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STRICT COMPLIANCE WITH MARINE INSURANCE CONTRACTS: CONFLICTING RULES IN THE NINTH CIRCUIT

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Abstract: Under the federal admiralty "strict compliance rule," a policy of marine insurance is voided by an insured vessel owner's failure to comply with express policy terms or "warranties." Although recognized and applied by a majority of the federal circuits, the strict compliance rule has been improperly ignored by a handful of district courts within the Ninth Circuit. Instead, by misapplying the holding of *Wilburn Boat v. Fireman's Fund Insurance Co.*, a 1955 Supreme Court case, and by ignoring the Ninth Circuit's interpretation of *Wilburn Boat* in *Bohemia, Inc. v. Home Insurance Co.*, these district courts have turned to state insurance law, requiring a causal or other relationship between a breached policy warranty and the loss before voiding coverage. This Comment describes these current inconsistencies among marine insurance cases in the Ninth Circuit and the importance of maintaining uniformity in admiralty law and in uniformly applying the well-established strict compliance rule.

Due to the many risks inherent in both commercial and recreational marine voyages, comprehensive insurance is an important aspect of navigation. And, like all other insurance carriers, marine insurers and underwriters[1] require that the owners of the vessels they insure[2] comply with specific terms of coverage. These terms of coverage are typically outlined in detail within the insurance policy or contract. For example, a marine policy may restrain the vessel from navigating in certain waters, from carrying certain types of cargo, or from sailing during seasons of rough weather. These terms are considered "material" to marine insurance contracts, and are generally enforceable under federal maritime law pursuant to the so-called "strict compliance" doctrine.

The strict compliance rule requires that marine insurance policies be strictly or literally construed, rendering a policy void where the insured has breached an express policy term or warranty. By contrast, state insurance law typically requires some connection between a breached policy term and the loss suffered before the insurer may deny coverage based upon the breach, even where the policy expressly conditions coverage on compliance with specific terms.

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*The student author wishes to acknowledge that she is employed by LeGros, Buchanan & Paul, P.S., a Seattle-Anchorage maritime law firm that represents a significant percentage of northwest marine insurance underwriters.

1. Herein referred to as "insurers."

2. Herein referred to as "insureds."

Uniformity is an important feature of maritime law and a primary interest recognized by the Supreme Court; this interest is served by keeping maritime issues within the sphere of federal law.[3] However, the principle of uniformity in admiralty law is not the only value upheld by courts. For example, in *Wilburn Boat Co. v. Fireman's Fund Insurance Co.*,[4] the Supreme Court did not seem too concerned with maintaining uniformity in interpreting the effects of marine insurance contracts, or at least subordinated that interest to the concern of securing insurance regulation to the states pursuant to the McCarran Act.[5] The Court held that, in resolving marine insurance issues, resort to state law should occur absent a controlling federal admiralty statute or judicial rule. Although the strict compliance rule had been applied in several jurisdictions at the time *Wilburn Boat* was decided, the Supreme Court concluded that the rule was not well enough established to be controlling. The Court declined, however, to articulate the criteria for a controlling, "well-established" admiralty rule. Because the states had been vested with the power to regulate insurance under the McCarran Act, the Court merely held that it was proper to apply state law.

However, the importance of uniformity has never been completely abandoned. In fact, the Ninth Circuit has enlarged the *Wilburn Boat* test to encourage courts to consider how the national uniformity of federal admiralty law might be affected by the application of state law.[6] Still, the Supreme Court holding in *Wilburn Boat* represented a major departure from previous uniformity standards.

Since *Wilburn Boat*, the strict compliance rule has been strengthened or recognized in a majority of federal jurisdictions.[7] If there was any doubt before, it is now clear that the strict compliance rule has become "well-established." However, over the past decade, several district courts within the Ninth Circuit have failed to follow this established federal

3. *See infra* note 40.

4. 348 U.S. 310, *reh'g denied*, 349 U.S. 907 (1955).

5. Pursuant to the McCarran Act of 1945, particularly 15 U.S.C. §§ 1011–12 (1988), a state has the power to regulate the insurance industry within its borders. For instance, states may impose licensing and business practice requirements on its insurance agents and brokers. However, the McCarran Act does not give states the power to displace federal admiralty rules governing the interpretation of marine insurance contracts. Maryland Casualty Co. v. Cushing, 347 U.S. 409, 413 (1954). Rather, marine insurance contracts have long been recognized as falling within admiralty jurisdiction, but not within the exclusive jurisdiction of the United States. Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1 (1870).

6. Bohemia, Inc. v. Home Ins. Co., 725 F.2d 506, 510 (9th Cir. 1984) (citing Kossick v. United Fruit Co., 365 U.S. 731, 741–42 (1961)).

7. *See infra* note 74.

precedent.[8] Instead, these courts have used *Wilburn Boat* to justify rejecting the strict compliance rule and applying various state rules. These decisions have created a troubling inconsistency in Ninth Circuit marine insurance law.

In interpreting the strict compliance rule in light of the "well-established" criterion announced in *Wilburn Boat*, district courts within the Ninth Circuit should recognize and follow the conclusion reached in every other federal circuit where the issue has been addressed: that the strict compliance rule is a long-standing, well-established rule of federal admiralty law which must be applied when express marine policy terms have been breached. Displacing federal law and applying state law in such cases violates the Supremacy Clause, erodes uniformity and predictability in federal admiralty law, and ignores the rule set forth in *Wilburn Boat* and the Ninth Circuit's interpretation of *Wilburn Boat* in *Bohemia, Inc. v. Home Insurance Co.*[9]

I. MARINE INSURANCE AND THE STRICT COMPLIANCE RULE

One of the most notable characteristics of ocean travel is uncertainty.[10] In the face of this uncertainty, marine investors, lenders, shippers, and insurers seek to maintain predictability and certainty whenever possible.[11] As a result, these maritime actors generally rely upon ancient, well-established rules of admiralty law which promote consistency and uniformity.

A. Marine Insurance Contracts and Express Warranties

Because ships are the oldest means of transporting goods, marine insurance is likely the oldest form of commercial indemnity.[12] There are many different types of marine insurance covering a wide range of maritime perils.[13] Marine navigation includes routine risks such as crew

8. *See infra* note 70.

9. 725 F.2d 506 (9th Cir. 1984).

10. Nicholas J. Healy and David J. Sharpe, *Cases and Materials on Admiralty* 1 (1974).

11. *Id.*

12. Donald T. Rave and Stacey Tranchina, *Marine Cargo Insurance: An Overview*, 66 Tul. L. Rev. 371 (1991) (citing William D. Winter, *Marine Insurance: Its Principles & Practice* 1 (3d ed. 1952)).

13. Common types of marine insurance coverage include: hull and cargo, protection and indemnity, ship building and repair, charter, towing, stevedore and terminal liability, and pollution.

injuries and vessel damage, as well as extreme weather, fire, war, pirates, jettisons, seizures, restraints, and detainments in foreign ports.[14] Commercial and non-commercial vessels of all types must procure an ever-increasing array of property and liability insurance designed to guard against these diverse risks.[15]

As with most insurance, in order to recover for a loss under a marine policy, an insured vessel must demonstrate that it has suffered a loss, and that the loss suffered fell within the terms of the policy.[16] Terms of coverage usually include certain duties and obligations imposed upon the parties by the insurance contract. These duties and obligations are generally set forth in the express language of the policy in the form of a warranty.[17]

An express warranty may contain any specific term or agreement and becomes part of the insurance contract. For example, an insurer may require a vessel to agree to remain moored during certain months of the year or confine itself to sailing only in certain waters. The owner of an insured vessel may also be expected to comply with specific reporting requirements. Express warranties, by definition, condition policy coverage upon compliance with these agreements. Even if these terms are not specifically identified as "warranties" within the policy, if it is evident that the parties intended the policy to be contingent upon compliance with certain expressed terms, such terms are deemed express warranties.[18]

A marine insurer or underwriter should be able to condition its agreement on a fixed state of facts expressed in the form of policy warranties. This is especially true with regard to marine insurance, where potential losses are significant.[19] An important issue in insurance

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Raymond P. Hayden and Sanford E. Balick, *Marine Insurance: Varieties, Combinations, and Coverages*, 66 Tul. L. Rev. 311 (1991).

14. Healy & Sharpe, *supra* note 10, at 634.

15. Hayden and Balick, *supra* note 13.

16. Rave & Tranchina, *supra* note 12, at 380.

17. *Id.* at 390. Continual duties may also arise from federal maritime common law. For example, the common law doctrine of *uberrimae fidei* imposes upon an owner of an insured vessel a duty of good faith disclosure of material facts. Albany Ins. Co. v. Anh Thi Kieu, 927 F.2d 882 (5th Cir. 1991).

18. Rave & Tranchina, *supra* note 12, at 390.

19. The owner of an insured vessel also needs to know the potential consequences of failing to comply with the express terms of his or her insurance. Moreover, express and enforceable policy provisions motivate owners of insured vessels to avoid risks that the insurance company has deemed to be beyond the scope of coverage, as well as to comply with federal and local safety regulations.

law therefore is the legal effect given to express policy warranties. That is, it is important to determine the effect that an insured's breach of express policy provisions will have upon coverage in the event of a loss. It is important for both the insurer and the insured to be able to predict the result of a breached policy term in order to provide both fairness to the insurer and incentives to the insured to comply with its obligations under the policy. However, federal maritime law and state law approach the effect of breached policy warranties differently. Moreover, rules vary from state to state. It is therefore important to determine when federal and state rules apply.

B. Federal Maritime Rules Compared to State Insurance Laws

Since 1869, the Supreme Court has recognized that the power to regulate insurance companies and contracts is primarily vested with the states.[20] However, like other forms of maritime law, most aspects of marine insurance transactions have historically been exempt from state regulation.[21] While each state is free to develop its own insurance law through legislation and its courts, rules governing marine insurance have primarily developed from federal and English common law.[22]

Federal admiralty rules of contract interpretation are generally quite similar to those applicable to state insurance law.[23] However, the concerns underlying state insurance laws are somewhat different from those served by federal admiralty rules. The aim or focus of most state insurance regulation, which is typically very intensive and intrusive,[24] is to protect resident policy holders from insolvent insurance companies,

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The vessel owner has more to lose than insurance coverage: an owner who fails to limit risk may endanger human life or the environment, or cause other non-monetary losses.

20. Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1869). *See also supra* note 5.

21. Insurance Co. v. Dunham, 78 U.S. (11 Wall.) 1, 14–15 (1870). There are approximately 425 (total) ocean marine exemptions within the insurance laws of all fifty states (combined), which exempt marine insurers from rate regulation, form filing, and many other aspects of state insurance regulation. Marilyn L. Lytle, *Recent Legislative Proposals Affecting the Marine Insurance Industry*, Current Issues Affecting Marine Insurance in the Pacific Northwest (University of Washington Continuing Legal Education Seminar) 1992, at B1. States do, however, retain some power to regulate certain activities. For example, many states exclude insurance on yachts and pleasure craft from standard "ocean marine" insurance exemptions. *Id.* at B4–5.

22. *Dunham*, 78 U.S. at 8–9; Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487, 493 (1921). *See also* Wilburn Boat v. Fireman's Fund Ins. Co., 348 U.S. 310, 310–11 (1955).

23. Bohemia Inc. v. Home Ins. Co., 725 F.2d 506, 509 n.2 (9th Cir. 1984).

24. Spencer L. Kimball, *Cases and Materials on Insurance Law* 621 (1992).

unreasonable rates, and unfair policy terms.[25] While federal marine insurance rules have similar aims, admiralty law is also concerned with maintaining uniform national rules. Since states do not share the same concern for national uniformity, the approach taken by state legislatures and courts often differs from that of federal courts in formulating insurance rules.

A clear example of these different approaches is the effect of an insured's breach of express policy provisions. State insurance laws, including those in Washington State,[26] typically require a causal or other relationship between a breached policy term and the loss suffered in order for the breach to void the policy. This approach is consistent with the typical state view that insurance policies are contracts of adhesion, that the parties have disparate bargaining status, and that the insured is the "weaker" party.[27] This rule therefore favors the insured and serves the state interest of protecting policy holders and sustaining coverage whenever possible.

