

INTRODUCTION

The United States has significant interest in R.M.S. Titanic, Inc.'s ("RMST") Motion for a Salvage Award, filed on November 30, 2007. Accordingly, the United States as amicus submits this Response to RMST's Motion for a Salvage Award.

The *R.M.S. Titanic* is an international maritime memorial. In recognition of the *R.M.S. Titanic's* continuing historical importance, the United States, at Congress' direction, has made considerable efforts towards promoting the protection of the sunken vessel, its wreck site, and its artifacts for posterity. Upon review of RMST's Motion for Salvage Award, it is clear that an interim *in specie* award with limitations could serve as an appropriate mechanism to ensure that the artifacts from the *R.M.S. Titanic* are conserved and curated together in an intact collection that is available to the public and accessible for historical review, educational purposes, and scientific research in perpetuity. Indeed, an interim *in specie* award should, at the minimum, contain limitations or conditions furthering the principles contained in the R.M.S. Titanic Maritime Memorial Act of 1986, NOAA's Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic*, and the proposed legislation to implement the Agreement. Accordingly, the United States articulates these principles and describes in general how such principles can and should be effectuated by certain types of covenants.

In keeping with its acknowledgment of the importance of maintaining the integrity of the collection of artifacts from the *R.M.S. Titanic*, RMST has indicated a general willingness to be bound by some form of limitations or conditions. Further, RMST has offered to provide specific covenants for evaluation. Because the specific terms and language of covenants that would

protect the interests articulated in this memorandum need to be carefully drafted and enforceable against RMST and any successor over the life of the collection of *R.M.S. Titanic* artifacts, the United States recommends that the Court enter an order adopting the process set out below that would allow for the development of covenants to be included in any interim *in specie* salvage award.^{1/}

INTERESTS OF THE UNITED STATES

“The *R.M.S. Titanic* sank in 1912 in the North Atlantic.” *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 524 (4th Cir. 2006). The site of the wreck was discovered in 1985. *Id.* Following the discovery of the sunken vessel, the United States has taken a number of major steps to protect the *R.M.S. Titanic*, its wreck site, and its artifacts. This interest was formally recognized by the United States Congress when, in 1986, it passed the R.M.S. Titanic Maritime Memorial Act, which noted that the *R.M.S. Titanic* “is of major national[,] international[,] cultural[,] and historical significance, and merits appropriate international protection.” 16 U.S.C. § 450 rr. The Act further served to encourage the United States, the United Kingdom, France, Canada, and other interested nations to “designate the *R.M.S. Titanic* as an international maritime memorial to those who lost their lives aboard her in 1912.” *Id.* In keeping with the United States’ interests in this vessel, the Act directed NOAA to “develop international guidelines for research on, exploration of, and if appropriate, salvage of the *R.M.S. Titanic*.” 16 U.S.C. § 450 rr-3. The guidelines, which NOAA developed in consultation with the United Kingdom, France, and Canada, became effective on April 12, 2001. 66 Fed. Reg. 18905,

^{1/} The United States does not take issue with RMST’s characterization of the proposed salvage award as being an *interim* award.

18912 (2001). In addition, the Act called for the United States Department of State to negotiate and enter into an International Agreement with other interested nations to preserve the historic nature of the shipwreck. This has been accomplished and the legislation, “To amend the R.M.S. Titanic Maritime Memorial Act of 1986 to implement the International Agreement Concerning the Shipwrecked Vessel RMS Titanic,” was re-transmitted for introduction and referral to the appropriate congressional committees in 2007.²¹

FACTUAL AND PROCEDURAL BACKGROUND

On June 7, 1994, RMST, successor in interest to Titanic Ventures Limited Partnership, was declared the salvor-in-possession of the sunken wreck. *R.M.S. Titanic, Inc.*, ___ F. Supp. 2d ___, 2007 WL 4793215 *1 (E.D. Va. 2007). In making this finding, this Court “explicitly declared that RMST is not the owner of the artifacts which it recovers from the wreck site.” *Id.* (emphasis in original). “Rather, under the law of salvage, RMST is entitled to a salvage award for its salvage efforts.” *Id.*

After ten years of acting as the exclusive salvor-in-possession of the sunken wreck, RMST requested that the “[C]ourt enter an order awarding it title to all the artifacts (including portions of the hull) which are the subject of this action pursuant to the law of finds or, in the alternative, a

