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Ownership Rights in the *Titanic*

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Notes

OWNERSHIP RIGHTS IN THE *TITANIC**

In September 1985 the R.M.S. Titanic was located, lying 2.5 miles beneath the surface of the North Atlantic Ocean, by a joint team of French and American scientists. Its discovery raises the possibility of the recovery of Titanic artifacts. This Note explores the Titanic's brief history and recent discovery, focusing on the result of a hypothetical salvage claim brought in an American federal admiralty court. Although salvage of the Titanic is feasible, the Congress is currently considering a bill to declare the wreck an international maritime memorial and to regulate any research or salvage of artifacts.

INTRODUCTION

THIS NOTE Will explore the possible ownership rights in the wreck of the Royal Mail Service *Titanic*,¹ recently discovered in the Atlantic Ocean approximately 560 miles off the coast of Newfoundland in over 13,000 feet of water.² The *Titanic's* discovery prompts the question of who actually owns the remains of the ship; more specifically, who would own any property recovered, should the *Titanic* remains be salvaged?

Possible claimants include Cunard Lines, which merged with White Star Lines, original owner of the *Titanic*, in 1934;³ Lloyds of London underwriters, who issued the hull insurance on the *Titanic*;⁴ Commercial Union Associates of London, who insured the passengers for £ 1,000,000;⁵ passengers, their relatives and the vari-

* The author thanks Jon Hollis of the Titanic Historical Society and the Staff of the Committee of Merchant Marine and Fisheries for their help in the research of this Note.

1. The R.M.S. *Titanic*, owned by the White Star Line, sank on April 15, 1912 during her maiden voyage from Southampton to New York after colliding with an iceberg. H.R. REP. NO. 393, 99th Cong., 1st Sess. 3 (1985) (report on the R.M.S. *Titanic* Maritime Memorial Act of 1985, submitted on behalf of the Committee on Merchant Marine and Fisheries by Hon. Walter B. Jones, Chairman) [hereinafter H.R. REP. NO. 393]. For the classic account of the *Titanic* tragedy, see W. LORD, *A NIGHT TO REMEMBER* (1955).

2. H.R. REP. NO. 393, *supra* note 1, at 3; Detjen, *Looking at the Titanic: Scientists Excited By the Technology That Found the Ship*, Philadelphia Inquirer, Oct. 27, 1985, at 3D, col. 1; see generally Sullivan, *Debris Shows Titanic Lost Her Entire Stern End*, N.Y. Times, Sept. 12, 1985, at 9y, col. 1 (general discussion concerning the sinking of the *Titanic*). See *infra* notes 29-35 and accompanying text.

3. W. WADE, *THE TITANIC: END OF A DREAM* 311 (1979); see *infra* notes 71-74 and accompanying text.

4. See *infra* notes 75-79, 85-88 and accompanying text.

5. See *infra* notes 80-84 and accompanying text.

ous insurance companies which paid off individual personal claims;⁶ and the salvors themselves.⁷

This Note will begin by a brief accounting of the sinking of the *Titanic* and its recent discovery.⁸ Next, assuming a salvage of property from the *Titanic* wreckage, this Note will examine the available information as to the strength of the claims of the insurance companies and other possible claimants⁹ and then discuss the choices of law that an American admiralty court might use in determining the ownership of the salvaged property.¹⁰ This Note will also explore possible jurisdictional issues that may confront a salvor in bringing a salvage claim.¹¹ Finally, this Note will conclude with a discussion of the public's reaction to the finding of the *Titanic*,¹² including the recently-passed House of Representatives Committee on Merchant Marine and Fisheries Bill H.R. 3272, The R.M.S. *Titanic* Maritime Memorial Act of 1985.¹³

I. HISTORICAL BACKGROUND

A. *The Sinking of the Titanic*

On April 14, 1912 at 11:40 p.m. the R.M.S. *Titanic* struck an iceberg, which caused her plates to buckle and allowed water to flood her hull.¹⁴ Two hours and forty minutes later the *Titanic* sank to a depth of over 13,000 feet.¹⁵ Of the approximately 2200 passengers and crew on board, over 1500 lost their lives.¹⁶ The British Board of Trade and the United States Senate hearings on the *Titanic* determined not only that the *Titanic* had been warned of the presence of icebergs in her path, but also that her captain had pro-

6. See *infra* notes 88-91 and accompanying text.

7. See *infra* notes 92-96 and accompanying text.

8. See *infra* notes 14-45 and accompanying text.

9. See *infra* notes 65-99 and accompanying text.

10. See *infra* notes 101-58 and accompanying text.

11. See *infra* notes 159-99 and accompanying text.

12. See *infra* note 204 and accompanying text.

13. See *infra* notes 208-22 and accompanying text.

14. H.R. REP. NO. 393, *supra* note 1, at 3. Although it was originally believed that an iceberg created a 300-foot gash in the *Titanic's* side, photographs from the July 1986 expedition of Dr. Robert D. Ballard, Woods Hole Oceanographic Institute, show that, in fact, the collision caused the *Titanic's* one inch thick plates to buckle and the rivets to pop. Sullivan, *Divers Report No Hull Gash In The Titanic*, N.Y. Times, July 31, 1986, at A1, col. 1.

15. H.R. REP. NO. 393, *supra* note 1, at 3.

16. Records are unclear as to how many people were actually on board the *Titanic*; 713 people were saved and at least 1500 were lost. Wade cites 1522 as lost, W. WADE, *supra* note 3, at ix, whereas the report on H.R. 3272 cites 1513. H.R. REP. NO. 393, *supra* note 1, at 3.

ceeded at nearly top speed right into a field of icebergs.¹⁷ The hearings also determined that the *Titanic* did not have enough lifeboats to accommodate the passengers and crew and this was a major cause of many deaths.¹⁸

The findings generated by the hearings and the resulting recommendations were the beginning of a new awareness regarding safety at sea.¹⁹ Laws were passed requiring that all ships carry radios and also that radio operators be on duty at all times.²⁰ The International Convention on Safety of Life at Sea (SOLAS)²¹ provided that an adequate supply of lifeboats for all passengers and crew members must be carried.²² SOLAS also created an international derelict-destruction and ice patrol service to patrol the North Atlantic shipping lanes for ice and other hazards.²³

The *Titanic* tragedy sparked the imaginations of both Hollywood and the literary world.²⁴ The 1950's saw a revival of "Titanic fever" after the publication of Walter Lord's classic, *A Night To Remember*.²⁵ In 1963, the Titanic Historical Society was formed to preserve the history of the *Titanic* and the stories of her

17. H.R. REP. NO. 393, *supra* note 1, at 4; W. WADE, *supra* note 3, at 37, 132, 265-66, 271.

18. H.R. REP. NO. 393, *supra* note 1, at 3; W. WADE, *supra* note 3, at 37-38. The *Titanic* carried 20 lifeboats, enough for 1,178 persons. *Id.* Because some lifeboats were not filled to capacity, only 713 were saved. *Id.* at 37, 42. The *Titanic* was only statutorily required to carry 16 lifeboats. *Id.* at 37.

19. H.R. REP. NO. 393, *supra* note 1, at 4; *The R.M.S. Titanic Maritime Memorial Act of 1985: Hearings on H.R. 3272 Before the Comm. on Merchant Marine and Fisheries*, 99th Cong., 1st Sess. 108 (1985) [hereinafter *Hearings*] (statement of Dr. Robert Scheina, United States Coast Guard Historian) (The *Titanic* disaster had an immediate effect on legislation in the United States). See also W. WADE, *supra* note 3, at 263-90.

20. H.R. REP. NO. 393, *supra* note 1, at 4-5 (statement of Dr. Robert Scheina, United States Coast Guard Historian).

21. International Convention on Safety of Life at Sea, London 1913-14, S. DOC. NO. 463, 63d Cong., 2d Sess. 1 (1914) [hereinafter SOLAS]. Although the convention did not come into force until after World War I, the United States adopted a number of its provisions, including the lifeboats-for-all measure, the ship procedures to be followed when ice is reported near a ship's course, and the prohibition on using international distress signals for any use other than as a distress signal. W. WADE, *supra* note 3, at 283; H.R. REP. NO. 393, *supra* note 1, at 4; *Hearings, supra* note 19, at 108 (statement of Dr. Robert Scheina, United States Coast Guard Historian).

22. SOLAS, *supra* note 21, at 19.

23. *Id.* at 9; H.R. REP. NO. 393, *supra* note 1, at 4. The United States accepted responsibility for this new patrol service, and within one year the service officially became the United States Coast Guard. W. WADE, *supra* note 3, at 284; *Hearings, supra* note 19, at 3 (statement of Dr. Robert Scheina, United States Coast Guard Historian).

24. The *Titanic* has inspired seven movies, 28 books and more than 500 songs. Detjen, *supra* note 2.

25. *Id.*; see W. LORD, *supra* note 1.

survivors.²⁶ In 1977, the first plans were made to locate and photograph the *Titanic*,²⁷ which led to the *Titanic's* ultimate discovery.²⁸

B. Finding the Titanic

On September 1, 1985, the wreck of the *Titanic* was located by a two-team French and American scientific expedition headed by Dr. Robert Ballard of the Woods Hole Oceanographic Institute.²⁹ In August 1985, the French team, while testing a new high-precision sonar and magnetometer system, had located several areas of the ocean floor where the *Titanic* might rest.³⁰ In late August, the United States team brought in the unmanned *Argo*, a deep sea sled equipped with cameras (both television and 35mm) and sonar-mapping equipment, to visually scan the area.³¹ The sixteen-foot sled was towed forty to fifty feet above the ocean floor by the research vessel *Knorr*.³²

Once the *Titanic* was located, the scientists used another submersible vehicle, the *Angus*, to take color photographs of the wreck.³³ The photographs show debris lying on the ocean floor around the wreck, including wine bottles, lumps of coal, suitcases and a silver platter.³⁴ The hull of the wreck appears intact except for the stern section, which has broken off. Ballard concluded, at that time, that the stern had disintegrated and had scattered over an immense nearby debris field.³⁵ In July of 1986, Ballard headed an-

26. *Hearings*, *supra* note 19, at 22 (statement of Jon Hollis, Spokesperson, Titanic Historical Society).

27. W. WADE, *supra* note 3, at 310.

28. Many schemes have been planned since 1912 to locate and raise the *Titanic*, but no serious effort was made until recently. W. WADE, *supra* note 3, at 310; *see infra* notes 93, 98, and 165. The Astor, Guggenheim and Widener families consulted with the Merritt and Chapman Wrecking Company soon after the sinking regarding the feasibility of raising the ship. W. WADE, *supra* note 3, at 66. Although they considered dropping dynamite over the site in hope of recovering some of the bodies, marine experts and scientific journals showed such plans were useless. *Id.* The first attempt using technology capable of locating the *Titanic* was Texas millionaire Jack Grimm's 1981 expedition. *See* W. HOFFMAN & J. GRIMM, *BEYOND REACH: THE SEARCH FOR THE TITANIC* (1982).

29. H.R. REP. NO. 393, *supra* note 1, at 4; *see* Marbach, Katz and Pedersen, *The Sea Gives Up A Secret*, *NEWSWEEK* 44 (Sept. 16, 1985); *see also* Angier, *After 73 Years, A Titanic Find*, *TIME* 68 (Sept. 16, 1985).

