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Insurer Wins Unanimous Decision in New York Choice of Law Battle

By James E. Mercante

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In sports, there's nothing like a clean sweep, a shutout, a perfect game or a unanimous decision. Anything close to a unanimous decision in the U.S Supreme Court these days is rare.

Count a gritty marine insurer as part of the exclusive Supreme Court's 9-0 club; winners by knockout in a hotly contested marine insurance dispute that braved its way from the District of Pennsylvania to the U.S. Court of Appeals for the Third Circuit and ultimately landed in the Supreme Court. And all the fuss was over the insurance contract's selection of New York law to govern future disputes.

The financial stakes were not as high in the case as they were for the overall marine insurance market. Indeed, while the legal expense far exceeded the value of the claim, the tenacity of the marine insurer involved in digging in on a major principal of maritime law and not throwing in the towel, will turn out to be worth every penny for the future of marine insurance.

Courtesy photo

James E. Mercante

All the insurance company wanted was a fair fight, like any insurer involved in a disputed insurance coverage litigation. But the insured's retaliation to a declaratory judgment action included extra-contractual counter claims for breach of fiduciary duty, insurance bad faith and breach of Pennsylvania's Unfair Trade Practices Law. Such claims signal

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dangerous waters for an insurance company and often have the effect of trumping a fair assessment and adjudication of the claim itself. Faced with claims that could result in a shifting of attorney's fees, treble damages and more, insurers typically settle rather than risk the pursuit of justice when such pursuit is not solely on the merits of the claim.

That all has changed for marine insurers since the Supreme Court's unanimous decision on Feb. 21, 2024, to overturn the Third Circuit and enforce the insurance contract's New York choice of law clause. *Great Lakes Insurance SE v. Raiders Retreat Realty Company*, 601 U.S. 65 (2024). The effect of enforcing the choice of law clause was to wipe out the state of Pennsylvania's extra-contractual bad faith claims. This permits a resolution on the merits not clouded by the specter of bad faith and attorney's fees.

Hitting Rock Bottom

Raiders Retreat (a Pennsylvania company) owned a yacht insured with Great Lakes Insurance for $550,000. The yacht ran hard aground in Florida waters, resulting in extensive hull and machinery damage. The United Kingdom-based marine insurer denied the claim citing alleged misrepresentations in statements by the insured prior to binding coverage and breach of express warranties contained within the policy.

The district court enforced the policy's New York choice of law clause thereby sinking the extra-contractual claims sounding in Pennsylvania state law. Despite the insurance contract's clear and unambiguous New York choice of law clause, the Third Circuit vacated and remanded permitting the district court to consider whether Pennsylvania state law has a 'strong public policy' to protect citizens insured in its state by applying its own state laws. 47 F.4th 225 (3d Cir. 2022).

With full appreciation of the significance of this ruling not only for the *Great Lakes Insurance SE v. Raiders Retreat Realty Company* case, but for the marine insurance market and maritime law as a whole, the insurer and its tenacious maritime coverage counsel, The Goldman Maritime Law Group, took an expensive gamble with a pitch to the Supreme Court. The thrust was to resolve once and for all a split in the Courts of Appeal regarding the enforceability of choice of law provisions in maritime contracts.

The decision authored by Justice Brett Kavanaugh concluded that choice of law provisions in maritime contracts are presumptively enforceable. The ruling is of utmost importance to the pursuit of uniformity in maritime laws throughout the United States as it will 'reduce legal uncertainty' and avoid a patchwork of marine insurance decisions throughout the 50 states. 601 U.S. *72, 77.

Bright Line Rule Adopted

As stated in the conclusion of my Admiralty Law column prior to oral argument, this would be the "*Supreme Court's opportunity to salvage a bright line federal rule permitting parties to a maritime contract to rely upon choice of law clauses that will be enforced by the courts. This is the only way to avoid parties running aground in mostly uncharted waters*

and laws of the 50 states…a federal maritime rule adopted by the Supreme Court will have the desired impact of promoting uniformity of law in this maritime nation". (See, James E. Mercante, "Off to Sea the Wizard: High Court Takes on Marine Insurance Dispute", New York Law Journal, April 19, 2023).

This is precisely what the court's decision has accomplished. Having attended oral argument on behalf of the New York Law Journal, it was quite encouraging to hear nine Justices (none with maritime backgrounds to speak of) questioning and opining on intricate issues of maritime law and marine insurance history dating back six decades to the court's last marine insurance dispute in *Wilburn Boat v. Fireman's Fund Insurance*, 348 U.S. 310 (1955).

Justice Clarence Thomas was highly critical of *Wilburn Boat* in his concurring opinion and seemed eager to have the opportunity to reverse course on a decades old Supreme Court decision. Here, Thomas was adamant that *Wilburn Boat* was wrongly decided and reiterated that 'uniformity' and federal admiralty law requires strict compliance with express warranties in a marine policy. Similarly, under New York insurance law, a breach of warranty does not require a causal connection between the breach and the loss.

Judging Risk

A New York choice of law clause will be upheld according to the Supreme Court, unless the parties can "furnish no reasonable basis for the chosen jurisdiction." 601 U.S. at *76. The court acknowledged that New York was a reasonable choice because its insurance law is well developed, well known and well regarded.

A choice of law clause enables the parties to a maritime contract to determine in advance (before a conflict arises) what law will govern a dispute, and in the case of a marine insurer, to better assess risk of exposure and the insurance premium to be charged. Thus, the Supreme Court's decision is a giant step toward streamlining maritime contract disputes. It will avoid a tug-of-war over what law to apply when numerous jurisdictions are potentially implicated while providing a fair and unclouded judicial resolution on the merits of marine insurance litigation.