

2009 LAWASIA MOOT COURT COMPETITION

INTERNATIONAL CENTER FOR ARBITRATION

BENEVOLENT HERITAGE, INC.

(CLAIMANT)

v.

THE GOVERNMENT OF ROLGA

(RESPONDENT)

MEMORIAL FOR THE APPLICANT

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STATEMENT OF JURISDICTION

Pursuant to Clause 10 of the Partnering Agreement Memorandum between Heritage and Rolga, both parties have agreed to settle any disputes or differences by arbitration in accordance with the Rules of Arbitration of the Kuala Lumpur Regional Centre for Arbitration.¹ The parties have decided the International Center for Arbitration in Ho Chi Minh City, Vietnam, to be the seat for the arbitration.²

¹ *Partnering Agreement Memorandum*, ¶ 9 [hereinafter *1995 Memorandum*].

² *Further Clarifications*, ¶ 24.

QUESTIONS PRESENTED

- (1) Whether the State of Rolga (“Rolga”) interfered with Benevolent Heritage, Inc.’s (“Heritage”) salvage rights and performance under the 1995 Partnering Agreement Memorandum (“1995 Memorandum”) when it (1) entered into Agreement with Astoria in 2001, (2) ratified the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage (“2001 UNESCO Convention”), and (3) allowed a tour conductor, Aquatic View, to organize and make profits from visiting activities to the shipwreck site which included taking of photographs of the ship.

- (2) Whether Heritage, as the salvor in possession, has exclusive rights to photograph and document the Coeur de l’Ocean, which supply an income to fund the expense of the salvage operation.

- (3) Whether the calculation of profits and/or distribution of artifacts between Heritage and Rolga are to be made solely on the basis of salvage legal principles.

STATEMENT OF FACTS

Rolga, the Respondent, is a nation in which the tourism industry has greatly developed owing to its rich cultural and natural resources, including underwater heritage that attracts many wreck divers and deep sea treasure hunters from around the world. At the same time, however, such historic wrecks have been the target of rampant illegal treasure hunting. The Coeur de l’Ocean is a famous and historically significant wreck which served as a military vessel of the colonial empire of Astoria in 1800. The archival records say that the Coeur de l’Ocean sailed to the city of Zamzala, which now is a part of Rolga, and the Astorians who conquered the city loaded the ship with the riches of the Palace of Zamzala. The Coeur de l’Ocean sank on its way back when it encountered a monsoon. This wreck has been much coveted among deep sea treasure hunters.

In 1990, Mr. Bernard Bodd, a professional salvor and a major shareholder of Benevolent Heritage Inc., the Claimant, submitted a proposal to the Rolga Cultural Heritage Committee to legally survey and recover historic wrecks from the Astorian colonial era including the Coeur de l’Ocean. According to the law of Rolga in 1990, the relevant authority had to approve all survey or recovery of excavation projects involving historical objects or sites. Heritage conducted studies and research for three years and succeeded in locating the Coeur de l’Ocean in the territorial sea of Rolga. Heritage recovered some articles from the Coeur de l’Ocean to convince the government to give approval for a more extensive recovery project. The National Geographic estimated the value of the treasures in the wreck to exceed USD 1 billion. The Committee granted approval to Heritage for an extensive recovery of the Coeur de l’Ocean and signed a Partnering Agreement Memorandum with Heritage on 27th September 1995 (“1995 Memorandum”).

Since 1995, some parts of the recovered artifacts were sold at overseas auction houses to finance the cost of the recovery project. Some parts of the artifacts such as

cannons, elephant tusks, and gold coins were set up for an exhibition in the National Museum of Rolga by the government in 2000, which resulted in doubling of the tourist visits to the National Museum.

In 2001, Rolga entered into an Agreement on the Protection of Astorian Wrecks (“2001 Agreement”) with Astoria. Under this Agreement, Astoria conveyed all of its right, title, and interest in and to the wrecked ancient vessels and articles of Astoria lying on or off the coast of Rolga. Astoria also expressed its hope that Rolga would do its best to preserve underwater cultural heritage in the light of current development of international law. In turn, Rolga recognized of Astoria’s continuing historical and cultural interest in the articles recovered from Astorian shipwrecks. The 2001 Agreement included an attachment setting forth Guiding Principles for the Determination of the Disposition of Materials from the Shipwrecks of Astoria Off the Coast of Rolga (“Guiding Principles”). The guiding principles emphasized the significance of the collective value of the artifacts, by expressly providing that the two principles that Rolga is to observe are (1) the capability of the total assemblage for the purpose of statistical and scholarly analysis, and (2) the ability to form a meaningful assemblage of unique or rare objects by avoiding split or creating replicas.

