SUPREME COURT
EN BANC

FAR EASTERN SHIPPING COMPANY,
***Petitioner*,**

-versus-

G.R. No. 130068
October 1, 1998

COURT OF APPEALS and PHILIPPINE PORTS AUTHORITY,
***Respondents*.**
x----------x

MANILA PILOTS ASSOCIATION,
***Petitioner*,**

-versus-

G.R. No. 130150
October 1, 1998

PHILIPPINE PORTS AUTHORITY and FAR EASTERN SHIPPING COMPANY,
***Respondents*.**
x----------x

D E C I S I O N

REGALADO, *J.*:

These consolidated Petitions for Review on *Certiorari* seek in unison to Annul and Set Aside the Decision[1] of respondent Court of Appeals of November 15, 1996 and its Resolution[2] dated July 31, 1997 in CA-G.R. CV No. 24072, entitled "Philippine Ports Authority, Plaintiff-Appellee vs. Far Eastern Shipping Company, Senen C. Gavino and Manila Pilots' Association, Defendants-Appellants," which affirmed with modification the judgment of the trial court holding the defendants-appellants therein solidarily liable for damages in favor of herein private respondent.

There is no dispute about the facts as found by the appellate court, thus —

> On June 20, 1980, the M/V PAVLODAR, flying under the flagship of the USSR, owned and operated by the Far Eastern Shipping Company (FESC for brevity's sake), arrived at the Port of Manila from Vancouver, British Columbia at about 7:00 o'clock in the morning. The vessel was assigned Berth 4 of the Manila International Port, as its berthing space. Captain Roberto Abellana was tasked by the Philippine Port Authority to supervise the berthing of the vessel. Appellant Senen Gavino was assigned by the Appellant Manila Pilots' Association (MPA for brevity's sake) to conduct docking maneuvers for the safe berthing of the vessel to Berth No. 4.
>
> Gavino boarded the vessel at the quarantine anchorage and stationed himself in the bridge, with the master of the vessel, Victor Kavankov, beside him. After a briefing of Gavino by Kavankov of the particulars of the vessel and its cargo, the vessel lifted anchor from the quarantine anchorage and proceeded to the Manila International Port. The sea was calm and the wind was ideal for docking maneuvers.
>
> When the vessel reached the landmark (the big church by the Tondo North Harbor) one-half mile from the pier, Gavino ordered the engine stopped. When the vessel was already about 2,000 feet from the pier, Gavino ordered the anchor dropped. Kavankov relayed the orders to the crew of the vessel on the bow. The left anchor, with two (2) shackles, were dropped.

However, the anchor did not take hold as expected. The speed of the vessel did not slacken. A commotion ensued between the crew members. A brief conference ensued between Kavankov and the crew members. When Gavino inquired what was all the commotion about, Kavankov assured Gavino that there was nothing to it.

After Gavino noticed that the anchor did not take hold, he ordered the engines half-astern. Abellana, who was then on the pier apron noticed that the vessel was approaching the pier fast. Kavankov likewise noticed that the anchor did not take hold. Gavino thereafter gave the "full-astern" code. Before the right anchor and additional shackles could be dropped, the bow of the vessel rammed into the apron of the pier causing considerable damage to the pier. The vessel sustained damage too. (Exhibit "7- Far Eastern Shipping"). Kavankov filed his sea protest (Exhibit "1-Vessel"). Gavino submitted his report to the Chief Pilot (Exhibit "1 -Pilot ") who referred the report to the Philippine Ports Authority (Exhibit "2-Pilot"). Abellana likewise submitted his report of the incident (Exhibit "B ").

Per contract and supplemental contract of the Philippine Ports Authority and the contractor for the rehabilitation of the damaged pier, the same cost the Philippine Ports Authority the amount of P1,126,132.25 (Exhibits "D" and "E").[3]

On January 10, 1983, the Philippine Ports Authority (PPA, for brevity), through the Solicitor General, filed before the Regional Trial Court of Manila, Branch 39, a complaint for a sum of money against Far Eastern Shipping Co., Capt. Senen C. Gavino and the Manila Pilots' Association, docketed as Civil Case No. 83-14958,[4] praying that the defendants therein be held jointly and severally liable to pay the plaintiff actual and exemplary damages plus costs of suit. In a decision dated August 1, 1985, the trial court ordered the defendants therein jointly and severally to pay the PPA the amount of P1,053,300.00 representing actual damages and the costs of suit.[5]

The defendants appealed to the Court of Appeals and raised the following issues: (1) Is the pilot of a commercial vessel, under

compulsory pilotage, solely liable for the damage caused by the vessel to the pier, at the port of destination, for his negligence? and (2) Would the owner of the vessel be liable likewise if the damage is caused by the concurrent negligence of the master of the vessel and the pilot under a compulsory pilotage?

As stated at the outset, respondent appellate court affirmed the findings of the court a quo except that it found no employer-employee relationship existing between herein private respondents Manila Pilots' Association (MPA, for short) and Capt. Gavino.[6] This being so, it ruled instead that the liability of MPA is anchored, not on Article 2180 of the Civil Code, but on the provisions of Custom. Administrative Order No, 15-65,[7] and accordingly modified said decision of the trial court by holding MPA, along with its co-defendants therein, still solidarily liable to PPA but entitled MPA to reimbursement from Capt. Gavino for such amount of the adjudged pecuniary liability in excess of the amount equivalent to seventy-five percent (75%) of its prescribed reserve fund.[8]

Neither Far Eastern Shipping Co. (briefly, FESC) nor MPA was happy with the decision of the Court of Appeals and both of them elevated their respective plaints to us via separate petitions for review on certiorari.

In G.R. No. 130068, which was assigned to the Second Division of this Court, FESC imputed that the Court of Appeals seriously erred:

1. in not holding Senen C. Gavino and the Manila Pilots' Association as the parties solely responsible for the resulting damages sustained by the pier deliberately ignoring the established jurisprudence on the matter;

2. in holding that the master had not exercised the required diligence demanded from him by the circumstances at the time the incident happened;

3. in affirming the amount of damages sustained by the respondent Philippine Ports Authority despite a strong and

convincing evidence that the amount is clearly exorbitant and unreasonable;

4. in not awarding any amount of counterclaim prayed for by the petitioner in its answer; and

5. in not granting herein petitioner's claim against pilot Senen C. Gavino and Manila Pilots' Association in the event that it be held liable.[9]

Petitioner asserts that since the MV PAVLODAR was under compulsory pilotage at the time of the incident, it was the compulsory pilot, Capt. Gavino, who was in command and had complete control in the navigation and docking of the vessel. It is the pilot who supersedes the master for the time being in the command and navigation of a ship and his orders must be obeyed in all respects connected with her navigation. Consequently, he was solely responsible for the damage caused upon the pier apron, and not the owners of the vessel. It claims that the master of the boat did not commit any act of negligence when he failed to countermand or overrule the orders of the pilot because he did not see any justifiable reason to do so. In other words, the master cannot be faulted for relying absolutely on the competence of the compulsory pilot. If the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot.[10]

Respondent PPA, in its comment, predictably in full agreement with the ruling of respondent court on the solidary liability of FESC, MPA and Capt. Gavino, stresses the concurrent negligence of Capt. Gavino, the harbor pilot, and Capt. Viktor Kabankovs.[*] shipmaster of MV Pavlodar, as the basis of their solidary liability for damages sustained by PPA. It posits that the vessel was being piloted by Capt. Gavino with Capt. Kabankov beside him all the while on the bridge of the vessel, as the former took over the helm of MV Pavlodar when it rammed and damaged the apron of the pier of Berth No. 4 of the Manila International Port. Their concurrent negligence was the immediate and proximate cause of the collision between the vessel and the pier — Capt. Gavino, for his negligence in the conduct of docking maneuvers for the safe berthing of the vessel; and Capt.

Kabankov, for failing to countermand the orders of the harbor pilot and to take over and steer the vessel himself in the face of imminent danger, as well as for merely relying on Capt. Gavino during the berthing procedure.[11]

On the other hand, in G.R. No. 130150, originally assigned to the Court's First Division and later transferred to the Third Division, MPA, now as petitioner in this case, avers that respondent court's errors consisted in disregarding and misinterpreting Customs Administrative Order No. 15-65 which limits the liability of MPA. Said pilots' association asseverates that it should not be held solidarily liable with Capt. Gavino who, as held by respondent court, is only a member, not an employee, thereof. There being no employer-employee relationship, neither can MPA be held liable for any vicarious liability for the respective exercise of profession by its members nor be considered a joint tortfeasor as to be held jointly and severally liable.[12] It further argues that there was erroneous reliance on Customs Administrative Order No. 15-65 and the constitution and by-laws of MPA, instead of the provisions of the Civil Code on damages which, being a substantive law, is higher in category than the aforesaid constitution and by-laws of a professional organization or an administrative order which bears no provision classifying the nature of the liability of MPA for the negligence its member pilots.[13]

As for Capt. Gavino, counsel for MPA states that the former had retired from active pilotage services since July 28, 1994 and has ceased to be a member of petitioner pilots' association. He is not joined as a petitioner in this case since his whereabouts are unknown.[14]

FESC' s comment thereto relied on the competence of the Court of Appeals in construing provisions of law or administrative orders as bases for ascertaining the liability of MPA, and expressed full accord with the appellate court's holding of solidary liability among itself. MPA and Capt. Gavino. It further avers that the disputed provisions of Customs Administrative Order No. 15-65 clearly established MPA's solidary liability.[15]

On the other hand, public respondent PPA, likewise through representations by the Solicitor General, assumes the same

supportive stance it took in G.R. No. 130068 in declaring its total accord with the ruling of the Court of Appeals that MPA is solidarily liable with Capt. Gavino and FESC for damages, and in its application to the fullest extent of the provisions of Customs Administrative Order No. 15-65 in relation to MPA's constitution and by-laws which spell out the conditions of and govern their respective liabilities. These provisions are clear and unambiguous as regards MPA's liability without need for interpretation or construction. Although Customs Administrative Order No. 15-65 is a mere regulation issued by an administrative agency pursuant to delegated legislative authority to fix details to implement the law, it is legally binding and has the same statutory force as any valid statute.[16]

Upon Motion[17] by FESC dated April 24, 1998 in G.R. No. 130150, said case was consolidated with G.R. No. 130068.[18]

Prefatorily, on matters of compliance with procedural requirements, it must be mentioned that the conduct of the respective counsel for FESC and PPA leaves much to be desired, to the displeasure and disappointment of this Court.

Section 2, Rule 42 of the 1997 Rules of Civil Procedure[19] incorporates the former Circular No. 28-91 which provided for what has come to be known as the certification against forum shopping as an additional requisite for petitions filed with the Supreme Court and the Court of Appeals, aside from the other requirements contained in pertinent provisions of the Rules of Court therefor, with the end in view of preventing the filing of multiple complaints involving the same issues in the Supreme Court, Court of Appeals or different divisions thereof or any other tribunal or agency.

