U.S. Supreme Court Decides *Great Lakes*

On February 21, 2024, the U.S. Supreme Court handed down its decision in *Great Lakes Insurance SE v. Raiders Retreat Realty Company, LLC*.

The question presented was whether, under federal admiralty law, a choice-of-law clause in a maritime contract can be rendered unenforceable if enforcement is contrary to the "strong public policy" of the U.S. state whose law is displaced. In a unanimous opinion authored by Justice Kavanaugh, the Court concluded that the answer to this question was no. It held that choice-of-law provisions in maritime contracts are presumptively enforceable as a matter of federal maritime law. It further held that while there are narrow exceptions to this rule, state public policy is not one of them.

Facts

Great Lakes Insurance SE (GLI) is a corporation organized under the laws of the Germany that is headquartered in the United Kingdom. Raiders Retreat Realty Co., LLC (Raiders) is a company organized under the laws of Pennsylvania. GLI insured a yacht owned by Raiders. The marine insurance contract signed by the parties contained the following choice-of-law clause:

> *It is hereby agreed that any dispute arising hereunder shall be adjudicated according to well established, entrenched principles and precedents of substantive United States Federal Admiralty law and practice but where no such well-established, entrenched precedent exists, this insuring agreement is subject to the substantive laws of the State of New York.*

After the yacht ran aground in Florida and sustained significant damage, Raiders filed a claim. GLI denied the claim on the ground that the yacht's fire-extinguishing equipment had not been recertified or inspected. Although the damage to the yacht was not caused by fire, GLI took the position that Raiders had misrepresented the vessel's fire suppression system's operating ability, thereby making the policy void from inception.

After denying the claim, GLI filed an action for a declaratory judgment in the U.S. District Court for the Eastern District of Pennsylvania. It asked the court to hold that the policy was void due to the alleged misrepresentations by Raiders with respect to the fire extinguishers. In response, Raiders asserted five counterclaims against GLI: (1) breach of contract, (2) breach of implied covenant of good faith and fair dealing, (3) breach of fiduciary duty, (4) bad faith liability under 42 Pa. Const. Stat. §8371, and (5) violation of Pennsylvania's Unfair Trade Practices and Consumer Protection Law.

GLI moved for judgment on the pleadings with respect to the fourth and fifth counterclaims. It argued that these claims were not viable because the policy's choice-of-law provision had designated New York as the governing law in the absence of applicable federal maritime law. Because the claims were based on Pennsylvania statutes, it argued, they were barred by the choice-of-law clause. Raiders opposed this motion. It argued that the choice-of-law clause was unenforceable because it was contrary to Pennsylvania's strong public policy of punishing insurers who deny coverage in bad faith.

The trial court ruled in favor of GLI. The Third Circuit ruled in favor of Raiders. The Supreme Court granted GLI's cert petition and heard oral arguments on October 10, 2023.

Decision

The Court held that the issue of whether a choice-of-law clause in a maritime contract is enforceable is governed by federal law. In support of this conclusion, the Court noted that it had previously held that the enforceability of forum selection clauses in these contracts is governed by federal law. It would be strange, the Court reasoned, to adopt a different rule with respect to choice-of-law clauses. The Court further held that choice-of-law clauses in maritime contracts were "presumptively enforceable." Again, this conclusion logically followed from the fact that the Court had previously held that forum selection clauses in maritime contracts are "prima facie valid."

After discussing why the Court's decision in *Wilburn Boat Company v. Fireman's Fund Insurance Company* (1955) did not dictate a different outcome, the Court turned its attention to the question of when a choice-of-law clause in a maritime

contract should not be enforced. It held that courts should disregard these clauses in situations where applying the chosen law would "contravene a controlling federal statute" or "conflict with an established federal maritime policy." It also held that these clauses should not be given effect when there was no "reasonable basis" for selecting the law of the chosen jurisdiction. However, the Court expressly rejected the argument advanced by Raiders that a choice-of-law clause in a maritime contract was unenforceable if applying the law of the chosen state would be contrary to a fundamental policy of a state with a greater interest in the dispute.

In rejecting this argument, the Court explained that a federal presumption of enforceability "would not be much of a presumption if it could be routinely swept aside based on 50 States' public policy determinations." It reasoned that the "ensuing disuniformity and uncertainty caused by such an approach would undermine the fundamental purpose of choice-of-law clauses in maritime contracts: uniform and stable rules for maritime actors." The Court also noted that nothing in its previous decisions relating to the enforceability of forum selection clauses in maritime contracts suggested that state public policy was relevant to whether these clauses should be given effect.

Finally, the Court declined to adopt the argument—advanced by me and Kim Roosevelt in an *amicus* brief prepared with the assistance of the North Carolina School of Law Supreme Court Program—that it should resolve the question of enforceability by looking to Section 187(2) of the Restatement (Second) of Conflict of Laws. The Court reasoned that the rule laid down in Section 187 "arose out of interstate cases and does not deal directly with federal-state conflicts, including those that arise in federal enclaves like maritime law." The Court also pointed out that Section 187 was a "poor fit" for maritime cases in part because it would "prevent maritime actors from prospectively identifying the law to govern future disputes."

Analysis

I had two great fears going into this case. Thankfully, neither was realized.

First, I was concerned that the Court might take the test it had previously articulated for determining whether a *forum selection clause* should be given

effect as a matter of federal maritime law and apply that test to *choice-of-law clauses*. This is, in essence, what the Third Circuit did in its decision below. Such an approach would, in my view, have generated a great deal of mischief. Although choice-of-law clauses and forum selection clauses are often invoked in the same breath, they are not the same and the courts should utilize different tests to evaluate whether they should be enforced. I was relieved that the Court chose not to go down this path. The test laid down in *Great Lakes* for determining whether a choice-of-law clause in a maritime contract is enforceable is distinct and different from the test for determining whether a forum selection clause laid down in *The Bremen* and *Carnival Cruise.*

Second, I was concerned that the Court's test for enforcing choice-of-law clauses might be couched in such broad language that it would eventually supplant Section 187 in non-maritime cases. This is essentially what happened when the Court decided *The Bremen* in 1972. Although that decision only applied to forum selection clauses in maritime contracts, the sweeping language utilized by the Court ultimately brought about a significant change in practice in non-maritime cases. The language in *Great Lakes*, by comparison, is much more carefully drawn. Throughout the opinion, Justice Kavanaugh consistently frames the issue as whether a choice-of-law clause is enforceable *in a maritime contract* rather than in a more general sense. The rationales articulated by the Court for declining to adopt the rule laid down in Section 187 are similarly encouraging. The Court stated that Section 187 was not the right rule because it "arose out of interstate cases and does not deal directly with federal-state conflicts." This language suggests that Section 187 should provide the relevant rule of decision in cases relating to the enforceability of choice-of-law clauses when the conflict of laws is between two states—or between a state and foreign country—rather than between state and federal law.

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