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Maritime Coverage Case About To Make Waves at Supreme Court

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How should a federal court decide whether to enforce a choice-of-law provision? That's the question at the heart of Great Lakes Insurance v. Raiders Retreat Realty, a maritime coverage dispute that will be argued before the U.S. Supreme Court in October. See No. 22-500 (U.S. 2023). However the court rules, the decision could have wide-ranging implications for insurance disputes—even those on land.

A SHIPWRECK AND AN APPEAL

The dispute arose after a yacht ran aground in 2019 near Fort Lauderdale, Florida. The yacht—although intact—sustained serious damage in the wreck. Its owner, Raiders Retreat Realty (Raiders Retreat), filed a claim for coverage with its insurer, Great Lakes Insurance (Great Lakes), which denied the claim after learning that the boat's fire extinguishers had not been inspected and recertified. Great Lakes then brought a declaratory-judgment action against Raiders Retreat (a Pennsylvania-based company) in the Eastern District of Pennsylvania.

Raiders Retreat responded with five counterclaims, including three under Pennsylvania law for breach of fiduciary duty, bad faith liability under 42 Pa. Cons. St. §8271 and violations of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.

Even though Great Lakes initiated its lawsuit in Pennsylvania, the carrier moved for judgment on the pleadings as to Raiders Retreat's three Pennsylvania counterclaims. It pointed to the policy's choice-of-law provision that would apply federal admiralty law where "well established, entrenched" precedent exists, and, in the absence of that precedent, New York law. Great Lakes contended that in the absence of federal admiralty law, Raiders Retreat's counterclaims were not cognizable under New York law, and thus they failed on their face.

In response, Raiders Retreat argued the policy's choice-of-law provision was unenforceable since its application would contravene a strong public policy of Pennsylvania, the forum state. The district court agreed with Great Lakes and granted its motion.

The U.S. Court of Appeals for the Third Circuit, however, reversed on appeal. It held that, based on admiralty-law precedent, the district court had failed to ask whether the forum state of "Pennsylvania has a strong public policy that would be thwarted by applying New York law." It rested that conclusion on an earlier Supreme Court decision that recognized a similar public-policy exception in the maritime insurance forum non conveniens context. That exception, it reasoned, applied to a choice-of-law provision, too.

Great Lakes asked the Supreme Court to review that decision. This past April, the court agreed.

CASE SIGNIFICANCE AND THE COURT'S OPTIONS

Outside of maritime insurance disputes, one might reasonably ask why all this matters. Many insurance lawyers don't deal with admiralty law at all. So why care about the court's ruling in this case?

The answer is that the Supreme Court's decision has potential to have lasting effects on disputes involving choice-of-law provisions even beyond maritime law—and that is true no matter how broadly the court ultimately chooses to decide the issue.

GREAT LAKES' PROPOSAL: DAMN THE TORPEDOES, ENFORCE THE PROVISION

One option the court has is to accept what Great Lakes urges: Under maritime law, a choice-of-law provision is presumptively enforceable unless it would violate a federal policy. Practically speaking, adopting that approach would be a victory for marine insurers. Under that approach, the public policy of the forum state would be irrelevant to whether a choice-of-law provision should apply. Consequently, those provisions would almost always be enforced as written.

Great Lake's proposal, however sweeping, has some immediate appeal. Adopting a single federal standard of enforceability could be more straightforward for trial courts. And by making the enforcement of choice-of-law provisions more likely, it could also mean greater predictability for contracting parties.

But dipping below the surface, those rationales start to break down. Most states' choice-of-law rules already contemplate public-policy exceptions, and clear choice-of-law clauses in insurance contracts are routinely enforced. So it's not clear enforceability will create more uniform results. It's also unclear whether it would make life easier for trial courts. In addition, federal courts already apply state choice-of-law rules all the time in non-maritime cases, so applying a unique maritime standard would actually mean deviating from a familiar approach.

That leaves predictability. A near-uniform rule of enforceability has the appeal of giving contracting parties peace of mind that the laws of an agreed-upon jurisdiction will govern, regardless of where an insurer or insured elects to sue. But there are other ways to achieve predictability, including through negotiating forum-selection clauses, and disputes over governing law will still arise for significant enough claims or where the results are case-dispositive in any event.

