UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., *et al.*,[1]

Debtors.

Case No. 3:16-bk-02230-PMG
Chapter 11 (Jointly Administered)

RMS TITANIC, INC.,

Plaintiff,

vs.

FRENCH REPUBLIC
a/k/a REPUBLIC OF FRANCE,

Defendant.

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

PLAINTIFF RMS TITANIC, INC.'S SUPPLEMENTAL SUBMISSION IN SUPPORT OF ITS 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 and through the undersigned counsel, hereby files this *Supplemental Submission in Support of its Motion for Default Judgment Against Defendant French Republic a/k/a Republic of France* (the "Supplemental

[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.

Submission”). In support of the Motion for Default Judgment, the Debtors respectfully state as follows:

BACKGROUND

1. 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.

2. 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 (“IFREMER”). The artifacts recovered during the 1987 expedition are referred to herein as the “Artifacts.” TVLP is the predecessor to the Debtor. For purposes of this pleading, TVLP and RMST will be collectively referred to as the “Debtor”.

3. On July 22, 2016, this 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]. In that order, the Court found that the Republic of France may assert an "interest" in the Artifacts within the meaning of Section 363(f) of the Bankruptcy Code, and such interest may warrant 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).

4. On August 17, 2016, Debtor RMST commenced in this Court an adversary proceeding against the Republic of France in the matter styled *RMS Titanic, Inc. v. French Republic a/k/a Republic of France*, Adversary Proceeding Case No. 3:16-ap-00183-PMG (the "French Adversary Proceeding"). In the French Adversary Proceeding, Debtors seek a determination, pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 7001(2) and (9), that the Republic of France holds no interest in the Artifacts.

5. On April 25, 2017, the Court entered an order granting Debtor's Amended Motion for Entry of Clerk's Default against the French Republic and scheduling an evidentiary hearing on Debtor's Amended Motion for Default Judgment against the French Republic (hereinafter the "Order"). The Debtor files this Supplemental Submission to address the concerns raised by the Court in the Order, and to provide the Court with a sufficient evidentiary basis to enter default judgment against the French Republic in accordance with 28 U.S.C. § 1608(e).

6. In the Order, the Court seeks additional evidence including: an explanation of the legal implications of the Proces-Verbal dated October 20, 1993; an explanation of the legal implications of the French Administrator's decision dated October 12, 1993 transferring the Artifacts to TVLP; an explanation of the legal implications of the Debtor's "letter of intent" dated September 22, 1993; whether "decree 61-1547 of 26 December 1961" permits an Administrator to modify an award in specific circumstances, such as by incorporating a salvager's representations into a Proces-Verbal; whether the attachment of the Debtor's letter of intent to the Proces-Verbal in the case may have affected the property transferred to the Debtors; and (vi) the import of the "Note from the Embassy of the Republic of France dated July 8, 2016".

7. In support of this Supplemental Submission, Professor Denis Mouralis, Professor of Law at Aix Marseille University in Aix-en-Provence, France, executed an additional declaration providing his expert opinion on the issues raised in the Order. *See*, Exhibit 1 attached hereto.

8. In addition, the Debtors engaged Yann Aguila, a former member of the French Supreme Administrative Court, the Conseil d'Etat. While a member of the Conseil d'Etat, Mr. Aguila served as a judge within the Litigation Division (2009-2011), and prior to that, he served as Deputy Secretary-General (2001-2004), and Commissaire du Government (independent judge giving impartial opinions on all cases before the Conseil d'Etat (2004-2009). See, Exhibit 2 attached hereto at ¶3. The *Conseil d'Etat* acts as legal advisor to the executive branch and as the Supreme Court of Appeal for all administrative law courts and administrative justice in France. *See,* Declaration of Yann

Aguila in Support of Application of Nelson Mullins' Application Seeking Authorization for the Debtors to Make Payment Directly to Yann Aguila for Services Rendered, attached hereto as Exhibit 3 at ¶ 2. It hears both claims against national-level administrative decisions and appeals from lower administrative courts. Like the decisions of the United States Supreme Court, the decisions of the *Conseil d'Etat* are final and un-appealable. *Id.* Mr. Aguila, currently a partner in the law firm of Bredin Prat in Paris, France leads Bredin Prat's Public/Administrative law practice. Id. at ¶2. Mr. Aguila was retained to provide his expert opinion on the issues raised in the Order.

9. Finally, Jessica Sanders, the Corporate Secretary and Vice President of Corporate Affairs for the Debtors, provides an affidavit explaining that from the time RMST was awarded title to the Artifacts to the commencement of the Debtors' Chapter 11 cases, the Republic of France never asserted or expressed an interest in the Artifacts. *See*, Exhibit 4 attached hereto.

SUPPLEMENTAL EVIDENCE

I. The Legal Implications of the Proces-Verbal

A. The Proces-Verbal constitutes an unconditional transfer of title to Debtor.

10. Under French law, the *Procès-Verbal* constitutes a legally enforceable administrative decision from an Administrator in the French Office of Maritime Affairs (Ministry of Equipment, Transportation and Tourism) (hereinafter, the "Administrator"). *See*, Exh. 1 at ¶9, and Exh. 2 at *¶¶* 11-17, 29, 42. The transfer of the Artifacts took place through two acts issued by the Administrator: the letter of decision dated 12 October

1993 (the "Letter Decision") as well as minutes dated 20 October 1993 (the "Proces-Verbal"). *See*, Exh. 1 at ¶¶8, 9 and Exh. 2 at ¶16.

11. The Letter Decision and the Proces-Verbal were executed pursuant to decree 61-1547 of 26 December 1961 (art. 13), in order to transfer the Artifacts to Titanic Ventures Limited Partnership. *See*, Exh. 1 at ¶10 and Exh. 2 at ¶11.

12. The Administrator may only proceed under Article 13 if no party claims ownership of property salvaged at sea following an extended public search for such owners, or for the heirs and assigns of such owners. The search is governed by Article 13 and is intended to give any third-parties with a claim of ownership the opportunity to make such claim. *See*, Exh. 1 at ¶¶11, 13 and Exh. 2 at ¶13.

13. Only if the property goes unclaimed may the Administrator either sell the property to compensate the salvager for its work pursuant to Article 12, or transfer title of the property to the salvager pursuant to Article 13. *Id.*

14. In the instant case, the Administrator elected to satisfy the Debtor's salvage award utilizing Article 13, and only after determining that there existed no claims of ownership by third-parties, their heirs or assignees. *See*, Exh. 1 at ¶¶13, 14 and Exh. 2 at ¶15.

15. Article 13 does not provide merely for the use or possession of such property, nor any other transfer yielding less than the full bundle of property rights inherent in unconditional title. *See*, Exh. 1 at ¶16. Therefore, despite the Procès-Verbal using the term "delivery", its purpose was to transfer full property of the Artifacts to the

beneficiary. The term "delivery" as used in the Proces-Verbal means transfer of title. *See*, Exh. 1 at ¶¶14, 15, and Exh. 2 at ¶¶15 and 16.

16. Article 13 of Decree 61-1547 does not permit any entity other than the rescuer to obtain any interest in the goods. *See*, Exh. 1 at ¶16.

17. Article 13 of Decree 61-1547 does not permit a third party to receive liens or encumbrances on the artifacts assigned to the rescuer. *See*, Exh. 1 at ¶16 and Exh. 2 at ¶13, 14.

18. Article 13 of Decree 61-1547 does not permit a condition to be incorporated into the Proces-Verbal. *See*, Exh. 1 at ¶16 and Exh. 2 at ¶¶ 38, 41.

19. In addition to the plain language of decree 61-1547, which permits only a full, complete and unconditional transfer of title, other elements of French law confirm that the transfer of title to the Debtor was complete and unconditional.

20. French law protects private property as a constitutional right. *See*, Exh. 1 at ¶20, 21 and Exh. 2 at ¶41. *Id*. In France, 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. *Id.* Even if decree 61-1547 permitted a conditional transfer of title, which it does not, because the transfer of title evidenced by the Proces-Verbal was permanent, it could not contain a prohibition on alienation in perpetuity. *Id.*

21. French law enumerates the bundle of rights a party may have in property. *See*, Exh. 1 at ¶22. Property rights are defined by statute. *Id.* No party may have an interest in property that is not recognized by statute, except rights of usage created by contract, with consent of both parties. *Id.* In particular, French law ignores the concept

of equitable interests in property. *Id.* Thus, the Proces-Verbal could not create, for the benefit of the Republic of France, an ownership interest in the Artifacts, or a right to prevent their alienation. *Id.*

22. For all these reasons, the Proces-Verbal constitutes a transfer of full and unconditional title to the Artifacts to the Debtor and does not contain a condition or reservation on the transfer of title.

B. As a matter of law, the Republic of France never had an ownership interest in the Artifacts.

23. Neither in decree 61-1547, nor elsewhere in French law, did the Republic of France ever have a claim to ownership of the Artifacts. Indeed, in issuing the Letter Decision and the Proces-Verbal pursuant to Article 13, the Administrator acted as a neutral administrative authority transferring title of unclaimed or abandoned property to the Debtor. *See*, Exh. 1 at ¶18 and Exh. 2 at ¶¶14 and 40. The purpose of Article 13 is not to permit the Administrator to convey property owned by the Republic of France to a third-party, nor to permit unclaimed property to be claimed by the sovereign. *Id.*

24. Article 13 does not permit the Administrator to convey to the sovereign unclaimed property rescued from the sea. *Id.*

25. The Proces-Verbal does not convey to the Republic of France any ownership interest in the Artifacts or any reversionary interest in them. *Id.*

26. Nor did the Republic of France ever have an ownership claim to the Artifacts under the Law of the Sea. 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 property from the wreck as its own.

