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Nothing Gold Can Stay? How Tommy Thompson Lost His Golden Ticket and Gained Decades of Legal Turmoil

Chris Ryan
Stone & Gerken, PA

NOTHING GOLD CAN STAY? HOW TOMMY THOMPSON LOST HIS GOLDEN TICKET AND GAINED DECADES OF LEGAL TURMOIL

Chris Ryan•

Kein Froher soll
Seiner sich freu'n;
Keinem Glücklichen lache
Sein Lichter Glanz;
Wer Ihn Besitzt,
Den sehre sorge,
Und wer ihn nicht hat,
Nage der Neid!
Jeder geire
Nach seinem Gut,
Doch keener geniesse
Mit Nutzen sein.[1]

Richard Wagner's famous opera, Das Rheingold, opens with Niberlund dwarf Alberich chasing the Rhinemaidens lustily through the waters of the Rhine.[2] As the clouds part and the sun casts its rays on the water, Alberich sees, glittering at the bottom, the splendors of the Rheingold.[3]

• Christopher Ryan holds a BA from Stetson University, and graduated with honors from Barry University School of Law, where he was the Editor-in-Chief of Barry Law Review. He currently works at Stone And Gerken, PA.

[1] WILLIAM HIRSCH, GENIUS AND DEGENERATION: A PSYCHOLOGICAL STUDY 272-273 (London: Heinemann 1896). Translated from Wagner's opera:

> No joy shall please
> Him who it holds;
> Upon no favourite of fortune shall shine
> Its brilliant light;
> Who it doth own
> Let care devour,
> And who has it not,
> Let envy gnaw!
> All shall strive
>
> For what it brings,
> Yet none joy shall reap
> Though it is used.

[2] *See* SYNOPSIS OF *Das Rheingold*, THE METROPOLITAN OPERA, http://www.metopera.org/Discover/Synposes-Archive/Das-Rheingold/, (last visited Nov. 23, 2015).

[3] *Id.*

Legend is, were someone to claim the gold for himself and forge a ring of it, it would grant him immeasurable power over the world.[4] Such a power, though, would come at a price — he must forever forswear love, and be cursed to a life devoid of fulfillment.[5]

Though it was composed over a century earlier, a similar story of treasure, longing, and woe befell a more modern antihero — Tommy Thompson. Thompson led a life of intrigue as a treasure hunter and salvor of the S.S. Central America. Not all, however, would remain golden in Thompson's life. After salving three tons of gold, silver, and artifacts from the famous 1857 wreck, Thompson stiffed his investors and went on the lam.[6] For more than two years, Thompson and his girlfriend Alison Antekeier eluded authorities, avoiding a civil suit for the more than $12.7 million that he owed investors.[7]

"The story of Tommy Thompson and the ship of gold is an odyssey, a mystery, a tragedy. It's a tale of rousing triumph and scientific breakthroughs, of greed and twisted lies. It's a story that, when it ends, as all stories do, will leave a legacy, for better or for worse."[8] According to some, what went wrong was simple:

> "He brought up three tons of gold instead of three pounds," life insurance consultant Don Garlikov says. "He should have brought up three pounds. Because there's an axiom out there for me: If they think they can steal it from you, they'll try." He's being hyperbolic, but only slightly. If Thompson had waited to recover the majority of the treasure until after the dust had settled in admiralty court over who had salvage rights, there would have been less to lose. Things might have shaken out differently for investors.[9]

As entertaining as Thompson's story may be, it also manages to call into question whether the laws of salvage "may need to be [updated for the modern age]." Part I of this article will focus on the timeline of Thompson's particular salvage; from his success in currying favor from local investors to his recent arrest and extradition to Ohio. Part II will focus on the evolution of the laws of salvage and finds, as apply to both international and domestic salvage. Part III will discuss

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[4] *Id.*

[5] *Id.*

[6] Kathy Lynn Gray, *Treasure Hunter Tommy Thompson Arrested at Hotel in Florida*, THE COLUMBUS DISPATCH (Jan. 29, 2015, 4:36 PM), http://www.dispatch.com/content/stories/local/2015/01/28/tommy-thompson-arrested.html.

