

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, the Republic of Peru,	:	
Gonzalo de Aliaga (the Count of San Juan	:	
de Lurigancho) et al., Santiago de Alvear et al.,	:	
Elsa D. Whitlock, Joseph Anthony Rodriguez and	:	
Dr. Jaime Durand Palacios,	:	
	:	
Claimants.	:	
	/:	

**PLAINTIFF, ODYSSEY MARINE EXPLORATION, INC.’S RESPONSE TO
VERIFIED CLAIM OF KINGDOM OF SPAIN**

COMES NOW Plaintiff, Odyssey Marine Exploration, Inc. (“Odyssey”), pursuant to Fed. R. Civ. P. 8 (b), and files this, its Response to Claimant, Kingdom of Spain’s Verified Claim (Dkt. 13) which was filed on May 31, 2007, pursuant to Supplemental Rule C (6), and states as follows:

BACKGROUND

1. On April 9, 2007, Odyssey filed its original Complaint describing the Defendant Site and stating therein that Odyssey had not discovered evidence of a vessel at the site. (Dkt. 1, p. 3).

2. On April 30, 2007, in accordance with Supplemental Rule C (4) and Local Admiralty Rule 7.01(g), Odyssey published the Notice of Arrest and filed the affidavit of publication on May 7, 2007 (Dkt. 10).

3. On May 31, 2007, the Kingdom of Spain filed a Verified Claim indicating its belief, despite the absence of evidence of any vessel at the site, that the Defendant was in fact a Spanish ship and/or property (Dkt. 13).

4. On August 7, 2007, Odyssey filed an Amended Complaint, based on further examination of the Defendant Site, and identified the Defendant Site as “The Unidentified Shipwrecked Vessel, if any...” (Dkt. 25).

5. On May 8, 2008, the Kingdom of Spain filed its answer to court interrogatories stating it had positively identified the Defendant Site as the *Nuestra Senora de las Mercedes* (Dkt. 107).

RESPONSE TO VERIFIED CLAIM OF KINGDOM OF SPAIN

6. Claimant Kingdom of Spain (“Spain”) filed a Verified Claim on May 31, 2007, (Dkt. 13) stating in part that “the Kingdom of Spain has not abandoned its ownership rights and other rights in sunken vessels of the Kingdom of Spain, in vessels sunk while in the service of the Kingdom of Spain, and in cargo or other property of the Kingdom of Spain on or in sunken vessels.” Spain’s Verified Claim does not assert a basis for any claim specific to this Defendant Site.

7. Odyssey denies that Spain has demonstrated a valid legal interest in the Defendant Site. Odyssey realleges and reaffirms the previously provided factual evidence that clearly describes the nature and substance of the Defendant Site as well as facts which contradict Spain's assertion that the Defendant Site represents the *Mercedes* and that *Mercedes* is entitled to sovereign immunity, in its responses to Spain's Motion to Dismiss or for Summary Judgment (Dkts. 138 and 179) which, together with declarations and exhibits attached thereto, are restated and incorporated herein by reference.

8. Odyssey denies that it has located a vessel at the Defendant Site.

9. Odyssey denies that the Defendant Site or items recovered therefrom have been positively identified as being associated with the *Mercedes* or any specific vessel.

10. Odyssey further denies that Spain has demonstrated a valid legal interest in the Defendant Site or in any property which has been recovered from the site and brought into this Court's jurisdiction.

11. Odyssey contests Spain's assertion that there has been no abandonment of right or interest in the Defendant Site or items recovered therefrom.

12. Odyssey denies that the Defendant Site or any of the items recovered from the Defendant Site are subject to sovereign immunity.

13. Odyssey further denies that there has been a valid refusal of salvage by Spain as to the Defendant Site or items recovered therefrom.

14. Odyssey respects the sovereign status of Spain, but denies Spain can raise sovereign immunity as a claimant in this case or that the Defendant Site or any items recovered therefrom are subject to sovereign immunity.

