

**IMPORTANT LEGAL NOTICE**

*A California Court authorized this notice. This is not a solicitation from a lawyer.*

James Fletcher, et al.,

Class Action

Plaintiffs v.

Santa Barbara County Superior Court  
Case No. 01131631  
Honorable James W. Brown

Brown & Brown of California; Whilt, Fatch and Perry, Insurance Services; United Resturant Insurance Service; Leon Toppin, et al.

Defendants.

**NOTICE OF: (1) PENDENCY OF CLASS ACTION; (2) CERTIFICATION OF SETTLEMENT SUB-CLASS; (3) PROPOSED SETTLEMENT; AND (4) FINAL APPROVAL HEARINGS**

TO: To all bar and restaurant owners doing business in California who, at any time from November 5, 1999 through November 5, 2003, contracted, through Brown & Brown of California, Inc. or Whilt Fatch and Perry, Insurance Services, for liability insurance through United Restaurant Insurance Services (“URIS”) and/or California Restaurant Specialty Cooperative (“CRSC”) and/or Leon Toppin and who did not receive valid or authorized policies of insurance.

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT WITH CARE AND CONTACT CLASS COUNSEL IF YOU HAVE ANY QUESTIONS.**

The purpose of this Notice is to inform you of: (1) the pendency of a class action which is being pursued on behalf of certain bar and restaurant owners; (2) the conditional certification, for settlement purposes only, of a settlement sub-class on behalf of certain bar and restaurant owners as defined below (“Settlement Sub-Class”); (3) a proposed settlement of the class action on behalf of the Settlement Sub-Class; and (4) final approval hearings which have been scheduled by the Court to take place on August 29, 2007, 2007 at 1:30 p.m. in order to determine whether the Settlement is fair, reasonable and adequate to the members of the Settlement Sub-Class.

This Notice is being sent to you in a form and in a manner approved by the Santa Barbara Superior Court. However, this Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses by any of the parties. Rather, this Notice is being sent to you because the records of Brown & Brown of California, Inc. and Whilt Fatch & Perry Insurance Services indicate that **you are a member of the Settlement Sub-Class.**

As set forth below in the section entitled “The Proposed Settlement”, a proposed settlement has been reached which is subject to approval by the Court. If the Settlement is approved, then **eligible members of the Settlement Sub-Class will be entitled to receive some money back on certain liability insurance products purchased through Brown & Brown of California, Inc. and/or Whilt, Fatch & Perry, Insurance Services.** Please read the section entitled “Eligibility for Benefits” to determine what steps you must take in order to receive benefits.

**PARTIES TO THE CLASS ACTION**

The Plaintiffs who are pursuing this matter on behalf of the members of the Settlement Sub-Class are James Fletcher (owner of Jimboz’s Tavern in Santa Barbara, California) and Mike Bastanchury (owner of Tiberon Tavern in Santa Barbara, California). The defendants in this class action Brown & Brown of California, Inc., Whilt, Fatch and Perry, Insurance Services, United Resturant Insurance Service, California Restaurant Specialty Cooperative, Leon Toppin, Richard Peterson, a/k/a “Robert James,” Surplus Lines, Inc., Heritage International, and Ian Stuart.

## **DESCRIPTION OF AND CLAIMS ALLEGED IN THE CLASS ACTION**

Prior to November 5, 2003, URIS and Toppin had underwritten restaurant and/or bar liability for restaurants and bars throughout California purporting to have been placed with Certain Underwriters at Lloyd's of London (hereinafter "Lloyd's"). Some of these policies were purchased through Brown & Brown of California, Inc. and/or Whilt, Fatch & Perry, Insurance Services. On November 5, 2003, after receiving a letter from Lloyd's informing them that their restaurant policy with Lloyd's, underwritten by URIS, did not exist to provide coverage for their business, Plaintiffs filed this action as a class action. The lawsuit includes claims for the following claims (a) Breach of contract and breach of implied in fact contract; (b) Negligence; (c) Violations of the Unfair Business Practices Act, California Business & Professions Code §17200, et seq, (d) Conversion and (e) Fraud (the "Lawsuit") The Lawsuit sought compensatory damages, injunctive relief, restoration of money or property, and punitive damages.

