# In the
# Indiana Court of Appeals

## Case No. 25A-PL-01073

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| STARR INDEMNITY & LIABILITY INSURANCE CO., et al.,<br><br>*Appellants*,<br><br>v.<br><br>AMERICAN COMMERCIAL BARGE LINE LLC,<br><br>*Appellee*. | ) | Appeal from the Marion County Superior Court, DO1<br>Trial Court Case No.: 49D01-2011-PL-040621<br><br>The Honorable Christina R. Klineman, Judge |

**BRIEF OF *AMICUS CURIAE* UNITED POLICYHOLDERS IN SUPPORT OF APPELLEE AMERICAN COMMERCIAL BARGE LINE LLC**

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## STATEMENT OF INTEREST

United Policyholders is a unique non-profit, tax-exempt, charitable organization founded in 1991, that educates and assists individual and business consumers on insurance matters and works to secure the loss indemnity objective for which people buy insurance. United Policyholders monitors legal developments in the insurance marketplace and serves as a voice for policyholders in legislative and regulatory forums. United Policyholders helps preserve the integrity of the insurance system by advocating for fair sales and claims practices. Grants, donations, and volunteers support the organization's work. United Policyholders does not accept funding from insurance companies.

In furtherance of its mission, United Policyholders keenly evaluates pending appeals and, where appropriate, appears as *amicus curiae* in significant cases nationwide to advance the policyholder's perspective on insurance issues likely to have widespread impact. Since 1991 United Policyholders has filed hundreds of *amicus curiae* briefs in federal and state appellate courts across the country. A list of United Policyholders *amicus* submissions can be found here: https://uphelp.org/advocacy/amicus-library/. *Amicus* briefs filed by United Policyholders have been expressly cited in the opinions of state supreme courts as well as the U.S. Supreme Court. *See Humana Inc. v. Forsyth*, 525 U.S. 299, 314 (1999); *Julian v. Hartford Underwriters Ins. Co.*, 110 P.3d 903, 911 (Cal. 2005); *Cont'l Ins. Co. v. Honeywell Int'l, Inc.*, 188 A.3d 297, 322 (N.J. 2018); *Allstate Prop. & Cas. Ins. Co.*

*v. Wolfe*, 105 A.3d 1181, 1185-6 (Pa. 2014). A United Policyholders' *amicus* brief has also been referenced by the Indiana Court of Appeals in *Commonwealth Land Title Ins. Co. v. Robertson*, 5 N.E.3d 394 (Ind. Ct. App. 2014).

Here, United Policyholders identified the Starr[1] appeal asking this Court to overturn the trial court decision and apply federal admiralty law to govern claims of a nonmarine nature—despite the absence of a choice-of-law clause, much less one invoking admiralty jurisdiction—as seeking a sea change in how courts interpret policies providing an extensive array of nonmarine coverages. Thus, United Policyholders recognizes this case as one with potentially vast implications regarding the protection of rights and expectations for the policyholder community rather one unique to a single insured. United Policyholders is aligned with American Commercial Barge Line LLC ("ACBL") in seeking to affirm the trial court rulings rejecting the application of admiralty law to interpret the policy, concluding that the Starr policies are governed by Indiana law, and finding that the Watercraft Exclusion inapplicable to deny coverage for a claim arising out of the handling and disposal of hazardous substances.

[1] "Starr" refers collectively to Appellants Starr Indemnity & Liability Insurance Company, StarNet Insurance Company, XI Specialty Insurance Company, and Underwriters of Lloyd's of London, Syndicate 1861.

## SUMMARY OF ARGUMENT

As a threshold issue, the trial court correctly determined that the umbrella policies Starr sold ACBL are not maritime contracts subject to admiralty jurisdiction and federal admiralty law because they provide broad-based, nonmarine coverages that are clearly distinct and separate from whatever maritime risks they cover. The trial court's decision not only comports with persuasive precedent from the Seventh Circuit finding such "bumbershoot" policies subject to state law, but it is also consistent with Indiana public policy and well-settled notions of federalism reserving the issue of insurance law as a matter best left to the States. Indiana courts have long demonstrated their unyielding commitment to enforcing the reasonable expectations of Hoosier policyholders in interpreting insurance policies. Similarly, Congress has steadfastly allowed states to serve as the regulators of insurance—including policies like those Starr sold to ACBL—to citizens and businesses operating within their borders. There is no reason for this Court to deviate from the guidance the Seventh Circuit has provided, disregard Indiana public policy, or upend Congress' deferral of the regulation and interpretation of liability insurance as matters best reserved to and for the States.

