

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

INDIAN RIVER RECOVERY CO., \*

Plaintiff, \*

v. \* C.A. No. 85-312 C.M.W.

THE SANTA ROSEA LEA, \*

HER APPURTENANCES, \*

FURNITURE, CARGO, ETC., \*

Defendant. \*

\* \* \* \* \*

MOTION TO INTERVENE

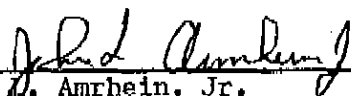
John L. Amrhein, Jr., for himself, hereby moves this Court for permission to intervene in the above styled action pursuant to Rule 24 (b) Fed.R.Civ.Proc. This petition is predicated upon 16 USC 470 et. seq. and the petitioner's personal knowledge concerning the in rem defendant in this action. This petitioner says that:

1. The in rem defendant "Santa Rosea Lea" does not lie within the territorial jurisdiction of this Court.
2. He is a maritime historian.
3. The petitioner challenges the existence of subject matter jurisdiction pursuant to Rule 12 h (3) Fed.R.Civ.Proc.
4. This Court lacks in rem jurisdiction.
5. The Complaint does not meet the "reasonable inquiry" requirement of Rule 11 Fed.R.Civ.Proc.
6. The plaintiff's Complaint should be dismissed.

These issues are more fully briefed in the attached Memorandum In Support Of The Motion To Intervene and accompanying Exhibits.


Wherefore, upon the grounds and evidence presented, this petitioner prays the Court to grant his Motion To Intervene and to examine the existence of subject matter jurisdiction as well as in rem jurisdiction as regards this action.

I DECLARE UNDER THE PENALTY OF PERJURY that the foregoing is true and correct.

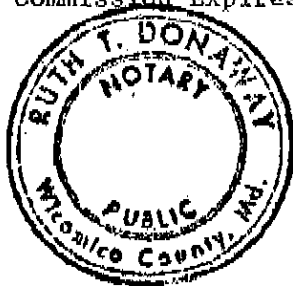
  
\_\_\_\_\_  
John J. Amrhein, Jr.  
Brookview Drive  
Salisbury, Maryland 21801

STATE OF MARYLAND  
COUNTY OF WICOMICO

Subscribed and sworn to before me this 25<sup>th</sup> Day of June, 1985, a Notary Public for the State and County aforesaid.

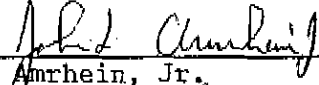
  
\_\_\_\_\_  
Notary Public

My Commission Expires: July 1, 1986



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this last day of July, 1985, I caused copies of the accompanying Motion To Intervene to be served by mail, first-class postage prepaid, on Bayard J. Snyder, Esquire, Tomar, Parks, Seliger, Simonoff & Adourian, 901 Market Street, Suite 1111, Wilmington, Delaware 19801, attorney for Indian River Recovery Company; Michael Foster, Esquire, Department of Justice, 8th Floor, Carvel Street Building, 820 North French Street, Wilmington, Delaware, 19801, attorney for the State of Delaware.

  
\_\_\_\_\_  
John L. Amrhein, Jr.  
Brookview Drive  
Salisbury, Md. 21801

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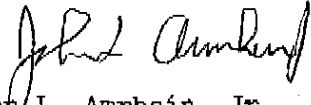
FURNITURE, CARGO, ETC., \*

Defendant \*

\* \* \* \* \*

MEMORANDUM IN SUPPORT  
OF MOTION TO INTERVENE

Respectfully submitted,



John L. Amrhein, Jr.  
Brookview Drive  
Salisbury, Md. 21801

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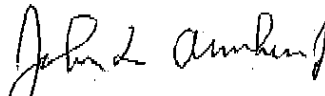
\* \* \* \* \*

3.1 (D) CERTIFICATION

JOHN L. AMRHEIN, JR., Applicant for Intervention, hereby avers to this Honorable Court that:

1. On June 25, 1985 the enclosed Motion To Intervene and Memorandum Of Support, along with the accompanying Exhibits, were sent via registered mail to plaintiff's attorney, Bayard J. Snyder, Esq. of Tomar, Parks, Seliger, Simonoff & Adourian, 901 Market Street, Suite 1111, Wilmington, Delaware 19801;
2. That the domestic return receipt on said registered mailing indicates delivery to plaintiff's attorney on June 27, 1985;
3. That no communication or other indication of opposition to aforesaid Motion has been initiated by plaintiff's attorney.

