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NORTHERN DISTRICT OF CALIFORNIA

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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,  
19 Plaintiff,  
20 v.  
21 M/V COSCO BUSAN, LR/IMO Ship No.  
22 9231743, her engines, apparel, electronics, tackle,  
boats, appurtenances, etc., in rem, THE  
23 SHIPOWNERS' INSURANCE & GUARANTY  
COMPANY LTD., REGAL STONE LIMITED,  
24 FLEET MANAGEMENT LTD., and JOHN  
COTA, in personam,  
25 Defendants.

Civil No. CV 07  
IN ADMIRALTY

6045

VERIFIED COMPLAINT OF  
THE UNITED STATES

1 Plaintiff, the United States of America, alleges upon information and belief as follows:

2 **NATURE OF THE ACTION**

3 1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully  
4 appears, and within Rule 9(h) of the Federal Rules of Civil Procedure, and, further, is an action  
5 brought, *inter alia*, under the National Marine Sanctuaries Act (“NMSA”), 16 U.S.C. §§ 1431, *et*  
6 *seq.*, the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. §§ 2701, *et seq.*, and the Park System  
7 Resource Protection Act (“PSRPA”), 16 U.S.C. § 19jj, *et seq.*, against Defendants M/V COSCO  
8 BUSAN, *in rem*, and THE SHIOWNERS’ INSURANCE & GUARANTY COMPANY LTD.  
9 (“SIGCO”), REGAL STONE LIMITED (“REGAL STONE”), FLEET MANAGEMENT LTD.  
10 (“FLEET MANAGEMENT”), and JOHN COTA, (“COTA”), *in personam*.

11 2. The United States expressly reserves the right to amend this Complaint to, *inter alia*,  
12 add additional parties and assert additional claims against such additional parties and the present  
13 Defendants herein.

14 **JURISDICTION AND VENUE**

15 3. The United States is authorized to bring this suit and the Court has jurisdiction  
16 pursuant to, *inter alia*, 28 U.S.C. § 1345, 16 U.S.C. §§ 1437 and 1443, 33 U.S.C. §§ 1321 and 2717,  
17 and 16 U.S.C. § 19jj-2.

18 4. Venue is properly in this Court pursuant to, *inter alia*, 28 U.S.C. § 1391 and 1395,  
19 16 U.S.C. § 1443, 33 U.S.C. § 2717, and 16 U.S.C. § 19jj-2.

20 **DEFENDANTS**

21 5. At all times material herein, defendant M/V COSCO BUSAN, LR/IMO Ship No.  
22 9231743, her engines, apparel, electronics, tackle, boats, appurtenances, *etc.*, *in rem* (hereafter the  
23 “Vessel”), was flagged in Hong Kong is now or during the pendency of this action will be within the  
24 navigable waters of this District and within the jurisdiction of this Court.

25 6. At all times material herein, defendant SIGCO was doing business within the United  
26 States of America and within this district and within the jurisdiction of this Court, including, but not  
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1 limited to, by insuring and/or providing evidence of financial responsibility and certain guarantees  
2 pertaining to liabilities incurred by or through the Vessel.

3 7. SIGCO has provided evidence of financial responsibility and certain guarantees  
4 pertaining to the Vessel; accordingly, the United States of America is entitled to bring its claims  
5 directly against said guarantor.

6 8. At all times material herein, defendant REGAL STONE, a foreign corporation or  
7 entity, presently believed to be headquartered in Hong Kong, had a place of business and/or was  
8 doing business within this district and within the jurisdiction of this Court, including, but not limited  
9 to, through operation of the Vessel at the time of, and with respect to, the matters sued upon herein.

10 9. At all times material herein, REGAL STONE owned the Vessel.

11 10. At all times material herein, REGAL STONE operated the Vessel.

12 11. At all times material herein, REGAL STONE managed the Vessel.

13 12. At all times material herein, REGAL STONE chartered the Vessel.

14 13. At all times material herein, REGAL STONE controlled the Vessel.

15 14. At all times material herein, defendant FLEET MANAGEMENT, a foreign  
16 corporation or entity, presently believed to be headquartered in the Hong Kong, had a place of  
17 business and/or was doing business within this district and within the jurisdiction of this Court,  
18 including, but not limited to, through operation of the Vessel at the time of, and with respect to, the  
19 matters sued upon herein.