Alternatively, even if this Court concluded that the umbrella policies Starr sold ACBL are maritime insurance policies, the CERCLA claim the U.S. Environmental Protection Agency ("EPA") asserted against ACBL implicating the nonmarine coverages in those policies should still be decided under state law because admiralty law is not

sufficiently developed to decide such questions. Instead, in *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310 (1954), the U.S. Supreme Court directed courts to apply state law to decide questions involving maritime insurance policies when there is no federal statute or judicially established federal rule that applies to such claims. *Id*. at 313-14. Not only is the deferral by a federal court to use state law to resolve insurance coverage disputes on marine policies authorized, but it is actually the preferred course of action. Therefore, *Wilburn Boat* provides separate and independent grounds for affirming the trial court's decision applying state law to decide ACBL's right to coverage for the CERCLA claims EPA asserted against it.

## ARGUMENT

### A. The Umbrella Policies Starr Sold ACBL Are Not Maritime Contracts Due to Their Mixed Nature and Inclusion of Broad-Based, Nonmarine Coverages.

#### 1. Starr policies are not maritime contracts because they carry wider portfolio of nonmarine and mixed coverages than marine coverages.

While marine contracts are subject to federal admiralty jurisdiction (and marine Insurance policies may be governed by either federal or state law, *see infra.*), nonmarine contracts are governed by state law. *Norfolk So. Ry. Co. v. Kirby*, 543 U.S. 14, 22-23 (2004). Starr tries to convince this Court that the umbrella policies it sold ACBL are maritime contracts under *Kirby* because they include marine coverages, but *Kirby* did not deal with insurance, much less an excess policy providing coverage for a variety of nonmarine and mixed perils in addition to marine coverage. Instead, *Kirby* dealt with simple bills of

lading for the shipment of goods via ocean from Australia to Georgia followed by a comparatively short rail journey to Alabama. 543 U.S. at 23-25. Because of the mixed elements of the contract, the Court recognized the test of whether such a contract was maritime in nature depended upon the nature and character of the contract. *Id*. at 22-23. In analyzing whether to apply maritime jurisdiction to claims arising out of the rail portion of this multimodal journey, the Court focused on whether the principal objective of the contract was maritime commerce, the protection of which would be served via maritime jurisdiction. *Id*. at 25. The Court held that the bills of lading were maritime contracts because their purpose was "to effectuate maritime commerce." *Id*. at 24.

In contrast to the overwhelming portion of the shipping process for the bills of lading in *Kirby* involving maritime transport and commerce, Starr's umbrella policies provide more extensive coverage for nonmarine and mixed risks than for marine risks. *See Hartford Fire Ins. Co. v. Harborview Marina & Yacht Club Cmty., Ass'n*, 2016 U.S. Dist. LEXIS 170438, *12 (D. Md. Dec. 9, 2016) (recognizing most mixed contracts do not lend themselves to the objective geographical analysis employed in *Kirby*). Because the Starr umbrella policies are mixed excess policies, understanding the scope of coverages they provide necessitates a review of both the umbrella policies themselves and the underlying primary policies, which were also issued by Starr. (Appellees App. Vol. 2 p. 93-171 (2012 first- and second-layer policies).) Beyond the marine coverage (i.e., "Protection and Indemnity") in Starr's policies, those policies also contained mixed

coverages (e.g., employers liability covering sailing and shore-based employees) and numerous nonmarine coverages including general liability, premises liability, auto, workers comp, and other exposures. Because the Starr policies provided more mixed and nonmarine coverages than marine coverage, a significant part of the nature and character of those policies was to protect ACBL against nonmarine claims and losses rather than to promote maritime commerce. Accordingly, the Starr umbrella policies are properly considered nonmarine contracts subject to state law.

