

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,  
Complainant,  
v.  
PUGET SOUND PILOTS,  
Respondent.**

**Docket TP-220513**

**REBUTTAL TESTIMONY OF  
CAPTAIN MITCHELL S. STOLLER  
ON BEHALF OF PUGET SOUND PILOTS**

**MARCH 3, 2023**

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<b>EXHIBIT LIST</b>		
<b>Exhibit No.</b>	<b>Description</b>	<b>Page Referenced</b>
MSS-13	NTSTS Marine Accident Report / M/V Golden Key	4
MSS-14	“Ship Happens: How the Golden Ray’s Final Voyage Went Wrong in a Hurry”	5
MSS-15	Kirschner, “Liability Considerations in the Use by Pilots of Their Own Carry Aboard Navigation Equipment (March, 2018).	7, 8

1 **I. IDENTIFICATION OF WITNESS**

2  
3 **Q: Please state your name and position.**

4 A: My name is Captain Mitchell Stoller. I am a retired LA Harbor Pilot and currently work  
5 as a maritime safety consultant.

6 **II. PURPOSE OF TESTIMONY**

7 **Q: What is the purpose of your testimony?**

8 A: My testimony is offered to rebut the testimony of PMSA witnesses Kathy J. Metcalf and  
9 Captain Michael Moore that the risks involved in serving as a state-licensed pilot on a heavily  
10 trafficked pilotage ground are not, as I described in my original testimony, "persistent and  
11 growing." The evidence clearly supports my conclusion.

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14 **Q: In her testimony, Ms. Metcalf responded to your testimony that risks to pilots are**  
15 **growing with the following statement: "I would suggest that the risks are not growing but**  
16 **rather changing due to the increased size of vessels (both in tonnage and physical**  
17 **dimension) in the close quarters situations encountered in pilotage waters." She then goes**  
18 **on to state that, in her opinion, "this increased risk is mitigated by the fact that bridge**  
19 **crews and pilots are more highly trained than ever before, vessels are more technologically**  
20 **advanced, communications between the pilot and the bridge team have been enhanced,**  
21 **enforcement of USCG regulations [is] more robust to ensure compliance for on board**  
22 **systems critical to safe navigation and vessel maneuverability, and the use of escort/assist**  
23 **vessels has increased." Do you agree with this position?**  
24  
25  
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1 A: No. One need only examine a number of recent casualties involving vessels under  
2 pilotage to see that increased vessel size in waterways that are not changing in terms of channel  
3 dimensions is increasing pilotage risk. One of the most obvious risks is the fact that the mega-  
4 ships of today carry enough fuel, often as much as a million gallons, to cause a major oil spill in  
5 a grounding or collision that ruptures the fuel tanks.

6  
7 **Q: Do you have confidence that technological advances in cargo vessel design**  
8 **significantly mitigate the risk of casualty?**

9 A: Absolutely not. Rather than speak in general terms on this topic, I would point to two  
10 relatively recent major casualties demonstrating that, as vessels grow in size and technological  
11 complexity, there is growth in casualty risk. The two casualties that illustrate this point are the  
12 M/V Ever Given grounding in the Suez Canal in March 2021 and the capsizing of the M/V  
13 Golden Ray in pilotage waters off the coast of Georgia in September 2019. As I noted in my  
14 original testimony in this case, one of the serious problems from a navigational standpoint that  
15 has come along with increasing vessel size is that rudder size has been decreased on these vessels  
16 in order to maximize fuel efficiency. Especially at slow speeds, this loss in rudder size reduces  
17 the ship's maneuverability. This is a concern that the International Maritime Organization has  
18 identified as one that must be addressed in a "Lessons Learned and Safety Issues Identified"  
19 memorandum that is an annex to the International Group of P&I Clubs' 20-year study that is  
20 discussed in my original testimony. That IMO report describes this serious safety issue as  
21 follows:  
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24 Rudders with small surface areas and software managed engines to improve fuel  
25 economy make ship manoeuvring ever more difficult.

26 Exh. MSS-03 at 42.

1 This is a clear example of where technological advances in ship design that increase profit –  
2 more cargo carrying capacity and enhanced fuel efficiency – when not also associated with  
3 similar advances in vessel maneuverability cause a significant increase in the risk of casualty in  
4 pilotage waters.

