



Samuel H. Ruby
San Francisco,
Shareholder-in-Charge

Direct Dial: 415.352.2723
Fax: 415.352.2701
Email Attorney

Responsibilities imposed by the federal maritime doctrine of *uberrimae fidei*

By Samuel H. Ruby

In *New Hampshire Ins. v. C'est Moi, Inc.*, the Ninth Circuit confirmed that if it were possible for parties to modify or eliminate an insured's *uberrimae fidei* obligation through terms in a marine insurance policy, it would require very clear policy language, unequivocally disclosing a mutual intent to supersede the insured's common law obligation.

The Ninth Circuit Court of Appeals found that the language in the "Concealment or Misrepresentation" clause of a yacht insurance policy fails to supersede the insured's *uberrimae fidei* obligation that imposes a duty of utmost good faith on parties to marine insurance contracts. The clause stated:

10. Concealment or Misrepresentation

Any relevant coverage(s) shall be voided if you *intentionally* conceal or misrepresent any material fact or circumstance relating to this insurance, or your insurance application, before or after a loss.

The insured argued that this clause allowed the insurer to rescind the insurance policy only for a material misrepresentation that is intentional.

The Court rejected this argument. The Court reasoned that *uberrimae fidei* is a well-entrenched doctrine that protects not merely the insurer but also the integrity of the risk pool; and only "an unambiguous statement" in the policy, purporting to supersede the doctrine in express terms, would be sufficient to accomplish that purpose. In reviewing the "Concealment or Misrepresentation" clause, the Court found that nothing in the language of this clause indicates that it is meant to displace rights or responsibilities imposed by operation of law. The Court, therefore, concluded that pursuant to *uberrimae fidei*, the insurer may rescind the yacht insurance policy *even if* the material misrepresentation was not intentional. Because the insured's misrepresentation of the yacht's purchase price and its present insurer on the policy application constituted a material misrepresentation, the court held that the insurer may rescind the policy as a matter of law.