This conclusion is consistent with persuasive authority from the Seventh Circuit analyzing an excess policy providing marine and nonmarine coverages. *See St. Paul Travelers Cos., Inc. v. Corn Island Shipyard, Inc.*, 495 F.3d 376 (7th Cir. 2007). In *Corn Island,* the Seventh Circuit found that when an insurance policy covers both marine and nonmarine risks, and the coverages in the policy are similar to those purchased by non-maritime companies, the policies are nonmarine contracts subject to state law. *Id.* at 381 n.4. This description fits the Starr umbrella policies to a tee and supports the trial court's determination below that the Starr umbrella policies are nonmarine contracts subject to state law. This Court should adhere to the Seventh Circuit's guidance in *Corn Island* and affirm the trial court's ruling that the Starr umbrella policies are nonmarine contacts governed by state law.

**2. The Court should protect policyholders' reasonable expectation that state law governs nonmarine insurance policies and coverages.**

Indiana courts consistently protect and enforce the reasonable expectations of policyholders and insurers when analyzing coverage under an insurance policy. *See, e.g., McGuire v. Century Surety Co.,* 861 N.E.2d 357, 363 (Ind. Ct. App. 2007) ("[T]he policy will be enforced to satisfy the reasonable expectations of the insured."); *Argonaut Ins. Co. v. Jones,* 953 N.E.2d 608, 619 (Ind. Ct. App. 2011), *trans. denied* (identifying the reasonable expectations of the policyholder and insurer as critical factor in determining coverage); *Eli Lilly & Co. v. Home Ins. Co.,* 482 N.E.2d 467, 470 (Ind. 1985) (Indiana courts employ basic principles governing interpretation of insurance policies to give effect to parties' reasonable expectations.)

Policyholders commonly buy policies providing a range of coverages via a single package policy or an insurance tower with umbrella and excess layers. When policyholders purchase policies providing a mix of marine and nonmarine coverages, they do not reasonably or expect admiralty law to apply to risks or claims arising out of their land-based operations, activities, operations, workforce, and facilities. After all, Indiana courts interpret insurance policies based on the perspective of an ordinary policyholder of average intelligence. *Erie Indem. Co. v. Estate of Brian L. Harris,* 99 F.3d 625, 630 (Ind. 2018); *Allgood v. Meridian Sec. Ins. Co.,* 836 N.E.2d 243, 246-47 (Ind. 2005). Here, no ordinary policyholder of average intelligence would think the Starr umbrella policies—that provide significant nonmarine coverages—would be subject to maritime

law and admiralty jurisdiction, particularly in the absence of a choice-of-law clause in the policies. Instead, an ordinary policyholder of average intelligence would expect its policies containing broad-based, nonmarine risks alongside marine and mixed risks to be governed by state law.

However, the facts in this case make clear that neither Starr nor ACBL reasonably expected the Starr umbrella policies to be subject to admiralty law because the underlying primary policies—which were also issued by Starr—contained a choice-of-law clause selecting New York law to govern those policies. (Appellants' App. Vol. 2 p. 41.) Although the Starr umbrella policies did not "follow form" with respect to the choice-of-law clause in the primary policies (*id.* at p. 66.), Starr's inclusion of the New York choice-of-law clause in the primary policies suggests that neither ACBL nor Starr would consider an excess policy with a variety of nonmarine coverages as being subject to anything other than state law. Starr's inclusion of the New York choice-of-law clause in the underlying policies also indicates that Starr considered the application of maritime law unsuitable to a policy with nonmarine coverages.

Moreover, policyholders would reasonably expect policies with nonmarine or mixed marine and nonmarine risks being governed by state law because policyholders can be expected to have some knowledge of state law. Policyholders would not reasonably expect admiralty law to govern their policies with extensive nonmarine risks and coverages because they would have little to no understanding how admiralty law

would apply to such nonmarine risks and claims. Admiralty law is comprised of not only the common law of federal admiralty courts but also international treaties and other sources. Even Starr acknowledges the arcane nature of admiralty law as applied to marine insurance by characterizing it as:

> [a] complex and esoteric field. It is governed by numerous norms, customs and practices, some of which date back centuries. Some of these norms are designed to "keep in harmony with the marine insurance laws of England."

(Appellants' App. Vol. 3 p. 132.) Thus, admiralty law is something far beyond the understanding of an ordinary policyholder of average intelligence and well outside the policyholder's reasonable expectations of what law would govern its policies. Because the Starr umbrella policies do not contain a maritime choice-of-law clause, applying maritime law to the policies would disregard the parties' reasonable expectations in entering into those contracts. Therefore, the Court should deny Starr's request and affirm the trial court's decision to apply state law to the Starr umbrella policies.

