

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
Northern Division

GREAT LAKES EXPLORATION)
GROUP LLC)
Plaintiff,)
v.)
The Unidentified, Wrecked and (For)
Salvage-Right Purposes), Abandoned)
Sailing Vessel, her tackle,)
apparel, appurtenances, cargo, etc.)
located within a circle having)
a radius of 3.5 statute miles, whose)
center point is at coordinates)
45° 32.8' North latitude and 86° 41.5')
West longitude,)
In Rem)
Defendant.)

Civil Action No. 1:04-CV-375

HON. ROBERT HOLMES BELL

AFFIDAVIT OF STEVEN LIBERT

Steven Libert, after being duly sworn, deposes and states as follows:

I am an adult male. I have all my natural faculties. I am personally familiar with the facts set forth herein. I have over twenty-two years' experience in underwater search, survey and recovery. I am a licensed diver, holding various certifications, including PADI-Basic Diver, PADI-Advanced Diver, Wreck Diving, Navigation, Water CPR, Ice Diving (Search and Rescue). In addition, I have taken and participated in various other training in the field of underwater archaeology. I have spent twenty-two years in diving operations in the vicinity of the Defendant shipwreck. I have spent twenty-eight years researching the identity of shipwrecks known or believed to be in the area. Along with

various other individuals and the Field Museum of Chicago, I am working with Great Lakes Exploration in its endeavor to explore, protect and preserve the Defendant shipwreck.

Great Lakes Exploration is committed to the scientific and historic protection of the shipwreck. As part of its efforts, Great Lakes Exploration has sought and obtained the input and expertise of a number of different scholars and experts in the field of underwater archaeology and exploration. That is the reason why it has obtained the assistance and expertise of the Field Museum. For example, Dr. Scott Demel of the Field Museum has provided significant insight and expertise, diving to the wreck site and assisting in the ensuring that good and standard historical and archaeological practices are followed in the exploration effort. Great Lakes Exploration and the Field Museum intend to continue to do so in all future exploration, and have committed themselves to protecting the scientific, historic and archaeological values of the shipwreck.

I have reviewed the conclusions advanced on behalf of the Intervenors and determined that they are based on certain mistaken factual assumptions. There is nothing preventing the Intervenors (or anyone else) from commencing an investigation into the facts. Great Lakes Exploration is more than happy to have the Intervenors' participate in its exploration, has invited them to participate in dives, and would welcome their suggestions and insights (as we have in the past). While to date the Intervenors have not accepted this invitation, the invitation remains open.

The starting point for commencing an investigation in this field is to review archives and historic records. There is voluminous information about the Defendant in public records, which is readily available to them. The public pronouncements and

admissions of the State Archaeologist for the State of Michigan, which are also in the public domain, show clearly Intervenors' ability to conduct an investigation. (See, for example, attached media articles). Given the specific criteria set forth in the Amended Complaint, it is inconceivable that Intervenors cannot commence an investigation.

The Intervenors' assumption that they are incapable of investigating a 38.5 square mile area of Lake Michigan having a maximum depth of less than 120' is not accurate. There are a numerous, well-known, well-tested, well-established, commercially available methods and technologies for conducting such investigations. These methods and technologies include side-scan sonar, sub-bottom profiling, magnetometer investigation, visual investigation, and numerous other techniques which are effective when used with proper skill, care and know-how. Such methods and technologies have now been available for over two generations. For example, the searches for the SS *Central America* and the *Titanic* were made over a generation ago. Such investigations were done by private individuals, without the benefit of the financial resources and taxing power of a state government. Such searches were conducted hundreds of miles off the coast of the United States, with all the logistical and practical disadvantages of being so far off the coast. The objects being investigated were on the seafloor several miles below the surface of the Atlantic Ocean. For example, with respect to the search for the SS *Central America* over a generation ago, the search area was larger than the State of Rhode Island, in an area of the Atlantic Ocean having a depth exceeding several miles. Such technologies have been available and in use for over two generations. The investigation of the *Titanic* twenty years ago involved similar geographic and depth considerations.

