SULLIVAN & CROMWELL LLP

S&C memo

February 23, 2024

Supreme Court Rules on Choice-of-Law Clauses in Maritime Contracts

U.S. Supreme Court Holds That Choice-of-Law Clauses in Marine Insurance and Other Maritime Contracts Are Presumptively Enforceable as a Matter of Federal Law

SUMMARY

The U.S. Supreme Court ruled in *Great Lakes Insurance SE* v. *Raiders Retreat Realty Co., LLC*, 601 U.S. ___, 2024 WL 694920 (2024), that choice-of-law clauses in maritime contracts are presumptively enforceable as a matter of federal law.[1] In a unanimous opinion authored by Justice Kavanaugh, the Court ruled in favor of S&C client Great Lakes and reversed the Third Circuit Court of Appeals, upholding Great Lakes' choice of New York law in its marine insurance contract with Raiders.[2] S&C represented Great Lakes, a subsidiary of Munich Re, before the Court.

The Court's ruling resolved a circuit split on whether maritime choice-of-law provisions may be held unenforceable as a matter of state public policy, as the Third Circuit held in the decision below.[3] The Court held that the federal presumption of enforceability was subject only to narrow, federal exceptions—and did not include an exception for state public policy.[4]

BACKGROUND

Raiders is a Pennsylvania company that purchased an insurance policy for its yacht from Great Lakes, a specialty insurer organized in Germany and headquartered in the United Kingdom.[5] The policy included a choice-of-law provision that, as relevant here, selected New York law.[6]

When the yacht ran aground, the parties got into a dispute about the policy's coverage, with Great Lakes arguing that a breach by Raiders of the insurance contract voided the contract.[7] Great Lakes brought a declaratory judgment action in the U.S. District Court for the Eastern District of Pennsylvania, and Raiders

asserted several counterclaims under Pennsylvania law.[8] The district court held that the contract's choice-of-law clause was presumptively valid as a matter of federal maritime law, and therefore dismissed Raiders' Pennsylvania counterclaims.[9] On appeal, the Third Circuit vacated the district court's decision, holding that the court should have considered whether the choice-of-law provision violates Pennsylvania's public policy.[10]

THE SUPREME COURT'S DECISION

Writing for a unanimous Court, Justice Kavanaugh held that maritime choice-of-law clauses are presumptively enforceable as a matter of federal law, with certain narrow exceptions for federal—but not state—policies.[11] As an initial matter, the Court reaffirmed that federal courts have constitutional authority "to create and apply maritime law," and that in order to maintain a "uniform system" of maritime law across the nation, federal courts must "'make decisional law' for maritime cases."[12] In exercising that common-law authority, "federal courts follow previously 'established' maritime rules," which can be demonstrated by "a body of judicial decisions."[13] In the absence of a previously established rule, "federal courts may create uniform maritime rules."[14] Surveying case law and history, the Court held that "[l]ongstanding precedent establishes a federal maritime rule: Choice-of-law provisions in maritime contracts are presumptively enforceable."[15]

The Court rejected Raiders' argument that *Wilburn Boat Co.* v. *Fireman's Fund Insurance Co.*, 348 U.S. 310 (1955), compelled a different result.[16] The Court recognized that there may be "tension" between *Wilburn Boat* and "the Court's modern maritime jurisprudence, which tends to place greater emphasis on the need for uniformity in maritime law," but chose not to resolve that tension in this case because, even on its own terms, "*Wilburn Boat* does not control the analysis of choice-of-law provisions in maritime contracts."[17] The Court noted that *Wilburn Boat* "held only that state law applied as a gap-filler in the absence of a uniform federal maritime rule on a warranty issue."[18] The Court also rejected Raiders' suggestion that *Wilburn Boat* recognized "a kind of 'insurance exceptionalism' where th[e] Court will apply state law in maritime *insurance* cases[,]" holding that nothing in *Wilburn Boat* overrides choice-of-law clauses in maritime contracts generally, including the subset of marine insurance contracts.[19]