[7] Julia Glum, *Who is Tommy Thompson? Fugitive Treasure Hunter Who Found S.S. Central America Shipwreck to Appear in Court for Cheating Investors*, INTERNATIONAL BUSINESS TIMES (Jan. 29, 2015, 8:52 AM), http://www.ibtimes.com/who-tommy-thompson-fugitive-treasure-hunter-who-found-ss-central-america-shipwreck-1799002.

[8] Michelle Sullivan, *Man Overboard: Tommy Thompson, a Ship of Gold and the Columbus Investors Still Looking for Treasure*, COLUMBUS MONTHLY (Nov. 1, 2014, 11:48 AM), http://www.columbusmonthly.com/content/roundups/2014/11/man-overboard-a-tale-of-tommy-thompson-a-ship-of-gold-and-the-columbus-investors-still-looking-for-treasure.html?page=all [hereinafter Sullivan].

[9] *Id.*

whether those laws still make sense, or whether there needs to be an inquiry made into a new model.

I. THE RISE AND FALL OF A GENIUS

Although he did not start recruiting investors until 1985, it could be said that Tommy Thompson's quest for sunken riches really began in the late 1970s when he graduated from Ohio State University with a mechanical engineering degree, the course plan of which included mechanical design, ocean engineering, and marine sciences.[10] Or it could be said that his lust for gold was kindled when he spent a year training in salvage with renowned treasure hunter Mel Fisher, the discoverer of the Atocha.[11] Either way, Thompson's quest for the S.S. Central America, or the "Ship of Gold," was one that would span decades—years filled with more tragedy than they were with success.[12] The S.S. Central America "sank off the coast of South Carolina in September 1857 while carrying approximately 580 passengers and many tons of gold on the final leg of a multimodal journey from the California gold fields. Approximately 425 lives were lost along with a cargo of gold . . . then valued at over $1.2 million."[13]

Estimated at containing between three and twenty-one tons of gold,[14] more than $40 million in gold coins and ingots have already been salvaged by Thompson's crew.[15] The shipwreck site contained golden treasure in a multitude of forms: "coins, assay ingots, individual nuggets that miners pulled directly from the ground and streams, and — amazingly, gold dust strewn amid the sediment."[16]

Thompson did not work alone. Between the years of 1985 and 1986, Thompson recruited 161 different people of varied diverse backgrounds to assist in the salvage of the sunken "Ship of Gold."[17] Most would contribute through a financial investment to Recovery Limited, a partnership that collected $12.7 million in funds for the exhibition.[18] It took only a little over a year for the search to come to fruition — Thompson's crew, known as the Columbus America Discovery Group, found the wrecked S.S. Central America in 1987, and the team of twenty-two men began

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[10] Sullivan, *supra* note 8.
[11] *Id.*
[12] David W. Robertson & Michael F. Sturley, *Recent Developments in Admiralty and Maritime Law at the National Level and in the Fifth and Eleventh Circuits*, 38 TUL. MAR. L.J. 419, 459 (2014) [hereinafter Robertson].
[13] *Id.*
[14] With gold trading at $1,320 an ounce as of April 2015, this salvage payday could be worth as much as $887 million. *See Gold Spot Price & Charts*, JM BULLION, http://www.jmbullion.com/charts/gold-price/ (last visited Apr. 16, 2015).
[15] Karla Zabludovsky, *Shipwreck of S.S. Central America Yields More Gold*, NEWSWEEK (Aug. 30, 2014, 2:20 PM), http://www.newsweek.com/shipwreck-ss-central-america-yields-more-gold-267637.
[16] *The S.S. Central America*: *Nuggets & Dust*, AMERICA'S LOST TREASURE, http://www.sscentralamerica.com/nuggets.html (last visited Apr. 22, 2015).
[17] *Timeline of the Gold Hunt*, THE COLUMBUS DISPATCH, http://www.dispatch.com/content/topic/news/2014/shipwreck-timeline.html (last visited Apr. 22, 2015) [hereinafter *Timeline of the Gold Hunt*].
[18] *Id.*

to raise the loot from the briny depths.[19] Located almost 200 miles from shore and at a depth of around 8,000 feet, the *Nemo*, Thompson's remotely operated vehicle (ROV), searched thousands of potential targets on the sea floor's debris field before eventually signaling that its sonar had picked up an object — the *S.S. Central America*'s bell.[20]

