IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

NATIONAL UNDERWATER AND MARINE AGENCY, INC., Plaintiff/Counterdefendant,	:	
vs.	:	
EDWARD LEE SPENCE, Defendant/Counterplaintiff,	:	
vs.	:	
CLIVE CUSSLER, individually, Counterdefendant.	:	2:01 CV 4006

Motion hearing held Tuesday, May 15, 2007, commencing at 11:00 a.m., before the Hon. Sol Blatt, Jr., in Courtroom III, United States Courthouse, 81 Meeting Street, Charleston, South Carolina, 29401.

APPEARANCES:

RICHARD L. TAPP, JR., ESQUIRE, 205 King St., Charleston, SC, appeared for NUMA.

RONALD L. RICHTER, JR., ESQUIRE, 18 Broad St., Charleston, SC, appeared for Spence.

ERIC S. BLAND, ESQUIRE, P.O. Box 72, Columbia, SC, appeared for Spence.

SCOTT M. MONGILLO, ESQUIRE, 1525-D Old Trolley Rd., Summerville, SC, appeared for Spence.

JOHN T. LAY, ESQUIRE, P.O. Box 2285, Columbia, SC, appeared for Cussler.

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THE COURT: Well, I have been over all these briefs and I've read the affidavits that have been submitted. And let me ask Mr. Spence's attorneys a couple questions that concern me.

Mr. Spence gave this affidavit in '97, I think.

MR. RICHTER: Yes, sir.

THE COURT: And by that time, he says he was 99 percent sure that his coordinates and the coordinates that they found the sub were the same. And he also said that one of Cussler's people who had worked with Cussler had come to him and told him they found the Hunley exactly where Spence says it was. And I'm not so sure that Spence wasn't the fellow that found it. But anyway, and also, this Cussler, to quote his quote from the paper, which was May 11, '96, prior to the affidavit, said he lied when he said how deep the submarine was. So he knew all of that by 1997, when he gave this affidavit.

How can you get around the fact that he knew or reasonably should have known -- I believe that's the -- that starts the statute to running -- that he had a cause of action against -- or I should say why he didn't know that he had a cause of action against Cussler for claiming something that he had found.

MR. RICHTER: Good morning, Judge, Ronnie Richter. I'll address the argument.

Your Honor, if the question ultimately is, when did the statute accrue, which I think is the legal issue that your question is directed towards, when a party knew or reasonably should have known that a right of his had been invaded, or to put it alternatively, the moment upon which someone has a legal right to sue. What Lee Spence said in his affidavit, he said from the point of view of a scientist and an archeologist. He's intellectually honest. He always believed or suspected that what he found in 1970 was the Hunley, and that his coordinates were the true coordinates.

Now, in order for him to know, or for him to say that he knew or reasonably should have known that Clive Cussler invaded upon his right such that he had the right to sue, the piece of information that he would have to know, would be the true coordinates of the Hunley, where Cussler claims to have found it. So after the alleged discovery by Mr. Cussler in 1995, the first thing that we know that happened, is that the coordinates were secreted from the public. The announcement was made, we found the Hunley, but its location was kept secret.

Then Mr. Cussler, by his own admission, lied about where the true coordinates were.

In March of 1996, the State of South Carolina, who for all intents and purposes were partners with Mr. Cussler on this adventure, passed a new law that made disclosure of the

Hunley's coordinates a violation of state law, and, in fact, protected the disclosure even from a FOIA request.

THE COURT: No question Cussler got in the legislature all right.

MR. RICHTER: No doubt about it. So we're talking about a circumstance where this man's a scientist and an archeologist. Yes, he suspects or he believes that what Cussler found was, in fact, what he found in 1970. But the piece of information that he must have, in order to know that, such that he does have the right to bring an action on it, would be those coordinates themselves.

To put it another way, if he had filed an action in 1996 or 1997, before the public -- before the coordinates were made public, it would have been impossible for him to prove his claim.

THE COURT: Now, why would it have been impossible?

