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US Supreme Court Decides First Marine Insurance Case in Decades, Holds Choice of Law Clauses in Marine Insurance Contracts are Presumptively Valid

Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC, 601 U.S. 65 (2024).

Many admiralty practitioners—particularly those whose practices involve marine insurance—have been paying close attention to *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*. Indeed, *Boating Briefs* has covered this case extensively.

By way of background, the case addressed whether under the maritime law there is a presumption of validity for a marine insurer's choice of law, and if so, what exceptions to that presumption do or should exist. The policy at issue in the case contained a choice of law provision that called for the application of the "substantive United States Federal Admiralty law and practice[,] but where no such well established, entrenched precedent exists, th[e] insuring agreement is subject to the laws of the State of New York."

The insured, Raiders Retreat Realty Co. ("Raiders Retreat") made a claim with Great Lakes Insurance SE ("Great Lakes") arising from a vessel grounding. During the investigation of the grounding, Great Lakes discovered that the vessel's fire extinguishers had not been properly certified and tagged, in violation of an express warranty in the policy. Although this breach did not contribute to the loss, Great Lakes argued that the breach of this express warranty rendered the policy void from inception under New York law. As a result, Great Lakes filed a declaratory judgment action in the United States District Court for the Eastern District of Pennsylvania—where Raiders Retreat was headquartered—seeking to disclaim coverage. In response, Raiders Retreat counterclaimed for bad faith, breach of contract, and breach of fiduciary duty under Pennsylvania law. Great Lakes moved for judgment on the pleadings as New York law, which the policy said would control, did not recognize such causes of action under the facts of the case. The district court agreed with Great Lakes and, after applying New York law, dismissed Raiders Retreat's claims arising under Pennsylvania law. Raiders Retreat appealed the decision of the district court, and on appeal the Third Circuit reversed, finding that the insurance policy's choice of law provision may not be enforceable if its election of New York law was contrary to the "strong public policy" of the displaced law of the State of Pennsylvania. The Third Circuit's reasoning was based in part on the Supreme Court's decision in *Bremen v. Zapata Offshore Co.*, 407 U.S. 1 (1972), which sets out a framework for evaluating the enforceability of a forum selection clause in a maritime contract. The Third Circuit remanded the case to the district court for consideration as to whether Pennsylvania has a strong public policy that would preclude the application of New York law.

In November 2022, Great Lakes filed a petition for a writ of certiorari to the Supreme Court of the United States.

This newsletter summarizes the latest cases and other legal developments affecting the recreational-boating industry. Articles, case summaries, suggestions for topics, and requests to be added to the mailing list are welcome and should be addressed to the editor.

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Great Lakes argued in its petition that further guidance was needed on the enforcement of choice law clauses in marine insurance contracts in the wake of *Wilburn Boat v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1955), and the problems with identifying an "entrenched" rule of federal admiralty law when interpreting contractual provisions. On March 6, 2023, the Supreme Court granted Great Lakes' petition and agreed to hear the matter. Before the Supreme Court, Great Lakes further argued that the Supreme Court should follow guidance from the Fifth, Ninth, and Eleventh Circuits, all of which held that choice of law clauses in maritime contracts are enforceable so long as the chosen law has a sufficient connection to the parties or transaction and does not conflict with the fundamental purposes of maritime law. Finally, Great Lakes argued that following the Third Circuit's reasoning would result in state law, and specifically state choice of law rules, taking priority over federal admiralty law in violation of longstanding precedent and the Supremacy Clause of the U.S. Constitution.