20 15. At all times material herein, FLEET MANAGEMENT owned the Vessel.

21 16. At all times material herein, FLEET MANAGEMENT operated the Vessel.

22 17. At all times material herein, FLEET MANAGEMENT managed the Vessel.

23 18. At all times material herein, FLEET MANAGEMENT chartered the Vessel.

24 19. At all times material herein, FLEET MANAGEMENT controlled the Vessel.

25 20. At all times material herein, defendant COTA was a resident of the State of  
26 California and/or had a place of business and/or was doing business within this district and within  
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1 the jurisdiction of this Court.

2 21. At all times material herein, defendant COTA was a licensed maritime pilot and,  
3 *inter alia*, was licensed to pilot vessels such as the M/V COSCO BUSAN on the waters of San  
4 Francisco Bay.

5 **GENERAL ALLEGATIONS**

6 22. On the morning of November 7, 2007, defendant COTA boarded the Vessel at its  
7 berth at the Port of Oakland, California, in preparation for piloting the Vessel outbound from  
8 Oakland, through the waters of San Francisco Bay, across the bar outside the Golden Gate, and  
9 thereafter to the pilot station offshore San Francisco, at which point COTA was to disembark the  
10 Vessel and transfer to a pilot boat. The Vessel thereafter was to continue directly on its voyage to  
11 a foreign port of call, believed to be South Korea.

12 23. On the morning of November 7, 2007, defendant COTA, the Vessel, and her crew  
13 departed the Vessel's berth in Oakland and proceeded outbound through the waters of San Francisco  
14 Bay.

15 24. At the time the foregoing voyage commenced, and at all relevant times herein,  
16 defendant COTA was on the bridge of the Vessel and serving in the capacity as pilot of the Vessel.

17 25. At the time the foregoing voyage commenced, and at all relevant times herein,  
18 the Vessel's Master and various crew of the Vessel were on the bridge of the Vessel.

19 26. At or about 0830 hours on November 7, 2007, while on navigable waters of the  
20 United States, the Vessel allided with the base and/or fendering system of the "Delta Tower", one  
21 of the support towers of the western span of the San Francisco-Oakland Bay Bridge (the "Bay  
22 Bridge").

23 27. The foregoing allision with the Bay Bridge resulted, *inter alia*, in a rupture of the  
24 Vessel's tanks, thereby allowing a portion of the Vessel's bunkers to be discharged into navigable  
25 waters of the United States and onto adjoining shorelines, including, but not limited to, navigable  
26 waters and adjoining shorelines of San Francisco Bay, including its appurtenant waters and  
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1 tributaries; the Pacific Ocean, including, but not limited to, the Gulf of the Farallones National  
2 Marine Sanctuary and the Monterey Bay National Marine Sanctuary; and the navigable waters and  
3 adjoining shorelines of units of the National Park System, including, but not limited to, the Golden  
4 Gate National Recreation Area, Point Reyes National Seashore, San Francisco Maritime National  
5 Historic Park, Rosie the Riveter/World War II Home Front National Historic Park, and other  
6 resources subject to the protections of the PSRPA. The foregoing allision and subsequent discharge  
7 of bunkers is hereafter referred to as the "COSCO BUSAN Incident".

8 28. As a direct and proximate result of the COSCO BUSAN Incident, the United States  
9 has expended and/or sustained, *inter alia*, response costs and damages within the meaning of the  
10 NMSA, OPA, and PSRPA and, further, will continue to expend and/or sustain such response costs  
11 and damages.

12 29. The COSCO BUSAN Incident was proximately caused, *inter alia*, by the acts,  
13 omissions, strict liability, fault, negligence, and breach of federal safety and operating regulations  
14 by the *in rem* and *in personam* Defendants and, as applicable, their agents, servants, employees,  
15 crew, and others for whom Defendants were responsible, all within the privity and knowledge of the  
16 Defendants.

17 30. The amount of damages sustained as a result of the COSCO BUSAN Incident  
18 presently is not known and shall be established according to proof at the time of trial.

19 **AS AND FOR A FIRST CAUSE OF ACTION AGAINST**

20 **ALL DEFENDANTS**

21 **(NATIONAL MARINE SANCTUARIES ACT)**

22 31. Plaintiff, United States of America, refers to and incorporates by reference as though  
23 fully set forth herein each and every foregoing paragraph of this Complaint.

