

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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|---|---|-------------------------|
| THE CONTINENTAL INSURANCE COMPANY, |) | Case No. 08-2052 SC |
| |) | |
| Plaintiff, |) | Related cases: |
| |) | 07-5800 SC |
| v. |) | 07-6045 SC |
| |) | 08-2268 SC |
| JOHN JOSEPH COTA; REGAL STONE |) | 08-5096 SC |
| LIMITED, FLEET MANAGEMENT, LTD.; |) | 08-5098 SC |
| and the M/V COSCO BUSAN, LR/IMO |) | 09-1469 SC |
| Ship No. 9231743, her engines, |) | |
| apparel, electronics, tackle, |) | ORDER GRANTING |
| boats, appurtenances, etc., <u>in rem</u> , |) | MOTIONS FOR PARTIAL |
| |) | <u>SUMMARY JUDGMENT</u> |
| Defendants. |) | |
| _____ |) | |
| REGAL STONE LIMITED and FLEET |) | |
| MANAGEMENT, LTD., |) | |
| |) | |
| Counterclaimants, |) | |
| |) | |
| v. |) | |
| |) | |
| THE CONTINENTAL INSURANCE COMPANY, |) | |
| |) | |
| Counterdefendant. |) | |
| _____ |) | |
| REGAL STONE LIMITED and FLEET |) | |
| MANAGEMENT, LTD., |) | |
| |) | |
| Cross-Complainants, |) | |
| |) | |
| v. |) | |
| |) | |
| JOHN JOSEPH COTA, |) | |
| |) | |
| Cross-Defendant. |) | |
| _____ |) | |

1 REGAL STONE LIMITED and FLEET)
2 MANAGEMENT, LTD.,)

3 Third-Party Plaintiffs,)

4 v.)

5 THE SAN FRANCISCO BAR PILOTS and)
6 THE SAN FRANCISCO BAR PILOTS)
7 BENEVOLENT AND PROTECTIVE)
8 ASSOCIATION,)

Third-Party Defendants.)
_____)

9 **I. INTRODUCTION**

10 On August 20, 2009, Plaintiff and Counterdefendant
11 Continental Insurance Company ("Continental") filed a Motion for
12 Partial Summary Judgment. Docket No. 90 ("Continental's MPSJ").
13 On August 21, 2009, Defendant and Cross-Defendant John Joseph Cota
14 ("Cota") filed a Motion for Partial Summary Judgment. Docket No.
15 93 ("Cota's MPSJ").¹ Defendants, Counterclaimants, Cross-
16 Defendants, and Third-Party Plaintiffs Regal Stone Limited ("Regal
17 Stone") and Fleet Management, Ltd., ("Fleet") filed an Opposition.
18 Docket No. 97. Continental and Cota submitted Replies. Docket
19 Nos. 102 ("Continental's Reply"), 104 ("Cota's Reply"). Third-
20 Party Defendants San Francisco Bar Pilots and The San Francisco
21 Benevolent and Protective Association (collectively, "Bar Pilots")
22 joined in the motions for partial summary judgment. Docket No.

23 _____
24 ¹ Cota's MPSJ incorporates by reference the authorities and
25 legal arguments made on the preemption issue in his Motion to
26 Dismiss filed in Regal Stone, Ltd. v. Cota, Case No. 08-5098,
27 Docket No. 30 ("Motion to Dismiss"). That case has been related to
28 and consolidated with this one for pre-trial purposes. See Case
No. 08-2052, Docket No. 83 ("Order Granting Motion to
Consolidate").

1 107 ("Joinder I"). For the following reasons, the Court GRANTS
2 the motions for partial summary judgment.

