

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

GREAT LAKES EXPLORATION)	
GROUP LLC)	
Plaintiff,)	
v.)	Civil Action No. 1:04-CV-375
)	
The Unidentified, Wrecked and (For Salvage-)	
Right Purposes), Abandoned Sailing Vessel, etc.)	
Defendant, et al.)	

REBUTTAL DECLARATION OF STEVEN J. LIBERT

Commonwealth of Virginia	}	ss:
County of Fairfax	}	

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

1. I am an adult male. I have all my natural faculties. I am personally familiar with the facts stated in this Affidavit.
2. I have previously noted my familiarity with the Defendant and my background and expertise in the area.
3. In preparing this Affidavit, I have reviewed the Affidavits of Thomas P. Graf and Wayne Lusardi in support of the Intervenor’s Motion to Dismiss. I have also participated in the further exploration and salvage of the Defendant as described below.
4. I have performed many years of research regarding the Defendant, and this research has included open-source information that is accessible to the public, including the Intervenor’s. There is a plethora of information from which the Intervenor’s have had the opportunity to “commence an investigation” of the Defendant. In fact, Mr. Lusardi

appears to admit at Paragraph 12 of his Affidavit that the Intervenors commenced such an investigation no later than September, 2005.

5. I have closely followed the weather windows at the site of the Defendant and have observed at least 12 weeks since November, 2005 during which the Intervenors could have commenced (and easily complete) an at-sea investigation into the shipwreck since November, 2005. I agree with Mr. Lusardi's statement at Paragraph 12 of his Affidavit that a survey of the area requires only a "couple of days".

6. Great Lakes Exploration has been continuing its on-going salvage of the Defendant. For example, in Spring, 2006, our in-house team worked with Geomar Research, LLC and other experts in a follow-up exploration, salvage and underwater archaeological survey of the Defendant. As described in the Declaration of Stephen Bilicki, this work utilized professionally accepted and approved industry standard equipment and survey techniques. Work included acoustic data collection used a Klein 595 digital side scanning sonar system. Magnetic data collection incorporated a Geometrics, Inc 882 Cesium Magnetometer allowing nose or deep tow capabilities, and the compilation of analysis utilizing both Remote Sensing and diving.

7. This analysis provided further corroboration that the scatter and debris areas appear that they may be part of a unitary shipwreck site. (As noted in the declaration of Mr. Bilicki, this included articulated and disarticulated timbers, magnetic anomalies, and multiple small mono-polar and di-polar magnetic signatures in confined areas).

8. As noted in the Declaration of Mr. Bilicki, on going diver investigation into the timber called a “barn timber” by the State’s lawyer has further corroborated that it indicates European ship construction techniques of the type that would have been utilized by Sieur de LaSalle.

9. We have successfully completed Phase I and goals for our on-going salvage include the comprehensive generation of a precise catalog and map of all the artifacts in the area and limited test excavations around anomalies which appear to be articulated to determine if larger more intact archaeological features are present, and to corroborate more precisely the exact age, extent, and significance of each of these underwater cultural resources.

10. We continue to be successful in rescuing the Defendant from the marine peril, and are continuing to do so. In working with professionals in the field, we have developed a long-term program for the continuing exploration, preservation, recovery and other salvage of the Defendant in a way that protect the scientific, historical and environmental characteristics of the shipwreck. We would very much like the State of Michigan to be a part of that effort.

11. The shipwreck is clearly not “embedded” in the bottom lands of the State of Michigan. Not only are tools of mechanical excavation not required, it would be imprudent and counterproductive to use them. Use of mechanical tools of excavation could cause damages to the artifacts and result in the irreparable loss of scientific information. Based on our current work, non-mechanical methods, such as hand fanning, lift bags and other non-mechanical techniques, are the appropriate methods.

12. I am surprised that the counsel for the State of Michigan would advocate the use of techniques that are clearly inconsistent with well-established principles of underwater archaeology, particularly in light of the irreparable damage and loss of information from shipwrecks managed by the State of Michigan in the past (such as the well-known theft, looting and damage to the Three Brother's site while under the State's management). Such incidents of looting and the destruction of irreplaceable cultural resources being managed by the State of Michigan may cause severe harm to the cause of historic preservation, and, in my judgment, are inconsistent with national standards regarding the reasonable care that should be exercised by State Historic Preservation Offices, in advancing the cause of the study and investigation of historic shipwrecks and in promoting private-public partnerships in doing so.