30. Detjen, *supra* note 2.

31. *Id.*

32. *Id.*

33. *Id.* Many of the photographs are reproduced in Ballard and Michael, *How We Found Titanic*, 168 *NAT'L GEOGRAPHIC* 696 (Dec. 1985).

34. Sullivan, *supra* note 2; *see* Ballard and Michael, *supra* note 33, at 709-11, 715, 717.

35. Sullivan, *supra* note 2; Letter from Jon Hollis, Spokesperson for Titanic Historical Society, to the author (Jan. 30, 1986) (discussing condition of *Titanic* remains) [hereinafter

other expedition to the *Titanic* site to photograph in detail both the exterior and the interior of the ship.³⁶ On this expedition, Ballard used a twenty-five-foot three man submarine, *Alvin*, and its tethered robot probe, *Jason Jr.*, to take still photographs and color videotapes inside and around the wreck.³⁷ The expedition found the stern intact and lying over 600 yards away from the bow section.³⁸ Ballard failed to find the famous 300-foot gash where the iceberg purportedly collided with the *Titanic*; instead he found buckled plates and popped rivets.³⁹ The ship itself is badly rusted, covered with "rusticles" or streams of rust hanging like icicles.⁴⁰ All of the organic matter, including the deck and other wooden parts of the ship, have been eaten away by wood borers.⁴¹ The expedition did find items such as a copper kettle, chamber pots, toilets, a doll's head, a patent leather shoe, pots and pans, and a bronze statue, as well as five of the ship's safes, which were intact and well preserved.⁴² *Jason Jr.*, travelling through the ship's interior, photo-

Hollis Letter]. See Ballard and Michael, *supra* note 33, at 716-17. Ballard theorizes that, as the ship was sinking, her bow filled with water and dragged the stern under before the air could escape from it. Address by Dr. Robert D. Ballard, Cleveland Museum of Natural History (Feb. 28, 1986) [hereinafter Ballard Address]. At a depth of about 1000 feet, pressure caused the stern to implode, leaving a mile-long trail of debris on the ocean floor. Ballard stated that the stern section appeared to have broken off between the second and third (of four) stacks. *Id.*

36. Saltus, *Crew Photographs Entire Outside Surface of the Titanic as Expedition Nears Its End*, Boston Globe, July 23, 1986, at 22, col. 1.

37. Sullivan, *Undersea Robot Gets a Look Inside Still-Luxurious Titanic*, N.Y. Times, July 16, 1986, at A1, col. 1. The expedition is also using *Angus*, the unmanned submersible used in the 1985 expedition, to photograph the *Titanic* when *Alvin* and *Jason Jr.* are not in use. Saltus, *Titanic's Stern Located Intact on Ocean Floor*, Boston Globe, July 21, 1986, at 1, col. 4.

38. Murphy, *Down Into the Deep: Using High Tech to Explore the Lost Treasures of the Seas*, TIME 48 (Aug. 11, 1986). The stern section was actually discovered by the *Angus*. Saltus, *supra* note 37. Ballard still believes the ship broke up very early in her descent to the ocean floor (probably around 1,000 feet) from implosions caused by water pressure. Sullivan, *supra* note 14, at A1, col. 1, A16, col. 1. See Ballard Address, *supra* note 35. (The stern landed in a twisted position so that it faces the same direction as the nearby bow section). Sixteen of the twenty witnesses who testified at the American Senate and British investigations stated that the *Titanic* split in two or broke up as she went under the surface. W. LORD, *THE NIGHT LIVES ON* 150-51, 251-53 (1986).

39. Sullivan, *supra* note 38; Saltus, *Violent Death Throes of Titanic Illustrated By New Photographs*, Boston Globe, July 31, 1986, at 55, col. 4. See *supra* note 14. However, because the bow is buried beneath 50 feet of sediment, there may be a gash hidden underneath. Saltus, *supra* note 36; Sullivan, *supra* note 14, at A16.

40. Sullivan, *supra* note 14, at A16.

41. Saltus, *Wood Borers Ate Away At Researcher's Dream of a Pristine Titanic*, Boston Globe, July 21, 1986, at 4, col. 5. These tiny clam-like mollusks have shells edged with hundreds of thousands of sharp "teeth" and can eat through a quarter-inch of hardwood in a year. *Id.*

42. Saltus, *supra* note 39. Using one of *Alvin's* remote-controlled claws, the researchers

graphed a chandelier, battered but still hanging from one of the *Titanic's* ceilings.⁴³

The photographs taken during the 1985 and 1986 expeditions show the bow and stern sections, although separated, to be fairly intact.⁴⁴ However, wreckage picked up immediately after the sinking indicates that the ship may have broken up in other areas, and may be in much worse condition than the photographs seem to indicate.⁴⁵

C. *Salvaging the Titanic*

Since locating the *Titanic*, the question of its salvage has become a topic of major interest. It is technically feasible to raise the ship itself, although it would be very costly and difficult, and most likely would have to be done in sections.⁴⁶ Artifacts and pieces of the ship, however, could be raised more easily.⁴⁷ Presently, several major countries, including the United States, France, Great Britain, and presumably the Soviet Union possess the necessary technology to do salvage work on the ocean floor.⁴⁸ Several private citizens possess the technology as well.⁴⁹ More than technology, however,

tried to open one of the safes, but were unsuccessful. Sullivan, *Safe Is Found in Wreckage of Titanic*, N.Y. Times, July 19, 1986, at 32, col. 1.

43. Horner, *Picturing the Titanic: Public Fascination Rekindled*, Philadelphia Inquirer, July 27, 1986, at 1, col. 1, 14A, col. 1.

44. Saltus, *supra* note 37.

45. Telephone interview with Jon Hollis (Nov. 18, 1985) [hereinafter Hollis Interview]. The interior of the ship may have been greatly damaged as the compartments burst open while the ship was foundering. Hollis Letter, *supra* note 35. The ship's impact on the ocean floor may have damaged the keel and frame of the ship. Furthermore, the 1986 expedition found evidence to support Hollis' contention: "The bow section from the forecabin forward was the first to impact . . . it came in and buried the bow in the bottom and then the back part fell down," resulting in the bow and forward deck being bent downward into the sand while the rest of the bow section, from the bridge back, lies flat on the ocean floor. Dr. Robert Ballard, *quoted in* Saltus, *supra* note 39. One must also consider the effects of 6,000 pounds per square inch of pressure for over 73 years, and the effect that sudden exposure to oxygen will have on the wreckage. Hollis Letter, *supra* note 35.

46. H.R. REP. NO. 393, *supra* note 1, at 5; *Hearings*, *supra* note 19, at 104 (statement of Capt. W.F. Searle, Jr., USN (Retired), and Chairman, Searle Consultants, Ltd.).

47. *Hearings*, *supra* note 19, at 104 (statement of Capt. W.F. Searle, Jr., USN (Retired), and Chairman, Searle Consultants, Ltd.). The 1986 *Titanic* expedition found literally "thousands and thousands" of small artifacts, including the ship's safes, in a debris field near the stern section. Saltus, *Treasure-Trove of Titanic Artifacts Litters Seabed*, Boston Globe, July 19, 1986, at 17, col. 2. Ballard stresses that most of the debris is from the third-class section and "not very elegant." Sullivan, *supra* note 38, at A16, col. 1.

48. *Hearings*, *supra* note 19, at 104 (statement of Capt. W.F. Searle, Jr., USN (Retired), and Chairman, Searle Consultants, Ltd.); H.R. REP. NO. 393, *supra* note 1, at 5.

49. *Hearings*, *supra* note 19, at 104 (statement of Capt. W.F. Searle, Jr., USN (Retired), and Chairman, Searle Consultants, Ltd.).

is required. The critical factor is the expense, for salvage costs may be in the billions of dollars.⁵⁰

Nevertheless, "Titanic fever" has would-be salvors planning a myriad of ways to bring the ship, or at least parts of it, to the surface.⁵¹ Many see the *Titanic* as a potential goldmine,⁵² estimating the value of gold, silver and memorabilia in and around the wreck to be in the hundreds of millions of dollars.⁵³ Profit aside, some would salvage the *Titanic* solely for the sake of raising the ship.⁵⁴

Although ten millionaires went down with the ship, however, historians feel that there is not enough "booty" aboard to justify the expense of a salvage operation.⁵⁵ The *Titanic's* cargo was insured for only \$420,000 for such items as 500 cases of shelled walnuts, 860 rolls of linoleum, and eight cases of orchids—all of which now would be worthless.⁵⁶ While the *Titanic's* storage room was supposedly full of jewels and money, including diamonds valued at seven million dollars in 1912 terms,⁵⁷ there is significant doubt as to

50. "[Salvage] is only a matter of how much time it takes and the cost." *Id.*

51. See Davis, *Titanic: Lost and Found*, POPULAR MECHANICS 75 (Jan. 1986); Marbach, Katz and Pedersen, *supra* note 29, at 46; Angier, *supra* note 29, at 70.

52. Davis, *supra* note 51, at 77.

53. *Id.* "Anything that comes off that ship has a great deal of value because nobody's been able to get anything off it before." Statement of Jack Grimm, the Texas millionaire behind the 1980, 1981 and 1983 expeditions in search of the *Titanic*, *quoted in* Marbach, Katz and Pedersen, *supra* note 29, at 45-46.

54. "I don't see any objection to diving down there . . . I'd sure love to drink a bottle of that wine." Statement of Jack Grimm, *quoted in* Angier, *supra* note 29, at 70. Grimm is planning an expedition to dive on the *Titanic* wreck during the summer of 1987. Powell, *The Titanic Yields Her Secrets*, U.S. NEWS & WORLD REPORT 6, 7 (Aug. 11, 1986).

55. H.R. REP. NO. 393, *supra* note 1, at 6 (statement of Jon Hollis, Spokesperson, Titanic Historical Society).

56. Angier, *supra* note 29, at 70; see also *Hearings*, *supra* note 19, at 23 (statement of Jon Hollis, Spokesperson, Titanic Historical Society) (The *Titanic* was essentially a passenger vessel which carried a limited amount of "express cargo." It was not a ship laden with gold and jewels.)

57. *Titanic's Discovery A Matter of Science*, Plain Dealer (Cleveland), Sept. 9, 1985, at 1A, col. 5. There is no sign of these diamonds on the ship's cargo manifest. Fishlock, *Titanic's Hidden Treasures Dismissed As Myth By Expert*, The Times (London), Sept. 12, 1985, at 6, col. 1. John Eaton of the Titanic Historical Society has examined the *Titanic's* manifest and insurance claims, and there is little evidence that a vast amount of jewelry was on board. The most valuable item lost was a painting by Blondel valued at \$100,000. The highest insurance claim, \$174,000, was for some jewelry, but mostly for clothing and luggage. There was a diamond merchant on board who supposedly was carrying uncut diamonds, but his family made an insurance claim for only \$5000. Eaton suspects that many of the wealthy passengers were travelling with paste copies of their jewelry and not the real thing. In fact, examination of the manifest record shows that the *Titanic* was carrying wine, cheese, fruit, furniture, textiles, a car, straw hats, champagne, books, potatoes, machinery, soap, two cases of grandfather clocks, a case of gramophones, horse hair, hair nets, rabbit fur, ostrich feathers, briar

whether they could be found in the wreck. Surviving passengers and crew members have stated that the ship's pursers managed to give some passengers their jewels as the ship was sinking and carried the rest, along with the safes' contents and ship's papers, to the upper deck in postal bags.⁵⁸ As the bags were being loaded onto the lifeboats, the ship lurched, and the bags fell overboard.⁵⁹ The jewels, therefore, would not be located within the wreck, but would be buried under sediment somewhere else on the deep ocean floor. Thus, salvors searching for jewelry in the *Titanic's* remains will be searching in vain.