²¹ The United States’ interest in promoting the public’s knowledge of the *R.M.S. Titanic* and its artifacts is also apparent in numerous other ways. For example, the joint Woods Hole Oceanographic Institution/IFREMER expedition that located the *R.M.S. Titanic* in 1985 was funded, in large part, by the United States Navy. Indeed, the Office of Naval Research contracted with the Woods Hole Oceanographic Institution’s Deep Submergence Laboratory to develop the ARGO/JASON Undersea Search and Exploration System that was used to locate the vessel. NOAA’s Office of Ocean Exploration also sponsored research expeditions to the *R.M.S. Titanic* in 2003 and 2004. The United States’ interest is further demonstrated by the National Science Foundation’s issuance of federal grants totaling nearly \$1.6 million to the Maryland Science Center to support an interactive exhibition concerning the *R.M.S. Titanic*.

salvage award in the amount of \$225 million.” *R.M.S. Titanic, Inc.*, 435 F.3d at 524 (internal quotation omitted). On July 2, 2004, the Court “rejected RMST’s claim that it should be awarded title to the artifacts recovered since 1993” *Id.*

In a detailed opinion, issued on January 31, 2006, the United States Court of Appeals for the Fourth Circuit affirmed this Court’s ruling, noting that “to change RMST’s role from that as salvor-in-possession to that as finder would be momentous.” *Id.* at 533.³⁷ The Fourth Circuit found that such a change in status would harm basic notions of trust law and work an injustice to those who had earlier and unsuccessfully sought to be salvors. *Id.* Moreover, it would allow RMST to do what it wished with the property it recovered. *Id.* The Fourth Circuit noted that, if RMST were granted title to the artifacts, its earlier promises to “preserve the property either for the owners of or for the historic and cultural interest of the public” would be difficult to enforce. *Id.* The court also found that “such a ruling would open the way to justified claims of unfairness by other would-be finders who are excluded from the wreck site.” *Id.* In keeping with these findings, the Fourth Circuit remanded the case “to the district court with the recognition that it may apply the principles of traditional salvage law to the wreck of the *Titanic* in a manner that serves either the owner or, absent an owner, the public interest and at the same time provides an appropriate award to the salvor.” *Id.* at 538.

On October 15, 2007, after noting that this matter was remanded nearly two years ago, the Court directed RMST “to file a motion for a salvage award, with supporting documentation, within sixty (60) days.” *R.M.S. Titanic, Inc.*, 2007 WL 3036846 at *2. The Court stated that in

³⁷ The Fourth Circuit vacated a portion of the district court’s order regarding certain artifacts retrieved from the *Titanic* in 1987 and taken to France. *Id.* at 530.

status reports preceding its order, counsel for RMST “attempted to readdress settled matters involving final orders and the law of this case, matters which are actually contrary to these orders and laws.” *Id.* at *1. In its order, the Court also stated:

The court further entrusts the United States, through the United States Attorney for the Eastern District of Virginia, to review RMST’s continuing actions as salvor and the periodic status reports thereof filed with the court, as well as any salvage award motion which RMST chooses to submit. The court finds that this additional oversight is necessary in order to preserve and protect the *R.M.S. Titanic* and its artifacts as an international treasure for posterity, and the United States’ efforts and interests in this regard, and to ensure compliance with this court’s rulings and final orders.

Id. at *2.

On November 30, 2007, RMST filed its lengthy Motion for Salvage Award accompanied by three volumes of exhibits. In its filing, RMST argues that it satisfies the prerequisites necessary for the issuance of a salvage award. RMST’s Mot., 4-9. Namely, RMST alleges that it voluntarily rescued property from marine peril and was successful in its efforts. *Id.* Next, RMST argues that it meets the standards set forth by the Supreme Court in *The Blackwall*, 77 U.S. 1 (1869), and the Fourth Circuit in *Columbus-America Discovery Group v. Atlantic Mutual Ins. Co.*, 56 F.3d 556, 573 (4th Cir. 1995). *Id.* at 9-31. Thus, RMST asserts that it is entitled to a liberal salvage award expressed as a high percentage (90% or above) of the appraised value of the artifacts recovered from the *R.M.S. Titanic*. *Id.* at 31-49. RMST estimates that such an award would be in excess of \$100 million. *Id.* at 34. RMST then contends an *in specie* salvage award is appropriate in this case. *Id.* at 49-55. In other words, RMST believes that it should be awarded the recovered *R.M.S. Titanic* artifacts, themselves, as opposed to the funds resulting from the sale of such artifacts. RMST further asserts that the Court could impose covenants as part of such an award, in order to keep the artifacts intact and together in perpetuity. *Id.* at 52-55. Finally,

RMST argues that the Court does not have the ability to transfer the artifacts to the State. *Id.* at 55-58.