13. In preparing this Affidavit, I have had the opportunity to review the previous Affidavit of Wayne Lusardi. Based on my knowledge of the facts and reading of Mr. Lusardi's "Affidavit", it clear that Mr. Lusardi's "Affidavit" is not a statement of facts based on his personal knowledge but instead that it is largely legal argument and speculation, apparently drafted not by Mr. Lusardi but instead by the lawyers for the Intervenors. The facts are very different from the argument and speculation set forth in Mr. Lusardi's "Affidavit," and Mr. Lusardi's Affidavit does not sound like the statement of a scientist or archaeologist, but instead that of a lawyer.

14. Mr. Lusardi's statement in his Affidavit that "the proposed complaint identifies geographic regions rather than a wreck" and that it identifies only "geographic areas" rather than the "location of the wreck" is legal argument and speculation. It is not a statement of fact based on Mr. Lusardi's personal knowledge, since the facts are the

opposite. The Second Amended Complaint speaks for itself and specifically identifies the Defendant. (Of course, even if later exploration were to determine, as Intervenors have hypothesized in the past, that the shipwreck is not the *Giffin* but instead is a “barn timber” or something else then neither Great Lakes nor the Field Museum would be interested in it, and we are prepared to make a stipulation of other binding agreement to that effect.

15. As noted in Dr. Demel’s prior Affidavit, good and sound archaeological practices require that the shipwreck be maintained and scientifically investigated as a unified whole. In this regard, it is important to understand the nature and science of properly analyzing and preserving shipwrecks of great significance, such as the *Griffin*. Good and scientific study of shipwrecks require that all portions of the shipwreck, including the hull, tackle, apparel, appurtenances, cargo, passenger effects, crew materials and other items associated with the shipwreck be studied and maintained as a unified whole. For this reason, the geographical dispersion of portions of a shipwreck caused by the harsh conditions of wind, weather, wave action, biological and chemical processes and other forces of nature cannot be permitted to interfere with the proper scientific study and analysis of historic shipwrecks.

16. The scientific exploration and salvage of the wreck site is an on-going process. Good and sound archaeological techniques will require many months, and even years of scientific analysis to investigate each item located and to determine, with reasonable scientific certainty, that it is, or is not, associated with the *Griffin*. As noted in the Affidavit previously filed by Dr. Scott Demel of the Field Museum, there are a number of factors that make it important not to artificially limit or restrict the site of the *Griffin*

shipwreck, which consists not only of her hull, but also tackle, appliances, apparel, appurtenances, cargo, equipment, etc., since each of these items is of historical interest, including contiguous and non-contiguous scatter, debris and other related artifacts and matter that may be useful in understanding the shipwreck and the pertinent history. As Dr. Demel has noted in his prior Affidavit, among the factors making exactitude difficult are the nature and condition of the Defendant believed to exist at the time of the sinking, the nature of the construction of the Defendant, the nature of the cargo, the historical record pertaining to the Defendant and the sinking, the date of sinking, the wind, wave, current, biological, and other conditions at the location of the sinking, including the high energy and dispersal factors, storms over the centuries and high rates of dispersion, and the other facts and circumstances affecting the Defendant. It is important to treat all artifacts and information associated with the shipwreck in a unified fashion in order to permit the best scientific analysis and understanding of the shipwreck, and, for this reason, it is important to include debris fields, artifacts, information and items associated with the Defendant shipwreck. Until many years of painstaking study and scientific analysis have been completed, it would violate good and established archaeological techniques to attempt to make false suppositions and speculation.

17. Such failures to adhere to scientific standards in investigating and preserving historic shipwrecks have resulted in irreparable harm to the interests of present and future generations in the past. These losses have been not only to Americans and Canadians living on the Great Lakes, but also to all peoples interested in science and education. Once departures from the scientific method for investigating and preserving shipwrecks have been made-- even if made simply in good faith due to errors in judgment, lack of

funding or outside political pressure-- the loss of artifacts and scientific information may be irreparable.