5  
6 **Q: Does the IMO report regarding "safe pilotage practice" that you just referenced**  
7 **also call out other safety-related issues associated with the increasing size of modern cargo**  
8 **vessels?**  
9

10 A: Yes. This report also references four other factors that increase the risk of a pilotage  
11 assignment involving large ships with huge hulls above the water line or “sail area” that is  
12 susceptible to wind forces. These include the following:

13 Inter-port rivalry for handling of ever larger ships may compromise safety judgments  
14 and propose ships movements that involve excessive risk owing to inadequate under  
15 keel clearance (UKC), channel width, safe turning basins, or other necessary navigation  
16 infrastructure;

17 Machinery failure;

18 Absence and shortage of adequate number of assist tugs of suitable power for the size  
19 of the ships being handled; and

20 Escort tugs and/or powerful tugs for steering/pushing a ship away from a developing  
21 incident area.

22 Exh. MSS-03 at 42.

23 **Q: Do pilots throughout the United States including Puget Sound face increasing risk**  
24 **associated with the above factors actually occurring with a modern mega-ship?**  
25  
26

1 A: Yes. Where that failure involves a very large vessel, which includes vessels that did not  
2 call in Puget Sound two or more years ago, the pilotage risk is substantially increased. The  
3 increased risk of mega-sized oil tankers is one of the reasons for the passage of legislation in  
4 Washington and other states requiring increased use of tug escorts. The fact that this risk is  
5 growing is demonstrated by the active involvement of the Puget Sound Pilots in the ongoing  
6 development of tug escort and line tethering practices (with the Department of Ecology and  
7 Board of Pilotage Commissioners) that are now the subject of simulation training for every PSP  
8 pilot. The idea that pilotage risks are static when vessel sizes continue to increase cannot be  
9 reconciled with objective evidence to the contrary.  
10

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12 **Q: Please describe how the massive casualty involving the large car carrier M/V**  
13 **Golden Ray supports your opinion that the risks of service as a state-licensed pilot in the**  
14 **United States are "persistent and growing."**

15 A: The massive casualty generated by the capsizing of the M/V Golden Ray on September  
16 8, 2019, illustrates the risks associated with the incredibly complex navigation and stability  
17 systems utilized in modern mega-ships. The M/V Golden Ray was a 71,178 gross ton car carrier  
18 with the capacity of up to 7,742 vehicles. The 47-page Marine Accident Report Issued by the  
19 National Transportation Safety Board on August 26, 2021, which is Exh. MSS-13, determined  
20 that the probable cause of the casualty was "the chief officer's error in entering ballast quantities  
21 into the stability calculation program, which led to his incorrect determination of the vessel's  
22 stability and resulted in the Golden Ray having an insufficient righting arm to counteract the  
23 forces developed during a turn while transiting outbound from the Port of Brunswick through St.  
24 Simons Sound." One only needs to read this report to understand the complexity of the vessel  
25  
26

1 stability issues involved in this casualty and the contributing cause of open watertight doors on  
2 deck five, which allowed flooding into the vessel when she capsized or "turned turtle" and also  
3 blocked the primary egress from the engine room.  
4

5 **Q: What were the consequences of this casualty involving a very large car carrier?**

6 A: As a result of the accident, two crewmembers suffered serious injuries and the vessel  
7 suffered significant damage due to fire, flooding and saltwater corrosion. The vessel was  
8 ultimately declared a total loss estimated at \$62.5 million. Vehicle cargo loss was estimated at  
9 \$142 million. Technological advances in wreck removal have enabled jurisdictions to insist on  
10 the removal of shipwrecks that previously were left to deteriorate on the ocean floor. In this case,  
11 the State of Georgia insisted on wreck removal, which has resulted in one of the largest casualty  
12 claims in the history of the world. To date, the cost of the M/V Golden Ray casualty totals \$850  
13 million. A news report describing the casualty and containing excellent photographs of the  
14 infrastructure necessary to accomplish the removal of a large cargo ship is Exh. MSS-14. One of  
15 the photographs from that article showing the enormous infrastructure necessary to remove such  
16 a mega-ship wreck is below:  
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**Q: Have you reviewed the testimony of maritime insurance broker Sean McCarthy?**

A: Yes.

