

PUGET SOUND PILOTS' RESPONSES TO PMSA DATA REQUESTS Nos. 580-614

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| DATE PREPARED: March 15, 2023 DOCKET: TP-220513 REQUESTER: Pacific Merchant Shipping Association ("PMSA") | WITNESSES: SEAN MCCARTHY RESPONDER: SEAN MCCARTHY PUGET SOUND PILOTS DATE: March 22, 2023 TEL: (503) 241-9228 EMAIL: seanm@dbates.com |
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PMSA DATA REQUEST NO. 580: Regarding Exh. SM-02 at 12, please provide a copy of the United States Coast Guard "instructions for Criminal Enforcement of Environmental Laws" document issued in July 1997 as referenced.

RESPONSE:

I was unable to find the USCG Criminal Enforcement guideline from 1997, but did find the attached USCG document dated 2004-05 addressing the topic of environmental enforcement actions from a 2001 International Oil Spill Conference and the attached 2001 International Oil Spill Conference article entitled "*Oil Spills and Criminal Sanctions: An Insurer's Perspective.*"

PMSA DATA REQUEST NO. 581: Regarding Exh. SM-03, please provide a copy of the current policy effective February 28, 2023, for Puget Sound Pilots, and the policies for years 2017-2021.

RESPONSE:

Copies of requested policies attached.

PMSA DATA REQUEST NO. 582: Regarding Exh. SM-03 at 4, regarding the premiums for “Named Assureds” Puget Sound Pilots Association and Pilot Technology Services LLC, where no premiums are listed, please respond to the following:

- (a) Admit that for Puget Sound Pilots Association, the term “Included” is listed for every premium category.
- (b) Admit that for Pilot Technology Services LLC, no premium or notes are included for any premium category.
- (c) Please describe what “Included” means as a practical matter with respect to premiums for the Puget Sound Pilots Association (i.e. are the premiums for Puget Sound Pilots Association provided for free by underwriters as a negotiated business term, are the premiums for Puget Sound Pilots Association built into the individual premiums paid per pilot, or some other business arrangement).
- (d) How are “Included” premiums reflected in the costs of these policies?
- (e) How much does this “Included” premium cost each individual pilot?
- (f) Please describe what the non-notation of premiums means as a practical matter with respect to premiums for Pilot Technology Services LLC (i.e. are the premiums for Pilot Technology Services LLC provided for free by underwriters as a negotiated business term, are the premiums for Pilot Technology Services LLC built into the individual premiums paid per pilot, or some other business arrangement).
- (g) How are the costs of the non-noted premiums for Pilot Technology Services LLC reflected in these policies?
- (h) How much does this non-noted premium cost each individual pilot?

RESPONSE:

- (a) Admit.
- (b) Admit.
- (c) As a practical matter, the Puget Sound Pilots Association is an additional insured included within the total negotiated premium because, depending on the case and how it is litigated by the plaintiff, there is potential for the Puget Sound Pilots Association to be named as a defendant, which necessitates the need for general liability coverage that includes the costs of legal defense.
- (d) See response to (c).
- (e) This cost is not set out separately. Given the varying numbers of licensed pilots in a given year due to new licensures and retirements, determining the average cost per pilot varies.
- (f) Given the small character of the risks associated with this category of insurance, Pilot Technology Services LLC is an additional insured with the cost blended into the premiums paid by PSP. This cost is not the subject of a separately identified premium.
- (g) See response to (f).

(h) See response to (f).

PMSA DATA REQUEST NO. 583: Further regarding Exh. SM-03 at 4, regarding the premiums for “Added Coverage for Portable Pilot Units (PPU’s) – Limit \$28,000” please respond to the following:

- (a) Admit that for this “Added Coverage,” the term “Included” is listed.
- (b) Please describe what “Included” means as a practical matter with respect to premiums for the named assureds, including individual pilots, Puget Sound Pilots Association, and the Pilot Technology Services LLC.
- (c) How are these “Included” premiums reflected in the costs of these policies?
- (d) How much does this “Included” premium cost each individual pilot?

RESPONSE:

- (a) Admit.
- (b) As a practical matter, Pilot Technology Services LLC is an additional insured included within the total negotiated premium because, depending on the case and how it is litigated by the plaintiff, there is potential for Pilot Technology Services LLC to be named as a defendant, which necessitates the need for general liability coverage that includes the costs of legal defense.
- (c) See response to DR 54(f).
- (d) See response to DR 54(d).

PMSA DATA REQUEST NO. 584: Further regarding Exh. SM-03 at 4, regarding “WAGES” please describe how the policy coverage figure of \$320,000 was determined.

