

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

RMS TITANIC, INC. *et al.*,¹

Case No. 3:16-bk-02230-PMG

Chapter 11 (Jointly Administered)

Debtors

RMS TITANIC, INC.,

Plaintiff,

Adv. Pro. No. 3:16-ap-00183-PMG

vs.

FRENCH REPUBLIC,
a/k/a REPUBLIC OF FRANCE,

Defendant.

**PLAINTIFF RMS TITANIC, INC.'S MEMORANDUM OF
LAW IN SUPPORT OF ITS (I) MOTION FOR CLERK'S
DEFAULT AGAINST DEFENDANT FRENCH REPUBLIC,
A/K/A REPUBLIC OF FRANCE AND (II) MOTION
FOR DEFAULT JUDGMENT AGAINST DEFENDANT
FRENCH REPUBLIC A/K/A REPUBLIC OF FRANCE**

RMS Titanic, Inc., (the “Debtor” or “RMST” and together with its affiliated debtors listed in footnote 1, the “Debtors”) by undersigned counsel hereby files this memorandum of law in support of its (I) *Motion for Clerk’s Default Against Defendant French Republic, a/k/a Republic of France* [D.E. 10] as amended by *Plaintiff RMS Titanic, Inc.’s Amended Motion for Entry of Clerk’s Default Against Defendant French Republic, A/K/A Republic of France* [D.E. 45] (as amended, the “Motion for Clerk’s

¹ The Debtors in the chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number include: RMS Titanic, Inc. (3162); Premier Exhibitions, Inc. (4922); Premier Exhibitions Management, LLC (3101); Arts and Exhibitions International, LLC (3101); Premier Exhibitions International, LLC (5075); Premier Exhibitions NYC, Inc. (9246); Premier Merchandising, LLC (3867); and Dinosaurs Unearthed Corp. (7309). The Debtors’ service address is 3045 Kingston Court, Suite I, Peachtree Corners, Georgia 30071.

Default”) and (II) *Motion for Default Judgment Against Defendant French Republic, a/k/a Republic of France* [D.E. 11] as amended by *Plaintiff RMS Titanic, Inc.’s Amended Motion for Default Judgment Against Defendant French Republic, A/K/A Republic of France* (as amended, the “Motion for Default Judgment” and together with the Motion for Clerk’s Default, the “Default Motions”). In support of the Default Motions, the Debtors are filing concurrently herewith the Declaration of David P. Stewart, Professor from Practice at Georgetown University Law Center in Washington, D.C., who has been retained as an expert consultant by the Debtor to advise on sovereign immunity and international law issues in this adversary proceeding. In further support of the Default Motions, the Debtor states the following:

I. INTRODUCTION

The Debtor filed this adversary proceeding seeking declaratory judgment that the Republic of France² has no interest in Artifacts owned by the Debtor that were recovered from the wreckage of the *R.M.S. Titanic* in 1987. The Republic of France has acknowledged proper service upon it but has failed to appear in this case. It is in default. The Debtor therefore seeks entry of default judgment declaring that the Republic of France has no interest in the Artifacts.

This case has generated substantial attention from special interest groups around the world seeking to advance their policy agendas at the expense of the Debtor’s private property rights. Not one of these parties has standing to participate in this action.³ Not

² Capitalized terms used but not defined in this Introduction shall have the meaning given to them elsewhere in this memorandum.

³ Indeed, none are even parties in interest pursuant to 28 U.S.C. § 1109.

one of them invokes the correct legal standards governing a Debtor's estate in a Chapter 11 proceeding. Most important, not one of them has ever contended that the Republic of France has an ownership interest in the Debtor's Artifacts, nor could they. To be clear, the *R.M.S. Titanic* was not a French flagged vessel and did not sink in French waters. Therefore, France never had a property interest in the Artifacts. The *proces verbal*⁴ itself confirms this. France merely served as the forum country that applied the law of the sea through its administrative procedures, following the decision by the Debtors to land the 1987 expedition vessel in France.

For the second time in the long history of *R.M.S. Titanic* litigation, France has consciously abstained from participating in a United States judicial proceeding concerning the Artifacts. Under the Foreign Sovereign Immunities Act and applicable bankruptcy law, entry of default judgment is warranted on multiple grounds. First, the Debtor properly served France under Article 5 of the 1965 Hague Service Convention,⁵ France elected not to respond within 60 days after service was effected, and France has not contested the validity of service. Second, Bankruptcy Code section 106(a) provides a clear waiver of the immunity otherwise afforded the Republic of France under the Foreign Sovereign Immunities Act. 11 U.S.C. §106(a). Third, this Court has both subject matter jurisdiction over the proceedings and personal jurisdiction over the Republic of France, such that the Motion for Default Judgment is properly before the

⁴ The *proces verbal*, as discussed in more detail below, is the instrument by which the Republic of France granted title for the Artifacts to the Debtor's predecessor. The *proces verbal* is attached at Exhibit B to the Complaint filed in this adversary proceeding and is further included as part of Exhibit 5 attached hereto.

⁵ *International Conferences (The Hague), Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (hereinafter the "Hague Convention"). For the full text of the Hague Convention, see <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17>

Court. Fourth, default judgment is appropriate at this time as the Debtor has met its burden of proof. Fifth, pursuant to the Court's *in rem* jurisdiction over the Artifacts under 28 U.S.C. §§ 157 and 1334 (b), this Court is the exclusive forum in which to resolve issues concerning the Debtor's property, including the Artifacts.

II. BACKGROUND

On June 14, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of Title 11 of the United States Code, 101 *et seq.* (as amended) (the "Bankruptcy Code"), commencing the above-captioned jointly administered bankruptcy cases. The Debtors continue to operate their businesses as debtors and debtors-in-possession. No trustee or examiner has been appointed in the Debtors' cases.

On June 20, 2016, the Debtors filed their *Motion for Order Pursuant to Bankruptcy Code Sections 105 and 363 and Bankruptcy Rules 6003, 6004, and 9014 Authorizing the Debtors to Market and Sell Certain Titanic Artifacts Free and Clear of Liens, Claims, and Interests* (the "Sale Motion").

Pursuant to the Sale Motion, the Debtors sought authority to sell free and clear of claims and interests approximately 2,100 artifacts recovered from the wreckage of the *R.M.S. Titanic* in 1987 by Titanic Ventures Limited Partnership ("TVLP") with assistance of Institut Francais de Recherche Pour l'Exploitation de la Mer. The artifacts recovered during the 1987 expedition are referred to herein as the "Artifacts." TVLP is the predecessor to the Debtor.

On July 22, 2016, the Court entered an order denying the Sale Motion without prejudice and directing the Debtors to file an adversary proceeding in connection with the sale of the Artifacts [D.E. 102] (the “Sale Order”). In the Sale Order, the Court found that the Republic of France may assert an interest in the Artifacts, and such interest warrants the procedural safeguards of an adversary proceeding under Rule 7001, which provides that any proceeding to determine the validity, priority, or extent of a lien or other interest in property, or any proceeding seeking a declaratory judgment regarding any of the foregoing are adversary proceedings. Fed. R. Bankr. P. 7001(2) and (9).

Accordingly, on August 17, 2016, RMST commenced this Adversary Proceeding by filing a complaint against defendant French Republic a/k/a Republic of France (“Republic of France” or “France”) [D.E. 1] (the “Complaint”). The Complaint seeks a declaratory judgment that France has no interest in the Artifacts. As discussed below, the Republic of France has been properly served but has failed to file a responsive pleading or appear in this adversary proceeding.

III. ARGUMENT

A. Service of Process under the Hague Convention.

1. Background.

The United States and France are both Contracting States to the Hague Convention. “The Hague Service Convention is a multilateral treaty that was formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law.” *In re Mak Petroleum, Inc.*, 424 B.R. 912, 916 (Bankr. M.D. FL 2010) (quoting *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698, 108 S. Ct. 2104, 100

L. Ed. 2d 722 (1988)). “The purpose of the Hague Convention is ‘to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,’ and to ‘improve the organization of mutual judicial assistance for that purpose by simplifying and expediting the procedure.’” *Id.*

Article I of the Hague Convention provides that the Convention “shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.” *The Hague Convention, Art. I.* “Given the express purpose of the Hague Convention, the United States Supreme Court has stated that ‘compliance with the Convention is mandatory in all cases to which it applies.’” *In re Mak Petroleum, Inc.*, 424 B.R. at 916 (quoting *Volkswagenwerk*, 486 U.S. at 705). Because (1) the United States and France are both Contracting States to the Hague Convention, (2) the Hague Convention applies in all cases where judicial or extrajudicial documents are transmitted for service abroad in Contracting States, and (3) compliance with the Hague Convention is mandatory in all cases where it applies, Debtor’s service of process on the Republic of France is governed by the provisions of the Hague Convention. *Id.*

2. France was properly served pursuant to Article 5 of the Hague Convention.

The Hague Convention provides for service through a number of channels. Article 2 of the Hague Convention requires each Contracting State to designate a Central Authority to receive requests for service from other Contracting States. Article 3 “provides that the ‘authority or judicial officer competent under the law of the State in

which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legislation or other equivalent formality.” *Id.* at 917. Article 5 “provides that the ‘Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency.’” *Id.* Although there are a number of other alternative methods of service under the Convention, service by the Central Authority is the “primary” and preferred channel of service. *Malone v. Highway Star Logistics, Inc.*, 2009 U.S. Dist. LEXIS 64024, 2009 WL 2139857, at *3 (D.Colo., July 13, 2009).

In compliance with the Hague Convention, France has designated the Ministry of Justice as the Central Authority to receive requests for service. *See* Hague Conference on Private International Law (available at <https://www.hcch.net/en/states/authorities/details3/?aid=256>); *Blondin v. Dubois*, 238 F.3d 153, 159 (2d Cir. 2001) (Ministry of Justice also Central Authority under Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980). Article 6 of the Hague Convention requires the Central Authority to complete a certificate stating that the document has been served, the place and the date of service, and the person to whom the document was delivered. Article 6 further requires the Central Authority to return the certificate directly to the applicant. “[R]eturn of a completed certificate of service is *prima facie* evidence that the Authority’s service’ was made in compliance with that country’s law.” *In re SI Corp. Secs. Litig.*, 173 F. Supp. 2d

1334, 1357 (N.D. Ga. 2001) (quoting *Northrup King Co. v. Compania Productora Semillas Algodoneras Selectas, S.A.*, 51 F.3d 1383, 1390 (8th Cir. 1995)).

The Debtor satisfied the primary channel of service under Article 3 of the Hague Convention to effect service on France.⁶ On January 27, 2017, the Central Authority of France returned the certificate to the Debtor confirming that service was effected on the French Ministry of the Environment, Energy and the Sea on December 16, 2017. *See, Exhibit 4* (Certificate of Service) attached hereto. Consequently, the Debtor has properly effected service on France under the Hague Convention. *See Northrup King Co.*, 51 F.3d at 1389.

3. France failed to timely respond.

Rule 4 of Federal Rules of Civil Procedure applies to service of a summons and complaint in bankruptcy proceedings. Fed. R. Bankr. P. 7004. It requires a foreign state

⁶ The Republic of France had actual notice of the proceedings long before the date of service confirmed in the certificate of return. Dating back to March, 2016, two months before the Debtor filed for bankruptcy protection, the United States, through its representatives at the National Oceanic and Atmospheric Administration (“NOAA”), began communicating with French diplomatic officials that the Debtor, at that time, had contemplated selling certain of its Artifacts. NOAA and the French officials, including the French Ambassador of Oceans, communicated extensively on this matter. *See Exhibit 1* (Periodic Report of R.M.S. Titanic, Inc. on the Progress of Research and Recovery Operations filed in *RMS Titanic, Inc., etc. v. The Wrecked and Abandoned Vessel, etc.*, Civil Action No 2:93cv902 pending in the United States District Court for the Eastern District of Virginia (the “Periodic Report”)) attached hereto. These communications continued through Debtor’s filing of the bankruptcy petition, and included discussions regarding the Adversary Complaint. *Id.* In addition, the Debtor used a variety of alternative methods of service to ensure that France had actual notice of the litigation and sufficient time to respond to the Adversary Complaint should it so choose. For example, on August 31, 2016, a courier attempted hand-delivery of the Complaint on French Ministry of the Environment, Energy and the Sea, which was rejected. Also on August 31, 2016, the Debtor mailed a copy of the Adversary Complaint to the French Ministry of the Environment, Energy and the Sea. *See* the Default Motions. In July, 2016, counsel for the Debtor exchanged email correspondence on the matter with Pierre Michel, Science and Technology Attache, Embassy of France in the United States. On August 23, 2016, the Debtor emailed Mr. Michel a copy of the Adversary Complaint, and on September 1, 2016, Mr. Michel provided the Adversary Complaint to Marie-Laurence Navarri, Justice Attache, Embassy of France in the United States. *See Exhibit 2* (email correspondence between Mr. Michel, Ms. Navarri, and counsel for the Debtor) attached hereto. Mr. Michel and Ms. Navarri are the same diplomats with whom NOAA engaged in extensive correspondence about the planned sale of Artifacts. *See Exhibit 1* (Periodic Report) attached hereto, and *Exhibit 3* (email correspondence between Mr. Michel, Ms. Navarri, and NOAA) attached hereto.

to be served in accordance with 28 U.S.C. § 1608. Section 1608(d) provides that a “foreign state” must serve a responsive pleading to a complaint against it within sixty days of service. The Republic of France is a foreign state. See 28 U.S.C. § 1603(a); *see* also 11 U.S.C. § 101(27). As set forth above, service was effected on the Republic of France on December 16, 2017. *See Exhibit 4* (Certificate of Service) attached hereto. Because France failed to respond within sixty days of service (which was February 14, 2017) or even to date, it is in default.

B. Foreign Sovereign Immunities Act (“FSIA”).

1. The Foreign Sovereign Immunities Act Applies.

The FSIA is the exclusive basis for establishing jurisdiction over a foreign state. *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 493, 103 S.Ct. 1962, 1971, 76 L.Ed.2d 81 (1983). The FSIA provides the basis for asserting jurisdiction over foreign states in U.S. courts. *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 443, 102 L. Ed. 2d 818, 109 S. Ct. 683 (1989); 28 U.S.C. §§ 1604-07, 1609-11. The statute confers immunity on foreign states either in all cases that do not fall into one of its specifically enumerated exceptions, or in cases where the immunity is not waived by federal statute. *See* 28 U.S.C. §§ 1605, 1607; 11 U.S.C. § 106; *Hercaire Intern., Inc. v. Argentina*, 821 F.2d 559, 563 (11th Cir. 1987); *McKesson HBOC, Inc. v. Islamic Republic of Iran*, 271 F.3d 1101, 1105 (D.C. Cir. 2001); *In re Tuli*, 172 F.3d 707 (9th Cir. 1999).

Under the FSIA, a foreign state is “presumptively immune” from suit. *Saudi Arabia v. Nelson*, 507 U.S. 349, 355, 113 S. Ct. 1471, 123 L. Ed. 2d 47 (1993). Thus, in order to establish subject matter jurisdiction under the FSIA, a plaintiff must overcome that presumption by producing evidence that “the conduct which forms the basis of [the] complaint falls within one of the statutorily defined exceptions [to immunity].” *Butler v. Sukhoi Co.*, 579 F.3d 1307, 1312-13 (11th Cir. 2009) (quoting *S & Davis, Int’l v. Republic of Yemen*, 218 F.3d 1292, 1293 (11th Cir. 2000)). Generally, whether a “plaintiff has satisfied [its] burden of production in this regard is determined by looking at ‘the allegations of the complaint [and] the undisputed facts, if any, placed before the court by the parties.’” *Id.* (citing *In re Terrorist Attacks on September 11, 2001*, 538 F.3d 71, 80 (2d Cir. 2008) (plaintiff has burden of producing evidence showing that, under exceptions to the FSIA, immunity should not be granted). Once the plaintiff demonstrates that one of the statutory exceptions to FSIA immunity applies, the burden then shifts to the defendant to prove, by a preponderance of the evidence, that the plaintiff’s claims do not fall within the exception. *See S & Davis Int’l*, 218 F.3d at 1300. “[E]ven if the foreign state does not enter an appearance to assert an immunity defense, a district court still must determine that immunity is unavailable under this Act.” *Verlinden B.V.*, 461 U.S. at 495 n.20.

2. 11 U.S.C. § 106(a) establishes a clear statutory waiver of sovereign immunity in this matter.

This Adversary Complaint is brought pursuant to 11 U.S.C. §§ 105 and 363. The sole defendant in this matter is the Republic of France. The Republic of France is a

governmental unit for purposes of the Bankruptcy Code, and a “foreign state” for purposes of the FSIA. *See* 11 U.S.C. § 101(27); 28 U.S.C. § 1603(a).

