

# **VOID: The Subaqueous Exploration and Archaeology Case 577 F. Supp. 597**

The following is by John Amrhein, Jr., author of [The Hidden Galleon](#) This review is based on his experience as an investor in SEA, Ltd., chief diver and Assistant Project Director, and a *pro se* litigant in the case.

Millions are familiar with the wild horses that roam Assateague Island, Virginia. They were made world famous in Marguerite Henry's, *Misty of Chincoteague*. In her book, she documents the legend that the horses came from a Spanish shipwreck centuries ago. This classic in children's literature was made into a movie in 1961. Who would have guessed that a con man would later exploit this enduring story with a make-believe shipwreck and then go so far as to claim the fraudulent shipwreck in admiralty court?

On April 24, 1977, a [con man named Donald Stewart](#) published an article in the Baltimore *Sun* called "Assateague Ponies: A New Look."<sup>1</sup> This was a story that seemed to answer the mystery of the origin of the wild ponies of Assateague crediting a ship called the *San Lorenzo de Escorial* that wrecked on Assateague as the source. But the story was a complete fabrication. In 1980, Stewart formed Subaqueous Exploration and Archaeology, Ltd. and used the *San Lorenzo* story as bait to lure potential investors. On January 13, 1981, Stewart and his corporations, SEA, Ltd. and Atlantic Ship Historical Society, Inc. filed *in rem* claims in the U.S. District Court for the District of Maryland to not only the [San Lorenzo](#), but for three other ships called the [Santa Rosalea, \(1785\)](#), [Santa Clara \(1798\)](#), and the [Royal George \(1789\)](#).<sup>2</sup> The only basis for the existence of these ships was Stewart's limitless imagination and his recklessness. It was a total fraud. The verified complaint was signed by Raymond Cardillo, the Secretary-Treasurer of SEA, Ltd., co-founder of SEA, Ltd. and ally of Donald Stewart. The complaint stated that the shipwrecks had been found when Cardillo knew that they had not. On the basis of the [complaint](#) alone, the Court issued warrants of arrest on January 31, 1981. Notice of the arrests were published in the Baltimore *Sun* on March 24, 1981.

The State of Maryland filed an appearance in these cases on April 9, 1981, without making a claim to the shipwrecks but preserving its sovereign immunity offered by the Eleventh Amendment to the Constitution. It limited its appearance to "if the defendant property in fact consists of the remains the plaintiffs believe them to be" then they would belong to the State of Maryland. The State made no claim to the shipwrecks because they already knew about Stewart.<sup>3</sup> Instead of the shipwrecks, if they won their legal argument that the Submerged Lands Act of 1953 and Maryland Natural Resources Code § 2-309 (1977, 1980 supp.) gave the State colorable claim to all shipwrecks in Maryland waters, they would have a legal precedent. But to reach that legal conclusion the Court would have to believe that the shipwrecks were real. It would have to believe that it had subject matter or admiralty jurisdiction and *in rem* jurisdiction over the defendant shipwrecks.

If the State lost this argument and the plaintiffs won the make-believe shipwrecks, then it would have been easy for it to prevail on appeal by asserting that the judgments were void because of the lack of *in rem* and subject matter jurisdiction. The State could even have raised the issue of fraud if the cases were remanded to the district court.

During this time, there were other shipwreck cases in the news and waiting to be decided. Treasure Salvors, Inc., in Florida, had already won against the State of Florida over the Spanish galleon *Nuestra Señora de Atocha*. Cobb Coin, Inc., had successfully salvaged treasure and artifacts from ships of the 1715 fleet off of Vero Beach, Florida, and the case was decided in 1982; *Cobb Coin Co., Inc. v. Unidentified, Wrecked, Etc.* 549 F. Supp. 540 (1982). In Texas in 1967, Platoro, Ltd. had discovered the *Espiritu Santo*, a Spanish ship lost off Texas in 1554 which set off a long and contentious legal battle. 614 F.2d 1051 (5th Cir.1980) (Platoro II ), final appeal 695 F.2d 893, 1984 (5th Cir., 1984). In Massachusetts, before judgment in *Subaqueous*, Maritime Underwater Surveys, Inc. discovered the 1717 pirate ship, *Whydah*, in 1982. This resulted in litigation that was also closely followed by the State of Maryland 717 F.2d 6 (1st Cir. 1983) but was not finally resolved until 1988, *Commonwealth vs. Maritime Underwater Surveys, Inc.*, 403 Mass. 501.

If the State of Maryland could defeat the treasure hunters of SEA, Ltd. they would be held in high regard by other coastal States. But all of these cases had something in common but remarkably different from *Subaqueous*—a shipwreck was actually discovered and the plaintiff corporations had been successful in salvaging something from the shipwrecks which was then arrested by the court. Thus, subject matter jurisdiction and *in rem* jurisdiction was created giving the courts the power to then entertain other arguments raised by the states which included the Eleventh Amendment defense. There never was a suggestion that these courts lacked subject matter or *in rem* jurisdiction.

### **Motion to Intervene.**

On January 13, 1981, immediately after the SEA, Ltd. complaint was filed, Judge Young directed the Clerk to issue a Warrant of Arrest over the *in rem* defendant vessels. Upon reading the verified complaint “[T]hat any person claiming an interest in the abandoned vessel(s) arrested pursuant thereto may, upon showing of any improper practice or manifest want of equity on the part of the plaintiffs, be entitled to an order requiring the plaintiffs to show cause why the arrest should not be vacated or other relief granted.” Thereafter, the case was assigned to Judge Norman Ramsey.

There is an implied corollary found in Maryland Natural Resources Code § 2-301, “[A] person who knows the location of any archaeological site in the state is encouraged to communicate the information to a reputable museum, an institution of higher education, a recognized scientific or historical institution or society or the [Geological] survey.” The implication is that if a person

knows that if the State of Maryland was entering a fraudulent scheme over make-believe archaeological sites then that person is urged to come forward.

On [March 23](#) and [April 28, 1983](#), this writer filed verified motions to intervene<sup>4</sup> and informed the court that nothing had been found, that the shipwrecks were a fabrication, and that SEA, Ltd. was using the actions to facilitate the sale of stock in SEA, Ltd., and that the prospective intervenor was situated to know the truth. The motions requested an evidentiary hearing. The purpose of the evidentiary hearing was to document that there were no shipwrecks present in the litigation. These motions were a direct challenge to the court's subject matter and *in rem* jurisdiction. It did not threaten any State property or archaeological sites. The motion did not ask the court to try the stock fraud issue. That statement was made to show why and how the plaintiffs intended to benefit from the false claims. This writer was also organizing a fraud suit amongst SEA, Ltd., investors against Donald Stewart and others over the scheme and was cognizant of the fact that such a suit could not efficiently proceed without disposition of the federal case.<sup>5</sup>

The controversy reached the front page of the Baltimore *Sun* on April 24, 1983<sup>6</sup>, headlined as "Search for treasure off Ocean City is shipwrecked on rocky finances." Raymond Cardillo was quoted as saying that with a favorable ruling more money could be raised for SEA, Ltd., Judith Arnold, Assistant Attorney General of Maryland, said that the State had not pressed for a decision because "I guess it was not believed that if anything was down there it would be worth a lot." The article also said that Stewart had spearheaded the restoration of the USS *Constellation* in Baltimore Harbor. Dr. Richard Passwater, an investor and the fourth president of SEA, Ltd., commented on Stewart's research: "I have heard a lot of stories, but nothing he [Mr. Stewart] had not written himself." Stewart responded "I copied on a typewriter what it was necessary for them [investors] to know."

