

ODYSSEY MARINE EXPLORATION INC

Form 10-Q

November 10, 2008

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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the quarterly period ended September 30, 2008

or

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934
For the transition period from _____ to _____

Commission File Number 001-31895

ODYSSEY MARINE EXPLORATION, INC.

(Exact name of registrant as specified in its charter)

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Nevada
(State or other jurisdiction of
incorporation or organization)

84-1018684
(I.R.S. Employer
Identification No.)

5215 W. Laurel Street, Tampa, Florida 33607
(Address of principal executive offices) (Zip code)

(813) 876-1776
(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES NO

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See definition of "accelerated filer", "large accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act (Check one).

Large accelerated filer: Accelerated filer: Non-accelerated filer: Smaller reporting company:
(Do not check if a smaller Reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): Yes No

The number of outstanding shares of the registrant's Common Stock, \$.0001 par value, as of November 3, 2008 was 52,348,386.

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Table of Contents**PART I: FINANCIAL INFORMATION****ITEM 1. FINANCIAL STATEMENTS****ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED BALANCE SHEETS**

| | (Unaudited) September 30, 2008 | December 31, 2007 |
|--|--------------------------------------|----------------------|
| ASSETS | | |
| CURRENT ASSETS | | |
| Cash and cash equivalents | \$ 10,388,825 | \$ 18,321,349 |
| Restricted cash | 936,509 | |
| Accounts receivable, net | 708,809 | 585,051 |
| Inventory | 1,245,745 | 2,024,676 |
| Other current assets | 307,711 | 401,329 |
| Total current assets | 13,587,599 | 21,332,405 |
| PROPERTY AND EQUIPMENT | | |
| Equipment and office fixtures | 14,171,377 | 13,495,418 |
| Building and land | 4,702,173 | 3,709,873 |
| Accumulated depreciation | (8,598,101) | (6,875,121) |
| Total property and equipment, net | 10,275,449 | 10,330,170 |
| OTHER ASSETS | | |
| Inventory (non current) | 6,057,591 | 5,746,970 |
| Other non current assets | 1,121,725 | 1,148,155 |
| Total other assets | 7,179,316 | 6,895,125 |
| Total assets | \$ 31,042,364 | \$ 38,557,700 |
| LIABILITIES AND STOCKHOLDERS EQUITY | | |
| CURRENT LIABILITIES | | |
| Accounts payable | \$ 793,601 | \$ 776,378 |
| Accrued expenses and other | 2,084,501 | 3,644,350 |
| Mortgage and loans payable | 172,046 | 449,024 |
| Total current liabilities | 3,050,148 | 4,869,752 |
| LONG TERM LIABILITIES | | |
| Mortgage and loans payable | 3,160,050 | 2,601,286 |
| Deferred income from Revenue Participation Certificates | 887,500 | 887,500 |
| Total long term liabilities | 4,047,550 | 3,488,786 |
| Total liabilities | 7,097,698 | 8,358,538 |
| STOCKHOLDERS EQUITY | | |
| Preferred stock - \$.0001 par value; 2,469,980 shares authorized; none outstanding | | |

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| | | |
|---|---------------|---------------|
| Preferred stock series D convertible - \$.0001 par value; 7,340,000 shares authorized; 6,900,000 issued and outstanding | 690 | 690 |
| Preferred stock series E convertible - \$.0001 par value; 20 shares authorized; 13 issued and outstanding | | |
| Preferred stock series F convertible - \$.0001 par value; 30 shares authorized; 22 issued and outstanding | | |
| Common stock - \$.0001 par value; 100,000,000 shares authorized; 50,148,386 and 47,766,848 issued and outstanding | 5,015 | 4,777 |
| Additional paid-in capital | 106,173,739 | 93,659,049 |
| Accumulated deficit | (82,234,778) | (63,465,354) |
| Total stockholders' equity | 23,944,666 | 30,199,162 |
| Total liabilities and stockholders' equity | \$ 31,042,364 | \$ 38,557,700 |

The accompanying notes are an integral part of these financial statements.

Table of Contents**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF OPERATIONS - Unaudited**

| | Three Months Ended | |
|--|-------------------------------|-------------------------------|
| | September 30, 2008 | September 30, 2007 |
| REVENUE | \$ 2,218,926 | \$ 1,314,248 |
| OPERATING EXPENSES | | |
| Cost of sales | 177,512 | 406,425 |
| Marketing, general and administrative | 2,515,737 | 2,843,352 |
| Operations and research | 6,076,031 | 3,483,606 |
| Total operating expenses | 8,769,280 | 6,733,383 |
| LOSS FROM OPERATIONS | (6,550,354) | (5,419,135) |
| OTHER INCOME (EXPENSE) | | |
| Interest income | 31,826 | 113,966 |
| Interest expense | (53,945) | (124,978) |
| Other | 23,789 | 18,512 |
| Total other income (expense) | 1,670 | 7,500 |
| LOSS BEFORE INCOME TAXES | (6,548,684) | (5,411,635) |
| Income tax benefit (provision) | | |
| NET LOSS | (6,548,684) | (5,411,635) |
| NET LOSS PER SHARE | | |
| Basic and diluted | \$ (.13) | \$ (.11) |
| Weighted average number of common shares outstanding | | |
| Basic and diluted | 49,085,641 | 47,204,133 |

The accompanying notes are an integral part of these financial statements.

Table of Contents**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF OPERATIONS - Unaudited**

| | Nine Months Ended | |
|--|-------------------------------|-------------------------------|
| | September 30, 2008 | September 30, 2007 |
| REVENUE | \$ 3,620,508 | \$ 5,195,793 |
| OPERATING EXPENSES | | |
| Cost of sales | 504,261 | 1,418,394 |
| Marketing, general and administrative | 8,211,067 | 8,533,813 |
| Operations and research | 13,840,322 | 10,698,541 |
| Total operating expenses | 22,555,650 | 20,650,748 |
| LOSS FROM OPERATIONS | (18,935,142) | (15,454,955) |
| OTHER INCOME (EXPENSE) | | |
| Interest income | 174,586 | 226,379 |
| Interest expense | (102,154) | (372,163) |
| Other | 93,285 | 61,326 |
| Total other income (expense) | 165,717 | (84,458) |
| LOSS BEFORE INCOME TAXES | (18,769,425) | (15,539,413) |
| Income tax benefit (provision) | | |
| NET LOSS | (18,769,425) | (15,539,413) |
| NET LOSS PER SHARE | | |
| Basic and diluted | \$ (.39) | \$ (.36) |
| Weighted average number of common shares outstanding | | |
| Basic and diluted | 48,362,638 | 47,033,938 |

The accompanying notes are an integral part of these financial statements.

Table of Contents**ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES****CONSOLIDATED STATEMENTS OF CASH FLOWS - Unaudited**

| | Nine Months Ended | |
|---|-----------------------|-----------------------|
| | September 30, 2008 | September 30, 2007 |
| CASH FLOWS FROM OPERATING ACTIVITIES: | | |
| Net loss | \$ (18,769,425) | \$ (15,539,413) |
| Adjustments to reconcile net loss to net cash used by operating activities: | | |
| Depreciation and amortization | 2,039,639 | 1,986,063 |
| Financing costs | 73,294 | |
| Loss on disposal of equipment | 28,386 | 18,576 |
| Share-based compensation | 1,526,756 | 869,929 |
| (Increase) decrease in: | | |
| Restricted cash | (936,509) | |
| Accounts receivable | (123,758) | (173,312) |
| Inventory | 468,310 | 1,047,613 |
| Other assets | 113,492 | (70,933) |
| Increase (decrease) in: | | |
| Accounts payable | 17,223 | 14,631 |
| Accrued expenses and other | (1,394,796) | 374,577 |
| NET CASH (USED) BY OPERATING ACTIVITIES | (16,957,388) | (11,472,269) |
| CASH FLOWS FROM INVESTING ACTIVITIES: | | |
| Purchase of property and equipment | (1,239,749) | (659,105) |
| Proceeds from sale of equipment | 12,000 | |
| NET CASH (USED) BY INVESTING ACTIVITIES | (1,227,749) | (659,105) |
| CASH FLOWS FROM FINANCING ACTIVITIES: | | |
| Proceeds from issuance of common stock | 10,623,120 | 723,655 |
| Proceeds from issuance of preferred stock | | 21,255,000 |
| Proceeds from warrants exercise | 200,000 | |
| Broker commission and fees on private offering | | (45,000) |
| Proceeds from issuance of loan payable | 5,040,500 | |
| Repayment of mortgage and loans payable | (5,611,007) | (336,265) |
| NET CASH PROVIDED BY FINANCING ACTIVITIES | 10,252,613 | 21,597,390 |
| NET INCREASE (DECREASE) IN CASH | (7,932,524) | 9,466,016 |
| CASH AT BEGINNING OF PERIOD | 18,321,349 | 2,415,842 |
| CASH AT END OF PERIOD | \$ 10,388,825 | \$ 11,881,858 |
| SUPPLEMENTARY INFORMATION: | | |
| Interest paid | \$ 98,645 | \$ 361,732 |
| Income taxes paid | \$ | \$ |
| NON CASH TRANSACTIONS: | | |
| Beneficial conversion option related to preferred stock issuance | \$ | \$ 1,555,338 |
| Settlement of outstanding balances with line of credit | \$ 3,018,310 | \$ |

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| | | | | |
|---|----|---------|----|---------|
| Building and equipment purchased with financing | \$ | 779,000 | \$ | |
| Accrued compensation paid by common stock | \$ | 165,051 | \$ | 189,395 |
| Transfer of attraction development assets into property and equipment | \$ | | \$ | 327,341 |

The accompanying notes are an integral part of these financial statements.

