

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

CONSERVATION LAW FOUNDATION,  
INC.,

*Plaintiff,*

v.

GULF OIL LIMITED PARTNERSHIP,

*Defendant.*

Civil Action No. 3:21-cv-00932-SVN

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**DEFENDANT GULF OIL LIMITED PARTNERSHIP’S REPORT  
IN RESPONSE TO THE COURT’S FEBRUARY 16, 2022 ORDER**

Defendant Gulf Oil Limited Partnership (“Gulf”) files this report in response to the Court’s February 16, 2022 Order instructing the parties to provide submissions on the potential transfer and consolidation of *Conservation Law Foundation, Inc. v. Shell Oil Company, et al.*, No. 3:21-CV-933 (SALM) (the “Shell Lawsuit”). As discussed below, Gulf agrees that the cases are related, that the Shell Lawsuit should be transferred to this Court, and that the cases may be properly consolidated for discovery and pre-trial purposes only.

**1. The Shell Lawsuit is Related to this Lawsuit and Should be Transferred to this Court.**

Transfer of related cases is governed by Local Rule 40(b)(1)(a), which provides:

In the event that it is subsequently determined that there is pending in this District a related case assigned to a different Judge, the later-filed case should normally be transferred to the Judge having the earliest filed case that remains pending. The presiding Judge in a later-filed, related case will consider whether transfer is appropriate under the rule promptly after learning of an earlier-filed, related case pending before another Judge of this Court.

As this Court has explained, “[t]he sensible purpose of this rule is to permit a judge already familiar with the facts of one case to preside over both cases with a minimum duplication of

judicial effort.” *McCann v. Comms Design Corp.*, 1992 WL 336760, at \*2 (D. Conn. Oct. 1, 1992) (Cabranes, C.J.) (discussing former LR 10(B)(1), now at LR 40(b)(1)); *Lundstedt v. People’s United Bank*, 2015 WL 540988, at \*3 (D. Conn. Feb. 10, 2015) (instructing parties in a subsequently filed related case to file a motion for transfer under Local Rule 40(b) “on the ground that the filing is a related case and on the ground of my familiarity acquired to date with the legal issues presented in this case”).

While there is no strict test or definition for determining what constitutes a “related case,” it cannot reasonably be disputed here that the Shell Lawsuit is related to this case. Even though the parties are not identical, the stated claims and many of the underlying factual allegations are the same. For example, the Shell Lawsuit involves the same plaintiff represented by the same lawyers asserting the same legal claims under the same federal statutes (the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*) and attempting to enforce the same requirements of the same General Permit issued by the Connecticut Department of Energy and Environmental Protection. Specifically, CLF makes the same fundamental allegations that the Shell terminal has taken insufficient measures to address and protect against the release of pollutants associated with climate change-induced severe weather and flooding. Many of the paragraphs in the Complaint in the Shell Lawsuit are identical to paragraphs in the Complaint in this case. CLF has issued press releases that treat both cases together, as a single coordinated effort within its overall strategy to litigate its climate change agenda. *See, e.g.*, <https://www.clf.org/newsroom/gulf-and-shell-sued-for-climate-inaction/>. Notably, CLF stated in its press release that “CLF’s *lawsuit* [singular] alleges that Gulf and Shell are violating the Clean Water Act and the Resource Conservation and Recovery

Act by operating these fuel storage terminals without the proper protections for flooding and extreme weather.” *Id.* (emphasis added).

While CLF will no doubt argue that the two cases involve terminals owned by separate companies and thus may turn on different individualized facts, the test for transfer is not whether the cases are identical. Rather, the rules require only that the cases be “related.” Here, even a cursory review of the two Complaints and their allegations demonstrates that this requirement is easily satisfied. Because this case and the Shell Lawsuit are related, application of the first-filed rule in Local Rule 40(b)(1)(a) requires that the case be transferred to this Court before the Honorable Sarala V. Nagala.

**2. Following Transfer, the Shell Lawsuit and This Case May Be Consolidated for Discovery and Pre-Trial Matters.**

Motions to consolidate are governed by Rule 42(a) of the Federal Rules of Civil Procedure, which provides that “[w]hen actions involving a common question of law or fact are pending before the court . . . it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” In determining whether consolidation is appropriate, courts consider:

Whether the specific risks of prejudice and possible confusion are overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on the parties, witnesses, and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits against a single one, and the relative expense to all concerned of the single-trial, multiple trial alternatives.

