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

INTERNATIONAL LONGSHORE & WAREHOUSE
UNION-PACIFIC MARITIME ASSOCIATION
WELFARE PLAN BOARD OF TRUSTEES,

No. C 11-01215 WHA

Plaintiff,

v.

**ORDER GRANTING
DEFENDANT’S
MOTION FOR GOOD
FAITH SETTLEMENT
DETERMINATION**

SOUTH GATE AMBULATORY SURGERY
CENTER, a California limited liability company;
JEFFREY T. HO, M.D., an individual; STEWART
GOLDSTEIN, M.D., an individual; SHPS HEALTH
MANAGEMENT SOLUTIONS, INC, a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

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INTRODUCTION

In this ERISA action for recovery of alleged overpayments and erroneous payments, defendant Dr. Stewart Goldstein moves for a good faith settlement determination pursuant to California Code of Civil Procedure Section 877.6. For the following reasons, the motion is **GRANTED.**

STATEMENT

Plaintiff International Longshore & Warehouse Union-Pacific Maritime Association Welfare Plan Board of Trustees (the “Board”) is the administrator and named fiduciary of the International Longshore & Warehouse Union-Pacific Maritime Association Welfare Plan (the “plan”). The plan is an employee welfare benefit plan established pursuant to ERISA

1 (First Compl. ¶¶ 10–11). The plan, as a plaintiff, was previously dismissed pursuant to
2 Rule 12(b)(1) for lack of standing (Dkt. No. 69 at 6–7). The plan provides coverage to its
3 members for medical care that is medically necessary, meets established treatment protocols
4 in the United States, and is not experimental. By its own terms, the plan pays only usual,
5 customary, and reasonable rates for services that are covered (First Amd. Compl. ¶¶ 21–22).

6 Defendants and cross-complainants Jeffrey T. Ho, M.D., and Stewart Goldstein, M.D.,
7 are physicians who have provided medical services to plan members at defendant South Gate
8 Ambulatory Surgery Center’s facilities. Defendants submitted claims to the plan for services
9 provided to plan members, and plaintiff paid them. In this action, plaintiff now seeks the return
10 of some of the money it paid to the doctors for those claims (*id.* at ¶¶ 12–15, 26–27).

11 The plan provided, in pertinent part (*id.* at ¶ 19):

12 If a third party provider of Benefits hereunder, through error,
13 misrepresentation, or fraud, receives payment of Welfare Fund
14 assets in an amount greater than the amount authorized under the
15 Plan, the Trustees, in their sole, absolute, and unreviewable
16 discretion, may collect the amount of any such overpayment(s)
17 and any amounts expended or incurred in investigating the matter
18 and collecting the overpayment(s) (including, but not limited to,
19 expenses of the Trustees’ staff and reasonable fees of any
20 investigators, attorneys, and/or consultants retained by or on behalf
21 of the Trustees). The Trustees also may, in their sole, absolute,
22 and unreviewable discretion, disallow any future assigned Benefit
23 claims presented by such provider, and take any other action they
24 may deem necessary or appropriate under the circumstances.

19 A recent ongoing review by professional experts revealed that a substantial percentage of
20 the medical services underlying the claims defendants submitted to the plan since approximately
21 2008 were not medically necessary, not generally accepted in the medical field, and/or not
22 performed in accordance with established treatment protocols. Additionally, the amounts billed
23 exceeded the usual, customary, and reasonable rates for medical services covered by the plan.

24 Plaintiff therefore asserts that the claims were not covered by the plan (*id.* at ¶¶ 27–29).

25 Defendants are not plan members, but plaintiff alleges that defendants submitted the claims
26 pursuant to contractual assignments from plan members. Plaintiff argues that in doing so,
27 defendants agreed to the plan’s provision requiring the repayment of erroneous payments and
28 overpayments (*id.* at ¶ 26).