> This was proof enough for the federal judge to grant the group 92 percent of any salvaged treasure. Soon, like caterpillars bursting out of cocoons, claimants emerged en mass. All but eight of the 39 insurance company claims were dismissed along with petitions from rival salvors. The Capuchin Monks' plea declaring that salvor Jack Grim gave them salvage rights was rejected along with petitions from two universities.[21]

Certainly, the investors were ecstatic to see Thompson's triumphant return to Columbus in late 1989 — after all, they were about to see a fantastic return on investment. "In the early, heady days, estimates of the total value of Thompson's find on the world's gold-collecting markets ranged as high as $500 million."[22] With such a high market estimate, investments of as little as $50,000 could expect a possible return of around $1.5 million.[23] A less modest $250,000 contribution could expect to net around $8 million.[24]

Surely a sweet song to Tommy Thompson's ears, 1990 saw U.S. District Court Judge Richard Kellam declare that the bulk of the *S.S. Central America*'s gold belonged to Thompson's crew — and not the bickering insurance companies.[25] The distinction was made based on the maritime "law of finds" whose object is "to vest title in the person who reduces abandoned property to his possession."[26] "The common law doctrine of finds law is available to a plaintiff in admiralty court under the 'savings to suitors' clause of the Judiciary Act of 1789, which preserves the common law remedy."[27] Not all would remain as favorable, as there were multiple attempts at appeals and new verdicts:

> In *Central America*, the District Court for the Eastern District of Virginia held that the law of finds applied to the ship which had laid undisturbed one and a half miles below the ocean for 130 years, and that Columbus-America had earned the title to the vessel and her

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[19] Ellsworth Boyd, *S.S. Central America: Ship of Gold Resurfaces*, NUMA (Jan 2, 2015), http://www.numa.net/2015/01/ss-central-america-ship-of-gold-resurfaces/.
[20] *Id.*
[21] *Id.*
[22] Herb Cook, Jr., *Ship of Debt*, COLUMBUS MONTHLY (June 2009), http://www.columbusmonthly.com/content/stories/2009/06/ship-of-debt.html (originally published in June 1999) [hereinafter Cook].
[23] *See id.*
[24] *See id.*
[25] *Id.*
[26] Mark A. Wilder, *Application of Salvage Law and the Law of Finds to Sunken Shipwreck Discoveries*, 67 DEF. COUNS. J. 92, 93 (2000).
[27] *Id.*

> treasure by being the first finder of an abandoned vessel. The Fourth Circuit reversed the lower court, holding that there was insufficient evidence to find that the underwriters had abandoned their interests in the gold. The Fourth Circuit concluded, therefore, that the law of salvage, and not the law of finds, was the applicable rule. Judge Widener wrote a very spirited dissent, declaring that his colleagues had reversed the trier of fact simply because they would have decided the case differently. Judge Widener thought the court should have given more deference to the finding of abandonment, since the wreck had been left alone for more than a century and the claimants had not taken an active part in the search for the vessel. Indeed, many of the claimants were corporations that had not come into existence until long after the 1857 disaster.
>
> On remand, the district court dismissed certain claims for the salvaged gold, and distributed much of the rest of the claims to the gold, by percent, to the remaining parties. Some of the gold, the court deemed, was uninsured, and belonged to the finder, Columbus-America.[28]

Still, it looked as though Thompson and his investors would see a major payday. How disappointed must they have been to have never seen dollar one. Thompson's reemergence as fortunate salvor lead to a most *unfortunate* series of events — not the least of them being the nearly seven year protracted legal battle that ran Columbus America Discovery Group out of all of its investment capital which in turn forced a costly suspension of excavation, the tanking of the numismatic market for collectible gold coins, Thompson's own costly divorce, and multiple attempted management coups, which Thompson barely managed to stave off.[29] His own personal woes spilled over into his legal battles as well, with Thompson missing an appearance at depositions in his *own* divorce case.[30] The reasoning? Thompson was simply too busy — "Columbus America is wholly dependent on Mr. Thompson. . . .[H]e must attend to the very substantial present financial and future marketing programs that confront the project."[31]

As years passed, Thompson's plight never really abated. He had small victories, certainly. In 2000, for example, Thompson sold his company's portion of the gold salvage to California Gold Group for the sum of $52 million.[32] When investors did not see a slice of this, they began to champ at the bit. Thompson did his best to delay any confrontation, but this could only last so long. Then in 2001, Thompson had documents drawn up that would allow for twenty-five percent of profits from any *future* sales.[33] Soon thereafter, communications from Thompson had dried up, as had the

