

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.

**MOTION OF FORMER AND CURRENT MEMBERS OF CONGRESS
FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF**

COMES NOW, a group of former and current Members of Congress (“Members”),
by and through undersigned counsel and pursuant to Local Rules 3.01(c) and (d), and hereby
moves this Honorable Court for leave to file a brief as *amicus curiae* of no more than 10
pages and within 2 days of the granting of its motion. In support of this motion, the
Members state:

1. This brief is not offered in support of any party in the case, but rather to
inform the Court of the Members’ views concerning the construction of the Sunken Military
Craft Act (SMCA).

2. The Members have each been on record as being concerned about matters of homeland security, environmental protection, and the preservation of this nation's maritime heritage.

3. The United States filed a Statement of Interest and *Amicus Curiae* brief on September 29, 2009 (Doc. 247 at 8-9), which takes the position that a "warship" may be engaged in substantial commercial activities and still be entitled to sovereign immunity under the SMCA.

4. The Kingdom of Spain, in its latest filing, appears to adopt a similar position. (See Doc. 236 at 28.)

5. This interpretation is expansive and contrary to the language and Congress's intent for this legislation. Acceptance of this construction would be deleterious to U.S. national security, and would inappropriately expand the class of vessels rightfully entitled to protection under the SMCA.

6. It is appropriate for Members of Congress, individually and collectively, to express their views when questions of statutory construction have been raised in a matter of foreign policy or national security, and when the views of the legislative branch may be at variance with those of the executive. (See *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 387 n.25 (2000), *aff'd*, 181 F.3d 38 (1st Cir. 1999) (*amici* Members of Congress filed briefs in both court of appeals and Supreme Court).

WHEREFORE, the Members respectfully request this Honorable Court to grant its motion for leave to file a brief of no more than 10 pages and within 2 days of the granting of this motion, as *amicus curiae* in this matter.

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 3.01(g), undersigned counsel certifies that he has conferred or attempted to confer with counsel for all other parties or in the case of the pro se party, with that party directly, for the purpose of inquiring as to whether each such party agrees on the resolution of this motion. The following parties have responded and have agreed to this motion: Guy Ellington Burnett, Jr., counsel for Palacios, David Paul Horan counsel for Merchant Descendants (group), Timothy Peter Shusta and Mark Maney counsel for Peru, John J. McLaughlin counsel for the Alvear Descendants and Joseph A. Rodriguez – *pro se* litigant. The following parties have responded and opposed the motion: James Goold counsel for Spain. No response has yet been received from the following parties: Marlow V. White counsel for Merchant Descendants – individuals – Whitlock. But pursuant to the Rule, the undersigned will continue to seek a response and upon receiving such response will promptly supplement this motion with a statement certifying whether or to what extent the parties have resolved the issue presented in the motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 8, 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,

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