II. <u>The Legal Implications of the Defendant's Letter of Intent dated September 22, 1993 and the Administrator's Decision dated October 12, 1993</u>

27. In the letter of intent dated September 22, 1993, the Debtor represented, that "these objects shall be used only for cultural purposes and shall accordingly not form the subject matter of any transaction leading to their dispersion (except for the purposes of an exhibition) and that no such object shall be sold" (the "Representation" or the "Representation Letter").

28. On October 12, 1993, the Administrator issued its Letter Decision, which together with the Proces-Verbal, constitute the administrative acts by which the French administration transferred to the Debtor title to the Artifacts. *See*, Exh. 2 at ¶¶15 and16. The Letter Decision constitutes the decision of the Administrator granting title to the Artifacts to the Debtor, whereas the Proces-Verbal sets out the precise list of Artifacts and records their "delivery", or transfer to the Debtor. *Id.*

29. The Letter Decision confirms that the public search for parties claiming an ownership interest in the Artifacts was completed: "[t]he 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."

30. The Letter Decision confirms that such search yielded no party with a property interest in the Artifacts. In particular, the Letter Decision dictates that the Artifacts "delivered" pursuant to the regime set forth in Article 13 would only include those objects over which no party has made a claim of ownership, or for which such claim has been rejected: "[o]wnership of the objects *that have not been claimed, or for which the claim for restitution has been refused,* shall be delivered to the company."

(Emphasis added). Pursuant to the plain language of the Letter Decision, neither the Republic of France nor any other third-party was granted a property interest in the Artifacts. *See*, Exh. 1 at ¶24 an Exh. 2 at ¶14

31. The term "delivered" in the Letter Decision has the same meaning as the term "delivery" in the Proces-Verbal. Because Article 13 provides only for the transfer of complete and full title to property, and does not provide for merely the use or possession of property, nor any other transfer yielding less than the full bundle of property rights inherent in unconditional title, the term "delivered" in the Letter Decision refers to the transfer of title. *See*, Exh. 1 at ¶¶14, 15 an Exh. 2 at *¶¶15, 16, 17.*

A. French law does not permit an Administrator to permanently modify an award to limit Debtor's right to sell the Artifacts.

32. The Letter Decision also references the Representation Letter: "the list of the artefacts is exhibited to the present minutes together with the letter of intent of Titanic Ventures Limited Partnership dated September 22nd, 1993".

33. The Letter Decision, by its plain language, does not incorporate by reference the Representation Letter, nor make the Representation Letter a condition or limitation to the "delivery". *See*, Exh. 1 at ¶¶ 19-29 and Exh. 2 at ¶24-39.

34. French law prohibits the "delivery" of property with a permanent condition preventing the sale or assignment of such property. *See*, Exh. 1 at ¶¶ 19-29 and Exh. 2 at ¶39, 41.

35. As a matter of French law, the attachment of the Representation Letter to the Letter Decision does not impose any conditions limiting the sale or assignment of the Artifacts. *See*, Exh. 1 at ¶¶ 19-29 and Exh. 2 at ¶24-39.

36. The attachment of the Representation Letter to the Letter Decision does not vest in the Republic of France any property interest in the Artifacts. *See*, Exh. 1 at ¶ 17, 18, 23, 29 and Exh. 2 at ¶¶14 and 40.

37. The Representation Letter itself merely constitutes a statement of the present and future intentions of the Debtor. *See*, Exh. 1 at ¶ 25 and Exh. 2 at ¶24-39. Under French law, the attachment of the Representation Letter to the Letter Decision does not create any legally binding obligations or limitations on the Debtor's use or enjoyment of the Artifacts, nor does the Representation Letter legally prevent the Debtor from taking any action incident to full ownership of the Artifacts. *Id.*

38. As set forth above, French law does not give the Administrator the right to reserve any interest in, or permanently limit the use of the Artifacts. In any event, administrative decisions departing from general rules set out by statute must set forth a precise explanation, in writing, of the factual and legal considerations that formed the basis for such a departure from general rules of law. *See*, Exh. 1 at ¶¶26-28 and Exh. 2 at ¶24-39. Neither the Letter Decision nor the Proces-Verbal contains any such explanation, and the attachment of the Representation Letter does not constitute such an explanation. *Id.*

39. The Representation Letter constitutes precatory language, at best. Language is characterized as precatory when its "ordinary significance imports entreaty, recommendation, or expectation rather than any mandatory direction. *Raines v. Duskin*, 247 Ga. 512, 523 (2) (277 S.E.2d 26) (1981); *Torres v. Elkin,* 317 Ga. App. 135, 141, 730 S.E.2d 518*,* 523 (2012). In this respect, the Representation Letter was made a part of the

record of the administrative proceeding, but it does not carry legal significance governing the nature of the Debtor's ownership of the Artifacts. *See*, Exh. 1 at ¶¶25, 29 and Exh. 2 at ¶24-39

III. <u>The Note Purportedly from the French Embassy has no legal effect on this matter</u>

A. The Note is not admissible evidence in the proceedings.

40. The purported Note from the French Embassy dated July 8, 2016 (the "Note") and attached as an exhibit to the Complaint initiating this Adversary Proceeding is not admissible evidence in this proceeding. "[W]hen a litigant has been given ample opportunity to comply with court orders but fails to effect any compliance, the result may be deemed willful." *Katz v. MRT, LLC*, 2008 U.S. Dist. LEXIS 45586, 2008 WL 2368210 at *3 (S.D. Fla. June 10, 2008); *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 952 (11th Cir. 1996). The record in this case yields the inescapable conclusion that the default of the Republic of France was willful. As such, and in keeping with this Court's Order, the Republic of France has defaulted in these proceedings and waived the right to defend the action.

41. The Plaintiff attached the purported Note to the Complaint merely to provide this Court with a complete record of the facts and circumstances leading to the commencement of the Adversary Proceeding. The Plaintiff disputes the accuracy of virtually every aspect of the Note and did not offer the Note for the truth of any matter asserted therein. Only authentic documents attached to a complaint may be considered for purposes set forth in Rule 10(c) of the Federal Rules of Civil Procedure. *See e.g.*

Blankenship v. Manchin, 471 F.3d 523, 526 n. 1 (4th Cir. 2006). Where a document lacks authenticity or a party disputes its authenticity, it may not be used. *Id.*

42. The Note does not constitute admissible evidence in this matter and the Court should not consider it on its merits. The Note was not signed and lacks foundation. The author of the Note is unknown and not subject to cross-examination. The Note constitutes inadmissible hearsay. The Note renders legal opinions about French law requiring expert testimony. The Note wholly fails to meet the requirements of Rule 44 of the Federal Rules of Evidence governing entry of a Foreign Record, as it lacks an attestation by an authorized person accompanied either by a final certification of genuineness or by a certification under a treaty or convention to which the United States and the country where the record is located are parties. Fed. R. Evid. 44.[2]

B. Not only does the Note deserve no evidentiary respect, the allegations contained in it are incorrect.

43. The unknown author of the Note incorrectly suggests that the Covenants and Conditions issued by United States District Court for the Eastern District of Virginia (the "EDVA Court") governing the use and disposition of the artifacts within that Court's jurisdiction also apply to the Artifacts. The EDVA Court has repeatedly stated that the Covenants and Conditions do not apply to the Artifacts. *See e.g.*, June 21, 2016 transcript, attached hereto as Exhibit 5, at pp. 11 (THE COURT: [m]y understanding that it's only

[2] Nor does the Note constitute a self-authenticating foreign document under Rule 902 of the Federal Rules of Evidence as it is unsigned, not attested, and lacks a final certification of genuineness of signature. The Federal Rules of Evidence are made applicable to this proceeding pursuant to Rule 9017 of the Federal Rules of Bankruptcy Procedure.

the French artifacts that are involved in this sale, and those were excepted in the covenants and conditions….")

44. The unknown author of the Note incorrectly points to the holding in *R.M.S. Titanic, Inc. v. Wrecked & Abandoned Vessel*, 435 F.3d 521 (4th Cir. 2006) as authority for the proposition that the Proces-Verbal incorporated by reference the Representation Letter. As a matter of law, that portion of the Fourth Circuit decision referenced in the Note constitutes dictum. Indeed, the Fourth Circuit specifically refused to consider or determine any issues related to the Artifacts, instead holding that the EDVA Court lacked subject matter jurisdiction over them. *Id. at* 538. The Fourth Circuit could not and did not rule, on the one hand, that it lacked subject-matter jurisdiction over the Artifacts, and simultaneously, on the other hand, assert jurisdiction to interpret the meaning of French law with regard to the Proces-Verbal (an issue not even before it).

45. The unknown author of the Note states incorrectly, or perhaps disingenuously, that the Republic of France had no prior notice of Debtor's intent to sell Artifacts. As previously set forth in detail in the Debtor's Memorandum in Support of its Amended Motion for Default Judgment, beginning in March, 2017 the Republic of France and NOAA engaged in extensive correspondence about this very issue. [D.E. 49, Ex.3]

46. The unknown author of the Note summarily and obliquely refers to "France's ownership of recovered artifacts" and artifacts "held by TVLP for the French government." These statements contain no factual support, no legal authority, and are

irreconcilable with article 13 of decree 61-1547, the plain language of the Letter Decision, the Proces-Verbal, and the Law of the Sea.

47. Following this Court's Order granting the Clerk's default, the only competent evidence before this Court consists of the allegations in the Complaint, and the affidavit testimony of Professor Mouralis, Mr. Aguila, Ms. Sanders, and Mr. Henshall. Pursuant to Fed. R. Civ. P. 55, a default is an admission of well-pleaded allegations. *Perez v. Wells Fargo N.A.*, 774 F.3d 1329, 1337 (11th Circ. 2014).

