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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 PACIFIC ASIAN ENTERPRISES, a
12 California corporation, and RLI Insurance
Company, an Illinois corporation,

13 Plaintiffs,

14 vs.

15 CROSS CHARTERING N.V., a foreign
limited liability company, *in personam*;
16 SSA MARINE, INC., a Washington
corporation doing business as
17 STEVEDORE SERVICES OF AMERICA;
and M.V. CATALONIA V-285, her
18 machinery, tackle, and engines, etc., *in*
rem;

19 Defendants
20

CASE NO. 10cv1335-LAB (WVG)

**ORDER ON SEQUENCING OF
MOTIONS**

21 After Defendants filed a motion to dismiss this case on the ground that it belongs in
22 Antwerp, Belgium, Plaintiffs filed a motion for partial summary judgment on the merits. (The
23 motions were actually filed on the same day — January 31, 2011 — but the Defendants got
24 to the docket first.) On February 10, 2011, Defendants filed an *ex parte* motion asking the
25 Court to consider their motion to dismiss first, and to push back the briefing schedule for the
26 Plaintiffs' summary judgment motion. The Defendants' motion implicates a forum selection
27 clause in a commercial agreement at the heart of this case, and the Defendants argue,
28 sensibly, that the Court should make a venue determination first, before reaching the merits

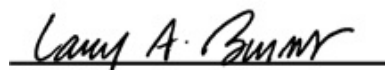
1 of the case. In the Plaintiffs' view, though, the enforceability of the forum selection clause
2 and the merits of the case aren't separable issues. Specifically, Plaintiffs argue that
3 "whether or not [the forum selection] clause can be enforced is inextricably interwoven with
4 the issue of whether or not Defendants can limit their liability to \$500 per package or unit
5 under the *U.S. law of fair opportunity*, which is unknown to Belgian law and which a Belgian
6 court would not recognize." (Doc. No. 25-1, p. 2.)

7 It may be that the law in Belgium is different from the law in the United States, and
8 that Plaintiffs' claims would be dead on arrival there. But the Court doesn't see why Plaintiffs
9 can't make that very argument in opposing Defendants' motion to dismiss. There is ample
10 case law out there — Plaintiffs cite *Vimar Seguros v. M/V Sky Reefer*, 515 U.S. 528
11 (1995) — standing for the proposition that courts will not enforce forum selection clauses that
12 force a party to surrender statutory remedies, and Plaintiffs are welcome to assemble it in
13 their attempt to keep their case in the United States. Indeed, the Defendants admit that
14 "PAE may oppose Defendants' venue motion *on any grounds*, including any that bear upon
15 the limitation of liability issue." (Doc. No. 28-1, p. 4 (emphasis added).)

16 The briefing and hearing on Defendants' motion to dismiss will proceed as scheduled.
17 Plaintiffs' summary judgment motion — the briefing and the hearing — will be stayed until
18 the Court has ruled on the motion to dismiss and determined the appropriate venue for this
19 case.

20 **IT IS SO ORDERED.**

21 DATED: February 14, 2011

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23 **HONORABLE LARRY ALAN BURNS**
24 United States District Judge