

Law360 Insurance Authority: Justices' Maritime Insurance Ruling Retains Tilted Status Quo

When the [U.S. Supreme Court](#) ruled this week that an insurer can enforce choice-of-law provisions in a marine insurance policy it issued to the owner of a yacht that ran aground, it upheld existing practices that give insurers the upper hand over policyholders.

In a [6-3 decision](#) delivered Wednesday by Justice Brett Kavanaugh, the justices found that Great Lakes Insurance SE's New York choice-of-law provision in the policy it issued to Raiders Retreat Realty Co. is presumptively enforceable, and no exception allowed Raiders to bring counterclaims under Pennsylvania law.

The justices rejected Raiders' argument that the courts should weigh the interests of the states whose laws are being displaced, instead siding with the insurer that treating such provisions as presumptively valid was crucial for maintaining certainty in maritime contracts and commerce.

"That widespread understanding is correct, and Raiders' argument for disrupting that longstanding consensus is essentially a solution in search of a problem," the justices said.

Experts for insurers and policyholders told Law360 that the decision clarified and strengthened the status quo, which often leaves insurers with greater leverage for dictating which state's laws will serve as

the arena for any contest of insurance terms.

"Maritime interests, maritime commerce really transcends state boundaries and, in a sense, transcends national boundaries," Gino Zonghetti of [Cohen Ziffer Frenchman & McKenna](#) told Law360. "The federal maritime law, the uniformity of it, is important to support business interests in evaluating their risks and liabilities because of the unique nature of the maritime trade."

The issue presented to the justices was whether choice-of-law clauses could be voided if enforcement of a designated state's law would contravene "the fundamental public policy" of the state with the greatest interest in the dispute — in this case, Pennsylvania.

The dispute began when Great Lakes filed suit in Pennsylvania court seeking a declaration that it didn't owe coverage for Raiders' 70-foot yacht running aground, saying that while the damage was not fire-related, the policy was always void because the yacht owner failed to maintain the yacht's fire-suppression system. Raiders responded with counterclaims of bad faith and violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.

On appeal, Raiders argued that since the high court's 1955 decision in *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*, designated state law as controlling maritime contracts absent established federal law, it should be allowed to bring Pennsylvania law counterclaims.

...

Jillian Raines of [Cohen Ziffer Frenchman & McKenna](#), who represents policyholders, said the decision failed to address the power imbalance between insurers and policyholders, and the status quo left insurers empowered to shield themselves with favorable state laws.

"It didn't seem to me that they really address the issue behind the issue," she said. "Policyholders are often not in a significant negotiating position with maritime insurers and all insurers, really, to redraft language, to negotiate which law they want to apply, negotiate the forum, things like that."

...

Ultimately, while the decision leaves choice-of-law provisions in place and such provisions can provide clarity to policyholders, Cohen Ziffer's Raines said that discouraging litigation is not necessarily a favorable outcome.

"I do think it's always easy to basically point at this slippery slope and it's hard to say what would have really happened," she said.

Related People

Jillian Raines