The Supreme Court heard oral arguments just prior to the press time of the prior edition of *Boating Briefs*, and on February 21, 2024, after much anticipation, the Supreme Court handed down its decision. Siding with Great Lakes, the Supreme Court held that, like forum selection clauses in maritime contracts, choice of law clauses in maritime contracts were presumptively valid and not subject to annulment based upon one state's strong public policy to the contrary. In so holding, the Supreme Court established the presumptive validity of choice of law provisions as an established federal maritime rule, meaning that future courts need not look to state law under *Wilburn Boat* when determining whether a choice of law clause is enforceable. Although Justice Thomas, in concurrence, expressed a desire to jettison *Wilburn Boat*, the majority left that case relatively intact, but the majority clarified that *Wilburn Boat* did not create some sort of "insurance exceptionalism" that required courts to apply state law in marine insurance cases (as opposed to other maritime contracts) even where there was an established federal admiralty rule on point. As the Supreme Court explained: "Nothing in *Wilburn Boat* purports to override parties' choice-of-law clauses in maritime contracts generally, or in the subset of marine insurance contracts specifically."

Although *presumptively* valid, the Supreme Court delineated several exceptions that might override the presumptive validity of a choice of law provision. Specifically, the choice of law clause will not control when: (1) it contravenes a controlling federal statute; (2) it conflicts with an established federal maritime policy (*e.g.*, the chosen law would release a carrier from all liability for negligence); and (3) the parties had no reasonable basis for choosing a particular jurisdiction's law. With respect to the third exception, the Supreme Court clarified that "the 'no reasonable basis' exception must be applied with substantial deference to the contracting parties, recognizing that maritime actors may sometimes choose the law of a specific jurisdiction because, for example, that jurisdiction's law is 'well developed, well known, and well regarded.'"

With the Supreme Court's decision in *Raiders Retreat*, the law of marine insurance is less amorphous than before, and although cases like *Wilburn Boat* and its progeny still permit state law to invade the realm of marine insurance contracts, there is no longer any room for confusion or doubt that choice of law provisions—including those naming New York law—will generally be enforced.

United States Court of Appeals for the First Circuit Holds Lack of Up-To-Date Paper Charts Did Not Render Vessel Unseaworthy

Great Lakes Insurance SE v. Andersson, 89 F.4th 212 (2023)

In November 2018, Martin Anderson ("Andersson" purchased a policy of marine insurance for his vessel from Great Lakes Insurance SE ("Great Lakes"). Like many marine insurance policies, the policy he purchased contained an express warranty of seaworthiness. Specifically, the policy stated: "[i]t is warranted that the Scheduled Vessel is seaworthy at all times during the duration of this insuring agreement. Breach of this warranty will void this insuring agreement from its inception." Pertinently, Andersson's policy defined seaworthiness as "[f]it for the Scheduled Vessel's intended purpose. Seaworthiness applies not only to the physical condition of the hull, but to all its parts, equipment and gear and includes the responsibility of assigning an adequate crew. For the Scheduled Vessel to be

seaworthy, it and its crew must be reasonably proper and suitable for its intended use." The term "Scheduled Vessel" included the vessel's "machinery, electrical equipment, sails, masts, spars, rigging, and all other equipment normally required for the operation and maintenance of the vessel and situate on the Scheduled Vessel, which would normally be sold with the vessel."

On December 17, 2019, the vessel ran aground on a breakwater. Due to rough seas and the seasickness of crewmembers, Andersson had deviated from his intended route. The paper charts on board the vessel covered the original route, but not the deviation. Likewise, the vessel's electronic charts were outdated and did not show the breakwater on the new route; however, updated electronic charts in 2018 also did not show the breakwater.

Following the grounding, Andersson sought coverage under the policy from Great Lakes. In response, Great Lakes filed a declaratory judgment action to determine whether the grounding was covered by the policy. Great Lakes asserted that coverage was void *ab initio* because the vessel's lack of updated paper charts rendered the vessel unseaworthy, thereby violating the policy's express warranty of seaworthiness. Andersson counterclaimed for breach of contract and equitable estoppel. With respect to the former, Andersson asserted that the vessel was seaworthy because it had up-to-date paper charts for its *intended* voyage. Both parties moved for summary judgment, and on March 21, 2023, the district court denied Great Lakes' motion and granted Anderson's motion. Great Lakes subsequently appealed to the United States Court of Appeals for the First Circuit.