IV. **The inactions of the Republic of France constitute implied consent under Bankruptcy rule 363(f)(2)**

48. Thirty years have passed since the Debtor recovered the Artifacts. Prior to the commencement of the Debtor's Chapter 11 case, the Republic of France never asserted a property interest in the Artifacts or sought to limit the Debtor's unfettered ownership of them despite numerous opportunities to do so. *See,* Exhibit 4, attached hereto. During this entire period, the Republic of France took no interest or action with respect to the Artifacts. *Id.*

49. Of particular importance, the Republic of France refused to take any position or otherwise participate in any manner when the EDVA Court in 2004 sought to invalidate the Proces-Verbal and assert *in rem* jurisdiction over the Artifacts. *R.M.S. Titanic, Inc. v Wrecked & Abandoned Vessel*, 323 F. Supp. 2d 724 (E.D. Va. 2004). In refusing to recognize the 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 Debtor's ownership of the Artifacts, thus re-confirming the legal effect of the Letter Decision and the Proces-Verbal. *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel,* 435 F.3d 521, 528 (4th Cir. 2006). Had the Fourth Circuit affirmed the EDVA Court Order, the EDVA Court would have assumed jurisdiction over the Artifacts, voiding the six year French administrative process that resulted in the issuance of the Letter Decision and the Proces-Verbal. Following the attempted invalidation of the Proces-Verbal and the jurisdiction of the French Administrative authority, the Debtor asked the Republic of France to participate as an *amicus curiae* in the Fourth Circuit appeal. *See*, Exhibit 4, attached hereto. The Republic of France refused to participate as an *amicus curiae*. *Id.* The Republic of France similarly refused to write a letter on behalf of the Debtor or to take or state any position on the matter. *Id.* The Republic of France never asserted any property interest in the Artifacts at that time, or any other. *Id.* Instead, the Republic of France consciously abstained from those proceedings, evidencing a lack of any authority, jurisdiction or interest in the Artifacts.

50. Similarly, the Republic of France willfully chose not to participate in these proceedings, resulting in this Court's entry of the Clerk's default pursuant to Fed. R. Civ. P. 55(a). As set forth in detail in the Debtors' Memorandum in Support of its Amended Motion for Default [D.E. 49], this default was willful, knowing and intentional, following extensive correspondence from both the Debtors and the United States Government and actual notice of this proceeding provided in accordance with requirements for international service of process under the Hague Convention.

51. In the Adversary Proceeding, the Debtor seeks a determination under § 105 and § 363 of the Bankruptcy Code that the French Republic has no interest in the Artifacts.

52. Section 363 of the Bankruptcy Code authorizes the sale of a debtor's property outside of the ordinary course of business. Subsection (f)(2) permits a sale free and clear of any interest in such property if such entity claiming an interest consents. The majority of bankruptcy courts throughout the country view silence as implied consent sufficient to satisfy the consent requirement for approving a sale under § 363(f)(2). *See e.g., In re Colarusso*, 295 B.R. at 175; *see also FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002); *In re Elliot*, 94 B.R. at 345; *In re Blixseth*, No. 09-60452-7, 2011 Bankr. LEXIS 1451, 2011 WL 1519914, at *14 (Bankr. D. Mont. April 20, 2011); *Hargrave v. Township of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994).[3]

53. The silence of the Republic of France over the past 24 years, its refusal to participate in the Fourth Circuit proceedings, and its default in these proceedings constitute implied consent under § 363(f)(2) justifying a determination without further evidentiary review that the French Republic has no interest in the Artifacts.

[3] Other courts hold that a creditor's silence in response to a properly noticed sale results in waiver of its objection. *Village Ventures, Inc. v. The Official Comm. of Unsecured Creditors (In re EnvisioNet Computer Servs., Inc.),* 275 B.R. 664, 669 (D. Me. 2002); *In re Table Talk, Inc.,* 53 B.R. 937, 941-42 (Bankr. D. Mass. 1985). The consent versus waiver distinction is one without a difference, because courts uphold sales under both views. The Seventh Circuit succinctly expressed the policy for this result as follows: "It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt's assets had to execute a formal consent before they could be sold." *FutureSource LLC*, 312 F.3d at 285-86.

WHEREFORE, the Debtors respectfully request that this Court enter default judgment against the Republic of France declaring that it has no interest in the Artifacts.

NELSON MULLINS RILEY
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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 July 25, 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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/s/ Daniel F. Blanks
Attorney

~#4826-9932-5260~

EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., *et al.*,[1]

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

[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.

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 International Law Association, 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*").

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 22nd, 1993, and of a letter from Ministry of equipment, transportation and tourism to Titanic Ventures Limited Partnership dated October 12th, 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, executive branch of government).

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).

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. Article 13 of decree 61-1547 permits the administration to give the rescuer any wreck, as an alternative to selling it and paying an indemnity to the rescuer, for its costs and efforts, out of the sale price. While article 13 uses the verb deliver (*remettre*), it clearly provides for the full transfer of property of an unclaimed wreck to the rescuer, when the administration chooses to apply it. Therefore, despite the procès-verbal using the term "delivery", its purpose is to transfer full property of the artefacts to the beneficiary.

15. Moreover, I must point out that, under French contractual practice, the transfer of property in tangible moveable items is usually made through their delivery to the recipient. A donation of a moveable item is valid only if it has been physically delivered to the beneficiary (Cass. civ. 1st, 11 July 1960, *Bull. civ.* 1960, I, n° 382, http://tinyurl.com/y7xzmanf) or if a notarized act has been executed (Civil Code, art. 931). As to the sale of moveable items, while physical delivery is not a condition of its validity (Civil Code, art. 1583), it often takes

place at the exact moment when the parties conclude the contract orally, so that is can be deemed as an expression of their agreement. In this legal and cultural context, it is quite understandable that article 13 of decree 61-1546 used the word delivery as implying the transfer of property in the artefacts to the rescuer.

16. 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.

17. Neither decree 61-1547, nor any other French legal rules confers to the Republic of France a claim to ownership of wrecks found at sea and brought back to French shore, except, of course, when such wrecks are identified as of ships belonging to the French government. But when this is not the case, the purpose of decree 61-1547 is to attempt to find the owner of the wreck and, if this fails, to indemnify the rescuer through the sale of the wreck to a third party or the transfer of its ownership to the rescuer.

18. Therefore, France never had any interest in the wreck or the artefacts contained in it. In issuing the Proces-Verbal pursuant to Article 13, the Maritime Affairs Administrator acted as a neutral administrative authority transferring title of unclaimed or abandoned property to the Debtor. Article 13 does not permit the Maritime Affairs Administrator to convey property owned by the Republic of France to a third-party, nor does it permit unclaimed property to be claimed by the Sovereign.

19. In addition, there are several specific reasons why the procès-verbal cannot be construed as giving the rescuer a limited or conditional interest in the artefacts.

20. ***First***, French law protects private property as a constitutional right (Declaration of the Rights of Man and of Citizen of August 26th, 1789, art. 2). The owner of a thing has the absolute right to alienate it (French Civil Code, art. 537 and 544). 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, 1st Civil Chamber, October 31st, 2007, n° 05-14238, *Bull. Civ.* 2007, I, n° 337).

21. If we transpose this reasoning here, it means the Maritime Affairs Administrator could not impose on the rescuer it gave the wreck's property a perpetual prohibition of alienating it. Such a prohibition could only be in force for a few years: 24 years later, it would not be in force any more.

22. ***Second***, contrary to the English legal tradition, in France, the rights persons can have in chattels or real estate are not unlimited in nature. In principle, rights *in rem* are exhaustively enumerated by statutes, such as full property, joint property, right of the beneficiary of a pledge, etc. Recently, the French Court of Cassation has ruled that parties can, in a contract, establish a right of use that is not specifically mentioned in a statute (Court of Cassation, 3rd Civil Chamber, October 31st, 2012, n° 11-16.304). Nevertheless, this ruling dealt only with rights of use and the Court later added that, when the beneficiary is not a natural person, such a right cannot last more than 30 years (Court of Cassation, 3rd Civil Chamber, January 28th, 2015, n° 14-10.013). In addition, one

must bear in mind that French law ignores the notion of equitable interests in property.

23. Thus, under French law and even considering this recent case-law, the procès-verbal could not create, to the benefit of the French government, a perpetual interest in the artefacts that would give it the right to oppose their owner alienating them. Indeed, such an interest would not be a right of use, since the French government never pretended to use the artifacts. On the contrary, it delivered them to Titanic Ventures Limited Partnership. This interest would rather be akin to what is known in the English legal tradition as an equitable interest which does not exist under French law. Moreover, there was no contract between the French government and Titanic Ventures Limited Partnership explicitly creating such a right in rem. Lastly, such a right could not be perpetual.

24. ***Third***, the procès-verbal itself does not contain any condition or reservation. It only states that "the list of the artefacts is exhibited to the present minutes together with the letter of intent of Titanic Ventures Limited Partnership dated September 22nd, 1993".

25. In this letter of intent, the rescuer explained that "these objects shall be used only for cultural purposes and shall accordingly not form the subject matter of any transaction leading to their dispersion (except for the purposes of an exhibition) and that no such object shall be sold". It is impossible to deduce from this affirmation that the rescuer granted the French government an interest of some sort, that would not be recognized by French law. It cannot any more be construed as a commitment not to alienate the artefacts, since it is

not worded as a formal undertaking. Anyway, under French law, perpetual obligations are forbidden (French Civil Code, art. 1210 and Constitutional Council, November 9th, 1999, n° 99-419).

26. ***Fourth***, under article L211-3 of the Code of Relations between the Public and the Administration, administrative decisions departing from general rules set out by statutes or by-laws must be motivated. Under article L211-5 of the same Code, this means that the administration must explain, in writing, the factual and legal considerations which are the ground for its decision.