24 32. Pursuant to the NMSA, any person who destroys and/or causes the loss of and/or  
25 injures National Marine Sanctuaries and their resources are strictly liable for, *inter alia*, all damages,  
26 response costs, and interest thereon. 16 U.S.C. §§ 1436-37.

1 33. Pursuant to the NMSA, vessels used to destroy and/or cause the loss of and/or  
2 injure National Marine Sanctuaries and their resources are strictly liable *in rem* and are subject to  
3 a maritime lien for all response costs, damages, and/or disbursements specified in the NMSA. 16  
4 U.S.C. § 1437(d)(3).

5 34. Pursuant to the NMSA, vessels used to destroy and/or cause the loss of and/or  
6 injure National Marine Sanctuaries and their resources are subject to forfeiture to the United States.  
7 16 U.S.C. § 1437(e)(1).

8 35. As a direct and proximate result of the actions set forth in the United States'  
9 Complaint, Defendants are liable to the United States, without limitation, by virtue of the NMSA,  
10 16 U.S.C. §§ 1437 and 1443, for all response costs and damages.

11 **AS AND FOR A SECOND CAUSE OF ACTION AGAINST**  
12 **SIGCO, REGAL STONE, AND FLEET MANAGEMENT**  
13 **(OIL POLLUTION ACT OF 1990)**

14 36. Plaintiff, United States of America, refers to and incorporates by reference as though  
15 fully set forth herein each and every foregoing paragraph of this Complaint.

16 37. Defendant REGAL STONE, *inter alia*, is a "responsible party" within the meaning  
17 of OPA.

18 38. Defendant FLEET MANAGEMENT, *inter alia*, is a "responsible party" within the  
19 meaning of OPA.

20 39. Pursuant to OPA, 33 U.S.C. § 2706(b), the federal government designates officials  
21 to act as trustees for natural resources.

22 40. "Natural resources," as that term is defined in OPA, 33 U.S.C. § 2701(20), held in  
23 trust by Federal trustees, have been injured, destroyed, or lost as the result of the Defendants'  
24 discharge of oil into navigable waters, within the meaning of 33 U.S.C. § 2702(b)(2).

25 41. Pursuant to OPA, 33 U.S.C. § 2702(a) and (b), each responsible party for a vessel  
26 from which oil is discharged, or which poses the substantial threat of discharge, into or upon the  
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1 navigable waters or adjoining shorelines or the exclusive economic zone of the United States, is  
2 strictly liable for all response costs, damages, and/or disbursements specified in the Act, including,  
3 but not limited to, damages for injuries to natural resources.

4 42. Under the circumstances herein, Defendants REGAL STONE and FLEET  
5 MANAGEMENT are liable to the United States of America, without limitation, and SIGCO is liable  
6 to the United States of America up to the monetary limits of its statutory and regulatory liability, for  
7 all the aforesaid response costs, damages, and/or disbursements sustained by the United States of  
8 America as a result of the COSCO BUSAN Incident.

9 **AS AND FOR A THIRD CAUSE OF ACTION AGAINST**  
10 **SIGCO, REGAL STONE, AND FLEET MANAGEMENT**  
11 **(OIL POLLUTION ACT OF 1990)**

12 43. Plaintiff, United States of America, refers to and incorporates by reference as though  
13 fully set forth herein each and every foregoing paragraph of this Complaint.

14 44. Pursuant to OPA, 33 U.S.C. § 2715, the National Pollution Funds Center (“Fund”),  
15 on behalf of the Oil Spill Liability Trust Fund, shall be subrogated to all rights, claims and causes  
16 of action of claimants to whom it has paid compensation.

17 45. As a result of the COSCO BUSAN Incident, the Fund may incur costs, damages  
18 and/or disbursements by reason of claims for removal costs and damages brought against it under  
19 OPA, 33 U.S.C. § 2712.

20 46. Pursuant to OPA, Defendants REGAL STONE and FLEET MANAGEMENT are  
21 liable to the United States of America, without limitation, and SIGCO is liable to the United States  
22 of America up to the monetary limits of its statutory and regulatory liability, for all such costs,  
23 damages, and/or disbursements which may be sustained by the Fund.

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28 VERIFIED COMPLAINT

1 AS AND FOR A FOURTH CAUSE OF ACTION AGAINST  
2 REGAL STONE AND FLEET MANAGEMENT  
3 (OIL POLLUTION ACT OF 1990)

4 47. Plaintiff, United States of America, refers to and incorporates by reference as  
5 though fully set forth herein each and every foregoing paragraph of this Complaint.