A follow up article in the *Sun* on May 1 "Investors seek proof in sunken ship search." The president of SEA, Ltd., had a meeting with the corporation's board of directors about Stewart and his so-called "research" and decided to "throw the ball" in Stewart's court and demand proof of the shipwrecks. Stewart countered "I'm going to throw it right back to them." Then he refused further comment to the reporter.

The Court was no doubt aware of these articles and knew what the outcome of an evidentiary hearing would be without even calling one. No shipwrecks had been found and that they were nothing more than fabrications made up by Donald Stewart, an officer in both plaintiff corporations. Nothing the Court read contradicted the controversy documented in the Motion to Intervene.

The State of Maryland filed no objections to the Motions to Intervene.<sup>7</sup>

On June 17, 1983, Dr. Passwater<sup>8</sup> wrote to Judge Ramsey to encourage him to hold an evidentiary hearing. He said that the present board of directors had no knowledge of the

shipwrecks named in the claims and that Stewart and Cardillo were the only ones who claimed to have such knowledge. “At this point the board of SEA, Ltd. is interested in knowing the truth as we are sure the court must be.” Cardillo was the attorney of record for SEA, Ltd., at the time and certainly not willing to direct the court to his own shortcomings.

### **The Decision**

On December 21, 1983, the District Court rendered its decision in *Subaqueous*. For nearly three years the court improperly assumed it had subject matter jurisdiction and *in rem* jurisdiction. It reviewed the precedents found in *Treasure Salvors*, *Cobb Coin*, *Platoro*, and *Maritime Surveys*. During the *Subaqueous* court’s deliberations, it refused to take evidence when the truth was called into question and refused to issue a show cause order<sup>9</sup> against the plaintiffs to force them to defend the alleged admiralty jurisdiction they wished to assert even though the State of Maryland had made a basic and compelling argument that the court was without subject matter jurisdiction from the beginning of its appearance.<sup>10</sup> But in the end, the court decided in favor of the State of Maryland saying that it had colorable claim to the “shipwrecks” and dismissed the cases on the grounds that Maryland wanted so that it could be used as a precedent in future shipwreck litigation. The Court stated in its Opinion, *Subaqueous* 601,603, that it had subject matter and *in rem* jurisdiction giving it the power to consider the State’s Eleventh Amendment defense:

“Approximately two hundred years ago, three ships, believed to be carrying a king’s ransom in gold altar plate and other riches, sank in the Atlantic Ocean after being battered by a fierce hurricane. The remains of these vessels and their cargo, are currently submerged “under an undetermined amount of sand “off the shore of Ocean City, Maryland.” Later in the Opinion it affirmed its *in rem* jurisdiction at 606: “. . .the remains of the defendant vessels and their cargo can only be characterized as objects or materials of historical or archaeological value, then at 612 “. . .The defendant vessels and their cargo, when they are successfully recovered, promise to provide the public with an invaluable opportunity to learn about the culture of people who explored or travelled to the shores of the United States two centuries ago.”

### **The Court Denies the Motions to Intervene –*Subaqueous*, at 602**

Subsequently, John L. Amrhein, Jr., proceeding *pro se*, filed a motion to intervene in these proceedings pursuant to Rule 24(b) of the Federal Rules of Civil Procedure. In support thereof, Amrhein contends that he is a shareholder of *Subaqueous*; that he purchased his stock based on the claim by an officer of *Subaqueous* that the defendant vessels in these proceedings exist; that the defendant vessels are neither within the territorial jurisdiction of this forum “... nor in any other area of the world”; and that consequently, a certain officer of the plaintiff corporation committed fraud in selling him shares of *Subaqueous*. Neither plaintiffs nor the State of Maryland have filed responses to Amrhein's motion.<sup>11</sup>

The Court denies Amrhein's motion to intervene.<sup>12</sup> Rule 24(b), Fed.R. Civ.P., which governs permissive intervention, provides in pertinent part that "[u]pon timely application anyone may be permitted to intervene in an action: .... (2) when an applicant's claim or defense and the main action have a question of law or fact in common." The grant or denial of a motion to intervene pursuant to Fed.R.Civ.P. 24(b) rests within the discretion of the court, and its decision thereon will not be disturbed on appeal absent an abuse of such discretion. *See Wright & Miller, Federal Practice and Procedure: Civil § 1913* (1972) and cases cited therein. A review of applicable case law reveals that permissive intervention should be denied where such intervention would delay or prejudice the adjudication of the rights of the original parties, *see, e.g., Degge v. City of Boulder, Colorado*, 336 F.2d 220 (10th Cir.1964); *Carpenter v. Wabash Ry.*, 103 F.2d 996 (8th Cir.1939), *rev'd on other grounds*, 309 U.S. 23, 60 S. Ct. 416, 84 L. Ed. 558 (1940); where the applicant raises claims collateral or extrinsic to the questions presented in the original proceedings, even though the petition presents a common question of law or fact, *see, e.g., Sutphen Estates, Inc. v. United States*, 342 U.S. 19, 72 S. Ct. 14, 96 L. ed. 19 (1951); *Commonwealth Edison Co. v. Allis-Chalmers Mfg. Co.*, 315 F.2d 564 (7th Cir.), *cert. denied*, 375 U.S. 834, 84 S. Ct. 64, 11 L.Ed.2d 64 (1963); *City of Rockford v. Secretary of HUD*, 69 F.R.D. 363 (N.D. Ill. 1975);<sup>13</sup> and where the intervenor's rights can be adequately protected in a separate proceeding, *see, e.g., Koriath v. Briscoe*, 523 F.2d 1271 (5th Cir.1975); *Clark v. Sandusky*, 205 F.2d 915 (7th Cir.1953); *United States v. 1,830.62 Acres of Land in Botetourt County*, 51 F. Supp. 158 (W.D. Va. 1943). *See generally* 3B Moore's Federal Practice ¶ 24.10[4] (1982) and cases cited therein. Upon consideration of the entire record in this proceeding, the Court finds on balance that Amrhein's claim of stock fraud is collateral and largely irrelevant to the thrust of the original action; that the adjudication of Amrhein's claim would unduly delay and complicate the adjudication of the controverted rights of the original parties and the State of Maryland; and that the applicant can adequately protect his rights by instituting a separate proceeding.<sup>14</sup>

### **The court dismissed the cases**

“In conclusion, the Court finds for purposes of determining whether the Eleventh Amendment bars the maintenance of these proceedings that these actions are suits directly against the State of Maryland, that the State of Maryland has a colorable claim of possession of the defendant vessels and their cargo, and that the State of Maryland has not waived its sovereign immunity<sup>15</sup> or otherwise consented to these actions. Under such circumstances, the Eleventh Amendment bars the maintenance of these proceedings. Consequently, the Court grants the State of Maryland's motions to dismiss. In addition, the clear rule of *Treasure Salvors* directs that in an *in rem* admiralty action the Eleventh Amendment bars a federal court from issuing arrest warrants directed at vessels over which a state has a colorable claim to possession. Therefore, the Court finds that its Orders entered January 13, 1981, directing the United States Marshal to seize the defendant vessels and their cargo, were improvidently issued. Accordingly, the Court grants the State of Maryland's motions to vacate the arrests of the defendant vessels. The grant of the State of Maryland's motions to dismiss and to vacate the arrests of the defendant vessels and their

cargo also requires this Court to vacate its Orders entered January 22, 1981, appointing Subaqueous as substitute custodian of the vessels.”