On appeal, Great Lakes advanced a single argument: That the district court erred by refusing to enforce the policy's express and implied warranties of seaworthiness, and by extension, the policy's definition of seaworthiness and "Scheduled Vessel", which in turn required the vessel to have adequate "parts, equipment and gear", *i.e.*, up-to-date paper charts covering the location of the grounding.

Addressing Great Lakes' arguments concerning the implied warranty of seaworthiness, the Court quickly dispatched Great Lakes' assertion that the implied warranty of seaworthiness required a vessel to maintain up-to-date paper charts. It explained: "[there is] no precedent to suggest that the implied warranty imposes such a requirement," and "[t]o make the vessel seaworthy under the absolute implied warranty, Andersson was not required to keep up-to-date paper charts" because "the absolute implied warranty has been interpreted by case law to pertain to the physical condition of the vessel."

Addressing Great Lakes arguments concerning the express warranty of seaworthiness and the definition of seaworthiness outlined in the policy, the Court noted that the law of New York governed the policy, which required the Court to "interpret an insurance contract 'to give effect to the intent of the parties as expressed in the clear language of the contract.'" In reading the policy as a whole, the Court determined that Great Lakes' interpretation of the definition of seaworthiness was "not supported by the express terms of the policy, precedent, or common sense." The Court explained that "[t]o construe the express warranty in such a way would be to require a vessel to have and maintain updated paper charts for every location in the area where it could navigate at all times from the time the policy commences" which is "completely unreasonable and unsupported by admiralty case law." The Court further explained that a vessel's seaworthiness is determined based on whether the vessel was fit for its *intended* voyage, *i.e.*, "an express warranty of seaworthiness concerns whether the vessel was equipped for its specific intended course, not for every location that could be navigated under the entirety of the policy coverage area at its inception."

In addition to Great Lakes' argument with respect to the policy's definition of seaworthiness, which applied not only to the vessel itself but the vessel's "parts, equipment and gear," Great Lakes also asserted that the policy's definition of Scheduled Vessel required Anderson to carry up-to-date paper charts. The Court disagreed, noting that "machinery, electrical equipment, sails, masts, spars, or rigging" did not encompass paper charts. Accordingly, the Court affirmed the ruling of the district court, holding that a lack of up-to-date paper charts did not render the vessel unseaworthy, and thus the policy was not rendered void *ab initio*.

United States District Court for the Southern District of Florida Awards Attorney's Fees and Costs in Maritime Case Involving Marine Insurance Dispute

***Serendipity at Sea, LLC v. Underwriters at Lloyd's of London*, No. 20-CV-60520, 2024 WL 1077155 (S.D. Fla. Feb. 26, 2024), *report and recommendation adopted*, No. 20-CV-60520-RAR/JMS, 2024 WL 1071732 (S.D. Fla. Mar. 12, 2024)**

In a marine insurance case where the plaintiff, Serendipity at Sea, LLC ("Serendipity") invoked diversity jurisdiction, the defendant, Underwriters at Lloyd's of London ("Underwriters"), asserted that it was entitled to attorney's fees and non-taxable costs pursuant to Section 768.79 of the Florida Statutes based upon an unaccepted offer of judgment. Serendipity did not dispute that Underwriters would normally be entitled to attorney's fees and non-taxable costs based upon the unaccepted offer of judgment in a standard diversity case, but Serendipity asserted that because the case was governed by maritime law, Florida's offer of judgment statute was inapplicable, even where Serendipity had invoked the district court's diversity jurisdiction.

In addressing whether the general rule prohibiting an award of attorney's fees under a state statute in a maritime case applied, the Magistrate Judge examined two cases from the Eleventh Circuit: *Misener Marine Const., Inc. v. Norfolk Dredging Co.*, 594 F.3d 832 (11th Cir. 2010), and *All Underwriters v. Weisberg*, 222 F.3d 1309 (11th Cir. 2000). In the latter, a marine insurance contract case, the Eleventh Circuit had held that attorney's fees could be recovered pursuant to a state statute, but in the later, a dredging contract case, the Eleventh Circuit held that attorney's fees were not recoverable. Despite these seemingly disparate outcomes, both *Weisberg* and *Misener* could be reconciled.

