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IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ROCIO ADAME ARANJO de	)	No. CV-F-02-6527 REC/LJO
AGUILAR, et al.,)	
	)	ORDER GRANTING PLAINTIFFS'
	)	MOTION FOR ENTRY OF JUDGMENT
Plaintiff,	)	PURSUANT TO FRCivP 54(b) AND
	)	STAY OF PROCEEDINGS (Doc.
vs.	)	178), AMENDING ORDER
	)	GRANTING DEFENDANT COUNTY OF
	)	KERN'S MOTION FOR SUMMARY
	)	JUDGMENT (Doc. 175) AND
NATIONAL RAILROAD PASSENGER	)	DIRECTING CLERK OF COURT TO
CORPORATION, et al.,	)	ENTER JUDGMENT IN FAVOR OF
	)	DEFENDANT COUNTY OF KERN
Defendant.	)	PURSUANT TO RULE 54(b)
)	
)	

By Order filed on December 29, 2005, the court granted defendant County of Kern's motion for summary judgment, ruling that the County was not liable to those plaintiffs who sued it in these consolidated actions pursuant to California Government Code § 835 for damages resulting from the death of decedents when the van in which they were traveling was struck by an Amtrak train as the van was crossing the railroad tracks on Poplar Avenue. The

1 essential issue in the claims against the County was that the
2 configuration of Poplar Avenue was a dangerous condition of
3 property within the meaning of Section 835.¹

4 Plaintiffs move the court to amend the Order and certify it
5 for immediate appeal pursuant to Rule 54(b), Federal Rules of
6 Civil Procedure, and to stay all further proceedings in this
7 action pending the appeal of the Order.

8 Rule 54(b) provides in pertinent part:

9 When more than one claim for relief is
10 presented in an action ... or when multiple
11 parties are involved, the court may direct
12 the entry of a final judgment as to one or
13 more but fewer than all of the claims or
parties only upon an express determination
that there is no just reason for delay and
upon an express direction for the entry of
judgment.

14 In certifying an appeal pursuant to Rule 54(b), the district
15 court must first determine that it has rendered a "final
16 judgment," i.e., a judgment that is "an ultimate disposition of
17 an individual claim entered in the course of a multiple claims
18 action.'" Curtiss-Wright Corp. v. General Electric Co., 446 U.S.

19
20 ¹This is a consolidated action. The lead case number is No.
21 CV-F-02-6527. Consolidated with the lead case are Nos. 02-6559,
22 03-5271, 03-5632, and 03-5633. Not all plaintiffs in this
23 consolidated action sued the County of Kern and not all plaintiffs
24 in this consolidated action are represented by Gregory Moreno,
25 counsel for the moving plaintiffs. The County's motion for summary
26 judgment was directed only to the plaintiffs in Nos. CV-F-03-5632
and CV-F-03-5633. Consequently, when this motion refers to
plaintiffs, it is not referring to all plaintiffs in this action.
However, it is noted that no opposition to this motion has been
filed by the other plaintiffs in this action and that counsel for
the moving plaintiffs represented to the court at oral argument on
February 27, 2006 that he had contacted counsel for all plaintiffs
and that none opposed this motion.

1 1, 7 (1980).

2 It is conceded by the parties and the court concurs that
3 this requirement is satisfied.

4 The court must then whether there is any just reason for
5 delay. Factors that must be considered are judicial
6 administrative interests as well as the equities involved.
7 Curtiss-Wright, supra, 446 U.S. at 8.

8 In considering judicial administrative interests, the
9 district court may properly consider (a) the separateness of the
10 claims for relief and whether the claims are separable, and (b)
11 whether the nature of the claims already determined was such that
12 no appellate court would have to decide the same issues more than
13 once even if there were subsequent appeals. Curtiss-Wright,
14 supra. As explained in General Acquisition, Inc. v. Gencorp,
15 Inc., 23 F.3d 1022, 1030 (9th Cir. 1994):

16 Although '[n]o precise test exists for
17 determining whether there is a just reason to
18 delay,' ... this court has articulated the
19 following 'nonexhaustive list of factors
20 which a district court should consider when
21 making a Rule 54(b) determination':

- 22 (1) the relationship between the
23 adjudicated and unadjudicated
24 claims; (2) the possibility that
25 the need for review might or might
26 not be mooted by future
developments in the district court;
- (3) the possibility that the
reviewing court might be obliged to
consider the same issue a second
time; (4) the presence or absence
of a claim or counterclaim which
could result in set-off against the
judgment sought to be made final;
- (5) miscellaneous facts such as

1 delay, economic and solvency
2 considerations, shortening the time
3 of trial, frivolity of competing
4 claims, expense and the like.

