SEMAPHORE

Newsletter of the Maritime Law

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Maritime Insurance Arbitration Clause Upheld by US Court of Appeals

A maritime insurance policy clause that any coverage dispute be settled by arbitration administered by the American Arbitration Association (AAA) under the Federal Arbitration Act (FAA) has been enforced by the United States Court of Appeals for the Ninth Circuit.

The judgement relates to a dispute over yacht insurance coverage between Galilea LLC — consisting of Montana residents Taunia and Chris Kittler — and AGCS Marine Insurance Company — as underwriter for insurance firm Pantaenius America.

Following its yacht running aground, Galilea submitted a claim for insurance coverage which was declined on the basis the yacht was deemed to have travelled outside a “cruising area” specified within the insurance policy.

After Galilea rejoined that the written policy had not reflected the parties’ actual agreement and requested reconsideration of the coverage, AGCS initiated arbitration proceedings in New York. Galilea submitted objections and counterclaims in the arbitration proceedings, and separately filed action in the Federal Court in the District of Montana along with a motion to stay the arbitration proceedings. AGCS responded with a motion to dismiss and a motion to compel arbitration, and separately filed a petition to compel arbitration in Federal Court in the Southern District of New York.

Galilea’s contention the policy did not reflect the parties’ actual agreement related to differing language between the application it filed and the ultimate policy documentation issued. In the former versus the latter, the agreement was to be governed by New York Law which became primarily United States Federal Maritime Law, and the scope of arbitration was to be “any dispute arising out of or relating to the relationship” which became “any and all disputes arising under this policy”.

Furthermore, Galilea contended that the McCarran-Ferguson Act should afford “reverse pre-emption” to the insurance policy’s coverage disputes being subject to arbitration under the FAA.

In their judgement, Circuit Judges Marsha S Berzon, Paul J Watford and John B Owens upheld the District Court for the District of Montana’s original finding that the “plaintiff’s insurance application was not a contract”.

In the “Opinion” section of the judgement, Judge Berzon addressed the issue of jurisdiction and noted that, although the background of the dispute “has its drama”, the primary legal issues were “more mundane”.

“Is an arbitration provision in a maritime insurance policy enforceable despite law in the forum state assertedly precluding its application?,” asked Judge Berzon.

“In addressing this question, we consider several questions concerning the intersection of the McCarran-Ferguson Act, 15 U.S.C. § 1012, which shields state insurance laws from federal pre-emption, and the Federal Arbitration Act, 9 U.S.C. § 1–16, which provides for enforcement of arbitration provisions in maritime contracts. After doing so, we conclude that the arbitration clause should be given effect.”

The full "Conclusion" of the judgement reads as follows:

> *"The underwriters' argument that the insurance application supplies an enforceable arbitration agreement fails. The parties' insurance policy's arbitration clause concerns a maritime transaction falling under the FAA, and Montana Law is inapplicable under both Federal Maritime Law choice-of-law principles and the policy itself, so it does not render the arbitration clause unenforceable. We further agree with the underwriters that the arbitration agreement shows a clear and unmistakable intent to resolve arbitrability questions in arbitration. We thus affirm the District Court's order finding the policy's arbitration clause enforceable, affirm the District Court's order granting the underwriters' motion to compel arbitration as to certain causes of action, reverse the District Court's order denying the underwriters' motion to compel arbitration as to Galilea's remaining causes of action, and remand to the District Court with instructions to grant the underwriters' motion to compel arbitration in its entirety.*
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> *"Affirmed in part, reversed in part and remanded."*

The full judgement can be found here.

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