

# Admiralty Committee

## SO, YOU THINK YOUR MARINE INSURANCE WILL PAY YOUR BOAT DAMAGE CLAIM.....

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If you have a boat insurance policy issued by Concept Special Risks YP, **READ THIS!** Great Lakes Insurance SE (GLSE) is a German corporation that makes payment on approved claims for these policies of marine insurance for Hull and Machinery and Protection and Indemnity (liability) coverage. Concept Special Risks Ltd. issues the policy contracts and acts as claims agent on behalf of GLSE.

Under *Wilburn Boat Company v. Fireman's Fund Insurance Company*, 348 U.S. 310 (1955), state law governs marine insurance. Like most states other than New York, Florida law provides that a breach by the insured of a warranty in a marine insurance policy does not bar coverage or void the policy "unless such breach or violation increased the hazard by any means within the control of the insured." See Fla. Stat. § 627.409(2). The purpose of this Florida statute is to "prevent the insurer from avoiding coverage on a technical omission playing no part in the loss," *Pickett v. Woods*, 404 So.2d 1152, 1153 (Fla. 5th DCA 1981), and to ensure that the breach "significantly alters the risk of loss [the insurer] would be called on to bear," *Fireman's Fund Ins. Co. v. Cox*, 742 F.Supp. 609, 611 (M.D.Fla.), *aff'd*, 892 F.2d 87 (11th Cir.1989). See also *Travelers Prop. Cas. Co. Am. v. Ocean Reef Charters, LLC*, 996 F.3d 1161 (11th Cir. 2021)

The Concept/GLSE contracts contain general conditions which are designated as warranties and which void the policy if breached. GLSE takes advantage of the *Wilburn Boat* decision and avoids the Florida anti-technical statute by including a choice of law provision in its insurance policies, such that regardless of the citizenship of the insured, where the policy is

delivered, or the state where the loss occurred, New York law applies. New York law utilizes the "strict or literal compliance" rule whereby breach of an express warranty in a marine insurance policy voids coverage, even if there is no connection between the breach and the loss.

GLSE has a sufficient substantial relationship with New York to allow application of New York law: GLSE is a surplus line carrier in New York; it maintains bank accounts in New York; it accepts service of process through attorneys in New York; and Great Lakes is a wholly owned subsidiary of Munich Re, which owns American Re, and the offices of both of those insurance companies are in New York. Like other courts that have addressed this precise issue, Florida courts have concluded that, on these facts, there is no basis to disregard the policy's choice of New York law.

GLSE relies on application of New York insurance law to deny coverage for a breach of any policy condition without regard to any causal connection to the loss. Upon the occurrence of a claim, if GLSE claims agents find a violation of any policy condition, GLSE denies coverage and/or reserves its rights and brings suit for declaratory judgment against the vessel owner. Vessel owners incur large attorney fees to defend those lawsuits, sometimes for years, while GLSE maintains a cadre of attorneys on contract to prosecute and win those suits, or to effectively force vessel owners to settle for minimal amounts and for far less than the amount the owner believed was bargained for under the



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policy. A Pacer search of the outcome of many GLSE lawsuits proves the effectiveness of this approach: a breach of any policy condition, even a mere technical omission playing no part in the loss, voids the policy .

However, a recent 3<sup>rd</sup> Circuit ruling issued August 30, 2022, in *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*, a maritime insurance case, offers some hope for policy holders with claims. In *Raiders*, at 15-16, the 3<sup>rd</sup>

Circuit opined, citing Supreme Court cases, “we consider it altogether reasonable that a strong public policy of the forum [state] in which suit is brought could, as to that policy specifically, render unenforceable the choice of state law in a marine insurance contract”. The 3<sup>rd</sup> Circuit held that “the District Court needed to consider whether Pennsylvania has a strong public policy that would be thwarted by applying New York law. We thus vacate and remand for further proceedings consistent with this holding.”