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ODYSSEY MARINE EXPLORATION, INC. AND SUBSIDIARIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

NOTE A - BASIS OF PRESENTATION

The accompanying unaudited consolidated financial statements of Odyssey Marine Exploration, Inc. and subsidiaries (the Company, Odyssey, us, we or our) have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission and the instructions to Form 10-Q and, therefore, do not include all information and footnotes normally included in financial statements prepared in accordance with generally accepted accounting principles. These interim consolidated financial statements should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2007.

In the opinion of management, these financial statements reflect all adjustments, including normal recurring adjustments, necessary for a fair presentation of the financial position as of September 30, 2008, and the results of operations and cash flows for the interim periods presented. Operating results for the three-month period ended September 30, 2008 are not necessarily indicative of the results that may be expected for the full year.

NOTE B - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

This summary of significant accounting policies of the Company is presented to assist in understanding our financial statements. The financial statements and notes are representations of the Company's management who are responsible for their integrity and objectivity and have prepared them in accordance with our customary accounting practices.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, Odyssey Marine, Inc., Odyssey Marine Services, Inc., OVH, Inc, Odyssey Retriever, Inc. and Odyssey Marine Entertainment, Inc. All significant inter-company transactions and balances have been eliminated.

Shipwreck Heritage Press, LLC was organized during 2005 to publish and distribute print media. The entity does not have activity and has not been capitalized, and therefore, it is not consolidated.

Use of Estimates

Management used estimates and assumptions in preparing these financial statements in accordance with generally accepted accounting principles. Those estimates and assumptions affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities, and the reported revenues and expenses. Actual results could vary from the estimates that were used.

Revenue Recognition and Accounts Receivable

Revenue from sales is recognized at the point of sale when legal title transfers. Legal title transfers when product is shipped or is available for shipment to customers. Bad debts are recorded as identified, and no allowance for bad debts has been recorded. A return allowance is established for sales which have a right of return. Accounts receivable is stated net of any recorded allowance for returns.

Cash and Cash Equivalents

Cash and cash equivalents include cash on hand and cash in banks. We also consider all highly liquid investments with a maturity of three months or less when purchased to be cash equivalents.

Fair Value of Financial Instruments

The carrying value of cash and cash equivalents, accounts receivable, prepaid expense, accounts payable, accrued expense, loan payable and mortgage payable approximate fair value. Considerable judgment is necessarily required in interpreting market data to develop the estimates of fair value, and, accordingly, the estimates are not necessarily indicative of the amounts that we could realize in a current market exchange.

Inventory

Our inventory consists of artifacts recovered from the SS *Republic* shipwreck, general branded merchandise and related packaging material. The value of recovered artifacts in inventory includes the costs of recovery and conservation. The recovery costs also include the fee paid to an insurer to relinquish the insurer's claim to the artifacts recovered from the shipwreck. The

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capitalized costs include direct costs of recovery such as vessel and related equipment operations and maintenance, crew and technical labor, fuel, provisions and supplies, port fees and depreciation. Conservation costs include fees paid to conservators for cleaning and preparing the artifacts for sale. We continually monitor the recorded aggregate costs of the artifacts in inventory to ensure these costs do not exceed the net realizable value. We use historical sales, publications or available public market data to assess market value.

Packaging materials and merchandise are recorded at average cost. We record our inventory at the lower of cost or market.

Long-Lived Assets

Our policy is to recognize impairment losses relating to long-lived assets in accordance with Financial Accounting Standards Board No. 144, Accounting for the Impairment or Disposal of Long-Lived Assets based on several factors, including, but not limited to, management's plans for future operations, recent operating results and projected cash flows. Due to reorganization of our themed attraction segment and the closing of our attraction in the New Orleans, we accelerated the estimated useful lives of certain fixed assets and leasehold improvements resulting in additional depreciation and amortization for the period ended December 31, 2007 of \$928,427.

Comprehensive Income

Securities with a maturity greater than three months from purchase date are deemed available-for-sale and carried at fair value. Unrealized gains and losses on these securities are excluded from earnings and reported as a separate component of stockholders' equity. At September 30, 2008, we did not own securities with a maturity greater than three months.

Property and Equipment and Depreciation

Property and equipment is stated at historical cost. Depreciation is provided using the straight-line method at rates based on the assets' estimated useful lives which are normally between three and ten years. Leasehold improvements are amortized over their estimated useful lives or lease term, if shorter.

Earnings Per Share

Basic earnings per share (EPS) is computed by dividing income available to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted EPS reflects the potential dilution that would occur if dilutive securities and other contracts to issue Common Stock were exercised or converted into Common Stock or resulted in the issuance of Common Stock that then shared in our earnings. We use the treasury stock method to compute potential common shares from stock options and warrants and the as-if-converted method to compute potential common shares from Preferred Stock or other convertible securities. When a net loss occurs, potential common shares have an anti-dilutive effect on earnings per share and such shares are excluded from the diluted EPS calculation.

At September 30, 2008 and 2007, weighted average common shares outstanding year-to-date were 48,362,638 and 47,033,938, respectively. For the periods ended September 30, 2008 and 2007 in which net losses occurred, all potential common shares were excluded from diluted EPS because the effect of including such shares would be anti-dilutive.

The potential common shares, in the table following, represent potential common shares calculated using the treasury stock method from outstanding options and warrants that were excluded from the calculation of diluted EPS:

| | Nine Months Ended | | Three Months Ended | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 30, 2008 | September 30, 2007 | September 30, 2008 | September 30, 2007 |
| Average market price during the period | \$ 4.90 | \$ 4.76 | \$ 4.61 | \$ 5.93 |
| In the money potential common shares excluded | 490,718 | 893,073 | 398,055 | 1,507,892 |

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Potential common shares from out of the money options and warrants were also excluded from the computation of diluted EPS because calculation of the associated potential common shares has an anti-dilutive effect on EPS. The following table lists options and warrants that were excluded from diluted EPS:

| | Nine Months Ended | | Three Months Ended | |
|---|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 30, 2008 | September 30, 2007 | September 30, 2008 | September 30, 2007 |
| Out of the money options and warrants excluded: | | | | |
| Stock options with an exercise price of \$5.00 per share | 955,000 | 1,125,000 | 955,000 | |
| Stock options with an exercise price of \$7.00 per share | 100,000 | | 100,000 | |
| Warrants with an exercise price of \$5.25 per share | 100,000 | 100,000 | 100,000 | |
| Total anti-dilutive warrants and options excluded from EPS | 1,155,000 | 1,225,000 | 1,155,000 | |

Weighted average potential common shares from outstanding Convertible Preferred Stock calculated on an as-if-converted basis having an anti-dilutive effect on diluted EPS were excluded from potential common shares as follows:

| | Nine Months Ended | | Three Months Ended | |
|--|-----------------------|-----------------------|-----------------------|-----------------------|
| | September 30, 2008 | September 30, 2007 | September 30, 2008 | September 30, 2007 |
| Potential common shares from Preferred Stock excluded from EPS | 10,400,000 | 5,825,275 | 10,400,000 | 7,157,143 |

The following is a reconciliation of the numerators and denominators used in computing basic and diluted net income per share:

| | Nine Months Ended | | Three Months Ended | |
|---|------------------------|------------------------|-----------------------|-----------------------|
| | September 30, 2008 | September 30, 2007 | September 30, 2008 | September 30, 2007 |
| Net loss | \$ (18,769,425) | \$ (15,539,413) | \$ (6,548,684) | \$ (5,411,635) |
| Discount on preferred stock issuance | \$ | \$ (1,555,338) | \$ | \$ |
| Numerator, basic and diluted net income (loss) available to stockholders | \$ (18,769,425) | \$ (17,094,751) | \$ (6,548,684) | \$ (5,411,635) |
| Denominator: | | | | |
| Shares used in computation basic: | | | | |
| Weighted average common shares outstanding | 48,362,638 | 47,033,938 | 49,085,641 | 47,204,133 |
| Shares used in computation diluted: | | | | |
| Weighted average common shares outstanding | 48,362,638 | 47,033,938 | 49,085,641 | 47,204,133 |
| Dilutive effect of options and warrants outstanding | | | | |
| Shares used in computing diluted net income per share | 48,362,638 | 47,033,938 | 49,085,641 | 47,204,133 |
| Net loss per share basic | \$ (0.39) | \$ (0.36) | \$ (0.13) | \$ (0.11) |
| Net loss per share diluted | \$ (0.39) | \$ (0.36) | \$ (0.13) | \$ (0.11) |

Income Taxes

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Income taxes are accounted for using an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences attributable to differences between financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or the entire deferred tax asset will not be realized.

Segment reporting

Statement of Financial Accounting Standards No. 131, *Disclosure About Segments of an Enterprise and Related Information* (FAS 131), requires segment reporting when certain conditions are achieved. Based on the requirements of FAS 131, we previously reported our themed attractions as a segment. Since January 1, 2008, we no longer have a reportable segment.

