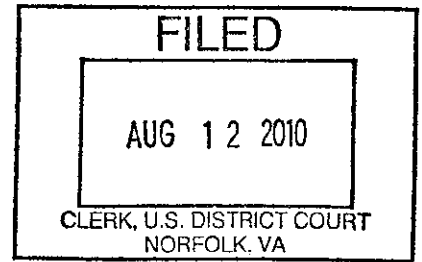


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division



R.M.S. TITANIC, INC.,
successor-in-interest to
Titanic Ventures, limited partnership,

Plaintiff,

v.

ACTION NO. 2:93cv902

THE WRECKED AND ABANDONED VESSEL,
ITS ENGINES, TACKLE, APPAREL,
APPURTENANCES, CARGO, ETC., LOCATED
WITHIN ONE (1) NAUTICAL MILE OF A POINT
LOCATED AT 41 43' 32" NORTH LATITUDE
AND 49 56' 49" WEST LONGITUDE,
BELIEVED TO BE THE R.M.S. TITANIC,
IN REM,

Defendant.

OPINION

This matter comes before the court on R.M.S. Titanic, Inc.'s ("RMST") Motion for a Salvage Award ("Motion") filed on November 30, 2007.¹ The court held an evidentiary hearing on RMST's Motion on October 26-29, 2009, and on November 2 and 23, 2009. For the reasons set forth below, the court **GRANTS** RMST's motion for a salvage award in the amount of **ONE HUNDRED PERCENT (100%)** the fair market value of the artifacts recovered in the 1993, 1994, 1996, 1998, 2000, and 2004 expeditions to the wreck of the R.M.S. Titanic. The court specifically reserves the right to

¹ The progression of the case since the filing of the instant Motion is set forth infra Part I. at 10-14.

determine at a later time whether to pay such award in currency or via an in specie award.

I. Factual and Procedural History

It has been nearly one hundred years since the R.M.S. Titanic ("Titanic") sank in the waters of the North Atlantic in the early hours of April 15, 1912, killing more than 1,500 of the 2,228 people onboard. For over half a century, the Titanic lay undetected, 12,500 feet below the surface, in international waters four hundred nautical miles southeast of Newfoundland, until a joint American-French expedition discovered the wreck in 1985.

In 1987, RMST's predecessor-in-interest, Titanic Ventures Limited Partnership ("TVLP"), participated in a joint expedition with the Institut français de recherche pour l'exploitation de la mer ("IFREMER") to begin salvage operations at the site. Over the course of thirty-two dives to the Titanic wreck, TVLP recovered approximately 1,800 artifacts ("1987 artifacts"), which were taken to France for conservation and restoration.²

On May 4, 1993, RMST, formerly known as First Response Medical, Inc., acquired all the assets and liabilities of TVLP, including TVLP's interest in the Titanic salvage operations and the 1987 artifacts. In the summer of that year, RMST conducted another expedition to the Titanic wreck site, pursuant to a charter with

² The number of artifacts listed for each expedition is approximate, as the data sometimes varies, depending on whether related objects are counted as a group or individually.

IFREMER,³ recovering approximately 800 artifacts ("1993 artifacts") and producing 105 hours of videotape over the course of fifteen dives. After bringing the 1993 artifacts to Norfolk, Virginia, RMST commenced the current in rem action on August 26, 1993.

The court issued a warrant directing the United States Marshal to arrest the wreck and all the artifacts that had already been salvaged and that were yet to be salvaged. The court also ordered that RMST be substituted for the Marshal as custodian of the Titanic wreck, the wreck site, and the artifacts. Formal notice of the court's order appeared in The Virginian-Pilot, The Wall Street Journal, and The Journal of Commerce, directing persons who had any claim to the wreck, or any of the associated property, to appear and state their claims. The only party to file a claim was Liverpool and London Steamship Protection and Indemnity Association Limited ("Liverpool & London"), which had insured passenger personal property and baggage on board the Titanic.

On October 20, 1993, a French administrator in the Office of Maritime Affairs of the Ministry of Equipment, Transportation, and Tourism awarded TVLP title to the 1987 artifacts. The 1987 artifacts are not included in the present Motion.⁴

³ As RMST did not own the expensive and highly technical equipment necessary to salvage the Titanic wreck site, it entered into a series of charter agreements to make its salvage operations possible. Those charter agreements are discussed more fully below. See infra Part II.B.4. and 5.

⁴ See infra note 7 and accompanying text.

After RMST reached a settlement agreement with Liverpool & London, the court dismissed Liverpool & London's claim on June 7, 1994. By separate order that same day, the court awarded RMST exclusive rights to salvage the Titanic wreck as salvor-in-possession. Thus, in the summer of 1994, RMST and IFREMER conducted another expedition to the wreck, recovering over 1000 more artifacts ("1994 artifacts") and producing approximately 125 hours of videotape.

Pursuant to Federal Rule of Civil Procedure 60(b), John Joslyn ("Joslyn") filed a motion on February 20, 1996, asking the court to reconsider the June 7, 1994, Order making RMST salvor-in-possession. Joslyn argued that RMST was not fulfilling its duty as salvor-in-possession on the grounds that RMST had not made an expedition to the site in nearly two years and that it did not have the financial means to do so. On May 10, 1996, the court upheld RMST's status as salvor-in-possession in a Memorandum Opinion and Order, finding RMST had exercised due diligence, had maintained ongoing salvage operations, and had demonstrated its efforts were clothed with a prospect of success. R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 924 F. Supp. 714, 722-724 (E.D. Va. 1996). The court's holding was partially based on the fact that RMST had "promised the Court that it would keep the artifacts together and preserve them for the public," and, at least until that point, RMST had kept that promise. Id. at 723.

RMST's 1996 expedition to the Titanic, again in conjunction with IFREMER, led to the recovery of 74 artifacts ("1996 artifacts") and the production of approximately 125 hours of videotape. With the cooperation of RMST, Discovery Communications, Inc. ("Discovery") joined the expedition, from which it produced three hours of television programming for The Discovery Channel.⁵ Also on the 1996 expedition, efforts began to recover a section of the Titanic hull, known as the "Big Piece," measuring approximately 26 feet by 20 feet and weighing approximately 20 tons. Nevertheless, efforts to raise the Big Piece on the 1996 expedition were ultimately unsuccessful.

In the summer of 1998, pursuant to another charter with IFREMER, RMST returned to the Titanic site, recovering approximately 70 artifacts ("1998 artifacts"), which included the Big Piece, and producing 350 hours of videotape. Once again, Discovery joined the expedition, producing five hours of television programming, which included the first-ever live broadcast from the Titanic wreck site.

On May 4, 1998, RMST sought an injunction to prohibit Deep Ocean Expeditions ("DOE") from organizing tourist expeditions to the Titanic wreck site for the purposes of photographing it. That same day, Christopher Haver ("Haver"), an individual who had paid

⁵ The two-hour feature, "TITANIC: Anatomy of a Disaster," was the highest rated program in the history of The Discovery Channel as of its airing in April 1997.

DOE \$32,000 to participate in such an expedition, filed an action in this court seeking a declaratory judgment that he was entitled to enter the Titanic wreck site. After consolidating Haver's action with this in rem proceeding, the court granted RMST's motion for an injunction on June 23, 1998, enjoining DOE, Haver, and others from photographing the Titanic wreck. The court found an injunction necessary, in part, to compensate RMST for its efforts as salvor-in-possession, given that RMST could not sell the artifacts in its care. R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 9 F. Supp. 2d 624, 636 (E.D. Va. 1998). On appeal, the Fourth Circuit reversed the court's decision to grant an injunction, holding that the court could not enjoin DOE, Haver, and others from traveling to and photographing the Titanic wreck. R.M.S. Titanic, Inc. v. Haver, 171 F.3d 943, 970 (4th Cir. 1999) ("Titanic 1999"). The Fourth Circuit affirmed, however, this court's decision to name RMST as salvor-in-possession. Id. at 966. On remand, this court entered an order consistent with the Fourth Circuit's ruling, monitoring RMST's salvor-in-possession status with periodic reports and hearings. See R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, No. 2:93cv902 (E.D. Va. July 7, 1999).

RMST completed another expedition to the Titanic wreck site in the summer of 2000, in conjunction with the P.P. Shirshov Institute of Oceanology of Moscow, Russia ("Shirshov Institute"), which provided the research vessel "Akademik Mstislav Keldysh" and two

deep manned submersibles, the "MIR-1" and the "MIR-2." The 2000 expedition consisted of twenty-eight dives and resulted in the recovery of over 900 artifacts ("2000 artifacts"), as well as the discovery of a new debris field.

