

40514 3 2 1 We have several interesting inquiries this week from downtown Charleston. "Dear Mr. Cooper, I have heard that the docking pilots in Charleston are able to make agents for ships calling in the port sign a pilotage agreement which makes the ships liable if the pilot makes a mistake. Is this true? How are the pilots able to do this when other businesses are unable to do so?

Excellent questions. I will answer them all, beginning with the last. Employers of harbor pilots, local and federal, and employers of docking pilots in ports around the globe have for many years by near universal custom included various versions of what is known as the "pilotage clause" in their contracts for service to vessels. By agreeing to the pilotage clause the ship and her owners first agree that the pilot becomes the borrowed servant of the ship and then further agree to indemnify the pilot's regular employer for damages caused by his negligence. So the pilotage clause does not actually make the ship liable, because when the pilot has two employers (his regular employer and his borrowing employer, the ship) they are both jointly and severally liable for his negligence, except that the pilotage clause is an agreement by the ship to indemnify the regular employer for any liability for damage.

It is interesting to note that pilotage clauses have withstood challenges to their validity based upon theories of public policy, the compulsory nature of pilotage, contract of adhesion, and warranty of workmanlike performance.

This makes commercial sense. If the pilot and his regular employer were responsible for damage due to pilot negligence,

insurance coverage would be difficult to match to the different sizes and market values of the vessels to be serviced during the policy period, and would likely be expensive due to the unknown nature and amount of the risk. On the other hand, the owners of a ship already insure the vessel against damage from the risks of grounding, collision, negligence of master and mariners, etc. and can inexpensively include coverage for negligence of pilots, because the nature and amount of the risk is well known.

However, there are limits. The limit to the pilotage clause is that it can only provide protection from liability, but cannot provide for indemnity for damage to the pilot's boat or equipment. Even so, I wish I had drafted the first pilotage clause.

More next week on The Admiralty Docket. Until then remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

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