RAIDERS RETREAT'S PROPOSAL: STEADY AS SHE GOES

That brings us to Raiders Retreat's equally straightforward and compelling pitch: The current system works just fine.

For one thing, it's been this way for a while. As some scholars have noted, courts sitting in admiralty have long enforced choice-of-law provisions unless doing so would be unreasonable or unjust. As a result, parties to a contract can likely anticipate whether their choice-of-law provision is (or isn't) enforceable. That could be why disputes like this one don't come up every day in federal appeals—by Raiders Retreat's count, only three or four times since 1992.

That said, choice-of-law provisions tend to be early targets in significant coverage disputes. That's especially true where, as in Great Lakes, the issue determines if a claim survives at all. Great Lakes thus may be correct that more challenges like this one will follow if the Court endorses the current approach.

AMICI'S PROPOSAL: CHART A MIDDLE COURSE WITH THE RESTATEMENT

A viable option may be the one advanced by non-parties. Two scholars, John F. Coyle and Kermit Roosevelt III, filed an amicus brief urging the court to rule that admiralty law incorporates the test laid out in the Restatement (Second) of Conflicts of Laws §187. Under that test, a choice-of-law provision will be enforced unless (1) the chosen state lacks a substantial relationship to the parties or transaction, and no other reasonable basis exists for that law to apply; and (2) applying the chosen law would offend a fundamental policy of the forum state, and that state has a materially greater interest in the dispute.

A few features of the proposal stand out. It would create some uniformity for federal courts applying admiralty law without binding judges with a rigid presumption of enforceability. It would clarify the issue without the court having to necessarily rely on its ruling in M/S Bremen v. Zapata Off-Shore, 407 U.S. 1 (1972), a 50-year-old case concerning the enforceability of a forum-selection clause that the Third Circuit relied on.

The proposal would also mirror what most federal courts do already. As mentioned, most states have some kind of public-policy exception in their choice-of-law rules, and many have expressly adopted Section 187. Federal judges are thus well-equipped to apply Section 187 it in all kinds of contexts, including admiralty and insurance disputes.

The most important effect may be for litigants, and especially for policyholders. Applying Section 187 would, in most cases, honor the terms of a choice-of-law provision that the parties negotiate—but it would also allow parties to challenge enforcement in cases where the forum state has a strong policy interest in the other direction. Allowing a policyholder (like in Great Lakes) to get the benefit from a strong policy interest of the forum, particularly where their insurer selected that forum by suing for a declaration of no coverage first, has plenty of equitable appeal.

The proposal would thus balance predictability, fairness and some measure of flexibility. In turn, it would ensure that a party to a marine insurance contract may, where appropriate, have its case governed by the laws of the forum state.

WHY 'GREAT LAKES' MATTERS

No matter how the court rules, its decision in Great Lakes will have obvious consequences, the least of which is for parties to marine insurance contracts. A federal standard holding maritime choice-of-law provisions nearly always enforceable will mean insurers will have an easier time protecting themselves with favorable (or more developed) state law. If, on the other hand, the court takes a more lenient approach, it could invite more principled choice-of-law challenges from policyholders.

Either outcome will likely shape future marine-insurance disputes in New York's federal courts, which have significant influence on how other jurisdictions decide admiralty cases. See, e.g., Price v. PBG Hourly Pension Plan, 921 F. Supp. 2d 764, 71 n.1 (E.D. Mich. 2013) (noting that "the Second Circuit, along with the District Court for the Southern District of New York, [are] the foremost American admiralty court[s]").

Even beyond the admiralty context, maritime rulings tend to shape other areas of law over time. As Professor Maggie Gardner has pointed out, several legal principles have their roots in admiralty law. See Maggie Gardner, Admiralty's Influence, 91 Geo. Wash. L. Rev. (forthcoming 2023). Those include doctrines like forum non conveniens, the enforcement of forum-selection provisions, and the presumption against extraterritoriality. All three doctrines were developed in admiralty disputes before drifting into general civil practice. Great Lakes could be no different.

Whatever answer the court gives could thus shape choice-of-law disputes, including those in federal insurance cases, for years to come.

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