RESPONSE:

On an annual basis, PSP provides an estimate of its anticipated net income per pilot for that year, which is then the basis for the level of lost income insurance.

PMSA DATA REQUEST NO. 585: Testimony at Exh. SM-01T 4:21–24 states that “PSP carries \$30 million in total coverage for civil legal liability and defense costs,” however, the liability limits stated at Exh. SM-03 at 1 are “Civil Legal Defense” are \$10 million and “Civil Legal Liability” are “Included.” Please respond to all of the following:

- (a) Admit that the \$20 million discrepancy in the coverage levels between Exh. SM-03 and your testimony is reflective of the existence of an “Excess Pilots Legal Liability” policy.
- (b) Provide a copy of the “Excess Pilots’ Legal Liability” policy.

RESPONSE:

- (a) Admit.
- (b) Copy of policy attached.

PMSA DATA REQUEST NO. 586: Regarding Exh. SM-01T 8:25–9:2, please demonstrate with representative data the general increase in rates from 2018 to 2022 that support the claim that “rates have risen.”

RESPONSE: Spreadsheet for 2018-22 attached.

PMSA DATA REQUEST NO. 587: Further regarding Exh. SM-01T 8:25–9:2, please include as much specificity as possible with respect to how you have assessed that the rate increases identified in DR 586 are “as a result” of the allegations regarding ordinary negligence claims as identified in your testimony.

RESPONSE:

As a direct result of negotiations in which the underwriters specifically referenced the M/V SM MUMBAI litigation to justify an increase in premiums.

PMSA DATA REQUEST NO. 588: Regarding Exh. SM-06 at 3, admit that Best’s Market Segment Report dated February 15, 2022, states that “factors such as the fall in the age profile of vessels, technological advances in navigation, investment in loss prevention, and increases in club deductibles continue to have a positive impact on claims costs.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 589: Further regarding Exh. SM-06 at 3, admit that Best's Market Segment Report dated February 15, 2022, states that "social inflation has also been mentioned by some of the clubs as an influencing factor in pushing up claims costs."

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 590: Further regarding Exh. SM-06 at 1, admit that Best's Market Segment Report dated February 15, 2022, states that "[t]he general increases announced for the policy year 2022/23 are above the previous year, ranging between 5% and 15%, and have been attributed to: •An increase in the cost of pool claims •The cost of attritional COVID-19 related claims, and •The erosion of premium levels up to 2019 to a level considered unsustainable."

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 591: Regarding Exh. SM-07 at 5, admit that the Aon “Navigating New Forms of Volatility Protection and Indemnity Renewal 2022/23 Commentary” states that “the increasing cost of major claims” is “due to varying factors, including: • governments and authorities punitively penalizing shipowners for incidents; • technological advancement permitting increasingly expensive wreck removals; and • a worrying trend of governments trying to break limitation to which their country has signed.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 592: Regarding Exh. SM-07 at 5, admit that the Aon “Navigating New Forms of Volatility Protection and Indemnity Renewal 2022/23 Commentary” states that “[a]lmost all of the incidents are caused by human error, so the focus will also be on the performance of crew and pilots.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 593: Admit that P&I premium rates reflect the costs of vessel casualties, including vessel casualties that are the result of pilotage negligence.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 594: Admit that vessel casualties which are the result of pilotage negligence create upward pressure on P&I premium rates and costs.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 595: Admit that shipowners pay P&I premium rates and costs.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 596: Admit that pilots do not pay P&I premium rates and costs.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 597: Please describe the full extent of your **personal knowledge** of the *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021) and *M/T LEVANT, et al. v. Henshaw*, Case No. 2:21-cv-01670-RSM (W.D. WA 2022) cases, and the role you had in each case whereby you derived your **personal knowledge** of these cases. “**Personal knowledge**” is hereby defined as knowledge of a circumstance or fact gained through firsthand observation, experience, or one’s own senses.

RESPONSE:

I served as the marine insurance broker representing the insureds, Capt. Christopher Boyce in the federal court case in Oregon and Capt. Brian Henshaw in the federal court case in Washington. In that capacity, I received copies of all reports from counsel, participated in evaluations of the potential loss, estimation of reserves and settlement recommendations from counsel and negotiating strategy.