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[28] Lawrence J. Kahn, *Sunken Treasures: Conflicts Between Historic Preservation Law and the Maritime Law of Finds*, 7 TUL. ENVTL. L.J. 595, 634-35 (1994).
[29] *See* Cook, *supra* note 22.
[30] *Id.*
[31] *Id.*
[32] *Timeline of the Gold Hunt*, *supra* note 17.
[33] Sullivan, *supra* note 8.

hopes of his investors of seeing any of that cash — in fact, "[t]he partners didn't even know he was negotiating the sale of the gold until after he sold it."[34]

By 2004, and then again in 2005, investors had had enough.[35] The new attacks on Thompson's financial ship were made by a group of investors led by John F. Wolfe and Don Fanta.[36] Wolfe's pack of investors began requesting financial documentation and assurances from Thompson that they claimed was owed by the board of directors.[37] Thompson responded (or more accurately *didn't*) with his characteristic secrecy, resulting in Wolfe and Fanta filing two law suits in the Franklin County Court of Common Pleas, "one against Thompson and his companies and the other against his companies' four directors."[38] In the same year, Thompson's salvage crew also filed suit against him for claims of their portion of the treasure owed for their work in the recovery effort.[39] Due to similarities with Wolfe and Fanta's cases, the three were consolidated into one. "Since then, the mammoth case has grown increasingly complex, generating nearly 1,000 docket entries and exposing lies, inconsistencies, and even more mystery along the way."[40]

In 2006, U.S. District Court Judge Edmund Sargus gave Wolfe a bite at what he was after by ordering Thompson and the board of directors to submit inventories for accountability to satisfy their requests for accounting.[41] However, what Thompson would turn in to them was only an inventory of the gold sold to California Gold Group, which made up only a fraction of the amount actually salvaged.[42] This was not enough for Wolfe, nor was it enough for a clearly exasperated Judge Sargus who, in 2008, would demand them to produce anything that even "remotely resembled" an inventory for all the recovered gold.[43] Thompson's attorney responded in particularly vexing manner for Wolfe and the court that "they had searched for the inventories and 'produced the one and only inventory that the company had, which was the inventory relating to the sale to … the California Gold Marketing Group.' Translation: They had only one inventory, and the court already had it."[44]

Judge Sargus would find Thompson and his board of directors in contempt in late 2009, citing their lack of document production and "sandbagging" technique that took what should have lasted months into the realm of several years of litigation.[45] A trial was finally scheduled in what would be called the *Williamson* case for late in 2012.[46]

> Through it all, Thompson has been virtually unreachable. He rarely appeared in court. He'd respond to inquiries via written letters, or deliver oral testimony to attorneys who traveled to meet him in

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Timeline of the Gold Hunt*, *supra* note 17.

> Florida, where he moved in the early 2000s. Eventually, Thompson stopped responding at all. Then so did his assistant Alison Antekeier. In August of 2012, after months of futile attempts by all involved to reach him, Sargus ordered Thompson to appear in court to account for the missing inventories lest a warrant be issued for his arrest.
>
> On August 13, 2012, Thompson didn't appear. Judge Sargus held him in contempt of court and ordered the U.S. Marshals to track him down. Overnight, Thompson became a federal fugitive.[47]

So Thompson was gone — with him, all hope of investors to recoup any of their money in the now almost thirty years since they initially invested. While before his secrecy and lack of a paper trail were vexing for investors and the court, they were now doubly much so for the federal marshals tasked with bringing him in. The marshals searched for three years without producing Thompson — or his money. Then, in 2015, Thompson's luck (if you could call his thirty years of unease and dispute "luck") finally ran out.

On January 27, 2015, Tommy Thompson was found living with longtime assistant and girlfriend Alison Antekier at the Hilton hotel in West Boca Raton, Florida.[48] Thompson and Antekier had been staying at the same Hilton for the better part of a year, paying for their room in cash, and using fake names.[49] The two would use taxis or buses, presumably to avoid having cars registered to them.[50] Law enforcement officials had faced an uphill battle, as Thompson paid for everything in cash, kept a dozen "burner" cellphones,[51] had a bank account under a pseudonym with a balance of at least a million dollars, and kept a book with him titled "How to Be Invisible," which was filled with tricks on how to evade law enforcement.[52] For years, they had "paid rent for the multi-million dollar Vero Beach [mansion in which they'd been staying previously] in cold, sweaty cash that had become damp and moldy after being buried underground, according to court documents from 2013 that were unsealed. . . ."[53]

The fugitive treasure hunting couple were finally apprehended, not due to the diligence of the marshals and other federal agencies tasked with his apprehension, but because a handyman

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[47] Sullivan, *supra* note 8.

