently

1 for inspection by Port Control States upon their arrival,” this is but one
2 aspect of the comprehensive port state control program implemented by the
3 USCG, which also includes routine inspection protocols and a program
4 which recognizes superior safety and environmental performance, known as
5 the QUALSHIP21 and E-Zero programs. At least Mr. Costanzo recognizes
6 that many flag states can require vessels to meet higher safety standards, a
7 statement equally applicable to both flag and port states, and further
8 recognizes that vessels have incentives to avoid “time lost during port state
9 control inspections” as such inspections are “costly.” This is certainly not the
10 only reason to avoid delays associated with the port state control program
11 as the time lost during port state control inspections pales in comparison to
12 the costs associated with delays resulting from inspection deficiencies,
13 which include fines, penalties and in some case detentions. In reality, the
14 goal of the vessel owner is to present a vessel with a clean port state control
15 history and to execute the port state control inspection with the USCG
16 inspection team with no deficiencies.

17 Another important aspect of the shipowners’ view of Flag States and
18 their Flag State Control programs is addressed by the International
19 Chamber of Shipping’s (ICS) “Shipping Industry Flag State Performance
20 Table.” Exhibit KJM-3 is a copy of the 2022/2023 report of the ICS’ Shipping
21 Industry Flag State Performance Table. The table lists by Flag State the
22 performance ratings for 19 specific items relating to port state control (6
23 categories), ratification of international conventions (7 categories) and other
24 categories including implementation of the recognized organization code,
25 average age of ship under the registry, inclusion on the latest STCW
26 whitelist, completed ILO reports, participation in IMO meetings and

1 participation in the IMO Audit Scheme. The purpose of this table is to
2 encourage shipowners and operators to examine whether a Flag State has
3 sufficient substance before registering a ship under that flag and to
4 encourage shipowners and operators to put pressure on their Flag
5 Administrations to implement any improvements to their national laws
6 relative to safety of life at sea, the protection of the marine environment and
7 the provision of decent working and living conditions for seafarers.

8 Mr. Costanzo's testimony incorrectly asserts that shipowners/operators
9 deliberately choose "flags of convenience" for their lax program in
10 enforcement of international treaty requirements relating to safety and
11 environmental performance standards. This document, produced by ICS,
12 the international association composed of national shipowner associations,
13 is evidence of the fact that shipowners/operators approach flag registration
14 of their vessels with a view to selecting those that have comprehensive laws
15 and regulations to ensure their obligations are met under international
16 treaties. This is a key part of ICS's Flag State Control program and is
17 diametrically opposed to Mr. Costanzo's assertion. In summary, it is in the
18 vessel owners'/operators' best interest to use a Flag State that aggressively
19 implements the provisions of international treaties to assure its compliance,
20 which will be most certainly examined under Port State Control programs.

21
22 **Q: Please describe the Port State Control program run by the Coast**
23 **Guard in the United States.**

24 **A:** Please refer to Exhibit KJM-4, the 2021 Port State Control in the United
25 States report just issued by the USCG. It should be noted that this report is
26 published on an annual basis. Past reports may be viewed at the USCG

1 Commercial Vessel Compliance website by searching the internet for
2 “USCG Port State Control Annual Reports.”

3 The USCG port state control program ensures the safe, secure, and
4 environmentally responsible operation of vessels calling in US ports with
5 the ultimate objective of the elimination of substandard ships. Foreign flag
6 vessels are evaluated relative to compliance and enforcement issues relative
7 to SOLAS, MARPOL and other international treaties to which the US is a
8 party. Port state control inspections are intended to be of sufficient breadth
9 and depth to satisfy the USCG that a vessel’s major systems comply with
10 applicable international standards and domestic requirements and confirm
11 that the crew possesses sufficient proficiency to safely operate the vessel.
12 The inspection will also verify that the vessel has valid certificates onboard
13 and that the vessel conforms to the conditions required for issuance of the
14 required certificates. This is accomplished by a walk-through examination
15 and visual assessment of a vessel’s relevant components, certificates and
16 documents, as well as limited testing of systems and the crew. Vessels are
17 screened prior to arrival in a US port by the USCG who assesses each vessel
18 on a multitude of regulatory and risk-based factors resulting in an
19 inspection prioritization so that the vessels of most concern are placed at the
20 top of the inspection list. This assessment takes into account a number of
21 factors including ship management performance, vessel history (regarding
22 deficiencies, detentions, control actions, marine casualties, violations,
23 EQUASIS data), flag state performance history, recognized organization
24 safety/security performance history, arrival information (ship type, ship age,
25 status of certificates, and cargo onboard, including hazardous cargoes).
26 Although Exhibit KJM-4 contains much detail, the full USCG port state

1 control program is fully detailed in the Marine Safety Manual, Volume II,
2 which is Exhibit KJM-5.

