Changing Tides: Maritime Legal Landscape

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Overview

• Small Passenger Vessel Liability Fairness Act
• Defense Costs – Within the Limits?
• Ocean Shipping Reform Act of 2022
• Choice of Law Clauses
Small Passenger Vessel Liability Fairness Act

- Background – Limitation of Liability Act of 1851
- Public Outrage Over Losses
- Small Passenger Vessel Liability Fairness Act
- Impact on Insurance Industry
Limitation of Liability Act of 1851

- Background – Goal of Protecting American Shipping Industry
- Prior Limitation of Liability Rules
- Limitation Fund
- Breaking Limitation
Famous Losses – Attempts to Invoke LOL
Small Passenger Vessel Liability Fairness Act

- Response to Conception fire
- Introduced Sept. 22, 2021; Signed Dec. 23, 2022
- “Small Passenger Vessels” (≤ 49 Passengers Overnight; ≤150 Passengers Non Overnight) Excluded
- Two Years (vs. Six Months) to File Suit
Impact on Insurance Industry

- Increased Risk Operating Small Passenger Vessels
- Higher Insurance Premiums; Increased Safety Measures; More Stringent Regulatory Oversight = Higher Operating Costs
- Review of Policies Needed – Necessary Coverage in Place?
- Low Value Vessel ≠ Low Value Verdict
Defense Costs – Within the Limits?

- Historical Industry Practice
- Louisiana Advisory Letter
- AIMU Response
- Commissioner Reply
Louisiana Advisory Letter

- “Generally, any portion of the liability limits of a policy shall not be reduced by the defense costs in a suit under the policy”
- “the Commissioner shall not waive the prohibition...[for] personal lines liability coverages”
AIMU Concerns/Response

• Liability Limits Historically Eroded by Defense Costs
• Brokers & Insureds Aware of This; Coverages Underwritten & Priced Accordingly
• Analogous to Other Waived Insurance Types (Pollution)
• Yacht/Personal Watercraft = “Personal Lines”?
Commissioner’s Response

• “the [Louisiana Department of Insurance] does not regulate Ocean Marine Products”

BUT

• “AIMU’s members may consider evaluating each of their Yacht – Personal Watercraft risks as to whether the classification/use is personal or commercial”
Ocean Shipping Reform Act of 2022

• Increased Authority of Federal Maritime Commission (FMC)

• FMC Must Now:
  – Investigate Complaints About Detention & Demurrage Charges (late fees) by Common Ocean Carries
  – Determine Whether Charges are Reasonable
  – Order Refunds for Unreasonable Charges
Choice of Law Clauses

• *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*

• Third Circuit Holding

• Issues on Appeal before SCOTUS

• AIMU’s Position (Amicus Brief)
**Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC**

- Yacht Owned by Raiders Retreat Ran Aground
- Insurer (Great Lakes) Denied Coverage (fire equipment not timely certified/inspected)
- Great Lakes Sued for Declaratory Judgment (no coverage)
- Bad Faith Counterclaims & Pennsylvania State Law Claims
- District Court found NY Law Applied; Dismissed PA Claims
Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC

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.
Third Circuit Holding

• “The District Court needed to consider whether Pennsylvania has a strong public policy that would be thwarted by applying New York law”
• Vacated and Remanded
Which is To Be Master?

- “Which is to be master of maritime contracts, federal choice of law rules or state choice of law rules?”
- “‘The question is,’ said Humpty Dumpty, ‘which is to be master - that's all.’” Alice's Adventures in Wonderland

Petition for Writ of Certiorari, Great Lakes Ins. SE v. Raiders Retreat Realty Co, LLC, 2022 WL 17361673 (U.S.)
SCOTUS Issue on Appeal

2. Under federal admiralty law, can a choice of law clause in a maritime contract be rendered unenforceable if enforcement is contrary to the “strong public policy” of the state whose law is displaced?
Issue Declined by SCOTUS

“Petition for writ of certiorari to the United States Court of Appeals for the Third Circuit granted limited to Question 2 presented by the petition.”

*Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC., 143 S. Ct. 999 (2023)*

“1. Under federal admiralty law, what is the standard for judging the enforcement of a choice of law clause in a maritime contract”

Petition for Writ of Certiorari, Great Lakes Ins. SE v. Raiders Retreat Realty Co, LLC, 2022 WL 17361673 (U.S.)
Amicus Brief

- Uniformity & Predictability of Law
- Forum Shopping Issues
- State Public Policy Cannot Override Federal Maritime Law
- *Wilburn Boat*
- Timeline – Briefs Due in Fall 2023
Hot Topic: Choice of Law Clauses

*Great Lakes Ins. SE v. Andersson*, 2023 WL 2998992 (1st Cir. 2023)

- Similar Facts: Loss → Declination → Declaratory Judgment → State Law Counterclaims
- Same Choice of Law Provision; Different Holding
- Claims are “Extracontractual” = Not Within Choice of Law Provision
- “Only these contract-related claims are specifically subjected to New York law. It is entirely unclear whether extracontractual claims -- even if they may be said to “arise[ ] hereunder” -- are also subject to New York law.”
- Ambiguity Construed in Favor of Insured
Questions?
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