27. Thus, even if we accept, for the sake of argument, that it was legally possible for the Maritime Affairs Administrator to reserve any right in the artefacts, had he intended to do so, he would have had to explain, in writing, the factual and legal considerations that formed the basis for his decision.

28. However, the procès-verbal contains no written explanation of the factual and legal considerations upon which its decision was based. The procès-verbal only states that the letter is attached to it. It does not say that the motivation for its decision is to be found in this attachment. Moreover, the letter annexed to the procès-verbal only makes some affirmation as to the way the artefacts shall be used. The letter does not contain a motivation for the procès-verbal, and it does not state the factual and legal ground for the procès-verbal.

29. ***In conclusion***, (a) the procès-verbal does not state that the French government retains some interest in the artefacts; (b) even if the administration had such an intent, the procès-verbal could not validly create such an interest because (c) this would perpetually infringe on the rights of the artefacts' owner, which would contradict fundamental principles of French law; (d) this would

create an equitable interest in chattels that cannot exist under French law; and (e) the procès-verbal does not provide any motivation, in writing, explaining any decision to limit the title being transferred.

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

30. Executed on this the 13th day of July, 2017.

DENIS MOURALIS

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

Annex to Denis MOURALIS' 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 & Associas)

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 Laperriere
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 respectfull 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,

D.M.

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.M.

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.M.

TITANIC VENTURES
204 Old Post Road, Southport, Connecticut 06490
Tel. (203) 255-9481, Fax (203) 255-7673

Monsieur Tricot
Chef du Quartier des Affaires Maritimes
Quartier des Affaires Maritimes de Lorient
88 - 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 sauveteur, souhaite donc prendre possession des objets dont les légitimes 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 propriétaire 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 expressement l'Etat francais de toute responsabilité vis-à-vis des tiers dont les intérêts auraient été attients 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 Tulloch
General Partner
Titanic Ventures Limited Partnership

TITANIC and the Titanic logo are trademarks of Titanic Ventures.

D.M.

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

October 12, 1993

English Version (2 pages)

D. M.

FRENCH REPUBLIC

Oct. 18, 1993

MINISTRY FOR EQUIPMENT,
TRANSPORTATION AND TOURISM

MARITIME MATTERS

LORIENT QUARTER

N° 443
HLD/DD

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 Martime
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. M.

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 2nd class
for Maritime Matters Tricot
(signature)

D. M.

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

October 12, 1993

French Version (2 pages)

D.M.

18 OCT. 1993

MINISTERE DE L'EQUIPEMENT,
DES TRANSPORTS ET DU TOURISME

AFFAIRES MARITIMES

QUARTIER DE LORIENT

LORIENT, le 12 octobre 199

80-90 Avenue de la Perrière
B.P. 2143
56321 LORIENT CEDEX
Tél. 97.37.16.22
Télex : 950846
Télécopie : 97.83.97.

N°443
HLD/DD

Affaire suivie par :
M. LE DOZE

Le Chef du Quartier des Affaires Maritimes de LORIENT,

à

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

DOMICILE ELU EN FRANCE :
Société d'Avocats
J.C. GOLDSMITH et Associés
4, avenue Van Dyck
75008 PARIS
-à l'attention de Maître de FOUCAUD

O B J E T : Objets prélevés sur l'épave du "TITANIC" en 1987.

Monsieur,

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

Les objets non réclamés, ou dont la demande en rest tution a été rejetée, vont être remis en propriété à la socié TITANIC VENTURES Limited Partnership, en sa qualité de sauv teur, conformément aux dispositions de l'article 13 du décr n°61-1547 du 26 décembre 1961 fixant le régime des épaves.

D M./...

Concernant cette remise, j'ai pris bonne note de votre intention, consignée dans le courrier du 22.05.93, 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.

L'Administrateur en Chef de 2ème classe
des Affaires Maritimes TRICOT

D.M.

Minutes of Delivery to the Salvagor 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. П.

(Translation made by J.C Goldsmith et Associés)

FRENCH REPUBLIC

MINISTRY OF EQUIPMENT
TRANSPORTATION AND TOURISM

MARITIMES AFFAIRS

HEADQUARTER OF LORIENT

"MINUTES OF DELIVERY TO THE SALVAGOR 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 Laperrière
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 salvagor.

D.M.

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. Chapalain
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. M.

Minutes of Delivery to the Salvagor 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.M.

REPUBLIQUE FRANCAISE

MINISTERE DE L'EQUIPEMENT,
DES TRANSPORTS ET DU TOURISME

AFFAIRES MARITIMES

QUARTIER DE LORIENT

"PROCES-VERBAL DE REMISE AU SAUVETEUR DES OBJETS PRELEVES SUR L'EPAVE 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 Perrière
B.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.

D.H

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 de LORIENT

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

assisté de Maître A. de FOUCAULD,
Avocat

A de Foucauld

D. M.

EXHIBIT 2

BREDIN PRAT

YANN AGUILA

Avocat à la Cour Associé

Téléphone +33 1 44 35 35 35
Email yannaguila@bredinprat.com

To the attention of: RMS Titanic Inc

Subject: Declaration of Yann Aguila

Paris, July 10, 2017

Introduction

1. My name is Yann Aguila. I have personal knowledge of, and am competent to testify to, the matters set forth in this Declaration.

2. I have been a partner at the French law firm Bredin Prat since 2014 and head the firm's public law practice. I advise on all aspects of public law, public business law and environmental law, in connection with both transactions and litigation. I advise major companies and public sector bodies in setting up and running their projects, including the most complex. I also regularly assist clients in public law and tax litigation matters pending before the French administrative courts, the French supreme administrative court (*Conseil d'Etat*) and the French Constitutional Court (*Conseil constitutionnel*).

3. Prior to joining Bredin Prat in 2011, I had been a member of the French *Conseil d'Etat* (since 1990), acting as Deputy Secretary-General (2001-2004), *Commissaire du gouvernement* (2004-2009) and as judge within the Litigation Division (2009-2011). When acting as *Commissaire du gouvernement* (advocate general) I issued conclusions on major public law cases, such as the KPMG case (recognition of the principle of legal certainty) and the Commune d'Annecy case (constitutional value of the Environmental Charter). Both these cases are considered to have set legal precedents in their respective areas and as such are listed in the *Grands Arrêts de la Jurisprudence Administrative* (the most famous case book for French administrative law).

4. I was admitted to the Paris Bar in 2011 and am a graduate of the high-level civil servant training institution, the *Ecole Nationale d'Administration* (1990), the *Institut d'études politiques* of Aix-en-Provence (1986) and the University of Aix-en-Provence (Master of law, 1985).

5. I currently lecture on public law at Sciences Po and at the Paris Bar School. I am also a member of the legal think-tank, the *Club des Juristes*, where I chair the Environmental Law Commission.

6. In 2014, I was awarded the 2014 Law Book Prize for my book *Droit public français et européen* (French and European public law) that I co-authored with Bernard Stirn (President of the Litigation Division of the *Conseil d'Etat*). I am also the author and co-author of many publications on French public law.

Background

7. I have been retained as an expert consultant by RMS Titanic, Inc. to issue a declaration on the conditions in which the artifacts salvaged from the Titanic wreck in 1987 were transferred to Titanic Ventures Limited Partnership in 1993.

8. To that end, I was informed of the following facts:

- Titanic Ventures Limited Partnership – a predecessor to RMS Titanic Inc. –, carried out, with the assistance of the *Institut Français de Recherche pour l'Exploitation de la Mer*[1], an expedition to the site of the wreck of RMS Titanic in 1987.

- During that expedition, approximately 2,100 artifacts were salvaged from the wreck, brought to France then transferred to Titanic Ventures Limited Partnership (now RMS Titanic, Inc.).

- RMS Titanic Inc. is currently subject to Chapter 11 bankruptcy proceedings before the United States Bankruptcy Court for the Middle District of Florida, Jackson Division, in which it may seek authorization to sell some or all of such artifacts transferred to it in 1993.

9. For the purposes of this consultation, I have been provided with, amongst other things, three documents: a letter of intent from Titanic Ventures Limited Partnership dated September 22, 1993 and another letter dated October 12, 1993 (the latter letter being herein referred to as the "**Letter**"), as well as minutes (*procès-verbal*) dated October 20, 1993 (the "**Minutes**"), issued by the Administrator in the French Office of Maritime Affairs, the Regional Head Maritime Affairs of Lorient, and sent to Titanic Ventures Limited Partnership.

[1] The *Institut Français de Recherche pour l'Exploitation de la Mer* is a national agency of the French State with the mission of contributing, by its works and investigations, to knowledge of the oceans and their resources, supervision of the marine environment and coastline and to the sustainable development of maritime activities.

The Letter, of which the subject line is "*Objects removed from the wreckage of the Titanic in 1987*", is worded as follows:

> "*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 be 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 no. 61-1547 of December 26, 1961 instituting the system governing wreckages.*
>
> *Concerning this delivery of ownership, I have duly noted your intention, as indicated in the letter of 9/22/93, by which you undertake 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.*"

As for the Minutes (*Procès-Verbal*), entitled "*Minutes of delivery to the salvager of the artifacts recovered from the Titanic wreck in 1987*", they record:

> "*In accordance with its decision dated October 12, 1993, taken pursuant to the provisions of the decree no. 61-1547 of December 26, 1961 determining the regime of wrecks 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 as salvager.*
>
> *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.*"

The list of the documents provided to me is set out in the Annex hereto.

10. The purpose of the present declaration is to present my views, pursuant to French administrative law, on the exact scope of the Letter and the Minutes. More precisely, after giving a description of the legal context and the content of these two documents (**Part I below**), I will examine the question of whether they contain a condition prohibiting the sale of all or part of the artifacts transferred to RMS Titanic (**Part II below**).

