

1 ****E-filed 3/24/11****

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7 IN THE UNITED STATES DISTRICT COURT

8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 SAN FRANCISCO DIVISION

10 COSCO CONTAINER LINES COMPANY

11 LIMITED,

No. C 09-4173 RS

12 Plaintiff,

**ORDER VACATING PRIOR ORDER
AND RESETTING HEARING**

13 v.

14 HECNY SHIPPING LIMITED, et al.,

15 Defendants.

16 _____/

17 On March 23, 2011, an order issued denying plaintiff's motion for summary judgment on

18 what were essentially procedural grounds. Counsel for Hecny Shipping Limited and Hecny

19 Transportation Inc. (collectively "Hecny") subsequently communicated with court staff, requesting

20 that the motion be put back on calendar, to permit him to present argument that the merits of the

21 motion were properly before the Court under the provisions of Rule 14(c)(2) of the Federal Rules of

22 Civil Procedure and the authority of *Royal Ins. Co. of America v. Southwest Marine*, 194 F.3d 1009,

23 1017 (9th Cir. 1999).

24 While counsel's decision to proceed in an informal and cost-effective manner by first

25 contacting court staff is understandable, the result was an *ex parte* communication of a legal

26 argument, to which other parties must now be given the opportunity to respond, in the event any of

27 them disagree with the analysis that the Court may properly reach the merits of plaintiff's motion

28 for summary judgment. Accordingly, good cause appearing, the order entered on March 23, 2011 is

1 vacated. Plaintiff's motion for summary judgment, now being advanced by Hecny pursuant to an
2 assignment from plaintiff, is continued to April 14, 2011 at 1:30 p.m. The Court reserves the right
3 to take the matter under submission without oral argument pursuant to Civil Local Rule 7-1(b), and
4 will notify the parties in advance if it does so. Any party wishing to respond to Hecny's argument
5 that the motion is properly before the court pursuant to Rule 14(c)(2) and *Royal Insurance*, may file
6 a brief, not to exceed three pages, no later than April 1, 2011.

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8 IT IS SO ORDERED.

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10 Dated: 3/24/11

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RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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