MR. RICHTER: Because the proof of his claim ultimately would require that he prove that his coordinates and Cussler's, were essentially one in the same.

THE COURT: The State passed a law, said he couldn't get it under the Freedom of Information Act.

MR. RICHTER: Yes, sir.

THE COURT: That doesn't mean that -- Do you take that to mean that if a -- say this Court had issued an order requiring him -- if he'd have sought discovery, and issued an

order requiring him to disclose that information, that he couldn't have gotten it?

MR. RICHTER: Your Honor, I don't know --

THE COURT: Of course, I don't know if he knew that, but I mean --

MR. RICHTER: I don't know that -- I can't imagine that the Federal Court would be precluded from that information; but is it reasonable to expect Lee Spence to know that the state law notwithstanding, if he avails himself of the federal system, that he can override that state law --

THE COURT: Or the State. Of course he couldn't -- Cussler was somewhere else, so he couldn't stay in State Court.

MR. RICHTER: That's true, Your Honor. And the issue is not -- I think the issue is, did he exercise reasonable diligence. That's what the law speaks to in terms of the discovery rule and accruals of cause of action. When you come into possession of information upon which you suspect or believe that a right of yours has been invaded, the law expects that you're going to use reasonable diligence to get to that standard where you know or should have known that a right of yours was actually invaded. And you look at the different ways that he could have availed himself of that information, and they were all foreclosed to him.

He could have returned to the site, but it was under guard

by the U.S. Coast Guard and the U.S. Navy. He would have been subject to arrest if he went out there to verify his location. He couldn't get the information by FOIA. Cussler had lied publicly about it, and Cussler wasn't about to share that information.

So I don't know what more he could have done in the exercise of reasonable diligence, to determine whether, in fact, his rights had been invaded so as to create the cause of action.

Now, certainly when the Hunley is finally raised and those coordinates are made a matter of public record, and are, in fact, published in a newspaper of wide circulation, then he obviously knows, and that's October 4th, 2000. And we would urge the Court that that's the logical date to look at, to say this is when he knew that his rights had been invaded, because he can compare those coordinates with the ones that he originally recorded back in 1970, and that will tell him that although Cussler had said he found it in 17 feet of water and that it was some great distance from where Spence believed it to be, now he knows that those two sets of coordinates are, for all intents and purposes, exactly the same. And for Cussler to claim discovery, he has invaded that right. But before that time, that piece of evidence is simply not available to him, despite the exercise of reasonable diligence.

And it was the Moriarty case in South Carolina that spoke to the blameless ignorance standard. That, you know, if you are using reasonable diligence and you are blamelessly ignorant to know that you have this cause of action, then the statute shouldn't run against you, it shouldn't close the courthouse doors to you, is what Moriarty says.

And, you know, for us, I think that case speaks directly to the facts of this case, where extraordinary circumstances prevent someone from putting together that final piece of the puzzle. Again, the standard is not did you believe it, did you suspect it, it's when did you know or when should you reasonably have known.

THE COURT: That's the question that gives me the concern, the reasonably should have known.

MR. RICHTER: Your Honor, respectfully, I don't think he reasonably should have known in 1995, without being provided access to those coordinates. At that point it's simple. You compare where Cussler said he found it with where you said you found it, and you'll know, you'll know exactly is that the same spot or not. Without those coordinates, and especially where the coordinates themselves are being secreted as a state, if not a national secret, I don't think it's -- I don't think it can be expected of a litigant that you reasonably know under those circumstances. He kept trying, he kept -- he was aware of all these different circumstances. He

contacted SCIAA, he contacted the State, he contacted the Navy. He did everything that he knew to do to answer that question, short of violating law by returning to his site to see if he could find it for himself, which he could not do.

So did he act with reasonable diligence to determine if a right of his was invaded? He absolutely did. And when should he reasonably have known -- not believed or suspected -- and definitely he should have known October 4th, 2000, when the coordinates were finally made available to him.

THE COURT: And he filed the counterclaim and --

MR. RICHTER: In 2002.

THE COURT: All right, sir, let me hear from the other side. Don't you agree that's the issue?