**Q: Does Mr. McCarthy's testimony regarding the massive casualty losses experienced by International Group P&I Clubs insuring 90% of the world's shipping tonnage in the last three years support your opinion regarding the growing and persistent risks of work as a state-licensed pilot?**

A: Yes. The scale of those losses in 2020, 2021 and 2022 directly rebuts Captain Moore's testimony regarding the 20-year study by the International Group of P&I Clubs that casualties under pilotage are becoming less significant and supports my view that the sizeable increases in

1 the scale of casualty losses involving large and complex ships like those transiting pilotage  
2 waters in Puget Sound correlates directly with the increased risks involved in providing pilotage  
3 services to these vessels.  
4

5 **Q: How would you describe the significance of the invention of Portable Pilot Units or**  
6 **PPUs?**

7 A: From a technological standpoint, one of the most significant developments in the last 30  
8 years related directly to piloting was the development of portable electronic chart systems, which  
9 are commonly referred to as Portable Pilot Units or PPU's. While these devices are extremely  
10 useful to the pilot, they have raised many liability considerations for the pilot. Some of these  
11 questions include: (1) With use of PPU's having become so prevalent, is a pilot's failure to use a  
12 PPU negligence?; (2) What are the legal consequences where a pilot makes a mistake in using a  
13 PPU or fails to properly maintain the unit?; and (3) What happens if the pilot or his or her pilot  
14 association is a source of erroneous information incorporated into the software developed by the  
15 manufacturer of the PPU? These are all questions that pilots and pilot groups have had to  
16 examine as the availability and use of PPU's has become ubiquitous.  
17  
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19  
20 **Q: Are you able to provide any information regarding the legal considerations you just**  
21 **identified?**

22 A: Yes, with the benefit of a 14-page legal memorandum prepared in 2018 by Paul Kirchner,  
23 then the Executive Director-General Counsel for the American Pilots' Association, a copy of  
24 which is Exh. MSS-15. This memorandum was widely circulated throughout the pilotage  
25 profession in the US and contains extremely valuable advice. The conclusion to this  
26

1 memorandum is particularly helpful, but also illustrates the significant intersection between work  
2 as a pilot and legal exposure:

3 Where does this leave us? It leaves us where I think pilots have always been. The best  
4 protection against liability is to do the best possible piloting job. Not only will that  
5 prevent casualties, it will put the pilot in the best legal position in case a casualty does  
6 occur.

7 Pilots should avoid trying to think like lawyers. Many of the most serious legal  
8 problems that pilots get themselves into happen when they make a decision on the  
9 bridge of a ship, often under emergency circumstances, based on what they think they  
10 heard a lawyer say or, even more dangerous, what they think a lawyer would do under  
11 the circumstances. My advice to pilots is: Don't do this! BE A PILOT! Rely on your  
12 training and instincts and keep in mind why ships are required to take a pilot. It is  
13 becoming increasingly clear that a pilot's job, and what the public and the law expect of  
14 a pilot, is to prevent a casualty. Pilots should do whatever they can, and use whatever  
15 resources are available, to prevent a casualty. If a casualty does occur, the law favors  
16 those who can show that they did their best rather than those who tried to avoid  
17 liability.

18 If using a PPU will, in the pilot's own professional judgment, help to prevent a casualty  
19 and will genuinely enhance safety and improve the pilot's performance, the pilot should  
20 use it. I believe a pilot can do so under current United States law without exposing  
21 himself or herself to significantly greater liability risks. The key is to be prudent and to  
22 exercise some common sense measures to limit the liability exposure.

23 MSS-16 at 14.

24 **Q: Based on your background and experience including service on the National Safety  
25 Advisory Council, do you consider the legal exposure of a state-licensed pilot to be  
26 comparable to that of other professionals such as doctors, lawyers and accountants?**

27 A: No. If a pilot makes a major mistake in a pilotage assignment involving one of today's  
28 mega-ships, that mistake can literally be seen from space. Consistent with that reality, a  
29 maritime pilot faces legal exposure far in excess of what lawyers, doctors or accountants face as  
30 a result of malpractice in the performance of their work. In those professions, a single instance of  
31 mistake or malpractice will expose the professional to a monetary claim that likely will be

1 covered by insurance, but the doctor, lawyer or accountant who commits malpractice does not  
2 face the potential loss of their license to pursue their chosen livelihood or criminal imprisonment.  
3 In contrast, the state-licensed maritime pilot who makes a mistake that results in a high profile  
4 casualty faces an extraordinary array of legal consequences including potential suspension or  
5 loss of his or her state or federal pilotage license (or both) plus potentially ruinous civil and/or  
6 criminal liability and potential imprisonment. I am not aware of any other profession in the  
7 United States where negligence can result in criminal consequences. However, that is the case  
8 for the maritime pilot as described in the testimony of Clay Diamond and Sean McCarthy  
9 strongly supporting the practice of pilot groups to secure substantial amounts of both civil and  
10 criminal liability and defense coverage as well as license defense and lost income insurance.  
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13 **III. CONCLUSION.**

14 **Q: Does this conclude your testimony?**

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16 **A: Yes.**  
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