5

6 Here, plaintiffs contend, the alleged dangerous condition of
7 the configuration of Poplar Avenue as it approached and crossed
8 the railroad tracks is separate and distinct from plaintiffs'
9 claims against the remaining defendants:

10 Plaintiffs' claims against Amtrak, the train
11 operators (engineers/conductors), and BNSF
12 stem from negligence resulting from these
13 defendants operation of the train and their
14 failure to properly warn motorists of their
15 presence. In particular, there are questions
16 as to whether or not warning devices such as
17 the ditch lights and the train horn were
18 properly functioning. These issues are
19 separate and distinct from the dangerous
20 condition claims alleged against the County
21 of Kern regarding the configuration of the
22 intersection where the collision occurred.

23 In opposing this motion, the County admits that the claim
24 against it is distinct from the claims of negligence brought
25 against the remaining defendants. Nonetheless, the County
26 argues:

27 [S]ome of the elements of proof for the torts
28 overlap. For example, whether the harm was
29 foreseeable and whether the decedents caused
30 the damages are two key questions that
31 address both torts. Moreover, the factual
32 situation as to the County and the remaining
33 defendants stem from a single car-train
34 collision. Therefore, depending on the
35 outcome of the trial against the remaining
36 defendants, it is possible that 'the
37 appellate court will be required to address'
38 issues which are 'inseverable, both legally
39 and factually' in relation to the allegations
40 against the other defendants.

1 There is no question here that some of the facts relevant to
2 the claims against the remaining defendants overlap with those
3 relevant to the claims against the County. However, it also is
4 true that the claims against the County largely involve unique
5 facts which are not germane to the claims against the remaining
6 defendants. Therefore, although this is not a complex case, it
7 is not a case where the facts essentially are the same for all of
8 the claims alleged. Furthermore, if the other defendants obtain
9 a defense verdict, that verdict will not necessarily moot the
10 claims against the County. Therefore, the Ninth Circuit will not
11 be hearing the same appeal twice. Finally, it is noted that none
12 of the nonmoving plaintiffs or the remaining defendants have
13 opposed this motion.

14 Therefore, the court concludes that plaintiffs have
15 demonstrated that certification for immediate appeal under Rule
16 54(b) furthers judicial administrative interests as well as the
17 equities.

18 Plaintiffs further argue that good cause exists to stay the
19 proceedings in the District Court while plaintiffs pursue their
20 appeal against Kern County. Counsel for plaintiffs, Gregory
21 Moreno, avers in pertinent part:

22 14. On January 12, 2006, I spoke with Erin
23 Frye ... attorney of record for Defendants
24 National Railroad Passenger Corporation
('Amtrak'), Walter Ward, W.M. Dike and
25 Burlington Northern Santa Fe Corporation in
regards to a stipulation to continue trial;

26 15. During the above conversation, Erin
Frye, indicated that Defendants wished to

1 reserve their right to request a stay of
2 proceedings while Plaintiffs pursue their
3 appeal against the County of Kern

4 Plaintiffs argue that granting a stay of proceedings "will
5 prevent piecemeal litigation, as it will avoid the possibility of
6 two separate trials arising out of the same incident" and "will
7 reduce litigation expenses and be mutually convenient for this
8 court and all litigants."

9 The County argues that plaintiffs are inconsistent:

10 [P]laintiffs assert that although the claims
11 against the County are severable from the
12 remaining claims and will not result in
13 'piecemeal appeals,' plaintiffs also request
14 the Court stay the trial court action as to
15 the remaining defendants in order to avoid
16 'piecemeal litigation.' ... How a claim is
17 severable but lends itself to a great risk of
18 piecemeal litigation is not explained by
19 plaintiffs.

20 The court does not agree with the County's concerns. As
21 noted, none of nonmoving plaintiffs or the remaining defendants
22 have opposed this motion, notwithstanding the trial date set for
23 August 8, 2006. Staying further proceedings pending the appeal
24 of the grant of summary judgment for the County of Kern possibly
25 will avoid the need to conduct two separate trials, thereby
26 saving judicial resources as well as the resources of the
27 parties.

28 ACCORDINGLY:

29 1. Plaintiffs' Motion for Entry of Judgment Pursuant to Rule
30 54(b), Federal Rules of Civil Procedure, and Certification of
31 Appeal, and Stay of Proceedings is granted;

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2. The Order Granting Defendant County of Kern's Motion for Summary Judgment filed on December 29, 2005 is hereby amended at page 18 to include the following:

The Clerk of the Court is directed to enter judgment for the County of Kern pursuant to Rule 54(b), Federal Rules of Civil Procedure, the court concluding that there is no just reason for delay.

3. The Clerk of the Court is directed to enter judgment for the County of Kern.

IT IS SO ORDERED.

Dated: February 28, 2006
668554

/s/ Robert E. Coyle
UNITED STATES DISTRICT JUDGE