By contrast, in the course of developing federal maritime law, most courts in the United States and England[28] have recognized and exclusively applied the strict compliance rule to express marine insurance warranties.[29] Under this approach, express warranties are strictly construed. When an insured vessel has failed to comply with any express policy term, the policy is void, regardless of the relationship between the breach and the loss.[30] This rule originated in England and

25. Spencer L. Kimball, *The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law*, 45 Minn. L. Rev. 471 (1961).

26. *See, e.g.*, Transit Casualty Co. v. Pedersen Fisheries, Inc., No. C83-1471R, slip op. at 6 (W.D. Wash. Feb 11, 1985) (order denying plaintiff's motion for summary judgment) ("Where a breach of warranty has absolutely no relationship to the cause of the loss, then the Washington courts would hold that it is arbitrary and unreasonable to deny coverage of the loss on the basis of the breach."); Oregon Auto. Ins. Co. v. Salzberg, 85 Wash. 2d 372, 535 P.2d 816 (1975); Riordan v. Commercial Travelers Mut. Ins. Co., 11 Wash. App. 707, 525 P.2d 804 (1974).

27. Kimball, *supra* note 24, at 12–13; Edwin W. Patterson, *The Interpretation and Construction of Contracts*, 64 Colum. L. Rev. 833, 858 (1964).

28. English precedent is acknowledged in Wilburn Boat Co. v. Fireman's Fund Insurance Co., 348 U.S. 310, 325 n.1 (Reed, J., dissenting).

29. *See, e.g.*, Canton Ins. Office, Ltd. v. Independent Transp. Co., 217 F. 213, 215 (9th Cir. 1914) (holding that if the language of express warranties were not strictly construed, "such a warranty would be of no value to either party to the insurance contract"); Thames & Mersey Marine Ins. Co. v. O'Connell, 86 F. 150 (9th Cir. 1898) (holding that insurer was not liable for loss when a vessel violated navigation warranties by sailing in prohibited waters).

30. *See, e.g.*, Lexington Ins. Co. v. Cooke's Seafood, 835 F.2d 1364 (11th Cir. 1988); Mutual Fire, Marine & Inland Ins. Co. v. Costa, 789 F.2d 83 (1st Cir. 1986); Aguirre v. Citizens Casualty Co., 441 F.2d 141 (5th Cir. 1971).

was first clearly stated in the United States by the Seventh Circuit in *Fidelity-Phenix Insurance Co. v. Chicago Title & Trust Co.*[31] The strict compliance rule has also been recognized and followed in seven other federal circuits.[32]

Compared to the typical state approach, applying the strict compliance rule may appear harsh at first glance. Indeed, it is these sometimes harsh effects that inspired the Supreme Court to be sympathetic with the houseboat owners denied coverage in *Wilburn Boat.*[33] However, there are important and compelling reasons for the rule.

First, from a contract standpoint, express warranties provide the very terms upon which a contract for marine risk coverage is made.[34] The rule enforces marine insurance contracts as written and therefore carries out the intent of the parties and allows them to rely upon their agreement. A contract, by its very nature, implies obligations which are voluntarily undertaken.[35] Unlike auto or home insurance, marine insurance contracts are more frequently made between sophisticated parties. Even where the vessel owner is not sophisticated, an insurance broker is typically involved to represent the insurance purchaser, to negotiate the coverage purchased, and to ensure that the scope of coverage, including express warranties, is clearly understood by the shipowner. Furthermore, if the shipowner later desires to change or enlarge the terms of coverage to accommodate a temporary change in insurance needs, the shipowner may re-negotiate with the insurer for a rider to the policy.

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31. 12 F.2d 573 (7th Cir. 1926).

32. *Mutual Fire*, 789 F.2d at 83; Goodman v. Fireman's Fund Ins. Co., 600 F.2d 1040 (4th Cir. 1979); Home Ins. Co. v. Ciconett, 179 F.2d 892, 894 (6th Cir. 1950); Levine v. Aetna Ins. Co., 139 F.2d 217 (2d Cir. 1943); Robinson v. Home Ins. Co., 73 F.2d 3 (5th Cir. 1934); Cotton Blossom Corp. v. Lexington Ins. Co., 615 F. Supp. 87 (D. Mo. 1985); *Canton*, 217 F. at 213.

33. Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 320 (1955). *See* discussion *infra* notes 45–50 and accompanying text.

34. Patrick J.S. Griggs, *Coverage, Warranties, Concealment, Disclosure, Exclusions, Misrepresentations, and Bad Faith*, 66 Tul. L. Rev. 423, 430–31 (1991). For example, in *Home Insurance Co. v. Ciconett* the Sixth Circuit stated:

> It is settled that a warranty in a contract of insurance must be literally complied with; that the only question in such cases is whether the thing warranted to be performed was or was not performed; and that a breach of the warranty releases the company from liability regardless of the fact that a compliance with the warranty would not have avoided the loss.

Ciconett, 179 F.2d at 894. Thus, an express warranty or agreement in a marine insurance policy should void the policy if breached, regardless of the connection (or lack thereof) between the breach and the loss. *See, e.g.*, Vizzini v. Insurance Co., 273 A.2d 137 (Md. 1971).

35. Kossick v. United Fruit Co., 365 U.S. 731, 741 (1961).

In addition, even under the strict compliance rule, a deliberate, knowing policy breach is generally required to void coverage. This is because marine policies typically contain "held-covered" clauses, which prevent a marine policy from being voided by an accidental or unwilling breach of express policy terms. Such clauses are effective as long as the insured has exerted its best efforts to remain in compliance and has promptly notified the insurer of the breach as soon as it is discovered.[36] Similarly, most state insurance laws generally do not allow an insured party, by its own willful misconduct, to unilaterally enlarge the risk that the insurer has agreed to cover.

Moreover, with the exception of the Supreme Court's failure to recognize the strict compliance rule as being "well-established" in the United States as of 1955, it has been a widely recognized and virtually unchallenged doctrine of marine insurance law for nearly 100 years in the United States[37] and for even longer in England.[38] The rule therefore fulfills traditional and reasonable expectations of both marine insurers and insureds.

C. *The Importance of Uniformity*

Perhaps the most important value sought to be preserved in the interpretation and enforcement of marine insurance contracts is uniformity.[39] The Supreme Court has long recognized that the Constitutional preservation of federal maritime jurisdiction was intended to maintain the uniformity of federal admiralty law.[40] It is difficult to imagine an area with more interstate contacts, and therefore federal

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36. Northwestern Nat'l Ins. Co. v. Federal Intermediate Credit Bank, 839 F.2d 1366, 1367–68 (9th Cir. 1988).

37. *See supra* note 29. *See also infra* note 74.

