

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHELSEA, LLC, MARK RUSSO, and	)	Case No. 07-5800 SC
ALLEN LORETZ, individually and on	)	
behalf of all others similarly	)	and related cases:
situated,	)	
	)	07-6045 SC
Plaintiffs,	)	08-2268 SC
	)	08-2052 SC
v.	)	08-5098 SC
	)	
REGAL STONE, LTD., HANJIN SHIPPING,	)	
CO., LTD., SYNERGY MARITIME, LTD.,	)	ORDER GRANTING MOTION
FLEET MANAGEMENT, LTD., and JOHN	)	TO CONSOLIDATE
COTA <u>In Personam</u> , M/V COSCO BUSAN,	)	RELATED CASES FOR
their engines, tackle, equipment,	)	PRE-TRIAL PURPOSES
appurtenances, freights, and cargo	)	<u>ONLY</u>
<u>In Rem</u> ,	)	
	)	
Defendants.	)	
	)	
_____	)	
	)	
AND ALL RELATED CASES	)	
_____	)	

**I. INTRODUCTION**

On December 19, 2008, Regal Stone Limited ("Regal Stone") and Fleet Management Ltd. ("Fleet") moved to consolidate this case - referred to hereinafter as "the Chelsea action" - and the four related civil cases before this Court for pre-trial purposes only. Docket No. 156. Regal Stone and Fleet filed the same motion in the related cases. See United States v. Regal Stone, Ltd., Case No. 07-6045, ("the United States action"), Docket No. 130;

1 California v. Regal Stone, Ltd., Case No. 08-2268, ("the  
2 California action"), Docket No. 44; Continental Ins. Co. v. Cota,  
3 Case No. 08-2052, ("the Continental action"), Docket No. 78; Regal  
4 Stone, Ltd. v. Cota, Case No. 08-5098, ("the Regal Stone action"),  
5 Docket No. 16.<sup>1</sup>

6 In the United States action, the Third-Party Defendant, Dr.  
7 Charles Calza ("Dr. Calza"), filed a statement of conditional non-  
8 opposition. See Docket No. 133 ("Dr. Calza Resp."). The United  
9 States responded to the motion, filing what is essentially a  
10 statement of non-opposition. See Docket No. 134 ("United States  
11 Resp.").

12 In the Continental action, The Continental Insurance Company  
13 ("Continental") opposed the motion. See Docket No. 79 ("Opp'n").  
14 In the same case, Defendant John Joseph Cota ("Cota") filed a  
15 conditional statement of non-opposition. See Docket No. 80 ("Cota  
16 Resp."). The Third-Party Defendants San Francisco Bar Pilots and  
17 The San Francisco Bar Pilots Benevolent and Protective Association  
18 (collectively, "the Bar Pilots") also filed a conditional  
19 statement of non-opposition. See Docket No. 81 ("Bar Pilots  
20 Resp."). In the United States action, Regal Stone and Fleet filed  
21 a Reply. See Docket No. 136. For the reasons stated herein, the  
22 motions to consolidate are GRANTED.

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26 <sup>1</sup> In the California action, both Regal Stone and Fleet moved  
27 to consolidate, but Fleet is not listed as a defendant in the case.  
28 See Docket No. 44. The Court treats that motion as if it were  
filed by Regal Stone alone.

1     **II.   BACKGROUND**

2           **A.   The Allision**

3           On November 7, 2007, the cargo ship M/V COSCO BUSAN hit the  
4     Bay Bridge while attempting to sail out of the San Francisco Bay.  
5     Regal Stone owns the M/V COSCO BUSAN, and Fleet is the ship's  
6     operator. Cota is a member of the Bar Pilots and was allegedly  
7     piloting the vessel during its exit from the San Francisco Bay.  
8     As a result of the allision, the M/V COSCO BUSAN discharged more  
9     than 50,000 gallons of heavy bunker fuel into the bay.

10          **B.   The Lawsuits**

11          Various lawsuits have since been filed in state and federal  
12     court. There are currently five federal civil actions that have  
13     been related and are before this Court.<sup>2</sup> In addition, the United  
14     States filed a criminal action against both Cota and Fleet. See  
15     United States v. Cota, Case No. CR 08-0160 ("the criminal  
16     action").