I. As regards the legal context and the content of the Letter and the Minutes

11. It is noted that the Letter and the Minutes refer to Decree no. 61-1547 of December 26, 1961 which sets out the regime governing wrecks (the "**Decree**"). This Decree governs the procedure applicable to the salvaging of wrecks.

12. Pursuant to the terms of article 2 of the Decree, as worded at the time of the facts in question: "*Any person*[2] *who discovers a wreck*[3] *must, to the extent possible, secure it, and in particular place it where it will not be [further] damaged by the sea. The salvager must, within forty-eight hours of discovery or of arrival at the first port if the wreck was found at sea, declare it to the Administrator of Maritime Affairs or the representative of such Administrator*". Pursuant to article 3 of the Decree: "*Wrecks must be placed under the protection and safeguard of the Administrator of Maritime Affairs who shall take all useful measures to salvage and ensure conservation of the salvaged artifacts.*"

13. In addition, pursuant to the terms of article 4 of the Decree: "*The discovery of a wreck whose owner is unknown will be advertised by the Administrator of Maritime Affairs, in the form of placards or notices published in newspapers.* [...] *The owner has a period of three months from the date of publication or notification of the discovery or of the salvaging of the wreck, to claim their property* [...]". By virtue of the combined provisions of articles 12 and 13 of the Decree, if, upon expiry of this three-month period, ownership of the wreckage has not been claimed, the Administrator of Maritime Affairs "*shall have it sold*" but can, alternatively, "*transfer the property rights to the wreck to the salvager*". In the event of being put up for sale, article 14 of the Decree provides that the salvager's remuneration is deducted from the proceeds of the sale of the wreck.

14. It should be noted that at no stage in the procedure does the French State become the owner of the wreck. Its role is limited to ensuring, in the initial stages, that the wreck is protected and safeguarded, and then subsequently that it is returned to the initial owner or, if this is not possible, that it is put up for sale or that the property rights thereto are transferred to the salvager. It is to be further noted that in the event of the wreck being put up for sale, article 14 of the Decree provides that the net proceeds from the sale can be claimed by the initial owner of the wreck within a period of five years and if there are no such claims, such funds only accrue to the French Treasury upon expiry of that time-limit.

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[2] Called "salvager".

[3] By virtue of article 1 of the Decree, the following are considered as wrecks "*all objects* [...] *taken from the deep-sea bed and brought into* [French] *territorial waters or into the* [French] *maritime public domain*".

15. In the case at hand, the Letter and the Minutes confirm acts and operations which correspond to the procedure described. The Letter thus first of all records completion of the procedure of looking for the successors and assigns of the artifacts salvaged from the Titanic wreck in the 1987 expedition. Then it draws the necessary conclusions by indicating that the artifacts that have not been claimed "*will be transferred*" to Titanic Ventures Limited Partnership, in its capacity as salvager. Following on from the Letter, the Minutes drawn up by the Administrator of Maritime Affairs record the effective delivery of the artifacts to Titanic Ventures Limited Partnership and set out an exhaustive list thereof in the annex.

16. It can be seen from these elements that the Letter, together with the Minutes, constitutes the Administrative Act by which the French Administration transferred, to Titanic Ventures Limited Partnership, title to the artifacts. More specifically, the Letter contains the decision taken by the French State to transfer title to the artifacts, whereas the Minutes set out the precise list of such artifacts and record their effective delivery.

17. The transfer of title to the French artifacts took place by means of a **unilateral administrative deed**. As opposed to an **agreement**, which is the result of the meeting of the intentions of two (or more) parties, a unilateral administrative deed only results from the **intention of just one person**, in our case, the French Administration, which alone decides on the contents of the deed. In France, this type of unilateral deed is the French Administration's most common means of implementing legal measures.

II. As regards the existence of a condition prohibiting the sale of all or part of the artifacts transferred

18. The question is raised as to whether the decision to transfer title to the artifacts salvaged from the Titanic wreck was subject to a prohibition to sell them. Before examining this point (**B below**), a concise review of the general rules governing interpretation of Administrative Acts under French law is necessary (**A below**).

A. General rules governing interpretation of Administrative Acts

19. As a general rule, a judge must not interpret an Administrative Act **if such Act is clear** on its face. As an eminent judge, the president of the Litigation Division of the French *Conseil d'Etat*, once said, when faced with a clear Act, the judge must not embark on "*any imaginative interpretation*"[4] and must simply apply it. This is application of the legal adage "*interpetatio cessat in claris*". Pursuant to this principle, the judge cannot refer to the preparatory documents of a legal provision if such provision is clear[5].

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[4] R. Odent, *Contentieux administratif*, t. 1, Dalloz, 2007, p. 348.

[5] *Conseil d'Etat*, October 27, 1999, *Commune de Houdan v. Mrs. Lhemery*, req. n° 188685, "*Whereas it results from the very terms of these provisions* [the provisions of article L. 213-1 of the French Town Planning Code] *that as noted by the decision against which appeal is brought,*

20. It is only when the Administrative Act is not clear on its face that the judge is authorized to interpret it. If the Act at issue is unclear on its face, that is, if its meaning is debatable notably due to the imprecise nature of the terms used or their ambiguity, the judge can – and even must – interpret it, otherwise he would be committing a denial of justice.

21. In practice, the first stage consists therefore of examining whether **the legal text is clear on its face.** The judge proceeds to analyze the scope of the terms used in the Act, examining, as the case may be, usage of the language and rules of grammar, semantics and syntax. Next, if the judge considers that an Act is not clear on its face, he can and must then proceed to render an interpretation. He will usually use **two types of method** to interpret an unclear Administrative Act.

22. The first type is the "subjective" method which consists of **seeking the intention of the author of the Act**. The judge will search for all types of indications to be able to determine the intention of the drafter of the Act. He will therefore analyze the preparatory documents for the Act and the Act's general scheme (*économie générale*). This method does, however, have its limits: it is not always easy, as the French saying goes, to "probe hearts and minds" to understand what was in the mind of the civil servant who issued and signed an Administrative Act.

23. The second method of interpretation is the so-called "objective" method: it involves **taking into account the legal background to, or context of,** the Administrative Act. Here, the judge does not find the elements for interpretation in the Act itself or in the preparatory documents prior to it being drafted, but in elements which are external to it. He applies the principle that the Administration, whenever it has not formally expressed an intention to the contrary, is deemed, when in doubt, to have sought to comply with the higher-ranking legal standards applicable to it. The judge will thus always give precedence to such interpretation of the Act which best enables it to be integrated into its legal landscape.

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the forced sale of a property as part of proceedings for seizure of real property cannot be regarded as a voluntary alienation within the meaning of the first paragraph of article L. 231-1 aforementioned, and whereas the provisions of the third paragraph of the same article, which only concern the practical details of how the pre-emption right is exercised in certain cases, do not have as their purpose and cannot have as their effect to broaden the scope of application of the pre-emption right as defined in the first paragraph; whereas, therefore, contrary to what is argued in the application, the Paris Administrative Court of Appeal did not commit an error in law by giving this scope to the provisions without referring to the parliamentary preparatory documents preceding their adoption".

B. Application of these rules to the decision to transfer title to the Titanic artifacts

1. The "letter" of the decision

24. The Letter states that the Administrator of the French Office of Maritime Affairs has "duly noted" the intention of Titanic Ventures Limited Partnership not to sell any of the artifacts salvaged from the Titanic wreck.

25. In French, the term "has duly noted" is **clear** and **free of any ambiguity**. According to the definition thereof given by the *Académie Française* and the *Centre National de Ressources Textuelles et Lexicales* (*CNRTL*), this term means "to keep in mind". Thus, when a person "duly notes" something, **he or she does not take any personal decision whatsoever**. He or she merely **acknowledges a fact which is exterior to him or her** and **records it**, in writing for example, to keep it in mind.

26. This is the reason why moreover, in the eyes of a French judge, Acts by which the French Administration indicates that it "duly notes" a fact are generally of **no legal effect for their recipient**. For example, the French *Conseil d'Etat* has judged that a letter in which a Minister indicated, *inter alia*, that he had "duly noted" the necessity of pursuing certain programs of a public establishment had no legal effect and did not constitute, therefore, a decision causing prejudice and against which an appeal for cancellation could be filed before the judge[6].

27. In the present case, in view of general usages of the French language, I believe that in "duly noting" the letter of intent of Titanic Ventures Limited Partnership dated September 22, 1993, the Administrator of Maritime Affairs only intended to note the intention expressed by the Company in this letter, i.e. to simply keep it in mind. The choice and use of this term seems to exclude any desire whatsoever on the part of the French Administration to make this intention into an obligation.

28. Furthermore, it should be remembered that the Letter is a **unilateral deed** and not a contract. Only the Administration's intention counts. The content of an external act has no impact on that of a unilateral deed, except in the rare case where the unilateral deed expressly, clearly and deliberately incorporates the intention for itself, which is not the case here. The Letter does not contain **any mention expressly manifesting** the decision

[6] *Conseil d'Etat*, 20 May 1994, *Mrs. Micheline Saubot et al*, req. no. 100067, ruling that "*by its letter of November 12, 1986, the minister for the Civil Service and the Plan on authority from the Prime Minister informed the president of the "Centre Mondial Informatique et Ressource Humaine", an industrial and commercial public establishment (établissement public à caractère industriel et commercial), of the government's decision to "end the missions" of this establishment, requested that the board of directors and the personnel be informed of this perspective and informing the latter that its employment contracts would be complied with and duly noted the necessity of continuing certain programs until September 1987; whereas these various elements do not constitute decisions causing harm*".

on the part of the French Administration to render the intention of Titanic Ventures Limited Partnership into a condition for the transfer of title.

