

United States District Court  
For the Northern District of California

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

RICHARD CAYO,  
  
Plaintiff,  
  
v.  
  
VALOR FIGHTING & MANAGEMENT LLC; RICH  
BASSMAN; AIG DOMESTIC CLAIMS, INC.;  
GAGLIARDI INSURANCE SERVICES, INC.;  
and NATIONAL UNION FIRE INSURANCE  
COMPANY OF PITTSBURGH, PA,  
  
Defendants.

No. C 08-04763 CW  
  
ORDER CONFIRMING  
GOOD FAITH OF  
(1) SETTLEMENT  
BETWEEN DEFENDANT  
GAGLIARDI INSURANCE  
SERVICES, INC. AND  
PLAINTIFF RICHARD  
CAYO AND  
(2) SETTLEMENT  
BETWEEN GAGLIARDI  
AND RICH BASSMAN AND  
VALOR FIGHTING  
(Docket Nos. 60, 70)

Defendant Gagliardi Insurance Services, Inc. moves for orders determining that its settlement agreements with Plaintiff Richard Cayo and Co-Defendants Rich Bassman and Valor Fighting & Management LLC were made in good faith. (Docket Nos. 60, 70.) Defendants AIG Domestic Claims, Inc. (AIG) and National Union Fire Insurance Company of Pittsburgh, PA (collectively, Insurers) oppose the motions. The motions were submitted on the papers. Having considered the parties' arguments, the Court GRANTS Gagliardi's motions.

BACKGROUND

Plaintiff alleges that he was injured at a "mixed martial arts

1 fight performance" at Cache Creek Casino Resort on September 15,  
2 2006. The fight was allegedly organized by Defendant Valor, a  
3 company owned by Defendant Bassman. Plaintiff claims he entered  
4 into written and oral contracts with Mr. Bassman and Valor, under  
5 which Mr. Bassman and Valor assumed liability for any injuries  
6 Plaintiff might suffer during the fight. According to Plaintiff,  
7 he was advised that Mr. Bassman and Valor had insurance coverage  
8 through AIG. Plaintiff claims that Mr. Bassman and Valor's policy  
9 was procured through Gagliardi, an insurance broker.

10 Plaintiff states that, following his injury, he filed an  
11 insurance claim with AIG, which it allegedly denied. Plaintiff's  
12 negligence claim against Gagliardi arises out of this alleged  
13 denial.

14 On July 24, 2009, Gagliardi entered into two settlement  
15 agreements, one with Plaintiff and one with Mr. Bassman and Valor.  
16 Gagliardi agrees to pay Plaintiff \$70,000 in consideration for  
17 Plaintiff providing a general release to Gagliardi for

18 any and all claims [Plaintiff] has, or may ever have,  
19 against [Gagliardi], or its employees, agents, or  
20 brokers, arising out of the handling / processing of  
21 Plaintiff's claim for medical benefits and all other  
22 claims arising out of injuries he sustained at a fight on  
23 Sept[.] 15, 2006 or as is more fully set forth in  
24 [Plaintiff's First Amended Complaint].

25 Addendum to Lindstrom Decl. in Support of August 14, 2009 Mot., Ex.

26 A. With respect to Mr. Bassman and Valor, Gagliardi agrees to pay  
27 \$4,615 in consideration for their

28 general and mutual release of any and all claim[s] either  
released party has, or may have, against one another,  
including claims for indemnity, contribution, fraud,  
breach of contract, or covenants pertaining to the  
purchase and issuance and handling of the policy  
purchased and or issued, which is the subject of the  
above-referenced complaint.

1 September 16, 2009 Mot., Ex. at 1-2.

2 On August 14, 2009, Gagliardi filed a motion under California  
3 Code of Civil Procedure § 877.6(a)(2), seeking the Court's  
4 determination that its settlement with Plaintiff was made in good  
5 faith. Along with this motion, Gagliardi filed a proposed order  
6 that states, in relevant part,

7 This court further orders that any pending cross-  
8 complaints against defendant, Gagliardi Insurance  
9 Services, Inc., for equitable or implied indemnity,  
10 contribution or other comparative fault, be dismissed  
11 with prejudice, and any further cross-complaints by joint  
12 tortfeasors or co-obligors relating to this matter from  
13 any other party are also barred.

14 Def. Gagliardi's Proposed Order 1-2. Insurers filed a limited  
15 opposition to the proposed order requested in this motion.

16 On September 16, 2009, Gagliardi filed a § 877.6(a)(2) motion  
17 regarding its settlement with Mr. Bassman and Valor. Insurers  
18 oppose this motion.

