

A Pandora's Box?

The 1955 *Wilburn Boat* case still causes confusion in policy interpretation regarding state law or federal admiralty rules.

Sixty-two years ago, the Supreme Court determined that state law should control interpretation of maritime insurance policies because federal admiralty rules have not been established. This sounds like a common sense, simple solution, avoiding an attempt to fashion a federal maritime rule. Instead, *Wilburn Boat Co. v. Fireman's Fund Ins. Co.* opened a Pandora's box of coverage litigation.

In *Wilburn Boat*, the assured warranted that the insured vessel would not be hired or chartered unless permission was granted by endorsement. The boat, for which no such permission had been granted, was being used to carry passengers on a small lake between Texas and Oklahoma—an obvious breach of the warranty—when it burned, resulting in loss of life. The Supreme Court, reversing the U.S. Court of Appeals decision, held that state law applied, not federal admiralty law, and the policy could only be voided if the breach contributed to the loss.

The *Wilburn Boat* ruling has been characterized generally as holding that in the absence of federal maritime law or a determination that in the interests of national uniformity a federal maritime rule needs to be formulated, state law will apply to the interpretation of maritime insurance policies.

On one level, this gives courts leeway in determining whether the formulation of a federal rule is, in fact, needed in the interest of national uniformity. On another, it opens the door to



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inconsistent decisions dependent on differences in state insurance rules governing policy interpretation. On the most basic level, there has to be a determination that there is an absence of federal maritime law. This amounts to an open door for endless arguments by litigators. Even a cursory review of relevant case law nationwide reveals numerous examples of cases where the courts have applied or rejected state law rules of interpretation. Any attempt to reconcile the cases and develop a general rule for determining whether state or maritime law ought to apply in any given situation is a daunting task.

The doctrine of *uberrimae fidei*, for example, is a concept that has been deeply entrenched in maritime law since the early 19th century. It requires the insurance applicant to exercise the utmost good faith by disclosing all facts regarding the risk. Many states, on the other hand, excuse unintentional failures to disclose. Nonetheless, the 5th U.S. Circuit Court of Appeals held that the lesser state standard would apply to avoid rescission of a hull policy. In the 5th Circuit, the doctrine is not considered to be firmly entrenched in maritime law, while it is in every

other jurisdiction.

How could there possibly be any uniformity of federal maritime law regarding the interpretation of maritime insurance contracts when the states have differing standards regarding their rules of construction of policies, such as the treatment of textual ambiguities, the reasonable expectations of the insured, or whether the two are interrelated? When confronted with a coverage question regarding a maritime policy, do not fall into the trap of thinking that *Wilburn Boat* has simplified anything. It's quite the contrary. **BR**