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## **The Spanish Warship Conde De Tolosa**



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Here is an inside look at the landmark Sea Hunt case, the first time that the Kingdom of Spain has entered litigation involving discovery of a Spanish shipwreck. The shipwrecks, *La Galga* and *Juno*, which were the subject of this litigation, had not actually been discovered, yet were awarded to Spain in contradiction to Admiralty Law. John Amrhein, Jr., the author of *The Hidden Galleon*, has had a front row seat to this unfolding spectacle. This is the second of three installments by Amrhein concerning government intervention in shipwreck exploration and how, in some cases, it is destroying the integrity of our maritime heritage. In this installment he documents what really happened in the *Sea Hunt* case.

**Above Left:** *La Galga* model photographed before she went into the display case. The model was built by Bill Bane and Brooks Brueckman.

**Above Right Top to Bottom:** Bill Bane working in his workshop on the *La Galga*. Notice the centuries old work tools in the background. Bill uses old tools and old world craftsmanship while building his true to scale models.

Model builders Bill Bane and Brooks Brueckman standing by another model, not the *La Galga* model.

## The Sea Hunt Case: Your Government Saving Our Maritime Heritage

Text by John Amrhein, Jr.

In my first installment, appearing in the last issue of this magazine, you read about my quest for *La Galga*, a Spanish warship of 56 guns, which ran ashore on Assateague Island on September 5, 1750. I believed that *La Galga* could easily be found because her captain, Don Daniel Huony, had left precise directions to her location. In a letter to the Governor of Maryland, he described the shipwreck as being two ship lengths north of the Maryland-Virginia border. That information has been public knowledge since 1913 when it was published by the state archives. This clue and my subsequent search that began in 1980 was the beginning of a lifelong odyssey that led not only to finding the shipwreck buried in a forgotten inlet, but also to discovering the historic significance of this shipwreck. It is the wreck of *La Galga* which gave birth to the legend that the wild horses on Assateague Island descended from those that swam ashore from a Spanish shipwreck. This legend was immortalized in the children's classic, *Misty of Chincoteague*, written in 1947 by Marguerite Henry. It was later made into a movie in 1961.

After notifying federal authorities in 1983 about the shipwreck's location, I waited patiently for them to take on the project since the shipwreck was theirs and there were no competing claims. I had no way of knowing then that their inaction would bring *La Galga* to the steps of a federal courthouse decades in the future. *La Galga* would be not alone, however. She was joined by another Spanish warship which sank far from the shores of Assateague Island in the next century. Together, they achieved infamy in litigation followed around the world. Today, it is known as the *Sea Hunt* case.

The second ship involved in the *Sea Hunt* litigation was the *Juno*, a 34-gun frigate of the Spanish Navy that sank on October 28, 1802, 250 miles off Assateague Island. On October 1, 1802, the *Juno*, under the command of Don Juan Ignacio Bustillo, departed San Juan, Puerto Rico, for Cádiz, Spain, along with another ship named the *Anfitrite*.



**Upper Left Photo:** Left to right Greg Bane; Bill Bane; and Don George in Bill Bane's workshop the evening before the official unveiling at the Chincoteague National Wildlife Refuge.

**Lower Left Photo:** The unveiling of the *La Galga* model. On the left is Bill Bane, in the dark jacket and gray pants on the right is Congressman Glenn Nye of the 2nd district of Virginia, and in the red sweater, Vice Mayor of Chincoteague Virginia; John Jester



She was carrying the Third Battalion of the African Regiment as well as civilian passengers and their valuables estimated at \$100,000. The ships reached the vicinity of Bermuda with little difficulty but then encountered continuous squalls and heavy seas. The *Juno* suffered greatly and her hull sprung a leak. The two ships became separated as the *Juno* continued north in search of better weather.

On October 24, at latitude 37°N, longitude 67°W, 400 miles southeast of Assateague Island, the *Juno* fell in with the American schooner *Favorite*, Captain Pourland, from

Madeira to Boston. Captain Bustillo requested Captain Pourland to stay by him and assist in getting the frigate to the nearest American land. At this time, he put on board the *Favorite* his second in command, Don Francisco Clemente y Miro, and some soldiers to facilitate communication between the two vessels.

The weather cleared on the 25th of October. The captain was able to investigate the origin of the leak and attempted to stem the rate of increase. The problem was discovered in the boatswain's storeroom/quarters. Captain Bustillo ordered all of the artillery from the mainmast to the bow and her third and fourth anchors to be thrown overboard. The storerooms were cleared and supplies moved back to the stern. He desperately tried everything to stop the leak in the boatswain's area but nothing proved to be successful. He tried caulking, sealing off the area from the inside and applying sails from the outside. The water level continued to rise.

The *Favorite* continued on with the *Juno* when, on the 27<sup>th</sup>, the *Favorite* was informed that the *Juno* had lost her rudder during the night. The water was rising in the ship as the pumps were no longer able to overcome the invading seawater. The crew bailed water by hand. A steering oar was rigged as a temporary rudder. They were able to make little headway. At midday, the ship was at latitude 38° N, longitude 69° 56' W, 280 miles east of the coast of Assateague Island and 250 miles southeast of Boston.

At ten o'clock that evening, the wind changed to the northwest. A violent squall parted the gaff peak, leaving the ship under bare poles. *Juno* managed to absorb the sea's blows for a distance of 10 to 11 miles while being pushed away from land by the northwest wind. The frigate lost her mainmast, the fore topsail mast, and the yard which had been used to replace the tiller. Captain Bustillo sent signals to the *Favorite* for help but the schooner was only able to come to leeward as close as a hundred yards. This was near enough for the crew to hear the anguished cries of men, women, and children and see the *Juno* roll as if nearly full of water. Overcome by the wind and convinced that she would capsize if she attempted to come around, the *Favorite* remained incapable of maneuvering for the rest of the night.

At 9 am, *Juno's* mainmast went into the sea and "her foremast fell alternatively from side to side." Captain Pourland attempted to assist but to no avail. Out of nowhere, a fog bank rolled over the ships; when it lifted one half hour later, the *Juno* had disappeared. Captain Pourland was convinced that the *Juno* was lost with all 413 souls. The *Favorite* continued her route northward and dropped anchor in the port of Boston on November 1. Here, Captain Pourland gave his account to the Boston *Columbian Centinal* and Lt. Clemente travelled to Washington, DC, where he retold the dreadful details to the officials at the Spanish embassy. The only reliable accounts of *Juno's* loss came from these two reports.

### March 11, 1998. Federal Court House, Norfolk, Virginia

Sea Hunt, Inc. appeared before the U.S. District Court for the Eastern District of Virginia to lay claim to two unidentified shipwrecks found off Assateague Island. The attorneys for Sea Hunt brought with them three artifacts that proved they had found some shipwrecks but they admitted to the court that they may not have been from *La Galga* or *Juno*, only that their client believed them to be. No evidence was offered as foundation for that belief.

In 1997, Sea Hunt had been granted permits by the Commonwealth of Virginia to explore for shipwrecks in a six-square-mile area adjoining Assateague Island. The permits did not specify any particular shipwreck, but everyone knew that Sea Hunt was looking for *La Galga* and the *Juno*. Virginia was obligated under state and federal laws to inventory all archaeological sites found within its lands and territorial waters. Virginia had the authority to subcontract archaeological investigations, which would include shipwrecks that might be of foreign or U.S. origin. This was the case when Virginia surveyed the York River for British ships from the American Revolution resulting in their discovery and nomination to our National Register.