On October 22, 1994, 11 U.S.C. § 106, the statutory provision governing sovereign immunity in bankruptcy cases, was amended. *In re Tuli*, 172 F.3d at 712. As a result of the amendment, a foreign state can no longer assert sovereign immunity to the jurisdiction of the bankruptcy court to most actions under the Bankruptcy Code, including, as in this matter, proceedings brought pursuant to 11 U.S.C. §§ 105 and 363. *Id.* Section 106(a) provides an “unequivocal waiver” of immunity. *In re Jove Eng’q, Inc.*, 92 F.3d 1539, 1549 (11th Cir. 1996) (holding that § 106 provides unequivocal, express waiver of sovereign immunity); *see also Hardy by & Through IRS v. United States (In re Hardy)*, 97 F.3d 1384, 1387-88.

In addition, 11 U.S.C. § 106(a)(5) states that “nothing in this section shall create any substantive claim for relief or cause of action not otherwise existing under this title, the Federal Rules of Bankruptcy Procedure, or nonbankruptcy law.” 11 U.S.C. § 106(a)(5). Accordingly, the Debtor “must show that some source outside of § 106 entitles it to relief.” *In re Jove Eng’q, Inc.*, 92 F.3d at 1549. Sections 105 and 363 of the Bankruptcy Code provide these independent sources of relief. *Id.*; 11 U.S.C. § 106(a)(5). Accordingly, section 106(a) of the Bankruptcy Code provides a clear waiver of sovereign immunity in this case, such that the FSIA does not apply and the Debtors may proceed against France in the Adversary Proceeding.

Further, the statutory waiver of immunity under Section 106(a) is consistent with France's international legal obligations regarding waiver of sovereign immunity for *in rem* bankruptcy proceedings. On January 17, 2007, France signed the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property (the "2004 UN Convention"), and approved (ratified) it on August 12, 2011. See https://treaties.un.org/Pages/ShowMTDSGDetails.aspx?src=UNTSOnline&tabid=2&mtdsg_no=III-13&chapter=3&lang=en.

Article 13 of the 2004 UN Convention in pertinent part states, "[u]nless otherwise agreed between the States concerned, a State cannot invoke immunity from jurisdiction before a court of another State which is otherwise competent in a proceeding which relates to the determination of: ... (c) any right or interest of the State in the administration of property, such as trust property, **the estate of a bankrupt** or the property of a company in the event of its winding up." (Emphasis Added).⁷ While the United States is not a party to the 2004 UN Convention, France is, having ratified it in 2011. Consequently, its provisions, including the waiver of immunity in Article 13, apply to France in relevant proceedings, in the same way that §106(a) applies in these proceedings.

C. This Court has subject matter and personal jurisdiction over France.

This Court has an affirmative duty to examine its jurisdiction over the parties when entry of judgment is sought against a party who has failed to plead or otherwise

⁷ For the full text of the 2004 UN Convention, see http://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004.pdf.

defend. *Williams v. Life Sav. and Loan*, 802 F.2d 1200, 1202 (10th Cir. 1986); *In re Tuli*, 172 F.3d at 712.

1. Subject Matter Jurisdiction.

This Court has jurisdiction in this adversary proceeding pursuant to 28 U.S.C. § 1334(b) and (e). This adversary proceeding is a core matter pursuant 28 U.S.C. § 157(b).

Further, under 28 U.S.C. § 1330(a), federal district courts have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief *in personam* with respect to which the foreign state is not entitled to immunity. 28 U.S.C. § 1330(a).

Accordingly, in order to ascertain whether it has subject-matter jurisdiction, a court must first determine whether the defendant meets the definition of “foreign state” in § 1603(a) and then whether immunity has been waived. If the defendant qualifies and no waiver of immunity applies, it is immune and the court lacks both personal and subject-matter jurisdiction (even if proper service has been made). In contrast, if the claimed immunity is waived and if proper service has been made, the court has personal and subject-matter jurisdiction. *DRFP, LLC v. Republica Bolivariana De Venez.*, 945 F. Supp. 2d 890, 901 (S.D. Ohio 2013). As set forth above, the Republic of France is a foreign state under § 1603(a), and immunity has been waived by statute pursuant to § 106(a). Accordingly, this Court has subject matter jurisdiction over this matter. As set forth in section 5 below, insofar as this Court has exclusive *in rem* jurisdiction over the

Debtor pursuant to 28 U.S.C. §§ 157 and 1334 (b), it is the only forum in the world qualified to rule on the issues raised in the Adversary Complaint.

2. Personal Jurisdiction.

Pursuant to 28 U.S.C. § 1330(b), “[p]ersonal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.” This means that subject-matter jurisdiction, together with valid service, constitutes personal jurisdiction. *DRFP, LLC.*, 945 F. Supp. 2d at 905 (holding that for the purposes of statutory jurisdiction, the Foreign Sovereign Immunities Act “makes personal jurisdiction over a foreign state automatic when an exception to immunity applies and service of process has been accomplished in accordance with 28 U.S.C. § 1608”). The statutory approach to personal jurisdiction over foreign states is appropriate because foreign states are not persons within the meaning of the Due Process Clause. *See, e.g., Abelesz v. Magyar Nemzeti Bank*, 692 F.3d 661, 694 (7th Cir. 2012) (holding that “foreign states are not ‘persons’ entitled to rights under the Due Process Clause”); *Frontera Res. Azerbaijan Corp. v. State Oil Co. of Azerbaijan Republic*, 582 F.3d 393, 398-99 (2nd Cir. 2009); *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 96, 352 U.S. App. D.C. 284 (D.C. Cir. 2002); *Continental Cas. Co. v. Argentine Republic*, 893 F. Supp. 2d 747, 752 n.12 (E.D. Va. 2012) (“Every circuit court to address the issue has held ‘that foreign states are not ‘persons’ protected by the Fifth Amendment,’ and thus foreign states are not subject to the minimum contacts analysis prior to the exercise of personal jurisdiction.”) (internal quotations omitted).

Accordingly, because this Court has subject matter jurisdiction, and the Debtor has achieved valid service, this Court has personal jurisdiction over the Republic of France.

D. Debtor has met the legal standards for entry of default judgment.

Rule 55(b) of Federal Rules of Civil Procedure governs defaults and default judgments and is “rendered applicable in a bankruptcy proceeding by Fed. R. Bankr. P. 7055(b)(2).” *O’Neil v. Bahre (In re Holmes & Bahre Paint & Body, Inc.)*, 558 B.R. 58, 63 (Bankr. D. Conn 2016). Rule 55 “applies specifically to situations where the defendant ... fails to answer.” *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1337 (11th Cir. 2014). Subsection (a) provides, “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). Rule 55 applies where the court, “has only allegations and no evidence before it.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 107 (2d Cir. 2006) (internal citation omitted). Further, 28 U.S.C. § 1608(e) requires that “[n]o judgment by default shall be entered by a court of the United States . . . against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.” 28 U.S.C. § 1608(e).

Pursuant to Rule 55, a default is an admission of all well-pleaded allegations against the defaulting party. *Perez*, 774 F.3d 1329. “While a defendant who defaults admits all well-pleaded factual allegations, legal conclusions, with no specific factual allegations, are insufficient to support a default judgment.” *See O’Neil*, 558 B.R. at 63.

Rule 55(b) permits, but does not require, a court to conduct a hearing before granting default judgment. Fed. R. Civ. P. 55(b). “In permitting, but not requiring, a [trial] court to conduct a hearing before ruling on a default judgment, Rule 55(b) commits this decision to the sound discretion of the [trial] court.” *Finkel v. Romanowicz*, 577 F.3d 79, 87 (2d Cir. 2009).

The facts and exigencies of this case compel the granting of a default judgment at this time. The Debtor has alleged sufficient facts to make out a prima facie case that the Republic of France has no ownership interests in the Artifacts. The Debtor alleges, *inter alia*, that it salvaged the Artifacts (Adv. Comp., ¶11), that it was awarded title to the Artifacts in 1993 pursuant to a *proces verbal* (Adv. Comp., ¶ 15), and that the award of title was unconditional (Adv. Comp., ¶ 26). For purposes of this proceeding on default under Rule 55, all of these facts are deemed admitted. *Perez*, 774 F.3d at 1336. Further, the Debtor has filed the affidavit of Jerome Henshall in support of the Motion for Default Judgment [D.E. 12] (the “Henshall Affidavit”), which provides any necessary factual support for each of the above allegations in the Complaint.

To the extent that any of these allegations constitute legal conclusions, which the Debtor denies, they are all supported by factual allegations and the Henshall Affidavit. Further, the Debtor hereby submits the declaration of Professor Denis Mouralis, attached hereto as Exhibit 5 (the “Mouralis Declaration”).⁸ Professor Mouralis is a tenured Professor of arbitration law, international law and business law at Aix-Marseille University in Aix-en-Provence, France. *Id.*, ¶ 2. He teaches courses for LLM degrees

⁸ The Debtor previously submitted the Mouralis Declaration as an exhibit to its Sale Motion.

(master of laws) and/or LLB degrees (bachelor of laws) in maritime law and international law. *Id.* Professor Mouralis confirms that under French law, the *proces verbal* constitutes a legally enforceable administrative decision which transferred title to the Artifacts to the Debtor. *Id.*, ¶ 9. The transfer of title is total and unconditional, and does not assign any rights, liens or encumbrances to any third-parties. *Id.*¶ 12.

All of these allegations are now deemed admitted (*see Perez*, 774 F.3d at 1335-36) and are further supported by the Henshall Affidavit and Mouralis Declaration. Thus, the Debtor has proven them for purposes of these default proceedings for purposes of Rule 55 and 28 U.S.C. § 1608(e). Accordingly, the Debtor is entitled to an Order from this Court declaring that the Republic of France has no property interests in the Artifacts. Application of equitable principles justifies an immediate entry of default judgment. A contrary ruling would fail to serve the interests of the Debtors, the Official Committee of Unsecured Creditors, and the Official Committee of Equity Holders. As evidenced by the Monthly Operating Reports filed in the Debtors' cases, and as previously presented to the Court by the various constituents to this matter, the administrative costs of maintaining the Chapter 11 proceedings are draining the Debtors' capital. A default judgment at this time furthers the equity principles set forth in 11 U.S.C. § 105(a) to facilitate an efficient reorganization.

E. This Court is the only proper forum to hear this matter.

1. This Court has exclusive *in rem* jurisdiction over the Artifacts.

The filing of a bankruptcy petition under 11 U.S.C. §§ 301 creates a bankruptcy estate. 11 U.S.C. § 541(a). The district court in which the bankruptcy case is commenced

obtains exclusive *in rem* jurisdiction over all of the property in the estate. 28 U.S.C. § 1334(e); *Hong Kong & Shanghai Banking Corp. v. Simon (In re Simon)*, 153 F.3d 991, 996 (9th Cir. 1998). Bankruptcy courts have constructive possession of estate property, no matter where it is located. *Katchen v. Landy*, 382 U.S. 323, 327, 15 L. Ed. 2d 391, 86 S. Ct. 467 (1966); *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983). Protection of *in rem* jurisdiction is a sufficient basis for a court to restrain another court's proceedings. *Donovan v. City of Dallas*, 377 U.S. 408, 412, 12 L. Ed. 2d 409, 84 S. Ct. 1579 (1964). In such cases, “the state or federal court having custody of such property has exclusive jurisdiction to proceed.” *Id.* Protection of the bankruptcy court's *in rem* jurisdiction over estate property even allows a bankruptcy court to enjoin an international proceeding. *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996). “The efficacy of the bankruptcy proceeding depends on the court's ability to control and marshal the assets of the debtor wherever located” *Id.* Under this legal framework, this Court is the only forum in the world in which to determine the rights of the Debtor with respect to the Artifacts.

2. The Navarri letter is irrelevant to these proceedings and misapplies United States law.

On January 19, 2017, Marie-Laurence Navarri, Justice Attache, Embassy of France in the United States, sent this Court a letter alleging a myriad of reasons why it should not proceed with the Adversary Complaint. In the second sentence of her letter, Ms. Navarri confirms the letter is written “*pro se*,” or on her own personal behalf. *Duncan v. Poythress*, 777 F.2d 1508, 1518 (11th Cir. 1985), cert. denied, 475 U.S. 1129, 106 S. Ct. 1659, (1986) (“the term ‘*pro se*’ is defined as an individual acting ‘in [her]

own behalf...”). In her capacity as an individual, not counsel of record for France, Ms. Navarri has no standing to participate in this matter as she is not a party in interest pursuant to § 1109, and her letter has no legal effect. In many respects, it appears that in submitting her letter, Ms. Navarri served as the proxy for NOAA, which similarly has no standing to participate in this matter. *See Exhibit 1* (Periodic Report) attached hereto and *Exhibit 3* (email correspondence between Ms. Navarri and NOAA) attached hereto. Nevertheless, insofar as Ms. Navarri’s letter misstates every aspect of allegedly applicable United States law, the Debtor hereby responds to Ms. Navarri’s contentions.

Specifically, Ms. Navarri incorrectly claims: (i) France is immune under the FSIA; (ii) the relief sought in this Adversary Complaint seeks to disregard or nullify the *proces verbal*; and (iii) principles of international comity and the act of state doctrine, as referenced in *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159, 1179-1181 (11th Cir. 2011), compel this Court to exercise its discretion not to proceed with the Adversary Complaint. In every respect, Ms. Navarri misconstrues both United States law and the relief sought in this Adversary Complaint.

As set forth in detail in Section III.B. *supra*, the FSIA does not immunize France from these proceedings. To the contrary, any immunity that France might have been entitled to is waived by §106(a). Additionally, principles of international comity and the act of state doctrine are irrelevant to these proceedings, as there is no conflict of laws and the legality of the *proces verbal* is not at issue.

The expressed policy concerns of an individual employed by a foreign government do not deprive a United States Bankruptcy Court of its right/obligation to adjudicate the ownership or disposition of tangible property otherwise within the Court's jurisdiction under U.S. law. Nor should a French tribunal abstain from adjudicating disposition of privately owned property in France just because a foreign government asserts it should.

Comity is a doctrine of prudential abstention under which a U.S. court may recognize “the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens.” *Hilton v. Guyot*, 159 U.S. 113, 164 (1895). Such deference may be appropriate, for example, when a court that otherwise has jurisdiction might refrain from exercising that jurisdiction “with respect to a person or activity having connections with another state when the exercise of such jurisdiction is unreasonable.” *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 818–19 (1993) (quoting Restatement (Third), Foreign Relations Law of the United States § 403(1)). *Cf. Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1237 (11th Cir. 2004) (international comity “is an abstention doctrine: A federal court has jurisdiction but defers to the judgment of an alternative forum.”). It might also be appropriate in deciding whether to grant recognition of foreign proceedings and enforcement of foreign court orders. *See, e.g., In re Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685 (U.S. Bankruptcy Court, S.D.N.Y. 2010); *In re Atlas Shipping A/S*, 404 B.R. 726 (U.S. Bankruptcy Court, S.D.N.Y. 2009).

Application of international comity may also be appropriate in cases where there is a “true conflict” between domestic and foreign law. *See, In re Simon*, 153 F.3d at 999; *see also, United International Holdings Inc. v. Wharf Holdings Ltd.*, 210 F.3d 1207, 1223 (10th Cir. 2000) (“In general, we will not consider an international comity or choice of law issue unless there is a ‘true conflict’ between United States law and the relevant foreign law.”); *In re Maxwell Communication Corp.*, 93 F.3d 1036, 1049 (2d Cir. 1996) (“International comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction.”).

The doctrine of comity has no application in the instant matter because there is no conflict of laws or jurisdiction, nor is there any relevant foreign proceeding or judgment. In fact, the Debtor acknowledges and accepts the *proces verbal* as a lawful instrument transferring title to the Artifacts to the Debtor.⁹ The Debtor does not seek a judgment from this Court that the *proces verbal* was “erroneous in law or in fact.” *Hilton v. Guyot*, 159 U.S. at 163-64. Quite the opposite is true. As the lawful owner of the Artifacts, Debtor, by the Adversary Complaint, merely seeks an Order *confirming* the legal effect

⁹ Unlike these proceedings, principles of comity were squarely at issue before the United States District Court for the Eastern District of Virginia in 2004 (the “EDVA Court”), when that court sought to invalidate the *proces verbal* in its entirety. *R.M.S. Titanic, Inc. v Wrecked & Abandoned Vessel*, 323 F. Supp. 2d 724 (E.D. Va. 2004). In refusing to recognize the French Administrator’s decision to award the Artifacts to RMST, the EDVA Court concluded that an application of the principles of comity did not justify the EDVA Court’s recognition of the French administrative proceeding. *Id.* at 733. On appeal, the United States Court of Appeals for the Fourth Circuit vacated the EDVA Court Order with respect to the ownership of the French Artifacts, thus re-confirming the legal effect of the *proces verbal* and confirming Debtor’s ownership of the Artifacts. *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 528 (4th Cir. 2006). Even following the attempted invalidation of the *proces verbal* by the EDVA Court, the Republic of France elected not to file an *amicus* brief in the Fourth Circuit supporting the application of comity and defending as valid the French administrative procedures. France chose to abstain from those proceedings even though the Debtor invited and urged its participation. The conscious decision by the Republic of France not to participate in the instant matter is consistent with its abstention between 2004 and 2006.

of the *proces verbal* which transferred title to the Artifacts to the Debtor. Because the Debtor accepts as lawful the transfer instrument, there is no conflict of law, and issues of comity have no bearing on these proceedings.

