

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

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff,

v.

Case No: 8:07-cv-614-T-23MAP

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 *et al.*,

Claimants.

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**PLAINTIFF ODYSSEY MARINE EXPLORATION, INC.'S MOTION  
(ON BEHALF OF ITSELF AND CERTAIN CLAIMANTS) FOR LEAVE  
TO FILE REPLY TO SPAIN'S RESPONSE TO ODYSSEY'S OBJECTIONS  
TO THE JUNE 3, 2009 REPORT & RECOMMENDATION (DOC. 236)**

On June 3, 2009, Magistrate Judge Mark A. Pizzo issued a Report and Recommendation (the "R&R") (Doc. 209) on claimant Kingdom of Spain's motion to dismiss or for summary judgment ("Spain's Motion") (Doc. 131). Odyssey Marine Exploration, Inc. ("Odyssey") subsequently filed its objections to the R&R ("Odyssey's Objections") (Doc. 230), and on August 31, 2009, Spain filed a consolidated response to

Odyssey's Objections and the objections of "individual claimants"<sup>1</sup> ("Spain's Response") (Doc. 236). Odyssey, on behalf of itself and all individual claimants, respectfully requests leave to file reply briefs to Spain's Response within 30 days after an order on this request. Odyssey's reply would address certain discrete arguments made in Spain's Response

Specifically, Odyssey seeks leave to reply to Spain's Response to address two discrete issues: (1) Spain's contention that the standard of review applicable to a determination of subject matter jurisdiction in this case, in which the facts necessary to decide jurisdiction are intertwined with the merits of Odyssey's claims, somehow changes because the jurisdictional challenge is under the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.*; and (2) Spain's argument that purported "warships" and their cargo – unlike other government-owned vessels – enjoy sovereign immunity regardless (a) of the nature of their voyage (which here involved commercial transport of private parties' property in exchange for payment of freight charges) or (b) that none of the recovered cargo was in or near any vessel structure, or indeed that no vessel or cohesive remnants of a vessel's hull were uncovered at the site. Significant interests of Odyssey, and of the individual claimants, will be affected by the outcome of Spain's Motion, and Odyssey believes its briefing on these two limited issues will assist the Court with resolving that motion.

WHEREFORE, Odyssey, on its and the individual claimants' behalf, respectfully requests leave to file replies to Spain's Response (Doc. 236) within 30 days of an order granting this request.

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<sup>1</sup> "Individual claimants" refers to all claimants in this case except Spain and Peru.

**LOCAL RULE 3.01(g) CERTIFICATION**

Odyssey has conferred with counsel for Spain, and Spain objects to the relief requested in this motion.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 10, 2009, I electronically filed this document with the Clerk of the Court by using the CM/ECF system and mailed a true and correct copy to non-CM/ECF participant Joseph A. Rodriguez, *pro se*, 4611 South University Drive, Davie, FL 33328-3817.

Respectfully Submitted,

s/ Gianluca Morello

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