

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 TAMPA DIVISION

4 Odyssey Marine Exploration,
5 Plaintiff,

6 vs. CASE NO. 8:07-CV-614-T-23MAP
7 8 JANUARY 2009
8 TAMPA, FLORIDA
9 PAGES 1 - 22

10 The Unidentified Shipwrecked Vessel,
11 Defendant.

12 v.
13 Claimant Kingdom of Spain

14 TRANSCRIPT OF STATUS CONFERENCE
15 BEFORE THE HONORABLE MARK A. PIZZO
16 UNITED STATES MAGISTRATE JUDGE

17 APPEARANCES:

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26 Proceedings recorded and transcribed by
27 computer-aided stenography.

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1 (Call to order of the Court.)

2 THE COURT: Thank you. Please be seated. We
3 have our next Odyssey case, The Odyssey Marine
4 Exploration, Inc., plaintiff, versus The
5 Unidentified Shipwrecked Vessel and the various
6 claimants involved in this matter. This is
7 Case Number 07 Civil 614-T-23MAP. Will counsel
8 please announce their appearances.

9 MR. VON SPIEGELFELD: Allen Von Spiegelfeld.
10 And I have Melinda MacConnel and Mr. Greg Stemm with
11 me.

12 MR. MANEY: Mark Maney and Mr. Tim Shusta for
13 the Republic of Peru.

14 MR. HORAN: David Paul Horan for the
15 claimants.

16 THE COURT: Thank you.

17 MR. GOOLD: Jim Goold, David Banker for Spain.

18 THE COURT: Thank you. And Mr. Horan, since
19 you're appearing here by telephone, if you would
20 please just simply be patient with us and hopefully
21 we will not lose you. And if we do, well, I don't
22 know what we'll do then. We'll just proceed without
23 you, but we'll figure it out.

24 MR. HORAN: All right.

25 THE COURT: But you could call our chambers

1 and see where we are.

2 I had to say that I had some hesitancy about
3 even scheduling a status hearing in this case
4 because -- because much of what needs to be done is
5 still in the process of being done. But in
6 endeavoring to be a full service court and being
7 customer friendly, the parties wanted a status
8 conference, so -- at least some of the parties
9 wanted a status conference as it was explained to me
10 by my law clerk, and so we've scheduled a status
11 conference.

12 And I'm not sure -- I think it was counsel for
13 the Republic of Peru who was asking for a status
14 conference. But since we have everybody here, is
15 there an abridged version as to where we are in this
16 case?

17 MR. GOOLD: I'll start. Well, the end is --

18 THE COURT: Don't say that, Mr. Goold.

19 MR. GOOLD: -- near as far as the briefing
20 process.

21 THE COURT: For the briefing process, perhaps.

22 MR. GOOLD: I'll be glad when January 27 rolls
23 around and I've seen the confirmation on the screen
24 that the papers being done for that day have come
25 through.

1 And other than that, I'm here because -- I
2 didn't oppose the request because I didn't think it
3 was worth fighting about and I was going to be here,
4 anyway. I have no -- I have no agenda other than to
5 finish as rapidly as possible and get back to work
6 on the briefs I've got to do by the end of the
7 month.

8 MR. VON SPIEGELFELD: For Odyssey, we're not
9 too far away from Mr. Goold's position. We'd like
10 to see this moving along as quickly as possible.
11 One of the issues that has come up is the fact that
12 there are -- we're continuing to get calls from
13 potential claimants, and we would like to be able to
14 file a notice of an end date for filing, something,
15 because otherwise this could go on indefinitely with
16 new claimants coming in.

17 The time has run for claimants, theoretically.
18 We have not moved for a default as to any future
19 claimants, but the time has run. And --

20 THE COURT: Refresh my recollection, Mr. Von
21 Spiegelheld, but -- since I didn't look at that
22 issue before I came here on the bench. But the time
23 period is specified by local rule?

24 MR. VON SPIEGELFELD: Yes, Your Honor. Well,
25 it's by the federal rules and the local rule. The

1 notice -- the -- normally it's 30 days from the time
2 of the notice. The problem is -- well, it's not a
3 problem. In this case there was a second notice
4 given that was given in Spain, if you remember
5 correctly.

6 THE COURT: Yes.

7 MR. VON SPIEGELFELD: And when that second
8 notice was given, that's when new claimants have
9 come forward. Now, that -- the time for that -- the
10 30 days has run on that notice, also.