*3.* **Applying state law to interpret insurance policies is consistent with Congress having long ceded regulation of insurance to the States.**

Prior to the issuance of the Supreme Court's opinion in *U.S. v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944), the regulation of the business of insurance was traditionally considered to fall exclusively within the ambit of the authority of the individual States. *F.T.C. v. Travelers Health Ass'n*, 362 U.S. 293, 303 (1960) (citing dissenting opinion, J. Harlan); *see also St. Paul Fire & Marine Ins. Co. v. Barry*, 438 U.S. 531, 538-39 (1978) ("Prior to that decision, it had been assumed . . . that the issuance of an insurance

policy was not a transaction in interstate commerce and that the States enjoyed a virtually exclusive domain over the insurance industry.") The *S.-E. Underwriters* opinion, holding for the first time that insurance was subject to regulation under the interstate commerce clause, 322 U.S. 533, 552-53, shocked observers, commentators, and Congress itself. *ESAB Group, Inc. v. Zurich Ins. PLC,* 685 F.3d 376, 380 (4th Cir. 2012). The response from Congress to *S.E. Underwriters* was swift and decisive.

One year later, in 1945, Congress passed the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, to allay any doubts raised by *S.-E. Underwriters* that Congress viewed the regulation of insurance as a matter best reserved to state law and, through that statute, sought to restore that authority to the States. *Travelers Health,* 362 U.S. at 299, 303. As the Supreme Court later observed, the McCarran-Ferguson Act provides that "'[t]he business of insurance' shall be recognized as a subject of state regulation, 15 U.S.C. § 1012(a), which shall be good against preemption by federal legislation unless that legislation 'specifically relates to the business of insurance,' § 1012(b)." *American Ins. Ass'n v. Garamendi*, 539 U.S. 396, 427-28 (2003) (citing 15 U.S.C. § 1012). Congress also declared that the policy behind the McCarran-Ferguson Act was that "'continued regulation and taxation by the several States of the business of insurance is in the public interest' and 'silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States.'" *Id.* at 428 (quoting 15 U.S.C. § 1011).

Thus, Congress plainly stated its intent in leaving insurance as a matter generally within the legal realm of the States "[w]as to limit congressional preemption under the commerce power, whether dormant or exercised." *Id*. at 428. Notably, one of the primary arguments in favor of leaving the regulation of insurance to the States, as confirmed by the McCarran-Ferguson Act, was that the States were in close proximity to the policyholders affected by the insurance business and, therefore, in a better position that the federal government to regulate the insurers selling business within their States. *Travelers Health,* 362 U.S. at 302 (citing 91 Cong.Rec. 1087; 90 Cong.Rec. 6532. Joint Hearings before the Subcommittees of the Committees on the Judiciary on S. 1362, H.R. 3269, H.R. 3270, 78th Cong., 1st Sess. 17, 37, 117, 238—239, 242—243, 244, 252).

The crux of McCarran-Ferguson and the subsequent Supreme Court precedent analyzing it is unmistakable—namely, that insurance is a matter best reserved for the States. Accordingly, the States have created departments of insurance, like the Indiana Department of Insurance ("IDOI"), that regulate the sale of insurance and handling of insurance claims within their borders. Three of the Starr Appellants—namely Starr Indemnity & Liability, StarNet, and XL Specialty—are all regulated by the IDOI.[2]

[2] The IDOI's Compliance Express Webpage permits queries "against IDOI live data on Individuals/Entities holding a license/registration" at https://www.in.gov/idoi/companyentity-financial-compliance/. Searching this Webpage for the Starr Insurer Appellees confirms the following are licensed and registered with the IDOI: (1) Starr Indemnity - (*see* https://www.sircon.com/ComplianceExpress/Inquiry/consumerInquiry.do); (2) StarNet - (*see* https://www.sircon.com/ComplianceExpress/Inquiry/consumerInquiry.do; and (3) XL Specialty

Throughout our nation's history state courts have adjudicated insurance coverage disputes as matters of contract law according to the applicable state identified by choice-of-law clauses within the policy at issue or through the choice-of-law rules followed by the courts of that State. In contrast, because insurance policies have not been regulated by Congress, there is no significant body of federal caselaw available to courts to assist them in adjudicating insurance coverage disputes. This deficiency in federal common law is particularly acute with respect to nonmarine claims like those at issue in this case.