MR. RICHTER: I do agree that's the issue, Your Honor. I guess as a corollary issue, if you don't mind me taking two more minutes of the Court's time.

THE COURT: I don't mind; that's what I'm here for.

MR. RICHTER: I do think if you were inclined to believe that the statute accrued when Cussler made his announcement, that there are grounds for tolling that statute on equitable grounds thereafter, so as to still make these claims timely. And South Carolina recognizes tolling of statutes of limitation, both legal and equitable tolling. And there's two different doctrines of equitable tolling that we think apply here. One is based on the conduct of the

defendant, the other is based on conduct outside of the plaintiff's control. And when you're looking at the conduct of the defendant, the cases, most of these cases arise in the insurance arena, where the insurance company may not have --

THE COURT: Contract.

MR. RICHTER: Absolutely, it arises in contract, and they didn't disclose to the insureds certain things that should have been disclosed, or secreted information. But I do think there's a parallel here in Cussler going out publicly and lying or disseminating false information, that would trigger the grounds for an equitable tolling during that period of time. Alternatively, if you look at the cases that address equitable tolling, really based on unconscionability. What the cases say --

THE COURT: Excuse me.

MR. RICHTER: Yes, sir.

THE COURT: I spent a lot of time looking about unconscionability, and I couldn't find it used a single place outside of contract terms.

MR. RICHTER: I think you're right, Your Honor. And we would be asking to expand that doctrine into the tort setting here. But when you look at the criteria that the cases speak to, all of the elements seem to be present, that there are extraordinary circumstances. And I definitely think when you've got a site that's being monitored by the U.S. Navy

and the U.S. Coast Guard, and a State statute being passed that says you can't get the information you seek, that that's pretty extraordinary, that it's conduct that's external to the plaintiff and beyond his control, that's certainly present here. And that to deny the plaintiff access to legal recourse would be unconscionable. Of course, that's a determination for the Court.

THE COURT: What you're telling me is that you think that these create jury issues.

MR. RICHTER: That, Your Honor, and that we believe it would be fundamentally unfair to apply a strict application of the statute of limitations, given the extraordinary circumstances of this case.

THE COURT: All right, sir, thank you.

MR. RICHTER: Thank you, Judge.

THE COURT: Let me hear.

MR. LAY: Good morning, Your Honor, John Lay representing Mr. Cussler. First I want to address one issue; I don't think this is a jury issue at all. This is an objective standard that you're going to have to evaluate on whether or not Mr. Spence was reasonable, and knew or should have known, and this is one of the key words in this principle, that he might have a cause of action that exists. It's not that he absolutely knew. And we think that the evidence in this case undeniably and uncontradicted shows that

he absolutely knew that he had a claim, if what he was saying was true. But the standard is less than that.

THE COURT: Let me ask you one thing. When I said jury issue, if I were to deny summary judgment, this would be a matter that would be submitted to the jury, wouldn't it? Wouldn't it be a question that the jury --

MR. LAY: I hope I'd get a shot at revisiting that with the jury, if you denied it.

THE COURT: That's what I mean.

MR. LAY: But it is my belief that where you sit, you're the one that needs to make this decision, and has the right to make the decision on whether or not this objective standard has been met.

THE COURT: I agree with that, but I was mentioning jury in terms of if I denied the summary judgment, then it would be an issue that a jury would -- that was because I felt that a jury should pass on it. If I denied it. That was what I meant when I said that.

MR. LAY: Okay.

THE COURT: Go ahead, sir.

MR. LAY: I think where there's been this wonderful side step of an issue, is the -- Mr. Spence's argument that he somehow needed coordinates to be able to state his claim, and that is not accurate. Mr. Spence has made this allegation that he is the one that first discovered the Hunley. He hears

at a press conference on May 11, 1995, that someone else is now claiming that they first discovered the Hunley. Whether or not the coordinates are the same is not the issue. Either Mr. Spence found it or he did not find it. And he knew, if he did, in fact, find it, on May 11, 1995, that someone else was claiming that they first found it.

Not only that; within one hour of Mr. Cussler proclaiming that he found the Hunley, Mr. Spence alleges that an individual came up to him and told him, we think you found it. Now, I'm not saying that's true, but that's what he's saying. You have to take him at his word on that for purposes of this summary judgment motion.

THE COURT: He can't have it both ways.

MR. LAY: He can't have it both ways. Then by 1996 -- and they submit the newspaper article that shows that Cussler is publicly proclaiming that he had said something that was inaccurate -- it was a lie, is the way he put it -- to keep people from getting near the site, he had stated something that was false about the depth.

THE COURT: He said, "I lied."

MR. LAY: He said, "I lied about the depth." Now, Mr. Spence knows that. We know he knows it, one, because he filed that article; two, we have his own publication where he writes an article about how Spence had lied in 1996.

THE COURT: Cussler had lied.

MR. LAY: Excuse me, that Cussler had lied in 1996. We have Spence's affidavit that was submitted to the Hunley Commission on February 1st, 1997, where he states that Mr. Cussler had lied about it. So he knew for a long period of time that Mr. Cussler had lied about the depth.

If you look at that affidavit, I mean this is so disingenuous to hear them state now that they cannot -- that he had to know those coordinates to know that he had a claim. But if you look at that affidavit, there was no question in his mind when he testified in front of the Hunley Commission, when he submitted the lengthy affidavit, detailed, single spaced, 17-page affidavit, he states, "The verification of my location was extremely good news to me, because although I was 99 percent sure of my discovery, I'm an archeologist, and like any competent scientist, I wanted a thorough independent verification by other trained archeologists. Without such verification there would always remain the small question lurking even in my own mind. On the other hand, had the Hunley been found outside of my small area, I would have been stunned, but I would have graciously accepted the facts and walked away. However, as far as I'm concerned, thanks to NUMA, SCIAA and the NPS, there's no longer any question whatsoever that what I found in 1970 by accident, and again purposely with a magnetometer in '71 and '79, was indeed the Hunley."

He knew where, in 1997, everybody was saying the Hunley was found. He knew that that location was within the circle that he drew at the 1990 -- or 1980 admiralty claim he brought that was in front of Your Honor. He knew enough about the location of his alleged finding of the Hunley, that he actually filed that admiralty claim.

So to now say that he needed verification of those coordinates, when he absolutely knew it, when he testified under oath at the Hunley Commission, filed an affidavit, a sworn affidavit that was notarized that he submitted to the Hunley Commission, is disingenuous. And it is -- what he's saying now is different, completely different than what he was saying to the Hunley Commission in 1997. Again, he can't have it both ways, to use Your Honor's words. That's what he's trying to do here.

He knew, at a minimum, that he might have a cause of action on May 11, 1995, at that press conference. If you somehow believe that he reasonably relied on Cussler, which I think is ridiculous, he's got this person that's saying something that is completely different than what he's saying, he's got no -- he cannot reasonably rely on Clive Cussler and what he said. But if you assume for a minute that he should reasonably rely, which is what's required under the equitable tolling argument made by Mr. Spence's attorneys, he knew by 1996 that that depth was wrong, that Cussler had lied about

it. So at a minimum, the statute, or at the latest, the statute runs in 1999. He does not file these counterclaims until May of 2002, four years or three years, depending on which way you look at it, after the statute of limitations has run.

There's no debate, the statute of limitations on all of these causes of action are three years. The statute had run and then some. He could have done something about it. He could have filed his claim, he could have put up his evidence that he found the Hunley, he could have come into Federal Court and asked for those coordinates, if he felt he needed it. But he doesn't need it to prove his case that he found the Hunley. He's been proclaiming that for the last 30 years. He either did or he didn't. We believe he didn't. But if he's got the evidence to prove that he did and can make a court believe it, well, he had that information in 1995 and he sat on it. And our law says you can't do that. You've got a statute of limitations that has to be met; he didn't meet it here, and his claim should be dismissed.

THE COURT: All right, sir, thank you.

MR. TAPP: Very briefly, Your Honor, Rick Tapp on behalf of NUMA. We join in counsel's arguments. But I would like to emphasize just a few certain points, if I may. Counsel's been very ingenious in kind of diverting this argument in this motion. The issue before the Court is the

timing of who found the Hunley. It's the identification, not the location. They've twisted it into a location issue, and tried to argue that the coordinates issue somehow muddies the water sufficiently that their time was tolled. I point out to the Court that that's certainly -- an issue of the coordinates did not give them such uncertainty that they felt they could not file the 1980 maritime or admiralty action. They did that. They felt sufficiently comfortable in 1980, that they found the Hunley, they knew where it was, and they came into this courtroom and filed a lawsuit. They could have done the same thing in 1995, after the press conference, before the entire world, where NUMA said, We found the Hunley.

Your Honor, you asked the question. I understood exactly what you said. If you decline the motion, that indeed it does go to the jury. I would point out there's one case under the State precedent of Holy Loch Distributors, Inc. versus R. L. Hitchcock, it's at 503 South Eastern 2d. 787. It is a 1988, I believe it's a Court of Appeals case that's been reversed on other grounds. But it does say, "Although asserted as a defense in a law case, equitable estoppel -- which is an estoppel as to statute of limitations -- is an issue to be tried and determined by the judge, rather than a jury."

So at least as to the issue of the tolling, the equitable tolling the statute of limitations, the precedent, at least in the State Court, is it is entirely an issue for the bench.

Thank you, Your Honor.

THE COURT: All right. Anything in reply?

MR. RICHTER: Briefly, Your Honor. Your Honor, the issue is a coordinates issue. And again, going back to the example of if the lawsuit had been brought in '96 or '97, what would that lawsuit say. It would say Clive Cussler has invaded my rights. And in order to prove that claim, Mr. Spence would have to have the coordinates of the Hunley. I don't know how that claim can survive ultimately, without being able to produce and introduce to the Court and the jury, that here is where I said I found it, and here is where Mr. Cussler says that he found it. They are the same, my rights have been invaded. And at least as of March 1996, there was a state law that said you can't even get it by FOIA.

So would it be reasonable for Mr. Spence to think that he lacks the information that he needs to prove his claim? I think that is reasonable. And, in fact, in one of our attachments to Mr. Spence's affidavit, his second affidavit, Exhibit H, he also writes to the Commission. This is separate from the affidavit that my colleagues on the other side cited to Your Honor. But on April 8th, 19 --

THE COURT: What exhibit are you talking about?

MR. RICHTER: That's Exhibit H to the affidavit of Lee Spence that we filed in opposition to summary judgment.

THE COURT: I'm trying to find it. Are these marked?

MR. RICHTER: They're divider pages, Your Honor, but there's a blank page that says Exhibit H, and then behind that is the --

THE COURT: You're speaking of the letter to Senator McConnell?

MR. RICHTER: Yes, sir, the letter dated April 8, 1996, to Senator McConnell of the Hunley Commission. And what Mr. Spence says in part is, "As you know, I am absolutely convinced that the object NUMA has identified as the Hunley, is the same object I identified as the Hunley in 1970. However, at present I cannot prove that they are one and the same, as I am prohibited by law, and my sense of ethics, from diving or doing any excavation at my location, and the location worked by NUMA is currently being kept secret." That's precisely the point that we have been making in court today, and it's a position that he's held since 1996.

Now, there is some further background to the '97 affidavit where he says I'm 99 percent sure those are my coordinates. And this would come out in testimony at the trial of the matter. Mr. Spence was frankly trying to get the State to come out, to disclose the coordinates, to create an opportunity for somebody to say to him, no, you're wrong, because the actual coordinates are in 17 feet of water or elsewhere than what you identified.

Now, nobody took the bait, but it was certainly out there

for somebody to respond to. But what he says in '96 is exactly right. I'm convinced, I believe it to be true, but I can't prove it. I lack the evidence I need, and I can't get it, because getting it would be illegal. And that condition persisted until October 4th of 2000, when he finally did know, and it's at that time that he knew that he had a right that he could sue on.

And, Your Honor, I may have -- you asked me earlier what's a jury issue and what's a court issue. I think issues in equity are always with the Court. So as to the equitable tolling arguments, I believe those are with Your Honor. Now, as to whether or not he acted reasonably or exercised reasonable diligence to try to discover his rights, so as to trigger the running of the statute of limitations, I definitely think those are fact issues for the jury. And I just wanted to clarify that. I believe I was not as precise as I would have liked in my earlier response.

THE COURT: All right, sir.

MR. RICHTER: Thank you, Judge.

THE COURT: You know, sometimes the facts and the resulting law kind of go against your grain. I'm going the think about this a minute or so, since I've heard your arguments.

Here you have a fellow who sort of boastfully tells the paper that he lied. And then I don't know how in the world he

accomplished all this -- none of my business, none of the Court's business -- but he takes the spot that he claims he found it, and some way or another has the General Assembly pass an act that that information can't be revealed. How he got that done, as I said, that's not for the Court to decide; that was done. And he gets it protected by the -- I don't know whether it was the Coast Guard or somebody, anyway, I believe I read in one of these statements or affidavits of something that they had boats out there or some way patrolling the spot so you couldn't get to it. How he did all of that, I don't know.

You've got on one hand, it really just doesn't seem fair to hold that the statute bars him. On the other hand, the law is -- the statute of limitations is the law this Court has to follow. And the facts that make up or create a statute of limitations defense, or what is before the Court, and whether I like the result, I've got to follow the law. And as I said, I don't really -- it just kind of goes against my grain to let a fellow openly tell a lie, that he so boastfully boasts about it, and somehow or another have the General Assembly pass an act that keeps information that at least would have been helpful to him, secret. And I don't know that the average citizen would -- average person would understand that if you couldn't get it under Freedom of Information Act, you could go to court and maybe the Court could overcome the Freedom of

Information Act. And they put boats out there to guard it, so he couldn't go check himself. That just doesn't seem fair. But the law is another situation, and the law is well established about if you know about a right that you have, or you reasonably should have known, then the statute starts to run. Of course, we do have equitable tolling, but I couldn't find equitable tolling in the tort sense, all I could find -- I mean equitable tolling would be based, I guess, would be based on the fact it would be unconscionable to deprive somebody of a right. And I couldn't find it anywhere except in contract law, the contracts that were unconscionable.

Let me think about it a few minutes. Just be at ease and I'll come back.

MR. BLAND: Your Honor, may I say --

THE COURT: Yes, sir.

MR. BLAND: Eric Bland for Lee Spence. Equitable tolling does exist for statute of limitations purposes outside of contract. For instance, in Title VII cases, which are statutory, that arise from a tort of workplace harassment. So it can apply outside of a contractual situation, so I just wanted to bring that to the Court's attention.

THE COURT: That's not in -- nobody cited me a case about equitable -- about it being equitable tolling would -- because something is unconscionable, would apply to any -- I couldn't find any. I'm sure you must be right about it.

MR. BLAND: Well, it's in the context of a Title VII case, if the employer's doing something to lead the employee along --

THE COURT: Yes, I know what it is.

MR. BLAND: -- that they're going to remedy the workplace. I think there's the Zapata case in the Fourth Circuit that deals with the equitable tolling on a Title VII case. And if Your Honor wants me to get that, I can get you the cite.

THE COURT: Let me think about it.

MR. BLAND: Thank you, Your Honor.

THE COURT: Y'all just be at ease.

(A recess was held at this time.)

THE COURT: Well, we've spent a lot of time with this yesterday, last night, today. And this is a suit about who found the Hunley, not where the Hunley was found. Where the Hunley was found would be an element of proof as to who found the Hunley. But back in 19, I guess '95, when Cussler announced that he found it, Spence had been claiming for maybe back since 1970 anyway, since 1980, that he found it. And once that issue was raised, it seems to me that he had a right to bring a suit.

