

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREAT LAKES EXPLORATION	:	
GROUP LLC	:	File No. 1:04-CV-375
	:	
Plaintiff,	:	HON. ROBERT HOLMES BELL
	:	
v.	:	
	:	
The Unidentified, Wrecked , etc. , et al.	:	
	:	
Defendant.	:	

**REBUTTAL AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR
PROTECTIVE ORDER**

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

I am an adult male. I have all my natural faculties. I make this Affidavit based on the facts personally known to me, and those as to which I have become aware as a member of the project for the preservation and exploration of The *Griffin* by Great Lakes Exploration and the Field Museum of Chicago.

Great Lakes Exploration has assembled, and is prepared to provide to Intervenors, specific data and details on the nature, composition, location and characteristics of the shipwreck site, its efforts, and other trade secrets and confidential materials. The company has consistently treated this information confidentially and as trade secret information. It has done so in light of (1) the substantial amount of time, effort and money (including hundreds of thousands of dollars and thousands of hours) that it has devoted to developing the information; (2) the unique nature and value of the information for the location and exploration of the Defendant; (3) the difficulty in replicating the

information independently; (4) the threats to the shipwreck that would result from release of such information and the value of such information to competitors; and (5) the grave and irreparable harm that would be done to the company from the release of such information. The company's trade secrets and confidential information are one of its primary assets.

From the outset of the exploration, the company has been concerned with, and sensitive to, the irreparable harm and significant monetary damage that would result from the disclosure of its trade secrets and confidential information. Because of the nature of historic shipwreck exploration, misappropriation of trade secrets, know how, and other information are among the most significant threats to a successful operation in the field. Because of the nature of the valuable confidential information (which frequently is the result of hundreds of hours of study, translation and analysis of historical documents, as well as painstaking at-sea searches), it is extremely easy for those who seek to misappropriate trade secrets and confidential information to simply make fraudulent claims of "independent" development of the information. Without special protections in place, it is difficult, and often impracticable, to disprove such claims of "independent" development of the information. It is also extremely difficult to detect and prove misappropriation of such trade secrets and confidential information, since use of the information (unlike patent infringement where a misappropriation can often be readily determined by comparing tangible products or other items) is often hard to detect. Further compounding the difficulty of proof is the inherent problem in proving a "negative," i.e. that the person using the information did not develop it independently.

Once a misappropriation of confidential information about the location, composition or nature of an historic shipwreck occurs, it is also extremely difficult to prove with precision the resulting damages in a court of law. By the very nature of historic shipwrecks and underwater exploration, such damages are difficult to measure, are dependent on a number of different factors and may even sometimes be considered “speculative.” Liquidated damages have typically been used to overcome such problems, since those who abide by confidentiality orders have nothing to fear from liquidated damages provisions.

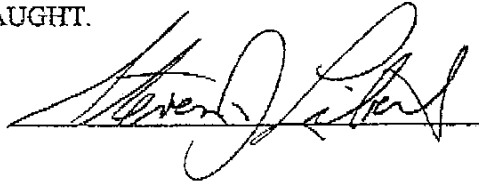
As a result, a person receiving access to trade secrets and confidential information in this field is typically required to sign a strict confidentiality/non-disclosure agreement. Such agreements typically include anti-fraud provisions that include mechanisms which will allow a neutral, independent fact-finder to readily and quickly determine whether the person receiving the information had “independently” developed the information prior to receiving it. Such agreements also typically include a provision for liquidated damages in the event of a breach. It has been my experience that persons who intend to abide by such confidentiality/non-disclosure agreements readily accept them, whereas those who plan to misappropriate information typically resist such provisions or try to write into the agreements “loopholes” or exceptions to allow them to get around such protections. They also typically oppose liquidated damages clauses for obvious reasons, in contrast to persons who have no intention of violating such agreements.

Following the hearing before the Court in May, 2005, Great Lakes Exploration became apprised that the Intervenors have attempted to make overtures to France to get

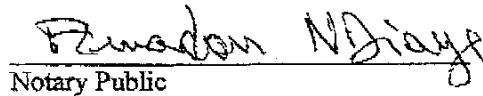
rid of Great Lakes Exploration and the Field Museum (characterizing the Company in these communications as “treasure hunters”), and implying that the State could simply take the information about the location of the shipwreck developed by Great Lakes Exploration and use it to do its own project. In light of the Intervenor’s previous decision to take material that had been filed with the Court under seal by Plaintiff, and to place it in a brief and affidavits filed by the State in the open public record, the company is gravely concerned that Intervenor’s intend to commit further misappropriation of the company’s trade secrets and confidential information, including utilizing the company’s trade secrets at some time in the future to explore and recover the Defendant shipwreck based on a claim of having determined the location “independently.” The company is concerned that without strong protections against fraud, together with predictable and strong sanctions in the event of a misappropriation of trade secrets and other confidential information, the Intervenor’s will simply try to reverse their prior representations to Judge Bell that this suit is simply against a “barn timber,” and then, after the dust clears (perhaps years later) try to claim “independent” development, while at the same time using the trade secrets and confidential information that Great Lakes Exploration has spent so much time and money developing. The company is further concerned that, while the protective order proposed by counsel for Great Lakes Exploration would work to protect these trade secrets, an order with weakened or diluted protections (such as those in the numerous loopholes proposed by the Intervenor’s) would likely result in misappropriation of the company’s trade secrets and confidential information, whether as a result of claimed inadvertence (e.g. through a “contractor” to whom the information had been provided by the Intervenor’s), or as a result of intentional misappropriation,

and that a weakened or diluted protections would lead to breach of confidentiality and irreparably harm the company.

FURTHER AFFIANT SAYETH NAUGHT.



The foregoing was subscribed and sworn to before me this 13th day of July 2005.


Notary Public

Amadou Ndiaye
NOTARY PUBLIC
Montgomery County, Maryland
My Commission Expires 5/01/06