

Protection of Pilots: The Fifth Circuit Rejects Application of Maritime Law Preemption in Upholding Louisiana’s Heightened Pilot Negligence Standard

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I. INTRODUCTION

The United States Supreme Court once described Louisiana river pilots as “indispensable cogs in the transportation system of every maritime economy” whose work “affects the safety of lives and cargo.”¹ Those words highlight the crucial role that pilots play in navigating the nation’s lakes, rivers, and ports. Unfortunately, collisions and allisions are inevitable for piloted vessels, and pilots will inevitably find themselves involved in the resulting lawsuits against the vessels, their owners, and sometimes, the pilots themselves.

One such collision occurred on January 3, 2019, just beyond the New Orleans General Anchorage on the Mississippi River.² That morning, the *M/V Strandja* (*Strandja*), owned by Balkan Navigation Ltd. and managed by Navigation Maritime Bulgare JSC (together “Balkan”), was anchored along the western side of the Mississippi River and secured by port and starboard anchor.³ Captain Robert Johnson, a Louisiana state-commissioned river pilot acting as the ship’s compulsory pilot, boarded

1. *Kotch v. Bd. of River Port Pilot Comm’rs for Port of New Orleans*, 330 U.S. 552, 558, 1947 AMC 535 (1947).

2. *Marquette Transp. Co. Gulf-Inland, LLC v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 681, 2023 AMC 622 (5th Cir. 2023).

3. *Id.*

the *Strandja* to prepare the vessel for its return to sea.⁴ Captain Johnson requested that the *Strandja*'s master instruct the crew to heave the port anchor.⁵ Due to this heaving process, the ship made a landward movement.⁶ As the port anchor released from the river bottom, the natural strain shifted to the starboard anchor, which was still anchored to the river floor.⁷ This strain caused the bow to change course, and the ship drifted into the middle of the river, approximately three hundred feet outside the general anchorage.⁸

Meanwhile, the *Kieffer E. Bailey*, a tugboat owned by Marquette Transportation Company Gulf-Inland LLC (Marquette), was pushing a tow of six loaded barges down the Mississippi River and attempted to pass.⁹ The *Kieffer E. Bailey* "made multiple radio calls to vessels in the area indicating its approach and its position in the river. No one from the *Strandja* responded to these calls or warned . . . that the *Strandja* would be drifting into the middle of the river."¹⁰ Both vessels engaged in evasive maneuvers in an attempt to avoid a collision.¹¹ "The *Kieffer E. Bailey* steered . . . toward the eastern side of the river Despite efforts, one of the *Kieffer E. Bailey*'s barges struck the *Strandja*'s bulbous bow."¹²

Marquette brought *in personam* claims against Balkan in federal court in the United States District Court for the Eastern District of Louisiana based on diversity jurisdiction. Balkan brought an *in personam* counterclaim against Marquette and an *in rem* counterclaim against the *Kieffer E. Bailey* sounding in admiralty jurisdiction.¹³ "Marquette then amended its complaint to add *in rem* admiralty claims against the *Strandja* and impleaded Captain Johnson."¹⁴ On appeal, Captain Johnson alleged that the District Court did not apply the applicable standard of proof regarding Marquette's negligence.¹⁵ Captain Johnson argued that state pilotage law, specifically Louisiana Revised Statute section 34:1137, provided the correct standard, and Marquette would need to prove that

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 681-82.

14. *Id.* at 682.

15. *Id.* at 682-83.

Captain Johnson was grossly negligent by the clear and convincing evidence standard.¹⁶

The district court disagreed, determined that general maritime law preempted Louisiana pilotage law, and instructed the jury that Marquette had to prove Captain Johnson was grossly negligent only by the preponderance of the evidence standard under federal law.¹⁷ The jury concluded that Marquette was not negligent, that Balkan and Captain Johnson were each fifty percent at fault, and that Marquette was entitled to \$114,000 in damages.¹⁸ The United States Court of Appeals for the Fifth Circuit *held* that general maritime law does not preempt the burden of proof and the applicable negligence standard in section 34:1137, which requires a plaintiff to prove gross negligence against a pilot by clear and convincing evidence.¹⁹ *Marquette Transp. Co. Gulf-Inland, LLC v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 2023 AMC 622 (5th Cir. 2023).