[48] Brian Entin, *Tommy Thompson: Fugitive Treasure Hunter Arrested by U.S. Marshals in West Boca Raton*, ABC ACTION NEWS (Jan. 28, 2015, 5:48 AM), http://www.abcactionnews.com/news/tommy-thompson-fugitive-treasure-hunter-arrested-by-us-marshals-in-west-boca-raton-florida [hereinafter Entin].

[49] *Id.*

[50] *Id.*

[51] A "burner" cellphone is a disposable phone, not tied to a bank account of individual identity, but one that can have cash add minutes and other functionality to keep it operational.

[52] Abby Phillip, *How Treasure Hunter Tommy Thompson, "One of the Smartest Fugitives Ever," Was Caught*, THE WASHINGTON POST (Jan. 30, 2015), http://www.washingtonpost.com/news/morning-mix/wp/2015/01/30/how-treasure-hunter-tommy-thompson-one-of-the-smartest-fugitives-ever-was-caught/.

[53] *Id.*

recognized Thompson's face from news coverage.[54] By the time the authorities arrived, Thompson and Antekeier were long gone.[55] "Wanted" billboards sprouted up in the nearby South Florida communities. Eventually, a member of the Hilton hotel management recognized Thompson's face from those billboards and directed marshals to Thompson's room.[56]

The federal agents have recovered hardly any of the money from Thompson's horde. Aside from the million dollars in the bank account, agents found discarded bank straps marked with a "$10,000" designation — proof that more money may be hidden somewhere nearby.[57] Thompson has since been fighting extradition back to Ohio where he will stand trial, claiming that the illness he contracted from a mosquito bite would be exacerbated by the cold climate.[58]

Perhaps the most fitting description of Thompson's plight can be attributed to his cousin, Ted Thompson, who stated to reporters outside Thompson's courtroom proceeding: "If he had it to do all over again, he wouldn't do it. You don't throw away your life for something that's yellow and weighs a lot."[59] At this point, Thompson would no doubt agree. What started as the key to a happy future became the lock on his cell door.

II. FROM "FINDERS KEEPERS" TO THE 1989 CONVENTION ON SALVAGE: THE EVOLUTION OF LAWS OF SALVAGE AND FINDS

It is well-entrenched in the admiralty and maritime laws of the United States that "[c]ompensation as salvage is not viewed by the admiralty courts merely as pay, on the principle of *quantum meruit*[61] or as a remuneration *pro opera et labore*,[62] but as a reward given for perilous services, voluntarily rendered."[63] This doctrine can be traced to its origin in Roman law, "which gave anyone who volunteered to preserve or improve the property of another a right to compensation from the owner." Though perhaps similar in result to *quantum meruit*, the principle of *negotiorum gestio* was founded on the idea that it would be unfair to allow for the unjust enrichment of one party to the detriment of another. [65]

Salvage cases have traditionally found their way into American courts via Article III, Section 2, of the United States Constitution, which establishes admiralty and maritime jurisdiction.[66] As it stands, "[u]nder Federal Rule of Civil Procedure 9(h), a pleader may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions."[67]

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[54] *Id.*
[55] *Id.*
[56] Entin, *supra* note 48.
[57] *Id.*
[58] *Id.*
[59] *Id.*
[61] Latin for "as much as he deserved."
[62] While there is no settled definition of *pro opera et labore*, it has been inferred to mean just compensation for the work rendered, without any extra reward or reimbursement.
[63] Blackwall, 77 U.S. 1, 14 (1870).
[65] Charles S. Davant, *A High Stakes Game of Finders Keepers: A Glance at the World of Marine Salvage Law*, 31 NO. 4 TRIAL ADVOC. Q. 36, 37 (2012).
[66] *Id.*
[67] *Id.*

Modern plaintiffs hoping to establish a claim based on pure salvage must prove, by a preponderance of the evidence, the following three elements: "[1] maritime peril from which the ship or the property could not have been rescued without the salvor's assistance; [2] a voluntary act by a salvor who is under no official or legal duty to render the assistance; and [3] success in saving or helping to save at least part of the property at risk."[68] It is not hard to imagine a situation in which element three is called into question, as "success in . . . helping to save . . . at least part of the property at risk" can quite easily be read with a minimalist lens. Would it be considered "success" were the salvor to collect the cargo on a sinking ship?