38. *See* Bean v. Stupart, 99 Eng. Rep. 9 (1786); De Hahn v. Hartley, 99 Eng. Rep. 1130 (1786).

39. Standard Oil Co. v. United States, 340 U.S. 54, 59 (1950); Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487, 493–94 (1921).

40. The Lottawanna, 88 U.S. (21 Wall.) 558, 574–75 (1874).

> One thing . . . is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states.

Id. at 575. *See also* Knickerbocker Ice Co. v. Stewart, 253 U.S. 149, 160 (1920).

interests, than marine insurance. This makes adherence to existing, uniform federal rules imperative.[41]

Uniformity is particularly important because of the interstate and international nature of the insurance business. Marine insurance contracts are possibly the most common[42] and complex form of maritime contract. It is therefore important that the rules, practice, and laws regarding marine insurance contracts be as consistent as possible throughout the world.[43] A vessel moves from state to state, along coasts and rivers, and across national borders. It would be disastrous if the legal construction of maritime insurance contracts changed with every border a vessel crossed.[44]

Additionally, if marine insurance laws are variable and inconsistent, and if insurance contracts are not given the legal effect that the parties intended, escalating insurance costs are likely to result. The business of marine insurance will require more litigation and will be more difficult to manage. High insurance rates will handicap marine industries and individuals in jurisdictions where courts refuse to recognize the strict compliance rule.

II. THE DIFFICULTIES OF *WILBURN BOAT*

A. The Wilburn Boat *Rule*

In *Wilburn Boat v. Fireman's Fund Insurance Co.*,[45] the Supreme Court formulated an analysis for determining when federal or state law applies to marine insurance cases. The houseboat owners in *Wilburn Boat* breached an express warranty within their marine policy, and the houseboat was destroyed by fire. The insurer denied coverage due to the breach. The trial court applied what it recognized as well-settled

41. Jerome C. Scowcroft, *Uniformity in Admiralty Law and the Application of State Compensation Statutes*, Current Issues Affecting Marine Insurance in the Pacific Northwest (University of Washington Continuing Legal Education Seminar) 1992, at A1–2.

42. Insurance Co. v. Dunham, 78 U.S. 1, 13 (1870). Within his argument that marine insurance contracts fall exclusively within maritime jurisdiction—a proposition ultimately affirmed by the Supreme Court—plaintiff's counsel noted that such contracts were perhaps the most common form of maritime contract. *See also infra* note 77.

43. *Insurance Co.*, 78 U.S. at 13.

44. Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 323 (Reed, J., dissenting) (noting that admiralty laws that change from state to state would do "violence to the premise upon which the admiralty jurisdiction was constructed" and would "unduly burden" maritime operations).

45. 348 U.S. 310 (1955).

admiralty law, namely the strict compliance doctrine, and found in favor of the insurer. This was affirmed by the Fifth Circuit.[46]

However, the Supreme Court reversed. The Court stated that, while the body of federal admiralty law must first be examined for a controlling rule,[47] if no federal admiralty statute or "well-established" judicially-created rule exists, state law must be applied.[48] The Supreme Court was not convinced, as of 1955 when *Wilburn Boat* was decided, that the strict compliance rule had been sufficiently well-established in the United States to be controlling.[49] Therefore, the Court remanded the case, and the trial court was directed to apply state law.[50]

The rule articulated in *Wilburn Boat* is problematic for many reasons.[51] First and foremost, the Court failed to give proper recognition to the importance of the basic principle of uniformity in admiralty law and failed to consider the effect that applying state law would have upon uniformity and other federal interests.[52] The Court should have attempted to create or develop rules that reflected and were consistent with established, uniform maritime laws and principles, instead of resorting to state law. This could have involved looking to English admiralty law, from which U.S. maritime law originated,[53] or looking to federal circuit court decisions. When an issue is truly maritime in nature,[54] borrowing state law is completely inapposite to choice of law principles and the supremacy of federal law.

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46. 201 F.2d 833 (5th Cir. 1953), *rev'd*, 348 U.S. 310 (1955).

47. *Wilburn Boat*, 348 U.S. at 314.

48. *Id.* at 316.

49. *Id.*

50. *Id.* at 321.

51. *Wilburn Boat* has been strongly criticized for several reasons, including for the Supreme Court's refusal to apply what was considered by many to be an already "well-established" federal strict compliance rule, as well as for stating a choice-of-law analysis which works against uniformity in federal admiralty law. G. Gilmore and C. Black, *The Law of Admiralty* 69–71 (2d ed. 1975). Furthermore, the *Wilburn Boat* rule has the effect of preventing change or development in federal maritime law. "[A]s to each issue or area of law in which it is held that no federal admiralty rule currently exists no such rule will ever exist under *Wilburn Boat* because under that doctrine only pre-existing federal law can ever be applied." *Uberrimae Fidei Not Entrenched Federal Precedent*, Committee on Marine Insurance, General Average, and Salvage Newsletter No. 2, P & I Subcommittee (May 1991) p. 9588, at 9591.

52. *See supra* notes 40–44 and accompanying text.

53. Calmar S.S. Corp. v. Scott, 345 U.S. 427, 442–43 (1953); Queen Ins. Co. v. Globe & Rutgers Fire Ins. Co., 263 U.S. 487, 493 (1921).

54. Whether a transaction is truly "maritime" and therefore within admiralty jurisdiction depends upon its nature and subject matter, having reference to maritime service or maritime transactions. Insurance Co. v. Dunham, 78 U.S. 1, 26 (1870).

Moreover, the Supreme Court's holding in *Wilburn Boat* is difficult to accept even under the very terms of the rule it set forth. Not only did the Court fail to provide a method for determining when a federal rule is "well-established," but it also chose to distinguish the strict compliance rule as a "general warranty rule" rather than an admiralty rule, and thereby diminished its importance. As a result, at least six federal circuits ceased uniform application of the rule in admiralty cases.[55]

B. *Applying the* Wilburn Boat *Test in the Ninth Circuit*

Not surprisingly, courts have encountered difficulties applying the *Wilburn Boat* test.[56] Determining when to replace a federal maritime rule with state law has been problematic, especially since the Supreme Court did not discuss the need for uniformity in admiralty law or any other factors which might be important in determining when to apply state law. Beyond uniformity concerns, other relevant factors include competing state and federal interests and the extent to which state law materially differs from federal maritime law.

