



JULY 2015

Introductory Guide to *Rev 973 v. Mouren-Laurens et al*

by *Albert M. Cohen, Partner*

Loeb & Loeb LLP currently represents a group of approximately 65 potentially responsible parties (PRPs) in the *Rev 973* litigation. The following is an introduction to the case and a summary of its current posture.

Rev 973, LLC v. John Mouren-Laurens, et al, 98-cv-10690 DSF (Ex), is pending in the United States District Court for the Central District of California. The case was filed in 1998 and involves claims that two sites in Compton, California, known as the Mouren-Laurens site (ML Site) and the Leach Oil Site, are environmentally impaired. Plaintiff *Rev 973*, the current owner of the ML Site, has filed claims against the original owners and operators of the two sites as well as several thousand parties that it claims sent wastes, primarily used oil, to the two sites. Plaintiff has claimed that it will cost in excess of \$55 million to clean up the two sites and has additional claims for other damages.

Pursuant to Case Management Order No. 3 (CMO 3), parties that are served are not permitted to answer or file a motion to dismiss because a stay is in place. Rather, they are required to enter an appearance by filing a completed "PRP Appearance Notice" with the court as well as with the Special Master via JAMS on "Case Anywhere" (www.jams.caseanywhere.com). Instructions for how to do so should be in the service package.

General Background

The ML Site operated as an oil processing and distribution business dating back to about the 1950s and ceased operation in 1999. The Leach Oil Site, located next door, operated as a used oil processing and recycling business dating back to the 1960s. At some point in time, there was a pipeline connecting the two sites, and oil from a used oil refinery on the Leach Oil Site, purportedly owned by Joseph Mouren-Laurens, was allegedly pumped to the ML Site for processing. The pipeline was reportedly shut down in the mid-1960s. Numerous businesses in Los Angeles sent oil and/or chemical additives to the ML Site, sent oil (allegedly used or "waste" oil) to the Leach Oil Site, and/or purchased oil from the Mouren-Laurens Oil Company. Most records relating to the ML Site were reportedly destroyed when the company ceased operations in or around 1999, and there are relatively few records regarding the site's use. There are records relating to the Leach Oil Site, including some records of shipments to the site dating from about the late 1970s through the late 1990s. These include manifests and other documents evidencing shipments to the site (see discussion below).

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

1. Litigation History

In about 1998, an entity related to Rev 973 purchased a pool of mortgages from the Resolution Trust Company that included a loan secured by the ML Site. While it was aware that the ML Site was contaminated, Rev 973 claims it was not aware of the extent of contamination at the time it purchased the loan. In any event, when Rev 973 was unable to work out payment terms with the owner of the ML Site, it foreclosed. Mouren-Laurens continued to operate on the site for about a year but was eventually evicted and ceased operating in 1999.

Rev 973 sued the owners of both the ML Site and the Leach Oil Site claiming that they were responsible for environmental contamination on the sites. Because the case has been pending for so long, the docket contains over 2,000 entries. In addition, many of the early documents are not available online. There are, however, a few published decisions with useful background information about the case, including the following:

- *Rev 973 LLC v. John Mouren-Laurens, et al.* Case No. CV 98-10690 (C.D. Cal. January 25, 2010) 2010 U.S. Dist. LEXIS 12514
- *Rev 973 LLC v. John Mouren-Laurens, et al.* Case No. CV 98-10690 (C.D. Cal. April 22, 2009) 2009 U.S. Dist. LEXIS 38462
- *OneBeacon America Insurance Company v. Fireman's Fund Insurance Company* 175 Cal. App. 4th 183 (2009)

Additional information about the case is also available at www.rev973vsmloc.com, a website created by Michel & Associates, counsel for the Mouren-Laurens parties. This site contains historical environmental reports and other information but is not up to date.