More particularly, the second paragraph of Section 2, Rule 42 provides:

x x x

> The petitioner shall also submit together with the petition a certification under oath that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any

> other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. (Emphasis ours.)

For petitions for review filed before the Supreme Court, Section 4(e), Rule 45 specifically requires that such petition shall contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42.

The records show that the law firm of Del Rosario and Del Rosario through its associate, Atty. Herbert A. Tria, is the counsel of record for FESC in both G.R. No. 130068 and G.R. No. 130150.

G.R. No. 130068, which is assigned to the Court's Second Division, commenced with the filing by FESC through counsel on August 22, 1997 of a verified motion for extension of time to file its petition for thirty (30) days from August 28, 1997 or until September 27, 1997.[20] Said motion contained the following certification against forum shopping[21] signed by Atty. Herbert A. Tria as affiant:

> **CERTIFICATION AGAINST FORUM SHOPPING**
>
> I/we hereby certify that I/we have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my own knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that if I/we should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I/we undertake to report that fact within five (5) days therefrom to this Honorable Court.

This motion having been granted, FESC subsequently filed its petition on September 26, 1997, this time bearing a "verification and certification against forum-shopping" executed by one Teodoro P. Lopez on September 24, 1997,[22] to wit:

> **VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING**
>
> In compliance with Section 4(e), Rule 45 in relation to Section 2, Rule 42 of the Revised Rules of Civil Procedure, I, Teodoro P. Lopez, of legal age, after being duly sworn, depose and state:
>
> 1. That I am the Manager, Claims Department of Filsov Shipping Company, the local agent of petitioner in this case.
>
> 2. That I have caused the preparation of this Petition for Review on Certiorari.
>
> 3. That I have read the same and the allegations therein contained are true and correct based on the records of this case.
>
> 4. That I certify that petitioner has not commenced any other action or proceeding involving the same issues in the Supreme Court or Court of Appeals, or any other tribunal or agency, that to the best of my own knowledge, no such action or proceeding is pending in the Supreme Court, the Court of Appeals or any other tribunal or agency, that if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, I undertake to report the fact within five (5) days therefrom to this Honorable Court. (Emphasis supplied for emphasis.)

Reviewing the records, we find that the petition filed by MPA in G.R. No. 130150 then pending with the Third Division was duly filed on August 29, 1997 with a copy thereof furnished on the same date by registered mail to counsel for FESC.[23] Counsel of record for MPA,

Atty. Jesus P. Amparo, in his verification accompanying said petition dutifully revealed to the Court that —

x x x

> 3. Petitioner has not commenced any other action or proceeding involving the same issues in this Honorable Court, the Court of Appeals or different Divisions thereof, or any other tribunal or agency, but to the best of his knowledge, there is an action or proceeding pending in this Honorable Court, entitled Far Eastern Shipping Co., Petitioner, vs. Philippine Ports Authority and Court of Appeals with a Motion for Extension of time to file Petition For Review by Certiorari filed sometime on August 18, 1987. If undersigned counsel will come to know of any other pending action or claim filed or pending he undertakes to report such fact within five (5) days of this Honorable Court.[24] (Emphasis supplied.)

Inasmuch as MPA's petition in G.R. No. 130150 was posted by registered mail on August 29, 1997 and taking judicial notice of the average period of time it takes local mail to reach its destination, by reasonable estimation it would be fair to conclude that when FESC filed its petition in G.R. No. 130068 on September 26, 1997, it would already have received a copy of the former and would then have knowledge of the pendency of the other petition initially filed with the First Division. It was therefore incumbent upon FESC to inform the Court of that fact through its certification against forum shopping. For failure to make such disclosure, it would appear that the aforequoted certification accompanying the petition in G.R. No. 130068 is defective and could have been a ground for dismissal thereof.

Even assuming that FESC had not yet received its copy of MPA's petition at the time it filed its own petition and executed said certification, its signatory did state "that if I should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals or any other tribunal or agency, I undertake to report the fact within five (5) days therefrom to this Honorable Court."[25] Scouring the records page by page in this

case, we find that no manifestation concordant with such undertaking was then or at any other time thereafter ever filed by FESC nor was there any attempt to bring such matter to the attention of the Court. Moreover, it cannot feign non-knowledge of the existence of such other petition because FESC itself filed the motion for consolidation in G.R. No. 130150 of these two cases on April 24, 1998.

It is disturbing to note that counsel for FESC, the law firm of Del Rosario and Del Rosario, displays an unprofessional tendency of taking the Rules for granted, in this instance exemplified by its pro forma compliance therewith but apparently without full comprehension of and with less than faithful commitment to its undertakings to this Court in the interest of just, speedy and orderly administration of court proceedings.

As between the lawyer and the courts, a lawyer owes candor, fairness and good faith to the court.[26] He is an officer of the court exercising a privilege which is indispensable in the administration of justice.[27] Candidness, especially towards the courts, is essential for the expeditious administration of justice. Courts are entitled to expect only complete honesty from lawyers appearing and pleading before them.[28] Candor in all dealings is the very essence of honorable membership in the legal profession.[29] More specifically, a lawyer is obliged to observe the rules of procedure and not to misuse them to defeat the ends of justice.[30] It behooves a lawyer, therefore, to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.[31] Being an officer of the court, a lawyer has a responsibility in the proper administration of justice. Like the court itself, he is an instrument to advance its ends — the speedy, efficient, impartial, correct and inexpensive adjudication of cases and the prompt satisfaction of final judgments. A lawyer should not only help attain these objectives but should likewise avoid any unethical or improper practices that impede, obstruct or prevent their realization, charged as he is with the primary task of assisting in the speedy and efficient administration of justice.[32]

Sad to say, the members of said law firm sorely failed to observe their duties as responsible members of the Bar. Their actuations are indicative of their predisposition to take lightly the avowed duties of officers of the Court to promote respect for law and for legal

processes.[33] We cannot allow this state of things to pass judicial muster.

In view of the fact that at around the time these petitions were commenced, the 1997 Rules of Civil Procedure had just taken effect, the Court treated infractions of the new Rules then with relative liberality in evaluating full compliance therewith. Nevertheless, it would do well to remind all concerned that the penal provisions of Circular No. 28-91 which remain operative provides, *inter alia*:

> 3. Penalties. —
>
> x x x
>
> (c) The submission of a false certification under Par. 2 of the Circular shall likewise constitute contempt of court, without prejudice to the filing of criminal action against the guilty party. The lawyer may also be subjected to disciplinary proceedings.

It must be stressed that the certification against forum shopping ordained under the Rules is to be executed by the petitioner, and not by counsel. Obviously it is the petitioner, and not always the counsel whose professional services have been retained for a particular case, who is in the best position to know whether he or it actually filed or caused the filing of a petition in that case. Hence, a certification against forum shopping by counsel is a defective certification. It is clearly equivalent to non-compliance with the requirement under Section 2, Rule 42 in relation to Section 4, Rule 45, and constitutes a valid cause for dismissal of the petition.

Hence, the initial certification appended to the motion for extension of time to file petition in G.R. No. 130068 executed in behalf of FESC by Atty. Tria is procedurally deficient. But considering that it was a superfluity at that stage of the proceeding, it being unnecessary to file such a certification with a mere motion for extension, we shall disregard such error. Besides, the certification subsequently executed by Teodoro P. Lopez in behalf of FESC cures that defect to a certain extent, despite the inaccuracies earlier pointed out. In the same vein, we shall consider the verification signed in behalf of MPA by its counsel, Atty. Amparo, in G.R. No. 130150 as substantial compliance

inasmuch as it served the purpose of the Rules of informing the Court of the pendency of another action or proceeding involving the same issues.

It bears stressing that procedural rules are instruments in the speedy and efficient administration of justice. They should be used to achieve such end and not to derail it.[34]

Counsel for PPA did not make matters any better. Despite the fact that, save for the Solicitor General at the time, the same legal team of the Office of the Solicitor General (OSG, for short) composed of Assistant Solicitor General Roman G. Del Rosario and Solicitor Luis F. Simon, with the addition of Assistant Solicitor General Pio C. Guerrero very much later in the proceedings, represented PPA throughout the appellate proceedings in both G.R. No. 130068 and G.R. No. 130150 and was presumably fully acquainted with the facts and issues of the case, it took the OSG an inordinately and almost unreasonably long period of time to file its comment, thus unduly delaying the resolution of these cases. It took several changes of leadership in the OSG — from Silvestre H. Bello III to Romeo C. dela Cruz and, finally, Ricardo P. Galvez — before the comment in behalf of PPA was finally filed.

In G.R. No. 130068, it took eight (8) motions for extension of time totaling 210 days, a warning that no further extensions shall be granted, and personal service on the Solicitor General himself of the resolution requiring the filing of such comment before the OSG indulged the Court with the long required comment on July 10, 1998.[35] This, despite the fact that said office was required to file its comment way back on November 12, 1997.[36] A closer scrutiny of the records likewise indicates that petitioner FESC was not even furnished a copy of said comment as required by Section 5, Rule 42. Instead, a copy thereof was inadvertently furnished to MPA which, from the point of view of G.R. No. 130068, was a non-party.[37] The OSG fared slightly better in G.R. No. 130150 in that it took only six (6) extensions, or a total of 180 days, before the comment was finally filed.[38] And while it properly furnished petitioner MPA with a copy of its comment, it would have been more desirable and expedient in this case to have furnished its therein co-respondent FESC with a copy thereof, if only as a matter of professional courtesy.[39]

This undeniably dilatory disinclination of the OSG to seasonably file required pleadings constitutes deplorable disservice to the tax-paying public and can only be categorized as censurable inefficiency on the part of the government law office. This is most certainly professionally unbecoming of the OSG.

Another thing that baffles the Court is why the OSG did not take the initiative of filing a motion for consolidation in either G.R. No. 130068 or G.R. No. 130150, considering its familiarity with the background of the case and if only to make its job easier by having to prepare and file only one comment. It could not have been unaware of the pendency of one or the other petition because, being counsel for respondent in both cases, petitioner is required to furnish it with a copy of the petition under pain of dismissal of the petition for failure otherwise.[40]

Besides, in G.R. No. 130068. it prefaces its discussions thus —

> Incidentally, the Manila Pilots' Association (MPA), one of the defendants-appellants in the case before the respondent Court of Appeals, has taken a separate appeal from the said decision to this Honorable Court, which was docketed as G.R. No. 130150 and entitled "Manila Pilots' Association, Petitioner, versus Philippine Ports Authority and Far Eastern Shipping Co., Respondents.[41]

Similarly, in G.R. No. 130150, it states —

> Incidentally, respondent Far Eastern Shipping Co. (FESC) had also taken an appeal from the said decision to this Honorable Court, docketed as G.R. No. 130068, entitled "Far Eastern Shipping Co. vs. Court of Appeals and Philippine Ports Authority."[42]

We find here a lackadaisical attitude and complacency on the part of the OSG in the handling of its cases and an almost reflexive propensity to move for countless extensions, as if to test the patience of the Court, before favoring it with the timely submission of required pleadings.