In *Kossick v. United Fruit Co.*,[57] the Supreme Court somewhat redeemed and reiterated the principle of uniformity in admiralty law, distinguishing between "maritime" issues that require uniformity and "local" issues that do not.[58] It was not until 1988, however, that the

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55. *Wilburn Boat*, 348 U.S. at 315. The Court attempted to diminish the importance of the fact that the rule had been applied in the following six circuits: Home Ins. Co. v. Ciconett, 179 F.2d 892 (6th Cir. 1950); Levine v. Aetna Ins. Co., 139 F.2d 217 (2d Cir. 1943); Aetna Ins. Co. v. Houston Oil & Transp. Co., 49 F.2d 121 (5th Cir. 1931); Fidelity-Phenix Ins. Co. v. Chicago Title & Trust Co., 12 F.2d 573 (7th Cir. 1926); Canton Ins. Office v. Independent Transp. Co., 217 F. 213 (9th Cir. 1914); Rosenbauer v. Standard Ins. Co., 1949 A.M.C. 716 (Fla. 1949).

56. Port Lynch, Inc. v. New England Int'l Assurety of Am., 754 F. Supp. 816, 819 (W.D. Wash. 1991).

57. 365 U.S. 731 (1961).

58. *Id.* at 738. The Court set forth a two-question test in *Kossick* concerning the application of state—as opposed to federal admiralty—law to an agreement between a vessel owner and a crew member. First, the court asked if the agreement was a maritime contract. Since the answer was yes, the Court then asked if the contract was of such a "local" nature that its validity should nevertheless be judged by state law. *Id.* at 735. The Court noted that a contract may be both "maritime and local," *id.* at 738 (citing Western Fuel Co. v. Garcia, 257 U.S. 233, 242 (1921)), "in the sense that the application of state law would not disturb the uniformity of maritime law." *Id.* (citing Southern Pac. Co. v. Jensen, 244 U.S. 205 (1917)).

The *Kossick* Court also noted that, while offending national maritime uniformity was rare, it was tolerated to allow recovery under state wrongful death and survival statutes in maritime liability cases or to impose state environmental laws upon vessels engaged in interstate commerce. *Id.* at 739–40 (citing Just v. Chambers, 312 U.S. 383 (1941)). *See also* Huron Portland Cement v. City of Detroit, 362 U.S. 440 (1960). The Court concluded that the agreement at issue in *Kossick*, between

Ninth Circuit had the opportunity to revisit *Wilburn Boat* in light of the Supreme Court's decision in *Kossick*. In *Bohemia, Inc. v. Home Insurance Co.*,[59] the Ninth Circuit concluded that the *Wilburn Boat* analysis had been enlarged by *Kossick* to require courts to consider the impact upon uniformity of applying state law to a marine insurance issue.[60] The Ninth Circuit concluded that there should be a new test: If no federal statute or "well-established," judicially-created rule exists to cover a particular marine insurance issue, or if there is no need for uniformity in admiralty practice, then state law must be applied.[61] In other words, the Ninth Circuit determined that it is only appropriate to apply state law in marine insurance cases when there is neither a well-established federal maritime rule nor a recognized need for uniformity with regard to that particular area of marine insurance law.[62]

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the owner of a vessel and a crew member (to assume liability for improper treatment the crew member received at a public health hospital), was not "peculiarly a matter of state and local concern," that it could have been made anywhere in the world, and that it therefore should be subjected to interpretation under only one body of law, wherever made. Furthermore, the Court noted that the contract at issue involved obligations voluntarily undertaken, distinguishing wrongful death and pollution regulation cases where concerns for uniformity are displaced by local concerns. *Id.* at 741 (quoting *Huron*, 362 U.S. at 446). Thus, the Court held that the general rule of maintaining uniformity was appropriate and that the very rare exceptions of displacing uniformity were not applicable. *Id.* at 742.

59. 725 F.2d 506 (1984).

60. *Id.* at 510.

61. *Id.*

62. This test acknowledges that, as with all areas of federal regulation, in rare circumstances states may exercise their police power to supplement federal law when the relevant issue is "peculiarly a matter of state and local concern." *Huron*, 362 U.S. at 446. *See also supra* note 58 and accompanying text. Even so, applying state law in such circumstances may not discriminate against matters of federal interest, such as interstate commerce, or operate to disrupt uniform federal law. *Huron*, 362 U.S. at 448.

A rule similar to that employed in *Bohemia* was adopted by the Fifth Circuit in Koninklyke Nederlandsche Stoomboot Maalschappy v. Royal Netherlands Steamship Co., 301 F.2d 741 (5th Cir. 1962). "In the absence of a federal statute, a judicially-fashioned federal rule, or a need for uniformity throughout admiralty jurisdiction relevant state law may be applied." *Id.* at 743 (citing Wilburn Boat v. Fireman's Fund Ins. Co., 348 U.S. 310 (1955)). The Fifth Circuit went even further in Albany Insurance Co. v. Anh Thi Kieu, 927 F.2d 882, *reh'g denied*, 934 F.2d 1263 (5th Cir. 1991), when it incorporated additional federal common law principles into the *Wilburn Boat* analysis. In *Albany*, the Fifth Circuit formulated a three-factor test for determining when state law might displace admiralty law under the *Wilburn Boat* "well-established" criteria. However, the issue in *Albany* was the effect of material misrepresentations by the insured rather than breached policy warranties.

III. NINTH CIRCUIT: FAILURE TO APPLY STRICT COMPLIANCE RULE

Pursuant to *Wilburn Boat*, courts must apply federal maritime rules that are "well-established" in admiralty law.[63] This necessarily includes the strict compliance rule which, despite its status when *Wilburn Boat* was decided, has since become well-established in maritime law.[64] It would make little sense for today's courts to rely upon the holding in *Wilburn Boat*, which was based upon the Supreme Court's impression of the strict compliance rule nearly forty years ago. To do so treats the state of admiralty law as frozen in time.[65] Courts in the Ninth Circuit and in other jurisdictions must recognize the history of the strict compliance rule and particularly the post-*Wilburn Boat* history of the rule.

Furthermore, at least in the Ninth Circuit, courts have been directed to consider the potential impact upon the uniformity of federal admiralty law when determining whether to apply federal or state law.[66] An additional and important aspect of national uniformity is to ensure that the legal rights of parties in admiralty are consistent throughout the various jurisdictions. When states are given leave to regulate in a particular area, there is always a risk that state law will infringe upon established rights under admiralty law. Thus, the general maritime principle of uniformity, reiterated by the Supreme Court in *Kossick*, and by the Ninth Circuit in *Bohemia*, in addition to the *Wilburn Boat* "well-established" precedent test, dictate that courts apply the strict compliance rule.