3
4 **II. BACKGROUND**

5 This action stems from the allision of the cargo ship M/V
6 COSCO BUSAN with the San Francisco-Oakland Bay Bridge on November
7 7, 2007.² First Amended Compl. ("FAC"), Docket No. 14, ¶ 22.
8 After the allision, a number of civil actions were filed against
9 Cota, the pilot of the vessel on November 7, 2007. *Id.* ¶¶ 21, 24.
10 Because Continental issued a policy of insurance to the Bar
11 Pilots, it initially appointed defense counsel for Cota. *Id.* ¶¶
12 11, 28. Continental claims to have incurred at least \$315,321.31
13 in legal fees and costs relating to Cota's defense before Regal
14 Stone, Fleet, and the vessel assumed Cota's defense. *Id.* ¶¶ 26-
15 31. Continental filed this lawsuit seeking reimbursement of those
16 fees and costs. Continental relies primarily on California
17 Harbors and Navigation Code section 1198, which provides that a
18 vessel, or its owner or operator, shall either purchase trip
19 insurance from the pilot, or defend, indemnify and hold harmless
20 the pilot if an accident occurs due to the pilot's negligence.
21 Cal. Harbors & Navigation Code § 1198(c).

22 In their Answer, Regal Stone and Fleet's Second Affirmative
23 Defense states that "section 1198(c) is invalid as it is preempted

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25 _____
26 ² The term "allision" is used in maritime cases to describe an
27 accident involving a moving vessel and a stationary object or
28 vessel. Hochstetler v. Bd. of Pilot Comm'rs for the Bays of San
Francisco, San Pablo and Suisun, 6 Cal. App. 4th 1659, 1661 n.1
(Ct. App. 1992).

1 by federal maritime law." Docket No. 26 ("Answer") ¶ 64. In
2 their Counterclaim, Cross-Claim and Third-Party Complaint, Regal
3 Stone and Fleet seek a determination that federal maritime law
4 preempts section 1198(c), and that they are not required to
5 defend, indemnify, and hold harmless Cota or the Bar Pilots.
6 Docket No. 27 ("Countercl.") ¶¶ 25-29.

7 Continental and Cota move for partial summary judgment on the
8 question of whether section 1198 is preempted by federal maritime
9 law. Continental's MPSJ at 1; Cota's MPSJ at 1. On September 21,
10 2009, the Court ordered supplemental briefing on the question of
11 whether section 1198 applies to Regal Stone and Fleet because the
12 time charterer hired the pilot. Docket No. 108 ("Order Requiring
13 Supplemental Briefing"). Continental and Cota filed supplemental
14 briefs. Docket Nos. 122 ("Continental's Supplemental Br."), 126
15 ("Cota's Supplemental Br."). The Bar Pilots joined in and adopted
16 the supplemental briefs of Continental and Cota. Docket No. 127
17 ("Joinder II"). Regal Stone and Fleet filed an Opposition.
18 Docket No. 130 ("Opp'n"). Continental and Cota submitted Replies.
19 Docket Nos. 139 ("Continental's Reply"), 140 ("Cota's Reply"). On
20 December 17, 2009, the Court found that the vessel hired the
21 pilot, and therefore section 1198 applies to the owner and
22 operator of the vessel, Regal Stone and Fleet. Docket No. 146
23 ("Order re: Applicability of Section 1198").
24

25 **III. LEGAL STANDARD**

26 Partial summary judgment is appropriate when there is no
27 genuine issue of material fact and the moving party is entitled to
28

1 a determination of a legal issue as a matter of law. Fed. R. Civ.
2 P. 56. The party moving for summary judgment bears the initial
3 burden of identifying the absence of a genuine issue of material
4 fact. Celotex v. Catrett, 477 U.S. 317, 323 (1986). If the
5 movant meets this burden, then the burden shifts to the non-moving
6 party to provide evidence and specific facts which establish the
7 existence of a genuine issue. Anderson v. Liberty Lobby, 477 U.S.
8 242, 249 (1986). "The evidence of the non-movant is to be
9 believed, and all justifiable inferences are to be drawn in his
10 favor." Id. at 255. The standards and procedures for granting
11 partial summary judgment, also known as summary adjudication, are
12 the same as those for summary judgment. See California v.
13 Campbell, 138 F.3d 772, 780 (9th Cir. 1998). A party can move,
14 under Rule 56, for partial summary judgment as to an affirmative
15 defense. See United States v. Union Pac. R.R. Co., 565 F. Supp.
16 2d 1136, 1149 n. 20 (E.D. Cal. 2008).

17
18 **IV. DISCUSSION**

19 Having determined that the vessel hired Cota, the issue now
20 before the Court is a purely legal one; namely, whether section
21 1198 is preempted by federal maritime law.

22 **A. Section 1198**

23 Under California law, foreign vessels in the Bay of San
24 Francisco must use a pilot: "Every foreign vessel . . . [in] the
25 bay[] of San Francisco . . . shall use a pilot or inland pilot
26 holding a license issued pursuant to this division" Cal.
27 Harbors & Navigation Code § 1127(d). Section 1198 is entitled
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1 "Pilotage services; rates and charges; exclusions; insurance
2 coverage." Section 1198(c) begins by stating that:

3 Every vessel, owner, operator, or demise or
4 bareboat charterer hiring a pilot with a state
5 license for the Bays of San Francisco, San
6 Pablo, and Suisun shall either defend,
7 indemnify, and hold harmless pilots pursuant to
8 paragraph (1), or alternatively, notify pilots
9 of an intent to pay for trip insurance pursuant
10 to paragraph (2). If a vessel or its owner,
11 operator, or demise or bareboat charterer does
12 not provide written notice pursuant to paragraph
13 (2) of an intent to exercise the trip insurance
14 option, then the vessel and its owner, operator,
15 and demise or bareboat charterer will be deemed
16 to have elected the obligation to defend,
17 indemnify, and hold harmless pilots pursuant to
18 paragraph (1).

12 Id. § 1198(c). Paragraph 1 states, in part, that:

13 A vessel subject to this paragraph and its
14 owner, operator, and demise or bareboat
15 charterer shall defend, indemnify, and hold
16 harmless the pilot, any organization of pilots
17 to which the pilot belongs, and their officers
18 and employees, with respect to liability arising
19 from any claim, suit, or action, by whomsoever
20 asserted, resulting in whole, or in part, from
21 any act, omission, or negligence of the pilot,
22 any organization of pilots to which the pilot
23 belongs, and their officers and employees.

19 Id. § 1198(c)(1)(B). Paragraph 2 states, in part, that:

20 In lieu of paragraph (1), a vessel subject to
21 this subdivision and its owner, operator, demise
22 or bareboat charterer, and agent may elect to
23 notify the pilot, or the organization of pilots
24 to which the pilot belongs, of intent to pay for
25 trip insurance, as described in subdivision (b).
26 If notice of this election is received, in
27 writing, by the pilot, or the organization of
28 pilots to which the pilot belongs, at least 24
hours prior to the time pilotage services are
requested, the vessel, and its owner, operator,
demise or bareboat charterer, and agent are not
subject to the requirements of paragraph (1).

1 Id. § 1198(c)(2).

2 **B. Preemption**

3 The Supremacy Clause of Article VI of the Constitution
4 provides Congress with the power to preempt state law. Preemption
5 occurs when (A) Congress, in enacting a federal statute, expresses
6 a clear intent to preempt state law; (B) when there is actual
7 conflict between federal and state law; (C) where compliance with
8 both federal and state law is physically impossible; (D) where
9 there is implicit in federal law a barrier to state regulation;
10 (E) where Congress has legislated comprehensively, thus occupying
11 an entire field of regulation and leaving no room for the states
12 to supplement federal law; or (F) where the state law stands as an
13 obstacle to the accomplishment and execution of the full
14 objectives of Congress. Louisiana Pub. Serv. Comm'n v. FCC, 476
15 U.S. 355, 368-69 (1986).

