



When History Takes a Dive:
The Wreck of the *Maple Leaf* and the Legal Question of Marine Cultural Property

by

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It is of great importance that the general public be given the opportunities to experience, consciously and intelligently, the efforts and results of scientific research. It is not sufficient that each result be taken up, elaborated, and applied by a few specialist in the field. Restricting the body of knowledge to a small group deadens the philosophical spirit of ALL people and leads to spiritual poverty.

Albert Einstein
Ideas and Opinions, 1954

Abandon Ship! **Historical Background on the Wreck of the Maple Leaf**

On the eastern bank, a quarter moon rose into the clear skies over the St. Johns River.¹ The pale light picked out lines of oaks and cypress that formed the swampy forest of the shore. River pilot Romeo Murry guided the 178-foot Union steamship *Maple Leaf* through the calm, inky waters. The journey upriver to Palatka was uneventful. Now, back on familiar waters, they were heading back to Jacksonville.

It was 1864 and the Civil War has rampaged the country for several years. The Union and Confederacy skirmished constantly for supremacy in Florida. On February 20, at the small town of Olustee a few miles west of Jacksonville, the Confederacy humiliated the Union in a brutal battle, forcing a retreat back to Jacksonville. Weak and disorganized, the Union command was scared. The Confederacy could use this opportunity to assault Jacksonville and capture one of the few strong points the Union still had in the state.

Union commanders quickly sent troops from Folly Island, South Carolina to reinforce their position in Florida. The *Maple Leaf*, which carried from Folly Island some 400 tons of personal and regimental equipment from the 13th Indiana and the 112th and 169th New York Volunteers, and sutler and Army stores, arrived at Jacksonville on March 30. Before she could unload her cargo, the *Maple Leaf* was immediately ordered to convey a detachment of seventy-five officers and men with their mounts from the Independent Battalion Massachusetts Calvary to Palatka, a small town seventy miles south threatened with capture. After she delivered the calvary, the *Maple Leaf* took on some forty-five refugees of war (Union sympathizers) that had to be evacuated, or else risk capture by Confederate soldiers.² Using the cover of darkness,

¹Facts concerning the sinking of the *Maple Leaf* and the court hearing there of are extracted from Holland, Keith V., Lee B. Manley, and James W. Tow art (Eds.) *The Maple Leaf: An Extraordinary American Civil War Shipwreck*. Jacksonville, Florida: Progressive Printing, Inc. 1993.; Dillin, James, "The Maple Leaf", *Jacksonville Today* November/December 1980, pp.20-24.; Babits, Lawrence B., "Exploring A Civil War Sidewheeler". *Archaeology*, September/October 1994, pp.48-50 ; and personal knowledge of the region.

²Dillin, p.21.

as ordered, the *Maple Leaf* chugged down the dusky river, past shores infested with Confederate troops.

It was early morning, April 1. Most of the passengers and crew slept as the *Maple Leaf* rounded Mandarin Point, twelve miles south of Jacksonville. The twin side paddle-wheels, powered by her coal-fired boilers, churned the boat through the glassy waters at ten knots.

"The river was still and the channel easy, and if there had been anything as big as my hat on the water I could have seen it," river pilot Murry would later testify. At that point, he said, came the loud explosion right underneath the ship, lifting the pilothouse up and slamming Murry's head into the ceiling. Within five minutes, the *Maple Leaf* was on the bottom of the St. John's River in 20 feet of water. Four people [two deckhands and two firemen] died. Fifty-seven others escaped via lifeboats to complete the trip to Jacksonville. Three Confederate prisoners temporarily were left perched atop part of the *Maple Leaf's* superstructure, which barely remained above the waterline.³

Days later, Confederate troops boarded the *Maple Leaf* and burned down the upper decks that protruded above the waterline.

A board of inquiry found a new machine, created at the Confederate's arsenal at Charleston, sank the *Maple Leaf*: the submarine torpedo. These mines employed a simple design of a beer barrel filled with seventy pounds of small-grain cannon powder that floated just under the surface by conical buoys attached at the ends. The weapon proved to be very effective against shipping and could cripple the Union's superiority on the river. The *Maple Leaf* was the weapon's first claim in Florida, but far from the last.

The *Maple Leaf* was constructed in Kingston, Ontario in 1851 for the steamboat trade on Lake Ontario. In 1862, she was sold to "Boston shipowners who chartered it to the U.S. Army Quartermaster Department as an Army transport."⁴ In the Army, the *Maple Leaf* became one within the legions of workhorse steamers operated by the Union along the coast during the war. Although she survived the extreme icy winters of Canada, numerous wrecks and groundings, the

³Dillin, p.21.

⁴Towart, James W., "The *Maple Leaf* in Historical Perspective", *The Maple Leaf*, p.3.

rigors of ocean travel along the eastern seaboard, even capture by Confederate prisoners destined for Fort Delaware; it was in Florida, warm and almost benign, that fate awaited her.

With the end of the Civil War and the commencement of Reconstruction, traffic rapidly grew along the St. Johns River. Lying in a major channel, the wreckage of the *Maple Leaf* was a constant complaint for the river pilots. On September 20, 1870, the U.S. Treasury Department advertised in a “Sale of Wrecked Property”, the remains of the *Maple Leaf*. No records of bids were recorded however.⁵ On September 1, 1882, the U.S. Army Engineer's Office advertised for bids for the removal of the wreckage and cargo of the *Maple Leaf*. Any material salvaged would become property of the U.S. Government. “A contract was executed on November 17, 1882, . . . by Rodrick G. Gross of Fernandina, Florida, to remove the wreck and cargo of the *Maple Leaf* by February 1, 1883, for the price of \$3,880.”⁶

Speculation has it his bid was so low because rather than attempting to remove the *Maple Leaf* and recover its cargo, he instead decided to blast away any remnants of the ship using explosives. He reported the mission accomplished, and . . . the case of the *Maple Leaf* was considered closed. . . . In 1888 the Corps of Engineers once again reported that the wreckage of the *Maple Leaf* was a hazard to navigation. Another contract was awarded, incredibly to the same Mr. Ross who was supposed to have done the work the first time. Once again, the job was reported to have been done.⁷

From this point, references of to the location of the wreckage of the *Maple Leaf* were systematically removed from all navigation charts. And she slept, thus forgotten, wrapped in a thick blanket of silt, to be awakened by a world very different from the one that laid her to rest.

⁵Towart, James W. and Col. J.V. Witt, “Maple Leaf as a Union Army Transport”, The Maple Leaf, p.15.

⁶Towart, James W. and Col. J.V. Witt, p. 15.

⁷Dillin, p.22.

Rough Seas Ahead **The Strife Over Recovery of Marine Cultural Property**⁸

The development of remote sensing equipment and SCUBA systems during the 1950's opened a new realm for the adventurous. The general public now had access to the numerous shipwrecks that littered the floor of U.S. waterways. Three particular groups developed special interests in the wrecks that lay in territorial seas. For sports divers with an interest in history, or in scavenging artifacts for personal collections, shipwrecks became a natural site for recreational diving. Unrestricted access, however, conflicted with professional salvors, who sought exclusive rights to these sites as profit-making opportunities, and with the marine archeologist, who believed that such haphazard collection and resultant site injury compromised the integrity of proper archeological inquiry.

As a market for marine artifacts grew, notions of vast wealth yet to be claimed incited a fury of professional divers to conduct large-scale salvage operations on the historic wrecks that laid beneath the waves. For professional salvors, the law offered an opportunity for profit. Traditionally, historic shipwrecks fell under the jurisdiction of federal admiralty law, which allowed, and in fact encouraged, the salvage of lost and abandoned goods at sea. In the *Cobb Coin Co.* case⁹, Melvin A. Fisher, famous for his salvage of the Spanish 1622 plate fleet ship *Nuestra Senora de Atocha* and the numerous court appearances stemming from that action, defended the conduct of salvors:

public interest [is] best served by permitting the private salvor, held to high standard as achaeological [sic] guidelines as promulgated by archaeologist of private enterprise such as Treasure Salvors, Inc., the freedom to gather

⁸Material in this section extrapolated from Giesecke, Anne G., "The Abandoned Shipwreck Act: Affirming the Role of the States in Historic Preservation", *Columbia--VLA Journal of Law and Arts* vol.12, spring 1988, pp.379-389, except where noted.

