

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ODYSSEY MARINE EXPLORATION, INC.,
Plaintiff,

v.

Case No. 8:07-CV-614-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, et al.,

Claimants.

**MOTION OF UNITED STATES FOR AUTHORIZATION TO FILE
STATEMENT OF INTEREST AND AMICUS CURIAE BRIEF
IN SUPPORT OF KINGDOM OF SPAIN**

Pursuant to 28 U.S.C. § 517, the United States submits the attached Statement of Interest and brief as amicus curiae in support of the Kingdom of Spain (“Spain”) to inform the Court of the substantial policy interests the United States has in this litigation.

These interests are predicated upon the pledges made by the United States and Spain in Article X of the 1902 Treaty of Friendship and General Relations, 33 Stat. 2105, Treaty Series, 422, 11 Bevans 628, which remains in force between the two parties.

Article X of this Treaty obligates the United States to ensure that “the same assistance and protection and the same immunities” that would be provided to U.S. sunken vessels “in similar cases” are provided to sunken Spanish vessels. The United States has a strong foreign policy interest in upholding the 1902 Treaty and identifying for the Court the protections and immunities that would be applicable to a U.S. sunken warship lost in international waters in a similar case.

The United States also has a strong interest in fostering the reciprocal treatment the terms of the 1902 Treaty require Spain to afford to U.S. submerged vessels. If we do not observe our treaty responsibilities to Spain, Spain may not uphold its responsibilities under that treaty to the United States in the future. The United States owns thousands of warships that have been lost in U.S. territorial waters and foreign and international waters. The sites of these sunken warships may contain, in addition to the remains of the vessels, associated cargo and equipment of real significance to the United States. They may also serve as the final resting place for individuals lost in service to their country. Under international law, the United States is responsible for protecting cultural heritage like historic shipwrecks found at sea. By supporting Spain, the United States seeks to ensure that its own sunken warships and lost crews are treated as sovereign ships and honored graves, and are not subject to unauthorized exploration or exploitation.

Moreover, as technological and scientific advances continue to make sunken vessels more accessible to salvors, we expect the number of situations to increase in which the United States will need to call upon other States for assistance, protection, and

immunities. Accordingly, in order to satisfy its obligations under international law and encourage comparable treatment by other States of our vessels, the United States must observe and apply these protections and immunities in order to increase the probability that it will be treated fairly in actions concerning U.S. warships that may be brought in a foreign jurisdiction.

Pursuant to Rule 3.01(g) of the local rules, Counsel for the United States certifies that she has conferred in good faith with the *pro se* Plaintiff and opposing counsel, and that we are unable to resolve the issues raised by this motion.

For the reasons given above, the United States submits the attached Statement of Interest and amicus curiae brief in support of the Kingdom of Spain for the Court's consideration in this litigation.

Attachments :

- A - Statement of Interest and Amicus Curiae Brief
- B - Declarations (3)

Dated: September 9, 2009

Respectfully submitted,

TONY WEST
Assistant Attorney General

A. BRIAN ALBRITTON
United States Attorney

s/Barbara B. O'Malley

District of Columbia Bar Number 106617
Special Litigation Counsel
U.S. Department of Justice
Civil Division, Torts Branch
P. O. Box 14271
Washington, DC 20044-4271
Telephone (202) 616-4081
Fax (202) 616-4002
E-Mail: barbara.o'malley@usdoj.gov