

BAD FAITH BLOG

Insured's Material Misrepresentations/Concealments Sink Maritime Insurance Coverage

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Summary: Markel American Insurance Company filed a declaratory judgment action alleging the maritime insurance policy it issued to Veras should be declared void *ab initio*. The District Judge agreed with the Magistrate Judge's recommendations that the doctrine of *uberrima fides* governs this case, that Veras' misrepresentations and concealments violated his duty of utmost good faith, and that the District Judge should grant Markel's motion for summary judgment. With those recommendations from the Magistrate Judge and no objection from Veras, the court declared the maritime policy void *ab initio*.

Markel v. Veras

Jose Veras filed an application for insurance with Markel for his vessel. Veras obtained a \$100,000 insurance policy through Markel. While Veras was operating his vessel, he crashed and then sought insurance coverage for the damages. Markel's investigation revealed Veras concealed the following material facts: the vessel's true purchase price, the vessel was for sale, losses to vessels Veras previously owned, the number of vessels he owned, and his blood alcohol level exceeded the legal limit at the time of the accident. Markel then filed a declaratory judgment action seeking a declaration of no coverage. Markel argued the doctrine of *uberrima fides*, which requires utmost good faith by both parties in a marine insurance policy, applies in Puerto Rico. Markel further contended that the application of *uberrima fides* combined with Veras' concealment of material facts breached his duty of utmost good faith such that the maritime insurance policy should be declared null and void.

The court noted that neither the First Circuit nor Puerto Rico had adopted the doctrine *uberrima fides* as a rule of maritime law. However, a majority of the circuits recognize *uberrima fides* as entrenched in federal law. Furthermore, Puerto Rico had no insurance code regulating maritime insurance contracts.

Veras did not dispute Markel's claim that Veras' misrepresentation of the vessel's purchase price resulted in about 67% more coverage than if he had divulged the real purchase price. Moreover, Veras' concealment of his prior losses and owning other vessels prevented Markel from to doing a proper investigation into the facts of his loss experience with other vessels. Disclosure of that information might have caused his insurance premiums to be higher. Applying a narrow definition of materiality, the court found that Veras' misrepresentations to Markel affected Markel's decision to insure him. Thus, Veras breached his duty of utmost good faith.

Here, the application of the doctrine of *uberrima fides*, protected Markel from Veras' material misrepresentations. The District Court of Puerto Rico was not going to allow Veras' conduct to require Markel to pay for his vessel's damages. Instead, the Court voided the insurance policy altogether.

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