⁹*Cobb Coin Co. v. Unidentified, Wrecked & Abandoned Sailing Vessel* 525 F. Supp 186 (S.D. Fla. 1981). For cases involving the *Atocha* see *Treasure Salvors, Inc. v. The Unidentified, Wrecked & Abandoned Sailing Vessel* 408 F. Supp. 907 (S.D. Fla. 1976); 569 F.2d. 330 (5th Cir. 1978); 640 F. 2d (5th Cir. 1981).

archaeological data from historic shipwrecks.¹⁰

Mr. Fisher and his fellow salvors argue that the public is best served by reintroducing artifacts back into the flow of commerce, as intended in the spirit of salvage law, after all information has been “gathered.”

Salvage operations are expensive and time-consuming endeavors. Salvors must use direct and cost efficient methods so they can pay investors and still produce a profit. To reach their quarry quickly, salvors often employed blasting, dredging, and, at the site of the *Atocha*, propeller backwash, to free wrecks from surrounding corals and sediments. Such haphazard methodology compromises the integrity of proper archaeology for the sake of commercial value.¹¹

For archaeologists, shipwrecks are time capsules that hold elemental evidence of social, economic, and technological systems. Like terrestrial sites, archaeologists believe preservation and interpretation of historic marine sites would best serve the public good. George Bass, a leading figure in underwater archaeology, noted that:

The public visits Mount Vernon and the Alamo, but we would not allow an entrepreneur to dismantle either for private gain. Similarly, historic shipwrecks should be preserved for the pleasure of future generations of visiting divers. Why should a salvor be allowed to dismantle one of John Paul Jones' or LaSalle's ships to sell or own for his own benefit? A historic monument, regardless of where it is found, is a historic monument. It should be recognized as such by law...

There should be no distinction between the protection of historic or archaeological sites on land and historic archaeological sites underwater.¹²

To understand the components of these systems fully, archaeology demands precise study

¹⁰ Fisher, Melvin A. "The Abandoned Shipwreck Act: The Role of Private Enterprise", Columbia-VLA Journal of Law and Arts, vol. 12, spring 1988, p.375.

¹¹ Miller, Robert, "Charting the Future of Historic Shipwreck Legislation in California: Application of the English Model in Salvage of Brother Jonathan", Hastings International & Comparative Law Review, vol. 17, Summer 1994, p.796.

¹² "The Debate of Shipwrecks: Scientist and Explores Ponder Protection Versus Plunder", Science Digest, February 1986, from Nafziger, James A.R., "Finding the Titanic: Beginning an International Salvage of Derelict Law at Sea", Columbia-VLA Journal of Law and Arts, vol.12, spring 1988, p.340, footnote.

and measurements of artifacts and their relationship to each other. In a case that involved the removal of artifacts from a wreck in Biscayne National Park in Southern Florida, the court found that, “it is in the public interest that if artifacts are to be removed from the wreck, the removal to be conducted with scrupulous care.”¹³ Such careful removal and study is a long, tedious process that can extend over many years and for which funding is often not available.

Like archaeologists, museums also have a public obligation in maintaining the integrity of information that can be gleaned from their collections. As early as 1973, museums have passed acquisition policies, based on this ethical consideration, which precluded the collecting of unscientifically excavated objects.¹⁴ Thus, a challenge arises to find a balance among the competing interests of these special interest groups that will ultimately best serve the public good.

Master of the Seas Problems Between Federal Admiralty Laws and State Sovereignty

Federal Admiralty Jurisdiction

Sea laws can be traced back to 1600 BC in the Code of Hammurabi from ancient Babylon, in which some of the basic concepts of modern Admiralty laws are formulated.¹⁵ English maritime law evolved from the court system at a time when piracy was a constant scourge to international trade. As the authoritative voice at sea, the admiral of a boat was entrusted to secure trade and ensured that goods returned back into the flow of commerce. From this duty, a system developed to award individuals who risked life and property to recover goods in a marine peril or, in cases when the property was abandoned, to receive the property itself, or

¹³ *Klein V. The Unidentified, Wrecked & Abandoned Sailing Vessel* 568 F.Supp. 1562 (S.D. Fla. 1983).

¹⁴ See, for example, the Board of Regents Acquisition Policy of the Smithsonian Institution, 1973.

¹⁵ Extrapolated from Moseley, James F., “The Case of the Maple Leaf Sails into Court”, *The Maple Leaf*, pp.167-175.

proceeds produced from its sale.¹⁶ The United States based its maritime law on the English model. The U.S. Constitution illustrates the importance of maritime commerce, which conferred on the federal courts exclusive jurisdiction over admiralty and maritime matters.¹⁷

The federal court sitting in admiralty hears claims on a case-by-case basis with vessels treated as *in rem* jurisdictional personality. “*In rem*,” is a Latin phrase, literally meaning “in the thing.” Under *in rem* jurisdiction, a court exerts its authority over the “thing,” such as a shipwreck. Any person with an interest in the wreck must come forward to protect their claim or otherwise forfeit their rights to it.

With derelict and abandoned property at sea, under which historic shipwrecks fall, admiralty courts generally apply the law of salvage, which developed from the 1869 *Blackwell* opinion of the Supreme Court.¹⁸ The Court summarized the criteria for awarding salvage in 1874 *The Clarita* and *The Clara* case: (1) there must be marine peril, (2) that service of the salvor was performed voluntarily, and (3) that there was success in recovering the vessel or cargo.¹⁹ Rewards are determined by the amount of danger involved in the rescue, the value of the property, and the time and labor expended by the salvors. Such rewards are paid from the monies received in public action of the salvaged goods.²⁰ If the need arises, the court can withhold or reduce compensation if the salvor is found at fault in rendering assistance, theft, fraud, or not abiding by the “Admiralty’s diligence ethics”.²¹

¹⁶ Giesecke, 383.

¹⁷ Article III, §2

¹⁸ 77 U.S. (Wall) 1 (1869)

¹⁹ 90 U.S. 1(1874). When property is salvaged at sea, however, salvors have the right only to possession and that: “ the owner has not been divested of title by virtue of the fact. And neither does the salvor gain title by finding it. It is the obligation to bring the salvaged property before Admiralty court . . . where the owner will be given opportunity to come and claim the property. The salvor by bringing his salvage complaint and by having the recovered property arrest by the marshal, is enable to take the necessary steps for securing his reward.” Morris, 10§150.

²⁰ Giesecke, p.384.

²¹ *Cobb Coin*, 206.

However, because of the nature of shipwrecks, the question of who owns legal title to a shipwreck may be a complicated one. By action of time, storms, and sediment deposits, historic shipwrecks can become forgotten pieces of debris embedded in the soil, and therefore can become, in a sense, a part of the land. In *Klein v. The Unidentified, Wrecked & Abandoned Sailing Vessel*, when the plaintiff took artifacts from a wreck embedded in submerged land owned and administrated by the United States Park Service, the court found that, “when the property is embedded in soil and when the owner of the land has constructive possession of the property such that property is not considered legally lost.”²² Thus, when property is found embedded or affixed to the land, title of the property rest in the owner of the land.²³ By sovereign prerogative, the United States claims all the land beneath its territorial waters out to three miles and, thus, title and power to exercise dominion over historic wrecks for the people of this country as a whole.²⁴ Federal title to wrecks came into contention and confusion when states, to protect their marine heritage, passed legislation claiming title for themselves.