29. There are therefore good reasons to consider that in view of the texts of the Letter and of the Minutes, the decision by the French Administration to transfer title to Titanic Ventures Limited Partnership the artifacts salvaged from the Titanic wreck was not subject to any prohibition to sell them. As the scope of these Acts is clear, there should not be any need to interpret them. However, hesitation on this point is totally understandable and it may therefore also be helpful, for the purposes of the analysis, to also look at their interpretation by using the two methods described above.

2. Interpretation of the decision

a) Interpretation of the decision in the light of the subjective method

30. It is true that certain elements might imply that the Administrator of Maritime Affairs had the intention of making his decision to transfer, to Titanic Ventures Limited Partnership, title to the artifacts conditional upon a prohibition to sell them.

31. Such an intention on the part of the Administrator of Maritime Affairs could potentially first of all result from a specific reference **in the body of the Letter and the Minutes** to the letter of September 22, 1993 by which Titanic Ventures Limited Partnership undertook not to sell any of the artifacts to be transferred to it. As a result of such a reference, the Administrator of Maritime Affairs might potentially be seen to have "adopted" the intention expressed by the Company concerning their future non-sale and have made it a condition for transfer of title to the artifacts.

32. The intention of the Administrator of Maritime Affairs in issuing the Decision could possibly also be found from the **context in which the Decision was issued**, as presented by the Ambassador of France in the United States in the memorandum of July 8, 2016 produced in the present proceedings (the "**French Embassy Memorandum**"). The French Embassy Memorandum refers to a charter signed by the *Institut Français de Recherche pour l'Exploitation de la Mer* and Oceanic Research and Exploration Ltd, article 20 of which apparently stipulates that "*Charterers shall not sell the objects collected by Owners but shall use them only for exhibition purposes*" and which appears to have led the Company to issue the letter of intent of September 22, 1993. According to the French Embassy Memorandum, it was on the basis of "*this understanding and signed guarantee*" that the French administration agreed to transfer to the Company title to the artifacts.

33. These considerations are not, however, in my opinion, determinative factors. First of all, it is not uncommon that an Administrative decision refers to a document containing an undertaking given by a person, without incorporating it and making it mandatory. Secondly, neither the Letter, nor the Minutes confirm or incorporate the assertions

contained in the French Embassy Memorandum in the United States. In particular, it can be noted that neither the Letter nor the Minutes refer to the aforementioned charter between the *Institut Français de Recherche pour l'Exploitation de la Mer* and Ocean Research and Exploration Ltd, whereas it is supposed to be at the origin of the letter of intent of Titanic Ventures Limited Partnership. Incidentally, it should be noted that the *Institut Français de Recherche pour l'Exploitation de la Mer* is an industrial and commercial public body (*établissement public à caractère industriel et commercial*) which is legally separate from the French State and that it seems that in the Titanic expedition in 1987 it was acting for its own account and not further to any mandate given by the French State. Lastly, and above all, there are very good reasons to believe that the Administrator of Maritime Affairs did not intend to make the transfer of title to the Titanic artifacts conditional upon compliance with the intention expressed by Titanic Ventures Limited Partnership not to sell them.

34. This seems to me, first of all, to be based on the **choice of the terms used**. The Letter indicates that the Administrator of Maritime Affairs "*duly noted*" Titanic Ventures Limited Partnership's intention not to sell any of the artifacts salvaged from the Titanic wreck. And yet, as already pointed out, use of this expression, synonymous with "*keep in mind*", suggests that the author of the decision only intended to acknowledge the Company's intention **without however making it in any way an obligation**. Likewise, the Letter mentions Titanic Ventures Limited Partnership's "intention" not to sell the artifacts. The Minutes mention, in the same way, the Company's "letter of intent" dated September 22, 1993. And yet, in French legal terminology and comprehension, the simple term "intention" is much weaker than and does not rise to the level of an "undertaking". Use of this expression again shows the intention of Titanic Ventures Limited Partnership and of the French Administration not to make the prohibition to sell the artifacts a condition to the transfer of title.

35. In addition, if the Administrator of Maritime Affairs had intended to make his decision subject to a condition prohibiting the sale of the artifacts, he would not have drafted it in this way. He would certainly have been careful to use an expression which is **both clearer and more common**. There are a few cases, in French law, where the French Administration does make its decisions subject to a condition. Their wording is however very different from that of the decision at issue here. Administrative decisions with conditions generally employ **unequivocal terms**. For examples of such decisions issued in the same year as the Letter and the Minutes, one can quote a decision authorizing the use of frequencies in audiovisual matters in which it was indicated that the allocation of frequencies "*is subject to the conditions indicated in the annex* [to the decision]"[7] or a ministerial decree granting an air transport operating license which mentions that it is issued "*in the conditions specified below*" and that the company concerned is authorized to provide certain air transportation services "*subject to the restrictions specified*" in a

[7] *Conseil supérieur de l'audiovisuel*, decision no. 93-900 of 9 February 1993 granting Télédiffusion de France authorization for the use of frequencies for broadcasting the program France Info of *Société nationale de programmes Radio France*.

letter from the general directorate of civil aviation referred to in the decree[8]. This drafting methodology also applies when the conditions of the decision take the form of commitments given by the recipient. It is, for example, the case of the decisions taken by the Minister for the Economy concerning foreign investments which often in practice are authorized subject to compliance with undertakings given by the investor. And yet, in that case, the Minister's decisions indicate clearly that the authorization is granted "*subject to compliance*" with these undertakings, which is not the case in the present situation.

36. It can also be noted that the absence of an intention on the part of the Administrator of Maritime Affairs to make his decision conditional can also be seen from the **structure of the Letter**. He mentions that he has "*duly noted*" Titanic Ventures Limited Partnership's intention not to sell the artifacts **in a paragraph which follows on from that in which it is indicated that the artifacts will be transferred to the Company**. The place where the words "*duly noted*" are positioned in the Letter shows that in the author's mind, transferring title to the artifacts was not decided because of the intention expressed by the Company. Under French law, when an administrative decision is conditional upon its recipient complying with undertakings of which the recipient has already informed the Administration, it is common practice to refer to them in the recitals to the decision and before the operative part of the decision. The wording employed by the Administrator of Maritime Affairs in his decision therefore leads me, on this point again, to consider that the decision to transfer title to the Titanic artifacts was not conditional upon a prohibition to sell them, in whole or in part.

b) Interpretation of the decision in the light of the objective method

37. In view of the legal context in which the Letter and the Minutes were issued, I believe it is particularly difficult to conclude that the transfer, to Titanic Ventures Limited Partnership, of title to the artifacts could have been **conditional upon a prohibition to sell the transferred artifacts.**

38. First, **article 13 of the Decree does not provide for the possibility of laying down such a condition**. The possibility for the French Administration to make its decisions conditional, when such possibility exists, is normally provided for by the legislative or regulatory texts on which it is based. This is the case, for example, concerning foreign investments where the law expressly provides that the authorization given by the Minister for the Economy can be subject to conditions aimed at ensuring that the prospective investment does not affect national interests[9]. Likewise, the French Town

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[8] Decree of February 25, 1993 granting an air transport operator license and air transport authorizations.

[9] Article L. 151-3 of the French Monetary and Financial Code: "*I. – Foreign investment in any activity in France which, even if only occasionally, is part of the exercise of public authority or pertains to one of the following domains is subject to prior approval from the Minister for the Economy: a) Activities likely to jeopardize public order, public safety or national defense interests b) Research in, and production or marketing of, arms, munitions, or explosive powders or*

Planning Code expressly provides that the issuance of a building permit can be made subject to specific obligations related in particular to public safety[10].

39. Secondly, the fact that the French Administration could have the legal right of restricting the use of artifacts salvaged from a wreck is not apparent **either from the general scheme (*économie générale*) of the Decree, or from the objectives that this text pursues.** Under French law, the option for the French Administration to make its decisions conditional, when it is not expressly provided for by the legal text on which such an administrative decision is based, **is only allowed with strict reserves and within strict limits.** Indeed, to be legal, these conditions must always be "*of a necessity which is intimately related to the structure of this text and its aim*", as Nicolas Boulouis noted, in his conclusions before the French *Conseil d'Etat*[11]. As an illustration, the allocation of a state subsidy with a view to the construction of a warehouse **cannot be subject to a condition** requiring that the recipient of the subsidy not be subject to criminal proceedings, as this condition, not provided for by the relevant legal texts, was not sufficiently linked to the object of the decision[12]. In addition, the French Administration is prohibited, otherwise it would be committing a misuse of power (*détournement de pouvoir*), from using any of its powers **for a purpose other than that for which it was entrusted to it**[13]. In the case at hand, the purpose of the Decree, on the grounds of which the decision transferring title to the artifacts was issued, is to organize a policing regime aimed principally at **ensuring the security of navigation** and at **safeguarding the rights of the owners of vessels and their successors and assigns.**

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substances. A decree issued following consultation with the Conseil d'Etat specifies the nature of the above activities. II. - The approval granted may have special conditions attached to it to ensure that the planned investment does not jeopardize the national interests referred to in I."

10 Article R. 111-2 of the French Town Planning Code: "*The project can be refused or be accepted subject to compliance with specific instructions if it could have an impact on public health or public safety as a result of its situation, its characteristics, its size or its proximity to other installations.*"

11 N. Boulouis, conclusions on decision of the *Conseil d'Etat*, March 14, 2008, *Mr. André Portalis*, req. no. 283943.

12 *Conseil d'Etat*, July 25, 1986, *Société Grandes Distilleries "Les fils d'Auguste Peureux"*, req. no. 22692, ruling: "*Whereas, in a ministerial order (arrêté) dated October 30, 1973, issued pursuant to the provision of the Decree of March 17, 1964 instituting a premium (prime d'orientation) for companies which stock, manufacture and process agriculture and food products, the minister for agriculture and rural development allocated to the limited company (société anonyme) GRANDE DISTILLERIES "LES FILS D'AUGUSTE X..." a "financial contribution from the State" with a view to the construction of a warehouse; (...) Whereas the ministerial order of October 30, 1973 constitutes an individual pecuniary decision which, issued in the exercise of the discretionary power which the minister for agriculture has in this matter, created rights in favor of its recipient; whereas in the absence of legislative or regulatory provisions allowing the minister to go back on such decision, the facts that the company was subject to criminal proceedings did not authorize, in itself, the minister to suspend the payment of the premium which had been granted to it*".

