

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

KEITH A. SEILHAN,

Defendant.

CIVIL ACTION

NUMBER:

SECTION:

COMPLAINT

Plaintiff Securities and Exchange Commission (the “Commission”) alleges as follows:

SUMMARY

1. This matter involves unlawful insider trading in the securities of BP p.l.c. (“BP” or the “Company”) by Defendant Keith A. Seilhan (“Seilhan” or the “Defendant”), a former twenty-year employee of BP and a senior responder for BP during the 2010 Deepwater Horizon oil spill in the Gulf of Mexico.

2. On April 20, 2010, an explosion occurred on the Deepwater Horizon, an offshore oil rig leased by a subsidiary of BP. On April 22, 2010, the Deepwater Horizon sank. Immediately or very soon thereafter, oil began spilling into the Gulf of Mexico.

3. Shortly after the explosion, BP deployed Seilhan, an experienced crisis manager, to the Company’s Incident Command Center in Houma, Louisiana, from which he coordinated BP’s initial oil collection and clean-up operations in the Gulf of Mexico and along the coast.

4. As an Incident Commander and On-Scene Coordinator, Seilhan, among other things, directed BP’s oil skimming operations and its efforts to contain the expansion of the oil spill. Within days, Seilhan had received nonpublic information relating to the breadth and scope

of the evolving disaster, including oil flow estimates and data relating to the volume of oil floating on the surface of the Gulf.

5. By April 29, 2010, BP was publicly estimating that the flow rate of the spill was up to 5,000 barrels of oil per day (“bopd”), as set forth in its filings with the Commission. However, the Company’s public estimate was significantly less than the actual flow rate occurring at the time, which was estimated later to be between 52,700 and 62,200 bopd.

6. In performing his duties and responsibilities, Seilhan received material, nonpublic information indicating that the magnitude of the oil spill, and, in turn, BP’s potential liability and financial exposure, was likely greater than the up to 5,000 bopd being reported by BP to the public.

7. On April 29 and 30, 2010, while in possession of this material, nonpublic information, and in breach of duties owed to BP and its shareholders, Seilhan caused to be sold his and his family’s entire \$1 million portfolio of BP securities. Specifically, Defendant caused to be sold his and his family’s holdings in the BP Stock Fund, a fund consisting almost entirely of BP American Depository Shares (“ADSs”), held in Defendant’s and his family’s retirement accounts at BP. In addition, Defendant exercised three different sets of options to purchase BP ADSs and immediately sold the underlying shares.

8. As a result of his illegal trading, Seilhan realized unjust profits and avoided losses in excess of \$100,000. Following Seilhan’s trades, the price of BP ADSs declined by approximately 48% over time, reaching its lowest point in late June 2010.

9. By knowingly or recklessly engaging in the conduct described in this complaint, Seilhan violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)] and Section 10(b) of the Securities Exchange Act

of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

JURISDICTION AND VENUE

10. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Sections 21(d) and 21A of the Exchange Act [15 U.S.C. §§ 78u(d) and 78u-1] to enjoin such transactions, acts, practices, and courses of business and to obtain disgorgement, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

11. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(c), and 22 of the Securities Act [15 U.S.C. §§ 77t(b), 77t(c), and 77v] and Sections 21(d), 21(e), 21A, and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 78u-1, and 78aa].

12. Venue lies in this judicial district pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Transactions constituting violations of the federal securities laws charged herein occurred within this judicial district.

DEFENDANT

13. **Keith A. Seilhan**, age 47, resides in Tomball, Texas. Defendant worked at BP from 1990 through January 2011. At the time of the Deepwater Horizon explosion, Defendant was serving as a BP Area Operations Manager. At various times during the spill response, Defendant served as an On-Scene Coordinator and Incident Commander, including in Houma, Louisiana.

RELATED PERSON AND ENTITIES

14. **BP p.l.c.** is an international oil and gas company that has its principal executive offices in London, England. BP's ordinary shares are listed on the London Stock Exchange and the Frankfurt Stock Exchange. In the United States, BP's ordinary shares are registered with the Commission pursuant to Section 12(b) of the Exchange Act [15 U.S.C. § 78j(b)], and its ADSs, each representing six ordinary shares, are listed on the New York Stock Exchange, under the ticker symbol BP.