16 "[T]he purpose of Congress is the ultimate touchstone in
17 every pre-emption case." Wyeth v. Levine, 129 S.Ct. 1187, 1194
18 (2009)(quoting Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996)).
19 In "all pre-emption cases, and particularly in those in which
20 Congress has 'legislated . . . in a field which the States have
21 traditionally occupied,' . . . we 'start with the assumption that
22 the historic police powers of the States were not to be superseded
23 by the Federal Act unless that was the clear and manifest purpose
24 of Congress.'" Wyeth, 129 S.Ct. at 1194-95 (quoting Medtronic,
25 518 U.S. at 485)(ellipses in Wyeth); see also Rice v. Santa Fe
26 Elevator Corp., 331 U.S. 218, 230 (1947)). Federal admiralty law
27 preempts state law only if the state law "contravene[s] any acts
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1 of Congress, . . . work[s] any prejudice to the characteristic
2 features of the maritime law, [] or interfere[s] with its proper
3 harmony and uniformity in its international and interstate
4 relations." In re Exxon Valdez, 484 F.3d 1098, 1101 (9th Cir.
5 2007).

6 **C. Congress Authorized State Regulation of Pilotage**

7 "Pilotage is the art of navigating ships into and out of
8 ports or along rivers, bays, harbors and other special waters."
9 Interport Pilots Agency, Inc. v. Sammis, 14 F.3d 133, 136 (2nd
10 Cir. 1994). Historically, Congress has left the regulation of
11 pilotage in the control of the states. In its very first session,
12 Congress passed the Lighthouse Act of 1789, which provided that
13 "all pilots in bays, inlets, rivers, harbors, and ports of the
14 United States shall continue to be regulated in conformity with
15 the existing laws of the states" Anderson v. Pac. Coast
16 S.S. Co., 225 U.S. 187, 195 (1912)(quoting from Act of Aug. 7,
17 1789, ch. 9, § 4).

18 According to the United States Supreme Court, "[t]his was a
19 clear and authoritative declaration by the first Congress, that
20 the nature of this subject is such that until Congress should find
21 it necessary to exercise its power, it should be left to the
22 legislation of the states." Id. (citation and internal quotation
23 marks omitted); see also Kotch v. Bd. of River Port Pilot Comm'rs,
24 330 U.S. 552, 559 (1947) ("The States have had full power to
25 regulate pilotage of certain kinds of vessels since 1789 when the
26 first Congress decided that then existing state pilot laws were
27 satisfactory and made federal regulation unnecessary."); Soriano

1 v. U.S., 494 F.2d 681, 684 (9th Cir. 1974) (describing regulation
2 of pilotage as "an area specifically reserved by Congress for 185
3 years for regulation by the states and acknowledged by the Supreme
4 Court for more than 120 years to be a subject of peculiarly local
5 concern.").

6 In 1983, Congress enacted 46 U.S.C. § 8501, which provides,
7 in part, that "pilots in the bays, rivers, harbors, and ports of
8 the United States shall be regulated only in conformity with the
9 laws of the States." 46 U.S.C. § 8501(a). "Any regulation or
10 provision violating this section is void." Id. § 8501(e). The
11 House of Representatives Report emphasized the importance of the
12 word "only": "Section 8501 establishes the general proposition
13 that the states regulate pilots in the bays, rivers, harbors, and
14 ports of the United States, unless otherwise specifically provided
15 by law. Subsection (a) . . . uses the word 'only' for emphasis on
16 this point." H.R. Rep. No. 98-338, at 184 (1983), reprinted in
17 1983 U.S.C.C.A.N. 924, 996.

18 Courts have interpreted this statute as an expression of
19 Congress's intent not to limit the states' power to regulate
20 pilotage unless otherwise provided by Congress. See Gillis v.
21 Louisiana, 294 F.3d 755, 761 (5th Cir. 2002). Congress has
22 preempted state regulation of pilotage only with respect to
23 vessels on the Great Lakes, 46 U.S.C. § 9302, and American flag
24 vessels sailing between American ports, 46 U.S.C. § 8502. Sammis,
25 14 F.3d at 136. Thus, the states have authority over the pilotage
26 of all American vessels engaged in foreign trade, and all foreign
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1 flag vessels.³ Id. Pursuant to 46 U.S.C. § 8501, California has
2 the authority to regulate pilotage in the Bay of San Francisco.
3 The California legislature exercised that authority when it
4 enacted section 1198.

