

**IN THE UNITED STATE COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

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**No. 10-10269-J**

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**D.C. Docket No. 8:07-cv-00614-SDM-MAP**

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff – Appellant

THE KINGDOM OF SPAIN,

Claimant – Appellee. /

**APPELLANT ODYSSEY MARINE EXPLORATION, INC.’s  
MOTION TO STRIKE THE  
BRIEF OF THE UNITED STATES AS AMICUS CURIAE IN PARTIAL  
SUPPORT OF CLAIMANT – APPELLEE KINGDOM OF SPAIN**

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 11<sup>th</sup> Cir. R. 26.1-1 through 26.1-3, the undersigned counsel for Plaintiff/Appellant Odyssey Marine Exploration, Inc., certifies that the following is a complete list of the trial judge, magistrate judge, all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the above case:

Aliaga, Agustin de

Aliaga, Gonzalo de

Alvear, Emilio de

Alvear, Santiago de

Anderson, Jeffrey Carter – Attorney

Armijo, Enrique – Attorney

Arvelo, Jose E. – Attorney

Banker, David Christopher – Attorney

Barthe, Alejandro Julian Pera

Bederman, David J. – Attorney

Buehler, David P. – Attorney

Burnette, Guy Ellington. Jr. – Attorney

Casa Davila, Marques of

Colmenares, Ignacio de  
Colmenares, Leonor Perales Calderon de  
Del Fuente, Marques de Zelada  
Del Villar, Gonzalo Alvarez  
Duthurburu, Enriqueta Pita  
Eurasquin, Julio Vega  
Fleisig-Greene, Eric – Attorney  
Goold, James – Attorney  
Goyeneche, Javier de  
Goyeneche y Silvela, Mariano de  
Guaqui, Count of  
Horan, David Paul – Attorney  
Izcue Bazo, Adela Armida de  
Kimball, John D. – Attorney  
Kingdom of Spain  
Kinsky, Carola Daireaux  
Kinsky, Eleonora Daireaux  
Kinsky, Matilde Daireaux  
LaMotte, K. Russell – Attorney

Luriganchu, Count of San Juan de

MacConnel, Melinda Joy – Attorney

McLaughlin, John J. – Attorney

Maney, Mark – Attorney

Merryday, Steven D. – Trial Judge

Morello, Gianluca – Attorney

Nelson, Carl R. – Attorney

O’Malley, Barbara B. – Attorney

Odyssey Marine Entertainment, Inc.

Odyssey Marine Exploration, Inc. – Stock Symbol **OMEX**

Odyssey Marine, Inc.

Odyssey Retriever, Inc.

Odyssey Marine Services, Inc.

Osorio, Inez Marque

OVH, Inc.

Palacios, Dr. Jaime Durand

Pizzo, Mark A. – Magistrate Judge

Polentinos, 11<sup>th</sup> Count of

Republic of Peru

Rodriguez-Menendez, Jose Antonio – Appearing pro se

Shipwreck Heritage Press LLC

Shusta, Timothy Peter – Attorney

Skorewicz, Keith Dennis – Attorney

Solveyra, Agustina

Solveyra, Ignacio

Solveyra, Maria Eugenia

Stull, R. Jeffrey – Attorney

Thiel, Eric C. – Attorney

Thiessen, Alberto Emilio

United States of America

VanDercreek, William – Attorney

Villafuente, Marques de

Von Spiegelfeld, Allen K. – Attorney

Voyest, Felipe

White, Marlow V. – Attorney

Whitlock, Elsa Dorca

Respectfully submitted,

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Carl. R. Nelson, FBN 0280186  
*Counsel for Appellant*

**APPELLANT ODYSSEY MARINE EXPLORATION, INC.’s  
MOTION TO STRIKE THE  
BRIEF OF THE UNITED STATES AS AMICUS CURIAE IN PARTIAL  
SUPPORT OF CLAIMANT – APPELLEE KINGDOM OF SPAIN**

Plaintiff – Appellant Odyssey Marine Exploration, Inc. (“Odyssey”), by and through its undersigned counsel and under Fed. R. App. P. 27, objects to the Court’s consideration of the Brief Of The United States As Amicus Curiae In Partial Support Of Claimant – Appellee Kingdom of Spain (“U.S. Amicus Brief”) and moves the Court to strike the brief. In the alternative Odyssey moves the Court to require the United States to amend the statement of interest to reflect the clandestine negotiations between the United States (“U.S.”) and the Kingdom of Spain (“Spain”) to use U.S. Government support of Spain’s position in this case as a bargaining chip with respect to completely unrelated litigation involving efforts to obtain possession of a nineteenth century painting looted by Nazis and now in the possession of Spain, or any other such negotiations as yet undisclosed.

