

The US Supreme Court Enforces a New York Choice of Law Clause in a Marine Insurance Policy

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The US Supreme Court denied a Pennsylvania boat owner's claim for insurer bad faith under Pennsylvania law by enforcing a New York choice of law policy provision. Similar choice of law clauses in marine policies may be enforced to circumvent home state rules limiting denial of coverage for misrepresentation, breach of warranty, and late notice.

To insure its boat, Raiders Retreat Realty Co., a Pennsylvania company, purchased a policy of marine insurance from Great Lakes Insurance. The policy warranted that the boat would be fitted with fire extinguishers. The boat ran aground near Fort Lauderdale, Florida, and Great Lakes denied coverage on the basis of breach of the fire extinguisher warranty, notwithstanding that the breach of the warranty was not causally related to the grounding.

Great Lakes sued in federal district court in Pennsylvania for a declaratory judgment of no coverage, and Raiders counterclaimed for bad faith under Pennsylvania law. The district court dismissed the counterclaim because the policy contained a New York choice of law clause. The US Court of Appeals for the Third Circuit reversed on the basis that New York law conflicted with the public policy of Pennsylvania, the state law that would apply in the absence of choice.

The US Supreme Court reversed the Third Circuit. *Great Lakes Ins. SE. v. Raiders Retreat Realty Co.*, 601 U.S. ____, February 21, 2024. Analogizing to forum selection clauses, the Court held that maritime law choice of law clauses are presumptively enforceable. Raiders argued that the presumption should not apply to marine insurance because the *Wilburn Boat* case held that, in the absence of a well-established federal maritime rule, state law applies to marine insurance. The Court responded that *Wilburn Boat* did not address choice of law clauses and that the New York rule did not contradict any established *federal* maritime policy.

The Court noted that enforcing the choice of law clause promoted certainty in the interpretation of the policy and uniformity in the maritime law. In a lengthy concurrence, Justice Clarence Thomas encouraged the federal courts to craft substantive federal marine insurance rules as a better means of promoting uniformity than relying on clauses choosing the law of a particular state.

The law chosen by your insurer may limit your rights in a coverage dispute. Insureds should negotiate for a clause choosing the law and venue of their home state in case of any disputes.

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