Supreme Court Holds Choice-of-Law Provisions in Maritime Insurer Contracts Are Presumptively Enforceable

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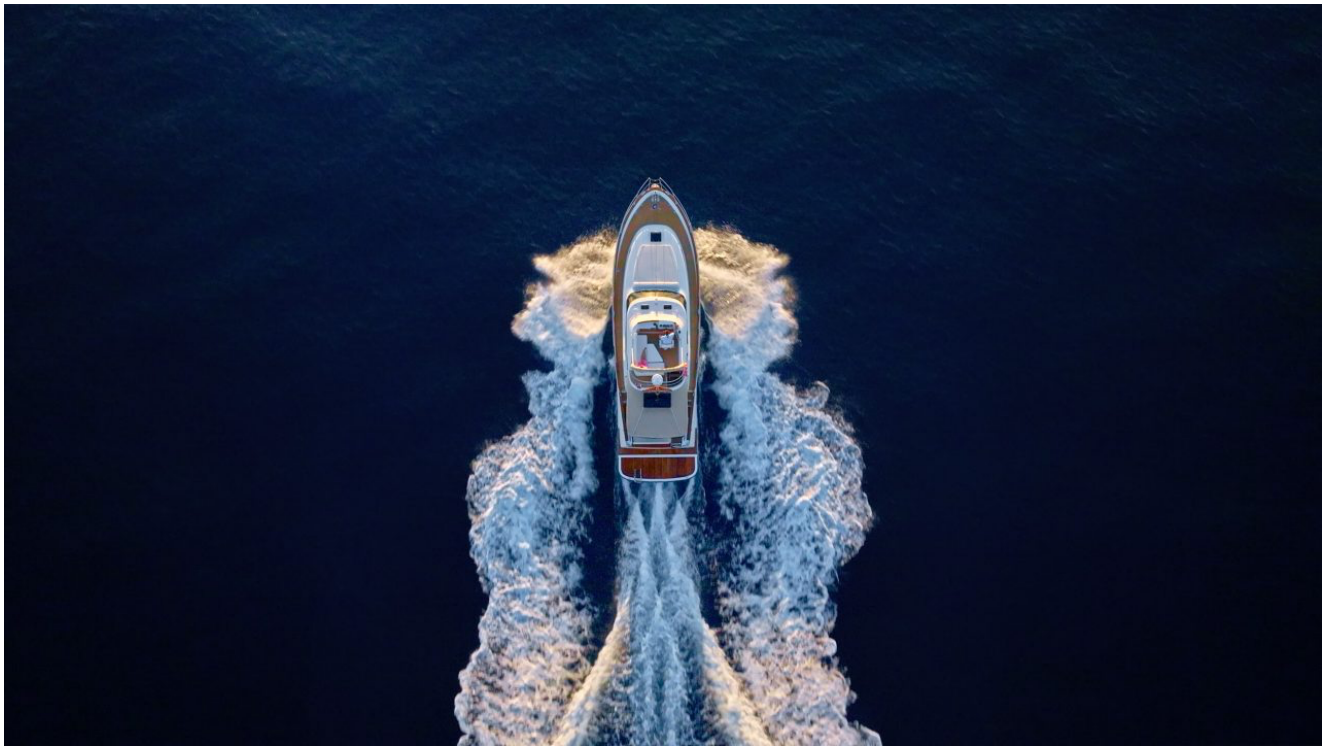
Summary

- The decision eliminates any ambiguity regarding the enforceability of choice-of-law provisions in maritime contracts.
- Insurers will be in a better position to insist on application of choice-of-law provisions in maritime contracts.
- In marine insurance, state law should be applied where there is no established federal maritime rule governing the issue at hand.



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In a recent unanimous decision authored by Justice Kavanaugh, the U.S. Supreme Court ruled that choice-of-law provisions in maritime contracts are presumptively enforceable, subject to only limited exceptions.

This article recounts that decision, as well as a subsequent case that has applied it, and discusses the potential implications for insurers and policyholders. In sum, the Court's decision in *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*, [1] eliminates any ambiguity regarding the enforceability of choice-of-law provisions in maritime contracts, thus providing clarity for the maritime insurance industry.

Background

The facts of the case are as follows: In October 2007, defendant Raiders Retreat Realty, LLC, a Pennsylvania business, purchased an insurance policy with Great Lakes, for its 1988 70-foot Viking Motor Yacht. Raiders renewed this policy with Great Lakes every year thereafter, up to and including 2018.

At the time of renewal for the 2016–2017 policy, however, a third party inspected the vessel's condition and recommended, among other things, the installation of a fire-suppression system and fire extinguishers. [2] Based on Raiders' 2016 "Letter of Survey Recommendations Compliance to GLI" —in which Raiders certified that it complied with the recommendations of the third-party inspector— Great Lakes renewed Raiders' policy. Great Lakes also included the following provision in the policy:

> If the Scheduled Vessel is fitted with fire extinguishing equipment, then it is warranted that such equipment is properly installed and is maintained in good working order. This includes the weighing of tanks once a year, certification/tagging and recharging as necessary. [3]

In June 2019, the vessel ran aground and sustained significant damage. No fire occurred and, therefore, no fire-extinguishing equipment was needed or used.

After Raiders made a claim against the policy, Great Lakes investigated and determined that the vessel's fire extinguishers had not been recertified or inspected. Great Lakes thereafter denied Raiders' claim on the grounds that Raiders violated the policy's express warranty concerning fire extinguishers and that Raiders' 2016 letter contained a material misrepresentation. [4]

Following its denial, Great Lakes instituted a declaratory judgment action in the U.S. District Court for the Eastern District of Pennsylvania seeking a declaration that the policy did not afford coverage for the loss. In response, Raiders filed counterclaims arising under Pennsylvania law for (a) breach of contract; (b) breach of implied covenant of good faith and fair dealing; (c) breach of fiduciary duty; (d) bad-faith liability, in violation of section 8371 of title 42 of the Pennsylvania Consolidated Statutes; and (e) violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law (UTPCPL). [5]

Relying on the policy's choice-of-law provision applying New York law, Great Lakes then moved to dismiss Raiders' counterclaims for breach of fiduciary duty, bad-faith liability under section 8371, and violation of the UTPCPL. Great Lakes argued that these Pennsylvania-specific causes of action were not cognizable under New York law.

The district court agreed with Great Lakes and dismissed Raiders' counterclaims for breach of fiduciary duty, bad faith, and violations of the UTPCPL. [6] On interlocutory appeal, the U.S. Court of Appeals for the Third Circuit vacated and remanded the district court's dismissal of Raiders' state law counterclaims. [7] In so ruling, the Third Circuit held that, consistent with two older U.S. Supreme Court cases, [8] the district court should have considered "whether Pennsylvania has a strong public policy that would be thwarted by applying New York law." [9]

Great Lakes thereafter filed a petition for writ of certiorari, and the U.S. Supreme Court agreed to decide the following question:

> Under federal admiralty law, can a choice of law clause in a maritime contract be rendered unenforceable if enforcement is contrary to the "strong public policy" of the state whose law is displaced? [10]

In a unanimous 9–0 decision issued in February 2024, the Supreme Court reversed the Third Circuit and held that choice-of-law provisions in maritime contracts are presumptively enforceable, subject to only limited exceptions.

Analysis

In its analysis, the Supreme Court focused primarily on three of its prior decisions: *The Bremen v. Zapata Off-Shore Co.*, [11] *Carnival Cruise Lines, Inc. v. Shute*, [12] and *Wilburn Boat Co. v. Fireman's Fund Ins. Co.* [13] Each is discussed briefly in turn.

The Bremen, like *Great Lakes*, was also an admiralty matter. However, in *The Bremen*, the Supreme Court analyzed a forum-selection clause as opposed to a choice-of-law provision. In ultimately ruling that the forum-selection clause was enforceable in *The Bremen*, the Supreme Court observed that "in the light of present-day commercial realities and expanding international trade we conclude that the forum clause should control absent a strong showing that it should be set aside." [14]

Notably, *The Bremen* Court suggested in its analysis that a forum-selection clause could be invalidated if it "would contravene a strong public policy of the forum in which suit is brought," or if it was the product of "undue influence, or overweening bargaining power." However, because *The Bremen* involved two sophisticated parties and did not directly implicate a "strong public policy of the forum," the Court did not have occasion to decide those exceptions. [15]

