

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
IN ADMIRALTY

ODYSSEY MARINE EXPLORATION, INC.	:	
	:	
Plaintiff,	:	CIVIL ACTION
	:	
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;	:	
<i>in rem</i>	:	
and	:	
	:	
The Kingdom of Spain and,	:	
The Republic of Peru	:	
	:	
Claimants.	:	
_____ /	:	

**MOTION TO SET DEADLINE FOR CLAIMS**

COMES NOW the Plaintiff, Odyssey Marine Exploration, Inc. and files, this Motion to Set Deadline for Claims and in support hereof states as follows:

1. This case arises out of Plaintiff Odyssey’s admiralty arrest of the Defendant Site located in the Atlantic Ocean beyond the territorial waters of any country and the determination of rights to coins and artifacts recovered therefrom.
2. On April 9, 2007, Odyssey filed the Warrant of Arrest in this case.
3. On April 12, 2007, Odyssey posted notice of the arrest at the Defendant Site.

4. On April 30, 2007, Odyssey published Notice of the arrest in The Tampa Tribune daily newspaper published in Tampa in Hillsborough County, Florida. (Dkt. #10)

5. On May 31, 2007, The Kingdom of Spain filed its Verified Claim.

6. On August 19, 2008, the Republic of Peru filed its Verified Conditional Claim.

7. This case has been before the Court for over one year, and all proper notices have been given.

8. In the interest of expediency, judicial economy and justice, Odyssey hereby requests this Court enter an order setting a date certain in which claimants must submit claims to the property which is the subject of this action. Imposition of a deadline for filing claims will not prejudice either claimant currently in the case.

#### **MEMORANDUM OF LAW**

Rule 7.03 (f) of the Admiralty and Maritime Rules for the Middle District of Florida states as follows:

Unless otherwise ordered by the court, any claimant of property subject to an action *in rem* shall: (1) file his claim within ten (10) days after process has been executed; and (2) serve his answer within twenty (20) days after the filing of the claim.

Clearly the rule of procedure contemplates a shorter time frame for claimants to come forward in admiralty arrests (10 days to submit a claim and 20 days to file an Answer) than the 526 days that have passed since Odyssey's filing of the arrest in this case. Considering the complicated nature of the case and the difficulty in confirming identification of the site, the extra time has been warranted, however with all Odyssey's theories about the site set

forth publicly, Odyssey believes that sufficient time has elapsed for evaluation of this information by potential claimants.

Odyssey has or will have provided all proper and necessary notice to potential claimants in this case.

At the most recent preliminary pretrial conference in this case held before the Court on June 9, 2008, Odyssey inquired as to the possibility of Notice to be published to alert potential claimants who may be descendants of passengers and/or merchants transporting private goods aboard the *Nuestra Senora de las Mercedes*. This issue arose as a result of Claimant, Spain's assertion that it had concluded that the vessel related to the cargo recovered from the Defendant Site was the *Mercedes*. Although Odyssey disputes that sufficient evidence exists to conclusively identify a specific vessel related to the cargo, Odyssey has obtained documentation listing the private merchants and owners of cargo on board the *Mercedes* at the time of its loss and believes that the publication of that information would fulfill Odyssey's obligation to notify any potential claimants that have come to their attention. At the hearing, the Court suggested that specific notice be delayed pending filing of Spain's Motion to Dismiss based upon the Foreign Sovereign Immunities Act and Odyssey's Response thereto.

Regardless of whether notice published by Odyssey includes a list of owners of cargo aboard the *Mercedes*, Odyssey has provided proper notice via a publication in the Spanish Newspaper El País on September 30, 2007, in Spain as to the arrest. (A copy of the Notice is attached hereto as Exhibit A.) Furthermore, the significant press coverage of this particular arrest and recovery (code named the "Black Swan") has certainly given any interested party

ample opportunity to submit a claim to property recovered by Odyssey. In fact, a publication of the list of 130 owners of the cargo aboard the *Mercedes* was published independently in El País on September 7, 2008, apparently based on the independent research of a journalist for that publication.

Odyssey granted Spain's request for an extension in which to file its Motion to Dismiss; however, the delay in having this case properly adjudicated has caused and will continue to cause economic damage to Odyssey. Spain's Motion will likely refuse to acknowledge this Court's jurisdiction over property properly and legally brought before it. During the time that Spain has taken to file this Motion, a second Claimant, the Republic of Peru, has filed a conditional claim in the case. Odyssey has reason to believe that there may be additional claimants, and while Odyssey welcomes the claims of any valid claimant and acknowledges the potential interest of parties who may be related to the owners of the cargo recovered, in the interest of justice, and as contemplated by the Rules of Procedure, a deadline for filing claims in the case should be set.

A deadline for claims would not be affected by and would not have any effect upon a ruling on the Motion to Dismiss.

Thus, Odyssey respectfully requests this Honorable Court to set a deadline for the filing of any claims and/or Answers to the Complaint in this case. Odyssey would suggest a deadline not more than 60 days from the date of this Motion, but would certainly welcome any reasonable date set by the Court at its discretion. Odyssey also requests any related Order by the Court as to any further Notice to be published should the Court so deem it appropriate.

**CERTIFICATE UNDER LOCAL RULE 3.01(g)**

Pursuant to Local Rule 3.01(g), undersigned counsel certifies that Plaintiff has conferred with counsel for Spain and with counsel for Peru regarding this Motion. Neither Counsel has an objection to the Motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 17, 2008, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to James A. Goold, Covington & Burling LLP, 1201 Pennsylvania Ave., NW, Washington, DC 20004; and David C. Banker, Bush Ross P.A., 220 S. Franklin Street, P. O. Box 3913, Tampa, FL 33601, *Attorneys for Claimant, Kingdom of Spain*; and Timothy P. Shusta, Phelps Dunbar LLP, 100 S. Ashley Drive, Suite 1900, Tampa, FL 33602-5315; and Mark Maney, South Tower, Penzoil Place, 711 Louisiana, Suite 3100, Houston, TX 77002, *Attorneys for the Republic of Peru*.

s/ Allen von Spiegelfeld \_\_\_\_\_

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