

PHILLIPS & SNYDER, P. A.

ATTORNEYS AT LAW  
SUITE 700  
200 WEST NINTH STREET  
WILMINGTON, DELAWARE

(302) 655-4200

JOHN C. PHILLIPS, JR.  
BAYARD J. SNYDER

MAILING ADDRESS:  
P.O. BOX 20  
WILMINGTON, DE 19899

March 3, 1986

The Honorable Caleb M. Wright  
U.S. District Court  
6124 Federal Building  
844 King Street  
Wilmington, DE 19801

Re: Indian River Recover Co. v.  
The Faithful Stewart - C.A. #85-310,  
The Three Brothers, C.A. #85-311,  
The Santa Rosea Lea, C.A. #85-312,  
The Adeline, C.A. #85-313, and  
The Cornelia, C.A. #85-314

Dear Judge Wright:

By Order dated December 20, 1985 you requested that the plaintiffs show cause why the above five actions should not be dismissed. Pursuant to your letter of December 20, 1985, this is my Memorandum of Points and Authorities in Support of the Court's admiralty and maritime jurisdiction.

I have attached hereto the Affidavits of Harvey Harrington (Exhibit 1), Joseph Amaral (Exhibits 2, 3 and 4) and Jonathan Farrar (Exhibits 5 and 6). These Affidavits establish that the plaintiff, Indian River Recovery Co., has located five shipwreck sites. Indian River Recovery Co. has tentatively identified the ships as the Faithful Stewart, the Three Brothers, the Santa Rosea Lea, the Adeline and the Cornelia. It should be noted that the Court's jurisdiction does not depend upon whether the shipwrecks are actually those five ships. After each site has been completely salvaged it may still be impossible to conclusively identify the ship. It is known that these ships went down in the area near where the wreck sites have been located. It is also known that the types of timbers and plankings discovered would most likely be from an 18th or 19th century ship.

The plaintiff has invoked the Court's jurisdiction pursuant to Rule 9(h). The plaintiff has arrested the ships pursuant to the Court's Order of May 29, 1985. In addition, the plaintiff is acting as custodian of the wreck sites pursuant to the Court's Order of May 29, 1985. The elements of a valid salvage claim have

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been set forth by the Supreme Court in *The Sabine*, 101 U.S. 384 (1880). The plaintiff must prove: (1) a marine peril; (2) service voluntarily rendered when not required as an existing duty or from a special contract; (3) success in whole or in part, or that the service rendered contributed to such success.

There is no question that a marine peril exists in this case. In *Treasure Salvors, Inc. v. The Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (Fifth Circuit, 1978) the Court stated:

Marine peril includes more than the threat of storm, fire, or piracy to a vessel in navigation. . . . There is no dispute that the *Atocha* was lost. Even after discovery of the vessel's location it is still in peril of being lost through the actions of the elements.

569 F.2d at 337.

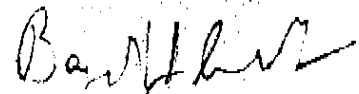
In regard to the second element for a valid salvage claim, there is no existing duty or special contract which would require Indian River Recovery Co. to conduct the salvage operations. The salvage operation of Indian River Recovery Co. will therefore be voluntary.

The final element for a valid salvage claim is success in whole or in part. The plaintiff has succeeded in locating five abandoned shipwrecks. The plaintiff has not proceeded further because of a threat of prosecution from the State of Delaware. The State of Delaware has advised the plaintiff that it is willing to enter into leases for the five shipwreck sites. As soon as Indian River Recovery Co. enters into those leases salvage can commence. Thereafter this Court will be able to determine whether the plaintiff has been successful in whole or in part. If the plaintiff does not enter into leases with the State, and if the plaintiff does not proceed with salvage operations within a reasonable period of time, then it would be appropriate for the Court to dismiss the claim. However, at this time it would not be appropriate to dismiss the claim.

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Based upon the foregoing, the plaintiff respectfully submits that this Court should not dismiss its five admiralty and maritime actions.

Respectfully submitted,

  
BAYARD J. SNYDER

BJS:dlw

Encs.

AFFIDAVIT OF JOHN FARRAR

STATE OF *Mass.* :  
*Plymouth* : SS.  
COUNTY: :

I, JOHN FARRAR, being duly sworn do depose and state:

1. I am an experienced diver. I have worked on the deBraak and other historic shipwrecks.

2. I was hired by Indian River Recovery Co. as an independent contractor in December, 1985.

3. On December 20th I made a dive from the ship the Playmate approximately one-quarter of a mile off-shore in seventy (70) feet of water.

4. The purpose of the dive was to arrest and survey the ship believed to be **The Santa Rosa Lea**.

5. On the bottom at the location of the arrest, I discovered an abundance of ship's timbers, plankings and encrusted objects.

*John Farrar*  
\_\_\_\_\_  
JOHN FARRAR

SWORN TO AND SUBSCRIBED before me this 29<sup>th</sup> day of

January, 1986.

