

Law360 Insurance Authority: Justices Weigh Contract Certainty In Marine Insurance Dispute

The Supreme Court's looming decision over the enforceability of a choice-of-law provision in a yacht owner's marine insurance policy may upend the principles of uniformity and certainty in admiralty law if the provision is invalidated at the highest court, some experts say. The high court heard its first marine insurance case in nearly 70 years Oct. 10, when Raiders Retreat Realty Co. LLC and Great Lakes Insurance SE appeared before the justices to argue whether Pennsylvania public policy can void the New York choice-of-law provision in the yacht owner's policy.

The question before the justices is limited to whether a choice-of-law clause in a maritime contract can be voided under federal admiralty law if enforcement would contravene the "strong public policy" of the state whose law is displaced.

"It seems to me that overwhelmingly the court favored Great Lakes' argument and recognizes that, especially in the maritime context, if they were to decline to enforce the choice-of-law provision it's going to create a lot of uncertainty in these types of contracts," Oliver Beiersdorf, a partner at [Oliver Wyman](#), told Law360.

If the choice-of-law provision is not enforced in maritime insurance contracts, Beiersdorf said it is unclear whether it will be enforced in other maritime contracts.

“That’s one of the concerns in the industry: What are the knock-on effects of a decision that essentially invalidates these sophisticated parties’ choice-of-law provision?” he said.

The composition of the court “might militate in favor of holding parties to the contracts they’ve negotiated and finding the choice-of-law provision valid and enforceable,” said partner Anthony Bartell, who represents policyholders.

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The Supreme Court _____ the case in March.

“There definitely was a lot of inquiry into the fairness from a consumer protection, policyholder-side of things,” _____ partner Jillian Raines said of _____.

Much of that inquiry came from Justice Elena Kagan who at one point seemed to take issue with Great Lakes’ use of the word “idiosyncratic” when describing Raiders’ Pennsylvania state-law claims, saying they are designed to protect consumers against insurance companies in situations like this one.

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