

*Great Lakes Exploration Group, LLC. v. Unidentified Wrecked and (For-Salvage Right Purposes), Abandoned Sailing Vessel, etc.*, [522 F.3d 682 \(6th Circ. 2008\)](#).

Location: Exact location unknown, Lake Michigan

Applicable Laws: [Abandoned Shipwreck Act](#) (ASA) (43 U.S.C. §§ 2101 *et seq.*)  
[Submerged Lands Act](#) (SLA) (43 U.S.C. §§ 1301 *et seq.*)

Where Laws Apply: *Abandoned Shipwreck Act:* Applies to abandoned shipwrecks that are embedded in the submerged lands of a state, embedded in coralline formations protected by a state on its submerged lands, or located on the submerged lands of a state when the wreck is included in or determined to be eligible for the National Register.

*Submerged Lands Act:* Grants coastal states rights to natural resources and control of the seabed out to 3 nautical miles (9 nautical miles for Texas, the Gulf coast of Florida, and Puerto Rico and to the international boundary line for states bordering the Great Lakes), defining the seaward limit of a state's submerged lands and the landward boundary of federally managed outer continental shelf lands.

Holding: A federal court may require a salvor to reveal the precise location of a vessel after a state has intervened to assert a claim under the Abandoned Shipwreck Act, although the court must first ensure that the state cannot divest the federal court of admiralty jurisdiction by arresting the vessel prior to the state's intervening. The court is free to issue a conditional arrest warrant limiting salvage operations or to take other actions designed to protect the interests and concerns of both parties.

*General Facts:*

*Le Griffon* was one of the first sailing vessels to navigate the Great Lakes. The French vessel was last seen on September 18, 1670, when it set sail for Niagara. In 2004, Great Lakes Exploration Group, LLC (GLEG), a private underwater exploration and salvage company, brought an admiralty action *in rem* seeking the arrest of the wreck of an ancient sailing vessel, claiming they had located the wreck of *Le Griffin* on the bottom of Lake Michigan.

*Procedural History:*

After GLEG filed the admiralty action seeking arrest of the wreck, the State of Michigan intervened in the action and claimed title to the vessel under the Abandoned Shipwreck Act (ASA). Michigan filed a motion to dismiss the action, claiming that GLEG's complaint was insufficient under the Federal Civil Procedure Supplemental Rules for Certain Admiralty or Maritime Claims (the Supplemental Rules) because it did not state the precise location of the

vessel. Michigan also claimed the court lacked jurisdiction because under the ASA, the wreck belonged to Michigan and the claim was thus barred by the 11th Amendment.

Under the ASA, a state may assert title to an abandoned shipwreck if the wreck is abandoned and is 1) embedded in the submerged lands of the state; 2) embedded in coralline formations protected by a State on submerged lands of a State; or 3) on submerged lands of a State and included or determined eligible for inclusion in the National Register. Once a state is determined to have possession, the 11th Amendment applies and federal courts are barred from exercising jurisdiction over the wreck.

However, GLEG refused to disclose the precise location of the wreck and the State, not privy to the location of the wreck, was unable to determine whether the wreck fell into any of the categories that bring it within the purview of the ASA. The court issued a protective order requiring all documents which revealed the location of the wreck be filed under seal and maintained in confidence by the parties to prevent public disclosure of the wreck's location. GLEG moved to amend the protective order and for the issuance of a temporary restraining order (TRO) seeking to prohibit the State from taking possession of the vessel. The Court denied both motions.

GLEG filed an amended complaint listing three circular areas, 1 mile in diameter each, and claiming the wreck was located in one of the circular areas. Again, Michigan filed a motion to dismiss GLEG's complaint for failure to state a precise location in violation of the Supplemental Rules of the Federal Rules of Civil Procedure. The court again ordered GLEG to disclose the precise location. GLEG again failed to disclose the location and filed new motions requesting an arrest warrant for the vessel, a TRO against Michigan, and an extension of time to disclose the location. The court denied all the motions and dismissed GLEG's complaint without prejudice. GLEG appealed.

#### *Holding and Reasoning:*

Before the Circuit Court were the issues of whether the District Court erred 1) interpreting the Supplemental Rules to require GLEG to disclose the precise location of the shipwreck at the pleading stage, and 2) in refusing to take additional steps to protect federal jurisdiction, such as arresting the vessel or issuing a TRO/preliminary injunction against Michigan, before dismissing GLEG's complaint.