2. Site Investigation and Clean-Up History and Status

The sites are currently under the jurisdiction of the Los Angeles Regional Water Quality Control Board (RWQCB). Investigations conducted over the years have indicated that both sites are contaminated with various chemicals including petroleum hydrocarbons. There is also allegedly a chlorinated solvent plume extending off of the site(s) to the south, which reportedly has not been completely delineated. In addition, further testing is purportedly necessary to confirm that contamination is not migrating on-site from the north. A Cleanup and Abatement Order was issued to the owners of both sites dated September 19, 2014, which can be downloaded at http://geotracker.waterboards.ca.gov/regulators/deliverable_documents/5948425114/Final%20CAO%20R4-2014-0117.pdf. Information regarding the environmental conditions of the sites, as well as communications with the RWQCB, are available on GeoTracker at http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T10000006017 (Leach Oil Site) and http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL2047C1671 (ML Site). It is our understanding that Rev 973 contends that the cleanup cost for both sites is in the range of \$55 million and that others, including the original defendants, believe the cleanup costs are in the range of \$10 million to \$20 million.

The Litigation Against the PRPs

1. The Operative Complaint

Rev 973 originally sued the owners/operators of the two sites. (As mentioned above, the history of the litigation is long and complex and will not be

summarized here.) Currently, the matter is pending before Judge Fisher, with Judge West acting as the Special Master and Tim Gallagher as the mediator. It is our understanding that there was active litigation in the early years of the case, before the filing of the Seventh and Eighth Amended Complaints, and that there were numerous depositions and document productions. It is also our understanding that in recent years the case has not been actively litigated while Rev 973 and the original parties pursued settlement.

The operative complaint is the Eighth Amended Complaint, Document No. 1006 filed July 14, 2014, although many of the defendants were first named in the Seventh Amended Complaint. There are six claims against several thousand alleged arranger, generator, and transporter defendants as PRPs. As against the PRPs, the following claims have been pleaded:

- The 27th claim is for response costs under The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA);
- The 28th claim is for contribution under CERCLA;
- The 29th claim is for declaratory relief under CERCLA;
- The 30th claim is for restitution under The Resource Conservation and Recovery Act (RCRA)
- The 31st claim is for injunctive relief under RCRA (Rev 973 issued RCRA notice letters to various PRPs in about 2010, but we do not know if it sent them to all PRPs.); and
- The 32nd claim is for indemnity or contribution under the California Health and Safety Code.

As of July 14, 2015, approximately 850 PRPs have appeared in the case. The deadline for serving PRPs was March 3, 2015. It is expected that approximately 1,000 PRPs will ultimately appear in the case.

[2. Case Management Order No. 3 and the Document Depository](#)

In early 2014 the court entered CMO 3, which sets forth some general procedures regarding the case, including procedures for holding status conferences with the Special Master and submitting documents to the document depository. It also governs the proceedings with respect to the original parties and stayed all active litigation with regard to the PRPs, meaning that the PRPs are not permitted to respond to or otherwise challenge the complaint at the present time. CMO 3 set various discovery cutoffs for the original parties in 2015 and set the case for trial on January 25, 2016.

Within the past few months Rev 973 reported that it has entered into a settlement agreement, subject to court approval, with the MLOC parties and their insurance carriers pursuant to which they agreed to pay approximately \$16 million to resolve the claims against them. Negotiations with the Leach parties are apparently ongoing. The litigation is on hold while the parties seek approval of the MLOC settlement from the court.

Pursuant to CMO 3, a document depository has been established for the case. This depository is maintained by Hahn & Bowersock Corporation and can be found at <https://hahnbowersock.com/login/edocs.html>. There are instructions on the website for how to gain access to the depository. The electronic version of the depository is not up to date, however.

In order to submit documents to the depository, they must be bates stamped as provided and submitted in PDF format to depository@fraleylaw.com, and notice must be provided to all other parties by email with information identified in CMO 3. There are numerous environmental reports on this site. In addition, the Leach disposal records are available on the site.

3. The PRP Funding Order

On March 13, 2015, the court entered a PRP Funding Order that requires each PRP to pay \$250 into an escrow fund to be used to fund joint PRP expenses which are in the common interests of the PRPs, including costs for the mediator and Special Master. These funds also could be used for other purposes such as retaining a joint environmental consultant to advise the PRPs regarding the environmental conditions at the sites.

Pursuant to that order, each PRP that has entered the case is required to pay \$250 into the fund within 30 days of the date of their appearance in the case or the entry of the Funding Order, whichever is later. Each PRP must send a check for \$250 made payable to “Alperstein, Simon, Farkas, Gillin & Scott LLP Client Trust Fund” marked “For Rev 973 PRP Fund on behalf of PRP No. ___.” The checks must be mailed to:

The Law Offices of Alperstein, Simon,
Farkas, Gillin & Scott LLP
15760 Ventura Blvd., Suite 1520
Encino, CA 91436

4. PRP Litigation Order No. 1

Rev 973 has claimed that it cannot make settlement offers to the PRPs because there is no accurate, comprehensive record of which party sent what – and

how much – to the sites. The PRPs have pushed Rev 973 to develop an accurate database and provide PRPs with a list of what plaintiff contends each PRP sent to the sites, copies of any records evidencing shipments to the sites, a waste-in list for all PRPs, and a settlement offer so that the parties can attempt to negotiate a resolution before spending too much money on litigation. On April 14, 2015, the Special Master requested that the court enter proposed PRP Litigation Order No. 1 (PRPLO-1), which addresses these issues and would require Rev 973 to provide the PRPs with manifest packages and settlement offers by July 31, 2015. If approved by the court, PRPLO-1 would establish a framework attempting to resolve the case against the PRPs via settlement over the next six months. The following is a summary of its key provisions. However, parties should review the order itself to understand the terms and requirements:

1. All PRPs are required to “deliver all PRP Shipment Documents for all PRPs over which the PRP has possession, custody or control in Adobe PDF and a declaration by the PRP describing the PRP’s diligent search and reasonable inquiry to identify and locate PRP Shipment Documents to the Depository Administrator.” The procedure for submitting these documents is as follows, though you should consult PRPLO-1 and CMO 3 for the exact procedures:
 - a. Pursuant to a separate agreement, documents that are submitted should be bates stamped PRPXXXXX—YYYYYY with XXXXX being the PRP ID No. and YYYYYY the document’s number, starting with 000001. Thus, for example, documents submitted by

PRP No. 543 would start with PRP00543—000001.

- b. Documents must be submitted to the Depository Administrator at depository@fraleylw.com. They may be submitted in PDF form or may be submitted by Hightail download link or Dropbox. There is no requirement that the documents or declarations be posted on Case Anywhere. However, notice of the filing must be sent by email to all other parties in the case.
2. Rev 973 is required to create a manifest database, including the documents provided by the PRPs, documents it has obtained from the California Department of Toxic Substances Control, and other documents, possibly including prior discovery.
3. By July 31, 2015, Rev 973 is required to provide each PRP with a PRP Manifest Package that includes a list of alleged shipments by the PRP to the sites, copies of documents evidencing the shipments, and a waste-in list for all PRPs at the sites. PRPLO-1 also sets out a process for challenging the contents of the manifest packages.
4. By July 31, 2015, Rev 973 is required to provide each PRP with a settlement demand. PRPLO-1 includes provisions to mediate the terms of a settlement with a deadline for reaching a settlement by January 29, 2016.
5. PRPLO-1 also includes provisions to allow PRPs that believe they were wrongly named or that have dissolved or become bankrupt or insolvent

to seek a voluntary dismissal. Requests for voluntary dismissals using this procedure must be submitted within 30 days of entry of PRPLO-1 or appearance in the case, whichever is later. In the event that parties are unable to reach an agreement on voluntary dismissal, PRPLO-1 sets out procedures governing the filing of appropriate motions.

6. Rev 973 and PRPs that do not agree to settle by January 29, 2016, are required to hold an FRCP Rule 26 conference to meet and confer regarding a proposed PRP Litigation Order No. 2 that would govern procedures for active litigation of the case and to lodge the proposed order with the court by March 31, 2016.

Rev 973 opposed entry of PRPLO-1, and it has not yet been entered by the court, although the parties are attempting to proceed as generally contemplated by the proposed order. Rev 973 is not expected to meet the deadlines for providing the manifest packages and settlement offers.

If you have any questions about the status of this case or the group of PRPs represented by Loeb & Loeb, please contact [Albert M. Cohen](mailto:acohen@loeb.com) at 310.282.2228 or acohen@loeb.com.

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

© 2015 Loeb & Loeb LLP. All rights reserved.