11 THE COURT: So why is there a need to set any
12 time for a deadline if, as I read it, the
13 deadline --

14 MR. VON SPIEGELFELD: Well, we have not moved
15 for default at this time because of the fact that
16 there have been people coming forward all the time.
17 But we would like to move for a default at this
18 point in time as to any future claimants. We will
19 do that.

20 MR. HORAN: Could you speak up just a little
21 bit.

22 MR. VON SPIEGELFELD: We will -- we plan on
23 moving for a default in the near future as to any
24 future claimants.

25 THE COURT: All right.

1 MR. HORAN: I'm getting the same thing. This
2 is Dave Horan in Key West. I'm getting the same
3 thing with regard to inquiries as to additional
4 parties. And it would make it a lot simpler for me
5 to have a default so that there would not be this
6 continual -- I mean, it's spreading like wild fire
7 in South America.

8 MR. VON SPIEGELFELD: And in that same regard,
9 we'd like the Court to enter an order setting --
10 ending the date of affidavits and things so that we
11 have something.

12 THE COURT: Why don't you submit a motion,
13 Mr. Von Spiegel, as to that.

14 MR. VON SPIEGELFELD: Okay.

15 THE COURT: And it will be considered.

16 MR. MANEY: Your Honor, I guess I asked for
17 this. Mark Maney for the Republic of Peru.

18 I've got two issues that I wanted to address
19 and, frankly, I also wanted to see what was going to
20 happen in the other proceeding, because Peru is
21 anxiously awaiting if there's any chance there was
22 Peruvian gold on the Merchant Royal, and if it's the
23 Merchant Royal.

24 And that leads me -- given where it is, I'll
25 start with the first issue, which is other

1 claimants. I didn't have a piece of the last
2 hearing, but I am troubled by the prospects as Peru
3 is troubled by the prospects that a company could
4 find part of a vessel, give notice that gives very
5 little notice because they don't know what they've
6 found or what the vessel is, and obtain orders that
7 say they are owners of that property, and perhaps in
8 the future, in this case shutting off future
9 claimants, before anyone knows exactly whose
10 property it is.

11 In this case, we inspected the silver in
12 December or late November and we found one coin from
13 Mexico, minted in Mexico. Mexico's never gotten
14 notice. In fact, it was Mexico who sent me to Peru
15 to talk to the Peruvians about bringing a claim.

16 I don't represent Mexico in this case. I
17 don't have a power of attorney. But I know that if
18 material portions of Mexican silver are found aboard
19 a vessel, that Mexico has an interest in protecting
20 them. So having an end filing date before we know
21 what the vessel is for sure and where it is I think
22 is troublesome, particularly for sovereigns.

23 In this case, there are potential sovereign
24 claims from Colombia, Chile and Bolivia, all of whom
25 have gold coins that were minted in their countries.

1 The second issue I wanted to address was I
2 became troubled with the motions that were being
3 filed that I think there's some confusion that may
4 develop because three separate issues are being
5 confused. Spain originally moved for sovereign
6 immunity against Odyssey. They did that shortly
7 after Peru was entered.

8 It was unclear to me whether their motion was
9 addressed to Peru, although the relief they
10 requested included Peru's claim. Since then,
11 private claimants have come forward saying they had
12 property on the Mercedes.

13 In my mind there are three very distinct
14 sovereign immunity issues here. Spain versus
15 Odyssey, the briefing on which I believe is
16 finished. The replies now are really addressed to
17 my motions.

18 THE COURT: No. No.

19 MR. MANEY: Okay. But the Spain versus
20 Odyssey, what I would say is really Spain versus
21 Peru versus Odyssey. If there's a sovereign owner
22 of this vessel, does Odyssey -- or is there immunity
23 as against Odyssey's claim for salvage or finds?
24 There's a distinct claim of immunity, whether Spain
25 would have immunity against another sovereign

1 claimant. Peru as a successor state to the former
2 kingdom -- Worldwide Kingdom of Spain. Those
3 issues, I think, are very distinct.

4 I also think there are very strong
5 distinctions between claims by the private claimants
6 as owners of property and Peru and Spain, because
7 they're of the same kind, that is, they're ownership
8 claims.

9 My goal here was to try to convince this Court
10 to divide those things so that they could be
11 addressed logically rather than in the -- what I
12 view as a confused manner that they're being viewed
13 at now.