The key to reconciling these two cases was the type of contract that was at issue. In *Misener*, the court noted three exceptions to the general rule that attorney's fees are not recoverable in maritime cases: "(1) they are provided by the statute governing the claim, (2) the non-prevailing party acted in bad faith in the course of the litigation, or (3) there is a contract providing for the indemnification of attorneys' fees." *Misener*, 594 F.3d at 838. In *Weisberg*, however, the Eleventh Circuit explained that because state law applies to marine insurance dispute in the absence of a specific and controlling federal rule, state law—including Florida's offer of judgment statute—applies in marine insurance cases as there is no specific and controlling federal rule governing attorney's fees in marine insurance cases. As the Magistrate Judge explained, "*Misener* sets forth the general rule—and three exceptions to that general rule—regarding the ability to recover attorney's fees in most maritime cases. *Weisberg*, on the other hand, is limited to the recovery of attorney's fees under a state statute in maritime insurance cases (and not maritime cases more generally)."

The reconciliation of *Misener* and *Weisberg* did not fully resolve the issue. The Magistrate Judge noted that the statute at issue in *Weisberg* was not the same statute that Underwriters sought to apply in the instant case. That distinction, however, was immaterial. Like the Florida statute applied in *Weisberg*, Florida's offer of judgment statute was substantive for *Erie* purposes, and therefore, because the case involved marine insurance and not some other maritime contract, Florida's offer of judgment statute applied, and Underwriters was entitled to attorney's fees.

Limitation of Liability

Owner of the DALI and its Management Company Petition for Limitation of Liability

***In re Grace Ocean Private Limited, et al.*, Case No. 1:24-cv-00941 (D. Md. April 1, 2024).**

On the morning of March 26, 2024, the M/V Dali allided with Maryland's Francis Scott Key Bridge—a key piece of Interstate 695. As a result of the allision, portions of the Key Bridge collapsed into the Patapsco River. The collapse killed six workers present on the Key Bridge at the time of the allision, and two other workers were injured. Beyond the loss of life, the collapse also blocked the shipping channel into Baltimore—the busiest port for automotive shipping in the entire United States—causing many shippers to divert to other ports to offload their cargo.

The Dali is owned by Grace Ocean Private Limited ("Grace") and managed by Synergy Marine PTE LTD ("Synergy"), both of which are based in Singapore. On

April 1, 2024, Grace and Synergy filed a Petition for Exoneration from or Limitation of Liability in the United States District Court for the District of Maryland seeking to limit their liability to the post-casualty value of the Dali, which Grace and Synergy estimate to be approximately $42,500,000, plus pending freight in the amount of $1,170,000.

It should come as no surprise that many members of the Maritime Law Association have found themselves involved in the aftermath of the allision in one form or another. Indeed, beyond vetting new potential clients, many members have been asked to opine on the legal implications of the allision and the potential rights and remedies of various interested parties. As the esteemed professor Martin Davies explained to several news outlets, although the circumstances surrounding the allision are extraordinary, the ensuing litigation will take the form of a limitation action familiar to many maritime practitioners.

With the filing of the limitation action on April 1, 2024, the starter pistol has been fired. Likely, the ensuing litigation will drag on for years, and opinions generated therefrom are likely to find a home in a future edition of *Boating Briefs*.

Jurisdiction

United States District Court for the Eastern District of Texas Affirms Maritime Tort Jurisdiction Where Vessel Fire on Navigable Waters Destroys Surrounding Vessels and Damages "Dockominium"

In re Cox, No. 4:21-CV-172-SDJ, 2024 WL 1198469 (E.D. Tex. Mar. 20, 2024)

The Coxes filed for limitation of liability in the Eastern District of Texas after their vessel caught fire, damaging surrounding property belonging to Mill Creek Marina ("Mill Creek"), and a vessel owned by Jay Stamper and Sandra Peak (collectively, "Stamper"), which was declared a total loss. Stamper filed a counterclaim against the Coxes, as well as a cross-claim against Mill Creek, which sought damages for, *inter alia*, the loss of use of the vessel.

In response to Stamper's cross-claim, Mill Creek filed a motion for summary judgment arguing that maritime law precluded recovery for loss-of-us damages. Stamper, in turn, challenged the application of admiralty jurisdiction and the substantive maritime law. According to Stamper, admiralty jurisdiction was lacking "because a contributing cause of the fire that destroyed their property was Mill Creek Marina's land-based conduct and because they suffered land-based injuries, particularly damage to their dockominium" which was not a vessel.

To address whether Stamper was entitled to recover loss-of-use damages, the district court reviewed the jurisprudence surrounding admiralty tort jurisdiction. It noted that although prior maritime jurisprudence held that the injury had to be "wholly" sustained on the navigable waters for the claim to be cognizable in admiralty, Congress changed that rule with its adoption of the Extension of Admiralty Jurisdiction Act. Following Congress' enactment of the Extension Act, the Supreme Court handed down a number of clarifying decisions regarding the contours of admiralty tort jurisdiction, *e.g.*, *Executive Jet Aviation, Inc. v. City of Cleveland, Ohio*, 409 U.S. 249, (1972), *Foremost Ins. Co. v. Richardson*, 457 U.S. 668 (1982), *Sisson v. Ruby*, 497 U.S. 358 (1990), and *Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527 (1995). Ultimately, in *Grubart*, the Supreme Court espoused the modern test for admiralty tort jurisdiction, under which admiralty jurisdiction "exists over a tort claim when conditions both of location and of connection with maritime activity are satisfied." The location test is satisfied where "the tort occurred on navigable water or whether injury suffered on land was caused by a vessel on navigable water." The connection test, which is addressed in two parts, is satisfied where the incident has a potentially disruptive effect on maritime commerce, and where the "general character of the activity giving rise to the incident shows a substantial relationship to traditional maritime activity."

Turning to Stamper's arguments that admiralty tort jurisdiction was lacking where a contributing cause of the damage was Mill Creek's land-based electrical service and where the damaged dockominium was not a vessel, the district court noted that Stamper's arguments had already been rejected by *Grubart* and its predecessors. With respect to the location test, the district court found that the fire itself occurred on the navigable waters of the United States—Lake Texoma. With respect

to the first inquiry of the connection test—whether the incident has a potentially disruptive effect on maritime commerce—the district court explained that *Sisson*, which held that the burning of a docked vessel at a marina located on navigable waters has a potentially disruptive effect on maritime commerce, was dispositive of the first inquiry. Likewise, *Sisson* was also dispositive of the second inquiry as it held that the storage and maintenance of vessels at marinas that are themselves located on navigable waters is an activity that is substantially related to traditional maritime activity. Because the location test and both prongs of the connection test were satisfied, the district court held that Stamper's tort claims against Mill Creek were governed by maritime law.

Stamper did not dispute that maritime law precluded recovery for loss-of-use damages, but rather, that Texas law—which permitted loss-of-use damages—applied. Because the district court held that maritime law applied under the tests espoused in *Sisson* and *Grubart*, the district court entered summary judgment in favor of Mill Creek with respect to Stamper's claim for loss-of-use damages.

State Law Updates

Arizona Moves Closer to Adopting Boater Safety and Education Requirements

H.B. 2149, 56th Leg., 2d Reg. Sess. (Az. 2024).

The number of States without a boating education requirement on the books is poised to shrink once more following Arizona's passage of House Bill 2149. The new piece of proposed legislation requires those under eighteen years of age as of January 1, 2025—*i.e.*, those born after January 1, 2007—to complete an approved boating safety education course before operating a watercraft that is propelled by machinery of more than ten horsepower. The bill passed the Arizona House of Representatives on March 4, 2024, and is now on its way to the Arizona Senate. If adopted, only four States would then remain without boating safety education requirements.