Following the filing of RMST's Motion for Salvage Award, the United States sought a 60-day extension of time in which to consider whether to seek to participate as amicus. On January 16, 2008, the Court granted this extension. The Court's order required the United States to "notify the court of the outcome of its review and whether it intends to seek leave to participate as amicus" by March 17, 2008. Ct's Order, 2. Upon review of RMST's Motion for Salvage Award, the United States believes it is appropriate to offer input, as detailed below, on the interim *in specie* award proposed by RMST.⁴

DEVELOPMENT OF AN INTERIM *IN SPECIE* AWARD WITH LIMITATIONS

As recognized by the Court in its Order of January 16, 2008, the United States, indeed, has significant interest in this matter. In addition, as detailed above, the United States is interested in protecting the *R.M.S. Titanic*, its wreck site, and its artifacts. Upon examining RMST's Motion for Salvage Award, it appears that an interim *in specie* award with conditions or limitations could be consistent with the United States' interest in ensuring that the artifacts from the *R.M.S. Titanic* are conserved and curated together in an intact collection that is available to the public and accessible for historical review, educational purposes, and scientific research. Accordingly, the

⁴ The United States' filing does not speak to RMST's claims that it satisfies the prerequisites necessary for the issuance of a salvage award, it is entitled to a liberal salvage award, and that such an award would be in excess of \$100 million. Moreover, the United States notes that it cannot now, without expert review, opine on whether RMST has indeed been a good steward of the *R.M.S. Titanic* artifacts. If the Court believes that such expert review would be beneficial, the Court should consider appointing witnesses pursuant to Federal Rule of Evidence 706 to provide testimony on RMST's stewardship, appraisal of the fair market value of the artifacts, and its assertion that the company has not realized net revenues from exhibitions of *R.M.S. Titanic* artifacts and documentaries pertaining to its operations.

United States provides information on the types of conditions or limitations that must be included in such an award. Furthermore, the United States recommends a process that would allow for the development of a proposed interim *in specie* salvage award reflecting the principles contained in the R.M.S. Titanic Maritime Memorial Act of 1986, NOAA's Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic*, and the proposed legislation to implement the Agreement.

I. Evaluation of the Proposed Award

Evaluation of RMST's request for an interim *in specie* award requires an examination of the core principles designed to preserve and protect the *R.M.S. Titanic* and its artifacts as an international treasure for posterity, RMST's previous representations to the Court, and the orders and decisions of this Court and the Fourth Circuit.

As specified in NOAA's Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, "[b]asic professional archaeological standards dictate that artifacts recovered or salvaged from a wreck site should be kept intact as a collection. Such collections should not be dispersed through the sale of individual artifacts to private collectors such as through auction house sales." *Id.* at 18906. Accordingly, consistency with NOAA's Guidelines requires that "individual artifacts would not be sold." *Id.* at 18906. On the other hand, "this would not necessarily preclude the sale, transfer or trade of an entire collection to a museum or other qualified institution, provided that this commercial transaction does not result in the dispersal of artifacts." *Id.* at 18906-07. Such principles are also reflected in the International Agreement regarding the *R.M.S. Titanic*. Article 3, ("Each party shall take all reasonable measures to ensure that all artifacts recovered from RMS Titanic after entry into force of this Agreement, that are under its

jurisdiction, are conserved and curated consistent with the relevant Rules and are kept together and intact as project collections”); *see also* Annex, XII (Curation of Project Collection).⁵⁷ In addition, the proposed legislation to implement the International Agreement expressly prohibits the sale of artifacts not constituting a “collection.” Administration’s Proposed Titanic Implementing Legislation § 6(d); *id.* at § 3(c) (definition of “collection”).

