

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

AMALIA LUCATERO PEREZ,  
individually and as Successor in Interest to  
the Estate of JACQUELINE SANCHEZ,  
decedent; ARNULFO SANCHEZ,

Plaintiffs,

v.

FORD MOTOR COMPANY, et al.,

Defendants.

CASE NO. 1:10-cv-02213-LJO-SKO

**FINDINGS AND  
RECOMMENDATIONS THAT FORD  
MOTOR COMPANY'S MOTION FOR  
DETERMINATION OF GOOD FAITH  
SETTLEMENT BE GRANTED**

(Docket No. 31)

**OBJECTIONS DUE: 10 days**

**I. INTRODUCTION**

On December 21, 2011, Defendant Ford Motor Company ("Ford") filed a motion for determination of good faith settlement. (Doc. 31.) The court has reviewed the motion as well as the supporting documentation and finds that the matter is suitable for decision without oral argument pursuant to Local Rule 230(g). Accordingly, the January 25, 2012, hearing is VACATED.

For the reasons set forth below, the Court RECOMMENDS that Ford's motion for determination of good faith settlement BE GRANTED.

**II. FACTUAL BACKGROUND**

This action arises from an auto accident that occurred on August 29, 2009, involving a 1999 Ford Explorer driven by Plaintiff Amalia Lucatero Perez ("Amalia") and containing passengers

1 Jacqueline Sanchez ("Jacqueline") and Arnulfo Sanchez ("Arnulfo"), Plaintiff's children. The  
2 accident occurred at 5:25 p.m., in the southbound lanes of State Route 99 in an unincorporated area  
3 of Stanislaus County, California. (Doc. 31-1, p. 2, 10.) The traffic collision report ("TCR")  
4 indicates that the left rear tire of the Ford Explorer ruptured, causing rapid tire deflation. (Doc. 31-1,  
5 p. 17.) Plaintiff applied the brakes and improperly turned the vehicle to the right, losing control.  
6 (Doc. 31-1, p. 17.) The vehicle traveled in a southwesterly direction, left the west roadway edge, and  
7 overturned. (Doc. 31-1, p. 17.) Amalia's daughter, Jacqueline, was ejected from the vehicle during  
8 the accident and died from injuries she sustained as a result. (Doc. 31-1, p. 14, 17.)

9 The TCR indicates that Amalia reported that she placed Jacqueline in her seat and attached  
10 her seatbelt. (Doc. 31-1, p. 11.) Amalia confirmed that Jacqueline's seatbelt was attached prior to  
11 entering the highway. (Doc. 31-1, p. 11.) However, Arnulfo and Amalia both reported to the  
12 investigating officer that Jacqueline had a habit of removing her seatbelt when traveling in the  
13 vehicle. (Doc. 31-1, p. 12.) Amalia reported that she often had to stop her vehicle to coax  
14 Jacqueline to secure her seatbelt before continuing. (Doc. 31-1, p. 12.) The TCR states that  
15 Jacqueline was not wearing her seatbelt restraint at the time she was ejected from the vehicle. (Doc.  
16 31-1, p. 17.)

17 On April 23, 2010, Plaintiffs filed a complaint alleging claims against Ford and Goodyear  
18 Dunlop Tires North America, Ltd. ("Goodyear") for Strict Product Liability, and against all  
19 defendants (Ford, Goodyear, Jalo's Auto Sales #2, Raymundo Covarrubias, individually and dba  
20 Jalo's Auto Sales #2) for Negligence [Product Liability] and Negligent Infliction of Emotional  
21 Distress. Additionally, Plaintiffs sought punitive damages against defendant Ford only. On  
22 November 29, 2010, the action was removed to federal court on the basis of diversity of citizenship.<sup>1</sup>

23 Following participation in voluntary mediation on November 10, 2011, Plaintiffs agreed to  
24 settle their claims against Ford. The settlement is contingent upon a determination of good faith  
25 settlement pursuant to the California Code of Civil Procedure. As a result, Ford filed a motion for  
26 determination of good faith settlement on December 21, 2011. (Doc. 31.) In conjunction with its  
27

---

28 <sup>1</sup> Defendants Jalo's Auto Sales #2 and Raymundo Covarrubias were dismissed from the lawsuit prior to removal.  
(Doc. 1, p. 3, ¶ 11.)