II. HISTORICAL BACKGROUND

A. *Liability for Pilot Negligence*

In the maritime industry, the term “pilot” refers to a person with specialized knowledge of local conditions and navigational hazards who boards a vessel temporarily to navigate a ship through local waters to and from a port.²⁰ Their duties can include determining the correct position of the vessel, employing the vessel’s radar, sounding the signals, maintaining a proper speed, and remaining informed of changes to conditions and hazards.²¹ Since they are considered experts in their field, pilots are held to a high standard of care.²² In situations where a pilot’s actions fall below that standard of care, the pilot can be held liable for damages.²³

Additionally, the vessel and its owner may be held liable for the pilot’s negligence, although their liability depends on whether the pilot

16. *Id.*; LA. STAT. ANN. § 34:1137 (2025).

17. *Id.* at 683-84. Even though the district court found that the preponderance of the evidence standard applied under general maritime law, it nevertheless used the gross negligence standard under section 34:1137. *See also* LA. STAT. ANN. § 34:1137.

18. *Id.* at 682.

19. *Id.* at 684.

20. Frederick B. Goldsmith, *River Pilot, Marine Surveyor, and Third-Party Inspector Liability*, 26 TUL. MAR. L.J. 463, 464 (2002).

21. *Id.* at 471; THOMAS J. SCHOENBAUM, *ADMIRALTY AND MARITIME LAW* 161 (6th ed. 2002).

22. Goldsmith, *supra* note 20, at 471; SCHOENBAUM, *supra* note 21.

23. Goldsmith, *supra* note 20, at 471; SCHOENBAUM, *supra* note 21.

was classified as compulsory or voluntary.²⁴ As a general rule, pilots are considered compulsory only if a statute specifically requires a vessel to take a pilot on board and imposes a criminal penalty or fine against a vessel owner for violating the statutory mandate; otherwise, they are classified as voluntary.²⁵ A compulsory pilot is not considered an agent of the vessel owner; accordingly, there is no respondeat superior liability for the pilot's negligence for which the vessel owner can be held personally liable.²⁶ However, the vessel itself can be liable *in rem* for the negligence of its compulsory pilot.²⁷ By contrast, respondeat superior liability applies to a voluntary pilot, who is considered an employee of the vessel owner, potentially resulting in both *in personam* liability for the owner and *in rem* liability for the vessel stemming from the pilot's negligence.²⁸

B. General Maritime Law Preemption and the States' Power to Regulate Pilotage

Given the potential liability of the vessel, its owner, and the pilot following a collision involving a piloted vessel, a question arises regarding the negligence standard applicable to the pilot. One source for the negligence standard can be found in the general maritime law, which the Supreme Court has described as "an amalgam of traditional common-law rules, modification of those rules, and newly created rules."²⁹ General maritime law "only requires a finding of ordinary negligence by a preponderance of the evidence,"³⁰ which is evidence that persuades the court that "the plaintiff's claim is more likely true than not true."³¹ To the extent general maritime law may conflict with state laws, general maritime law preempts state laws that "prejudice the characteristic

24. SCHOENBAUM, *supra* note 21, at 159.

25. *Id.*; David J. Bederman, *Compulsory Pilotage, Public Policy, and the Early Private International Law of Torts*, 64 TUL. L. REV. 1033, 1045-46 (1990).

26. SCHOENBAUM, *supra* note 21, at 159.

27. *Id.*

28. *Id.*

29. *E. River S.S. Corp. v. Transamerica Delaval, Inc.*, 476 U.S. 858, 864-65, 1986 AMC 2027 (1986) (citing *Kermerac v. Compagnie Generale Transatlantique*, 358 U.S. 625, 630, 1959 AMC 597 (1959); *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 354, 373-75 (1959)).

30. *Marquette Transp. Co. Gulf-Inland, LLC v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 683, 2023 AMC 622 (5th Cir. 2023).

31. *Offshore Specialty Fabricators, LLC v. Dumas Intern., Inc.*, 982 F. Supp. 2d 695, 700 (E.D. La. 2013) (quoting COMM. ON PATTERN JURY INSTRUCTIONS DIST. JUDGES ASS'N FIFTH CIR., PATTERN JURY INSTRUCTIONS (CIVIL CASES) 2.20 (1998)).

features of the maritime law or . . . disrupt the harmony it strives to bring to international and interstate relations.”³²

However, an exception to the application of general maritime law can be found in 46 U.S.C. § 8501(a), which provides, “[e]xcept as otherwise provided in this subtitle, pilots in the bays, rivers, harbors, and ports of the United States shall be regulated only in conformity with the laws of the States.”³³ This congressional intent of leaving the regulation of pilotage to the states dates back to the first Congress and the passage of the Lighthouse Act of 1789—the origin of § 8501—which stated, “[u]ntil further provision is made by Congress, all pilots in the bays, inlets, rivers, harbors, and ports of the United States shall continue to be regulated in conformity with the existing laws of the States.”³⁴ The Supreme Court in *Olsen v. Smith* upheld the state’s power to legislate pilotage against constitutional challenges because, even though “state laws concerning pilotage are regulations of commerce,” they may be exercised by the states until Congress has deemed it necessary to act upon the subject.³⁵ And as the Fifth Circuit stated in *Gillis v. Louisiana*, “Congress has historically left the regulation of pilotage largely in the control of the states.”³⁶ The *Gillis* court further elaborated on the congressional intent of § 8501 by explaining that “[r]ather than a limited grant of authority to the states over the specified bodies of water, the statute has been interpreted as an expression of Congress’s general intent *not* to limit the power already held by the states unless otherwise provided by Congress.”³⁷

C. Louisiana’s Pilotage Liability-Limiting Statute

In 2004, the Louisiana legislature enacted the current version of section 34:1137, which provides:

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

32. J. Ray McDermott & Co. v. The Vessel Morning Star, 457 F.2d 815, 818, 1972 AMC 907 (5th Cir. 1972) (en banc) (citing *Romero*, 358 U.S. at 373; *Just v. Chambers*, 312 U.S. 383, 389-90, 1941 AMC 430 (1941); *S. Pac. Co. v. Jensen*, 244 U.S. 205, 216, 1996 AMC 2076 (1917)).

33. 46 U.S.C. § 8501(a).

34. 46 U.S.C. § 211 (1970) (codifying the Lighthouse Act of Aug. 7, 1789, ch. 9, § 4, 1 Stat. 54).

35. *Olsen v. Smith*, 195 U.S. 332, 341 (1904) (first citing *Cooley v. Port Wardens*, 195 U.S. 332 (1851); then citing *Ex parte McNiel*, 80 U.S. 236, 240 (1871); and then citing *Wilson v. McNamee*, 102 U.S. 572, 574-75 (1880)).

36. *Gillis v. Louisiana*, 294 F.3d 755, 761, 2002 AMC 2010 (5th Cir. 2002).

37. *Id.*

clear and convincing evidence that the damages arose from the pilot's gross negligence or willful misconduct.³⁸

As compared to the preponderance of the evidence standard, the clear and convincing evidence standard is more demanding, having been defined by the Fifth Circuit as the

weight of proof which 'produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts' of the case.³⁹

Prior to the noted case, no court had squarely addressed the conflict between the general maritime law preponderance of the evidence standard and the clear and convincing standard set forth in section 34:1137.