18. Sound underwater exploration and archaeology demand that political considerations not be permitted to interfere with science and education, and that artificially segregate portions of a shipwreck or to fracture the unity of a shipwreck would result in the irreparable loss of information. In their Responses to Great Lakes Exploration's Request for Admissions, Intervenors have admitted to many of these facts. As previously noted, in the words of Michigan's State Archaeologist, "Shipwrecks when they break up, particularly wooden ones, commonly migrate, can migrate for long distances. It's not uncommon for pieces of wreckage, particularly along Lake Michigan, to migrate for miles from where they were originally lost." (Trial Proceedings, Fairport International, Tr. page 90 lines 14-25.)

19. As for Mr. Lusardi's statements regarding the communication he and I had in April, 2003, there are several details of our communication that are not set forth in Mr. Lusardi's Affidavit. It is true that when I communicated with Mr. Lusardi at that time, I indicated that the item shown in the photos attached to his previous affidavit was significant. I also made it clear, however, that I believed that the item was only a part of a shipwreck. I did not represent or suggest that the exploration efforts by me or others had located only the items depicted in those photographs. I did not indicate that I believed that artifacts or information was limited to single area. To the contrary, to the best of my recollection, even then at the stages of the exploration and salvage as they existed in April, 2003 when I communicated with Mr. Lusardi, I made it very clear I believed that there were a number of significant anomalies in various locations, and that

these should be all be investigated methodically and thoroughly. I invited the State of Michigan to participate (at that time, I even offered to pay his way, that he could join me in Charlevoix and we would proceed from there), and he indicated no interest in doing so. In fact, I heard nothing until Great Lakes Exploration filed this case and the Intervenors decided only then that they were interested.

20. The rest of Mr. Lusardi's statements in his "Affidavit" appear to be legal argument and speculation, written by an attorney. Contrary to that argument and speculation, we have engaged in extensive exploration of, and salvage with respect to, the shipwreck. Such rank speculation that no recovery of an artifact has been accomplished (together with the accompanying implication that Great Lakes Exploration is not in possession of the shipwreck and/or is somehow not capable of continuing such exploration and making such recoveries on an on-going basis) is simply false. As noted in the Second Amended Complaint, which is verified, Great Lakes Exploration has successfully conducted exploration, salvage and recovery efforts, and has the on-going capability to do so in the future.

21. The exploration and salvage effort is being conducted with the support of an impressive team of individuals. Many of these are listed in our web site. In addition, the marine archaeological team of the Republic of France has agreed to take an increasingly active role and has confirmed its interest in, and willingness to, broaden its participation beyond providing historical research information and input into actively participating in the at-sea exploration and salvage efforts. A true, genuine, and authentic copy of the communications by the United States Department of State regarding the role of the Republic of France has been filed in the Notice previously filed with the Court.

22. It is important that the Republic of France be permitted to participate in the methodical analysis of the shipwreck with Great Lakes Exploration and the Field Museum. France's team of marine archaeologists is one of the best in the world, and it has extensive experience in the field of shipwreck analysis and interpretation, including with respect to mapping and identifying geographically-dispersed items and information associated with a particular wreck. Our team approach has allowed an on-going methodical, thorough and archaeologically-sound exploration, salvage and preservation of the Defendant.

23. Mr. Lusardi's statement that the first Amended Complaint "implied a single target" is a legal argument, not a statement of fact. The facts are in the court record. Those facts show that the Intervenors were served with the affidavits by both Dr. Demel on behalf of the Field Museum and myself on behalf of Great Lakes Exploration making very clear that the "target" was the *Griffin* shipwreck, believed to consist of numerous items, artifacts and pieces of information over a broad scatter area.