It must be emphasized that the Court can resolve cases only as fast as the respective parties in a case file the necessary pleadings. The OSG, by needlessly extending the pendency of these cases through its numerous motions for extension, came very close to exhausting this Court's forbearance and has regrettably fallen short of its duties as the People's Tribune.

The OSG is reminded that just like other members of the Bar, the canons under the Code of Professional Responsibility apply with equal force on lawyers in government service in the discharge of their official tasks.[43] These ethical duties are rendered even more exacting as to them because, as government counsel, they have the added duty to abide by the policy of the State to promote a high standard of ethics in public service.[44] Furthermore, it is incumbent upon the OSG, as part of the government bureaucracy, to perform and discharge its duties with the highest degree of professionalism, intelligence and skill[45] and to extend prompt, courteous and adequate service to the public.[46]

Now, on the merits of the case. After a judicious examination of the records of this case, the pleadings filed, and the evidence presented by the parties in the two petitions, we find no cogent reason to reverse and set aside the questioned decision. While not entirely a case of first impression, we shall discuss the issues seriatim and, correlatively by way of a judicial once-over, inasmuch as the matters raised in both petitions beg for validation and updating of well-worn maritime jurisprudence. Thereby, we shall write finis to the endless finger-pointing in this shipping mishap which has been stretched beyond the limits of judicial tolerance.

The Port of Manila is within the Manila Pilotage District which is under compulsory pilotage pursuant to Section 8, Article III of Philippine Ports Authority Administrative Order No. 03-85,[47] which provides that:

> SEC. 8. Compulsory Pilotage Service. — For entering a harbor and anchoring thereat, or passing through rivers or straits within a pilotage district, as well as docking and undocking at any pier/wharf, or shifting from one berth or

another, every vessel engaged in coastwise and foreign trade shall be under compulsory pilotage.

In case of compulsory pilotage, the respective duties and responsibilities of the compulsory pilot and the master have been specified by the same regulation in this wise:

> SEC. 11. Control of vessels and liability for damage. — On compulsory pilotage grounds, the Harbor Pilot providing the service to a vessel shall be responsible for the damage caused to a vessel or to life and property at ports due to his negligence or fault. He can only be absolved from liability if the accident is caused by force majeure or natural calamities provided he has exercised prudence and extra diligence to prevent or minimize damage.
>
> The Master shall retain overall command of the vessel even on pilotage grounds whereby he can countermand or overrule the order or command of the Harbor Pilot on board. In such event, any damage caused to a vessel or to life and property at ports by reason of the fault or negligence of the Master shall be the responsibility and liability of the registered owner of the vessel concerned without prejudice to recourse against said Master.
>
> Such liability of the owner or Master of the vessel or its pilots shall be determined by competent authority in appropriate proceedings in the light of the facts and circumstances of each particular case.
>
> SEC. 32. Duties and responsibilities of the Pilot or Pilots' Association. — The duties and responsibilities of the Harbor Pilot shall be as follows:
>
> x x x
>
> f) a pilot shall be held responsible for the direction of a vessel from the time he assumes his work as a pilot thereof until he leaves it anchored or berthed safely; Provided, however, that his responsibility shall cease at

> the moment the Master neglects or refuses to carry out his order.

Customs Administrative Order No. 15-65 issued twenty years earlier likewise provided in Chapter I thereof for the responsibilities of pilots:

> Par. XXXIX. — A Pilot shall be held responsible for the direction of a vessel from the time he assumes control thereof until he leaves it anchored free from shoal; Provided, That his responsibility shall cease at the moment the master neglects or refuses to carry out his instructions.
>
> x x x
>
> Par. XLIVS. — Pilots shall properly and safely secure or anchor vessels under their control when requested to do so by the master of such vessels.

I. G.R. No. 130068

Petitioner FESC faults the respondent court with serious error in not holding MPA and Capt. Gavino solely responsible for the damages caused to the pier. It avers that since the vessel was under compulsory pilotage at the time with Capt. Gavino in command and having exclusive control of the vessel during the docking maneuvers, then the latter should be responsible for damages caused to the pier.[48] It likewise holds the appellate court in error for holding that the master of the ship, Capt. Kabankov, did not exercise the required diligence demanded by the circumstances.[49]

We start our discussion of the successive issues bearing in mind the evidentiary rule in American jurisprudence that there is a presumption of fault against a moving vessel that strikes a stationary object such as a dock or navigational aid. In admiralty, this presumption does more than merely require the ship to go forward and produce some evidence on the presumptive matter. The moving vessel must show that it was without fault or that the collision was occasioned by the fault of the stationary object or was the result of inevitable accident. It has been held that such vessel must exhaust

every reasonable possibility which the circumstances admit and show that in each, they did all that reasonable care required.[50] In the absence of sufficient proof in rebuttal, the presumption of fault attaches to a moving vessel which collides with a fixed object and makes a prima facie case of fault against the vessel.[51] Logic and experience support this presumption:

The common sense behind the rule makes the burden a heavy one. Such accidents simply do not occur in the ordinary course of things unless the vessel has been mismanaged in some way. It is not sufficient for the respondent to produce witnesses who testify that as soon as the danger became apparent everything possible was done to avoid an accident. The question remains, How then did the collision occur? The answer must be either that, in spite of the testimony of the witnesses, what was done was too little or too late or, if not, then the vessel was at fault for being in a position in which an unavoidable collision would occur.[52]

The task, therefore, in these cases is to pinpoint who was negligent the master of the ship, the harbor pilot or both.

A pilot, in maritime law, is a person duly qualified, and licensed, to conduct a vessel into or out of ports, or in certain waters. In a broad sense, the term “pilot” includes both (1) those whose duty it is to guide vessels into or out of ports, or in particular waters and (2) those entrusted with the navigation of vessels on the high seas.[53] However, the term “pilot” is more generally understood as a person taken on board at a particular place for the purpose of conducting a ship through a river, road or channel, or from a port.[54]

Under English and American authorities, generally speaking, the pilot supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation. He becomes the master pro hac vice and should give all directions as to speed, course, stopping and reversing, anchoring, towing and the like. And when a licensed pilot is employed in a place where pilotage is compulsory, it is his duty to insist on having effective control of the vessel, or to decline to act as pilot. Under certain systems of foreign law, the pilot does not take entire charge of the vessel, but is deemed merely the adviser of the

master, who retains command and control of the navigation even in localities where pilotage is compulsory.[55]

It is quite common for states and localities to provide for compulsory pilotage, and safety laws have been enacted requiring vessels approaching their ports, with certain exceptions, to take on board pilots duly licensed under local law. The purpose of these laws is to create a body of seamen thoroughly acquainted with the harbor, to pilot vessels seeking to enter or depart, and thus protect life and property from the dangers of navigation.[56]

In line with such established doctrines, Chapter II of Customs Administrative Order No. 15-65 prescribes the rules for compulsory pilotage in the covered pilotage districts, among which is the Manila Pilotage District, viz. —

> PARAGRAPH I. — Pilotage for entering a harbor and anchoring thereat, as well as docking and undocking in any pier or shifting from one berth to another shall be compulsory, except Government vessels and vessels of foreign governments entitled to courtesy, and other vessels engaged solely in river or harbor work, or in a daily ferry service between ports which shall be exempt from compulsory pilotage provisions of these regulations; provided, however, that compulsory pilotage shall not apply in pilotage districts whose optional pilotage is allowed under these regulations.

Pursuant thereto, Capt. Gavino was assigned to pilot MV Pavlodar into Berth 4 of the Manila International Port. Upon assuming such office as compulsory pilot, Capt. Gavino is held to the universally accepted high standards of care and diligence required of a pilot, whereby he assumes to have skill and knowledge in respect to navigation in the particular waters over which his license extends superior to and more to be trusted than that of the master.[57] A pilot should have a thorough knowledge of general and local regulations and physical conditions affecting the vessel in his charge and the waters for which he is licensed, such as a particular harbor or river. He is not held to the highest possible degree of skill and care, but must have and exercise the ordinary skill and care demanded by the circumstances, and usually shown by an expert in his profession.

Under extraordinary circumstances, a pilot must exercise extraordinary care.[58]

In Atlee vs. The Northwestern Union Packet Company,[59] Mr. Justice Miller spelled out in great detail the duties of a pilot:

> The pilot of a river steamer, like the harbor pilot, is selected for his personal knowledge of the topography through which he steers his vessel. In the long course of a thousand miles in one of these rivers, he must be familiar with the appearance of the shore on each side of the river as he goes along. Its banks, towns, its landings, its houses and trees, are all landmarks by which he steers his vessel. The compass is of little use to him. He must know where the navigable channel is, in its relation to all these external objects, especially in the night. He must also be familiar with all dangers that are permanently located in the course of the river, as sand-bars, snags, sunken rocks or trees or abandoned vessels or barges. All this he must know and remember and avoid. To do this, he must be constantly informed of the changes in the current of the river, of the sand-bars newly made, of logs or snags, or other objects newly presented, against which his vessel might be injured.
>
> x x x
>
> It may be said that this is exacting a very high order of ability in a pilot. But when we consider the value of the lives and property committed to their control, for in this they are absolute masters, the high compensation they receive, the care which Congress has taken to secure by rigid and frequent examinations and renewal of licenses, this very class of skill, we do not think we fix the standard too high.

Tested thereby, we affirm respondent court's finding that Capt. Gavino failed to measure up to such strict standard of care and diligence required of pilots in the performance of their duties. Witness this testimony of Capt. Gavino:

Court:

You have testified before that the reason why the vessel bumped the pier was because the anchor was not released immediately or as soon as you have given the order. Do you remember having stated that?

A Yes, your Honor.

Q And you gave this order to the captain of the vessel?

A Yes, your Honor.

Q By that testimony, you are leading the Court to understand that if that anchor was released immediately at the time you gave the order, the incident would not have happened. Is that correct?

A Yes, sir, but actually it was only a presumption on my part because there was a commotion between the officers who are in charge of the dropping of the anchor and the captain. I could not understand their language, it was in Russian, so I presumed the anchor was not dropped on time.

Q So, you are not sure whether it was really dropped on time or not?

A I am not sure, your Honor.

x x x

Q You are not even sure what could have caused the incident. What factor could have caused the incident?

