

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RANDY’S TRUCKING, INC., et al.,)	1:08cv0819 OWW DLB
)	
)	
)	FINDINGS AND RECOMMENDATION
)	REGARDING DEFENDANTS’ MOTION FOR
Plaintiffs,)	GOOD FAITH SETTLEMENT
)	DETERMINATION
v.)	
)	(Documents 74, 75)
AMTRAK, et al.,)	
)	
)	
Defendants.)	

Defendants National Railroad Passenger Corporation (“Amtrak”) and Burlington Northern Santa Fe Railroad (“BNSF”) filed the instant motion for good faith settlement on June 15, 2009.¹ The action was referred to the undersigned for Findings and Recommendation to the District Judge.

BACKGROUND

This is one of three consolidated actions arising out of an accident between an Amtrak train and truck owned by Randy’s Trucking, Inc. (“Randy’s”), on July 19, 2007. In this lead case, Plaintiffs Randy’s and Star Insurance Co. filed an action for property damage against numerous

¹ The motion was originally filed as Plaintiffs’ motion to vacate the Court’s May 27, 2009, order finding the settlement to be in good faith. At the September 4, 2009, hearing on the motion, the Court indicated that the order was issued prematurely and would be vacated. The parties agreed to submit additional briefing to allow the Court to determine whether the settlement is in good faith. The Court vacated the May 27, 2009, order on December 17, 2009.

1 Defendants, including municipal Defendants and Amtrak and BNSF. Plaintiffs believe that the
2 location of a stop sign immediately to the west of the railroad tracks is so close to the tracks that
3 a tractor trailer rig cannot stop at the sign without leaving part of the rig on the tracks. Amtrak
4 and BNSF filed cross-complaints for property damage, etc., against Randy's and Fernando
5 Sandoval, the driver.

6 In the consolidated action 1:09cv331 OWW DLB, Plaintiffs Robert, Rachel, Jessica and
7 Erica Garcia filed a personal injury action against Amtrak and Randy's in February 2009. After
8 consolidation, Randy's filed a cross-claim for indemnification against Amtrak.²

9 DISCUSSION

10 A motion for good faith settlement determination is based upon California Code of Civil
11 [Procedure Section 877](#), which states, in pertinent part:

12 Where a release, dismissal with or without prejudice, or a covenant not to sue or
13 not to enforce judgment is given in good faith before verdict or judgment to one or
14 more of a number of tortfeasors claimed to be liable for the same tort, or to one or
15 more other co-obligors mutually subject to contribution rights, it shall have the
16 following effect:

17 (a) It shall not discharge any other such party from liability unless its terms so
18 provide, but it shall reduce the claims against the others in the amount stipulated
19 by the release, the dismissal or the covenant, or in the amount of the consideration
20 paid for it, whichever is greater.

(b) It shall discharge the party to whom it is given from all liability for any
contribution to any other parties.

19 See [Rutgard v. Haynes, 61 F.Supp.2d 1082, 1085](#) (S.D. Cal. 1999).

20 [California Code of Civil Procedure Section 877.6](#) provides the procedural process by
21 which a party may move for a good faith settlement determination. While the procedures of
22 Section 877.6 do not govern a federal action, the Court has discretion to conduct a hearing
23 pursuant to that section if it determines that such a hearing would be useful. [Fed. Sav. and Loan](#)
24 [Ins. Corp. v. Butler, 904 F.2d 505, 511 \(9th Cir.1990\)](#). Although Randy's and Sandoval argue
25 against it, the Court will exercise its discretion and decide the issue under Section 877.6.

26
27
28 ² The third action is *Roi Smith v. Randy's Trucking, Inc., et al.*, 1:09cv211 OWW DLB, but it is not
relevant to this motion.