24. Mr. Lusardi's statement that the Intervenors do not have "a reasonable opportunity to investigate the Defendant this fall" appears to be more legal argument. Since I am not a lawyer, I am not familiar with how the law distinguishes between a party's claimed right to "investigate the Defendant" versus its right to have notice sufficient to allow it to investigate its own interest in the defendant sufficiently to allow it to determine whether to file a claim and then to conduct "discovery" on the merits of the case. These are legal issues for the lawyers and the Court, not for scientists and explorers. I am personally aware that the Intervenors have had more than ample information to make an investigation into their own interests and the facts sufficient to allow them to determine

whether to assert a claim in this proceeding. I am also personally aware that the methodical and archaeologically sound analysis of the *Griffin* shipwreck will require years and years of painstaking scientific work, study and analysis, and that it would be imprudent to limit that study to a “two day survey.”

25. I do not believe that Mr. Lusardi or any other scientist, if they were asked directly, would accept the suggestion by the Intervenors’ lawyers that any reputable scientist, on the basis of a a survey lasting several weeks or even months, would feel confident making a scientifically-sound determination of the items and artifacts constituting the *Griffin*. As Mr. Lusardi notes at paragraph 8 of his previous affidavit, “Investigations seldom produce sufficient information to allow for the determination that the isolated structures were constituents of a vessel or to allow for a reasonable determination of its age or origin.” Such a determination will many months, if not years, of careful and painstaking scientific analysis by the team of qualified historians and marine archaeologists that has been assembled through the efforts of Great Lakes.

26. As noted in his previous Affidavit, Mr. Lusardi and his colleagues are responsible for more than a thousand cultural deposits all over the State. The painstaking study of a significant discovery such as the *Griffin* deserves a team of qualified scientists giving it their detailed attention, not a lone, though well-intentioned, state employee whose office is already overburdened by inadequate public funding, insufficient recognition of the importance of protecting underwater cultural resources, and too much work-- let alone political pressure to follow the State of Michigan’s claim that it has sovereignty over a French shipwreck.

27. I have also reviewed the other papers filed by the Intervenors. Insofar as these purport to set forth facts rather than legal argument, they do not accurately state what has transpired. We have produced voluminous documents and information to allow Intervenors the opportunity to determine whether they claim an interest in the *Griffin*. We have offered other additional data subject to the State's agreement to treat it as confidential and proprietary. We have offered to take one or more divers or other representatives from the State to the various debris fields so that they can see how extensive the work. To date, the State has declined. In contrast, the Intervenors have produced virtually nothing in response to our interrogatories and requests for production of documents disputing our claims, admitting that they have no basis for disputing our claim.

28. As Intervenors have admitted, the loss of items, information and damages has occurred in the past on their watch. Sometimes this may have been caused by the State's neglect of, and failure to provide adequate financial support and resources for, the exploration and preservation of underwater cultural deposits. Despite political pressures, the State Archaeologist, Dr. John Halsey, has shown the courage in the past to publicly comment on the State's failure to provide adequate "funding for research, evaluation, law enforcement, or education." with respect to cultural deposits in state waters. This has continued despite the fact that, as noted by Dr. Halsey, the "hi-tech equipment makes it increasingly easy for relic hunters to gain access to, and destroy, historic shipwrecks in the Great Lakes region." In Dr. Halsey's words, side-scan sonar, combined with intensive historic research wrecks, "provides an extremely potent finding aid for historic shipwrecks in the Great Lakes".

29. Significant historical artifacts have been lost or destroyed while in Intervenor's custody and control. For example, Dr. Halsey described the condition of the *Three Brothers* shipwreck at or near the commencement of the involvement of the State of Michigan in managing the shipwreck as follows: "The deck of the vessel is mostly missing forward of the main cargo hold, along with the pilothouse and upper cabins, possibly blown off by air pressure or washed off during or shortly after the wreck. The structural integrity of the upper portion of the hull is weakening by the fracture of deck beams near the hatches. Despite this damage, the stern, which is at a deeper depth and away from ice and wave action, is remarkably intact. A delicate window frame remains in the stern quarter and fire hoses dangle over the side to the lake bottom below. Remnants of a shoe, overalls and other small personal items on the site show the rapid abandonment of the ship in peril. The cylinder head of the engine protrudes from the sand, leaving the diver to imagine what the rest of its bulk must look like." As Dr. Halsey has further stated, approximately one year later, however, while the shipwreck had been in Intervenor's custody and control, (1) the shipwreck had been plundered and damaged, (2) boaters had dragged anchors across the shipwreck, (3) the superstructure had been damaged, (4) the fire hose nozzles, ornately carved wooden pillars and brass fittings on the steam engine had been stolen, (5) many personal items left by the crew had been stolen.