Title to shipwrecks is governed by the ASA. Under the ASA, if a wreck is abandoned and embedded in the submerged lands of a state, embedded in coralline formations protected by a state or located on state submerged lands and is eligible for listing on the National Register, title of the vessel lies with the state. The intersection of the ASA and the 11th Amendment was clarified in *California v. Deep Sea Research, Inc.*, [523 U.S. 491 \(1998\)](#). In *Deep Sea Research*, the Supreme Court held that when a state does not have actual possession of the vessel (the "res"), the 11th Amendment does not bar federal courts from determining the rights of the parties under maritime law or the ASA. Therefore, so long as a state has not yet taken possession of a wreck, federal courts have jurisdiction to determine whether the ASA is applicable. Possession was defined in *Deep Sea Research* as actual possession, not merely

constructive possession. Here, Michigan did not have actual possession of the vessel, as the State was not even aware of the wreck's location.

The Circuit Court concurred with the District Court that GLEG had violated two Supplemental Rules of the Federal Rules of Civil Procedure: Rule C(2)(b), requiring an admiralty complaint describe with *reasonable particularity* the property that is subject to the action; and Rule E(2)(a), requiring a complaint state the circumstances from which the claim arises with such particularity that the defendant or claimant will be able, *without moving for a more definite statement*, to commence an investigation of the facts and to frame a responsive pleading. GLEG had refused to disclose the wreck location because GLEG believed that once it did, Michigan would be able to take actual possession of the vessel and thus divest the court of admiralty jurisdiction by invoking the 11th Amendment.

The court turned to precedent set in *Fathom Exploration, LLC v. Unidentified Shipwrecked Vessel or Vessels*, [352 F.Supp.2d 1218 \(S.D. Ala. 2005\)](#), in order to assist in addressing the requirements of the Supplemental Rules as applied to shipwreck claims. In *Fathom*, a salvor brought a claim for salvage *in rem* against a vessel and the State of Alabama intervened, claiming the vessel was located in Alabama state waters and thus the State had title under the ASA and the claim was barred by the 11th Amendment. Because the salvors had very little information about the exact location of the vessel and the location information it did provide was enough for the State to form a responsive pleading, the Court refused to dismiss the salvor's claim. *Fathom* differs from the case at hand because GLEG does know the precise location of the wreck, and the District Court had authority to dismiss GLEG's claim after they failed to comply with its order requiring disclosure of the location information.

The Circuit Court held that a district court may require a salvor to amend its pleadings to reveal the precise location of a shipwreck where (1) there is a clear need for a more precise location, and (2) the requested information is available or in the salvor's possession. Regarding the issue of perfecting admiralty jurisdiction prior to requiring the revealing of the precise location, the Circuit Court held that the District Court erred in requiring the disclosure prior to assuring GLEG of the continuance and protection of federal jurisdiction over their salvage claim.

In *Deep Sea Research*, the Supreme Court made clear that courts faced with claims under the ASA should seek to retain federal jurisdiction to adjudicate the parties' disputes. A warrant of arrest secures possession of the shipwreck, protects federal jurisdiction in an *in rem* action, and does not affect adjudication of the parties' ultimate right of title. Issuance of an arrest warrant does not require disclosure of the precise location of the wreck because title is not at issue. In ASA claims, title to the vessel is being adjudicated and therefore due process concerns are heightened. With an arrest warrant, the public and salvors are given notice that a vessel in the area has been arrested and any potential owners of the vessel who are interested in litigation are alerted. Therefore, the precise location of the vessel is not required by the Supplemental Rules of Federal Civil Procedure at this time, as it is after the ASA has been invoked by the state.

The Circuit Court affirmed the District Court's finding that the Supplemental Rules allow the District Court to require the precise location of the wreck be revealed; however, the District Court erred in doing so before it perfected admiralty jurisdiction with the issuance of an arrest

warrant for the vessel. Although a federal court may require a salvor to reveal the precise location of a vessel after a state has intervened to assert a claim under the ASA, the federal court must first ensure that the state cannot divest the federal court of jurisdiction. In protecting admiralty jurisdiction with the issuance of an arrest warrant, it may be issued conditionally with limitations protecting interests and concerns of both parties.