5 **D. Section 1198 Is Not Preempted by Federal Maritime Law**

6 Under federal maritime law, the owner of a vessel is not
7 personally liable for the negligence of a compulsory pilot.
8 Homer Ramsdell Transp. Co. v. La Compagnie Generale
9 Transatlantique, 182 U.S. 406, 416-17 (1901); see also Davenport
10 v. M/V New Horizon, No. 01-933, 2002 WL 32098289, at *5 (N.D. Cal.
11 Dec. 18, 2002). The owner of a vessel is not personally liable
12 because the element of compulsion eliminates the respondeat
13 superior nexus which would normally serve as a basis for imputing
14 a pilot's negligence to the shipowner. California v. Italian
15 Motorship Ilice, 534 F.2d 836, 841 (9th Cir. 1976). However, the
16 vessel is liable for the tort of a pilot, whether or not the
17 pilotage is compulsory. The China, 74 U.S. 53, 61-69 (1868).

18 The Court finds that this limitation on a shipowner's
19 liability does not preempt section 1198. Generally, in an
20 admiralty case, "[a]bsent a relevant statute, the general maritime
21 law, as developed by the judiciary, applies." East River S.S.
22 Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 864 (1986).
23 Here, however, there is a relevant statute, which provides that
24 pilots "shall be regulated only in conformity with the laws of the
25 States." 46 U.S.C. § 8501(a)(emphasis added). This Court must

26
27 ³ There is no dispute that the M/V COSCO BUSAN is a foreign
28 flag vessel.

1 "keep strictly within the limits imposed by Congress. Congress
2 retains superior authority in these matters, and an admiralty
3 court must be vigilant not to overstep the well-considered
4 boundaries imposed by federal legislation." Miles v. Apex Marine
5 Corp., 498 U.S. 19, 27 (1990). Since Congress requires pilotage
6 to be regulated only in conformity with the laws of the states,
7 this Court must not overstep that boundary.

8 The Court notes that there is some tension between the
9 general maritime principle that shipowners cannot be held
10 personally liable for the negligence of compulsory pilots, and
11 section 1198, which requires shipowners who do not purchase trip
12 insurance to defend, indemnify, and hold harmless compulsory
13 pilots. This tension is mitigated somewhat by the fact that
14 section 1198 provides shipowners with a choice: even though pilots
15 are compulsory in the Bay of San Francisco, shipowners do not have
16 to defend, indemnify and hold harmless pilots if they purchase
17 trip insurance. More importantly, however, federal legislation
18 provides that pilots shall be regulated only in conformity with
19 the laws of the states. Therefore, this Court finds that the
20 general maritime principle at issue here does not preempt section
21 1198.

22 The Court's decision is consistent with the Ninth Circuit's
23 reasoning in Guangco v. Edward Shipping & Mercantile, S.A., 705
24 F.2d 360 (9th Cir. 1983). The Ninth Circuit took note of the
25 general maritime principle that shipowners are not personally
26 liable for the negligence of compulsory pilots. Id. at 362.
27 Despite its awareness of this principle, the Ninth Circuit held

1 that "even where pilotage is compulsory . . . an exculpatory
2 clause [requiring the shipowner to indemnify the pilot's employer]
3 is not unconscionable. . . . The clause is fair and reasonable in
4 the light of the customary business practices of pilotage
5 companies in Guam and elsewhere throughout the United States."
6 Id. at 362-63.

