



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.<sup>1</sup>

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 <sup>1</sup>This 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 (9<sup>th</sup> 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  
25 ('Amtrak'), Walter Ward, W.M. Dike and  
26 Burlington Northern Santa Fe Corporation in  
regards to a stipulation to continue trial;

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;

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

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

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

9           IT IS SO ORDERED.

10 **Dated: February 28, 2006**  
668554

**/s/ Robert E. Coyle**  
UNITED STATES DISTRICT JUDGE