Sea Hunt was not running blind in this seemingly large expanse of ocean. It had been told by another treasure hunter that he had already found *La Galga* years before. This treasure hunter led Sea Hunt to a site located a little south of the present Maryland-Virginia border and about eighty yards offshore. It happened to be the same site thoroughly surveyed by this author and the Commonwealth of Virginia in 1983. Both surveys concluded that there was no evidence that the wreck was *La Galga*. Sea Hunt had my report about on our 1983 discovery of *La Galga* which placed the Colonial boundary and the wreck two miles south of this location and buried beneath Assateague. But Sea Hunt concluded that this site must not be *La Galga* because the federal government had done nothing since 1983. As for the *Juno*, Sea Hunt was led to a site located within a thousand yards of the beach at the south end of Assateague Island by a fisherman who had dragged up an anchor with a pewter plate attached to it. It appeared that the plate was engraved with the letter "J." There were also accounts of locals finding Spanish coins on the beach near this location predating 1802. Sea Hunt did not understand that any shipwreck of this period could be carrying Spanish money as it was legal tender in the U.S. until 1857 and that the piece of eight was the basis for the American silver dollar. Sea Hunt had read Lt. Clemente's and Captain Pourland's reports about the last position of the *Juno* being at least 250 miles from shore when she disappeared. To add to everyone's confusion, another treasure hunting company called Quicksilver International was working a site 40 miles off the coast that they believed was the *Juno* because a Spanish bell had been recovered in the area by a clammer's dredge. Sea Hunt was also convinced the bell had come from the *Juno*, so they merely extended a line from *Juno's* last known position, through the Quicksilver site, and then to the area where the anchor had been found just off Assateague. This logic failed to account for the forces of wind and current on a vessel that they also wanted to believe hadn't sunk where it disappeared far out at sea. They also failed to acknowledge the number of shipwrecks lost in this area as it was the approach to Chincoteague Inlet. One of those wrecks was called the *Juno* but was lost fifteen years later in 1817.

In an *in rem* admiralty claim, the federal court acquires jurisdiction over the wreck only after something is recovered and brought to court. Without this prerequisite, treasure hunters would be laying claim to wrecks based solely on historical research, faulty or not, without actually finding them. In *Subaqueous Exploration and Archaeology, Ltd.*, (577 F. Supp. 597) discussed in the previous issue, this was not only the case, but also, the defendant shipwrecked vessels were a fraud.

When an *in rem* claim is filed, notification is required of any potential owner. In the *Sea Hunt* case, the obvious owner was the Commonwealth of Virginia as the Abandoned Shipwreck Act of 1987 granted the states all abandoned shipwrecks within three miles of their coasts. Vessels belonging to the federal government were excluded as well as vessels belonging to foreign states, but in the *Sea Hunt* case, there were no Spanish shipwrecks actually discovered.

On May 13, 1998, the Commonwealth of Virginia filed its own claim to the two unidentified shipwrecks. Their basis for the claim was that shipwrecks were its property by virtue of the Abandoned Shipwreck Act. In their claim and in all subsequent representations, Virginia always maintained that the vessels were "unidentified." Virginia offered nothing to the court on the historical background of the ships or gave any reason to believe that the two shipwrecks were Spanish and that *La Galga* and the *Juno* were, in fact, located within the coordinates specified by Sea Hunt or anywhere in or on Virginia's submerged land.

On May 18, 1998, Spain entered the litigation represented by Janet Reno's U.S. Justice Department at taxpayer expense. Spain claimed that if the artifacts brought into court came from a Spanish ship, they belonged to Spain. Spain only had legal standing to be there if the artifacts came from a Spanish ship. The court was faced with the jurisdictional question of whether there was any Spanish property

involved. This threshold issue needed to be resolved before the court had the power to entertain Spain's claim and interpret and apply language of Spanish treaties as they related to the property before the court. That threshold was never crossed.

Spain's free ride ended when the court told Spain it would have to get its own attorney. Spain chose James Goold of Covington & Burling in Washington, DC. However, this substitution did not remove the Justice Department from the litigation. The U.S. asked for and was granted status as an *amicus curiae*, a friend of the court. The U.S. was there for one reason to make sure that Spain won. Their stated premise was that the U.S. wanted to honor reciprocal agreements between other nations to protect lost warships. Not mentioned was the federal government's disdain for treasure hunters. The cost of this "friendly" assistance was borne by the U.S. taxpayer. Spain then filed its own claim on December 22. Their claim stated that to the best of Spain's knowledge, information, and belief, *La Galga* and *Juno* were the subject of the *in rem* litigation and were located within the coordinates offered by Sea Hunt.

The federal government never disclosed to the court that in their files was this author's report which pinpointed the wreck as buried inland and outside the jurisdiction of the admiralty court. They never said a word about NOAA's database of shipwrecks that listed *La Galga* as being buried within the Chincoteague National Wildlife Refuge.