15. **BP Employee Savings Plan** is a tax-qualified, defined contribution pension plan and is offered to BP employees in North America. The BP Stock Fund is an investment option within the BP Employee Savings Plan. The BP Stock Fund is a unitized fund that is (and was at all times relevant to this complaint) composed almost entirely of BP ADSs.

FACTS

I. On April 20, 2010, the Deepwater Horizon Exploded, Resulting in a Massive Oil Spill and the Activation of a "Unified Command."

16. The Deepwater Horizon was an offshore drilling platform operated by a BP subsidiary in April 2010 in the Macondo Prospect in the Gulf of Mexico, approximately forty-one miles from the Louisiana coast.

17. On April 20, 2010, an explosion occurred on the Deepwater Horizon, killing 11 of the 126 crew members on board. Two days later, on the morning of April 22, 2010, the rig sank approximately 5,000 feet to the seafloor. As the rig sank, the riser pipe, which had connected the wellhead to the oil rig, disconnected from the rig. The detached end of the riser pipe sank to the seafloor, and oil began to leak from the end of that riser pipe and the drill pipe.

18. The leak continued for eighty-four days until the well was capped on July 15, 2010. The resulting oil spill was massive, affecting commercial and other interests in the Gulf of

Mexico, other nearby waterways, and the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

19. Shortly after the explosion, the federal government, pursuant to statutory authority, activated a “Unified Command” to coordinate the response to the oil spill. This statutorily-mandated body consisted of representatives from BP, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration (“NOAA”), among other organizations.

II. Defendant Held a Crucial Role in Coordinating BP’s Response Efforts to the Oil Spill and, in That Role, Obtained Material, Nonpublic Information Regarding the Rate of Oil Flow.

20. Immediately after the explosion, BP designated Seilhan, a twenty-year employee and experienced crisis manager, to be an Incident Commander and an On-Scene Coordinator within Unified Command.

21. On April 23, 2010, BP deployed Seilhan to the Company’s Incident Command Center in Houma, Louisiana, from which he coordinated BP’s initial oil collection and clean-up operations in the Gulf of Mexico and along the coast. Among other things, Defendant was responsible for directing where BP would collect oil from the surface of the water through skimming operations and where protective boom would be deployed. He also participated in the allocation of chemical dispersants used by BP to enhance the oil’s natural dissolution rate.

22. On April 24, 2010, the day after the discovery of the oil leak, Unified Command released the first public estimate of the flow rate of the oil leak, which was 1,000 barrels of oil per day. Four days later, on April 28, Unified Command increased that estimate, publicly stating that the flow rate “could be as much as 5,000 [bopd].” And, on April 29 and 30 and May 4, 2010, BP furnished to the Commission Forms 6-K stating, among other things, that current

estimates of flow rate were “up to 5,000 barrels a day” or “some 5,000 barrels . . . of oil per day.”

23. In carrying out his duties and responsibilities as an Incident Commander and On-Scene Coordinator, Seilhan gained direct and immediate access to a variety of nonpublic information, which, among other things, indicated that the size and scope of the Deepwater Horizon oil spill exceeded the public flow rate estimates provided by both Unified Command and BP.

24. For instance, Defendant received daily confidential status reports regarding the oil spill and the progress of response operations. The reports addressed a variety of issues, including measurements of man hours worked, logistics, planning, response operations, and environmental issues. They detailed the scope of BP’s air-based operations (including the variety of aircraft being utilized and the number of “dispersant sorties” flown each day), provided details about numerous sea-based operations (including the number and type of ships and other watercraft being used to contain the spill), addressed the trajectory of the oil spill, the length of protective boom being deployed, and the location of threatened environmentally sensitive areas, and included information about the source of the ongoing leak and steps undertaken to restrict or otherwise stop the leak. Defendant also participated in daily conference calls with senior members of BP and Unified Command in which they discussed the details of the information contained in the daily confidential status reports.

25. In addition, Defendant received other information about the spill on a real-time basis at the Houma Incident Command Center, which enabled his team to respond to the crisis. Seilhan received updates from responders in the field who reported information to him through the chain of command. Defendant also received updated over-flight data that BP used for,

among other things, predicting the trajectory of the spill and measuring the surface area of the spill.

26. Further, on the morning of April 22, 2010, Seilhan received an e-mail message from a BP manager commenting on worst case discharge estimates performed by BP engineers. These worst case estimates, which were nonpublic, ranged from 64,000 bopd to 110,000 bopd, well in excess of BP's public flow rate estimates.