Policyholders are well aware that the States reign supreme with respect to the sale and regulation of insurance. Insurance policies often contain special notices or endorsements that are applicable to individual states or identify the department of insurance for a particular state for reporting complaints or addressing questions about the policy. Policyholders do not view the purchase of insurance as a transaction within the purview of their Federal Government.

At its heart, the decision to leave the regulation of insurance and the interpretation of insurance policies subject to state law is one of the hallmarks of our nation's system of federalism. To uproot this long-settled approach established by Congress and acknowledged by our Supreme Court would be anathema to this principle. Further, applying admiralty law to decide a policyholder's rights and an insurer's obligations

- (*see* https://www.sircon.com/ComplianceExpress/Inquiry/consumerInquiry.do). The Court may take judicial notice of these publicly available facts under Ind. Evidence Rule 201(a)(1)(B).

under a nonmarine claim for a policy that includes nonmarine coverages would disrupt policyholder expectations and create incredible chaos for our courts. Just because particular classes of policyholders (e.g., boat owners, ports, shippers, boat builders, marina operators, etc.) may purchase policies that include marine coverages alongside mixed and nonmarine coverages, if such policies lack a choice-of-law clause, there is no reason to think such policyholders would expect maritime law to govern their nonmarine claims. No court should substitute its judgment to apply admiralty law to decide nonmarine claims in disregard for this well-settled model of federalism reserving the regulation of insurance—and the interpretation of those policies—to the States and state law. Accordingly, this Court should affirm the trial court's ruling refusing to apply admiralty law to the Starr umbrella policies.

### B. Even if Starr Umbrella Policies Are Considered Maritime Contracts, Nonmarine Claims Remain Subject to State Law Because Admiralty Law Lacks Applicable Federal Statute or Judicial Rule to Address Such Claims.

#### 1. *Wilburn Boat* requires application of state law to ACBL's nonmarine claims.

Even if this Court reversed the trial court to find that that the Starr umbrella policies are maritime contracts, the application of admiralty law across the board for any claims or disputes arising under those contracts is not a *fait accompli*. To the contrary, the Supreme Court recognized in *Kirby* that maritime contracts must "clear a second hurdle before applying federal law in their interpretation," which involves an inquiry of whether the nature of the case is "inherently local." 543 U.S. at 25. When the case is "inherently

local," the Supreme Court recognized that state law supplants admiralty law to control the interpretation of the contract before it. *Id.* Here, ACBL is an Indiana-based company seeking property damage coverage for defense and indemnity of EPA's CERCLA claim, which seeks to hold ACBL liable for the presence of hazardous substances allegedly improperly handled, stored, and disposed of at a Louisiana site that was patroned by ACBL's corporate predecessor. This case is inherently local. The interpretation of the subject policies focuses on ACBL's right to reimbursement for past expenses, as well as future cleanup expenses, which will be paid out of ACBL's Indiana headquarters, and the environmental contamination is specific to a single, land-based site in Louisiana, both of which are of inherently local character. .In addition, neither has a connection to alleged losses occurring on a navigable waterway of the U.S. or international waterways or arises from a loss specifically arising from a scheduled marine vessel, thereby implicating the priority of local state law, rather than admiralty law, over such disputes.

While *Kirby* sets forth a test for determining whether admiralty or state law should apply to questions of contract interpretation, *Wilburn Boat* is the landmark case serving as controlling precedent in determining when a maritime insurance policy clears that second hurdle. Under *Wilburn Boat*, the Supreme Court established the rule that marine insurance policies are governed by state law when there is no federal statute or judicially recognized federal admiralty rule that applies to the claim at hand. 348 U.S. at 314-20; *see also Great Lakes Ins. SE v. Raiders Retreat Realty Co., LLC*, 601 U.S. 65, 70 (2024) (following

*Wilburn Boat* and stating that determination of whether an "established" maritime rule exists for the purpose of applying admiralty law depends on identification of a controlling federal statute or "a body of judicial decisions")

Importantly, the Supreme Court held in *Wilburn Boat* that application of state law to resolve marine insurance policy disputes is not merely authorized but is preferred. *Id.* at 319 (rejecting the unwieldy and inadequate nature of federal courts trying to fashion new federal judicial maritime rules regarding interpretation of marine insurance policies on a piecemeal, case-by-case basis when existing state laws suffice for the question at hand). The Supreme Court recognized that the primary rationale for applying state law rather than admiralty law to govern the analysis of marine insurance coverage claims was due to the long history of state legislatures and state courts treating marine insurance as controlled by state law, just like other types of insurance: *Id.* at 317. Further, the Court explained that this application of state law to cases involving marine insurance had been well settled throughout our nation's history:

> Under our present system of diverse state regulations, which is as old as the Union, the insurance business has become one of the great enterprises of the Nation. Congress has been exceedingly cautious about disturbing the system, even as to marine insurance, where congressional power is undoubted. *We, like Congress, leave the regulation of marine insurance where it has been—with the States*.