Other groups have expressed interest in exploring the *Titanic* for research purposes only. On his return to the *Titanic* site in 1986, Ballard photographed the exterior and interior of the ship and made new discoveries about the stern section and the legendary 300-foot gash.⁶⁰ Although Ballard had proposed that the artifacts surrounding the ship be recovered and recorded in order to preserve them from being lost or destroyed,⁶¹ the researchers did not recover any artifacts during their 1986 expedition.⁶² Ballard, the Titanic Historical Society, and other concerned parties have clearly stated that, in deference to those who lost their lives in the tragedy, commercial salvors should not be allowed to ravage the site for profit.⁶³ At this point in time, however, nothing exists to prohibit a salvor from pil-

pipes, 76 cases of dragon's blood, and \$24,000 worth of opium. Also among the ship's appurtenances were 26,000 pieces of silver and 46,000 pieces of china. Transcript of Columbia Broadcasting System Evening News With Dan Rather (Sept. 5, 1985).

58. *Hearings, supra* note 19, at 24 (statement of Jon Hollis, Spokesperson, Titanic Historical Society). Five of the ship's safes were spotted by researchers during the 1986 expedition. Saltus, *supra* note 39.

59. *Hearings, supra* note 19, at 24 (statement of Jon Hollis, Spokesperson, Titanic Historical Society).

60. See *supra* notes 14, 36-39 and accompanying text.

61. *Hearings, supra* note 19, at 21 (statement of Dr. Robert D. Ballard, Woods Hole Oceanographic Institute). Ballard suggested that the main body of the wreck and the things inside it should be photographed but otherwise left alone. *Id.* See also H.R. REP. NO. 393, *supra* note 1, at 6.

62. Horner, *supra* note 43, at 14A, col. 2.

63. It is clear from the news reports and the testimony for The R.M.S. *Titanic* Maritime Memorial Act of 1985 that many concerned Americans feel that the resting place of the *Titanic* is essentially a grave and should be left in peace. *Hearings, supra* note 19, at 14.

During the 1986 expedition, Ballard placed two plaques on the stern section of the *Titanic*. One honors both William H. Tatum, former president of the Titanic Historical Society, and those lost in the *Titanic* tragedy. The other reads, "In memory of those souls who perished with the *Titanic*, April 14-15, 1912." Murphy, *supra* note 38, at 54; Saltus, *Inspection of Stern Completes Picture of Titanic Wreck*, Boston Globe, July 22, 1986, at 17, col. 1.

The Titanic Historical Society hopes that the wreck can be preserved by compiling a photographic record of the *Titanic's* original construction, maiden voyage, and present state on the deep sea floor. Hollis Letter, *supra* note 35.

laging the site, except lack of adequate funding and technology.⁶⁴

II. OWNERSHIP RIGHTS IN PROPERTY SALVAGED FROM THE *TITANIC*

Suppose that a salvor *is* able to dive on the wreck and raise a silver platter or a case of wine. Who might legally attempt to claim these items? Would the salvor be entitled to sell the property and keep the profits, or would he be required to return the item to its true owner—if there still is one after seventy-five years? Similarly, suppose a salvor were able to actually raise the ship. Does anyone, after seventy-five years, still own the *Titanic*?

A. Possible Claimants of Ownership Rights in the *Titanic*

Any party having an ownership claim to the *Titanic* remains may want to assert that claim against a salvor should any of the remains be recovered. A salvor will probably choose to bring the recovered property into court to have title declared.⁶⁵ Any party who claims an interest in the salvaged property may join the action as a plaintiff against the “defendant” property over which title is sought.⁶⁶ Then, depending on the law applied by the court, the rights and interests of the parties in relation to the “defendant” property will be determined.⁶⁷

Any party with a possible claim of ownership to salvaged *Titanic* remains would be imprudent not to join an action declaring title. The salvor would have already expended the effort to finance and carry out the salvage operation. Even if the court were to award the entire value of the recovered property to the salvor,⁶⁸ the other claimants have nothing to lose by asserting their claims except the legal costs.⁶⁹ However, if the court awarded partial or even to-

64. If someone like Dr. Ballard were able to remove most of the scattered artifacts from the ocean floor, other salvors might be deterred from diving on the wreck—unless, of course, the salvors plan to salvage the ship as a whole. See H.R. REP. NO. 393, *supra* note 1, at 6 (statement of Dr. Robert D. Ballard, Woods Hole Oceanographic Institute).

65. See *infra* notes 168-69 and accompanying text.

66. FED. R. CIV. P. 19. See *Sheldrake v. The Chatfield*, 52 F. 495 (E.D. Va. 1892); M. NORRIS, *THE LAW OF SALVAGE* 443 (1958 & Supp. 1974). Norris discusses the rules of intervention in admiralty court that existed prior to the 1966 merger with the Federal Rules of Civil Procedure.

67. See *infra* notes 100-58 and accompanying text.

68. The salvage award may be quite high due to the estimated expense of a salvage operation on the *Titanic*. See *infra* note 132.

69. The *Titanic* has probably not been carried as an asset on any insurance company's records; the loss has long since been absorbed. See *infra* note 72 and accompanying text.

tal value of the property to the claimant,⁷⁰ that party would have secured a huge windfall.

1. *The Cunard Shipping Line*

One of the possible claimants to remains of the *Titanic* is the Cunard Shipping Line. In 1934, the White Star Line, original owner of the *Titanic*, and Cunard Shipping Lines, both of which were in financial difficulty, merged into a single company with Cunard holding the majority of shares.⁷¹ The sale agreement, however, did not include the wreck of the *Titanic*,⁷² and Cunard has specifically stated that it does not own the wreck.⁷³ Since the underwriters paid off a total loss on the *Titanic*, all rights which the White Star Line had in the wreck were subrogated to the underwriters under the British Marine Insurance Act of 1906.⁷⁴ Given

70. For the factors which the court will use in determining the amount of the salvage award, see *infra* note 123 and accompanying text.

71. W. WADE, *supra* note 3, at 311.

72. Berlins, *Titanic: Riches For Lawyers in Murky Waters*, *The Times* (London), Dec. 14, 1985, at 8, col. 2.

73. *Id.*; Transcript of Columbia Broadcasting System Evening News With Dan Rather (Sept. 5, 1985) (interview with spokesperson for Cunard Lines).

74. The Act states:

Where the insurer pays for a total loss, either of the whole, or in the case of goods of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the assured in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the assured in and in respect of that subject-matter as from the time of the casualty causing the loss.

British Marine Insurance Act of 1906, 6 Edw. 7, c.41, § 79(1), reprinted in J. ARNOULD, *The Law of Marine Insurance and Average II*, in 10 BRITISH SHIPPING LAWS § 1206 (Lord Chorley & C. Bailhache 15th ed. 1961). Subrogation after the payment of a total loss is the same in American marine insurance law. G. GILMORE & C. BLACK, *THE LAW OF ADMIRALTY* § 2-17 (2d ed. 1975) [hereinafter GILMORE & BLACK]. See COUCH ON INSURANCE 2d § 55.203 (1983).

The White Star Lines utilized United States law by filing a limitation of liability action in New York District Court. See *The Titanic*, 209 F. 501 (S.D.N.Y. 1913). The limitation of liability fund consisted of \$91,805.54 of pending freight and passage money, the rescued fourteen lifeboats, and equipment. *Id.* at 502. The ship's owners tried to force United States claimants either to join in the action and split the total \$97,772.12 or to be barred from bringing any action against White Star Lines in connection with the *Titanic* tragedy. W. LORD, *supra* note 38, at 207. The district court held, however, that the liability law of England applied, and the claimants could not be forced to join in the action. *Id.* at 512. The Second Circuit requested the Supreme Court to instruct them on certified questions regarding the issue. See *The Titanic*, 209 F. 513 (2d Cir. 1913). The Supreme Court held that if a foreign ship is sued in the United States, the ship's owners can invoke the limitation of liability laws of the United States. *The Titanic v. Mellor*, 233 U.S. 718, 733 (1914). For an account of the legal claims in both the United States and Great Britain, see W. LORD, *supra* note 38, at 206-10. After negotiations, White Star Lines agreed to pay a total of \$664,000 in damages, provided that all the claimants in both the United States and Great Britain dropped

Cunard's denial of ownership and the subrogation of its claim to the underwriters, it is highly doubtful that Cunard has a valid claim to any present ownership rights in the *Titanic*.

2. *The Insurance Companies*

Other potential claimants include the insurers of the ship. The hull, machinery and appointments of the *Titanic* were insured by a syndicate of approximately seventy brokers at Lloyds of London.⁷⁵ These underwriters would own any piece of the *Titanic* which was raised, provided the law of salvage was applied by the court in determining ownership rights.⁷⁶ The underwriter ownership rights are preserved by the British Marine Insurance Act of 1906.⁷⁷ The Act does not require the underwriters to make any decision regarding their ownership rights in order to preserve them.⁷⁸ Although it is possible that the *Titanic's* underwriters abandoned the wreck through a disclaimer of title after paying off the claim,⁷⁹ it does not appear that any of the underwriters bothered to do so because the possibility of salvage was so remote.

their lawsuits. *Id.* at 209-10. The various plaintiffs originally claimed \$16 million in damages. *Id.* at 209.

75. Berlins, *supra* note 72; Hollis Interview, *supra* note 45.

76. In his treatise on salvage law, Michael Norris states that "should a vessel be abandoned without hope of recovery or return, the right of property still remains in her owner." M. NORRIS, *supra* note 66, at 246. Since the underwriters have paid off all claims, they now retain an interest in the property. See J. ARNOULD, *supra* note 74, at § 1206.

77. Letter from N.M. Hudson, Adjuster of Marine Claims, Commercial Union Assurance, to William O'Brien, Solicitor, Russell, Jones & Walker (Nov. 1, 1985) [hereinafter Commercial Union Letter] (discussing insurance claims paid on *Titanic's* total loss and resulting subrogation rights); British Marine Insurance Act of 1906, 6 Edw. 7, c.41, § 79(1), reprinted in J. ARNOULD, *supra* note 74, § 1206.

78. Commercial Union Letter, *supra* note 77. "[I]f any remains of the wrecked ship or perished goods ultimately come to hand, or if any money have been realised abroad by their necessary and justifiable sale, such remains, or the net proceeds of such sale . . . are considered as a salvage to which the underwriters are entitled after payment of a total loss." J. ARNOULD, *supra* note 74, at § 1048.