7 This Court's decision is also supported by the Ninth
8 Circuit's reasoning in United States v. S.S. President Van Buren,
9 490 F.2d 504 (9th Cir. 1973). While that case concerned a
10 noncompulsory pilot, see id. at 507, it also concerned a situation
11 where vessels had the option of purchasing trip insurance, id. at
12 509. The Ninth Circuit relied in part on the availability of trip
13 insurance in determining that tariff provisions exculpating the
14 pilot from liability were valid and enforceable. Id. Quoting
15 from a Supreme Court decision enforcing a contractual clause
16 exculpating tug owners from liability, the Ninth Circuit stated
17 "[i]t would be unconscionable for petitioner upon occurrence of a
18 mishap to repudiate the agreement upon which it obtained the
19 service." Id. (quoting Sun Oil Co. v. Dalzell Towing Co., 287
20 U.S. 291, 295 (1932)). In S.S. President Van Buren, the Ninth
21 Circuit found the exculpatory provision valid and enforceable
22 despite its awareness of the maritime principle that shipowners
23 are not personally liable for the negligence of a compulsory
24 pilot. See id. at 506.

25 In 1983, the District Court of Oregon rejected a challenge to
26 Oregon's dual-rate pilotage system similar to the challenge
27 presently before this Court. Olympia Sauna Compania Naviera, S.A.

1 v. United States, No. 80-699, slip op. (D. Or. 1983) ("Olympia
2 Sauna").⁴ In Oregon, by electing not to request trip insurance,
3 vessels agree not to sue pilots, and they agree to defend,
4 indemnify and hold them harmless. See Or. Rev. Stat. §§ 776.510-
5 776.540. District Judge Leavy took note of the maritime rule that
6 a vessel owner is not personally liable for the negligence of
7 compulsory pilots, but went on to determine that the shipowner
8 could not assert any liability against the pilot. Olympia Sauna
9 at 4-6. Judge Leavy relied, in part, on the Ninth Circuit's
10 Guangco decision. Id. at 6. These decisions support this Court's
11 determination that the maritime rule limiting a vessel owner's
12 personal liability does not preempt section 1198.

13 California is not alone in limiting the liability of licensed
14 pilots or providing them indemnity. As noted above, Oregon has a
15 dual-rate tariff similar to section 1198, which requires vessels
16 without trip insurance to defend, indemnify and hold pilots
17 harmless. See Or. Rev. Stat. §§ 776.510-776.540. Other states go
18 further, by imposing strict limits on a pilot's liability, even
19 though vessels are not offered trip insurance. In Washington, a
20 pilot's liability for negligence is limited to \$5000 per incident.
21 Wash. Rev. Code §88.16.118(1)(a). The same is true in Maine. 38
22 Me. Rev. Stat. Ann. § 99-A. In Texas, a pilot's liability is

23 _____
24 ⁴ Steven M. Crane, attorney for Continental, filed a
25 Declaration in Support of Continental's MPSJ. Docket No. 92. The
26 District of Oregon opinion is attached as Exhibit F. Regal Stone
27 and Fleet filed an evidentiary objection to this opinion. Docket
28 No. 96 ("Evidentiary Objections") at 3. Citation of an unpublished
district court opinion is not improper, unless the opinion has been
designated as "not for citation." Civ. L. R. 3-4(e). The
objection is OVERRULED.

1 limited to \$1000 per incident. Tex. Transp. Code Ann.
2 § 66.083(a)(Houston Pilots), § 67.083(a)(Galveston Pilots),
3 § 69.083(a)(Jefferson and Orange County Pilots), § 70.083(a)(Port
4 of Corpus Christi Pilots). This Court is not aware of any
5 decision finding that federal maritime law preempts these
6 statutes.

7 It was Congress's intent to allow the states to regulate
8 pilotage, and there is no danger that state regulation of pilotage
9 interferes with federal maritime law's proper harmony and
10 uniformity. See Cooley v. Bd. of Wardens, 53 U.S. 299, 320
11 (1851)("[T]he nature of the subject [pilotage] when examined, is
12 such as to leave no doubt of the superior fitness and propriety,
13 not to say the absolute necessity, of different systems of
14 regulation, drawn from local knowledge and experience, and
15 conformed to local wants."). Accordingly, this Court would appear
16 to be sailing in safe waters by finding, as a matter of law, that
17 federal maritime law does not preempt section 1198.