348 U.S. at 319-21 (emphasis added) (citations omitted).

Therefore, *Wilburn Boat* is in harmony with other Supreme Court precedent cited above recognizing the demarcation between the States and the federal government

reserving the regulation and interpretation of insurance to the States. Here, Indiana has a strong interest in overseeing and governing disputed insurance claims, including disputes relating to marine insurance. As previously noted, three of the Starr Insurers—Starr, StarNet, and XL Specialty—are regulated by the IDOI. Part and parcel of Starr agreeing to sell insurance to Hoosier policyholders and being regulated by the IDOI also presumably carries an understanding that the insurers are subject to state law with respect to the sale of those policies and disputes arising out of them, particularly with respect to policies that do not include a choice-of-law clause selecting application of another jurisdiction's laws.

**2. Indiana's choice-of-law rules apply because Starr policies lack choice-of-law clause and admiralty law lacks established rules for resolving ACBL's claim.**

In this case, the trial court found that the Starr umbrella policies have no choice-of-law provisions, and Starr has not challenged this ruling on appeal. Likewise, there is no federal statute or judicially established federal maritime rule governing the choice-of-law for marine policies that do not contain their own choice-of-law provisions. Similarly, there is no federal statute of recognized maritime rule in federal common law requiring courts to impose the choice-of-law clause in an underlying policy to an umbrella or excess policy that does not contain its own choice-of-law clause.

While Starr appears to have waived this issue on appeal, it cited no statute or caselaw that supports an argument that the choice-of-law clause in an underlying policy should be carried over to an umbrella policy that does not contain its own choice-of-law

clause or any "follow-form" language with respect to the underlying policy's choice-of-law provisions. Starr attempts to get around the requirement for a federal statute or established judicial maritime rule by presenting an affidavit from Starr's own purported expert and employee about Starr's expectations. (App. Vol. 3 p. 185, 200.) However, such self-serving testimony fails to satisfy the requirement of either a federal statute or a well-developed "body of judicial decisions" necessary to demonstrate an "established" maritime rule governing the choice-of-law issue as to Starr's umbrella policies. *See Raiders Retreat*, 601 U.S. at 70. Therefore, even if this Court reverses the trial court ruling by holding that the Starr umbrella policies are not marine contracts, Indiana's choice-of-law rules still apply to those policies.

**3. Adherence to *Wilburn Boat* is clear and consistent.**

The Supreme Court continues to acknowledge *Wilburn Boat* as the controlling precedent setting forth the rule that marine insurance is governed by state law where no federal statute or judicially established federal admiralty rule applies. As recently as 2024, in *Raiders Retreat,* the Court analyzed the enforceability of a New York choice-of-law provision in a marine policy with respect to a policyholder's claim seeking to invalidate that clause on public policy grounds to permit the policyholder to pursue contract claims under Pennsylvania law. The Court first held that there is an established federal maritime rule in admiralty caselaw recognizing the enforceability of choice-of-law provisions in marine contracts. 601 U.S. at 70. In doing so, the Court recognized the importance of

*Wilburn Boat* for cases—like ACBL's—where no federal statute or established federal maritime rule exists:

> Exercising that authority, federal courts follow previously "established" maritime rules *Wilburn Boat Co. v. Fireman's Fund Ins. Co.*, 348 U.S. 310, 314, 75 S. Ct. 368, 99 L. Ed. 337 (1955). No bright line exists for determining when a federal maritime rule is "established," but a body of judicial decisions can suffice. *See Bisso v. Inland Waterways Corp.*, 349 U.S. 85, 89-90, 75 S. Ct. 629, 99 L. Ed. 911 (1955). In the absence of an established rule, federal courts may create uniform maritime rules. . . . When no established rule exists, and when the federal courts decline to create a new rule, federal courts apply state law. *See Wilburn Boat*, 348 U.S. at 320-21, 75 S. Ct. 368, 99 L. Ed. 337.