State Jurisdiction

Many states have passed legislation that manages marine cultural property as a component of supervising their aquatic resources. Surprisingly, Colorado was the first state to pass legislation that specifically addressed abandoned and historic shipwrecks in 1963. Similarly, many of the arid states west of the Mississippi River passed legislation regarding abandoned shipwrecks in an effort to control water beds and administer their scarce water resources. In the East, where water is much more plentiful, states developed laws in the context of historic preservation legislation or in response to locations of specific wrecks.²⁵ Florida

²² *Klein*, 1511

²³ 36A C.J.S. Finding Lost Goods § 5c (1961); *Quic quid plantatar* is the notion that “whatever is affixed to the soil belongs to the soil”

²⁴ U.S.C. Article IV §3

²⁵ Giesecke, p. 381.

developed legislation between 1965 and 1967, after the discovery of artifacts from the 1715 Spanish Plate fleet. Maine, Georgia, North Carolina and Texas likewise developed legislation to protect their maritime culture in the 1960's. Twenty-eight states have since enacted laws that specifically address shipwrecks.

Each state defined its jurisdiction based on the Submerged Lands Act, passed by Congress in 1953. This act transferred legal title to submerged lands and the natural resources under navigable waters extending three miles from their respective cost line from the United States to the individual states.²⁶ The act intended to pass ownership of mineral rights to the states yet not upset the sovereignty of the federal government in admiralty matters. The delicate language used to empower the state, however, turned into the Achilles' heel for the legislation designed to protect marine cultural heritage.

Although state laws designed to protect maritime culture developed over different times and for various regional reasons, they are fairly consistent. None prohibit sport diving on shipwrecks and several states provide compensation to licensed private salvage operations. Through the issuing of permits, states could manage their resources efficiently and for the benefit of all parties. Such active participation by the state enabled professional researchers and interested sports divers to contribute a wealth of knowledge in the discovery and study of historic wrecks. Maritime cultural management also has produced an economic impact, especially among states that relied on sports and cultural enthusiasts who fancied for adventure on the sea. Such well-intended management of marine cultural property on the state level, however, came in contention with federal admiralty laws and sovereign prerogatives.

The Inevitable Conflict

The *Cobb Coin Co. v. Unidentified, Wrecked & Abandoned Sailing Vessel* case filed in the federal District Court of Southern Florida was the first case that placed state and federal

²⁶ 43 U.S.C. §§1311 et seq. (1982).

ownership into conflict. Here the court found that federal admiralty law of salvage applied to abandoned wrecks in the terrestrial waters around Florida. Although the Submerged Lands Act of 1953 did pass title of submerged property to the state, it was found that this title encompassed natural resources exclusively and therefore the state did not have a valid claim to abandoned shipwrecks. The court thus determined that traditional federal salvage principles superseded Florida's statutes. The court further found that the state could not prevent someone from bringing a federal lawsuit in admiralty for salvage by invoking the Eleventh Amendment of the U.S. Constitution which bars any lawsuit brought against a state without its consent. Florida had claimed that since it owned the shipwreck, the lawsuit brought by the salvor was a suit against the state of Florida for which it had not given permission. Therefore, on constitutional grounds, the federal court should dismiss the suit.

The court in the *Cobb Coin* case disagreed, concluding that the lawsuit was based under federal admiralty jurisdiction and would not be barred. It also found that the federal admiralty principles could be fashioned to protect historic artifacts during the salvage process and that awarding a portion of the find to the state of Florida could protect the public interest.²⁷ Needless to say, this solution was not favored by the state or by the archeologist community. The prospect of having cost efficiency determinations inherent in salvage operations drive recovery of marine cultural property was not thrilling.

Confusion and inconstancy arose also when the court in Massachusetts found that the state did have plausible claim to a wreck and could claim sovereign immunity (protection from lawsuits) under the Eleventh Amendment barring the salvor from seeking a reward in federal court.²⁸ A similar conclusion of a state's claim was found in Maryland, which also bared the suit

²⁷ Geisecke, p. 385.

²⁸ *Maritime Underwater Survey v. Unidentifiable, Wrecked & Abandoned Sailing* affirmed 717 F. 2d 6 (1st Cir. 1983).

under the Eleventh Amendment.²⁹ As shipwreck cases were brought in various federal courts around the country, published court decisions were often inconstant and conflicting.

Salvage of maritime cultural property through the traditional method of bringing suit in admiralty court for reward presented three fundamental problems. First is the time consideration. Because rewards are granted on case-by-case basis after court hearings, a delay for up to two years could elapse before a federal judge could finally review a case. With the appeals process, it could be as long as ten years before the federal system reaches a final decision. Second, as the colloquial statement tells us, “time is money.” Individuals filing a claim for an award usually require a lawyer for the complex legal procedures. A counterclaim, by other individuals or government entities, along with legal fees and court costs would eventually produce a substantial bill. Finally, there was the problem of inconsistent decisions handed by judges that were based on precedent found in each separate district.³⁰ These were the challenges to those seeking to recover *The Maple Leaf*.

Home Port The Maple Leaf's Day in Court

Dr. Keith Holland and his companions share a passion for history.³¹ After tracing much of Florida's unique and colorful past through its many historic sites, the group wanted to find their own untouched "time capsule." Because of the substantial preservative qualities of the St. Johns River, the group decided to focus on shipwrecks that may be interred in its thick, silty

²⁹ *Subaqueous Exploration & Archaeology Ltd. v. The Unidentified Wrecked & Abandoned Vessel*, 577 F. Supp (D. Md. 1983); *Fairport International Exploration Inc. v. The Shipwrecked Vessel Known As The Captain Lawrence*, 1996 A.M.C. (D.C. Mich. 1995).

³⁰ Giesecke, p.384

³¹ This section extracted from Holland, Keith V., “The Long Successful Search for the Maple Leaf” *The Maple Leaf*, pp.127-137 and Moseley, James F. “The Case of the Maple Leaf Sails into Court”, *The Maple Leaf*, pp. 167-175.

bottom. After six years of extensive historical and archival research, the group was able to pinpoint the final resting-place of the *Maple Leaf* in 1984. Acquiring the right to explore her remains became a very different problem, but an excellent example of legal compromise.

Soon after the discovery of the ship, the group organized itself into the St. Johns Archaeological Expeditions, Inc. (SJAEI), with the intention to research, investigate, and excavate the *Maple Leaf*. This was a time when many professional treasure hunters were capturing the imagination (or condemnation) of the nation and court disputes over ownership of marine cultural property were on the rise. SJAEI's determined that its "sole criterion would be what was right for the *Maple Leaf* Project as it touched the benefit of the public."³² The professionals in SJAEI carefully weighed the guidelines of the profit-driven salvors and the archaeologist, which demands that only trained professionals conduct excavations. Since SJAEI was not obligated to the criterion of either one, they decided to take a middle ground. SJAEI organized as a for-profit corporation, which, as opposed to a non-profit entity, could be dissolved much more easily if the occasion arose. As a corporation, SJAEI could make decisions quickly regarding the growth and structure of the project based on public benefit, as well as, to preserve relics under the strict guidelines of the archaeologist, but without some of their ethical restrictions.

One of the first goals of SJAEI was to create public interest and support in the "Maple Leaf Project." SJAEI began its public campaign in a speech at the Jacksonville Historic Society's quarterly meeting on February 20, 1985. Through many public appearances, SJAEI was able to make the *Maple Leaf* household word in Jacksonville and drummed up a small army of volunteers and supporters needed for the "Project." To be recognized and supported from the

³²Holland p.132.

various historical and archaeological societies, SJA EI equipped themselves with all the material and knowledge required to carry out an excavation of such a grand caliber. With a strong public support system in place, SJA EI was ready to petition for the rights to the *Maple Leaf*.

SJA EI faced many legal questions regarding the legal title to the *Maple Leaf*. Did Florida have title under Florida Statutes that claimed sovereign prerogative for all antiquities and abandoned property within state-owned land as public property?³³ As an army transport, was the *Maple Leaf* ever abandoned by the federal government, which generally does not abandoned property?³⁴ In addition, since the ship was leased, did the federal government have proper title to it?

By the evidential actions of the federal government, the *Maple Leaf* appeared to have been abandoned. On numerous occasions, the government offered for sale the remains of the *Maple Leaf* that no one apparently bought. In 1880, Congress past an act in which wrecks posing as navigational risk must be removed at owner's expense.³⁵ And, after its contracted "removal", the government removed all indications of the *Maple Leaf* wreck from navigational charts.

