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

Case No. 8:06-cv-1685-T-23MAP
8:07-cv-614-T-23MAP

June 9, 2008
Tampa, Florida

ODYSSEY MARINE EXPLORATION, INC.,
Plaintiff,

vs.

THE UNIDENTIFIED SHIPWRECKED VESSEL
OR VESSELS, their apparel, tackle,
appurtenances and cargo, etc.,
Defendant,
In Rem

and

THE KINGDOM OF SPAIN,
Claimant.

TRANSCRIPT OF DIGITALLY-RECORDED
PRELIMINARY PRETRIAL CONFERENCE
BEFORE THE HONORABLE MARK A. PIZZO,
UNITED STATES MAGISTRATE JUDGE

Appearances of Counsel:

For the Plaintiff: Ms. Melinda MacConnel
Mr. Allen K. Von Spiegelfeld
For the Kingdom of Spain: Mr. James Goold
For Keith Bray: Mr. Frank D. Butler

Transcribed by: Dennis Miracle, Official Reporter

Dennis Miracle, Official Reporter (352) 369-7401

P R O C E E D I N G S

1
2 THE COURT: Good morning.

3 We have status conferences today in the case of
4 Odyssey Marine Exploration, Inc., plaintiff, versus
5 Unidentified Shipwrecked Vessels, the defendant in rem, and the
6 Kingdom of Spain. This is Case Number 06-cv-1685-T-23MAP and
7 07-cv-614-T-23MAP.

8 And I also acknowledge Mr. Bray, who is a claimant in
9 07-614.

10 MR. BUTLER: Excuse me, Your Honor. Frank Butler for
11 Mr. Bray.

12 THE COURT: Right.

13 MR. BUTLER: That's 06.

14 THE COURT: I'm sorry. 06- --

15 MR. BUTLER: In the 06 case.

16 THE COURT: -- civil-1685. I apologize for that.

17 Will counsel announce their appearances?

18 MR. GOOLD: Jim Goold for the Kingdom of Spain with
19 Keith Scorwitz of the Bush, Ross firm, and I'm accompanied by
20 Rear Admiral Luis Nucci of the Spanish Navy serving with
21 NATO -- or U.S. Central Command here in Tampa, Your Honor.

22 THE COURT: Welcome.

23 MR. GOOLD: Thank you, Your Honor.

24 MR. VON SPIEGELFELD: Allen Von Spiegelheld, and I
25 have with me Melinda --

1 MS. MacCONNEL: MacConnel.

2 MR. VON SPIEGELFELD: -- MacConnel -- I can't even
3 say it -- and Mark Gordon, president and chief operating
4 officer --

5 THE COURT: Thank you. Good to see you again.

6 MS. MacCONNEL: Good morning, Your Honor.

7 MR. VON SPIEGELFELD: -- of Odyssey.

8 MR. BUTLER: Frank Butler for intervenor Keith Bray.

9 THE COURT: Thank you, Mr. Butler.

10 The reason why I asked for this preliminary pretrial
11 conference -- I had been discussing the matter with
12 Judge Merryday several weeks ago and noted that -- we observed
13 that a case management order had not been issued in either
14 case, even though the parties had prepared case management
15 reports, and some of those dates had already expired without
16 the -- their adoption in the case management order, so I
17 thought it would be a good idea to meet and see where we are to
18 see whether these dates should remain the same, whether these
19 cases, at least for the administration of these cases, should
20 be separated so that perhaps they should go on different
21 tracks, what the status of the discovery is, how much more
22 information is needed to make some determination as to the
23 identity of either vessel, when that determination could be
24 made, or at least the position taken by the parties could be
25 made as to that, and the process for raising the FSIA arguments

1 as well, and, Mr. Goold, how you anticipated raising those
2 arguments, whether by a motion for summary judgment or a Rule
3 12(b)(1). I don't think the vehicle necessarily matters as
4 much as procedurally, frankly.

5 MR. GOOLD: Yes.

6 THE COURT: But let's -- let's first take up what --
7 what is the current status of discovery?

8 MR. GOOLD: I'd be pleased to cover that but also
9 talk about my proposed roadmap which spans essentially all the
10 Court has addressed vis-a-vis case 615 -- 614, however the
11 Court would like.

12 THE COURT: It makes no difference to me. Let's --
13 let -- let me just hear from Odyssey first as to the status of
14 discovery.

15 And also, Mr. Von Spiegel, if you would relate as
16 well not only the status of the discovery vis-a-vis Spain and
17 Mr. Bray but also whether other artifacts continue to be
18 excavated or recovered over either site during the pendency of
19 the case.

20 MR. VON SPIEGELFELD: Okay. Your Honor, as far as
21 the last question, no other artifacts have been excavated since
22 the outset of this case --

23 MS. MacCONNEL: Allen, regarding the 35, that may not
24 be true.

25 MR. VON SPIEGELFELD: That may not be true in regard

1 to Mr. Bray's case, but it's certainly true about the other
2 case. But anything that was excavated from the 35 -- the 2006
3 case is relatively minor. It's not a large item, and it's
4 not -- and there's no identifying mark on anything.

5 THE COURT: So there are no ongoing search
6 operations?

7 MS. MacCONNEL: Let me -- I will --

8 MR. VON SPIEGELFELD: Yeah.

9 MS. MacCONNEL: Your Honor, I know that we have been
10 back to the site, 1685. The crew's coming back, I think,
11 tonight with reports, so I'll have more information as to what,
12 if anything, they have gotten from that site. They may not
13 have recovered anything else; it may have been just another
14 visit. I'm not sure.

15 MR. VON SPIEGELFELD: The other site has not been --
16 nobody has gone back to that, and nobody has touched anything
17 there.

18 THE COURT: All right.

19 MR. VON SPIEGELFELD: As far as the discovery is
20 concerned, pursuant to the Court's instructions and because we
21 really want to move this along, we've provided Spain with the
22 opportunity to go see everything that has been excavated to
23 date from the -- from the site that they claim is the
24 Mercedes.

25 They have asserted that it is the Mercedes in their

1 answers to interrogatories. We still don't know that it's the
2 Mercedes, but that's their position.

3 We've both answered the interrogatories that the
4 Court has presented to us. And other than that --

5 THE COURT: Well, let me ask you, as to -- as to the
6 identification of what Spain contends is the Mercedes and what
7 you suspect might be the Mercedes, the 614 case, is your
8 information going to be any better at the close of discovery,
9 which you have as July 25, 2008, than it is as we sit here
10 today?

11 MR. VON SPIEGELFELD: Well, the answer to that is
12 sort of convoluted because Spain has made this very clear
13 assertion that it is the Mercedes. We haven't seen any
14 discovery other than answers to interrogatories. So we don't
15 know what they are basing that on other than their statement
16 that it is the Mercedes.