The court made many iterations of facts, jurisdictional facts, necessary to establish that the court had subject matter jurisdiction that simply were not true and were unsupported in the pleadings. It assumed by fiat, that whatever had been “arrested” was a shipwreck without any evidence to differentiate between shipwrecks or other items that might be salvageable but clearly not property of the State. At 606, “Their cargo is believed to include “gold altar plate and other riches.” There is nothing in the record about “gold altar plate and other riches.” But the Court went further:

“In addition it is certainly reasonable to assume that these vessels would also contain other items representative of the culture and lifestyle of people who lived over two centuries ago. §2-309 expressly declares that such historical objects are the property of the State of Maryland...”

It is with this pronouncement that the Court gave standing to the State of Maryland to make its Eleventh Amendment argument. The only evidence presented to the court on the presence of sunken vessels was the fraudulent affidavits presented by the plaintiffs. In 1983, two verified motions to intervene were filed that clearly stated that the defendant vessels had not been found, were not in the geographic areas described in the complaint, were not even in the territorial jurisdiction of the court and were fabrications to boot. Nothing in this verified motion contradicted what was already in the pleadings at the point of filing. Prior to attempted intervention there were admissions that nothing had been found and by inference nothing had been arrested.

If one were to argue that the State’s argument was valid, that the primary threshold to jurisdiction was determination of the Eleventh Amendment question, then why would it be necessary for the Court to make statements that in the interim the court had valid *in rem* jurisdiction? It is clear that the court was well aware of the jurisdictional prerequisite of an *in rem* defendant.

### **The State recognizes victory over the treasure hunters**

The State of Maryland’s victory was celebrated not only in other state capitols but throughout the archaeological community. In the March 1984 newsletter for the Society of Historical Archaeology (SHA):

“The State of Maryland has received a very favorable decision in a treasure salvage lawsuit. The State’s claim to ownership of three historic shipwrecks which sank about 200 years ago was upheld under the State Antiquities Code and the U.S. Submerged Lands Act. ...This case is highly significant in terms of the prospects of historic preservation of historic shipwreck sites instead of their destruction through commercial exploitation.”<sup>16</sup>

If only the SHA had read the Baltimore *Sun* article which described the fraud or even the Court's opinion which clearly documents that nothing had been found and that there were allegations of fraud. *Or did they?* In every case where the archaeological community comments on the evils of "treasure hunting," they always complain that the misplacement of a single artifact can destroy the context of the archaeological site. Now, four make-believe shipwrecks were not only inserted into the maritime history of Maryland but were codified in the Federal Supplement as if they were real and distributed to lawyers and libraries around the world. The archaeologists were happy. As the years have gone by, *Subaqueous* has been cited in other salvage cases, scholarly journals, and pleadings.<sup>17</sup>

### **On the face of the record, the orders of the court are void because the court lacked subject matter jurisdiction**

There is nothing in the record that remotely suggests that the court had subject matter jurisdiction. In order for an action in admiralty to have subject matter jurisdiction it must satisfy these three elements:<sup>18</sup>

- (1) that marine peril exists;
- (2) that the service was voluntarily rendered; and
- (3) that the effort was successful in whole or in part.

In *Subaqueous* there can be no marine peril if the vessels are a fabrication. Marine peril, needs to be examined on a case by case basis and would require the court to review the facts related to the exposure of the wreck versus the covering of sediment or sand, the distance from shore or energy zones, the temperature of the water, the depth of the water, commercial fishing activity and trawling, etc, and God forbid, treasure hunters. Marine peril cannot be assumed it must be proven.

There was no service that was successful in whole or in part so there was no voluntary service. The State of Maryland admitted to this deficiency.<sup>19</sup> Law of Salvage, Martin J. Norris, 1958 § 89, 90, 91 "mere attempt to save is not sufficient; there must be a beneficial result and a contribution to success."

Wright & Miller, Federal Practice and Procedure: Civil § 2862 (1972) a judgment is void "if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with the due process of law.

"[E]very court has judicial power to hear and determine, or inquire into the question of its own jurisdiction, both as to the parties and as to the subject matter, and to decide all questions, whether of law or fact, decision of which is necessary to determine the question of jurisdiction. The court necessarily decides that it has jurisdiction by proceeding to the cause 21 CJS COURTS § 113(1940) and at § 114 "If a court finds at any stage of the proceedings that it is without

jurisdiction, it is its duty to take proper notice of the defect, by staying the proceedings, dismissing or other appropriate action.”

In 1986, the District Court in Wilmington, Delaware, faced with the identical issues found in *Subaqueous*, and aware of the injustices of *Subaqueous*, issued show cause orders to the plaintiff salvors which they failed to comply with. The cases were dismissed for lack of subject matter jurisdiction. [Indian River Recovery Company](#) (unpublished).

### **Subject matter jurisdiction cannot be conferred on the court by agreement**

At *Subaqueous* 606, the court suggests that there was some sort agreement between the State and the plaintiffs:

“Plaintiffs and the State of Maryland agree, and the Court so finds that the defendant vessels and their cargo are situated off the shore of Ocean City, Maryland.” It appears from the face of the record that this why the court assumed it had subject matter jurisdiction because the record is clear that nothing had in fact been found. The State had argued as late as October 29, 1982:

“...this Court sitting as a Court of Admiralty, would be obliged to apply settled principles of admiralty law and to recognize the deficiency of the plaintiff’s allegations. Since this deficiency goes to the heart of this court’s subject matter jurisdiction, it is a deficiency that cannot be waived by action of the State. The parties cannot confer on this court subject matter jurisdiction that it does not otherwise possess.”(Emphasis added)<sup>20</sup> Subject matter jurisdiction cannot be conceded by any party nor can it be granted by this court in its discretion...the court must dismiss action *sua sponte* for want of subject matter jurisdiction,” *McGahey v. Giant Food, Inc.*, 300 F Supp 475, 477 (DC Md 1969). “Jurisdiction cannot be conferred upon a federal court by agreement, consent, or collusion of the parties, whether contained in their pleadings or otherwise, and a party cannot be precluded from raising jurisdictional question by any form of laches, waiver, or estoppels.” *Page v. Wrugert*, 116 F.2d, 449 (7<sup>th</sup> Cir. 1940), Cert. dismd. 312 U.S. 710, 85 L ed, 1142, 61 S CT 831.

Assuming, arguendo, that such agreement could be made, the State of Maryland lacked the standing to make it. The State of Maryland did not file a claim directly to the shipwrecks. The State merely asserted that if the shipwrecks had been found the court would be barred from adjudicating title because of the Eleventh Amendment. Such an agreement might be inferred from the fact that the State not only did not challenge the court’s in *rem* jurisdiction but moved the court to vacate the arrest and amend the order that made SEA, Ltd. substitute custodians thereby giving credibility to it.<sup>21</sup> However, this belief is contradicted by the court at 607, “No objects have been recovered from the defendant vessels...”