A Well, in this case now, because either the anchor was not dropped on time or the anchor did not hold, that was the cause of the incident, your Honor.[60]

It is disconcertingly riddled with too much incertitude and manifests a seeming indifference for the possibly injurious consequences his

commands as pilot may have. Prudence required that he, as pilot, should have made sure that his directions were promptly and strictly followed. As correctly noted by the trial court —

> Moreover, assuming that he did indeed give the command to drop the anchor on time, as pilot he should have seen to it that the order was carried out, and he could have done this in a number of ways, one of which was to inspect the bow of the vessel where the anchor mechanism was installed. Of course, Captain Gavino makes reference to a commotion among the crew members which supposedly caused the delay in the execution of the command. This account was reflected in the pilot's report prepared four hours later, but Capt. Kavankov, while not admitting whether or not such a commotion occurred, maintained that the command to drop anchor was followed "immediately and precisely." Hence, the Court cannot give much weight or consideration to this portion of Gavino's testimony."[61]

An act may be negligent if it is done without the competence that a reasonable person in the position of the actor would recognize as necessary to prevent it from creating an unreasonable risk of harm to another.[62] Those who undertake any work calling for special skills are required not only to exercise reasonable care in what they do but also possess a standard minimum of special knowledge and ability.[63]

Every man who offers his services to another, and is employed, assumes to exercise in the employment such skills he possesses, with a reasonable degree of diligence. In all these employments where peculiar skill is requisite, if one offers his services he is understood as holding himself out to the public as possessing the degree of skill commonly possessed by others in the same employment, and if his pretensions are unfounded he commits a species of fraud on every man who employs him in reliance on his public profession.[64]

Furthermore, there is an obligation on all persons to take the care which, under ordinary circumstances of the case, a reasonable and prudent man would take, and the omission of that care constitutes negligence.[65] Generally, the degree of care required is graduated according to the danger a person or property attendant upon the

activity which the actor pursues or the instrumentality which he uses. The greater the danger the greater the degree of care required. What is ordinary under extraordinary of conditions is dictated by those conditions; extraordinary risk demands extraordinary care. Similarly, the more imminent the danger, the higher the degree of care.[66]

We give our imprimatur to the bases for the conclusion of the Court of Appeals that Capt. Gavino was indeed negligent in the performance of his duties:

x x x

> As can be gleaned from the logbook, Gavino ordered the left anchor and two (2) shackles dropped at 8:30 o'clock in the morning. He ordered the engines of the vessel stopped at 8:31 o'clock. By then, Gavino must have realized that the anchor did not hit a hard object and was not clawed so as to reduce the momentum of the vessel. In point of fact, the vessel continued travelling towards the pier at the same speed. Gavino failed to react. At 8:32 o'clock, the two (2) tugboats began to push the stern part of the vessel from the port side but the momentum of the vessel was not contained. Still, Gavino did not react. He did not even order the other anchor and two (2) more shackles dropped to arrest the momentum of the vessel. Neither did he order full-astern. It was only at 8:34 o'clock, or four (4) minutes, after the anchor was dropped that Gavino reacted. But his reaction was even (haphazard) because instead of arresting fully the momentum of the vessel with the help of the tugboats, Gavino ordered merely "half-astern". It took Gavino another minute to order a "full-astern". By then, it was too late. The vessel's momentum could no longer be arrested and, barely a minute thereafter, the bow of the vessel hit the apron of the pier. Patently, Gavino miscalculated. He failed to react and undertake adequate measures to arrest fully the momentum of the vessel after the anchor failed to claw to the seabed. When he reacted, the same was even (haphazard). Gavino failed to reckon the bulk of the vessel, its size and its cargo. He erroneously believed that only one (1) anchor would suffice and even when the anchor failed to claw into the seabed or against a hard object in the seabed, Gavino failed to order the other

> anchor dropped immediately. His claim that the anchor was dropped when the vessel was only 1,000 feet from the pier is but a belated attempt to extricate himself from the quagmire of his own insouciance and negligence. In sum, then, Appellants' claim that the incident was caused by "force majeure" is barren of factual basis.
>
> x x x
>
> The harbor pilots are especially trained for this job. In the Philippines, one may not be a harbor pilot unless he passed the required examination and training conducted then by the Bureau of Custom, under Customs Administrative Order No. 15-65, now under the Philippine Ports Authority under PPA Administrative Order 63-85. Paragraph XXXIX of the Customs Administrative Order No. 15-65 provides that "the pilot shall be held responsible for the direction of the vessel from the time he assumes control thereof, until he leaves it anchored free from shoal: Provided, that his responsibility shall cease at the moment the master neglects or refuse(s) to carry out his instructions." The overall direction regarding the procedure for docking and undocking the vessel emanates from the harbor pilot. In the present recourse, Gavino failed to live up to his responsibilities and exercise reasonable care or that degree of care required by the exigencies of the occasion. Failure on his part to exercise the degree of care demanded by the circumstances is negligence (Reese versus Philadelphia & RR Co. 239 US 463, 60 L ed. 384, 57 Am Jur. 2d page 418).[67]

This affirms the findings of the trial court regarding Capt. Gavino's negligence:

> This discussion should not however, divert the court from the fact that negligence in maneuvering the vessel must be attributed to Capt. Senen Gavino. He was an experienced pilot and by this time should have long familiarized himself with the depth of the port and the distance he could keep between the vessel and port in order to berth safely.[68]

The negligence on the part of Capt. Gavino is evident; but Capt. Kabankov is no less responsible for the collision. His unconcerned lethargy as master of the ship in the face of troublous exigence constitutes negligence.

While it is indubitable that in exercising his functions a pilot is in sole command of the ship[69] and supersedes the master for the time being in the command and navigation of a ship and that he becomes master pro hac vice of a vessel piloted by him,[70] there is overwhelming authority to the effect that the master does not surrender his vessel to the pilot and the pilot is not the master. The master is still in command of the vessel notwithstanding the presence of a pilot. There are occasions when the master may and should interfere and even displace the pilot, as when the pilot is obviously incompetent or intoxicated and the circumstances may require the master to displace a compulsory pilot because of incompetency or physical incapacity. If, however, the master does not observe that a compulsory pilot is incompetent or physically incapacitated, the master is justified in relying on the pilot, but not blindly.[71]

The master is not wholly absolved from his duties while a pilot is on board his vessel, and may advise with or offer suggestions to him. He is still in command of the vessel, except so far as her navigation is concerned, and must cause the ordinary work of the vessel to be properly carried on and the usual precaution taken. Thus, in particular, he is bound to see that there is sufficient watch on deck, and that the men are attentive to their duties, also that engines are stopped, towlines cast off, and the anchors clear and ready to go at the pilot's order.[72]

A perusal of Capt. Kabankov' s testimony makes it apparent that he was remiss in the discharge of his duties as master of the ship leaving the entire docking procedure up to the pilot, instead of maintaining watchful vigilance over this risky maneuver:

> Q Will you please tell us whether you have the right to intervene in docking of your ship in the harbor?

A No sir, I have no right to intervene in time of docking, only in case there is imminent danger to the vessel and to the pier.

Q Did you ever intervene during the time that your ship was being docked by Capt. Gavino'?

A No sir, I did not intervene at the time when the pilot was docking my ship.

Q Up to the time it was actually docked at the pier, is that correct?

A No sir, I did not intervene up to the very moment when the vessel was docked.

x x x

Atty. Del Rosario (to the witness)

Q Mr. Witness, what happened, if any, or was there anything unusual that happened during the docking?

A Yes sir, our ship touched the pier and the pier was damaged.

Court (to the witness)

Q When you said touched the pier, are you leading the court to understand that your ship bumped the pier'?

A I believe that my vessel only touched the pier but the impact was very weak.

Q Do you know whether the pier was damaged as a result of that slight or weak impact?

A Yes sir, after the pier was damaged.

x x x

Q Being most concerned with the safety of your vessel, in the maneuvering of your vessel to the port, did you observe anything irregular in the maneuvering by Capt. Gavino at the time he was trying to cause the vessel to be docked at the pier?

A You mean the action of Capt. Gavino or his condition?

Court:

Q Not the actuation that conform to the safety maneuver of the ship to the harbor?

A No sir, it was a usual docking.

Q By that statement of yours, you are leading the court to understand that there was nothing irregular in the docking of the ship?

A Yes sir, during the initial period of the docking. there was nothing unusual that happened.

Q What about in the last portion of the docking of the ship, was there anything unusual or abnormal that happened?

A None Your Honor, I believe that Capt. Gavino thought that the anchor could keep or hold the vessel.

Q You want us to understand, Mr. Witness, that the dropping of the anchor of the vessel was not timely'?

A I don't know the depth of this port but I think, if the anchor was dropped earlier and with more shackles, there could not have been an incident.

Q So you could not precisely tell the court that the dropping of the anchor was timely because you are not well aware of the seabed, is that correct?

A Yes sir, that is right.

x x x

Q Alright, Capt. Kavankov, did you come to know later whether the anchor held its ground so much so that the vessel could not travel?

A It is difficult for me to say definitely. I believe that the anchor did not hold the ship.

Q You mean you don't know whether the anchor blades stuck to the ground to stop the ship from further moving ?

A Yes sir, it is possible.

Q What is possible'?

A I think, the 2 shackles were not enough to hold the vessel.

Q Did you know that the 2 shackles were dropped?

A Yes sir, I knew that.

Q If you knew that the shackles were not enough to hold the ship, did you not make any protest to the pilot?

A No sir, after the incident, that was my assumption.

Q Did you come to know later whether that presumption is correct?

A I still don't know the ground in the harbor or the depths.

Q So from the beginning, you were not competent whether the 2 shackles were also dropped to hold the ship?

A No sir, at the beginning, I did not doubt it because I believe Capt. Gavino to be an experienced pilot and he should be

more aware as to the depths of the harbor and the ground and I was confident in his actions.

x x x

Solicitor Abad (to the witness)

Q Now, you were standing with the pilot on the bridge of the vessel before the incident happened, were you not?

A Yes sir, all the time, I was standing with the pilot.

Q And so whatever the pilot saw, you could also see from that point of view?

A That is right.

Q Whatever the pilot can read from the panel of the bridge, you also could read, is that correct'?

A What is the meaning of panel?

Q All indications necessary for men on the bridge to be informed of the movements of the ship?

A That is right.

Q And whatever sound the captain ..... Capt. Gavino would hear from the bridge, you could also hear?

A That is right.

Q Now, you said that when the command to lower the anchor was given, it was obeyed, is that right?

A This command was executed by the third mate and boatswain.

Court (to the witness)

Q Mr. Witness, earlier in today's hearing, you said that you did not intervene with the duties of the pilot and that, in your opinion, you can only intervene if the ship is placed in imminent danger, is that correct?

A That is right, I did say that.

Q In your observation before the incident actually happened, did you observe whether or not the ship, before the actual incident, the ship was placed in imminent danger?

A No sir, I did not observe.

Q By that answer, are you leading the court to understand that because you did not intervene and because you believed that it was your duty to intervene when the vessel is placed in imminent danger to which you did not observe any imminent danger thereof, you have not intervened in any manner to the command of the pilot?

A That is right, sir.

x x x

Q Assuming that you disagreed with the pilot regarding the step being taken by the pilot in maneuvering the vessel, whose command will prevail, in case of imminent danger to the vessel?

A I did not consider the situation as having an imminent danger. I believed that the vessel will dock alongside the pier.

Q You want us to understand that you did not see an imminent danger to your ship, is that what you mean?

A Yes sir, up to the very last moment, I believed that there was no imminent danger.

Q Because of that, did you ever intervene in the command of the pilot?