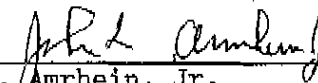
Respectfully submitted,



John L. Amrhein, Jr.  
Brookview Drive  
Salisbury, Md. 21801

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1<sup>st</sup> day of July, 1985, I caused copies of the accompanying Memorandum In Support Of Motion To Intervene to be served by mail, first-class postage prepaid, on Bayard J. Snyder, Esquire, Tomar Parks, Seliger, Simonoff & Adourian, 901 Market Street, Suite 1111, Wilmington, Delaware 19801, attorney for Indian River Recovery Company; Michael Foster, Esquire, Department of Justice, 8th Floor, Carvel Street Building, 820 North French Street, Wilmington, Delaware 19801, attorney for the State of Delaware.

  
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\* \* \* \* \*

MEMORANDUM IN SUPPORT  
OF MOTION TO INTERVENE

On or about April 24, 1985 the plaintiff, Indian River Recovery Co. filed claim in admiralty pursuant to 28 USC Section 1333 against a ship-wrecked vessel the plaintiff calls "Santa Rosea Lea", the in rem defendant in this action. This Complaint stated that the plaintiff had information and believed that the said in rem defendant vessel was the "Santa Rosea Lea" and it sank in Delaware Bay in 1788. The plaintiff further said without any reservation as to belief it had located and salvaged items from the "Santa Rosea Lea". The plaintiff alludes to its "great skill" as regards anticipated salvage activities directed towards this vessel. The plaintiff sought and was granted an arrest warrant for the "Santa Rosea Lea" as well as custody of the "Santa Rosea Lea".

Upon review of the record the salvage services to date appear to be merely alleged and no return of service in rem upon the wreck has been attested to.

This petitioner possesses historical data relating to the "Santa Rosea Lea". Upon examination of historical documents found in public depositories,

it is found that this ship, the "Santa Rosea Lea" (but more accurately labeled "Santa Rosalia") wrecked upon Cape Charles, Virginia on July 23, 1788 (See Exhibit A). As described in Exhibit A the spelling is incorrect and demonstrates the extent of the plaintiff's knowledge concerning this vessel.

Upon learning of this pending admiralty claim, this petitioner felt it important to inform this Court as to the obvious deficiencies found in the plaintiff's Complaint.

This petitioner is a maritime historian with a particular interest in the shipwrecks along the Delmarva Coast. As a maritime historian and a citizen of the United States, this petitioner is deeply concerned about the proper treatment of submerged historic and archaeological property. The Historic Preservation Act, 16 USC S 470 (d) specifies that private individuals are encouraged to assist in historic preservation. This basic concept has been upheld in River v. Richmond Metropolitan Authority, 359 F Supp 611 (DC Va, 1973) afd 481 F 2d 1280 (CA 4th, 1973). The Court said that users and enjoyers of resources allegedly protected by The National Historic Preservation Act are within the zone of protection of the Act.

Intervention by third parties is allowed in admiralty, see 2 AM JUR 2d ADMIRALTY 1962 S184. Rule 24 (b) says anyone may be permitted to intervene in an action:"(1) When a statute of the United States confers a conditional right to intervene; or (2) When an applicant's claim or defense and the main action have a question of law or fact in common". This petitioner has already stated that his Motion To Intervene is based partly upon the provisions of 16 USC 470 et. seq. This petitioner also has a defense in common with the main action in both fact and law.

As demonstrated in Exhibit A of this Memorandum, the in rem defendant as named by the plaintiff does not lie in Delaware Bay or within the territorial jurisdiction of this Court. There are no statements in the Complaint which demonstrate how the plaintiff came to the conclusion that the alleged salvaged items were deducted as being from a 1788 vintage Spanish ship. Based on Exhibit A we know it is not the Santa Rosalia.

1. Regardless Of The Identity Of The In Rem Defendant, This Court Lacks Subject Matter Jurisdiction As Well As In Rem Jurisdiction To Entertain This Claim In Admiralty.

To be a valid salvage claim three elements are necessary:

- (a) a marine peril
- (b) service, voluntarily rendered when not required as an existing duty or from a special contract
- (c) success in whole or in part, or that the service rendered contributed to such success.

Assuming a shipwrecked vessel is present as alleged, the question of peril is satisfied. However, the second element seems to indicate that voluntary service must be actual and not merely alleged. The third element goes further to say that such service must end in success, either whole or in part. In The Sabine 101 US 384 (1879) the Supreme Court said "proof of success, to some extent, is as essential as proof of service [rendered] for if the property is not saved, or if it perishes, or in case of capture, if it is not retaken, no compensation will be allowed".