3 The Highlights summary (page 3 of Exhibit KJM-4) provides the
4 following information relating to findings by the USCG for calendar year
5 2021:

- 6 • A total of 10,945 individual vessels from 81 different flag states made
7 73,974 port calls in the US with the USCG conducting 8,663 inspections
8 in total, a record number of inspections compared to prior years. The
9 total number of vessel detentions rose from 57 in 2020 to 63 in 2021.
- 10 • With respect to flag states' performance, the detention rate decreased
11 from 0.77% in 2020 to 0.73% in 2021.
- 12 • The leading causes of deficiencies in 2021 include compliance issues
13 associated with firefighting equipment, lifesaving equipment and safety
14 management systems.
- 15 • Details on the deficiencies noted in 2021 are found in Chapter 3 of the
16 port state control report (page 19-24 of Exhibit KJM-4) with breakdowns
17 by vessel type, deficiency type, and deficiency category.

18
19 **Q: Please describe the program and manner in which the US Coast**
20 **Guard assesses and recognizes excellence with respect to vessel**
21 **safety standards applied by some foreign flag states and recognizes**
22 **risks and potential heightened needs for safety and environmental**
23 **inspections of vessels which are registered in other foreign flag**
24 **states.**

25 **A:** The USCG port state control programs focus on the historical inspection
26 results for a specific vessel, also taking into account the performance history

1 of the flag state and the recognized organization (classification society) on
2 matters related to safety, environmental and security issues. Data is in
3 loaded in the Port State Information eXchange (PSIX), which contains
4 vessel specific information derived from the USCG's Marine Information
5 Safety and Law Enforcement System (MISLE). Prior to arrival, a specific
6 vessel file is reviewed for past compliance and enforcement information
7 (noted deficiencies/detentions/corrective action taken), at which point a risk
8 assessment is conducted. That assessment results in a decision as to
9 whether the vessel is low, medium or high risk, and the vessel is prioritized
10 in accordance with this risk.

11 Vessels with a high risk are categorized as a targeted vessel, which
12 normally results in a port state control inspection at its first US port of call.
13 Low and medium risk vessels may also be the subject of a port state control
14 inspection taking into consideration the workload of the local USCG and the
15 need to conduct a port state control inspection on the higher priority vessels.
16 Higher priority vessels are subject to more frequent port state control
17 inspections than those with a low or medium risk. Any deficiencies for any
18 vessel, regardless of risk profile, are tracked within the USCG database
19 with disposition as to whether the vessel will be issued a deficiency notice or
20 be subject to detention in the case of serious violations. Vessels will be
21 required to complete a corrective action program at the time the deficiency
22 is noted by some time certain and at its next US port call, the USCG will
23 check to ensure the deficiency is properly corrected.

24 As regards the program and manner in which the US Coast Guard
25 assesses and recognizes excellence with respect to vessel safety and
26 environmental performance standards, the USCG programs are the Quality

1 Shipping for the 21st Century (QUALSHIP 21) and E-Zero programs,
2 respectively.

3 QUALSHIP 21 recognizes and rewards vessels, vessel owners and flag
4 administrations for their commitment to safety and quality with incentives
5 including certificates, name recognition and a reduction in port state control
6 inspection frequencies. In 2021, there were 3,661 vessels enrolled in the
7 program and 27 qualifying flag states. The E-Zero program focuses on
8 environmental stewardship and compliance with IMO environmental
9 conventions. 220 vessels qualified for this program by the end of 2021. A
10 description of the QUALSHIP 21 and E-Zero programs can be found at
11 Chapter 2 of the 2021 Port State Control report (Exh. KJM-4 at pages 16-
12 17).