17 THE COURT: So you have not -- I note that there is a
18 disclosure of expert testimony that was --

19 MR. VON SPIEGELFELD: That's all --

20 THE COURT: -- listed as May 1, 2008.

21 MR. VON SPIEGELFELD: Yeah. Those dates, sort of,
22 fell apart when the Court --

23 THE COURT: Okay.

24 MR. VON SPIEGELFELD: -- took over.

25 THE COURT: All right. So that's a good reason why

1 we're here, then.

2 MR. VON SPIEGELFELD: Yeah. And that's what I was
3 going to suggest, is I was going to suggest new dates --

4 THE COURT: All right.

5 MR. VON SPIEGELFELD: -- for the discovery -- ongoing
6 discovery, because the dates that have been set forth in our
7 original proposal have not -- cannot -- well, were not and
8 won't be applicable -- can't be applicable.

9 THE COURT: All right. Well, let's -- since I have
10 to recognize somebody first, let's start with you,
11 Mr. Von Spiegel, and you propose to me, if you have some
12 dates to propose, what dates you think are appropriate, and
13 then I'll hear from Mr. Goold. And I'll also hear, Mr. Goold,
14 from you as to your roadmap.

15 MR. VON SPIEGELFELD: I -- I --

16 THE COURT: Let's start with -- go ahead.

17 MR. VON SPIEGELFELD: Okay. I would suggest that we
18 start with the -- for disclosure of expert testimony, August 1
19 instead of May 1.

20 THE COURT: All right.

21 MR. VON SPIEGELFELD: And then a month later for
22 supplemental disclosures and responses.

23 THE COURT: All right. So that would be September --

24 MR. VON SPIEGELFELD: September 1.

25 I actually have my calendar, and I can see if those

1 are Sundays. But I -- I've never really thought that was that
2 much of a big deal anyway because --

3 THE COURT: That's a Monday.

4 MR. VON SPIEGELFELD: Okay.

5 THE COURT: And August 1 is a Friday so --

6 MR. VON SPIEGELFELD: That works out nicely.

7 THE COURT: That works all right.

8 MR. VON SPIEGELFELD: And then as far as the
9 completion of discovery, we had it set previously as
10 approximately --

11 THE COURT: July 25.

12 MR. VON SPIEGELFELD: Well, it was -- July 25 was
13 just about two months later, because after you've had your
14 supplemental, you're going to want some time to look at what
15 you have. So if it's August, September, then it would be
16 the -- towards the end of October -- I would say October 23 for
17 the completion of discovery.

18 THE COURT: All right.

19 MR. VON SPIEGELFELD: And that pretty much completes
20 the discovery schedule.

21 THE COURT: And you would -- you would want to keep
22 them the same in both matters?

23 MR. VON SPIEGELFELD: Actually, the way we've always
24 done it in the past, Your Honor, is that --

25 THE COURT: When you say "we've always done it in the

1 past," are you saying you've always done it in the past in this
2 courthouse or --

3 MR. VON SPIEGELFELD: Yes. Yes.

4 THE COURT: Okay.

5 MR. VON SPIEGELFELD: -- is that the -- the defendant
6 usually is one -- is about two weeks to a month behind the
7 plaintiff simply because --

8 THE COURT: No, I'm talking about both cases; I'm not
9 talking about both sides.

10 MR. VON SPIEGELFELD: Oh. Yeah, both -- yes.

11 THE COURT: I'm talking about both cases.

12 MR. VON SPIEGELFELD: Both cases, yes, should be the
13 same. Yes.

14 THE COURT: What about as to Mr. Bray's claim?

15 MR. VON SPIEGELFELD: The same.

16 THE COURT: Why would -- would it make more sense to
17 have his claims maybe a month later than -- than the discovery
18 between your case and Spain's?

19 MR. VON SPIEGELFELD: We're fine with that. I mean,
20 we don't have a problem with that. That would be fine.

21 THE COURT: Mr. Butler, Mr. Bray's claims are
22 dependent entirely on what happens between Spain and Odyssey,
23 right?

24 MR. BUTLER: I would say that's accurate, Your Honor,
25 yes.

1 THE COURT: Does it matter to you whether the date's
2 the same or not?

3 MR. BUTLER: It really doesn't matter, Your Honor. I
4 was going to propose a six-month move of the dates across the
5 board. And the reason I say that, Your Honor, is if we run
6 into motions to compel, or something along those lines, we
7 might find ourselves back here in front of you on a hearing
8 like today.

9 And my thoughts were -- and I don't know what the
10 time frame is as far as how fast these folks want to get the
11 case done -- but it seems to me that moving the dates all six
12 months forward would give us enough time that, if there's any
13 discovery complications, that we wouldn't have to come back in
14 on a -- on a status conference. That's the only -- that's what
15 I came in prepared to suggest. I'm certainly able to abide by
16 the time frames that are proposed this morning, though.

17 THE COURT: Okay.

18 MR. BUTLER: Yes.

19 MR. VON SPIEGELFELD: The other reason we would not
20 want to move back six months is -- I think Spain probably will
21 agree, but I'm not sure -- we'd like to get this over with as
22 quickly as possible and resolve it as quickly as possible for a
23 number of reasons. From our perspective, there's a lot of cost
24 involved in maintaining the artifacts that have been taken from
25 the '14 site. And the sooner we can get a resolution of how

1 the -- what is going to happen with those, the better it is for
2 Odyssey.

3 THE COURT: Well, I'm also aware of the fact that the
4 legal argument and the -- the principles behind the FSIA is to
5 resolve the immunity issues as quickly as possible so as to --
6 to take care of the costs and expense associated with
7 litigation, because litigation should not have occurred in the
8 first place, so I'm -- I'm aware of those -- that there are
9 economic reasons, obviously, for Odyssey as well. And that's
10 why I'm asking all these questions to see -- I want everybody
11 to have a fair shot at getting all -- marshaling all their
12 information and evidence so as to present argument on these
13 issues because they're not particularly simple issues at times
14 so...

15 MR. VON SPIEGELFELD: There is one other factor --
16 and I was going to bring this up at a later date -- one of the
17 discussions that we've been having with Mr. Goold is in regards
18 to additional notices that we think are necessary --

19 THE COURT: Well, that was another matter that I
20 hadn't brought up that I was thinking about, and that is
21 whether -- I note, for example, I guess, in the Seahunt case
22 that the District Court required notice to be given to the
23 United States and I think Spain as well initially at the outset
24 of those proceedings.