In 2006, Rolga ratified the Convention in the Protection of the Underwater Cultural Heritage in Paris (“the UNESCO Convention”) adopted by the United Nations Educational, Social, and cultural Organization (“UNESCO”). In addition, Rolga has been a party to the 1989 Salvage Convention, the 1982 United Nations Convention on the Law of the Sea, and the 1969 Vienna Convention on the law of Treaties.

In 2009, Heritage and Rolga took steps to finalize the distribution of artifacts from the Coeur de l’Ocean, which all remained in the possession of Rolga. Heritage now brings this case to arbitration pursuant to the 1995 Memo because Rolga attempted to distribute the artifacts unfairly.

SUMMARY OF PLEADINGS

Firstly, three occasions of interference with Heritage's salvage rights and performance under the 1995 Memorandum can be pointed out. Interference occurred when Rolga entered into the 2001 Agreement with Astoria because (1) it imposed additional duties on Heritage which did not exist under the 1995 Memorandum; (2) it affected the distribution of the artifacts, such that Heritage will not be entitled to the unique and rare artifacts; and (3) it severely conditioned Heritage's ownership over them by requiring re-assembling of the artifacts. The second instance of interference occurred when Rolga ratified the 2001 UNESCO Convention in 2006 because the Convention prevented the sale of the artifacts that was necessary to finance the cost of the salvage service. The third instance of interference occurred when Rolga authorized Aquatic View to conduct underwater tour. Aquatic View's conduct such as exposing the exact location of the Coeur de l'Ocean to the tourists and the public, taking photographs and films of the Coeur de l'Ocean, and posting them on the Internet for the promotion of its tour interfered with Heritage's salvage operation on the vessel, exposed the vessel to the danger of unauthorized, illegal treasure hunting, and infringed upon Heritage's salvor-in-possession rights.

Secondly, the text of the 1995 Memorandum establishes the exclusivity of Heritage's right to photograph and document, and public policy supports Heritage's position.

Thirdly, the 1995 Memorandum was null and void because Rolga lacked ownership over the artifacts of the Coeur de l'Ocean at the time of agreement. Because Astoria was the rightful owner but it maintained silence on the matter, this entitles Heritage to be awarded for its salvage service with the artifacts.

PLEADINGS

I. ROLGA INTERFERED WITH HERITAGE'S SALVAGE RIGHT AND PERFORMANCE UNDER THE 1995 MEMORANDUM

Salvage by definition is “the aid or rescue given, either voluntarily or by contract, to a vessel in need of assistance because of present or apprehended danger.”³ Legal principles of salvage enumerate the rights of the salvor as (1) the right to claim an exclusive right to conduct salvage operations if the salvor is willing and diligent, and is actually capable of rendering effective assistance and maintaining exclusive possession of the vessel, and (2) the right to be rewarded liberally.⁴

Heritage has been performing salvage on the Coeur de l’Ocean since 1995 as a lawfully authorized salvor to do so. The Coeur de l’Ocean was in danger of being lost forever, as any other historic wrecks, as well as of being illegally exploited or injured by treasure hunters and fishermen. Heritage initiated the salvage activity voluntarily. Then subsequently a salvage contract was made with Rolga which approved Heritage’s salvage operation pursuant to the law of Rolga. Heritage’s effort has been continuous and successful for the past nineteen years, thus establishing Heritage’s status as the salvor-in-possession.

The 1995 Memorandum, which is the salvage contract between Rolga and Heritage, enumerates Heritage’s salvage rights. It broadly states that Rolga and Heritage would be engaged in a salvage project to conserve and document the artifacts of the Coeur de l’Ocean. Sharing Arrangement Clause of the 1995 Memorandum provides that “once the aggregate amount of the appraised values and

³ BLACK’S LAW DICTIONARY (Westlaw) [hereinafter *Dictionary*]

⁴ *Cobb Coin Company, Inc. v. Unidentified, Wrecked, and Abandoned Sailing Vessel*, 525 F. Supp. 186, 198 (Fla. D. Ct. 1981) [hereinafter *Cobb-Coin Company*].

selling prices of the artifacts and the net proceeds of any sales of artifacts exceed forty-five million dollars,”⁵ Heritage is entitled, as salvage reward, to own and possess its relative share of the artifacts from the Coeur de l’Ocean currently in possession of Rolga. These rights, namely to perform the salvage operation and to be rewarded for the service, are interfered in the next three occasions.