13
14 **Q: Based on these various programs and assessments made by the US**
15 **Coast Guard, is it reasonable to paint all foreign flagged vessels**
16 **with the same broad brush and using the phrase “flags of**
17 **convenience” as a pejorative term?**

18 A: Based on the commitment of the private and public sectors of the maritime
19 industry to eliminate substandard shipping, it is unreasonable to assume
20 foreign flag vessels are less regulated or less committed to superior safety
21 and environmental performance. The term “flags of convenience” used as a
22 pejorative term simply does not reflect today’s global maritime industry.
23 While the term continues to be used relative to potential benefits,
24 particularly relating to the costs of registering a vessel under a particular
25 flag, it no longer carries a negative connotation as regards the safety and
26

1 environmental performance of a vessel registered under a flag as regards
2 oversight by both the flag state and port states in which it calls.

3
4 **Q: When the combination of Port State Control and Flag State Control**
5 **for vessels calling on the United States is considered, what is your**
6 **opinion about the level of vessel safety review and environmental**
7 **protection oversight provided by the US Coast Guard?**

8 A: The oversight by the US Coast Guard relative to safety and environmental
9 protection performance standards is one of the most robust and
10 comprehensive anywhere in the world. It most certainly equals or exceeds
11 the port state control programs incorporated in the Paris and Tokyo
12 Memorandum of Understandings (MOU) which are viewed globally as the
13 ultimate standards. In this respect and as noted at page 3 of Exhibit KJM-4,
14 the 2021 USCG Port State Control report, the USCG has instituted an
15 enhanced exam program (EEP) similar to the Concentrated Inspection
16 Campaigns (CICs) carried out by the Paris and Tokyo MOUs and intended
17 to focus on specific aspects of ship safety on a quarterly basis, most often on
18 the implementation of new regulations or deficiency trends. The most recent
19 EEP focused on compliance with the ballast water management
20 requirements (new requirements) and the continuing deficiency trends
21 associated with firefighting and abandon ship drills and MARPOL Annex IV
22 (sewage).

1 **Q: Is there any reason to believe that this level of oversight by the US**
2 **Coast Guard is less robust in the Puget Sound or somehow defective**
3 **in the Puget Sound when compared to any other US waterways or**
4 **ports?**

5 A: No. The 2021 USCG port state control report provides a summary of
6 inspections by USCG Sector at page 5 of Exhibit KJM-4. In 2021, Sector
7 Puget Sound conducted 351 port state control inspections.

8
9 **Q: Do you share Mr. Costanzo’s opinion that vessel operators exhibit**
10 **“a serious disregard for human safety and environmental**
11 **protection” because the protection of “natural resources and**
12 **ecology is in conflict with the ship’s profit motive”?**

13 A: Absolutely not.

14
15 **Q: Why is this assessment wrong?**

16 A: As anyone working within the shipping industry afloat or ashore would
17 know, shipping companies take their safety and environmental performance
18 very seriously, as evidenced by the comprehensive safety and environmental
19 programs implemented from the top down, from the CEO to the newest
20 entry level position on a vessel. C information over the past two decades
21 shows that casualties have been significantly reduced (accepting the fact
22 that one is one too many) and corrective action programs when a casualty is
23 experienced are implemented both within the company as well as the flag
24 and port states. Review of the USCG Port State Control reports over the
25 past 20 years provides evidence of the reduction in noted deficiencies and
26 detentions over this time period. As I noted earlier, disregard for human

1 safety and environmental protection is not consistent with shipping
2 companies' operating philosophy and perspective. Rather, a robust corporate
3 safety and environmental protection is not only supportive of a well-run
4 vessel but also an important contributor to a positive bottom line.

5
6 **Q: In your experience, are you aware of any port state controls or flag
7 state controls regarding vessel safety or environmental protection
8 that are contingent on the rates charged to vessels in a pilotage
9 tariff?**

10 A: Absolutely not. In my view, these are two distinct and unrelated issues.

11
12 **Q: In your experience, are you aware of any port state controls or flag
13 state controls regarding vessel safety or environmental protection
14 that are contingent on the individual compensation received by a
15 pilot providing a pilotage service to a vessel?**

16 A: Absolutely not. In my view, these are two distinct and unrelated issues.

17
18 **IV. RISKS TO PILOTS ARE NOT PERSISTENT AND GROWING**

19
20 **Q: Were you able to review the testimony of Capt. Mitchell Stoller at
21 pages 5 to 20 of Exhibit MSS-01T regarding his claim that the
22 nature of the risks to pilots are “persistent and growing”?**

23 A: Yes.

1 **Q: Do you agree with this conclusion?**

2 A: Acknowledging the vast experience of Capt. Stoller both as an oceangoing
3 ship's Master and pilot, I would disagree in some important respects.