1 motion for a determination of good faith settlement, Ford requested that the parties' settlement  
2 agreement be filed under seal; the Court granted Ford's request. (Doc. 33.)

### 3 III. DISCUSSION

#### 4 A. Legal Standard

5 A motion for good faith settlement is governed by California Code of Civil Procedure §§ 877  
6 and 877.6, which apply to federal court diversity proceedings and authorize the Court to determine  
7 whether a settlement agreement was entered into in good faith.<sup>2</sup> *See Slottow v. Am. Cas. Co. of*  
8 *Reading, Penn.*, 10 F.3d 1355 (9th Cir. 1993) (en banc). In relevant part, section 877 states as  
9 follows:

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

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

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

17 Cal. Civ. Proc. Code § 877; *see also Rutgard v. Haynes*, 61 F. Supp. 2d 1082, 1085 (S.D. Cal. 1999).

18 The legislative objectives in promulgating Section 877 were "equitable sharing of costs among the  
19 parties at fault, and . . . encouragement of settlements." *River Garden Farms, Inc. v. Super. Ct.*,  
20 26 Cal. App. 3d 986, 993 (1972). However, "equitable sharing" does not require *equal* sharing. *Id.*

21 The California Supreme Court has held that "[t]he good faith provision of section 877  
22 mandates that the courts review agreements purportedly made under its aegis to insure that such  
23 settlements appropriately balance the contribution statute's dual objectives." *Tech-Bilt, Inc. v.*  
24 *Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 494 (1985). In determining whether the settlement is  
25 made in good faith, the factors to be considered include the following:

---

26  
27 <sup>2</sup> Section 877.6 provides that good faith settlements is subject to approval of the court through noticed motion  
28 and hearing. *See* Cal. Civ. Proc. Code § 877.6(a)(1). Section 877.6 is the procedural vehicle under which Ford brings  
its motion.

1 a rough approximation of plaintiffs' total recovery and the settlor's proportionate  
2 liability, the amount paid in settlement, the allocation of settlement proceeds among  
3 plaintiffs, and a recognition that a settlor should pay less in settlement than he would  
4 if he were found liable after trial. Other relevant considerations include the financial  
conditions and insurance policy limits of settling defendants, as well as the existence  
of collusion, fraud, or tortious conduct aimed to injure the interests of the non-  
settling defendants.

5 *Id.* at 499 (citations omitted).

6 A party opposing the motion for good faith settlement bears the burden of establishing a lack  
7 of good faith. *Id.* at 493; *see also* Cal. Civ. Proc. Code § 877.6(d). An opposing party "must  
8 demonstrate . . . that the settlement is so far 'out of the ballpark' in relation to these factors as to be  
9 inconsistent with the equitable objectives of the statute." *Id.* at 499-500. The determination as to  
10 whether a settlement is made in good faith is a matter within the court's discretion. *Id.* at 502.

## 11 **B. Analysis**

12 As set forth above, in determining whether a settlement falls within the reasonable range, the  
13 court should weigh the amount of the settlement in light of (1) the rough approximation of the  
14 plaintiff's potential recovery and the settlor's proportionate liability in view of the settlement amount;  
15 (2) a recognition that a settlor should pay less in settlement than if found liable at trial; (3) financial  
16 conditions and insurance policy limits of the settling defendants; and (4) any evidence, or absence  
17 of evidence, of collusion, fraud or tortious conduct between the settling parties aimed at making non-  
18 settling parties pay more than their fair share. *Tech-Bilt, Inc.*, 38 Cal. 3d at 499.

19 One of the most important *Tech-Bilt* factors is the proportion of liability. *Toyota Motor Sales*  
20 *U.S.A., Inc. v. Super. Ct.*, 220 Cal. App. 3d 864, 871 (1990). A "settlement figure must not be  
21 grossly disproportionate to what a reasonable person, at the time of the settlement, would estimate  
22 the settling defendant's liability to be." *Torres v. Union Pac. R. R. Co.*, 157 Cal. App. 3d 499, 508  
23 (1984).