In contrast, the area of the Defendant *res* is just off the coast of the nearest land, in depths less than 120' and comparatively small. (The depth soundings on Exhibit A to the Affidavits provided by the State of Michigan show that the depth of the water in the area is generally less than 90', and does not exceed 118') Such depths are considered comparatively shallow, and are well within the capability of traditional scuba gear. The area involved is much less than that typically involved in shipwrecks in the past.

I am personally familiar with the shipwreck site. The site encompasses a broad area based on the highly unusual nature of the shipwreck (primarily wood of hand-hewn construction), the sea conditions in the area (which tend to disburse artifacts over a wide area), the need to preserve the unity of artifacts associated with the shipwreck, the importance of protecting the shipwreck from risk of looting or damage by relic hunters, the expressed protocol communicated with the presumed owner, and the factors identified in the sealed portion of this Affidavit.

Great Lakes Exploration is in the process of creating a photomosaic and mapping of the entire debris field for the shipwreck. The wreck site reflects the importance of keeping all artifacts under unified management to permit scientific and historic research. Great Lakes Exploration intends to endeavor to prevent dispersion of artifacts among relic hunters.

Great Lakes Exploration and the Field Museum have been, and remain, concerned with the importance of protecting the shipwreck from possible destruction by relic hunters or others who might cause harm to the shipwreck site in the absence of legal protection for their research and development efforts. Prematurely disclosing the pinpoint location of the main body of the wreck publicly, detailed site conditions, and the

other factors identified in the sealed portion of this shipwreck would increase the risk of looting and/or destruction of such shipwrecks by relic hunters. These facts are discussed in more detail in the sealed portion of this Affidavit.

Great Lakes Exploration is in the process of conducting discovery. Great Lakes Exploration expects that its discovery will help demonstrate that the Intervenor's have no proof that the Defendant is covered by the Abandoned Shipwreck Act; that the Intervenor's have made admissions that they do not know whether the Defendant is not covered by the Abandoned Shipwreck Act; that the known sedimentation rates and bottom characteristics in the area are consistent with Great Lakes Exploration's claims; that they have been able to commence an investigation into the facts; and that the Intervenor's attack on the Court's jurisdiction is without a factual basis. We have served our first set of interrogatories, requests for production and requests for admissions, and but we did not receive adequate answers, and our counsel is currently attempting to resolve the discovery issues with counsel for Intervenor's. If that is unsuccessful, we plan to file a motion to compel discovery. Upon receiving such answers to the pending discovery, we expect to conduct follow-up discovery. Pursuant to Rule 56(f), Great Lakes Exploration is currently unable to provide a complete response to the Intervenor's arguments because of the need to complete the discovery process.

Great Lakes Exploration and the Field Museum are interested in working cooperatively with the State of Michigan and Intervenor's in the exploration and recovery of the shipwreck site in this matter and hope that all involved can foster a cooperative approach, focusing on protecting the scientific and historic value of the site. Great Lakes

Exploration has made a proposal which would allow a cooperative approach, and it hopes that the State of Michigan will join it in its efforts.

Further affidant sayeth not.

DOCUMENTS

UNDER


SEAL:

**SEALED PORTION OF
AFFIDAVIT OF
STEVEN LIBERT**

VERIFICATION

COMMONWEALTH OF VIRGINIA,
COUNTY OF FARFAX, SS:

I, Steven J. Libert, being duly sworn on oath, state that I have read the foregoing Affidavit and that the statements therein are true to the best of my knowledge and belief.