A Yes sir, I did not intervene because I believed that the command of the pilot to be correct.

Solicitor Abad (to the witness)

Q As a captain of M/V Pavlodar, you consider docking maneuvers a serious matter, is it not?

A Yes sir, that is right.

Q Since it affects not only the safety of the port or pier, but also the safety of the vessel and the cargo, is it not?

A That is right.

Q So that, I assume that you were watching Capt. Gavino very closely at the time he was making his commands ?

A I was close to him, I was hearing his command and being executed.

Q And that you were also alert for any possible mistakes he might commit in the maneuvering of the vessel?

A Yes sir, that is right.

Q But at no time during the maneuver did you issue order contrary to the orders Capt. Gavino made?

A No sir.

Q So that you were in full accord with all of Capt. Gavino' s orders?

A Yes sir.

Q Because, otherwise, you would have issued order that would supersede his own order?

A In that case, I should take him away from his command or remove the command from him.

Court (to the witness)

Q You were in full accord with the steps being taken by Capt. Gavino because you relied on his knowledge, on his familiarity of the seabed and shoals and other surroundings or conditions under the sea, is that correct?

A Yes sir, that is right.

x x x

Solicitor Abad (to the witness)

Q And so after the anchors were ordered dropped and they did not take hold of the seabed, you were alerted that there was danger already on hand?

A No sir, there was no imminent danger to the vessel.

Q Do you mean to tell us that even if the anchor was supposed to take hold of the bottom and it did not, there was no danger to the ship?

A Yes sir, because the anchor dragged on the ground later .

Q And after a few moments when the anchor should have taken hold the seabed but not done (sic), as you expected, you already were alerted that there was danger to the ship, is that correct?

A Yes sir, I was alerted but there was no danger.

Q And you were alerted that somebody was wrong?

A Yes sir, I was alerted.

Q And this alert you assumed was the ordinary alertness that you have for normal docking?

A Yes sir, I mean that it was usual condition of any man in time of docking to be alert.

Q And that is the same alertness when the anchor did not hold onto the ground, is that correct?

A Yes sir, me and Capt. Gavino (thought) that the anchor will hold the ground.

Q Since, as you said that you agreed all the while with the orders of Capt. Gavino, you also therefore agreed with him in his failure to take necessary precaution against the eventuality that the anchor will not hold as expected?

Atty. Del Rosario:

May I ask that the question.

Solicitor Abad:

Never mind, I will reform the question.

x x x

Solicitor Abad (to the witness)

Q Is it not a fact that the vessel bumped the pier?

A That is right, it bumped the pier.

Q For the main reason that the anchor of the vessel did not hold the ground as expected?

A Yes sir, that is my opinion."[73]

Further, on redirect examination, Capt. Kabankov fortified his apathetic assessment of the situation:

> Q Now, after the anchor was dropped, was there any point in time that you felt that the vessel was in imminent danger.
>
> A No, at that time, the vessel was not in imminent danger, sir."[74]

This cavalier appraisal of the event by Capt. Kabankov is disturbingly antipodal to Capt. Gavino's anxious assessment of the situation:

> Q When a pilot is on board a vessel, it is the pilot's command which should be followed at that moment until the vessel is, or goes to port or reaches port?
>
> A Yes, your Honor, but it does not take away from the Captain his prerogative to countermand the pilot.
>
> Q In what way'?
>
> A In any case, which he thinks the pilot is not maneuvering correctly, the Captain always has the prerogative to countermand the pilot's order.
>
> Q But insofar as competence, efficiency and functional knowledge of the seabed which are vital or decisive in the safety (sic) bringing of a vessel to the port, he is not competent?
>
> A Yes, your Honor. That is why they hire a pilot in an advisory capacity, but still, the safety of the vessel rest(s) upon the Captain, the Master of the vessel.
>
> Q In this case, there was not a disagreement between you and the Captain of the vessel in the bringing of the vessel to port?
>
> A No, your Honor.

Court:

> May proceed.

Atty. Catris:

> In fact, the Master of the vessel testified here that he was all along in conformity with the orders you gave to him, and, as matter of fact, as he said, he obeyed all your orders. Can you tell, if in the course of giving such normal orders for the saf(e) docking of the MV Pavlodar, do you remember of any instance that the Master of the vessel did not obey your command for the safety docking of the MV Pavlodar?

Atty. del Rosario:

> Already answered, he already said yes sir.

Court:

> Yes, he has just answered yes sir to the Court that there was no disagreement insofar as the bringing of the vessel safely to the port.

Atty. Catris:

> But in this instance of docking of the MV Pavlodar, do you remember of a time during the course of the docking that the MV Pavlodar was in imminent danger of bumping the pier?

A When we were about more than one thousand meters from the pier, I think, the anchor was not holding, so I immediately ordered to push the bow at a fourth quarter, at the back of the vessel in order to swing the bow away from the pier and at the same time, I ordered for a full astern of the engine."[75]

These conflicting reactions can only imply, at the very least, unmindful disregard or, worse, neglectful relinquishment of duty by the shipmaster, tantamount to negligence.

The findings of the trial court on this aspect is noteworthy:

> For, while the pilot Gavino may indeed have been charged with the task of docking the vessel in the berthing space, it is undisputed that the master of the vessel had the corresponding duty to countermand any of the orders made by the pilot, and even maneuver the vessel himself, in case of imminent danger to the vessel and the port.
>
> In fact, in his testimony, Capt. Kavankov admitted that all throughout the man(eu)vering procedures he did not notice anything was going wrong, and even observed that the order given to drop the anchor was done at the proper time. He even ventured the opinion that the accident occurred because the anchor failed to take hold but that this did not alarm him because there was still time to drop a second anchor.
>
> Under normal circumstances, the abovementioned facts would have caused the master of a vessel to take charge of the situation and see to the man(eu)vering of the vessel himself. Instead, Capt. Kavankov chose to rely blindly upon his pilot, who by this time was proven ill-equipped to cope with the situation.
>
> x x x
>
> It is apparent that Gavino was negligent but Far Eastern's employee Capt. Kavankov was no less responsible for as master of the vessel he stood by the pilot during the man(eu)vering procedures and was privy to every move the latter made, as well as the vessel's response to each of the commands. His choice to rely blindly upon the pilot's skills, to the point that despite being appraised of a notice of alert he continued to relinquish control of the vessel to Gavino, shows indubitably that he was not performing his duties with the diligence required of him

> and therefore may be charged with negligence along with defendant Gavino."[76]

As correctly affirmed by the Court of Appeals —

> We are in full accord with the findings and disquisitions of the Court a quo.
>
> In the present recourse, Captain Viktor Kavankov had been a mariner for thirty-two years before the incident. When Gavino was (in) the command of the vessel, Kavankov was beside Gavino, relaying the commands or orders of Gavino to the crew members-officers of the vessel concerned. He was thus fully aware of the docking maneuvers and procedure Gavino undertook to dock the vessel. Irrefragably, Kavankov was fully aware of the bulk and size of the vessel and its cargo as well as the weight of the vessel. Kavankov categorically admitted that, when the anchor and two (2) shackles were dropped to the sea floor, the claws of the anchor did not hitch on to any hard object in the seabed. The momentum of the vessel was not arrested. The use of the two (2) tugboats was insufficient. The momentum of the vessel, although a little bit arrested, continued (sic) the vessel going straightforward with its bow towards the port (Exhibit "A-1"). There was thus a need for the vessel to move "full-astern" and to drop the other anchor with another shackle or two (2), for the vessel to avoid hitting the pier. Kavankov refused to act even as Gavino failed to act. Even as Gavino gave mere "half-astern" order, Kavankov supinely stood by. The vessel was already about twenty (20) meters away from the pier when Gavino gave the 'full-astern" order. Even then, Kavankov did nothing to prevent the vessel from hitting the pier simply because he relied on the competence and plan of Gavino.
>
> While the "full-astern" maneuver momentarily arrested the momentum of the vessel, it was, by then, too late. All along, Kavankov stood supinely beside Gavino, doing nothing but relay the commands of Gavino. Inscrutably, then, Kavankov was negligent.

x x x

> The stark incompetence of Kavankov is competent evidence to prove the unseaworthiness of the vessel. It has been held that the incompetence of the navigator, the master of the vessel or its crew makes the vessel unseaworthy (Tug Ocean Prince versus United States of America, 584 F. 2nd, page 1151). Hence, the Appellant FESC is likewise liable for the damage sustained by the Appellee."[77]

We find strong and well-reasoned support in time-tested American maritime jurisprudence, on which much of our laws and jurisprudence on the matter are based, for the conclusions of the Court of Appeals adjudging both Capt. Gavino and Capt. Kabankov negligent.

As early as 1869, the U.S. Supreme Court declared, through Mr. Justice Swayne, in The Steamship China vs. Walsh,[78] that it is the duty of the master to interfere in cases of the pilot's intoxication or manifest incapacity, in cases of danger which he does not foresee, and in all cases of great necessity. The master has the same power to displace the pilot that he has to remove any subordinate officer of the vessel, at his discretion.

In 1895, the U.S. Supreme Court, this time through Mr. Justice Brown, emphatically ruled that:

> Nor are we satisfied with the conduct of the master in leaving the pilot in sole charge of the vessel. While the pilot doubtless supersedes the master for the time being in the command and navigation of the ship, and his orders must be obeyed in all matters connected with her navigation, the master is not wholly absolved from his duties while the pilot is on board, and may advise with him, and even displace him in case he is intoxicated or manifestly incompetent. He is still in command of the vessel, except so far as her navigation is concerned, and bound to see that there is a sufficient watch on deck, and that the men are attentive to their duties.

> Notwithstanding the pilot has charge, it is the duty of the master to prevent accident, and not to abandon the vessel entirely to the pilot; but that there are certain duties he has to discharge (notwithstanding there is a pilot on board) for the benefit of the owners that in well conducted ships the master does not regard the presence of a duly licensed pilot in compulsory pilot waters as freeing him from every obligation to attend to the safety of the vessel; but that, while the master sees that his officers and crew duly attend to the pilot's orders, he himself is bound to keep a vigilant eye on the navigation of the vessel, and, when exceptional circumstances exist, not only to urge upon the pilot to use every precaution, but to insist upon such being taken."[79] (Italics for emphasis.)

In Jure vs. United Fruit Co.,[80] which, like the present petitions, involved compulsory pilotage, with a similar scenario where at and prior to the time of injury, the vessel was in the charge of a pilot with the master on the bridge of the vessel beside said pilot, the court therein ruled:

> The authority of the master of a vessel is not in complete abeyance while a pilot, who is required by law to be accepted, is in discharge of his functions. It is the duty of the master to interfere in cases of the pilot's intoxication or manifest incapacity, in cases of danger which he does not foresee, and in all cases of great necessity. The master has the same power to displace the pilot that he has to remove any subordinate officer of the vessel. He may exercise it, or not, according to his discretion. There was evidence to support findings that plaintiff's injury was due to the negligent operation of the Atenas, and that the master of that vessel was negligent in failing to take action to avoid endangering a vessel situated as the City of Canton was and persons or property thereon.
>
> A phase of the evidence furnished support for the inferences that he negligently failed to suggest to the pilot the danger which was disclosed, and means of avoiding such danger; and that the master's negligence in failing to give timely admonition to the pilot proximately contributed to the injury complained of. We are of opinion that the evidence mentioned tended to prove

> conduct of the pilot, known to the master, giving rise to a case of danger or great necessity, calling for the intervention of the master. A master of a vessel is not without fault in acquiescing in conduct of a pilot which involves apparent and avoidable danger, whether such danger is to the vessel upon which the pilot is, or to another vessel, or persons or property thereon or on shore. (Emphasis ours.)

