At Sea Without a Rudder or Compass: 11th Circuit Opinion Demonstrates the Challenges of *Wilburn Boat* Concerning Breaches of Marine Insurance Warranties

Matthew A. Moeller
The Moeller Firm

Matthew is the Managing Attorney and Owner of The Moeller Firm in New Orleans. His practices focuses on maritime, construction, and business litigation.

For nearly 70 years, since the United States Supreme Court decided *Wilburn Boat Co.* v. *Fireman's Fund Insurance Co.*, 348 U.S. 310 (1955), courts have repeatedly struggled with the question of whether state law or maritime law applies to a breach of a particular warranty in a marine insurance policy. A recent decision by a three-judge panel of the Eleventh Circuit Court of Appeals brought renewed interest to that struggle, detailed the difficult jurisprudential history that has led courts to this point, and even attempted to entice the U.S. Supreme Court to take the case in order to simplify the determination of whether to apply state law or maritime law in a dispute over a breach of a specific warranty.

In *Wilburn Boat*, the plaintiff's small houseboat, which was used for the commercial carriage of passengers on an artificial inland lake between Texas and Oklahoma, was destroyed by a fire while moored on the lake. Prior to the loss, the vessel was transferred from three individual owners into a wholly owned corporation. The insurers refused to pay for the loss citing the policy's warranties that the boat would not be transferred and would only be used for private purposes. Consequently, the plaintiff corporation filed suit, alleging that since the policy was delivered in Texas, Texas law should apply which potentially invalidated the warranty. The district court found for Fireman's, holding that there was an established admiralty rule that required literal fulfillment of all warranties, and any breach barred recovery regardless of whether it impacted the loss. After the Fifth Circuit affirmed the district court's ruling, the Supreme Court granted certiorari, noting the importance of the questions posed by the dispute.

In resolving the case, the Supreme Court posed two questions: (1) was there a judicially established admiralty rule governing the warranties at issue, and (2) if not, should the Court fashion one? In answering no to both questions, the Court reflected on the sparse jurisprudence requiring strict fulfillment of marine insurance warranties as well as the vast judicial and legislative history leaving the regulation of insurance companies and insurance policies to the states. Specifically, the Court emphasized that there were very few judicial decisions where a strict breach of warranty rule was even considered, and only two circuits incorporated such a rule into the general admiralty law. However, there were numerous decisions dating back to the late 1800s and early 1900s demonstrating a court's unwillingness to regulate

the terms of marine insurance policies through judicial rule making. Moreover, the Merchant Marine Act of 1920, the District of Columbia Model Insurance Act of 1922, and the Limitation of Liability Act of 1935, all included a tenor of opposition to the regulation of marine insurance, and the McCarran-Ferguson Act declared that regulation of insurance by the states was in the public interest.

That brings us to the dilemma recently faced by the Eleventh Circuit in *Travelers v. Ocean Reef,* 996 F.3d 1161 (11th Cir. 2021). In *Travelers,* a 92-foot Hatteras yacht broke free from its mooring lines as a result of Hurricane Irma and suffered damage that resulted in a constructive total loss of the vessel. Travelers denied coverage because Ocean Reef breached the policy's captain and crew warranties. The warranties required that: (1) Ocean Reef employ a full-time approved captain; and (2) Ocean Reef have one full- or part-time professional crewmember onboard. At the time of the loss, Ocean Reef had neither. However, it argued that Florida law should apply, and under Florida law, the breach would not preclude coverage because it was unrelated to the loss since the yacht sank due to an unforeseeable dock piling failure. The district court granted summary judgment for Travelers, concluding that the Eleventh Circuit had established a rule of admiralty law requiring that marine insurance policy warranties be strictly construed in the absence of other limiting provisions in the policy.

The Eleventh Circuit reversed, with plenty to say concerning the guidance (or lack thereof) provided by the Supreme Court's *Wilburn Boat* decision. Before reaching the merits of the case, the court identified several problems with *Wilburn Boat*. The court explained that the peculiar facts of the case, a dispute involving a houseboat on an artificial inland lake, bore no resemblance to facts of previous controversies that formed the basis of traditional admiralty jurisprudence. Furthermore, the Supreme Court's desire to leave the regulation of marine insurance in the hands of the states fostered a lack of uniformity in maritime law. *Wilburn Boat* was decided at a time when the appellate courts all accepted the literal performance rule. Since decisions reflected a shift away from that rule, it has made it difficult to resolve choice-of-law questions concerning express warranties because the Supreme Court failed to fashion a new rule and instead instructed courts to look to see if one exists.

