

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.,

Claimant.

_____/

**OPPOSITION OF KINGDOM OF SPAIN TO PLAINTIFF
ODYSSEY MARINE EXPLORATION, INC.'S MOTION FOR
LEAVE TO FILE THE DECLARATION OF J. ASHLEY ROACH,
JAGC, USN (RET.), IN RESPONSE TO THE STATEMENT OF
INTEREST AND BRIEF OF THE UNITED STATES AS AMICUS
CURIAE IN SUPPORT OF THE KINGDOM OF SPAIN (DOC. 247)**

The Kingdom of Spain ("Spain") opposes the Odyssey Marine Exploration ("Odyssey") motion for leave to file a declaration in response to the Statement of Interest and Brief of the United States as amicus curiae. (Doc. 247).

By its September 18, 2009 Order (Doc. 244), the Court denied the United States leave to file declarations in support of a Statement of Interest, on grounds that included that "the statement of interest may not include evidentiary matters, such as an exhibit, affidavit,

declaration or any other evidentiary matter not offered to magistrate judge for consideration.”

The Court defined how Odyssey may respond to the ten-page Statement of Interest the Court allowed the United States to submit: Odyssey is permitted to file “a response of no more than ten (10) pages.” (Doc. 244).

Purportedly in response to the United States’ Statement of Interest, Odyssey seeks leave to do just what the Court did not allow the United States to do. It should be self-evident that a party may not submit evidentiary matter in response to an amicus curiae’s submission in which the Court has prohibited the inclusion of evidentiary matter.

In its forty seven pages of Objections to the June 3, 2009 Report and Recommendation Odyssey made abundant use of its right to present its arguments on the United States statutes, treaties and other measures cited in the June 3, 2009 Report and Recommendation. If that were not enough, the Court’s Order of September 18, 2009 allows Odyssey to file not only a response to the United States’ Statement of Interest, but also to file a reply in support of its objections to the Report and Recommendations. There must be a limit to what Odyssey can submit and the Court has defined that limit.

Odyssey’s motion is especially inappropriate because the stated purpose is to submit a declaration secured by Odyssey from a private individual setting forth for litigation purposes his views of how statutes enacted by Congress or international agreements entered into by the United States should be interpreted by the Court. Mr. Roach, the proposed declarant, is not Congress and the Odyssey motion makes no claim that he is authorized to speak for the United States. Such a declaration is not proper evidentiary matter in any event: “. . . in interpreting statutes, affidavits by drafters after enactment of legislation will not be considered by the Courts” even if the affiant is a Member of Congress, which Mr. Roach is not. *Friedman v. U.S.*, 364 F.

Supp. 484, 488 (D. Ga. 1973). See also *Epstein v. Resor*, 296 F. Supp. 214, 216 (D.C. Cal. 1969): “[T]he Court has not considered the affidavit prepared and submitted by the [drafter] solely for purposes of this lawsuit after the legislation in question was enacted.”

Spain respectfully submits that the Court is fully capable of reviewing the relevant United States statutes and other measures and determining their implications for this case, and Odyssey’s motion should be denied.

Respectfully submitted on October 5, 2009,

s/ James A. Goold

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CERTIFICATE OF SERVICE

I hereby certify that I caused the Opposition of Kingdom of Spain To Plaintiff Odyssey Marine Exploration, Inc.'s Motion For Leave To File The Declaration of J. Ashley Roach, JAGC, USN (Ret.), In Response To The Statement Of Interest and Brief of the United States As Amicus Curiae In Support of The Kingdom of Spain (Doc. 247) to be served on all 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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