79. Berlins, *supra* note 72. An underwriter might abandon title "where a wreck could remain a continuing danger to navigation and [the underwriters] do not want to be saddled with any claims for negligence." *Id.*

In marine insurance law, "abandonment" is a word of art meaning the relinquishment to the insurer of the damaged ship or cargo, and all proprietary rights incidental thereto, when the owner is compensated for a total loss. British Marine Insurance Act of 1906, 6 Edw. 7, c.41, § 63(1), reprinted in J. ARNOULD, *supra* note 74, § 1176. However, a treatise on British Marine Insurance and Average notes that "abandonment *per se* does not necessarily vest the property in anyone; all it does is to divest the owner of his property, and to give the underwriter an option either of accepting it or not, as he pleases. In the former event the property becomes the underwriter's property, and brings with it all the privileges and liabilities of ownership. But in the latter event the property becomes *res nullius*; no one, therefore, can be made liable *qua* owner of such property." *Id.* § 1205 (footnotes omitted). Section 63 of the

Commercial Union Associates of London, then known as Indemnity Marine Insurance, was the leading underwriter of the group. It was, however, liable for only 7.5% of the total loss.⁸⁰ Commercial Union paid the full amount within thirty days after the claim was submitted.⁸¹

Whatever ownership rights Commercial Union has are preserved by the British Marine Insurance Act of 1906.⁸² Commercial Union maintains that it will not make any decision regarding its rights until at least a part of the *Titanic* is actually salvaged, an event it believes is unlikely to occur.⁸³ In a television interview, however, Commercial Union officials said that Commercial Union does not own the wreck, and they are unsure if anyone actually does.⁸⁴

While many of the seventy-odd underwriters of the *Titanic* went out of business years ago,⁸⁵ one of Lloyds' member firms, the De Rougement firm, is still in existence and recently discovered that it had been part of the original syndicate insuring the *Titanic*.⁸⁶ Thus, although a spokesperson for Lloyds has stated that he does not think that the underwriters own the wreck,⁸⁷ the hull underwriters, if they can prove they paid the White Star Line for the loss, seem to be the most likely owners of the *Titanic* wreckage.

Marine Insurance Act of 1906, 6 Edw. 7, ch. 41, appears to support this view. *Id.* at 1181 n.49.

In his series on insurance law, Couch states that insurers may lose their rights to salvage if they refuse to accept the loss and pay the insured for only a portion of the loss. COUCH ON INSURANCE 2d § 55:329 (1983). The insurer may, under circumstances showing good faith, disclaim and renounce all interest in the salvage so that if the ship is later recovered the insurer will not risk incurring subsequent salvage expenses. *Id.*

80. Berlins, *supra* note 72.

81. Commercial Union Letter, *supra* note 77.

82. British Marine Insurance Act, 6 Edw. 7, c.41, § 79(1), reprinted in J. ARNOULD, *supra* note 74, § 1206.

83. Commercial Union Letter, *supra* note 77.

84. Transcript of Columbia Broadcasting System Evening News With Dan Rather (Sept. 5, 1985) (David Jones, Spokesperson for Commercial Union); see also Berlins, *supra* note 72 (stating that although Commercial Union originally thought it had exercised its right of abandonment of title to the *Titanic*, an examination of its records indicated that it had never taken this action. "[W]e probably just didn't bother. There was no reason to.").

85. Hollis Interview, *supra* note 45.

86. Transcript of Columbia Broadcasting System Evening News With Dan Rather (Sept. 5, 1985) (Michael White, Lloyds of London underwriter: "I don't think that the underwriters own the wreck. But I doubt it's worth very much, anyhow, at the bottom of the ocean.").

87. *Id.*

3. *Survivors, Heirs and Their Insurance Companies*

Surviving passengers and relatives of passengers aboard the *Titanic* may have claims to personal items which are recovered from the wreck. Several suitcases were photographed lying around the outside of the wreck.⁸⁸ If the claimants can prove that they or their relatives owned the property, then the court can award them title;⁸⁹ the claimants' rights, however, may be subrogated if an insurance company paid for the loss.⁹⁰ Unfortunately, the salvage costs for recovering these items may be so substantial that the court will award the entire value of the recovered property to the salvor.⁹¹

4. *Salvors*

The salvor of the *Titanic* will have at least a right of possession in the salvaged property.⁹² In fact, the salvor may be awarded title to the property if the law of finds, as opposed to the law of salvage, is applied.⁹³

Currently, there is some disagreement as to whether salvors have *already* staked a claim in the *Titanic*. Texas millionaire Jack Grimm, who has financed three expeditions in search of the *Titanic*, claims to have set navigational transponders on the ocean floor at the *Titanic* site.⁹⁴ In addition, in 1981, he claims to have photo-

88. Marbach, Katz and Pedersen, *supra* note 29, at 44.

89. This outcome will result if the court applies the law of salvage. See *infra* notes 116-18 and accompanying text.

90. See British Marine Insurance Act, 6 Edw. 7, c.41, § 79(1), *reprinted in* J. ARNOULD, *supra* note 74, § 1206. For example, diamonds on board the *Titanic* were insured by various companies for five million dollars (one passenger carried a \$600,000 policy on a string of pearls). If any such personal property was recovered, it would belong to the insurance company which paid off the claim. W. WADE, *supra* note 3, at 36. However, insurance in 1912 was not as widespread as it is today, and many passengers on the *Titanic* were not covered. In that case, anything of value found belonging to uninsured passengers would be returned to those passengers or their heirs. Berlins, *supra* note 72.

91. See *infra* note 120.

92. M. NORRIS, *supra* note 66, at 230. See *infra* notes 111-15 and accompanying text.

93. See *infra* notes 136-45 and accompanying text.

This possibility of a windfall has stimulated some wildly speculative activities. Author Wyn Craig Wade states that in 1968 Englishman Doug Wooley "bought up" all the salvage claims on the *Titanic*. Wooley formed Titanic Salvage, Ltd. and planned to raise the ship by attaching containers to the hull which would electrolyze seawater into hydrogen. Wooley, however, was unable to raise enough capital to even consider the plan. W. WADE, *supra* note 3, at 310.

94. *Hearings*, *supra* note 19, at 50 (statement of Jack Grimm). Grimm's transponders, however, appear to have been set about 10 miles away from the actual location of the *Titanic*. Hollis Letter, *supra* note 35. For an account of Grimm's three expeditions, see W. HOFFMAN & J. GRIMM, *supra* note 28.

graphed the propeller of the *Titanic*.⁹⁵ Furthermore, the joint French-American expedition which located and photographed the *Titanic* may have a similar claim.⁹⁶

However, both property law and the law of salvage require more than a mere sighting to establish a legal claim in recovered property. Property law holds that the rights of a "finder depend on an 'actual taking' coupled with an intent to reduce the property to possession."⁹⁷ Similarly, to establish a right of possession in salvage law, a required element is that the salvage be successful.⁹⁸ In other words, the salvor must actually recover the property. Whereas salvage law requires the claimant to actually recover property in order to establish possession rights, property law only demands an active and continuous attempt to recover the property.⁹⁹ The salvor's actual rights in the recovered property will depend on whether the court applies the law of salvage or the law of finds.

B. *The Law of Salvage v. The Law of Finds*

The *Titanic* has been resting on the ocean floor for seventy-five years. Until recently, no serious effort has been made by anyone to locate or raise the *Titanic*.¹⁰⁰ How and to what extent this lapse of time has affected the rights of the parties with respect to ownership claims depends on whether salvage law or the law of finds is applied.

1. *Salvage Law*

The law of salvage is the law governing the voluntary recovery of distressed property at sea.¹⁰¹ The origins of salvage law can be

95. *Hearings*, *supra* note 19, at 50.

96. At a recent appearance in Cleveland, Ballard stated that neither his team nor the French were going to make any kind of legal claim on the *Titanic*. Ballard Address, *supra* note 35.

97. *Eads v. Brazelton*, 22 Ark. 499, 509 (1861). As Justice Holmes stated in *Missouri v. Holland*, 252 U.S. 416, 434 (1920), "Wild birds are not in the possession of anyone; and possession is the beginning of ownership."

98. *The Blackwall*, 77 U.S. (10 Wall.) 1, 12 (1869).

99. *Eads*, 22 Ark. at 512; *see infra* notes 141-42 and accompanying text.

100. Schemes to raise the *Titanic* have included using ping-pong balls and helium balloons. W. WADE, *supra* note 3, at 310; *see supra* note 28. *See also supra* notes 93 and *infra* note 167.

101. "In its simplest form salvage can be described as a service voluntarily rendered in relieving property from an impending peril at sea or other navigable waters by those under no legal obligation to do so." M. NORRIS, *supra* note 66, at 2. "Salvage is the compensation allowed to persons by whose assistance a ship or her cargo has been saved, in whole or in part, from impending peril on the sea, or in recovering such property from actual loss, as in cases of shipwreck, derelict, or recapture." *The Blackwall*, 77 U.S. at 12.

traced back to the Rhodian and Roman maritime laws.¹⁰² The underlying theory of the law of salvage is to give "to the volunteer who preserved or improved the property of another a right of compensation from the owner, although the services were rendered without the owner's knowledge."¹⁰³ In other words, the owner compensates one who retrieves his property, even if the retrieval was unknown to the owner.¹⁰⁴

Property which is of a salvagable nature is defined as "ships and vessels and their cargoes, or those things which have been committed to, or lost in, the sea or its branches, or other public navigable waters, and have been found and rescued."¹⁰⁵ Three elements must be established in order to assert a salvage claim. First, the property rescued must be in peril.¹⁰⁶ To establish a marine peril, the property must be in danger and in need of assistance.¹⁰⁷ Second, the salvage service must be voluntary; the salvor cannot have a preexisting duty to render aid to the property.¹⁰⁸ Finally, the salvage must be successful, in whole or in part.¹⁰⁹ The salvor can receive a salvage award only through actual recovery of the property.¹¹⁰

Once these three elements are established, maritime law creates a salvage lien in the recovered property in favor of the salvor.¹¹¹ Like all maritime liens, a salvage lien is a privileged possessory claim in certain property which becomes effective through the legal

102. M. NORRIS, *supra* note 66, at 1, 4-7.

103. *Id.* at 1.

104. *Id.*

105. *Cope v. Vallette Dry Dock Co.*, 119 U.S. 625, 629 (1887). Property recovered from the *Titanic* would fall within this definition; however, "salvageable property" is defined differently by other nations. See *infra* note 175.

106. *The Blackwall*, 77 U.S. at 12; *The "Sabine"*, 101 U.S. 384, 384 (1879).

107. M. NORRIS, *supra* note 66, at 2. Courts will usually find that underwater shipwrecks are in marine peril, because sunken vessels and their cargoes are in danger of being lost forever. See, e.g., *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330, 336-37 (5th Cir. 1978) (The court, in response to the argument that the ship in question was not in peril, maintained that despite the discovery of the vessel's location, it was nonetheless in peril of being lost by exposure to the elements.); see Note, *Property Rights in Recovered Sea Treasure: The Salvor's Perspective*, 3 N.Y.J. INT'L & COMP. L. 271, 276 (1981). " 'Impending peril' in these situations, has been functionally redefined to mean merely the increasing likelihood of permanent loss that attends marine property the longer it remains unsalvaged." Lawrence, *State Antiquity Laws and Admiralty Salvage: Protecting Our Cultural Resources*, 32 U. MIAMI L. REV. 291, 298 (1977).