In the summer of 2001, the court learned that RMST had plans to transfer interest in the Titanic artifacts. After holding a hearing, the court issued an order on September 26, 2001, finding that its previous orders to prevent sales of individual Titanic artifacts "were proper and were necessary when entered." R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, No. 2:93cv902, at 2 (E.D. Va. Sept. 26, 2001) ("Titanic 2001").⁶ After RMST appealed the September 26, 2001, Order, the court amended that order on October 19, 2001, to further explain its position. RMST then filed an amended notice of appeal, appealing both orders. The Fourth Circuit held an expedited hearing on the matter, and on

⁶ In particular, on July 28, 2000, the court ordered that RMST could not "sell or otherwise dispose of any artifacts or any object recovered from the TITANIC wreck site." R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, No. 2:93cv902, at 3 (E.D. Va. July 28, 2000). The court further ordered that RMST was "forbidden to in any way cut into the wreck or detach any part of the wreck." Id. On April 30, 2001, the court amended the July 28, 2000, Order, clarifying that RMST remained free to sell coal recovered from the wreck site. R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, No. 2:93cv902, at 2 (E.D. Va. Apr. 30, 2001). On April 30, 2010, the court issued a Memorandum Order again amending the July 28, 2000, Order, to permit, in connection with the planned 2010 expedition, the limited collection of "rusticles," which are complex microbiological structures that feed on the ship's iron, for the purposes of scientific research. See R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, No. 2:93cv902, at 3 (E.D. Va. Apr. 30, 2010); infra note 27.

June 6, 2002, affirmed the position of the court:

The Titanic was a historic ship, and the artifacts recovered from its wreckage therefore have enhanced value. RMST currently has a unique role as the Titanic's exclusive salvor, and, having performed salvage services, it has a lien in the artifacts and is entitled to a reward enforceable against those artifacts. At this stage of the proceedings, however, we cannot conclude that RMST has title to any artifacts. We also cannot conclude that the course that the district court is pursuing violates the law of salvage or amounts to an abuse of discretion.

R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 286 F.3d 194, 210 (4th Cir. 2002) ("Titanic 2002").

On February 12, 2004, RMST filed a "Motion for Salvage and/or Finds Award," pursuant to which the court held a hearing on May 17, 2004. In a Memorandum Opinion and Order, dated July 2, 2004, the court refused to recognize the French administrative judgment awarding title of the 1987 artifacts to RMST's predecessor, under principles of international comity.

R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, 323 F. Supp. 2d 724, 730-34 (E.D. Va. 2004) ("Titanic 2004"). Moreover, the court held that RMST, as salvor-in-possession, could not seek title to the artifacts under the law of finds because it would be "inequitable and inconsistent" for the court "to award a party both the exclusive right to recover objects on the premise that the recovery is being performed for the benefit of the objects' owners, and to award title to the objects once they are recovered on the

premise that they were previously unowned." Id. at 737. On August 2, 2004, the court issued an order staying its proceedings pending RMST's interlocutory appeal. R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 327 F. Supp. 2d 664, 666-67 (E.D. Va. 2004).

In the summer of 2004, RMST conducted its most recent expedition to the Titanic wreck site, pursuant to charters with Phoenix International, Incorporated ("Phoenix International") and Secunda Marine Services Limited ("Secunda Marine"). For the first time, RMST relied exclusively on a deep ocean remotely operated vehicle ("ROV"), which permitted round-the-clock underwater operations. The expedition resulted in the recovery of 75 artifacts ("2004 artifacts"), as well as the discovery of another debris field, with remnants of the first class à la carte restaurant.

In 2006, on appeal of this court's decision in Titanic 2004, the Fourth Circuit affirmed this court's ruling that it is the law of salvage and not the law of finds that governs this case. See R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel, 435 F.3d 521, 535 (4th Cir. 2006) ("Titanic 2006").⁷ The Fourth Circuit remanded

⁷ The court of appeals did vacate that portion of the court's opinion dealing with the 1987 artifacts, finding that the court lacked in rem jurisdiction over the 1987 artifacts. Titanic 2006, 435 F.3d at 530. RMST had previously been awarded title to the 1987 artifacts in a French administrative proceeding. See supra note 4 and accompanying text.

the case to this court to provide RMST with "an appropriate reward, which may include awards in specie, full or restricted ownership of artifacts, limitations on use of the artifacts, rights to income from display and shared research, and future rights to salvage." Id. at 538.

On October 1, 2007, the court conducted a status hearing, and on October 16, 2007, the court issued a Memorandum Opinion and Order directing RMST to file a motion for a salvage award within sixty days, including all salvage costs through December 31, 2006, or RMST would waive the right to a salvage award up to and including that date. R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, 531 F. Supp. 2d 691, 693 (E.D. Va. 2007) ("Titanic 2007"). Further, the court entrusted the United States Attorney for the Eastern District of Virginia to continue reviewing RMST's operations as salvor-in-possession, as well as responding to any motion for salvage award RMST might file. Id.

On November 30, 2007, RMST filed the instant Motion, along with several volumes of exhibits, seeking a salvage award for all of its efforts salvaging the Titanic wreck site through December 31, 2006.⁸ In the Motion, RMST represented that the fair

⁸ RMST specifically reserved the right to pursue successive salvage awards for operations subsequent to January 1, 2007. (Motion ¶ 17.) To date, RMST has conducted no further salvage operations or expeditions to the site. However, as indicated in its most recent Periodic Report to the court, dated August 10, 2010, an expedition is set to begin on August 18, 2010. (Periodic

market value of the artifacts at that time, excluding the artifacts from the 1987 expedition, was \$110,859,200. (Motion ¶ 10.) RMST further stated that it was seeking a salvage award between ninety to one hundred percent of the artifact's fair market value. (Id. ¶ 11.)

After receiving an extension of time from the court, on March 17, 2008, the United States filed a motion seeking leave of the court to submit its views on RMST's Motion. With written consent from RMST, the court granted the United States' request, on March 25, 2008, to participate as amicus and ordered that the United States' amicus brief be filed. In its brief, the United States indicated that "an interim in specie award with limitations could serve as an appropriate award mechanism in this case," and therefore, the United States proposed certain limitations for the court's consideration. (United States' Resp. to RMST's Motion for Salvage Award at 10-16 (Mar. 17, 2008).)

On April 15, 2008, the court issued an order directing RMST to submit proposed restrictive covenants. The court stated:

At minimum, these proposed covenants must ensure that the artifacts are conserved and curated in an intact collection that is available to the public and accessible for historical research, educational purposes, and scientific research, in perpetuity. The proposed covenants shall incorporate safeguards to ensure that they will remain effective in perpetuity, notwithstanding any further changes in circumstances. Furthermore, the

Report Ex. B at 1 (Aug. 10, 2010).)

proposed covenants shall guard against contingencies that might impair their future effectiveness.

R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel, No. 2:93cv902, at 6 n.12 (E.D. Va. Apr. 15, 2008). With regard to the content of the covenants, the court indicated:

Specifically, these covenants, at minimum, must ensure the following: (1) that the collection is maintained as an intact collection that joins those artifacts from the R.M.S. Titanic awarded to RMST by a French maritime tribunal; (2) that the collection is managed according to the professional standards recognized in the NOAA Guidelines, the International Agreement and the Annexed Rules, and the federal regulations governing the curation of the federally owned and administered archaeological collections; (3) that reasonable, ongoing oversight by NOAA is implemented in order to protect the United States' interests in the Titanic wreck site and the artifacts recovered therefrom, and to ensure compliance with all court-imposed covenants; (4) that the collection is protected in perpetuity by ensuring that the covenants run with the collection to any subsequent purchasers and/or successors-in-interest to RMST; and (5) that the collection is protected in the event of insolvency or bankruptcy by RMST.

Id. at 4-5 (footnotes omitted). Further, the court stressed that the covenants would need to protect the Titanic and its artifacts as an international treasure for posterity, as expressed by the R.M.S. Titanic Maritime Memorial Act of 1986, 16 U.S.C. § 450rr et seq., the National Oceanic and Atmospheric Administration's ("NOAA") Guidelines for Research, Exploration, and Salvage of R.M.S. Titanic, 66 Fed. Reg. 18,905-18,913 (Apr. 12, 2001), the International Agreement Concerning the Shipwrecked Vessel R.M.S. Titanic, and the proposed legislation to implement the

International Agreement. Id. 3-4.