13 *Conseil d'Etat*, November 26, 1875, *Pariset*, rec. Lebon p. 934. In this case, the prefect had ordered the closure of a matches factory solely for financial purposes, because there was a dispute between the manufacturer and the French State concerning the amount of the indemnity for expropriation of this factory. The *Conseil d'Etat* cancelled the decision on the grounds that "*he* [the prefect] *thus exercised policing powers which he had with respect to establishments which were dangerous, unmaintained or squalid for a purpose other than that on the grounds of which he had been granted them.*"

The French Administration cannot, without committing a misuse of power, use the powers attributed to it by virtue of this text for another purpose, even if it were in the public interest, such as that of ensuring the preservation and protecting the value of cultural assets. The latter objective results moreover from another legal regime, provided for by law no. 89-874 of December 1, 1989 relating to maritime cultural assets and amending the law of September 27, 1941 which governs archeological excavations. This law, in force at the time of the facts in question, was not invoked by the Administrator of Maritime Affairs.

40. Thirdly, as described above, the French State does not hold, at any stage of the procedure provided for by the Decree, any ownership title to the artifacts salvaged from a wreck. In the absence of such title, it does not therefore have the power, by virtue of ordinary law, to make the transfer of the artifacts subject to any encumbrance whatsoever.

41. Fourth, the existence of a condition comprising the prohibition to sell all or part of the artifacts transferred would raise two serious issues of constitutionality. It would probably constitute a **serious and manifestly illegal infringement of ownership rights**. Under French law, ownership rights are protected by the Constitution, on two fronts. First, the Constitution provides that the fundamental principles of the property regime arise exclusively from **the field of the law**[14]. Consequently, the French Administration cannot, of its own initiative and without authorization from the legislator, regulate these rights. In addition, the French Constitution requires that any restriction on the exercise of property rights must be **justified by general grounds which are proportional to the objective pursued**[15]. A French judge pays particular attention to assure that these conditions are strictly complied with. For example, the French Court of Cassation considers that a non-transferability clause in a contract is only valid when it is justified by a serious and legitimate interest and when it is limited in time[16]. In our case, no legislative provision authorizes the French Administration to make the transfer of title to artifacts salvaged from a wreck to the salvager conditional upon a prohibition to sell them. In the absence of any legislative authorization, the

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[14] Pursuant to the terms of article 34 of the French Constitution, "*Statutes shall determine the fundamental principles: (...) of property rights*".

[15] Ownership rights are one of the human rights laid down articles 2 and 17 of the Declaration of 1789. According to article 17, "*Since the right to Property is inviolable and sacred, no one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it, and just and prior indemnity has been paid*". Pursuant to the terms of its article 2, "*The aim of every political association is the preservation of the natural and imprescriptible rights of Man. These rights are Liberty, Property, Safety and Resistance to Oppression.*" The Constitutional Council, the supreme constitutional court in France, considers that in the absence of being deprived of property rights within the meaning of article 17 of the Declaration of 1789, it remains nonetheless from its article 2 that "infringements of these rights must be justified by grounds of public interest which are proportional to the objective pursued" (See, for example, Constitutional Council, decision no. 2014-692 DC of March 27, 2014, *Law aimed at promoting the real economy*, cons. 6).

[16] Court of Cassation, 1st civ division, October 31, 2007, req. no. 05-14.238, Published in the bulletin, ruling that: "*Whereas however to the extent that it is limited in time and that it is justified by a serious and legitimate interest, a non-transferability clause may be stipulated in an act involving payment of a consideration*".

Administrator of Maritime Affairs would not have authority to impose such a prohibition. Furthermore, it is difficult to identify grounds of public interest which would justify the prohibition to sell the transferred artifacts. Even supposing that these grounds of public interest relate, for example, to the necessity of making the artifacts available to the public in exhibitions, it is not evident that the sale of all or part of the artifacts necessarily prevents this. In any event, even if grounds of public interest were to be identified, the existence of a prohibition which is absolute and unlimited in time would appear manifestly disproportionate. Quite clearly, a perpetual prohibition would raise a serious French constitutional issue of proportionality in the infringement of property rights.

42. For all of the reasons explained above, the Administrative decision by which the French Administrator of Maritime Affairs transferred title to the artifacts salvaged from the Titanic wreck in 1987 should not, in my opinion, be understood or interpreted as creating a legally binding requirement under French law prohibiting Titanic Ventures Limited Partnership from selling the artifacts and does not therefore, in my opinion, prevent under French law the sale of all or part of such artifacts.

In Paris,
On July 10, 2017,

Yann Aguila
Avocat à la Cour

ANNEX

List of documents provided

- Letter from Titanic Ventures Limited Partnership to Office of Maritime Affairs for France (Ministry of Equipment, Transportation and Tourism), September 22, 1993, English Version and French Version;
- Letter from Ministry of Equipment, Transportation and Tourism to Titanic Ventures Limited Partnership, October 12, 1993, English Version and French Version;
- Minutes of Delivery to the Salvager of the Artifacts Recovered from the Titanic Wreck in 1987 ("*Procès-Verbal*") by Administrator of Maritime Affairs of the Ministry of Equipment, Transportation and Tourism, English Version and French Version;
- Note from the Embassy of the Republic of France dated July 8, 2016;
- Debtors' 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, United States Bankruptcy Court, Middle District of Florida, Jacksonville Division;
- United States' Objection 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, United States Bankruptcy Court, Middle District of Florida, Jacksonville Division;
- Order on Motion for Order Authorizing the Debtors to Market and Sell Certain Titanic Artifacts Free and Clear of Liens, Claims, and Interests;
- Order on Plaintiff RMS Titanic, Inc.'s Amended Motion for Entry of Clerk's Default and Amended Motion for Default Judgment against Defendant French Republic, a/k/a Republic of France, United States Bankruptcy Court, Middle District of Florida, Jacksonville Division.

EXHIBIT 3

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC., *et al.*,[1]

Debtors.

Case No. 3:16-bk-02230-PMG
Chapter 11 (Jointly Administered)

DECLARATION OF YANN AGUILA IN SUPPORT OF NELSON MULLINS' APPLICATION SEEKING AUTHORIZATION FOR THE DEBTORS TO MAKE PAYMENT DIRECTLY TO YANN AGUILA FOR SERVICES RENDERED TO NELSON MULLINS AS ITS FRENCH ADMINISTRATIVE LAW EXPERT.

I, Yann Aguila, declare that:

1. I am a partner of Bredin Prat (the "Firm"), which maintains an office at 53 Quai d'Orsay, 75007 Paris, France. The Firm is a leading law firm in Corporate and M&A, Securities Law, Litigation and International Arbitration, Tax, Competition and European Law, Banking and Financing, Restructuring and Insolvency, Employment and Public/Administrative Law.

2. I have been a partner at the Firm since 2014 and lead the Firm's Public/Administrative Law practice. Prior to joining the Firm in 2011, I was a member of the French Supreme Administrative Court, the *Conseil d'Etat*, since 1990, including as a judge within the Litigation Division (2009-2011) and prior to that as Deputy

[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.

Secretary-General (2001-2004) and *Commissaire du Gouvernement* (independent judge giving an impartial opinion on all cases before the *Conseil d'Etat*) (2004-2009). The *Conseil d'Etat* acts as legal adviser to the executive branch and as the supreme court of Appeal for all administrative law courts and administrative justice in France. It hears both claims against national-level administrative decisions (e.g., orders, rules, regulations, and decisions of the executive branch) and appeals from lower administrative courts. The decisions of the *Conseil d'Etat* are final and unappealable.

3. I also acted as legal adviser to the President of the Republic of Senegal (1995-2001). I currently lecture on public law at Sciences Po and at the Paris Bar School. In 2014, I was awarded the 2014 Law Book Prize for a book that I co-authored, *Droit public français et européen* (French and European public law). I was admitted to the Paris Bar in 2011 and am a graduate of the high-level civil servant training institution, the *Ecole Nationale d'Administration* (1990), the Institut d'Etudes Politiques of Aix-en-Provence (1986) and the University of Aix-en-Provence (*Maîtrise in law*, 1985).

4. I submit this declaration in support of *Application Of Nelson Mullins As Counsel To The Debtors And Debtors In Possession Seeking Authorization For The Debtors To Make Payment Directly To Yann Aguila For Services Rendered To Nelson Mullens*

As Its French Administrative Law Expert (the "Application"). I have personal knowledge of the matters set forth herein, and if called as a witness, I would testify competently thereto.

5. Neither my firm, nor I, have represented any of the Debtors (as set forth in Footnote 1 to the Application) and I personally am not aware of any conflicts of interest that would affect our ability to serve as an expert witness in this matter.

