

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

DONALD SLAVEN, SALVATORE RUSSO; CARL )	)	CV 90-0722 RJK(JRx)
GASSAWAY; YERIKO NITTA, d/b/a THE SEACLIFF )	)	
MOTEL; SALVATORE MANZELLA; STEVEN PANTO )	)	<u>CLASS ACTION</u>
and DONNA PANTO; HEINZ PET PRODUCTS COMPANY, )	)	Consolidated with
a Division of Star-Kist-Foods, Inc., a California corporation; )	)	No. CV 90-0733 RJK(JRx)
GREGORY KUGLIS; and JACK MORICI, On Behalf of )	)	No. CV 90-2619 RJK(JRx)
Themselves and All Others Similarly Situated, )	)	No. CV 91-0334 RJK(JRx)
	)	No. CV 91-0515 RJK(JRx)
Plaintiffs, )	)	No. CV 91-3363 RJK(JRx)
vs. )	)	
	)	
BP AMERICA, INC.; BP OIL SHIPPING CO., U.S.A.; )	)	
BP OIL SUPPLY COMPANY; AMERICAN TRADING )	)	
TRANSPORTATION COMPANY, INC.; AMERICAN )	)	
TRADING AND PRODUCTION CORP.; THE )	)	
TRANS-ALASKA PIPELINE LIABILITY FUND; GOLDEN )	)	
WEST REFINING COMPANY; and BRANDENBURGER )	)	
MARINE, INC., )	)	
	)	
Defendants. )	)	
	)	

**NOTICE OF PENDENCY OF CLASS ACTION AND HEARING  
ON PROPOSED 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 A PROPOSED SETTLEMENT THAT WILL CONCLUDE THE LITIGATION IN ITS ENTIRETY.**

**I. INTRODUCTION**

1. Pursuant to an Order of the United States District Court for the Central District of California (the "Court"), entered in the above-captioned lawsuit (the "Class Action"), the Court has preliminarily approved a proposed settlement that has been reached by the Class plaintiffs with defendants BP America, Inc., BP Oil Shipping Co., U.S.A., BP Oil Supply Company (the "BP Defendants"); Attransco, Inc.; Golden West Refining Company ("Golden West") and Brandenburger Marine, Inc. ("Brandenburger") (collectively, the "Settling Defendants"), which, if granted final approval by the Court, will terminate this litigation in its entirety. In a prior notice to the Class, dated July 29, 1996, Class members were advised of two separate proposed settlements reached with defendant Trans-Alaska Pipeline Liability Fund (the "Fund") and the BP Defendants, providing for the payment of \$1,087,500 by the Fund and \$1,087,500 by the BP Defendants. The settlement with the Fund is now final and effective. However, the settlement with the BP Defendants did not become effective in accordance with its terms. The new proposed settlement, which is made with the BP Defendants, Attransco, Golden West and Brandenburger provides for the payment in cash that will, when combined with the proceeds of the settlement with the Fund and the earlier proposed settlement with the BP Defendants, create a Settlement Fund in the total amount of \$4 million for the benefit of the Class.

2. This Notice is to advise you of the proposed settlement, the proposed plan for the distribution of the settlement proceeds, the terms of an agreement between the settling defendants and plaintiffs' counsel for the payment of attorneys' fees and costs in addition to the Settlement Fund, an application for an award of incentive compensation to the plaintiffs and your rights with respect thereto.

**II. DESCRIPTION OF THE LITIGATION**

3. 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 crude oil into the Pacific Ocean (the "Oil

Spill”). Oil from the spill spread over a substantial area, and oil washed ashore in Huntington Beach, Newport Beach and adjacent and nearby coastal areas.

4. On February 13, 1990, the Class Action was filed against the BP Defendants, American Trading Transportation Company, Inc. (“Attransco”) and the Fund. Thereafter, plaintiffs amended their complaint to add Golden West and Brandenburger as additional defendants. In their complaint, plaintiffs have asserted claims for economic damages only.

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

### **III. DESCRIPTION OF THE CLASS**

6. On May 25, 1994, the Court certified a class in the litigation. On February 7, 2000, the Court directed that the Class be decertified as to damages and causation issues. For purposes of effectuating the settlement described in this Notice, 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 June 14, 2001, a Notice of Pendency of Class Action and Claims Procedure 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 notified of the obligation to submit proof of claim forms by August 24, 2001.