The plaintiff clearly alleges past salvage services which are a prerequisite to the establishment of subject matter jurisdiction. However, the plaintiff cannot confer subject matter jurisdiction on the Court by mere allegation alone. There must be some proof of service. The plaintiff has even failed to describe in particular where the alleged salvage services took place, other than generally in Delaware Bay in 80 feet of water.

The plaintiff must prove that what it calls the "premises" is actually a vessel. 7A J. Moore, Moore's Federal Practice, P. 215 [3] 2d ed 1983 says "[i]f ... the structure ... is not a 'vessel' the contract will be outside the maritime jurisdiction" [beyond the scope of Rule 9 (h)] emphasis added. Jurisdiction as applied to suits in rem for breach of maritime contract presupposes that the contract sued upon is to be a maritime contract, and that the property proceeded against is in lawful custody of the court, see The Resolute, 1897 168 US 437, 42 L ed 533, 18 S CT 112. To be in lawful custody of the court, at least a part of the vessel must be recovered and placed under arrest. The record in this case fails to show this, and without such there is no in rem jurisdiction. And if the salvage service is merely alleged and not actual, the court is without subject matter jurisdiction. Wright and Miller, Federal Practice And Procedure: Civil S 1393, 1969 says that according to Rule 12 h (3) a question of subject matter jurisdiction may be presented by any interested party at any time, either by motion or in the answer, and that this is true regardless of what stage the case may be in. Wright and Miller, supra S 1350 says subject matter jurisdiction goes to the power of the court to hear and decide the case, and in Vecchione v. Wohlgmuth, 426 F Supp 1297 (ED Pa 1977) the court said at 1307 "[A] judgement rendered in the absence of subject matter jurisdiction is a legal nullity unable to ripen with age into a valid judgement".

In Joyce v. United States, 474 F 2d 215 (CA 3rd, Pa 1973) the court said that according to Rule 12 h (3) Fed.R.Civ.Proc. wherever it appears by suggestion that it lacks jurisdiction of subject matter, and where there

is no subject matter jurisdiction, there is, as well, no discretion to ignore that lack of jurisdiction.

2. The Complaint Does Not Meet The "Reasonable Inquiry" Requirement

In the instant case we should look to Rule 11, Fed.R.Civ.Proc. for guidance. Since the salvage services appear to be merely alleged and yet unproven, the Complaint must fail. Courts may not infer their jurisdiction solely from the attorney's certificate, see Dodrill v. New York Central R. Co., 253 F Supp 564 (DC Ohio 1966). 3A Benedict On Admiralty § 143 says "[i]t follows, therefore, that where the service rendered is not in the nature of a salvage or does not constitute a valid salvage claim as, lack of success, lack of peril, no admiralty jurisdiction, etc., a salvage lien does not exist" and at § 151 Benedict says "[s]alvors' possession must be a lawful one made in good faith".

The plaintiff filed this Complaint partly on "general knowledge and belief". Rule 11, however, says that general knowledge and belief is only acceptable "after reasonable inquiry" and "is well grounded in fact and ... law ...".

It appears prudent for cases of salvage involving historic shipwrecks that "reasonable inquiry" would include:

1. That a shipwreck or vessel of some type can be positively identified within the confined geographic perimeter given in the complaint.
2. That a minimum of historical research has been done to support the alleged identity of the shipwreck or vessel and can place the vessel reasonably within the salvor's complaint.

1/ Should a salvor feel that disclosing the actual identity of the shipwreck would compromise his work product or trade secrets, then he should not be allowed to allege any identity in his complaint, but should specify with particularity as to the vessel's vintage and its location.

3. That a suitable archaeological investigation of the shipwreck or vessel be performed which places the sued upon vessel or shipwreck within the historic parameters of the named in rem defendant vessel or shipwreck.

This petitioner is making no allegation of wrongdoing on the part of the plaintiff other than noting the complete lack of historical research relating to this claim. However for general discussion this petitioner would like to point out some possible problems which this Court and others should consider. If a complaint in admiralty is made attesting to discovery and salvage of an ancient shipwreck and is taken at face value and the court proceeds to adjudicate, rule, and issue orders and judgements, the plaintiff/salvor in almost all instances will proceed to sell investment shares in itself/himself to finance the expedition. The very identity of the vessel could conceivably be a fabrication or even a real vessel which never wrecked. An unscrupulous salvor may make statements to potential investors as to the vessel's identity and worth and point to the fact that the vessel is in custody of the federal admiralty court. Such custody tends to lend a great deal of credibility to the salvor who is seeking investment. Courts should be extremely careful in such circumstances to accept jurisdiction unless the above prerequisites have been met. The search for and discovery of ancient and valuable shipwrecks is a dream shared by millions of people today, and it is easy for many to be led astray by the unscrupulous.