24 Plaintiffs have asserted a product liability claim against Ford under a theory of strict product  
25 liability. For purposes of strict product liability, a manufacturer may only be held liable if it  
26 manufactured a defective product, the defect existed at the time of manufacture, and the defect  
27 proximately caused an injury to the consumer. *Greenman v. Yuba Power Prods., Inc.*, 59 Cal. 2d  
28 57, 62 (1963); *Barker v. Lull Eng'g Co., Inc.*, 20 Cal. 3d 413, 426-27 (1978). To establish proximate

1 causation, a plaintiff must prove that the product, as originally designed and manufactured,  
2 proximately caused the plaintiff's injuries. *Id.* at 432-33. A plaintiff must also prove that the  
3 product's design substantially contributed to the injuries suffered and that the circumstances establish  
4 that it is just to hold the defendant liable. *Bates v. John Deere Co.*, 148 Cal. App. 3d 40, 50 (1983).  
5 Finally, the plaintiff must establish that the disputed design, rather than the circumstances of the  
6 collision, was the proximate cause of the injuries suffered. *Endicott v. Nissan Motor Corp.*, 73 Cal.  
7 App. 3d 917, 926 (1977). If there are superseding factors that render a defective design immaterial,  
8 the plaintiff cannot recover. *Id.*

9 Ford asserts that it would have established that Jacqueline's failure to wear her seatbelt was  
10 the cause of her ejection and subsequent death and that Plaintiff's improper steering inputs following  
11 the tread separation of the tire caused the vehicle to roll over. Ford also asserts that, even if it would  
12 have been found strictly liable for a product defect, its proportionate share of liability would have  
13 been reduced by the comparative fault of others – namely that of Amalia. Thus, Ford's proportionate  
14 share of the liability is minimal at best. The Court finds that the amount of the settlement as set forth  
15 in the parties' sealed settlement agreement is within the reasonable range of Ford's proportionate  
16 share of comparative liability.<sup>3</sup> Further, the Court has considered that the settlement amount is less  
17 than the amount Ford would have paid had it been found liable. *Tech-Bilt, Inc.*, 38 Cal. 3d at 499.

18 With regard to consideration of Ford's financial condition and insurance policy limits, Ford  
19 does not dispute that it has sufficient finances and insurance to pay more than the settlement amount  
20 on any judgment that may be entered against it at the time of trial. However, the fact that the parties  
21 agreed to the settlement terms through the assistance of counsel after arms-length negotiations before  
22 a neutral mediator, indicates that Ford's ability to pay a larger amount has been balanced against the  
23 facts of the case and the degree to which Ford is liable. Therefore, the Court finds this factor does  
24 not weigh against finding that the parties have entered into a good faith settlement.

---

25  
26  
27 <sup>3</sup> As a condition of the parties' settlement, the amount of the settlement is to remain confidential. A sealed copy  
28 of the parties' settlement agreement has been filed under seal pursuant to the Court's order granting Ford's request to seal  
the document, and the Court has reviewed the amount of the settlement. (Doc. 34.)

1 Finally, there is no evidence of collusion, fraud, or tortious conduct aimed at injuring the  
2 interests of the other remaining defendant, Goodyear. Significantly, although the material terms of  
3 the settlement have been shared with Goodyear (*see* Doc. 31, Declaration of Saleem K. Erakat, ¶ 10),  
4 no opposition to Ford's motion has been filed. Accordingly, this factor also weighs in favor of  
5 finding that the parties have entered into a good faith settlement.

6 In sum, the factors considered above weigh in favor of granting Ford's motion for a  
7 determination of good faith settlement.

#### 8 IV. RECOMMENDATION

9 Based on consideration of the declarations, pleadings, and exhibits to the present motion, the  
10 Court RECOMMENDS that:

- 11 1. Ford's motion for determination of good faith settlement be GRANTED; and
- 12 2. Any and all claims for equitable indemnity or contribution against Ford be forever  
13 barred pursuant to California Code of Civil Procedure § 877.6(c).

14 These findings and recommendations are submitted to the district judge assigned to this  
15 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule 304. Within ten (10) days  
16 of service of this recommendation, any party may file written objections to these findings and  
17 recommendations with the Court and serve a copy on all parties. Such a document should be  
18 captioned "Objections to Magistrate Judge's Findings and Recommendations." The district judge  
19 will review the magistrate judge's findings and recommendations pursuant to 28 U.S.C.  
20 § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time may  
21 waive the right to appeal the district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

22  
23 IT IS SO ORDERED.

24 **Dated:** January 23, 2012

25 /s/ Sheila K. Oberto  
26 UNITED STATES MAGISTRATE JUDGE  
27  
28