RMST submitted its proposed covenants and conditions ("C&Cs") on June 11, 2008, and a revised version on June 23, 2008. After extensive consultation with the United States, RMST submitted another revised version of the C&Cs on September 12, 2008, in compliance with the court's schedule.⁹ Generally, the C&Cs provide for oversight by NOAA, extensive trustee obligations, a reserve fund, trustee default procedures, collection management, deaccession, bankruptcy procedures, and possible sale in the event of a rival collection. On October 14, 2008, the United States filed its amicus response to the C&Cs, which approved of most provisions, objected to several provisions, and attached an edited version of the C&Cs. The court granted RMST leave to reply to the United States' concerns.

At a hearing on November 18, 2008, the parties addressed the disputed issues, and the court oversaw further revisions. Specifically, the parties agreed to alter language about the trustee's obligations, deaccession, the reserve account, and the bankruptcy proceedings; delete a section about selling the collection if a rival collection emerges; and incorporate extrinsic sources. Taking into account these revisions, the court is satisfied that the current version of the C&Cs complies with the

⁹ This submission was not docketed, however, until September 15, 2008.

court's order dated April 15, 2008.¹⁰

Finally, pursuant to the instant Motion for a Salvage Award, the court conducted an evidentiary hearing on October 26-29, 2009, and on November 2 and 23, 2009. On December 21, 2009, RMST submitted its Post-Hearing Memorandum in Support of its Motion for a Salvage Award. The United States opted to make no further submissions to the court. After almost seventeen years since the commencement of this in rem action, RMST's Motion for an interim salvage award is ripe for decision.

II. Analysis

A. Entitlement to a Salvage Award

Principles of salvage law emerged over three thousand years ago, in the days of Rhodian civilization, and have since become an important part of the maritime law of nations. The purpose of salvage law is "to encourage persons to render prompt, voluntary, and effective service to ships at peril or in distress by assuring them compensation and reward for their salvage efforts." Titanic 1999, 171 F.3d at 962 (citing The Akaba, 54 F. 197, 200 (4th Cir. 1893)). In that regard, a salvage award "is not viewed by the admiralty courts merely as pay, on the principle of a quantum meruit, or as a remuneration PRO OPERE ET LABORE, but as a reward given for perilous services, voluntarily rendered, and as an

¹⁰ This version is attached to this Opinion as Exhibit A.

inducement to seamen and others to embark in such undertakings to save life and property." The Blackwall, 77 U.S. (10 Wall) 1, 14 (1869). Thus, in order to encourage salvage operations, a salvor is entitled to "liberal compensation." Id.

Rather than obtaining title to the salvaged property, a salvor acts on behalf of the property's owner, thereby obtaining a lien against the property saved. The "Sabine", 101 U.S. 384, 386 (1879). The salvor's lien is exclusive and prior to all others, including the res owner, and it grants the salvor a possessory interest in the res pending satisfaction of the lien. Titanic 1999, 171 F.3d at 963. A salvor may enforce its lien on the salvaged property by pursuing an in rem action before an admiralty court. Id.

A salvor must establish three elements to prove entitlement to a salvage award: (1) that the salvaged property faced a marine peril; (2) that the salvor's services were voluntarily rendered without any preexisting contractual obligation; and (3) that the salvage efforts were successful, in whole or in part. The "Sabine", 101 U.S. at 384. If any ambiguity still remains as to whether RMST has demonstrated these elements, the court explicitly finds that the prerequisites to a salvage award have been satisfied and that a salvage award is, therefore, warranted in this case. See Titanic 2006, 435 F.3d 538 (directing this court on remand to "apply the principles of traditional salvage law to the wreck of the Titanic

in a manner that . . . provides an appropriate award to the salvor").

First, there can be little doubt that the Titanic, which now lies 12,500 feet below the surface, has faced, and continues to face, marine peril. See, e.g., Bemis v. RMS Lusitania, 884 F. Supp. 1042, 1051 (E.D. Va. 1995) ("Courts will usually find that underwater shipwrecks are in marine peril, because sunken vessels and their cargoes are in danger of being lost forever." (citing Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 569 F.2d 330, 336-37 (5th Cir. 1978))). Second, RMST's salvage efforts were voluntary, in that RMST owed no contractual duty to perform the salvage. Last, RMST's efforts have been successful in retrieving thousands of artifacts from the wreck site. Thus, having determined a salvage award is appropriate, the court must now determine the amount of that award.

B. Factors to be Considered in Calculating the Salvage Award

There is no precise formula for calculating a salvage award. Allseas Maritime, S.A. v. M/V Mimosa, 812 F.2d 243, 246 (5th Cir. 1987). Because salvage cases are rarely alike, comparisons to previous awards are of little help, and the court must instead focus on the particular circumstances of the case at hand. See B.V. Bureau Wijsmuller v. United States, 702 F.2d 333, 339-40 (2d.

Cir. 1983) (citations omitted).¹¹ In the Fourth Circuit, the fashioning of a salvage award is informed by seven factors, including six factors drawn from The Blackwall: (1) the labor expended by the salvors in rendering the salvage service; (2) the promptitude, skill, and energy displayed in rendering the service and saving the property; (3) the value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed; (4) the risk incurred by the salvors in securing the property from the impending peril; (5) the value of the property saved; and (6) the degree of danger from which the property was rescued. 77 U.S. (10 Wall) at 14. In Columbus-America Discovery Group v. Atl. Mut. Ins. Co., 974 F.2d 450 (4th Cir. 1992) ("Columbus-America I"), the Fourth Circuit added a seventh factor: "the degree to which the salvors have worked to protect the historical and archeological value of the wreck and the items salvaged." Id. at 468.

When calculating a salvage award, "the court of admiralty becomes a court of equity," such that the award "may properly be increased, diminished, or wholly forfeited, according to the merit or demerit of the salvor, in relation to the property saved." Id. (citations omitted). The amount of the salvage award "is primarily

¹¹ Although the court heard testimony comparing RMST's salvage operations to those involved in the Columbus-America case, the court has fashioned the amount of the present salvage award based upon the merits of RMST's efforts. See infra note 35 and accompanying text.

a matter of judgment to be exercised by the trial court, and, beyond a careful examination of the facts, little remains for the appellate court except to determine whether the judgment has been exercised in accordance with the general principles respecting salvage." Columbus-America Discovery Group v. Atl. Mut. Ins. Co., 56 F.3d 556, 569 (4th Cir. 1995) ("Columbus-America II") (citation omitted). Thus, appellate courts apply an "extremely deferential standard of review" to salvage awards. Id.

Traditionally, the maximum amount that a court would award for a successful salvage was the present market value of the salvaged property. See Platoro Ltd., Inc. v. The Unidentified Remains of a Vessel, 695 F.2d 893, 904 (5th Cir. 1983). Any award higher than that value would have burdened rather than benefitted the property's owner, a "result contrary to the goals of salvage law." Id. (citation omitted). Nevertheless, the Fourth Circuit has held, "[i]f it becomes apparent to the court that the proceeds of any sale would clearly be inadequate to pay the salvor its full reward, then the court might, as a matter of discretion, award the salvor title to the property in lieu of the proceeds of sale, thus saving the costs of sale." Titanic 2002, 286 F.3d at 204. Because whether to grant title is a matter of discretion for the court, the court must first determine the amount of the award and then determine how it ought to be paid.

1. The Value of the Property Saved (Blackwall Factor 5)¹²

When performing its analysis under The Blackwall factors, the court need only determine "a rough approximation of the worth of the salvaged property." Rand v. Lockwood, 16 F.2d 757, 759-60 (4th Cir. 1927). The salvaged property currently before the court includes all artifacts RMST recovered over the course of six expeditions: 1993, 1994, 1996, 1998, 2000, and 2004 (collectively, the "artifacts").¹³ If the court decides to grant a monetary award, the ceiling for such an award would be the fair market value of the artifacts currently before the court. See Platoro, 695 F.2d at 904.