An examination of the Motion for Salvage Award shows that RMST also acknowledges the importance of “keep[ing] the artifacts intact and together in perpetuity.” RMST’s Mot., 49; *see also id.* at 53 (“It is most certainly not RMST’s desire to individually market [*R.M.S. Titanic*] artifacts and break-up the collections.”). Such assertions are consistent with previous statements made by RMST throughout the case. As the Court stated in its Order of October 19, 2001:

The salvors in possession of this vessel assured this Court throughout the pendency of this case on the Court’s docket that they would not sell the artifacts piecemeal and would keep them together to be seen and admired by many people. Before the salvor in possession status was ever granted to RMST, the company assured the Court that RMST’s intention was to exhibit, not sell, the artifacts that had been salvaged from the trip.

Ct’s Order of October 19, 2001, 4 (internal citations omitted). The Court went on to note that “the record is rife with similar representations RMST made to this Court.” *Id.*; *see also id.* at 4-10 (citing RMST’s Periodic Status Reports of November 12, 1997, March 13, 2000, and April 5, 2001). The Court further explained that it “has relied on these representations by RMST in many of its Orders. Most importantly, the Court relied on RMST’s assurances when it granted RMST salvor in possession status in July, 1994.” *Id.* at 10. *See also R.M.S. Titanic, Inc.*, 924 F. Supp.

⁵⁷ The United States notes that the International Agreement will not become effective for the United States until its implementing legislation is signed into law and the United States has deposited its instrument of acceptance.

714, 718 n.10 (E.D.Va. 1996) (noting that “RMST’s promise to keep the artifacts together was one of the factors this Court considered when it granted salvor-in-possession status to RMST in 1994”); Ct.’s Order of July 28, 2000 (prohibiting the sale of individual artifacts and the cutting into or cutting off of any part of the wreck); Ct.’s Order of September 21, 2001 (regarding the sale of artifacts and the requirement to keep the collection together for public exhibition). *See also R.M.S. Titanic, Inc.*, 435 F.3d at 536-37 (discussion by the Fourth Circuit of RMST’s representations to the Court and its objectives in regard to the R.M.S. Titanic artifacts).

In keeping with its acknowledgment of the importance of maintaining the integrity of the collection and its previous assertions to the Court, RMST’s Motion proposes that the Court issue it an interim *in specie* award “with conditions attached concerning [the artifacts] disposition.” RMST’s Mot., 52. RMST states that such conditions would take the form of “a covenant that would run, in perpetuity, with the entirety of the 1993-2004 expedition Artifacts.” *Id.* at 54. In its Motion, RMST briefly summarizes the requirements of such covenants, stating:

The covenants would require that this collection be kept together forever, with appropriate rules for the extraordinary de-accessioning of Artifacts that can no longer be properly curated. The covenants could also stipulate the manner of use of the Artifacts that can no longer be properly curated. The covenants could also stipulate the manner of use of the Artifacts, particularly for research, study and exhibition, and the nature of eligible subsequent purchasers. The covenants should indicate that an eligible institution need not be limited to not-for-profit museums, but that any entity would need to be qualified by resources and accreditation as being competent to conserve and curate [*R.M.S. Titanic*] Artifacts into the future.

Id. at 55.

As RMST has noted, such an award is in keeping with the Fourth Circuit’s statement that the remedy designed by the Court “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.” *R.M.S. Titanic, Inc.*, 435 F.3d at 538; *see also* RMST’s Mot., 50.

Further, the Fourth Circuit’s ruling made clear that the Court “may, in addition to the traditional salvage remedies, also enter such orders as to the title and use of the property retrieved as will promote the historical, archeological, and cultural purposes of the salvage operation.” *R.M.S. Titanic, Inc.*, 435 F.3d at 537-38. In addition, as noted by RMST, such an award would be consistent with the conditions imposed by the French maritime tribunal on the artifacts retrieved from the *Titanic* in 1987. RMST’s Mot., 53-54; *see also R.M.S. Titanic, Inc.*, 435 F.3d at 528 (detailing such conditions). Consequently, it is clear that an interim *in specie* award with limitations could serve as an appropriate award mechanism in this case.

II. Limitations That Should Be Included in an Interim *In Specie* Salvage Award

An interim *in specie* award, however, will serve as an appropriate award mechanism in this case, only if appropriate conditions or limitations, described in general below, are part of such an award. Indeed, an interim *in specie* salvage award should include limitations that would serve to ensure the integrity of the collection of *R.M.S. Titanic* artifacts, govern the management of this collection, and provide oversight of the collection. In addition, the covenants attached to the award should provide protection for the *R.M.S. Titanic* artifacts in the event that the collection is sold or if RMST or any Court-approved assignee becomes bankrupt.

Furthermore, RMST has made clear its intent to continue its salvage work and ultimately seek a final salvage award in this matter.⁹ An interim award with specific covenants will set the

⁹ RMST’s filing also noted that “[i]t would have been RMST’s preference to wait until such time as it has completed all of its operations at the wreck-site, recovered all of the artifacts it had intended to do so as salvor-in-possession, and then seek a final salvage award from this Court.” RMST’s Mot., 2. RMST further stated that its “operational plans and the necessity of conducting rescue and forensic archaeology at the site, and matters of judicial economy, counsel

foundation for the issuance of a final salvage award. The United States believes that even after the final award is made in this litigation, the Court should consider retaining jurisdiction to make sure the proposed covenants are followed.

A. Integrity of the Collection

First, an essential component of an interim *in specie* salvage award should be a covenant that is designed to maintain the integrity of the collection of *R.M.S. Titanic* artifacts. Thus, the Court should require that the collection be maintained in an intact collection that joins the artifacts awarded to RMST by the French maritime tribunal (“French artifacts”).⁷ A covenant of this nature would recognize the fundamental principle woven throughout the R.M.S. Titanic Maritime Memorial Act of 1986, NOAA’s Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic*, and the proposed legislation to implement the Agreement. Namely, that “artifacts recovered or salvaged from a wreck site should be kept intact as a collection.” 66 Fed. Reg. at 18906; *see also* Section I. The importance of this principle also has been repeatedly emphasized by this Court and RMST. *See* Section I (setting forth the applicable orders and decisions of the Court and representations by RMST). Accordingly, including such a covenant in an interim *in specie* salvage award will offer the additional protection, desired by both the United States and RMST,

in favor of waiting to make a final salvage award.” *Id.*

⁷ The United States recognizes that the Fourth Circuit held that this Court does not have *in rem* jurisdiction over the French artifacts. Requiring RMST to keep the collection of *R.M.S. Titanic* artifacts subject to the jurisdiction of this Court together with the French artifacts should not result in a conflict with the Fourth Circuit’s determination.

to the *R.M.S. Titanic* artifacts.⁸⁷

B. Management of the Collection

Secondly, the Court should include a covenant in the award that would govern the management of the collection. As noted in the R.M.S. Titanic Maritime Memorial Act of 1986, “[i]t is the sense of Congress that research and limited exploration activities concerning the RMS Titanic should continue for the purpose of enhancing public knowledge of its scientific, cultural, and historical significance.” 16 U.S.C. § 450 rr-5; *see also* 66 Fed. Reg. at 18912. In keeping with Congress’ goal of enhancing public knowledge regarding the *R.M.S. Titanic* artifacts, the collection should be managed using the professional standards recognized in NOAA’s Guidelines, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic* including the Annexed Rules, and the numerous orders made by the Court and the Fourth Circuit. For example, “the guidelines are based on . . . widely accepted international and domestic professional archaeological standards, including the International Council on Monuments and Sites (ICOMOS) International Charter on the Protection and Management of Underwater Cultural Heritage, and the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation.” 66 Fed. Reg. at 18905; *see also id.* at 18913 (discussing documentation, artifact conservation, and curation of project collection); International Agreement regarding the *R.M.S. Titanic*, Art. IX, 24; Art. XII, 28-30. These standards are also recognized by the regulations

⁸⁷ In discussing the proposed interim award, RMST states that “[t]he covenants would require that this collection be kept together forever, with appropriate rules for the extraordinary deaccessioning of Artifacts that can no longer be properly curated.” RMST’s Mot., 55. The United States agrees that any deaccessioning of *R.M.S. Titanic* artifacts would, indeed, be appropriate only in extraordinary circumstances. Moreover, one of the conditions of an interim *in specie* award should require approval by the Court for any such deaccessioning.

governing the curation of federally-owned and administered archeological collections set forth at 36 C.F.R. Part §§ 79.1-79.11 and related appendices.

Accordingly, a covenant of this nature would make clear that the *R.M.S. Titanic* artifacts must be managed in a manner that “ensure[s] proper recording and dissemination to the public of historical, cultural and archaeological information.” 66 Fed. Reg. at 18912. Moreover, “[a]dherence to proper scientific methodology and approach is in the interest of the public because it preserves the integrity of the site, the artifacts recovered and the story contained at the wrecksite.” *Id.* at 18911; *see also* International Agreement regarding the *R.M.S. Titanic*, Preamble (stating that the parties “seek[] to ensure the protection of *RMS Titanic* and its artifacts for the benefit of present and future generations”). Given the significance of the *R.M.S. Titanic*, a covenant governing the management of the collection should be included in an interim award.