25 MR. GOOLD: Yes --

1 THE COURT: So --

2 MR. GOOLD: -- at the outset.

3 THE COURT: And we have the -- the case which I had
4 not scheduled for today -- and that was the Italian ship -- and
5 whether notice should be given to Italy as well so...

6 MS. MacCONNEL: We have.

7 MR. VON SPIEGELFELD: We've done that --

8 THE COURT: All right.

9 MR. VON SPIEGELFELD: -- pursuant to Judge Merryday's
10 order.

11 THE COURT: Okay.

12 MR. VON SPIEGELFELD: But we think that notice should
13 be given -- in light of the -- the assertions by Spain that
14 this is the Mercedes -- and obviously that was -- there was
15 some consideration given by Odyssey before that assertion was
16 made, that flat-out assertion -- there were, and there are,
17 manifests for the cargos that were on board that vessel.

18 And we think that it is necessary and is required by
19 the -- by the law to give notice to all of the potential
20 claimants, i.e., the people who had cargo on board that
21 vessel. These were private individuals, merchants who had put
22 cargo on board a vessel. Some of them were in South America.
23 Some of them were in Spain.

24 And we have prepared a proposed notice to go to both
25 a Spanish publication of general jurisdiction -- general

1 circulation and also some Spanish -- some South American ones,
2 notably Argentina and Uruguay where the vessel started.

3 And we think -- we think that those should be -- the
4 way the rules are set forth, you're supposed to either approve
5 that or not approve that. And any additional notice is beyond
6 the initial notice. That's in the Local Rule.

7 Actually, we've had some discussion whether I'm
8 correct in that assertion or not.

9 THE COURT: Just a moment.

10 (Pause.)

11 THE COURT: All right.

12 MR. VON SPIEGELFELD: And we've proposed -- we've
13 made a proposed notice of which we've sent to Mr. Goold. He
14 has responded to that. We haven't reached an agreement on what
15 the proposed notice should say, but I have a feeling we're
16 going to be -- either we're going to get a resolution -- we're
17 going to resolve it between ourselves or we'll be back before
18 the Court with a proposed notice.

19 The way -- the way I read the Local Rule is, it says
20 the Court shall or may enter a requirement for additional
21 notices. The first notice is given pursuant to the Federal
22 Rules which simply state you give it in a newspaper of
23 general --

24 THE COURT: Correct.

25 MR. VON SPIEGELFELD: -- circulation. If -- the

1 Court can then order additional notices if it deems it
2 appropriate.

3 It's towards the beginning of the rules, I think, as
4 I remember them.

5 THE COURT: Well, obviously the difficulty -- I am
6 assuming -- and perhaps I shouldn't assume -- but I'm assuming
7 that there will be no -- given the age of these vessels and
8 perhaps the state of the world economy at that time, that there
9 may not have been insurance claims with respect to any of these
10 vessels. Certainly that would be a presumption.

11 So you're talking about the descendants and --

12 MR. VON SPIEGELFELD: We're talking about the
13 descendants and theoretically if it was a company, some
14 merchant -- some company that still exists, but primarily
15 descendants, yes.

16 THE COURT: Well, all right. We'll see where that
17 goes.

18 Anything else that you wanted to raise as far as
19 scheduling dates?

20 MR. VON SPIEGELFELD: No. I think that's pretty much
21 it, Your Honor.

22 THE COURT: Mr. Goold, you've been waiting patiently.

23 MR. GOOLD: That's my job. Thank you, Your Honor.

24 Well, I'll address 614 first, because I'm sure it's
25 caught the Court's eye that, yes, as far as we're concerned, it

1 is the Mercedes; photographs don't lie. And we took care to
2 put up front in our interrogatory answers --

3 THE COURT: I noticed that.

4 MR. GOOLD: -- the sovereign immunity point. So we
5 believe that guides indeed must guide, I say with all respect,
6 the proceedings from this chapter forward because it goes to
7 subject matter jurisdiction which must be determined by the
8 Court in the ordinary case at the outset. And when you're
9 talking about a warship of another nation, the course, I
10 believe, the Court needs to follow was chartered -- charted as
11 early as 1812 during the Napoleonic wars by Chief Justice
12 Marshall in -- when it was a French brig in the Schooner
13 Exchange, 11 U.S. 116, where the Supreme Court put to the top
14 of its docket whether the U.S. courts would consider claims
15 against a public armed vessel of another nation.

16 And those principles have -- if there's one body of
17 law that's remained the same ever since, continuing on down
18 from there to the Eleventh Circuit and this court, it has been
19 that. And I won't go through all the Supreme Court decisions,
20 et cetera, but I'll just note, for example, that the Eleventh
21 Circuit has similarly held that where it's a question of FSIA,
22 the Court should inquire into whether it has subject matter
23 jurisdiction at the earliest possible stage.

24 THE COURT: Can you point to me an FSIA case that has
25 applied the immunity principles to an in rem action as opposed

1 to an in personam action?

2 MR. GOOLD: Yes, Your Honor. I can read off a list
3 of cases, if you'd like. There's certainly a long line of
4 cases where -- and more commonly, yes, it is a floating ship --
5 but whether it is Liberian, Angolan, Algerian, et cetera, when
6 the owner comes forward with what is typically a 12(b)(1)
7 motion with the declarations, et cetera, that is the first
8 order of business and the exclusive order of business. And I'd
9 be happy to --

10 THE COURT: Well, I expect --

11 MR. GOOLD: -- rattle off some cites, if you'd like.

12 THE COURT: -- I will see that in your motion.

13 MR. GOOLD: Yes, I suspect you will.

14 So as to case --

15 THE COURT: Well, let me ask you, with respect to the
16 process --

17 MR. GOOLD: Yes, with respect to the process -- well,
18 two parts: First -- so I would certainly envision a 12(b)(1)
19 motion accompanied by the declarations by Spanish government
20 people, et cetera, as to the history of the vessel, which
21 you've seen a taste of --

22 THE COURT: Right.

23 MR. GOOLD: -- in the interrogatory answer; the
24 identity of the vessel, the special sensitivity of this vessel
25 that you've seen a bit of as what we say is the first order of

1 business. And if there's one case I would respectfully refer
2 the Court to, it would be in this court Judge Bucklew's
3 decision in Howland v. Hertz where -- and that's 431 F.Supp 2d
4 1238.

5 THE COURT: Twelve what?

6 MR. GOOLD: Thirty-eight, 2006, a case involving the
7 Bank of Indonesia where she laid out the principles regarding
8 what was called a 12(b)(1) factual attack.

