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PRESS RELEASE

Wiley Files Supreme Court *Amicus* Brief in Maritime Insurance Choice-of-Law Case

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Washington, DC – Working with the Supreme Court Program at the University of North Carolina School of Law, Wiley Rein LLP filed an *amicus* brief on behalf of two prominent legal scholars in a case before the United States Supreme Court involving the enforceability of a choice-of-law provision in a maritime insurance contract.

The case, *Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*, stems from a coverage dispute over damage to a yacht owned by the policyholder. The contract provides that disputes shall be adjudicated according to admiralty law or, in the absence of established admiralty principles, New York law. Following an investigation of the accident, the insurer sought to void the policy under New York law, alleging the insured had violated the terms of the maritime contract. The insured filed counterclaims under Pennsylvania law.

The fundamental issue raised by the case is what test federal courts should apply to determine the enforceability of a choice-of-law provision in a maritime contract. In an August 30, 2022, decision, the Third Circuit held that the test adopted by the Supreme Court in *M/S Bremen v. Zapata Off-Shore Co.*, a case addressing forum selection clauses, should govern choice-of-law clauses as well.

The *amicus* brief, filed in support of neither party, asserts that the Third Circuit erred in adopting the test stated in *The Bremen*, without expressing an opinion as to whether *The Bremen* states the correct test regarding forum selection clauses. It argues that the enforceability of a maritime contract's choice-of-law provision is a question of federal common law. The brief further asserts that the Supreme Court should hold that federal common law incorporates the

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traditional test for enforceability of choice-of-law provisions stated in the Restatement (Second) of Conflict of Laws § 187. Under § 187, the law of a state designated in a contractual choice-of-law clause will apply unless (1) the designated state does not have a substantial relationship to the parties or the transaction and there is no other reasonable basis for the parties' choice, or (2) applying the law of the designated state would be contrary to a fundamental policy of the state whose law would otherwise apply and that state has a materially greater interest than does the designated state in the determination of the particular issue. Finally, the brief contends that the Court should adopt § 187 even if it determines that state law rather than federal common law applies.

Wiley filed the brief on behalf of John F. Coyle, the Reef C. Ivey II Distinguished Professor of Law at the University of North Carolina School of Law, and Kermit Roosevelt III, the David Berger Professor for the Administration of Justice at the University of Pennsylvania School of Law. Professor Coyle is viewed as the leading scholar in the United States on choice-of-law and forum selection clauses, and Professor Roosevelt is the Reporter for the Restatement (Third) of Conflict of Laws. They both have written extensively about conflicts of laws.

Adopting a uniform federal common law for resolving choice-of-law disputes in maritime contracts would "serve the critical function of providing the parties with a consistent means for predicting when a choice-of-law clause will be enforced and, consequently, which state's laws will govern their rights and liabilities when federal law does not," according to the brief. "Such predictability is essential for parties drafting maritime contracts; the parties need to know whether and how their contract will be enforced."

Professor Coyle and Professor Roosevelt are represented as *amici* in this case by Wiley partner Richard A. Simpson and Professor F. Andrew Hessick of the University of North Carolina School of Law. They were assisted by law students Michael Conway and Megan Laney and Wiley project assistant Sophia Winston-Mendoza.