Furthermore, the party asserting the applicability of the comity doctrine bears the burden of proof. *Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996, 999 (2d Cir. 1993). As the Republic of France has consciously defaulted, it has not raised the issue of comity, let alone met the standard of proof as to its application.

For different reasons, the act of state doctrine and the holding in *Odyssey Marine* are irrelevant to these proceedings. Unlike the principles of comity, “[t]he act of state doctrine is not some vague doctrine of abstention but a ‘*principle of decision* binding on federal and state courts alike.’ . . . Act of state issues only arise when a court *must decide* -- that is, when the outcome of the case turns upon -- the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine.” *W.S. Kirkpatrick & Co., Inc. v. Env. Tectonics Corp., Int'l*, 493 U.S. 400, 406, 110 S. Ct. 701, 107 L. Ed. 2d 818 (1990) (citations omitted). “Courts in the United States have the power, and ordinarily the obligation, to decide cases and controversies properly presented to them.” *Id.* at 409. “The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid.” *Id.*

The doctrine applies only when a United States court is asked “to declare *invalid* the official act of a foreign sovereign performed within its own territory.” *Id.* at 405 (emphasis added). In other words, it applies only where the legality of an act of a foreign state is at issue and the outcome of the case turns upon the answer. Where the legality of an act of a foreign state is not at issue, the act of state doctrine does not apply. *Id.* at 406. (see e.g. *Geophysical Services, Inc. v. TGS-NOPEC Geophysical Services*, No. 14–1368, 2015 U.S. Dist. LEXIS 151441, *22 (S.D. Texas, Nov. 9, 2015); *In re Vitamin C Antitrust Litigation*, 810 F.Supp.2d 522 (E.D. NY. 2011)).

Because the validity of a foreign sovereign act is not at issue in this proceeding, the doctrine has no application to this case. The Debtor accepts as valid the *proces verbal*, as does Ms. Navarri. At issue here is not the legality of the *proces verbal*, but its effect in this United States bankruptcy proceeding. Insofar as the outcome of this matter does not depend on whether the French Government had the authority to issue the *proces verbal*, the act of state doctrine does not apply here. *Id.*

The holding in *Odyssey Marine* does not impact this case. *Odyssey Marine Exploration, Inc. v. Unidentified Shipwrecked Vessel*, 657 F.3d 1159. In *Odyssey Marine*, the Eleventh Circuit affirmed the district court’s holding that it lacked *in rem* jurisdiction over a wrecked Spanish vessel. The district court lacked subject matter jurisdiction over the wreck because (i) the wreck and cargo are the remains of a sunken Spanish warship and are therefore owned by Spain; and (ii) where the *res* at issue is the property of a foreign state, the federal courts only have jurisdiction to arrest the *res*, thus acquiring *in rem* jurisdiction, if authorized by the FSIA. *Id.* at 1171. The court

concluded that no exception to the FSIA applied for matters involving the attachment and arrest of Spanish property. *Id.* at 1179; *see also* 28 U.S.C. § 1609 (“the property in the United States of a foreign state shall be immune from attachment arrest and execution”).

In contrast, as confirmed by the *proces verbal*, the Artifacts were never the property of France because the *R.M.S. Titanic* was not a French flagged vessel and tragically wrecked in international waters.¹⁰ *See*, Exhibit 5 (Mouralis Declaration) attached hereto. The *proces verbal* confirms as much, and there has never been dispute on this issue. Similarly, while no exception to the FSIA applied to attachment of the Spanish property under 28 U.S.C. § 1609, thus depriving the *Odyssey Marine* trial court of *in rem* jurisdiction, France’s immunity under the FSIA has been clearly and unequivocally waived by 11 U.S.C. § 106. *See*, Section III.B. *supra*. Consequently, this Court’s *in rem* jurisdiction under 28 U.S.C. § 1334(e) is alive and well in these proceedings.

The “unique interest” and the “specific affront” referenced in *Odyssey Marine* and urged by Ms. Navarri in her letter as the basis for this Court’s suggested abstention in these proceedings only applies where principles of comity “take concrete form,” where

¹⁰ Navigable waters that lie inland of a nation's borders are within the nation's complete control, the same as any real property within its borders. *See RMS Titanic, Inc. v. Haver*, 171 F.3d 943, 965 (4th Cir. 1999) (citing *United States v. Louisiana*, 394 U.S. 11, 22, 22 L. Ed. 2d 44, 89 S. Ct. 773 (1969) (footnote omitted)). Beyond the territorial waters, where the *R.M.S. Titanic* wreck occurred, lie the high seas, over which no nation can exercise sovereignty. *Id.*; *see also United States v. Louisiana*, 363 U.S. 1, 33-34, 4 L. Ed. 2d 1025, 80 S. Ct. 961 (1960) (stating that the “high seas, as distinguished from inland waters, are generally conceded by modern nations to be subject to the exclusive sovereignty of no single nation”); *The Vinces*, 20 F.2d 164, 172 (E.D.S.C. 1927) (stating that the high seas “are the common property of all nations”). Mutual access to the high seas is firmly etched into the *jus gentium*. *See, e.g., United Nations Convention on the Law of the Sea*, Dec. 10, 1982, 21 I.L.M. 1245, 1286-87 arts. 87, 89 (providing that the high seas shall be open to all nations and that “no State may validly purport to subject any part of the high seas to its sovereignty”). The *R.M.S. Titanic* wrecked in international waters. *R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel*, 742 F. Supp. 2d 784, 788 (E.D. Va. 2010). Accordingly, the Republic of France could not claim any of its property as its own.

ownership of the property at issue is claimed by the foreign state, and where an exception to the FSIA does not apply. *Republic of the Philippines v. Pimentel*, 553 U.S. 851, 866 128 S. Ct. 2180, 2190 (2008). None of these circumstances exists in the instant matter.

3. Diplomatic efforts do not carry the force of law and are immaterial for purposes of these proceedings.

The diplomatic efforts referenced by Ms. Navarri in her letter do not carry the force of law in this country, or elsewhere, and are irrelevant to these proceedings. In 1986, Congress passed the Titanic Maritime Memorial Act of 1986, 16 U.S.C. § 450rr et seq. (the “Act”). The purpose of the Act was “to direct the United States to enter into negotiations with other interested nations to establish an international agreement which [would] provide for the designation of the *R.M.S. Titanic* as an international maritime memorial, and protect the scientific, cultural, and historical significance of the *R.M.S. Titanic*.” 16 U.S.C. § 450rr(b). To that end, the Act directed NOAA “to enter into consultations with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the *R.M.S. Titanic*” that were “consistent with its national and international scientific, cultural, and historical significance and the purposes” of the Act, and would promote the safety of people involved with researching/exploring the *R.M.S. Titanic* site. 16 U.S.C. § 450rr–3(a).

Pursuant to the Act, the United States negotiated the International Agreement Concerning the Shipwrecked Vessel *R.M.S. Titanic* with France, Canada and the United Kingdom, which the United States signed on June 18, 2004, the acceptance of which was subject to the enactment of implementing legislation by Congress. *Agreement*

Concerning the Shipwrecked Vessel RMS Titanic, Nov. 6, 2003, available at <http://www.gc.noaa.gov/documents/titanic-agreement.pdf> (the “Treaty”). However, Congress never enacted implementing legislation and the Treaty has no legal effect in this country or elsewhere.¹¹ Pursuant to the Act, the United States, through NOAA, also developed guidelines “intended to guide the planning and conduct of activities aimed at *R.M.S. Titanic*, including exploration, research, and if appropriate, salvage.” *NOAA Guidelines for Research, Exploration and Salvage of RMS Titanic*, 66 Fed. Reg. 18905, 18912 (Apr. 12, 2001). “As guidelines, they are advisory in nature” without legal effect. *Id.* at 18909. Consequently, none of these diplomatic efforts referenced by Ms. Navarri carries the force of law, nor do they impact these proceedings. More to the point, even if the Act or the Treaty carried the force of law, which they do not, neither vests a country with authority to regulate the Debtors’ private property, acquired 24 years ago.

III. CONCLUSION

This adversary proceeding is squarely within this Court’s jurisdiction, and the Republic of France is not entitled to sovereign immunity. The Republic of France has been properly served in accordance with US and international law and has chosen not to respond or participate in this adversary proceeding. Default judgment should be entered against the Republic of France.

¹¹ The Agreement enters into force when two parties sign and agree to be bound under international law. The United Kingdom ratified the Agreement on November 6, 2003. The United States never passed implementing legislation and neither Canada nor France signed the treaty.

WHEREFORE, the Debtor requests that the Court enter default judgment against the Republic of France declaring that it has no interest in the Artifacts.

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*Co-Counsel for the Debtors and Debtors in
Possession*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF on March 24, 2017. I also certify that the foregoing document is being served this day on the following counsel of record via transmission of Electronic Filing generated by CM/ECF:

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Via U.S. Mail

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EXHIBIT 1

Periodic Report

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January 3, 2017

HAND DELIVERY

Fernando Galindo, Clerk
United States District Court
600 Granby Street
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RMS Titanic, Inc., etc. v. The Wrecked and Abandoned Vessel, etc
Civil Action No. 2:93cv902

Dear Mr. Galindo:

Enclosed are a Periodic Report of R.M.S. Titanic, Inc. on the Progress of Research and Recovery Operations which we ask that you file on behalf of RMS Titanic, Inc. in the above-captioned matter. Copies of same have been delivered this day by hand to counsel for the Government and Chief Judge Smith.

Thank you for your assistance. With best wishes, I am

Sincerely yours,



Robert W. McFarland

RMW/kyw

Encl

CC: The Honorable Rebecca B. Smith, Chief Judge (by hand delivery)
Kent Porter, Esq. (by hand delivery)
Brian A. Wainger, Esq.

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

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

Plaintiff,

v.

Civil Action No. 2:93cv902

The Wrecked and Abandoned
Vessel, . . . believed to be
the RMS TITANIC, in rem,

Defendant.

**PERIODIC REPORT OF R.M.S. TITANIC, INC.
ON THE PROGRESS OF RESEARCH AND
RECOVERY OPERATIONS**

NOW COMES Plaintiff, R.M.S. Titanic, Inc. ("RMST"), by counsel, and files this
"Periodic Report of R.M.S. Titanic, Inc. on the Progress of Research and Recovery Operations"
("Periodic Report").

I. Corporate Developments

RMST, together with its parent Company, Premier Exhibitions, Inc. ("Premier"),
continues with its restructuring under Chapter 11 of Title 11, 11 U.S.C., §§ 101 *et seq.* (the
"Bankruptcy Code") in the United States Bankruptcy Court for the Middle District of Florida in
Jacksonville, Florida ("Bankruptcy Court"). As previously reported to this Court, on August 17,
2016, the Company filed an Adversary Complaint against The Republic of France in the
Bankruptcy Court seeking a declaratory judgment that The Republic of France has no legal right
or interest in the artifacts recovered by the Company in its 1987 expedition to the wreck of the

RMS TITANIC (the “Adversary Proceeding”). The Adversary Proceeding is in its early stages, and the Company will continue to report material developments as they occur.

II. NOAA Activities

On February 23, 2016, the Company filed a Periodic Report under seal with this Court which informed the Court about confidential and proprietary matters related to the Company’s financial condition, and about extensive discussions between the Company and NOAA. Discussions between NOAA and the Company on the topics detailed in that Periodic Report continued on a regular basis through the end of June, 2016, and included extensive conversations regarding considerations by the Company to sell certain artifacts contained within the 1987 artifact collection (referred to in the Covenants and Conditions, and herein as the “French Titanic Artifact Collection”). The Company informed NOAA about its then financial condition at the first meeting of the parties on January 7, 2016, and provided consistent updates between January and June, 2016. The Company notified NOAA immediately of its Chapter 11 filing on June 14, 2016.

Shortly after the bankruptcy filing, the Company continued to engage in extensive discussions with NOAA about the scope and enforceability of the Covenants and Conditions inside of a bankruptcy, and about the likely effort by the Company to seek judicial authorization from the Bankruptcy Court to sell artifacts from the French Titanic Artifact Collection. The topic of a potential sale of artifacts from the French Titanic Artifact Collection was discussed at the parties’ first meeting in Washington, DC on January 7, 2016, and continued until June 20, 2016, when the Company filed with the Bankruptcy Court its motion for authorization to sell certain items in the French Titanic Artifact Collection.

The Company engaged in these discussions with NOAA in good faith, to honor and uphold those provisions in the Covenants and Conditions seeking to vest in NOAA oversight of compliance with the Covenants and Conditions. See Covenants and Conditions, Section V. In continuously apprising NOAA of the Company's most sensitive information, the Company similarly sought to satisfy this Court's desire to have an open and free exchange of information with NOAA regarding the Company and its Titanic-related activities. In this respect, all of these discussions between NOAA and the Company were conditioned upon, and subject to a Non-Disclosure Agreement ("NDA") entered into on January 7, 2016 between the United States Department of Commerce and the Company. See, Exhibit A, attached hereto.

Pursuant to a subpoena issued by the Company on September 2, 2016, to NOAA in the Adversary Proceeding, on or about October 7, 2016, NOAA produced a series of documents to the Company. The produced documents reveal a disturbing disregard by NOAA and its employees of the NDA, in an effort to coalesce an international opposition to the Company's efforts to sell certain of the artifacts within the French Titanic Artifact Collection. Putting aside for the moment the Company's legal rights and remedies with respect to NOAA's breach of the NDA, RMST interprets the Covenants and Conditions as imposing on it the obligation to inform this Court of NOAA's actions.

On June 1, 2016, two weeks before the bankruptcy filing, NOAA advised the Company that it needed to provide The Republic of France adequate notice in advance of any sale of the artifacts from the French Titanic Artifact Collection. The Company assured NOAA that it would provide NOAA advance notice of any sale, such that NOAA would have the opportunity to provide similar notice to The Republic of France. The Company advised NOAA, however, that it would be inappropriate for NOAA to notify France of a possible sale of certain of the French

Titanic Artifact Collection at that time, as the Company had not made a final decision on a possible sale. RMST reminded NOAA that all such discussions between NOAA and the Company were the subject of the NDA.¹

On June 16, two days after the bankruptcy filing, NOAA asked the Company to release from seal the documents contained in the February 23, 2016 Periodic Report, and to relieve NOAA of its duties under the NDA, claiming the seal over the documents, together with the NDA, inhibited NOAA's ability to participate in the bankruptcy proceedings. The Company denied NOAA's requests, both with respect to unsealing the documents and relieving NOAA of its obligations under the NDA. During that same meeting, though, in an effort to relieve NOAA of its perceived conflict in maintaining its diplomatic responsibilities to The Republic of France on the one hand, while complying with its legal duties under the NDA on the other hand, the Company allowed NOAA to inform The Republic of France of the Company's intention to sell certain artifacts from the French Titanic Artifact Collection. The Company granted this authorization to NOAA on this June 16, 2016 call because it had decided to move the Bankruptcy Court for authorization to sell certain items in the French Titanic Artifact Collection, and intended to file such motion immediately.

RMST has now learned that months before June 16, 2016, NOAA had disregarded the NDA, and deliberately misled the Company in order to extract from the Company confidential information to be used by NOAA in very calculated and public opposition to the Company's efforts to sell within the bankruptcy proceedings certain artifacts from the French Titanic Artifact Collection. In doing so, NOAA breached its duties to the Company, to the public interest as required under the Covenants and Conditions, and to this Court.

¹ These details, and other meeting details summarized in this Periodic Report, are documented in the Minutes of the parties' meetings, prepared by NOAA as part of a documentation procedure agreed to by the parties.

The Company has learned that NOAA informed The Republic of France of the possible sale of artifacts at least as early as March, 2016, and recruited members in France's highest diplomatic levels to oppose RMST's efforts. Indeed, between March and June, 2016, before the Company had determined how it intended to proceed, NOAA used the Company as an unknowing pawn in an international, diplomatic chess game, seeking to prevent a sale of any artifacts from the French Titanic Artifact Collection.

On March 28, 2016, NOAA representatives emailed Pierre Michel, Science and Technology Attache, Embassy of France in the United States, regarding "a possible sale of the 1987 French Collection for commercial purposes that would violate the award of the French Tribunal as well as the 2001 UNESCO Convention." *See, Exhibit B* attached hereto. Mr. Michel responded the next day that he had notified Mr. Serge Segura, the French Ambassador of Oceans of the "possible sale." *See, Exhibit C* attached hereto. NOAA representatives subsequently invited Mr. Michel and Ambassador Segura to participate in a conference call to discuss how the parties could prevent such a sale. *See, Exhibit B.* Based on the limited information currently available to it, the Company cannot yet determine the full extent of the collaboration between NOAA and France in the Spring of 2016, but these documents confirm improper communications, in violation of the NDA, about a then-theoretical event.

On June 15, 2016, NOAA informed Pierre Michel not only that the Company had filed for bankruptcy, but that the Company intended to seek authorization from the Bankruptcy Court to sell certain artifacts from the French Titanic Artifact Collection. *See, Exhibit D,* attached hereto. This email followed the Company's June 1 insistence that NOAA adhere to the NDA, and preceded by one day the Company's authorization to share such information with The Republic of France.

NOAA's improper communications paid dividends, at least temporarily deterring the Company's efforts to sell certain artifacts in the French Titanic Artifact Collection inside the bankruptcy. On the morning of July 12, just hours before a hearing in the Bankruptcy Court on the Company's motion for authorization to sell certain artifacts, the United States Government filed a pleading with the Bankruptcy Court, attaching a July 8, 2016 letter from the Embassy of France. *See* Exhibit E attached hereto. The letter opposes a sale of the artifacts on a number of grounds, including on the basis of a provision in the 1987 Charter Party Agreement between IFREMER and the Company. Four months earlier, legal counsel for NOAA obtained from P.H. Nargeolet a copy of the Charter Party Agreement, and an interpretation of the provision addressed by The Republic of France in its letter. *See*, Exhibit F attached hereto. P.H. Nargeolet led the 1987 expedition. He has been an employee of RMSI for at least six years, and for many years before that served as an independent contractor to the Company. Legal counsel for NOAA contacted Mr. Nargeolet, acquired a copy of the Charter Party Agreement from him, and obtained Mr. Nargeolet's input and interpretation of it without even advising the Company, let alone obtaining its permission to speak to a Company employee. *Id.* The Company only learned of this conduct after it received and reviewed NOAA's document production.

On December 14, 2016, the Company received a letter from Mechthild Rossler, Director Culture Sector, United Nations Educational, Scientific and Cultural Organization ("UNESCO"), in which Ms. Rossler suggests that a future sale of any Titanic artifacts "alone or via a court" may violate the 2001 UNESCO Convention. *See*, Exhibit G attached hereto. That Ms. Rossler's expressed position is without legal merit is beside the point for the purposes of this Periodic Report. *See e.g.* January 3, 2017 letter from Company counsel to Ms. Rossler, attached hereto as

Exhibit H. Of more concern is that the positions expressed in Ms. Rossler's letter mirror the points outlined in NOAA's March 28, 2016 letter, attached hereto as Exhibit B.²

The actions set forth above violate the letter and spirit of the NDA and raise legitimate questions about the conduct and tactics of a United States Federal Agency. The actions also warrant this Court's consideration as to whether NOAA should continue to act in an oversight capacity for this Court vis a vis the Covenants and Conditions. The Company welcomes the opportunity to appear before the Court to further discuss these matters, and looks forward to hosting the Court and representatives of NOAA in Atlanta on January 9, 2017.

WHEREFORE, RMST submits this Periodic Report for the Court's information and consideration.

Respectfully submitted,

R.M.S. TITANIC, INC.

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757/965-6804



Robert W. McFarland

² Following the Company's June 20, 2016 motion for authorization from the Bankruptcy Court to sell certain artifacts, NOAA stepped up its written communication with France and its efforts to block such a sale. NOAA's efforts include extensive dialogue about the letter from the Embassy of France, attached hereto as Exhibit G, as well as communications regarding the Company's positions and the rulings of the Bankruptcy Court. NOAA's post-June 20 actions do not appear to violate the NDA or implicate other improper practices, and therefore are not the subject of this section of the Periodic Report.

CERTIFICATION

I hereby certify that a copy of the foregoing has been hand delivered this day to Kent Porter, Esq., U.S. Attorney's Office, 8000 World Trade Center, Norfolk, VA 23510, this 3rd day of January, 2017.



Robert W. McFarland

85744200_1

EXHIBIT A

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT ("Agreement") is entered into as of January 7, 2016, by and between Premier Exhibitions, Inc. ("Premier") and the United States Department of Commerce ("Commerce").

WHEREAS, (Premier) is providing information it deems proprietary to Commerce for an official purpose of Commerce,

and in consideration of the foregoing, the parties agree:

and thereafter
AK
AK

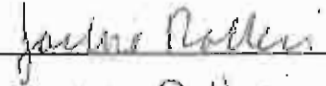
1. Premier acknowledges and agrees that:
 - (a) All information provided by Premier to Commerce at the meeting on January 7, 2016 shall be deemed confidential and proprietary.
 - (b) Premier has informed Commerce that it derives significant economic value from this Proprietary Data, not being known to the public;
 - (c) Premier has informed Commerce that any disclosure or unauthorized use of the Premier Proprietary Data could cause harm and loss to Premier;
2. Commerce acknowledges and agrees:
 - (a) to disclose the Premier Proprietary Data only to those of its employees with a need to know and to protect the data to the extent permitted by law;
 - (b) to not disclose, reveal, report, publish or transfer, directly or indirectly, any of the Premier Proprietary Data to any other person or entity, or allow any third-Party access to the Premier Proprietary Data to the extent permitted by law.
3. This agreement is made under and shall be governed by the laws of the United States. This Agreement may be amended by written agreement signed by both Parties hereto.
4. This Agreement may be terminated immediately by either party upon written notification to the other party. Such termination shall not affect Commerce's duties with respect to proprietary information provided by Premier prior to termination.
5. This Agreement imposes no obligation upon Commerce with respect to information that:
 - (a) was in Commerce's possession before receipt from Premier;
 - (b) is or becomes a matter of public knowledge;
 - (c) is received by Commerce from a third party without a duty of confidentiality;
 - (d) is disclosed by Premier to a third party without a duty of confidentiality on the third party;
 - (e) is disclosed by Commerce with Premier's prior written approval;
 - (f) is required by law to be disclosed.

6. These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. This paragraph shall not be construed to authorize the withholding of information from Congress or the taking of any personnel action against an employee who discloses information to Congress.

7. This agreement does not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto, as of the day and year first above written.

US Department of Commerce

By (signature): 
Name (print): Jackie Rolleri
Title: Attorney-Advisor, NOAA
Date: 1/17/2016

Premier Exhibitions, Inc.

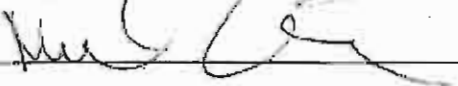
By (signature): 
Name (print): Michael Little
Title: CEO/COO - Premier
Date: 1/17/2016

EXHIBIT B

8/31/2016

National Oceanic and Atmospheric Administration Mail - Fwd: FACT-O

NOAA 000001



Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>

Fwd: FACT-O

Catherine Marzin - NOAA Federal <catherine.marzin@noaa.gov>
 To: James Delgado - NOAA Federal <James.Delgado@noaa.gov>
 Cc: Ole Varmer - NOAA Federal <Ole.Varmer@noaa.gov>

Mon, Mar 28, 2016 at 7:28 PM

Hi Jim,

Per our discussion this morning, I asked Pierre for a possible contact on Titanic related issues. He asked the big gun and asked Serge Segura, the new French Ocean Ambassador for help. It's pretty high up.

C

----- Forwarded message -----

From: Pierre Michel <attache-envt@ambascience-usa.org>

Date: Monday, March 28, 2016

Subject: RE: FACT-O

To: serge.segura@diplomatie.gouv.fr

Cc: Minh-Hà Pham <conseiller@ambascience-usa.org>, Clément Lefort <deputy-envt@ambascience-usa.org>, Vincent Delporte <Vincent.DELPORTE@dgtresor.gouv.fr>, "Catherine Marzin" <catherine.marzin@noaa.gov>, GAILL Francois <Francoise.GAILL@cirs-dir.fr>

Monsieur l'Ambassadeur, Cher Collègue,

Je suis ravi de voir que la note diplomatique FACTS nous a permis de rentrer en contact et je me réjouis de l'intérêt que vous portez à l'initiative FACT-O. Nous travaillons effectivement étroitement avec Françoise Gaill à la préparation du prochain événement qui aura lieu à l'automne en partenariat avec la NOAA. Ci-joint le compte-rendu de notre dernière réunion avec des représentants de cette agence ; notre principale interlocutrice (française) au sein de la NOAA est Catherine Marzin en copie de ce message (département des aires marines protégées). Les événements FACT-O abordent des dimensions qui dépassent largement la sphère scientifique et votre rôle en tant qu'Ambassadeur chargé des océans s'avérera précieux pour mobiliser des acteurs non scientifiques avec lesquels nous avons très peu d'interactions.

L'un des thèmes de notre prochain FACT-O sera l'archéologie marine et le patrimoine marin, ce sujet est au carrefour des préoccupations historiques et scientifiques car les épaves sont des oasis de biodiversité qui intéressent beaucoup les biologistes. La France a signé avec la NOAA un Memorandum of Understanding sur les aires marines protégées (ci-joint) et la prochaine étape serait un MOU sur l'exploration des épaves marines françaises au large des côtes américaines que nous aimerions présenter lors de l'atelier FACT-O. Mon collègue Vincent Delporte, représentant le MEEM au sein de l'ambassade, a tenté de contacter le ministère de la culture pour les sensibiliser au sujet mais sans succès jusqu'à présent. Les Etats Unis ont déjà signé un accord du même type avec l'Espagne (ci-joint) et si vous pouviez intercéder auprès des personnes en charge de cette question au ministère de la culture, nous vous en serions reconnaissants.

Sur le même registre, la NOAA nous demande quelle serait la personne de contact qui suit la convention internationale sur le Titanic. Il semble que la collection française de 1987 soit potentiellement mise en vente à des fins commerciales en infraction avec la loi française et la convention de 2001 de l'UNESCO.

Je vous avoue ma totale Incompétence sur ces sujets qui doivent vous être plus familiers compte tenu de votre précédente position de Sous-Directeur en charge du droit de la mer.

NOAA 000001

8/31/2016

National Oceanic and Atmospheric Administration Mail - Fwd: FACT-O

NOAA 000002
Je vous remercie par avance pour votre éclairage et le soutien que vous pourrez nous accorder dans la réalisation du programme FACT-O et je reste à votre disposition pour plus d'informations.

Bien cordialement,

--

Pierre Michel

Attaché pour la Science et la Technologie

Ambassade de France aux Etats Unis

Tel : +1 202 944 6216

www.france-science.org

De : SEGURA Serge [mailto:serge.segura@diplomatie.gouv.fr]

Envoyé : mercredi 23 mars 2016 12:52

À : MICHEL Pierre; LEFORT Clément

Objet : FACT-O

Chers collègues,

J'avais lu avec beaucoup d'intérêt en son temps votre ND 2016-019704 sur votre initiative FACT-O.

J'ai croisé trop rapidement Françoise GAILL à son retour de Washington qui m'a dit tout le bien qu'elle pensait de cette initiative et de votre action. Elle me demandait dans le même temps si j'envisageais de me joindre à cette action.

Malheureusement nous n'avons pu discuter plus avant mais je la reverrai bientôt plus longuement.

A la lecture de votre ND, il apparaît que FACT-O est une opération scientifique vis-à-vis de laquelle je ne vois pas, a priori, la valeur ajoutée que je pourrai apporter ;

Je voudrais donc savoir si vos projets sont maintenant plus précis et, très franchement et sans langue de bois, si vous pensez qu'une des manifestations de ce cycle pourrait trouver un intérêt quelconque à ma présence.

Si votre réponse est négative, je le comprendrai aisément puisque je n'ai aucune compétence scientifique sauf si vous appelez le droit et la diplomatie des sciences (!). En revanche, si vous pensez utile d'apporter à un des débats une approche autre que strictement scientifique et qui serait de ma compétence, indiquez le moi et nous verrons alors ensemble si la chose est envisageable.

Vous aurez compris mon intérêt pour votre initiative, ainsi que ma volonté d'être utile sans pour autant m'imposer. Je vous fais donc confiance pour me dire ce qu'il en est, de sorte à ce que je n'ai pas de regrets par la suite.

Bien cordialement

NOAA 000002

8/31/2016

National Oceanic and Atmospheric Administration Mail - Fwd: FACT-O

NOAA 000003

Serge Ségura
Ambassadeur chargé des océans
Ministère des affaires étrangères et du développement international
37 Quai d'Orsay

75700 Paris 07SP

(FRANCE)

tél : +33 (0) 1 43 17 71 65 - +33 (0) 6 99 86 81 82

email : serge.segura@diplomatie.gouv.fr






Liberté • Égalité • Fraternité

RÉPUBLIQUE FRANÇAISE

Climate Team Lead
NOAA Office of National Marine Sanctuaries
1305 East West Highway
Silver Spring MD 20910
Tel: (240) 533-0673 - Please note the new phone number.

3 attachments

-  Minutes of the meeting v2.docx
16K
-  20130417_Signed_Spain MOU_English.pdf
436K
-  MOA-2010-003 #7991 France fully signed.pdf
1368K

NOAA 000003

EXHIBIT C

8/31/2018

National Oceanic and Atmospheric Administration Mail - Re: More Titanic

NOAA 000004



Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>

Re: More Titanic

Catherine Marzin <catherine.marzin@noaa.gov>

Tue, Mar 29, 2016 at 12:21 PM

To: Pierre Michel <attache-envt@ambascience-usa.org>

Cc: James Delgado <James.Delgado@noaa.gov>, Gonzalo Cid - NOAA Federal <gonzalo.cid@noaa.gov>, Clément Lefort <deputy-envt@ambascience-usa.org>, Ole Varmer <Ole.Varmer@noaa.gov>

Hi Pierre,

Thanks so much for reaching out to Serge Segura on our effort and on the Titanic issue. As luck would have it, Ole Varmer (CCed here), NOAA's lead attorney on the maritime heritage including the Titanic negotiations will be working on the new MOU for us. Ole was especially happy to hear of your email to Ambassador Segura, who was then his French counterpart as the lead negotiator for France on the Titanic Agreement. Below additional background information Ole shared on the RMS Titanic.

If Ambassador Segura is interested in getting involved, we would be happy to set up a follow up conference call/gotomeeting/webex/Google Hangout to discuss both the MOU in general and the Titanic in particular (Ole suggested that perhaps the Titanic could even be integrated into the MOU).

I am looking forward to our call tomorrow.