International law, however, hinges on a completely different set of rules: "(1) the salvage rule that the salvor does not create any ownership rights in the property saved; (2) the finders principle . . . at least in the case of abandoned property; or (3) the international law principle that property of historical and archaeological importance should be preserved for the benefit of mankind as a whole."[69]

The Salvage Convention of 1910, to which the United States is still a signatory, instituted a "no cure, no pay" principle, which wouldn't provide for payment to the attempted salvor unless the recovery was a success.[70] Considered a matter of some degree of frustration when considering international dispute, the United States is *also* signatory to the Salvage Convention of 1989 while *still* honoring the 1910 Convention.[71] One major difference between the two concerns a much more modern trend — when salvage abates problems created by pollution, yet leaves the cargo or the ship in a state of disrepair.[72] Under the auspices of the 1910 Convention, were a cargo ship to be seriously damaged and leaking hazardous waste into the bay, a potential salvor would not be compensated for their salvage efforts unless the cargo and/or ship itself was saved.[73] This clearly has adverse effects in an era that has seen such disasters as the Exxon Valdez, Atlantic Empress, ABT Summer, Amoco Cadiz, and the Odyssey.[74] All but one of these ships leaked a minimum of forty million gallons of oil into the ocean.[75] Under the 1910 Convention, there would be no reward unless ship or cargo was saved.[76]

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[68] *Id.*

[69] Allison Leigh Richmond, *Scrutinizing the Shipwreck Salvage Standard: Should a Salvor be Rewarded for Locating Historic Treasure?*, 23 N.Y. INT'L L. REV. 109, 116 (2010) (internal quotation marks omitted).

[70] *See, e.g.* Martin Davies, *Whatever Happened to the Salvage Convention of 1989?* 39 J. L. MAR. & COM. 463 (2008) [hereinafter Davies]. *See also International Convention on Salvage*, INTERNATIONAL MARITIME ORGANIZATION, http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-on-Salvage.aspx (last visited Apr. 21, 2015) [hereinafter *International Convention on Salvage*].

[71] *See* Davies, *supra* note 70.

[72] *See International Convention on Salvage*, *supra* note 70.

[73] *Id.*

[74] *See generally 10 Biggest Oil Spills in History*, POPULAR MECHANICS, http://www.popularmechanics.com/science/energy/g1765/biggest-oil-spills-in-history/ (last visited Apr. 24, 2015).

[75] *Id.*

[76] *See International Convention on Salvage*, *supra* note 70.

Fortunately, the 1989 Convention rights this ship a bit, allowing for "special compensation" that might be awarded to salvors that protect against damage to the environment.[77] This damage was defined as "substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents."[79] The 1989 Convention offers up compensation in terms of the salvor's expenses, "plus up to 30% of these expenses if, thanks to the efforts of the salvor, environmental damage has been minimized or prevented. The salvor's expenses are defined as 'out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used.'"[80] Perhaps this might seem steep to some in need of salvage with a dangerous or leaky cargo, but it can be far cheaper than the alternative. The Exxon Valdez, for example, was one of the smaller wrecks mentioned above, yet Exxon spent approximately $2.1 billion in the clean-up efforts.[81] Compare that to the several million they would have to spend as the 30% salvage surcharge (on top of expenses), and it seems like a no-brainer.

Where the confusion comes in is that the United States is still party to both treaties, yet the 1989 Convention has only been applied once since 1996.[82] Though many nations are party to the 1989 Convention, courts seem reticent to apply those standards.[83]

Even after the 1989 Convention, the factors in *The Blackwell* are still taken into account in determining the amount paid to a successful salvor. Those factors include: (1) the skill and efforts expended in saving the vessel, property, and/or life; (2) "'the promptitude, skill, and energy displayed in rending the service and saving the property'"; (3) the value of property and danger of the attempted salvage; (4) the risk in securing the property in the face of danger; (5) value of the property saved; and (6) degree and nature of danger.[84] These factors bleed into one another and are, in most cases, easy to shoehorn into almost any argument. Salvage is never a cake-walk in the tea-park.

