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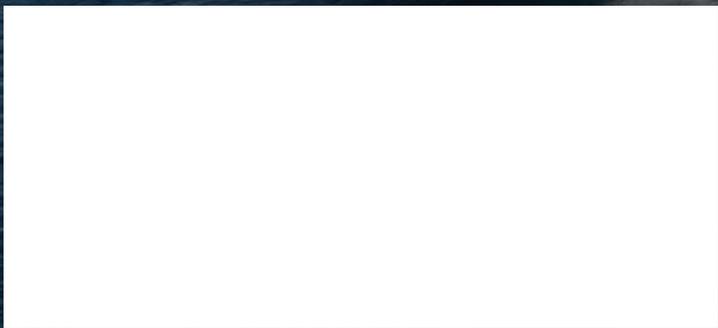
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The R.M.S. Titanic's Positive Impact on the Law of Salvage:

Court Orders Title to Ship's Artifacts, Worth Over \$110 Million, Conveyed as Salvage Award, But with Important Strings Attached

By Frederick B. Goldsmith

Finding that “the proceeds of any sale would clearly be inadequate to pay the salvor its full reward,” a federal judge in Norfolk, Virginia, wrote that the amount of the salvage award due salvor R.M.S. Titanic, Inc. (“RMST”) for rescuing artifacts from the Royal Mail Ship Titanic “can only be satisfied by the court conveying title to the artifacts.” In her order handed down one year ago, U.S. District Judge Rebecca Beach Smith granted RMST title to the artifacts it recovered between 1993 and 2004 from the passenger ship which sank in the North Atlantic after striking an iceberg in the early hours of April 15, 1912. The vessel was on its maiden voyage from Southampton, England, to New York City. More than 1,500 of the 2,228 passengers and crew aboard died in the accident. A year earlier, Judge Smith had granted RMST’s motion for a salvage award in the amount of 100% of the fair market value of these same artifacts, yet she reserved the right to decide later whether to pay the award in cash or by conveying title to the Titanic’s artifacts to RMST.

For more than 50 years after it sunk, the Titanic rested undiscovered in international waters 12,500 feet deep, four hundred nautical miles southeast of Newfoundland. The wreck was discovered by a joint American–French expedition in 1985. Aside from the monetary value of the Norfolk federal court’s salvage award, though, the most significant and perhaps precedent-setting aspect of the court’s order is that the title conveyance is subject to 19 pages of covenants and conditions that the United States government negotiated with RMST.

One legal scholar has observed that the attachment of these covenants and conditions to the salvage award “marks the first time that historic preservation principles have been combined with the law of salvage.” See Laura Gongaware, “The Day Historic Preservation Principles saved TITANIC from a Second Maritime Disaster,” *Tulane Maritime Law Journal* (Summer 2012).

Among other things, these covenants and conditions require the collection be kept together, managed, and conserved in accordance with scientific and archeological standards. This will ensure, Gongaware notes, “that the

collection will remain accessible to both the public and future researchers.” Unlike the fate that has typically met cargoes and artifacts discovered at other shipwreck sites, which valuables are generally sold to the highest bidder, the artifacts from the Titanic, by Judge Smith’s order, will not be dispersed to private owners around the world. Gongaware observes it was actually RMST itself which was “the first to suggest that the court attach a set of protective restrictions on the transfer of title to the artifacts.”

RMST’s salvage award is, under the general maritime law, an example of “pure” salvage, distinct from “contract” salvage. The latter applies when the salvage operation is performed under a contract. To win a case of pure salvage, the U.S. Supreme Court wrote in 1879, in a case entitled “The Sabine,” that the salvor must prove three things: First, that the salvaged property faced a marine peril; second, that the salvor’s services were voluntarily rendered without any preexisting contractual obligation; and finally, that the salvage efforts were successful in whole or in part. Courts do not employ a precise formula or automatically award a percentage of the value of the vessel or cargo salvaged when calculating a salvage award.

In 1870, the U.S. Supreme Court, in a case entitled “The Blackwall,” described how trial courts are to calculate salvage awards. (The Blackwall was the name of a British freighter which, along with its cargo of wheat, was afire in San Francisco harbor when it was rescued by the combined crews of a tug and two land-based fire engines which were hastily rolled onto the tug’s deck.) When calculating a salvage award, the Supreme Court wrote trial courts should consider the following six factors: (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.

In a 1992 decision in a case entitled “Columbus-

America Discovery Group vs. Atlantic Mutual Insurance Company,” the U.S. Fourth Circuit Court of Appeals added a seventh factor to be considered by courts within that Circuit (which includes the federal trial court in Norfolk hearing the Titanic salvage case): “the degree to which the salvors have worked to protect the historical and archeological value of the wreck and the items salvaged.”

Judge Smith of federal district court in Norfolk applied the factors from the court decisions noted above in deciding RMST’s salvage award. Preliminarily, in deciding whether RMST was even entitled to a salvage award, the court found, applying the law noted above from *The Sabine*, “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.” She further ruled RMST’s salvage efforts were voluntary; that RMST owed no contractual duty to perform the salvage. Finally, as to the third factor bearing on entitlement to any salvage award, the court found “RMST’s efforts have been successful in retrieving thousands of artifacts from the wreck site.” Next, the court

addressed the seven factors described above which bear on the amount of the salvage award due RMST.

CONCLUSION: AUCTION OF ARTIFACTS CANCELLED, THEY REMAIN ON PUBLIC DISPLAY

In April 2012, RMST had planned to auction the artifacts from the Titanic in a single lot. But the auction was cancelled because RMST was in discussions with multiple parties for the purchase of the entire collection. Steve Sellers, a representative of RMST’s parent, was quoted in January of this year, “It’s not about money so much as it is about turning the ownership over to someone better equipped for stewardship of these artifacts.” Portions of the Titanic artifacts were on display at The Henry Ford Museum in Dearborn, MI, through September 30, 2012.

Regardless of where the Titanic artifacts collection ultimately comes to rest, though, Judge Smith’s salvage decision, which preserves these artifacts together as a collection, for generations to publicly view and study, represents a milestone in, and a positive impact on, the evolving law of salvage.

Highlights of Judge Smith’s extensive analysis included:

Blackwall factor #1: “The amount of time, money, and energy that RMST has expended since 1993 represents an enormous investment for the salvors...In expedition costs alone, RMST has spent \$9,049,000....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.”

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.... 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.

Blackwall factor #3: “The most frequently used vessels include the Nadir, a surface support ship, and the Nautila, a manned submersible, which RMST chartered...[a]t the time of these expeditions, the Nadir had an estimated value of \$10,000,000, whereas the Nautila was worth approximately \$44,000,000.... As RMST did not own this equipment, however, the court views this factor to be less important than the others. This factor’s 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.”

Blackwall factor #4: “[T]he 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....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.”

Blackwall factor #5: “According to RMST’s experts...the fair market value of the artifacts is currently over one hundred and ten million dollars....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.’ ...That figure is representative of the invaluable service that RMST has provided in its salvage of the Titanic.”

Blackwall factor #6: “[T]he 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... such a rescue can be considered ‘the ultimate rescue from the ultimate peril.’ 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.

Factor #7: (from *Columbus-America Discovery Group vs. Atlantic Mutual Insurance Company*): “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....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.”