A. Wilburn Boat *"Well-Established" Test Violated*

The strict compliance rule, which requires literal compliance with all marine insurance policies and voids coverage upon any breach of an express policy warranty, has been recognized in the Ninth Circuit as a controlling federal maritime rule for nearly 100 years.[67] At present, most federal jurisdictions have recognized and applied the strict compliance

63. *See supra* note 47 and accompanying text.

64. *See infra* note 74.

65. In Highlands Insurance Co. v. Koetje, 651 F. Supp. 346, 347 n.2 (W.D. Wash. 1987), the court stated that under *Wilburn Boat* "there is no federal admiralty law governing enforcement of marine insurance warranties," thus assuming that marine insurance law had not evolved since 1955.

66. Bohemia, Inc. v. Home Ins. Co., 725 F.2d 506 (9th Cir. 1984).

67. *See supra* notes 29–32 and accompanying text.

rule.[68] Pursuant to *Wilburn Boat*, when there is a well-established admiralty rule on a particular marine insurance issue, it must be applied.[69]

Despite the relative clarity of the *Wilburn Boat* and *Bohemia* tests, several district courts within the Ninth Circuit have incorrectly rejected the strict compliance rule and used state law to interpret marine insurance contracts.[70] In each of these decisions, the district court ignored the well-established nature of the strict compliance rule, the need for its uniform application, and interpreted *Wilburn Boat* as mandating that there is no recognized express warranty strict compliance rule. In so doing, each court improperly adopted the *Wilburn Boat* holding and failed to apply the *Wilburn Boat* test.

Historically, the strict compliance rule was the only established rule applied within the body of admiralty law for interpreting the effect of breached marine insurance warranties.[71] This rule was recognized and applied in England and in six federal circuits of the United States before *Wilburn Boat*.[72] This doctrine remained unchallenged until 1955 when the Supreme Court questioned the strength of the rule in *Wilburn Boat*.[73] However, since *Wilburn Boat*, and despite it, three more circuits have adopted the strict compliance rule.[74] Thus, the strict compliance rule has

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68. *See infra* note 74 and accompanying text.

69. *See supra* note 47 and accompanying text.

70. United States Fire Ins. Co. v. Liberati, 1989 A.M.C. 1436 (N. D. Cal. 1989); Highlands Ins. Co. v. Koetje, 651 F. Supp. 346 (W.D. Wash. 1987); Rondys, Inc. v. Insurance Co. of N. Am., 1988 A.M.C. 2234, 2239 (D. Or. 1986), *modified*, No. 85-904, slip. op. at 10 (D. Or. June 19, 1986); Transit Casualty Co. v. Pedersen Fisheries, No. C83-1471R (W.D. Wash. Feb. 11, 1985).

71. *See supra* note 55 and accompanying text.

72. *See supra* note 55.

73. Wilburn Boat v. Fireman's Fund Insurance Co., 348 U.S. 310 (1955).

74. Before *Wilburn Boat*, the strict compliance rule had been applied in the Second, Fifth, Sixth, Seventh, Ninth, and Eleventh Circuits. *See supra* note 55. Post-*Wilburn Boat* the rule has been recognized in the First, Fourth, and Eighth Circuits (see *infra*), and has been strengthened in virtually every other federal circuit. For example, in Lexington Insurance Co. v. Cooke's Seafood, 835 F.2d 1364 (11th Cir. 1988), the Eleventh Circuit held that a marine insurance contract was void where the insured had breached a navigation warranty, incurring loss while operating outside its navigational limits. The court concluded that, as a matter of general maritime law, strict construction is required in enforcing express warranties in marine insurance contracts, and breach of the warranty released the insurer from liability, even where compliance would not have avoided the loss.

With the exception of a few district court cases in the Ninth Circuit, the strict compliance rule has been followed wherever breached warranty issues have arisen. *See* Employers Ins. v. Trotter Towing Corp., 834 F.2d 1206 (5th Cir. 1988), *reh'g denied*, 841 F.2d 633; Graham v. Milky Way Barge, Inc., 824 F.2d 376 (5th Cir. 1987); Mutual Fire, Marine and Inland Ins. Co. v. Costa, 789 F.2d 83 (1st Cir. 1986); Parfait v. Central Towing, Inc., 660 F.2d 608 (5th Cir. 1981); Goodman v. Fireman's Fund Ins. Co., 600 F.2d 1040, 1042–43 (4th Cir. 1979); Aguirre v. Citizens Casualty Co.,

now been applied in at least twenty cases post-*Wilburn Boat*, in a total of nine federal circuits, and, with the exception of a few Ninth Circuit district court decisions which have applied state law, is the only recognized rule for determining the effect of breached express marine insurance warranties in federal admiralty law.

In deciding post-*Wilburn Boat* breach-of-warranty cases, virtually all courts have found that the strict compliance rule has become "well-established," regardless of its status before *Wilburn Boat.* In each case, the court simply looked to see if the insured party had breached an express policy term and then held that long-standing maritime law rendered the policy void due to the breach, regardless of the nature of the warranty or the connection between the breach and the loss.[75] This broad and virtually unanimous application of the strict compliance rule in a majority of the federal jurisdictions where the issue has arisen means that the rule is well-established, widely accepted, and relied upon in the marine industries.

B. Recognized Need for Uniformity Also Ignored

Furthermore, none of these aberrational district court cases within the Ninth Circuit properly considered the Ninth Circuit mandate of uniformity.[76] Instead, each court ignored the recognized need for uniformity in the interpretation of marine insurance express warranties. In *Transit Casualty Co. v. Pedersen Fisheries*[77] and *Highlands Insurance Co. v. Koetje*,[78] district courts in Washington ignored *Bohemia* and uniformity considerations altogether. In *Rondys, Inc. v. Insurance Co. of North America*,[79] the Oregon court mentioned *Bohemia,* but then failed to consider or discuss uniformity considerations in its analysis or holding. In *United States Fire Insurance Co. v. Liberati*,[80] a California district

441 F.2d 141 (5th Cir. 1971); F.B. Walker & Sons, Inc. v. Valentine, 431 F.2d 1235 (5th Cir. 1970); Home Ins. Co. v. Ciconett, 179 F.2d 892, 894 (6th Cir. 1950); Cotton Blossom Corp. v. Lexington Ins. Co., 615 F. Supp. 87 (D. Mo. 1985); Rosenberg v. Maritime Ins. Co., 1968 A.M.C. 1609 (D. Fla. 1968); Vizzini v. Ins. Co. of N. Am., 273 A.2d 137 (Md. 1971).