Maine's New Boating Safety Law Takes Effect

Me. Rev. Stat. tit. 12, § 13068-A.

In the previous edition of *Boating Briefs*, we covered a piece of Maine legislation that required individuals born after January 1, 1999, to take and pass a boating safety and education course prior to operating a motorboat of twenty-five (horsepower or greater for recreational boating purposes. Under the amended statute—Me. Rev. Stat. tit. 12, § 13068-A—"Recreational Boating" includes "operating a motorboat primarily for the operator's pleasure or leasing, renting or chartering a motorboat to another person for the other person's pleasure." The carriage of passengers for hire is expressly excluded from the definition. The amended statute also adds several carveouts to the safety and education course requirement, and exempts from the requirement those who: (1) are test driving a motorboat, under certain conditions; (2) possess a valid or expired United States merchant marine document issued by the United States Coast Guard for an operator of uninspected passenger vessel, or master or mate captain's license; and (3) are not citizens of the United States, but arrived to the United States by sea and are temporarily operating in territorial waters. These new requirements took effect on January 1, 2024.

Alabama Enacts Sweeping Revisions to Its Boating Code, Changing Penalties and Reporting Requirements

AL LEGIS 2023-363, 2023 Alabama Laws Act 2023-363 (H.B. 358).

Alabama enacted substantial revisions to its boating code—Ala. Code §§ 33-5-1, *et seq.*—which took effect on January 1, 2024. Under Alabama's previous law, violations of various boating safety provisions were classified as either misdemeanors or felonies, but the new legislation establishes a new classification of criminal offenses called a "Boating Violation," which is defined as "[a]n offense committed on the waters of this state, which does not amount to a misdemeanor or felony, and for which this chapter authorizes a fine of not more than two hundred dollars ($200) or a sentence for a term of imprisonment in the county jail for not more than 30 days, or both." Ala. Code § 33-5-3(2). Above and beyond the addition of Boating Violations to the Alabama Code, the new legislation also establishes a uniform system for the issuance of citations—akin to traffic citations—for Boating Violations, which will be adjudicated by Alabama's district courts.

The new legislation also changes boating accident reporting requirements. Previously, a person was required to report a boating accident involving death, personal injury, or property damage of $2,000 or more within ten days of the accident, but the timeframe in which to report these accidents has now been reduced from ten days to twenty-four hours. Ala. Code § 33-5-25(b).

The new legislation also removes certain sections of the Code that were incongruent with existing federal law. Among other things, the Legislature removed existing engine shut-off switch requirements, as well as modified capacity plate requirements. *See, e.g.*, Ala. Code § 33-5-77.

The changes to Alabama's Code were broad, and readers are encouraged to view the enacted legislation themselves to acquire a full picture of the additions, deletions, and revisions: https://www.legislature.state.al.us/pdf/SearchableInstruments/2023RS/HB358-int.pdf

New Maryland Legislation Aims to Increase Penalties for Boating Under the Influence

H.B. 770, 2024 Leg., 446th Sess. (Md. 2024).

Named "Nick's Law" after Nick Barton, who died in a June 2022 boat crash caused by an intoxicated vessel operator, the proposed legislation seeks to enable Maryland's Department of Natural Resources Police ("DNRP") to better enforce prohibitions on the operation of vessels by those convicted of boating while intoxicated. Currently, a Maryland court can prohibit a person from operating a vessel upon conviction for boating while intoxicated, but such a prohibition lacks teeth where the DNRP are unaware of the prohibition and are consequently unable to enforce it properly. Nick's Law seeks to change this outcome. Under Nick's Law, a person convicted of boating while intoxicated would be statutorily prohibited from operating a vessel for two years—five years if the intoxicated operation results in the death of another. The law would also establish a database containing the information of persons who are prohibited from operating a vessel, which would better equip the DNRP to enforce the prohibitions on vessel operation. Nick's Law recently passed the Maryland Senate, and it is now on its way to the House of Representatives.