According to RMST's experts, Paul Zerler ("Zerler") and Stephen Rogers ("Rogers") (collectively, the "appraisers"), the fair market value of the artifacts is currently over one hundred and ten million dollars. (See RMST Evid. Hr'g Ex. 50 at 18 ("2009 Update").)¹⁴ That current valuation represents an update of their original appraisal, which began in 2000 and took approximately

¹² As the value of the property saved determines the maximum salvage award, the court begins with Blackwall factor 5, and then proceeds to consider the remaining factors.

¹³ The 1987 artifacts are not before the court. See supra notes 4 and 7 and accompanying text.

¹⁴ As previously indicated, the court held an evidentiary hearing on RMST's Motion for a Salvage Award on October 26-29, 2009, and on November 2 and 23, 2009. The RMST evidentiary hearing exhibits referred to by the court were all admitted into evidence over the course of that hearing.

three and a half years to complete. In performing their initial appraisal, Zerler and Rogers took a "bottom-up" approach, individually inspecting almost every Titanic artifact. (Zerler Decl. ¶ 5 (Nov. 28, 2007) (hereinafter "Zerler Decl.")). The value of each object was determined based upon "the character of the object, its state of conservation, the scarcity of the item, and other relevant factors." (Id.) Although the appraisers determined fair market value by comparing the artifacts to "other reasonably comparable assemblages of artifacts and collectibles, . . . because of the uniqueness of these artifacts, there are no precise comparables." (Id.) Because the artifacts before the court are the only ones to originate from the Titanic wreck site, the appraisers believe that the artifacts are worth more as a collection than individually. (See id.)

In 2007, Zerler and Rogers generated an updated appraisal based upon the values established in the original report ("2007 Update"). (See id. Ex. B.) The 2007 Update removed the 1987 artifacts, added the 2004 artifacts, and updated the appraisal figures to reflect market conditions. The appraisers determined that the 1993-2002 artifacts had doubled in value since their initial appraisal. (Id. Ex. B. at "2007 Update Addendum with 2004 Expedition Added.")¹⁵ The 2004 artifacts were then appraised by

¹⁵ The appraisers used as a baseline the value of the artifacts in 2002, after their preservation. The artifacts' value before preservation, i.e., as originally salvaged, is approximately sixty

multiplying the 2002 valuation of comparable artifacts by one hundred fifty percent. (Id.) The appraisers justified the increases based on the "art market, the collectables market, the notoriety of the Titanic, the mystery of the Titanic and the fact that it has become a household word and a metaphor for great or major tragedies or mistakes." (Id.) The increase is also due, in part, to increased notoriety following numerous exhibitions of the artifacts. (See id. at App. A at "Titanic Artifact Appraisal Summary" (2007).)

The 2009 Update, other than correcting a relatively small error in calculation, maintains the findings of the 2007 Update, valuing the collection at \$110,859,200. (2009 Update at 18.) The appraisers are of the opinion that the "current financial market volatility does not appear to be affecting unique, high end collectible values." (Id.) As evidence, the appraisers provide recent sales data from unique collectibles, including items from the Titanic that were recovered either from survivors or from the ship's flotsam and jetsam.¹⁶ Among those items, the key to the E-Deck of the Titanic recently sold, in April 2009, for £60,000 (approximately \$90,000). (2009 Update at 16.) A third-class

percent of their value as preserved. (Zerler Decl. Ex. B. at App. A.)

¹⁶ Jetsam are items that are thrown from the ship in attempts to save the ship, whereas flotsam are items that float off the ship during the sinking.

manifest sheet, written in eight languages, also sold in 2009 for £23,000 (approximately \$34,000). (Id. at 14.) In September 2007, the key to the ship's crow's nest sold for £90,000 (approximately \$145,000). (Id. at 16.)

The appraisers were careful to emphasize, however, that even these items from the Titanic are not directly comparable to the artifacts before the court. Zerler and Rogers assert that the carefully documented provenance of each artifact recovered from the wreck site drives up that artifact's value by a factor of ten, over any comparable item. (Id. at 6.) Nevertheless, the appraisers maintain that the "current valuation of the collection remains extremely conservative, and may be seen as a bottom beneath which lower valuation does not appear feasible." (Id. at 10.)

The current valuation excludes RMST's "hard costs," such as the cost of salvage, preservation, lab operation, exhibition, and storage, as well as the value of slides and video films. (Id. at 18.)¹⁷ The appraisers indicate those costs could be an additive to the current valuation of as much as \$44,000,000 (as of 2007). (Id.) Moreover, Zerler and Rogers properly assumed, for purposes of the appraisal, that the artifacts would stay together as a collection and that none of the artifacts would be sold, either

¹⁷ The money, time, and labor expended in salvaging the Titanic, and in preserving and displaying its artifacts, will be considered in relation to the other Blackwall factors. See infra Part II.B.2. through 7.

individually or in groups. (Id. at 10-11.)

As evidence of the reliability of the Zerler-Rogers appraisal, RMST also submitted the report and testimony of Richard-Raymond Alasko ("Alasko"), an accredited senior appraiser for the American Society of Appraisers and principal in the Alasko Company. In the report, Alasko "confirms the reliability of the Zerler-Rogers conclusion of the Fair Market Value of the subject properties as \$110,859,200 on 23 October 2009." (RMST Evid. Hr'g Ex. 52 at 22.) At the evidentiary hearing, upon questioning by the court, Alasko testified that he believed, were the court to hire an independent expert to value the collection, that the valuation would be substantially similar to that of Zerler and Rogers.

The court recognizes the inherent difficulty in placing a fair market value on a collection of artifacts that has no real market equivalent. However, other methods of valuation are equally unsatisfactory, as there is no way to calculate the replacement cost of an irreplaceable collection. Similarly, the income method would overlook the intrinsic value of ownership, independent of income potential, possessed by truly rare historic and artistic collections. In the absence of a more attractive alternative, the court embraces the fair market value approach taken by the appraisers.

Under The Blackwall factors, the court is charged with determining a "rough approximation" of the value of the property

saved. Rand, 16 F.2d at 759-60. In assessing the reliability of the submitted appraisal, the court notes that Zerler has been a renowned appraiser of artifacts, fine art, and collectibles for over forty-two years. (2009 Update at 3.) Along with Rogers, Zerler spent over 3600 hours valuing the Titanic artifacts. (Zerler Decl. Ex. B. at "Appraisal of Artifacts from the Wreck R.M.S. Titanic September 2000-June 2004 with 2007 Update Supplement" at 1.) Although Zerler could not testify at the evidentiary hearing on account of severe and current health issues, Rogers, a licensed civil engineer who served as a United States Navy Salvage Officer and has worked with Zerler since 1989, did testify. (See RMST Evid. Hr'g Ex. 52; 2009 Update at 4.) Rogers testified that items assessed by Zerler typically sell within ten to twelve percent of their appraised value, with the Atocha artifacts selling within eight percent of Zerler's appraisal.¹⁸ Moreover, the Zerler-Rogers appraisal was independently reviewed by Alasko, who vouched for its accuracy.

Taking into account the entire record before the court, the court **FINDS** \$110,859,200 to be an appropriate approximation of the fair market value of the artifacts. That figure is representative of the invaluable service that RMST has provided in its salvage of

¹⁸ The shipwreck believed to be Nuestra Señora de Atocha ("Atocha") was the subject of Treasure Salvors, Inc. v. Unidentified Wrecked & Abandoned Sailing Vessel, 569 F.2d 330 (5th Cir. 1978).

the Titanic.

2. The Labor Expended by the Salvors in Rendering the Salvage Service (Blackwall Factor 1)

The amount of time, money, and energy that RMST has expended since 1993 represents an enormous investment for the salvors. Over the course of six expeditions to the wreck site, RMST has spent over 180 days at sea, logged more than 100 dives, and spent a combined total in submersible operations in excess of 1000 hours. (Geller Decl. ¶¶ 3, 10 (Nov. 29, 2007) (hereinafter "Geller Decl.")). In expedition costs alone, RMST has spent \$9,049,000. (See RMST Evid. Hr'g Ex. 67.)¹⁹ When considered in conjunction with its efforts conserving and exhibiting the artifacts, RMST has devoted well over 500,000 hours of labor to the salvage of the Titanic. (Geller Decl. ¶ 17.)