Best,

Catherine

~~~~~

1) The award by the French Administrative Tribunal to Titanic Ventures (now RMST) of the artifacts salvaged on the 1987 expedition on conditions that they will be conserved for cultural purposes and will not be sold for commercial purposes [http://www.gc.noaa.gov/documents/092293-french\\_award.pdf](http://www.gc.noaa.gov/documents/092293-french_award.pdf). A commercial sale of it would violate the condition of the award and call into question RMST title to the artifacts.

2) The Charter Agreement with IFREMER where the French Institute had similar conditions as a threshold requirement for the 1987 expedition. See attached (The Charterers [TV/RMST] shall not sell the artifacts collected by Owners to any individual or private collector, but shall use them only for exhibition purposes. However the collection may be sold to any entity that will make them available for exhibition to the public.)

3) The sale of the 1987 French Artifact Collection for commercial purposes would also be a violation of the 2001 UNESCO Convention on Underwater Cultural Heritage and inconsistent with the International Agreement on Titanic that was negotiated between France, the United Kingdom, Canada and the United States. See [http://www.gc.noaa.gov/gcil\\_titanic-intl.html](http://www.gc.noaa.gov/gcil_titanic-intl.html) and [http://portal.unesco.org/en/ev.php-URL\\_ID=13520&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.html)

On 3/29/2016 11:46 AM, Pierre Michel wrote:

Hi Catherine,

I wrote yesterday to Serge Segura, our new Ambassador for oceans affairs (message attached). He was formerly, director of Maritime Legal Affairs at the Ministry of Foreign Affairs. He is on vacations right now but he should be able to answer in a few days.

Best,

Pierre

NOAA 000004

8/31/2016

National Oceanic and Atmospheric Administration Mail - Re: More Titanic

NOAA 000006

--

Pierre MICHEL

Science and Technology Attaché

Embassy of France in the United States

Tel : 202 944 62 16

<http://www.france-science.org/>

---

De : Catherine Marzin [mailto:catherine.marzin@noaa.gov]

Envoyé : Monday, March 28, 2016 1:36 PM

À : Pierre Michel <attache-envt@ambascience-usa.org>

Cc : James Delgado <James.Delgado@noaa.gov>; Gonzalo Cid - NOAA Federal <gonzalo.cid@noaa.gov>

Objet : Fwd: Re: More Titanic

Hi Pierre,

A separate topic but related to our MOU on maritime heritage: We were wondering who would be the point of contact in France to address Titanic related questions (see below)?

Best,

Catherine

----- Forwarded Message -----

**Subject:** Re: More Titanic

**Date:** Mon, 28 Mar 2016 13:07:09 -0400

**From:** James Delgado - NOAA Federal <james.delgado@noaa.gov>

**To:** Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>, Catherine Marzin <catherine.marzin@noaa.gov>

Hi

Just in from a morning of doctors (shoulder). I'm copying Catherine as she is more in touch with the Embassy folks and can advise us.

NOAA 000005



8/31/2016

National Oceanic and Atmospheric Administration Mail - Re: More Titanic

NOAA 000006

On Mon, Mar 28, 2016 at 10:25 AM, Ole Varmer - NOAA Federal <ole.varmer@noaa.gov> wrote:

Jim,

In regard to MOU with France, do you have a POC that you feel comfortable talking about the Titanic situation and giving them a heads up on the possible sale of the 1987 French Collection for commercial purposes that would violate the award of the French Tribunal as well as the 2001 UNESCO Convention?

On Mon, Mar 14, 2016 at 6:55 AM, James Delgado - NOAA Federal <james.delgado@noaa.gov> wrote:

Dear Jenya:

Here's what I understand about the Act and the treaty. I am copying Ole Varmer as he can correct and add to this. Ole is the best source on this and other aspects of Titanic law.

1. The idea of the Act was conceived by Ballard somewhere shortly after the Discovery expedition. I.e. he was quite prophetic when he began think about legal status of the *Titanic* artifacts yet in 1985, before any real salvage operation took place.

Ballard appeared before Congress and argued against any salvage. He proposed making it a memorial. The Titanic Memorial Act was then passed and expressed the WISHES of Congress. It is not a binding law in regard to regulating the wreck, which was then and to this day only regulated under Admiralty Law. A key aspect of that legislation, however, was the expressed desire of Congress for an international agreement, and for NOAA to be involved in determining standards. Ole was and remains NOAA's key person with all of that.

2. He then approached Congress and NOAA with this idea.

I am not sure of who had the idea. More than likely, Ballard approached key Congressmen and their aides drafted the legislation. NOAA was named in the legislation, but I am not sure that NOAA requested that. I was in the National Park Service at the time, and we supported the legislation, but there was really no plan to move forward until Ole came along.

3. On a basis of it, your group (you, Ole, Ash Roach, Robert Gronler et al.) developed the draft treaty in 1986 (?).

NOAA 000006

B31/2016

National Oceanic and Atmospheric Administration Mail - Re: More Titanic

NOAA PRODUCT

The draft treaty was prepared in a side room after a meeting of various international experts called by the National Maritime Museum, Greenwich in the UK in 1986, as I recall. I had suggested the meeting and some substantive action to help implement steps for the protection and preservation of Titanic with the museum's director, Richard Ormand, and then chairman of the board, Lord Lewin in response to the concern of many member museums of the International Congress of Maritime Museums to the planned exhibition of recovered Titanic artifacts by Greenwich. I have a big file on this and the various actions we were involved in (It is currently with Ole). The meeting was international in scope, and at the end, Frank Wall, Ole Varmer, Ash Roach, Robert Grenier and I stepped into the side room to discuss and then draft the first version of the international agreement (treaty). Frank Wall was then with the Ministry of Transport, as I recall, and he was going to take it to his government, while Roach and Varmer would take it to the US, and Grenier and I would take it to Canada.

4. This document was eventually signed by the President in October 1986.

The Titanic Memorial Act was signed by the President in 1986 - I do not recall the signature process for the treaty - Ole will know. It is not in effect at this time, however.

5. But it was finally ratified by the countries-participants only in 2003-2004...

It has not been "ratified" or gone into effect. Only the UK has essentially signed it - and it needs at least two signatories to go into effect. Other nations have expressed an interest (Estonia and Sweden, as I recall). I believe that at the time, Russia had no interest in signing, and neither did France, over concerns it might regulate activities then undertaken by nations who had the assets (Mir I and Mir II, Nautilus) to work on Titanic.

Again, Ole will be the ideal person to answer these. Ole, Eugene (Jenya) is an exceptionally talented author who is revising his book on Titanic, previously published in Russia, for an English speaking audience. It is the most carefully researched, objective and thorough account I have yet read on the modern aspects of Titanic as he has shared his working drafts of chapters with me, and I have been providing sources and information from my museum, ICMM, and INA files on Titanic.

Jim

On Fri, Mar 11, 2016 at 3:30 PM, Eugene N. <duman1983@gmail.com> wrote:

Dear Jim!

Thank you wholeheartedly and countlessly for sharing new links and for more than inspiring and exciting words at the end of this workweek! Your words alone mean a great deal for me!

I'm going to check carefully Ole Varmer's video & textual materials later today (at night after work) and tomorrow (when at work, again).

But I can't rush you with any new material, never! Just take your time, please (especially on the weekend)!

Before proceeding further, I need to clarify some more details regarding the *Titanic Act*... Could you please tell me: do I get the basic outline and chronology of the events right, or not?

1. The idea of the Act was conceived by Ballard somewhere shortly after the Discovery expedition, i.e. he was quite prophetic when he began think about legal status of the *Titanic* artifacts yet in 1985, before any real salvage operation took place.

2. He then approached Congress and NOAA with this idea.

3. On a basis of it, your group (you, Ole, Ash Roach, Robert Grenier et al.) developed the draft treaty in 1986 (?).

NOAA 000007

8/31/2016

National Oceanic and Atmospheric Administration Mail - Re: Mera Titanic

NOAA 000008

This document was eventually signed by the President in October 1986.  
5. But it was finally ratified by the countries-participants only in 2003-2004...

Is this schematic picture correct, or?

With all the best weekend wishes, innumerable thanks and the deepest respects, sincerely yours,  
Jenya.

---

Это сообщение было отправлено с неинфицированного компьютера,  
защищенного программой Avast.  
www.avast.com

Ole Vamer, Attorney-Advisor, International Section Office of General Counsel - NOAA

DC office (202) 482-1402

SS office (301) 713-7385


\*MOBILE iPhone (202) 558-8992

Image result for shark graphic design

--  
Climate Team Lead  
NOAA Office of National Marine Sanctuaries  
1305 East West Highway  
Silver Spring MD 20910  
NEW TELEPHONE NUMBER: (240)533-0673

www.sanctuaries.noaa.gov

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 Titanic 1987 Chart Party (1) [1].pdf  
1488K

NOAA 000008

# **EXHIBIT D**

5/31/2016

National Oceanic and Atmospheric Administration Mail - Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH  
NOAA 000008



Ole Varner - NOAA Federal <ole.varner@noaa.gov>

**Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH**

Ole Varner - NOAA Federal <ole.varner@noaa.gov>

Wed, Jun 15, 2016 at 11:31 PM

To: Pierre Michel <attache-envt@ambascience-usa.org>, Clément Lefort <clement.lefort@ambascience-usa.org>, Minh-Hà Pham <conseiller@ambascience-usa.org>

Cc: serge.segura@diplomatie.gouv.fr, Gonzalo Cid <gonzalo.cid@noaa.gov>, Catherine <catherine.marzin@noaa.gov>, Paul Ticco - NOAA Affiliate <paul.ticco@noaa.gov>, David M Gravalles <GravallesDM@state.gov>, Lisa Phelps <PhelpsE@state.gov>

Dear Colleagues,

The past couple of days there have been developments involving French heritage that I want to alert you all about in response to your request for advice about the French historic wreck off Florida and Titanic which you may not be aware. I've copied US Department of State attorney Dave Gravalles as he should be included in discussions and may want to add or amend my informal comments.

First, in regard to Titanic, the US salvage company has filed for bankruptcy and we are concerned that the collection of artifacts salvaged from Titanic may be sold. This would include what we refer to as the "French TITANIC Artifact Collection" associated with artifacts salvaged in 1987 expedition that was accomplished with assistance from the French Institute IFREMER (co-discoverer of the wreck). The "1987 French Collection" involves approximately 1,800 artifacts in which RMST obtained title to them, subject to certain conditions, in a salvage award from a French Administrative Tribunal. The conditions of the French Administrative Tribunal include a requirement that the artifacts not be sold individually but rather be kept together as a single collection for the public benefit. RMST admits that George Tulloch and its predecessor, Titanic Ventures Inc. did indicate to the French government that the artifacts would not be sold and would be kept together as a collection. However, its view is that was not incorporated as a condition of the award and therefore they can sell artifacts from the French Collection without approval from the Government of France. We disagree but of course defer to the decision of the Government of France. For your convenience, here is a link to the French Award.

[http://www.gc.noaa.gov/documents/092293-french\\_award.pdf](http://www.gc.noaa.gov/documents/092293-french_award.pdf)

[Redacted content]

8/31/2015 National Oceanic and Atmospheric Administration Mail - Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH

[Redacted]

[Redacted]

[Redacted]

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NOAA 000010

8/31/2015 National Oceanic and Atmospheric Administration Mail - Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH  
NOAA 000011

[REDACTED]

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NOAA 000011

8/31/2016 National Oceanic and Atmospheric Administration Mail - Titanic Collection at Rixax, Salvage of French Wreck off Florida and Cooperation on JCH

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Ole Varner, Attorney-Advisor, International Section Office of General Counsel - NOAA  
DC office (202) 482-1402  
SS office (301) 715-7385  
\*MOBILE iPhone (202) 658-8992



[REDACTED]



# **EXHIBIT E**

*Ambassade de France  
aux Etats-Unis*

N° 2016-506130/DOS

## NOTE

The Embassy of the Republic of France presents its compliments to the Department of State and has the honor to refer it to the proceedings concerning the RMS Titanic (RMST) in the United States District Court for the Eastern District of Virginia, Norfolk Division (Case No. 2:93-cv-902) and in the United States Bankruptcy Court for the Middle District of Florida, Jacksonville Division (Case No. 3:16-bk-02230).

France's ownership of recovered artifacts dates back to the expedition on the site of the wreck in 1987, in which the Institut Français de Recherche pour l'Exploitation de la Mer (IFREMER) played an active part, namely the use of its vessels by Oceanic Research and Exploration Ltd. to dive on "HMS TITANIC to promote the survey of the wreck and to recover objects from the Titanic".

Under Article 20 "Recovery of objects" agreed upon in a Charter signed by both parties (IFREMER as the owner and Oceanic Research and Exploration as the Charterer), it was formally agreed that "Charterers shall not sell the objects collected by Owners but shall use them only for exhibition purposes".

In 1993, Titanic Ventures Limited Partnership (TVLP), RMST's predecessor-in-interest, sought and obtained the remit of French artifacts from the French Ministry of Equipment, Transportation and Tourism, subject to assurances made by the company that the collection would neither be sold nor dispersed.

The Department of State

- French Desk

Thus, in the attached letter from September 22, 1993, signed by the Director of TVLP, France was assured that "the artifacts will be used only for cultural purposes and will not, therefore, be part of any operations that would lead to their dispersion, with the exception of exhibition purposes, and none of the artifacts will be sold".

With this understanding and signed guarantee, the French administration agreed to grant the title to TVLP in a Procès-Verbal of October 20, 1993.

With the merger of May 1993, RMST acquired the artifacts held by TVLP for the French government and mounted other expeditions over the years, recovering more artifacts for which it was granted an in specie salvage award of title by the District of Virginia Court.

The Embassy of France notes that in the Eastern District of Virginia proceeding, the United States Department of Justice and the National Oceanic and Atmospheric Administration developed and obtained judicial approval of covenants and conditions for the protection and non-dispersal of artifacts recovered from the Titanic in the possession of private parties, RMS Titanic, Inc. and Premier Exhibitions, Inc. These covenants and conditions include maintenance of the artifacts as a collection not to be dispersed through sale or other disposition, i.e. the same conditions and covenants regarding the French artifacts.

The Embassy further observes that in those proceedings, the Fourth Circuit Court recognized that the French artifacts were subject to the same binding conditions, as it stated that "the 1993 French Administration decision also incorporated Titanic Ventures' assurances made in its September 22, 1993 letter stating that "Titanic Ventures agreed to make use of such objects in conformity with the respect due to the memory of their initial owners and not to carry out any commercial transaction concerning such objects nor any sale of any one of them nor any transaction entailing their dispersion, if not for the purposes of an exhibition" (RMS Titanic, Inc., 435 F 3d at 527-28).

Furthermore, these conditions are also consistent with the principles of the finalized text agreed by the United States, France, Great Britain and Canada for the International Agreement to Protect the Shipwrecked Vessel RMS Titanic in respect of any future recovery of artifacts.

The Embassy of France thus notes with concern that the intention was expressed by RMS Titanic, Inc., in the Middle District Florida to seek approval to sell and disperse French artifacts, in violation of the aforementioned Procès-Verbal and the covenants and conditions of the Eastern District of Virginia Court and under the erroneous assumption that France has no interest in the French artifacts.

This attempt and assumption are all the more surprising in that France has never been given any prior notice by RMST of its intention to sell the artifacts.

France would like to remind RMST that its interest in the fate of the artifacts is high, and that not only would the dispersion or sale of the artifacts infringe upon the due respect to the memory of its initial owners but also violate the principle of sovereign immunity.

The Embassy of France therefore requests the assistance of the Department of State and any other appropriate United States agencies to inform the courts of these matters and takes such action as appropriate to secure compliance with the above-referenced principles, covenants and conditions.

The Embassy of France takes this opportunity to assure the Department of State of its highest consideration.



Washington, July 8, 2016

# **EXHIBIT F**

03/17/2016

National Oceanic and Atmospheric Administration Mail - Re: Titanic 1987 Chart Party

NOAA 000036



Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>

**Re: Titanic 1987 Chart Party**

Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>  
To: Paul-Henry Nargeolet <ph@nargeolet.com>

Sun, Mar 6, 2016 at 10:19 AM

PH

Thank you and Congratulations! As you may know, the salvage award of the US District Court was also subject to Covenants and Conditions. See [http://www.gc.noaa.gov/documents/gcil\\_titanic\\_opinion\\_081210\\_ex\\_A.pdf](http://www.gc.noaa.gov/documents/gcil_titanic_opinion_081210_ex_A.pdf)

Ive been having a debate with RMST attorney, Brian Wainger, about the 1987 French Collection. While he is correct that the 4th Circuit Court ruled that the District Court did not have jurisdiction over the 1987 French Collection, RMST subsequently voluntarily included them in the Covenants and Conditions with the intent of managing all of the artifacts in one Titanic Collection. I wanted to get hold of the Charter Agreement that would apply regardless which of us is correct.

