

MAR 16 2011

MEMORANDUM

TO: OIG – Harold W. Geisel, Deputy Inspector General

FROM: OIG/ISP - [REDACTED]
 OIG/OGC – [REDACTED]

SUBJECT: Congressional Request for Review: Department of State Activities Regarding Shipwreck Salvage Claim (ISP-I-11-36)

In response to a December 21, 2010, letter from Representative Kathy Castor (FL-11) regarding a constituent’s request for an investigation, the Department of State’s (Department) Office of Inspector General (OIG) conducted a review to determine whether there is evidence to support an allegation made in the *St. Petersburg Times*, that the Department offered to support the Government of Spain’s claim to coins and other artifacts found by Odyssey Marine Exploration, Inc. (Odyssey), a U.S. shipwreck salvage company, in exchange for Spain’s return of a high-value painting to a private family, the Cassirer family, in California.¹

The team undertook a review of Department officials’ actions regarding two cases which are currently in litigation: the dispute between Odyssey and the Government of Spain over recovered shipwreck artifacts, including gold and silver coins, and the dispute between descendants of an American citizen, Claude Cassirer, and the Government of Spain over a Camille Pissarro painting confiscated from Cassirer’s family by the Nazis. The Government of Spain claims rightful ownership to both the coins and the Pissarro painting. The purpose of the review was to determine whether, during discussions with Spain, Department officials proposed a *quid pro quo* arrangement connecting the return of the artifacts to Spain with the return of the painting to the Cassirer family.

Background

In March 2007, Odyssey discovered the remains of a shipwreck about 100 miles west of the Straits of Gibraltar. The remains included approximately 594,000 silver and gold coins, which Odyssey retrieved and brought to the United States, where it filed a claim for either ownership of the find or a salvage award for the company’s work in retrieving it. The Government of Spain opposed Odyssey’s claim, asserting that the shipwreck was the Spanish warship *Nuestra Senora de las Mercedes*, sunk in 1804, and had sovereign immunity. The

¹ Penn, Ivan. “Odyssey angry U.S. tried to trade gold for looted painting.” *St. Petersburg Times*, December 10, 2010. Accessed March 1, 2011. <http://www.tampabay.com/news/humaninterest/odyssey-angry-us-tried-to-trade-gold-for-looted-painting/1139220>

magistrate judge for the case concluded that the coins did, in fact, come from the wreck of the *Mercedes*, and recommended that the coins be returned to Spain.

Due to its substantial interest in the proper interpretation of marine and international law applicable to sovereign immunity, the U.S. Government filed a statement of interest in the case with the U.S. District Court in Tampa, Florida. In its statement, the U.S. Government supported the Government of Spain's claim that, as a sovereign warship, the *Mercedes* was immune from the salvage company's claim, based on the 1902 U.S.-Spain Treaty of Friendship and General Relations; principles from the United Nations Convention on the High Seas; and customary international law, as reflected in the United Nations Convention on the Law of the Sea. The statement explained, in part: "By supporting Spain, the United States seeks to ensure that its own sunken warships and lost crews are treated as sovereign ships and honored graves and are not subject to unauthorized exploration or exploitation." The district court ruled in favor of Spain, and ordered that the coins be returned to Spain. However, Odyssey appealed the decision, and the coins remain under the court's authority until the case is resolved.

In a separate and unrelated case, in September 2003 the Department's Office of Holocaust Issues was asked to help resolve a Holocaust restitution claim regarding a Camille Pissarro painting, *Rue Saint-Honoré, Après-Midi, Effet de Pluie*. The late Claude Cassirer, an American citizen, had asked for restitution of the painting, which the Nazis took from his grandmother in the 1930s. In 1976, Baron Hans Heinrich Thyssen-Bornemisza of Spain acquired the painting, and in the early 1990s, the Government of Spain purchased the baron's collection and built the Thyssen-Bornemisza Museum in Madrid. In considering the Cassirer claim, a U.S. district court ruled that U.S. courts have jurisdiction to determine who has ownership of the painting. However, Spain appealed this ruling, and the case is now before the U.S. Court of Appeals for the 11th Circuit.

The Office of Holocaust Issues continues to encourage the Government of Spain and representatives of the Cassirer family to resolve their dispute by engaging in direct talks. During the 1998 Washington Conference on Holocaust Era Assets, the participating nations (including Spain) accepted 11 nonbinding principles to assist in resolving issues on Nazi confiscated art. One of these principles calls on nations to expeditiously achieve just and fair solutions, and to develop and use alternative dispute resolution mechanisms for resolving ownership issues. (See: <http://www.state.gov/p/eur/rt/hlcst/122038.htm>.) On numerous occasions, both the Office of Holocaust Issues and the U.S. Ambassador to Spain have urged the Spanish Government and representatives of the Cassirer family to meet and seek a way forward². The U.S. Government has met with both parties in an effort to encourage resolution of the issue. However, to date, the two sides have not met.