After filing the Lawsuit, attorneys representing the Plaintiffs conducted discovery pursuant to a Court-ordered discovery plan. The discovery included document productions from Leon Toppin, URIS, Whilt, Fatch & Perry and Brown & Brown of California, Inc. and written interrogatories. On December 6, 2006, attorneys for the Plaintiffs filed a motion seeking an order certifying the class action on behalf of all bar and restaurant owners doing business in California who, at any time within the four-year period of time predating the filing of this action, contracted, through insurance producers or brokers, for liability insurance through United Restaurant Insurance Services and/or California Restaurant Specialty Cooperative and/or Leon Toppin and who did not receive valid or authorized policies of insurance and on behalf of a separate subclass of bars and restaurants who purchased said policies through Brown & Brown of California, Inc. and/or Whilt, Fatch & Perry, Insurance Services. The Court did not rule on Plaintiffs motion because the parties agreed to enter into settlement negotiations.

Beginning in September of 2006 and continuing through February of 2007, counsel for Plaintiffs and counsel for Defendants Brown & Brown of California, Inc., and Whilt, Fatch and Perry reached a proposed settlement on behalf of thirty-one bars (31) bars and/or restaurants which purchased their policies through these two insurance brokers. Defendants Brown & Brown of California, Inc., and Whilt, Fatch and Perry have denied any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit as they assert that they were not aware that the policies received from URIS and/or Toppin were not authorized by Lloyd's. They have chosen to proceed with the proposed settlement to avoid unnecessary further expense. .

### **CONDITIONAL CLASS ACTION CERTIFICATION**

In an order entered by the Santa Barbara Superior Court on June 20, 2007, 2007, this action was conditionally certified, for settlement purposes only, as a class action. Plaintiffs Fletcher and Bastanchury were certified to act as the representative of the Settlement Sub-Class. The law firms of Foley Bezek Behle & Curtis, LLP, and the Law Offices of T. Todd Thompson were appointed as Class Counsel. The Settlement Class is defined as follows: "all bar and restaurant owners doing business in California who, at any time from November 5, 1999 through November 5, 2003, contracted, through insurance producers or brokers, for liability insurance through United Restaurant Insurance Services ("URIS") and/or California Restaurant Specialty Cooperative ("CRSC") and/or Leon Toppin and who did not receive valid or authorized policies of insurance."

### **THE PROPOSED SETTLEMENT**

**The Settlement provides that Defendants Brown & Brown of California, Inc. and/or Whilt, Fatch & Perry, Insurance Services pay \$140,000 (the "Gross Settlement Amount") to fully resolve the issues in the Lawsuit.** After any and all Court-approved deductions are made (as described below), the remaining amount (the "Net Settlement Amount") will be distributed among the thirty-one (31) bars and restaurants that are members of the class.

## **ELIGIBILITY FOR BENEFITS**

**IF YOU HAVE BEEN MAILED THIS NOTICE, YOU ARE IN THE SUB-CLASS AND WILL RECEIVE MONEY BACK AS A RESULT OF THIS LAWSUIT AS LONG AS YOU DO NOT OPT-OUT OF THIS SETTLEMENT AND THUS EXCLUDE YOURSELF.**

## **PRELIMINARY APPROVAL BY THE COURT**

The Santa Barbara Superior Court has preliminarily approved the proposed Settlement as fair, reasonable and adequate to the members of the Settlement Sub-Class. If the Court grants final approval to the Settlement, then a final judgment will be entered by the Court approving the Settlement and dismissing the class action with prejudice. This final judgment will be binding upon all members of the Settlement Sub-Class who do not exercise their right to exclude themselves from the Settlement Sub-Class.

## **DISMISSAL OF CERTAIN DEFENDANTS**

If this settlement is approved then the Court will also dismiss Defendants Richard Peterson a/k/a “Robert James,” Surplus Lines, Inc., Heritage International, and Ian Stuart from this Lawsuit. Plaintiffs are no longer seeking recovery from these Defendants by way of this Lawsuit because all of these Defendants have been prosecuted or are facing criminal liability with respect to the act alleged in Lawsuit and any restitution from those Defendants has been or will be sought by the Federal District Attorney. If you believe you have claims against these individuals, please understand that state and federal law impose mandatory time limits for the filing of claims and/or lawsuits. Therefore, should you decide to proceed with you own independent legal action against these individuals you should file your claim in accordance with those time limits or you may be precluded from bringing any legal action at some time in the future.

## **RECOMMENDATION OF CLASS COUNSEL**

The Settlement described herein was agreed upon by the parties only after the parties had completed discovery and participated in arm’s-length negotiations. After taking into account the disputed factual and legal issues involved, the substantial information learned through discovery, and the substantial benefits to be received by the members of the Settlement Sub-Class, Plaintiffs and Class Counsel have concluded that the Settlement is in the best interests of the members of the Settlement Sub-Class.

## **RELEASE OF CLAIMS BY SETTLEMENT CLASS MEMBERS**

If the Settlement is granted final approval by the Court, all members of the Settlement Sub-Class (except those who exclude themselves from the Settlement Sub-Class) will absolutely and irrevocably release and forever discharge Brown & Brown of California, Inc. and Whilt Fatch & Perry, Insurance Services and their representatives, attorneys, insurers, related parties, owners, parent, subsidiaries, employees and assigns (the “Released Parties”) from any and all claims, debts, liabilities, demands, obligations penalties, guarantees, costs, expenses, attorney fees, damages, action or causes of action of whatever kind or nature, that were alleged or reasonably could have arising out of the same facts alleged in the Lawsuit. This Release expressly excludes Richard Peterson, a/k/a Richard James, Surplus Lines, Inc., Heritage International and Ian Stuart.

In connection with the release and discharge of the Released Parties, each member of the Settlement Sub-Class shall be deemed to have expressly waived all rights under *California Civil Code* section 1542 (or any comparable statute) and to have done so understanding the significance of that waiver. Section 1542 provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

## ATTORNEYS' FEES, EXPENSES AND OTHER PAYMENTS

If approved by the Court, the following deductions will be made from the Gross Settlement Amount before distribution of the settlement funds:

- a. Claims Administrator: The costs of providing notice to the sub-class and claims administration which at this time is estimated to be \$4,109 will be paid from the Gross Settlement Amount.
- b. Attorneys Fees and Costs. The Court has appointed Robert Curtis of Foley Bezek Behle & Curtis, LLP and T. Todd Thompson of The Law Office of T. Todd Thompson as Class Counsel. Class counsel have been prosecuting the Lawsuit on behalf of the Class and Sub-Class on a contingency fee basis (that is, without being paid to date), while advancing litigation costs and expenses. Class Counsel will be entitled to request from the Court reimbursement of their costs and expenses. Any such reimbursements will be subject to the Court's approval and will be paid out of the Gross Settlement Amount. Class Members are not personally responsible for any fees or expenses. The Settlement provides for attorneys' fees equal to one-third (1/3) of the Gross Settlement Amount. In that regard, class counsel will file an application for attorneys' fees asking the Court for an award of attorney's fees equal to and not to exceed \$46,662.00 relating to this settlement with these Defendants. The Court, in the sole and absolute discretion, will decide the amount of fees to be provided to class counsel. Class Counsel will also seek reimbursement of the expenses they have advanced to date in connection with the lawsuit. These amounts of attorneys fees and reimbursed costs would constitute full compensation for all legal fees, costs, and expenses of all Plaintiffs' Counsel, including costs and expenses incurred by Plaintiffs' Counsel in connection with the Lawsuit, and all future work that will be required to be performed through the completion of the Settlement process, which could take years. **Class Members will not be required to pay Plaintiffs Counsel out of their own pocket for any attorneys' fees, costs or expenses.**
- c. Incentive Awards to Named Plaintiffs. Class Counsel also will seek incentive awards of \$3,000.00 for the following plaintiffs for acting as Class Representatives on behalf of the Class in the Lawsuit: James Fletcher and Mike Bastanchury. If approved by the Court, these amounts will be paid from the Gross Settlement Amount for Plaintiffs' risks and services on behalf of the class which include, among other things, the risk of litigation, reviewing documents, attending strategy sessions, responding to discovery, meetings with Class Counsel, and performing other services of that nature on behalf of the class. Any service payment awards approved by the Court shall be paid from the Gross Settlement Amount.

## THE SETTLEMENT APPROVAL HEARINGS

Hearings will be held by the Court on August 29, 2007 at 1:30 p.m. in Department 4 of the Santa Barbara Superior Court, located at 1100 Anacapa, Santa Barbara, California, 93101 to determine whether: (1) the Settlement should be finally approved as fair, adequate and reasonable; (2) attorneys' fees and expenses should be awarded to Class Counsel; and (3) an incentive awards should be granted to Plaintiffs. The settlement approval hearing may be rescheduled or continued to a later date without further notice. **You are not required to attend the hearing**, but you may do so on your own or through an attorney retained by you at your own expense.