A. The 2001 Agreement that Rolga entered with Astoria has interfered with Heritage’s salvage right and performance under the 1995 Memorandum

The 2001 Agreement, which provides the Guiding Principles for the Determination of the Disposition of Materials from the Shipwrecks of Astoria Off the coast of Rolga (“Guiding Principles”), interferes with Heritage’s salvage right and performance because it (1) imposes additional duties on Heritage that did not exist under the 1995 Memorandum, (2) affects the distribution of artifacts from Coeur de l’Ocean, and (3) attaches conditions on Heritage’s ownership over its share of the artifacts.

1. Additional Duties on Heritage

The 2001 Agreement interferes with Heritage’s salvage right and performance because its legal consequences impose additional duties on Heritage, such as doing its “best to preserve any objects recovered from [Rolga’s] seabed for the benefit of mankind,”⁶ subjecting the artifacts to chemical treatments before distribution,⁷ and dealing with the Committee appointed under the 2001 Agreement as well as the Director of the National Museum of Rolga.⁸ In contrast, the 1995 Memorandum

⁵ 1995 Memorandum, ¶ 5.

⁶ Moot Problem, ¶ 9.

⁷ Appendix 2: *Guiding Principles for the Determination fo the Disposition of Materials from the Shipwrecks of Astoria Off the Coast of Rolga (2001)*, ¶ A(3) [hereinafter *Guiding Principles*].

⁸ Moot Problem, ¶ 4.

contains no provisions governing the handling of artifacts. Although Heritage had to exercise due care in handling the artifacts, as every contract imposes the implied duty of good faith in its performance, Rolga did not require such extensive degree of due care as doing best in preserving the artifacts. Therefore, although some Chinese porcelain were destroyed during recovery activities, there is no indication that Rolga demanded compensation or penalized Heritage for such damages. However, the provision in the 2001 Agreement – that Rolga must do its best to preserve the artifacts – implies that Rolga will require a higher degree of care in handling the artifacts for Heritage. This requirement will incur additional cost on Heritage’s salvage operation and performances during and after the recovery of the artifacts.

The 2001 Agreement also provides that articles are to be chemically treated for conservation and stabilization before distribution. Under the 1995 Memorandum, again, no such duty was implied. The Guiding Principles, however, provides that “most articles are fragmentary and in need of immediate chemical conservation and stabilization in the laboratory as soon as they are recovered. This treatment cannot await distribution.”⁹ This provision implies that Heritage may be responsible for the chemical treatment of the articles rewarded from the wreck. It further implies that Heritage must wait until the chemical treatment is complete in order to take possession of its share of the artifacts it is entitled to under the 1995 Memorandum. Therefore, this provision interferes with Heritage’s right by imposing new duties with regards to the artifacts of which it is entitled to ownership and possession under the 1995 Memorandum.

Moreover, the 2001 Agreement provides that an appointed Committee must review the proposals for distribution by the Director of the National Museum of Rolga.

⁹ *Guiding Principles*, *supra* note 7, at ¶A(3).

Because Heritage has not received its share of artifacts yet, this provision may apply to the artifacts recovered from the Coeur de l’Ocean. In other words, Heritage may have to subject its distribution plan with Rolga to the review of the Committee and the Director of the National Museum. In effect, this gives the Committee the opportunity to change the terms of the 1995 Memorandum, to the detriment of Heritage. Thus, this additional process imposes an additional duty on Heritage and interferes with Heritage’s salvage rights and performances.

2. Distribution of artifacts

The 2001 Agreement interferes with Heritage’s salvage rights because it expressly gave to Astoria a continuing cultural and historical interest over the artifacts from the Coeur de l’Ocean. This 2001 Agreement imposes an obligation upon Rolga inconsistent with the provisions of the 1995 Memorandum by requiring it to preserve certain representative samples, examples, and collections. A portion of the artifacts that Heritage recovered from Coeur de l’Ocean are rare and one-of-a-kind. But under well-established salvage principles, when a salvor recovers artifacts that are “uniquely and intrinsically valuable beyond monetary worth,” the salvor is entitled to award *in specie*.¹⁰ Recognition of Astoria’s “interest” in such artifacts threatens Heritage’s right to unique and rare artifacts under the 1995 Agreement. Thus, the 2001 Agreement interferes with the distribution of the artifacts and Heritage’s right to be awarded with the artifacts.