The court reviewed the legal arguments put forth by the parties and the Justice Department but was having trouble deciding if there really were two Spanish ships before the court. Judge Clarke suggested that the Justice Department send a diver to the locations to verify them. The U.S. attorney said that since Sea Hunt couldn't identify them it was doubtful if a U.S. diver could either. Judge Clarke responded saying, "But Sea Hunt has never guaranteed that these are the two ships. You are, in effect, trying to guarantee that they are the two ships, and I'm not satisfied that the Court is going to give Spain the yea or nay on salvaging these vessels when we don't really know what they are... the burden is upon the United States, I would think, to establish that we are really talking about Spanish warships...." The Commonwealth of Virginia also admitted that the wrecks had not been identified.

On April Fools' Day, 1999, in order to enable the litigation to proceed, Sea Hunt, Spain, and Virginia stipulated that the two Spanish ships were somewhere within the three-mile limit of Virginia's waters off Assateague thus abrogating the need for an evidentiary hearing. Spain's standing was now perfected. But was it? If there were no Spanish property present, and the court had assumed *in rem* jurisdiction, which was the case, Spain would have no standing to enter into a binding agreement.

On April 27, 1999, the district court reached a decision (47 F.Supp.2d 678 E.D. Va. 1999). *La Galga* was deemed property of the Commonwealth of Virginia as she was considered abandoned by the terms of the Treaty of 1763 between Spain and England, but since the *Juno* wrecked after that treaty, Spain would get the *Juno*. All parties appealed to the 4<sup>th</sup> Circuit in Richmond, Virginia.

The language of the district court's opinion told the world that the *Juno* had been found: "the location of the wreck was not discovered until recent efforts by Sea Hunt." This so called "discovery" was not one of fact but by agreement. While the parties were preparing their appeals, Sea Hunt asked the district court for a salvage award for the *Juno*. In direct disregard for the court's written opinion, Spain argued to the contrary, "Sea Hunt achieved no success in even locating, much less salvaging the wreck."

On July 21, 2000, The 4<sup>th</sup> Circuit rendered its decision (221 F.3d 634 4th Cir. 2000). Spain would get both *La Galga* and the *Juno*. The court relied on the language found in the district court's opinion as fact that *La Galga* and the *Juno* had been found and repeated the same in the preamble of its own opinion. This was necessary because it had to confirm that the court had *in rem* jurisdiction and that Spain had standing to be there. This was done in spite of the record made in the lower court that the shipwrecks had not been identified. Almost a year after the court of appeals ruled in favor of Spain,



Odyssey discovered hundreds of silver coin concretions lying on the seabed at the "Black Swan" site. More than 500,000 silver coins, weighing more than 17 tons, were scattered over the site which comprised an area larger than six football fields. (Photo courtesy of Odyssey Marine Exploration, Inc.)

Gold coins and a gold box lie in situ on the "Black Swan" site. Hundreds of gold coins and more than 500,000 silver coins were discovered on the site. (Photo courtesy of Odyssey Marine Exploration, Inc.)

Virginia told the court, "...we want to have control of our underwater land when we get through with this, except for the area in which the *La Galga* and the *Juno* lie. But the weakness of that exception is, nobody knows where that is."

Judge Clarke, almost in direct contradiction to the statements made in his district court opinion that Sea Hunt had found *La Galga* and the *Juno*, expressed the continuing doubt of the court: "The court is faced with a problem that, in reading through this very thick file, that there is really not been any statement made by Sea Hunt positively this stuff came from *Juno* or these artifacts came from *Juno* or *La Galga*." In an apparent move to perfect the *in rem* jurisdiction *after* judgment, Spain demanded custody of the artifacts. Virginia objected, arguing that Spain had the burden of proof to determine which artifacts were attributable to *La Galga* or the *Juno*. Virginia also said that Sea Hunt was prohibited by the terms of its permit from turning over to Spain any artifacts that came from any other shipwreck. Virginia suggested an item by item analysis with the burden of proof to be put on Spain. Spain objected. Spain walked away with the artifacts. Today, at Virginia's Department of Historic Resources, there are site forms for archeological sites. There is one for the *Juno*, but it says that what was thought to be the *Juno*, isn't. There is no site form for *La Galga*.

The *Sea Hunt* case has been touted by many in the legal profession as a landmark in admiralty law. It was the first time that Spain had entered shipwreck litigation in American courts. Spain, for the second time, has interjected itself in a legal claim to sunken Spanish treasure.

In April 2007, in international waters off the coast of Portugal, 17 tons of Spanish treasure was retrieved from the seafloor in over 3000 feet of water. The discovery was made by Odyssey Marine Exploration of Tampa, Florida, who filed an admiralty salvage claim to the booty in the U.S. District Court for the Middle District of Florida, also in Tampa. The treasure consisted mostly of silver pieces of eight and the unidentified shipwreck was dubbed the *Black Swan* by Odyssey. When Spain heard about the discovery and the claim filed in the federal court, they claimed that the treasure came from the *Nuestra Señora de Mercedes*, a Spanish warship sunk by the British in 1804. James Goold, the same attorney who represented Spain in the *Sea Hunt* case, proclaimed that they had won before and they would win again.

For over two years Odyssey and Spain have exchanged pleadings at the courthouse. In nearly every filing made by Spain, it has asked the court to consider the *Sea Hunt* case as precedent for a number of their legal arguments. Countering Spain's arguments, Odyssey has put forth a somewhat novel defense to Spain's claims of sovereign immunity. Assuming the *Black Swan* is the *Mercedes*, they maintain that the cargo of treasure was registered mostly to private individuals and therefore would be exempt from Spain's claims. Descendants and legal heirs of these cargo owners filed their own claims to the treasure. David Horan, who is representing their interests, is the veteran admiralty attorney who, in 1982, took Mel Fisher's claim to the *Nuestra Señora de Atocha* successfully through the Supreme Court defeating the claims of Florida and the United States. After Horan made the claim for the heirs to the treasure, Spain thought that they were in need of help. The U.S. Justice Department led by Eric Holder, a graduate of Covington & Burling, Spain's law firm, entered the case on the side of Spain. They again used the premise that they were there to encourage protection of warships of other nations. In this case, they had waited two years to decide if that argument needed to be made. In their initial filing requesting status as an amicus curiae, the U.S. cited the *Sea Hunt* case three times for the benefit of Spain. At this writing, Odyssey is awaiting the final decision from the court as to whether it will proceed with a trial or summarily grant the treasure haul to Spain. Will this court cite the *Sea Hunt* case as part of its deliberations? We shall see.

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## Side Bars

### The Model of *La Galga*

On April 4, 2009, a model of *La Galga* was put on display at the Chincoteague National Wildlife Refuge Visitor Center at Assateague Island, Virginia. The model was built by Wilson M. "Bill" Bane who was a partner with John Amrhein and who, with others, located the buried warship in 1983. The model took two years of intense, detailed work and thousands of dollars worth of materials to complete. It is truly a work of art built by a master craftsman. Kudos go to Mr. Lou Hinds, manager of the refuge, who was responsible for the display arrangements and the organization of the model unveiling. In attendance were the Honorable Glen Nye, (D) Representative of Virginia's 1<sup>st</sup> District; Ms. Elaine Samson, U.S. State Department; Mr. Eugene Marino, Service Archaeologist for the Fish and Wildlife Service and John Jester, Vice mayor of the Town of Chincoteague. Also thanks to the Chincoteague Natural History Association who financed the construction of the display case. The ceremony included the model unveiling and presentations by Congressman Nye, Eugene Marino, John Jester, and John Amrhein, the author of *The Hidden Galleon*. Afterwards, the guests were driven to the location believed to contain the remains of the Spanish warship where Amrhein gave a detailed account of the shipwreck and the

clues that guided him to her discovery. *Wreck Diving Magazine* was there to document the event.

### The Location of *La Galga*

On February, 2008, Gray & Pape, Cultural Resource Managers from Richmond, Virginia, filed for a permit with the U.S. Fish and Wildlife Service to perform a non-intrusive magnetometer survey of the suspected wreck site of *La Galga* located on land within the Chincoteague National Wildlife Refuge. John Wilson, Historic Preservation Officer for Region 5, has refused to discuss the permit with Gray & Pape since its filing. Amrhein contacted him by phone in May 2009. During the conversation, it was revealed that Spain had submitted a written request in September 2008 to USFWS to keep Gray & Pape and Amrhein off Assateague Island, at least in the area of the shipwreck. This request is in direct contradiction to the Embassy's position taken in that same letter that, "We also note that the theory advanced in the application as to the location of *La Galga* is not supported by the historical record, as reviewed and found by the court." Putting it simply, if Spain really thought that the court's findings in the Sea Hunt case were factually correct, they would have no issue with someone looking for *La Galga* two miles away on land. Rather than make the argument to Spain that this was not a treasure hunt but a valid effort to see the shipwreck preserved and put in a museum for the benefit of both countries, Wilson chooses to do nothing, not even deny the permit. Direct communications from Amrhein to the Spanish Embassy have gone unanswered.

### The Display of the Sea Hunt Artifacts

On 2006, the National Park Service and the Embassy of Spain struck an agreement to display the artifacts recovered by Sea Hunt, Inc. in the new Visitors Center at the Assateague Island National Seashore in Berlin, Maryland. The internet promotion of these artifacts makes no reservation that they came from *La Galga* and the *Juno*. This agreement gives Spain the final authority on how they are to be labeled and presented to the public. Through a Freedom of Information Request made by Amrhein, the NPS said that, although they can't rule out that these artifacts came from Spanish ships, they are unable to confirm that they did. The only artifact that they were able to confirm was a piece of plastic, apparently misidentified by Sea Hunt. No distinction has been made of the artifacts between the two shipwrecks even though they are eleven miles apart. The artifacts include some Spanish coins, straight pins, pottery shards, several musket balls, and many "indeterminate" objects. Conspicuously absent: no cannonballs from either wreck. Spain provided no item identification when the artifacts were turned over to the Park Service. When asked to produce documentation that the Sea Hunt wrecks were *La Galga* and the *Juno*, they were only able to provide the opinion of the 4<sup>th</sup> Circuit Court of Appeals as proof that the shipwrecks had indeed been found. The NPS offered no other historical documentation that would prove that the unidentified shipwrecks were *La Galga* and the *Juno*. This reliance on a court decision as a sole basis for historical fact is reminiscent of what took place in the SEA, Ltd. case described in *The Hidden Galleon* (see Fall *WDM*, 2009). When the investors of SEA, Ltd. took the con man into state court over four fraudulent shipwrecks, the con man raised the opinion of the federal court in Maryland as his defense. Instead of producing historical documents to back up his claims, he pointed to the court's opinion that said that the shipwrecks were real, had been found, and belonged to the State of Maryland. That faulty opinion and judgment had been a direct result of his fraud. He nearly got away with it.

At least as far as the *Juno* is concerned, the information on her history and last days is readily available to anyone interested in the subject. As for *La Galga*, The National Park Service is fully aware that Spain has asked the U.S. Fish and Wildlife Service to deny the permit to verify her location which lies two miles from the site "awarded" to Spain in the Sea Hunt case. The artifacts are scheduled to go on display by early summer, 2010.



The author, John Amrhein speaking at the ceremony commemorating the unveiling of the *La Galga* model at Chincoteague National Wildlife Refuge.

**About the author:** John Amrhein, Jr. made his first dive at 14 where he became enchanted with the underwater world. It was his interest in diving and shipwreck exploration that led him to the Library of Congress and other archives in pursuit of history. In 1980, he began pursuing the location of the Spanish warship, *La Galga*, lost on Assateague Island, Virginia, in 1750. After reporting on her discovery to the federal government in 1983, he returned to the business world. It was in 2001 that he decided to resume his research and write *The Hidden Galleon* which was published in October of 2007. Since then, many things have happened and the federal government is currently blocking any attempt to verify the wreck site situated on government lands.



**Top Left:** Wild ponies have roamed Assateague Island for centuries. Legend holds that they originated from a wrecked Spanish Galleon.

**Top Right:** This is the most probable location of the *La Galga* wreck based on historical information and the research conducted by the author.

**Left:** Odyssey's 8 ton Remotely Operated Vehicle (ROV) returning from the "Black Swan" site over 1000 meters below. (Photo courtesy of Neil Dobson/Odyssey Marine Exploration, Inc.)

**Inset:** Odyssey's 251' deep-ocean archaeological platform *Odyssey Explorer*. (Photo courtesy of Odyssey Marine Exploration, Inc)



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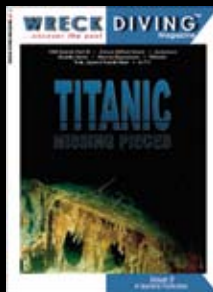
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