Federal Updates

National Oceanic and Atmospheric Administration ("NOAA") Denies Petition to Establish a 10-Knot Speed Limit to Protect Rice Whales.

On May 11, 2021, a number of environmental activist groups, including the Natural Resources Defense Council, the Center for Biological Diversity, and Earthjustice, filed a petition with NOAA seeking the establishment of a year-round 10-knot speed limit in the northeastern Gulf of Mexico from around Pensacola, Florida, to south of Tampa, Florida, to protect Rice's whales from vessel strikes. The petition also sought to prohibit nighttime vessel transits. On April 7, 2023, in response to the petition, NOAA published a formal notice in the Federal Register to initiate a 90-day comment period.

Naturally, port operators in the affected areas fiercely opposed the petition, noting the harm that would befall the various marine industries if the petition were approved. In total, NOAA received over 75,000 comments responsive to the petition.

On October 27, 2023, NOAA issued a bulletin wherein it denied the activists' petition. In support of its decision to deny the petition, NOAA noted that it was "prioritizing other conservation actions for Rice's whales" including "finalizing critical habitat for the species, conducting additional vessel risk assessments, and developing a recovery plan for the species."

USCG Issues Policy Letter on Fire Safety Rules for Small Passenger Vessels

On December 24, 2023, the United States Coast Guard issued Policy Letter 23-03 to provide "clarifying policy to District Commanders, Sector Commanders, and Officers in Charge, Marine Inspection (OCMI) when implementing," *inter alia*, 46 U.S.C. § 3306(n) and "Fire Safety of Small Passenger Vessels," Interim Rule, 86 Federal Register 73160, December 27, 2021, which implemented fire safety regulations for "covered small passenger vessels" following the tragic fire and loss of life on the *CONCEPTION* in 2019. Notably, 46 CFR subchapters K and T afforded "existing vessels" with an option to comply with the means of escape requirements, but the Interim Rule eliminated that option. As the Coast Guard noted in the Policy

Letter: "[The Interim Rule] revised the applicability sections in 46 CFR parts 114, 116, 175, and 177 to require a [covered small passenger vessel] with *overnight accommodations* for passengers that is an e*xisting vessel* to comply with current requirements for means of escape in §§ 116.500 or 177.500, eliminating the option to comply with the requirements that were applicable to the vessel on March 10, 1996." As a result, all covered small passenger vessels must be brought up to current standards for means of escape.

The Interim Rule did not take full effect upon its promulgation. Rather, its requirements gradually took effect in phases, the first of which began on March 28, 2022, and the last of which occurred on December 27, 2023. Despite eliminating optional compliance for existing vessels, there are exemptions for, *inter alia*, "covered historic vessels" and "historic wood sailing vessels." According to a U.S. Government Accountability Office ("GAO") Report dated January 30, 2024, "[t]here are no vessels in operation that meet all of the elements of a "historic wood sailing vessel," and the GAO had identified approximately 308 covered small passenger vessel that will now be subject to the heightened means of escape requirements. The Coast Guard plans to issue a final rule in November 2024.

USCG Announces New Merchant Mariner Credential

On February 26, 2024, the USCG announced in Marine Safety Information Bulletin 01-24 that it would be replacing the Merchant Mariner Credential ("MMC"), currently a red passport-style book, with a new credential, which will be issued to mariners after March 1, 2024, when mariners make their next application. According to the bulletin, the change to the new credential was brought on by the age of the USCG's current printers and the need to "move to a more reliable and modern printing process."

Current MMCs will remain valid until their expiration date, which is five) years from their issue date. As a practical matter, this means that both styles of the MMC will co-exist until approximately March of 2029. In the long term, the USCG is working on an electronic MMC, which would contain all of the necessary mariner information and security features to comply with domestic and international requirements.

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