*DeSouza v. Park West Apartments, Inc.*, 2017 WL 10926753, at \*1-2 (citing *Johnson v. Celotex Corp.*, 899 F.2d 1281, 1284 (2d Cir. 1990)). This Court has explained that “[i]f the court determines that actions do involve a common question of fact or law, consolidation will usually

be allowed unless the opposing party can show prejudice.” *Yungk v. Campbell Hausfeld/Scott Fetzer Co.*, 2007 WL 2100114, at \*1 (D. Conn. July 17, 2007).

As mentioned above, there is significant overlap and identity of issues between this case and the Shell Lawsuit. Specifically, both lawsuits involve allegations of climate change induced flooding of petroleum terminals in New Haven Harbor and alleged violations of Connecticut’s General Permit for industrial stormwater. As a result, both cases will involve proof of similar facts addressing potential climate change modeling and expected sea level rise, specific climate change impacts to New Haven Harbor, technical requirements for terminal design and stormwater control measures, among many other issues. Similarly, the Court will be required to address Plaintiffs’ theories—again, which are the same in both lawsuits—that the defendants’ General Permits (which are the same) require specific consideration of the risk of release of pollutants caused by flooding associated with climate change-induced sea level rise and severe weather. Indeed, Gulf and Shell have already advanced similar legal arguments regarding CLF’s lack of standing to pursue claims based on future risks of releases from the terminals.

Further, based on these similarities and CLF’s Initial Disclosures in both cases, Gulf anticipates that CLF will likely rely on the same fact and expert witnesses in both cases, so consolidated discovery as to those common witnesses and experts would allow the parties and the Court to achieve significant efficiencies during the pre-trial phases of the two cases. Indeed, in its Initial Disclosures in the Shell Lawsuit, CLF identifies the same individuals it identified in its Initial Disclosures in this case as having discoverable information. *See* CLF’s Initial Disclosures in Gulf Lawsuit (attached as Exhibit 1); CLF’s Initial Disclosures in Shell Lawsuit (attached as Exhibit 2). Given the factual overlap and identity of issues between this case and the Shell Lawsuit, CLF cannot plausibly allege any prejudice caused by consolidation for

discovery and pretrial, even though the individual cases would have to be tried separately—assuming the cases were to survive dispositive motions, which Gulf denies.<sup>1</sup>

In this context, this Court has commonly consolidated cases involving common questions of fact and law. *See, e.g., DeSouza*, 2017 WL 10926753, at \*2 (granting motion to consolidate cases involving similar legal and factual issues); *Yungk*, 2007 WL 2100114, at \*1 (granting motion to consolidate cases involving common questions of law and fact); *Callahan v. Unisource Worldwide, Inc.*, 2004 WL 413268, at \*2 (D. Conn. Feb. 24, 2004) (consolidating related cases for discovery involving similar allegations, similar defendants, same plaintiffs’ counsel, and common factual and legal issues).

Accordingly, consolidation for purposes of discovery and pre-trial matters is appropriate, will achieve efficiencies for the parties and the Court, and will ensure consistent adjudication of similar legal and factual questions presented by CLF’s claims.

***[Signatures on the following page]***

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<sup>1</sup> Although there will likely be considerable witness overlap between the two cases, consolidation for trial would not be appropriate given the differences between the defendants, the terminals at issue, and the likely claimed relief. Courts commonly consolidate cases for discovery and pretrial purposes, but not for trial. *See, e.g., Stevens v. Hanke*, No. 20 Civ. 8181 & 20 Civ. 4765, 2022 WL 489054 (S.D. N.Y. Feb. 7, 2022) (consolidating cases “for pretrial purposes, including discovery and the resolution of dispositive pretrial motions”); *Rishell v. Computer Sciences Corp.*, Nos. 1:13-cv-931, 1:14-cv-213, 2014 WL 11515835 (E.D. Va. Apr. 4, 2014) (consolidating cases for purposes of discovery and pretrial practice); *Blagg v. Line*, Nos. 09-CV-0703, 09-CV-0708, 10-CV-0502, 2010 3893981 (N.D. Okla. Sept. 23, 2010) (consolidating cases for discovery only).

Respectfully submitted this 23rd day of February 2022.

*/s/ Benjamin M. Daniels*

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 23, 2022, a copy of the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of Court's electronic filing system or by mail on anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

*/s/ Benjamin M. Daniels*  
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