NOTE C - RESTRICTED CASH

As required by the revolving credit facility entered into with Fifth Third Bank (the Bank) on February 7, 2008, \$500,000 was deposited into an interest-bearing account from which interest payments will be made for the first one-year period. On each anniversary of the facility, we will deposit into the account an amount sufficient to ensure a balance of \$500,000 for

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interest payments during the subsequent year of the facility. The balance in this restricted cash account is held as additional collateral by the Bank and is not available for operations. Any funds remaining in this account at the end of the facility term will be returned to the Company.

As required by the mortgage loan entered into with the Bank on July 11, 2008, \$500,000 was deposited into an additional interest-bearing account from which principal and interest payments will be made for the first one-year period. On each anniversary of the mortgage, we will deposit into the account an amount sufficient to ensure a balance of \$500,000 for principal and interest payments during the subsequent year of the mortgage. The balance in this restricted cash account is held as additional collateral by the Bank and is not available for operations. Any funds remaining in this account at the end of the mortgage term will be returned to the Company.

NOTE D - INVENTORY

Our inventory consisted of the following:

| | September 30, 2008 | December 31, 2007 |
|-------------------------------|-----------------------|----------------------|
| Artifacts | \$ 6,920,215 | \$ 7,279,464 |
| Merchandise | 618,389 | 661,899 |
| Packaging | 333,147 | 389,381 |
| Merchandise inventory reserve | (568,415) | (559,098) |
| Total inventory | \$ 7,303,336 | \$ 7,771,646 |

Of these amounts, \$6,057,591 and \$5,746,970 are classified as non-current as of September 30, 2008 and December 31, 2007, respectively.

In the event we secure ownership rights to the recovered artifacts from the *Black Swan* project, we will capitalize into inventory all related costs to recover and conserve these artifacts. Recovery costs include operating costs to recover, legal fees to defend and secure ownership rights and other costs associated with bringing the artifacts into an appropriate archeological state. We have capitalized costs of approximately \$2.3 million related to recovery and conservation that have been reserved for at 100 %. When and if ownership rights are secured, these deferred costs will be allocated to inventory and the reserve eliminated.

NOTE E - INCOME TAXES

As of September 30, 2008, the Company had consolidated income tax net operating loss (NOL) carryforwards for federal tax purposes of approximately \$83 million. The NOL will expire in various years ending through the year 2028.

Deferred income taxes reflect the net tax effects of the temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Significant components of the Company's deferred tax assets and liabilities are as follows:

| | |
|---|---------------------|
| Deferred tax assets: | |
| Net operating loss and capital loss carryforwards | \$ 30,184,064 |
| Accrued expenses | 362,228 |
| Reserve for inventory return | 200,483 |
| Start-up costs | 107,944 |
| Excess of book over tax depreciation | 345,153 |
| Stock option expense | 1,041,869 |
| Less: valuation allowance | (31,068,671) |
| | \$ 1,173,070 |

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| | |
|------------------------------|-----------|
| Deferred tax liability: | |
| Property and equipment basis | \$ 69,823 |
| Prepaid expenses | 75,956 |
| Inventory capitalization | 1,027,291 |
| | 1,173,070 |
| Net deferred tax asset | \$ |

As reflected above, we have recorded a net deferred tax asset of \$0 at September 30, 2008. In accordance with SFAS No. 109, *Accounting for Income Taxes*, we have evaluated whether it is more likely than not that the deferred tax assets will be realized. Based on the available evidence, we have concluded that it is more likely than not that those assets would not be

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realizable without the recovery and rights of ownership or salvage rights of high value shipwrecks and thus a valuation allowance has been recorded as of September 30, 2008. While we have recovered more than 17 tons of silver and hundreds of gold coins and other artifacts from the *Black Swan* project, we do not have the ability to immediately monetize the recovered cargo until we are awarded title or a salvage award by the U.S. District Court.

The change in the valuation allowance is as follows:

| | |
|--------------------------------------|---------------------|
| September 30, 2008 | \$ 31,068,671 |
| December 31, 2007 | 24,265,356 |
| Change in valuation allowance | \$ 6,803,315 |

Income taxes for the nine-month periods ended September 30, 2008 and 2007 differ from the amounts computed by applying the effective federal income tax rate of 34% to income before income taxes as a result of the following:

| | September 30, 2008 | September 30, 2007 |
|--|-----------------------|-----------------------|
| Expected (benefit) | \$ (6,381,605) | \$ (5,283,496) |
| State income taxes net of federal benefits | (243,044) | (261,147) |
| Nontaxable expense | 11,107 | 9,484 |
| Stock options exercised | (130,201) | (417,443) |
| Change in valuation allowance | 6,803,315 | 5,898,318 |
| Change in estimate of net operating loss | (898) | 560,545 |
| Inventory capitalization | | (559,648) |
| Effects of: | | |
| Change in apportionment estimate | (58,765) | 54,705 |
| Other, net | 91 | (1,318) |
| | \$ | \$ |

During the nine-month periods ended September 30, 2008 and 2007, the Company recognized certain tax benefits, prior to any valuation allowances, related to stock option plans in the amount of \$135,068 and \$162,034, respectively. If we did not have a full valuation allowance, such benefits would be recorded as an increase in the deferred tax asset and an increase in additional paid-in capital.

Effective January 1, 2006, we were required to capitalize inventory costs under Internal Revenue Code Section 263A. This adjustment created a deferred tax liability in the amount of \$3,314,407 on January 1, 2006 and will be recognized over the four year period beginning January 1, 2006. The remaining deferred tax liability as of September 30, 2008 is \$1,027,291.

We adopted Financial Standards Board Interpretation No. 48, Accounting for Income Taxes (FIN 48), an interpretation of SFAS 109, on January 1, 2007. As a result of the adoption of FIN 48, we have not recognized a material adjustment in the liability for unrecognized tax benefits and have not recorded any provisions for accrued interest and penalties related to uncertain tax positions.

The Company's tax years 2005 through 2007 remain open to examination by the major taxing jurisdictions.

NOTE F - CONTINGENCIES**Legal Proceedings**

On or about December 14, 2004, a complaint was filed against seven defendants, including the Company, in the Court of Common Pleas in the Ninth Judicial Circuit, County of Charleston, in the State of South Carolina. The complaint was filed by Republic & Eagle Associates, Inc. and Sea Miners, Inc. against John Morris, Greg Stemm, John Lawrence, John Balch, Daniel Bagley, Seahawk Deep Sea Technologies, Inc.

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(Seahawk) and the Company. The plaintiffs' allegations include breach of fiduciary duty, civil conspiracy and breach of contract based primarily upon an alleged contract(s) between the plaintiffs and Seahawk dated May 16, 1995 dealing with the search for the SS *Republic*. The plaintiffs allege that their research, which was provided to Seahawk, led to the discovery of the SS *Republic*, and they seek an unspecified amount of damages and public recognition of their contribution. On February 18, 2005, John Morris, Greg Stemm, Daniel Bagley, and the Company filed their Notice of Motion and Motion to Dismiss Defendants John Morris, Greg Stemm, Daniel Bagley and Odyssey Marine Exploration, Inc. (the Motion). In the Motion, the defendants alleged that the complaint should be dismissed because, among other things, the South Carolina court does not have jurisdiction over them, the action was filed in an improper venue, plaintiffs lack the capacity to maintain the action, and the action should be barred based on the Doctrine of Forum Non Conveniens. The court granted the Motion and dismissed the case for lack of personal jurisdiction on June 9, 2006. The Plaintiffs subsequently filed a Motion for

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Rehearing, and after further argument on the issues, the judge reversed his decision and entered an order denying the Defendants' motion to dismiss on February 27, 2007. The Defendants filed a Motion to Reconsider the order granting the Plaintiffs' Motion for Reconsideration and denying Defendants' Motion to Dismiss on March 12, 2007. On March 23, 2007, the Court denied that Motion. On June 25, 2007 Odyssey filed its appeal of the order denying its Motion to Dismiss with the South Carolina Court of Appeals. On October 15, 2007, the Appellate Court denied the appeal but ruled that determinations of fact in the trial court's order denying the Motion to Dismiss are not binding in future proceedings, and the case was remanded to the trial court. Counsel for the Plaintiffs filed a Motion to Withdraw as counsel which was denied by the trial court on April 14, 2008.

On August 28, 2008, the parties successfully settled this matter which resulted in a dismissal with prejudice of all claims against Odyssey, Greg Stemm, John Morris and Dan Bagley. Although the settlement agreement is confidential, we believe this settlement is favorable to us and does not have a material impact to our financial statements.

In addition to the legal proceedings described above, the Company may be subject to a variety of claims and suits that arise from time to time in the ordinary course of business.

NOTE G - MORTGAGE AND LOANS PAYABLE

The Company's consolidated mortgages and loan payable consisted of the following at September 30, 2008 and December 31, 2007:

| | September 30, 2008 | December 31, 2007 |
|-------------------|-----------------------|----------------------|
| Mortgages payable | \$ 3,332,096 | \$ 2,410,310 |
| Loan payable | | 640,000 |
| | \$ 3,332,096 | \$ 3,050,310 |

Revolving Credit Facility

On February 7, 2008, we entered into a \$5 million revolving credit facility with Fifth Third Bank (the Bank). We used a portion of this credit facility to pay off all amounts owed to Mercantile Bank under our prior credit facility, which has been terminated. The new credit facility has a floating interest rate equal to the Prime Rate plus fifty basis points (.50%), requires monthly payments of interest only and is due in full February 7, 2010. Odyssey will also be required to pay the Bank an unused line fee commencing in the second year of the agreement equal to 0.50% per annum of the unused portion of the credit line, payable quarterly in the second year. The line of credit is secured by a restricted cash balance (See NOTE C) as well as approximately 33,000 coins recovered from the SS *Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold. The borrowing base is equal to thirty percent (30%) of the eligible coin inventory valued on a rolling twelve-month wholesale average value. Odyssey is required to comply with a number of customary covenants.

On March 29, 2006, we entered into an Amended and Restated Revolving Credit Agreement (the Amended Credit Agreement) with Mercantile Bank. The Amended Credit Agreement replaced the Company's prior agreement with Mercantile Bank. The Amended Credit Agreement reduced the amount of the commitment from Mercantile Bank from a \$6.0 million revolving credit facility to a \$3.0 million revolving credit facility. The \$4.0 million of gold coins previously collateralized were removed from the Amended Credit Agreement and silver coins collateralized and held by the custodian increased from 10,000 to 15,000 coins. The credit facility had a floating interest rate equal to the LIBOR 30-Day Index Rate plus two hundred sixty-five basis points (2.65%), required monthly payments of interest only and was due in full on April 21, 2008. The Company was also required to pay Mercantile Bank an unused line fee equal to 0.25% per annum of the unused portion of the credit line, payable quarterly. Additionally, the Company granted Mercantile Bank a first lien position on all corporate assets, including a provision not to pledge as collateral Company-owned vessels. The Company was required to comply with a number of covenants as stated in the Amended Credit Agreement. On February 7, 2008, this Mercantile Bank credit facility was terminated. The bank released all collateral securing this debt.

Mortgage Payable

On July 11, 2008, we entered into a mortgage loan with Fifth Third Bank. Pursuant to the Loan Agreement, we borrowed \$2,580,000. The loan bears interest at a variable rate equal to the prime rate plus three-fourths of one percent (0.75%) per annum. The loan matures on July 11, 2013, and requires us to make monthly principal payments in the amount of \$10,750 plus accrued interest. This loan is secured by a restricted cash balance (See NOTE C) as well as a first mortgage on our corporate office building. This loan contains customary representations and warranties,

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affirmative and negative covenants, conditions, and other provisions.

During May 2008, we entered into a mortgage loan in the principal amount of \$679,000 with The Bank of Tampa to purchase our conservation lab and storage facility. This obligation has monthly payment of \$5,080 and a maturity date of May 14, 2015. Principal and interest payments are payable monthly. Interest is at a fixed annual rate of 6.45%. This debt is secured by the

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related mortgaged real property. The seller is carrying a second mortgage for \$100,000 with interest due monthly and \$25,000 of principal due each May commencing in May 2009. The interest is at a variable rate of 1.0% above the prime interest rate stated by Colonial Bank of Tampa. This obligation has a maturity date of May 14, 2012 and is secured by the related mortgage real property.

During June 2006, we entered into a mortgage loan in the principal amount of \$2.5 million with Carolina First Bank for the refinancing of our corporate office building. This mortgage replaced the original mortgage held by the Bank of Tampa. The mortgage loan was due on June 1, 2009 with monthly payments based on a 20-year amortization schedule. Interest was at a fixed annual rate of 7.5%. This debt was secured by the related mortgaged real property as well as being cross-collateralized with the coins used to secure the Amended and Restated Revolving Credit Agreement with Mercantile Bank. On February 7, 2008, the mortgage loan was paid in full in the amount of approximately \$2,400,000. The bank released all collateral securing this debt.

Loan Payable

During June 2006, we entered into a loan agreement for \$1.12 million with Mercantile Bank for the purchase of a remotely operated vehicle (ROV) for which the purchase price was \$1.4 million. This loan had a maturity date of September 1, 2009 and bore a variable LIBOR interest rate that was adjusted monthly. The variable rate was calculated by dividing LIBOR by an amount equal to 1.00 minus the Libor Reserve Percentage, plus 3.0%. The first three months of the agreement required interest only payments followed by principal payments of \$32,000 plus interest over the remaining life of the loan. The ROV was pledged as collateral for this loan. On February 7, 2008, the loan payable was paid in full in the amount of approximately \$600,000. The bank released all collateral securing this debt.

NOTE H - STOCKHOLDER S EQUITY**Preferred Stock****Series D Preferred Stock**

On January 24, 2007, we issued and sold an aggregate of 2.2 million shares of Series D Preferred Stock at a price of \$3.00 per share, for an aggregate purchase price of \$6.6 million in cash, pursuant to a Series D Preferred Stock Purchase Agreement (the "Purchase Agreement"). In connection with the transaction, the Company issued the investors warrants to purchase an aggregate of 440,000 additional shares of Series D Preferred Stock with an exercise price of \$4.00 per share and an expiration date of January 24, 2009. These warrants constituted a beneficial conversion option, which is a discount on the preferred stock offering, since they added value to the offering. The Black-Scholes valuation method was utilized in valuing these warrants. Since the related Series D Preferred Stock was immediately convertible, the entire discount on the preferred stock offering of \$1,555,338 was amortized to retained earnings thus decreasing the income available to stockholders. We also issued to certain of the investors warrants to purchase an aggregate of 2.2 million shares of Series D Preferred Stock with an exercise price of \$3.50 per share and an expiration date of May 15, 2007, in exchange for the cancellation and surrender of warrants to purchase Common Stock held by such investors with an exercise price of \$3.50 per share of Common Stock and an expiration date of March 9, 2007.

On May 2, 2007, we issued and sold an aggregate of 2.2 million shares of Series D Convertible Preferred Stock, par value \$0.0001 per share ("Series D Preferred Stock"), at a price of \$3.50 per share, for an aggregate purchase price of \$7.7 million in cash. The shares of Series D Preferred Stock were issued and sold upon the exercise of outstanding warrants, which were set to expire on May 15, 2007, to purchase the shares. The Series D Preferred Stock has no voting rights, except as required by Nevada law. Each share of Series D Preferred Stock is convertible into one share of the Company's Common Stock. However, no holder may convert any or all of the shares of Series D Preferred Stock held by such holder if and to the extent that such conversion would cause such holder to be a beneficial owner of more than nine and nine-tenths percent (9.9%) of the Common Stock, as determined under Rule 16a-1(a)(1) under the Securities Exchange Act of 1934, as amended. Holders of the Series D Preferred Stock have the right to participate in any dividends declared by us on our Common Stock on an as-if-converted basis.

Series E Preferred Stock

On September 13, 2007, the Company issued and sold 13 shares of its Series E Convertible Preferred Stock, par value \$0.0001 per share ("Series E Preferred Stock"), at a price of \$535,000 per share, for an aggregate purchase price of \$7.0 million in cash, pursuant to a Series E Convertible Preferred Stock Purchase Agreement between the Company and one institutional accredited investor. The Series E Preferred Stock has no voting rights, except as required by Nevada law. Each share of Series E Preferred Stock is convertible into 100,000 shares of the Company's Common Stock. However, the Company shall not effect any conversion of the Series E Preferred Stock or any other preferred stock or warrant held by a holder of Series E Preferred Stock, and no such holder shall have the right to convert any Series E Preferred Stock or any other preferred stock or warrant held by such holder, to the extent that after giving effect to such conversion, the beneficial owner of such shares (together with such beneficial owner's affiliates) would beneficially own in excess of 9.9% of the shares of the Company's Common Stock outstanding immediately

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after giving effect to such conversion or exercise. Holders of the Series E Preferred Stock have the right to participate in any dividends declared by the Company on the Company's Common Stock on an as-if-converted basis.

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Series F Preferred Stock

On December 17, 2007, the Company issued and sold 22 shares of its Series F Convertible Preferred Stock, par value \$0.0001 per share (Series F Preferred Stock), at a price of \$540,000 per share, for an aggregate purchase price of \$11.9 million in cash, pursuant to a Series F Convertible Preferred Stock Purchase Agreement between the Company and the investors. The Series F Preferred Stock has no voting rights, except as required by Nevada law. Each share of Series F Preferred Stock is convertible into 100,000 shares of the Company's Common Stock. However, the Company shall not effect any conversion of the Series F Preferred Stock or any other preferred stock or warrant held by a holder of Series F Preferred Stock, and no such holder shall have the right to convert any Series F Preferred Stock or any other preferred stock or exercise any warrant held by such holder, to the extent that after giving effect to such conversion or exercise, the beneficial owner of such shares (together with such beneficial owner's affiliates) would beneficially own in excess of 9.9% of the shares of the Company's Common Stock outstanding immediately after giving effect to such conversion or exercise. Holders of the Series F Preferred Stock have the right to participate in any dividends declared by the Company on the Company's Common Stock on an as-if-converted basis.

Common Stock

On August 19, 2008, we issued and sold 1,970,000 shares of common stock, par value \$0.0001 per share at a price of \$4.90 per share, for an aggregate purchase price of \$9,653,000 in cash, pursuant to a Common Stock Purchase Agreement between the Company and six funds managed by three accredited investors.