9 THE COURT: I'm familiar with that.

10 MR. GOOLD: Okay.

11 THE COURT: And, frankly, I was -- as you were
12 talking about a 12(b)(1) motion, I was pondering that in my
13 mind as to whether we needed an evidentiary hearing or whether
14 it would be sufficient on the papers, including the affidavits,
15 and I'm -- I understand the argument, so --

16 MR. GOOLD: Yeah. So my --

17 THE COURT: The question is whether you want to wait
18 until the close of discovery to do this or whether you want to
19 wait --

20 MR. GOOLD: Well, I think I've got to press forward
21 as rapidly and as single-mindedly as the cases teach as well,
22 because this is national territory of Spain, and I cannot
23 consent to other kinds of proceedings or rulings, in fact,
24 because it all goes to both -- especially when you're talking
25 about a Navy ship --

1 THE COURT: I understand.

2 MR. GOOLD: -- the kinds of sensitivities.

3 THE COURT: The only -- I think your argument or your
4 suggestion carries with it the counter argument that Odyssey is
5 entitled either to depose or investigate the bases for your
6 opinion that this is the vessel that you say it is without
7 equivocation. Obviously, without equivocation isn't the
8 standard of proof required here. But, nonetheless, you make a
9 strong claim that it is.

10 And what do you anticipate or think would be the
11 rational and reasonable and due process demand for Odyssey to
12 be able to investigate your opinion?

13 MR. GOOLD: Okay. Well, as of now, prior to the
14 motion, I don't think they are in any position to do so, and it
15 would be improper and a big hullabaloo. That's not to say that
16 it's impossible as this proceeds.

17 But let me be a little more specific, and that sounds
18 so perhaps elliptical. Our burden is to come forward and make
19 a -- what I'll call prima facie showing: This is the property,
20 territory, history, et cetera.

21 Their burden is to oppose that and try to show some
22 exception to sovereign immunity applies, but they are not, I
23 respectfully submit, entitled to open-ended discovery. It must
24 be narrowly tailored, if it is necessary at all, to some
25 specific fact put in motion by the subject matter jurisdiction

1 question.

2 And I would again refer you, if I may, to the same
3 decision by Judge Bucklew because she pulled together those
4 cases -- and I even brought spares, Your Honor, if you would
5 like -- that there's immunity from discovery; a sovereign is
6 immune from, I wish, pretrial wrangling to trial itself;
7 discovery, if any, should be ordered circumspectly and only to
8 verify allegations of specific facts crucial to an immunity
9 determination.

10 THE COURT: Well, I mean, the determination -- if --
11 if Spain were not -- if this didn't involve a sovereign nation,
12 the first order of business would be identify the ship in any
13 event.

14 MR. GOOLD: Right.

15 THE COURT: And so --

16 MR. GOOLD: So as far --

17 THE COURT: That has to be done in any event, so...

18 MR. GOOLD: Yeah. So now it's up to us to come
19 forward as we envision with the declarations, et cetera, to
20 present that to the Court. Then -- and that, by the way, would
21 cover a lot more than your Rule 26-type disclosures in any
22 case, because that's laying out the key facts and the -- and
23 the -- the evidence behind them.

24 So my view, recommendation, request would be that we
25 proceed with the subject matter jurisdiction 12(b)(1) motion.

1 I will tell you -- and I've been thinking a lot about this, as
2 you would expect -- that I would like to do that within 60
3 days. Odyssey can then oppose.

4 If they wish to apply to the Court for discovery on
5 something, I suppose they could, though there are a lot of
6 cases saying that one of the duties of the Court here is to try
7 to figure out, as you have said, how to deal with this while
8 minimizing the intrusion on the foreign sovereign, but it's too
9 early to say the courthouse door should be absolutely closed on
10 that; I recognize that --

11 THE COURT: Well, I'm also contemplating whether an
12 evidentiary hearing would be necessary and whether the papers
13 would be sufficient.

14 MR. GOOLD: Well, that's a good question. My --
15 right now I have tended to think of it, frankly, in terms of
16 papers, photos, videotapes, declarations. I wouldn't -- I'd
17 like to think about that a bit more, if I can. I never want to
18 box myself off if I -- it turns out that someone needs to
19 testify live certainly. But I suppose -- I still think the way
20 to tee it up is the -- a 12(b)(1) motion, which is a set of
21 brief and evidentiary submissions, at least beginning in the
22 form of paper and other hard media, Your Honor.

23 THE COURT: And you think you can have that done in
24 60 days?

25 MR. GOOLD: With a gulp, yes.

1 I'm doing things like looking through videotapes, and
2 then we've got to figure out, okay, how do you pick -- some of
3 that's tech stuff --

4 THE COURT: Sure.

5 MR. GOOLD: -- but that's what I'm shooting for.
6 Should I --

7 THE COURT: Let me ask you, as to the artifacts
8 pertaining to the Mercedes, has -- in Spain's view, has Odyssey
9 uncovered anything that may be the wreck of a -- or the
10 artifacts of a different ship, a different wreck?

11 MR. GOOLD: No, Your Honor, apart from the normal
12 unfortunate quotient of trash that you'll find anywhere on the
13 seabed, I don't think anyone on board the Mercedes was drinking
14 a -- from a Schwepps gin and tonic water can or -- there's a
15 fishing net wrapped around a cannon. There's that kind of
16 thing. But everything we have seen --

17 THE COURT: Points to that?

18 MR. GOOLD: -- from Spanish Navy cannons, Spanish
19 Navy this, Spanish Navy that, points to the one and only
20 ship -- the one and only frigate that exploded and sank in 1804
21 at a specific location --

22 THE COURT: All right.

23 MR. GOOLD: -- west of Gibraltar, Your Honor. So
24 that's what I have in mind as to 614.

25 On the question of notice, I think, with great

1 respect, that's a -- would be a -- I don't want to sound
2 disrespectful -- a fool's errand. If there's subject matter
3 jurisdiction -- if there's no subject matter jurisdiction,
4 there's no subject matter jurisdiction no matter how many
5 people might end up writing letters to this Court.

6 And if there are claims by descendants of the crew of
7 this ship that they didn't get enough in terms of pension or
8 whatever, that's obviously not a matter for this Court to deal
9 with; that's a matter for the Spanish process under the laws of
10 Spain. This ship was under the exclusive legal control and
11 jurisdiction, in our view, of the Kingdom of Spain.

12 I could go on to 1685, if you would like, or respond
13 to any questions, or whatever the Court wishes.

14 THE COURT: Well, leaving aside for a moment the
15 roadmap that you've suggested, for argument's sake, if you
16 would give me the dates -- well, let's do it this way: Let me
17 hear what you have to say about -- about 1685, the Merchant
18 Royale, and dates as well.