### **IV. THE TERMS OF THE SETTLEMENT**

8. In September 2002, plaintiffs, the BP Defendants, Attransco, Golden West and Brandenburger (the "Settling Defendants") reached an agreement to settle and conclude the entire litigation. As described above, the settlement agreement provides for, among other things, the creation of a \$4 million cash fund (the "Settlement Fund") for the benefit of the Class. As described above, the Settlement Fund includes the funds previously deposited pursuant to the settlement with the Fund and a proposed settlement with the BP Defendants, which was described in the notice to the Class, dated July 29, 1996.

9. 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.

10. The above is only a summary of the proposed settlement. You may refer to the detailed written Stipulation of Settlement Between Class Plaintiffs and Defendants BP America, Inc.; BP Oil Shipping Co., U.S.A.; BP Oil Supply Company; Attransco, Inc; Golden West Refining Company; and Brandenburger Marine, Inc., dated as of December 16, 2002, on file with the Court, for further information regarding the terms and conditions of the settlement.

11. 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 from them absent the settlement.

### **V. DESCRIPTION OF THE PROPOSED PLAN OF DISTRIBUTION OF THE SETTLEMENT FUNDS**

12. Upon consideration of the prior orders of the Court, the facts of this litigation, the principles of law governing the distribution of class action settlement funds and administrative considerations, Class Plaintiffs' Counsel have proposed that the Settlement Fund, less any Court-approved administrative fees and expenses or other fees and expenses as described below, shall be distributed to all Class members who have previously submitted information regarding their claims to the Claims Administrator on a *pro rata* basis based on their Net Allowed Losses determined in the manner described below.

13. A portion of the Settlement Fund will be used to pay certain administrative fees and expenses, including the costs associated with the establishment and administration of the Settlement Fund Escrow Account, and the taxes payable on the interest earned on the Settlement

Fund and may be used to pay the fees, costs and expenses incurred by Class Plaintiffs' Counsel that are not paid by the Settling Defendants pursuant to the Memorandum of Understanding between Class Plaintiffs and the Settling Defendants.

14. Class Plaintiffs will also make an application in an amount not to exceed \$25,000 for an award of compensation to be paid out of the Settlement Fund to each of the following named plaintiffs who represented the Class during the pendency of the litigation, namely, Salvatore Russo, Carl Gassaway, Yeriko Nitta, d/b/a The Seacliff Motel, Steven Panto, Donna Panto, Heinz Pet Products Company, a Division of Star-Kist Foods, Inc., and Jack Morici.

15. The balance of the Settlement Fund, after payment of the foregoing sums (the "Net Settlement Fund") shall be distributed to those members of the Class whose claims are allowed by the Court ("Authorized Claimants") based on each Authorized Claimant's *pro rata* share of the Net Settlement Fund in the proportion that the Net Allowed Loss of such Claimant bears to the total of the Net Allowed Losses of all Claimants. The Net Allowed Loss of each Authorized Claimant will be determined by the Claims Administrator based on the documents and information previously provided by Class members to plaintiffs' and defendants' counsel and information provided by plaintiffs' expert witnesses. The Net Allowed Loss of each Claimant will be reduced by any amounts previously received by the Claimant in compensation for any economic losses suffered as a result of the Oil Spill and ensuing clean-up effort. The Claims Administrator will, at the conclusion of the claims administration process, make a recommendation to the Court as to the Net Allowed Loss of each Claimant, and such recommendation will be subject to Court approval. Each Claimant will be given notice and an opportunity to be heard by the Court with respect to the calculations made by the Claims Administrator, prior to the final approval by the Court of those calculations.

16. To the extent, at the conclusion of efforts to make distributions to Authorized Claimants, there remains any undistributed portion of the Settlement Fund, it shall be disposed of pursuant to the instructions of plaintiffs' counsel, with the approval of the Court, without further notice to the Class. If the settlement becomes effective in accordance with its terms, no portion of the Settlement Fund will be paid or otherwise revert to any of the Settling Defendants or their insurers.

#### **VI. FINAL JUDGMENTS AND ORDERS OF DISMISSAL**

17. 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);

(c) Adjudicating that the named plaintiffs and all other 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; and

(d) Barring and permanently enjoining the named plaintiffs and all other 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.

#### **VII. NO OPINION IS EXPRESSED BY THE COURT AS TO THE MERITS**

**18. 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.**

#### **VIII. INSTRUCTIONS TO CLASS MEMBERS**

19. 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 have certain options that you may choose:

(a) YOU MAY CHOOSE TO PARTICIPATE IN THE SETTLEMENT FUND. To choose this option, you must not request exclusion from the Class. If you are a member of the Class and have previously provided information regarding your claim to the Claims Administrator, you will be eligible to share in the Settlement Fund if (i) you are determined to have sustained a Net Allowed Loss; and (ii) the Court determines that your claim should be allowed. You will be bound by the judgments and releases entered pursuant to the settlement.

