

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

DONALD SLAVEN, et al.,)	Case No. CV 90-0722 RJK(JRx)
)	
Plaintiffs,)	<u>CLASS ACTION</u>
)	
vs.)	Consolidated with:
)	No. CV 90-0733 RJK(JRx)
BP AMERICA, INC., et al.,)	No. CV 90-2619 RJK(JRx)
)	No. CV 91-0334 RJK(JRx)
Defendants.)	No. CV 91-0515 RJK(JRx)
)	No. CV 91-3363 RJK(JRx)

**NOTICE OF PENDENCY OF CLASS ACTION AND HEARING ON
PROPOSED PARTIAL CLASS ACTION SETTLEMENT**

TO: ALL PERSONS AND ENTITIES OWNING, LEASING OR HAVING AN INTEREST IN REAL AND/OR PERSONAL PROPERTY OR HAVING AN OWNERSHIP INTEREST IN COMMERCIAL ENTERPRISES OR RESIDING OR WORKING WITHIN OR ABOUT THE AREA OR AREAS AFFECTED BY THE RUPTURE OF THE HULL OF THE AMERICAN TRADER ON FEBRUARY 7, 1990, AND THE RESULTING OIL SPILL AND CLEAN-UP EFFORT, WHO HAVE SUFFERED OR WILL SUFFER ECONOMIC DAMAGE AS A RESULT OF THE SPILL AND/OR THE ENSUING CLEAN-UP EFFORT.

PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY THE ABOVE-ENTITLED CLASS ACTION LAWSUIT AND THE PARTIAL SETTLEMENT OF THE LITIGATION.

I. DESCRIPTION OF THE LITIGATION

1. There is now pending in the United States District Court for the Central District of California (the "Court") a civil lawsuit (the "Class Action"), which has been brought as a class action on behalf of persons and entities who suffered economic damages as a result of the oil spill that took place off the shore of Huntington Beach on February 7, 1990. In the Class Action, the plaintiffs have asserted various claims arising under federal and state law. If you are a member of the Class, as defined in Paragraph 6 below, your rights may be affected by the Class Action and the partial settlement described in this Notice. This Notice is sent so that you may decide what steps you wish to take with respect thereto.

2. On February 7, 1990, the hull of the steamship American Trader was punctured on her anchor while she was approximately one-and-one-half miles off the coast of Huntington Beach, California. As a result, the vessel released more than 200,000 gallons of crude oil into the Pacific Ocean. Oil from the spill spread over a substantial area, and oil washed ashore in Huntington Beach, Newport Beach and adjacent and nearby coastal areas.

3. On February 13, 1990, the Class Action was filed against American Trading and Transportation Co., Inc. ("Attransco"), BP America, Inc., BP Oil Shipping Co., U.S.A., BP Oil Supply Company (the "BP Defendants"); and the Trans-Alaska Pipeline Liability Fund (the "Fund"). Thereafter, plaintiffs amended their complaint to add Golden West Refining Company ("Golden West") and Brandenburger Marine, Inc. ("Brandenburger") as additional defendants.

4. The plaintiffs in the Class Action have asserted claims for economic damages only. The plaintiffs also seek costs and expenses and disbursements incurred in the Class Action, including reasonable attorneys' and experts' fees.

5. The defendants do not admit any charges of wrongdoing on their part.

II. DESCRIPTION OF THE CLASS

6. On May 25, 1994, the Court certified a class in the litigation. The Court subsequently denied a motion to decertify the class. Thereafter, for purposes of effectuating the partial settlement described below, the Court certified a settlement class defined as follows:

All persons and entities owning, leasing or having an interest in real and/or personal property or having an ownership interest in commercial enterprises or residing or working within or about the area or areas affected by the rupture of the hull of the American Trader on February 7, 1990, and the resulting oil spill and clean-up effort, who have suffered or will suffer economic damage as a result of the spill and/or the ensuing clean-up effort. Excluded from the class are all persons and entities, if any, currently seeking to make tort claims based exclusively on personal injuries as a result of the rupture, the oil spill, and/or the ensuing clean-up activities; all governmental agencies, departments, bodies, and political subdivisions; and all defendants and their respective parents, subsidiaries, divisions, affiliates, directors, officers, agents, employees and representatives. As used herein, the term "governmental agencies, departments, bodies, and political subdivisions" means the United States of America, the State of California, the California Department of Fish and Game, the California Department of Parks and Recreation, the California Regional Water Quality Control Board, Santa Ana Region, the California State Coastal Conservancy, the California State Lands Commission, the County of Orange, the Orange County Flood Control District, and the cities of Seal Beach, Huntington Beach and Newport Beach.