1 In [Tech-Bilt, Inc. v. Woodward-Clyde & Assoc., 38 Cal.3d 488, 499-500 \(1985\)](#), the
2 California Supreme Court set forth factors that a court should consider in determining whether
3 the settlement was made in good faith. These factors are: (1) Whether the amount of the
4 settlement is within the reasonable range of setting tort feors proportional share of comparative
5 liability; (2) Whether the amount of the settlement is a rough approximation of the plaintiff's total
6 recovery in the tort feosor's proportional liability; (3) The amount paid in settlement; (4) The
7 allocation of settlement proceeds among plaintiffs; (5) The recognition that a settlor should pay
8 less in settlement than he would if he were found liable after trial; (6) Financial conditions and
9 insurance policy limits of the settling tort feosor; (7) A recognition that the pertinent analysis must
10 be based on the information at the time of the settlement; and (8) The existence of collusion, fraud
11 or tortious conduct intended to injure the interests of the non-settling parties. [Id.](#)

12 Amtrak and BNSF argue that the \$10,000 settlement is made in good faith under the
13 [Tech-Bilt](#) factors. The evidence at the time of settlement shows that the settlement is reasonable
14 given Amtrak and BNSF's comparative liability. BNSF appears to have had no role in the
15 placement of the subject stop sign. Exhibits D, E and F to Declaration of Jason B. Shane. The
16 evidence also suggests that the Amtrak train was traveling at a speed within the allowed limits,
17 and any claim to the contrary would be preempted. [CSX Transp., Inc. v. Easterwood, 507 U.S.](#)
18 [658 \(1993\)](#); Declaration of Jason B. Shane, ¶ 8.

19 The evidence also shows that the Garcia Plaintiffs had total medical bills of \$14,304.57.
20 Robert Garcia received chiropractic care from July 25, 2007, through October 2007 and incurred
21 \$3,345.00 in medical bills. Rachel Garcia also received chiropractic care from July 25, 2007,
22 through October 2007 and incurred \$3,620.00 in medical bills. Jessie Garcia, who was taken by
23 ambulance from the scene of the accident but discharged shortly thereafter with a left shoulder
24 abrasion, received chiropractic care from July 25, 2007, through October 2007 and incurred
25 \$6,994.57 in medical bills. Erica Garcia's medical treatment consisted of one appointment with a
26 chiropractor on July 25, 2007, for a total of \$345.00 in medical bills. Declaration of William M.
27 Margolin, ¶ 3.

1 The \$10,000 settlement is to be divided as follows: \$3,000 to Robert Garcia, \$3,000 to
2 Rachel Garcia, \$3,000 to Jessie Garcia, and \$1,000 to Erica Garcia.

3 Defendants' counsel suggests that a similar case would normally produce a jury verdict of
4 \$30,000 to \$40,000, and that the Garcia Plaintiffs made a prior demand of \$20,000. Declaration
5 of Jason B. Shane, ¶ 10. Amtrak and BNSF believes, and this Court agrees, that the \$20,000
6 demand, combined with the maximum settlement value of the action and lack of Amtrak and
7 BNSF's liability, makes the settlement offer more than their true share of liability.

8 Pursuant to Section 877.6(d), the party contesting the lack of good faith has the burden of
9 proof on that issue. Here, however, Randy's and Sandoval have failed to set forth their analysis
10 under Tech-Built. Instead, they make speculative arguments as to the liability of Amtrak and
11 BNSF and request additional time for discovery. This determination must be made based on
12 evidence at the time of settlement, however, making further discovery unnecessary. Randy's and
13 Sandoval have simply failed to demonstrate that the settlement is not in good faith.

14 Accordingly, the Court finds that the settlement agreement between Amtrak and BNSF
15 and the Garcia Plaintiffs in the amount of \$10,000.00 was made in good faith pursuant to
16 [California Code of Civil Procedure Sections 877](#) and 877.6. The Court further finds that all
17 future cross-complaints filed in this action for equitable comparative relief, or partial or
18 comparative indemnity based upon comparative negligence or comparative fault against Amtrak
19 and BNSF, are barred.

20 **RECOMMENDATION**

21 The Court recommends that the Motion for Good Faith Settlement Determination be
22 GRANTED.

23 This Findings and Recommendation is submitted to the Honorable Oliver W. Wanger,
24 United States District Court Judge, pursuant to the provisions of [28 U.S.C. section 636](#) (b)(1)(B)
25 and Rule 72-304 of the Local Rules of Practice for the United States District Court, Eastern
26 District of California. Within thirty (30) days after being served with a copy, any party may file
27 written objections with the court and serve a copy on all parties. Such a document should be
28

1 captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The Court will
2 then review the Magistrate Judge’s ruling pursuant to [28 U.S.C. § 636](#) (b)(1)(C). The parties are
3 advised that failure to file objections within the specified time may waive the right to appeal the
4 District Court’s order. [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\)](#).

5
6 IT IS SO ORDERED.

7 **Dated: January 7, 2010**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE