

EXHIBIT B

Fish nets cause serious accident at Huron Beach

Three lake trout fishermen were treated to a harrowing experience Saturday evening when their 19-foot boat capsized off the shore of Huron Beach while they were trolling in Lake Huron.

Harold DeHart, Harry Wheaton and Carl Wheaton were fishing in a favorite area about 500 yards offshore when the downriggers from the boat caught in a net and brought the boat to a stop even with the small trolling motor still running. As they tried to

free the downriggers, the motor's propeller caught in the netting and caused the stern of the boat to slope downward at a perilous angle so that the water started pouring in. The boat capsized quickly, throwing the men into the lake. The boat floated upside down and the men managed to cling to it and signaled for help, not knowing whether or not anyone could see them bobbing in the waves.

Luckily for the fishermen, Mark Piavis, who lives with his parents on

the nearby lakeshore, saw the accident. He managed to get a small boat launched and got to the men before they had further problems. Due to the cold water temperature, hypothermia could have developed in a few hours and the men would have been in a serious plight.

After getting the men to shore, Piavis aided them in a salvage effort with a larger boat and the capsized craft was towed closer to shore and

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SURVEY DAMAGED BOAT — Harry Wheaton (left) and Harold DeHart discuss the next step in the salvage of their boat which capsized Saturday evening after encountering a fish net at Huron Beach. Wheaton, the owner, says the 19½-foot boat would cost \$14,000 to replace if it can't be repaired.

Fishing nets cause serious accident

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anchored on a sand reef for the night. The capsized boat could not be towed all the way to the beach because of rough wave action.

Early Sunday morning the men tried to get the craft out of the water and found it had broken loose from the anchoring spot and floated around upside down, causing more severe damage to the boat and its motors.

Harry Stern, a neighbor of the Wheatons, brought in a Jeep with a winch and a line was fastened to the boat and it was dragged to shore. Several men from the area aided in getting it on a trailer and it was towed to Wheaton's home.

The fishing boat, 19'6" long, with a large motor and a trolling motor, would cost approximately \$14,000 to replace. The steering wheel housing was crushed, the metal hand rail torn away, the main motor crushed in at the top, the small trolling motor damaged badly by sand and water, and several places in the boat's hull were cracked and scarred. The trolling motor had several pieces of netting wrapped around the propeller when it was taken out of the water. Many valuable fishing articles were lost when the boat turned over. Some, of the floating type, were recovered but non-floating equipment went to the bottom of the lake.

The fishing net is reportedly owned by Indians who have fished in the Hammond Bay area for the last few years. DeHart, who works for the Department of Natural Resources in Cheboygan, said it was a trap net and not the gill net that has been the center of much controversy. According to the DNR, the Indians are fishing legally under present law which state, federal and tribal representatives have been discussing in Washington.

According to the men aiding in the recovery efforts Sunday, the Indians have been setting their nets in the



A PILE OF BROKEN GEAR — Carl Wheaton gathered bits and pieces of some of the gear from the capsized boat in which he was fishing last Saturday. He said he never expected anything like this his first time out on the lake. Fortunately, a shoreline resident saw the mishap or things could have been worse.

area for many months and have taken tons of fish from the lake. They complained that the nets are not easily seen due to insufficient use of marker buoys. The nets stretch for 500 yards or more underwater and the main pole marker with a flag is hard to see, especially in rough water. The residents at the beach state that other boaters have also had trouble running into nets.

Harold DeHart is a supervisor for Bearinger Township and lives in the Orchard Lake area year-round. Wheaton and his son Carl are from Milford. The father spends many of his off-days at a summer cottage located at Huron Beach and fishes a lot on the waters nearby. Ironically, this is the first time on the lake for



MOTOR DAMAGED — Harry Wheaton (left) and Harold DeHart are shown above holding strands of the netting in which they became entangled while fishing Saturday on Lake Huron, with bits of the net still wrapped around the motor's propeller blade. They were able to cling to their overturned boat until help arrived.

Early copy needed for next

Monday, May 25, is Memorial Day and in order for that holiday off to spend with their families, it will be an early copy for the next issue of The Presque Isle County Advance.

Where possible, we ask that correspondents and advertisers get copy into our office by 5 p.m. on Friday, and advertisements will be taken up to noon on Tuesday. That late time perfection cannot be guaranteed.

We urgently seek your cooperation in this matter. Please continue to give our readers the type of news and advertising they deserve. Thank you.

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EXHIBIT C

FOR IMMEDIATE RELEASE

November 30, 1993

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BOATING TRAGEDY ON ST. MARTIN BAY

On September 4, 1993, a tragedy occurred on St. Martin Bay. At approximately 11:00 a.m. sportsfisherman James Swikowski, his son Martin (age 18) and brother Dan departed from the Carp River boat launch to fish for salmon. Family members of the fishermen remained at a nearby campsite where the families were spending the Labor Day weekend.

A short time later the fishermen's 17 foot vessel, the *Pinky Lee*, became entangled in a floating gillnet and sank. All three men perished in the cold water of Lake Huron. Martin was wearing a life jacket; his father and uncle were not.

Due to the extensive public interest in this tragic incident, an investigation was conducted under the authority of the Mackinac County Sheriff's Department with the assistance of the Michigan State Police. While complete details of the investigation are available by appropriate request, the following are among the most significant conclusions.

1. Weather Conditions: There is contradictory evidence regarding wind and wave conditions on St. Martin Bay on the date of the incident. Several native American fishermen who claim to have been on the bay that morning reported high winds and rough seas. In fact, these same fishermen state that they met the victims at the Carp River boat launch and warned them against

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going onto the bay. Residents along the east shore of the bay similarly described lake conditions as treacherous.

Coast Guard reports, on the other hand, describe calm and clear weather conditions throughout the day except for a squall that passed through the area at approximately 2:00 p.m. A video tape of the bay taken at 11:00 a.m. by family members of the victims depicts calm seas and very little wind. It should be noted, however, that the video was taken from the west side of the bay, which would have been sheltered from the southwesterly winds that prevailed during the squall.

2. Radio Distress Call: Coast Guard records of radio traffic confirm transmission of "Mayday" distress calls at 1:15 p.m. from the St. Martin Bay area. The calls lasted only about 10 seconds. Unfortunately, the transmission was completely covered by a more powerful transmission and was discovered only after the fact.

3. Net Presence in St. Martin Bay: According to local tribal commercial fishermen, as many as twelve fishermen with more than thirty nets were operating out of St. Martin Bay on September 4th. Tribal fishermen explain that under the 1985 consent decree they are unable to fish in much of their treaty water. Consequently, they have been squeezed into the waters around St. Ignace and St. Martin Bay.

Documentation by the Coast Guard confirms that St. Martin Bay was riddled with nets on September 4th. The net in which the victims' boat was entangled was 1800 feet in length. The net, 35 feet deep, was suspended from the surface, where it was marked by small blue and white floats, to the lake's bottom in 29 feet of water. Tribal fishing rules also require that nets be

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marked with a flag staff at one end and some sort of buoy at the other. The purpose of the rule is to allow the owner of the net to be easily identified. It is uncertain whether any tribal netting regulations exist which establish minimum safety standards.

4. Condition of Victim's Boat: The *Pinky Lee* initially was discovered by the fishermen in whose nets it was entangled. With the assistance of the Coast Guard buoy tender *Buckthorn*, the sunken vessel was lifted from the lake bottom. Approximately 60 feet of the gillnet remained attached to the vessel, the rest having been severed by the fishermen who discovered it.

A visual inspection revealed the net to be afoul with boating and fishing equipment. The primary motor, an 80 h.p. Mercury, was manually latched in the up position, suggesting that it was not being used when the boat came into contact with the net. The prop of the 5 h.p. trolling motor was obviously wrapped with netting. In fact, the monofilament net was wrapped so tightly around the prop that it could not be turned. After the net was cut away, the prop turned freely. Therefore, it is most likely that the small motor was running when it came into contact with the net.

A mechanical and electrical inspection of the vessel was conducted by Coast Guard personnel. No significant findings were made.

5. Presence of Alcohol/Tampering with Nets: The victims' family confirmed that the victims had taken a twelve-pack of beer with them. Eight unopened cans were recovered near where the incident occurred. Toxicology reports from the body of Martin Swikowski were negative for alcohol.

Several tribal fishermen also have voiced suspicion that the victims may have been tampering with the net (e.g. stealing salmon) when they became

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entangled. While such a possibility exists, there is no evidence whatsoever to substantiate this claim.

6. History of Problem: Safety concerns associated with the presence of floating nets have increased substantially in recent years. The tragedy of the *Pinky Lee* was, arguably, a disaster waiting to occur.

Complaints among local ferry lines and sport fishermen are well documented. Residents of St. Martin Point have expressed fear of going out into the bay due to the number of nets which the residents maintain are "all but invisible in choppy water." In one particular incident during September of 1992, two residents experienced a near tragedy when their boat became entangled in a net. With the engine stalled as a result of the net being wrapped around the prop, the boat swung downwind, exposing the transom, and began taking on water. One of the men was able to balance the boat while the other one cut away the net. Another area resident experienced a similar near tragedy in 1989.

Local officers of the United States Coast Guard have repeatedly expressed concern about the navigational hazards created by floating nets, especially the difficulty in seeing them under different weather and lake conditions. The Coast Guard previously has communicated its concern to tribal authorities and recommended that the nets be lowered from the surface to a depth sufficient to ensure safe clearance for all boats. Tribal fishermen have rejected the recommendation.

It should be noted that Coast Guard vessels have also experienced unpleasant and dangerous encounters with floating nets. During a search and rescue operation in Hammond Bay during September of 1992, a Coast Guard vessel became entangled in a floating net. The crew was attempting to assist another

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craft that had become entangled in a different net.

At one point during its search for the crew of the *Pinky Lee*, the Coast Guard was forced to abort its operation due to the number of floating nets in St. Martin Bay. After the incident and for the remainder of the salmon season, the Coast Guard transmitted twice daily over marine radio warnings to boaters around the St. Ignace and St. Martin Bay areas. The warning cautioned boaters to exercise "extreme caution when transiting these areas as the nets can be extremely difficult to see both during the day and at night."

Given the generally controversial history associated with tribal gill netting in the open Great Lakes, it is not surprising that individuals and groups with competing agendas and interests have followed this case closely. Tribal fishermen and their representatives consider the matter to be within the sovereign jurisdiction of the tribal courts. The State of Michigan, according to the tribal fishermen, has no authority to intervene or otherwise attempt to regulate how they conduct their federal treaty-protected fishing rights.

Other groups and individuals who oppose the right of natives to fish commercially with gill nets, on the other hand, view this case as a legitimate opportunity to review the entire issue--to correct what they perceive as irrational and obsolete reasoning by appointed federal judges.

A decision to prosecute any citizen must, however, be based solely on applicable law and relevant facts. To initiate or pursue a criminal prosecution to satisfy the interests of one group or another would, at the very least, represent an abuse of prosecutorial discretion.

On the other hand, I do not share the belief that the State of Michigan is without authority to prosecute native American fishermen whose conduct or

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actions violate state laws that are designed, not to regulate fishing, but to protect the safety and welfare of its citizens. Indeed, the State of Michigan also has attributes of sovereignty, the most basic of which includes the protection of its citizens from the unreasonable and dangerous activity of others. Recent federal court decisions relating to the right of natives to hunt deer at night in the State of Wisconsin provides authority for this position.

In the present case, there obviously is no evidence that the fishermen in whose nets the victims' boat became entangled intended to cause them any harm. However, the State of Michigan makes it a criminal offense to exercise even a legal right in a grossly reckless manner that causes loss of life.

Whether the practice of floating nets of great length across the lake surface amounts to criminal recklessness is a question of fact. Certainly the history of previous serious incidents as well as the recent tragedy, and the growing concern of the United States Coast Guard, are persuasive indicators that floating nets do present a substantial threat to navigational safety.

The ironic fact remains, however, that the use of floating nets is the standard practice among the tribal fishermen in pursuit of salmon. Approved by tribal authorities and apparently accepted or tolerated by state and/or federal authorities, the use of floating nets is perceived among tribal fishermen as a legal and totally appropriate manner of pursuing their livelihood.

Unlike the typical criminal case involving reckless conduct where the individual knows, or should know, that his actions are unlawful, no such knowledge can be presumed or imputed to the fishermen in whose nets the *Pinky Lee* became entangled. Although the concerns relating to floating nets have

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previously been communicated to tribal authorities, and the issue addressed amongst tribal fishermen and tribal authorities, no tribal or other lawful regulation exists which makes the use of floating nets a criminal offense. In other words, there is no evidence to prove that the fishermen knew that the use of floating nets in St. Martin Bay could amount to criminal recklessness. In the absense of any culpable intent or knowledge, a criminal prosecution would be inappropriate.

The survivors of the victims are entitled to pursue their claims, if any exist, in civil suits. But the overriding issue here is one of public safety, not a criminal prosecution of an individual fisherman or private litigation. The Great Lakes, including treaty waters, belong to all of the citizenry. Each and every citizen has an equal right to use the waters of the Great Lakes without being exposed to unreasonable and unnatural hazards.

As a matter of public safety, this issue must be confronted and resolved by our state and federal representatives. The rights and safety of all citizens who use the Great Lakes must be protected. Whether by negotiations with tribal authorities, or by legislative mandate, prompt action must be undertaken to prevent further needless tragedies from occurring. A failure to act truly would be reckless.