Still in another case involving a nearly identical setting, the captain of a vessel alongside the compulsory pilot was deemed to be negligent, since, in the words of the court, "he was in a position to exercise his superior authority if he had deemed the speed excessive on the occasion in question. I think it was clearly negligent of him not to have recognized the danger to any craft moored at Gravell Dock and that he should have directed the pilot to reduce his speed as required by the local governmental regulations. His failure amounted to negligence and renders the respondent liable.[81] (Stress supplied.) Though a compulsory pilot might be regarded as an independent contractor, he is at all times subject to the ultimate control of the ship's master.[82]

In sum, where a compulsory pilot is in charge of a ship, the master being required to permit him to navigate it, if the master observes that the pilot is incompetent or physically incapable, then it is the duty of the master to refuse to permit the pilot to act. But if no such reasons are present, then the master is justified in relying upon the pilot, but not blindly. Under the circumstances of this case, if a situation arose where the master, exercising that reasonable vigilance which the master of a ship should exercise, observed, or should have observed, that the pilot was so navigating the vessel that she was going, or was likely to go, into danger, and there was in the exercise of reasonable care and vigilance an opportunity for the master to intervene so as to save the ship from danger, the master should have acted accordingly.[83] The master of a vessel must exercise a degree of vigilance commensurate with the circumstances.[84]

Inasmuch as the matter of negligence is a question of fact,[85] we defer to the findings of the trial court, especially as this is affirmed by the Court of Appeals.[86] But even beyond that, our own evaluation is that Capt. Kabankov's shared liability is due mainly to the fact that he

failed to act when the perilous situation should have spurred him into quick and decisive action as master of the ship. In the face of imminent or actual danger, he did not have to wait for the happenstance to occur before countermanding or overruling the pilot. By his own admission, Capt. Kabankov concurred with Capt. Gavino's decisions, and this is precisely the reason why he decided not to countermand any of the latter' s orders. Inasmuch as both lower courts found Capt. Gavino negligent, by expressing full agreement therewith Capt. Kabankov was just as negligent as Capt. Gavino.

In general, a pilot is personally liable for damages caused by his own negligence or default to the owners of the vessel, and to third parties for damages sustained in a collision. Such negligence of the pilot in the performance of duty constitutes a maritime tort.[87] At common law, a ship owner is not liable for injuries inflicted exclusively by the negligence of a pilot accepted by a vessel compulsorily.[88] The exemption from liability for such negligence shall apply if the pilot is actually in charge and solely in fault. Since, a pilot is responsible only for his own personal negligence, he cannot be held accountable for damages proximately caused by the default of others,[89] or, if there be anything which concurred with the fault of the pilot in producing the accident, the vessel master and owners are liable.

Since the colliding vessel is prima facie responsible, the burden of proof is upon the party claiming benefit of the exemption from liability. It must be shown affirmatively that the pilot was at fault, and that there was no fault on the part of the officers or crew, which might have been conducive to the damage. The fact that the law compelled the master to take the pilot does not exonerate the vessel from liability. The parties who suffer are entitled to have their remedy against the vessel that occasioned the damage, and are not under necessity to look to the pilot from whom redress is not always had for compensation. The owners of the vessel are responsible to the injured party for the acts of the pilot, and they must be left to recover the amount as well as they can against him. It cannot be maintained that the circumstance of having a pilot on board, and acting in conformity to his directions operate as a discharge of responsibility of the owners.[90] Except insofar as their liability is limited or exempted by statute, the vessel or her owner are liable for all damages caused by the negligence or other wrongs of the owners or those in charge of the

vessel. Where the pilot of a vessel is not a compulsory one in the sense that the owner or master of the vessel are bound to accept him, but is employed voluntarily, the owners of the vessel are, all the more, liable for his negligent act.[91]

In the United States, the owners of a vessel are not personally liable for the negligent acts of a compulsory pilot, but by admiralty law, the fault or negligence of a compulsory pilot is imputable to the vessel and it may be held liable therefor in rem. Where, however, by the provisions of the statute the pilot is compulsory only in the sense that his fee must be paid, and is not in compulsory charge of the vessel, there is no exemption from liability. Even though the pilot is compulsory, if his negligence was not the sole cause of the injury, but the negligence of the master or crew contributed thereto, the owners are liable.[92] But the liability of the ship in rem does not release the pilot from the consequences of his own negligence.[93] The rationale for this rule is that the master is not entirely absolved of responsibility with respect to navigation when a compulsory pilot is in charge.[94]

By way of validation and in light of the aforecited guidepost rulings in American maritime cases, we declare that our rulings during the early years of this century in City of Manila vs. Gambe,[95] China Navigation Co., Ltd. vs. Vidal,[96] and Yap Tico & Co. vs. Anderson, et al.[97] have withstood the proverbial test of time and remain good and relevant case law to this day.

City of Manila stands for the doctrine that the pilot who was in command and complete control of a vessel, and not the owners, must be held responsible for an accident which was solely the result of the mistake of the pilot in not giving proper orders, and which did not result from the failure of the owners to equip the vessel with the most modern and improved machinery. In China Navigation Co., the pilot deviated from the ordinary and safe course, without heeding the warnings of the ship captain. It was this careless deviation that caused the vessel to collide with a pinnacle rock which, though uncharted, was known to pilots and local navigators. Obviously, the captain was blameless. It was the negligence of the pilot alone which was the proximate cause of the collision. The Court could not but then rule that —

> The pilot in the case at bar having deviated from the usual and ordinary course followed by navigators in passing through the strait in question, without a substantial reason, was guilty of negligence, and that negligence having been the proximate cause of the damages, he is liable for such damages as usually and naturally flow therefrom.
> The defendant should have known of the existence and location of the rock upon which the vessel struck while under his control and management.

Consistent with the pronouncements in these two earlier cases, but on a slightly different tack, the Court in Yap Tico & Co. exonerated the pilot from liability for the accident where the orders of the pilot in the handling of the ship were disregarded by the officers and crew of the ship. According to the Court, a pilot is "responsible for a full knowledge of the channel and the navigation only so far as he can accomplish it through the officers and crew of the ship, and I don't see that he can be held responsible for damage when the evidence shows, as it does in this case, that the officers and crew of the ship failed to obey his orders." Nonetheless, it is possible for a compulsory pilot and the master of the vessel to be concurrently negligent and thus share the blame for the resulting damage as joint tortfeasors,[98] but only under the circumstances obtaining in and demonstrated by the instant petitions.

It may be said, as a general rule, that negligence in order to render a person liable need not be the sole cause of an injury. It is sufficient that his negligence, concurring with one or more efficient causes other than plaintiff's, is the proximate cause of the injury. Accordingly, where several causes combine to produce injuries, person is not relieved from liability because he is responsible for only one of them, it being sufficient that the negligence of the person charged with injury is an efficient cause without which the injury would not have resulted to as great an extent, and that such cause is not attributable to the person injured. It is no defense to one of the concurrent tortfeasors that the injury would not have resulted from his negligence alone, without the negligence or wrongful acts of the other concurrent tortfeasor.[99] Where several causes producing an injury are concurrent and each is an efficient cause without which the

injury would not have happened, the injury may be attributed to all or any of the causes and recovery may be had against any or all of the responsible persons although under the circumstances of the case, it may appear that one of them was more culpable, and that the duty owed by them to the injured person was not the same. No actor's negligence ceases to be a proximate cause merely because it does not exceed the negligence of other actors. Each wrongdoer is responsible for the entire result and is liable as though his acts were the sole cause of the injury.[100]

There is no contribution between joint tortfeasors whose liability is solidary since both of them are liable for the total damage. Where the concurrent or successive negligent acts or omissions of two or more persons, although acting independently, are in combination the direct and proximate cause of a single injury to a third person, it is impossible to determine in what proportion each contributed to the injury and either of them is responsible for the whole injury. Where their concurring negligence resulted in injury or damage to a third party, they become joint tortfeasors and are solidarily liable for the resulting damage under Article 2194[101] of the Civil Code.[102]

As for the amount of damages awarded by the trial court, we find the same to be reasonable. The testimony of Mr. Pascual Barral, witness for PPA, on cross and redirect examination, appears to be grounded on practical considerations:

> Q So that the cost of the two additional piles as well as the (two) square meters is already included in this P1,300,999.77.
>
> A Yes sir, everything. It is (the) final cost already.
>
> Q For the eight piles.
>
> A Including the reduced areas and other reductions.
>
> Q (A)nd the two square meters.
>
> A Yes sir.

Q In other words, this P1,300,999.77 does not represent only for the six piles that was damaged as well as the corresponding two piles.

A The area was corresponding, was increased by almost two in the actual payment. That was why the contract was decreased, the real amount was P1,124,627.40 and the final one is P1,300,999.77.

Q Yes, but that P1,300,999.77 included the additional two new posts.

A It was increased.

Q Why was it increased?

A The original was 48 and the actual was 46.

Q Now, the damage was somewhere in 1980. It took place in 1980 and you started the repair and reconstruction in 1982, that took almost two years?

A Yes sir.

Q May it not happen that by natural factors, the existing damage in 1980 was aggravated for the 2 year period that the damage portion was not repaired?

A I don't think so because that area was at once marked and no vehicles can park, it was closed.

Q Even if or even natural elements cannot affect the damage?

A Cannot, sir.

x x x

Q You said in the cross-examination that there were six piles damaged by the accident, but that in the reconstruction of the pier, PPA drove and constructed 8 piles. Will you

explain to us why there was change in the number of piles from the original number?

A In piers where the piles are withdrawn or pulled out, you cannot re-drive or drive piles at the same point. You have to redesign the driving of the piles. We cannot drive the piles at the same point where the piles are broken or damaged or pulled out. We have to redesign, and you will note that in the reconstruction, we redesigned such that it necessitated 8 piles.

Q Why not, why could you not drive the same number of piles and on the same spot?

A The original location was already disturbed. We cannot get required bearing capacity. The area is already disturbed.

Q Nonetheless, if you drove the original number of piles, six, on different places, would not that have sustained the same load?

A It will not suffice, sir."[103]

We quote the findings of the lower court with approval:

> With regards to the amount of damages that is to be awarded to plaintiff, the Court finds that the amount of P1,053,300.00 is justified. Firstly, the doctrine of *res ipsa loquitur* best expounded upon in the landmark case of Republic vs. Luzon Stevedoring Corp. (21 SCRA 279) establishes the presumption that in the ordinary course of events the ramming of the dock would not have occurred if proper care was used.