Armed with questionable ownership, a well-organized archaeological group, and the power of the people, SJA EI filed the Amended Complaint in federal admiralty court in 1986. Although the federal courts were favoring the government in such cases, SJA EI believed that their evidence and professionalism would speak for itself. The complaint consisted of three counts. Count I sought to confirm title of the *Maple Leaf* to SJA EI and allow them full salvage of

³³ Florida Statutes 267.061 b. (Full Volume 1993).

³⁴ 18 U.S.C. § 641.

³⁵ 33 U.S.C. § 409.

the wreck.³⁶ Count II sought admiralty jurisdiction under 28 U.S.C. § 2201 and to declare the wreck abandoned by the United States Government. Count III was an injunction of relief to protect SJA EI interests as a salvager and, because of her significance, protect the *Maple Leaf* from violation by outside individuals through touching, mechanical devices, or exploring the wreck by electronic devices. Two agencies answered the complaint – the Government Services Administration (GSA) and the Department of the Army. Both departments claimed title on the notion that the GSA never abandons property and demanded the case proceed to trial.

Proceeding to trial would probably have been proven cataclysmic for SJA EI. A case similar to the *Maple Leaf* was presided in the District Court of Georgia. In *Chance v. Certain Artifacts Found and Salvaged*, the case involved the salvage and ownership of artifacts removed from the Civil War steamship *The Nashville* that sunk in the Georgia River in 1863.³⁷ Here, though the plaintiff had good intentions for the public, as well as a love for history, the court found them liable for conducting an unsuccessful salvage and denied the plaintiff's claim for both the articles and the salvage reward. The court first determined that the ship was "embedded" in submerged property belonging to the state and, therefore, property of the state. Second, the plaintiffs, after being denied a permit by the Georgia Department of Natural Resources and given a Cease and Desist Order, continued their actions, such as digging and dredging on the wreck, and found guilty of trespassing. Finally, the plaintiffs were found to have caused a marine peril to the site when they upset the delicate equilibrium between the wreck and its environment through their slipshod excavation and conservation techniques. With this precedent, SJA EI faced a court in which the government had not yet lost a case involving title of submerged property on

³⁶ *St. Johns Archaeological Expedition, Inc. v. The Unidentified and Abandoned Steamship*, (D.C. Middle Fla. 1986) from [The Maple Leaf](#) appendix D, p. 177-185.

³⁷ See note 27

inland waterways.

After filing discovery procedures, the counsel for the U.S. government was impressed at the professionalism and public support of the *Maple Leaf* Project. It was decided that the public interests would be best served through a compromised agreement rather than forcing the abandonment issue in trial. The compromised agreement stipulated that: (1.) The United States Government would bestow SJA EI title to explore and remove artifacts from the *Maple Leaf* if they continued to work diligently on the site. (2.) The United State would retain certain sovereign rights and governance to the wreck. (3.) SJA EI could be assisted by the state with information and facilities. (4.) SJA EI would be allowed publication rights regarding the all information of the *Maple Leaf*. All finds from the wreck would be divided, with 80% of the finds going to SJA EI, 10% to the United States Government, and 10% to the State of Florida.

After receiving the official go ahead in 1989, SJA EI spent ten days of fieldwork on the wreck. The nature of the wreck and the qualities of the St. Johns River made for interesting excavation techniques. The St. Johns River is so saturated with tannic acid produced by the cypress trees that line its shore, the water has the consistent color of strong tea, with visibility of only a few inches underwater. The wreck is twenty feet underwater and is buried under five feet of packed silty mud. The excavation process involved digging a pit to the deck of the wreck, cutting a hole into the deck to reach the hold, and going into the hold and grabbing any artifact that you can feel in the pitch darkness. In the preliminary excavations from the hull of the *Maple Leaf* SJA EI was able to recover more than three thousand incredibly preserved objects of wood, leather, canvas, glass, ceramics, and metal. From this cursory search it was found:

- The *Maple Leaf* is still fully loaded with its cargo [400 tons worth].
- The cost of recovery in the terms of labor, vessels, field equipment, and insurance is extremely high.
- The conservation of the material is time consuming and expensive.

- The work environment is difficult and dangerous.³⁸

The *Maple Leaf* wreck site is of such significant magnitude that it would be impractical, if not impossible, to divide the artifacts equitably among the parties in the Admiralty suit.³⁹ Because of the cargo's integrity and unique perspective it provided on Civil War life stored in the hold of the *Maple Leaf*, SJA EI decided that division of the collection would seriously compromise its historical value. "In December 1989 SJA EI announced to the Center of Military History [to whom the Department of the Army assigned its ownership to] and to the Florida Division of Historical Research that it chose not to exercise its right of ownership."⁴⁰ However, SJA EI insisted that the Maple Leaf Project, the Jacksonville community, and the State of Florida should benefit by making sure that some of the material could remain on exhibit at the local Museum of Science and History. This action would allow the people the whole community to enjoy its common heritage and raise awareness among them of the need to protect such resources.

To assist in the preservation of the *Maple Leaf* the Florida legislators presented a Special Category Grant to the Museum of Science and History in 1990. The securing of public funding was a testament to SJA EI's dedication to archaeological principals. The directors of SJA EI had proved themselves to many professional archaeologists who had initially looked at the project with an untrusting eye. In 1991, the Program in Maritime History at Eastern Carolina University agreed to take the *Maple Leaf* as a research and training project.⁴¹ The federal government has also become more interested in the Project and committed funds for artifact conservation. "No

³⁸ Holland, p. 135.

³⁹ Holland, p.135.

⁴⁰ Holland, p.135.

⁴¹ Cantelas, Frank J., "Maple Leaf Wreck Site", Stem to Stern: Newsletter of East Carolina University's Program in Maritime History and Underwater Research, vol.7, 1991. pp.9-10.

underwater archaeological project in Florida has yet even come close to the *Maple Leaf* in representing a model for public and private sector cooperation, or for public benefit."⁴²

Eye on the Horizon

The Maple Leaf as an Example?

As evident from the vast information gathered from the *Maple Leaf* and distributed to the public, this project is a testimony to marriage of public sector resources and private sector efficiency. It was a creative solution that incorporates the interest of common people who implemented sound archaeological practice with efficient maritime cultural management. Most importantly, the integrity of the collection being produced and maintained gives researchers a detailed view of camp life during the Civil War.

The efforts to obtain this collection, however was produced by undertaking measures that are far from common. All parties sacrificed personal interests to adapt sound cultural management practices. SJA EI took on huge expenses, most of which were assumed by private members of the expedition, to prove their commitment and capability to carry out an extensive excavation. Salvors, who often work on shoe string budgets and investors' money, cannot make the personal sacrifices to afford a full-scale excavation. Secondly, to maintain the integrity of the collection, SJA EI forfeited their personal monetary gain that they could have produced through the sell of salvaged artifacts. This practice is rarely encountered among professional salvage operators. Finally, SJA EI received funding support from the State of Florida, as well as support from the City of Jacksonville, which arranged space for storing and exhibiting artifacts at the Museum of Science and History for the enjoyment of the public. Many museums are already

⁴²Miller, James J. "The Sociology of a Shipwreck Project", *The Maple Leaf*. p.126.

stretched thin to maintain their current collections. The burden of several tons of extremely sensitive artifacts would be much more than the typical museum can handle without outside financial support.

The common denominator for all these factors is money. Without funds, managing marine cultural property effectively will be impossible. However, conducting a full excavation on every tug that rived the waves of the sea is not necessary or feasible.