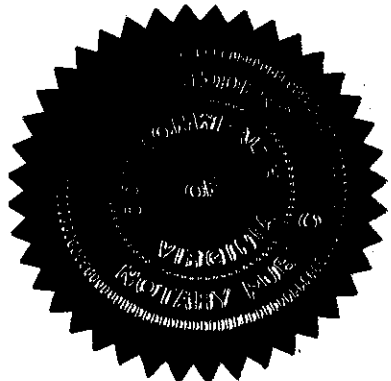
STEVEN LIBERT

The foregoing was subscribed and sworn to before me this 21st day of January, 2005.



NOTARY PUBLIC

My Commission Expires: 4/30/06



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CLAIM TO HISTORY: Has explorer found ship sunk in 1679?

Thursday, July 08, 2004
By Ed White
The Grand Rapids Press

A Virginia man who for years tried to get permission to search for gold in northern Lake Michigan said he is back with the story of another shipwreck, one that could be among the "most significant archeological finds" in U.S. history.

Steve Liber won't divulge the ship's identity or the exact location in Lake Michigan. But state archeologist John Halsey has an idea, based on the scant details filed in federal court in Grand Rapids.

"There is something sticking out of the bottom that he thinks is the Griffin," said Halsey, who has briefly talked to Liber. "I don't think it's possible to know without more discovery."

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Historians consider the Griffin to be the first European trade ship to sail lakes Huron and Michigan. It was built for French explorer Robert Cavalier Sieur de La Salle in 1679 but disappeared that same year, probably in a storm, loaded with furs and bound for Lake Erie.

"I'm not going to say what it is," said Liber, of Great Lakes Exploration Group,

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Caldonia Twp., Kent - \$242,900
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based in Ohio. "If I did, everyone would jump out of the woodwork. ... They'll find the ship and tear it apart."

He may have no choice but to divulge more. Great Lakes Exploration has filed a lawsuit seeking to be declared the exclusive owner of the shipwreck. In the short term, it wants to be named custodian.

A judge, however, rejected that request, for now, saying he needs more information.

Great Lakes Exploration "fails to give any identifying information" about the ship, aside from disclosing latitude and longitude coordinates in a large area, U.S. Chief District Judge Robert Holmes Bell said.

Based on the coordinates, the shipwreck is in northern Lake Michigan, somewhere between Escanaba and the St. Martin Islands, near Wisconsin.

"The vessel was owned by a foreign research expedition operating with the authority of ... a foreign sovereign until it became wrecked, lost and abandoned," Great Lakes Exploration said in court documents.

The group said it has "invested substantial time, money and effort" finding the ship and researching its history.

Libert, an experienced diver, said he removed a tiny piece to determine age.

"It's taken me 30 years to locate this," he said. "I last saw it two weeks ago. We're not 100 percent sure, but, so far, all the scientific data is supporting what we think it is."

Halsey has seen only "grainy" underwater videotape. He said he wants the state's maritime archeologist to go to the site.

"You don't have to have a doctorate degree to know how many vessels were under a foreign sovereign on the Great Lakes," Halsey said. "If it turned out to be the Griffin, it would be the preeminent vessel in the Great Lakes.

"But you don't know what's left; sometimes there are just bits and pieces," he said. "Where exactly it was lost is also a real mystery. Back then, you didn't have a whole lot of people watching for it."

And even if it is the Griffin, Libert's group still would have a difficult time gaining control, Halsey predicted.

Michigan typically has authority over abandoned ships on the bottom of the Great Lakes. But the French government could trump everyone if this is the Griffin, he said.

"Unless the French give their blessing, it can't be salvaged," Halsey said.

La Salle's other ship, La Belle, was discovered in the mid-1990s in Matagorda Bay off the Texas coast. With approval from France, state archaeologists there recovered nearly 1 million artifacts, from human bones to muskets.

This is not Libert's first visit to federal court. He and partners spent years trying to salvage rights to the Captain Lawrence, a ship ravaged by storm off the Upper Peninsula in 1933.

They believed it went down just after the skipper recovered a chest of gold dating back to the War of 1812.

The state, however, said the ship was abandoned by its owner and must remain untouched. Federal courts agreed.

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