3. Heritage’s ownership over its share of artifacts

The Guiding Principles attached to the 2001 Agreement interferes with Heritage’s salvage rights and performance under the 1995 Memorandum because they severely condition Heritage’s ownership and how Heritage may dispose its share

¹⁰ *Columbus-America Discovery Group v. Atlantic Mutual Insurance Company*, 974 F.2d 450, 469 (4th Cir. 1992) [hereinafter *Columbus-America*].

of artifacts. The 2001 Agreement provides that Rolga must observe the principle of “total assemblage,” which means that unique or rare objects should be kept together as a “meaningful assemblage” and not split, so that it would be capable of reassembly.¹¹ Under this provision, Heritage will retain a conditioned ownership over its share of artifacts because Heritage will be required to produce its artifacts whenever the “total assemblage” is necessary for purposes of statistical and scholarly analysis. Heritage will be disadvantaged in the sale of the artifacts because, with the application of the Agreement, it can only convey limited ownership to the recipients, who would also then be required to agree to “reconstitute the original assemblage if it is required for scholarly research.”¹² Impairment of Heritage’s ability to receive its salvage reward and finance its expenses is clearly an interference with Heritage’s salvage right which has been respected in the industry of salvage for a long time, as Judge King states in Cobb Coin, “[u]nder traditional salvage rules, salvor receives a lien against the salvaged property and is usually entitled to his expenses plus a salvage award.”¹³ Thus the 2001 Agreement interferes with Heritage’s right to salvage award.

B. The ratification of the 2001 UNESCO Convention has interfered with Heritage’s salvage right and performance on the Coeur de l’Ocean

The provisions of the 2001 UNESCO Convention interfere with Heritage’s salvage right and performance by interfering with the sale of the artifacts recovered from Coeur de l’Ocean. The specific provisions running counter to the 1995

¹¹ *Guiding Principles*, *supra* note 7, at ¶ A(2).

¹² *Id.*

¹³ *Cobb Coin Company*, *supra* note 4, at 207.

Memorandum are as follows. First, the 2001 UNESCO Convention provides that “[u]nderwater cultural heritage shall not be commercially exploited.”¹⁴ Secondly, it requires State parties to inform the flag State and incorporate them into the activities directed at underwater cultural heritage.¹⁵ Thirdly, it requires states to take measures against “dealing in, or the possession of, underwater cultural heritage illicitly exported and/or recovered where recovery was contrary to the Convention.”¹⁶

Prior to discussing these specific provisions, the tribunal should note that strictly speaking, the Convention should not affect Heritage at all because of the fact that the parties agreed to the 1995 Memorandum before the ratification of the Convention. Even so, Heritage recognizes the possibility that Rolga may still domestically enforce these provisions of the Convention, thereby applying them to the distribution process between Heritage and Rolga. This would be because firstly, Rolga is a monist country in which the international law is supreme law of the country. Secondly, the public has been protesting against commercially exploiting the artifacts from the Coeur de l’Ocean. Thirdly, Rolga has shifted to a strong preservationist position since 2000. These factors may provide a basis for Rolga to domestically apply the prohibition of commercial exploitation provision of the Convention on the artifacts of the Coeur de l’Ocean.

If Rolga does enforce the provisions of the Convention, Heritage’s salvage rights would be impaired in two ways. First, Heritage’s options in the disposal of the artifacts and its awarded for the salvage service it provided to Rolga will be severely limited because the 2001 UNESCO Convention provisions prohibit the sale of the artifacts. Secondly, Astoria would become involved in the distribution

14 UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001 art. 2 para. 7, 41 I.L.M. 40.

15 *Id.* at art. 7 para. 3, and art. 19.

16 *Id.* at art. 14.

process as the state with a historical, cultural, and archaeological link to the Coeur de l’Ocean. The Convention provides that State Parties should inform the flag State Party “with a view to cooperating on the best methods of protecting State vessels and aircraft”¹⁷ and share information on the “discovery of heritage, location of heritage, heritage excavated or recovered contrary to this Convention or otherwise in violation of international law, pertinent scientific methodology and technology, and legal developments relating to such heritage.”¹⁸ In other words, the Convention requires disclosure of information regarding the Coeur de l’Ocean, which has been kept confidential, to Astoria. Astoria has not yet made any specific demands with regard to the Coeur de l’Ocean but with its “cultural and historical interests” recognized by the UNESCO Convention, it may well intervene in the distribution of the artifacts of the Coeur de l’Ocean and insist on its right to receive them. Thus, the Convention interferes with Heritage’s salvage rights and performance under the 1995 Memorandum.