Anticipated Services to be Rendered

6. Nelson Mullins anticipates that I will serve as an expert witness on issues related to French administrative law relating to the "decision" by the French "Chef de quartier des Affaires maritimes de Lorient dated October 12, 1993 with respect to certain artifacts found underwater on the Titanic shipwreck in an expedition in the year 1987 (the "Expert Services")

Compensation As Expert Witness

7. Compensation for my services as an expert witness will be invoiced from my law firm, Bredin Prat. The Firm will be compensated based upon providing services for two separate tasks, one required and one contingent. I will draft a written expert opinion as to the subject matter under French administrative law described above. If necessary, I will also provide oral expert testimony to the Court. The proposed compensation structure, subject to the approval of the Bankruptcy Court, is as follows:

a. The Firm will be paid at a blended hourly rate of 600 Euros per hour for the preparation of my initial written expert opinion. I estimate that the preparation of such initial written expert opinion will require approximately 50 hours of attorney work. After submission of such initial written expert opinion, any requests for additional advice in connection with the Expert Services would be subject to an additional estimate and billing.

b. If I am required to travel to Jacksonville, Florida to testify before the Court, Nelson Mullins will pay the Firm a total of 20,000 Euros for one day (covering both preparation and the hearing) plus reimbursement of expenses. Nelson Mullins will pay the Firm for any additional time in connection with travel to Jacksonville at the rate of 7,000 Euros per day, which will be pro-rated (on the basis of 600 euros per hour) for less than a full day of work (on the basis of a 10 hour workday), plus reimbursement of expenses. If further matters arise in connection with this matter and I am required to travel outside of Paris, Nelson Mullins will pay the Firm a rate of 7,000 Euros per day, plus reimbursement of expenses.

c. If I am not asked to travel to Jacksonville to testify for the hearing, but testify electronically or via telephone, Nelson Mullins will pay the Firm at the hourly rate of 600 Euros per hour.

d. Nelson Mullins will also pay an additional three percent of the Firm's fees as a flat charge for general office disbursements incurred and will in addition reimburse my actual travel costs.

e. The above rates are applicable for services rendered in 2017.

8. The terms of the engagement and proposed compensation are as set forth more fully in the Engagement Letter attached as Exhibit B to the Application.

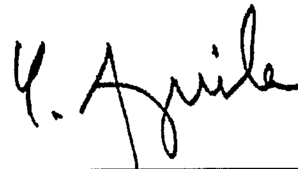
9. Other than as set forth in the preceding paragraph, there is no proposed additional arrangement for compensation. Neither I nor the Firm has received any promises as to compensation in connection with this case other than in accordance with

the aforesaid Engagement Letter. Neither I nor the Firm has an agreement with any other entity in connection with this case. The professional fees awarded and paid to the Firm in connection with this case will not be shared with anyone outside the Firm..

10. I have read the Application, and to the best of my knowledge, and except for legal matters and issues indicated in the Application relating to the Bankruptcy Code (as to as a French attorney I have no knowledge) , the contents of the Application are true and correct.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: May 26, 2017.



Yann Aguila
BREDIN PRAT
53 Quai d'Orsay
75007 Paris, France

~ #4847-4591-5721 ~

EXHIBIT 4

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

RMS TITANIC, INC. *et al.*,[1]

Debtors

Case No. 3:16-bk-02230-PMG
Chapter 11 (Jointly Administered)

RMS TITANIC, INC.

Plaintiff,

vs.

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

FRENCH REPUBLIC,
a/k/a REPUBLIC OF FRANCE

Defendant.

DECLARATION OF JESSICA SANDERS

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

1. My name is Jessica Sanders. 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 have been employed by Premier Exhibitions, Inc. ("Premier") since 2007.

3. I have served as the Corporate Secretary and Vice President of Corporate Affairs for Premier since 2016. In that capacity, among many other duties, I maintain the records and documents of Premier and its subsidiaries, including RMS Titanic, Inc. (collectively, the "Company").

[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.

4. It is also my responsibility to liaise with Company management and the Premier Board of Directors and to provide corporate data and information to them where necessary. In this respect, I am responsible for maintaining and providing institutional knowledge of the Company.

5. I have extensive personal knowledge of the litigation pending in the United States District Court for the Eastern District of Virginia, Norfolk Division (the "EDVA Court") styled as *R.M.S. TITANIC, INC., Successor in interest to Titanic Ventures, Limited Partnership v. The Wrecked and Abandoned Vessel, . . Believed to be the RMS TITANIC* (the "Salvage Litigation"). I maintain and review the pleadings in the Salvage Litigation, and work closely with Company counsel.

6. I also have personal knowledge of the Company's appeal to the United States Court of Appeals for the Fourth Circuit of a July, 2004 decision by the EDVA Court, styled as *R.M.S. Titanic, Inc. v. The Wrecked and Abandoned Vessel*, 435 F.3d 521, 528 (4th Cir. 2006) (the "Appeal"). While I was not employed by the Company during the appeal process which took place between July, 2004 and January, 2006, I have examined the Company's corporate records and informed myself of the facts and circumstances leading to the Appeal.

7. In July, 2004 the EDVA Court issued an order refusing to recognize the Proces-Verbal as a legally binding decision, and assuming jurisdiction over the artifacts recovered by the Company in 1987 (the "EDVA Order"). The EDVA Order was a devastating blow to the Company, because the EDVA Court refused to recognize the validity of the Proces-Verbal. The EDVA Order, if not reversed, would have divested from the Company title to the artifacts it recovered in 1987 (the "Artifacts"), eleven years after title to the Artifacts had been granted to the Company.

8. If not reversed, the EDVA Order not only would have divested the Company of title to the Artifacts, but also would have served as a complete rejection of the six year French administrative process leading to the issuance of the Proces-Verbal.

9. Under these circumstances, the Company believed that the Republic of France would have an interest in the Appeal. The Company, through its counsel, invited the Republic of France to file an *amicus curiae* brief in support of the Company's Appeal. Alain De Foucaud, the French attorney who represented the Company throughout the French administrative process, notified the French government of the EDVA Order and formally sought participation in the Appeal from the French government. The Republic of France showed no interest in what became of the Artifacts, refusing to assist the Company in the Appeal, refusing to file an *amicus* brief, refusing to draft a letter on behalf of the Company, in opposition to the EDVA Order or in support of the French administrative procedures, and refusing to take any public or private position on the matter. Those are not the actions of a sovereign with an interest in the Artifacts.

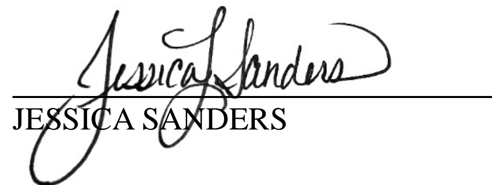
10. After the Republic of France refused to participate in the Appeal, Alain de Foucaud filed his own appellate brief as *amicus curiae*. As stated in his brief, Mr. de Foucaud participated as an *amicus curiae* in part, "out of concern for the unwarranted bad light cast on the law of France" by the EDVA Order.

11. I have searched the Company records and spoken with company counsel and former and current company employees to determine the extent to which the Republic of France has corresponded with the Company regarding, or otherwise expressed an interest in, the Artifacts since the issuance of the Proces-Verbal. Prior to June, 2016 when the Company filed for bankruptcy protection, I am not aware of any actions taken by the Republic of France with

respect to the Artifacts following the issuance of the Proces-Verbal, nor am I aware of any assertion or claim by the Republic of France that it has a property interest in the Artifacts.

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

13. Executed on this the 25th day of July, 2017.



JESSICA SANDERS

EXHIBIT 5

1 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
2 Norfolk Division

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5 R.M.S. TITANIC, INC.,)
SUCCESSOR IN INTEREST TO)
6 TITANIC VENTURES, LIMITED)
PARTNERSHIP,)
7) CIVIL ACTION NO.
Plaintiff,) 2:93cv902
8)
v.)
9)
THE WRECKED AND ABANDONED)
10 VESSEL, ETC.,)
)
11 Defendant.)
- - - - - - - - - - - - - - - - - -
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TRANSCRIPT OF PROCEEDINGS
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Norfolk, Virginia
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June 21, 2016
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BEFORE: THE HONORABLE REBECCA BEACH SMITH
18 Chief United States District Judge

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20 APPEARANCES:

21 KALEO LEGAL
By: Brian A. Wainger
22 And
McGUIRE WOODS LLP
23 By: Robert W. McFarland
Counsel for R.M.S. Titanic
24

25

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2 APPEARANCES CONTINUED:
3 UNITED STATES ATTORNEY'S OFFICE
By: Kent Porter
4 Assistant United States Attorney
Counsel for Amicus United States
5
THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
6 By: Jackie Rolleri
Counsel for NOAA
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1 of the sale of a limited number of the French artifacts. 11:45:0
2 THE COURT: My understanding that it's only the 11:45:1
3 French artifacts that are involved in this sale, and those 11:45:1
4 were excepted in the covenants and conditions that protected 11:45:1
5 the artifacts that were before this Court? 11:45:2
6 MR. McFARLAND: Yes, Your Honor, that is correct. 11:45:2
7 The French artifacts, no question they are part of the 11:45:2
8 estate, the bankruptcy estate. So we have filed there a 11:45:3
9 motion for seeking the Court's approval for a potential sale 11:45:3
10 of certain of those French artifacts, the idea being, 11:45:4
11 although we didn't come to this motion and decision lightly, 11:45:4
12 but given the company's financial circumstances, a limited 11:45:5
13 sale of certain of the French artifacts, if it were to occur, 11:45:5
14 could provide the revenue necessary for the company to pay 11:45:5
15 off its creditors, including ending its lease obligations in 11:46:0
16 New York City, provide the company working capital going 11:46:0
17 forward, and allow the shareholders to maintain their equity 11:46:1
18 stakes in the company. All the shareholders would maintain 11:46:1
19 their positions, and we would be able to operate the company 11:46:2
20 profitably, we believe, going forward coming out of the 11:46:2
21 Chapter 11 proceeding. 11:46:2
22 THE COURT: All right. Well, I would remind you, 11:46:2
23 Mr. McFarland, and anyone else involved in this bankruptcy, 11:46:3
24 that this Court's order on the covenants and conditions takes 11:46:3
25 precedent. It was entered a few years ago, and the covenants 11:46:4