**MEMORANDUM IN SUPPORT**

1. The U.S. filed its amicus brief in support of Spain in this appeal stating its purported interest to be the interpretation of maritime and international law and agreements as they apply to shipwrecks and the protection of underwater cultural heritage.

2. As pointed out in Odyssey’s Opening Brief at page 58, the U.S. position advanced in this case is contrary to its historical position on the issue of

foreign sovereign immunity for commercial activities and its interpretation of the Sunken Military Craft Act prior to this case.

3. U.S. diplomatic cables very recently leaked by Wikileaks.org reveal that the U.S. interest in this case is quite different from what was represented to the Court. The U.S. interest and participation in this case involved an offer of U.S. Government support in exchange for reciprocal support in unrelated litigation – the U.S. wanted to lend support to Claude Cassirer,<sup>1</sup> a U.S. citizen, in his efforts to obtain from Spain a painting said to have been forced from his grandmother by the Nazis.<sup>2</sup> A copy of one such cable is attached herewith as Exhibit A. (*See* ¶ 3, emphasis added.)

4. While made public by Wikileaks.org on December 8, 2010, the cable of interest, Exhibit A, is dated July 2, 2008, and was retrieved on December 28, 2010.<sup>3</sup>

5. Regardless of the legalities surrounding the public release of these diplomatic documents, they are now public record; and the facts therein strongly

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<sup>1</sup> Mr. Cassirer founded the La Mesa-Foothills Democratic Club, a supporter of the current administration's policies. *See*: [http://www.clevelandjewishnews.com/articles/2010/10/08/life\\_cycles/deaths/obituaries/doc4cadd9fda2cf5154763382.txt](http://www.clevelandjewishnews.com/articles/2010/10/08/life_cycles/deaths/obituaries/doc4cadd9fda2cf5154763382.txt), which also reveals that Mr. Cassirer died on September 25, 2010; and <http://www.lmfdc.sddem.org/President.html>. Both articles were last viewed on December 22, 2010.

<sup>2</sup> *See Cassirer v. Kingdom of Spain*, 616 F.3d 1019 (9th Cir. 2010).

<sup>3</sup> Exhibit A was retrieved on December 28, 2010, from: <http://213.251.145.96/cable/2008/07/08MADRID724.html>.

indicate that the Statement of Interest in the U.S. Amicus Brief filed in this case is not accurate.

6. Fed. R. App. P. 29 (c)(3) requires that amici provide a concise statement of its interest in the case. In this case, the leaked documents provide evidence that the U.S. did not reveal all of its interest in the case to the Court and the parties.

7. A statement of interest is meant to reveal the interest and perspective of the amici to allow the Court to place the interpretations of law of the amici in the appropriate context.

8. Although the relevant facts and applicable laws support Odyssey's position regarding the jurisdiction of United States courts in this case regardless of the position taken in the U.S. Brief, this Court should strike the amici brief given the conflict of interest of the U.S. recently revealed. In the alternative, the U.S. should be directed to amend its statement of interest to reflect accurately and completely the interest it has in this case.

WHEREFORE, Odyssey moves the Court to strike the U.S. Amicus Brief or, in the alternative, to require the U.S. to amend its statement of interest to reflect accurately its interest in this case.

Respectfully submitted,

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*Counsel for Appellant,  
Odyssey Marine Exploration, Inc.*

## EXHIBIT A

VZCZCXYZ0000

RR RUEHWEB

DE RUEHMD #0724/01 1840921

ZNR UUUUU ZZH

R 020921Z JUL 08

FM AMEMBASSY MADRID

TO SECSTATE WASHDC 5015

UNCLAS MADRID 000724

SIPDIS

STATE FOR EUR/OHI (JKENNEDY;JBECKER)

STATE FOR EEB/IPE (JURBAN)

STATE FOR EUR/WE, OES, L/OES

STATE PASS USTR (DWEINER)

E.O. 12958: N/A

TAGS: [ETRD](#) [KIPR](#) [PBTS](#) [PHSA](#) [SCUL](#) [SP](#)

SUBJECT: AMBASSADOR'S MEETING WITH MINISTER OF CULTURE

[¶1](#). (U) Summary: Ambassador met with Minister of Culture Cesar Antonio Molina on 6/30/08. The minister told the Ambassador that he was willing to meet with the claimant or his representative in a Nazi art loot case. The minister emphasized he was willing to continue to fight intellectual property rights (IPR) piracy. He was also clearly following the Odyssey case closely and made it clear that the GOS would exercise all of its legal options. The minister discussed cultural cooperation with the U.S. as well. End Summary

PARTICIPANTS

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¶2. (U) The minister was accompanied by Cultural Industries Policy Director General Guillermo Corral van Damme. The Ambassador was accompanied by EconOff.