*Janet L. Duhamel*  
\_\_\_\_\_  
NOTARY PUBLIC 11-2-90

AFFIDAVIT

STATE OF DELAWARE )  
COUNTY OF *New* ) SS  
*Castle*

I, HARVEY HARRINGTON, being duly sworn do depose and state:

1. I am a Vice-President of Indian River Recovery Co.
2. I am a stockholder in Indian River Recovery Co.
3. I have been a professional diver for the past 30 years.
4. I have had an interest in shipwrecks and sunken vessels since my youth.
5. Throughout my professional career as a diver I have maintained that interest in shipwrecks and sunken vessels.
6. I have had a very longstanding interest in locating the deBraak. My interest in the deBraak preceded the year 1980 by many years.
7. Prior to 1980 I read numerous articles about the deBraak.
8. Prior to 1980 I also had heard of and read about the Faithful Steward and the Three Brothers and had read articles about them.
9. In 1980 I began a serious and intensive study to determine the exact location of the deBraak.
10. In my research there have been numerous references to the Adeline, the Santa Rosea Lea and the Cornelia.
11. The books I have read and relied upon for information have included the Encyclopaedia of American Shipwrecks by Bruce Berman, The Treasures of the Mid-Atlantic by Stephen M. Boynick, The History of Lewes, Past and Present and Shipwrecks of the Western Hemisphere by Robert Marx.

12. During the summer of 1982 I made two trips to Lewes, Delaware in order to do research on the deBraak.

13. My research in Lewes included visits to museums and libraries to review and copy all available documents related to the deBraak.

14. My research in Lewes, Delaware also included meetings with fishermen and pilot boat captains.

15. The purpose of meeting with fishermen was to determine where the good fishing grounds were located. It is well known that shipwreck sites are often also good fishing grounds.

16. The purpose of my discussions with pilot boat captains was to determine where the most treacherous currents are. The location of the treacherous currents often remains the same over many years and therefore the area of those treacherous currents is a good location for locating shipwrecks.

17. During the summer of 1983 I made an additional two or three trips to Lewes, Delaware for further research as described above.

18. I went to Washington, D.C. to review the NOAA records on shipwrecks.

19. I obtained extensive information from the United States Hydrographic Office in Rockville, Maryland which publishes the Automated Wreck and Obstruction Information Service.

20. In April of 1984 I conducted the side-scan sonar search for the deBraak.

21. I conducted this search as President of Sub-Sal, Inc. The search of the deBraak was successful.

22. I located the deBraak and have been salvaging thousands of historic artifacts from that shipwreck site over the last two years.

23. Since May of 1984 I have conducted additional research regarding the Faithful Steward, the Three Brothers, the Adeline, the Cornelia and the Santa Rosea Lea by continuing to review documents in libraries and museums and by talking with numerous fishermen and pilot boat captains.

24. On May 29th and 30th of 1985 I contracted with Donald Evans, a boat captain in Lewes, Delaware, and Joseph Amaral, an experienced diver, for their services.

25. On those two dates I supervised the arresting and surveying of shipwreck sites tentatively identified as the Faithful Steward, the Adeline, and the Three Brothers, all of which ships are well within three miles of the Delaware shore line.

26. On December 20, 1985 I contracted with Robert Macilvane, a boat captain in Lewes, Delaware, and Jonathan Farrar, an experienced diver, for their services.

27. On that date I supervised the arresting and surveying of shipwreck sites tentatively identified as the Santa Rosea Lea and the Cornelia, both of which ships are well within three miles of the Delaware shore line.

28. On or about July 29, 1985 I received a copy of a letter which had been sent by Michael F. Foster, Deputy Attorney General of the State of Delaware, to my attorney, Bayard J. Snyder, a copy of which is attached hereto as Exhibit A.

29. As a result of that letter I have not conducted further

salvage operations on any of the five shipwreck sites.


30. The State of Delaware, by its representative Micahel F. Foster, has represented to me and to my attorney that the State is prepared to enter into a lease or leases with Indian River Recovery Co. for the five shipwreck sites.

31. I intend to enter into such leases with the State of Delaware.

32. Since each arrest I have been observing each of the wreck sites on a regular basis in order to assure that no one is interfering with Indian River Recovery Co.'s custody and possession of the wreck sites.

  
\_\_\_\_\_  
HARVEY HARRINGTON

Sworn to and subscribed before me, a Notary Public for the State and County aforesaid, this 3rd day of March, 1986.

  
\_\_\_\_\_  
Notary Public



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

10

INDIAN RIVER RECOVERY CO., )  
Plaintiff )  
v. )  
FAITHFUL STEWART, HER APPURTENANCES, )  
FURNITURE, CARGO, etc., )  
Defendant )  
v. )  
STATE OF DELAWARE, )  
Intervenor )

This order was issued  
for all five shipwrecks

Civil Action 85 - 310 CMW

ORDER TO SHOW CAUSE

This 20th day of December, 1985, the court having raised sua sponte the issue of its subject matter jurisdiction in the above captioned-action, and after holding a conference on December 19, 1985 at which counsel for all parties were present,

IT IS HEREBY ORDERED that Plaintiff shall show cause no later than February 1, 1986 why Court should not quash the warrant for the arrest of the vessel in the above-captioned action and dismiss the action for lack of subject-matter jurisdiction.

  
United States District Court Judge