19 MR. GOOLD: Okay. A disclaimer up front: My -- my
20 vision is a little less clear on that one --

21 THE COURT: So is mine.

22 MR. GOOLD: -- but I -- but I'll explain why. We
23 agree everything on the seabed suggests it is this Merchant
24 Royale. We have seen documentary evidence that that ship was
25 in Cadiz, Spain, home of Admiral Nucci, from April through

1 September 1641 while awaiting to take on board a large amount
2 of money of the crusada, the Crusade, funds -- I'll indulge the
3 Court in a little bit of history -- that the -- were raised
4 through the church but awarded by the Pope to the king as royal
5 revenues for purposes of -- well --

6 THE COURT: Proselytizing.

7 MR. GOOLD: -- proselytizing by one means or
8 another. And that was handled by the tesserro henerao
9 (phonetic), an -- an official of the crown given that
10 responsibility.

11 We see strong evidence that the money, some or all of
12 it, was put on that ship. I will tell you, Your Honor, that
13 there's also evidence that there was a sister ship with it, and
14 these were both British ships, as you know. And at least the
15 Merchant Royale didn't make it.

16 Where did the money go? Is it there or what? We
17 know the ship did not sink catastrophically. Frankly,
18 Your Honor, when we've looked at the photo mosaic-type
19 materials, there is very strong evidence, at least in the view
20 of myself and those who advise me, that this Odyssey -- this
21 ship is no stranger to previous visitors, and Odyssey was not
22 the first company there. In fact, there have been statements
23 by a gentleman who was on Odyssey's board at one point that
24 before that, sometime in the past, he had been there.

25 Odyssey tells me they have not found the money. If

1 the money is there, we would consider it the same as a
2 present-day counterpart, a shipment by a central bank subject
3 to sovereign immunity, but we don't know if it is, in fact,
4 there. I've told you what I'm told by Odyssey.

5 So it all revolves, at least in the first instance,
6 on a factual question about, is it there? We would concede, I
7 have seen no evidence as yet -- can't foreclose the
8 possibility -- that the ship was bareboat chartered to Spain.
9 I don't think that was the case, from what I know so far. So
10 we are not the master of the vessel or the owner of the
11 vessel.

12 The question from a management point of view -- and I
13 suppose also shaped by the FSIA proposition -- is, okay, do we
14 have a subject matter jurisdiction issue as to some material
15 that may or may not be at this site, and how do we get to the
16 bottom of that?

17 And the answer to that, I would respectfully suggest,
18 is in Odyssey's hands or data bank --

19 THE COURT: Robot.

20 MR. GOOLD: -- or knowledge or Mr. Bray's, because,
21 remember, he did an awful lot of research, got a lot of money
22 for it. And if that information got out on the table, we could
23 make some very more targeted decisions about where to go with
24 this case. That was one of the reasons why I had hoped that
25 the January order would --

1 THE COURT: Have --

2 MR. GOOLD: Sorry.

3 THE COURT: Have any -- I'm not familiar enough with
4 the recordkeeping of Spain's bureaucracy at the time, although
5 I know I -- I've read it's legendary -- but have any gold coins
6 been recorded and -- from that site, and are any of the gold
7 coins, if they have been recovered, traceable to this
8 shipment?

9 MR. GOOLD: I -- I'll tell you exactly what I know
10 and what I don't know. Yes, the recordkeeping is legendary,
11 but also there are gaps, as you might expect. It's not all
12 retrievable on a hard drive from 1641.

13 We see evidence, documentary evidence, that the money
14 was gathered, came in the form of copper coins and, you know,
15 stuff from the local church level; then it gets consolidated.
16 Then it gets put in a common currency suitable for shipment
17 abroad, put in standardized chests of the -- that were the --
18 guided by the weight a mule could carry.

19 We understand that the official who was responsible
20 for this function reported a shortfall in the amount he was
21 able to get to the Spanish army in Flanders that year. I won't
22 specify the exact amount for fear of precipitating the
23 treasure-hunting free-for-all that Odyssey sometimes say they
24 worry about.

25 We have not as yet seen the -- any detailed

1 postmortem-type stuff of, where did it go? Woe is us, the ship
2 sank, that kind of thing.

3 I fully expect, again, that's the kind of thing that
4 Odyssey went through quite thoroughly long before us, and we're
5 just, sort of, retracing their footsteps through archives,
6 Your Honor.

7 THE COURT: So essentially what you are saying is
8 that if an FSIA argument applies, it would apply to cargo that
9 may not have been recovered that may not exist on the site.
10 It, in effect, would be an academic answer or an advisory
11 opinion of some sort. That if it does, the FSIA applies, and
12 yet the Court would be on a dual track of applying either the
13 law of salvage or the law of finds which, by my reading in the
14 very end on a case, perhaps, like this, is a distinction
15 without a difference because the title would ultimately go to
16 Odyssey.

17 So how -- how would -- and let's assume that two
18 years or three years from now this case is processed and
19 Odyssey eventually gets title to whatever is under the water,
20 the wreck, and it were to discover coins that it contends is
21 not Spain's or at least not part of the shipment, and you say
22 it was; what's, then, the relief? What happens next?

23 MR. GOOLD: I don't know. I do know that I thought
24 about whether to bring something in the nature of a declaratory
25 judgment that -- but it would be so conditional.

1 If this material is there and it was what the Spanish
2 records say, then it is -- whatever might happen to the rest of
3 the ship and anything else they -- broken bottles or whatever
4 else they recovered --

5 THE COURT: Isn't this more appropriate for a
6 resolution between Spain and Odyssey as to the recovery of
7 these items in an out-of-court settlement? I mean, isn't that
8 the wisest course and the most efficient course to -- to --

9 MR. GOOLD: There's some logic --

10 THE COURT: -- take?

11 MR. GOOLD: I'm sorry; I beg your pardon, Your Honor.

12 THE COURT: No, I'm finished.

13 MR. GOOLD: There's some logic to that. What it
14 turns on is, what do they know? If they were to come forward
15 and say, look, Spain --

16 THE COURT: They may not know any more than you do,
17 Mr. Goold.

18 MR. GOOLD: Oh, I'm sure they do. If there's one
19 thing I have faith in --

20 THE COURT: Are you a conspiracy theorist,
21 Mr. Goold?

22 (Laughter.)

23 MR. GOOLD: No. No. No. I just know that they
24 bought that Bray file, the infamous Bray file, and it caused
25 them to decide to go out and look for this ship, and then the

1 Bray agreement recites that they had been doing their other
2 research before that. And I have seen other glimpses of how
3 extensive the archival search process is by them, as we've
4 discussed previously.

5 So my proposal would be extend, require, beseech
6 disclosure as to what happened with this ship and what it took
7 on board in Cadiz, Spain, on or about September 1641, and then
8 we can make informed judgments.