27. On April 26, 2010, Defendant received a NOAA memorandum and distributed it to other senior BP employees. In the memorandum, which was written at a time when the official, public flow rate estimate was 1,000 bopd, it was estimated (based on over-flight observations of the size and density of the oil slick) that the flow rate was 5,000 bopd. However, in discussing the methodologies by which the 5,000 bopd estimate was derived, the memorandum's authors made clear that the actual flow rate could be much higher and was not capped at 5,000 bopd. Among other things, the memorandum stated that the actual flow rate could be materially greater than the 5,000 bopd estimate, i.e., to "an order of magnitude."

28. In addition, on or about April 26, 2010, and thereafter, Defendant knew details regarding BP's use of chemical dispersants (which were sprayed onto the oil slick to control its size and to reduce the likelihood that oil would reach land). Based on the amount of dispersants used, Defendant could ascertain the amount of oil already dispersed. Defendant further knew that the flow rate calculations in the nonpublic April 26, 2010, NOAA memorandum did not account for the oil that had been dispersed, therefore leading to the conclusion that the resulting estimate was too low.

29. Defendant and his staff at the Houma Incident Command Center also used over-flight data that identified the density of the surface oil and its trajectory to guide the deployment

of BP's collection and clean-up resources. This over-flight data was transposed to computer-generated, color-coded maps that distinguished the surface areas that contained "sheen" oil from those areas that contained "dull" or "dark" oil. Indeed, at 5:15 a.m. central time on April 29, 2010 – the day on which Defendant began to trade – Defendant received, via e-mail, the previous day's over-flight data reflected in a color-coded map. The map demonstrated that the amount of thicker dark and dull oil (which holds the majority of the volume of the oil spilled) had increased to a proportion of the total oil slick that was far higher than had been observed in preparing the flow rate estimates in the April 26, 2010, NOAA memorandum. In other words, Defendant had additional nonpublic information that the flow rate of oil was well in excess of the then public estimates.

III. On the Basis of Material, Nonpublic Information, Defendant Sold Units of the BP Stock Fund and Exercised Options for BP ADSs.

30. At the time of Defendant's sales of his and his family's units of the BP Stock Fund and his exercise of options for BP ADSs (and sale of the underlying shares), BP and Unified Command had announced to the public that the flow rate could be as high as 5,000 bopd. Among other things:

- a. at a press conference on the evening of April 28, 2010, Unified Command announced that the flow rate "could be as much as 5,000 barrels" per day;
- b. on April 29, 2010, a senior BP executive appeared on three nationally broadcast morning television shows and stated that the "range [of flow rate] is one to 5,000 barrels a day," "something between one and 5,000 barrels a day," or "somewhere between one and 5,000 barrels a day";
- c. on April 29, 2010, BP filed a Form 6-K in which it stated that the flow rate was "estimated at up to 5,000 barrels per day"; and

d. on April 30, 2010, BP filed another Form 6-K, again stating that the flow rate was “estimated at up to 5,000 barrels per day.”

31. As set forth above, on April 29 and 30, 2010, at the time Seilhan caused the sale of his and his family’s BP Stock Fund units and exercised all of his options for BP ADSs (and sold the underlying ADSs), he was in possession of material, nonpublic information regarding the magnitude of the flow rate of oil resulting from the Deepwater Horizon incident.

32. On April 29, 2010, at 11:56 a.m. and 12:00 p.m. central time, Defendant caused to be sold a total of 87,512 units of the BP Stock Fund (in his and his family’s retirement accounts) at \$11.25 per unit, resulting in proceeds of \$984,697.01.

33. The next morning, on April 30, 2010, between 6:53 a.m. and 7:14 a.m. central time, Defendant caused to be sold three different BP employee stock option grants in his brokerage account. These three series of options were not set to expire until between 10 and 34 months from that date: February 22, 2011, February 17, 2012, and February 16, 2013. The total net proceeds Defendant received from these transactions was \$47,561.54.

34. As a BP employee, Seilhan was required to annually review BP’s Code of Conduct, which contained guidance on insider trading. Moreover, as a manager, he was required to annually certify that he had reviewed the Code of Conduct. BP’s Code of Conduct provides, in part: “BP Employees are prohibited from trading on the basis of ‘inside information in shares or other securities of BP, any BP company, or any other publicly traded company.’”