The law of finds, on the other hand, relies on a different set of elements. Unlike the particularities of the laws of salvage,

> [t]he law of finds vests title to property that has been lost or abandoned in the first person that lawfully and fairly appropriates the property and reduces it to his or her possession with the intention to become its owner. Mere discovery of lost or abandoned property is not sufficient for title to be granted to a finder; the property must be reduced to actual or constructive possession. In *Treasure Salvors,*

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[77] *Id.*
[79] *Id.*
[80] *Id.*
[81] *Questions and Answers*, EXXON VALDEZ OIL SPILL TRUSTEE COMMITTEE, http://www.evostc.state.ak.us/index.cfm?FA=facts.QA (last visited Apr. 21, 2015). Incidentally, while the Exxon Valdez was not salvaged whole, it was eventually salvaged piecemeal and re-outfitted. *Id.* It now works hauling bulk ore in the South China Sea. *Id.*
[82] Davies, *supra* note 70, at 463.
[83] *Id.*
[84] *Id.* at 475-76.

> *Inc. v. The Unidentified Wrecked and Abandoned Sailing Vessel*[85], for example, the court stated that the law of finds applied to the Atocha because it was abandoned--as it had been 'lost for centuries'--and because it was uncontested that plaintiffs 'were in possession of the Atocha.' In order to decide whether property is either lost or abandoned, courts consider several factors, including: (1) the condition of the property at the time it was abandoned; (2) the amount of time that has passed since the property was lost or abandoned; (3) any steps taken by the original owner to recover the property; and (4) whether the original owner has relinquished all hope of recovery.[86]

The law of finds can often be distilled to the "trite colloquialism, 'finders keepers, losers weepers.'"[87] The modern primary concern in cases about law of finds is of title, which may be acquired when the finder is able to demonstrate both intent to acquire the property deemed abandoned and actual possession of that property.[88] Common law treats abandoned property as "having returned to nature," making it no more owned than "fish or ocean plants."[89]

Like the Atocha, Thompson's discovery of the S.S. Central America did seem to match up quite well with the factors of the law of finds. After all, it had been over a hundred years that the ship was lost, the gold was buried under a layer of debris, there had been no efforts in any recent years for recovery, and in any event, there were only vague estimates on where to begin searching. Once the bell was acquired, the initial ruling was for Thompson on the basis of finds.

While both laws of salvage and finds have evolved through the years, neither are perfect. Courts tend to apply laws of salvage more often than of finds, perhaps in an attempt to provide some degree of stability and predictability.

III. MAKING THE MOST OF WHAT THERE IS

"As American maritime law currently stands, whether the law of salvage or the law of finds applies to the recovery of a given ancient or historic shipwreck is essentially a crapshoot."[90] It is potentially because of this problem that only around 10% of discovered ships have actually been recovered.[91] Adding to this, some courts view application of the law of finds as promoting secrecy in order to "avoid claims of prior owners or other would-be finders that could entirely deprive

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[85] Treasure Salvors, Inc. v. The Unidentifed Wrecked and Abandoned Sailing Vessel, 546 F.Supp. 919 (S.D. Fla. 1981).
[86] Christopher R. Bryant, *The Archeological Duty of Care: The Legal, Professional, and Cultural Struggle over Salvaging Historical Shipwrecks*, 65 ALB. L. REV. 97, 118-19 (2001) [hereinafter Bryant].
[87] Jonathan Joseph Beren Segarra, *Cursing Under a Star-Dogged Moon: Why the Legal Regime Concerning the Recovery of Ancient or Historic Vessels Must Change*, 25 U.S.F. MAR. L.J. 93, 105 (2012-2013).
[88] *Id.* at 105-06.
[89] *Id.*
[90] *Id.* at 94.
[91] *See id.* at 94.

them of the property."[92] There are few arguments for applying the law of finds on a more regular basis. The United States Court of Appeals for the Fifth Circuit premised it as:

> Persons who actually reduce lost or abandoned objects to possession and persons who are actively and ably engaged in efforts to do so are legally protected against interference from others, whereas persons who simply discover or locate such property, but do not undertake to reduce it to possession, are not. This principle reflects a very simple policy – the law acts to afford protection to persons who actually endeavor to return lost or abandoned goods to society as an incentive to undertake such expensive and risky ventures; the law does not clothe mere discovery with an exclusive right to the discovered property because such a rule would provide little encouragement to the discoverer to pursue the often strenuous task of actually retrieving the property and returning it to a socially useful purpose and yet would bar others from attempting to do so.[93]

Although this argument has some merit, the same things can be said about salvage. The process of excavating old wrecks itself is never clean and easy, and taking the extra steps to ensure the salvage preserves its historic import while at the same time granting marketable title should take precedence over a quick grab-and-run.