## RIGHT TO BE EXCLUDED FROM THE SETTLEMENT CLASS

**Any Settlement Sub-Class member who wishes to exclude himself, herself or itself from the Settlement Sub-Class may do so by exercising his, her or its right to be excluded from the Settlement Sub-Class as instructed below.** If you request exclusion, then: (1) you will not be entitled to receive the benefits being made available under the Settlement; (2) you will not be bound by the final judgment entered in this action; and (3) you will be free to pursue or not pursue any legal rights you may have against Brown & Brown of California, Inc.

and Whilt Fatch & Perry. **If you do not request exclusion, then you will be bound by the judgment entered in this class action under the legal doctrine of *res judicata*.**

All requests for exclusion must be made in writing, must affirmatively state that you wish to be excluded from the Settlement Sub-Class, and must be mailed to Settlement Administrator at the following address:

Settlement Administrator  
c/o Desmond, Marcello & Amster  
P.O. Box 451999  
Los Angeles, CA 90045

**All written requests for exclusion must be postmarked no later than August 1, 2007 and must include your name, address, telephone number and signature.** Any request for exclusion made on behalf of a Settlement Class member by a representative of that Settlement Class member must state the capacity in which the representative is acting. No representation is made herein that any sub-class member seeking to be excluded would or will have any rights against the settling parties.

### **RIGHT TO OBJECT TO THE SETTLEMENT OF THE CLASS ACTION**

Any member of the Settlement Sub-Class who does not exercise his/her/its right to be excluded from the Settlement Class may object to the Settlement, the application for attorneys' fees and expenses and/or the application for an incentive award. All objections must be in writing and **must**: (1) include your name, address and telephone number; (2) provide a detailed explanation of your objection and include any documents upon which you rely to support your objection; (3) include the caption and case number appearing at the head of this Notice; (4) include a statement of whether you intend to appear, either in person or through your own counsel, at the settlement approval hearing; (5) be filed with both the Clerk of the Santa Barbara Superior Court by **NO LATER THAN** August 3, 2007 at the addresses set forth below in the section entitled "Mailing Addresses For All Communications"; and (6) be served via first class mail, by **NO LATER THAN** August 3, 2007, on both Class Counsel and Defense Counsel at the addresses set forth below in the section entitled "Mailing Addresses For All Communications". Any member of the Settlement Sub-Class who fails to comply with these requirements will not be heard, either in person or through counsel, at the time of the settlement approval hearing unless specifically permitted by the Court, and will be bound by the Settlement.

### **ADDITIONAL COPIES OF THIS NOTICE**

Additional copies of this Notice may be obtained by sending a written request to the Settlement Administrator at the address set forth below in the section entitled "Mailing Addresses For All Communications".

### **MAILING ADDRESSES FOR ALL COMMUNICATIONS**

For purposes of submitting a claim form, requesting exclusion from the class action, or requesting additional copies of this Notice, the mailing address for the Settlement Administrator is:

Settlement Administrator  
c/o Desmond, Marcello & Amster  
P.O. Box 451999  
Los Angeles, CA 90045

For any questions regarding the Settlement or the class action, or for purposes of serving an objection, the mailing address for Class Counsel is:

Robert A. Curtis, Esq.  
Foley Bezek Behle & Curtis, LLP  
15 West Carrillo Street  
Santa Barbara, California 93101

For purposes of serving an objection, the mailing address for Defense Counsel is:

Lawrence Borys  
Ropers Majeski Kohn Bentley  
515 South Flower Street, Suite 1100  
Los Angeles, California 90071

For purposes of filing an objection or entering an appearance, the address for the Clerk of the Court is:

Santa Barbara Superior Court  
Department 4  
1100 Anacapa,  
Santa Barbara, California, 93101,

**Please direct all questions to Class Counsel in writing at the address listed above or via e-mail to [RCurtis@foleybezek.com](mailto:RCurtis@foleybezek.com). Please do not contact the Court, the Arbitrator, the Settlement Administrator, or Defense Counsel with your questions.**

#### **ADDITIONAL INFORMATION**

The matters identified and described in this Notice do not purport to be comprehensive and should not be considered as such. Settlement Sub-Class members who desire further information may wish to review the pleadings and other records on file with the Santa Barbara Superior Court. The documents publicly filed in this class action are available for inspection and copying during regular business hours at the Office of the Clerk of the Santa Barbara Superior Court at the address above.

Dated: June 20, 2007

Honorable James W. Brown