6 48. Pursuant to OPA, 33 U.S.C. § 2717(f)(2), the United States is entitled to, and  
7 hereby seeks, a declaratory judgment that is binding in any subsequent action or actions against  
8 Defendants REGAL STONE and FLEET MANAGEMENT that said Defendants are liable for  
9 removal costs and damages in any such subsequent action or actions.

10 AND AS FOR A FIFTH CAUSE OF ACTION AGAINST  
11 ALL DEFENDANTS  
12 (PARK SYSTEM RESOURCE PROTECTION ACT)

13 49. Plaintiff, United States of America, refers to and incorporates by reference as though  
14 fully set forth herein each and every foregoing paragraph of this Complaint.

15 50. Pursuant to the PSRPA, 16 U.S.C. § 19jj-1(a), any person who destroys, causes the  
16 loss of, or injures any park system resource is strictly liable to the United States for response costs  
17 and damages resulting from such destruction, loss, or injury.

18 51. Pursuant to the PSRPA, 16 U.S.C. § 19jj-1(b), any vessel used to destroy and/or  
19 cause the loss of and/or injure any park system resource or any marine or aquatic park resource shall  
20 be liable *in rem* to the United States for response costs and damages resulting from such destruction,  
21 loss, or injury to the same extent as a person is liable under § 19jj-1(a).

22 52. As a direct and proximate result of the COSCO BUSAN Incident, Defendants are  
23 liable to the United States, without limitation, by virtue of the PSRPA for all response costs and  
24 damages specified therein.

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1 WHEREFORE, the United States of America prays as follows:

2 1. That United States of America be granted judgment against all Defendants pursuant  
3 to the Verified Complaint of the United States herein;

4 2. That if Defendants REGAL STONE and FLEET MANAGEMENT cannot be found  
5 within this District, then, pursuant to Supplemental Admiralty Rule B of the Federal Rules of Civil  
6 Procedure, that all of any such absent Defendants' property of any description, whatsoever, including  
7 other vessels or real property, located within this District be attached for up to the amounts sued for  
8 herein, and condemned and sold to pay the amounts due plaintiff herein;

9 3. That actual notice of the commencement of this suit, in a manner approved by the  
10 Court, be given to the custodian, master or other ranking officer of the Vessel, as may be applicable,  
11 and to any person, firm or corporation which has recorded a notice of claim of any undischarged lien  
12 upon the said Vessel;

13 4. That, pursuant to Rule C(3) of the Supplemental Rules for Certain Admiralty and  
14 Maritime Claims this Honorable Court enter an order authorizing a warrant for the arrest of the  
15 Vessel, her engines, tackle, appurtenances, etc.;

16 5. That a warrant issue for the arrest of the Vessel, her engines, tackle, appurtenances,  
17 *etc.*;

18 6. That judgment of condemnation and sale be entered against the Vessel, her engines,  
19 tackle, appurtenances, *etc.*;

20 7. That plaintiff United States of America be declared the holder of a valid preferred  
21 maritime lien on the Vessel, *in rem*;

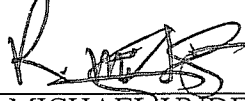
22 8. That the Vessel be sold and the proceeds of the Vessel be applied first to any  
23 judgments, costs, and expenses of the United States with respect to the Verified Complaint of the  
24 United States herein;

25 9. In the alternative, that the Vessel, as defined in the NMSA, 16 U.S.C. § 1437(e), be  
26 forfeited to the United States;

1 10. For such other relief as the Court deems just and proper in the premises.

2 Dated: November 28, 2007.

JEFFREY S. BUCHOLTZ  
Acting Assistant Attorney General

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4 

5 R. MICHAEL UNDERHILL  
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7 GEOFFREY D. OWEN  
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28 Attorneys for Plaintiff United States of America

VERIFICATION

R. Michael Underhill says:

I am one of the attorneys for plaintiff, United States of America, herein, and make this verification by authority for and on its behalf; I have read the foregoing complaint, know the contents thereof, and from information officially furnished to me believe the same to be true.

I verify under penalty of perjury, in accordance with 28 U.S.C. §1746, that the foregoing is true and correct.

Dated: November 28, 2007.



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R. MICHAEL UNDERHILL