In observing the Supreme Court's failure to deal with the issues created by its decision in *Wilburn Boat*, the Eleventh Circuit articulated that "the Supreme Court has left the lower federal courts at sea without a rudder or compass" and further explained that if it was not for its fidelity to *Wilburn Boat*, it would consider fashioning a uniform rule on express warranties. However, given the Supreme Court's apparent directive, and its own interpretive history, the court explained that it must determine if the warranty at issue is or should be the subject of a uniform entrenched federal

admiralty rule. While there are Eleventh Circuit decisions dealing with breach of the warranties of seaworthiness and navigation limits that contain generalized statements regarding breaches of express warranties in marine insurance policies, taking those statements too literally and affirming the district court's decision which would signify a subversive attempt to overrule *Wilburn Boat*, would be improper since only the Supreme Court has the power to overrule itself.

In adhering to a strict stare decisis approach in reaching its conclusion, the court reviewed previous cases addressing the breach of a captain or crew warranty and found an absence of any adopted, entrenched, or established maritime rule governing either warranty. The court identified only three cases addressing the captain warranty. While two of them alluded to an alleged maritime rule of strict warranty compliance, neither adopted such a rule. A third case held that all warranties had to be literally fulfilled, but the court in that case relied on two pre-*Wilburn* cases; therefore, the *Travelers* court refused to give it much weight. Turning to the crew warranty, the court found no American cases and considered an often-cited English case from the late 1700s, holding that the breach of a crew warranty voided the policy even though it was cured before and was unrelated to the loss. However, the court was unwilling to rely on that case since it was considered by the *Wilburn* Court in determining that there was no entrenched maritime rule requiring strict compliance with marine insurance warranties. Therefore, the court found that Florida law governed Ocean Reef's breaches of the captain and crew warranties and remanded the case for the application of Florida law and consideration of other arguments.

The Eleventh Circuit's decision illuminates the confusion and difficulty faced by lower courts in applying *Wilburn Boat*. The rule from the case, which the lower courts are tasked to apply, is ambiguous and leads to a highly subjective analysis and has resulted in inconsistency among the federal circuits. For example, in *Albany Insurance Co. v. Anh Thi Kieu*, 927 F.2d 882 (5th Cir. 1991), the Fifth Circuit interpreted *Wilburn Boat* as a pronouncement from the Supreme Court that the regulation of marine insurance should primarily be left to the states. However, in *Kamta AS v. Royal Insurance Co.*, 21 P.3d 1150 (Wash. Ct. App. 2001), the court expressed an inclination to apply federal or even English law instead of state law. Other courts have taken yet a different approach by considering the need for uniformity, holding that state law only applies in the absence of a federal statute or judicially established admiralty rule or where there is a need for uniformity. *See, e.g.*, *Kalmbach, Inc. v. Ins. Co. of the State of Pa*, 422 F.Supp. 44 (D. Alaska 1976).

Practitioners face an equally arduous task in advising clients concerning the application of *Wilburn Boat* to a potential dispute regarding whether maritime law or state law should govern a client's dispute over breach of a warranty. Key considerations include the federal circuit in which the dispute is pending, which state's law might apply in the absence of maritime law, and the specific warranty at issue. In *Wilburn Boat*, the Supreme Court established a default position, that in the absence of congressional action or a very clearly established judicial rule, the regulation of marine insurance policies should be left to the states. That default position permeates most federal circuits, and marine insurance coverage lawyers should be mindful of such in advising clients. However, that does not make the job any easier since the inherent ambiguity, subjectivity, and even dicta often included in a court's *Wilburn Boa*t analysis leads to an inconsistent patchwork of jurisprudence. Unless the Supreme Court or Congress acts to establish a consistent analytical framework for determining whether state law or maritime law applies to a breach of a specific warranty, lawyers and judges will continue to be left "at sea without a rudder or compass."