Ole

Ole Varmer, Attorney-Advisor, International Section Office of General Counsel - NOAA  
On assignment in Lima, Peru until March 7  
Local landline Phone in Lima: 365-2882  
Cell Phone in Lima 99981-5951

On Sat, Mar 5, 2016 at 2:45 PM, Paul-Henry Nargeolet <ph@nargeolet.com> wrote:

Hi Ole,  
Here is the 87 Chart Party. In 87 and 93 chart Party, there is the same paragraph about the artifacts recovered. In Chart Party 94, 96, 98 the paragraph was change for:  
The Charterers shall not sell the artifacts collected by Owners to any individual or private collector, but shall use them only for exhibition purposes. However the collection may be sold to any entity that will make them available for exhibition to the public.  
Hope that will help you.

By the way, [REDACTED]  
Be well,  
PH

Paul-Henry (PH) Nargeolet  
ph@nargeolet.com

NOAA 000096

# **EXHIBIT G**



United Nations  
Educational, Scientific and  
Cultural Organization

Organisation  
des Nations Unies  
pour l'éducation,  
la science et la culture

Organización  
de las Naciones Unidas  
para la Educación,  
la Ciencia y la Cultura

Организация  
Объединенных Наций по  
вопросам образования,  
науки и культуры

منظمة الأمم المتحدة  
للثقافة والعلم والتربية

联合国教育、  
科学及文化组织

**Culture Sector**  
Cultural Heritage Protection Treaties Section

Mr Brian Andrew Walnger  
Kaleo Legal  
4456 Corporation Lane Suite 135  
Virginia Beach, VA 23462  
United States of America

1 December 2016

Ref.: CLT/HER/CHP/16/133

Dear Sir,

Please find enclosed, for your information, a letter concerning artefacts from the Titanic shipwreck (case 3:16-bk-02230-PMG) addressed to the Premier Exhibitions and to the RMS Titanic.

Please do not hesitate to contact us, in case you should have any questions.

Yours sincerely,



Ulrike Guerin





United Nations  
Educational, Scientific and  
Cultural Organization

Organisation  
des Nations Unies  
pour l'éducation,  
la science et la culture

Organización  
de las Naciones Unidas  
para la Educación,  
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Организация  
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вопросам образования,  
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منظمة الأمم المتحدة  
للربية والعلم والثقافة

联合国教育、  
科学及文化组织

**Culture Sector**  
Division for Heritage

Premier Exhibitions  
3045 Kingston Court, Suite 1  
Peachtree Corners, Georgia 30071  
United States of America

RMS Titanic Inc,  
3340 Peachtree Rd NE # 900  
Atlanta, GA 30326  
United States of America

29 November 2016

Ref.: CLT/HER/CHP/16/133

Dear Sir/Madam,

We were informed that your firm, salvor of certain Titanic artefacts, filed recently for bankruptcy and that you requested permission to sell the artefacts you salvaged from the Titanic in 1987 together with the French institution IFREMER.

As you know, the Titanic is a historically very significant wreck, which's sinking changed in many aspects the attention given to security at sea. It also sank more than a hundred years ago and thus falls under the protection of the UNESCO 2001 Convention on the Protection of Underwater Cultural Heritage, adhered to by already 55 Member States.

The 2001 UNESCO Convention regulates in its Article 2.7 that underwater cultural heritage shall not be commercially exploited. It prohibits the dealing in commercialized artifacts in Article 14, regulating that all States Parties to the Convention will take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage recovered, where recovery was contrary to the Convention (which the recovery of the Titanic artefacts would become through their commercial sale). The Convention also provides for seizure possibilities in Article 18.1, regulating that each State Party will take measures providing for the seizure of underwater cultural heritage in its territory that has been recovered in a manner not in conformity with the UNESCO Convention.

Hence, should RMS Titanic, alone or via a court, sell any Titanic artifacts for commercial purposes, it may violate law implementing the 2001 UNESCO Convention. The sale of the Titanic artifacts would be considered "commercial exploitation" under the 2001 UNESCO Convention and these artifacts may be subject to seizure or other enforcement measures when in the jurisdiction of the fifty-five States Parties to the 2001 UNESCO Convention. Please note that France has also ratified the UNESCO Convention.

.../..

- 2 -

Thus, we urge you to keep the Titanic collection together, avoiding its irretrievable dispersal, and to seek to make it available to a museum. UNESCO is deeply concerned about the destruction and dispersal of significant underwater cultural heritage, such as the Titanic artefacts. These artifacts are part of the legacy of humanity and should be made available for viewing by the public.

For additional information on the legal aspects of the 2001 Convention or the protection of underwater cultural heritage, you may wish to contact Ms Ulrike Guerin, responsible for the 2001 Convention within the Culture Sector (tel.: + 33 (0) 1 45 68 44 06; e-mail: u.guerin@unesco.org).

Yours sincerely,



Mechtild Rössler  
Director

cc: Permanent Delegation of the United States of America to UNESCO  
Mr Brian Andrew Wainger, Kaleo Legal  
US Bankruptcy Court  
US District Court Eastern District of Virginia  
Mr Michel L'Hour, DRASSM

# **EXHIBIT H**



Brian Wainger, Esq.  
Direct: 757.965.6864  
bwainger@kaleolegal.com

January 3, 2017

VIA ELECTRONIC MAIL

Ms. Mechtild Rossler  
Director  
Culture Sector, Division for Heritage  
United Nations Educational, Scientific and Cultural Organization  
7 place de Fontenoy  
75352 Paris 07 SP, France  
[M.Rossler@unesco.org](mailto:M.Rossler@unesco.org)

Re: RMS Titanic, Inc.  
UNESCO Ref: CLT/HER/CHP/16/133

Dear Ms. Rossler:

The undersigned and this law firm represent RMS Titanic, Inc. and its parent company, Premier Exhibitions, Inc. (collectively "RMST" or the "Company"). This responds to your letter dated November 29, 2016 in which you claim that RMST, as salvor of certain Titanic artifacts, risks violating the 2001 UNESCO Convention if it sells any of its Titanic artifacts. Specifically, you contend that the Titanic is an Underwater Cultural Heritage, as defined by the 2001 UNESCO Convention (the "Convention"), and that a sale of artifacts by RMST, whether or not authorized by a court of law, "may violate law implementing the 2001 UNESCO Convention." You conclude that any such sale "may" subject such artifacts to seizure or other enforcement measures when such artifacts are in the jurisdiction of a State Party to the Convention. The Company acknowledges the notice provided in your letter, and understands the overarching goals of the Convention, but the Company categorically disputes that the Convention applies to the Titanic artifacts owned by the Company, or that the Convention applies in any respect to the disposition of private property owned by a United States company that obtained title to such property by and through the laws of its sovereign.

As an initial matter, the United States is not a State Party to the Convention, and the Convention has no force of law in the United States. Accordingly, any sale of the Company's artifacts transacted in the United States would not, as a matter of law, implicate the Convention.

Moreover, the Convention does not apply to the Company's artifacts simply because they are located in the jurisdiction of the States Parties to the Convention. The Convention only applies to an Underwater Cultural Heritage as defined in the Convention. Underwater Cultural

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4510 Cox Road, Suite 201 · Glen Allen, VA · 23060

[www.kaleolegal.com](http://www.kaleolegal.com)

Page 2

Heritage (or "UCH") "means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years . . ." See, Article 1, paragraph 1a. Insofar as the artifacts owned by the Company were not submerged underwater for at least 100 years, they do not qualify as Underwater Cultural Heritage and the Convention does not apply to them.

RMST recovered virtually all of its artifacts before the Convention was ratified in 2001. RMST recovered all of its artifacts on or before 2004. RMST received title to certain of these artifacts via a *procès verbal* issued by the French administration (Maritime Affairs Office, Ministry of Transportation) in 1993. As the beneficiary of this administrative decision, RMST received full ownership of the artifacts. RMST received title to the remainder of the artifacts through Order of the United States District Court for the Eastern District of Virginia, Norfolk Division in August, 2011. The tragic wreck of the *RMS TITANIC* took place in April 1912. Accordingly, the Titanic wreck did not qualify as Underwater Cultural Heritage until 100 years later, in 2012, at least eight years after the company had recovered its last artifact from the seabed. While the Company takes no position herein regarding whether the wreck of the Titanic itself qualifies as Underwater Cultural Heritage (or whether France or any other States Party has a "verifiable link" to it), the plain and unambiguous language of the Convention yields the inescapable conclusion that the Company's artifacts are not Underwater Cultural Heritage. The definition of UCH in the Convention does not extend to property such as the artifacts owned by RMST which are linked to or originating from UCH, but lifted from submersion before the expiration of 100 years. Absent such express language in the Convention, and in the face of the clear definition of UCH requiring submersion of at least 100 years, the artifacts owned by the Company do not fall under the jurisdiction of the Convention.

Nor would international law permit a state sponsored seizure or taking of the personal property of a private citizen, years after title had lawfully transferred to such citizen. The Company is not merely a "salvor of certain artifacts" as alleged in your letter, but pursuant to court orders and administrative directive owns and holds title to the artifacts, after administrative and judicial proceedings carried out under the laws of France and the United States respectively. Indeed, domestic laws in the United States and in France protecting the private property rights of its citizens mirror similar protections afforded under international law. See e.g. Article 1 to the First Protocol of the European Convention of Human Rights (affording every natural or legal person the peaceful enjoyment of his possessions).

The provisions of Article 4 of the Convention, directing that the law of finds and the law of salvage shall not apply to UCH, further underscore the impropriety of seeking to designate the Company's artifacts as UCH under the regime of the Convention. As noted above, the Company received title to the artifacts following administrative and judicial procedures in France and the United States under each country's application of the laws of salvage. A *post hoc* invalidation of the salvage procedures those tribunals carefully employed years before would not only constitute a manifest injustice to the Company, but would jeopardize the finality and certainty accompanying countless maritime decisions throughout the international community.

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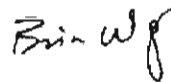
Page 3

Under these circumstances, the Convention does not apply to the artifacts owned by the Company. Neither the policies of UNESCO nor the historical and archaeological importance of the Titanic support the positions expressed in your letter, which belie a plain reading of the Convention.

Since its first expedition in 1987, RMST has taken great care to preserve the wreck site, and the artifacts it has recovered, stabilized and conserved, often at the expense of its private commercial interests. RMST respects the objectives and ideals espoused by the Convention and welcomes further dialogue with you and your colleagues regarding the proper legal treatment of its artifacts under international law.

With best wishes, I am

Very truly yours,



Brian Wainger

cc: Ms. Ulrike Guerin ([u.guerin@unesco.org](mailto:u.guerin@unesco.org))  
Robert McFarland, Esq. ([rmcfarland@mcquirewoods.com](mailto:rmcfarland@mcquirewoods.com))

4456 Corporation Lane, Suite 135 · Virginia Beach, VA 23462  
4510 Cox Road, Suite 201 · Glen Allen, VA · 23060

[www.kaleolegal.com](http://www.kaleolegal.com)

EXHIBIT 2

Email Correspondence Between Mr. Michel, Ms. Navarri, and Counsel for the Debtor



Brian Wainger <[bwainger@gmail.com](mailto:bwainger@gmail.com)>

---

**Re: France**

1 message

---

**Brian Wainger** <[bwainger@kaleolegal.com](mailto:bwainger@kaleolegal.com)>

Mon, Jul 25, 2016 at 5:08 PM

To: Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)>

Cc: [marie-laurence.navarri@diplomatie.gouv.fr](mailto:marie-laurence.navarri@diplomatie.gouv.fr)

Bcc: Dan Blanks <[daniel.blanks@nelsonmullins.com](mailto:daniel.blanks@nelsonmullins.com)>

Pierre - As you know, the judge in the bankruptcy of RMS Titanic, Inc. has issued an order holding that the company must proceed by way of an adversary proceeding to determine, in part, whether the Republic of France has a legal interest in the artifacts. I would like the opportunity to speak with you or the appropriate individual representative of France. Please let me know if we can arrange that.  
Brian.

On Tue, Jul 5, 2016 at 4:41 PM, Brian Wainger <[bwainger@kaleolegal.com](mailto:bwainger@kaleolegal.com)> wrote:  
Thanks so much Pierre. I look forward to speaking with you. Travel safe, Brian.

On Tue, Jul 5, 2016 at 4:30 PM, Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)> wrote:

Brian,

Thank you for your message. I am traveling on official business this week. We may be in a position to speak with you next week after appropriate legal arrangements have been made. I will ask that you be notified at that time.

Best regards

--

Pierre MICHEL

Science and Technology Attaché

Embassy of France in the United States

Tel : 202 944 62 16



<http://www.france-science.org/>

**De :** [bawainger@gmail.com](mailto:bawainger@gmail.com) [mailto:[bawainger@gmail.com](mailto:bawainger@gmail.com)] **De la part de** Brian Wainger

**Envoyé :** Wednesday, June 29, 2016 2:04 PM

**À :** Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)>

**Objet :** Re: France

Pierre - I appreciate you permitting Ole Varmer to provide me your email address. On behalf of my client, RMS Titanic, Inc., I would like to speak with you at your earliest convenience. Please let me know if you would be available to speak, and if so, the time and number at which to call you. Brian Wainger.

--

Brian Wainger

Principal

Kaleo Legal

4456 Corporation Lane, Suite **135**

Virginia Beach, VA 23462

t:[757.965.6804](tel:757.965.6804)

f:[757.304.6175](tel:757.304.6175) (efax direct)

**PLEASE NOTE MY NEW MAILING ADDRESS**

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--

Brian Wainger

Principal

Kaleo Legal

4456 Corporation Lane, Suite **135**

Virginia Beach, VA 23462

t:[757.965.6804](tel:757.965.6804)

f:[757.304.6175](tel:757.304.6175) (efax direct)

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--

Brian Wainger  
Principal  
Kaleo Legal  
4456 Corporation Lane, Suite 135  
Virginia Beach, VA 23462  
t:[757.965.6804](tel:757.965.6804)  
f:[757.304.6175](tel:757.304.6175) (efax direct)

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3/23/2017

Gmail - TR: Premier Exhibitions vs France



Brian Wainger <bawainger@gmail.com>

---

**TR: Premier Exhibitions vs France**

1 message

---

**Pierre Michel** <attache-envt@ambascience-usa.org>  
To: bawainger@gmail.com  
Cc: NAVARRI Marie-Laurence <marie-laurence.navarri@diplomatie.gouv.fr>

Thu, Sep 1, 2016 at 12:11 PM

Brian,

For legal issues please send your messages to Marie-Laurence Navarri, Justice Attaché and liaison judge at the embassy of France (cced).

Thank you,

Best regards

Pierre MICHEL

Science and Technology Attaché

Embassy of France in the United States

Tel : 202 944 62 16

<http://www.france-science.org/>

**De :** [bawainger@gmail.com](mailto:bawainger@gmail.com) [mailto:[bawainger@gmail.com](mailto:bawainger@gmail.com)] **De la part de** Brian Wainger

**Envoyé :** Tuesday, August 23, 2016 3:26 PM

**À :** Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)>

**Objet :** Fwd: Premier Exhibitions vs France

Pierre - I hope you are well. You will recall I represent RMS Titanic, Inc. Attached is a courtesy copy of the Adversary Complaint my client recently filed against the Republic of France. I look forward to speaking with you about this most interesting matter. Brian.

—

Brian Wainger

Principal

Kaleo Legal

3/23/2017

Gmail - TR: Premier Exhibitions vs France

4456 Corporation Lane, Suite **135**

Virginia Beach, VA 23462

t:[757.965.6804](tel:757.965.6804)

f:[757.304.6175](tel:757.304.6175) (efax direct)

**PLEASE NOTE MY NEW MAILING ADDRESS**

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---

**2 attachments**

 **RMS.French Republic Complaint w exhibits.pdf**  
2969K

 **Summons.pdf**  
77K

**EXHIBIT 3**

Email Correspondence Between Mr. Michel, Ms. Navarri, and NOAA

8/31/2016

National Oceanic and Atmospheric Administration Mail - contact at the DOJ

NOAA 000063



Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>

**contact at the DOJ**

NAVARRI Marie-Laurence <marie-laurence.navarr@diplomatie.gouv.fr>  
To: ole.varmer@noaa.gov  
Cc: Pierre Michel <attache-envt@ambascience-usa.org>

Mon, Jul 11, 2016 at 3:14 PM

Dear M. Varmer

I've sent the note verbale on Titanic to M. Randles who is an attorney for bankruptcy cases at the DOJ.

[Redacted]

Thanks a lot for your help,

Kind regards,

Marie

Marie-Laurence NAVARRI  
Magistrat de liaison aux Etats-Unis  
Justice Attaché, French Embassy

4101 Reservoir Road, 20007 Washington DC

+1 (202) 944 60 33

Cell : +1 (202) 431 66 22

NOAA 000063

8/31/2016

National Oceanic and Atmospheric Administration Mail - Re: contact at the DOJ

NOAA 000064



Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>

**Re: contact at the DOJ**

Ole Varmer - NOAA Federal <ole.varmer@noaa.gov>  
To: NAVARRI Marie-Laurence <marie-laurence.navarril@diplomatie.gouv.fr>  
Cc: Pierre Michel <attache-envi@ambassade-usa.org>

Mon, Jul 11, 2016 at 6:40 PM

Dear Marie  
I will work on that and get back to you tomorrow.  
Sincerely  
Ole

Sent from my iPhone

On Jul 11, 2016, at 3:14 PM, NAVARRI Marie-Laurence <marie-laurence.navarril@diplomatie.gouv.fr> wrote:

Dear M. Varmer

I've sent the note verbale on Titanic to M. Randlee who is an attorney for bankruptcy cases at the DOJ.

[Redacted]

Thanks a lot for your help,

Kind regards,

Marie

Marie-Laurence NAVARRI  
Magistrat de liaison aux Etats-Unis  
Justice Attaché, French Embassy