9 I've asked that question of Odyssey informally.
10 Ms. MacConnel doesn't want the people to tell me, like, when
11 we're meeting looking at maps and so on. It seemed to me a
12 simple matter, and then we could report back to Your Honor
13 where we go from there.

14 THE COURT: And this would do what? Because if you
15 haven't found anything on the bottom of the ocean, what
16 difference does it make what you knew before you went out
17 there?

18 MR. GOOLD: Pardon me? Oh. As to --

19 THE COURT: I say, if you haven't found anything at
20 the bottom of the ocean --

21 MR. GOOLD: That's the risk they run. That's the
22 risk they run. I have enough where I have reason to believe
23 that this ship left port with sovereign immune property on it.
24 I want to protect that position.

25 I will also add one more thing and then --

1 THE COURT: I have to say that -- I mean, the
2 provision that you cite in the FSIA at first blush isn't near
3 as convincing as the argument you make in the other case so
4 that -- not that I am going to be the decider in this. It
5 certainly very -- very well -- will be ultimately up to
6 Judge Merryday.

7 But, nonetheless, without having seen the briefs,
8 because none have been filed, it's -- it doesn't have the
9 logical appeal to me that the other argument does.

10 MR. GOOLD: I -- I have --

11 THE COURT: It seems a little bit of a stretch,
12 Mr. Goold. That's what I'm saying.

13 MR. GOOLD: I humbly respect your suggestion. That's
14 easy to say if you don't live in a monarchy or have never -- in
15 a country that's never been a monarchy. At that time the king
16 was the monetary authority --

17 THE COURT: Oh, I understand, the supreme ruler.

18 MR. GOOLD: -- but that's a historical question, yes.

19 THE COURT: I understand that.

20 MR. GOOLD: Yes.

21 So my proposal, which -- my vision, which admittedly
22 is a bit blurred, would be to require the disclosures as to
23 what is known about the material on board with specific
24 reference to the stuff I'm talking about. If there were
25 elephant tusks or whatever --

1 THE COURT: Let's assume --

2 MR. GOOLD: -- that man was carrying around for his
3 own account, we don't claim it.

4 THE COURT: Let's assume, Mr. Goold, that I were to
5 take Odyssey's position on -- and reschedule the case
6 management landscape and give these new dates for discovery,
7 and discovery would proceed as any other case. You could
8 propound any interrogatories you want and requests for
9 admissions, all the tools of discovery; focus on what issue you
10 thought was appropriate. If the current issue that you've just
11 outlined for the Court is the one that you want to hammer on,
12 you have at it.

13 Come the close of discovery -- which, let's say, is
14 the end of the year -- you have to make some decisions about
15 what dispositive motions you're going to file. And you know no
16 more about whether these coins are at the bottom of the sea,
17 because none have been recovered. And so you file your motions
18 as best you can, and the first order of business for the Court
19 to decide is what's the identity of the vessel. We find that
20 it's the Merchant Royale. And you want to lay claim to some of
21 the property, but that property has not been recovered. What
22 are you going to ask the Court to do?

23 MR. GOOLD: Well, then, I would be in a holding
24 position, that if and when -- whether that's a stay or Odyssey
25 goes and does whatever they want --

1 THE COURT: But wouldn't the law -- wouldn't the law
2 envision the law of -- assume the Court takes the law of
3 salvage as opposed to the law of finds and the Court were to
4 conclude that -- that it is entitled -- that is, Odyssey is
5 entitled to a lien on what's recovered, and no claimant has
6 come forward and, therefore, they are entitled to what they
7 recover.

8 MR. GOOLD: As to the rest of the thing, yeah.
9 Okay. Well, that's --

10 THE COURT: So what happens?

11 MR. GOOLD: Yeah, I'm not in a position -- I'm trying
12 to be as candid as I can with the Court -- I'm not -- we don't
13 claim to be the master --

14 THE COURT: Right.

15 MR. GOOLD: -- or owner of that vessel. If there are
16 bracelets -- there's evidence of trade with Africa, for
17 example -- we have no reason to think that had anything to do
18 with Spain. But I would say this -- and I think it's an
19 important point here -- that if we were to go through all of
20 the Rule 26 disclosures, interrogatories and depositions and
21 schedule all of this stuff for the -- it would be incredibly
22 inefficient when --

23 THE COURT: It could be incredibly expensive as well.

24 MR. GOOLD: And expensive, too.

25 THE COURT: And that's why I go back to my original

1 suggestion -- not to conduct a mediation conference right here
2 in open court -- but it would seem to me that Spain's interest
3 in the cargo of the Merchant Royale is not the same as its
4 heritage and historic significance of the Mercedes. I mean,
5 they are two different vessels and -- and two different --
6 what's the word? -- provenance or pedigree.

7 MR. GOOLD: Yes, that's true, Your Honor. And when
8 you began, in fact, by talking about whether we're now --
9 should be addressing divergence of the cases, you're right.
10 And so as to 1685 -- and I think it -- I don't want it to be
11 the tail wagging the dog here -- it just calls for a bit of
12 creativity and/or candor from Odyssey -- creativity by myself
13 or the Court or candor by Odyssey -- to figure out where we go
14 with that one.

15 MR. VON SPIEGELFELD: Your Honor, if I might, I think
16 there's a little confusion here. My understanding of the law
17 is that the cases before this Court is in regards to the
18 artifacts that have been brought before the Middle District of
19 Florida, and that is what he -- Mr. Goold has to make a
20 determination of whether or not his client --

21 THE COURT: Well, that's --

22 MR. VON SPIEGELFELD: The Court can't --

23 THE COURT: As I understand the law,
24 Mr. Von Spiegel, we're not -- we're not -- although the
25 artifacts bring the -- bring the jurisdiction of the Court to

1 bear in the -- in a tremendous piece of fiction, if -- if you
2 are seeking a salvage award, the artifacts only give you in rem
3 jurisdiction, but they give you in rem jurisdiction not solely
4 as to those artifacts but to the shipwreck itself, the ship
5 itself.

6 MR. VON SPIEGELFELD: As to -- as to continuing the
7 salvage. But as to getting title to those goods, to the -- to
8 whatever the goods are, they have to be brought before the
9 Middle District.

10 The Fourth Circuit has discussed this in regards to
11 the Titanic. And actually in the Titanic case -- and it's a
12 2002 case -- decision by the Fourth Circuit -- it's an
13 interesting case because there some of the goods that were
14 originally salvaged were taken to France, and some were in the
15 Fourth Circuit. And what they said -- what the salvors said
16 is, hey, you know, those are our goods that are in France.
17 And, in fact, the French court awarded those to us, and we want
18 the U.S. court to award them to us, too. And the U.S. court
19 said, well, that's interesting, but they're in France. We
20 don't have jurisdiction over them in France. We can't give you
21 title to them in the United States.