The vast majority of salvage operations in search of sunken property last a matter of hours or days, with only a few known cases to have lasted longer than a month. See Columbus-America II,

¹⁹ RMST's Exhibit 67 purports to correct Exhibit 6 to the Declaration of Kelli Kellar, reducing the costs of the 2000 expedition from \$2,710,000 to \$2,107,000. After making such adjustment, Exhibit 67 indicates the total expedition costs to be \$9,047,000. Upon the court's review, however, the total costs from all expeditions adds up to \$9,049,000, as opposed to \$9,047,000, as reflected in Exhibit 67. Notably, these expedition costs exclude the \$1,845,000 in expenses associated with The Discovery Channel in fiscal year 1999, as those expenses were directly responsible for generating \$3,495,000 in revenue during that same fiscal year. (See Kellar Decl. ¶ 7 and Ex. 6 (Nov. 29, 2007) (hereinafter "Kellar Decl."); infra note 32.)

56 F.3d at 571 ("Our research has revealed only two other sunken property cases in which it was reported that the salvor's operations lasted longer than a month." (footnote omitted)). Although the time spent on a project is no sure indication of its success, the court recognizes the sheer magnitude of the resources that have been devoted to the salvage of the Titanic. In determining the amount of an appropriate salvage award, the labor expended by RMST weighs greatly in its favor.

3. The Promptitude, Skill, and Energy Displayed in Rendering the Service and Saving the Property (Blackwall Factor 2)

The Titanic lies two and a half miles below the surface of the North Atlantic. Without question, recovering artifacts at such a depth requires state of the art equipment and expertise. As of 2007, there were only five manned submersibles in the world capable of descending to this depth, three of which were employed by RMST. (Dettweiler Decl. ¶ 8 (Nov. 28, 2007) (hereinafter "Dettweiler Decl.")) Because those vessels were designed for purposes of research, not salvage, RMST was required to invent approximately twenty new tools with which to equip the submersibles. (RMST Evid. Hr'g Ex. 3 (Nargeolet Decl. ¶ 6 (Nov. 28, 2007))) For example, to avoid crushing fragile objects with the manipulator arm of the submersible, RMST developed a vacuum system for the collection of small artifacts. (Id.) Indeed, such inventions were often artifact-specific, such as the long, flat shovel, designed to

recover a stained glass window. (Id.)

By far the most impressive innovation, however, was the system used to raise the Big Piece of the hull. For that task, RMST positioned lift bags, full of diesel fuel, around the Big Piece, and when weights were released, the diesel fuel, being less-dense than water, hoisted the Big Piece towards the surface. (Id. ¶ 5.) The difficulty arose in controlling the ascent of the lift bags, and the first attempt to raise the Big Piece, in 1996, was a failure. (Dettweiler Decl. ¶¶ 14, 15.) The Big Piece was successfully recovered in 1998, and, as it weighed over fifteen tons, it was the largest artifact ever to be recovered from the deep ocean. (Id.)

In addition to RMST's successes, however, the court is equally cognizant as to some of its failures. Kenneth Vrana ("Vrana"), President and Chairman of the Center for Maritime and Underwater Resource Management ("CMURM"), submitted a report to the court on the 2004 expedition, in which he estimated that the damage rate to recovered artifacts was around twenty-one percent (i.e., thirteen out of sixty-three artifacts). (RMST Evid. Hr'g Ex. 64 at 3.) Moreover, due to technical difficulties in operating the ROVs, RMST failed to recover thirteen artifacts, despite serious attempts at their recovery. (Id. at 2.) Lastly, eight out of the ten ROV dives were terminated due to equipment failure, with three dives

being terminated before reaching the ocean floor. (Id. at 1.)²⁰

While the court is obviously displeased to learn that some artifacts have been damaged due to ROV operations, that fact also emphasizes the fragility of the artifacts that RMST has recovered. Indeed, the salvage operations are far from complete when the artifacts emerge from the ocean. Each artifact undergoes an extensive cataloguing and conservation process that is dictated by the composition of the artifact, whether it be metal, ceramic, paper, or textile. (Savatsky Decl. ¶ 10 (Nov. 29, 2007) (hereinafter "Savatsky Decl.")). Although most conservation efforts, aside from desalination, are carried out by contract conservators (see RMST Evid. Hr'g Ex. 68 at 4), this action bespeaks the level of care and expertise required, as well as RMST's commitment to preserving the condition of the artifacts.²¹

Considering the immense level of difficulty in retrieving and caring for the Titanic artifacts, the court finds that RMST has shown a high level of skill in its salvage operations.

²⁰ On the 2010 expedition to the wreck site, RMST, for the first time, will supplement its use of ROVs with the use of autonomous underwater vehicles ("AUVs"), which are self-sufficient, non-tethered robotic vehicles that can remain underwater for days at a time. (Periodic Report at 3 (Aug. 10, 2010).) For more information on the 2010 expedition, see infra note 27.

²¹ For further discussion of RMST's conservation efforts, see infra Part II.B.7.

4. The Value of the Property Employed by the Salvors in Rendering the Service, and the Danger to which such Property was Exposed (Blackwall Factor 3)

As previously mentioned, as of 2007, there were only five manned submersibles in the world capable of descending to the depth of the Titanic wreck site, 12,500 feet below the ocean surface.²² For that reason, RMST entered into a series of charters over the course of its six expeditions to obtain access to manned submersibles, ROVs, and surface support ships. (See RMST Evid. Hr'g Ex. 3 at Ex. 1 ("Schedule of Vessels and Major Equipment Used in Titanic Salvage Operations").) The most frequently used vessels include the Nadir, a surface support ship, and the Nautilus, a manned submersible, which RMST chartered from IFREMER for the 1993, 1994, 1996, and 1998 expeditions. At the time of these expeditions, the Nadir had an estimated value of \$10,000,000, whereas the Nautilus was worth approximately \$44,000,000. (Id.) The court accepts these figures as representative of the highly specialized equipment necessary to perform the salvage of the Titanic wreck site.

As RMST did not own this equipment, however, the court views this factor to be less important than the others.²³ This factor's

²² See supra Part II.B.3. at 26.

²³ The risk to which this property was exposed is discussed further under the next factor. See infra Part II.B.5. The cost to RMST of renting this equipment is subsumed within the expedition costs discussed under Blackwall factor 1. See supra Part II.B.2.

relevance exists solely in exemplifying the technological demands of salvaging the Titanic wreck site, and to that extent, the factor weighs in RMST's favor.

5. The Risk Incurred by the Salvors in Securing the Property from the Impending Peril (Blackwall Factor 4)

In order to induce salvors to come to the aid of distressed persons and property, salvage law must reward those who risk their own safety and property when assisting the distressed vessel. See The Blackwall, 77 U.S. (10 Wall) at 14. As discussed under the previous factor, however, RMST did not actually own the vessels it used in salvaging the Titanic. Moreover, under the 1993, 1994, and 1996 charters, IFREMER explicitly assumed the risk of loss to property and liability for personal injury arising out of the operation of the leased vessels, with the exception of injury to persons specifically invited on board by RMST (e.g., journalists and media). (See RMST Evid. Hr'g Exs. 4, 5, and 6 at ¶ 24.2.)²⁴ In 2000, the Shirshov Institute also assumed the risk of loss to its equipment, unless due to the direct negligence of RMST, as well as the risk of injury or death to its employees, unless caused by RMST's acts, omissions, or negligence. (See Geller Decl. Ex. 3 at ¶¶ 2.6, 13.1.) Lastly, in 2004, both Phoenix International, the owner of the ROV employed, and Secunda Marine, the owner of the

²⁴ The 1998 charter with IFREMER contains no risk of loss provision. (See RMST Evid. Hr'g Ex. 7.)

surface ship, assumed the risk of loss to their vessels and the risk of personal injury to their employees, even if caused by RMST's negligence. (See Geller Decl. Ex. 2 at ¶ 6(c), (d), and Ex. 1 at Part II.12(a).) Taking these provisions together, the courts finds it improper, in conducting the Blackwall analysis, to reward RMST for any risk that it expressly contracted away.

Nevertheless, the court is cognizant of the risks that RMST did face, not the least of which is the possibility of death or serious bodily injury faced by those RMST personnel participating in expeditions. In Columbus-America II, the Fourth Circuit noted that the vessel's 160-mile distance from shore "meant that treatment for the most severe injuries was hours away." 56 F.3d at 572. By comparison, the Titanic wreck site lies approximately 400 nautical miles offshore, in an area of the North Atlantic in which the only "open weather window" occurs in the summer, in the midst of hurricane season. (Geller Decl. ¶ 11.) Indeed, salvage operations were suspended on several occasions due to approaching hurricanes and storms. (Id.)