CASSIRER CLAIM

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¶3. (U) The Ambassador stressed the USG's interest in direct discussions between the Spanish government and Claude Cassirer, the AmCit claimant of a painting by Camille Pisarro ("Rue St. Honore") in the Thyssen Museum. **The Ambassador noted also that while the Odyssey and Cassirer claim were on separate legal tracks, it was in both governments' interest to avail themselves of whatever margin for maneuver they had, consistent with their legal obligations, to resolve both matters in a way that favored the bilateral relationship.**

The minister listened carefully to the Ambassador's message, but he put the accent on the separateness of the issues. Molina said that no Spanish government could return the painting (if this is what the claimant wants). To begin with, while the minister presides over the board that manages the Thyssen Museum's collection, the minister could not oblige the board to return the painting without a (Spanish) legal judgment. The minister added that paying compensation, as the British government has reportedly done in a number of cases, also posed legal problems. Director General van Damme said, however, that perhaps the Spanish government had "sinned" (pecado) in not meeting with the claimant or his representative. The minister said that he was willing to meet with the claimant or his representative in connection with a trip to Washington, D.C. in September or October this year.

IPR

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¶4. (U) The minister emphasized that he remains committed to fighting piracy. He said that on July 10, he would preside over the Spanish government's inter-ministerial anti-piracy coordinating body. Van Damme said that this meeting would serve to "relaunch efforts" to fight piracy. The Ambassador noted that the USG had waited a number of years to place Spain on the Special 301 Watch List, but that this year, continued alarming internet piracy levels had precipitated the Watch List decision. Having said that, the Ambassador also praised recent vigorous enforcement actions, for instance the arrests of 32 suspected Chinese DVD and CD pirates. The Ambassador noted that the subsequent press conference, in which the minister said that Spaniards should not buy pirated products because such products harmed culture, was especially significant. Both the minister and director general emphasized the importance of the internet. Van Damme said it was especially important to create attractive business models for selling content on-line. The Ambassador suggested that the minister meet with IPR and internet service provider representatives when he travels to Washington this fall, and he agreed to do so.

ODYSSEY

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¶5. (U) The minister explained that one of the reasons for his September or October Washington trip was to meet with the law firm the Spanish government has retained in the Odyssey case. The minister added that he was following the court proceedings in Tampa, Florida closely. He expressed

indignation at a recent CNN interview of Odyssey CEO Greg Stemm who indicated that he would be willing to keep the gold coins found at the salvage site and return items of purely archeological interest. The Ambassador explained that the USG was cognizant of its international law responsibilities in these kinds of salvage cases and that American government lawyers would study carefully the legal implications and obligations arising from the Tampa court's decisions.

CULTURAL COOPERATION

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¶6. (U) The minister and the director general expressed great enthusiasm for cultural cooperation with the U.S. in general and Washington, D.C. in particular. With respect to Washington, for instance, the minister talked about Spanish support for an exhibition of 1970s and 80s art. He also talked about a more ambitious project, a "museum of "Latin" art (not clear where this would be, but he did talk about a "museum", not just a one-off exhibit). This would be separate from Ambassador Westendorp's (Spain's ambassador to the U.S.) idea of using the former Spanish Ambassador's residence in the Washington for some form of cultural repository.

COMMENT

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¶7. (U) The minister's expressed willingness to meet with Claude Cassirer or his representative is a modest step forward. We will remind the minister of this commitment when he finalizes his Washington travel plans. With respect to IPR, we think the minister is sincere in his desire to combat piracy. Our challenge as an Embassy is to find ways to convince the GOS and stakeholders (especially the ISPs) that

action against internet piracy cannot be held hostage to the mantra that "new business models" are required in this area. They certainly are necessary and desirable (both for ISPs and content providers). However, action against piracy may, in some cases, be necessary to make those models feasible.

AGUIRRE

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 3, 2011, a true and correct copy of this document has been served by U.S. Mail (with courtesy copy by email) to those on the attached Service List.

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Carl. R. Nelson, FBN 0280186

**10-10269-J**  
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