30. The loss to present and future generations of scientists, archaeologists, historians and the public from these occurrences has been devastating. The artifacts taken from the *Three Brothers* shipwreck and others while under Intervenor's control tend to quickly decay out of water, and information has been irretrievably lost that may have been

obtained from scientific study of such artifacts (not only by studying such items individually but also by studying them as an integral collection associated with the shipwreck).

31. Because of the unique nature and significance of the *Griffin*, permitting repetition of such occurrences as to the Defendant would result in irreparable harm to Great Lakes Exploration, France, present and future generations of scientists, archaeologists, historians-- and, perhaps worst of all, to the peoples of the United States, Canada and France, whose shared, common heritage is represented by the shipwreck.

32. As noted above and in our verified Second Amended Complaint, our salvage has been successful, and upon issuance of the arrest warrant, we are prepared to have arrest executed.

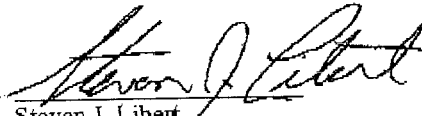
33. As I have previously noted, it is correct, as Mr. Lusardi has indicated, that many years ago, I provided him several photos of one of the cultural deposits on the site (which has now been mischaracterized by counsel for the State as a "barn timber."). Even at that time years ago, I never stated or even implied to Mr. Lusardi that there was only one object in the shipwreck site, and I made it clear that I believed that there was a broad scatter across several geographic areas. (As noted in the Affidavit of Dr. Scott Demel, it is obvious to anyone who has studied the structural nature of the *Griffin* and the sea conditions in this part of Lake Michigan why this is so).

34. The information upon which Mr. Lusardi has based his assumptions is clearly out of date, and I remain ready, willing and able to discuss details with Mr. Lusardi or his designee, and to take him or his representative to the debris fields, provided that they agree to be bound by confidentiality and protection of our trade secrets.

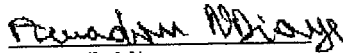
35. I deeply regret that this invitation has not yet been accepted, and apologize to the Court for adding to the Court's burden in having to treat this matter as adversarial, when, in my judgment, the interests of all would best be served by a cooperative investigation. It has been the State's position that any information I provided would be treated as "in the public domain," and thus not proprietary to Great Lakes Exploration. I do agree with the Affidavit of Thomas Graf that no permit has been requested "to recover any abandoned property associated with any shipwreck in the described location." As noted in prior filings, we do not believe that the *Griffin* is "abandoned" within the meaning of the Abandoned Shipwreck Act, but instead only for salvage purposes under admiralty procedures. As part of my investigation of the shipwreck, I have devoted a great deal of time to studying the historical analysis that has been made by the Republic of France in support of its claim that the shipwreck belongs to France and has not been abandoned. I am in agreement with that analysis, which has communicated through the U.S. Department of State. I also agree that Great Lakes Exploration has not requested a permit to "dredge" or to "place any material on or within Lake Michigan bottomlands," since we do not consider such destructive activities to be consistent with our protection of the Defendant our efforts and our salvage work that has been rescuing it from marine peril and protecting it for future generations. We have requested, and received, permission of the Republic of France to proceed with the exploration, salvage and scientific analysis, and we have continued to so. We have extended to the State of Michigan an open invitation to assist in these efforts, but to date we have been unable to work out all the details for such a joint activity. We would, of course, be honored to have the State's participation in the future.

FURTHER AFFIANT SAYETH NAUGHT.

I, Steven Libert, after being duly sworn, declare under penalty of perjury that I have read the foregoing Affidavit and that it is true to the best of my knowledge and belief.


Steven J. Libert

Sworn and subscribed to before me, a Notary Public, this 21st day of June, 2006.


Notary Public

My Commission Expires: MAY 1st, 2010

