

## Odyssey Marine Exploration challenges claims by Spain in its "Black Swan" appeal

2010-09-24 09:00:00 by Rons\_ROV\_Links



Odyssey Marine Exploration, Inc. today filed its Reply to Spain's Response in the "Black Swan" case, currently pending in the United States Court of Appeals for the Eleventh Circuit in Atlanta, Georgia. This is expected to be the last round of written pleadings at the appellate court level.

Odyssey's filing is available for review at <http://www.shipwreck.net/blackswanlegal.php>.

Odyssey is appealing the district court's dismissal of the case based on the court's finding of lack of federal jurisdiction. Odyssey's Reply presents the following documented facts that debunk the misrepresentations made by Spain that contributed to the clear error in the district court's earlier ruling and that have been repeated in Spain's appellate Response:

- there was no vessel and there were no human remains located at the "Black Swan" site;
- Odyssey acted legally and appropriately in the recovery of the "Black Swan" artifacts;
- evidence, including accounts from Spain's "experts" and Spain's own contemporaneous diplomatic communications, prove that the *Mercedes* (the vessel Spain associates with the site) was on a commercial mission on her final voyage - a fact that legally voids Spain's claim of immunity under settled international law and conventions;
- a distinction between cargo and vessel is allowed and even required by settled admiralty law; and
- according to the manifest of the *Mercedes*, the vast majority of cargo on board did not even belong to Spain - even Spain concedes the cargo was "articles of Spanish citizens."

"The emotional and inflammatory language used in Spain's appellate response serves to distract from the truth and the relevant legal issues. The story Spain tells mirrors the one it told at the district level, where the court made clearly erroneous factual findings," said Melinda MacConnel, Odyssey Vice President and General Counsel. "Spain's filing has painted a negative portrait of Odyssey, but the company has always acted in full compliance with the letter and spirit of the law. We brought the artifacts to the U.S. courts for proper adjudication of claims, but we didn't even receive a hearing on the jurisdictional facts. If the court did not have jurisdiction, it would have no legal authority to order transfer of the property to Spain, who did not have possession of the coins."

"In fact, Spain's argument failed to adequately address the requirement of possession. A recent ruling (*Aqua Log v. State of Georgia*) from the Eleventh Circuit requires a sovereign to be in possession of property in order to successfully argue sovereign immunity," continues MacConnel. "Spain attempts to avoid this legal requirement by claiming that the *Aqua Log* ruling does not apply to the "Black Swan" case because *Aqua Log* was an Eleventh Amendment case, not a Foreign Sovereign Immunities Act (FSIA) case. That is a flawed argument which actually suggests Spain would have greater rights under the FSIA than the state of Georgia was found

to have under the U.S. Constitution, which may be a convenient political position for Spain but is not borne out by U.S. law."

"A majority of Spain's filing focused on vilifying Odyssey's work, despite the fact that we conduct our operations to the highest archaeological standards. Spain's accusations are unsupported and even contradicted by their own 'story' and documents", said Greg Stemm, CEO of Odyssey Marine Exploration, Inc. "We continue to believe that justice and the rule of law will ultimately prevail and hope for an amicable resolution in this case so that the true history and significance of this find can be shared with all of the legitimate claimants as well as the public."

Additional Replies, filed by groups who have presented documentation indicating that they are descendants of the owners of the *Mercedes'* cargo and who recognize Odyssey's archaeological recovery efforts were also filed this month. Those pleadings focus on the Eleventh Circuit's recent opinion in the Aqua Log case and the requirement of possession in order for sovereign immunity to apply where property interests are at stake, and on the argument that the status quo prior to the arrest (with Odyssey in possession of the coins and other artifacts) should be restored if the district court does not have jurisdiction. Odyssey expects at least one other claimant to file a Reply in the case, and we anticipate that the Eleventh Circuit will hear oral arguments. These and all of Odyssey's significant filings to date can be viewed at <http://www.shipwreck.net/blackswanlegal.php>.

About the Black Swan

In May 2007, Odyssey announced the discovery of the "*Black Swan*," a Colonial-period site located in the Atlantic Ocean which yielded over 500,000 silver coins weighing more than 17 tons, hundreds of gold coins, worked gold, and other artifacts. Odyssey completed an extensive pre-disturbance survey of the "*Black Swan*" site, which included recording over 14,000 digital still images used to create a photomosaic of the site.

The coins and artifacts were brought into the United States with a valid export license and imported legally pursuant to U.S. law. Odyssey brought the artifacts under the jurisdiction of the U.S. District Court by filing an Admiralty arrest action. This procedure allows any legitimate claimant with an interest in the property to make a claim. For more information on the "*Black Swan*," visit [www.shipwreck.net/blackswan.php](http://www.shipwreck.net/blackswan.php).

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