PMSA DATA REQUEST NO. 598: Further regarding Exh. SM-04, the Opinion and Order, *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021), admit that the Order found (at page 7) that in consideration of the comparison of willful misconduct and gross negligence that a “split in authority makes the waters of Oregon tort law difficult to navigate, especially given the dearth of case law on these statutory provisions.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 599: Regarding Exh. SM-04, the Opinion and Order, *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021), admit that the Order held (at page 9) that “this Court finds, interpreting under admiralty and Oregon law and looking at the text and context of the statute, that O.R.S. §776.540 allows for recovery up to \$250 for any damages flowing from a proven act of gross negligence and does not limit damages flowing from an act of willful misconduct.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 600: Further regarding Exh. SM-04, the Opinion and Order, *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021), admit that the Order held (at page 9) that “Because There Is a Genuine Issue of Material Fact as to Whether Boyce Engaged in Willful Misconduct, Summary Judgment is Precluded.”

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 601: Further regarding Exh. SM-04, the Opinion and Order, *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021), admit that the case was dismissed by Order entered on September 16, 2021, as a result of a settlement by the parties.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 602: Further regarding Exh. SM-04, the Opinion and Order, *Port of Kalama v. M/V SM MUMBAI*, et al, Case No. 3:20-cv-00621-IM (D. OR 2021), admit that the pilot in question, Capt. Boyce, after dismissal as a result of the settlement recovered in full the \$250 cash bond posted in the case.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 603: Regarding Exh. SM-05, the Answer and Third Party Complaint, *M/T LEVANT, et al. v. Henshaw*, Case No. 2:21-cv-01670-RSM (W.D. WA 2022), admit that the pilot in question, Capt. Henshaw, replied to the Third Party Complaint and denied all claims of negligence and gross negligence on June 13, 2022.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 604: Further regarding Exh. SM-05, the Answer and Third Party Complaint, *M/T LEVANT, et al. v. Henshaw*, Case No. 2:21-cv-01670-RSM (W.D. WA 2022), admit that on February 23, 2023, all claims brought against the vessel M/T LEVANT were dismissed upon settlement of the parties, but that the federal court determined that it would retain jurisdiction of the Third Party Complaint against the pilot in question, Capt. Henshaw, and the settlement did not affect the claims of negligence and gross negligence.

RESPONSE:

Admit.

PMSA DATA REQUEST NO. 605: Please provide the last 10 years, 2013-2022, of claims paid to Puget Sound Pilots Association.

RESPONSE:

Recap attached with pilot names redacted.

PMSA DATA REQUEST NO. 606: Please provide the last 10 years, 2013-2022, of claims paid to Pilot Technology Services LLC.

RESPONSE:

Recap attached.

PMSA DATA REQUEST NO. 607: Please provide the last 10 years, 2013-2022, of claims paid to individual Puget Sound Pilot members.

RESPONSE:

See response to DR 605.

PMSA DATA REQUEST NO. 608: Of all claims paid in the last 10 years, 2013-2022, please identify all claims paid as the result of a Puget Sound Pilot allision.

RESPONSE:

See response to DR 605.

PMSA DATA REQUEST NO. 609: Of all claims paid in the last 10 years, 2013-2022, please identify all claims paid as the result of a Puget Sound Pilot collision.

RESPONSE:

None.

PMSA DATA REQUEST NO. 610: Of all claims paid in the last 10 years, 2013-2022, please identify all claims paid as the result of a Puget Sound Pilot grounding.

RESPONSE:

None.

PMSA DATA REQUEST NO. 611: Of all claims paid in the last 10 years, 2013-2022, please identify all claims paid as the result of an oil spill caused by a Puget Sound Pilot allision, collision, or grounding.

RESPONSE:

None.

PMSA DATA REQUEST NO. 612: Regarding your testimony at Exh. SM-01T 10:4–20, please describe whether the “risk of accidents while berthing” as described in the 2019 British Columbia incident are risks to pilots, risks to the vessels being piloted, or both.

RESPONSE:

Both.

PMSA DATA REQUEST NO. 613: Further regarding your testimony at Exh. SM-01T 10:4–20, if risks to pilots are identified in response to DR 611, please identify whether those are risks covered under the current PSP and individual PSP member policies and the limits and deductibles applicable to each identified risk.

RESPONSE:

In the event of a loss covered under the terms of the insurance policy, there is general liability coverage for these risks for all PSP working pilots and the Puget Sound Pilots Association.

PMSA DATA REQUEST NO. 614: Regarding Exh. SM-01T 1:4–6, please clarify whether Durham and Bates Agencies as a “marine insurance brokerage firm” only brokers marine pilot insurance policies or whether Durham and Bates Agencies also underwrites marine pilot insurance policies. If it underwrites marine pilot insurance policies, please identify which marine pilot insurance policies held by Puget Sound Pilots Durham and Bates Agencies underwrites.

RESPONSE:

Durham and Bates Agencies operates exclusively as a marine insurance broker. Our company does no underwriting of marine risks.