

Circuit Split over *Uberrimae Fidei*

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The doctrine of *uberrimae fidei* imposes a duty of utmost good faith and requires a marine insured to fully and voluntarily disclose to the insurer all the facts material to a calculation of the insurance risk. This theory relies on disclosure of material information irrespective of whether the insurer inquires.

Origin of *Uberrimae Fidei*

Lord Mansfield established the *uberrimae fidei* doctrine in the 1766 case *Carter v. Boehm* before England's Court of King's Bench. In *Carter v. Boehm*, Lord Mansfield recognized the need for heightened good faith for insurance contracts to prevent a future insured from omitting or hiding material facts that would induce the insurer "into a bargain, from his ignorance."¹ The rationale behind this heightened standard of good faith stems from an insurer's inability to verify an insured's representations prior to issuing a policy.² Logic follows for marine insurance policies because a vessel may be insured on a time-sensitive basis in one location while berthed on the other side of the world.

Uberrimae Fidei in America

In 1828 was the first time that American courts recognized the doctrine of *uberrimae fidei* for marine insurance contracts.³ In 1870 was the first time that the United States Supreme Court recognized that marine insurance contracts are within a federal court's maritime jurisdiction.⁴ A decade later, the U.S. Supreme Court reaffirmed the heightened disclosure requirement imposed on the insured by the doctrine.⁵

Then, in 1924 the U.S. Supreme Court held that states may manage maritime insurance if doing so does not "conflict with any essential feature of the general maritime law."⁶ Four years later, the U.S. Supreme Court in *Stipcich v. Metropolitan Life Ins. Co.* stated that "[I]nsurance policies are traditionally contracts *uberrimae fidei* and a failure by the insured to disclose conditions affecting the risk, of which he is aware, makes the contract voidable at the insurer's option."⁷

Wilburn Boat Co. v. Fireman's Funds Inc. Co. established that federal maritime law will apply to an issue before the court when precedent exists and the same court will apply state substantive law when no such precedent exists.⁸ And Congress's silence on codifying the doctrine has left room for court interpretation.⁹ Circuits are split on applying *Wilburn Boat* about

¹ (1766) 97 Eng. Rep. 1162, 1164 (K.B.).

² See Thomas J. Schoenbaum, *Admiralty and Maritime Law* § 19:14, at 460 (6th ed. 2018).

³ See *McLanahan v. Universal Ins. Co.*, 26 U.S. (1 Pet.) 170, 185 (1828).

⁴ *New Eng. Mut. Marine Ins. v. Dunham*, 78 U.S. 1 (1870).

⁵ See *Sun Mut. Ins. Co. v. Ocean Ins. Co.*, 107 U.S. 485, 510-11 (1883).

⁶ *Red Cross Line v. ATL Fruit Co.*, 264 U.S. 109, 109 (1924).

⁷ 277 U.S. 311, 316 (1928).

⁸ 348 U.S. 310, 320-21 (1955).

⁹ See *id.* at 321.

whether a marine insurance issue invokes state or federal jurisdiction. Circuit courts have developed their own federal common law of admiralty and continue to interpret marine insurance policies as incorporating, by inference, the *uberrimae fidei* doctrine.¹⁰

First Circuit

“While we have never actually decided the issue, it is true that we have questioned whether *uberrimae fidei* is an established rule of maritime law.”¹¹

Though the First Circuit has yet to issue a sound stance on whether *uberrimae fidei* is an established rule of maritime law,¹² “the number and ratio of courts endorsing the doctrine weigh in favor of [applying state law in *Pesante*].”¹³

In the 1995 case *Windsor Mount Joy Mut. Ins. Co. v. Giragosian*, the Court affirmed that state insurance law applied.¹⁴ “We need not undertake this analysis [of whether to apply *uberrimae fidei*][...] because we find that the stringent *uberrimae fidei* has been applied.”¹⁵