C. Oversight of the Collection

In addition, the Court should include in an interim *in specie* award a requirement that would permit the reasonable oversight of the collection to ensure adherence to the covenants. The *R.M.S. Titanic Maritime Memorial Act* of 1986 acknowledges that NOAA is the federal agency possessing expertise in regard to the shipwreck. 16 U.S.C. § 450 rr-3. Moreover, as explained in NOAA’s Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, “NOAA has the technical expertise to . . . advocate the professional scientific approach to manage the Maritime Memorial.” 66 Fed. Reg. at 18911. For example, NOAA’s National Marine Sanctuary Program has extensive experience managing shipwrecks of cultural importance such as the *USS Monitor*. Accordingly, including a covenant of this nature would allow NOAA to provide its expertise to oversee RMST’s or a Court-approved successor’s salvage actions. NOAA

could also be available, at its discretion, to provide oversight by experts in the relevant fields in regard to the conservation and curation of the *R.M.S. Titanic* artifacts so that the United States' interest in the wrecksite and artifacts – as recognized by Congress and this Court – can be protected. If, for example, RMST proposes to sell or transfer the collection, NOAA could provide assistance and oversight regarding the transaction. In particular, NOAA could provide the Court with insight to ensure that the proposed recipient of the collection possesses the professional expertise and means to conserve and curate the collection. Indeed, reasonable oversight of the collection would assist the Court with ensuring enforcement of the covenants included in an interim *in specie* award and offer additional protection to these historically significant artifacts.⁹

D. Protection of the Collection in the Event of Sale

In the future, RMST or other entities may contemplate selling the *R.M.S. Titanic* artifacts. The United States has also acknowledged that “as long as the collection is kept together and maintained for research, education, viewing and other use of public interest, there should not be restrictions on commercial transactions which are intended to further these public purposes.” 66 Fed. Reg. at 18907. Accordingly, an interim *in specie* salvage award should provide protection for the *R.M.S. Titanic* artifacts in the event of their sale. Similarly, RMST's Motion appears to acknowledge that the covenants included in the award should run with the artifacts in the event of their sale. RMST's Mot., 55 (“That means that [the R.M.S. Titanic] artifact disposition

⁹ Although the United States will endeavor to provide its expertise to assist with implementation of the covenants, such assistance will necessarily be provided subject to available resources and appropriations. The United States does not envision a formal role as a party to those covenants, and will not undertake mandatory legal obligations or assume any liability under them.

restrictions would notionally be enforceable, even if not expressly included in the bill of sale between a subsequent seller and subsequent purchaser.”).

Thus, the United States suggests that the Court include a covenant in the award that specifies that the collection cannot be sold to or possessed by any successor entity unless the new entity can demonstrate that it is fully capable of carrying out the requirements set forth in the covenants.¹⁰ The United States further contends that the covenant should make any sale or transfer of possession of the artifacts contingent upon approval of the Court. Expressly providing such a covenant in an interim *in specie* salvage award would make clear that any successor entity is required to keep the artifacts together in an intact collection that is available to the public and accessible for curation, educational purposes, and scientific research. A covenant of this nature also would reflect the definition of a “qualified institution” as set out in NOAA’s Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*. 66 Fed. Reg. at 18912. Without such protections, it would be difficult to ensure that the *R.M.S. Titanic* artifacts will be properly maintained in an intact collection in the future.

E. Protection of Collection in the Event of Bankruptcy

Finally, the Court should include in an interim *in specie* salvage award a covenant designed to protect the *R.M.S. Titanic* artifacts in the event of bankruptcy. RMST is a private entity, owned by Premier Exhibitions, Inc., which, like any other private entity, has the potential to become bankrupt. Because of this potential, the Court should consider imposing a requirement that, in the event of insolvency, RMST, or a Court-approved assignee, would be prohibited from

¹⁰ For example, the covenant could provide a specific amount of funding of an endowment that the controlling organization would need to have available as a condition of receiving the collection.

selling the collection in a piecemeal fashion. In addition, the Court should require RMST or any Court-approved assignee to secure a bond sufficient to insure the faithful performance of covenants in the event of insolvency or bankruptcy. A covenant of this nature would offer further assurance that these internationally significant artifacts will not be disbursed or compromised in any way. Moreover, such a covenant would serve to ensure that the *R.M.S. Titanic* artifacts are properly protected as Congress and this Court has intended them to be in perpetuity. In addition, this approach would be consistent with the treatment of the artifacts as set forth in NOAA's Guidelines, the International Agreement, and the proposed legislation to implement the International Agreement.