The Court improperly granted the State the standing by inferring that he State agreed with the plaintiffs that the vessels were within the territorial jurisdiction of the court when in fact they weren’t. And if the plaintiffs knew that the defendant vessels were a fraud and the State of

Maryland knew they were a fraud, the referred to “agreement” would be void.<sup>22</sup> This so-called agreement between Raymond Cardillo, who signed the affidavit, and the State of Maryland, who should have called the averments in the affidavit into question, would frustrate the attempted intervention which challenged the jurisdictional facts before the court.

**Can the Court or the State of Maryland claim an “assumption of the truth” of the Plaintiffs’ allegations when a verified claim of fraud, in direct contradiction to the alleged facts enumerated in the Plaintiffs complaint, that was filed prior to judgment, and did not contradict the known jurisdictional facts before the court?**

It was only after the district court’s judgment and in post judgment pleadings that the State said that they “assumed the truth” of the plaintiffs allegations.

Plaintiffs’ affidavits were fraudulent under Maryland law.

Elements of actionable fraud are false representation, knowledge of its falsity or such a reckless indifference to the truth so as to impute knowledge, intention that the representation be acted upon, justifiable reliance thereon, a person (or a court) embarking upon a course of conduct that would not have been chosen but for the misrepresentation, and finally resulting damage. *Casale v. Booner Laboratories, Inc.* 503 F.2d 303 (4<sup>th</sup> Cir. 1973 and *Fox v. Kane Miller Corp.*, 542 F.2d 915 (4<sup>th</sup> Cir. 1976).

One might argue that when Cardillo signed the verified complaint that he had “treasure fever” and was under the spell of a fraudster. But, he knew as a matter of fact that nothing had been found. He also knew that selling stock would be much easier after the actions were filed. Cardillo’s “innocence” does not abrogate the perjury suborned by Stewart and Atlantic Ship Historical Society, Inc. One cannot make the assertion that he believes he has discovered the “San Lorenzo” when there is no such shipwreck as the “San Lorenzo” nor any wreck at all. The argument that it was only Cardillo’s opinion is not valid since the practice in Admiralty does not permit personal judgment to be entered on a libel *in rem*, 2 Am Jur 2d ADMIRALTY § 94 (1962) quoting *The Wanata* 95 U.S. 600 24 L ed 461.

Cardillo admitted just before the filing of the libel that he was disturbed that some concrete evidence had not been discovered prior to the claim.<sup>23</sup> Cardillo also represented himself to the plaintiffs that he was versed in admiralty law, and specifically cited *Platoro Ltd. v. Unidentified Remains of a Vessel*, 614 F.2d 1051 (5<sup>th</sup> Cir. 1980). At 1052, the court listed the three prerequisites for admiralty subject matter jurisdiction. Cardillo knowingly made false statements to create the appearance of subject matter jurisdiction. Cardillo knew that without the appearance of subject matter jurisdiction the court would have dismissed the actions. He also knew that the court would most likely rely on his sworn statements.

The court did rely on Cardillo’s affidavits and issued warrants of arrest *in rem*. This was the sole basis for the court’s *in rem* jurisdiction. The court retained this jurisdiction for nearly three years.

The damages done by this fraudulent action are incalculable. There are other court cases, pleadings, and articles, which give credibility to the existence of these shipwrecks that, in reality, are a complete fraud. Four shipwrecks have been inserted into public discourse which don't even exist. Future generations have been harmed by this as argued below.

Cardillo filed no answer to the Motion to intervene and the allegations contained therein. He made no inquiry of the prospective intervenor as to the proof of the fraudulent shipwrecks. He even wrote a letter to Judge Ramsey on May 3, 1983,<sup>24</sup> urging to court to reach a decision as quick as possible without mentioning the Motion to Intervene. But none of this was a surprise to Cardillo because the issue of Donald Stewart being a con man was being discussed among board members beginning in early 1982. That same year, Cardillo even undertook to represent Stewart against SEA, Ltd. in an alleged injury aboard a diving vessel.

### **On the face of the record, the orders of the court are void because the court lacked *in rem* jurisdiction**

The Court stated at 607 “No objects have been recovered from the defendant vessels...” There can be no constructive seizure or arrest of the defendant vessel if it is itself a fiction, the product of fraud. Without an arrest there can be no jurisdiction *in rem*. For courts in admiralty to have jurisdiction *in rem* the *res* must be arrested and brought within the court's jurisdiction. Where there has been no arrest, Admiralty has no jurisdiction to enter a decree *in rem* see, e.g. *Burns Bros. v. Long Island Railroad Company*, 176 F.2d 950 (2<sup>nd</sup> Cir., 1949).

The property proceeded against must be in the lawful custody of the court. *The Resolute* 1897 168 U.S. 437, 42 L ed. 533, 18 S. CT 112, “It is true that in every proceeding of a judicial nature, there are one or more facts which are strictly jurisdictional, the existence of which is necessary to the validity of the proceedings, and without which the act of the court is a mere nullity; such for example... the seizure and possession of a *res* within the bailiwick in a proceeding *in rem*. See also *Noble v. Union River Logging R. Co.*, 147 U.S. 165, 173-74, 13 S. CT 273, 37 L ed. 123 1893 and cited in *Kansas City R. Co. v Great Lakes Carbon Corp.*, 624 F.2d 822 (CA 8<sup>th</sup>, 1980) 59 ALR Fed 816 at 821 6n.

“Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the court shall dismiss the action.” Rule 12 (h)(3) FRCP.

Wright and Miller, Federal Practice and Procedure, CIVIL § 1393, 1969 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.

Jurisdiction is essential to the validity of a judgment *in rem*, such a judgment rendered by a court having no jurisdiction being a nullity. *Hanson v. Deckla*, Del & Fla, 78 S.Ct. 1228, 357 U.S. 235, 2 L.Ed.2d 1283.

The State did not challenge the court's *in rem* jurisdiction. It only moved to vacate the arrest. Had it argued that *in rem* jurisdiction did not exist and according to the face of the record it did not, then the court would be precluded from contemplating the state's Eleventh Amendment defense. In fact, the State's very standing, their legal right to be there, is predicated on the notion that something was arrested.

Where a vessel is the object of an *in rem* action in admiralty, it must be both within the territorial jurisdiction of the District Court and subject to the order of the District Court through the valid process of arrest, see *American Bank of Wage Claims v. Registry of District Court of Guam*, 431 F 2d 1215 (9<sup>th</sup> Cir. 1970). If jurisdiction over a defendant is never acquired, any judgment subsequently rendered is void and of no effect. *Ruddies v. Auburn Spark Plug Company*, 262 F Supp. 648 (S.D. NY 1966).

A court will not exercise jurisdiction over a defendant who has been induced into the Court's jurisdiction by trickery for which the plaintiff is responsible, *Commercial Air Charters, Inc. v. Sundorph Aeronautical Corp., Inc.* 57 FRD 84 (D.C. Conn. 1972) or where it has been fraudulently obtained, 20 Am Jur 2d, COURTS, § 96 (1965). This is true even when the court in good faith believes that the subject matter is within its jurisdiction, 20 Am Jur 2d COURTS § 97 (1965) 3A Benedict on Admiralty, § 151, [S]alvors possession must be a lawful one made in good faith..."