Summary of the Office of Inspector General Review

The OIG review focused on whether there was a link between Department officials' activities concerning Odyssey's claim and negotiations over the ownership of the Pissarro painting. The team examined internal Department documents, including email exchanges and

² State 77179, July 23, 2010; State 79027, July 28, 2010; Madrid 724, July 2, 2008; Madrid 174, February 12, 2010; Madrid 734, July 14, 2010.

telegraphic communications; held interviews with Department officials who were responsible for monitoring the Odyssey case; and met with Department officials who were involved with the Cassirer case from 2007 to the present time. They also interviewed Department employees who were involved in these matters, including the senior and deputy Spain desk officers, the former economic officer in Madrid, the Special Envoy for Holocaust Issues and his deputy, and an attorney in the Office of the Legal Adviser who had advised on issues concerning the Odyssey case. In addition, the OIG team interviewed by telephone the former U.S. Ambassador to Spain and the former Spain desk officer, who is currently assigned to Madrid.³

Officials at Embassy Madrid, the Office of Holocaust Issues, and the Office of Western Europe (in the Bureau of European and Eurasian Affairs) all told OIG inspectors that efforts to resolve these two disputes always have been, and remain, unconnected. Likewise, unclassified cable traffic confirms that, in discussions between the U.S. Ambassador and the Spanish Minister of Culture, there was agreement that the two cases were on separate tracks.

Despite press articles to the contrary, inspectors found no evidence that a *quid pro quo* arrangement with Spain was ever considered as a way to resolve these two distinct disputes. Department officials in Washington and embassy officials in Madrid never discussed linking the Odyssey and Cassirer cases.

In 2007, shortly after Odyssey filed its admiralty claim in federal district court in Tampa, an informal, interagency working group was formed to discuss the issues raised in the Odyssey case, and to determine whether any U.S. Government action would be appropriate—including any action to protect substantial U.S. Government interests in the proper interpretation of marine and international law applicable to sovereign immunity. This group monitored the litigation and evaluated the legal and policy issues associated with the matter. Odyssey's representatives and the Government of Spain also met with the Department on several occasions to discuss their respective positions.

Ultimately, on May 5, 2009, the Spanish Embassy presented to the United States a note verbale⁴ requesting assistance in the district court litigation, in accordance with Article X of the 1902 U.S.-Spain Treaty of Friendship and General Relations, and on other shared bases. As mentioned above, on June 3, 2009, the magistrate judge found that the coins came from the wreck of the *Mercedes* and recommended that they be returned to Spain. On July 30, 2009, the Office of the Legal Adviser requested that the Department of Justice file a Statement of Interest in the litigation, on behalf of the United States. The Department of Justice filed the Statement in district court on September 29, 2009. The district court ruled in favor of Spain, and ordered that the coins be returned to Spain.⁵ However, Odyssey appealed the decision, and the coins remain under the court's authority until the case is resolved.

³ The review took place in Washington, DC, between January 18 and 28, 2011.

⁴ A form of diplomatic note, the "note verbale" is an informal third-person note that is less formal than a first-person note but more formal than an aide-memoire, per Department regulations (5 FAH-1 H-612.2-1).

⁵ *Odyssey Marine Exploration, Inc. v. Unidentified, Shipwrecked Vessel*, 675 F. Supp. 2d 1126 (M.D. Fla. 2009).

In August 2010, the Department of Justice submitted an amicus brief to the U.S. Court of Appeals for the 11th Circuit, where the case is now pending; the content of this brief is similar to the Statement of Interest which the Department of Justice had filed in the district court.

Conclusion

After reviewing the relevant files and meeting or conducting telephone conversations with present and former Department officials involved with the disparate cases, the OIG team found no evidence of a *quid pro quo* connection between the Odyssey and Cassirer cases. The United States did provide assistance to the Government of Spain, in response to a Spanish request under the terms of a treaty between the two nations. However, there is no relationship between the two cases, other than that they both involve disputes between U.S. citizens and the Government of Spain. The team found no evidence that any linkage between the cases was ever intended, discussed, authorized, or acted upon. Beyond Spain's claim to its ownership of the disputed valuables in each case, the two lawsuits have nothing in common.