Secondly, the various estimates and plans justify the cost of the port construction price. The new structure constructed not only replaced the damaged one but was built of stronger materials to forestall the possibility of any similar accidents in the future.

The Court inevitably finds that the plaintiff is entitled to an award of P1,053,300.00 which represents actual damages caused by the

damage to Berth 4 of the Manila International Port. Co-defendants Far Eastern Shipping, Capt. Senen Gavino and Manila Pilots Association are solidarily liable to pay this amount to plaintiff.[104]

The Solicitor General rightly commented that the adjudicated amount of damages represents the proportional cost of repair and rehabilitation of the damaged section of the pier.[105]

Except insofar as their liability is limited or exempted by statute, the vessel or her owners are liable for all damages caused by the negligence or other wrongs of the owners or those in charge of the vessel. As a general rule, the owners or those in possession and control of a vessel and the vessel are liable for all natural and proximate damages caused to persons or property by reason of her negligent management or navigation.[106]

FESC's imputation of PPA's failure to provide a safe and reliable berthing place is obtuse, not only because it appears to be a mere afterthought, being tardily raised only in this petition, but also because there is no allegation or evidence on record about Berth No. 4 being unsafe and unreliable, although perhaps it is a modest pier by international standards. There was, therefore, no error on the part of the Court of Appeals in dismissing FESC's counterclaim.

II. G.R. No. 130150

This consolidated case treats on whether the Court of Appeals erred in holding MPA jointly and solidarily liable with its member pilot, Capt. Gavino, in the absence of employer-employee relationship and in applying Customs Administrative Order No. 15-65, as basis for the adjudged solidary liability of MPA and Capt. Gavino.

The pertinent provisions in Chapter I of Customs Administrative Order No. 15-65 are:

> "PAR. XXVII. — In all pilotage districts where pilotage is compulsory, there shall be created and maintained by the pilots or pilots' association, in the manner hereinafter prescribed, a reserve fund equal to P1,000.00 for each pilot thereof for the purpose of paying claims for damages to vessels or property

caused through acts or omissions of its members while rendered in compulsory pilotage service. In Manila, the reserve fund shall be P2,000.00 for each pilot.

PAR. XXVIII. — A pilots' association shall not be liable under these regulations for damage to any vessel, or other property, resulting from acts of a member of an association in the actual performance of his duty for a greater amount than seventy-five per centum (75 %) of its prescribed reserve fund; it being understood that if the association is held liable for an amount greater than the amount above-stated, the excess shall be paid by the personal funds of the member concerned.

PAR. XXXI. — If a payment is made from the reserve fund of an association on account of damages caused by a member thereof, and he shall have been found at fault, such member shall reimburse the association in the amount so paid as soon as practicable; and for this purpose, not less than twenty-five per centum of his dividends shall be retained each month until the full amount has been returned to the reserve fund.

PAR. XXXIVS. — Nothing in these regulations shall relieve any pilots' association or members thereof, individually or collectively, from civil responsibility for damages to life or property resulting from the acts of members in the performance of their duties.

Correlatively, the relevant provisions of PPA Administrative Order No. 03-85, which timely amended this applicable maritime regulation, state:

Article IV

SEC. 17. Pilots' Association. — The Pilots in a Pilotage District shall organize themselves into a Pilots' Association or firm, the members of which shall promulgate their own By-Laws not in conflict with the rules and regulations promulgated by the Authority. These By-Laws shall be submitted not later than one (1) month after the organization of the Pilots' Association for approval by the General Manager of the Authority. Subsequent

amendments thereto shall likewise be submitted for approval.

SEC. 25. Indemnity Insurance and Reserve Fund —

a) Each Pilots' Association shall collectively insure its membership at the rate of P50,000,00 each member to cover in whole or in part any liability arising from any accident resulting in damage to vessel(s), port facilities and other properties and/or injury to persons or death which any member may have caused in the course of his performance of pilotage duties.

b) The Pilotage Association shall likewise set up and maintain a reserve fund which shall answer for any part of the liability referred to in the immediately preceding paragraph which is left unsatisfied by the insurance proceeds, in the following manner:

1) Each pilot in the Association shall contribute from his own account an amount of P4,000.00 (P6,000.00 in the Manila Pilotage District) to the reserve fund. This fund shall not be considered part of the capital of the Association nor charged as an expense thereof.

2) Seventy-five percent (75 %) of the reserve fund shall be set aside for use in the payment of damages referred to above incurred in the actual performance of pilots' duties and the excess shall be paid from the personal funds of the member concerned.

x x x

5) If payment is made from the reserve fund of an Association on account of damage caused by a member thereof who is found at fault, he shall reimburse the Association in the amount so paid as soon as practicable; and for this purpose, not less than twenty-five percentum (25%) of his dividend

shall be retained each month until the full amount has been returned to the reserve fund. Thereafter, the pilot involved shall be entitled to his full dividend.

6) When the reimbursement has been completed as prescribed in the preceding paragraph, the ten percentum (10 %) and the interest withheld from the shares of the other pilots in accordance with paragraph (4) hereof shall be returned to them.

c) Liability of Pilots' Association — Nothing in these regulations shall relieve any Pilots' Association or members thereof, individually or collectively, from any civil, administrative and/or criminal responsibility for damages to life or property resulting from the individual acts of its members as well as those of the Association's employees and crew in the performance of their duties.

The Court of Appeals, while affirming the trial court's finding of solidary liability on the part of FESC, MPA and Capt. Gavino, correctly based MPA's liability not on the concept of employer-employee relationship between Capt. Gavino and itself, but on the provisions of Customs Administrative Order No. 15-65:

> The Appellant MPA avers that, contrary to the findings and disquisitions of the Court a quo, the Appellant Gavino was not and has never been an employee of the MPA but was only a member thereof. The Court a quo, it is noteworthy, did not state the factual basis on which it anchored its finding that Gavino was the employee of MPA. We are in accord with MPA's pose. Case law teaches Us that, for an employer-employee relationship to exist, the confluence of the following elements must be established: (1) selection and engagement of employees; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employees with respect to the means and method by which the work is to be performed (Ruga versus NLRC, 181 SCRA 266).
>
> x x x

The liability of MPA for damages is not anchored on Article 2180 of the New Civil Code as erroneously found and declared by the Court a quo but under the provisions of Customs Administrative Order No. 15-65, supra, in tandem with the by-laws of the MPA."[107]

There being no employer-employee relationship, clearly Article 2180[108] of the Civil Code is inapplicable since there is no vicarious liability of an employer to speak of. It is so stated in American law, as follows:

> The well established rule is that pilot associations are immune to vicarious liability for the tort of their members. They are not the employer of their members and exercise no control over them once they take the helm of the vessel. They are also not partnerships because the members do not function as agents for the association or for each other. Pilots' associations are also not liable for negligently assuring the competence of their members because as professional associations they made no guarantee of the professional conduct of their members to the general public.[109]

Where under local statutes and regulations, pilot associations lack the necessary legal incidents of responsibility, they have been held not liable for damages caused by the default of a member pilot.[110] Whether or not the members of a pilots' association are in legal effect a co-partnership depends wholly on the powers and duties of the members in relation to one another under the provisions of the governing statutes and regulations. The relation of a pilot to his association is not that of a servant to the master, but of an associate assisting and participating in a common purpose. Ultimately, the rights and liabilities between a pilots' association and an individual member depend largely upon the constitution, articles or by-laws of the association, subject to appropriate government regulations.[111]

No reliance can be placed by MPA on the cited American rulings as to immunity from liability of a pilots' association in light of existing positive regulation under Philippine law. The Court of Appeals properly applied the clear and unequivocal provisions of Customs Administrative Order No. 15-65. In doing so, it was just being consistent with its finding of the non-existence of employer-employee

relationship between MPA and Capt. Gavino which precludes the application of Article 2180 of the Civil Code.

True, Customs Administrative Order No. 15 -65 does not categorically characterize or label MPA's liability as solidary in nature. Nevertheless, a careful reading and proper analysis of the correlated provisions lead to the conclusion that MPA is solidarily liable for the negligence of its member pilots, without prejudice to subsequent reimbursement from the pilot at fault.

Article 1207 of the Civil Code provides that there is solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. Plainly, Customs Administrative Order No. 15-65, which as an implementing rule has the force and effect of law, can validly provide for solidary liability. We note the Solicitor General's comment hereon, to wit:

> Customs Administrative Order No. 15-65 may be a mere rule and regulation issued by an administrative agency pursuant to a delegated authority to fix "the details" in the execution or enforcement of a policy set out in the law itself. Nonetheless, said administrative order, which adds to the procedural or enforcing provisions of substantive law, is legally binding and receives the same statutory force upon going into effect. In that sense, it has equal, not lower, statutory force and effect as a regular statute passed by the legislature."[112]

MPA's prayer for modification of the appellate court's decision under review by exculpating petitioner MPA "from liability beyond seventy-five percent (75 %) of Reserve Fund" is unnecessary because the liability of MPA under Par. XXVIII of Customs Administrative Order No. 15-65 is in fact limited to seventy-five percent (75%) of its prescribed reserve fund, any amount of liability beyond that being for the personal account of the erring pilot and subject to reimbursement in case of a finding of fault by the member concerned. This is clarified by the Solicitor General:

> Moreover, contrary to petitioner's pretensions, the provisions of Customs Administrative Order No. 15-65 do not limit the liability of petitioner as a pilots' association to an absurdly small

> amount of seventy-five per centum (75%) of the member pilots' contribution of P2,000.00 to the reserve fund. The law speaks of the entire reserve fund required to be maintained by the pilots' association to answer (for) whatever liability arising from the tortious act of its members. And even if the association is held liable for an amount greater than the reserve fund, the association may not resist the liability by claiming to be liable only up to seventy-five per centum (75 %) of the reserve fund because in such instance it has the right to be reimbursed by the offending member pilot for the excess."[113]

WHEREFORE, in view of all of the foregoing, the consolidated petitions for review are **DENIED** and the assailed decision of the Court of Appeals is **AFFIRMED** in toto.

Counsel for FESC, the law firm of Del Rosario and Del Rosario specifically its associate, Atty. Herbert A. Tria, is **REPRIMANDED** and **WARNED** that a repetition of the same or similar acts of heedless disregard of its undertakings under the Rules shall be dealt with more severely.

The original members of the legal team of the Office of the Solicitor General assigned to this case, namely, Assistant Solicitor General Roman G. Del Rosario and Solicitor Luis F. Simon, are **ADMONISHED** and **WARNED** that a repetition of the same or similar acts of unduly delaying proceedings due to delayed filing of required pleadings shall also be dealt with more stringently.

The Solicitor General is **DIRECTED** to look into the circumstances of this case and to adopt provident measures to avoid a repetition of this incident and which would ensure prompt compliance with orders of this Court regarding the timely filing of requisite pleadings, in the interest of just, speedy and orderly administration of justice.