The closest any court had come to addressing this conflict was the Louisiana Third Circuit Court of Appeals in 2009.⁴⁰ In that case, there was a collision involving the plaintiff's fishing boat, a foreign vessel, and tugboats that were transporting a drilling barge onto the foreign vessel.⁴¹ The plaintiff was injured and sued the employer of the pilots aboard the foreign vessel.⁴² The plaintiff argued that because general maritime law defines the standard of care as ordinary care or reasonable care under the circumstances, the Louisiana statute requiring a showing of gross negligence or willful misconduct on the part of a pilot is preempted.⁴³ In opposition, the defendant pilots cited "§ 8501(a), which specifically reserves the regulation of pilotage to the states."⁴⁴ The court upheld the defendant pilots' position, simply stating it was "a correct statement of the law."⁴⁵

38. LA. STAT. ANN. § 34:1137 (2025).

39. *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992) (quoting *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 285 n.11 (1990)).

40. *McCrary v. Can Do, Inc.*, No. 08-506, 2009 WL 530977 (Ct. App. La. Mar. 4, 2009) (unpublished opinion). A handful of cases have ruled that LA. STAT. ANN. § 34:1055 (the predecessor statute to section 34:1137) requires a plaintiff to make a specific allegation of gross negligence or willful misconduct against the pilot to maintain a cause of action for negligence. *See, e.g., Belala v. Coastal Towing Co.*, No. Civ. A. 01-3137, 2002 WL 31729491, at *2 (E.D. La. Dec. 3, 2002); *Busby v. Lasco Towing, Inc.*, No. 94-1958, 1994 WL 532030, at *1 (E.D. La. Sep. 29, 1994); *Transit Enter., LTD v. Bisso Towboat Co.*, No. 86-2965, 1988 WL 2689, at *1 (E.D. La. Jan. 14, 1988). These cases, however, do not address the applicable burden of proof.

41. *McCrary*, 2009 WL 530977, at *1-2.

42. *Id.* at *1.

43. *Id.* at *3.

44. *Id.*

45. *Id.*

D. Other States that Limit Pilotage Liability

Several other states have enacted statutes that, like section 34:1137, impose limitations on pilot liability. For example, Alaska Statute section 08.62.165(a) limits pilots' liability by capping damages at \$250,000 unless the plaintiff can prove "the pilot is either grossly negligent or guilty of willful misconduct."⁴⁶ Through Maine Statute title 38, section 99-A(2)(A), Maine limits pilot negligence liability to five thousand dollars absent "intentional, willful or reckless misconduct of the pilot."⁴⁷ In South Carolina, section 54-15-350 limits pilot negligence liability to five thousand dollars unless there is "wilful [sic] misconduct or reckless disregard for safety by the pilot."⁴⁸ Section 66.083(b)(1) of the Texas Transportation Code limits pilot negligence liability in Texas to one thousand dollars absent "damage or loss that arises because of the willful misconduct or gross negligence of the pilot."⁴⁹ And in Washington, section 88.16.118(1)(a) limits the liability of pilots to five thousand dollars in damages "except as may arise by reason of the willful misconduct or gross negligence of the pilot."⁵⁰ Although none of these states requires a plaintiff to meet the clear and convincing evidence standard, these laws demonstrate states' recognition of the need to impose limits on liability for pilots.

III. COURT'S DECISION

In the noted case, the Fifth Circuit held that general maritime law does not preempt the burden of proof and the applicable negligence standard in Louisiana Revised Statute section 34:1137; therefore, a plaintiff must prove gross negligence against a pilot by clear and convincing evidence.⁵¹ The Fifth Circuit determined that the district court erred in instructing the jury that Marquette had the burden to prove—by the lower preponderance of the evidence standard, and not the clear and convincing standard—gross negligence against Captain Johnson.⁵²

The court began its analysis by discussing the exception to general maritime law preemption carved out by 46 U.S.C. § 8501(a) and proceeded to explain why section 34:1137 falls within § 8501(a)'s

46. ALASKA STAT. ANN. § 08.62.165 (West 2024).

47. ME. REV. STAT. ANN. tit. 38, § 99-A (2024).

48. S.C. CODE ANN. § 54-15-350 (2024).

49. TEX. TRANSP. CODE ANN. § 66.083 (West 2023).

50. WASH. REV. CODE ANN. § 88.16.118 (West 2024).

51. *Marquette Transp. Co. Gulf-Inland, LLC v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 684, 2023 AMC 622 (5th Cir. 2023).