17          On September 18, 2008, the Court stayed the Continental  
18     action pending resolution of the criminal action. See Docket No.  
19     62 ("Sept. 18, 2008, Order"). On December 9, 2008, the Court  
20     entered a Case Management Order in the California action, staying  
21     the case pending completion of the criminal proceedings. See  
22     Docket No. 39 ("Case Management Order"). On December 19, 2008,  
23     Regal Stone and Fleet filed the motions to consolidate at issue  
24     here.

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26           <sup>2</sup> In Shogren Living Trust v. Regal Stone, Ltd., Case No. 07-  
27     5926, the Court entered an order dismissing the case on August 8,  
28     2008. See Docket No. 29.



1 Pilots Resp. at 1.

2 Only Continental opposes consolidation of the cases. See  
3 Opp'n. Continental's concerns, as well as those of the other  
4 responding parties, are addressed below.

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6 **III. LEGAL STANDARD**

7 "If actions before the court involve a common question of law  
8 or fact, the court may . . . consolidate the actions." Fed. R.  
9 Civ. P. 42(a)(2). District courts have broad discretion under  
10 this rule to consolidate cases pending in the same district.  
11 Investors Research Co. v. U.S. Dist. Court for Cent. Dist. of  
12 Cal., 877 F.2d 777, 777 (9th Cir. 1989). District courts may  
13 consolidate cases for purposes of discovery and pre-trial  
14 proceedings only. See Firemen's Ins. Co. of Newark, N.J. v.  
15 Keating, 753 F. Supp. 1137, 1141 (S.D.N.Y. 1990). In deciding  
16 whether to consolidate actions under Rule 42(a), the court must  
17 balance the savings of time and effort consolidation will produce  
18 against any inconvenience, delay, or expense that it would cause.  
19 Huene v. U.S., 743 F.2d 703, 704 (9th Cir. 1984).

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21 **IV. DISCUSSION**

22 **A. Continental's Opposition**

23 Continental contends that there are no common questions of  
24 law or fact between its case and the related actions. Opp'n at 6-  
25 7. Continental, an insurance company, is the underwriter of one  
26 of the Bar Pilots' insurance policies. Id. at 4. Continental  
27 seeks reimbursement from Regal Stone and Fleet for money that

1 Continental advanced to Cota to defend himself in the civil and  
2 criminal cases pending against him. Id. at 5. Continental relies  
3 on a provision of the California Harbors and Navigations Code,  
4 which provides that "[e]very vessel, owner, operator, or demise  
5 . . . hiring a pilot with a state license for the Bay[] of San  
6 Francisco . . . shall . . . defend, indemnify, and hold harmless  
7 pilots." Cal. Harb. & Nav. Code § 1198(c). Continental contends  
8 that while the allocation of fault for the allision is central to  
9 the other cases, "the dispute over the enforceability of § 1198 is  
10 the fundamental issue in Continental's action." Opp'n at 6.

11 However, Continental fails to mention that section 1198(c)  
12 releases vessels, owners and operators from the obligation to  
13 defend, indemnify or hold pilots harmless in "cases of willful  
14 misconduct by the pilot." Cal. Harb. & Nav. Code § 1198(c)(1)(c).  
15 Resolving what Continental considers to be the "fundamental issue"  
16 in its action requires discovery concerning Cota's conduct.

17 The conduct of Cota is a factual issue common to all of the  
18 actions, and discovery concerning Cota's conduct will overlap in  
19 all of the actions. In this case, the Chelsea action, it is  
20 alleged that Cota was piloting the M/V COSCO BUSAN at the time of  
21 the allision, and as a result he has been sued for damages.  
22 Docket No. 117 ("Verified Second Am. Class Action Compl."). In  
23 the United States action, it is alleged that Cota was piloting the  
24 M/V COSCO BUSAN at the time of the allision, and as a result the  
25 United States has sued Cota for damages. Docket No. 44 ("Am.  
26 Compl.") In the Regal Stone action, plaintiffs allege that Cota's  
27 operation of the M/V COSCO BUSAN was negligent. Docket No. 1

1 ("Compl."). In the Continental action, Regal Stone and Fleet  
2 filed a cross-claim against Cota seeking damages for rates and  
3 charges paid for pilotage services, and Regal Stone and Fleet also  
4 seek a declaration that they are not obligated to defend Cota.  
5 Docket No. 27 ("Countercl., Cross-cl., and Third Party Compl.").  
6 Even in the California action, where Cota is not a defendant,  
7 Cota's conduct is at issue because Regal Stone and Fleet have  
8 entered a counterclaim alleging that the Board of Pilot  
9 Commissioners was negligent in issuing a license to Cota. Docket  
10 No. 32. Consolidating these actions for pre-trial purposes will  
11 save time and effort because it will avoid duplication of  
12 depositions and other discovery relating to Cota's conduct.