As used in this Notice, the term "Class" means and refers to both the certified class and the settlement class.

7. Pursuant to an Order of the Court, dated May 25, 1994, a notice of the Class Action was previously published and mailed to potential members of the Class. Pursuant to that notice, all persons and entities believing themselves to be members of the Class were requested to submit response forms. If you fall within the definition of the Class, as defined in Paragraph 6 above, you are a member of Class and you may be entitled to share in the proceeds of the settlement, even if you did not submit a response form.

III. THE SETTLEMENTS WITH THE BP DEFENDANTS AND THE FUND

8. Plaintiffs and the BP Defendants and the Fund (the "Settling Defendants") recently reached an agreement to settle the litigation as to those defendants. The agreement provides for, among other things, the payment of \$2.175 million in cash (the "Settlement Fund") by the Settling Defendants for the benefit of the Class. The funds described above have been deposited into an interest-bearing escrow account. The settlement requires, as a condition of its effectiveness, that the claims asserted by the plaintiffs and members of the Class against the Settling Defendants shall be dismissed with prejudice.

9. The Settling Defendants have denied any wrongdoing on their part. The settlement is a compromise of disputed claims and does not mean that the Settling Defendants would have been found liable for any damages or losses sustained by any members of the Class had the matter been fully litigated, or that any recovery would have been obtained absent the settlement.

10. Due to the partial nature of the settlement, no plan of distribution of the Settlement Fund to Class members is being proposed at this time. At a subsequent time, notice will be provided to the Class of plaintiffs' proposed distribution plan and Class members will be requested at that time to submit proof of claim and release forms.

11. The above is only a summary of the proposed settlement. You may refer to the detailed written Settlement Agreement between plaintiffs, the BP Defendants and the Fund, dated as of November 30, 1995, on file with the Court for further information regarding the terms and conditions of the settlement.

12. The litigation has not been settled as to the remaining defendants in the Class Action, namely, Attranco, Golden West and Brandenburger, and the litigation continues as to them.

IV. FINAL JUDGMENTS AND ORDERS OF DISMISSAL

13. Upon the approval of the settlement by the Court, a final judgment and order of dismissal will be entered in the Class Action:

(a) Approving the settlement and adjudging the terms of the settlement to be fair, reasonable and adequate to the Class, directing the consummation of the settlement, and retaining jurisdiction over the parties and the Settlement Fund for the purpose of effectuating the settlement;

(b) Dismissing the Class Action on the merits and with prejudice as to the named plaintiffs and all other members of the Class (other than those who timely and validly request exclusion therefrom) solely with respect to the Settling Defendants;

(c) Adjudicating that the plaintiffs and the members of the Class, (other than those who timely and validly request exclusion therefrom) shall be deemed conclusively to have released any and all Settled Claims against the Settling Defendants, as defined in the Stipulation;

(d) Barring and permanently enjoining plaintiffs and the members of the Class, other than those who timely and validly request exclusion therefrom, from prosecuting any and all Settled Claims against the Settling Defendants, as defined in the Stipulation;

(e) Finding that as respects the BP Defendants, the settlement was made in good faith and that all persons with notification of the application for such bar order, including recipients of this notice, shall be barred from any further claims against the BP Defendants for contribution or equitable indemnity based on any claims of plaintiffs and the Class against such persons or entities (including equitable comparative contribution and partial or comparative indemnity), however denominated and on whatsoever theory (whether by way of third- or subsequent-party complaint, cross-claim, separate action or otherwise), whether based on comparative negligence, comparative fault, or otherwise; and that all such claims against the BP Defendants are to be extinguished to the maximum extent permitted by the provisions of sections 877 and 877.6 of the California Code of Civil Procedure and federal and maritime law;

(f) Determining that because the Fund is not and has not been alleged to be a tortfeasor with respect to the claims asserted by plaintiffs and the Class, no claim against the Fund for contribution or equitable indemnity by any persons or entities based on any claims of plaintiffs and the Class against such persons or entities (including equitable comparative contribution and partial or comparative indemnity), however denominated and on whatsoever theory (whether by way of third- or subsequent-party complaint, cross-claim, separate action or otherwise), whether based on comparative negligence, comparative fault or otherwise is viable; and

(g) Assigning to the Settling Defendants an interest in any and all claims that such plaintiffs and members of the Class may have against the Non-Settling Defendants under state, federal or maritime law in an amount up to, but not exceeding, the gross amount of the settlement payments made by the respective Settling Defendants.