52. *Id.*

exception.⁵³ The court observed that the states regulated pilotage as sovereigns before the ratification of the Constitution and that § 8501 was “an expression of Congress’s general intent *not* to limit the power already held by the states unless otherwise provided by Congress.”⁵⁴ Further, the court found that there are no federal statutes that preclude a state from regulating pilot liability and that “the limitation of pilots’ liability serves as an essential cog in Louisiana’s comprehensive pilotage regulatory system.”⁵⁵ The court determined that section 34:1137 “falls within the state’s broad power to regulate pilotage,” comparing it with liability-limiting statutes found in other states’ pilotage regulatory systems.⁵⁶

The Fifth Circuit found that the cases cited by Marquette did not support the plaintiff’s argument.⁵⁷ Analyzing the decision in *Garrett v. Moore-McCormack Company*, the court observed that the Supreme Court there held that “the Jones Act’s ‘uniformity requirement extends to the type of proof necessary for judgment,’” whereas “[n]o such uniformity requirement exists as to pilotage regulations. Congress instead has left this area in the states’ capable hands.”⁵⁸ The Fifth Circuit likewise found *In re Exxon Valdez* distinguishable since that case was a general maritime tort case that “did not address the scope of Section 8501 or involve a state statute regulating pilotage.”⁵⁹ Finally, the Fifth Circuit concluded that because the erroneous jury instruction was not harmless, remanding the case for a new trial was necessary.⁶⁰

IV. ANALYSIS

In *Marquette*, the Fifth Circuit confronted an issue of first impression, and it reached the correct decision by holding that general maritime law does not preempt section 34:1137.⁶¹ The court’s decision is supported by the plain language of § 8501, Congress’s intent, the lack of federal laws prohibiting states from regulating pilotage in this manner, the recognition that numerous states have similar liability-limiting statutes, and the absence of any authoritative case law to the contrary. Simply stated, § 8501 expressly defers to the states the power to regulate “pilots

53. *Id.* at 683.

54. *Id.* (quoting *Gillis v. Louisiana*, 294 F.3d 755, 761, 2002 AMC 2010 (5th Cir. 2002)).

55. *Id.*

56. *Id.*

57. *Id.* at 683-84.

58. *Id.* at 684 (discussing *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 240-41, 1942 AMC 1645 (1942)).

59. *Id.* (discussing *In re Exxon Valdez*, 270 F.3d 1215, 2002 AMC 1 (9th Cir. 2001)).

60. *Id.*

61. *Id.*

in the bays, rivers, harbors, and ports of the United States,” and section 34:1137 is a straightforward exercise of Louisiana’s authority to enact such regulations.⁶²

One could argue that the outcome in *Marquette* was predictable, not only for the reasons discussed by the court but also based on the decisions from other courts that have declined to find state pilotage laws preempted by general maritime law. For example, in *McCrary*, the Louisiana Third Circuit Court of Appeals held that general maritime law’s ordinary negligence standard does not preempt section 34:1137’s gross negligence standard.⁶³ In *Continental Insurance Co. v. Cota*, the United States District Court for the Northern District of California held that California Harbors and Navigation Code § 1198, which required vessel owners and operators to indemnify the pilot for accidents caused by the pilot’s negligence, was not preempted by general maritime law.⁶⁴ The Fourteenth Court of Appeals of Texas in *Westergren v. Houston Pilots Association* upheld a Texas statute providing immunity for claims relating to pilot services along the Houston Ship Channel.⁶⁵ The court recognized that “[r]egulation of pilotage on the Houston Ship Channel is expressly left to the State,” that “Texas has enacted a relevant statute,” and that federal maritime law did not preempt the state statute.⁶⁶ In analyzing the defendants’ violation of the federal boundary statute, the United States Court of Appeals for the Second Circuit in *Interport Pilots Agency, Inc. v. Sammis* found that “states have authority over the pilotage of all American vessels sailing under register, that is, engaged in foreign trade, and all foreign flag vessels.”⁶⁷ Furthermore, “Congress has preempted state regulation of pilotage only with respect to vessels on the Great Lakes and American flag vessels sailing between American ports.”⁶⁸

Arguably one of the more compelling examples of the courts’ broad interpretation of § 8501’s deference to the states can be found in one of the Fifth Circuit’s own opinions, *Gillis v. Louisiana*.⁶⁹ In that case, the plaintiffs were Louisiana commissioned river pilots who served the Port of Lake Charles and the Calcasieu Ship Channel (CSC) navigation

62. *Id.* at 683.