18 Finally, the Court notes that the insurance commonly carried
19 by sea-going vessels covers accidents under pilotage. See Kane v.
20 Hawaiian Indep. Refinery, Inc., 690 F.2d 722, 725 (9th Cir. 1982).
21 Here, Fleet is entered with the Steamship Mutual Underwriting
22 Association (Bermuda) Limited, for protection and indemnity risks
23 relating to the M/V COSCO BUSAN. Rajvanshy Decl. ¶ 4.⁵ Hence,
24 even though the M/V COSCO BUSAN did not have trip insurance at the

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26 ⁵ Kishore Rajvanshy, Managing Director for Fleet, filed a
27 Declaration in Opposition to the Motions for Partial Summary
28 Judgment. Docket No. 98.

1 time of the November 7, 2007 collision, the vessel still had this
2 other form of insurance coverage. This coverage further lessens
3 any tension between section 1198 and the maritime principle that
4 vessel owners should not be held personally liable for the
5 negligence of a compulsory pilot.

6 **E. Section 1198 Is Not Preempted by the Oil Pollution Act**

7 Regal Stone and Fleet contend that section 1198 conflicts
8 with the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 et seq.
9 Opp'n at 21-24. While OPA imposes strict liability for pollution
10 removal costs and damages on parties responsible for vessels that
11 discharge oil, see id. § 2702, it also allows those parties to
12 bring an action for contribution against other parties who are
13 liable or potentially liable, see id. § 2709. Regal Stone and
14 Fleet imply that section 1198 is preempted by this law to the
15 extent that it would immunize Cota and the Bar Pilots from a
16 contribution claim. Opp'n at 23. However, the OPA contains a
17 savings clause, which provides that nothing in the act shall
18 "affect, or be construed or interpreted to affect or modify in any
19 way the obligations or liabilities of any person under . . . State
20 law, including common law." 33 U.S.C.A. § 2718(a). Accordingly,
21 the OPA does not affect or modify section 1198's requirement that
22 vessel owners and operators who fail to purchase trip insurance
23 must defend, indemnify and hold harmless pilots. The OPA also
24 provides that indemnification agreements are not prohibited. 33
25 U.S.C. § 2710. Furthermore, the OPA concerns pollution removal
26 costs and damages, while section 1198 concerns the regulation of
27 pilotage. The Court finds no conflict between the two such that

1 the OPA preempts section 1198.⁶
2

3 **V. CONCLUSION**

4 For the foregoing reasons, the Court finds that section 1198
5 is not preempted by federal maritime law. Based on this finding,
6 the Court grants partial summary judgment in favor of Continental
7 Insurance Company and against Regal Stone Limited and Fleet
8 Management Limited on the Second Affirmative Defense in the Answer
9 filed by Regal Stone Limited and Fleet Management Limited. The
10 Court also grants partial summary judgment in favor of Continental
11 Insurance Company, John Joseph Cota, the San Francisco Bar Pilots,
12 and the San Francisco Bar Pilots Benevolent and Protective
13 Association, and against Regal Stone Limited and Fleet Management
14 Limited, on the first claim for relief in the Counterclaim, Cross-
15 Claim and Third-Party Complaint filed by Regal Stone Limited and
16 Fleet Management Limited.

17
18 IT IS SO ORDERED.

19
20 Dated: January 27, 2010

21 
22 _____
UNITED STATES DISTRICT JUDGE

23 _____
24 ⁶ In the section of their Opposition discussing the OPA, Regal
25 Stone and Fleet also suggest that the Comprehensive Environmental
26 Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§
27 9601-9675, might preempt section 1198. Opp'n at 23. Plaintiffs
28 have not met their burden of showing how CERCLA preempts section
1198. The Court notes that CERCLA focuses on hazardous waste
disposal and the costs of cleanup, and, like OPA, CERCLA consists
of a number of savings clauses. See, e.g., Fireman's Fund Ins. Co.
v. City of Lodi, California, 302 F.3d 928, 941 (9th Cir. 2002).