22 And what we're talking about here is -- and the
23 reason that Odyssey comes before the Court on these cases is to
24 obtain the right of salvor in possession over the site.

25 Now, if we at some point -- and I have no reason to

1 believe this to be true or not true -- but let's say at some
2 point we suddenly find big boxes of gold coins, and we bring
3 them up, and we bring them back to the Middle District of
4 Florida; we would then ask this Court for title to those as
5 salvors of those coins. At that point in time if Mr. Goold
6 says, well, those are --

7 THE COURT: But wouldn't you have already --

8 MR. VON SPIEGELFELD: -- Spanish coins --

9 THE COURT: But wouldn't you already have title to
10 it --

11 MR. VON SPIEGELFELD: No.

12 THE COURT: -- if this Court were adjudicated?

13 MR. VON SPIEGELFELD: No. At that point we would be
14 entitled to the salvage -- to -- to conduct the salvage. We'd
15 be the salvors in possession. But we would still have to have
16 the Court make a determination as to whether we were salvors or
17 whether it was finds and whether we had a hundred percent title
18 to it or if we have 80 percent or 90 percent, as in the case of
19 the Central America. But that comes after they're brought to
20 the Middle District.

21 In regards to the '14 case, I -- I can't remember all
22 these numbers; I'm not very good on numbers -- but the 14 case,
23 here we have a -- a large number of coins. Now, we do not have
24 the vessel here. We're not salvaging the vessel. And the
25 videos would show clearly that these coins are just lying

1 around in clumps in the middle of the ocean. They are not
2 lying inside a hull -- they are not lying inside the hull of a
3 ship, or anything like that. They are clumps of coins that are
4 lying around in the middle of the ocean.

5 And the question is, who owns those coins? And the
6 reason -- one of the reasons why discovery will be necessary is
7 that Mr. Goold is going to say, well, this was our vessel, and
8 these are our coins. And you're not allowed to touch them or
9 have anything to do with them.

10 And we have to at least have the right to depose and
11 to find out from his people why they are asserting that these
12 are -- this is their coins, their gold, their whatever, when,
13 in fact, there's no vessel. There's some cannons here; there's
14 some cannons there over a large area of -- of ground. And then
15 there are clumps of coins.

16 No boxes of coins -- Mr. Goold was talking about
17 boxes of coins in regards to the Merchant Royale. None of that
18 was found. There's snuff containers, so obviously people had
19 bad habits back then, too. But obviously that -- that doesn't
20 mean that that belonged to the Kingdom of Spain or anything
21 else. It would belong to whoever wanted to use the snuff.

22 So the fact of the matter is, we do have two
23 different cases altogether. In the one we have a lot of
24 property that we're asking for title to whether it be through
25 salvage or finds. And Mr. Goold is asserting that that's

1 sovereign property.

2 In the other case we have not -- we have very few
3 items, and we're asking for title to those few items. And we
4 have two people who are contending that they have a right to
5 those -- those few items that we have salvaged. That's where
6 we stand today.

7 The Court has provided us with salvor-in-possession
8 status. And as such, we are theoretically entitled to continue
9 salvaging those sites. That's what the law has allowed us, and
10 this goes -- goes back to a lot of cases. The Court -- you
11 know, we'll be glad to brief that, if the Court wants, but, I
12 mean, that's well-established law.

13 And you're absolutely correct: It seems like a
14 far-fetched fiction. But by bringing those few artifacts into
15 the Court, that's what gives us the right of salvor in
16 possession.

17 It's interesting to note that there's also an
18 Eleventh Circuit case which holds that the mere fact that you
19 own -- it discusses -- it doesn't -- it was not the ruling, but
20 it discusses the fact that the mere fact that a -- an owner of
21 a vessel -- or in that case it was an airplane -- doesn't want
22 it salvaged gives them certain rights but only as to what they
23 own, not as to what they didn't own.

24 And they don't have a right to tell a salvor, or
25 anybody else, don't pick up what I don't own. And our position

1 is that, in this particular case, the Spanish government didn't
2 own what has been picked up by Odyssey.

3 THE COURT: What -- should England be given -- should
4 Great Britain be given notice as to the Merchant Royale?

5 MR. GOOLD: I believe that would be appropriate,
6 yes.

7 I'm -- I'm not sure I understand a fair amount of
8 what Mr. Von Spiegel, my learned friend, has said, with all
9 respect. The -- artifacts from the Merchant Royale that we've
10 seen in photographs, at least the stuff brought here or in the
11 photographs you've seen, look like typical English stuff of
12 that era. We don't claim them.

13 They claim a right, by virtue of having brought that
14 here, as the Court has pointed out, to anything else that might
15 be on that ship. You've heard my position on the coins -- on
16 the royal monetary authority shipment.

17 THE COURT: Is the Merchant Royale -- do we know
18 whether it was a naval vessel of the king's or -- or was it a
19 private vessel? You mentioned a bareboat charter --

20 MR. GOOLD: Yeah.

21 THE COURT: -- Mr. Goold.

22 MR. GOOLD: From what I've seen, it was a -- a
23 private -- privately-owned vessel.

24 THE COURT: So I take it what -- if it's not -- if
25 it's not the property of the crown -- or was not the property

1 of the crown -- why would notice be appropriate, then, to
2 England, to Great Britain? They wouldn't be able to raise the
3 foreign service -- Foreign Sovereign Immunity Act, would they?

4 MR. GOOLD: Well, that's really Odyssey's business,
5 not mine. But if they're so worried about descendants, then
6 those -- there was a Captain John Lemery who was apparently the
7 owner, entrepreneur in charge of this ship, and he would have
8 been the master of the vessel. And it is the -- in the words
9 of the Eleventh Circuit, it is the privilege of the master of
10 the vessel to reject salvage, and that's why we're in a
11 different position vis-a-vis the Mercedes, because the master
12 of the vessel is present and active.

13 As to what's at the Mercedes on -- well, this will
14 come up in the motion; but whoever jettisoned material into the
15 sea, dismantled the ship, threw the Spanish Navy cannons
16 overboard, took the rudder off and threw it into the sea, took
17 the dishes off and threw the china cupboard into the sea, threw
18 the ship's pump into the sea, ripped the hull into pieces by an
19 explosion and threw them into the sea, et cetera, and then
20 presumably swam away, as Odyssey would have it, and that's
21 nonsense, but that's our burden to present to you and we will.