35. Further, on May 5, 2010, at 4:08 p.m. central time, six days after Defendant first sold BP securities as alleged in this complaint, a BP in-house attorney sent an e-mail message to a number of BP response personnel, including Defendant, reminding them that “[t]he Code of Conduct prohibits you from trading on the basis of any price sensitive information relating to

either BP securities or those of any other publicly traded company.” In the e-mail message, each recipient was asked to contact the BP legal department if he was considering trading in BP securities and had any doubt about whether he was in possession of such information.

Defendant, having recently traded BP securities, responded on May 5, 2010, at 5:02 p.m. central time: “Thanks for this. I would like to discuss with you soon.” And, on May 11, at 1:18 p.m.

central time, a BP in-house attorney responded to Defendant’s e-mail message and subsequently left Defendant a voicemail message asking Defendant to call her to discuss the matter.

Defendant never responded to the e-mail message or voicemail message nor otherwise disclosed his trades to BP.

36. Defendant was fully informed as to his responsibilities and limitations with regard to his trading on the basis of information he learned during the course of his employment.

37. As set forth above, Defendant traded on the basis of material, nonpublic information in breach of a duty to BP and its stockholders.

38. As a result of his illegal trading, Seilhan realized unjust profits and avoided losses in excess of \$100,000.

IV. The Deepwater Horizon Explosion and Resulting Oil Leak Had a Significant Negative Impact on the Price of BP’s Securities.

39. The Deepwater Horizon spill was a highly publicized and evolving disaster that had a significant negative impact on the price of BP’s securities. On April 20, 2010, the date of the explosion, BP ADSs closed at \$60.48 and then declined \$33.46, or 55%, to \$27.02 on June 25, the lowest closing price during the disaster.

40. The nonpublic information upon which Defendant caused to be sold shares of the BP Stock Fund and exercised and sold options for BP ADSs was material in that it would have

been viewed by a reasonable investor as significantly altering the total mix of information available regarding BP securities.

41. On July 15, 2010, BP announced that it had successfully capped the well and that oil was no longer leaking into the Gulf of Mexico. Following the announcement, the price of BP ADSs closed at \$38.92 (down 36% from April 20).

42. Thereafter, on July 21, 2010, Defendant again traded in BP securities, selling all of his retirement account holdings in the S&P 500 index fund and reinvesting all of the proceeds therefrom back into the BP Stock Fund, purchasing 94,025 BP Stock Fund units at \$7.80 per unit, for a total purchase price of \$733,642.39.

43. Ultimately, the Flow Rate Technical Group (“FRTG”), a group of government, industry, and academic experts organized to evaluate the amount of oil leaking into the Gulf, issued a series of flow rate estimates confirming that the magnitude of the spill was much greater than what had been disclosed by BP, concluding with a final estimate on August 2, 2010, of between 52,700 to 62,200 bopd during the course of the leak. In total, the FRTG estimated that approximately 4.9 million barrels of oil had leaked into the Gulf.

FIRST CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

44. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 43, inclusive, as if they were fully set forth herein.

45. By engaging in the conduct described above, Seilhan, knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- a. employed devices, schemes, or artifices to defraud;

- b. made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person in connection with the purchase or sale of any security.

46. By engaging in the foregoing conduct, Defendant violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

SECOND CLAIM FOR RELIEF
Violations of Section 17(a) of the Securities Act

47. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 46, inclusive, as if they were fully set forth herein.

48. By engaging in the conduct described above, Seilhan, knowingly or recklessly, in the offer or sale of securities, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or the mails:

- a. employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of an untrue statement of a material fact or an omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

49. By reason of the foregoing, Defendant violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment:

I.

Permanently restraining and enjoining Defendant from, directly or indirectly, violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and from, directly or indirectly, violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)];

II.

Ordering Defendant to disgorge all losses avoided and profits gained from his activities as set forth in this complaint, together with prejudgment interest thereon;

III.

Ordering Defendant to pay a civil penalty of up to three times the losses avoided and profits gained pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1]; and

IV.

Granting such other and further relief as this Court may deem just, equitable, or necessary.

Respectfully submitted,

Dated: April 17, 2014.

/s/ Christopher R. Kelly
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