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Admiralty - Constitutional Law - Effect of State Regulation of Marine Insurance on Uniformity of Maritime Law

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RECENT DECISIONS

ADMIRALTY—CONSTITUTIONAL LAW—EFFECT OF STATE REGULATION OF MARINE INSURANCE ON UNIFORMITY OF MARITIME LAW—Petitioner's houseboat, used to transport passengers commercially on a lake between Texas and Oklahoma, was insured against fire and other loss by respondent. Following destruction of the boat by fire, respondent denied liability because of breaches of policy warranties against assignment, pledging, transferring, and use for hire. The petitioner's action was brought in the state court and removed to a federal court because of diversity of citizenship. Texas statutes provide that breaches of policy provisions by the insured are no defense unless the breach contributes to the loss,[1] and that provisions in policies against pledging are invalid.[2] Petitioner contended that these statutes were controlling. The district court disagreed and held that because a marine policy is a maritime contract, federal admiralty law, not state law, governs. The court held that an established admiralty rule requires strict fulfillment of warranties in marine policies and rendered judgment for the insurance company. The court of appeals affirmed.[3] On certiorari to the Supreme Court, *held,* reversed. Under the McCarran Act[4] the regulation of insurance was left to the states except where Congress had specifically acted. There being no established admiralty rule regarding warranties in marine policies, the court declined to fashion a judicial rule and the case was remanded to the district court for trial under the appropriate state law. Justice Frankfurter gave his limited concurrence. Justices Reed and Burton dissented. *Wilburn Boat Co. v. Fireman's Fund Insurance Co.,* 348 U.S. 310, 75 S.Ct. 368 (1955).

Concessions to state powers in the admiralty area are not new, having been made earlier in cases of liens and survival statutes.[5] The instant case represents the first application of a state regulatory statute directly affecting marine insurance.[6] The opinion is not rested on the clause of

1 Tex. Rev. Stat. (Vernon, 1936) art. 4930.

2 Id., art. 4890.

3 Wilburn Boat Co. v. Fireman's Fund Ins. Co., (5th Cir. 1953) 201 F. (2d) 833.

4 59 Stat. L. 33 (1945), 15 U.S.C. (1952) §1011.

5 The Lottawanna, 21 Wall. (88 U.S.) 558 (lien); Just v. Chambers, 312 U.S. 383, 61 S.Ct. 687 (1941) (survival statute).

6 Hooper v. California, 155 U.S. 648, 15 S.Ct. 207 (1895), and Nutting v. Massachusetts, 183 U.S. 553, 22 S.Ct. 238 (1902), relied on by the majority, involved state regulation of foreign insurance companies and upheld penal action against brokers but did not arise from any claim on the contract itself. The possibility of an irreconcilable conflict between state and federal laws affecting marine insurance was avoided in Maryland Casualty Co. v. Cushing, 347 U.S. 409, 74 S.Ct. 608 (1954), when four justices who were initially opposed to the application of the state law concurred in the compromise position of Justice Clark in order to effectuate their position temporarily. The decision rendered by Justice Black in the instant case might have been predicted from his dissenting opinion in the Cushing case (at 437). The absence of certain elements of hardship to the insured, which were present in the Cushing case, undoubtedly accounted for the new majority in the principal case. See 68 HARV. L. REV. 157 (1954); 22 UNIV. CHI. L. REV. 55 (1954).

the Judiciary and Judicial Procedure Act saving to suitors certain remedies in cases of admiralty and maritime jurisdiction.[7] Rather, there appears to be an implied reliance on the rule of *Erie R. Co. v. Tompkins*[8] incongruously combined with the "silence of Congress" doctrine often resorted to in decisions involving state regulation of interstate commerce.[9] It has been strongly argued that the *Erie* doctrine has no application to admiralty cases and should be confined to diversity cases.[10] But by declaring that previous federal decisions upholding literal compliance with warranties in marine insurance were made before *Erie* when the courts were developing a general commercial law under the doctrine of *Swift v. Tyson*,[11] Justice Black implies that the present case is governed by state law as if it were a diversity case. This implication appears to be belied by the recognition that federal law would take precedence over state law were there federal legislation in the field. This illustrates the apparent confusion of the majority as to whether the problem should be approached as one falling within the scope of potential, though unexercised, federal admiralty power, or as one governed by state law under the *Erie* doctrine. The dissent, although rejecting the application of state law, does recognize the harshness of demanding literal compliance with warranties when their breach does not contribute to the loss. Justice Reed's opinion even suggests the possibility of judicial amelioration of the strict rule.[12] While this judicial legislation does not seem as sound an alternative as the result achieved by the majority in holding state law applicable,[13] it would be based on the traditional recognition of the need for uniformity in maritime matters.[14] On the other hand, the policy of the majority, while salutary from the insured's viewpoint, is based on rather vague constitutional precedent and is achieved at the expense of uniformity. Congress

7 28 U.S.C. (1952) §1333(1) saves to suitors in civil cases of admiralty and maritime jurisdiction, remedies to which they are otherwise entitled. This would include statutory remedies not inconsistent with federal law in addition to common law remedies. See Red Cross Line v. Atlantic Fruit Co., 264 U.S. 109 at 123, 44 S.Ct. 274 (1924).

8 304 U.S. 64, 58 S.Ct. 817 (1938).

9 See Biklé, "The Silence of Congress," 41 HARV. L. REV. 200 (1927).

10 Stevens, "Erie R.R. v. Tompkins and the Uniform General Maritime Law," 64 HARV. L. REV. 246 at 264 (1950).

11 16 Pet. (41 U.S.) 1 (1842).

12 Principal case at 334.

13 Despite the lack of uniformity, insured and insurers alike can refer to state laws for guidance on marine insurance matters pending any possible action by Congress, rather than waiting for the judiciary to develop a uniform law case by case. Coastal and river traffic will be subjected to the varying regulation of state laws under the instant decision. Ocean traffic would rely on the law of the state in which the domestic port is situated, thereby achieving uniformity to the extent that such traffic will be subjected to the regulation of only one state.

14 Knickerbocker Ice Co. v. Stewart, 253 U.S. 149 at 160, 40 S.Ct. 438 (1920); Washington v. W. C. Dawson & Co., 264 U.S. 219 at 227, 44 S.Ct. 302 (1924). But cf. the dissenting opinion of Justice Brandeis in the latter case.

in the past has not ignored the invitations to action of Justice Black.[15] Legislative restraint should again yield to expression lest the application of state law destroy the uniformity of maritime law in the field of marine insurance.

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[15] The McCarran Act [59 Stat. L. 33 (1945), 15 U.S.C. (1952) §1011] was passed in response to the announcement by Justice Black in the majority opinion in United States v. South-Eastern Underwriters Assn., 322 U.S. 533 at 561, 64 S.Ct. 1162 (1944), that exceptions to the ruling of that case must come from Congress and not from the Court.