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Pilot Error Stops at the Pilot: First Circuit Shields Pilot Associations

By Jon Werner

The First Circuit recently held in *Codan Forsikring A/S v. Bogus*, No. 25-1770, that a pilot association is not liable for a pilot's negligent navigation unless the association controls how the pilot performs his navigational duties. After the KOMMANDOR SUSAN allided with a hurricane barrier while departing New Bedford, the vessel's insurer sued the pilot and his association. The insurer alleged that the association was vicariously liable because the pilot was its employee, member, and shareholder.

The court affirmed dismissal of the tort claims against the association. It held that the employment and ownership allegations did not plausibly show control, and that assigning pilots by rotation, dispatching them, and collecting fees did not amount to control over navigation. In doing so, the First Circuit relied on the Supreme Court's 1906 decision in *Guy v. Donald* and aligned itself with the Second and Fifth Circuits.

The more significant aspect of the decision is the court's refusal to let ordinary agency law displace the pilotage rule. The insurer had argued that the general common-law test for employee status should apply and that employment alone supplies the necessary control. The First Circuit disagreed. It held that "in the specific context of pilotage," an employment relationship, shareholder status, mandatory membership, and incorporation are not enough, and that a plaintiff must plead facts showing that the association actually directs the pilot's navigation. Because the ruling came at the pleading stage, the insurer could not rely on discovery to fill the gaps in its complaint.

The decision fits a longstanding pattern in U.S. maritime law that treats the pilot as the "sole master of his course," with liability following actual control over navigation. Without facts showing that kind of control, recovery for pilot error will generally have to come from the pilot individually, including through his statutory bond, rather than from the association. The ruling affirmed only a partial dismissal, and the contract-based claims remain pending in the district court.

As always, outcomes will depend on the facts and the applicable state pilotage regime. If you would like to discuss how this decision may affect a pending or potential claim, please contact **Jon Werner** of Montgomery McCracken's **Maritime and Transportation Industry Group**.



Jon Werner

Partner

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