75. *See supra* note 74.

76. *See* Bohemia v. Home Ins. Co., 725 F.2d 506 (9th Cir. 1984).

77. No. C83-1471R (W.D. Wash. Feb. 11, 1985).

78. 651 F. Supp. 346 (W.D. Wash. 1987).

79. 1988 A.M.C. 2234 (D. Or. 1986).

80. 1989 A.M.C. 1436 (N.D. Cal. 1989).

court cited the *Bohemia* rule and mentioned uniformity,[81] but applied state law anyway.

Resorting to state law, with no concern for the impact upon federal admiralty law, undermines and erodes general maritime principles and creates confusion and unpredictability. It has long been recognized that the very aim of the Constitution in granting admiralty jurisdiction to the federal courts is to avoid conflicting rules and to preserve the uniform working of the maritime legal system.[82]

Furthermore, even when a particular state law does not contravene an established principle of admiralty law, the state law cannot be applied when its adoption will impair the uniformity and simplicity which is the basic principle of federal admiralty law[83] or when its adoption will defeat an otherwise meritorious maritime cause of action.[84] Applying state law to marine insurance cases does both. First, it impairs federal uniformity and simplicity by thrusting inconsistent state rules upon federal maritime parties. Moreover, applying state law defeats substantial, established rights of marine insurers under existing federal law and fails to protect their legitimate expectations that the now well-settled strict compliance rule will be enforced. Thus, insurers lose the ability to enforce policy terms or to motivate owners of vessels to comply with requirements which reduce risk and promote vessel and crew safety.

Overriding uniformity concerns and applying state law is appropriate only under two circumstances. First, applying state law may be appropriate when the issue is so local in nature and impact that the interest in national uniformity is clearly outweighed by the local interests of the state.[85] For example, the local and important state interest of preserving the safety of its environment allows states to require vessels engaged in interstate commerce to comply with state anti-pollution

81. *Id.* at 1440.

82. *See supra* note 40. States may not impose rules or laws which work "material prejudice to the characteristic features of the general maritime law or interfere with the proper harmony and uniformity of that law in its international and interstate relations." Southern Pac. Co. v. Jensen, 244 U.S. 205, 216 (1917).

83. Byrd v. Byrd, 657 F.2d 615, 617 (5th Cir. 1981) (citing Moragne v. States Marine Lines, Inc., 398 U.S. 375, 402 (1970)); Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 631 (1959).

84. *Byrd,* 657 F.2d at 617–18 (citing St. Hilaire Moye v. Henderson, 496 F.2d 973, 980 (8th Cir.), *cert. denied,* 419 U.S. 884 (1974)).

85. *Id.* at 618–19 (citing Bell v. Tug Shrike, 332 F.2d 330 (4th Cir. 1984), *cert. denied,* 379 U.S. 844 (1964) (determining beneficiary under Jones Act by looking to state domestic relations law)). *See also supra* note 58 for examples of "matters of local concern" noted by the Supreme Court in Kossick v. United Fruit Co., 365 U.S. 731 (1961).

laws.[86] Second, requiring vessel compliance with state law may also be allowed when the area is one where federal preemption would leave a complex area largely unregulated, despite complete regulation by the states.[87] State insurance laws are one example of an area where Congress has expressly mandated that comprehensive state regulation is preferable to national insurance laws.[88] However, the Supremacy Clause still prevents even permissible state regulation from displacing established federal admiralty law.[89]

Interpreting the effect of breached marine policy warranties does not fall within either of these exceptions. Maritime insurance contracts are not "local in nature." Indeed, disputes regarding marine insurance contracts have long been recognized to fall within admiralty jurisdiction.[90] Moreover, any potentially "local" state interests in marine insurance are outweighed by the national interests inherent in a uniform body of admiralty law.

Furthermore, preempting state law with a well-established federal rule, which denies coverage to insured vessels that breach express policy warranties, does not leave a complex area largely unregulated. Marine insurance, although subject in some respects to state regulation, is also regulated to some degree under uniform federal admiralty rules and is actually exempt from many state insurance laws.[91] Any gaps in this regulation may be filled by looking to state law if the issue is truly local and does not demand application of a national, uniform rule.[92]

Uniformity concerns dictate that the strict compliance rule continue to be applied. Courts should apply the federal rule in order to maintain the integrity of a uniform rule in admiralty law, to enforce legitimate expectations of marine insurers, and to have insurance policies enforced as written by requiring the owners of insured vessels to comply with express policy terms.

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86. Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960).

87. Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 316–20 (1955).

88. McCarran Act of 1945, 15 U.S.C. §§ 1011–12 (1988). *See supra* note 5.

89. Under the Supremacy Clause, state law may not displace federal law. U.S. Const. Art. VI. However, state police power may be exercised to supplement federal admiralty law in the rare circumstances where it is necessary to preserve important matters of local concern. *See supra* note 62.

90. Insurance Co. v. Dunham, 78 U.S. 1 (1870).

91. *See supra* note 21.

92. Wilburn Boat Co. v. Fireman's Fund Ins. Co., 348 U.S. 310, 316–20 (1955).

When state law has been applied, the results have been inconsistent, unpredictable, and non-uniform. In *Transit Casualty,*[93] the court held that under Washington law breach of express warranties will not void the policy unless there is a causal connection between the breach and the loss.[94] This same rule was applied by the District of Oregon in *Rondys.* However, in *Highlands*, another Western District of Washington case, the parties agreed that Washington law should apply, and the court applied a new variation of Washington insurance law. The court held that marine insurance contracts are voided only upon an insured's breach of warranty if the breach contributed to the loss, or increased the risk of loss, of the type sustained.[95] Thus, the result in *Highlands* was the creation of a more "middle-of-the-road," fact-specific standard.

In *Liberati*, a California district court rejected both the "causal connection" analysis in *Rondys* and the "increased risk and related to loss" analysis in *Highlands.* It then applied a different rule under California law. The *Liberati* court held that the policy could not be voided by a breach of warranty unless the warranty was regarded as a "material" provision affecting risk, or unless the policy specifically stated that a breach would void the policy.[96] Consequently, in four separate cases, three distinct rules based on state law have emerged to confuse marine insurance law in the Ninth Circuit.

