IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

FIRST AMERICAN SPECIALTY INSURANCE COMPANY,

Plaintiff,

v.

FORD MOTOR COMPANY; CARMAX AUTO SUPERSTORES CALIFORNIA, LLC; CARMAX AUTO SUPERSTORES WEST COAST, INC., and DOES 1 through 30, inclusive,

Defendants.
_____/

No. C 16-05951 WHA

**ORDER GRANTING APPLICATION FOR DETERMINATION OF GOOD FAITH SETTLEMENT**

## INTRODUCTION

In this products liability action, one defendant moves for a good faith settlement determination. The co-defendants oppose. For the reasons set forth herein, the motion is **GRANTED.**

## STATEMENT

Plaintiff First American Specialty Insurance Company provided insurance for Anthony Santos's home in Fremont, California, and acts as subrogee in this action. It alleges that insured purchased a 2002 Ford F-150 from defendants Carmax Auto Superstores California, LLC, and Carmax Auto Superstores West Coast, Inc. (collectively "Carmax"), which had a defective speed control deactivation switch ("SCDS"). The SCDS was the subject of a recall because it was known to fail without warning and combust, but defendants allegedly failed to timely inform insured of the recall or otherwise fix the defective part. The defective SCDS caught fire

while on insured's property and caused damage to his car, garage, and home. First American paid insured $267,000 to cover the damage (Compl. at 1, 3–4).

First American sued defendants Ford Motor Company and Carmax to recover the money it paid to insured. The complaint alleges claims for strict products liability against Ford, and negligence against both Ford and Carmax. The negligence claims, however, arise from distinct theories. First American alleges that Ford negligently designed and manufactured the truck, whereas it alleges that Carmax negligently failed to warn the buyer of defects in the truck (*id.* at 3–4).[*]

The parties mediated their dispute before Judge Rebecca Westerfield at JAMS, and on April 28, 2017, Ford reached a settlement with First American (Dkt. No. 32; Br. at 2). Ford agreed to pay First American $85,000 in exchange for a release of all claims and a dismissal of the action with prejudice. The settlement was conditioned on entry of a good faith determination.

Carmax has not settled, and opposes Ford's motion for determination of good faith settlement arguing that the agreed-upon settlement amount is not a fair proportion of Ford's potential liability. This order follows full briefing and oral argument.

**ANALYSIS**

A finding of good faith settlement "bar[s] any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault." While the settlement does not discharge any other party from liability, unless its terms so provide, Section 877.6(c) of the California Civil Procedure Code states: "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, whichever is the greater."

The legislative objectives animating Section 877.6 "include both the encouragement of settlement and the equitable allocation of costs among multiple tortfeasors." *Tech-Bilt, Inc. v.*

[*] The complaint originally alleged negligent manufacturing and strict products liability claims against Carmax, but First American subsequently dismissed those claims (Dkt. No. 41).

*Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 498–99 (1985). To put those principles into practice, courts should consider a number of factors including:

> a rough approximation of plaintiffs' total recovery and the settlor's proportionate liability, the amount paid in settlement . . . and a recognition that a settlor should pay less in settlement than he would if he were found liable after a 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 nonsettling defendants.

Judges are not expected to be able to estimate an appropriate settlement amount with precision, but must avoid settlements that are "grossly disproportionate" to the defendants' share of liability. *Id.* at 499; *see also West v. Superior Court*, 27 Cal. App. 4th 1625, 1635 (1994). A party asserting that the settlement was not made in good faith bears the burden of proving that the settlement is "so far out of the ballpark in relation to the [*Tech-Bilt*] factors as to be inconsistent with the equitable objectives of [Section 877.6]." *Tech-Bilt*, 38 Cal. 3d at 499–500.

Ford contends that $85,000 is an appropriate settlement amount because First American's claims against it are relatively weak. It makes three points in support of this argument. *First*, it observes that the Fremont Fire Department was unable to conclude what caused the fire. Though the incident report lists the *area of origin* as either inside the engine or underneath the front of the vehicle, it states that the *ignition source — i.e.* what actually started the fire — is unknown. The incident report observes that the vehicle was parked over "ordinary combustibles," and photographs show an extension cord running along the wall of the garage, both of which, Ford argues, are plausible alternative causes (Br. at 4 citing incident report at 3). Ford further argues that the fire could have been ignited by another part of the engine besides the SCDS, which would not render Ford liable in this suit (Br. at 5).

*Second*, a fail-safe mechanism installed by Ford, which has been proven to prevent fires related to the defective SCDS, had been removed from the vehicle (by an unidentified party) and replaced with an after-market part that would not have prevented a fire (Br. at 5). This too, Ford argues, presents a plausible superseding cause of the fire.

*Third*, Ford argues that its liability for failure to inform insured of the recall is mitigated by the fact that it sent multiple notices to the previous owner of the vehicle shortly after the

recall issued in 2005. Ford further observes that insured was aware of how to search for outstanding recalls on a car, and admitted he had done so for other cars he had owned in the past (Br. at 4–5 citing Santos Dep. 34:14–35:10). Finally, Ford sent insured a notice of recall dated "April 2014." He claims that he received the letter after the fire, which occurred on April 29, 2014 (Reply at 6). Whether the trier of fact will believe that this was the sequence of events is an open question. Ford argues that insured may have instead received the letter before the fire, but failed to act on it.

Carmax argues that Ford is paying far too little — one third of the total amount First American is seeking — given its potential liability, which Carmax implies is the total damage amount. Ford's $85,000 settlement leaves Carmax in a position of having to pay potentially two thirds of the total recovery. Carmax believes, however, that it should not be liable for any damages because the negligence claim against it has no basis in law (Opp. 4–6, 9–10). Accordingly, it argues, Ford's settlement is unreasonable, and its motion should be denied.

Carmax's reasoning is flawed in that it assumes either Carmax or Ford must be responsible for all of the damages claimed. But as Ford's motion points out, there are a number of other possible sources of the fire, as well as intervening causes that could, at the very least, defray some of the liability and reduce the total recovery, and could even reveal that there should be no recovery. Therefore, it is not, as Carmax appears to suggest, a foregone conclusion that Ford and Carmax will split the $267,000 bill. Moreover, if, as Carmax argues, it is not liable as a matter of law, Ford's settlement will not subject it to any liability. Rather, Carmax will have an opportunity to present its theories at summary judgment and at trial, and may prevail entirely.

Carmax has not carried its burden to show that Ford's settlement is "grossly disproportionate" to its share of liability. *Tech-Bilt*, 38 Cal. 3d at 499. Nor is there any intimation that Ford colluded with First American, or otherwise engaged in fraud or wrongful conduct in arriving at its settlement. Under the prevailing law, Ford has made a sufficient showing of good faith and Carmax has not shown otherwise.

## CONCLUSION

For the foregoing reasons, Ford's motion for an order determining that First American and Ford have reached settlement in good faith pursuant to California Code of Civil Procedure Section 877 and 877.6 is **GRANTED**. Any claims which have been or may be asserted by Carmax against Ford as a joint tortfeasor or co-obligor for equitable comparative contribution, or partial comparative indemnity, based on comparative negligence or comparative fault are therefore barred.

**IT IS SO ORDERED.**

Dated: July 13, 2017.

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE