UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD HERSHEY, on behalf of himself and all others similarly situated, Plaintiff, vs. BP P.L.C., Defendant.	:	06 CIV. 6677 Case No. JUDGE BUCHWALD ECF Case JURY TRIAL DEMANDED

FILED
SEP - 1 2006
USDC WP SDNY

CLASS ACTION COMPLAINT

Plaintiff Richard Hershey ("Plaintiff"), by his undersigned counsel, brings this action pursuant to the Commodity Exchange Act, 7 U.S.C. §1, et. seq. (the "CEA"), on behalf of himself and all others who purchased and/or sold light, sweet crude oil futures contracts on the New York Mercantile Exchange ("NYMEX") during the period from January 1, 2003 to December 31, 2004, inclusive (the "Class Period"). Plaintiff's allegations as to himself and his own actions are based upon his knowledge. All other allegations are based upon information and belief pursuant to the investigation of counsel.

JURISDICTION AND VENUE

1. Crude oil is a "commodity" and is the "commodity underlying" light, sweet crude oil futures contracts traded on the NYMEX, as those terms are defined and used in Section 1a(4) and 22 of the CEA, 7 U.S.C. §§1a(4) and 25(a)(1)(D), respectively.

2. This Court has jurisdiction over this action pursuant to Section 22 of the CEA, 7 U.S.C. §25, 28 U.S.C. §§1331 and 1337.

3. Venue is proper in the Southern District of New York, pursuant to Section 22 of the CEA, 7 U.S.C. § 25(c) and 28 U.S.C. § 1391(b), (c) and (d). The Defendant transacts business in the Southern District of New York, the claims arose in the Southern District of New York, a substantial part of the events or omissions giving rise to the claims occurred in the Southern District of New York, and the defendant is an alien defendant which may be sued in any district. The conduct described herein has been carried out, in part, within the Southern District of New York. Defendant's unlawful acts manipulated the prices of NYMEX crude-oil futures contracts which were traded in this district in which NYMEX is located, at One North End Avenue, New York, New York.

4. Defendant, made use of the means and instrumentalities of transportation or communication in, or the instrumentalities of, interstate commerce, or of the mails in connection with the unlawful acts and practices and courses of business alleged in this Complaint.

THE PARTIES

5. Plaintiff Richard Hershey, a resident of St. Louis, Missouri, purchased and sold light, sweet crude oil futures contracts on the NYMEX during the Class Period. Plaintiff was damaged as a result of Defendant's manipulation of the light sweet crude oil market as alleged herein.

6. Defendant BP p.l.c. ("BP" or "Defendant") is a corporation organized, existing and doing business under and by virtue of the laws of the United Kingdom with its office and principal place of business located at 1 St. James Square, London, SW1Y 4PD, United Kingdom. BP's principal offices in the United States are located at 28100 Torch Parkway, Warrenville, Illinois 60555. BP was created in 1998 as a result of the merger of Amoco Corporation and the

British Petroleum Company, p.l.c. BP is one of the world's largest and leading oil companies on the basis of market capitalization and proved reserves, and operates one of the world's largest and most sophisticated oil-trading operations in the United States. BP maintains three operating business segments: Exploration and Production; Refining and Marketing; and Gas and Renewables. Approximately 40% of BP's fixed assets, valued at approximately $41 billion, are located in the United States. The United States also represents BP's single largest concentration of employees worldwide reported by geographical areas. BP's Refining and Marketing business segment, which is responsible for the supply and trading, refining, marketing and transportation of crude oil, petroleum and chemical products to wholesale and retail customers, has a strong presence in the United States; marketing under the Amoco and BP brands in the Midwest, East (including New York) and Southeast, and under the Arco brand on the West Coast. BP's sales and other operating revenues from Refining and Marketing activities exceeded $213.4 billion and $170.7 billion in 2005 and 2004, respectively. American Depository Shares of BP trade on the New York Stock Exchange under the symbol "BP." BP's business in the United States is carried out by BP America, Inc., and its 100% wholly-owned U.S. subsidiaries, which BP – at all times relevant hereto – had de jure and de facto control over, and acted under the direction, and at the behest of, BP.

SUBSTANTIVE ALLEGATIONS

A. Background

7. NYMEX has been designated by the Commodity Futures Trading Commission "CFTC") as a contract market pursuant to Section 5 of the CEA, 7 U.S.C. § 7. NYMEX submits to the CFTC various rules and regulations for approval through which the NYMEX designs,

creates the terms of, and conducts trading in various commodity futures and options, including futures and option contracts for light, sweet crude oil.

8. A futures contract is an agreement to buy or sell a commodity, such as light, sweet crude oil, at a date in the future. Every aspect of a futures contract traded on the NYMEX, such as the contracts for crude oil, is standardized, except the price. Futures markets are specifically designed to facilitate and ease trading in one central market place for traders who are located throughout the United States.

9. Futures contracts have two sides. The "long" side is the buyer of the contract and is obligated to take delivery and pay for the commodity if the buyer holds the contract until the delivery date. The "short" side is the seller of the contract and is obligated to make delivery of the commodity on the delivery date.

10. Only a small percentage of all futures contracts traded each year result in delivery of the underlying commodities. Instead, traders generally offset their futures positions before their contracts mature. For example, a purchaser of a futures contract can cancel or offset his future obligation to the contract market/exchange clearing house to take delivery of crude oil by selling an offsetting futures contract. The difference between the initial purchase or sale price and the price of the offsetting transaction represents the realized profit or loss.

11. NYMEX continually trades contracts for the delivery of light, sweet crude oil during the then-current calendar month (sometime called the spot month contract or spot contract) and for each of the next 72 consecutive calendar months. Prices for all light, sweet crude oil contracts are quoted in 1,000 U.S. barrels (42,000 gallons).

12. The crude-oil market involves the exchange of physical barrels of oil, trading on registered futures exchanges such as the NYMEX, and unregulated over-the-counter markets. It is estimated that the nominal annual value of all transactions is approximately $40 trillion.

13. The crude oil marketing hub located in Cushing, Oklahoma ("Cushing") is the most significant marketing and trading hub for crude oil in North America, and serves as the delivery (or price settlement) point for light sweet crude oil futures contracts traded on the NYMEX. West Texas Intermediate ("WTI") crude oil, one of the most actively traded domestic crudes, is the U.S. benchmark grade and is the primary deliverable grade under the NYMEX light, sweet crude oil futures contracts. Cushing is the most active and liquid trading hub for WTI crude oil in North America. The market for Cushing WTI crude oil contracts is the industry-wide benchmark for forward light, sweet crude oil markets because of its liquidity and transparency.

14. Crude oil coming out of Cushing is transported by a network of pipelines to oil producing areas and refineries located in the Southwest and along the Gulf Coast in the United States.

15. There are no substitutes for pipelines for the transport of crude oil to Cushing, and no substitutes for storage facilities in Cushing for the storage of crude oil pending delivery. Pipeline and storage facilities located in other regions cannot serve the crude oil trading activities in Cushing.

16. The efficient functioning of the pipeline and oil storage facilities into and in Cushing is critical to the fluid operation of both the trading activities in Cushing and the trading of crude oil futures contracts on the NYMEX. The restriction of pipeline or storage capacity can

affect the deliverable supply of crude oil in Cushing, and consequently affect NYMEX light sweet crude oil futures contract prices.

17. At all time relevant hereto, BP owned and/or controlled substantial crude oil storage facilities in and pipeline connections leading into and out of Cushing, which serves as the delivery and price settlement point for light, sweet crude oil futures contracts traded on the NYMEX. As of the end of the year 2005, BP owned and/or controlled approximately 30% of the crude oil storage facilities at Cushing.

B. Defendant's Manipulation

18. Throughout the Class Period, BP used its dominant ownership of crude oil pipeline connections leading into and out of Cushing, and crude oil storage facilities in Cushing, to control the amount of WTI crude oil that would be available to other market participants for delivery at Cushing, where WTI crude oil must be delivered for NYMEX crude oil futures contracts.

19. BP abused its dominant market position by not making available space at its crude oil storage facilities in Cushing to market participants who were obligated to deliver crude oil at Cushing, or alternatively refusing to sell quantities of WTI crude oil which BP had stored at its Cushing facilities, with the purpose and effect of causing WTI crude oil and its corresponding NYMEX futures contracts to trade at prices higher or lower than otherwise would have prevailed absent BP's conduct.

20. By reason of Defendant's conduct, the prices of NYMEX light, sweet crude oil futures contracts were manipulated to artificial levels during the Class Period.

21. Defendant's illegal conduct has led to investigations by the CFTC and the U.S. Department of Justice.

C. Defendant's Motive and Intent

22. Defendant trades not only in the crude oil physical market and NYMEX crude oil futures market, but also conducts business involving the purchase and sale of over-the-counter ("OTC") contracts in crude oil and other energy derivatives.

23. Defendant's motive and intent for its foregoing manipulative acts was to increase its financial return, including, but not limited to, to obtain trading profits on its NYMEX crude oil futures contract positions, OTC crude oil financial contracts that were priced off the exchange traded futures contracts (e.g. NYMEX look-alike OTC swaps), and its sale of physical crude oil.

24. As a direct, proximate and foreseeable result of Defendant's foregoing unlawful conduct, Plaintiff and members of the Class have suffered damages.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, on behalf of the following class (the "Class"):

> All persons, other than Defendant and its employees, affiliates and subsidiaries (whether or not named in this complaint), who purchased and/or sold NYMEX crude-oil futures contracts between January 1, 2003 and December 31, 2004.

26. The Class is so numerous that the individual joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that at least thousands of geographically dispersed Class members traded NYMEX crude-oil futures contracts during the Class Period.

27. Common questions of law and fact exist as to all members of the Class and predominate over any questions that affect only individual members of the Class. These common questions of law and fact include, without limitation:

a. Whether the alleged manipulation of the crude-oil market based on Defendant's unlawful conduct violates the CEA;

b. Whether the Defendant's conduct had an effect on the prices of NYMEX crude-oil futures contracts purchased or sold by Plaintiff and the Class during the Class Period; and

c. The appropriate measure of damages sustained by Plaintiff and the other members of the Class.

28. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class sustained damages arising out of Defendant's common course of conduct in violation of law as complained of herein. The injuries and damages of each member of the Class were directly caused by Defendant's wrongful conduct in violation of law as alleged herein.

29. Plaintiff will fairly and adequately protect the interests of the members of the Class. Plaintiff is an adequate representative of the Class and has no interests which are adverse to the interests of absent Class members. Plaintiff has retained counsel who have substantial experience and success in the prosecution of complex class action litigation, including commodity futures manipulation class action litigation.

30. A class action is superior to other methods for the fair and efficient adjudication of this controversy. Treatment as a class action will permit a large number of similarly situated persons to adjudicate their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment will also permit the adjudication of claims by many class members who could

not afford individually to litigate claims such as those asserted in this Complaint. The cost to the court system of adjudication of such individualized litigation would be substantial. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendant.

31. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

COUNT I
MANIPULATION IN VIOLATION OF THE COMMODITY EXCHANGE ACT

(7 U.S.C. § 1 et seq.)

32. Plaintiff repeats and realleges the previous allegations as if fully set forth herein.

33. Plaintiff and members of the Class purchased one or more NYMEX light, sweet crude oil futures contracts during the Class Period, and incurred damages as a result of Defendant's manipulation of the price of those contracts in violation of the CEA, 7 U.S.C. §1, et seq.

34. Defendant's trading activities alleged herein constitute manipulation of the price of NYMEX light, sweet crude oil futures contracts during the Class Period in violation of Sections 9(a) and 22(a) of the CEA, 7 U.S.C. §§13(a), 25(a).

35. Plaintiff and members of the Class are each entitled to damages for the violations of the CEA alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

(A) For an order certifying this lawsuit as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and designating Plaintiff as the Class representative and his counsel as Class counsel;

(B) For a judgment awarding Plaintiff and the Class damages against Defendant for its violation of the CEA, together with prejudgment interest at the maximum rate allowable by law;

(C) For an award to Plaintiff and the Class of their costs of suit, including reasonable attorneys' and experts' fees and expenses; and

(D) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully demands a trial by jury.

Dated: September 1, 2006

Respectfully submitted,

By: Richard W. Cohen

Richard W. Cohen (RC-5220)
Vincent Briganti (VB-1497)
Todd S. Garber (TG-4620)
LOWEY DANNENBERG BEMPORAD & SELINGER, P.C.
The Gateway-11th Floor
One North Lexington Avenue
White Plains, NY 10601-1714
(914) 997-0500

Attorneys for Plaintiff Richard Hershey and the Proposed Class