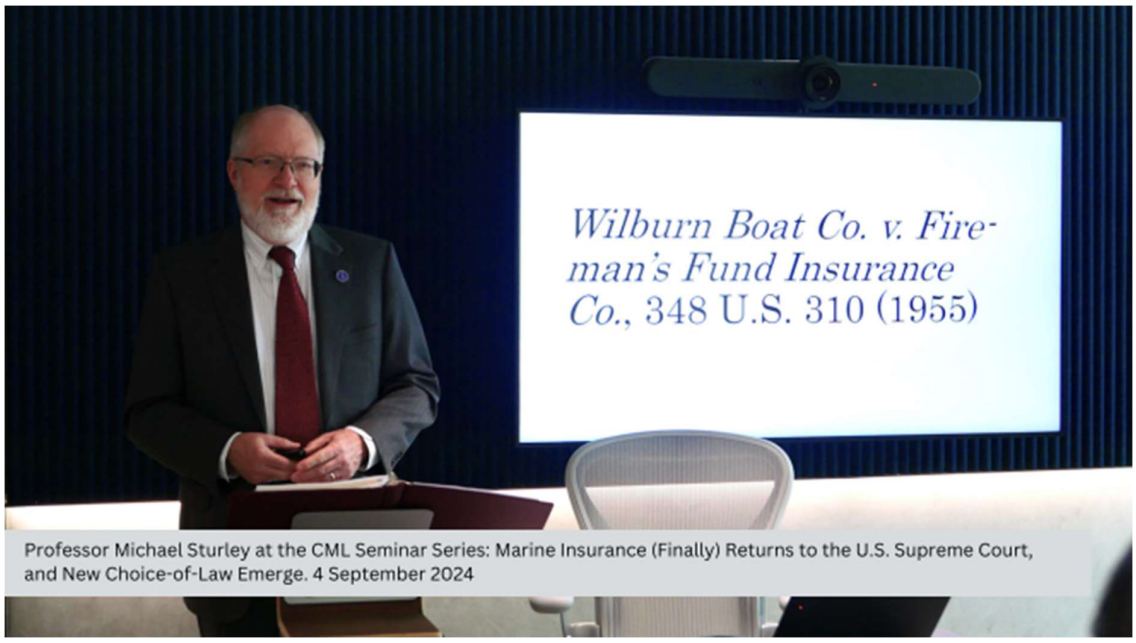
CML Seminar Series: Marine Insurance (Finally) Returns to the US Supreme Court, and New Choice-of-Law Emerge

4 September 2024
The Executive Centre, Level 7, Capital Square



Professor Michael Sturley at the CML Seminar Series: Marine Insurance (Finally) Returns to the U.S. Supreme Court, and New Choice-of-Law Emerge. 4 September 2024

The Centre for Maritime Law was pleased to have Professor Michael F Sturley, from the University of Texas at Austin speak at the CML Seminar Series on 'Marine Insurance (Finally) Returns to the US Supreme Court, and New Choice-of-Law Rules Emerge' held on 4 September 2024 from 4:30 pm to 6:00 pm.

Professor Sturley opened the session with a historical overview, highlighting the controversial *Wilburn Boat Co v Fireman's Fund Insurance Co* 348 US 310 (1955). The case set a precedent for state laws to govern marine insurance. However, it did not establish a definitive federal maritime rule on governing warranties, resulting in a long-standing and unnecessary influence on creating legal inconsistencies for over seventy years.

Professor Sturley then outlined the facts of *the Great Lakes Insurance SE v Raiders Retreat Realty Co*, 601 US 65 (2024) decision – the Supreme Court's first review of choice-of-law provisions in maritime contracts since the *Wilburn Boat* decision. Following a maritime accident in Florida, the key issue was whether a choice of New York law in a marine insurance contract should be upheld against claims that such an application would contravene Pennsylvania's public policy on insurance. The Third Circuit previously allowed for a public policy exception, suggesting that state-specific public policy could override the agreed-upon choice of law in maritime contracts. The Supreme Court, however, ruled

that choice-of-law provisions are 'presumptively' enforceable under federal maritime law, with 'presumptively' emphasising exceptions, such as contravening a federal statute, conflicting with established federal maritime policy, or the absence of a reasonable basis for the chosen jurisdiction.

At the end of the session, Professor Sturley posed several questions to be answered 'in practice', including whether lower courts will limit *Wilburn Boat* to warranty cases or localised disputes or whether courts will limit *Raiders Retreat* to choice-of-law clauses. He also pondered whether courts applying *Wilburn Boat* would be more willing to find established federal law and, more notably, whether insurers would make *Wilburn Boat* irrelevant by including choice-of-law clauses in every policy. The scope of choice-of-law clauses to specific maritime disputes was also questioned. In the Q&A session that followed, attendees probed these questions, asking about how and to what extent this case would influence future cases in the US jurisdiction, interrogating the relationship between state courts and federal courts.

Professor Sturley concluded by accentuating the Supreme Court's commitment to promoting uniformity in federal maritime law. He speculated on the future route of maritime law, considering whether new federal guidelines might emerge to clarify further the application of state versus federal laws in maritime contexts. He also posited that the *Raiders Retreat* decision would likely encourage the specification of favourable jurisdictions within maritime contracts. More particularly, he noted that New York law, known for its sophisticated and insurance-favoured commercial regulations, would likely become the most favoured choice for insurers and what effect this would have in the future.