13 Continental relies on Monticello Insurance Co. v. Kendall,  
14 1997 U.S. Dist. LEXIS 13749, at \*5-6 (D. Kan. Aug. 29, 1997) and  
15 Turner v. Transportacion Maritima Mexicana S. A., 44 F.R.D. 412,  
16 415-16 (E.D. Pa. 1968). However, the present facts are  
17 distinguishable. In those cases, the court denied motions to  
18 consolidate trials. Monticello, 1997 U.S. Dist. LEXIS 13749, at  
19 \*5-6; Turner, 44 F.R.D. at 415-16. Here, the motion is to  
20 consolidate the cases for discovery and pre-trial purposes only.

21 Finally, Continental cannot complain that consolidating the  
22 cases for pre-trial purposes will prejudice Continental, or cause  
23 inconvenience, delay, or extra expense because Continental's  
24 action has already been stayed pending the outcome of the criminal  
25 proceedings against Cota. See Sept. 18, 2008, Order. Regal Stone  
26 and Fleet's motion to consolidate is GRANTED.

1     **B.     Consolidation and Stay**

2             None of the other responding parties oppose consolidating the  
3 cases for pre-trial purposes only. However, in response to the  
4 concerns expressed by the responding parties, the Court takes this  
5 opportunity to clarify the nature of its Order. The Court's  
6 September 18, 2008 Order staying the Continental action remains in  
7 effect, and now all five consolidated civil cases are stayed  
8 pending completion of the criminal action, United States v. Cota.

9             As outlined above, Cota's conduct is at issue in all of the  
10 civil cases. Cota's fifth amendment rights would be implicated if  
11 discovery were to proceed in any of the civil actions before  
12 completion of the criminal matter. See Keating v. Office of  
13 Thrift Supervision, 45 F.3d 322, 324 (9th Cir. 1995)(noting that  
14 first consideration in deciding whether to stay civil proceedings  
15 in face of parallel criminal proceeding is extent to which fifth  
16 amendment rights are implicated). Notwithstanding the stay, any  
17 party in the position to file a dispositive motion without the  
18 need for discovery is allowed to do so.<sup>3</sup>

19             These cases are consolidated for discovery and pre-trial  
20 purposes only. The separate lawsuits are not merged into a single  
21 action, and they retain their separate character. See Geddes v.  
22 United Fin. Group, 559 F.2d 557, 562 (9th Cir. 1977)(determining  
23 that trial court erred in incorporating withdrawal of claims in  
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25             <sup>3</sup> With regard to Dr Calza's concern that the stay should last  
26 until after trial of the severed "False Statements" charges against  
27 Cota, the parties and the Court will be in a better position to  
28 address this concern in their Joint Case Management Statement and  
at the Case Management Conference scheduled for May 1, 2009.

1 one action in judgments entered in the other action where the two  
2 actions were consolidated for discovery purposes only). "[A]n act  
3 of consolidation does not affect any of the substantive rights of  
4 the parties." J.G. Link & Co. v. Continental Cas. Co., 470 F.2d  
5 1133, 1138 (9th Cir. 1972).

6  
7 **V. CONCLUSION**

8 The Court hereby ORDERS the following:

9 1. Regal Stone and Fleet's motions to consolidate the five  
10 related cases for discovery and pre-trial purposes only are  
11 GRANTED.

12 2. The consolidated cases are STAYED pending completion of  
13 the criminal matter, United States v. Cota, Case No. CR 08-0160,  
14 now before the Honorable Susan Illston.

15 3. The parties shall appear for a Case Management Conference  
16 on May 1, 2009, at 10:00 a.m. in Courtroom 1, on the 17th floor,  
17 U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.  
18 No later than seven days prior to the Case Management Conference,  
19 the parties shall file a Joint Case Management Statement  
20 addressing discovery and pre-trial motion practice in the cases  
21 that have been consolidated for pre-trial purposes.

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23 IT IS SO ORDERED.

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25 Dated: February 3, 2009

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27 UNITED STATES DISTRICT JUDGE