

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
IN ADMIRALTY**

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff,

v.

Case No. 8:07-CV-00614-SDM-MAP

THE UNIDENTIFIED SHIPWRECKED
VESSEL, if any, its apparel, tackle,
appurtenances and cargo located
within a five mile radius of the center
point coordinates provided to the Court
under seal,

Defendant,
in rem

and

THE KINGDOM OF SPAIN,

Claimant,

_____ /

**ANSWERS OF CLAIMANT KINGDOM OF SPAIN
TO THE COURT’S INTERROGATORIES**

Claimant Kingdom of Spain (“Spain”) answers the interrogatories propounded by the Court in its March 12, 2008 Order (Dkt. 92) as follows:

Interrogatory # 1: Describe what evidence supports a Spanish claim to the vessel or artifacts.

Spain’s Response:

The vessel and its contents which are the subject of this case are the remains of the Spanish Royal Navy Frigate Nuestra Señora de las Mercedes (“Mercedes”), which exploded and sank in combat on October 5, 1804 during the Battle of Cape St. Mary south of Portugal and

west of Cádiz, Spain. Mercedes is a warship on the official register of the Royal Navy of Spain and is the inalienable property and patrimony of the Kingdom of Spain. Mercedes is subject to, inter alia, sovereign immunity from any and all claims or arrest in the United States under the Foreign Sovereign Immunities Act, 28 U.S.C. Sections 1609 and 1611, Article X of the Treaty of Friendship and General Relations Between the United States and Spain, 33 Stat. 2105, and allied principles of United States and Spanish domestic law and international law. The underwater resting place of Mercedes is also the gravesite of more than 200 Spanish military personnel and family members who perished in the explosion and sinking of the warship. Spain has not abandoned or otherwise relinquished in any way its ownership of Mercedes. Spain has denied authorization or consent to disturbance or salvage of Mercedes and the gravesite of hundreds of Spanish sailors and family members. See, e.g., Protection of Sunken Warships, Military Aircraft and Other Sunken Government Property, 69 Fed. Reg. 5647 (Feb. 5, 2004).

Historical records document that Mercedes was constructed in 1788-89 in Havana for the Royal Navy of Spain and entered on the official register of Spanish Navy warships as a Frigate class warship. Mercedes remained in the military service of Spain as a warship of the Royal Navy from the commencement of active service in 1789 until its sinking in October 1804.

In November 1802, the Minister of the Spanish Navy issued the following order to the Captain General of the Spanish Navy Department of Ferrol, to which Mercedes was assigned under the command of Captain Don José Goycoa:

The King has resolved that two frigates be dispatched as early as possible from that port to the port of El Callao in Lima with the objective of bringing back the treasure and effects of the Royal Treasury that are ready in America. According to the latest news provided by the Engineer General the Clara and the Mercedes are ready to be armed in that Department and therefore His Majesty wants your Excellency to provide for the preparation of said vessels as early as possible keeping in mind the voyage they have

to complete, and with the knowledge that command has been given to Captain Don José Goycoa and to Frigate Captain Don Diego Aleson, whom have been advised as convenient so that they appear in that Department. God keep your Excellency safe for many years.

Barcelona, November 6 of 1802.

[Signed]
Domingo de Grandallana
[Minister of the Navy]

Señor Don Félix de Tejada
[Captain General of the Maritime Department of El Ferrol]

Pursuant to this order, Mercedes departed from Spain to El Callao and, in April 1804, from El Callao to Montevideo, where it was assigned to a fleet comprised of four Navy Frigates sailing to Spain. The squadron of four frigates, Mercedes, Clara, Fama and Medea, left Montevideo for Cádiz, Spain, in August 1804, under the command of Admiral José de Bustamante, with Captain General Diego de Alvear as second in command.

In the morning of October 5, 1804, the Spanish Navy squadron was south of Cape St. Mary, Portugal, within a day's sail of Cádiz. The Spanish fleet was intercepted by a British Navy fleet that had been dispatched to seize Spanish Navy warships inbound to Spain from the Americas. Admiral Bustamante refused a demand by the British Commodore to submit to British orders and the two fleets formed lines of battle. Shortly thereafter, firing commenced. Within minutes, Mercedes was blown apart by a great explosion. A small number of survivors was later rescued from those parts of the ship which remained afloat. Of eight officers on Mercedes, only one survived. The family of Captain de Alvear traveling on Mercedes also died. Following the sinking of Mercedes, the three surviving Spanish warships were captured by the British, taken to English ports, and seized.

At the time of the battle, active hostilities between Spain and Great Britain had been suspended by the 1802 Treaty of Amiens. In response to the attack and the loss of life on Mercedes, Spain declared war on Great Britain and reentered the Napoleonic Wars that continued for a decade thereafter. The sinking of Mercedes was a pivotal event in Spanish and European history, and the site and its contents are the inalienable historical heritage and patrimony of Spain.