The dangers on the surface, however, pale in comparison to the dangers faced by the passengers of the manned submersibles diving to the ocean floor. The water pressure at that depth is 6,300 pounds per square inch, meaning that a breach in, or even significant damage to, the hull of the submersible would cause the instantaneous death of the entire crew. (Dettweiler Decl. ¶ 11.)

Moreover, it takes approximately three hours to travel to the wreck site and four hours to return, with approximately eleven hours spent on the bottom. (RMST Evid. Hr'g Ex. 9 (Sinclair Dep. at 18:1-11 (Oct. 9, 2009)).) With temperatures inside the submersible dipping below 50 degrees Fahrenheit, and tight quarters requiring crew members to remain flat on their stomachs during the dives (Dettweiler Decl. ¶¶ 12, 13), crew members faced not only the risk of death, but also continuous hours of physical discomfort.

Although RMST was not contractually liable for all of the risks involved with salvaging the Titanic, particularly the risk of loss to the vessels, employees of RMST were amongst those that took their lives in their hands to descend to the wreck site in order to collect the artifacts that are the subject of this proceeding. It is that type of risk-taking that the salvage award is meant to compensate, in order to encourage and induce such efforts in the future, and the court recognizes the high level of risk faced by those individuals with RMST.

6. The Degree of Danger from which the Property was Rescued (Blackwall Factor 6)

In Columbus-America II, the Fourth Circuit evaluated the danger from which the salvaged gold was rescued as follows:

While it is true that the ocean itself presents no danger to the essential nature of gold and similar substances, it is also true that any value that our society attributes to gold depends entirely on the ability of someone to assert a property interest in it. Because

property is far less certain of being recovered once it has sunk, especially when it has sunk in deep water, we perceive that its sinking sharply increases the degree of danger to its continued existence and utility as property. We have little doubt that, if the BLACKWALL Court were transported over 125 years into the future to decide this case, it would consider Columbus-America's salvage of the CENTRAL AMERICA to be the ultimate rescue from the ultimate peril.

56 F.3d at 573. Similarly, the Titanic artifacts were previously lost on the bottom of the ocean, depriving the public of all social utility in their historic symbolism and cultural beauty. Instead, RMST has recovered those items from a fate of being lost to future generations. As in Columbus-America II, such a rescue can be considered "the ultimate rescue from the ultimate peril." Id.

Moreover, the wreck of the Titanic itself is in a process of bio-deterioration that, in one projection, may lead to the deterioration of the promenade decks by the year 2030, with the decking at all levels continuing to collapse towards the keel as the walls fail. (RMST Evid. Hr'g Ex. 20 at 94-95.)²⁵ Although the court need not make a precise determination as to the exact rate of bio-deterioration of the Titanic wreck site, the court does properly acknowledge the serious danger from which these artifacts

²⁵ This projection is taken from the draft report of D. Roy Cullimore, Ph.D., Registered Microbiologist, and Lori Johnston, M.Sc., Deep Ocean Biologist, entitled: "Bio-Deterioration of the RMS Titanic, 2003 and 2004 - An Evaluation of the Role of Rusticles in the Removal of Iron from the Steel of the Ship." (RMST Evid. Hr'g Ex. 20.) In a letter dated November 6, 2009, the authors gave the court permission to make the report an exhibit in its draft form.

have been recovered as being another factor supporting a liberal salvage award.

7. The Degree to which the Salvors have Worked to Protect the Historical and Archeological Value of the Wreck and the Items Salvaged (Columbus-America I Factor)

In its role as salvor-in-possession, RMST has been charged by this court with the care and preservation of the artifacts pending the outcome of this proceeding. Indeed, RMST has been in possession of some of the artifacts before the court for almost seventeen years. In that time, RMST has been dedicated not only to preserving the condition of the artifacts, but also to exhibiting them to the public in a series of exhibitions around the world.

From the moment artifacts are pulled from the water, RMST is working to stabilize their condition to prevent deterioration. The process required depends on the type of artifact. Ferrous metals, for example, are at risk of oxidation upon being removed from the low-light, low-oxygen environment of the wreck site, and, therefore, such items are immediately placed back in water for transport to RMST's warehouse in Atlanta. (Savatsky Decl. ¶ 10.) Textiles and paper, on the other hand, which are extremely delicate from the exposure to salt water, are freeze-dried or frozen upon recovery. (Id.) Once transported to the lab, textiles and paper, like other objects, are subjected to a desalination process, a process which can take from six months to two years, depending on

the type of object. (Id.) Ceramics take the least amount of time to desalinate, although it can take longer if the piece is broken.

(Id.)

Other than desalination, RMST contracts with professional conservators to perform the vast majority of the stabilization efforts. (See RMST Evid. Hr'g Ex. 68 at 4; Ex. 33.) RMST tracks the condition of its artifacts through condition reports (see, e.g., RMST Evid. Hr'g Ex. 40), and RMST's 10,080 square foot facility in Atlanta is specifically designed and maintained for the artifacts' preservation.²⁶ For example, the warehouse is equipped with a climate-controlled "bubble" to house metal, glass, and ceramic artifacts at approximately thirty-five to forty percent humidity. (Savatsky Decl. ¶¶ 5, 6.)

RMST has created an extensive database for every artifact that it has recovered from the wreck site, which tracks information such as the object's exhibition and conservation history. (See, e.g., RMST Evid. Hr'g Ex. 38.) The amount of information contained in the RMST database is impressive; the examples submitted to the court are themselves voluminous. Such efforts are critical to preserving the historical value of the artifact collection. In that regard, RMST has devoted substantial resources to the in situ

²⁶ Approximately 400 to 500 square feet is dedicated to other exhibitions run by Premier Exhibitions, Inc., RMST's parent company.

study of the Titanic wreck site, gathering data and images to create a map of the debris field, in hopes that such information will provide greater insight into the interrelationship between and among the artifacts. For example, much can be learned from this data about how the vessel sank. (Vrana Decl. ¶ 6 (Nov. 29, 2007).)²⁷

RMST has further promoted the historical significance of the Titanic through the worldwide exhibition of the recovered artifacts. RMST has displayed the artifacts on four continents to nearly twenty million people. (See Geller Decl. ¶ 17; RMST's Post-Hr'g Mem. Supp. Mot. for Salvage Award at 30 (Dec. 21, 2009).) RMST has approximately five exhibitions running at any given time, with about thirty percent of the artifacts on display. (Savatsky Decl. ¶ 4.) RMST has developed various educational programs to

²⁷ For the first time, artifact recovery will not be an objective of the 2010 expedition. (Periodic Report at 4 (Aug. 10, 2010).) Rather, the primary objective will be charting the position of the ship and the artifacts on the ocean floor in order to develop a comprehensive baseline map of the site. (Id. at 2.) Although the expedition will be sponsored and funded almost entirely by RMST, the project is undertaken in association with The Woods Hole Oceanographic Institution, The Institute of Nautical Archaeology, The National Oceanic Atmospheric Administration's Office of National Marine Sanctuaries, The National Park Service's Submerged Resources Center, and the Waitt Institute. (Id.) In addition to mapping the site, RMST plans to conduct bio-deterioration research on the wreck itself, which may include the collection of "rusticles," as authorized by the court on April 30, 2010. See supra note 6. In sum, the 2010 expedition represents a collaborative effort towards the long-term preservation of the Titanic wreck site, and the court looks favorably upon RMST's continued efforts as salvor-in-possession when evaluating the present salvage award.

accompany its exhibits, including an impressive teaching guide for various school grade-levels and a special program for senior citizens. (See RMST Evid. Hr'g Exs. 58, 60.)

Moreover, when the artifacts are on tour, RMST takes great lengths to ensure their preservation. RMST installs all exhibitions itself, as compared with most museums, which allow host venues to install the exhibitions themselves. (Savatsky Decl. ¶¶ 17, 18.) RMST sends with the artifacts a "Security and Log Notebook," providing the venue with information regarding the proper environment and treatment of the artifacts, as well as requiring the constant monitoring of such factors as temperature and humidity. (See, e.g., RMST Evid. Hr'g Ex. 32.) After artifacts are placed on tour, if necessary, they are then returned to the warehouse for a period of "resting" to prevent deterioration. (Savatsky Decl. ¶ 16.)

As RMST has requested an in specie award granting it title to the artifacts, it comes as no surprise to the court that RMST has invested significant time, energy, and resources in the care and preservation of the artifacts. Such efforts are not properly perceived as a sacrifice for the public interest, but rather as RMST making what it thinks to be a good investment in its business. Similarly, the display of the artifacts is a profitable venture, whether or not it also shares the story of the Titanic with the world. Nonetheless, the issue before the court is the degree to

which the salvors have worked to protect the historical and archeological value of the artifacts, and not their motive for doing so. There is extensive evidence before the court of RMST's efforts at conservation, education, and exhibition, and thus, the court finds RMST's efforts to be deserving of a salvage award that includes recognition of these efforts.

C. Potential Deductions

1. Disqualifying Salvor Misconduct

In seeking a salvage award, a salvor must come to the court with clean hands, acting "in entire good faith and with honesty of purpose." Columbus-America II, 56 F.3d at 569 (citation omitted). If a salvor comes to the court with unclean hands, its award may be reduced or entirely forfeited, depending on the level of misconduct. See Columbus-America I, 974 F.2d at 468 (citation omitted). Thus, the court must determine whether RMST has engaged in any disqualifying salvor misconduct.

Nevertheless, "it is not entirely clear what constitutes bad faith." Adams v. Unione Mediterranea di Sicurta, 220 F.3d 659, 676 (5th Cir. 2000). In Adams, a salvor purported to sell its rights in a deposit of sunken steel, although it was later determined that the salvor, in fact, did not have title at the time of the purported sale. Id. at 676-77. The district court found, and the Fifth Circuit affirmed, that such action did not constitute "bad

faith." Id. The court found that, although the salvor "may not have acted entirely in good faith," the salvor had "some basis to believe it could salvage the steel and at least transfer a possessory interest." Id. In sum, the salvor and the purchaser of the steel had "acted negligently but their behavior did not rise to bad faith under the law." Id.

Over the course of these lengthy proceedings, the court has grown tired of the repeated attempts of RMST to assert title to the artifacts, despite its established position as salvor-in-possession. See, e.g., Titanic 2007, 531 F. Supp. 2d at 693 n.4 ("The court will no longer tolerate these maneuvers by RMST to circumvent the court's final ruling that RMST is the salvor, and not the owner, of the artifacts. Further circumvention efforts will be met with appropriate sanctions under Federal Rule of Civil Procedure 11 and a review by this court of RMST's status and privilege to remain as salvor-in-possession of the R.M.S. Titanic." (emphasis in original)). Ultimately, the court's concerns stem from RMST's prior attempts to sell the artifacts that have been entrusted in its care.²⁸ Indeed, those concerns are magnified by the non-adversarial nature of these proceedings.

Nevertheless, to the court's knowledge, RMST has not actually

²⁸ See supra Part I. at 7.

sold any artifacts.²⁹ Although the court wonders what would have happened without the court's intervention, see Titanic 2001, RMST's plans to sell artifacts, to which it lacked title, does not rise to a level of bad faith that would require a substantial reduction in the amount of the salvage award. See Adams, 220 F.3d at 676-77 (finding sale of interest in salvaged property, without title to that property, did not amount to bad faith, when salvor had some basis to believe it had a possessory interest in the property). Although RMST may not have acted in the utmost good faith in all of its dealings with this court, the court holds that RMST has not engaged in disqualifying salvor misconduct, so as to forfeit its right to a salvage award or to warrant a substantial reduction in such award.

2. Contributions of Co-Salvors

The total salvage award must include the contributions of all co-salvors. Platoro, 695 F.2d at 904 n.15. After calculating the total award, the court must then allocate the award among co-salvors "according to each co-salvor's contribution to the recovery." Id. at 903. Thus, the court directed RMST to submit evidence as to any uncompensated or undercompensated entities or individuals assisting with the salvage. Titanic 2004, 323 F. Supp. 2d at 742-44.

²⁹ The court has allowed RMST to sell some of the recovered coal.

After a careful review of the record, the court is satisfied that there are no co-salvors in this case. Although RMST chartered the equipment necessary to carry out its salvage operations, those charter agreements represent arms-length transactions at market rates. Indeed, the charters themselves contain provisions in which the vessels' owners specifically denounce any ownership interest in the recovered objects. (See, e.g., RMST Evid. Hr'g Exs. 4, 5, and 6 at ¶ 21.1.)³⁰ The court finds that the vessels' owners were properly compensated for their assistance with salvage operations. (See, e.g., RMST Evid. Hr'g Ex. 63 (listing payments received by IFREMER for the 1994 expedition and indicating no outstanding balance).)

Similarly, there is no indication that the conservators employed by RMST received below-market rates for their services. (See, e.g., RMST Evid. Hr'g Ex. 41 at 16-19 (invoices from Northeast Document Conservation Center).) As no entity or individual has been uncompensated or undercompensated by RMST in relation to its salvage efforts, the court finds that there are no co-salvors that would be entitled to share in the total salvage award with RMST.

³⁰ The only charter that did not contain such a provision was the 1998 charter with IFREMER. (See RMST Evid. Hr'g Ex. 7.) This agreement largely focuses on the equipment required to make a live broadcast from the wreck site, and the court is confident that the parties understood that IFREMER was not a co-salvor, based upon their previous dealings in the 1993, 1994, and 1996 expeditions, and IFREMER has made no such claim to the court.

3. Revenues from Possession of the Artifacts

This court has previously held that RMST's salvage award must be reduced by any amount previously received by virtue of its possession of the artifacts. The court explained:

Finally, because a salvage award is a reward for performing salvage service, see The Blackwall, 77 U.S. (10 Wall.) at 14, rather than payment for the property recovered by the salvor, to the extent that a salvor has already been monetarily rewarded by virtue of its possession of salvaged artifacts, its salvage award should be accordingly reduced. In this regard, RMST's salvage of the Titanic wreck presents a novel circumstance. In no other case known to the court, in which a salvage award was calculated following an evidentiary hearing, has the property saved had significant pre-salvage award exhibition value that has been a major source of income for the salvor-in-possession. The salvor should not receive additional reward for his services simply because the court chose not to sell the saved property immediately after it came within the court's jurisdiction. Cf. The Blackwall, 77 U.S. (10 Wall.) at 15 (holding that one salvor does not benefit from the fact that another salvor chooses not to seek an award in the in rem proceeding). Thus, principles of equity dictate that the salvage award should be reduced by any amount of payment already received on account of the performance of the salvage service, in particular, the monetary benefits of the exhibitions of the recovered artifacts.

Titanic 2004, 323 F. Supp. 2d at 743.

At the court's direction, RMST submitted evidence as to its revenues and expenses through the fiscal year ending on February 28, 2007. Two major problems existed, however, in calculating RMST's revenue and expenses from the audited financial statements submitted to the Securities and Exchange Commission

("SEC") by Premier Exhibitions, Inc. ("Premier"), RMST's parent company. (Kellar Decl. ¶ 3.) First, Premier's overall figures included revenue and expenses from the 1987 artifacts, which are not currently before the court.³¹ Thus, RMST needed to isolate the revenue and expenses attributable to the 1993-2004 artifacts. Second, Premier's overall figures included revenue and expenses, in fiscal years 2005-2007, from Premier's other operations, primarily its "Bodies" exhibit that involves the display of human cadavers. Therefore, RMST also needed to separate out those revenues and expenses that were wholly unrelated to the Titanic artifacts before this court for the present salvage award.

In order to arrive at estimates of RMST's revenue and expenses attributable only to those artifacts before the court, RMST went through a series of assumptions and calculations involving Premier's filings with the SEC. As a preliminary matter, RMST excluded all revenue and expenses associated with non-Titanic operations, including the "Bodies" exhibit. (See id. ¶ 9 and Ex. 2.) Moreover, RMST removed gains and losses from the sale/disposal of assets not directly related to the Titanic. (Id. Ex. 1.) RMST also removed the revenue and expenses associated with Titanic merchandise, as these amounts did not apply to the artifacts. (Id.) RMST then removed all tax amounts and applied a statutory rate of forty percent. (Id.)

³¹ See supra notes 4 and 7 and accompanying text.