That is not to say salvage is perfect — it is not. In addition to ambiguity in the best purpose and goals of salvage, there are issues in timeliness of claims. For instance, in *Williamson v. Recovery Ltd. P'Ship*[94], in which Thompson himself was a party, the court held that a civil action based on recovering remuneration for

> giving aid or salvage services must be brought within two years after the date the aid or salvage services were given, unless the court in which the action is brought is satisfied that during that two-year period there had not been a reasonable opportunity to seize the aided or salvaged vessel within the jurisdiction of the court or within the territorial waters of the country of the plaintiff's residence or principal place of business.[95]

While this statute of limitations was Thompson's initial defense to his former employees' suit to collect their earned portion of the treasure, it also brings up a new question — is two years sufficient?[96] Granted, the language of 46 U.S.C.A. § 80107(c)[97] gives a bit of wiggle-room with

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[92] *Id.* at 108.
[93] *Id.* at 107 (quoting *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 640 F.2d 560, 572-73 (5th Cir. 1981).
[94] Williamson v. Recovery Ltd. P'ship, 731 F.3d 608 (6th Cir. 2013).).
[95] Robertson, *supra* note 12, at 459–60.
[96] *Id.*
[97] 46 U.S.C. § 80107(c) (2006).

the "reasonable opportunity" language, this still places the burden on the plaintiff to explain how any such delay was, in fact, reasonable.

An entirely different argument about the best use for salvage has been repeatedly based on the idea that perhaps the greatest and best use of shipwrecks *is not* to capture their sunken treasures — but to treat them as underwater museums. If the law reflected a standard where the historical import of these sunken ships was of greater import than the monetary value for their scraps and treasures, it would substantially change the landscape of laws of salvage and finds, at least where applicable to historic ships. Indeed, "the potential for overwhelming financial reward is the true engine behind the salvaging of historic shipwrecks. Not surprisingly, it is also what concerns and disturbs many archaeologists the most. Salvaging historic shipwrecks is so prohibitively expensive, that outside investors are often sought to fund salvage operations."[98]

This sort of view can often lead to scenarios where the goods are salvaged, but at the expense of the structural integrity of the subject of salvage — not only the ship itself, which is often of historic merit, but the gold or other artifacts as well. A discussion of these merits warrants a view of what is in the public's best interest. This requires a careful weighing of whether it is better to bring more gold and other forms of currency into the market, or whether it is better to save and study the culture, often lost over a hundred years ago. Arguments have been made that "[i]rresponsible salvage is not consistent with the public's interest in historic shipwrecks, and hinders the pursuit of historic preservation and learning. Ironically, the more that historic shipwrecks and their artifacts are damaged during salvage, the less salvors are likely to recover by way of salvage awards or selling artifacts."[99] With this taken into account, it would be in the best interests of all if courts swiftly determine the rights to salvage in order to head off any sort of rush to get as much as possible, almost assuredly damaging the valuable cargo in the process of trying to beat competitors to the loot. Making this mentality a priority in determining salvage rights would also be in accord with tenet three of international laws of salvage, discussed in part II of this paper.

In conclusion, much of what salvage hopes to accomplish is already codified or part of the common law. It is just a matter of sifting through the debris of what does not work and excavating what does. Courts seldom grant title based on law of finds because salvage is more fitting for preservation of artifacts. As salvage is less arbitrary than "finders keepers," it provides a better chance for a legitimate claim. Courts would also do well to follow doctrines that have a better chance of preserving artifacts. Perhaps a law could also be proposed that would allow governments or museums an option to be first to purchase salvaged goods at fair-market value in an effort to preserve collections. Maybe if such a law had been in place, the government would have the collection of the *S.S. Central America* and Thompson would be a free man.

[98] Bryant, *supra* note 86, at 107.
[99] *Id.* at 116-17.