Stock-Based Compensation

We have two active stock incentive plans, the 1997 Stock Incentive Plan and the 2005 Stock Incentive Plan. The 1997 Stock Incentive Plan expired on August 17, 2007. As of that date, options cannot be granted from that plan but any granted and unexercised options will continue to exist until exercised or they expire. The 2005 Stock Incentive Plan was adopted by our Board of Directors on August 3, 2005 and approved by our stockholders at the Annual Meeting of Stockholders on May 5, 2006. The 2005 Stock Incentive Plan provides for the grant of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units and stock appreciation rights. We have reserved 2,500,000 of our authorized but unissued shares of common stock for issuance under the plan, and not more than 500,000 of these shares may be used for restricted stock awards and restricted stock units. On January 16, 2008 the Board of Directors approved amendments to the Plan to add 2,500,000 shares of common stock to the Plan, to allow any number of shares to be used for restricted stock awards, to clarify certain other provisions in the Plan and to submit the amended Plan for shareholder approval. The amended Plan was approved at the annual meeting of stockholders on May 7, 2008. Any incentive option and non-qualified option granted under the plan must provide for an exercise price of not less than the fair market value of the underlying shares on the date of grant, but the exercise price of any incentive option granted to an eligible employee owning more than 10% of our outstanding common stock must not be less than 110% of fair market value on the date of the grant.

On January 1, 2006, we adopted Financial Accounting Standards No. 123 (revised 2004), Share-Based Payment (FAS 123(R)), that addresses the accounting for share-based payment transactions in which an enterprise receives employee services in exchange for either equity instruments of the enterprise or liabilities that are based on the fair value of the enterprise's equity instruments or that may be settled by the issuance of such equity instruments. The statement eliminates the ability to account for share-based compensation transactions, as we formerly did, using the intrinsic value method as prescribed by Accounting Principles Board, or APB, Opinion No. 25, Accounting for Stock Issued to Employees, and generally requires that such transactions be accounted for using a fair-value-based method and recognized as expenses in our consolidated statement of operations.

We adopted FAS 123(R) using the modified prospective method which requires the application of the accounting standard as of January 1, 2006. Our consolidated financial statements for periods beginning on or after January 1, 2006 reflect the impact of adopting FAS 123(R). In accordance with the modified prospective method, the consolidated financial statements for prior periods have not been restated to reflect, and do not include, the impact of FAS 123(R).

Share-based compensation expense recognized during the period is based on the value of the portion of share-based payment awards that is ultimately expected to vest. As share-based compensation expense recognized in the statement of operations is based on awards ultimately expected to vest, it will be reduced for forfeitures. FAS 123(R) requires forfeitures to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates. The share based compensation charged against income for the nine-month periods ended September 30, 2008 and 2007 was \$1,526,756 and \$869,929, respectively, and for the three-month periods ended September 30, 2008 and 2007 was \$277,085 and \$208,143, respectively. We did not grant options during the three-month periods ended September 30, 2008 or 2007.

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The Black-Scholes option valuation model was developed for estimating the fair value of traded options that have no vesting restrictions and are fully transferable. Because option valuation models require the use of subjective assumptions, changes in these assumptions can materially affect the fair value of the options. Our options do not have the characteristics of traded options, therefore, the option valuation models do not necessarily provide a reliable measure of the fair value of our options.

NOTE I - RECENTLY ISSUED ACCOUNTING STANDARDS

In September 2006, the Financial Accounting Standards Board (FASB) issued SFAS No. 157, Fair Value Measurements, which defines fair value, establishes a framework in generally accepted accounting principles for measuring fair value and expands disclosures about fair value measurements. This standard only applies when other standards require or permit the fair value measurement of assets and liabilities. It does not increase the use of fair value measurement. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007, except as it relates to nonrecurring fair value measurements of nonfinancial assets and liabilities for which the standard is effective for fiscal years beginning after November 15, 2008. The adoption of SFAS No. 157 with respect to financial assets and liabilities in the first quarter of 2008 did not have an effect on Odyssey's consolidated results of operations or financial position.

In February 2007, the FASB issued Statement of Financial Accounting Standard (SFAS) No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115. This standard permits entities to choose to measure eligible items at fair value at specified election dates and report unrealized gains and losses on items, for which the fair value option has been elected, in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 did not have an impact on Odyssey's consolidated results of operations or financial position.

NOTE J - CONCENTRATION OF CREDIT RISK

Financial instruments that potentially expose us to concentrations of risk consist primarily of cash and cash equivalents. Our policy is to place our cash and cash equivalents with high credit quality financial institutions in order to limit the amount of credit exposure. Funds are maintained in five financial institutions. The Federal Deposit Insurance Corporation insures up to \$100,000 per legal entity per financial institution. At September 30, 2008 our uninsured cash balance was approximately \$11.2 million which includes \$9.0 million in AAA S&P rated registered U.S. Treasury and institutional money market funds.

NOTE K - RESTATEMENT

During the period ended June 30, 2008, we restated the December 31, 2007 balance sheet to reflect a correction in the valuation of the beneficial conversion option related to the exchange of warrants to purchase 2.2 million shares of common stock for warrants to purchase 2.2 million shares of Series D Preferred stock and to include the valuation of embedded beneficial conversion feature associated with the January 2007 Series D Preferred Stock offering. The restated valuation resulted in an additional discount of approximately \$1.2 million reflected as an increase in additional paid-in capital and accumulated deficit. The 2007 year-to-date net loss per share, basic and diluted, increased by \$.02 per share.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion will assist in the understanding of our financial position and results of operations. The information below should be read in conjunction with the financial statements, the related notes to the financial statements and our Annual Report on Form 10-K for the year ended December 31, 2007.

In addition to historical information, this discussion contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 regarding the Company's expectations concerning its future operations, earnings and prospects. On the date the forward-looking statements are made, the statements represent the Company's expectations, but the expectations concerning its future operations, earnings and prospects may change. The Company's expectations involve risks and uncertainties (both favorable and unfavorable) and are based on many assumptions that the Company believes to be reasonable, but such assumptions may ultimately prove to be inaccurate or incomplete, in whole or in part. Accordingly, there can be no assurances that the Company's expectations and the forward-looking statements will be correct. Please refer to the Company's most recent Annual Report Form 10-K for a description of risk factors that could cause actual results to differ (favorably or unfavorably) from the expectations stated in this discussion. Odyssey disclaims any obligation to update any of these forward-looking statements except as required by law.

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Operational Update

We have numerous shipwreck projects in various stages of development around the world. In order to protect the identities of the targets of our planned search or recovery operations, in some cases we will defer disclosing specific information relating to our projects until we have located a shipwreck or shipwrecks of interest and determined a course of action to protect our property rights.

Additional information regarding projects discussed below may be found in our Annual Report on Form 10-K for the year ended December 31, 2007, and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008 and June 30, 2008. Only projects with status updates since these reports were filed will be discussed herein.

Equipment

Our 251' deep-ocean archaeological platform, *Odyssey Explorer*, recently completed its planned 2008 season work in the *Atlas* search area, which included extensive search, inspection and preliminary excavation activities as well as serving as the primary filming platform for a television series expected to be broadcast on the Discovery Channel beginning in early 2009 (additional information below). The ship is now being prepared for her five year Special Survey plus repairs and modifications, which will necessitate a dry dock period. While the Special Survey was not due until spring, the survey and dry dock were scheduled over the winter months to maximize operational opportunities around anticipated weather conditions.

Our vessel the *Ocean Alert* has completed an extensive overhaul of engines and other equipment which took longer than expected. The engines have now been tested successfully and the ship has made a transit to Hull, England where she is scheduled for a dry dock period to meet her five year class survey requirements, scheduled to be completed by early 2009. During the period that the *Ocean Alert* was not operational, the company utilized various different charter vessels to conduct search operations, so our search capability was not hampered by the work being done on the *Ocean Alert*.

Operations in the *Atlas* search area and other areas are continuing with a chartered vessel which has dynamic positioning capability and can be configured for both search and recovery operations.

2008 Operations and *Atlas* Project

During this season, we located and tentatively identified at least one of our targeted high value shipwrecks, which will be announced publicly upon confirmation of the identity and completion of negotiations with potential claimants.

The Odyssey crews were accompanied by television production crews from JWM Productions during the 2008 season to produce an 11-episode prime-time television series for Discovery Channel, scheduled to air worldwide beginning in early 2009. JWM has exclusive access to film Odyssey's operations and at other Odyssey controlled locations as needed for JWM to complete filming for the series. JWM also has limited use of our resources for production of the series.

Revenue generated to date by the production of this television series is included with the quarterly and year-to-date revenue discussed in the Results of Operations section. In addition to revenue generated from the production of the series, we anticipate that we will benefit from the brand building and exposure generated by the show, which features Odyssey's offshore operations and shipwreck discoveries.

The *Atlas* Project encompasses a minimum of five high value targets within a search area covering more than 5,000 square miles. We conducted operations in this search area during the 2005, 2006 and 2008 seasons. Results to date in the *Atlas* search area include the discovery of three Colonial period shipwreck sites containing cannon which are the subject of Admiralty arrests filed by Odyssey. The first site was located and arrested in 2006. Admiralty arrests were filed in May 2008 on the two additional cannon sites discovered in 2008. For additional information refer to the Admiralty Legal Proceedings section.

Two Admiralty arrests were also filed on shipwrecks located in the northern Atlantic Ocean west of the western approaches to the English Channel in November 2008. For more information refer to the Admiralty Legal Proceedings section.

***Black Swan* Project**

The *Black Swan* is a Colonial period site we discovered during 2007 in the Atlantic Ocean. The Company recovered over 500,000 silver coins weighing more than 17 tons, hundreds of gold coins, worked gold and other artifacts from this site.

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We have taken great care to archaeologically document this site and to carefully conserve and record all artifacts to the highest professional standards. The site which is primarily comprised of cargo spread over a large area does not contain an actual vessel or shipwreck. There are no signs of human remains at the site; however, the site is being treated with the utmost respect. We believe it is important to keep the location of the site confidential to protect the integrity of the site.