*Raiders Retreat*, 601 U.S. at 70 (citation omitted). Thus, the Court recognized the benefits of identifying the governing law for a marine policy in advance via inclusion of an explicit choice-of-law clause, but nothing in this holding suggests the forum state's choice-of-law rules would not apply when the policy has *no* choice-of-law provision.

Similarly, despite Starr's professed reliance on *Kirby*, the Supreme Court recognized in that case that "not 'every term in every maritime contract can only be controlled by some federally defined admiralty rule.'" The Supreme Court also observed this precedent in *Kossick v. United Fruit Co.*, 365 U.S. 731, 742 (1961) (stating "[t]he application of state law in [*Wilburn* Boat] was justified by the Court on the basis of a lack of any provision of maritime law governing the matter there presented.").

Numerous district court cases within the Seventh Circuit have likewise cited and applied this bedrock rule set forth in *Wilburn Boat* that courts should apply state law to resolve marine policy interpretation questions when there is no federal statute or

established judicial maritime rule to do so. *See Cont'l Ins. Co. v. George J. Beemsterboer, Inc.*, 148 F. Supp. 3d 770, 780 (N.D. Ind. 2015) (finding no conflict between federal law and Indiana law on rules for interpreting insurance policies in opting to apply Indiana law to interpret policy and, therefore, declining to create a new federal rule); *Egan Marine Corp. v. Great Am. Ins. Co.*, 531 F. Supp. 2d 949, 953-54 (N.D. Ill. 2007) (applying New York law to interpret coverage for firefighting and salvage of vessels in absence of controlling federal maritime law on these issues); *Progressive Northern Ins. Co. v. Bachmann*, 314 F. Supp. 2d 820, 828-29 (W.D. Wis. 2004) (rejecting marine insurer's request to apply increasingly questioned federal doctrine of *uberrimae fidei* potentially abrogated by *Wilburn Boat* and choosing to apply Wisconsin law to decide rescission claim); *Cont'l Ins. Co. v. Garrison*, 54 F. Supp. 2d 874, 880-81 (E.D. Wis. 1999) (applying Wisconsin choice-of-law rules to marine policy due to lack of admiralty choice-of-law rules and determining Wisconsin law governs policy due to most significant contacts with the policy).

These cases demonstrate that the trial court's ruling applying Indiana choice-of-law rules to determine Indiana law governs the interpretation of the Starr umbrella policies is in accord with *Wilburn Boat* and its progeny. Because there was no choice-of-law clause in the Starr umbrella policies and there is no federal statute or established judicial maritime rule regarding application of choice-of-law to such a policy, the trial court properly looked to Indiana law as controlling. Thus, there is no reason to disturb the trial court's finding that Indiana choice-of-law rules dictated the application of

Indiana law to resolve ACBL's nonmarine, general liability claim arising out of the handling and disposal of hazardous substances under the Starr umbrella policies either. Similarly, there is no federal statute or judicially established maritime rule governing the interpretation of a nonmarine claim under a marine or mixed marine and nonmarine policy relating to liability for disposal of hazardous substances under CERCLA so the trial court properly applied Indiana law to that claim.

## CONCLUSION

For all the above reasons, *Amicus Curiae* United Policyholders respectfully requests that this Court affirm the trial court's ruling (1) finding that the Starr umbrella policies are not maritime contracts subject to federal admiralty law, and (2) that, even if considered marine policies, they are still governed by Indiana state law because admiralty law lacks any definitive guidance for resolving ACBL's general liability coverage claim involving land-based environmental contamination.

Respectfully submitted,

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**WORD COUNT CERTIFICATE**

The undersigned hereby certifies that the foregoing Brief of Amicus Curiae, United Policyholders, complies with Indiana Appellate Rule 44(E) word limitation in that it contains less than 7,000 words, excluding the items specified in Appellate Rule 44(C), as calculated by the word processing program used to create this brief, which is Microsoft Word.

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## CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, the foregoing Brief of *Amicus Curiae* United Policyholders in Support of Appellee American Commercial Barge Line LLC was filed with the Clerk of the Indiana Court of Appeals and served upon the following counsel of record via the Indiana Electronic Filing System:

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