

UNITED STATES DISTRICT COURT
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, *in rem*

Defendant,

and

The Kingdom of Spain and the Republic of Peru,

Claimants.

**The Republic of Peru's Motion for Leave to File
Sur-Reply in Opposition to Spain's Motion to Dismiss or for Summary Judgment**

COMES NOW The Republic of Peru, by and through undersigned counsel and moves for leave to file a Sur-Reply in opposition to the Kingdom of Spain's Motion to Dismiss or for Summary Judgment. (Doc. 131).

The Kingdom of Spain's Reply to Peru's opposition to Spain's Motion to Dismiss (Doc. 161) raises important issues related to the claim by the Republic of Peru in this matter. Those issues deserve careful consideration by this Court, and therefore, the Republic of Peru requests leave to file a Sur-Reply, pursuant to Local Rule 3.01(d). The proposed Sur-Reply will be approximately 20 pages in length and will include as an exhibit the Affidavit of Ambassador John Norton Moore, which is approximately 13 pages.

Although denominated a Sur-Reply, this document is actually a Reply. The Kingdom of Spain's original Motion to Dismiss did not contemplate a competing claim by the Republic of Peru to the treasure. Therefore, Spain's reply to Peru's opposition (Doc. 161) was practically an initial response, and thus, this document is, in effect, a reply.

Spain's Reply is predicated on statements of "facts," stated as indisputable history, that are offensive to the Republic of Peru and that are contrary to the policy of the United States and to International Law. The Republic of Peru requests that such statements not be allowed to stand uncontested. The delay in requesting leave to file a Sur-Reply arises out of the fact that the Sur-Reply that has been prepared then had to be translated and then reviewed at various levels of the government. The sovereign nation of Peru has appeared in this action because a third party brought property, taken from Peru, into the jurisdiction of this court. In these circumstances, principles of comity dictate that the sovereign nation of Peru be allowed to respond to allegations made by the Kingdom of Spain in this action.

Clearly, this is not a simple salvage case, it involves the rights of Peru as a sovereign successor nation and Peru should be allowed to develop this issue in light of Spain's Reply. Peru's Sur-Reply will include as an exhibit, the affidavit of Ambassador John Norton Moore, one of the preeminent United States scholars on admiralty and international law. Ambassador Moore provides valuable insight into the unique legal questions presented by Peru's claims under the United Nations Convention on the Law of the Sea and on the international law on succession of states. This Court should consider the affidavit pursuant to Rule 44.1 Fed. R. Civ. P.

RULE 3.01(G) CERTIFICATE

I HEREBY CERTIFY that I have conferred with counsel for the Kingdom of Spain

and for Odyssey Marine neither has consented to filing the Sur-Reply described above.

WHEREFORE Peru respectfully requests that the Court grant leave to file a Sur-Reply to Spain's Reply to Peru's opposition to Spain's Motion to Dismiss or for Summary Judgment. The Sur-Reply has been prepared and can be filed immediately upon entry of an order granting this motion.

Respectfully Submitted,

/s/ Mark Maney
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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically filed with the Clerk of Court via CM/ECF system on April 7, 2009, which will generate and transmit Notices of Electronic Filing generated by the CM/ECF system and which will be sent via e-mail to Joseph A. Rodriguez-Menendez this April 7, 2009.

/s/ Timothy P. Shusta
Timothy P. Shusta