The State of Maryland apparently agreed. On October 29, 1982, "In the cases at bar, federal interests are illusory, and this court should have therefore declined to exercise its admiralty jurisdiction."<sup>25</sup>

"The court had had no jurisdiction over the subject matter or over the *res*, it therefore had no power to decide any issue of salvage law or federal preemption or the Eleventh Amendment." Owen, David R.<sup>26</sup>

There was only one prudent course of action for the court to take. Dismiss the complaint for lack of subject matter jurisdiction and *in rem* jurisdiction. In a case almost identical to *Subaqueous, Indian River Recovery Co. v. [Five Shipwrecks]*: "Moreover, allegations in the complaints about the existence and location of ancient wrecks based upon research and investigation alone do not satisfy the Court that such vessels actually rest at that location or exist at all...Here IRRC filed the five salvage actions prematurely. The Court did not satisfy itself at the time that conditions for an action *in rem* existed, and improvidently ordered that warrants for the arrest of the vessels issue. See Fed. R. Civ. P. Supp. Rule C(3). It is now apparent that IRRC has conducted no on-site salvage activities to date at the locations where its divers served the warrants of arrest. [Affidavits that timbers and other encrusted objects exist at those sites do not remedy the absence of success in whole or in part](#), a necessary element of any salvage action, nor do they satisfy the court that a salvageable wreck is located there...IRRC can initiate new actions by filing new complaints once it physically has performed salvage activities on actual wrecks located at the sites and can satisfy the Court that valid actions *in rem* exist."<sup>27</sup>

**Maryland statutes do not apply to fictitious shipwrecks, only to historical and archaeological objects actually found on State submerged lands.**

The Submerged Lands Act of 1953 43 U.S.C. § 1301 et seq., Id. § 1312. vested "title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters" in the states. Section 2-309 of Maryland's Natural Resources Article, entitled "[o]wnership and deposit of archaeological objects and materials, "provides that "[a]ny object or material of historical or archaeological value or interest found on an archaeological site or land owned or controlled by the State is the property of the State."

The State limited its claim pursuant to § 2-309: "If the Defendant property in fact consists of the remains the Plaintiffs believe them to be, it is the property of the State of Maryland." The unspoken corollary would be that if it is not what the plaintiffs believe it to be, (objects of historical or archaeological interest) then what was there would not be property of the state. (And the State would have no standing). SEA, Ltd. never found anything of historical or archaeological interest related to the federal claims. The State knew before judgment that nothing had been found that was related to these cases.

**The court's opinion in the *Subaqueous* Case is void because it is nothing more than an advisory opinion to the State of Maryland and is prohibited by Article III, Section Two of the U.S. Constitution**

Article III, Section Two of the U.S. Constitution requires that there be a real case or controversy, not a hypothetical one and the parties may not by stipulation invoke the judicial power of the United States in litigation which does not present an actual case or controversy, *Memphis Light, Gas and Water Division v. Craft* 436 US 1, 56 L ed 2d 30, 98 S CT 1554 (1978). For adjudication of constitutional issues, concrete legal issues, presented in actual cases, not abstraction, are requisite, *Michael v. Cockrell* 161 F.2d 163 (4<sup>th</sup> Cir. 1947) and at 165 "As is well known the Federal courts pursuant to Article Three, Section Two of the Constitution do not render advisory opinions, for the adjudication of constitutional issues, concrete legal issues, present in actual cases, not abstractions, are requisite." *See also Alabama State Federation of Labor v. McAdory* 325 US 450, 89 L ed 1725, 65 S CT 1384 (1945).

In exercising its pendant jurisdiction over state law claims, Federal District Court must first determine whether it has power under Article III, Section Two to decide the state law claims the litigant presents with a substantial federal claim, *United Mine Workers of America v. Gibbs* 383 US 715, 86 S CT 1130, 16 L ed 2d 218 (1960). In the absence of a case or controversy between parties, District Court will not undertake to decide questions presented, *Fenner v. Bruce, Inc* 409 Fed Supp 1332 (DC Md 1976).

David Owen, an admiralty attorney from Baltimore, MD, and former President of the Maritime Lawyers Association in the United States, who reviewed the case in 1985, had this to say in his

published law review: “What *Subaqueous* amounts to is, in legal effect but most assuredly not by design, an advisory opinion to the Attorney General of Maryland. It is elementary that a federal court has no power to render such an opinion.”<sup>28</sup>

**The Court should have called for an evidentiary hearing or issued show cause orders against the Plaintiffs.**

As argued above, the *Subaqueous* court operated without valid subject matter and *in rem* jurisdiction. The court could have fulfilled its constitutional duties by simply issuing show cause orders. It was not necessary to grant intervention to do so. In *Joyce v. United States*, 474 F.2d, 215 (CA 3<sup>rd</sup> PA 1973), the Court interpreting rule Rule 12 (h)(3) FRCP said that the court shall dismiss action whenever it appears by *suggestion* (emphasis added) 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. “Duty devolves upon the court at *any time* (emphasis added) jurisdictional question was presented to proceed no further until that question was determined, *Page v. Wrugert*, 116 F.2d, 449 (CA 7<sup>th</sup> II 1940), Cert. dismd. 312 U.S. 710, 85 L ed, 1142, 61 S CT 831. But the *Subaqueous* Court refused to make that determination even after the verified motion to intervene confirmed the allegation of no subject matter jurisdiction made by the State in the very beginning.<sup>29</sup> The court burdened with the duty not to entertain jurisdiction if it does not affirmatively appear cannot infer its jurisdiction from the attorney’s certificate, such as his signature on the pleading, *Dodrill v. New York Central R. Co.*, 253 Fed Supp. 564 (DC Ohio 1966)

**The improvidently issued judgment of dismissal in favor of the State of Maryland does not moot the issues raised by the would-be intervenor and the underlying Opinion contains material and factual misrepresentations of fact and law that are misleading to future generations**

*Subaqueous* is by far a harmless dismissal of a claim made by treasure hunters to historic shipwrecks. Judgments *in rem* are said to be binding “upon all the world.” The statements of fact contained in the opinion of the court are blatantly untrue, distort the maritime history of not only Maryland but the world, and are contrary to the public interest.

The public record of *Subaqueous* as enshrined in the Federal Supplement and further legitimized by reference and citations to this reporter. It is a complete affront to the goals of the National Historic Preservation Act and their presence in the published record sends an inaccurate message to future generations.

Maryland law includes “records” in the definition of historic property, The Annotated Code of Maryland, State Finance and Procurement Article, Title 5a Division of Historical and Cultural Programs, Subtitle 3, PART 1, § 5A-301. Definition (10)(ii) “Historic property” includes related artifacts, *records*, and remains.”

At present, the Maryland Historical Trust, presents to the public in an official publication, [“Archaeological Overview & Remote Sensing Survey for Maritime Resources in Maryland State Waters From the Ocean City Inlet to the Delaware Line Worcester County, Maryland,”](#)<sup>30</sup> page 39, information that the shipwrecks in *Subaqueous* may not exist. But, the author of the report repeats on page 53 in an entry for the *San Lorenzo de Escorial* a complete description of her treasure that was aboard and that it wrecked on Assateague in September of 1820. Her source was a dead end and worthless. There is no notation at the entry that it was associated with Donald Stewart or SEA, Ltd. However, at the beginning of the shipwreck list the author says that some sources are rife with errors. She reported at p39 that a popular author, (this writer) has asserted recently that all four vessels including the *San Lorenzo* were fabrications.” Apparently the author took heed on the *Santa Rosalea*, *Santa Clara*, and *Royal George* as they were not included in the report’s shipwreck list as was the *San Lorenzo*. It is clear from this record that had the court taken the correct actions in 1981-1983, the *San Lorenzo* would not be in the report. It should be noted here that the State of Maryland never consulted this writer about the so-called “San Lorenzo.”