14 THE COURT: Well, you may view it as a
15 confused matter but I don't necessarily view it as a
16 confused matter. I mean, as bad enough as it is,
17 seems like this thing grows exponentially.

18 Mr. Goold?

19 MR. GOOLD: Yes, sir.

20 THE COURT: Let me ask you a question, not to
21 single you out. But let's assume for a moment
22 that -- and this is not meant and please do not take
23 it as this way by the parties at all. But let's
24 assume for a moment for argument sake that I were to
25 determine that your sovereign immunity claim as with

1 respect to the res and Odyssey's claim to it had
2 merit. And so Spain's property is immune from any
3 judicial determination by this Court.

4 The res is still in the confines of the Court.
5 The Court has to make some determination about the
6 res as it pertains to the other parties who have
7 filed claims, many of whom are Spanish subjects.
8 Would not the appropriate approach be to make a
9 determination that a Spanish court would be the
10 appropriate court to determine the claims at issue,
11 and that that court could determine, as well, if
12 appropriate and appropriate any claims by any
13 foreign sovereigns, including Peru or Mexico? And
14 if that is the case, what would be the vehicle for
15 doing that? How would an order be fashioned,
16 thinking backwards?

17 MR. GOOLD: Well, I think it would be the
18 appropriate and logical scenario. It is what the
19 outcome was, albeit on a smaller scale, of the Sea
20 Hunt case where, at the end of the day -- well, the
21 Court is familiar with that. But that included --
22 it wasn't discussed in any detail in the Fourth
23 Circuit opinion, but it had been dealt with by the
24 district court that ownership, denial of salvage,
25 Spanish ownership, Spanish sovereign vessel,

1 anything -- all artifacts returned to the custody of
2 Spain. As it happens, those we loaned permanently
3 to the National Park Service for display in
4 Virginia, but that's a different matter.

5 It is the logical scenario. Spain has courts,
6 Spain has laws. If -- the order that I would think
7 would be appropriate would be a natural one under
8 Rule -- I think it's E(5)(C) about release of
9 arrested property. I'll address this, you know,
10 later this month, also. That it -- there were
11 provisions there for release of arrested property
12 and they include by order, court order, of course.
13 And that the Court's order should direct that the
14 material be returned to the owner of the vessel from
15 which it was taken.

16 And if it -- I'm not even going to suggest
17 this, but I could see a court giving consideration
18 to something about it being without prejudice to the
19 ability or the -- whatever rights others might have
20 to pursue claims against the sovereign and owner of
21 that vessel.

22 THE COURT: If I were to decide that an
23 evidentiary hearing was needed, that is, I wanted
24 some explication aside from what's in the papers and
25 the affidavits, how much time do you think you would

1 need to prepare for something like that? Or how
2 much notice, I guess, maybe would be more
3 appropriate?

4 MR. GOOLD: Sixty days, Your Honor.

5 THE COURT: Location, location, location,
6 Mr. Goold.

7 MR. GOOLD: I was -- I'll go with Mr. Von
8 Spiegelfeld on that. I was starting to think 30,
9 but it would also depend on if the Court gave any
10 guidance on what it wanted to hear about.

11 THE COURT: Sure. Sure.

12 MR. GOOLD: I mean, you won't be surprised,
13 we've thought about that. But I -- you know, of
14 course, I think the evidence is crystal clear and
15 there's no possible doubt, etcetera, but that if the
16 Court had any particular issues where it felt it
17 would be appropriate to hear more evidence, of
18 course.

19 THE COURT: Okay.

20 MR. HORAN: Could I ask a question?

21 THE COURT: Yes, Mr. Horan.

22 MR. HORAN: As far as the people who consigned
23 cargo onboard that vessel, if it is the Mercedes, if
24 this was contract salvage, we would just go ahead
25 and do a contract with Odyssey and they would go out

1 there as our contracted salver and salvage the cargo
2 that we own. And -- and in this case, it's
3 voluntary salvage and it's not contract salvage, but
4 I'm not sure that does anything with regard to
5 whether there is, in fact, a sovereign claim against
6 the property that my clients consigned onboard.

7 So the -- it seems like to me, I'm not sure
8 that Spain can claim sovereign immunity against the
9 descendent claimants. I -- I don't understand how
10 they can do that.