108. M. NORRIS, *supra* note 66, at 2-3.

109. *Id.* at 3.

110. *Id.*

111. *The "Sabine"*, 101 U.S. at 386.

process.¹¹² The salvor's right to the salvage lien is rooted in the fact that the salvor has prevented total loss, or at least damage, to the property which was certain to occur if the property was not saved.¹¹³ The salvage lien enables the salvor to proceed *in rem* against the property in a court of admiralty.¹¹⁴ The salvor maintains this right of possession in the property until his claim for compensation is adjudicated.¹¹⁵

The salvor does not gain title by merely finding and recovering the property.¹¹⁶ Likewise, the owner of property does not lose title to the property merely because it has been lost. Rather, the owner retains title and the right to the property despite its retrieval by a salvor,¹¹⁷ for the salvor's right is one of possession only. The salvor acquires neither title nor ownership to the property.¹¹⁸

The salvage award is the "heart" of salvage law. It embodies the principle that perilous services, voluntarily rendered, should be rewarded.¹¹⁹ It also serves as an inducement to save life and property under dangerous conditions.¹²⁰ The amount of the award is determined by the court and will not exceed the actual value of the salvaged property.¹²¹

In *The Blackwall*,¹²² the Supreme Court set out the key factors to consider in determining the amount of the salvage award:

- (1.) The labor expended by the salvors in rendering the salvage service.
- (2.) The promptitude, skill, and energy displayed in rendering the service and saving the property.
- (3.) The value of the property employed by the salvors in rendering the service, and the danger to which such property was exposed.
- (4.) The risk incurred by the salvors in securing the property from the impending peril.
- (5.) The value of the property saved.
- (6.) The de-

112. M. NORRIS, *supra* note 66, at 230-31. Maritime liens can be created either for a service done to a thing (usually a vessel) or for an injury caused by the thing. *Id.*

113. *Id.* at 3-4.

114. *Id.* at 230. *In rem* proceedings are discussed *infra*; see notes 185-87 and accompanying text.

115. M. NORRIS, *supra* note 66, at 248-50. The salvor is not automatically entitled to its full value. See *Twenty-three Bales of Cotton*, 24 F. Cas. 419 (E.D.N.Y. 1877) (No. 14,284) (salvage fixed at one-third the value of the property saved).

116. M. NORRIS, *supra* note 66, at 246-48.

117. *Id.*

118. *Id.* Under the law of salvage, title to the property remains vested in the owner despite the owner's abandonment of that property.

119. The "Sabine," 101 U.S. at 384. The salvage award consists of more than merely pay or remuneration for services rendered. *Id.* See M. NORRIS, *supra* note 66, at 373-74.

120. The "Sabine," 101 U.S. at 384.

121. M. NORRIS, *supra* note 66, at 375-76, 402-03. See McCreary, *Going For the Jugular Vein: Arrests and Attachments in Admiralty*, 28 OHIO ST. L.J. 19, 20 (1967).

122. 77 U.S. (10 Wall.) 1 (1869).

gree of danger from which the property was rescued.¹²³

The amount of the salvage award will also depend upon whether the property was found to have been abandoned.¹²⁴ Abandonment of property is the discarding or deserting of property by its owner with no intent to reclaim it.¹²⁵ The court will make a factual determination as to whether the property has been abandoned.¹²⁶ The factors considered will include: the physical condition of the property when deserted (which may reflect the owner's intent to desert the property), the amount of time which has passed, and the steps, if any, the owner has taken towards recovering the property. These factors are also taken into account in the court's determination of the salvage award.¹²⁷

In order to encourage salvors to reveal their discoveries, courts are usually generous in their determinations of the amount of salvage awards.¹²⁸ If the awards were small, salvors might sell their recovery to the highest bidder, keeping the profit for themselves and accepting the risk of being accused of conversion or theft by the true owner.¹²⁹ In addition, small salvage awards would serve to defeat the purpose of encouraging people voluntarily to take risks and rescue lives and property in distress at sea.¹³⁰

In applying salvage law to a recovery of property from the *Titanic*, it is likely that a court will conclude that the *Titanic* has been abandoned by her owners. She sank on the high seas seventy-five years ago, and the insurance underwriters have not made any attempt to locate or raise the *Titanic*. The factors which a court will use in determining the amount of the salvage award for a *Titanic* recovery suggest that the award may be very high.¹³¹ Considering the vast amounts of capital, equipment and manpower necessary for a dive on the *Titanic*, it is possible that a court might

123. *Id.* at 14.

124. M. NORRIS, *supra* note 66, at 219-21.

125. *Id.* at 224-26.

126. *Wiggins v. 1100 Tons, More or Less, of Italian Marble*, 186 F. Supp. 452 (E.D. Va. 1960); M. NORRIS, *supra* note 66, at 224-26; Lawrence, *supra* note 107, at 292-96.

127. *Wiggins*, 186 F. Supp. at 452; M. NORRIS, *supra* note 66, at 224-26. See Lawrence, *supra* note 107, at 292-96.

128. M. NORRIS, *supra* note 66, at 372-73.

129. Under salvage law, a salvor obtains only a possessory right and theoretically salvages the property for the benefit of the owner. Because the owner retains title to the property at all times, the owner could potentially bring suit against the salvor for conversion of property if the salvor were to sell the property. *Id.* at 257-58.

130. *Id.* at 372-73.

131. See *supra* note 127 and accompanying text. *But see* GILMORE & BLACK, *supra* note 74, at 563 (salvage award will never be for total value of recovered property unless no other claimant appears).

even award the entire value of the recovered property to the salvor. Estimates place the operational costs of a salvage operation between \$10,000 and \$150,000 per day, depending upon the type of equipment used and the size of the objects recovered.¹³² An additional factor which must be considered is the great danger a salvor will face in diving 2.5 miles beneath the surface of the Atlantic.¹³³

The value of any property recovered from the *Titanic* is unknown. Items might be considered more valuable solely because they went down with the *Titanic*.¹³⁴ Pieces of the ship, lumps of coal and bottles of wine, as well as jewelry and other items, will be valued at far beyond their real worth.¹³⁵

Under the law of salvage, a party with an ownership claim in the *Titanic* wreckage will have a chance to recover some or all of any property recovered by a salvor, even though the court will probably find that the owner abandoned the *Titanic* long ago.

2. *The Law of Finds*

If the court chooses to apply the law of finds, rather than the law of salvage, the outcome changes dramatically. Under the law of finds, abandonment by the owner is final, and title to the property vests in the first person to reduce it to possession.¹³⁶

Under the law of finds, the key to ownership is whether or not the owner has abandoned the property. Abandonment by the owner can be either express or implied.¹³⁷ Factors which a court

132. *Hearings, supra* note 19, at 66 (statement of Dr. William Ryan, Lamont-Doherty Geological Observatory, Columbia University). Ryan estimates that salvage costs for the recovery of small objects scattered on the ocean floor will be \$25,000 per day, with transit and mobilization costs at \$20,000 per day. If larger objects, such as a boiler, are to be recovered, the estimated costs are between \$50,000 and \$150,000 per day, with transit costs at \$50,000 per day. If an operational habitat on the ocean floor could be utilized, however, a large support vessel would not be required, and daily costs would drop to \$10,000. *Id.*

133. The Atlantic is infamous for its rough weather, especially in the winter. Icebergs are still a hazard, particularly to drilling rigs or platforms which attempt to remain in a fixed position while performing work on the seafloor. *Hearings, supra* note 19, at 106 (statement of Capt. W.F. Searle, Jr., USN (Retired), and Chairman, Searle Consultants, Ltd.).

134. In November, 1985, Christie's Art Auction House of South Kensington auctioned off a water-stained luggage weighing-machine ticket from the *Titanic* for £500. Mallalieu, *Top Prices Paid For English Paintings*, *The Times* (London), Nov. 23, 1985, at 10, col. g.

135. Museums are interested in *Titanic* memorabilia. Jack Grimm, prior to his three expeditions in search of the *Titanic*, made agreements with the Smithsonian Institute and other maritime museums to curate and display objects which he recovered from the wreck site. H.R. REP. NO. 393, *supra* note 1, at 7; *Hearings, supra* note 19, at 51 (statement of Dr. William Ryan, Lamont-Doherty Geological Observatory, Columbia University).

136. *Eads*, 22 Ark. at 509.

137. "It [abandonment] may occur when the owner with specific intent of desertion and relinquishment casts away, or leaves behind his property; or when after a casual or uninten-

will consider include the condition of the property when deserted, the amount of time that has passed, and the steps the owner has taken to recover the property.¹³⁸ If the court finds that the owner has relinquished all hopes of recovery, the property will be deemed abandoned.¹³⁹

The ownership of abandoned property depends on the finder taking possession. In *Eads v. Brazelton*,¹⁴⁰ the court stated, "[t]he occupation or possession of property lost, abandoned or without an owner, must depend upon an actual taking of the property and with the intent to reduce it to possession."¹⁴¹ The *Eads* court went on to say that the salvor could have established possession if he had placed his "boat over the wreck, with the means to raise its valuables, and with persistent efforts directed to raising the [property]."¹⁴² Once the finder establishes possession, he holds title to the property which is good against all, including the original owner, since abandonment forfeits all the owner's rights.¹⁴³ Since a court will probably find that the *Titanic* has been abandoned, any salvor who recovers property from the wreck will be awarded title if the court applies the law of finds. The question remains, however, whether a salvor would be awarded title only to property which he has actually recovered, or title to the entire wreck still on the ocean

tional loss all purpose further to seek and reclaim the lost property is given up." Perry, *Sovereign Rights in Sunken Treasures*, 7 LAND & NAT. RESOURCES DIV. J. 89, 94 (1969). In *Eads*, the Arkansas Supreme Court stated:

Property is said to be abandoned when it is thrown away, or its possession is voluntarily forsaken by the owner, in which case it will become the property of the first occupant; or when it is involuntarily lost or left without the hope and expectation of again acquiring it, and then it becomes the property of the finder, subject to the superior claim of the owner; except that in salvage cases . . . the finder may hold possession until he is paid his compensation, or till the property be submitted to legal jurisdiction for the ascertainment of the compensation.

Eads, 22 Ark. at 509.

138. *Wiggins*, 186 F. Supp. at 456. See *supra* notes 125-27 and accompanying text.

139. "General principles of maritime and international law dictate that an abandonment constitutes a repudiation of ownership and that a party taking possession under salvage operations may be considered a finder under the doctrine of *animus revertendi*, i.e., the owner has no intention of returning." Roberts, *Sinking, Salvage, and Abandonment*, 51 TUL. L. REV. 1196, 1213 n.126 (1977).

140. 22 Ark. 499 (1861).

141. *Id.* at 509.

142. *Id.* at 512. "The cases suggest that a higher degree of constructive or symbolic possession will be tolerated to establish possessory or titular rights where the wrecks lie in extremely deep water or other particularly inaccessible marine environments." Lawrence, *supra* note 107, at 296.