In 1990, a treasure hunting company called Alpha Quest run by a former SEA, Ltd. investor was reported to be looking for the SEA, Ltd. vessels under permit with the State of Maryland. Had the fraudulent nature of these shipwrecks been exposed in *Subaqueous*, the Alpha Quest investors would have been spared their time and money.<sup>31</sup> The State took no position on the non-existence of the vessels at the time they granted the permit.

In 2007, The State of Maryland initiated a survey of the Atlantic Ocean that overlapped the prior claims of SEA, Ltd. It identified no distinct shipwrecks or other remains recognized to be of historical or archaeological significance.<sup>32</sup>

It is very probable, given the nature of treasure hunters, that in the future, an unscrupulous person could go into court with or without a handful of artifacts and lay claim to a shipwreck that in fact has not been found or that may not even exist at all. *Subaqueous* could become a defense to possible criminal activity.

## NOTES

1. This article was repeated in the *Resorter* Magazine of Ocean City, July 15-31, 1979. The *Sun* article can be purchased [here](#).
2. The Complaint. All four shipwrecks were a fraud. None of them existed as described by Donald Stewart. Donald Stewart said the *Royal George* sank in 1789. He was inspired by the real shipwreck [HMS Royal George](#) which sank off the Isle of Wight in England in 1782. Stewart’s motivations on this make-believe ship was an [island](#) in the bay behind Fenwick Island at the north end of Ocean City that today is called Isle of Wight. It originally was called White’s Island after its first owner. It was typical of many of his childish creations. Rule 11 FRCP “Requires a pleading to be signed by an attorney and that the signature certifies that there is good ground to support the pleading” In *Re: Mid-Atlantic Toyota Antitrust Litigation*, 525 F Supp. 1265 (DC MD 1983) at 1282. Raymond

Cardillo who signed the complaint relied on Donald Stewart but continued to do so after evidence surfaced that contradicted Stewart.

3. The State of Maryland, by law, was required to seek the truth: 16 USC S470a(b)(3) (A) of the Historic Preservation Act Amendments of December 12, 1980, Pub L. 96-515. "It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program and to –

(a) In cooperation with Federal and State agencies, local, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic properties and maintain inventories of such properties.

The regulations implementing this statute known as 36 CFR Part 61.4 says:

(b) "It shall be the responsibility of the State Historic Preservation Officer to:

(1) Direct and conduct a comprehensive statewide survey of historic properties and maintain an inventory of such properties: this high priority responsibility entails locating historic and archaeological resources at a level of documentation such that the resources can be evaluated for potential nomination to the National Register of Historic Places..."

Notice of the actions was published in the *Baltimore Sun* on March 12, 1981. But the planned treasure hunts of SEA, Ltd., and Donald Stewart were known to the State a year before. Stewart's most outrageous con, that of the *San Lorenzo de Escorial*, should have been known to the State after Stewart published his detailed account in the *Baltimore Sun* July 24, 1977. The story is easily picked apart and the State had advisors who were already familiar with Stewart's antics at that time.

April 7, 1981. Tyler Bastian, State Archaeologist, received a letter dated April 7, 1981 from a friend who was a doctor from Baltimore who was introduced to Donald Stewart in 1980. "I have personal knowledge of Mr. Stewart's overtures and misrepresentations to me that I brought to your attention a year ago. My investigation of his reputation at the time reinforced my negative impression of him; thereafter, I had no further interest in his projects, until you wrote to me and I called on my friend [Bill Bane] an investor in SEA, Ltd., in Ocean City last week. "

"...I hope that competent authorities will respond to what I perceive as an incompetent operation that may well be laced with deception to the point of criminal fraud as defined from a variety of legal angles."

April 9, 1981. Special appearance by the State of Maryland, p3 "...if the Defendant property in fact consists of the remains the plaintiffs believe them to be, it is the property of the State of Maryland."

J Rodney Little, Director of the Maryland Historical Trust Affidavit p2 "That if the Plaintiffs' beliefs concerning the identity of the Defendant vessel are correct, the vessel may be of great historic significance; it will apparently have survived unmolested for many years and may therefore contain invaluable historic information, which should be preserved for the benefit of the people of Maryland and the United States."

Tyler J. Bastian Maryland State Archaeologist Affidavit p.4, Avers that during 1980, SEA, Ltd., had contacted him about permit requirements. He sent Raymond Cardillo application form on October 17, 1980.

Harold M. Cassel Chief of Wetlands Division, averred that SEA, Ltd. made a presentation to the Board of Public Works on June 17, 1980, to locate certain wrecks "immediately off the Maryland coast" that contained items of archaeological and monetary value.

October 12, 1982. State of Maryland's Supplemental Memorandum on Jurisdictional Issues (Docket Entry #14) page 18, paragraph 2, acknowledged "[N]o property has yet been raised or recovered. And whether any property will ever be successfully raised or recovered is wholly speculative."

September 11, 1984. Visit to Maryland Historical Trust Annapolis. This writer called on the Maryland Historical Trust to see what the State had listed for shipwrecks off of Ocean City. The National Historic Preservation Act required inventories of known archaeological sites. The shipwrecks were not on the inventory maps but there were notations for possible Indian habitation in some submerged areas across the bay from Ocean City. The associate who assisted this writer was queried about the SEA, Ltd., shipwrecks that had been reported in the newspaper. The associate responded that “they were not there.” This writer then wrote [Bastian and Arnold](#) and asked for an explanation. It was pointed out to them that the court had ruled that the shipwrecks had historical and archaeological value within the meaning of Maryland’s Natural Resources Code. They State refused to respond.

November 30, 1984, page 9, 4<sup>th</sup> Circuit, #84-2170, Response of State of Maryland to Appellant’s Motion for Leave to Appear as Amicus Curiae and to Appellant’s Informal Brief which was filed with the 4<sup>th</sup> Circuit Court of Appeals. The State said that “they had no knowledge concerning these claims.” On two occasions during post judgment pleadings this writer had the occasion to talk directly with the Assistant Attorney General, Judith Arnold. One was in person and the other by phone. It was made clear that nothing had been found and that the admiralty actions were a fraud. She never asked for any documentary evidence related to the SEA, Ltd., fraud.

December 7, 1984. Response of State Maryland to “Motion to Enter Order of Denial of Motion to Intervene to Court Docket,” page 6-7, “The state has no knowledge concerning Mr. Amrhein’s allegations of fraud. Any falsity in the facts alleged in the complaints would clearly have been exposed by the normal adversary process, if those facts had been placed at issue and had been material to this court’s decision.” The State chose not to challenge the arrest *in rem* but it did challenge subject matter jurisdiction. “[P]erjury and fabricated evidence are evils that can and should be exposed by the normal adversary process and the legal system encourages and expects litigants to root them out as early as possible” *Great Coastal Express v. International Brotherhood of Teamsters* 675 F.2d 1349, 1982 1357 (CA 4<sup>th</sup> Circuit)

The Court said the year before at 612 “The defendant vessels and their cargo, when they are successfully recovered, promise to provide the public with an invaluable opportunity to learn about the culture of people who explored or travelled to the shores of the United States two centuries ago.” But the State still claimed they knew nothing and these shipwrecks were not included in the State’s inventory of archaeological sites.

