



The United States Supreme Court Decision *Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC* 601 U.S. 65 (2024)

**Marine Underwriters Should Insert Choice Of Law And Forum Selection
Clauses In Policies That Insure U.S. Insureds Or Risks In the United States.**

John A.V. Nicoletti, Esq.
Managing Partner
Nicoletti Hornig & Sweeney

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No Uniform “U.S. Laws” Governing Insurance Policies

The McCarran – Ferguson Act (1945)

- 50 States Regulate Insurance, Unless Marine Insurance Is Excepted.
- *i.e.*, NY vs. Louisiana (Direct Action Statute).
- State Unfair Trade Practices Laws (*i.e.*, Bad Faith Claims Handling).
- Consequential Damages, Punitive Damages, Attorneys’ Fees.



No **COMPLETE** Uniformity Of Federal Maritime Law

The Doctrine Of *Uberrimae Fidei* – Utmost Good Faith – Requires Full Disclosure Of All Facts Material To The Calculation Of An Insurance Risk.

Federal Circuit Courts And *Uberrimae Fidei*

Circuit Courts That Recognize	Circuit Courts That Do Not Recognize	Circuit Courts That Have Not Ruled
1st Circuit	5th Circuit	6th Circuit
2nd Circuit		
3rd Circuit		
8th Circuit		
9th Circuit		
11th Circuit		

Note: District Courts within the 4th, 7th and 10th Circuits have also recognized.

Great Lakes – Facts

- ❖ Yacht Ran Aground In June 2019 Off Ft. Lauderdale, FL.

Express Warranty In Policy	Insurer – UK Based	Insured – US Based (PA)
<ul style="list-style-type: none">➤ All Equipment Must Be Properly Certified And Tagged.➤ Breach Would Void Policy.	<ul style="list-style-type: none">➤ Declined Voided Policy Due To Failure To Update Fire Suppression System.➤ DJ Action In PA.	<ul style="list-style-type: none">• Counterclaims:<ul style="list-style-type: none">➤ Breach Of Fiduciary Duty.➤ Bad Faith.➤ Violation Of PA State Consumer Fraud Statute.

Great Lakes – 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. (Emphasis added)

Great Lakes – District Court and Third Circuit

There Is No Uniform Federal Maritime Law On The Extra-Contractual Tort Claims. PA vs. NY State Law Would Be At Issue.

Federal District Court	Third Circuit
As To The Three PA Extra-Contractual Tort Claims, NY Law Applied Per Choice Of Law Clause.	NY Law May Be Violative Of PA Public Policy.
Dismissed PA Tort Claims	Reversed And Remanded

Great Lakes Supreme Court Decision – Unanimous

Questions Presented	Supreme Court
Is There An Established Federal Maritime Rule Regarding The Enforceability Of Choice-Of-Law Provisions?	✓
Are Choice-Of-Law Provisions In Maritime Contracts Presumptively Enforceable, With Two Limited Exceptions?	✓

The Two Exceptions To Enforceability Of Choice Of Law Clauses

1. When A Chosen Law Would Contravene A Controlling Federal Statute Or The Presumption Conflicts With An Established Federal Maritime Policy.

2. “No Reasonable Basis” For The Chosen Jurisdiction.

New York Law Is A Reasonable Basis
New York Has A “Well-Known And Highly Elaborated Commercial Law.”

➤ The Supreme Court Rejected A 3rd Exception: *i.e.*, When The Chosen Law Would Contravene The Public Policy Of The State With The Greatest Interest In The Dispute.

We Recommend The Following Clauses To Marine Underwriters Who Insure Risks In The United States:

CHOICE OF LAW CLAUSE

It Is Agreed That This Policy And All Rights, Defenses And Obligations Of The Company And The Insured Arising Out Of, In Connection With Or Relating To This Policy Shall Be Governed By Federal Maritime Law And Practice, Including The General Maritime Law, Of The United States Of America Or, In The Absence Thereof, The Laws Of The State Of New York, Excluding The Application Of Any Principles Of Choice Of Law, And Excluding The Application Of New York State's Statutory Pre-Judgment Interest Rate.

We Recommend The Following Clauses To Marine Underwriters Who Insure Risks In The United States:

FORUM SELECTION CLAUSE

It Is Agreed That Any Suit Arising Out Of, In Connection With Or Relating To This Policy Shall Be Brought Exclusively In The United States District Court For The Southern District Of New York Or, In The Absence Of Subject Matter Jurisdiction In That Court, In The Supreme Court Of The State Of New York For The County Of New York. The Company And The Insured Each Agree To Subject Themselves To The Jurisdiction Of The Federal And State Courts In The County Of New York For Such Purpose, And Each Hereby Waives Any Defense, Statute Or Procedural Mechanism That Such Courts Are An Improper Venue Or An Inconvenient Forum.

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John A.V. Nicoletti, Esq.
Nicoletti Hornig & Sweeney