V. NO OPINION IS EXPRESSED BY THE COURT AS TO THE MERITS

14. THE MAILING OF THIS NOTICE IS NOT TO BE CONSTRUED IN ANY WAY AS AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE PARTIES' RESPECTIVE CLAIMS OR DEFENSES. THIS NOTICE IS SENT TO ADVISE YOU OF THE PENDENCY OF THIS LITIGATION AND OF CERTAIN RIGHTS YOU MAY HAVE WITH RESPECT TO THE LITIGATION AND THE PENDING SETTLEMENT, SO THAT YOU MAY DECIDE WHAT STEPS YOU WILL TAKE IN RELATION TO THIS LITIGATION AND THE PROPOSED SETTLEMENT.

VI. INSTRUCTIONS TO CLASS MEMBERS

15. You need do nothing to remain a member of the Class. If you fall within the definition of the Class, as described in Paragraph 6 above, you are automatically a member of the Class and your rights will be represented by the plaintiffs and their attorneys, unless you request to be excluded from the Class. If you are a member of the Class and do not request exclusion, you will be bound by the proposed settlement described herein and any further settlements or judgments, whether favorable or unfavorable to the Class, obtained in the Class Action. However, if you request exclusion from the Class, you will **NOT** be entitled to share in the proceeds of the settlement with the BP Defendants and the Fund or any other recoveries that may be obtained for the benefit of the Class. If you remain as a member of the Class, you will not be personally responsible for any attorneys' fees or costs of litigation unless you retain your own counsel, in which case you may be responsible for his or her fees. Please also note that if you remain as a member of the Class, you will be notified at a subsequent time of the procedures concerning the submission of a proof of claim and release form establishing your right to recover as a part of the Class. The Court will thereafter determine under applicable legal and equitable principles, and in accordance with a plan of allocation to be submitted to the Court for its approval, whether and to what extent your claim shall be allowed as valid. You may, if you so desire, file with the Clerk of the Court, showing proper service on the parties, a notice of appearance. Any such notice must be filed and served no later than September 3, 1996. You do not need to file a notice of appearance in order to be included as a member of the Class.

16. As described above, you may request exclusion from the Class. If you wish to be excluded from the Class, you must advise the Court of your election to be excluded in a writing directed to the Claims Administrator, addressed as follows: Huntington Beach Oil Spill Litigation, c/o Gilardi & Co., P.O. Box 990, Corte Madera, California 94976-0990 sent by first class mail postage prepaid, and postmarked no later than September 3, 1996. You must refer to the Huntington Beach Oil Spill Litigation in your request for exclusion. You must also indicate on your election to be excluded the dollar amount of your claim and must provide information and documentation reasonably available to you regarding the nature of your claim and manner in which you have calculated your claim amount. A member of the Class may be excluded only upon specific written request. By electing to be excluded, in the event that the settlement with the BP Defendants and the Fund is approved:

(a) You will not be entitled to participate in the net Settlement Fund established by the settlement or in the proceeds of any other settlements or judgments that may be obtained on behalf of the plaintiffs and the Class; and

(b) You will not be bound by any release or dismissal entered in the Class Action in favor of the defendants and you will retain all rights to pursue independently any claims you may have, at your own expense.

VII. SETTLEMENT HEARING

17. Pursuant to an Order of the Court, a hearing ("the Settlement Hearing") will be held before the Honorable Robert J. Kelleher, Senior United States District Judge, at 10:00 a.m., on September 30, 1996, in Courtroom 840, Edward R. Roybal Federal Building, 255 East Temple Street, Los Angeles, California 90012-9743, for the purpose of determining whether the settlement is fair, reasonable and adequate to the Class and should be approved by the Court and to consider other related matters to be presented to the

Court at the Settlement Hearing. Plaintiffs will request that the Court enter a final order and judgment approving the proposed settlement and finding that the settlement with the BP Defendants was made in good faith. The time and date of the Settlement Hearing may be continued from time to time without further notice, other than an announcement at the time of the Settlement Hearing.