April 19, 1983. [Judith Arnold to Judge Ramsey](#). Refers to the Motion to Intervene. Mr. Amrhein’s verified motion and his correspondence to Your Honor make very serious and important allegations concerning the plaintiff, SEA, Ltd., certain of its officers and directors, and the basic allegations of the plaintiff’s complaint. . . . However, should the court determine that further proceedings may be had in these cases, Mr. Amrhein’s allegations would appear to merit serious consideration”

4. Docket Entry # 18 CA R-81-51. The shipwreck believed to be the *Santa Rosalea*. The Motion to Intervene in the *San Lorenzo* and *Santa Clara* case (R-81-53) is found at Docket Entry #17, CA R-81-52 the “Royal George” Case. This clerical mistake was corrected later in post judgment. There was clearly no “Royal George” either but the decision was made not to intervene because of the fact that no information could be found (when it would have if it was real) may not be considered proof of its non-existence. The *Santa Rosalea* and *San Lorenzo* were easy to refute because Stewart gave too many details.

5. The fraud suit was not filed until January of 1984 in the Circuit Court for Worcester County, Maryland.

6. This article “Search for treasure off Ocean City is shipwrecked on rocky finances “can be purchased [here](#).

7. [Letter from Judith Arnold to Judge Ramsey, April 19, 1983](#).

8. Letter from [Dr. Richard Passwater, President of SEA, Ltd. to Judge Norman Ramsey](#), June 17, 1983.

9. Judge Young, January 13, 1981. Docket entry #2.

10. Special Appearance by the State of Maryland, April 9, 1981. Docket entry #11.

11. The official record does not contain an answer from the State or the Plaintiffs but see the letter responses at n7-8 and n24.

12. The Court did not issue, as required, a separate order denying the applicant's Motion to Intervene. Therefore the clerk did not mail a copy of the Opinion to this Applicant. Through the grapevine, the final decision was discovered. The courthouse was called and the Opinion was received the day before the thirty day appeal time had run. A notice of appeal was filed with the 4<sup>th</sup> Circuit but it was received a day late resulting in a later denial. The Court's error failing to issue a separate order was later discovered. See [n15](#) for details.

13. In the cases cited by the Court there was no question of jurisdiction. The court did not consider that when corporate fraud is present a stockholder has standing to intervene, *In Re: Michigan-Ohio Building Corp.*, 117 F 2d 191, 193 (CA 7<sup>th</sup> 1941) cited *Farmers Loan & Trust Co. v. Waterman*, 106 US 265, 1 S CT 131, 27 led 115.

14. The Court said in footnote 5 "To the extent that Amrhein's grievance, liberally construed, constitutes a claim of stock fraud, the Court notes parenthetically that his motion fails to meet the standards of Fed. R. Civ. P. 24(a), which governs intervention of right. Rule 24(a) requires inter alia that the applicant show that "... he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest." Amrhein clearly can protect his interests by instituting a separate proceeding under a stock fraud theory. This was later proven to be not the case. Stewart and Cardillo argued that the investors were collaterally estopped from litigating the existence of the vessels in the action in State court. The plaintiffs are, in addition, collaterally estopped by the decision of the United States District Court in *Subaqueous Exploration and Archaeology, Ltd. V. Unidentified Wrecked Vessel*, 577 F. Supp 597 (D. Md. 1983) from alleging that the representations contained in the [federal] District Court Complaints are false. Also argued that the stock holders of SEA, Ltd. are bound by its judgment.

Cardillo's Memorandum of Law in Support of Demurrer to Counts One and Five of the Declaration, Worcester County Circuit Court. "[as] a matter of law the United States District Court for the District of Maryland, upon the consideration of the evidence before it, including Mr. Amrhein's Motion to Intervene, determined that the wrecks which the Plaintiff alleges do not exist in the area indicated by the Defendants are, in fact, in that area. For this reason, the allegations which form the underpinnings of the Plaintiff's claim must fail and, as a matter of law, this Demurrer should be sustained without leave to amend." He footnotes "The only issue on appeal was the denial of Mr. Amrhein's Motion to Intervene, not the location of the wrecks. Court opinion August 6, 1984, referring to the defendants' demurrers to the Amended Declaration: "the ships have by law been determined to be present as represented." When a Request For Admission Of Facts and Genuineness Of Documents was filed against Cardillo on July 5, 1985, he admitted that the only evidence of discovery submitted to the federal court was his affidavit. He also disclaimed any knowledge related to each shipwreck.

15. The State of Maryland, by its actions, involuntarily waived its sovereign immunity.

### **In the lower Court.**

The *Subaqueous* court at 614: "The Court finds that the State of Maryland has not waived its sovereign immunity throughout the course of these proceedings. The State has expressly preserved its sovereign immunity in each motion that it has filed and in presenting oral arguments on the questions raised in these actions."

If the State waived the requirement of subject matter jurisdiction it may have waived its sovereign immunity. When the state allowed the court to proceed in a feigned issue with the goal of obtaining a favorable judgment for itself with a legal precedent, the State submitted to the maintenance of the proceedings and waived its sovereign immunity. If a party deals with the merits or does any act which recognizes the case as in Court, he submits to the jurisdiction of the court." 5 AM JUR 2d APPEARANCE § 16. And see s21. In determining the character of an appearance, the Court will always look to matters of substance, rather than form, and a party's conduct, as well as other circumstances, are to be considered in determining whether he has actually appeared. 5 Am Jur 2d APPEARANCE S 14 and *Massachusetts Bonding & Insurance Co. v. Concrete Steel Bridge Co.*, 37 F.2d 695, 701 (CA 4<sup>th</sup> 1930) Filing answers in nature of pleas to which [are] coupled pleas of lack of jurisdiction of subject matter constitute[s] [a] general appearance, *Dickey v. Turner*, 49 F2d 998, 1001 (CA 6<sup>th</sup> 1931)

The State appeared voluntarily and asked the court to adjudicate its sovereign immunity contemplated by the Eleventh Amendment. In *Cobb Coin*, the court ruled that the State of Florida waived its immunity because it filed a claim to the *res*. In *Subaqueous*, the State did not file a claim to the *res* after being put on notice of the potential fraud, hoping to get a favorable ruling that would become a legal precedent. In *Cobb Coin*, the State of Florida lost its immunity because it voluntarily appeared, 549 F. Supp. 540 (1982); 1983 American Maritime Cases 1018.

*Cobb Coin* F Supp 555, “Florida’s pleadings attempted, in effect, to get the Court either to hold that Florida owns the wrecked galleon and its treasures, or to dismiss the suit as being one against the State. The State cannot have it both ways; it is either in the suit as a claimant subjecting its rights to decision or else it is out of the suit altogether. See *Treasure Salvors*, 458 U.S. at 670 n. 20, 102 S.Ct. at 3314 and at 5065, citing *Alabama v. Pugh*, 458 U.S. 781, 98 S. Ct. 3057, 56 L. ed.2d 1114 (1978).

The State never objected to the Motion to Intervene and filed no answer in lower court.