C. Rolga’s authorization to Aquatic View’s tour operations on the Coeur de l’Ocean which included photographing of the vessel has interfered with Heritage’s salvage right and performance on the Coeur de l’Ocean

1. The rights of salvor-in-possession

Rolga’s authorization of Aquatic View’s tour activities interferes with Heritage’s salvage right and performance because Heritage is entitled to continue its salvage activities without interruption. The United States case law rules that the salvor has the exclusive right to continue salvage operations without interruption, given that the salvor maintains appropriate possession and control of the site, that the

¹⁷ *Id.* at art. 7.

¹⁸ *Id.* at art. 19 para.3

salvor demonstrates due diligence in the salvage activity, and that the salvage efforts are “clothed with some prospect of success.”¹⁹ Although Aquatic View is not a rival salvor, its conduct such as photographing, filming, and diving in close proximity of the shipwreck interrupts the rights of the original salvor, Heritage, as much as a rival salvor would. For its part, Heritage has maintained appropriate possession and control over the Coeur de l’Ocean for the past years as the salvor-in-possession. It also has demonstrated due diligence, and has been successful in recovering the artifacts. Thus Heritage has established its status as the salvor-in-possession and the right to continue its salvage operations without interruption, with which Rolga’s authorization of Aquatic View’s interferes.

2. Interference with the shipwreck itself

Rolga’s authorization of Aquatic View’s tour operation interferes with Heritage’s salvage right and performance on the Coeur de l’Ocean because Aquatic View’s conduct underwater interferes with the shipwreck itself. It has been recognized that the photographers working close to the shipwreck risks “interference with or injury to the wreck itself”²⁰ because of the involvement of the heavy equipments used for lighting and other purposes.²¹

Aquatic View’s underwater activities no doubt includes photographing and filming, with the use of heavy lighting equipments, approaching the shipwreck with a large submarine to a close proximity, and diving in and around the shipwreck by the tourists. Such extensive exposure of the shipwreck is highly likely to injure the Coeur de l’Ocean and interfere with Heritage’s salvage operations on it and “disrupt

19 77A C.J.S. SALVAGE § 47 (quoting *Yukon Recovery, L.L.C. v. Certain Abandoned Property*, 205 F.3d 1189 (9th Cir. 2000); *Martha’s Vineyard Scuba Headquarters, Inc. v. Unidentified, Wrecked and Abandoned Steam Vessel*, 833 F.2d 1059 (1st Cir. 1987)).

20 *R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel*, 9 F. Supp. 2d 624, 636 (E.D.Va. 1998) [hereinafter *R.M.S. Titanic*].

21 *Id.*; Robert D. Peltz, *Salvaging Historic Wrecks*, 25 Tul. Mar. L. J. 1, 6 n.12 (2000).

the salvor.”²² Thus Rolga’s authorization of Aquatic View’s tour operations interferes with Heritage’s salvage right and performance on the Coeur de l’Ocean.

3. Exposure of the shipwreck to the danger of unauthorized treasure hunting through web posting of the ship’s photographs and video clips and through visitation to the shipwreck

Rolga’s authorization of Aquatic View’s tour operation interferes with Heritage’s salvage right and performance. Aquatic View has taken photographs of the Coeur de l’Ocean and posted them up on the Internet for the purpose of promoting its tour business. Aquatic View in essence gives everyone hints of where the Coeur de l’Ocean is located. Moreover, the location of the Coeur de l’Ocean, which has been kept confidential, is revealed to Aquatic View’s customers who travel to the shipwreck. Aquatic View’s activities may invite illegal treasure hunters and souvenir gatherers to the Coeur de l’Ocean, undermining Heritage’s recovery efforts. Therefore, Rolga’s authorization of Aquatic View’s tour operation interferes with Heritage’s salvage right and performance.