1 Plaintiff filed the instant action seeking restitution of those payments deemed to be
2 overpayments or payments made to the defendants in error. Plaintiff alleges the existence of
3 an equitable lien or a constructive trust on the overpayments and erroneous payments, and seeks
4 restitution and declaratory and injunctive relief. Plaintiff's complaint is directed at all
5 defendants and alleges on agency theories that each is joint and severally liable (*id.* at ¶ 15).
6 On October 17, 2011, defendant Dr. Goldstein filed his answer to plaintiff's complaint asserting
7 several affirmative defenses, counter claims, and several state-law cross-claims. Defendant also
8 filed a counter claim against SHPS Health Management Solutions, Inc (Dkt. No. 79). Defendant
9 is seeking approximately \$1,000,000 in damages (Dkt. No. 80).

10 Plaintiff and defendant Dr. Goldstein have reached a settlement agreement by which
11 Dr. Goldstein will release all claims against plaintiff, and vice versa, and all releases will be
12 with prejudice. The settlement further provides that Dr. Goldstein will pay \$40,000 to plaintiff.
13 Dr. Goldstein now moves for approval of the settlement and a determination that it is in good
14 faith, and therefore binding on all defendants and parties which might seek indemnity from
15 Dr. Goldstein (Br. 3–5). All named defendants received notice of Dr. Goldstein's motion,
16 signed a joint stipulation to the settlement and filed notices of non-opposition (Dkt. Nos. 98,
17 104–05, 111). In addition, they also requested relief from appearance, which was granted
18 (Dkt. Nos. 110, 113). This order follows full briefing and a hearing.

19 ANALYSIS

20 A court sitting in diversity has discretion to determine that a settlement is in good faith
21 pursuant to California Code of Civil Procedure Section 877. *Mason & Dixon Intermodal, Inc. v.*
22 *Lapmaster Int'l LLC*, 632 F.3d 1056, 1064 (9th Cir. 2011). The California Good Faith
23 Settlement statute provides that when a settlement is determined by a court to have been made in
24 good faith, the settlement “bar[s] any other joint tortfeasor or co-obligor from any further claims
25 against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial
26 or comparative indemnity, based on comparative negligence or comparative fault.” CAL. CIV.
27 PROC. CODE § 877.6(c). The party applying for a good faith settlement determination is required
28 to give notice of its application to all other parties and to the court. CAL. CIV. PROC. CODE

1 § 877.6(a). “A settling tortfeasor’s section 877.6, subdivision (c) good faith settlement
2 determination discharges indemnity claims by other tortfeasors, whether or not named as parties,
3 so long as the other tortfeasors were given notice and an opportunity to be heard.” *Gackstetter v.*
4 *Frawley*, 135 Cal. App. 4th 1257, 1273 (2006). “Once there is a showing made by the settlor
5 of the settlement, the burden of proof on the issue of good faith shifts to the nonsettlor who
6 asserts that the settlement was not made in good faith.” *City of Grand Terrace v. Superior*
7 *Court*, 192 Cal. App. 3d 1251, 1261 (1987).

8 **1. THE SETTLEMENT IS IN GOOD FAITH.**


9 Dr. Goldstein has carried his burden in proving the existence of the settlement. No party
10 has challenged the settlement for lack of good faith. All named defendants received notice
11 of Dr. Goldstein’s motion, signed a joint stipulation to the settlement and filed notices of
12 non-opposition (Dkt. Nos. 98, 104–05, 110). There is no indication of the existence of unlawful
13 collusion, fraud, or tortious conduct aimed to injure the interests of non-settling defendants.
14 No additional defendants have been identified, and none showed up to the hearing held on
15 May 3, 2012. Pursuant to Section 877.6, this order holds that the settlement agreement is in
16 good faith.

17 **CONCLUSION**

18 For the foregoing reasons, defendant Dr. Goldstein’s motion for a good faith settlement
19 determination is **GRANTED** as to all parties given timely notice of this motion and opportunity
20 to appear. Any claims which have been or may be asserted by South Gate Ambulatory Surgery
21 Center, Dr. Jeffrey T. Ho, and SHPS Management Solutions, Inc. against Dr. Goldstein as a joint
22 tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative
23 indemnity, based on comparative negligence or comparative fault are therefore barred.

24 **IT IS SO ORDERED.**

25
26 Dated: May 10, 2012.

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28 _____
WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE