

FILED

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

OCT 6 AM 9:30  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA, FLORIDA

ODYSSEY MARINE EXPLORATION, INC.

Plaintiff

CIVIL ACTION

vs.

Case No. 8:07-CV-00614-SDM-MAP

THE UNIDENTIFIED, SHIPWRECKED  
VESSEL, its apparel, tackle  
appurtenances and cargo located within  
center point coordinates:  
provided to the Court under seal,  
in rem

Defendant  
In Rem

And

The Kingdom of Spain and the Republic of Peru,

Claimants

And

Gonzalo de Aliaga (the Count of San Juan de Lurigancho),  
Agustin de Aliaga (the current Marques de Zelada de la Fuente),  
Gonzalo Alvarez del Villar, Ignacio de Colmenares (the 11<sup>th</sup> Count  
Of Polentinos), Alberto Emilio Thiessen, Enriqueta Pita Duthurburu, Flora Leonor Perales  
Calderon de Colmenares, Felipe Voyest, Adela  
Armida de Izcue Bazo, Carola Daireux Kinsky, Eleonora Daireux Kinsky,  
Matilde Daireux Kinsky, Julio Vega Eurasquin, Inez Marquez Osorio,  
Javier de Goyeneche (the current Count of Guaqui and Marques de Villafuente)  
and Jose Antonio Rodriguez Menendez aka Joseph Anthony Rodriguez

Claimants /

Jose Antonio Rodriguez Menendez (Menendez) *Opposed* Motion for Leave to File Motion Correcting Error and Clarifying Kingdom of Spain's Response to Ojections [Kingdom of Spain objects to this motion for leave]

In footnotes of pp. 37 and 38, Kingdom of Spain (KS) Response to Objections of Odyssey Marine Exploration (OME) and Individual Claimants to the Magistrate Judge's June 3, 2009 Report and Recommendation (Doc. 236), KS refers to Menendez:

One claimant, Jose Antonio Rodriguez-Menendez, purports to assert rights not because of any connection to the *Mercedes*, but rather based on a claim that an ancestor of his was granted rights in 1555 to "one fifteenth part of all the income, mines of gold and silver, precious stones, pearls and products which we shall have from the said lands and provinces of Florida," (Doc. 175, Rodriguez-Menendez Verified Claim; Doc. 234, Rodriguez-Menendez Objs.) By article 2 of the 1819 Treaty of Amity, Settlement and Limits Between the United States and His Catholic Majesty, Spain ceded Florida "in full property and sovereignty" to the United States. 8 Stat 252.

"Parties filing objections to a magistrate's report and recommendation must specifically identify those findings objected to." *Marsden v. Moore*, 847 F.2d 1536, 1548 (11<sup>th</sup> Circ.), *cert. denied*, 488 U.S. 983 (1988)...

Menendez basis for motion for leave to reply:

1. KS Error: "1555" (fifteen hundred fifty-five) is incorrect. Correct year of signing for Asiento (contract) between Pedro Menendez de Aviles, Alonso de la Campa (Menendez ancestor) and Felipe II, King of Spain for the Pacification and Settlement of Florida, is 1565 (fifteen hundred sixty-five). Menendez seeks to make this correction in Motion to Reply. See Exhibits 3/A and 4/A.
2. "in full property and sovereignty" is taken out of context by KS and misleads this Honorable Court because the remainder of the Adams-Onis Treaty (for 1821 purchase of Spanish Florida by the United States), pertinent case law, and other pertinent

judicial literature all highlight the fact that the United States only purchased State lands and State property from Spain. *Private property* and *private rights*, e.g. private contractual rights, were *not* sold by Spain to the United States—nor did the United States elect to assume them. Consequently, a post-transaction, contractual liability of Kingdom of Spain to Menendez survives the sale of Spanish Florida—as would have been the expressed intent of His Majesty, Felipe II, King of Spain. Menendez seeks to clarify this confusion and to present this Court with supporting case law and judicial literature in his proposed Motion to Reply to Kingdom of Spain’s Response to Objections.

#### Local Rule 3.01 Certification

Menendez certifies that legal counsel of all parties were asked about potential objections prior to filing this Motion for Leave to Reply to KS’s Response to Objections. Only Kingdom of Spain expressed objection to this motion.

#### Conclusion

Menendez respectfully requests leave to file a ten page motion to reply to Kingdom of Spain’s Response to Objections to Magistrate’s Report and Recommendation along with supporting citations and documents, by an October 16, 2009 filing deadline.

#### Certificate of Service

I hereby certify, on October 5, 2009, that I caused the attached documents to be served upon the Court:

Sam M. Gibbons U.S. Courthouse  
801 N. Florida Avenue  
Tampa, FL 33602

813/301-5400

and upon attorneys of record for the parties listed below, by Fedex Carrier to:

Allen von Spiegelfeld/

Eric C. Thiel

Fowler, White, Boggs, Banker, P.A.

501 E. Kennedy Blvd.- Ste. 1700

P.O. Box 1438

Tampa, FL 33601-1438

Fax: (813) 229-8313

AND

James A. Goold, Esq.

Covington & Burling, LLP

1201 Pennsylvania Avenue, NW

Washington, D.C. 20004

Fax: (202) 662-6291

Email: jgoold@cov.com

Attorneys for Plaintiff (Odyssey Marine)

Attorneys for Kingdom of Spain

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

Email: mmacconnel@shipwreck.net

Attorneys for Plaintiff

John D. Kimball, Esq.

Blank Rome LLP

405 Lexington Avenue

New York, NY 10174

(212) 885-5259

Fax: (917) 332-3730

Email: jkimball@blankrome.com

Attorneys for Plaintiff

K. Russell LaMotte

Beveridge & Diamond, PC

Suite 700

1350 1 St. NW

Washington, DC 20005-3311

Tel. (202) 789-6080

Fax (202) 789-6190

Email: rlamotte@bdlaw.com

Attorneys for Plaintiff

Carl Richard Nelson/

Gianluca Morello  
Fowler White Boggs, PA  
501 E. Kennedy Blvd., Suite 1700  
Tampa, FL 33602  
Tel. (813) 769-7867

David C. Banker/  
Jeffrey Carter Andersen/  
Keith Dennis Skorewicz  
Florida Bar 352977  
Bush Ross, PA  
1801 North Highland Avenue  
Tampa, Florida 33602-2656  
(813) 244-9255  
(813) 223-9620  
Kingdom of Spain

Mark Maney (Trial Counsel)  
Texas State Bar No. 12898200  
South Tower, Pennzoil Place  
711 Louisiana, Suite 3100  
Houston, Texas 77002  
Tel (713) 654-8001  
Fax (713) 654-8818  
mmaney@maneylaw.com  
Attorneys for the Republic of Peru

And

Timothy P. Shusta  
FBN: 442305  
Phelps Dunbar LLP  
100 S. Ashley Drive  
Suite 1900  
Tampa, FL 33602-5315  
Tel. (813) 472-7550  
Fax (813) 472-7570  
Shustat@phelps.com  
Attorneys for the Republic of Peru

Marlowe V. White, Jr.  
Lewis & White, PLC  
222W. Georgia St.  
P.O. Box 1050 Tallahassee, FL 32302  
Tel. (850) 425-5000  
Fax (850) 425-5004

Email: lawlaw@polaris.net  
Attorney of Elsa Dorca Whitlock

David Paul Horan  
FL Bar 142474  
Horan, Wallace, and Higgins, LLP  
608 Whitehead Street  
Key West, FL 33040  
Tel. (305) 294-4585  
Fax (305) 294-7822  
Attorney of Named Descendants

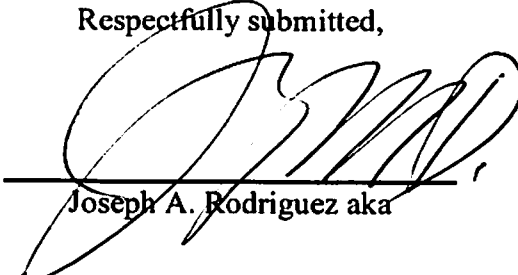
John J. McLaughlin  
Wagner, Vaughan & McLaughlin, P.A.  
601 Bayshore Blvd., Suite 910  
Tampa, FL 33606  
Tel. (813) 225-4000  
Fax (813) 225-4010  
Attorney of Santiago & Emilio Alvear,  
Maria Eugenia, Agustina, & Ignacio Solveyra,  
And Elsa Dorca Whitlock

Guy Ellington Burnette, Jr.  
Guy E. Burnette, Jr., P.A.  
3020 N. Shannon Lakes DR  
Tallahassee, FL 32309  
Tel. (850) 668-7900  
Fax (850) 668-7972  
Email: geb@gburnette.com  
Attorney of Dr. Jaime Durand Palacios

Barbara B. O'Malley  
U.S. Department of Justice  
P.O. Box 14271  
1425 New York Ave., NW  
Washington, DC 20044  
Tel. (202) 616-4081  
Fax (202) 616-4159

USA: Interested Party

Respectfully submitted,



Joseph A. Rodriguez aka

**Jose Antonio Roriguez Menendez**

**Pro Se/ Unrepresented Party**

**4611 South University Drive  
Davie, FL 33328-3817  
Tel. (954) 804-4115  
Email: [Expertdoctor@aol.com](mailto:Expertdoctor@aol.com)**