143. *Eads*, 22 Ark. at 508-09. In *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 408 F. Supp. 907 (S.D. Fla. 1976), the salvors argued that by undertaking to salvage a sunken galleon they had established possession and therefore were entitled to title as finders. *Id.* at 909. The court agreed. *Id.* at 911.

floor. *Eads* suggests that if a salvor kept a ship over the wreck and carried on a continual salvage operation, the salvor would establish possession of the entire wreck.¹⁴⁴ However, a court would probably only entertain an action to declare title over the specific property recovered due to possible jurisdictional and comity problems.¹⁴⁵

3. *Preference of Law*

American courts have tended to apply the law of finds, rather than the law of salvage, in cases where the owner or underwriter has expressly, or impliedly, abandoned the property.¹⁴⁶ In *Eads v. Brazelton*,¹⁴⁷ the court referred to the discrepancy between finder's and salvage law, noting that "[s]ome authorities refer to things found at sea as belonging to the finder, in distinction from wreck, that is, goods lost at sea and floated to land . . . and in extreme cases property wholly derelict and abandoned has been held to belong to the finder against the former owner."¹⁴⁸

In the relatively recent case of *Wiggins v. 1100 Tons, More or Less, of Italian Marble*,¹⁴⁹ the court applied the law of finds in determining rights to a ship salvaged after sixty-six years on the ocean floor.¹⁵⁰ The court noted that the salvage law view, under which an owner never loses title to abandoned wrecks and cargoes,¹⁵¹ is supported by cases in which the owners and their successors never intended to abandon their property; the owners' intention to return to

144. *Eads*, 22 Ark. at 511-12.

145. The question of whether an admiralty court would be able to claim jurisdiction over the *Titanic* wreck remains open. Additionally, even if an admiralty court could do so, it is unclear whether it would choose to do so. See *infra* notes 179-84 and 190-96.

146. See, e.g., *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (applying the law of finds, the court held that title to abandoned property vests in the person who reduces that property to possession); *Rickard v. Pringle*, 293 F. Supp. 981 (E.D.N.Y. 1968) (title to a propeller rescued from a vessel abandoned on the ocean floor for 60 years was held vested in the first person to reduce it to possession); *Brady v. The Steamship African Queen*, 179 F. Supp. 321 (E.D. Va. 1960) (first finder is entitled to ownership where property is wholly derelict and affirmatively abandoned by owners and underwriters); *Wiggins v. 1100 Tons, More or Less, of Italian Marble*, 186 F. Supp. 452 (E.D. Va. 1960) (salvor was considered a finder under the doctrine of *animus revertendi*, i.e., the owner has no intention of returning); *United States v. Smiley*, 27 F. Cas. 1132 (N.D. Cal. 1864) (No. 16,317) (title vested in salvor who reduced property to possession where underwriters abandoned all attempts to recover the broken-up vessel); *Eads v. Brazelton*, 22 Ark. 499 (1861) (first salvor to reduce property to possession was awarded title where owners had publicly abandoned the property).

147. 22 Ark. 499 (1861).

148. *Id.* at 509.

149. 186 F. Supp. 452 (E.D. Va. 1960).

150. *Id.* at 454.

151. *Id.* at 454-56; see M. NORRIS, *supra* note 66, at 257-58.

their property was apparent at all times.¹⁵² The court preferred the *Eads* approach, which has been interpreted to intimate that the passage of time enables a salvor to be characterized as a finder, and thus entitled to title rather than just a salvage award.¹⁵³

In his treatise on salvage law, Norris argues that the application of the law of finds to "publicly abandoned marine property discovered on the high seas" encourages "violent and lawless acts of the eager or desperate 'finders,'" in that the *Titanic* site will be bombarded by would-be salvors hoping to establish possession and gain title to the *Titanic* under finder's law.¹⁵⁴ Already there is concern that the *Titanic* is in danger of being ravaged by commercial scavengers.¹⁵⁵ The courts of admiralty will protect the rights of the first salvor legally in possession.¹⁵⁶ Additional salvors will not be permitted to interfere except in cases where the first salvor is manifestly incompetent or where assistance is required to successfully complete the salvage operation.¹⁵⁷ The theory that possession gives the first salvor a right against interference, however, also appears to be the same in finder's law; *Eads* suggests that a salvor can establish possession and be protected by the courts as well,¹⁵⁸ leaving Norris' fears unfounded.

The outcome of the hypothetical *Titanic* salvage case will depend on whether the court chooses to apply the law of salvage or the law of finds. If the court applies finder's law, however, the salvor will be awarded title to the recovery property but probably not to the wreck itself. If the court applies salvage law, however, the

152. *Wiggins*, 186 F. Supp. at 456.

153. *Id.*

154. M. NORRIS, *supra* note 66, at 138 (Supp. 1974).

155. Concern over the *Titanic*'s attractiveness to commercial salvors has resulted in The R.M.S. *Titanic* Maritime Memorial Act of 1985. H.R. REP. NO. 393, *supra* note 1, at 3.

156. M. NORRIS, *supra* note 66, at 250-52. The courts will deny the claim of the second salvor, and grant the salvage award to the first salvor. *Id.* (quoting *The "Edilio"*, 246 F. 470 (D.N.C. 1917)). Courts will award injunctions to salvors working on a wreck who are being interfered with by other would-be salvors. The theory is that by working on the wreck the original salvor has established a "possessory right." The "*Tubantia*," 18 Lloyd's List L.R. 158, 159-60 (1924); Lawrence, *supra* note 107, at 295. See also *Eads*, 22 Ark. at 512 ("Placing [Brazelton's] boat over the wreck, with the means to raise its valuables, and with persistent efforts directed to raising the lead, would have been keeping the only effectual guard over it, would have been the only warning that intruders, that is, other longing occupants would be obliged to regard, would have been such acts of possession as the law would notice and protect.").

157. M. NORRIS, *supra* note 66, at 250-52. Under the "use and occupation" view "the salvor must manifest an intent to reduce the property to physical possession by dealing with the wreck as a whole in a way that would tend to warn, if not exclude, subsequent salvors." Lawrence, *supra* note 107, at 295 (footnotes omitted).

158. See *supra* note 156.

salvor will receive a salvage award for his recovery which, depending on the discretion of the court, may or may not be for the property's entire value.

III. JURISDICTION

A. *No Nation has Exclusive Jurisdiction Over the Titanic*

The wreck of the *Titanic* is located in an area over which no nation has exclusive jurisdiction—the high seas.¹⁵⁹ Furthermore, no international law governs the salvage of a vessel on the deep sea floor.¹⁶⁰ Thus, no law restricts a salvor from salvaging the *Titanic* wreckage.

The recent British case involving the *Lusitania*¹⁶¹ has cleared the way for British salvors who are interested in salvaging the *Titanic*. The *Lusitania* was torpedoed by a German U-boat on May 7, 1915 and sank approximately twelve miles off the Head of Kinsale in 315 feet of water.¹⁶² In 1982, salvor John Pierce retrieved items from the *Lusitania* which, upon their arrival in England, were seized by the British Department of Transport's Receiver of

159. The "high seas" are considered to be an area beyond any nation's jurisdiction, and all nations have freedom of access to and over it. The 1982 Convention on the Law of the Sea defines the "high seas" as "all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." Third United Nations Conference on the Law of the Sea, Dec. 10, 1978, Part VII, § 1, Art. 86, G.A. Res. 66, 37 U.N. GAOR Supp. (No. 51) at 26, U.N. Doc. A/CONF. 62/122 (1982), reprinted in *THE LAW OF THE SEA* at 30, U.N. Sales No. E.83.V.5 (1982).

160. There are no international agreements governing the ownership of treasures found on the high seas. However, many international proposals have been made; see S. WILLIAMS, *THE INTERNATIONAL AND NATIONAL PROTECTION OF MOVABLE CULTURAL PROPERTY: A COMPARATIVE STUDY* 59-60 (1978). The only explicit rules governing marine international archeology were included in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Recommendation on International Principles Applicable to Archeological Excavations of 1956; see S. WILLIAMS, *supra*, at 60. These do not have the force of international law. *Id.*

The International Maritime Organization (IMO) is presently working on a new international convention on marine salvage. *Hearings, supra* note 19, at 84 (statement of Dr. F. Wiswall, Jr., former Chairman, Legal Committee, International Maritime Organization). Dr. Wiswall was unable to suggest an existing forum for the negotiations proposed under The R.M.S. *Titanic* Maritime Memorial Act of 1985, but he did suggest that the IMO is an appropriate forum for an international convention on the *Titanic* and for creation of an agreement along the same lines as the bill. *Id.* at 83; H.R. REP. NO. 393, *supra* note 1, at 7-8.

For more information on international law on marine antiquities, see Altes, *Submarine Antiquities: A Legal Labyrinth*, 4 SYRACUSE J. INT'L L. & COM. 77, 78-79 (1976).

161. The "Lusitania," as quoted in *Lusitania Contents Belong to Finders*, *The Times* (London), Nov. 30, 1985, at 21, col. g (Q.B. Nov. 29, 1985).

162. *Lusitania Contents Belong to Finders*, *The Times* (London), Nov. 30, 1985, at 21, col. g.

Wrecks.¹⁶³ In a suit brought for title, the British government argued that the government's right to any wreck brought from either territorial or international waters to Britain was firmly entrenched and dated back to a 1324 Act of Edward II.¹⁶⁴ The court, however, found that the Merchant Shipping Act of 1894 was intended to be a comprehensive statement of wreck and salvage law, and that the 1894 Act made no suggestion that the Crown had any interest in a wreck found outside its own territorial seas.¹⁶⁵ Because the *Lusitania* sank in international waters, the court was compelled to hold that Pierce had title to the recovered property.¹⁶⁶ Thus, relying upon the *Lusitania* outcome, it appears that any salvor, including Pierce, who successfully salvages the *Titanic* and returns it to England will not face a claim for title from the British government.¹⁶⁷

It appears that a salvor may dive on the *Titanic* without any immediate legal repercussions. However, if the salvor recovers any property from the wreck, it will be essential to resort to the courts if he wants title and ownership declared over the property.¹⁶⁸ The salvor need not have title declared and could simply keep the property *res*; however, other claimants with potential ownership rights may challenge him in court over his right to possession.¹⁶⁹

Although salvage law is considered to be *jus gentium*, the law of all nations,¹⁷⁰ conflicts between the laws and divergencies in municipal laws of different nations must be taken into consideration as a

163. *Key to Titanic Salvage in 1324 Act on Rights to Sea Wrecks*, The Times (London), Nov. 14, 1985, at 3, col. a [hereinafter *Key to Titanic*]. The items, said to be worth £2,500,000, included two bells and 8,000 silver spoons which were embossed with the head of General Kitchener. *Id.*

164. *Id.* The 1324 Act of Edward II proclaimed "the King's right to 'all wreck of the sea, whales and great sturgeons.'" *Id.*

165. *Lusitania Contents Belong to Finder*, *supra* note 162.

166. *Id.*

167. *Lusitania Court Ruling Clears Way For Raising the Titanic*, The Times (London), Nov. 30, 1985, at 4, col. a [hereinafter *Lusitania Court*]. Pierce plans to use giant air bags filled with compressed air to raise the *Titanic* and float her back to the shipyard in Belfast, Ireland where she was built. *Key to Titanic*, *supra* note 163. Pierce not only believes that the *Titanic* is rebuildable, *id.*, but also thinks that she is "sitting on the bottom in perfect condition." *Key to Titanic*, *supra* note 163 (quoting John Pierce). Pierce plans to attempt the operation in the summer of 1987. *Lusitania Court*, *supra*.