(b) You may object to (i) the proposed settlement; (ii) the plan of distribution of the settlement proceeds; (iii) the application for an incentive award to Class plaintiffs; or (iv) the procedure for awarding attorneys' fees, costs and expenses to Class Plaintiffs' Counsel, or any aspect of such award, even if you choose to participate in the Settlement Fund. However, if your objection is rejected by the Court, you will be bound by the terms of the settlement described in this Notice and the judgment and release entered thereon, and all other orders and judgments filed and entered in the litigation, just as if you had not objected.

(c) You may request to be excluded 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. LLC, P.O. Box 5100, Larkspur, California 94977-5100, sent by first class mail, postage prepaid and postmarked no later than March 3, 2003. You must refer to the Huntington Beach Oil Spill Litigation in your request for exclusion. A member of the Class may be excluded only upon specific written request. In the event that you request to be excluded from the Class, you will not be bound by any release or dismissal entered in the Class Action in favor of the Settling Defendants and you will retain all rights to pursue independently any claims you may have, at your own expense. You will not be eligible to participate in the Settlement Fund described in this Notice if you request to be excluded from the Class.

### **IX. SETTLEMENT HEARING**

20. Pursuant to an Order of the Court, a hearing ("the Settlement Hearing") will be held before the Hon. Robert J. Kelleher, Senior United States District Judge, at 10:00 a.m., on March 24, 2003, 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. The time and date of the Settlement Hearing may be continued from time to time without further notice, other than an announcement made at the Settlement Hearing.

21. If you do not wish to object to the settlement or plan of distribution of the proceeds of 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 March 3, 2003, 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:

#### Class Plaintiffs' Counsel

Marc M. Seltzer  
Susman Godfrey L.L.P.  
1880 Century Park East, Suite 950  
Los Angeles, California 90067-1606

#### Attransco's Counsel

John J. Reilly  
Holland & Knight LLP  
195 Broadway  
New York, NY 10007

#### The BP Defendants' Counsel

Penny M. Costa  
Baker & Hostetler LLP  
333 South Grand Avenue, Suite 1800  
Los Angeles, California 90071-1523

#### Golden West's Counsel

Nicholas S. Politis  
Flynn, Delich & Wise  
One World Trade Center, Suite 1800  
Long Beach, California 90831-1800

#### Brandenburger's Counsel

Carlton E. Russell  
Russell, Mirkovich & Morrow  
One World Trade Center, Suite 1450  
Long Beach, CA 90831-1450

To be considered timely, such papers must be RECEIVED by the Clerk of the Court on or before March 3, 2003. Such objections must include a statement of your intention to appear and a statement of the position you will assert and the grounds therefore, together with any supporting papers or briefs intended to be submitted to the Court.

### **X. ATTORNEYS' FEES AND EXPENSES**

22. The Settling Defendants have agreed to pay Class Plaintiffs' Counsel's reasonable attorneys' fees and costs and expenses. Class Plaintiffs' Counsel and the Settling Defendants have agreed to mediate or, in the alternative, obtain a ruling from the Court as to the amounts to be awarded to Class Plaintiffs' Counsel for their attorneys' fees, costs and expenses. Class Plaintiffs' Counsel may apply to the Court in the future for additional fees, costs and expenses to be paid out of the Settlement Fund without further notice to the Class. All such applications shall be subject to the approval of the Court.

23. Members of the Class may appear and be heard in person or by counsel at the hearing to object to the plan of distribution of the proceeds of the settlement, the application for incentive compensation awards to Class Plaintiffs and the procedure for awarding attorneys' fees, costs and expenses to Class Plaintiffs' Counsel, or any aspect of such award, 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 on or before March 3, 2003, 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 Class Plaintiffs' counsel at the address specified in paragraph 21 above. To be considered timely, such objections must be RECEIVED by the Clerk of the Court on or before March 3, 2003. Such written objections must include a statement of your intention to appear and a statement of the position to be asserted and the grounds therefore, together with any supporting papers or briefs intended to be submitted to the Court.

**XI. ADDITIONAL INFORMATION**

24. 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  
SUSMAN GODFREY L.L.P.  
1880 Century Park East, Suite 950  
Los Angeles, California 90067-1606  
Telephone: (310) 789-3100

Merrill G. Davidoff  
BERGER & MONTAGUE, P.C.  
1622 Locust Street  
Philadelphia, Pennsylvania 19103-6365  
Telephone: (215) 875-3000

Attorneys for Class 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.

**PLEASE DO NOT CALL THE COURT.**

Dated: January 13, 2003

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