Legal Postscript and The Future of Marine Cultural Property

In 1987, Congress approved the Abandoned Shipwreck Act (ASA)⁴³ in hopes of resolving the conflict between state and federal authority over shipwrecks excavation in submerged state lands. The intention of the ASA was to cure the inconsistencies in federal case law, to lighten the number of cases that have to be heard by the federal courts, and to empower the states to manage better marine cultural property within their borders. The ASA functions by divesting the federal court of exclusive admiralty and maritime jurisdiction in favor of the states in situations where “abandoned shipwrecks” are "embedded" in state's submerged lands and coral lines, or wrecks placed on the National Registry of Historic Places. It also called for states to control and to protect the some five thousand historic shipwrecks in U.S. navigable waters. Finally, the ASA provided funds to establish underwater parks and to excavate properly and display such wrecks for the benefit of the public.⁴⁴ After Congress enacted the ASA, federal courts heard only a few cases involving challenges to ASA’s constitutionality and the state's rights over marine cultural property.⁴⁵ Placing such property in the hands of the states proved to be efficient and cost considerate.

However, salvors prefer federal jurisdiction (as time consuming and cumber as it may

⁴³ 43 U.S.C. §§ 2102, et seq.

⁴⁴ Miller, p.796.

⁴⁵ See *Sunken Treasure, Inc. v. Unidentified, Wrecked & Abandoned Vessel*, 857 F. Supp. 1129 (DC VI 1994).

be) preferring its promise of reward over state permit programs.⁴⁶ It was inevitable that the ASA would be subject to a serious challenge in court. In April 1998, the Supreme Court's decision in *California and State Lands Commission v. Deep-Sea Research, Inc.*⁴⁷ once again opened federal courts to hear salvor's suits in admiralty under the traditional rules of salvage. At the trial level, the salvors argued that the shipwreck at issue was neither "abandoned" nor "embedded" as defined by the ASA. The State of California therefore could not claim ownership, nor could the state bar a suit in federal admiralty court to decide its ownership.

On appeal, the Supreme Court limited its review to the latter issue. The Court decided that unless a state has actual possession of a shipwreck, a suit in federal admiralty is not a suit against the state and therefore is not barred by the Eleventh Amendment. Therefore, a treasure salvor who is the first to possess a shipwreck can proceed to federal court to assert its right to reward and possible ownership without fear that the case would be dismissed. Based on the particular facts of the case, the federal court would then be free to determine whether if the ASA applies or the traditional admiralty law of salvage would govern the outcome. This case, in essence, returns an incentive to salvors to locate, excavate and to come forward with their finds, while giving states an incentive to locate and claim possession to historic shipwrecks.⁴⁸

The objective of the Supreme Court's ruling was to balance a public policy of preserving submerged maritime culture with ascertaining the title to property long lost on the sea and to return these items back into the flow of commerce. Though this may prove to be a boom for salvors to pick clean our nation's heritage, it is also a great opportunity for states to establish their claim on maritime culture as provided under the ASA. It is now imperative that states locate and bring into jurisdiction marine culture resources before salvage operators deprive us the knowledge, history, and excitement from what few remaining untouched wrecks that are left. States must in fact conduct surveys of their marine jurisdiction to place a stamp of ownership of

⁴⁶ Fisher, p. 374.

⁴⁷ 523 U.S. 491, 11, S. Ct. 1464 (1998).

⁴⁸ Shapreau, p. 489.

significant cultural resources. Again, such a daunting task will require expense and sacrifice by state and federal entities, as well as by private individuals.

In November 1994, President Clinton signed The National Maritime Heritage Grants Act into law.⁴⁹ This act is intended to coordinate both public and private programs to “redress the adverse consequences of a period of indifference during which maritime heritage of the United States has become endangered and to ensure the future preservation of the Nations maritime heritage.”⁵⁰ Funding for such programs was intended to come from the sale of scrapped ships owned by the United States. Because of environmental and economic concerns surrounding these ships, it is doubtful that money will be forthcoming from their sale. The spirit of the Act should not quaver! The only true way to protect the past is to educate the future. The past is not just the property of the government protected exclusively by its laws and monies. Our past lies in all of us. In Our homes; Our communities; Our states; Our Nation. And it is at such levels that we must embrace our responsibility and take action to protect it, so that Our History does not parish from the face of the earth. The battle to control the history of the seas is not over yet!

⁴⁹74 U.S.C. § 5401 et seq.

⁵⁰74 U.S.C. § 5401.7

Appendix⁵¹

**RELEVANT DOCUMENTS
FROM ADMIRALTY COURT
ABOUT THE MAPLE LEAF**

**UNITED STATES DISTRICT
COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CASE NO.: 84-1383-CIV-J-16

**ST. JOHNS ARCHAEOLOGICAL
EXPEDITIONS, INC., Plaintiff**

vs.

**THE UNIDENTIFIED, WRECKED AND
ABANDONED STEAM VESSEL**

(Believed to be the vessel *MAPLE LEAF*), her tackle, armament, apparel, etc., located within the St. John's River in tile vicinity of Mandarin Point: within a 600 foot radius of a Point at coordinates 30°9.50' N. Latitude and 81°41.2' W, Longitude. in rem: the UNITED STATES OF AMERICA, in personam. Defendants

**AMENDED VERIFIED COMPLAINT IN
ADMIRALTY AND ACTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

COMES NOW the Plaintiff, ST. JOHNS ARCHAEOLOGICAL EXPEDITIONS, INC., by and through its undersigned attorney and sues THE UNIDENTIFIED,

WRECKED AND ABANDONED VESSEL (believed to be the vessel *MAPLE LEAF*), her tackle, armament, apparel, etc.. located within the St. Johns River in the vicinity of Mandarin Point: within a 600 foot radius of a Point at coordinates 30°9.50' N. Latitude and 81°41.2' W. Longitude, *in rem*; and THE UNITED STATES, *in personam*, as follows:

GENERAL ALLEGATIONS.

1. Plaintiff, ST. JOHNS ARCHAEOLOGICAL EXPEDITIONS, INC. is a Florida corporation with its principal place of business in Jacksonville, Florida. The Corporation's address is 100 Riverside Avenue, Jacksonville, Florida 32202.
2. The Defendant, UNIDENTIFIED, WRECKED AND ABANDONED STEAM VESSEL, is located within the confines of a navigable body of water, the St. Johns River off Mandarin Point, Duval County, at the following location: with a 600 foot radius of a Point at coordinates 30°9.50' N. Latitude and 81°41.2' W. Longitude (hereinafter The *MAPLE LEAF*). The *MAPLE LEAF* is believed to have sunk during an act of war on or about April 1, 1864. Plaintiff specifically avers that The *MAPLE LEAF* is within the jurisdiction of this Honorable Court based upon its electronic sightings, visual and manual confirmation of the presence of The *MAPLE LEAF*'s hull, as well as review of historical records including official documents of the Defendant, UNITED STATES OF

⁵¹ from "Relevant Documents from Admiralty Court about the Maple Leaf" The Maple Leaf appendix D, pp. 177-185.

AMERICA.

3. The Defendant, UNITED STATES OF AMERICA, at one time is believed to have had a limited propriety interest in the MAPLE LEAF.

4. Plaintiff is the owner of or has acacias to certain salvage vessels, salvage equipment, and has brought together an archaeological team including engineers, archaeologist, historians, divers, and technical assistants, to conduct exploration and excavation of the MAPLE LEAF consonant with proper archaeological and historical principles. Plaintiff is presently in possession and exclusive control of The MAPLE LEAF.

5. The remains of The MAPLE LEAF, including her armaments, apparel, tackle, and cargo, are all abandoned maritime property, found, discovered, and confirmed by Plaintiff. On information and belief, The MAPLE LEAF was abandoned by the Defendant, UNITED STATES OF AMERICA, as evidenced by Composite Exhibit 1 hereto, through a series of acts, including but not limited to soliciting and/or entering into contracts for salvage and/or wreck removal in September 1870, September 1882, November 1888 and 1889.

6. The Plaintiff has engaged in long, extensive, expensive, and dangerous search, exploration, and excavation operations in order to find and possess The MAPLE LEAF, her tackle, armament, apparel, and cargo. Plaintiff is in contact with officials of the State of Florida concerning a plan of excavation.

7. The services, skills, expenditures of time and money on the part of the Plaintiff are of the highest order of merit.

8. By virtue of these circumstances, and the Plaintiff's acts, title to The MAPLE LEAF, her tackles, armament, apparel, and cargo, has been vested in Plaintiff, pursuant to the law of finds.