168. This is the most certain way for the salvor to protect whatever interest he has in the *res*. See Lohrey, *Sunken Vessels, Their Cargoes, and the Casual Salvor*, 20 JAG J. 25, 28 (1965). However, due to the international implications of determining the ownership rights in the *Titanic*, and since many of the possible claimants are located in Great Britain, the court may choose to apply the doctrine of *forum non conveniens* and decline jurisdiction. See *infra* notes 178-84 and accompanying text.

169. M. NORRIS, *supra* note 66, at 254; see *supra* note 129.

170. M. NORRIS, *supra* note 66, at 21-22.

claimant selects the forum in which to have his claims determined.¹⁷¹ Due to the magnitude of the choice, this Note will focus generally on the American judicial system, specifically in terms of admiralty law as it is applied in the federal courts.

B. *Jurisdictional Requirements For United States Admiralty Courts*

In order to proceed in a United States Admiralty Court, a salvor would first file a complaint in federal district court. The salvor should file in the district in which he intends to bring the *res*.¹⁷² In fact, he will be required to bring the *res* into the jurisdiction of the district court in order to establish *in rem* jurisdiction.¹⁷³

Admiralty courts have jurisdiction over cases of salvage performed on navigable waters.¹⁷⁴ In order to enforce the maritime lien which a successful salvage creates, suit must be brought in ad-

171. Eleazer, *The Recovery of Vessels, Aircraft, and Treasure in International Waters*, in *SOME CURRENT SEA LAW PROBLEMS* 26, 28 (S. Wurfel ed. 1975) (University of North Carolina Sea Grant Publication No. UNC-SG-75-06). See Luksic, *Limitation of Liability for the Raising and Removal of Ships and Wrecks: A Comparative Study*, 12 J. MAR. L. & COM. 47, 47-50 (1980). The Brussels Salvage Convention [hereinafter Convention], ratified by the United States in 1915, bound the admiralty courts of the contracting states to apply the provisions of the Convention in salvage suits brought by individuals. Eleazer, *supra*, at 28-29. See also I. WILDEBOER, *THE BRUSSELS SALVAGE CONVENTION* (1965). This effort for uniformity failed because the contracting states saw the Convention as an embodiment of pre-existing general salvage principles, rather than as explicit rules. Eleazer, *supra*, at 29. "Such a *jus gentium* outlook in effect allows national admiralty courts to proclaim adherence to the Convention while looking to municipal law to provide flesh to their legal decisions. Salvage disputes are thus pulled back into the realm of conflicts of law . . ." *Id.* But see M. NORRIS, *supra* note 66, at 22.

Art. 1 of the Convention limits what constitutes salvage to "[a]ssistance and salvage of seagoing vessels in danger, of anything on board, of freight and passage money." Brussels Salvage Convention of 1910, art. 1, reprinted in Eleazer, *supra*, at 30 n.19. Thus, French and Belgian salvage law do not consider the salvage of parts of vessels or wrecks to be subject to salvage law because partial salvage is outside of the Convention's limits. France would also define "vessel" as a ship capable of navigation, thereby placing a wreck outside the scope of the Convention's language and subject to municipal recovery laws. *Id.* at 30-31. See also Luksic, *supra*, at 48-49. In the United States and Great Britain, however, salvage law would apply both to wrecks and pieces of wrecks. Eleazer, *supra*, at 30-31. A salvage award would probably be more liberal than a recovery under municipal laws due to its underlying policy justifications. See *supra* notes 119-20 and accompanying text.

172. Generally, the salvor can bring suit on his own behalf or for his officers and crew. M. NORRIS, *supra* note 66, at 439.

173. See *infra* note 186 and accompanying text.

174. M. NORRIS, *supra* note 66, at 18; *The Hine v. Trevor*, 71 U.S. (4 Wall.) 555, 568-69 (1866). The salvage must have occurred on navigable waters, or water on which commerce takes place, in order for the admiralty court to have jurisdiction. *The Propeller Genessee Chief v. Fitzhugh*, 53 U.S. (12 How.) 443, 457 (1851).

miralty court.¹⁷⁵

United States admiralty courts are exceedingly generous in their jurisdictional requirements. Generally, they will grant jurisdiction so long as a maritime claim is involved, even if none of the parties are American.¹⁷⁶ In addition, there are no venue requirements in an admiralty court.¹⁷⁷ However, this generous jurisdiction is subject to the limitations of the judicially-created doctrine of *forum non conveniens*.¹⁷⁸ Under this doctrine, a court may dismiss a suit if the chosen forum is so inconvenient as to be oppressive to the parties, or if the forum is inappropriate due to features of the court itself, and if an alternative forum is available to hear the case.¹⁷⁹

The doctrine of *forum non conveniens* may play a key role in any suit brought by a salvor of the *Titanic*. First, the *Titanic* was a British vessel. Although her British registry does not give Great Britain exclusive jurisdiction over her remains,¹⁸⁰ a United States admiralty court may, at its discretion, choose not to entertain jurisdiction over any property recovered from the *Titanic*.¹⁸¹ Second, most of the possible claimants of ownership rights in the wreckage are British companies.¹⁸² Third, many of the *Titanic's* passengers

175. See *supra* notes 114-15 and accompanying text.

176. Norris attributes this generous jurisdiction to the universal application of the principles of the law of salvage. M. NORRIS, *supra* note 66, at 22. Eleazer attributes it to the doctrine of *forum non conveniens*, "which federal courts may assert in an attempt to promote fairer litigation." Eleazer, *supra* note 171, at 27 n.6; see Bickel, *The Doctrine of Forum Non Conveniens as Applied in the Federal Courts in Matters of Admiralty*, 35 CORNELL L.Q. 12, 16 n.24 (1949).

177. *In re Louisville Underwriters*, 134 U.S. 488 (1890).

178. "[W]hen an alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) (quoting *Koster v. Lumberman's Mut. Cas. Co.*, 330 U.S. 518, 524 (1947)).

179. *Id.*

180. *United States v. Smiley*, 27 F. Cas. 1132, 1134 (N.D. Cal. 1864) (No. 16,317) ("But when a vessel is destroyed, and goes to the bottom, the jurisdiction of the country over it necessarily ends, as much so as it would over an island which should sink into the sea.").

181. The Supreme Court has listed the following factors to assist a trial court in exercising its discretion: "the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing, witnesses; . . . and all other practical problems that make a trial of a case easy, expeditious, and inexpensive." *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508 (1947). In addition, the Court stated, "Administrative difficulties follow for courts when litigation is piled up in congested centers instead of being handled at its origin There is a local interest in having localized controversies decided at home." *Id.* at 508-09.

182. The underwriters of Lloyds of London and Commercial Union Associates are British-based companies.

were British citizens, and presumably claimants asserting claims through a passenger will also be British.¹⁸³ Thus, the court may choose to invoke *forum non conveniens* if intervening claimants wish the suit to be removed to a British court.¹⁸⁴

The salvor can bring a suit either *in rem* or *in personam*.¹⁸⁵ *In rem* jurisdiction requires that the *res* be located within the district either upon the filing of the complaint or during the pendency of the action.¹⁸⁶ The *res* becomes the defendant in the action.¹⁸⁷ *In personam* jurisdiction is sought when the *res* is outside the district and the salvor wishes to sue the property's owner personally.¹⁸⁸ Unless a salvor has entered into a salvage contract or agreement with a possible owner to salvage the *Titanic*, a salvor is likely to use the *in rem* remedy.¹⁸⁹

Although an *in rem* action requires the *res* to be within the district, a recent Fifth Circuit decision suggests that the parties may stipulate to the court's jurisdiction over the *res* and thereby waive

183. The *Titanic's* voyage originated in Southampton, England and stopped at Cherbourg, France and Queenstown, Ireland before heading for New York City. H.R. REP. No. 393, *supra* note 1, at 3.

184. Since the great majority of parties with possible ownership rights in the *Titanic* are British, and since most of the records on the *Titanic* would be located in Great Britain, it seems highly likely that the court will invoke *forum non conveniens* if a salvor wishes to sue for title in the United States. "The attendance of witnesses from a foreign jurisdiction cannot be forced. Witnesses may be unwilling to travel; and when they do, the expenses involved are considerable. Documents also may have to be transported, and dispensed with for lengthy periods of time, as well as subjected to the risk of loss. . . . Litigation in a strange place may involve also the hiring of local counsel; defendant may even lose the advantage of having his house counsel conduct the case" Bickel, *supra* note 176, at 14 n.15.

185. M. NORRIS, *supra* note 66, at 435. See The "Sabine," 101 U.S. 384 (1879); see also McCreary, *supra* note 121 (discussion of *in rem* and *in personam* jurisdiction).

186. FED. R. CIV. P. Adm. Supp. C (2): "[The complaint] shall describe with reasonable particularity the property that is the subject of the action and state that it is within the district or will be during the pendency of the action."

187. The personification of the *res* is peculiar to admiralty law. It allows the *res* itself to be sued when the owner cannot be reached, and, consequently, *in personam* jurisdiction does not exist. *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330, 333-34 (5th Cir. 1978). "*In rem* actions in admiralty generally require, as a prerequisite to a court's jurisdiction, the presence of the vessel or other *res* within the territorial confines of the court This rule is predicated upon admiralty's fiction of convenience that a ship is a person against whom suits can be filed and judgments entered Personification of the ship allows actions to be brought against the vessel when her owner can not be reached." *Id.* (citations omitted). See McCreary, *supra* note 121, at 20.

188. M. NORRIS, *supra* note 66, at 435 ("The salvor also has his remedy in personam against the owners of the salvaged property where the property has been destroyed without the salvor's fault or where the property saved has been removed from the jurisdiction to defeat his *in rem* remedy The salvor may also proceed in personam against the party at whose request and for whose benefit the salvage service was performed.").

189. *Id.*

this requirement.¹⁹⁰ In *Treasure Salvors, Inc. v. Unidentified Wrecked & Sailing Abandoned Vessel*,¹⁹¹ the parties litigated the title to the *Nuestra Senora de Atocha*, a Spanish galleon which sank in the seas off the Florida keys during a hurricane in 1622.¹⁹² Treasure Salvors, the salvors of the *Atocha*, brought suit for possession of and confirmation of title to the wreck.¹⁹³ Since it was impossible to bring the wreck into court, and since there was no fear of the wreck moving from its location in the reef, the parties (Treasure Salvors, Inc. and the United States) stipulated to the court's admiralty jurisdiction over the *res*.¹⁹⁴ This suggests that a salvor of the *Titanic* and the other claimants might be able to stipulate to the admiralty court's jurisdiction over the entire *Titanic* remains.¹⁹⁵

Given the international implications of such an action and the possibility that all the claimants to ownership rights may not be joined in the action,¹⁹⁶ however, the court may decline to accept jurisdiction except over property recovered and actually present within the district. In addition, there are significant questions as to the legitimacy of waiving such an important requirement as jurisdiction in admiralty law.¹⁹⁷

190. *Treasure Salvors, Inc. v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330, 335 (5th Cir. 1978).