Additionally, RMST opted to extract the expedition costs from the overall expenses, so that these costs could be considered separately. This was done in order to standardize the data, in light of a change in accounting practices that was ordered by the SEC in 2002. (Id. ¶ 7 and Ex. 6.)³² The expedition costs summed to a total of \$9,049,000.³³

Finally, RMST attempted to exclude those revenues and expenses related to the 1987 artifacts. In order to accomplish that goal, RMST excluded approximately \$7,700,000 in losses during 1993-1995, on the assumption that the "bulk of this activity was attributable to the 1987 artifacts." (Id. ¶ 6.) Such exclusion was intended to be a conservative assumption, with the effect of artificially increasing the apparent amount of net income attributable to the 1993-2004 artifacts. (Id.) For the remaining years, RMST assumed that the revenues and expenses attributable to the 1987 artifacts were forty-two percent of the total figures, on the grounds that each exhibit is comprised of approximately forty-two percent of 1987 artifacts and fifty-eight percent of 1993-2004 artifacts. (Id. ¶ 11.) Such apportionment was applied generally to all

³² An exception to this is the portion of the expedition costs in fiscal year 1999 associated with the direct generation of revenue from The Discovery Channel. As those \$1,845,000 in expenses were directly responsible for the \$3,495,000 in revenue received from The Discovery Channel, those costs were left in the overall income analysis. (Kellar Decl. ¶ 7 and Ex. 6.)

³³ See supra note 19 and accompanying text.

revenues and expenses in the relevant period (see id. Ex. 4), with the exception of conservation costs prior to 1998, which were excluded in their entirety because of unclear corporate records. (Id. ¶ 12 and Ex. 5.) That exclusion, again, artificially increased the revenue attributable to the 1993-1994 artifacts.

Based upon the forgoing assumptions and calculations, RMST generated \$1,937,305 during the fiscal years 1996-2007 from the 1993-2004 artifacts. (Id. Ex. 4.) Subtracting the \$9,049,000 in expedition costs from those revenues, RMST suffered a net loss during fiscal years 1996-2007 of \$7,111,695.³⁴

The court recognizes the inherent difficulty in isolating the revenue and expenses generated by the artifacts before the court from the revenues and expenses generated by the 1987 artifacts. Although the approach taken by RMST undoubtedly over-simplifies the process, the court finds the approach to be a reasonable approximation of the revenue generated by the 1993-2004 artifacts before 2007, especially in light of RMST's exclusion of roughly \$7,700,000 in losses between 1993-1995. The court's main concern is with RMST's subtraction of its expedition costs from those exhibition revenues.

RMST argues that the court must consider the expedition costs

³⁴ This figure represents a correction to the original Exhibit 7 to the declaration of Kelli Kellar, as well as to the purported correction provided in RMST's Exhibit 67. See supra note 19 and accompanying text.

in association with the exhibition revenues, as those exhibition revenues were only made possible by the costs RMST expended in retrieving the artifacts. (See RMST's Mem. Supp. Mot. for Salvage Award at 37-38 (Nov. 30, 2007).) While the court understands such an argument, it also finds it to be inconsistent with RMST's request for prejudgment interest. (See Motion ¶ 15.)

In maritime cases, "the awarding of prejudgment interest is the rule rather than the exception, and, in practice, is well-nigh automatic." U.S. Fire Ins. Co. v. Allied Towing Corp., 966 F.2d 820, 828 (4th Cir. 1992) (citations omitted). Typically, prejudgment interest serves "as compensation for the use of funds to which the claimant was rightfully entitled." Noritake Co., Inc. v. M/V Hellenic Champion, 627 F.2d 724, 728 (5th Cir. 1980). In this case, however, RMST's expenses in obtaining the artifacts led to accruing exhibition revenues; in other words, RMST was not truly deprived of the use of its funds, as it received a return on its initial investment. Thus, the court does not find it appropriate to award prejudgment interest, if RMST has already been compensated, in some form, for the use of its funds.

Thus, the court originally proposed to place RMST in the position of a typical salvor by deducting its operational profits. Under normal circumstances, a salvor would expend money and labor in assisting a distressed vessel, after which the salvor would receive a salvage award, with interest for the delay in the

salvor's recompense. By subtracting from the salvage award the money RMST had received from possessing the artifacts, the court intended to place RMST in that position of the typical salvor, as one who expended time and resources in conducting salvage operations, and who would then be entitled to a salvage award, along with prejudgment interest. The court does not understand, however, how RMST would be entitled to both its operational profits and prejudgment interest.

In sum, the court will accept RMST's position that it has failed to accumulate any profits from possession of the artifacts, in light of the costs incurred in salvaging the artifacts. Therefore, the court will decline to make a deduction from the salvage award for revenues earned via possession of the artifacts. Nevertheless, consistent with that position, the court also declines to award prejudgment interest, finding this to be a particularly unusual case. See U.S. Fire Ins., 966 F.2d at 828 ("A district court, however, may decline to award prejudgment interest when 'peculiar circumstances' would render such an award inequitable." (citation omitted)). RMST has been compensated for its investment via its operational revenues for the period 1996-2004, and therefore, the court finds a further award of prejudgment interest would not be equitable in this case.

4. Summary of Potential Deductions

Based on the foregoing, the court finds no deductions to be attributable to salvor misconduct, contributions of co-salvors, or revenues from possession of the artifacts, but declines an award of prejudgment interest. As such, the court will determine the amount of the award solely based upon the principles of salvage law represented by the Blackwall/Columbus-America I factors, as discussed above.

D. Amount of the Award

In determining the amount of a salvage award, the court may either fix a sum certain, or the court may award the salvor a percentage of the market value of the property. See, e.g., Columbus-America II, 56 F.3d at 573 (affirming salvage award of ninety percent the fair market value of the salvaged property); see also Margate Shipping Co. v. M/V Orgeron, 143 F.3d 976, 989 (5th Cir. 1998) (“[O]ur analysis of the economic foundations of the Blackwall rule indicates that the value of the salvaged property is one of the most important of the factors. The most natural way to effectuate its salient character is simply to make the award a function of that value.” (citations omitted)).

Michael Anderson (“Anderson”), an expert in marine salvage operations and salvage compensation, testified regarding his opinion as to the appropriate level of the award. A previous

expert in the Columbus-America case, Anderson has experience, inter alia, in negotiating salvage contracts on behalf of the governments of various nations, as well as insurance companies worldwide. (RMST Evid. Hr'g Ex. 24 at 4.) Anderson testified at the evidentiary hearing in October 2009, that, in order to properly induce salvage operations similar to those undertaken by RMST, an award of at least ninety-five percent of the fair market value of the artifacts would be appropriate. Anderson based his opinion on the difficulty of the salvage operations, including such factors as the depth of the wreck site, the distance off-shore, the condition of the wreck site, and the fragility of the artifacts.³⁵

As discussed at great lengths above, the court agrees that the salvage of the Titanic has involved unprecedented feats of skill and dedication, both in the salvage of the artifacts and their conservation and exhibition. Weighing the Blackwall/Columbus-America I factors, in particular the labor and resources expended and the skill involved, the court finds that RMST is entitled to a salvage award of **ONE HUNDRED PERCENT (100%)** the fair market value of the artifacts recovered in the 1993, 1994, 1996, 1998, 2000, and 2004 expeditions to the R.M.S. Titanic.³⁶

³⁵ In particular, Anderson compared the salvage of the Titanic to the operations in the Columbus-America case and found the Titanic operations of a higher degree of merit.

³⁶ Given the amount of the award, the court need not consider whether RMST is independently entitled to reimbursement and expenses for the retention and use of expert witnesses in this

E. Payment of the Award

The court has yet to decide the manner by which to pay the salvage award. Although RMST has sought an in specie award, the decision whether to grant an in specie award lies solely within the court's discretion. Titanic 2002, 286 F.3d at 204 ("If it becomes apparent to the court that the proceeds of any sale would clearly be inadequate to pay the salvor its full reward, then the court might, as a matter of discretion, award the salvor title to the property in lieu of the proceeds of sale, thus saving the costs of sale. The salvor does not have a direct right, however, to title in the property." (emphasis added) (citation omitted)). Although the court has found that an award of the entire fair market value of the artifacts would be appropriate in this case, the court maintains reservations about granting RMST title to the artifacts, for fear that the court would end up in a perpetual legal battle with RMST over the meaning and scope of the covenants and conditions that the United States, through the United States Attorney, has negotiated and finalized with RMST and the court.³⁷

Thus, the court reserves its discretion to sell the artifacts in a judicial sale, until which time it may determine that no appropriate buyer for the collection, capable of maintaining and

proceeding. (See Motion ¶ 16.)

³⁷ See supra note 10 and accompanying text; infra Exhibit A.