4

5 **Q: Please explain.**

6 A: In support of his claim that risks are persistent, it must be recognized that
7 vessel operations, particularly in the close quarter situations encountered in
8 pilotage waters, will never be risk free. Maneuvering large vessels in close
9 quarters will always present unique challenges, and it is up to the industry
10 as a whole to adopt the principle of continuous improvement to continue to
11 reduce these risks. Through collaborative efforts between competent highly
12 trained pilots and equally trained and competent bridge teams, these risks
13 can be further reduced.

14 In response to his claim that the risks are growing, I would suggest that
15 the risks are not growing but rather changing due in large part to the
16 increased size of vessels (both in tonnage and physical dimension) in the
17 close quarters situations encountered in pilotage waters. In my opinion, this
18 increased risk is mitigated by the facts that bridge crews and pilots are
19 more highly trained than ever before, vessels are more technologically
20 advanced, communications between the pilot and the bridge team have been
21 enhanced, enforcement of USCG regulations are more robust to ensure
22 compliance for onboard systems critical to safe navigation and vessel
23 maneuverability, and the use of escort/assist vessels has increased. As noted
24 above, the risk will never be zero due to the complexity of maneuvering very
25 large vessels in close quarters, but it has and will continue to be mitigated
26 by marine industry collaboration across the private and public sectors.

1 **Q: Would you agree that the principle evidence that Capt. Stoller**
2 **relied on in his testimony for this conclusion is the International**
3 **Group of P&I Clubs 2020 “Report on P&I Claims Involving Vessels**
4 **Under Pilotage 1999-2019” (Exhibit MSS-03)?**

5 A: Yes.

6

7 **Q: Have you also reviewed the contents of this report?**

8 A: Yes.

9

10 **Q: Do you agree with Capt. Stoller’s conclusion that this Report**
11 **measures risks to pilots, and if not, why not?**

12 A: No. The P&I report does not focus on risks to pilots but rather focuses on
13 the risk of liability to vessels when under pilotage as a result of faulty
14 decision making which causes vessel casualties such as allisions, collisions
15 and groundings. The very production of the 2020 P&I report indicates the
16 proactive stance taken by the maritime industry to continuously assess
17 vessel casualties in pilotage waters with a view to fully analyze these
18 casualties, identify causes and implement corrective action to prevent
19 recurrence.

20

21 **Q: Do you agree with Capt. Stoller’s conclusion that this Report shows**
22 **that navigational risks to vessels while under pilotage are**
23 **persistent and growing?**

24 A: No. The highest cost incident during the study period of 1999-2018 was the
25 result of a casualty that occurred in 2007, when a pilot in San Francisco Bay
26 navigated the *Cosco Busan* into the Bay Bridge. This was 15 years ago, and

1 since that time the report shows that no other vessel incident has been as
2 expensive. It is also important to note that the average vessel size amongst
3 container vessels since 2007 has grown consistently, but vessel incidents
4 and costs according to this report have not increased.

5
6 **Q: Would you agree with an assessment that this Report could be read**
7 **to support a theory that as vessels have historically increased in**
8 **size they necessarily become riskier and more prone to the risk of**
9 **an accident?**

10 A: Page 11 of Capt. Stoller’s testimony and its citation to page 33 of the 2020
11 P&I report highlight that fact that in 2018, only 30 incidents occurred out of
12 3.4 million ship movements under pilotage. This represents an
13 “infinitesimally small percentage” of the estimated pilotage moves in that
14 year. Risks to vessels under pilotage are therefore not “persistent and
15 growing” as claimed and are in fact exceptionally small.

16
17 **Q: Do you think that it is reasonable to conclude generally that, as**
18 **ships have increased in size, risks to pilots and vessels have**
19 **increased?**

20 A: No. To support this conclusion would require one to believe that the increase
21 in vessel size is the primary contributor to risks to pilots and vessels,
22 without factoring in the improvements in vessel technology, construction
23 and operating systems. Not taking into account these risk-mitigating factors
24 would lead to a conclusion that the ocean has become a more dangerous
25 workplace, which is certainly not the case. We have an exceedingly
26 sophisticated and modern shipping industry which is safer than ever, even

1 though vessels have consistently increased in size and the number of vessels
2 sailing at any one time has increased exponentially over time. Newer,
3 larger, and more technologically advanced vessels come into service which
4 are manned with better trained officers, crew, and pilots, equipped with
5 more refined technologies in the areas of electronic charting, collision
6 avoidance systems, communications, propulsion systems, assisted by more
7 powerful and maneuverable tugs, and improvements in navigational
8 channels and increased dredging. All this refutes the premise that levels of
9 risk have increased.

10
11 **Q: For his conclusions about persistent and growing risks, Capt.**
12 **Stoller also relies at pages 11-15 on two International Chamber of**
13 **Shipping documents, : a 2016 survey on pilotage and an updated**
14 **2022 bridge procedures guide. Are you familiar with these**
15 **documents?**

16 A: Yes. The very existence of these two documents reflects an on-going effort by
17 the global maritime industry toward continuous improvement and risk
18 mitigation **for mariners, vessels and pilots.**

19
20 **Q: In your opinion, is it appropriate for either of these two ICS**
21 **documents, or their recommendations, which are meant to improve**
22 **safety for mariners, vessels and pilots, to be cited for the**
23 **proposition that risks to pilots are persistent and growing?**

24 A: No. From the industry's perspective, continued efforts to reduce the risks
25 associated with global shipping will always be a high priority. In my
26 opinion, these ICS projects were undertaken not because of a persistent and

1 growing risk but rather for the recognition that certain identifiable risk
2 could be reduced by implementation of the results from the pilotage survey
3 through refinement of the ICS Bridge Procedures Guide. It is important to
4 note that the ICS Bridge Procedures Guide is reviewed and refined
5 periodically when new areas for improvement are identified.

6
7 **Q: Would you agree with Capt. Stoller’s testimony that the 2022 ICS**
8 **Bridge Procedures Guide is “a significant improvement over its**
9 **predecessor document in terms of emphasizing the importance of**
10 **consistent and clear bridge procedures and the clarity of the**
11 **guidance in the document”?**

12 A: Absolutely.

13
14 **Q: In your opinion, would improved clarity and communications on**
15 **the bridge lead to lower risks of incidents and casualties or would it**
16 **lead to “persistent and growing” risks?**

17 A: Clear and concise communication between the vessel’s bridge team and the
18 pilot are critical to ensure safe transits in pilotage waters and would reduce
19 the risks associated with miscommunications which could result in a
20 casualty.

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Q: Do you agree with the provision of recommendations in the conclusion of the IGP&I Report, cited by Capt. Stoller on page 13 of his testimony, that “[i]t is inevitable that there will continue to be incidents of loss or damage that arise with vessels under pilotage. However, one can only hope that the measures outlined in this report might serve to reduce the frequency and severity of these”?

A: Yes. It is incumbent on the vessel owner, crew and pilots to continue to work together to mitigate the risks of transits in pilotage waters, in spite of the fact that the risk will never be reduced to zero. When areas for improvement are identified, all stakeholders must work together to make transits under pilotage safer and less risky.

V. CONCLUSION

Q: Does this conclude your testimony?

A: Yes. I would like to add some closing thoughts relative to the marine industry as a whole. The brotherhood/sisterhood of mariners, whether they be serving as crew members onboard vessels, shoreside management (many who have seagoing sailing experience) or as pilots, are a tightly bonded group of consummate professionals that take our responsibilities for a safe and environmentally responsible operation seriously and who are dedicated to this end. We acknowledge the unique professional expertise of all parties which collectively can contribute to the reduction of all types of risks, including those on vessels under pilotage. When one sector fails to contribute to solutions, we all fail. So there is every incentive for the

1 industry to work collectively to reduce risks. However, in my opinion, these
2 critical operating issues do not logically support a proposal for pilotage rate
3 increases in one specific area of the country.
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