

Museum and Patron at Odds over Sub

Death came slowly in 1973 for two crewmen aboard the minisubmarine Johnson-Sea-Link when their 23-foot-long vessel became stuck for 32 hours beneath a scuttled destroyer in the Florida Keys. The owner of the submarine, a landsman who had commissioned the craft for use in ecological research, was badly shaken by the incident and decided to get out of the submarine business. This would have been a simple task except that the owner of the submarine was the Smithsonian Institution, the submarine had been donated, and the fund for operating the minisub was a multimillion dollar gift.

On 31 January this year, after nearly 4 years of litigation over whether or not the Smithsonian could back out of the minisub business, a U.S. District Court judge in Washington, D.C., ruled that the Smithsonian must use at least part of the fund—now valued at \$15 million—for operating the minisub. The case is a classic example of the legal tangle that develops when a gift is made and received in a spirit of friendship, with few specific details on its use. After the spirit sours, it becomes the task of the courts to determine what was intended when the gift was originally given.

The saga started in the late 1960's, when J. Seward Johnson of the Johnson & Johnson pharmaceutical family learned that his friend, the inventor Edwin A. Link, had been working with the Smithsonian on the development of a minisubmarine for research in deep ocean waters. Unique features of the vessel included a transparent sphere, 6 feet in diameter and 4 inches thick, that gave a panoramic view to pilot and observer. Behind the sphere was a separate 8-foot-long cylindrical compartment that allowed divers to exit from its bottom and collect specimens.

At Link's suggestion, Johnson, who had long been interested in oceanography, donated \$2 million in Johnson & Johnson stock to the Smithsonian. He also was the driving force behind another gift of \$3.6 million.

The Johnson-Sea-Link was launched in 1971 and functioned faithfully under the watchful eyes of Johnson, Link, and the Smithsonian. Johnson played an active role in the development of the vessel, and, according to a long opinion handed down by U.S. District Court Judge Barrington D. Parker, Smithsonian officials were able to persuade Johnson to provide an additional \$500,000 to refit a companion vessel for the minisub. Hopeful that Johnson would donate even more money, the Smithsonian staff "acceded readily to his wishes and were not inclined to offend him in any way," Parker wrote. This harmony did not last.

The surface of the sea was calm in 1973 when four researchers went down on what was expected to be a 90-minute dive. Two men were in the plastic bubble and two in the rear compartment. Unusually strong currents on the sea floor pushed the minisub under the destroyer, and the hours spent there resulted in death by carbon dioxide poisoning of the men in the rear chamber, who had a separate oxygen supply. During a Coast Guard probe, a medical officer for the research mission said the rear compartment had exhausted its supply of barralime, a chemical that absorbs carbon dioxide. Especially tragic was that one of the men in the rear chamber was the son of Edwin Link.

After the accident, the relationship between the Smithsonian and Johnson began to fall apart, according to Parker.

The Smithsonian became concerned about its potential legal liability for the minisubmarine operation. It also began to wonder, Parker wrote, if it should be in the minisub business at all, considering that it was a Florida laboratory, the Harbor Branch Foundation, a nonprofit charitable trust set up by Johnson that was actually operating the vessel.

In 1974, with Johnson's approval, the Smithsonian gave full control of the Johnson-Sea-Link project to Harbor Branch, as well as the income from the two gifts. The money was turned over on the condition that it would not be used for funding the minisub but instead would go for other oceanographic projects of interest to Johnson, in particular, for a study on the effects of pollution in the Indian River coastal zone.

In 1976, this arrangement too began to fall apart. David Challinor, assistant secretary for science at the Smithsonian, questioned the use of funds for the Indian River project and, in general, concluded that Harbor Branch's goals were remote from those of the Smithsonian. Sensing a new attitude, Johnson sought to reassert control over how the income from the gifts was spent. The Smithsonian reacted by firing some six to eight employees at the Indian River project, and in general cutting back its support of Harbor Branch projects. Johnson in turn demanded payment for the Sea-Link, for another minisub, and for several other vessels. In 1977, the Smithsonian took the dispute to federal court in hopes of clarifying the terms of the gifts.

Battle lines were clearly drawn. Johnson and the Florida laboratory contended that the two gifts, held in trust, were specifically intended for development of the minisubmarine project. The Smithsonian said it was free to use the income from both gifts for general oceanographic studies.

One argument used by lawyers for the Smithsonian was that the institution was relieved of its obligation to develop and operate the minisub because in light of the accident this had become "impossible or impracticable"—conditions spelled out in a 1969 letter from Johnson that had accompanied the first gift. Johnson and the Florida laboratory argued that the operation of the vessel remained very practical, as demonstrated by the hundreds of dives since it was recommissioned in 1974. Most recently, it explored the wreck of the U.S.S. *Monitor*, a Civil War vessel submerged off the North Carolina coast.

Judge Parker on 31 January ruled that the Smithsonian was obliged to use the income from the first gift for the entire Johnson-Sea-Link project, including the development of a companion minisubmarine for use in emergencies. The second gift, in which provisions were not so clearly spelled out, could be used by the Smithsonian for general oceanographic research.

An ironic footnote to the story is that the long-running feud over who would pay for the upkeep of the Johnson-Sea-Link has never affected day-to-day cooperative projects between the Smithsonian and the Harbor Branch Foundation. The Florida laboratory's science program, with a staff of 150, continues to work on a professional level with Smithsonian scientists, two of whom actually reside at the laboratory. Harbor Branch also continues to make the Johnson-Sea-Link available to the Smithsonian.

—WILLIAM J. BROAD