22 MR. VON SPIEGELFELD: I didn't understand that. I
23 didn't -- I didn't think I said that, Your Honor.

24 THE COURT: Well, I'm not sure I understand it
25 either. But, Mr. Goold, if -- if I keep the dates as Odyssey

1 suggests in the Merchant Royale case -- and obviously you can
2 file a 12(b)(1) motion at any time -- am I to anticipate that
3 you would file a 12(b)(1) motion in the 60-day period along the
4 lines of -- in the Mercedes case?

5 MR. GOOLD: To be honest with you, I don't know. And
6 I don't think it would be within 60 days because we've not
7 given it the same priority as the Mercedes.

8 We've seen some of the documents but not all, enough
9 to see the trail leading to this shipment, this -- talking
10 about the 1685 case.

11 I keep coming back -- I apologize, I don't mean to be
12 a broken record -- but what it takes to know where to go with
13 this case is right there on the other side of the table. If
14 you do want to go through the whole case management order,
15 interrogatories, all of that kind of stuff, one, I suspect
16 we'll have big fights about that, but it needs to be, from my
17 point of view as to me, narrowly tailored if it's anything
18 aimed at Spain. And I would think that Mr. Butler's six-month
19 rollover is a lot more sensible in any event than the dates --
20 realistic than the dates -- well, I'm not sure about that.
21 I -- Your Honor, I really don't know. It's a guessing game
22 here, and that's why it's so frustrating to me because the
23 answer is right there.

24 THE COURT: Mr. Von Spiegelfeld, not to pry into
25 Odyssey's intellectual property or schedule of recovery, but

1 let's say within a year's time -- well, let's make it more
2 exact. If I were to adopt the close of discovery -- it was
3 roughly October of this year -- how many more times, if any,
4 would Odyssey be over the Merchant Royale site?

5 MR. VON SPIEGELFELD: Well, your -- I can say without
6 any hesitation I haven't got the foggiest idea --

7 THE COURT: Maybe your co-counsel would.

8 MR. VON SPIEGELFELD: -- but I will -- I will say --
9 let me just say that from the point of view of how these --
10 I'll go back to the Titanic case. That case started in
11 nineteen something --

12 THE COURT: I understand.

13 MR. VON SPIEGELFELD: -- and was still ongoing in
14 2002 because they were still going back.

15 THE COURT: And I --

16 MR. VON SPIEGELFELD: And I don't anticipate that --

17 THE COURT: Judge Merryday and I would like to -- he
18 has a lifetime appointment. I do not. But I'm sure that his
19 lifetime appointment is not something that he wants to be
20 presiding over this particular case.

21 MR. VON SPIEGELFELD: My -- my -- my point is that I
22 do not anticipate this being a Titanic-type case for a very
23 simple reason: If -- if there were -- if Odyssey saw great big
24 boxes of gold, they probably would have gotten them by now, so
25 that -- and the pictures have been shown. The entire video

1 mosaic has been shown to Mr. Goold and to his clients.

2 I don't know what he keeps referring to about we have
3 some sort of inside knowledge. I don't know what that is. But
4 I do know that it is -- in all likelihood all of the -- the
5 archaeological discovery at that site will be conducted within
6 the next year to two years.

7 Now, having said that, it's very possible that it's
8 already been conducted as we speak today, because Ms. MacConnel
9 has already pointed out that they did send somebody back. They
10 have gone down and looked at some more stuff.

11 If they didn't find anything -- or if they did find
12 something -- that will certainly make -- be more enlightening
13 to the Court. At that point, once I have those answers, I'll
14 be able to give you a better answer.

15 THE COURT: What kind of discovery has been conducted
16 in the Merchant Royale case as far as -- have any depositions
17 occurred?

18 MR. VON SPIEGELFELD: No. No depositions, nothing
19 other than we provided Mr. Goold and his client with all of the
20 photo mosaics, with photographs, with -- with video; and we've
21 answered the interrogatories, and they've answered
22 interrogatories.

23 THE COURT: All right. Anything else that anybody
24 wants to discuss or add or any checklist that you have that we
25 didn't cover?

1 MR. GOOLD: One procedural guidance question.
2 Vis-a-vis the anticipated, should the Court permit, 12(b)(1)
3 motion, I would expect it to include photos of artifacts, which
4 the Court has already ruled are not confidential. We've
5 refrained from releasing those, as you may or may not have
6 noticed.

7 There are also artifacts on the seabed. These are
8 not the photo mosaics but individual cannons, dishes, pots,
9 et cetera. And at some point I'll need to get clarification as
10 to whether a photograph of an artifact on the seabed -- in
11 other words, it's not a landscape but a specific artifact -- is
12 confidential or not under your ruling addressing that of
13 earlier -- in March.

14 THE COURT: Not by the protective order that you've
15 issued, no.

16 MR. GOOLD: Okay.

17 MS. MacCONNEL: Your Honor, just one thing, if we
18 could get some guidance to prevent us from having to come
19 back. We do plan to publish notice in Spain, given Spain's
20 assertion that this is the Mercedes, giving the lists of
21 passengers and merchants we know were transporting private
22 goods aboard that ship. What we had proposed to do was to
23 publish our web site, Odyssey's web site, and we would have a
24 very specific link directly to those lists -- they are rather
25 extensive -- with the names of the passengers and the merchants

1 who were transporting private goods. Mr. Goold has objected to
2 that. I don't know if Your Honor would have any guidance --

3 THE COURT: My inclination would be to resolve the
4 FSIA issue first before discussing any notice or even
5 contemplating any notice issues.

6 MS. MacCONNEL: So you would like us to refrain,
7 then, from publishing that notice?

8 THE COURT: Yes.

9 MS. MacCONNEL: Okay. Thank you, Your Honor.

10 THE COURT: I'm going to consider what everybody has
11 said and issue a case management order, but my inclination is
12 to have two separate tracks as to these cases. But I want to
13 think about it some more, and I'll issue the appropriate
14 order.

15 Mr. Butler, I didn't ask you if you had anything else
16 that you wanted to say.

17 MR. BUTLER: No, Your Honor. We're good for right
18 now.

19 THE COURT: All right.

20 MR. BUTLER: Thank you.

21 THE COURT: Thank you.

22 All right. We'll be in recess.

23 MS. MacCONNEL: Thank you, Your Honor.

24 MR. GOOLD: Thank you, Your Honor.

25 (Thereupon, the proceedings in this case for this

1 date were concluded at this time.)

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C E R T I F I C A T E

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*I, Dennis Miracle, Official Court Reporter, do hereby certify that the foregoing proceedings were transcribed by me from a digital record that was produced by the United States District Court for the Middle District of Florida, Tampa Division, and is a true and accurate record of said proceedings to the best of my ability, **based on the quality of the recording.***

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/s/Dennis Miracle

June 20, 2008

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Dennis Miracle

Date