11 THE COURT: Well, you're free to file any
12 papers you want to, Mr. Horan, with respect to that
13 issue. But I think the first order of business for
14 me to decide is, A -- and this is obviously part of
15 the sovereign immunity issue -- is, A, which vessel
16 is it. I mean, is it the vessel that Spain thinks
17 it is and that the parties have discussed here in
18 these pleadings? So --

19 MR. HORAN: Certainly.

20 THE COURT: -- that will be the first order of
21 business because that's an integral question dealing
22 with sovereign immunity aspect, and we can go from
23 there.

24 MR. HORAN: I -- the one thing that I would
25 say is that the -- the -- the concept of the --

1 treating the vessel as a unity and not separating
2 out the ownership of cargo, that was something that
3 we faced in the Central America litigation and --
4 and in others that I've been involved in. I was
5 also the attorney who took the review to the Supreme
6 Court right after the election mess in Florida and
7 hanging chads did away with our ability to get
8 review by the Supreme Court, but I was not involved
9 in the prior litigation on the Kingdom of Spain
10 case.

11 THE COURT: Well, Mr. -- let me ask Peru's
12 counsel whether there was -- I kind of cut you off.
13 I didn't -- I think the issues that you want to
14 explore are issues that I don't think at least for
15 me right now are ripe for me to identify. I think
16 the first order of business is to wait to see
17 Spain's response. If I think I need a status
18 conference after that to discuss any dates for
19 argument or dates for an evidentiary hearing, I can
20 do that.

21 But I'd like to proceed in a -- in a piecemeal
22 fashion and first make some determination as to the
23 identity of the vessel and then go from there.
24 We'll talk to Judge Merryday to see whether I need
25 to do this on a report and recommendation or I can

1 do it on an order. I don't see why I can't perhaps
2 do it on an order, but we'll see where we are.

3 I think as to the dismissal of -- the
4 potential dismissal of -- let me put it this way. I
5 think as to the motion to dismiss, I can either
6 proceed if it's to be denied either on an order or a
7 report and recommendation. Certainly, if there's to
8 be a recommendation to be granted, it must be done
9 in a report and recommendation to be dispositive.
10 If it's denied, it's not dispositive of the case,
11 it's simply dispositive of the motion, perhaps.

12 But leave that as it may, that's an
13 internal -- that's an inside the park, ballpark
14 issue between the magistrate judges and the district
15 judges, so we'll resolve that.

16 Are there any other matters with respect to
17 this case that anyone wants to raise?

18 MR. HORAN: May I ask a question?

19 THE COURT: Yes, Mr. Horan.

20 MR. HORAN: The determination of whether or
21 not it is the Mercedes, until such time as that
22 determination is made, the claimants don't have a
23 claim.

24 THE COURT: Correct.

25 MR. HORAN: Okay. So I guess I can just go

1 ahead and wait until you make those -- that
2 determination, and then we -- and then we go forward
3 with regard to any --

4 THE COURT: Well, let me make this suggestion.
5 If you have an argument to make now as to whether
6 it's the Merced or not, you should file the
7 appropriate pleading so as to support your position,
8 you shouldn't wait. And I'll expect a motion or
9 some pleading from Mr. Von Spiegelfeld on behalf of
10 Odyssey to cut off the date as -- as he has
11 proposed, and we can proceed in that fashion, as
12 well.

13 MR. MANEY: Your Honor, I would like, if
14 possible, to address your suggestion that this
15 matter that Peru's claim be moved to Spanish courts.

16 THE COURT: Well, I haven't gotten that far.

17 MR. MANEY: Well, I know. But even the
18 possibility raises the hair at the back of my neck
19 because --

20 THE COURT: Why is that?

21 MR. MANEY: Well, because Peru has a long
22 history of dealing with Spanish justice and I'm not
23 sure it's a welcome one. And our argument in this
24 case, Your Honor, is not that Peru has a claim
25 against property of Spain. Our argument is this

1 vessel is no longer Spanish as that term is used
2 today. This vessel and its contents were Spanish in
3 1804 when Peru was part of Spain. And, therefore,
4 this vessel today is -- and particularly the gold
5 and silver on it are Peruvian, not Spanish.

6 Russia tried this not that many years ago and
7 said they were the successor to the Soviet Union and
8 they wanted all the embassies, all the Merchant
9 fleet, all the foreign gold reserves. They said
10 they're now Russian. The International Court said
11 no, it doesn't work that way.