63. *McCrary v. Can Do, Inc.*, No. 08–506, 2009 WL 530977, at *3 (Ct. App. La. Mar. 4, 2009) (unpublished opinion).

64. *Cont’l Ins. Co. v. Cota*, No. 08-2052, 2010 WL 383367, at *1, *5, 2010 AMC 313 (N.D. Cal. Jan. 27, 2010).

65. *Westergren v. Houston Pilots Ass’n*, 566 S.W.3d 7, 13 (Tex. App. 2018).

66. *Id.*

67. *Interport Pilots Agency, Inc. v. Sammis*, 14 F.3d 133, 136 (2d Cir. 1994) (citation omitted).

68. *Id.*

69. *Gillis v. Louisiana*, 294 F.3d 755, 761-62, 2002 AMC 2010 (5th Cir. 2002).

project.⁷⁰ The CSC extends about thirty-three miles from Louisiana's coastline, with the state's seaward boundary line located three miles from the coastline.⁷¹ The "Inner Bar" is the portion of the CSC lying landward of the three-mile line, while the "Outer Bar" encompasses the thirty miles lying seaward of the three-mile line.⁷² The pilots filed a declaratory action against the state, claiming they could not be compelled to provide pilotage services for the Outer Bar.⁷³ As part of their argument, the pilots claimed that § 8501's application is limited to "bays, rivers, harbors, and ports of the United States" and that the Outer Bar did not constitute a bay, river, harbor, or port.⁷⁴ The Fifth Circuit rejected this argument, declaring the pilots' argument to be "without merit."⁷⁵ The court also rejected the pilots' argument that the state's exercise of authority over pilotage on the Outer Bar conflicted with federal interests, stating that "[t]he Supreme Court has long upheld the authority of states to enact laws regulating pilotage where Congress has declined to act."⁷⁶ Federal and state courts consistently interpret § 8501 with considerable deference to the state's power to regulate pilotage, and *Marquette* certainly falls in line with this approach.

If the Fifth Circuit in *Marquette* had found that the general maritime law preempted section 34:1137, such a decision would have not only impacted pilots in Louisiana; it would have caused a ripple effect in the pilotage industry across the nation. As discussed earlier, several states have laws that impose limitations on pilot liability, and these pilotage regulations would potentially be invalidated based on maritime law preemption, exposing pilots to liability for ordinary negligence without any statutory limits on damages.⁷⁷

Although *Marquette* was decided based on a relatively straightforward statutory analysis of federal and state law, the court made a point to highlight that it was also taking into account the concerns raised by the pilot associations that filed amicus briefs in support of Captain Johnson.⁷⁸ "[A]s amici explain, the limitation of pilots' liability serves as an essential cog in Louisiana's comprehensive pilotage regulatory system."⁷⁹ Specifically, these amicus briefs were filed by the Crescent

70. *Id.* at 756-57.

71. *Id.* at 757.

72. *Id.*

73. *Id.*

74. *Id.* at 760-61.

75. *Id.* at 761-62.

76. *Id.* at 762.

77. *See supra* notes 46-50 and accompanying text.

78. *Marquette Transp. Co. Gulf-Inland, LLC v. Navigation Mar. Bulgare JSC*, 87 F.4th 678, 683, 2023 AMC 622 (5th Cir. 2023).