4101 Reservoir Road, 20007 Washington DC

+1 (202) 844 60 33

Cell : +1 (202) 431 56 22

NOAA 000064

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news In Bankruptcy Proceeding

NOAA 000080



Ole Varner - NOAA Federal <ole.varner@noaa.gov>

**RE: Good news In Bankruptcy Proceeding**

NAVARRI Marie-Laurence <marie-laurence.navarril@diplomatie.gouv.fr> Tue, Jul 26, 2016 at 9:03 AM  
To: Ole Varner - NOAA Federal <ole.varner@noaa.gov>, GUYONVARCH Olivier <olivier.guyonvarch@diplomatie.gouv.fr>, alexandra.bellayer-rolle@diplomatie.gouv.fr  
Cc: Minh-Hà Pham <conseiller@ambascience-usa.org>, Clément Lefort <deputy-envt@ambascience-usa.org>, Pierre Michel <attache-envt@ambascience-usa.org>, David M Gravallese <GravalleseDM@state.gov>

Dear Ole

No thank you that's very clear. We are aware that the proceedings are to be pursued in another framework and will do our best to be ready when notified the adversary proceedings by RMST

Thanks again,

Best,

Marie

Marie-Laurence NAVARRI  
Magistrat de liaison aux Etats-Unis  
Justice Attaché, French Embassy

4101 Reservoir Road, 20007 Washington DC

+1 (202) 944 60 33  
Cell : +1 (202) 431 56 22

De : Ole Varner - NOAA Federal [mailto:ole.varner@noaa.gov]  
Envoyé : lundi 25 juillet 2016 23:59  
À : NAVARRI Marie-Laurence; GUYONVARCH Olivier; alexandra.bellayer-rolle@diplomatie.gouv.fr  
Cc : Minh-Hà Pham; Clément Lefort; Pierre Michel; David M Gravallese  
Objet : Good news In Bankruptcy Proceeding

All,

The bankruptcy court denied RMST's motion to sell the French artifacts. In the attached order, the court concludes "the Debtors acknowledge that (1) they had agreed with French officials not to carry out a commercial transaction concerning the French Artifacts 'nor any sale of any one of them nor any transaction entailing their dispersion,' (2) that the agreement is a restriction on their ability to transfer the French Artifacts, and (3) that the market views the Debtors as lacking clear title to convey the French Artifacts."

However, the court goes on to say that RMST could pursue an "adversarial proceeding" to determine the validity or extent of a lien or other interest in the property since it may impact the rights and property of a non-debtor in such a way as to warrant additional procedural protection. I assume France would be a necessary party in such a proceeding.

NOAA 000080



8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news in Bankruptcy Proceeding

Please <sup>NOAA 000081</sup> let me know if you have questions or would like to discuss further.

Ole

On Fri, Jul 15, 2016 at 12:35 PM, NAVARRI Marie-Laurence <[marie-laurence.navari@diplomatie.gouv.fr](mailto:marie-laurence.navari@diplomatie.gouv.fr)> wrote:

Thank you very much Ole

Kind regards,

Marie

Marie-Laurence NAVARRI

Magistrat de liaison aux Etats-Unis

Justice Attaché, French Embassy

4101 Reservoir Road, 20007 Washington DC

+1 (202) 944 60 33

Cell : +1 (202) 431 56 22

**De :** Ole Varmer - NOAA Federal [<mailto:ole.varmer@noaa.gov>]

**Envoyé :** vendredi 15 juillet 2016 12:32

**À :** Pierre Michel; [alexandra.bellayer-rolle@diplomatie.gouv.fr](mailto:alexandra.bellayer-rolle@diplomatie.gouv.fr); GUYONVARCH Olivier; NAVARRI Marie-Laurence

**Cc :** Clément Lefort; Jackie Rolleri - NOAA Federal; David M Gravallese; Minh-Hà Pham

**Objet :** Re: Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH

All,

I am very saddened by the loss of life and other harm that ruined Bastille Day for all of us, but especially for our already beleaguered French colleagues. However, it makes our support and cooperation with each other even more important. Even on things that are small in comparison, like the potential sale of artifacts from the French Collection. To that end, attached here are documents filed by the litigation counsel for RMST (Rob McFarland) in the salvage case overseen by Chief Judge Smith in the Eastern District of Virginia, to inform her of recent activities including those involving the bankruptcy proceedings in the Middle District of Florida. The package includes letters between RMST and DOJ [representing NOAA] informing the court that US/NOAA and RMST disagree about the application of the Covenants & Conditions that were part of her order in the salvage case. I will continue to keep you apprised of any further developments by Chief Judge Smith in the salvage case, as well as in the bankruptcy case.

NOAA 000081

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news in Bankruptcy Proceeding

NOAA 000082  
Best Wishes

Ole

On Tue, Jul 5, 2016 at 4:24 PM, Pierre Michel <attache-envt@ambascience-usa.org> wrote:

Hi Ole,

Thank you so much for your intervention. The court listened to your arguments, James Goold sent us the decision of the court which postpones the motion for at least 60 days.

*"that the United States Trustee objects to the proposed sale of the artifacts for multiple reasons, including that France should be given official notice of the proposed sale and an opportunity to present its position. The Trustee asks the Court to suspend the motion to approve sale of artifacts, which is currently scheduled for July 12, for at least 60 days. The Trustee also informs the Judge that there are significant deficiencies in the motion"*

I look forward to strengthening cooperation between our two countries on this common heritage.

Best,

Pierre

—

Pierre MICHEL

Science and Technology Attaché

Embassy of France in the United States

Tel : 202 944 62 16

<http://www.france-science.org/>

De : Ole Varmer - NOAA Federal [mailto:[ole.varmer@noaa.gov](mailto:ole.varmer@noaa.gov)]

Envoyé : Monday, July 4, 2016 9:29 AM

À : Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)>

Cc : [alexandra.bellayer-roille@diplomatie.gouv.fr](mailto:alexandra.bellayer-roille@diplomatie.gouv.fr); GUYONVARCH Olivier <[olivier.guyonvarch@diplomatie.gouv.fr](mailto:olivier.guyonvarch@diplomatie.gouv.fr)>; Clément Lefort <[deputy-envt@ambascience-usa.org](mailto:deputy-envt@ambascience-usa.org)>; David M Gravalles <[GravallesDM@state.gov](mailto:GravallesDM@state.gov)>; James Delgado <[james.delgado@noaa.gov](mailto:james.delgado@noaa.gov)>

Objet : Re: Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH

Hi Pierre,

I hope all is well. Attached is a letter we were counseled to send in regard to the timing on this Titanic matter. It also provides a point of contact in our Department of Justice that represents us in court. Today we is a holiday celebrating our Independence Day. I am reminded me of the important role France played in the history of the United States and the work I need to get to do in drafting a document that outlines our future cooperation underwater cultural heritage.

Ole

On Thu, Jun 16, 2016 at 5:25 PM, Pierre Michel <attache-envt@ambascience-usa.org> wrote:

Dear Ole,  
NOAA 000082

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news in Bankruptcy Proceeding

NOAA 000083

Thank you very much for your detailed information. I have informed our colleagues lawyers in Paris (Alexandra and Olivier cced) and they should be able to intervene to protect this collection.

Best regards,

Pierre

--

Pierre MICHEL

Science and Technology Attaché

Embassy of France in the United States

Tel : 202 944 62 16

<http://www.france-science.org/>

**De :** Ole Varmer - NOAA Federal [mailto:[ole.varmer@noaa.gov](mailto:ole.varmer@noaa.gov)]

**Envoyé :** Wednesday, June 15, 2016 11:31 PM

**À :** Pierre Michel <[attache-envt@ambascience-usa.org](mailto:attache-envt@ambascience-usa.org)>; Clément Lefort <[clement.lefort@ambascience-usa.org](mailto:clement.lefort@ambascience-usa.org)>; Minh-Hà Pham <[conseiller@ambascience-usa.org](mailto:conseiller@ambascience-usa.org)>

**Cc :** serge.segura@diplomatie.gouv.fr; Gonzalo Cid <[gonzalo.cid@noaa.gov](mailto:gonzalo.cid@noaa.gov)>; Catherine <[catherine.marzin@noaa.gov](mailto:catherine.marzin@noaa.gov)>; Paul Ticco - NOAA Affiliate <[paul.ticco@noaa.gov](mailto:paul.ticco@noaa.gov)>; David M Gravallesse <[GravallesseDM@state.gov](mailto:GravallesseDM@state.gov)>; Lisa Phelps <[PhelpsE@state.gov](mailto:PhelpsE@state.gov)>

**Objet :** Titanic Collection at Risk, Salvage of French Wreck off Florida and Cooperation on UCH

Dear Colleagues,

The past couple of days there have been developments involving French heritage that I want to alert you all about in response to your request for advice about the French historic wreck off Florida and Titanic which you may not be aware. I've copied US Department of State attorney Dave Gravallesse as he should be included in discussions and may want to add or amend my informal comments.

First, in regard to Titanic, the US salvage company has filed for bankruptcy and we are concerned that the collection of artifacts salvaged from Titanic may be sold. This would include what we refer to as the "French TITANIC Artifact Collection" associated with artifacts salvaged in 1987 expedition that was accomplished with assistance from the French Institute IFREMER (co-discoverer of the wreck). The "1987 French Collection: involves approximately 1,800 artifacts in which RMST obtained title to them, subject to certain conditions, in a **salvage award** from a French Administrative Tribunal. The conditions of the French Administrative Tribunal include a requirement that the artifacts not be sold individually but rather be kept together as a single collection for the public benefit. RMST admits that George Tulloch and its predecessor, Titanic Ventures Inc. did indicate to the French government that the artifacts would not be sold and would be kept together as a collection. However, its view is that was not incorporated as a condition of the award and therefore they can sell artifacts from the French Collection without approval from the Government of France. We disagree but of course defer to the decision of the Government of France. For your convenience, here is a link to the French Award.

[http://www.gc.noaa.gov/documents/092293-french\\_award.pdf](http://www.gc.noaa.gov/documents/092293-french_award.pdf)

NOAA 000083

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news in Bankruptcy Proceeding

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NOAA 000084

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news in Bankruptcy Proceeding

[REDACTED] 000085

[REDACTED]

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8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news In Bankruptcy Proceeding

NOAA 000086

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[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Ole Varner, Attorney-Advisor, International Section Office of General Counsel - NOAA

DC office (202) 482-1402

SS office (301) 713-7385

\*MOBILE iPhone (202) 558-8982

[Redacted]

Ole Varner, Attorney-Advisor, International Section Office of General Counsel - NOAA

NOAA 000086

8/31/2016

National Oceanic and Atmospheric Administration Mail - RE: Good news In Bankruptcy Proceeding

NOAA 000087  
DC office (202) 482-1402

SS office (301) 713-7385

\*MOBILE IPHONE (202) 558-8992

Ole Varner, Attorney-Advisor, International Section Office of General Counsel - NOAA

DC office (202) 482-1402

SS office (301) 713-7385

\*MOBILE IPHONE (202) 558-8992

Ole Varner, Attorney-Advisor, International Section Office of General Counsel - NOAA

DC office (202) 482-1402

SS office (301) 713-7385

\*MOBILE IPHONE (202) 558-8992

NOAA 000087

**EXHIBIT 4**

Certificate of Service





Direction des Affaires Civiles et du Sceau  
Bureau du droit de l'Union, du droit international privé  
et de l'entraide civile  
13 Place Vendôme  
75042 PARIS CEDEX 01

Paris, le 27-01-2017

LE GARDE DES SCEAUX,  
MINISTRE DE LA JUSTICE

À

DANIEL F BLANKS  
50 NORTH LAURA STREET, APPARTEMENT 4100  
FL 32202 JACKSONVILLE  
ETATS-UNIS D'AMERIQUE

☎ Téléphone : 01 44 77 62 43 ou 65 73  
Télécopie : 01 44 77 61 22

00.01.2017 001035

**Référence à rappeler :**

8049TR2016 ETATS-UNIS D'AMERIQUE  
58NOTIF2016

Demande Daniel F Blanks-Procédure n°3:16-ap-00183-  
PMG-Convocation devant le Tribunal des Faillites des  
Etats-Unis, district méridional de Floride

**Destinataire :** RÉPUBLIQUE FRANÇAISE

**Objet :** Retour d'une demande de notification d'acte judiciaire.

**Texte de référence :** Circulaire NOR JUS CO5 20 961 C (CIV/20/05) du 1<sup>er</sup> février 2006, relative aux "Notifications internationales des actes judiciaires et extrajudiciaires en matière civile et commerciale" [ la partie pratique de la circulaire est disponible sur l'Internet à l'adresse : [www.entraide-civile-internationale.justice.gouv.fr](http://www.entraide-civile-internationale.justice.gouv.fr) ]

J'ai l'honneur de vous faire parvenir sous ce pli les documents établis à la suite d'une demande de notification internationale.

LD

Cachet du Ministère de la Justice



## ATTESTATION CERTIFICATE

L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention,  
The undersigned authority has the honour to certify, in conformity with Article 6 of the Convention,

1. que la demande a été exécutée\*  
that the document has been served\*

|                                                             |                                        |
|-------------------------------------------------------------|----------------------------------------|
| – le (date) / the (date):                                   | 16/12/2016                             |
| – à (localité, rue, numéro):<br>at (place, street, number): | TOUR PASCAL B – 92055 LA DEFENSE CEDEX |

– dans une des formes suivantes prévues à l'article 5 :  
in one of the following methods authorised by Article 5:

|                                     |                                                                                                                                                                                    |
|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input checked="" type="checkbox"/> | a) selon les formes légales (article 5, alinéa premier, lettre a)*<br>in accordance with the provisions of sub-paragraph a) of the first paragraph of Article 5 of the Convention* |
| <input type="checkbox"/>            | b) selon la forme particulière suivante*:<br>in accordance with the following particular method*:<br>_____                                                                         |
| <input type="checkbox"/>            | c) par remise simple*<br>by delivery to the addressee, if he accepts it voluntarily*                                                                                               |

Les documents mentionnés dans la demande ont été remis à :  
The documents referred to in the request have been delivered to:


|                                                                                                                                                    |                                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| Identité et qualité de la personne :<br>Identity and description of person:                                                                        | Ministère de l'Environnement, de l'Energie et de la Mer<br>- Monsieur Jean-Luc LAVALARO (Courrier Central<br>TPA) |
| Liens de parenté, de subordination ou autres,<br>avec le destinataire de l'acte :<br>Relationship to the addressee (family, business or<br>other): | _____                                                                                                             |

2. que la demande n'a pas été exécutée, en raison des faits suivants\* :  
that the document has not been served, by reason of the following facts\*:


|       |
|-------|
| _____ |
|-------|

- Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint\*.  
In conformity with the second paragraph of Article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

### Annexes / Annexes

|                                                                                                                                                                              |                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Pièces renvoyées :<br>Documents returned:                                                                                                                                    | _____                                                                                                                                      |
| Le cas échéant, les documents justificatifs de l'exécution :<br>In appropriate cases, documents establishing the service:<br><small>* s'il y a lieu / if appropriate</small> | Avis de réception de l'envoi en recommandé<br>n° 1A 064 825 1070 9                                                                         |
| Fait à / Done at <u>PARIS</u> ,<br><br>le / the <u>06/01/2017</u>                                                                                                            | Signature et / ou cachet<br>Signature and/or stamp<br> |

Environnement de : \_\_\_\_\_

**RECOMMANDÉ :**  **AVIS DE RÉCEPTION**  
 Numéro de l'envoi : **1A 064 825 1070 9**

Remettre à l'adresse ci-dessous : **F R A B**

16 DEC 2016

**MINISTÈRE DE LA JUSTICE**  
 SDIP - Réf 8049 TR 2016  
 13 place Vendôme

16 DEC 2016  
 COURRIER CENTRAL TPA

Présente / Avise le chef de la **DIRECTION DES AFFAIRES**  
 Courrier Central / **0 DEC 2016**

Distribué le : \_\_\_\_\_  
 Signature de l'expéditeur : \_\_\_\_\_  
 Signature du destinataire : \_\_\_\_\_

SGR2 V16 - PTO 101209021011 - 06/11

Destinataire : \_\_\_\_\_

Processus Electronique

*[Faint background text and markings, possibly from a stamp or another document.]*

**Destinataire**

**Les avantages du service suivi :**  
 Vous pouvez connaître, à tout moment, 24h/24, la date de distribution de votre lettre recommandée ou le motif de non-distribution.  
 3 modes d'accès direct à l'information de distribution :  
 ■ SMS : Envoyer le numéro de la lettre recommandée au 930 80 (0,35€ TTC + prix d'un SMS)  
 ■ Le site internet : [www.laposte.fr/suivi](http://www.laposte.fr/suivi)  
 ■ Le service vocal interactif : 0 969 937 320 (hors appel non surtaxé).

Date : \_\_\_\_\_ P-tx : \_\_\_\_\_ CRBT : \_\_\_\_\_

Niveau de garantie : 16 €  153 €  458 €

LA POSTE  
15-17  
FRANCE

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LA POSTE

**RECOMMANDÉ AVEC AVIS DE RÉCEPTION**

Numero de l'envoi : **1A 064 825 1070 9**

Expéditeur

2016

BOURNEVILLE  
MAY 2016

SGRZ V16 - PTC 7 - 201229021011 - 06/11

**PREUVE DE DÉPÔT À CONSERVER PAR LE CLIENT**

La Poste S.A. au capital de 3 400 000 000 €, RCS Paris 356 000 000, 44 boulevard de Vaugirard 75757 Paris CEDEX 15

Conservez ce feuillet. Il sera nécessaire en cas de réclamation.  
Le cas échéant, vous pouvez faire une réclamation dans n'importe quel bureau de Poste.  
Les conditions spécifiques de vente de la lettre recommandée sont disponibles dans votre bureau de Poste ou sur le site [www.laposte.fr](http://www.laposte.fr).  
Pensez également à la Lettre Recommandée Électronique, consultez [www.laposte.fr/ire](http://www.laposte.fr/ire).

EXHIBIT 5

Mouralis Declaration

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., *et al.*,<sup>1</sup>

Debtors.

Case No. 3:16-bk-02230-PMG

Chapter 11

(Joint Administration Requested)

DECLARATION OF DENIS MOURALIS

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

1. My name is Denis Mouralis. I am over the age of eighteen years. I have personal knowledge of, and am competent to testify to, the matters set forth in this Declaration.

2. I am a tenured full Professor of arbitration law, international law and business law at Aix Marseille University in Aix-en-Provence, France. I am a member of the Center for Economic Law, the Institute of Business Law, and the Transport Law Center (CDMT / IFURTA) of that University. I teach courses for LL.M degrees (master of laws) and/or LL.B. degrees (bachelor of laws) in maritime law, arbitration law, investment law, international contracts law, air law, ethics of the legal profession, means of payment and credit.

3. I received a Doctorate in law, Paul Cézanne University (Aix-Marseille III), 2008. I also received an LL.M degree from McGill, 2002; and a DEA (LL.M) of private law, Paul Cézanne University (Aix-Marseille III), 2003. I

D. M.

<sup>1</sup> The Debtors in the chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: RMS Titanic, Inc. (3162); Premier Exhibitions, Inc. (4922); Premier Exhibitions Management, LLC (3101); Arts and Exhibitions International, LLC (3101); Premier Exhibitions International, LLC (5075); Premier Exhibitions NYC, Inc. (9246); Premier Merchandising, LLC (3867), and Dinosaurs Unearthed Corp. (7309). The Debtors' service address is 3045 Kingston Court, Suite 1, Peachtree Corners, Georgia 30071.

am a lawyer (*avocat*) admitted to the bar of Aix-en-Provence, since January 2005.

4. I am the author or co-author of many leading publications on international arbitration law and procedure, such as the well-known French treatise on international commercial law entitled *Droit du commerce international* (Paris, LexisNexis, 2011). I also serve as arbitrator and counsel for domestic and international arbitrations, and act as a consultant on international legal issues.

5. I am the author of a doctoral thesis on the interplay between arbitration and parallel legal proceedings, and have significant experience with international arbitrations (for instance, with respect to international ship construction contracts), as well as domestic arbitrations and with respect to disputes before domestic courts. I frequently advise on conflict of jurisdictions and the conflict of laws in the context of international contracts.

6. I am a member of the French Arbitration Committee, the Institute of World Business Law of the International Chamber of Commerce, the research team for arbitration and international commerce of the University of Versailles Saint-Quentin en Yvelines and of the CDE (Center for Economic Law) of Aix-Marseille University, the French Association of Maritime Law (AFDM), among other organizations.

7. I have been retained as an expert consultant by R.M.S. Titanic, Inc. ("RMST") to advise on the legal significance under French law of the *procès-verbal* issued to Titanic Ventures Limited Partnership, a predecessor to RMST on October 20, 1993 (the "*procès-verbal*").

D.H.

8. This *procès-verbal* in French, with a translation into English, together with French and English versions of a letter from Titanic Ventures Limited Partnership to the Office of Maritime Affairs of France (Ministry of Equipment, Transportation and Tourism) dated September 22, 1993, and of a letter from Ministry of equipment, transportation and tourism to Titanic Ventures Limited Partnership dated October 12, 1993 are annexed to the present declaration. These documents have been provided to me by RMST and I assume for purposes of this declaration that they are authentic.

9. Under French law, this *procès-verbal* constitutes a legally enforceable administrative decision from an Administrator in the French Office of Maritime Affairs (Ministry of Equipment, Transportation and Tourism).

10. This *procès-verbal* was executed pursuant to decree 61-1547 of 26 December 1961 (art. 13), in order to transfer property of some artefacts to Titanic Ventures Limited Partnership, as the entity that recovered those artefacts from the Titanic wreck.

11. Under decree 61-1547, when someone, called the "rescuer" (*sauveteur*), has recovered a wreck or artefacts contained in a wreck, he or she must inform the Maritime Affairs Administrator (*administrateur des affaires maritimes*) (art. 2). If the owner of such wreck or artefacts is not known, the Maritime Affairs Administrator advertises the discovery, through placards or notices published in newspapers (art. 4). If, within three months of such advertisement, nobody has claimed ownership of the wreck or artefacts, the Maritime Affairs Administrator has them sold (art. 12).

D. F.



12. The sums obtained through the sale are used to reimburse the administration's and rescuer's expenses, the sale costs and any applicable taxes or duties; then the surplus, if any, is escrowed for five years, during which the owner of the goods sold can claim this surplus. If, after five years, nobody has claimed the surplus, it goes to the Public Treasury (art. 14).

13. Alternatively, the Maritime Affairs Administrator can assign property of the wreck or artefacts to the rescuer (art. 13). In the case at hand, that was exactly the purpose of the *procès-verbal*, which transferred to "Titanic Ventures Limited Partnership" the legal property of the artefacts listed in its annex (list that I have not seen).

14. According to the provisions of decree 61-1547 (art. 13), such transfer of ownership is total and not conditional. Decree 61-1547 does not provide that any other entity than the rescuer should have any interest in the goods assigned. Decree 61-1547 does not provide that a third party should receive liens or encumbrances on the artefacts assigned to the rescuer.

15. Moreover, French law protects private property as a constitutional right (Declaration of the Rights of Man and of Citizen of 26 August 1789, art. 2). The owner of a thing has the absolute right to alienate it (French Civil Code, art. 537 and 544).

16. Case law deduces from these principles that a contractual clause preventing the owner of a thing from alienating it is valid only if it is temporary and justified by a legitimate interest (Court of Cassation, 1<sup>st</sup> Civil Chamber, October 31, 2007, case n° 05-14238, *Bull. Civ.* 2007, I, n° 337).

D. H.

17. I declare under penalty of perjury in the United States of America that the foregoing is true and correct.

18. Executed on this the 20<sup>th</sup> day of June, 2016.

A handwritten signature in blue ink, appearing to read "Denis Mouralis", is written over a horizontal line.

DENIS MOURALIS

ANNEXED: documents transmitted by RMST, including the *procès-verbal* of October 20, 1993, and two letters

Annex to Denis HOURLIS' Declaration

Letter from Titanic Ventures Limited Partnership  
to  
Office of Maritime Affairs for France  
(Ministry of Equipment, Transportation and Tourism)

September 22, 1993

English Version (2 pages)

D.M.

(Translation made by  
J.C. Goldsmith & Associates)

Titanic Ventures Limited Partnership  
204 Old Post Road  
Southport Connecticut 06490

Mr. Tricot  
Head of Headquarter of  
Maritimes Affairs in Lorient  
88-90 Ave, de Laparriere  
BP 2143  
56321 Lorient Cedex  
France

Paris, September 22, 1993

Dear Sir,

The search procedure of the artifacts' heirs regarding the artifacts recovered from the Titanic during the 1987 expedition is over.

Titanic Ventures Limited Partnership (Titanic Ventures), as salvor, wishes to own the artifacts to which the owners of heirs have not been identified pursuant to the publicity measures implemented by the french authorities.

On this occasion, I hereby, on behalf of Titanic Ventures and as Director of Titanic Ventures, state that Titanic Ventures intends to make a respectful use of the artifacts recovered from the Titanic in 1987 in memory of their initial owners.

In this view, I indicate you that the artifacts will only be used on a cultural purpose and will not,

therefore, be part of any operations which would lead to their dispersion, but to the exception of exhibition purposes, and none of the artifacts will be sold.

In supplement, I expressly discharge the French State of any liability vis-a-vis any third parties whose interests would have been damaged by the delivery of the artifacts recovered from the Titanic wreck.

yours sincerely,

George Tulloch

General Partner

Titanic Ventures Limited Partnership

D.N.

Letter from Titanic Ventures Limited Partnership  
to  
Office of Maritime Affairs for France  
(Ministry of Equipment, Transportation and Tourism)

September 22, 1993

French Version (1 page)

D.P.

TITANIC VENTURES

204 Old Post Road, Southport, Connecticut 06490  
Tel. (203) 255-9481, Fax (203) 255-7579

Monsieur Trient  
Chef du Quartier des Affaires Maritimes  
Quartier des Affaires Maritimes de Lorient  
38 - 90 Avenue de Laperrière  
BP 2143  
56321 Lorient Cedex  
France

Paris le 22 septembre 1993

Monsieur,

La procédure de recherche des ayants droit des objets tirés de l'épave du Titanic lors de l'expédition de 1987, arrive à son terme.

Titanic Ventures Limited Partnership (Titanic Ventures), en sa qualité de sauveur, souhaite donc prendre possession des objets dont les véritables propriétaires ou ayants droit n'ont pu être identifiés, comme suite aux mesures de publicité qui ont été prises par les autorités françaises.

A cette occasion, je tiens au nom de Titanic Ventures dont je suis le Directeur, à vous faire part de l'intention de la société de faire des objets prélevés de l'épave du Titanic en 1987, un usage respectueux du souvenir de leurs propriétaires initiaux.

Dans cette optique, je vous indique que les objets ne seront utilisés que dans un but culturel et ne feront, en conséquence, l'objet d'aucune opération entraînant leur dispersion, si ce n'est pour les besoins d'une exposition, ni d'aucune vente de l'un quelconque d'entre eux.

En outre, je décharge expressément l'Etat français de toute responsabilité vis-à-vis des tiers dont les intérêts auraient été atteints par la remise des objets tirés de l'épave du Titanic.

Je vous prie de croire, Monsieur, à l'assurance de mes sentiments distingués.

George Fullush  
General Partner  
Titanic Ventures Limited Partnership

~~TITANIC~~ and the Titanic logo are trademarks of Titanic Ventures.

D.P.

Letter from  
Ministry of Equipment, Transportation and Tourism  
to  
Titanic Ventures Limited Partnership

October 12, 1993

English Version (2 pages)

D. 17.



FRENCH REPUBLIC

Oct. 18, 1993

MINISTRY FOR EQUIPMENT,  
TRANSPORTATION AND TOURISM

MARITIME MATTERS

LORIENT QUARTER

N° 443  
ELD/DDD

Matter followed by:  
M. Le Doze

Lorient, October 12, 1993  
88-90 Avenue de la Periere  
B.P. 2143  
56321 Lorient Cedex  
Tel. 97 37 16 22  
Telex : 950848  
Facsimile : 97 83 97  
The Quarter Master for Maritime  
Matters of Lorient

To

Mr. Georges Tulloch  
Director Titanic Ventures  
Limited Partnership  
204 Old Post Road  
Southport  
06490 Connecticut (USA)

Elected domicile in France:  
Professional Partnership of Attorneys  
J. C. Goldsmith & Associates  
4, avenue Van Dyck  
75008 Paris  
to the attention of Mr. de Foucard, Esq.

RE: Objects removed from the wreckage of the Titanic in 1987

Dear Sir:

The search for the heirs and assigns of the objects removed from the wreckage of the Titanic at the time of the 1987 expedition has now been completed.

Ownership of the objects that have not been claimed, or for which the claim for restitution has been refused, shall be delivered to the company Titanic Ventures Limited Partnership, as salvager, in accordance with the provisions of Article 13 of Decree n° 61-1547 of December 26, 1961 instituting the system governing wreckages.

D. 17.

Concerning this delivery of ownership, I have duly noted your intention, entered in the letter of 9/22/93, by which you agreed to make use of such objects in conformity with the respect due to the memory of their initial owners and to not carry out any commercial transaction concerning such objects nor any sale of any one of them nor any transaction entailing their dispersion, if not for the purposes of an exhibition.

In addition, I have also noted your discharge with respect to the French State for any liability vis a vis any third parties whose interests might have been harmed by the remittance of the objects removed from the wreckage of the Titanic.

Very truly yours,

(Stamp: Maritime Matters Lorient)

Chief Administrator 2<sup>nd</sup> class  
for Maritime Matters Tricot  
(signature)

D. H.

Letter from  
Ministry of Equipment, Transportation and Tourism  
to  
Titanic Ventures Limited Partnership

October 12, 1993

French Version (2 pages)

D.R.

18 OCT. 1993

MINISTÈRE DE L'ÉQUIPEMENT,  
DES TRANSPORTS ET DU TOURISME  
-----  
AFFAIRES MARITIMES  
-----  
QUARTIER DE LORIENT  
-----

LORIENT, le 12 octobre 1993

80-96 Avenue de la Patrie  
S.P. 2143  
56321 LORIENT CEDEX  
Tél. 97.37.16.22  
Télex : 950916  
Télécopie : 97.03.97.

N°443  
HLD/DD

Le Chef du Quartier des Affaires  
Maritimes de LORIENT.

Affaire suivie par :  
M. LE DOZE

Monsieur Georges FULLOCH  
Directeur TITANIC VENTURES  
Limited Partnership  
204 Old Post Road  
SOUTHPORT  
06490 CONNECTICUT (U.S.A.)

BOUCLE EN FRANCE :  
Société d'Avocats  
J.C. GOLDBRITH et Associés  
4, avenue Van Dyck  
75008 PARIS

à l'attention de Maître de FOUCAUD

O.P.J.E.F. : Objets prélevés sur l'épave du "TITANIC" en 1987.

Monsieur,

La procédure de recherche des ayants-droit des objets  
tirés de l'épave du TITANIC lors de l'expédition de 1987, est  
maintenant achevée.

Les objets non réclamés, ou dont la demande en restitu-  
tion a été rejetée, vont être remis en propriété à la société  
TITANIC VENTURES Limited Partnership, en sa qualité de sau-  
veur, conformément aux dispositions de l'article 13 du déar-  
d n°51-1547 du 26 décembre 1967 fixant le régime des épaves.

DH

Concernant cette remise, j'ai pris bonne note de votre intention, consignée dans le courrier du 23.09.93, par laquelle vous vous engagez à faire un usage desdits objets conforme au respect dû au souvenir de leurs propriétaires initiaux et à ne réaliser aucune opération commerciale sur ces objets ni aucune vente de l'un quelconque d'entre eux ni aucune opération entraînant leur dispersion si ce n'est pour les besoins d'une exposition.

En outre, j'ai pris note également de votre décharge à l'égard de l'Etat français de toute responsabilité vis-à-vis des tiers dont les intérêts auraient été atteints par la remise des objets retirés de l'épave du TITANIC.

Je vous prie de recevoir, Monsieur, l'expression de ma considération distinguée.



Administrateur en Chef de 2ème classe  
des Affaires Maritimes TRICOT

D.T.

*Minutes of Delivery to the Salvager of the Artifacts Recovered  
from the Titanic Wreck in 1987*  
("Proces-Verbal")

by

Maritime Affairs Administrator of the  
Ministry of Equipment, Transportation and Tourism

October 20, 1993

English Version (2 pages)

D. P.

(Translation made by  
J.C Goldsmith et Associés)

FRENCH REPUBLIC

MINISTRY OF EQUIPMENT  
TRANSPORTATION AND TOURISM

MARITIME AFFAIRS

HEADQUARTER OF LORIENT

"MINUTES OF DELIVERY TO THE SALVAGER OF THE ARTIFACTS RECOVERED FROM  
THE TITANIC WRECK IN 1987"

(Article 13 of the decree n° 61-1547 dated December 21, 1961 determining the regime  
of the wreck at sea)

By the Maritime Affairs Administrator,  
M. Chapalain  
representing the Head of the Headquarter of Lorient,  
88-90 Avenue Laparribère  
B.P. 2143  
56321 Lorient Cedex

to

Titanic Ventures Limited Partnership  
represented by M. George Tulloch, Managing Partner,  
assisted by Alain de Foucaud, Esq.,  
204, Old Post Road, Southport  
Connecticut 06490 (United States)

In accordance with its decision dated October 12, 1993, taken pursuant to the provisions of the  
decree N° 61-1547 dated December 26, 1961 determining the regime of the wreck at sea, M.  
Chapalain, representing the Head of the Headquarter of Maritime Affairs of Lorient, has carried  
out this day the delivery of the artifacts recovered from the Titanic wreck in 1987 and whose  
legal owners or heirs have not been identified pursuant to the publicity measures implemented  
by the French Authorities, to Titanic Ventures Limited Partnership, in its capacity of salvager.

D. N.

The list of the artifacts is exhibited to the present minutes together with the letter of intent of Titanic Ventures Limited Partnership dated September 22, 1993.

Done at Saint-Remy, on October 20, 1993

\_\_\_\_\_  
The Administrator  
of Maritime Affairs  
M. Chapelain  
representing the Head  
of the Headquarter of Lorient

\_\_\_\_\_  
Titanic Ventures Limited Partnership  
represented by M. George Tulloch,  
Managing Partner

\_\_\_\_\_  
Assisted by Alain de Foucaud, Esq.  
Attorney at Law

D. H.



*Minutes of Delivery to the Salvager of the Artifacts Recovered  
from the Titanic Wreck in 1987  
("Proces Verbal")*

by

Maritime Affairs Administrator of the  
Ministry of Equipment, Transportation and Tourism

October 20, 1993

French Version (2 pages)

D. 17.

REPUBLIQUE FRANÇAISE

MINISTÈRE DE L'ÉQUIPEMENT,  
DES TRANSPORTS ET DU TOURISME

AFFAIRES MARITIMES

QUARTIER DE LORIENT

"PROCÈS-VERBAL DE REMISE AU SAUVETEUR  
DES OBJETS PRÉLEVÉS SUR L'ÉPAVE DU TITANIC EN 1987"

(Article 13 du décret n°61-1547 du 21 décembre 1961  
fixant le régime des épaves maritimes)

Par l'Administrateur des Affaires Maritimes,  
M. CHAPALAIN  
représentant le Chef de Quartier de LORIENT,  
88-90, Avenue de la Ferrière  
E.P. 2143  
56321 LORIENT Cédex

à

la société TITANIC VENTURES Limited Partnership  
représenté par Monsieur Georges TULLOCH, directeur  
assisté de Maître Alain de FOUCAULD, avocat,  
204 Old Post Road, Southport  
CONNECTICUT 06490 (Etats-Unis)

\* \* \*

Conformément à sa décision en date du 12 octobre 1993,  
prise en application des dispositions du décret n°61-1547 du 26 décembre  
1961 fixant le régime des épaves maritimes, Monsieur CHAPALAIN,  
représentant le Chef de Quartier des Affaires Maritimes de LORIENT a  
procédé ce jour à la remise des objets prélevés sur l'épave du TITANIC en  
1987 et dont les légitimes propriétaires ou ayants droit n'ont pu être  
identifiés, comme suite aux mesures de publicité prises par les autorités  
françaises, à la société TITANIC VENTURES Limited Partnership, en sa  
qualité de sauveteur.

La liste de ces objets figure en annexe du présent procès-verbal, ainsi que la lettre d'intention de la société TITANIC VENTURES Limited Partnership en date du 22 septembre 1993.

A Saint Rémy , le 20 octobre 1993

L'Administrateur  
des Affaires Maritimes  
Monsieur CHAPALAIN  
représentant le Chef  
de Quartier LORIENT



La société TITANIC VENTURES  
Limited Partnership représenté  
par Monsieur G. TULLOCH,  
Directeur

assisté de Maître A. de FOUCAULD,  
Avocat

D. H.