Carnival Cruise was also an admiralty matter, but it dealt with one of the questions left over from *The Bremen*; namely, how the Court should account "for the realities of form passage contracts," [16] which are largely unnegotiated contracts between large corporations (Carnival Cruise) and individual consumers. In finding that the forum-selection clause was enforceable, the Court focused on the potential benefits of the forum-selection clause, which, in its view, included predictability, efficiency, and reduced costs. [17] It also found that any claims of hardship to the individual consumers—Washington state residents who would now have to litigate in Florida—to be unsupported. [18]

The final matter, *Wilburn Boat*, involved a coverage dispute arising from a marine insurance contract like the one in *Great Lakes*. In *Wilburn Boat*, the plaintiff—an owner of a houseboat used for commercial carriage of passengers on a lake between Texas and Oklahoma—suffered a fire loss. As in *Great Lakes*, the insurance company denied coverage, claiming that Wilburn had violated certain warranty provisions of the policy. Also as in *Great Lakes*, those provisions were totally unrelated to the loss.

In any event, the primary dispute in *Wilburn Boat* was whether Texas law or federal maritime law would apply to determine the effect of the alleged warranty breaches. If federal maritime law applied, the plaintiff's claims would have been barred; Texas law was more forgiving. [19]

As relevant here, the *Wilburn Boat* Court held that, in the field of marine insurance, state law should be applied where there is no established federal maritime rule governing the issue at hand. [20] In *Wilburn Boat*, it meant that Texas law applied to the specific warranty issues raised by the plaintiff, as opposed to federal maritime law. [21]

With these authorities in mind, the Supreme Court in *Great Lakes* first analyzed whether "there is an established federal maritime rule regarding the enforceability of choice-of-law provisions." [22] Citing various treatises and drawing analogies from the Court's precedent in forum-selection clause matters (like *The Bremen* and *Carnival Cruise*), the answer was "yes." [23] Thus, the Court concluded that, like forum-selection clauses, choice-of-law provisions in maritime contracts were entitled to a

presumption of enforceability.

The Court next turned to the "exceptions." Agreeing the exceptions should be "narrow," the Court identified three: (1) if the chosen law would contravene a controlling federal statute, (2) if the chosen law would conflict with established federal maritime policy, or (3) if the parties can furnish no reasonable basis for the chosen jurisdiction. [24]

In creating these narrow exceptions, the Court rejected an exception for instances—left open by *The Bremen*—where "enforcing the law of the State designated by the contract would contravene the fundamental public policy of the State with the greatest interest in the dispute." [25] This was because, in the Court's view, such an exception would effectively allow choice-of-law provisions in maritime contracts to be determined by state law. [26] Thus, on the facts presented, the Court determined that the parties' choice-of-law provisions should be enforced.

Recent Application

The Supreme Court's ruling in *Great Lakes* provides clarity for the maritime insurance industry and has potentially far-reaching consequences for the handling of maritime claims across the United States. Indeed, recent district court cases applying *Great Lakes* show the effect of its ruling.

Accelerant Specialty Insurance Co. v. Z & G Boat & Jet Ski Rentals, Inc., [27] for example, involved a "Florida corporation with its principal place of business in Florida" and an insurance company organized under Arkansas law with a principal place of business in Georgia. The underlying personal injury claim occurred in Florida and involved a Florida resident. [28] Nevertheless, the district court refused to invalidate the parties' New York choice-of-law provision because it found that New York was not a "distant foreign country" and that even if it were, the contracting parties' choice of New York's "well-known and highly elaborated commercial law" was "anything but irrational." [29]

Conclusion

It seems fair to conclude that, moving forward, parties (likely insurers) will be in a better position to insist on application of choice-of-law provisions in maritime contracts, and can do so with confidence that such provisions will be enforced. Likewise, with choice-of-law clauses now presumptively enforceable in maritime matters, marine insurers will likely include such language in policies during renewal talks. And while insurers and policyholders can negotiate which law may apply, the *Great Lakes* ruling suggests that insurers will likely prefer to have New York law as the default, as it is often seen as favorable for insurers.

While policyholders may not have much negotiating power to oppose this, the inclusion of choice-of-law provisions could also bring benefits to policyholders, such as clearer contracts and fewer disputes. This is because everyone will know the governing law before a claim is made.

Whether *Great Lakes* will or can be applied beyond maritime disputes is unclear. On its face, the decision is limited to maritime contracts based on federal law. However, in their amicus brief, the Chamber of Commerce of the United States of America and American Property Casualty Insurance Association took the position that it would "set an important precedent for the enforcement of choice-of-law provisions in other types of insurance contracts and in commercial contracts more broadly." [30] Given the unique nature of maritime claims (exclusively federal), and the general nature of coverage disputes (governed by state law), it is questionable whether such a broader application is possible. Whether any state courts adopt the reasoning of *Great Lakes* is another story, and one which only time will tell.

Endnotes

1. Daniel J. DeFiglio is a partner with., and a member of the firm's Insurance Recovery and Counseling Practice Group.

   The views and opinions expressed in this article are those of the author and not necessarily those of Archer & Greiner, P.C. or its clients.

   Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC, 601 U.S. 65, 65, 144 S. Ct. 637, 639, 217 L. Ed. 2d 401 (2024).

2. The district court identified the fire-suppression system as a "Halon system." *See Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 521 F. Supp. 3d 580, 583 (E.D. Pa. 2021), *vacated and remanded*, 47 F.4th 225 (3d Cir. 2022), *rev'd*, 601 U.S. 65, 144 S. Ct. 637, 217 L. Ed. 2d 401 (2024).

3. *Great Lakes*, 521 F. Supp. 3d at 583.

4. *Great Lakes*, 521 F. Supp. 3d at 583.

5. *Great Lakes*, 521 F. Supp. 3d at 582–83.

6. *Great Lakes*, 521 F. Supp. 3d at 585–88.

7. *Great Lakes*, 47 F.4th 225, 230–33 (3d Cir. 2022), *rev'd*, 601 U.S. 65, 144 S. Ct. 637, 217 L. Ed. 2d 401 (2024).

8. Those cases were *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972), and *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 1523, 113 L. Ed. 2d 622 (1991).

9. *Great Lakes*, 47 F.4th at 233.

10. *See Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 143 S. Ct. 999, 215 L. Ed. 2d 137 (2023), *and* Brief of Petitioner for a Writ of Certiorari, *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC* (U.S. filed Nov. 23, 2022) (No. 22-500).

11. *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 92 S. Ct. 1907, 32 L. Ed.2d 513 (1972).

12. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 111 S. Ct. 1522, 1523, 113 L. Ed. 2d 622 (1991).

13. *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 314, 75 S. Ct. 368, 99 L. Ed. 337 (1955).

14. *The Bremen*, 407 U.S. at 15.

15. *The Bremen*, 407 U.S. at 12, 15.

16. *Carnival Cruise Lines*, 499 U.S. at 593.

17. *Carnival Cruise Lines*, 499 U.S. at 594–95.

18. *Carnival Cruise Lines*, 499 U.S. at 594–95.

19. *Wilburn Boat*, 348 U.S. at 312.

20. *Wilburn Boat*, 348 U.S. at 316. While beyond the scope of this article, the *Wilburn Boat* rule has been heavily criticized. *See, e.g.*, 2 Thomas Schoenbaum, *Admiralty and Maritime Law* § 19:15 (6th ed. 2020) (asserting that *Wilburn Boat* has "caused endless mischief"); Gerard J. Mangone, *United States Admiralty Law* 247 (1997) (noting that *Wilburn Boat* "has since troubled many maritime lawyers"); I Alex L. Parks, *The Law and Practice of Marine Insurance and Average* 13 (1987) ("*Wilburn [Boat]* cast the law of marine insurance into a state of turmoil.").

21. *Wilburn Boat*, 348 U.S. at 319–21.

22. *Great Lakes*, 601 U.S. at 70.

23. *Great Lakes*, 601 U.S. at 70–71.

24. *Great Lakes*, 601 U.S. at 76–77.

25. *Great Lakes*, 601 U.S. at 77.

26. *Great Lakes*, 601 U.S. at 77. ("A federal presumption of enforceability would not be much of a presumption if it could be routinely swept aside based on 50 States' public policy determinations.").

27. *Accelerant Specialty Ins. Co. v. Z & G Boat & Jet Ski Rentals, Inc.*, 737 F. Supp. 3d 1297 (M.D. Fla. 2024).

28. *Accelerant Specialty*, 737 F. Supp. 3d at 1306.

29. *Accelerant Specialty*, 737 F. Supp. 3d at 1307.

30. Brief for Amici Curiae Chamber of Commerce of the United States of America and American Property Casualty Insurance Association Supporting Petitioner, *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 144 S. Ct. 637, 217 L. Ed. 2d 401 (2024) (No. 22-500).

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