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Firm Dives Into Supreme Court Battle Over Blackbeard's Ship

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September 20, 2019 — The firm has dived deep into a dispute over the wreckage of legendary pirate Blackbeard's flagship that has reached the nation's highest court.

On Aug. 12, HHR filed a brief for amicus curiae New York City Bar Association in a case on deck for the U.S. Supreme Court's next term beginning in October that will determine whether state governments have sovereign immunity from copyright lawsuits.

The brief, among more than a dozen filed by prominent groups last month, supports reviving a 1990 federal law that allows copyright owners to sue states for infringement. Other amici include the U.S. Chamber of Commerce, Dow Jones & Co., the Recording Industry Association of America and Oracle America Inc.

In June, the Supreme Court agreed to hear an appeal from documentary filmmaker Frederick Allen. His video company has been filming the salvage of Queen Anne's Revenge, the pirate ship that sank off North Carolina's coast in 1718, ever since the wreck was re-discovered in 1996. North Carolina, which owns the ship and its artifacts, allowed Allen to retain copyright in the footage in exchange for his services.

Allen sued the state in 2015 for \$8.2 million for posting some of his videos online and using an image in print materials without his permission. The U.S. Court of Appeals for the Fourth Circuit dismissed his case last year, ruling the 1990 Copyright Remedy Clarification Act unconstitutional. The Fourth Circuit agreed with North Carolina that states are immune under the 11th Amendment to the Constitution from private copyright infringement claims.

HHR's brief argues that states surrendered any claim of sovereign immunity from copyright lawsuits when they ratified the U.S. Constitution. "The plain language of the Copyright and Patent Clause, along with its legal context and history, make clear that Congress was empowered to grant exclusive rights to individuals over their writings and inventions," the brief states.

The case has garnered attention in [The New York Times](#), [USA Today](#), the [Los Angeles Times](#), [Bloomberg](#), [Reuters](#), [The Hollywood Reporter](#), [Law360](#) and other news sources.

Jim Klaiber and Olivia Bensinger prepared the brief as members of the NYCBA Council on Intellectual Property. Klaiber was appointed chair in April and appointed Bensinger as secretary. Summer associate Siobhan D'Angelo and senior litigation paralegal Jeff Bednar assisted them.

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