Now, where the -- in his affidavit of '97, he had a lot of information that he could have based a suit upon. Whether he realized that maybe the Court could get the coordinates for

him, is not -- you know, he wouldn't necessarily have needed that, but I mean, whether he realized they could have gotten them, doesn't take away the right that he could have brought the suit as to who found the Hunley, because that's the issue. Where the Hunley was found, as I said, goes to the proof. So I think under the normal rules of -- the statutes are passed for a purpose, that the statute of limitations, unless it is equitably tolled, would bar Spence's suit, Spence's claims.

Now, getting to the question of equitable tolling, I went back and read again -- I read it once -- I went back and read again this Rouse against Lee case, and that's the case that Judge Currie based her decision on in Hightower.

The Fourth Circuit, speaking of equitable tolling, said, "Any invocation of equity to relieve the strict application of a statute of limitations must be guarded and infrequent, lest circumstances of individualized hardship supplant the rules of clearly drafted statutes. To apply equity generously would loose the rule of law to whims about the adequacy of excuses, divergent responses to claims of hardship, and subjective notions of fair accommodation. We believe, therefore, that any resort to equity must be reserved for those rare instances where, due to circumstances external to the party's own conduct, it would be unconscionable to enforce the limitation period against the party and gross injustice would result."

I just don't believe that the equitable tolling is external to Mr. Spence's conduct. If a lawyer doesn't bring a suit for you, of course he's liable, but that's something maybe external to your conduct, and most of the other things, too. But the fact that Cussler was able somehow to have a special statute passed by the General Assembly that accrued to nobody's benefit but his, that I can see, and to have boats from the government, Coast Guard or somebody patrolling, and helicopters flying over, solely for his benefit, how he was able to accomplish that, I don't know, but he did.

But I don't think that that's -- the fact that he couldn't get the coordinates, he could have brought the suit in 1997. In his affidavit, one of Cussler's coworkers came up to him and told him that we found it exactly where you said it was going to be. That's enough on which to base a lawsuit.

He had other facts in his affidavit that would give him grounds for the suit, and he just didn't do it. And I don't think that the mere fact that he couldn't get the coordinates, didn't stop him from bringing the suit.

Now, if the only way, if there was some requirement under the law that you had to have coordinates before you could bring an admiralty suit or whatever kind of litigation it might have been, and he couldn't get them, that's one thing. But he had a great deal of evidence about having found the Hunley, as I said, including -- there were other factors in

his affidavit, particularly the statement from Cussler's coworker. So I don't think the circumstances that kept him from bringing the suit, were external to his own conduct. So I don't feel that I can apply the doctrine of equitable estoppel.

I'm not so sure, I mean the law is established, and I don't feel that there's a sufficient -- having been cautioned by the Court, the Fourth Circuit, in this Rouse case, that says that, "We believe any resort to equity must be reserved for those rare instances where, due to circumstances external to the party's own conduct, it would be unconscionable to enforce the limitations period against the party and gross injustice would result."

Well, I think that his situation is -- he brought a great deal of it on himself by not going ahead and bringing this suit. It wasn't that he couldn't bring the suit without coordinates. The coordinates would have helped him prove his case, but that's all they were for.

I'm not satisfied, just personally, but it's got nothing to do with it, that Cussler didn't find what Spence had already found, but I have to follow the law, not what I believe, and I have to follow the facts that are before me. And I just don't think this is a case that warrants equitable estoppel. And certainly back in '95, as soon as Cussler announced he'd found the Hunley, and Spence had already been

claiming it, he had a litigation to start right there. I mean, he could have started his litigation.

So I'm going to grant summary judgment. And if you take it to the Fourth Circuit, it wouldn't make me unhappy a bit if I got reversed. Because I just can't -- I never have gone to check, and I'm not, I'm through with it now, unless it comes back, but how he accomplished, how Cussler did all he did, just makes you wonder. But that may come another day. I appreciate y'all coming, and we'll be in recess.

(Court adjourned at 12:14 p.m.)

REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki
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Debra L. Potocki, RMR, RDR, CRR