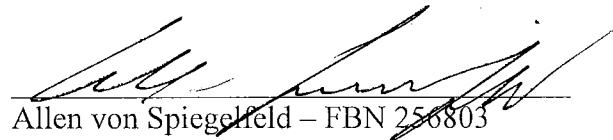
15. Odyssey denies that Spain has demonstrated a legal ownership interest in the Black Swan site or the items recovered therefrom. Odyssey demands strict proof of Spain's legal ownership interest claimed.

16. Upon strict proof and adjudication by the Court, Odyssey would recognize an ownership interest of Spain. Such interest, however, would be subject to maritime lien and an appropriate salvage award to Odyssey. *See The Sabine*, 101 U.S. 384 (1879).

17. Upon the Court's request, Odyssey can provide evidence of the labor, skill, energy, capital outlay and risk involved with the recovery as well as the archaeological preservation, onsite photography, the value of the technology and equipment used and the value of the property recovered in order to demonstrate that Odyssey is, indeed, entitled to a very liberal salvage award in this case should any party, including Spain, prove an ownership interest in property recovered. *See The BLACKWALL*, 77 U.S. 1, 14 (1869); *Columbus-America Discovery Group v. Atlantic Mutual Insurance Company*, 974 F.2d 450, 468 (4th Cir. Va. 1992); 56 F.3d 556, 571-574 (4th Cir. Va. 1995); *Deep Sea Research, Inc. v. The BROTHER JONATHAN*, 883 F. Supp. 1343, 1362 (N.D. Cal. 1995), *aff'd*, 102 F.3d 379 (9th Cir. 1996), *aff'd*, 118 S.Ct. 1464 (1998).

Dated: 3 March 2009

Respectfully submitted,



Allen von Spiegel – FBN 256803

avonsp@bankerlopez.com

Eric C. Thiel – FBN 016267

ethiel@bankerlopez.com

Banker Lopez Gassler P.A.

501 E. Kennedy Blvd.

Suite 1500

Tampa, FL 33602

(813) 221-1500

Facsimile: (813) 222-3066

and

Melinda J. MacConnel – FBN 871151

Odyssey Marine Exploration, Inc.

5215 West Laurel Street

Tampa, FL 33607

(813) 876-1776, ext. 2240

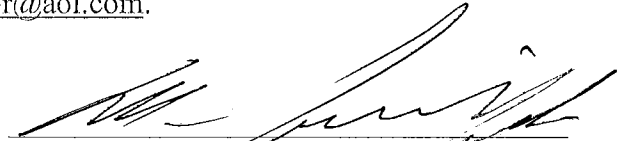
Fax: (813) 830-6609

E-mail: mmacconnel@shipwreck.net

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March __, 2009, 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 Claimant, Republic of Peru*; David Paul Horan, Horan, Wallace & Higgins, LLP, 608 Whitehead Street, Key West, FL 33040, *Attorney for Descendant Claimants*; John J McLaughlin, Wagner, Vaughan & McLaughlin, P.A., 601 Bayshore Blvd., Ste. 910, Tampa, FL 33606, *Attorney for Descendant Claimants*; Marlow V. White, Lewis & White, P.L.C., P.O. Box 1050, Tallahassee, FL 32302, *Attorney for Claimant, Elsa D. Whitlock*; Guy E. Burnette, Jr., 3020 N. Shannon Lakes Dr. Tallahassee, FL 32309, *Attorney for Claimant, Dr. Jaime Durand Palacios*, and by email to Joseph A. Rodriguez, *Pro Se/Unrepresented Party*, Email: expertdoctor@aol.com.



Allen von Spiegel – FBN 256803
avonsp@bankerlopez.com
Eric C. Thiel – FBN 016267
ethiel@bankerlopez.com
Banker Lopez Gassler P.A.
501 E. Kennedy Blvd.
Suite 1500
Tampa, FL 33602
(813) 221-1500
Facsimile: (813) 222-3066

and

Melinda J. MacConnel – FBN 871151
Odyssey Marine Exploration, Inc.
5215 West Laurel Street
Tampa, FL 33607
(813) 876-1776, ext. 2240
Fax: (813) 830-6609
E-mail: mmacconnel@shipwreck.net
Attorneys for Plaintiff