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We have indicated that no actual ship or vessel has been found at the site. One working hypothesis put forth by us is that a vessel related to the cargo found at this deep-water site may be the *Nuestra Señora de las Mercedes* (the *Mercedes*), sunk in 1804 while carrying mostly private merchant cargo. The Kingdom of Spain, which has filed a claim in this case, stated in court documents their belief that the site in question is definitely the *Mercedes*.

The recovered cargo and artifacts were brought to the United States under an Admiralty arrest action and we have been appointed Substitute Custodian by the federal US District Court. For additional information refer to the Admiralty Legal Proceedings section below.

North Carolina Project

We reached an agreement with shipwreck exploration firm Intersal, Inc. to pursue operations at a site off the coast of North Carolina.

Intersal holds an exploration permit from the North Carolina Department of Cultural Resources, which includes the site and additional surrounding areas, some of which correlate with Odyssey's Firefly shipwreck project. Odyssey and Intersal are committed to continuing Intersal's policy of maintaining high archaeological standards and close co-operation with the North Carolina State Government.

The agreement also entitles Odyssey to share in substantial research and data acquired by Intersal over the years relating to the target shipwreck and the work completed to date in the permit area. A number of artifacts have been recovered from the site, which is the subject of an admiralty arrest action by Intersal in the Eastern District of North Carolina. Documents are being prepared to request the substitution of Odyssey as Plaintiff in the case. By taking over the arrest, Odyssey will assume certain rights and obligations associated with continuing operations at the site.

The area covered by this permit and arrest is located near Odyssey's current Firefly project, which was acquired by Odyssey from BDJ Discovery Group in 2007 and includes one arrested site that has already produced a small number of gold and silver artifacts. This new Intersal site and permit area may also be related to the high-value, Colonial-era merchant vessel believed to be located in the area. The agreements with BDJ and Intersal are similar but separate and the areas do not overlap.

Plans are being developed to resume work in both areas in 2009.

Admiralty Legal Proceedings

An Admiralty arrest is a legal process in which Odyssey seeks recognition from the Court of Odyssey's salvor in possession status for a specific shipwreck, site or cargo. It is the first legal step in establishing Odyssey's rights to ownership or to a salvage award. Odyssey currently has eight pending Admiralty arrest cases; three in the *Atlas* search area, two in the north Atlantic, the *Black Swan*, the *Firefly* and an *Atlantic* passenger liner in the Mediterranean.

Additional information regarding the admiralty legal proceedings for these arrests may be found in our Annual Report on Form 10-K for the year ended December 31, 2007, and our Quarterly Reports on Form 10-Q for the quarters ended March 31, 2008 and June 30, 2008. Only arrests with status updates since these reports were filed will be discussed below.

We will continue to pursue prompt resolutions of all claims. If we are able to confirm that any entity has a potential legitimate legal claim to any of the materials recovered from these sites, we intend to provide legal notice to any and all potential claimants. Even if another entity is able to prove that it has an ownership interest in the shipwreck and/or cargo and that they had not legally abandoned the shipwreck, Odyssey would seek a salvage award from the Admiralty Court. In cases such as this, salvors are typically awarded up to 90% of the recovery.

***Black Swan* Arrest**

In April 2007, we filed an Admiralty arrest on a site in the Atlantic Ocean approximately 1,100 meters deep, beyond the territorial waters or contiguous zone of any sovereign nation and we were appointed substitute custodian for all artifacts recovered from the site (Case number 8:07-cv-00614). In May 2007, the Kingdom of Spain filed a notice in this case stating that the Spanish government did not intend to give up rights on any Spanish property which might be on the site.

The initial phase of discovery began in January 2008, when legal counsel for Spain and Spain's representative appeared at Odyssey's offices on January 24th and 25th and were given the requested documentation and shown photographs, video tape and a sampling of recovered cargo from the *Black Swan* site. On March 5, 2008 the parties again appeared in court to discuss issues related to discovery including confidentiality and the

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format of documentation produced. On March 6, 2008, the Court denied Spain's motion to dismiss Odyssey's claims for possession and ownership of three arrested sites and for salvage awards. The Court also dismissed certain counts of Odyssey's Complaint which related to Spain's illegal actions against Odyssey. The dismissal of these counts was based on the Court's finding of a lack of jurisdiction, not on the merits of the claims. The most significant aspect of the ruling was the Court's declaration that Odyssey's pleadings and its disclosures have met all requirements of the Federal Rules of Civil Procedure.

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On March 12, 2008, the Court issued orders in this case, the 2006 *Atlas* case, and the Mediterranean case confirming that Odyssey had complied with all discovery orders thus far and instructing Odyssey to respond within thirty days to interrogatories regarding its theory as to the identities of any vessels related to the sites.

On April 11, 2008, Odyssey filed its responses to the Court's interrogatories and identified the *Nuestra Señora de las Mercedes* (the *Mercedes*), a vessel assigned to transport mail, private passengers, consignments of merchant goods and other cargoes, as one vessel potentially related to the *Black Swan* site, although there is evidence which may contradict this hypothesis. Odyssey reiterated that no vessel has been found at the site, and stated that other hypotheses are also being explored. Spain then filed its answers to the Court's interrogatories indicating that it had concluded that the vessel related to the *Black Swan* site was the *Mercedes*.

Spain filed a Motion to Dismiss the case on September 22, 2008 based upon the Foreign Sovereign Immunities Act, alleging that the U.S. Federal Court lacks jurisdiction. Odyssey's response is due November 17, 2008.

***Atlas* Arrests**

In May 2008, we filed Admiralty arrests on two separate Colonial period shipwreck sites in the *Atlas* search area (Case numbers 8:08-cv-01044 and 8:08-cv-01045). Both sites contain cannon and other artifacts. On June 20, 2008, U.S. District Court for the Middle District of Florida appointed Odyssey as Substitute Custodian of both sites and the artifacts recovered therefrom. These two arrests are in addition to the site located and arrested in September 2006 in the *Atlas* area (Case number 8:06-cv-01685). The remainder of the information in this section refers only to the September 2006 arrest.

In May 2007, the Kingdom of Spain filed a notice in this case stating that the Spanish government did not intend to give up rights on any Spanish property which might be on the sites. On December 20, 2007, Keith Bray filed an Intervening Complaint in this case involving the site arrested in September 2006. His claim includes counts for Fraud, Rescission and Mutual Mistake and seeks to have the Court rescind his contract with Odyssey which specifically provided that Bray was entitled to nothing other than the cash payment paid to him for historical research work. On January 9, 2008, Odyssey filed its Answer and Affirmative Defenses to the Intervening Complaint denying Bray's allegations and attaching a copy of the Research Agreement which Odyssey had with Bray.

On March 12, 2008, the Court issued orders in this case confirming that Odyssey had complied with all discovery orders thus far and instructing Odyssey to respond within thirty days to interrogatories regarding its theory as to the identities of any vessels related to the sites. On April 11, 2008, Odyssey filed in this case its responses to the Court's interrogatories. Odyssey stated that it had not confirmed the identity of any vessel related to this site, but named the *Merchant Royall*, a British merchant vessel lost in 1641, as a possible vessel related to the site, although there is some evidence being examined that may contradict this theory. Spain filed its answers to the Court's interrogatories indicating that it believed the vessel related to this arrested site was the *Merchant Royall*.

After initial discovery and several pre-trial hearings, the parties appeared again in Court on June 9, 2008. Considering Spain's admission that it had no claim to anything that had been brought before the Court in this case, at the status hearing, the Court urged Spain and Odyssey to reach a settlement. Odyssey has proposed a voluntary dismissal without prejudice but Spain has refused. Spain and Bray have requested certain documentation from Odyssey and the court has entered an order compelling Odyssey to produce all documents requested.

In November 2008, Admiralty arrests were also filed on two shipwrecks located in the north Atlantic Ocean over 300 miles from the western approaches to the English Channel. Both sites bear characteristics of certain ships that we believe may contain valuable cargo. We have petitioned the court to be appointed substitute custodian of the sites and are awaiting a response to our motion.

Mediterranean Arrest

In April 2007, Odyssey filed an Admiralty arrest on a shipwreck in the Mediterranean believed to be the *Ancona*, a 20th century passenger liner believed to be carrying valuable cargo, and was appointed substitute custodian of the artifacts recovered (Case number 8:07-cv-00616). In May 2007, the Kingdom of Spain filed a notice in this case stating that the Spanish government did not intend to give up rights on any Spanish property which might be on the site. On March 12, 2008, the Court issued orders in this case confirming that Odyssey had complied with all discovery orders thus far. On April 1, 2008, Spain voluntarily dismissed its claim in this Admiralty case. Odyssey will be filing a Motion for Summary Judgment in the case.

Table of Contents**Critical Accounting Policies and Changes to Accounting Policies**

There have been no material changes in our critical accounting estimates since December 31, 2007, nor have we adopted any accounting policy that has or will have a material impact on our consolidated financial statements.