18. If you do not wish to object to the settlement it is not necessary to appear at the hearing or take any other action. However, any member of the Class who has not requested exclusion from the Class may appear at the hearing in person or by his or her duly authorized attorney and show cause why the settlement should not be approved as fair, reasonable and adequate, and why a final order and judgment should or should not be entered thereon; provided, however, that no person shall be heard in opposition to the settlement or any order and judgment that may be entered thereon, as applicable, and no paper or brief submitted by any such person shall be received or considered by the Court unless on or before September 3, 1996, such written objection is filed with the Clerk of the Court, 312 North Spring Street, Los Angeles, California 90012-9743, and a copy is delivered or sent by first class mail, postage prepaid, to the following:

Marc M. Seltzer
CORINBLIT & SELTZER
A Professional Corporation
3700 Wilshire Boulevard, Suite 820
Los Angeles, California 90010-3085

Attorneys for Plaintiffs and the Class

William P. Barry
BAKER & HOSTETLER
600 Wilshire Boulevard, 12th Floor
Los Angeles, California 90017

Attorneys for the BP Defendants

Eric J. Mogilnicki
WILMER, CUTLER & PICKERING
2445 M Street, N.W.
Washington, D.C. 20037-1420

Attorneys for the Fund

To be considered timely, such papers must be RECEIVED by the Clerk of the Court and each of the counsel identified above on or before September 3, 1996. Such objections must include a statement of your notice of intention to appear and a statement of the position you will assert and the grounds therefor, together with any supporting papers or briefs intended to be submitted to the Court.

VIII. AWARD OF ATTORNEYS' FEES AND EXPENSES

19. Plaintiffs' counsel have deferred making an application for an award of attorneys' fees to be paid from the settlement at this time. Any application for attorneys' fees to be paid out of the proceeds of the settlement shall be made upon subsequent notice to the Class and all such applications shall be subject to approval of the Court. Plaintiffs' counsel will make an application to be paid out of the proceeds of the settlement for reimbursement of interim costs and expenses incurred in connection with the prosecution and settlement of this action in an amount not to exceed \$250,000. That application will be heard at the Settlement Hearing. Plaintiffs' counsel may apply to the Court from time-to-time in the future for reimbursement of additional costs and expenses without further notice to the Class. All such applications shall be subject to the approval of the Court.

20. Members of the Class may appear and be heard in person or by counsel at the hearing to object to the application for reimbursement of out-of-pocket costs and expenses, provided that no person shall be heard in opposition to such application, and no paper or brief submitted by any such person shall be received or considered by the Court unless filed with the Clerk of the Court, 312 North Spring Street, Los Angeles, California 90012-9743, and a copy is sent by first class mail, postage prepaid, to Marc M. Seltzer, Corinblit & Seltzer, a Professional Corporation, 3700 Wilshire Boulevard, Suite 820, Los Angeles, California 90010-3085, counsel for the plaintiffs, and RECEIVED by the Clerk of the Court and plaintiffs' counsel no later than September 3, 1996. Such written comments or objections must include a notice of intention to appear and a statement of the position to be asserted and the grounds therefor, together with copies of any supporting papers or briefs intended to be submitted to the Court.

IX. ADDITIONAL INFORMATION

21. This notice is not all-inclusive. Requests for further details of the proposed settlement and any questions which you have concerning the matters described in this Notice may be directed in writing to the following persons:

Marc M. Seltzer
CORINBLIT & SELTZER
A Professional Corporation
3700 Wilshire Boulevard, Suite 820
Los Angeles, California 90010-3085

Merrill G. Davidoff
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, Pennsylvania 19103-6365

Attorneys for Plaintiffs and the Class

You may, of course, seek the advice and counsel of your own attorney if you desire. The pleadings and other records in this litigation may be examined and copied during regular office hours at the Office of the Clerk, United States District Court for the Central District of California, 312 North Spring Street, Los Angeles, California 90012-9743.

DO NOT CALL THE COURT.

Dated: July 29, 1996.

BY ORDER OF THE COURT
ROBERT J. KELLEHER
UNITED STATES DISTRICT JUDGE