II. HERITAGE HAS THE EXCLUSIVE RIGHT TO PHOTOGRAPH AND DOCUMENT THE COEUR DE L’OCEAN

A. The text of the 1995 Memorandum establishes Heritage’s exclusive rights over photography and documentation of the Coeur de l’Ocean

Heritage has the exclusive right to photograph and document the artifacts from the Coeur de l’Ocean under the 1995 Memorandum. The Project Plan provision of the Agreement states that Heritage and Rolga made “arrangements for the approval process of the project plan that will set forth ... the conservation and

²² Peltz, *supra* note 21.

documentation of *any* artifacts that may be retrieved from the shipwreck (emphasis added).”²³ Moreover, Rolga has granted “*the* right to use the name (emphasis added)” in the Merchandising Income clause.²⁴ These wordings establish that any artifact recovered from the Coeur de l’Ocean will be subject to Heritage’s right to photograph and document the Coeur de l’Ocean. Allowing a third party such as Aquatic View to document the artifacts is therefore incompatible with the 1995 Agreement.

B. Public policy supports Heritage’s exclusive right to photograph and document the Coeur de l’Ocean

Public policy encourages salvage activities and generous rewards to salvors because salvors provide service for the benefit of the general public. The Merchandising Income clause of the 1995 Agreement states that “Rolga granted [Heritage] the right to use the name “Coeur de l’Ocean” in association with sales and marketing merchandise related to the wreck of the Coeur de l’Ocean,”²⁵ and that Heritage in turn pays three percent of its gross sales of the merchandise. Presumably, this merchandising income is one of the sources of income with which Heritage funds its salvage activities on the Coeur de l’Ocean. A salvor’s need for income source is generally recognized by courts. In the United States, the courts recognized that the salvors need sources of income to fund their salvage activities, and that photographing and filming of the shipwreck is one of such sources.²⁶ Heritage spent nearly twenty years since 1990 to recover the artifacts from the Coeur de l’Ocean. This service at least partially, if not most, serves the cultural and

²³ *The Memorandum*, ¶ 2.

²⁴ *The Memorandum*, ¶ 6.

²⁵ *Id.*

²⁶ *R.M.S. Titanic*, *supra* note 20; *R.M.S. Titanic v. Haver*, 1999 A.M.C. 1330, 1358.

historical interest of the general public. The time and effort that Heritage spent in recovering the Coeur de l'Ocean must somehow be compensated. Therefore, the provisions of the 1995 Memorandum should be read in favor of Heritage's position, as to give exclusive right to photographing and documenting of the artifacts of the Coeur de l'Ocean.

III. THE CALCULATION OF PROFITS AND/OR DISTRIBUTION OF ARTIFACTS BETWEEN ROLGA AND HERITAGE IS TO BE MADE SOLELY ON THE BASIS OF SALVAGE LEGAL PRINCIPLES

- A. The 1995 Memorandum was null and void because Rolga had no right to make the contract with Heritage, thus inviting the salvage legal principles to compensate Heritage for its salvage service

The calculation of profits and distribution of the artifacts was null and void and thus necessitates the use of salvage legal principles to address how to award the salvage service that Heritage has rendered. Prior to the 2001 Agreement, Rolga did not have the ownership over the Coeur de l'Ocean or the artifacts in it. Military vessels, such as the Coeur de l'Ocean, are protected under state sovereign immunity,²⁷ and it cannot be abandoned unless the state expressly renounces its ownership.²⁸ As for the Coeur de l'Ocean, there is no evidence that its owner, Astoria, has ever done so prior to 2001. In other words, Astoria has been the rightful owner of the Coeur de l'Ocean and the artifacts in it until 2001. Consequently, Rolga lacked the legal basis for making the 1995 Memorandum with Heritage. Rolga's lack of ownership over the Coeur de l'Ocean and the artifacts at the time of contract with Heritage makes the 1995 Memorandum null and void.

²⁷ United Nations Convention on the Law of the Seas 1982 art 95, 1833 U.N.T.S. 3.

²⁸ *Columbia Discovery Group*, *supra* note 10, at 450.