An important and well-established marine insurance rule has been replaced with a handful of different rules based on Washington and California insurance law, with no demonstrated concern for the effect such decisions might have upon the uniformity of national and international marine insurance law. While these four district court cases seem somewhat insignificant in light of the historically consistent recognition and application which the federal strict compliance rule has received, it is important that some modicum of consistency be reinstated in Ninth Circuit marine insurance cases. Although parties may appeal these erroneous decisions, federal courts should nevertheless refrain from spawning any further aberrational maritime jurisprudence.

Currently, insurers of vessels in navigation within the Ninth Circuit are unable to predict what rule will apply when policy holders breach express policy warranties. They could be subjected to the federal strict compliance rule or any of three different state rules. Thus, the owners of

93. Transit Casualty Co. v. Pedersen Fisheries, No. C83-1471R (W.D. Wash. Feb. 11, 1985).

94. *See supra* note 26.

95. Highlands Ins. Co. v. Koetje, 651 F. Supp. 346, 347 (W.D. Wash. 1987).

96. United States Fire Ins. Co. v. Liberati, 1989 A.M.C. 1436, 1441 (N.D. Cal. 1989).

every vessel traveling within the Ninth Circuit can do little more than guess at the legal effect which will be given to the express warranties within their marine insurance policies. Furthermore, insurers are at risk of being denied the right to enforce the terms of existing insurance contracts as written and are left without a useful method for motivating vessel owners to comply with express policy terms.

C. The Strict Compliance Rule: Properly Applied in the Ninth Circuit

Significantly, the strict compliance rule has been properly recognized and applied in several post-*Wilburn Boat* Ninth Circuit decisions. As in the Fifth Circuit and other jurisdictions, courts in the Ninth Circuit have recognized that, regardless of the status of the strict compliance rule at the time of *Wilburn Boat*, it is now a well-established and uniform rule.[97]

In *Campbell v. Hartford Fire Insurance Co.*,[98] for example, an insured vessel breached a "lay-up" warranty within its marine insurance policy.[99] The parties in *Campbell* recognized the strict compliance rule as controlling, stipulating that strict and literal compliance with express policy warranties was required under English law and that this rule should govern their coverage dispute. The Ninth Circuit accepted this conclusion without question.[100]

Similarly, in two cases out of the Western District of Washington,[101] marine insurers were successful in avoiding payment on insured vessel losses. The insured vessel in each case had failed to comply with express policy terms, and the policy was voided pursuant to the strict compliance rule. Even as recently as 1988, in *Northwestern National Insurance Co. v. Federal Intermediate Credit Bank*,[102] the Ninth Circuit recognized and applied the strict compliance rule.

Moreover, in *Port Lynch, Inc. v. New England International Assurety of America, Inc.*,[103] despite recognizing the recent trend among district

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97. Campbell v. Hartford Fire Ins. Co., 533 F.2d 496, 497 (9th Cir. 1976); St. Paul Fire & Marine Ins. Co. v. Ebe, No. C83-14M (W.D. Wash. March 26, 1984); Puritan Ins. Co. v. 13th Regional Corp., No. C80-717R, slip. op. at 16 (W.D. Wash. June 28, 1983).

98. 533 F.2d at 497.

99. "Lay-up" warranties require the vessel to be moored or "laid-up" during periods notorious for rough weather.

100. *Campbell*, 533 F.2d at 497 (citing Marine Insurance Act of 1906, 6 Edw. 7, c. 41, § 33(3)).

101. *Ebe*, No. C83-14M (W.D. Wash. March 26, 1984); *Puritan*, No. C80-717R (W.D. Wash. June 28, 1983).

102. 839 F.2d 1366 (9th Cir. 1988).

103. 754 F. Supp. 816 (W.D. Wash. 1991).

courts in the Ninth Circuit to ignore federal precedent and use the 1955 findings in *Wilburn Boat* to justify applying state law, the *Port Lynch* court nevertheless applied the strict compliance rule, barring coverage for an insured vessel whose owner had breached an express navigational warranty.[104] The court acknowledged that courts must consider both *Wilburn Boat*'s "well-established" federal rule inquiry, and the Ninth Circuit's uniformity requirement set forth in *Bohemia*. The court held that the strict compliance rule was not only a well-established federal rule, but that its application was mandated under the uniformity concerns of federal maritime law.[105] Additionally, the court held that the finding in *Wilburn Boat* that the strict compliance rule was not well-established was no longer accurate, expressly holding that *Wilburn Boat* does not require courts to reject solidly entrenched admiralty law.[106]

The *Port Lynch* decision properly applied both the *Wilburn Boat* test and the *Bohemia* analysis. Due to the confusion created by earlier district court decisions in the Ninth Circuit, this was a refreshing and important move in the right direction. Courts must restore the integrity of the federal maritime strict compliance rule in order to be in compliance with the analysis mandated by the Supreme Court in *Wilburn Boat*, to preserve uniformity as required under *Bohemia*, and to secure the rights and reasonable expectations of marine insurers and their insured.

IV. CONCLUSION

For almost 100 years, express warranties within marine insurance contracts have been strictly construed in United States admiralty law, and this rule is presently recognized in nearly every federal circuit. Even if the strict compliance rule was not sufficiently established at the time of *Wilburn Boat*, uniformity under *Bohemia* and fundamental principles of admiralty and federal common law dictate that whatever rule is being applied should be consistent with existing federal maritime law.

The inconsistent and confusing line of district court cases which have emerged in the Ninth Circuit during the past decade evidence a flawed perspective on *Wilburn Boat*, as well as a complete disregard for the

104. "Navigational warranties" confine a vessel to certain waters; the language of the policy makes it void if such warranties are violated.

105. *Port Lynch*, 754 F.Supp. at 824 ("[T]here is both a judicially fashioned admiralty rule which applies and a need for uniformity in admiralty practice.").

106. *Id.*

principle of uniformity acknowledged by the Ninth Circuit in *Bohemia*. These decisions run directly contrary to the well-established federal strict compliance rule and offend the principle of uniformity in federal maritime law. Courts must consider the federal interests involved, including uniformity of admiralty law and other well-established principles of federal common law before applying state law to admiralty issues.