Prior to conducting its survey and recovery operations, Odyssey conducted archival research concerning Mercedes. Odyssey was aware that Spanish Navy vessels are the property of the Kingdom of Spain and may not be disturbed or subjected to salvage operations without the specific and express consent of the Kingdom of Spain. Odyssey acknowledged these principles in a submission to Spanish authorities in September 2006 appealing against penalties assessed against Odyssey for previous activities:

“ . . . [T]he wreckages of ships belong, for all proprietary and other purposes, to the flag State, regardless of the waters in which they are found.

* * *

The sunken warships of various countries are also the graveyards of marines who died while serving their homelands, and they should be properly handled by the State they served, which must take steps to prevent interference from foreign elements in that relationship.”¹

Analysis of location information from multiple sources confirms that the location on the seabed from which Odyssey took coins and other artifacts is the site of Mercedes.

¹ (Odyssey’s Appeal of the Decision of the General Director of Cultural Assets of the Council of Andalucía, Disciplinary Case file 201/06-CA-01/06 (Sept. 26, 2006)).

Artifacts on the seabed at the site and their pattern of distribution and other characteristics, as well as the artifacts taken by Odyssey from the shipwreck, further identify the site as the remains of Mercedes and reflect a Spanish Navy warship that was torn apart by an explosion, as confirmed by the historical reports concerning Mercedes.

In addition to ship fittings, appurtenances, and other characteristics of a Spanish Navy vessel, the artifacts include extensive quantities of other materials that are documented as having been on Mercedes. These include ingots of copper and tin which were on Mercedes.

Coins taken by Odyssey from the site provide further definitive identification of the site as Mercedes. At the site were the remains of chests of coins clumped and/or concreted together in the form in which they were packed into chests loaded onto Mercedes, with the surrounding wood of the chests having largely disintegrated or been consumed.

The “Artifact Summary” for the “Black Swan” disclosed by Odyssey pursuant to this Court’s Order of January 10, 2008 states that “the dates for milled coinage recovered from the ‘Black Swan’ range from 1773 to 1804 [and] the heaviest concentration comes from the 1790s to the early 1800s.” As noted previously, Mercedes sailed from El Callao, the port of Lima, in April 1804, and left Montevideo on August 9, 1804 for Cádiz, Spain. Inspection by Spain of coins taken by Odyssey to the United States has also confirmed that they were taken from Mercedes.

Odyssey’s April 11, 2008 Answers to the Court’s Interrogatories constitute further evidence in support of Spain’s claims to the vessel and artifacts. Odyssey states that one vessel “under consideration” is the Mercedes, but that the “artifacts could indicate jettisoned cargo” or there were “possibly other ships” which “could account for this site” but “have so far eluded our researchers and archivists,” or “[t]he cargo may have come from a pirate ship.” Odyssey

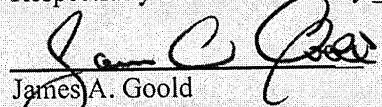
identifies no such ship(s), nor does Odyssey explain how or why a Spanish warship was dismantled at sea, and coins and other materials on board were removed, thrown overboard, and deposited at the site.

Interrogatory # 2: From Spain's viewpoint, what vessel is most likely associated with this site?

Spain's Response:

As stated in response to Interrogatory #1, the site is the Spanish Navy Frigate Mercedes.

Respectfully submitted on May 8, 2008 by


James A. Goold
District of Columbia Bar # 430315
Covington & Burling LLP
1201 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 662-5507
Fax: (202) 662-6291
E-mail: jgoold@cov.com

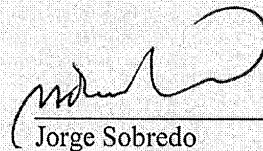
David C. Banker
Florida Bar # 352977
Bush Ross, PA
220 S. Franklin Street
P.O. Box 3913
Tampa, Florida 33601-3913
Telephone: (813) 224-9255
Fax: (813) 223-9255
E-mail: dbanker@bushross.com

Verification

I, Jorge Sobredo, am the Chief of the Cultural Office of the Embassy of Spain to the United States of America.

I have read the foregoing Answers of the Kingdom of Spain to Interrogatories and declare under penalty of perjury that the same are true and correct to the best of my knowledge, information and belief.


Signed this 7 day of May 2008 in Madrid, Spain.



Jorge Sobredo

Certificate of Service

I hereby certify that I caused the foregoing Answers of Claimant Kingdom of Spain to the Court's Interrogatories to be served on Plaintiff's counsel, Allen von Spiegelfeld, Eric C. Thiel, and Melinda J. MacConnel via the Court's CM/ECF system on May 8, 2008.


James A. Goold
District of Columbia Bar 430315
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 662-5507
Fax: (202) 662-6291
E-mail: jgoold@cov.com