79. *Id.*

River Port Pilots' Association, the Board of River Port Pilot Commissioners for the Port of New Orleans, and the New Orleans and Baton Rouge Steamship Pilots Association.⁸⁰ These associations raised legitimate public policy justifications for limiting liability for pilots. As argued in the amicus brief by the Board of River Port Pilot Commissioners, the pilot "is the only stakeholder on the vessel who has the exclusive interest to protect the health, safety, and welfare of the citizens and property of the state" and "is required to balance the financial interest of the community against safety interest and develop and implement risk mitigation strategy for the benefit of all."⁸¹

In addition to being the only person onboard the vessel to represent the state's safety interests, the pilot's presence is critical to ensuring that maritime commerce continues to thrive. River pilots perform an estimated twenty thousand ship movements per year, and "[m]aritime commerce on the Mississippi River is responsible for nearly 120,000 jobs in the United States, and generates \$29.8 billion in personal earnings, and \$4.2 billion in [Louisiana] state and local taxes."⁸² Because pilots play such a vital role in maritime commerce along the Mississippi River, any stoppage would have a detrimental impact on the nation's economy. For instance, a thirty-day shutdown of Lock 25, located in the Upper Mississippi River, could result in a loss of \$3.01 billion in national GDP.⁸³

Rather than putting ships at anchor in fear of negligence liability and thus shutting down commerce, the *Marquette* decision will allow pilots to continue navigating ships under extreme conditions, ensuring commerce flows without interruption.⁸⁴ Giving pilots the freedom to utilize their expertise will benefit many other workers involved in maritime commerce because it will encourage the movement of ships. Seamen aboard the ship, longshoremen in service of the ship in port, agricultural producers using ships to move products, energy manufacturers selling fuel, and even local actors purchasing goods all rely on pilots for their

80. *Id.* at 683 n.3.

81. Brief of The Board of River Port Pilot Commissioners for the Port of New Orleans as Amicus Curiae at 3-4, *Marquette*, 87 F.4th 678 (No. 22-30261), 2022 WL 17093079, at *3-4.

82. *Id.*; see also *Upper Mississippi River: A Vital Resource for Regional Economic Prosperity*, UPPER MISS. RIVER BASIN ASS'N (Nov. 16, 2016), <https://umrba.org/sites/default/files/documents/umr-econ-profile.pdf> (on file with the Tulane Maritime Law Journal).

83. ZHENHUA CHEN & JUNMEI CHENG, REGIONAL ECONOMIC IMPACTS OF INLAND WATERWAYS FAILURE IN THE MISSISSIPPI RIVER AND THE ROLE OF TRANSPORTATION RESILIENCE 36 (2023), <http://dx.doi.org/10.2139/ssrn.4719260> (on file with the Tulane Maritime Law Journal).

84. Brief of The Crescent River Port Pilots' Ass'n as Amicus Curiae in Support of Third Party Defendant-Appellee/Cross-Appellant Robert Johnson at 7, *Marquette*, 87 F.4th 678 (No. 22-30261), 2022 WL 4292163.

well-being.⁸⁵ Accordingly, there are strong economic policy justifications for upholding laws that allow pilots to operate without concern that their decisions will subject them to ordinary negligence liability, as these laws should reflect an interest in facilitating both safety and commerce.⁸⁶

V. CONCLUSION

“The history and practice of pilotage demonstrate that, although inextricably geared to a complex commercial economy, it is also a highly personalized calling.”⁸⁷ The Fifth Circuit in *Marquette* reached the correct outcome by respecting Congress’s intent, the limits of maritime law preemption, and the states’ long-held power to regulate pilotage. The court’s decision protects pilots by upholding Louisiana’s law requiring proof of gross negligence by clear and convincing evidence. Because of *Marquette*, those who answer the call as pilots will be able to perform their jobs while focusing on health, safety, and the welfare of the state and its citizens—rather than on the potential for a lawsuit.

Evan Pham*

85. *See id.* at 8-9.

86. Brief of The Board of River Port Pilot Commissioners, *supra* note 81, at *6.

87. *Kotch v. Bd. of River Port Pilot Comm’rs for Port of New Orleans*, 330 U.S. 552, 558, 1947 AMC 535 (1947).

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