9. Alternatively, said excavation services constitutes services of the highest merit,

justifying a full and liberal salvage award.

COUNT I (COMPLAINT IN ADMIRALTY).

10. Plaintiff realleges, as if fully set forth herein, paragraphs one (1) through nine (9) above.

11. This is a case brought within the admiralty and maritime jurisdiction of this Court within the meaning of Fed. R.Civ.P. 9 (h), and the Supplemental Rules for Certain Admiralty and Maritime Claims, and, in particular, Rules C and D, pursuant to 28 U.S.C. § 1333.

WHEREFORE, Plaintiff prays as follows:

(a) That proper process issue in accordance with the Supplementary Admiralty Rules, and, since it is impractical for the U.S. Marshal to take possession, that public notice to claimants be given by publication, or otherwise as ordered by the Court.

(b) That Plaintiff be put into possession of The MAPLE LEAF, including her armament, apparel, tackle, cargo, and that all other persons, firms, corporations and/or government agencies be enjoined from interfering with the Plaintiff's said title, possession and property.

(c) That Plaintiff's title in The MAPLE LEAF be confirmed against all claimants and all the world.

(d) That all governments, governmental agencies, states, and any other persons claiming an interest in The MAPLE LEAF be cited to appear before this Honorable Court and show cause why possession should not be delivered to Plaintiff as having full title, and that Plaintiff be put into full possession thereof, and its title therein be confirmed.

(e) Alternatively, that Plaintiff be awarded a full and liberal salvage award,

preferably *in specie*, and such other relief as the Court deems appropriate.

**COUNT II
(COMPLAINT FOR DECLARATORY
RELIEF).**

12. Plaintiff realleges, as is fully set forth herein, paragraphs one (1) through eleven (11) above.

13. This Court has jurisdiction over this action, pursuant to 28 U.S.C. §§ 1331, 1331(1), 1651, and 2201, et seq., 46 U.S.C. § 742, the Supplemental Rules for Certain Admiralty and Maritime Claims, and its pendant jurisdiction.

14. This is an action for declaratory judgment pursuant to 28 U.S.C. § 2201, for the purpose of determining a question of actual controversy between Plaintiff and THE UNITED STATES OF AMERICA, as hereinafter more fully appears.

15. Notwithstanding the apparent abandonment by THE UNITED STATES OF AMERICA, Plaintiff has been unable to secure from Defendant acknowledgment of said abandonment so as to be able to proceed with its exploration and salvage of The MAPLE LEAF.

16. Without a declaration by this Court that THE UNITED STATES OF AMERICA has, indeed, abandoned The MAPLE LEAF, Plaintiff will be unsure as to its title in The MAPLE LEAF.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to declare that the Defendant, UNITED STATES OF AMERICA, has totally and completely abandoned the Defendant vessel The MAPLE LEAF, and, therefore, has no right title or interest in her whatsoever.

**COUNT III
(COMPLAINT FOR INJUNCTIVE
RELIEF).**

17. Plaintiff realleges, as is fully set forth

herein, paragraphs one (1) through sixteen (16) above.

18. Plaintiff, by virtue of the aforementioned, is the sole party entitled to possession and control of and title in the Defendant vessel, The MAPLE LEAF.

19. In order to protect Plaintiff's aforesaid rights and interests in The MAPLE LEAF, and to allow it to properly conduct exploration and salvage operations of The MAPLE LEAF, consonant with proper archaeological and historical principles, it is necessary to protect Plaintiff from interference with its operations and/or the wreck site of The MAPLE LEAF by the Defendant, UNITED STATES OF AMERICA, and other individuals who are or may become aware of the existence and/or location of The MAPLE LEAF, and of Plaintiff's activities at the wreck site.

20. Because of the unique historical and archaeological significance of The MAPLE LEAF, Plaintiff has no adequate remedy of law to compensate it for losses which may be occasioned by said interference of The UNITED STATES OF AMERICA or other individuals.

21. As no other parties have any interest in The MAPLE LEAF, it is submitted that no bond should be required by this Court.

WHEREFORE, the Plaintiff prays that the Defendant, UNITED STATES OF AMERICA, and all other individuals be permanently enjoined from:

- (a) Diving in The MAPLE LEAF, as described herein;
- (b) In any way touching or causing mechanical devices to touch The MAPLE LEAF as described herein;
- (c) Exploring, by way of electronic devices or otherwise, the wreck site of The MAPLE LEAF, or asserting claims against The MAPLE LEAF except in this action.

Respectfully submitted,

TAYLOR, MOSELEY & JOYNER

By:/signed/ James F. Moseley
James F. Moseley
Robert B. Parrish
501 West Bay Street
Jacksonville, Florida 32202

Attorneys for Plaintiff

REQUEST FOR ADMISSION OF FACTS AND GENUINENESS OF DOCUMENTS

Pursuant to Fed.R.Civ.P. 36, Plaintiff in the above-entitled and numbered cause, for the purpose of expediting this cause, hereby requests Defendant UNITED STATES OF AMERICA to make the following pertinent admissions for the purpose of this action only, within 30 days here from:

1. The Defendant. UNIDENTIFIED, WRECKED AND ABANDONED STEAM VESSEL at the captioned coordinates (hereinafter THE VESSEL) is not the property of the UNITED STATES of AMERICA (hereinafter UNITED STATES).
2. The vessel has never been the property of the UNITED STATES.
3. The vessel does not constitute a grave site or cemetery.
4. The UNITED STATES government, since 1890 to the present, has made no exploration whatsoever of the vessel.
5. The Government has no present objection to exploration of the vessel by the Plaintiff.
6. The vessel is the double-stack, sidewheel steamer named "MAPLE LEAF."
7. The "MAPLE LEAF" was chartered to the UNITED STATES government on September 1, 1862, pursuant to agreement made in Boston, Massachusetts between Charles Spear on behalf of her owner, J.H.B.

Lang, and Captain William W. McKim, Assistant Quartermaster for the United States Army.

8. The "MAPLE LEAF" served as an Army troop transport vessel from the time of her original charter until April 1, 1864.

9. At approximately 4:00 on the morning of April 1, while off Mandarin Point, Florida, the vessel "MAPLE LEAF" struck an explosive device and sank within minutes in approximately 24 feet of water.

10. At the time of said explosion, the "MAPLE LEAF" was returning from Palatka, Florida, carrying 65 passengers consisting of civilian crew, Union military officers, three Confederate prisoner, and mid-Florida civilians.

11. At the time of said explosion, the "MAPLE LEAF" cargo consisted of camp and baggage of the 112th and 169th New York, and the 13th Indiana, regiments, a large portion of Brigadier General Robert S Foster's and Brigadier General Ames' brigade headquarters, sutlers' goods, and personal property of the civilians who were on board.

12. The "MAPLE LEAF" was declared a total loss.

13. On approximately April 2, 1864. officers of the Confederate Army boarded the "MAPLE LEAF" and set her upper cabins on fire, leaving only that portion below the water-line intact.

14. Up to the moment of her sinking on April 1, 1864, the UNITED STATE did not exercise any option to purchase the vessel pursuant to the charter agreement of September 1, 1862.

15. The Secretary of the Treasury had the power under the provisions of the Joint Resolution of Congress, approved June 21, 1870, to enter into contracts for the preservation sale or collection of any property which may have been left, abandoned or derelict.

16. Section 4, Chapter 211, 46 Congress,

dated June 14, 1880, is correctly reprinted in Exhibit I hereto.

17. On or about September 26, 1870, the Treasury Department advertised for propositions Treasury Department advertised for purchase of the remains of a sidewheel steamboat "MAPLE LEAF"

18. The document attached hereto as Exhibit 2 is a copy of said advertisement referred to in the preceding Request for Admission.

19. On or about October 31, 1882, the United States Army Corps of Engineers, by and through Lt. Col. Q.A. Gillmore, entered into a valid contract with Roderick G. Ross of Fernandina for the removal of the wreck and cargo of the steamer "MAPLE LEAF."

20. The document attached hereto as Composite Exhibit 3 is a true and correct copy of the contract referred to in Request for Admission 19, above.

21. As a result of the work done on the wreck of the "MAPLE LEAF" by Mr. Roderick C. Ross pursuant to the contract referred to in Requests for Admission 19 and 20, above, work began on January 1, 1883, and was completed by February 1, 1883.

22. As a result of said work, cargo was removed from the vessel, returned to the UNITED STATES Treasury Department, sold, and the proceeds delivered into the Treasury of the UNITED STATES for utilization in clearing obstructions to navigation

23. As a result of said work, the boilers, engine and all salvageable machinery were removed, returned to the Government and sold and the proceeds delivered into the Treasury of the UNITED STATES for utilization in clearing obstructions to navigation.

24. On or about November 5, 1888, the Corps of Engineers, again opened bids for the removal of the "MAPLE LEAF" from the St. Johns River.

25. Mr. Ross was again awarded the contract

and once again cleared the obstructions reported at the site of the wreck of the steamer "MAPLE LEAF."

26. The 1890 report of the Corps of Engineers, U. S. Army, stated that the obstruction at the site of the wreck of the steamer "MAPLE LEAF" had all been removed and no other obstructions could be discovered.

27. The chart, copy of which is attached hereto as Exhibit 4, shows in the area circled the location of the wreck of the "MAPLE LEAF" as specified in the contract referred to in Requests for Admission 19 and 20, above.

28. The "Note," contained on said Exhibit 4 is true and correct as to substance.

29. The chart attached hereto as Exhibit 5 shows the location of the remains of the wreck of the "MAPLE LEAF" at the completion of the contract for her removal referred to in Requests for Admission 19 and 20, above.

30. The chart attached hereto as Exhibit 6 shows the location of the remains of the wreck "MAPLE LEAF" in 1884 when lighted beacons were placed in that vicinity shortly after the removal of her remains pursuant to the contract for removal referred to in Requests for Admission 19 and 20, above.

31. The chart attached hereto as Exhibit 7 is an authentic copy of the official UNITED STATES government chart of the St. Johns River to Hibernia in 1911 as contained in the National Archives, RG-23, Chart 455-B, Ed.- 2, Plate No.1832 (Revised).

32. The prose contained on said Exhibit 7 is true and correct as to substance.

33. The chart attached hereto as Exhibit 8 shows that 1981 Orange Park Quadrangle, Florida, official government map corresponding to those charts set forth in the preceding Requests for Admission 27 through 32.

34. Said Exhibit 8 shows no sign of the

“MAPLE LEAF's” wreck site in the circle target area.

35. The chart attached hereto as Exhibit 9 is a true and correct copy of the National Oceanographic and Atmospheric Administration National Ocean Survey Chart No. 11492. 13th Edition, June 26, 1982, showing the Mandarin Point area of the St. Johns River as is set forth in those charts attached to Request for Admissions 27 to 34, above.

36. The prose set forth on said Exhibit 9 is true and correct as to substance.

TAYLOR, MOSELEY & JOYNER

By: /signed/ Robert Parrish

James F. Moseley
Robert B. Parrish
501 West Bay Street
Jacksonville, Florida 32202
(904)356-1306

CERTIFICATE OF SERVICE.

I HEREBY CERTIFY that a true copy of the foregoing was furnished to JOHN F. LAWLOR, III, Assistant United States Attorney, 409 Post Office Building. 3 II West Monroe Street, Jacksonville. Florida, by HAND DELIVERY this 25th day of June, 1986. and to DAMON C. MILLER, Trial Attorney, Torts Branch, Civil Division, U.S. Department of Justice, P.O. Box 14271, Washington, D.C. 20044-4271, by U.S. MAIL this 25th day of June, 1986.

/signed/ Robert B. Parrish ATTORNEY

EXHIBIT 1:

Chap. 211. - An act making appropriations for the construction, repair, and preservation of certain works on rivers and harbors, and for other purposes.

Sec. 4. Whenever hereafter the navigation of any river, lake, harbor, or bay, or other

navigable water of the United States. shall be obstructed or endangered by any sunken vessel or watercraft, it shall be the duty of the Secretary of War upon satisfactory information thereof, to cause reasonable notice, of not less than thirty days, to be given, personally or by publication. at least once a week in the newspaper published nearest the locality of such sunken vessel or craft, to all persons interested in such vessel or craft, or in the cargo thereof, of the purpose of said Secretary, unless such vessel or craft shall be removed as soon thereafter as practicable by the parties interested therein, to cause the same to be removed. If such sunken vessel or craft and cargo shall not be removed by the parties interested therein as soon as practicable after the date of the giving of such notice by publication, or after such personal service of notice, as the case may be, such sunken vessel or craft shall be treated as abandoned and derelict, and the Secretary of War shall proceed to remove the same. Such sunken vessel or craft and cargo and all property therein when so removed shall, after reasonable notice of the time and place of sale, be sold to the highest bidder or bidders for cash, and the proceeds of such sales shall be deposited in the Treasury of the United States to the credit of a fund for the removal of such obstructions to navigation. under the direction of the Secretary of War, and to be paid out for that purpose on his requisition therefor. The provisions of this act shall apply to all such wrecks whether removed under this act or under any other act of Congress. Such sum of money as may be necessary to execute this section of this act is hereby appropriated. out of any money in the Treasury of the United States not otherwise appropriated. to be paid out on the requisition of the Secretary of War. Approved. June 14.1880.

Source: Congressional Statutes, Forty-Sixth Congress, Sess. II. Page 180; Ibid., Page

197.

EXHIBIT 2:

Sale of Wrecked Property

By the Treasury Department.

Collector's office

Custom House, Jacksonville. September 20, 1870.

Notice is hereby given that the Treasury Department is preparing to receive propositions for the purchase of the following wrecked property, viz:

1. Remains of the Steamboat "COLUMBINE," sunk near Horse Landing. 20 miles above Palatka, on the St. Johns River. Upper works burned and part of the machinery removed.
2. Remains of the sidewheel Steamer "MAPLE LEAF." sunk near Mandarin Point. 15 miles above Jacksonville, on the St. Johns River.
3. Remains of the sidewheel steamer "DELAWARE." sunk near St. Johns Bar.
4. Remains of the Propeller "BURNSIDE." sunk below St. Johns Bar.
5. Remains of the U.S. Gunboat "HARRIET WEED." sunk near St. Johns Bluff.
6. Remains of the sidewheel Steamer "ALICE PRICE," sunk in Nassau River. The acceptance of any proposal for the purchase of any of said wrecked property will be conditioned on the removal of the wreck so as not to constitute an obstruction to navigation.

Proposals will be received at this office until 12 M., November 1, 1870.

By order of the Secretary of the Treasury.

Y.A. Dockray, Collector.

EXHIBIT 3 THRU 9 (not included)

**STIPULATION FOR
COMPROMISE SETTLEMENT**

IT IS HEREBY STIPULATED by and between defendant UNITED STATES OF AMERICA and plaintiff ST. JOHNS ARCHAEOLOGICAL EXPEDITIONS, INC., by and through their respective counsel, as follows:

WHEREAS, plaintiff desires to undertake salvage operations on and under navigable waters of the United States, within the St. Johns River off Mandarin Point. Duval County, Florida. within a 600-foot radius of a point at coordinates 30 degrees 9.50 minutes North Latitude and 81 degrees. 41.02 minutes West Longitude, said location believed to be the site of the sunken sidewheel steamer MAPLE LEAF, which is believed to have been sunk during an act of war on or about April 1, 1864;

and

WHEREAS, plaintiff has brought this action in admiralty, claiming that the United States has abandoned any and all interest in the said vessel, asserted its own right, title and interest therein, and seeking injunctive and declaratory relief against the United States,

and

WHEREAS, the United States has appeared in the action and asserted its continuing title to the wreck of the MAPLE LEAF and denying the existence of any interest on the part of the plaintiff;

and

WHEREAS, the parties desire to avoid further litigation, to protect the respective interests for the cultural and historical value of the wreck and its contents, in the interest of both plaintiff and the people of the United States;

IT IS HEREBY STIPULATED as follows:

1. That the United States, without prejudice to its claim of title, hereby grants to plaintiff exclusive rights to dive on explore and retrieve artifacts from the wreck of the

MAPLE LEAF, in exchange for the consideration herein.

2. That said rights shall continue as long as the plaintiff continues to diligently work said salvage site and to abide by the remaining provisions of this stipulation. Diligently, with respect to this stipulation, means: A fair, proper and reasonable degree of salvage activity, measured with reference to the particular circumstances surrounding the salvaging of a submerged shipwreck to include but not be limited to weather, water conditions, time of day, day of week, subject to paragraph 13 herein.

3. That plaintiff, in the exercise of his salvage activities, shall comply with all Federal, State and local laws, Executive orders, rules and regulations applicable to the area of operations involved herein.

4. That the plaintiff shall be responsible for the care, preservation and security of all property found and recovered pursuant to this stipulation. prior to the distribution thereof, as described herein and shall use reasonable care and caution to prevent loss or damage to said property. It is agreed and understood that plaintiff may make reasonable arrangements with outside entities and agencies including the State of Florida, Department of State, for such services.

5. That plaintiff shall not transfer or assign its salvage rights to any other person or entity without the approval of the Court. Plaintiff may enter into contract agreements for certain services in connection with the salvage operation, as long as plaintiff remains in overall control and remains responsible for compliance with the provisions herein. Plaintiff shall secure written agreements from all contractors and subcontractors insuring compliance with the provisions, copies of which agreements shall be furnished to the United States prior to the contractor's or subcontractor's beginning work.

6. That the plaintiff shall extend all reasonable cooperation to the United States and its representatives, including but not limited to allowing the placement of a representative on a salvage vessel, and permitting reasonable access and inspection of all salvaged objects, data, logs, records and materials relating to the salvage operations. Insuring compliance with the covenants and conditions of this stipulation shall not be interpreted as interference with the salvage operation.

7. That the United States, as sovereign, retains all rights and responsibility to enforce all Federal laws and regulations pertaining to the protection of the navigable waters of the United States and the safety of the boating public, and reserves the right to temporarily suspend salvage operations if, in its judgment, said operations are being conducted contrary to law or regulation or interfere with its ability to enforce said laws or regulations.

8. That the plaintiff shall cause to be conveyed at least annually at Jacksonville or Tallahassee, Florida, to the United States a cross-sectional representation of all salvaged artifacts recovered from the salvage site. It is the understanding of all parties that a cross sectional representation shall comprise 20 percent of the artifacts salvaged which shall become the property of the United States. The remaining 80 percent of all artifacts shall be the property of plaintiff

9. That the parties shall cooperate to the maximum extent possible to avoid controversies concerning the conduct of the salvage operation and the distribution of artifacts. It is recognized, however, that the precise contents of the wreck are not presently known and distribution rights will have to be determined by mutual consultation and consent once the artifacts are retrieved and identified. If the parties are unable to agree on the distribution, any party may apply to the Court, who may refer this

matter to non-binding arbitration to determine said distribution in accordance with the stipulation.

10. That to determine the cross-sectional representation of the artifacts salvaged, all artifacts shall be inventoried and listed by type and/or category. The artifacts to be conveyed to the United States shall comprise 20 percent of each type or category. In any event, the United States shall be entitled to receive at least one item of each type or category. Because the interest of the United States may extend to certain types of artifacts and not others, the United States may assert an interest in unique artifacts in which it has a special interest. Said unique artifacts shall be substituted for artifacts representing equal value from the already selected share. Nothing in this stipulation shall require the United States to keep its full share of salvaged items if it does not desire them, nor to prevent the United States from acquiring additional items by mutual agreement.

11. That the United States shall appoint, within 30 days of the date of this stipulation, a representative to speak for it and to receive notices in regard to all matters related to the salvage. Said representative shall be timely informed of all significant developments in the progress of the salvage, including but not limited to: projected dates of salvage activity; salvage activity already conducted, inventories of items recovered; any unusual or unexpected discoveries or developments. In any event, a written report of salvage activity shall be provided to said representatives at least quarterly. Said representatives shall also be notified when the plaintiff has ceased all activity and does not intend to resume same.

12. That upon the cessation of salvage activities, the United States shall retain its claim of title in the remaining wreck and contents. The cessation of salvage activities shall be deemed to take place (1) upon

notification by plaintiff to defendant's representative of said cessation or (2) one year after any active diving at the salvage site, or (3) two years after any active diving at the salvage site, regardless of the plaintiff's intentions (subject to paragraph 13 herein), or (4) upon dissolution of the plaintiff

13. The plaintiff reserves the right to temporarily suspend excavation operations should it determine that archaeological features or artifacts discovered or uncovered during recovery operations are of sufficient scientific or historical importance to the public to warrant special handling or protection. Suspension of recovery operations may remain in effect until such time as the plaintiff determines proper techniques and secures the ability to institute said operational procedures. During such suspension, the plaintiff shall continue to make the quarterly reports required in paragraph 11. If plaintiff deems it necessary to extend the two-year restriction of paragraph 12 for purposes described in this paragraph, it shall so advise the United States at least 30 days prior to the expiration of the two-year period, with an explanation of the reasons therefor and the estimated time to resolve the problem, and the period shall then be extended. If the United States is dissatisfied with plaintiff's reasons or activities, it may apply to the Court at any time after the two-year period for a determination that plaintiff has ceased salvage activities within the meaning of paragraph 12.

14. That the plaintiff agrees to indemnify and hold harmless the United States from any liability, claims, and costs of whatever kind arising out of the performance of this salvage operation, and the United States will not be responsible for any condition of the wreck or contents that might contribute to any such loss, it being understood that plaintiff is solely responsible for the conduct

of the salvage operation, the determination of the methods, equipment, and personnel to be utilized, and assumes all risks thereof.

15. That upon the cessation of activities, plaintiff shall ensure that the site is restored so as to ensure that no new hazard to navigation is created. Plaintiff shall at all times during the salvage activity keep the U.S. Coast Guard informed of any changed conditions at the salvage site which might affect navigational safety and shall comply with any Coast Guard directives concerning marking or other precautions to be taken.

16. That all costs and expenses of salvage, retrieval, preservation and transportation of salvaged materials shall be assumed by the plaintiff prior to such time as a distribution occurs, at which time the receiving party shall assume all subsequent costs and expenses relating to the items received. The United States shall assume all costs of attendance of its personnel at the salvage site or at another location for the purpose of carrying out the provisions of this stipulation.

17. That it is understood by both parties that plaintiff may enter into an agreement with the State of Florida, Department of State, Division of Archives, History and Records Management, by which the Division will provide technical assistance in the salvage, retrieval, preservation and transportation of salvaged material, in exchange for distribution to the State of 10 percent of the salvaged items. The United States agrees to the provision of such assistance and expertise provided it will be of no cost to the United States and that if such agreement is reached, its share as set forth in paragraph 8 shall be reduced to 10 percent. The plaintiff shall furnish the United States with a copy of any such agreement with the State of Florida.

18. It is understood and agreed that plaintiff shall have the right to reprint, publish, televise, or otherwise use in any media,

photographs, reproductions, copies of or descriptive works of any artifacts whatsoever found in or removed from the wreck, and exploit all intangible rights of the plaintiff's efforts, without further compensation to the United States: except that plaintiff shall provide the United States, without cost, one copy of each of such photographs or representations so used.

19. That the Court shall retain jurisdiction over this matter to enforce the provisions of this stipulation, but that the case may be removed from the active docket pending application by either party for a ruling under these provisions. It is contemplated by both parties, however, that the provisions of this stipulation will be carried out in an atmosphere of mutual cooperation and goodwill, and that resort to the Court will be undertaken only in the most extreme and unusual circumstances.

Executed, this 15th day of September, 1986.
ATTORNEY FOR PLAINTIFF

TAYLOR, MOSELEY & JOYNER

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SO ORDERED:

/signed/ John H. Moore II U.S. DISTRICT
JUDGE

September 16, 1986.