In 2007, the Court held that *uberrimae fidei* controlled in *Halifax Trawlers*, stating that the issue at controversy fell under admiralty jurisdiction because it involved a marine insurance policy.¹⁶

However, the Court in 2015 in *San Juan Towing* held that federal admiralty law, as opposed to state substantive law, was the controlling law and the insurance contract voidable due to the insured’s violation of *uberrimae fidei*.¹⁷

Most recently, *QBE Seguros v. Morales-Valzquez* was decided on appeal in January 2021. The Court affirmed the judgment for the insurer, explaining that the district court “faithfully” applied *uberrimae fidei*.¹⁸ In this matter of first impression, this Court held that the insurer need not show actual reliance on the insured’s failure to disclose a vessel’s previous grounding for the marine insurance policy to be void under the doctrine.¹⁹ The Court also declined the insured’s request to retire the doctrine, stating that “abandoning the doctrine of *uberrimae fidei* in marine insurance cases would have rebarbative consequences, both upending settled law and disrupting an industry that has long been premised on insureds telling the whole

¹⁰ *QBE Seguros v. Morales-Vázquez*, 2021 WL 164974 (citing *see e.g., Caitlin at Lloyd’s San Juan Towing & Marine*, 778 F.3d 69, 82 (1st Cir. 2015); *N.Y. Marine & Gen. Ins. Co. c. Cont’l Cement Co.*, 761 F.3d 830, 839 (8th Cir. 2014); *AGF Marine Aviation & Transp. v. Cassin*, 544 F.3d 255, 263 (3d Cir. 2008); *Certain Underwriters at Lloyd’s, London v. Inlet Fisheries Inc.*, 518 F.3d 645, 650 (9th Cir. 2008); *HIH Marine Servs., Inc. v. Fraser*, 211 F.3d 1359, 1362 (11th Cir. 2000); and *Puritan Ins. Co. v. Eagle S.S. Co. S.A.*, 779 F.2d 866, 870 (2d Cir. 1985)).

¹¹ *Pesante*, 459 F.3d at 38.

¹² *St. Paul Fire and Marine Ins. v. Halifax Trawlers, Inc.*, 495 F.Supp.2d 232, 238 (2007) (citing *see Commercial Union Ins. Co. v. Pesante*, 459 F.3d 34, 37 (1st Cir. 2006)).

¹³ *Halifax Trawlers*, 495 F.Supp.2d at 238.

¹⁴ 57 F.3d 50, 54 (1st Cir. 1995).

¹⁵ *Id.*

¹⁶ 495 F.Supp.2d at 237.

¹⁷ 778 F.3d at 82.

¹⁸ No. 19-1503, 2021 WL 164974 (1st Cir. Jan. 19, 2021).

¹⁹ *Id.*

truth to insurers.”²⁰ The Court highlighted that the pressure Morales put on the insurer for immediate coverage due to Morales’ need for coverage that same day, exemplified how this case is the “poster child for the continuing relevance of the doctrine” of utmost good faith.²¹

The First Circuit will generally apply state law in cases involving a marine insurance contract.²²

Fifth Circuit

In the Fifth Circuit, only three cases have mentioned, although to no great detail, *uberrimae fidei*.²³ One case decided in 1962 and another decided in 1969 each declined to enforce the stern *uberrimae fidei* requirement as the basis for marine insurance policy invalidation.²⁴ Then, in 1986 the Court affirmed that the *uberrimae fidei* doctrine did not preclude the plaintiff’s recovery under a marine insurance policy.²⁵ The Court emphasized that the *uberrimae fidei* doctrine did not require invalidation of the policy in *Austin* because the plaintiff’s alleged misrepresentations were not “material,” as the doctrine requires for policy invalidation.²⁶ The Fifth Circuit Court in all three of the above cases discussed the significance of the doctrine in dicta.²⁷