Results of Operations**Three months ended September 30, 2008 compared to three months ended September 30, 2007**

| | (Unaudited) (Dollars in millions) | | | |
|---------------------------------------|-----------------------------------|--------|---------------------|-------|
| | 2008 | 2007 | Increase/(Decrease) | |
| | | | \$ | % |
| Revenue | \$ 2.2 | \$ 1.3 | \$.9 | 69% |
| Cost of sales | .2 | .4 | (.2) | (56)% |
| Marketing, general and administrative | 2.5 | 2.8 | (.3) | (12)% |
| Operations and research | 6.1 | 3.5 | 2.6 | 74% |
| Total cost and expenses | \$ 8.8 | \$ 6.7 | \$ 2.1 | 30% |

The explanations that follow are for the three months ended September 30, 2008, compared to the three months ended September 30, 2007.

Revenue

Revenue is generated through the sale of coins, artifacts, merchandise, themed attractions, and beginning in the second quarter of 2008, expedition charter revenue associated with the production of a shipwreck exploration television series. The increase in revenue of \$.9 million is primarily related to expedition charter revenue from the television series (\$1.4 million) offset in part by fewer coins sold in 2008 versus the same period in 2007. With the SS *Republic* gold inventory sold out, except for a small quantity of high grade coins, we continue to develop the SS *Republic* coin products to sustain demand until we are able to offer a more diverse product line with new shipwreck products and stories.

An agreement was negotiated during third quarter 2008 with Arqueonautas Worldwide for the exclusive worldwide marketing rights to the collectible quality coins from their *Sao Jose* shipwreck project. These coins have not been available for sale previously and we are marketing them through our authorized distributors. This project is expected to generate revenue through sales commissions beginning in fourth quarter 2008 and has allowed us to expand our distribution network with new product to prepare for future Odyssey shipwreck products and stories.

Costs and Expenses

Cost of sales consists of shipwreck recovery costs, grading, conservation, packaging, and shipping costs associated with artifact and merchandise sales. The primary cost component is from the sale of coins. Cost of sales for coins decreased \$.2 million for 2008 versus 2007 primarily because of fewer coins sold in 2008. There is no cost of sales component associated with the themed attraction and expedition charter revenues.

Marketing, general and administrative expenses primarily include all costs within the following departments: Executive, Finance & Accounting, Legal, Information Technology, Human Resources, Marketing & Communications, Sales and Business Development. Marketing, general and administrative expenses were \$2.5 million in 2008 as compared to \$2.8 million in 2007. The decrease of \$.3 million was primarily attributable to lower advertising and commissions related to the restructure of our direct sales program with our direct marketing partner.

Operations and research expenses primarily include all costs within the following departments: Archaeology, Conservation, Research, and Marine Operations which include all vessel operations. Operations and research expenses were \$6.1 million in 2008, compared to \$3.5 million in 2007. The \$2.6 million increase was primarily due to increased vessel operating expenses primarily related to additional ship charters utilized to supplement our operating schedule in the *Atlas* search area while the Ocean Alert was undergoing repairs (\$1.8 million), higher vessel fuel costs (\$.4 million) and vessel repairs and maintenance expenses (\$.4 million).

Table of Contents**Nine months ended September 30, 2008 compared to nine months ended September 30, 2007**

| | (Unaudited) (Dollars in millions) | | | |
|---------------------------------------|-----------------------------------|---------|---------------------|-------|
| | 2008 | 2007 | Increase/(Decrease) | |
| | | | \$ | % |
| Revenue | \$ 3.6 | \$ 5.2 | \$ (1.6) | (30)% |
| Cost of sales | .5 | 1.4 | (.9) | (64)% |
| Marketing, general and administrative | 8.2 | 8.5 | (.3) | (4)% |
| Operations and research | 13.8 | 10.7 | 3.1 | 29% |
| Total cost and expenses | \$ 22.5 | \$ 20.6 | \$ 1.9 | 9% |

The explanations that follow are for the nine months ended September 30, 2008, compared to the nine months ended September 30, 2007.

Revenue

Revenue is generated through the sale of coins, artifacts, merchandise, themed attractions, and beginning in the second quarter of 2008, expedition charter revenue associated with the production of a shipwreck exploration television series. Revenues for 2008 and 2007 were \$3.6 million and \$5.2 million, respectively, which included \$1.7 million of expedition charter revenue in 2008 related to the television series. The decrease of \$3.3 million in revenue for 2008 (excluding the impact of the expedition charter revenue) is primarily due to fewer coins sold in 2008 versus the same period in 2007. Also, the sales mix in 2008 represented all silver coins while the 2007 sales mix included approximately 22% gold coins which are priced much higher than silver coins. With the SS *Republic* gold inventory sold out, except for a small quantity of high grade coins, we continue to develop the SS *Republic* coin products to sustain demand until we are able to offer a more diverse product line with new shipwreck products and stories.

The SS *Republic* silver program was re-developed in the first quarter of 2008 to take advantage of emerging research on the silver coins from the SS *Republic*. This includes the release of the 1861-O silver half dollar issued by the State of Louisiana in between the time it seceded from the Union and when it joined the Confederate States of America. Additionally, Odyssey has continued to expand distribution channels in the current quarter with a broader base of coin and collectible marketers, including opening markets overseas. We have also re-evaluated our efforts with our direct marketing partner (inbound and outbound call center and infrastructure) and restructured our agreement to expand on our indirect sales programs and distribution channels where our profit margins have been much greater.

An agreement was negotiated during third quarter 2008 with Arqueonautas Worldwide for the exclusive worldwide marketing rights to the collectible quality coins from their *Sao Jose* shipwreck project. These coins have not been available for sale previously and we are marketing them through our authorized distributors. This project is expected to generate revenue through sales commissions beginning in fourth quarter 2008 and has allowed us to expand our distribution network with new product to prepare for future Odyssey shipwreck products and stories.

Costs and Expenses

Cost of sales consists of shipwreck recovery costs, grading, conservation, packaging, and shipping costs associated with artifact and merchandise sales. The primary cost component is from the sale of coins. Cost of sales for coins decreased \$.9 million for 2008 versus 2007 primarily because of fewer coins sold in 2008. There is no cost of sales component associated with the themed attraction and expedition charter revenues.

Marketing, general and administrative expenses primarily include all costs within the following departments: Executive, Finance & Accounting, Legal, Information Technology, Human Resources, Marketing & Communications, Sales and Business Development. Marketing, general and administrative expenses were \$8.2 million in 2008 versus \$8.5 million in 2007. The decrease of \$.3 million was attributable to lower advertising and commissions (\$1.3 million) related to the restructure of our direct sales program with our direct marketing partner and lower themed attraction expenses (\$.3 million) which were offset by additional share-based compensation costs (\$.7 million) and a cash separation payment and consulting fees (\$.6 million) primarily due to the departure our former Chief Executive Officer in January 2008.

Operations and research expenses primarily include all costs within the following departments: Archaeology, Conservation, Research, and Marine Operations which include all vessel operations. Operations and research expenses were \$13.8 million in 2008, compared to \$10.7 million in 2007. The \$3.1 million increase was primarily due to increased vessel operating expenses primarily related to additional ship charters utilized to supplement our operating schedule in the *Atlas* search area while the Ocean Alert was undergoing repairs (\$2.4 million), higher vessel fuel

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costs (\$.3 million) and vessel repairs and maintenance expenses (\$1.3 million), offset by lower themed attraction and other marine operating expenses (\$.9 million).

Table of Contents**Liquidity and Capital Resources*****Discussion of Cash Flows***

Net cash used in operating activities for the first nine months of 2008 was \$17.0 million. This amount primarily reflected an operating loss of \$18.8 million offset in part by non-cash items including depreciation and amortization (\$2.0 million) and share based compensation (\$1.5 million), a decrease in accrued expenses (\$1.4 million) and inventory (\$.5 million) and an increase in restricted cash (\$.9 million) required by our new credit facility and building mortgage with Fifth Third Bank. Net cash used in operating activities in the first nine months of 2007 was \$11.5 million. This amount primarily reflected an operating loss of \$15.5 million offset in part by non-cash items including depreciation and amortization (\$2.0 million) and share based compensation (\$.9 million), a decrease in inventory (\$1.0 million) and other miscellaneous working capital items (net \$.1 million).

Cash flows used in investing activities were \$1.2 million and \$.7 million for the first nine months in 2008 and 2007, respectively. Cash used in investing activities in 2008 primarily reflected purchase of property and equipment which included capitalized maintenance for extensive engine repairs and upgrades to the *Ocean Alert* (\$.5 million), the purchase of a building (used primarily as a conservation lab and storage facility) for \$1.0 million of which we financed \$.8 million (net \$.2 million), and \$.5 million for property and equipment primarily vessel-related. Cash used in investing activities in 2007 primarily reflected purchase of property and equipment of which \$.6 million represented marine equipment for our shipwreck exploration segment and \$.1 million was for our themed attraction segment primarily for the opening of our *SHIPWRECK! Pirates & Treasure* exhibit.

Cash flows provided by financing activities for the first nine months of 2008 were \$10.2 million which primarily included \$10.8 million from the issuance of common stock and exercise of warrants offset by net loan repayments of \$.6 million. The net loan repayments included loan proceeds of \$2.5 million due to refinancing our corporate building with Fifth Third Bank in July 2008, offset by repayment of our previous building mortgage and equipment loan payable with Mercantile Bank for \$3.1 million in February 2008. Cash flows provided by financing activities for the first nine months of 2007 were \$21.6 million which primarily included \$21.9 million from the sale of preferred and common stock, offset in part by \$.3 million for repayment of mortgage and loans payable.

General

At September 30, 2008, we had cash and cash equivalents of \$10.4 million, a decrease of \$7.9 million from the December 31, 2007 balance of \$18.3 million.

On February 7, 2008, we entered into a \$5.0 million revolving credit facility with Fifth Third Bank (the Bank). We used a portion of this credit facility to pay off all amounts owed to Mercantile Bank under our prior credit facility, which has been terminated. The new credit facility has a floating interest rate equal to the Prime Rate plus fifty basis points (.50%), requires monthly payments of interest only and is due in full February 7, 2010. We are required to pay the Bank an unused line fee commencing in the second year of the agreement equal to 0.50% per annum of the unused portion of the credit line, payable quarterly. The line of credit is initially secured by approximately 33,000 coins recovered from the *SS Republic* shipwreck, which amount will be reduced over the term by the amount of coins sold. The borrowing base is equal to thirty percent (30%) of the eligible coin inventory valued on a rolling twelve-month wholesale average value. We are required to comply with a number of customary covenants and intend to use the line of credit as a means to fund ongoing operations as necessary. Initially the line of credit was used to payoff our first mortgage with Carolina First Bank for approximately \$2.4 million as well as the equipment loan payable due Mercantile Bank of approximately \$.6 million plus any closing costs of the transaction. On May 14, 2008, we purchased a building, approximately 8,000 square feet which is used as our conservation lab and storage facility. The building was previously leased by Odyssey. The building was financed by a first and second mortgage of approximately \$.8 million on the property. As of September 30, 2008, we did not have any outstanding balance on the line of credit. However in October 2008, due to the turmoil in credit markets and the overall banking environment, we borrowed all \$5 million from our line of credit.

On July 11, 2008, we entered into a loan agreement with Fifth Third Bank for approximately \$2.6 million. The loan is evidenced by a commercial promissory note and bears interest at a variable rate equal to the prime rate plus three-fourths of one percent (0.75%) per annum. The loan matures on July 11, 2013, and requires Odyssey to make monthly principal payments in the amount of \$10,750 plus accrued interest. The loan is secured by a first mortgage on Odyssey's corporate office building located in Tampa, Florida.

On August 19, 2008, we received \$9.7 million from the sale of 1,970,000 shares of common stock at a price of \$4.90 per share to six funds managed by three institutional accredited investors pursuant to the terms of a purchase agreement.

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Based upon our current expectations, we believe our cash and cash equivalents, cash generated from operations and existing credit facility will satisfy our working capital requirements into at least the second quarter of 2009. However, we anticipate we will continue to incur net losses through the remainder of 2008. Our capacity to generate net income in future

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periods will be dependent upon the success of our ability to recover and monetize high-value shipwrecks. While we have recovered more than 17 tons of silver coins and hundreds of gold coins and other artifacts from the *Black Swan* project, we do not have the ability to immediately monetize the recovered cargo until we are awarded title or a salvage award by the U.S. District Court. At the present time, we cannot determine how long that process will take.

Off-Balance Sheet Arrangements

We do not engage in off-balance sheet financing arrangements. In particular, we do not have any interest in so-called limited purpose entities, which include special purpose entities (SPEs) and structured finance entities.

New Accounting Pronouncements

In September 2006, the Financial Accounting Standards Board (FASB) issued SFAS No. 157, Fair Value Measurements, which defines fair value, establishes a framework in generally accepted accounting principles for measuring fair value and expands disclosures about fair value measurements. This standard only applies when other standards require or permit the fair value measurement of assets and liabilities. It does not increase the use of fair value measurement. SFAS No. 157 is effective for fiscal years beginning after November 15, 2007, except as it relates to nonrecurring fair value measurements of nonfinancial assets and liabilities for which the standard is effective for fiscal years beginning after November 15, 2008. The adoption of SFAS No. 157 with respect to financial assets and liabilities in the first quarter of 2008 did not have an effect on Odyssey's consolidated results of operations or financial position.

In February 2007, the FASB issued Statement of Financial Accounting Standard (SFAS) No. 159, The Fair Value Option for Financial Assets and Financial Liabilities Including an Amendment of FASB Statement No. 115. This standard permits entities to choose to measure eligible items at fair value at specified election dates and report unrealized gains and losses on items, for which the fair value option has been elected, in earnings at each subsequent reporting date. SFAS No. 159 is effective for fiscal years beginning after November 15, 2007. The adoption of SFAS No. 159 did not have an impact on Odyssey's consolidated results of operations or financial position.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Market risk is the exposure to loss resulting from changes in interest rates, foreign currency exchange rates, commodity prices and equity prices. We do not believe we have material market risk exposure and have not entered into any market risk sensitive instruments to mitigate these risks or for trading or speculative purposes.

ITEM 4. CONTROLS AND PROCEDURES

Odyssey maintains a set of disclosure controls and procedures designed to ensure that information required to be disclosed in reports that it files or submits under the Securities Exchange Act of 1934 is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms. As of the end of the period covered by this report, based on an evaluation carried out under the supervision and with the participation of Odyssey's management, including the chief executive officer (CEO) and chief financial officer (CFO), of the effectiveness of our disclosure controls and procedures, the CEO and CFO have concluded that Odyssey's disclosure controls and procedures are effective. There have been no significant changes in the Company's internal controls over financial reporting during the third quarter of 2008 that have materially affected, or are reasonably likely to materially affect, the Company's internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. Legal Proceedings

On or about December 14, 2004, a complaint was filed against seven defendants, including the Company, in the Court of Common Pleas in the Ninth Judicial Circuit, County of Charleston, in the State of South Carolina. The complaint was filed by Republic & Eagle Associates, Inc. and Sea Miners, Inc. against John Morris, Greg Stemm, John Lawrence, John Balch, Daniel Bagley, Seahawk Deep Sea Technologies, Inc. (Seahawk) and the Company. The plaintiffs' allegations include breach of fiduciary duty, civil conspiracy and breach of contract based primarily upon an alleged contract(s) between the plaintiffs and Seahawk dated May 16, 1995 dealing with the search for the SS *Republic*. The plaintiffs

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allege that their research, which was provided to Seahawk, led to the discovery of the SS *Republic*, and they seek an unspecified amount of damages and public recognition of their contribution. On February 18, 2005, John Morris, Greg Stemm, Daniel Bagley, and the Company filed their Notice of Motion and Motion to Dismiss Defendants John Morris, Greg Stemm, Daniel Bagley and Odyssey Marine Exploration, Inc. (the Motion). In the Motion, the defendants alleged that the complaint should be dismissed because, among other things, the South Carolina court does not have jurisdiction over them, the action was filed in an improper venue, plaintiffs lack the capacity to maintain the action, and the action should be barred based on the Doctrine of Forum Non Conveniens. The court granted the

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Motion and dismissed the case for lack of personal jurisdiction on June 9, 2006. The Plaintiffs subsequently filed a Motion for Rehearing, and after further argument on the issues, the judge reversed his decision and entered an order denying the Defendants' motion to dismiss on February 27, 2007. The Defendants filed a Motion to Reconsider the order granting the Plaintiffs' Motion for Reconsideration and denying Defendants' Motion to Dismiss on March 12, 2007. On March 23, 2007, the Court denied that Motion. On June 25, 2007 Odyssey filed its appeal of the order denying its Motion to Dismiss with the South Carolina Court of Appeals. On October 15, 2007, the Appellate Court denied the appeal but ruled that determinations of fact in the trial court's order denying the Motion to Dismiss are not binding in future proceedings, and the case was remanded to the trial court. Counsel for the Plaintiffs filed a Motion to Withdraw as counsel which was denied by the trial court on April 14, 2008.

On August 28, 2008, the parties successfully settled this matter which resulted in a dismissal with prejudice of all claims against Odyssey, Greg Stemm, John Morris and Dan Bagley. Although the settlement agreement is confidential, we believe this settlement is favorable to us and does not have a material impact to our financial statements.

See the information set forth under the heading "Operational Update - Admiralty Legal Proceedings" in Part I, Item 2 of this report for disclosure regarding certain admiralty legal proceedings in which Odyssey is involved. Such information is hereby incorporated by reference into this Part II, Item 1.

In addition to the legal proceedings described above, the Company may be subject to a variety of claims and suits that arise from time to time in the ordinary course of business.

ITEM 1A. Risk Factors

For information regarding risk factors, please refer to Item 1A in the Company's Annual Report on Form 10-K for the year ended December 31, 2007. There are no material changes from the disclosure provided in the Form 10-K for the year ended December 31, 2007 with respect to the Risk Factors. Investors should consider the Risk Factors prior to making an investment decision with respect to the Company's securities.

ITEM 2. Unregistered Sales of Equity Securities and Use of Proceeds

There were no unregistered sales of equity securities during the nine months ended September 30, 2008, that have not been reported in a Current Report on Form 8-K.

On June 11, 2008 two investment funds exercised warrants for the purchase of a total of 50,000 shares of common stock at \$4.00 per share. The resale of the stock acquired was registered in a registration statement on Form S-3, and the shares were issued free of restrictive legend.

ITEM 3. Defaults Upon Senior Securities

None.

ITEM 4. Submission of Matters to a Vote of Security Holders

None.

ITEM 5. Other Information

None.

ITEM 6. Exhibits

- 31.1 Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 31.2 Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002 (Filed herewith electronically)
- 32.1 Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)
- 32.2 Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (Filed herewith electronically)

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

ODYSSEY MARINE EXPLORATION, INC.

Date: November 10, 2008

By: /s/ Michael J. Holmes
Michael J. Holmes, Chief Financial
Officer and Authorized Officer