191. *Id.*

192. *Id.* at 333.

193. *Id.*

194. *Id.* at 335.

195. In *Treasure Salvors*, the court did have *in personam* jurisdiction over the parties; however, the *Atocha* lay outside the territorial waters of Florida and the United States. *Id.*

196. Admiralty courts might presume abandonment if no one else joins the action as a claimant for title. Lawrence, *supra* note 107, at 294.

197. In *Subaqueous Exploration Archeaeology, Ltd. v. Unidentified, Wrecked and Abandoned Vessel*, 577 F. Supp. 597 (D. Md. 1983), the court accepted the agreement between the plaintiff and the State of Maryland that the *res* was within the jurisdiction of the court. *Id.* at 606. This "agreement" to jurisdiction is severely criticized in Owen, *Some Legal Troubles With Treasure: Jurisdiction and Salvage*, 16 J. MAR. L. & COM. 139 (1985). In *Subaqueous Exploration*, the wreck was claimed to be within Maryland waters; however, no objects had been recovered by the salvor from the wreck. *Subaqueous*, 577 F. Supp. at 607. Since the salvor did not have either actual or constructive possession of the property, the court did not have *in rem* jurisdiction and should not have entertained the salvor's claims under either salvage or finder's law. Owen, *supra*, at 155-57.

In *Treasure Salvors*, the court cited *Continental Grain Co. v. The Barge FBL-585*, 364 U.S. 19 (1960), and stated that "the Supreme Court appears to favor the position that the presence of the *res* within the district is not an absolute prerequisite to the court's jurisdiction." *Treasure Salvors*, 569 F.2d at 334 (footnote omitted). However, the Supreme Court has not yet approved such a radical change, and the facts of *Continental Grain Co.* are sufficiently different to distinguish it from a case such as *Treasure Salvors*. Owen, *supra*, at 161-62. Owen states that the Fifth Circuit has since retreated from this position. Owen, *supra*, at 166.

Once the salvor has filed suit in admiralty court, any person who claims an interest in the salvaged property may join the action as a plaintiff against the defendant *res*.¹⁹⁸ The rights of the parties in relation to the property will then be determined. The outcome will depend on whether the court applies the law of salvage or the law of finds.¹⁹⁹

IV. POTENTIAL SOLUTIONS FOR THE *TITANIC*

The *Titanic* represents one of man's greatest achievements and one of his worst follies. The ship was the largest and most luxurious liner of her day; no expense was spared in her creation.²⁰⁰ She was claimed to be "unsinkable."²⁰¹ Even as water poured through her buckled plates, passengers refused to seek safety on the lifeboats because of their unshaken belief that she was, indeed, unsinkable.²⁰² The sinking of the *Titanic* marked the end of a golden era— an era of great optimism and self-confidence in man's ability to achieve whatever he desired.²⁰³ Today, the *Titanic* remains a symbol of that era.

There is general concern that the *Titanic* will be ravaged by fortune-seekers who will disregard her great history and will destroy the site where over 1500 people lost their lives.²⁰⁴ Dr. Robert Ballard has suggested that the *Titanic* wreckage be approached as an archaeological site, and that removal of any objects be carefully recorded, so we may learn more about the *Titanic* and her tragic sinking.²⁰⁵ Ballard photographed the interior and exterior of the ship in the summer of 1986.²⁰⁶ These photographs are slated for publication in a history of the *Titanic*, thus making the *Titanic* accessible to all, yet discouraging her salvage.²⁰⁷

198. See *supra* note 66.

199. See *supra* notes 146-58 and accompanying text.

200. H.R. REP. NO. 393, *supra* note 1, at 3; W. WADE, *supra* note 3, at 18.

201. H.R. REP. NO. 393, *supra* note 1, at 3.

202. *Id.*

203. W. WADE, *supra* note 3, at 6.

204. See, e.g., *Hearings*, *supra* note 19, at 23 (statement of Jon Hollis, Spokesperson, Titanic Historical Society); Marbach, Katz and Pedersen, *supra* note 29, at 46 (Ballard's appeal to the conscience of humanity not to desecrate the *Titanic*); *A Titanic Coup For Science*, U.S. NEWS & WORLD REP. 11 (Sept. 16, 1985) (Eva Hart, survivor of the *Titanic*: "You don't go poking around in someone's grave.").

205. H.R. REP. NO. 393, *supra* note 1, at 6; *Hearings*, *supra* note 19, at 29 (statement of Dr. Robert D. Ballard, Woods Hole Oceanographic Institute).

206. See *supra* notes 36-44 and accompanying text.

207. Hollis Letter, *supra* note 35. Ballard and *National Geographic Magazine* are also planning to create a television special. Horner, *supra* note 43.

Public concern regarding the fate of the *Titanic* led the House Committee on Merchant Marine and Fisheries to introduce H.R. 3272, The R.M.S. *Titanic* Maritime Memorial Act of 1985.²⁰⁸ The Memorial Act is designed to preserve the wreck as a memorial to those who died in the tragedy.²⁰⁹ Congress feels that the *Titanic* should be designated as an international maritime memorial²¹⁰ and that no one should physically alter, disturb or salvage the wreck in any way pending international agreement.²¹¹ The Memorial Act also directs the United States to enter into negotiations with other nations interested in designating the *Titanic* as an international memorial and in creating guidelines for its exploration.²¹² The Administrator of the National Oceanic and Atmospheric Administration would be responsible for consulting with interested nations to develop these guidelines,²¹³ and the Secretary of State would be responsible for entering into negotiations to reach an international agreement to designate the *Titanic* an international memorial and to develop regulation for research, exploration of, and, if appropriate, salvage of the *Titanic*.²¹⁴ Finally, the United States would disclaim

208. H.R. 3272, 99th Cong., 1st Sess. (1985). H.R. 3272 passed the House of Representatives on December 2, 1985.

209. H.R. 3272 § 2(a)(1) states: "(a) FINDINGS—The Congress finds that—(1) the R.M.S. Titanic, the ocean liner which sank on her maiden voyage after striking an iceberg on April 14, 1912, should be designated as an international maritime memorial to the men, women and children who perished aboard her . . ."

210. H.R. 3272, *supra* note 208, § 2(b) states: "(b) PURPOSES—The Congress declares that the purposes of this Act are—(1) to encourage international efforts to designate the R.M.S. Titanic as an international maritime memorial to those who lost their lives aboard her in 1912."

211. H.R. 3272, *supra* note 208, § 2(b)(4) states: "(4) to express the sense of the United States Congress that, pending such international agreement or guidelines, no person should physically alter, disturb, or salvage the R.M.S. Titanic in any research or exploratory activities which are conducted."

212. H.R. 3272, *supra* note 208, §§ 2(b)(2), (3) state:

(2) [t]o direct the United States to enter into negotiations with other interested nations to establish an international agreement which will provide for designation of the R.M.S. Titanic as an international maritime memorial, and protect the scientific, cultural, and historical significance of the R.M.S. Titanic;

(3) to encourage, in those negotiations or in other fora, the development and implementation of international guidelines for conducting research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic.

213. H.R. 3272, *supra* note 208, § 5(a) states:

(a) The Administrator is directed to enter into consultations with the United Kingdom, France, Canada, and other interested nations to develop international guidelines for research on, exploration of, and if appropriate, salvage of the R.M.S. Titanic, which:

(1) are consistent with its national and international scientific, cultural and historical significance and the purposes of this Act; and

(2) promote the safety of individuals involved in such operations.

214. H.R. 3272, *supra* note 208, § 6(a) states:

any "sovereignty, or sovereign or exclusive rights or jurisdiction over, or the ownership of, any marine areas or the R.M.S. *Titanic*."²¹⁵

Immediate reaction to the Memorial Act was favorable.²¹⁶ However, the Memorial Act has been incorrectly interpreted as prohibiting United States citizens from diving on the *Titanic*, while leaving citizens of other nations free to dive on the wreck.²¹⁷ Yet, the Memorial Act prohibits no one, not even United States citizens, from diving on the *Titanic*.²¹⁸ The Memorial Act does propose that an international agreement be created to regulate activities relating to the *Titanic*.²¹⁹ The Memorial Act also encourages *international* efforts to designate the *Titanic* as a memorial.²²⁰ However, Congress specifically states that until such an international agreement is reached, no prohibitions or regulations will be enforced against any would-be salvor of the *Titanic*.²²¹

The *Titanic* need not be salvaged to be of benefit to science and technology. Research and exploration have already provided data on the effects of extreme pressure, temperature and lack of light at the ocean floor for a period of seventy-five years.²²² Technology will improve and even more knowledge will be gained. Such research and exploration, however, should be done carefully so as not to destroy any part of the *Titanic*.

V. CONCLUSION

The *Titanic* represents a challenge to both potential salvors and to the nations of the world. The salvor will not only have to carefully consider the logistics of a salvage operation on the *Titanic*, but also the social and political ramifications of such action. First, the

(a) The Secretary is directed to enter into negotiations with the United Kingdom, France, Canada, and other interested nations to develop an international agreement which provides for:

- (1) the designation of the R.M.S. *Titanic* as an international maritime memorial; and
- (2) research on, exploration of, and if appropriate, salvage of the R.M.S. *Titanic* consistent with the international guidelines developed pursuant to section (5) and the purposes of this Act.

215. H.R. 3272, *supra* note 208, § 8.

216. Telephone Interview with Brian Stevenson, House Committee on Merchant Marine and Fisheries (Jan. 31, 1986).

217. *Id.*

218. H.R. 3272, *supra* note 208, § 2(b)(4); H.R. REP. NO. 393, *supra* note 1, at 5.

219. H.R. 3272, *supra* note 208, § 2(b)(2); H.R. REP. NO. 393, *supra* note 1, at 5.

220. H.R. 3272, *supra* note 208, § 2(b)(1); H.R. REP. NO. 393, *supra* note 1, at 5.

221. H.R. 3272, *supra* note 208, § 2(b)(4); *see supra* note 211.

222. *See supra* notes 40-41 and accompanying text.

salvor will have to find financing and adequate equipment for such an operation. Even if he is physically able to proceed, legal hurdles such as The Memorial Act and its companion laws in other nations must be overcome. Even if the salvor is able to recover *Titanic* memorabilia, his efforts may be wasted and his right to these remains lost to the claims of parties with greater ownership rights in the *Titanic*. Finally, he must consider the public sentiment surrounding the *Titanic* and the view of many that the wreck should remain as a tomb for those who went down with her.

All of society would benefit from scientific exploration and research on the *Titanic*. The nations of the world must decide if such an examination should be regulated or left to the discretion of the individual explorer.

The *Titanic* is a significant part of our history and should be preserved. Scientific research and exploration, if beneficial, should be carried out. The nations of the world are challenged to produce an agreement, perhaps similar to the "common heritage of mankind" concept, that the *Titanic* is everyone's, and should be held in trust for all the people of the world. The memorabilia lying around the wreck could be recovered and donated to a museum without harming the ship's remains. The main body of the wreck should also be researched and recorded but not salvaged. The *Titanic* should be left as a memorial to those who died with her and as a part of history whose place is now, and should remain, on the bottom of the Atlantic.

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