The Court further held that Great Lakes' choice-of-law clause did not fall into one of the few exceptions to presumptive enforceability. Framing those exceptions narrowly, the Court held that choice-of-law clauses should be enforced unless (i) "the chosen law would contravene a controlling federal statute," (ii) the chosen law would "conflict with an established federal maritime policy," or (iii) the "parties can furnish no reasonable basis for the chosen jurisdiction."[20] The Court took pains to note that the third exception is narrow and "must be applied with substantial deference to the contracting parties."[21] Parties may continue to select "well developed, well known, and well regarded" law, such as New York law.[22] The Court therefore held that the choice of New York law in the Great Lakes-Raiders contract was valid and enforceable as a matter of federal law, regardless of Pennsylvania's public policy.[23]

Justice Thomas joined the Court's opinion in full but also wrote separately "to highlight how *Wilburn Boat* rests on flawed premises and, more broadly, how the decision is at odds with the fundamental precept of admiralty law."[24] His concurrence describes *Wilburn Boat* as an "unwarranted" "break from settled practice," with a "deeply flawed" rationale that "has been met with universal criticism over the past 70 years."[25] Justice Thomas observed that the "Court has retreated from *Wilburn Boat* in subsequent decisions, implicitly cabining its reach to 'localized' disputes," and urged "[l]itigants and courts to heed [the Court's] instruction that general maritime law applies in maritime contract disputes."[26]

IMPLICATIONS

The Court's decision will have important implications in the maritime industry, reaffirming the primacy of federal maritime law and granting greater certainty regarding the enforceability of choice-of-law provisions in maritime insurance and other contracts. While limited on its face to federal maritime law, the ruling may also signal a more general favorability on the Court towards enforcing contracts, particularly choice-of-law provisions.

The decision includes favorable language regarding choice-of-law clauses. For instance, the Court cited its prior rulings that "'it is no injustice' to resolve disputes under the law that parties have 'agreed to be bound by.'"[27] The Court also noted a number of benefits of choice-of-law and forum-selection provisions that extend beyond the maritime industry, including that they "respect 'ancient concepts of freedom of contract,'" and "have 'the salutary effect of dispelling any confusion' on the manner for resolving future disputes, thereby slashing the 'time and expense of pretrial motions.'"[28]

* * *

ENDNOTES

1 *Great Lakes*, 2024 WL 694920, at *2.

2 *Id.* at *8.

3 *Id.*

4 *Id.* at *7.

5 *Id.* at *2.

6 *Id.*

7 *Id.*

8 *Id.*

9 *Id.* at *2-3.

10 *Id.* at *3.

11 *Id.* at *2.

12 *Id.* at *3.

13 *Id.*

14 *Id.*

15 *Id.* at *4.

16 *Id.* at *5.

17 *Id.*

18 *Id.* Specifically, the *Wilburn Boat* Court "simply determined what substantive rule applied when a party breached a warranty in a marine insurance contract[,]" and concluded that "no 'established federal admiralty rule' governed the warranty issue." *Id.* at *5. Justice Thomas in his concurrence criticized this conclusion since, at the time of *Wilburn Boat*, "the existence of an established federal maritime rule addressing the effect of a breach of warranty could not plausibly be questioned." *Id.* at *9 (Thomas, J., concurring).

19 *Id.* at *6 (majority opinion).

20 *Id.* at *7.

21 *Id.*

22 *Id.*

23 *Id.* at *8.

24 *Id.* (Thomas, J., concurring).

25 *Id.* at *9-10.

26 *Id.* at *11.

27 *Id.* at *4 (majority opinion) (quoting *London Assuranc*e v. *Companhia de Moagens do Barreiro*, 167 U.S. 149, 161 (1897)); *see id.* ("Except as forbidden by some public policy, the tendency of the law is to apply in contract matters the law which the parties intended to apply." (quoting *Lauritzen* v. *Larsen*, 345 U.S. 571, 588-89 (1953))).

28 *Id.* (quoting *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 11 (1972), and *Carnival Cruise Lines, Inc.* v. *Shute*, 499 U.S. 585, 593-94 (1991)); *see id.* at *5 ("By identifying the governing law

ENDNOTES (CONTINUED)

in advance, choice-of-law provisions allow parties to avoid later disputes—as well as ensuing litigation and its attendant costs.").

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.