Because the owner of the wrecked vessel must accept the salvage service, unless a prudent person would have rejected it otherwise, and award the salvor for the service rendered²⁹, Astoria should have given salvage award to Heritage. The salvage legal principles, as embodied in the International Convention on Salvage and in the common law of salvage, provide that a salvor is entitled to compensation unless he has a superseding salvage contract.³⁰ Heritage did not enter into any salvage agreement with Astoria, the rightful owner of the Coeur de l’Ocean and the artifacts. Moreover, Astoria has been silent about the issue of the Coeur de l’Ocean, and never brought any claim against Heritage or Rolga throughout the entire process of the highly publicized recovery of the Coeur de l’Ocean. Furthermore, it renounced its ownership in 2001 by transferring to Rolga all of its ownership over ancient shipwrecks including the Coeur de l’Ocean. If the owner of the wrecked vessel does not come forward and reward the salvor, the salvor is normally awarded the total value of what is recovered.³¹ Factually, Astoria’s conduct suggests its reluctance to be involved in the recovery of the Coeur de l’Ocean as the rightful owner. From Heritage’s position, it has the option of demanding Astoria for the remuneration for the salvage service it rendered between 1995 and 2001, or claim ownership over the artifacts that it recovered during that period instead of being rewarded by the owner. Therefore, Heritage is entitled to all the artifacts it recovered from the Coeur de l’Ocean.

B. Rolga’s distribution of the artifacts was unfair and the artifacts must be distributed according to the salvage legal principles

²⁹ *International Aircraft Recovery, L.L.C. v. Unidentified, Wrecked, and Abandoned Aircraft*, 54 F. Supp. 2d 1172 (Fla. D. Ct. 1999).

³⁰ International Convention on Salvage 1989 art. 6, 1953 U.N.T.S. 194.

³¹ *Columbia Discovery Group*, *supra* note 10, at 459.

Rolga's distribution of artifacts was unfair because it was based on the contract that was null and void. According to the salvage principles, Heritage is entitled to own all the artifacts that it has recovered. Therefore, all the artifacts should be awarded to Heritage rather than being distributed to Heritage and Rolga.

C. Alternative Distribution of the Artifacts

The 1995 Memorandum is null and void for the reasons give above. However, even if it is not null and void, Rolga's reading of Sharing Arrangement Clause is erroneous and unfair to Heritage. It is well-established principle that the salvor is entitled to liberal reward, and Rolga's reading of Sharing Clause does not incorporate this principle. Assuming that the 1995 Memorandum is not null and void and that the artifacts are to be distributed pursuant to Sharing Arrangements Clause, Heritage proposes the following alternative way of distribution.

Heritage reads Sharing Arrangement Clause such that it is entitled to rewards at up to three occasions. Heritage is to be rewarded 80% of the aggregate amount of the appraised values for the artifacts and the net proceeds of any sales of artifacts if the amount is less than USD \$ 45 million. When Heritage recovers more artifacts and increases the aggregate amount of the appraised values for the artifacts and the net proceeds of any sales of artifacts to more than USD \$ 45 million, Heritage is to be rewarded 50% of the additional amount. Similarly, when more artifacts are recovered and the aggregate amount of the appraised values for the artifacts and the net proceeds of any sales of artifacts exceeds USD \$ 500 million, Heritage is to be rewarded again with 40% of the additional amount.

The net sales proceeds, which is the profit from the auction, is not known. However, the aggregate value of the appraised values for the artifacts amounts to

USD \$ 616,298,000, excluding the undetermined value of some artifacts. This is more than USD \$ 500 million, so Heritage is to be rewarded at three levels, in total of USD \$ 301, 019, 200. The chart below illustrates the computation of the reward.

Aggregated amount	Less than \$ 45 M	\$ 45 M - \$ 500 M	\$ 616,298,000	Total
% Heritage is entitled to	80%	50%	40%	
Amount Heritage is entitled to	36,000,000	227,500,000	46,519,200	301, 019, 200

CONCLUSION AND PRAYER FOR RELIEF

In light of the above submissions, Heritage respectfully requests the Tribunal to declare that:

1. Rolga has interfered with Heritage's salvage right and performance under the 1995 Memorandum when it (1) entered into an agreement with Astoria in 2001, (2) ratified the 2001 UNESCO Convention, and (3) gave authorization to Aquatic View to conduct tour operations included photographing of the Coeur de l'Ocean.
2. The 1995 Memorandum gave Heritage the exclusive right to photograph and document the articles from the Coeur de l'Ocean.
3. The Rolga's distribution of the recovered artifacts from the Coeur de l'Ocean was unfair because the distribution based on the 1995 Memorandum was null and void. The calculation and distribution of artifacts between Heritage and Rolga has to be made solely on the basis of salvage legal principles, which entitle Heritage to the ownership of all the artifacts recovered from the Coeur de l'Ocean.

Respectfully submitted,
Counsel for the Claimant