Even in the case of the careful, honest and professional salvor who seeks to place an entire section of the bay or ocean bottom under his exclusive control via the in rem arrest procedure, the salvor should be made to demonstrate that the claim site will not intrude into other potential sites which might be claimed by another salvor. In areas such as the Capes

of Delaware there are wrecks upon wrecks and many ships' remains are intermingled with one another. Should an area be placed under exclusive use of the salvor, he may unjustly be given a title or reward to items which fall outside the specific suit in admiralty. The decree in rem should issue against only those objects relating to the named in rem defendant within a defined geographic area and not against all objects of interest found in a geographic area. Otherwise suits in admiralty for salvage will start to resemble a mining claim.

Conclusion

This petitioner by filing this Motion has placed in the record the facts as understood by him of the vessel named "Santa Rosalia". The petitioner prays that his Motion To Intervene be granted and the Court examine the validity of its admiralty subject matter jurisdiction before it proceeds to a determination of the plaintiff's claim. If subject matter jurisdiction and/or in rem jurisdiction is lacking the Complaint should be dismissed. However, should a decree in rem issue, may it issue only against the remains of the "Santa Rosa Lea". As this petitioner is not an attorney and has only provided a cursory exception to the Court's admiralty jurisdiction, this petitioner urges this Court to study the findings in a recent law review entitled Some Legal Troubles With Treasure: Jurisdiction And Salvage, Journal of Maritime Law and Commerce, Volume 16, No. 2, April, 1985.

Respectfully submitted,



John L. Amrhein, Jr.  
Brookview Drive  
Salisbury, Md. 21801

THE SANTA ROSALIA

By

John L. Amrhein, Jr.

On June 3, 1788 the Spanish merchant ship, Santa Rosalia, Captain A. A. Pardenus, entered the port of Baltimore, Maryland. (See 1 and 2) She was listed as a ship of three hundred tons burden (1) and was carrying a cargo of Cadiz salt, sherry wine, fresh raisins in boxes, Jesuit's bark and silk handkerchiefs from Cadiz, Spain (3) consigned to Carey and Tilghman, merchants. The Santa Rosalia remained in port until July 11, 1788 when she was cleared at customs of Baltimore (1, 4) destined for Teneriffe. Apparently the ship remained in the Chesapeake Bay for the next week until July 23, 1788 when a great hurricane struck the Virginia Capes, for after the hurricane it was recorded that a Spanish ship from Baltimore loaded with four thousand barrels of flour wrecked on Cape Charles, Virginia and all crew perished (5). Although this report left the ship unnamed, it did say the ship was from Baltimore bound outward and a careful review of the records of the U.S. Customs Bureau (1) does not reveal any other Spanish vessel coming out of Baltimore in this time period.

Robert Marx, in his Shipwrecks In The Americas, a reprint of his earlier Shipwrecks Of The Western Hemisphere, at page 163, entry #160 says:

"Year 1788. Spanish merchantman Santa Rosalea, Captain Pardenus, sailing from Baltimore to Havanna, wrecked near Cape Henlopen but some of her cargo was saved."

In early January, 1984 I personally met Robert Marx at Williamsburg, Virginia during the annual convention of the Society For Historical Archaeology. I asked Mr. Marx what his source was on the "Santa Rosalea" and he told me that it was "Lloyd's List" and as to the spelling, he said there were numerous errors in the book.

Upon examination of Lloyd's List found at the National Maritime Museum in London, England, the entry was verified as reading:

"Santa Rosalia  
Pardenus  
From Baltimore to Havannah ds drove on shore at the capes of Delaware and dismasted part of cargo saved. 16 September 1788"

Note that this entry does not even mention Cape Henlopen, but merely the Capes of Delaware. Marx, because of the layout of his book, had to assign each wreck to a particular State. Marx arbitrarily chose Cape Henlopen. Note also the entry in Lloyd's List says the ship was drove ashore, not sunk in Delaware Bay. Marx even admits in the introduction to Shipwrecks In The Americas, page XX that "in many cases the names of foreign ships, persons, and place names were misspelled in the List, and I have corrected only those I am positive were misspelled". In this case the misspelling was Marx's. "Santa Rosalia was a rare name used for Spanish ships which point was verified by a professional researcher in the Archivo General de Indias in Seville, Spain."

Note: For References 1-5, see page A-3



As to the error of placing the location of the wreck at Cape Henlopen rather than Cape Charles, Marx has made many other such errors relating to other shipwrecks. One glaring error is the placement of the HMS Culloden in Chesapeake Bay, Maryland, 1781 when it actually wrecked at Long Island, New York in 1781. Actions of British naval vessels in the American Revolution are very well documented and this error is not an easy one to make. The entries in Marx's book need to be viewed with skepticism unless they can be independently verified.

#### Conclusion

The ship referred to in Robert Marx's book as the Santa Rosalea and the Spanish ship wrecked upon Cape Charles, Virginia are one and the same.

REFERENCES

1. See Exhibit B attached, records of the U.S. Customs Bureau, Baltimore Customs House, Record Of Fees Collected, RG 36, E 1168, Page 140.
2. See the Maryland Gazette Or Baltimore Advertiser, June 6, 1788, Page 3, Column 3, at the Maryland Historical Society, Baltimore, Maryland, which shows the ships entering Baltimore, the Santa Rosalia, Captain Pardenus from Cadiz, being one.
3. See the Maryland Gazette Or Baltimore Advertiser, June 10, 1788, Page 3, Column 3.
4. See the Maryland Journal And Baltimore Advertiser, July 15, 1788, Page 3, Column 1 which shows vessels cleared to sail from Baltimore, the Santa Rosalia, Captain Pardenus, being one.
5. The Pennsylvania Gazette of August 20, 1788, Page 3, Column 1 reports from a gentleman in Norfolk, Virginia dated July 31, 1788 that, "an account is just arrived, that a spanish ship with 4 thousand barrels of flour on board, from Baltimore for the Mississippi or New Orleans was wrecked on Cape Charles and the crew consisting of 30 people all perished". Also examined was the Pennsylvania Packet and Daily Advertiser and the Pennsylvania Journal And Weekly Advertiser for this time period. The path of the hurricane can be followed from the North Carolina Coast to Norfolk, Virginia and then up Chesapeake Bay to Baltimore, Maryland. The Pennsylvania papers fail to disclose any ship losses or even the storm being at the Capes of Delaware during this time period.

FEDERAL SERVICES ADMINISTRATION  
National Archives and Records Service

presented shall come, Greeting:

Authority vested in me by the Administrator of General Services, I  
under the seal of the National Archives of the United States, that  
on (s) is a true and correct copy of documents in his custody.

EXHIBIT B

SIGNATURE <i>Clarence F. Lyons, Jr.</i>	
NAME Clarence F. Lyons, Jr.	DATE 2/22/83
TITLE Chief, Judicial, Fiscal, and Social Branch	
NAME AND ADDRESS OF DEPOSITORY  The National Archives Washington, D. C. 20408	

GSA FORM 6791A

<i>gantine Commerce</i>				<i>101 Tons</i>
<i>for duty on imports</i>	<i>142</i>	<i>154</i>	<i>7.11</i>	
<i>for at Tonnage</i>	<i>0</i>	<i>45</i>	<i>12.4</i>	
<i>for at at</i>	<i>120</i>	<i>8</i>	<i>1.0</i>	
<i>for at at</i>	<i>138</i>	<i>13</i>	<i>5</i>	<i>208.14.8</i>

<i>Ship Santa Rosalida</i>				<i>300 Tons</i>
<i>June 3 118</i>	<i>To State of Maryland for duty on Imports</i>	<i>112</i>	<i>418</i>	<i>2.3</i>
<i>July 11 119</i>	<i>State of Maryland for duty on Tonnage</i>	<i>103</i>	<i>25</i>	<i>0.0</i>
<i>..</i>	<i>Light House for at at</i>	<i>101</i>	<i>15</i>	<i>0.0</i>
<i>..</i>	<i>Port of Baltimore for at at</i>	<i>102</i>	<i>1.5</i>	<i>0.0</i>
				<i>489.7.3</i>

B-2

of *Journal*

1798 June 9 1000 By Thomas Hodgkinson for duties  
14 1008 " " Cash receipt

70 1574 7 11  
145 571 6 9 208 14 8

*Journal*

1170

of *Carriage*

1798 June 14 1000 By Henry J. Stephens for duties  
July 11 1550 " " Cash for carriage

31 1488 2 3  
108 141 5 2

*Carriage*

1489 7 3

0 577 ..

*Journal*