### **Post Judgment**

When the applicant for intervention filed his appeal (#84-1151, 4<sup>th</sup> Cir.), the State of Maryland filed a motion for dismissal. The State argued, after preserving its sovereign immunity, that the filing was untimely and that no appeal could be taken on a judgment of dismissal and that it would serve no purpose, and that there were no longer any cases in which to intervene. The State argued that the motions had nothing to do with the Eleventh Amendment issue being held *sub curia* before the court. The State emphasized that the cases decided below were never at issue. The State said in its memorandum of April 17, 1984, that “the State assumed the truth of the plaintiffs’ allegations, even though the State never had knowledge on which to base an opinion as to the truth or falsehood of those allegations.” See n2 above about State’s alleged ignorance. The State argued that the Court “assumed the truth” as well. The State conveniently forgot about its own arguments for lack of subject matter jurisdiction. It must be pointed out that if the State’s assumption of the truth was necessary to create a real case then it is obvious that proving that if there was no “truth” it would have been problematic.

One has to ask that, if the appellate court allowed an appeal and later intervention, then the only outcome would have been a dismissal on the grounds of subject matter and *in rem* jurisdiction. The State’s position would have remained the same. Of course, it may have become an issue as to what the State knew and what their duties were under the National Historic Preservation Act. The State further alleged, without proof, that the applicant’s motivation was that he wanted to pursue other shipwrecks in Maryland waters. This was not the case.

When the appeal was denied by the Fourth Circuit for untimeliness, the applicant then filed a Rule 60 (b)(4) Motion to Vacate the judgment of denial of his Motion to Intervene. This applicant argued the voidness of that order because of the lack of subject matter and *in rem* jurisdiction. The State filed objections to Motion to Vacate, not to protect its property, but to protect a judgment of dismissal, anticipating its precedential value in future treasure cases. The State thus recognized the court’s authority over the alleged State property which was a jurisdictional prerequisite. The plaintiffs filed no objections to the Motion to Vacate. That motion was ultimately denied and appealed. The 4<sup>th</sup> circuit ruled that this writer lacked standing for a Rule 60(b)(4) motion which was only directed at the order denying intervention. It needs to be pointed out here that the order which affirmed the lower court’s denial of the Motion to Vacate was [supported by an opinion](#) that said the appellant had no standing to bring the motion as he was not a party, it was published at [765 F.2d 139](#) that the entire *Subaqueous* proceeding was affirmed. Nothing can be farther from the truth. While before the Court of Appeals, the State repeatedly argued against this writer’s standing prompting a motion to address the Court as an amicus curiae. The State opposed that notion “Any fraud of which the plaintiffs below might be guilty would not taint the District Court’s judgments and, accordingly, there is no need to make the Appellant an Amicus. The State has no knowledge concerning these claims; however, the State believes that, even if the claims are true, they would not taint the District Court’s judgments. Certainly the State participated in the lower court proceedings in good faith, and the Appellant does not suggest the contrary.” The State

admitted that the non-existence of a defendant vessel was a “disputed jurisdictional fact” and but would have been a waste of time to determine the truth of the matter in an evidentiary hearing. Page 9, p. 1, Response of State of Maryland to Appellant’s motion for leave to appear as Amicus Curiae and to Appellant’s Informal Brief. Leave to appear as amicus was denied by the 4<sup>th</sup> Circuit.

Before ruling on the 60(b)(4) motion, this litigant informed the court that no separate order denying the Motion to Intervene had been docketed. The State of Maryland vigorously opposed any entry of an order that could be appealed from. They requested that the orders be entered *nunc pro tunc* thus preventing an appeal. The State was no longer fighting for rights to its property but the maintenance of a proceeding that was based on fraud. The intervention was filed solely to avoid contradictions of fact while prosecuting a fraud suit in State court. The only outcome that could have come from intervention would have been a dismissal for lack of subject matter and *in rem* jurisdiction. This would have resulted in a very short opinion and the opinion would have been void of any ill-conceived jurisdictional facts. There was no threat to any present or future claims against State property. The 4<sup>th</sup> Circuit did rule that this proposed intervenor did have the right to have the order denying intervention to be entered on the court docket and that an appeal could be filed after filing of that order. No appeal was taken because at the time the fraud suit was underway in State court and it was obvious that the State would muddy the water if it continued to marginalize the disputed jurisdictional facts.

16. The Society of Historical Archaeology maintains a strict [Code of Ethics](#) that would bar a member from participating in such an affront to the historical and archaeological record.

17. *Zych v. Unidentified, Wrecked and Abandoned Vessel, Believed to be SB Lady Elgin*, 746 F. Supp. 1334, 1340+, 1991 A.M.C. 359, 359+ (N.D. ILL Sep 13, 1990), Wright & Miller: Federal Prac. & Proc. § 1913, Discretion of Court (2013), Answering and Reply Brief of Intervenor-Appellant and Cross-Appellee the Kingdom of Spain, *Sea Hunt, INC., v. The Unidentified, Shipwrecked Vessel or Vessels*, No.99-2035, 99-2036 CA 4<sup>th</sup>)

18. Requirements for subject matter jurisdiction *The Sabine* 101 U.S. 384 (1880)

19. State’s Supplemental Brief on Jurisdiction, page 17, Docket Entry # 16.

20. Owen, David R., “[Some Legal Troubles With Treasure: Jurisdiction and Salvage.](#)” [Journal of Maritime Law and Commerce, Vol. 16, No. 2 April, 1985](#). P. 167. “[t]he State has no standing to enter into any binding agreement with the plaintiff. If the State was not a party and had no standing to enter the agreement upon which the court based its jurisdiction, then the court should have dismissed the action for lack of *in rem* jurisdiction, or should at least have required the plaintiff to prove the existence and location of the *res*.”

21. Motion for Substitute Custodian, April 10, 1981. Docket Entry #12; Owen, *supra*, page 168.

22. Donald Stewart was the conman. He was the founder and president of the Plaintiff Atlantic Ship Historical Society. Both Stewart and the president of Atlantic ship knew a fraud was being committed. The investors of SEA, Ltd. were innocent victims of Stewart’s. However, Raymond Cardillo, who had signed the verified complaint, became aware of the probability of the fraud and refused to make any reasonable inquiry into the facts that were readily available to him. Before judgment, the president of SEA, Ltd., sent a letter to Judge Norman Ramsey disavowing any knowledge of the fraudulent wrecks and urged the court to call an evidentiary hearing. The State of Maryland knew or should have known the truth of the matter, see n3. Illegal contracts are void

23. [Cardillo to the SEA, Ltd. board January 9, 1981.](#)

24. [Cardillo to Judge Ramsey, May 3, 1983.](#)

25. State’s Second Supplementary Memorandum on Jurisdiction, page 8, Docket Entry #18.

26. Owen, *supra*, Page 179.

27. [Indian River Recovery Co.](#) Decided June 11, 1986. Unpublished.

28. Owen, *supra*, Page 179.

29. April 9, 1981, Special Appearance of State of Maryland, page 3. Docket Entry #9

30. Langley, Dr. Susan, Maryland State Underwater Archaeologist, Principal investigator “[Archaeological Overview & Remote Sensing Survey for Maritime Resources in Maryland State Waters From the Ocean City Inlet to the Delaware Line Worcester County, Maryland](#)”, Maryland Historical Trust, 2007.

31. Ocean City *Today* Spring/Summer 1990. The State archaeologist, Tyler Bastian, said that he had never seen any research to support the vessels existence, *Maryland Coast Press*, Ocean City, MD, March 28, 1986.

32. Langley