Let copies of this decision be spread upon the personal records of the lawyers named herein in the Office of the Bar Confidant.

SO ORDERED.

Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Purisima, *JJ.*, concur.

Narvasa, *C.J.*, on official leave.

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[1] Rollo, G.R. No. 130068, 61-83; Rollo, G.R. No. 130150, 24-46; per Justice Romeo J. Callejo, Sr., ponente, with the concurrence of Justices Pedro A. Ramirez and Pacita Cañizares-Nye.
[2] Ibid., id., 85; ibid., id., 47.
[3] Ibid., id, 61-63; ibid, id, 24-26.
[4] Original Record, 1-6.
[5] Ibid., 292-301; per Judge Abelardo M. Dayrit.
[6] Rollo, G.R. No. 130068, 65-66; Rollo, G.R. No. 130150, 28-29.
[7] Revised Rules and Regulations Governing Pilotage Districts, Pilots and Pilots' Association and Rates of Pilotage Fees in the Philippines, dated September 1, 1965 and approved on October 13, 1965; 61 O.G. No. 51, 8217-8237, December 20, 1965.
[8] Rollo, G.R. No. 130068, 83; Rollo, G.R. No. 130150, 46.
[9] Ibid., id., 43.
[10] Ibid., id., 44-53.
[*] Also spelled as "Kavankov" elsewhere in the records.
[11] Rollo, G.R. No. 130068, 229-230.
[12] Rollo, G.R. No. 130150, 10-11.
[13] Ibid., id., 12-18.
[14] Ibid., id., 4.
[15] Ibid., id., 62-66.
[16] Ibid., id., 95-98.
[17] Ibid., id., 103-106.
[18] Ibid., id., 108; Minute resolution of the First Division dated July 8, 1998.
[19] Effective July 1, 1997, per resolution of the Supreme Court in Bar Matter No. 803, adopted in Baguio City on April 8, 1997.
[20] Rollo, G.R. No. 130068, 3-4.
[21] Ibid., id., 4.
[22] Ibid., id., 56-57.
[23] Rollo, G.R. No. 130150, 48.
[24] Ibid., id., 23.
[25] Rollo, G.R. No. 130068, 57.
[26] Canon 10, Code of Professional Responsibility.
[27] Agpalo, Legal Ethics, 1992 ed., 109.
[28] Canon 22, Canons of Professional Ethics; Chavez vs. Viola, Adm. Case No. 2152, April 19, 1991, 196 SCRA 10.
[29] Cuaresma vs. Daquis, et al., G.R. No. L-35113, March 25, 1975, 63 SCRA 257; Libit vs. Oliva, et al. A.C. No. 2837, October 7, 1994, 237 SCRA 375.

[30] Rule 10.03, Canon 10, Code of Professional Responsibility.
[31] Canon 12, Code of Professional Responsibility.
[32] Chua Huat, et al. vs. Court of Appeals, et al., G.R. No. 53851, July 9, 1991, 199 SCRA 1, jointly deciding G.R. No. 63863.
[33] Canon 1, Code of Professional Responsibility.
[34] Gabriel, et al. vs. Court of Appeals, et al., G.R. No. L-43757-58, July 30, 1976, 72 SCRA 273.
[35] Rollo, G.R. No. 130068, 221-242.
[36] Ibid., id., 196.
[37] Ibid., id., 242-243; Affidavit of service by Heidi B. Garcia, Records Officer III, Office of the Solicitor General.
[38] Rollo, G.R. No. 130150, 86-101.
[39] Ibid., id., 102; Affidavit of service by Ofelia P. Panopio, Records Officer IV, Office of the Solicitor General.
[40] Section 3, in relation to Section 5, Rule 45.
[41] Rollo, G.R. No. 130068, 222.
[42] Ibid., G.R. No. 130150, 89.
[43] Canon 6, Code of Professional Responsibility.
[44] Sec. 2, R.A. No. 6713, entitled "Code of Conduct and Ethical Standards for Public Officials and Employees."
[45] Sec. 4(b), ibid.
[46] Sec. 4(e), ibid.
[47] Rules and Regulations Governing Pilotage Services, The Conduct of Pilots and Pilotage Fees in Philippine Ports, dated March 21, 1985, 81 O.G. No. 18, 1872- 1887.
[48] Rollo, G.R. No. 130068, 45-50.
[49] Ibid., id., 50-53.
[50] Bunge Corporation vs. M.VS. Furness Bridge, 558 F. 2d 790 (1977).
[51] Canal Barge Company, Inc. vs. Mary Kathryn Griffith, 480 F. 2d 11 (1973), citing The Oregon, 158 U.S. 186, 39 Law Ed 943 (1895).
[52] Patterson Oil Terminals vs. The Port Covington, 109 F. Supp. 953, 954 (E.D. Pa. 1952), cited in Bunge Corporation vs. M.VS. Furness Bridge, supra, Fn 50.
[53] 48 C.J., Pilots, §§ 1-2, 1183-1184; 70 C.J.S., Pilots, § 1, 1061.
[54] 48 Am Jur., Shipping, § 192, 133; Hernandez and Peñasales, Philippine Admiralty and Maritime Law, 1987 edition, 368.
[55] Ibid., id., § 193, 133; Op. cit., 369.
[56] 48 C.J., Pilots, § 30, 1192; 48 Am Jur., Shipping, § 204, 139.
[57] 48 Am Jur., Shipping, § 194, 134.
[58] 48 C.J., Pilots, § 67, 1201; 70 C.J.S., Pilots, §14(b), 1080.
[59] 22 Law. Ed. 619.
[60] TSN, May 24, 1984, 8-10.
[61] Regional Trial Court Decision, 10; Original Record, 300.
[62] 57A Am Jur. 2d, Negligence, § 153, 214.
[63] Prosser, Law of Torts, § 32, 164.
[64] Cooley, Torts, 647, cited in Wilson vs. Charleston Pilots Association, et al. 57 Fed. 227 (1893).

[65] Davidson Steamship Company vs. United States, 205 U.S. 186, 51 Law, Ed. 764 (1907).
[66] 57A Am Jur. 2d, Negligence, § 169, 224-225.
[67] Court of Appeals Decision, 13-15; Rollo, G.R. No. 130068, 73-74, 75.
[68] Regional Trial Court Decision, 10; Original Record, 300.
[69] The Oregon, infra., Fn 79.
[70] Guy vs. Donald, 157 F 527.
[71] 70 C.J.S., Pilots, § 14, 1078-1079; 48 C.J., Pilots, § 64, 1199; 80 C.J.S. Shipping, § 64, 782.
[72] 48 Am Jur., Shipping, § 125, 89.
[73] TSN, May 23, 1984, 6-8, 13-17, 38-40, 46-52.
[74] Ibid., May 24, 1984, 40.
[75] TSN, May 24, 1984, 16-19.
[76] Original Record, 300-301.
[77] Rollo, G.R. No. 130068, 79-80, 81.
[78] 74 U.S. 67; Union Shipping & Trading Co., Ltd. vs. United States, 127 F. 2d. 771 (1942).
[79] The Oregon, 158 U.S. 186, 39 Law Ed. 943.
[80] 6 F.(2d) 7 (1925).
[81] The Emma T. Grimes, Mulqueen vs. Cunard S.S. Co., Limited, 2 F. Supp. 319 (1933).
[82] Burgess vs. M/V Tamano, et al., 564 F. 2d 964 (1977).
[83] Hinman vs. Moran Towing & Transportation Co., Inc., et al. 268 N.Y.S., 409 (1934).
[84] Canada S.S. Lines vs. Great Lakes Dredge & Dock Co., C.C.A. III., 81 F. 2d 100.
[85] Davidson Steamship Company vs. United States, supra, Fn 65.
[86] Banson vs. Court of Appeals, et al., G.R. No. 110580, July 13, 1995, 246 SCRA 42; Atlantic Gulf and Pacific Company of Manila vs. Court of Appeals, et al., G.R. Nos. 114841-42, August 23, 1995, 247 SCRA 606; Acebedo Optical Co., Inc. vs. Court of Appeals, et al., G.R. No. 118833, November 29, 1995, 250 SCRA 409.
[87] 48 C.J., Pilots § 66, 1200.
[88] Homer Ramsdell Transportation vs. La Compagnie Generale Transatlantique, 182 U.S. 1155, 1161.
[89] 70 C.J.S., Pilots § 14(d), 1080-1081.
[90] The Steamship China vs. Louis Walsh, supra, Fn 78.
[91] 58 C.J., Shipping, § 417, 297.
[92] Ibid., id., § 421, 301-302.
[93] Burgess, et al. vs. M/V Tamano, et al., supra, Fn 82.
[94] 80 C.J.S., Shipping, § 65(b), 792; Dampskibsselskabet Atlanta A/S vs. United States, 31 F.(2d) 961 (1929); Union Shipping & Trading Co., Limited vs. United States, supra, Fn 78.
[95] 6 Phil . 49 (1906).
[96] 22 Phil. 121 (1912).
[97] 34 Phil. 626 (1916).

[98] Jure vs. United Fruit Co., supra, Fn 80; The Emma T. Grimes, Mulqueen vs. Cunard S.S. Co., Limited, supra, Fn 81.
[99] 65 C.J.S., Negligence § 110, 1184-1189.
[100] Ibid., id., id., 1194-1197.
[101] Art. 2194. The responsibility of two or more persons who are liable for a quasi-delict is solidary.
[102] Sangco, Philippine Law on Torts and Damages, 1984 ed., 259-260; Dimayuga vs. Philippine Commercial & Industrial Bank, et al., G.R. No. 42542, August 5, 1991, 200 SCRA 143; Ouano Arrastre Service, Inc. vs. Aleonar, etc., et al., G.R. No. 97664, October 10, 1991, 202 SCRA 619; Singapore Airlines Limited vs. Court of Appeals, et al., G.R. No. 107356, March 31, 1995, 243 SCRA 143; Inciong, Jr. vs. Court of Appeals, et al., G.R. No. 96405, June 26, 1996, 257 SCRA 578.
[103] TSN, January 23, 1984, 12-15.
[104] Original Record, 301.
[105] Comment, 18; Rollo, G.R. No. 130068, 238.
[106] 58 C.J., Shipping, §§ 417-418, 297-298.
[107] Rollo, G.R. No. 130068, 65-66; Rollo, G.R. No. 130150, 28-29.
[108] Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.

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Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x

[109] Thomas J. Schoenbaum, Admiralty and Maritime Law, 1987 edition, 437; Guy vs. Donald, supra, Fn 70; The Manchioneal, 243 Fed. 801 (1917); 48 Am Jur., Shipping, § 196, 135.
[110] 48 C.J., Pilots, § 75, 1203.
[111] 70 C.J.S., Pilots, § 17, 1083.
[112] Rollo, G.R. No. 130150, 98.
[113] Rollo, G.R. No. 130150, 99.