III. Development of a Proposed Interim *In Specie* Salvage Award

In keeping with the principles articulated above, the United States sets forth a process that would allow for the development of a proposed interim *in specie* salvage award consistent with the efforts it has undertaken to promote the protection of the *R.M.S. Titanic*, its wreck site, and its artifacts for posterity.

In its Motion, RMST offers to provide future “briefing, analysis, and suggested covenant terms” if desired by the Court. RMST’s Mot., 55. Indeed, the specific language of covenants that would protect the interests articulated in this memorandum needs to be carefully drafted and feasible over the life of the collection of *R.M.S. Titanic* artifacts. There are likely to be a number of technical drafting issues associated with producing covenant language that implements the principles outlined herein. Further, the covenants should incorporate multiple safeguards to ensure their continued effectiveness and to guard against future contingencies.

Thus, RMST should propose specific language and details for the covenants. The United

States should then have an opportunity to have discussions with RMST to address concerns it may have with the language proposed. Based on these discussions, RMST should submit revised covenants to the Court. It is further requested that the United States then be given an opportunity to evaluate the final proposal by RMST and to make a submission to the Court identifying any remaining concerns, and propose specific language or other covenants as necessary. The United States recommends this process be set out in an order from the Court as follows:

1. RMST shall submit Proposed Covenants that specify conditions or limitations to be included in an interim *in specie* award consistent with the principles articulated in this memorandum no later than 30 days from the entry of this order. These Proposed Covenants should ensure that the artifacts from the *R.M.S. Titanic*, in the possession of RMST, are conserved and curated together in an intact collection that is available to the public and accessible for historical review, educational purposes, and scientific research in perpetuity. The covenants should incorporate safeguards to ensure that they will remain effective notwithstanding future changes in circumstances, and to guard against contingencies that might impair their future effectiveness. Accompanying the Proposed Covenants should be a memorandum explaining how the covenants would effectuate these principles.
2. Following the submission of the Proposed Covenants, RMST is encouraged to consult in depth with the United States in an attempt to resolve any concerns the United States may have with the Proposed Covenants and revise them accordingly. RMST shall then submit Revised Proposed Covenants no later than 60 days from RMST's submission of the Proposed Covenants.
3. The United States as amicus may, if it deems it necessary, submit its views regarding any remaining concerns on the Revised Proposed Covenants and provide additional covenants or revisions that would address such concerns no later than 30 days from RMST's submission of the Revised Proposed Covenants.

Adopting a process of this nature would allow RMST to provide the additional details it envisioned in suggesting that an interim *in specie* salvage award would be appropriate in this case. It would also allow the United States to work with RMST regarding specific covenant language to propose for the Court's consideration. Most importantly, the process would allow for

the development of a proposed interim *in specie* salvage award consistent with the principles contained in the R.M.S. Titanic Maritime Memorial Act of 1986, NOAA's Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic*, and the proposed legislation to implement the Agreement.

IV. Conclusion

In sum, the United States has significant interest in protecting and preserving the *R.M.S. Titanic*, its wreck site, and its artifacts. Upon review of RMST's Motion for Salvage Award, it is clear that an interim *in specie* award with limitations could serve as an appropriate award mechanism in this matter. Such an award should include limitations that would serve to ensure the integrity of the collection of *R.M.S. Titanic* artifacts, govern the management of this collection, and provide oversight of the collection. In addition, the covenants attached to the award should provide protection for the *R.M.S. Titanic* artifacts in the event that the collection is sold or if RMST or any Court-approved assignee becomes bankrupt. Thus, the United States recommends the Court adopt the process, detailed above, that would allow for the development of a proposed interim *in specie* salvage award consistent with the United States' interests and the principles contained in the R.M.S. Titanic Maritime Memorial Act of 1986, NOAA's Guidelines for Research, Exploration and Salvage of *R.M.S. Titanic*, the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic*, and the proposed legislation to implement the Agreement.

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Respectfully submitted,

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