The Fifth Circuit has established three instructive and non-dispositive factors for a court to consider if a federal maritime rule controls the issue at hand: (1) “whether the federal maritime rule constitutes ‘entrenched federal precedent’”;²⁸ (2) “whether the state has a substantial and legitimate interest in the application of its law”;²⁹ and (3) “whether the state’s rule is materially different from the federal maritime rule.”³⁰

The doctrine is a rule that the Fifth Circuit Court has recognized but never applied and concluded – with reservation – in 1991 that the *uberrimae fidei* doctrine is no longer “entrenched federal precedent” although the doctrine may have been at the time of both *Fireman’s Fund Ins. Co. and Gulfstream Cargo*.³¹ However, the Fifth Circuit has no cases where it rejects the doctrine and thus will continue to welcome it.³² The Court also stated in *Albany Ins.* that it does not hold that state insurance law will always supersede the doctrine, further explaining that the Court will not rule out the possibility that application of the *uberrimae fidei* doctrine could be

²⁰ *Id.* at 5.

²¹ *Id.* at 6.

²² *Pesante*, 459 F.3d at 37.

²³ *Albany Ins. v. Anh Thi Kieu*, 927 F.2d 882, 888 (5th Cir. 1991).

²⁴ *Id.* (citing *Fireman’s Fund Ins. Co. v. Wilburn Co.*, 300 F.2d 631, 647 (5th Cir. 1962) and *Gulfstream Cargo, Ltd. v. Reliance Ins. Co.*, 409 F.2d 974 (5th Cir. 1969)).

²⁵ *Austin v. Servac Shipping Line*, 794 F.2d 941, 941 (5th Cir. 1986).

²⁶ *Id.* at 944.

²⁷ *Albany Ins. v. Anh Thi Kieu*, 927 F.2d 882, 886 (5th Cir. 1991).

²⁸ *Anh Thi Kieu*, 927 F.2d at 886 (citing *Fireman’s Fund Ins. Co.*, 370 U.S. at 925).

²⁹ *Anh Thi Kieu*, 927 F.2d at 886 (citing *Morrison Grain Co. v. Utica Mut. Ins. Co.*, 632 F.2d 424, 429 (5th Cir. 1980)).

³⁰ *Anh Thi Kieu*, 927 F.2d at 886 (citing *Walker Sons, Inc. v. Valentine*, 431 F.2d 1235, 1239 (5th Cir. 1970)).

³¹ *Id.* at 889.

³² *Id.* at 890.

more appropriate than application of relevant state insurance regulations in an appropriate case.³³ Most states have come to abandon the stern *uberrimae fidei* doctrine over the years and even federal courts rarely invoke the *uberrimae fidei* doctrine under maritime law.³⁴

The Court held in *Anh Thi Kieu* that state insurance law and not federal maritime law governed the disputed issue.³⁵

Nineth Circuit

The Nineth Circuit Court stated that the “basic premise” of the *uberrimae fidei* doctrine as applied by this Circuit is that a material fact must be disclosed “even in the absence of a request.”³⁶

Conclusion

“... *Wilburn Boat* does not reach so far as to render the application of maritime law obsolete in the context of insurance disputes.”³⁷ Despite the U.S. Supreme Court’s *Wilburn Boat* decision that courts shall apply state substantive law for marine insurance issues if no federal admiralty law precedent exists, courts are split between applying state substantive law as opposed to federal admiralty law for marine insurance issues.

³³ *Id.*

³⁴ *Id.* at 888.

³⁵ *Id.* at 895.

³⁶ *Certain Underwriters at Lloyds v. Inlet Fisheries, Inc.*, Case No. 3:04-cv-00058-JWS, Re: Motions at Dockets 203 and 204, 6 (D. Alaska Feb. 24, 2006) (citing *Cigna Property Casualty Co. v. Polaris Picture Corp.*, 159 F.3d 412, 418 (9th Cir. 1998) and *Certain Underwriters at Lloyds v. Montford*, 52 F.3d 219, 222 (9th Cir. 1995)).

³⁷ *St. Paul Fire and Marine Ins.*, 495 F.Supp.2d at 237.