12 Every one of the successor nations to the
13 former Soviet Union have a part of that property,
14 and if it originated in their territory, they get it
15 all. It is not enough to say this was the Nuestra
16 Senora de las Mercedes, therefore, it's Spanish,
17 and, therefore, it's Spain's. It is Spanish in the
18 sense of 1804.

19 It's not 1804 anymore and Peru has those
20 rights. And we shouldn't have to go to Spain to
21 raise those rights. In fact, this Court shouldn't
22 be able to award it to Spain unless it's sure it's
23 Spain's, as that term is used today, not as it was
24 used in 1804.

25 I mean, I can't tell you how strongly Peru

1 believes that and that is the law and it's been the
2 law in the United States since when they let West
3 Virginia back in the Union and said they had to
4 divide the assets and debts of Virginia equitably,
5 just as the same rule they applied to the Soviet
6 Union, Czechoslovakia and Yugoslavia when they broke
7 up.

8 To put it another way, Peru and Spain got a
9 divorce after this vessel sank. You can't give it
10 to the husband without determining whether the other
11 party has rights. And so I don't think this Court
12 can just say it's the Mercedes and pass on. And
13 that's why I think Peru's claim is very different
14 from Odyssey's claim or someone else's claim. We're
15 claiming essentially we're -- you know, we changed
16 our name but we're part of that same former Kingdom
17 of Spain in 1804. These coins have --

18 THE COURT: So I take it by that token Peru
19 can lay claim to most of the gold altars in Spain
20 where gold leaf is encrusted on the altars and say
21 it's Peruvian property?

22 MR. MANEY: Not at all, Your Honor. Those
23 were covered by the treaty. The Independence Treaty
24 divided property that they had, not property that
25 had been lost before. This is -- I mean, this

1 property, found treasure that was sunk before the
2 independence of Peru is unique. Property that was
3 in Spain's possession since then, not to mention
4 adverse possession, is different.

5 THE COURT: Well, we'll just take it as it
6 comes.

7 MS. MACCONNEL: Your Honor, if I could say one
8 thing. We talked about identifying the vessel here
9 as a threshold issue. I think Mr. Horan and
10 Mr. Maney will agree with me that that issue is
11 relevant only insofar as the property that we have
12 recovered and whether it came from the Mercedes.
13 Again, there isn't a vessel at this site and we're
14 not determining the rights to a vessel. We're
15 determining rights to property that may or may not
16 have come from that vessel.

17 And as Your Honor perfectly well knows,
18 there's a lot of claimants here. There's
19 individuals, there's Peru, there's Spain who may
20 have owned some property aboard that. But we're not
21 talking about just the vessel or a vessel at all.
22 We're talking about the property. I just want to
23 put that on the record as a reminder.

24 THE COURT: All right.

25 MR. HORAN: Well, then, the analogy that he

1 made with regard to the divorce, we're grandchildren
2 and I don't care whether it's the mother or the
3 father. The fact is we are grandchildren.

4 THE COURT: You know, this could be taken to
5 its logical beginning and that is Adam and Eve and
6 we're all descendents of each other.

7 MR. GOOLD: But that's not for the Middle
8 District of Florida.

9 THE COURT: It certainly isn't.

10 MS. MACCONNEL: Although, Your Honor, Florida
11 was part of Spain in 1840.

12 THE COURT: I was thinking that as we heard
13 the history lesson here today. All right. We'll be
14 in recess.

15 MS. MACCONNEL: Thank you.

16 MR. HORAN: Thank you, Your Honor.

17 (Hearing concluded.)

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C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF HILLSBOROUGH)

I, Linda Starr, RPR, Official Court Reporter for
the United States District Court, Middle District,
Tampa Division,

DO HEREBY CERTIFY, that I was authorized to and
did, through use of Computer Aided Transcription,
report in machine shorthand the proceedings and
evidence in the above-styled cause, as stated in the
caption hereto, and that the foregoing pages,
numbered 1 through 22, inclusive, constitute a true
and correct transcription of my machine shorthand
report of said proceedings and evidence.

IN WITNESS WHEREOF, I have hereunto set my hand in
the City of Tampa, County of Hillsborough, State of
Florida, this 18th day of November 2009.

 /s/ Linda Starr
Linda Starr, RPR, Official Court Reporter