

**IN THE UNITED STATES DISTRICT COURT  
FOR THE 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,  
*in rem*

and

The Kingdom of Spain, The Republic of Peru, and  
Gonzalo de Aliaga, *et al.*,

Claimants.

\_\_\_\_\_ /

Kingdom of Spain Opposition To Odyssey Marine  
Exploration Inc. Motion For Leave To Respond To The Reply  
Memorandum of Claimant, Kingdom of Spain, Supporting  
Spain's Motion to Dismiss Or For Summary Judgment

Claimant Kingdom of Spain ("Spain") opposes the Odyssey Marine Exploration ("Odyssey") Motion For Leave To Respond To The Reply Memorandum Of Claimant, Kingdom of Spain, Supporting Spain's Motion To Dismiss or For Summary Judgment (Dkt. 170) and, in support of its opposition, states as follows:

1. Odyssey has already been accorded ample opportunity to respond to Spain's Motion to Dismiss or for Summary Judgment by Odyssey's November 17, 2008 Response (Dkt. 138), eight declarations and/or memoranda submitted therewith, and more than 600

pages of exhibits, annexes, etc. Additionally, Odyssey was granted leave to file a Reply to the Republic of Peru's Response to Spain's Motion (Dkt. 152) and Odyssey's January 26, 2009 Reply thereto (Dkt. 162) includes in large part argument equally directed against Spain's motion.

2. Odyssey's motion states that the subject of payments relating to the *Mercedes* is a matter raised "for the first time" in Spain's January 26, 2009 Reply. (Dkt. 163). This is not correct. Exhibit E to Odyssey's November 17, 2008 Response to Spain's Motion (Dkt. 138; Ex. E, Carlisle Report), specifically refers to "claims for losses from the Mercedes" as "recognized . . . by the Spanish government at the time and for years afterwards." (*Id.*, p. 4). *See also id.*, pp. 22-23, with extensive citations to cited sources. Odyssey now seeks leave to submit additional matter on a subject which Odyssey raised in its response to Spain.

Odyssey had and used the opportunity to present all matter it deemed appropriate at that time. Spain replied, as was permitted, and Odyssey should not be allowed to prolong the briefing to respond to a subject Odyssey itself introduced in its response as a non-movant, especially when it had the right to present all the information it saw fit in its response.

3. In the motion, Odyssey improperly presents argument as to case law it now wishes to reargue, if granted leave, and/or discuss a specific case it evidently now wishes it had included in its response (a case which Spain believes is manifestly irrelevant). Whatever cases or argument Odyssey wished to cite or argue were for its response to Spain's motion, and Odyssey should not be allowed to set in motion yet more briefing.

4. Like all good things, briefing on the pending motion must eventually come to an end. Afterthoughts about arguments, cases or other additional matter Odyssey may now wish

it had presented when it responded to Spain's motion should not be grounds for leave to file a surrejoinder.

WHEREFORE, Spain respectfully submits that Odyssey's Opposed Motion For Leave To Respond to The Reply Memorandum of Claimant, Kingdom of Spain, Supporting Spain's Motion To Dismiss or For Summary Judgment should be denied.

Respectfully submitted on January 30, 2009,

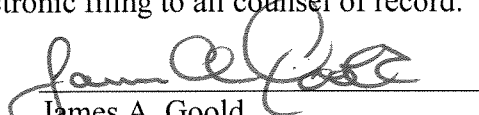
/s/ James A. Goold

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the attached Kingdom of Spain Opposition To Odyssey Marine Exploration, Motion For Leave To Respond To The Reply Memorandum of Claimant, Kingdom of Spain, Supporting Spain's Motion To Dismiss Or For Summary Judgment to be served on counsel of record by causing it to be filed with the Court's CM/EMF system which will send a notice of electronic filing to all counsel of record.

  
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Dated: January 30, 2009