#### 19 DISCUSSION

20 California Code of Civil Procedure § 877.6 provides that any  
21 settling party in an action in which it is alleged that there are  
22 two or more tortfeasors may seek a court's determination that the  
23 settlement was made in good faith. See Tech-Bilt, Inc. v.  
24 Woodward-Clyde & Assocs., 38 Cal. 3d 488, 494-95 (1985). To obtain  
25 a good faith determination,

26 a settling party may give notice of settlement to all  
27 parties and to the court, together with an application  
28 for determination of good faith settlement and a proposed  
order. The application shall indicate the settling  
parties, and the basis, terms, and amount of the  
settlement. The notice, application, and proposed order  
shall be given by certified mail, return receipt  
requested. . . . Within 25 days of the mailing of the  
notice, application, and proposed order, . . . a  
nonsettling party may file a notice of motion to contest

1 the good faith of the settlement. If none of the  
2 nonsettling parties files a motion within 25 days of  
mailing of the notice, application, and proposed  
order, . . . the court may approve the settlement.

3 Cal. Civ. Proc. Code § 877.6(a)(2). A court's good faith  
4 determination "shall bar any other joint tortfeasor or co-obligor  
5 from any further claims against the settling tortfeasor or co-  
6 obligor for equitable comparative contribution, or partial or  
7 comparative indemnity, based on comparative negligence or  
8 comparative fault." Id. § 877.6(c). A party challenging a  
9 settlement's good faith has the burden of proof on this issue. Id.  
10 § 877.6(d).

11 I. Gagliardi's Settlement with Plaintiff

12 Insurers challenge the scope of Gagliardi's proposed order  
13 accompanying the August 14 motion, asserting that the order is  
14 overbroad because it could be construed as barring future claims  
15 against Gagliardi based upon express contractual indemnity.  
16 Insurers claim that they have an express contractual indemnity  
17 agreement with Gagliardi. In its reply, Gagliardi denies that its  
18 proposed order can be construed as barring future claims based upon  
19 express contractual indemnity. Gagliardi does not take the  
20 position that such claims would be barred by the settlement.

21 Insurers challenge only the proposed order accompanying  
22 Gagliardi's motion, not the settlement itself. The Court therefore  
23 reads Insurers's opposition not to challenge the good faith of the  
24 settlement. After considering Gagliardi's papers and finding no  
25 timely opposition, the Court determines that Gagliardi's settlement  
26 with Plaintiff was made in good faith.

27 Nevertheless, Insurers's opposition raises a valid objection.  
28

1 California Code of Civil Procedure § 877.6(c) defines which claims  
2 will be barred. The California Supreme Court construed this  
3 section not to bar claims under express contractual indemnity  
4 agreements. Bay Dev., Ltd. v. Superior Court, 50 Cal. 3d 1012,  
5 1019 (1990) ("[W]hen the settling defendant has previously entered  
6 into a contractual agreement to indemnify a nonsettling defendant,  
7 a settlement -- even if in good faith -- does not relieve the  
8 settling defendant from performing the contractual indemnification  
9 obligations."). Thus, the Court does not adopt Gagliardi's  
10 proposed order, but enters the order below incorporating the  
11 language of § 877.6(c).

12 II. Gagliardi's Settlement with Mr. Bassman and Valor

13 Insurers oppose this motion, asserting that § 877.6(a)(2) does  
14 not apply to this settlement and that, even if it did, Gagliardi  
15 does not pay an amount that complies with the statute.

16 Alternatively, Insurers request the Court to continue the motion  
17 until after Mr. Bassman's bankruptcy proceedings end so that the  
18 parties can obtain discovery from him.

19 A. Applicability of § 877.6

20 Insurers assert that Gagliardi cannot obtain a good faith  
21 determination because Mr. Bassman has not filed an action against  
22 any party. They cite § 877.6(a)(1),<sup>1</sup> which provides,

23 Any party to an action in which it is alleged that two or  
24 more parties are joint tortfeasors or co-obligors on a  
contract debt shall be entitled to a hearing on the issue

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26 <sup>1</sup> Gagliardi notes that it moves under § 877.6(a)(2), which  
27 provides for a good faith determination through an application to  
28 the Court, not § 877.6(a)(1), which requires a hearing.  
Nevertheless, § 877.6(a)(1) is relevant because it defines the type  
of actions and settlements to which good faith determinations  
apply.

1 of the good faith of a settlement entered into by the  
2 plaintiff or other claimant and one or more alleged  
tortfeasors or co-obligors . . . .

3 They construe this language to mean that there must be an existing  
4 cross-claim between the settling co-defendants, not just a claim  
5 between the plaintiff and defendants.

6 Insurers do not provide authority supporting their narrow  
7 interpretation. Two cases Insurers cite, Long Beach Memorial  
8 Center v. Superior Court, 172 Cal. App. 4th 865 (2009), and Wildan  
9 v. Sialic Contractors Corporation, 158 Cal. App. 4th 47 (2007), do  
10 not address Insurers' argument. KOAM, Inc. v. Superior Court,  
11 35 Cal. App. 4th 549 (1995), is relevant, but does not foreclose  
12 the determination of the good faith of a settlement between co-  
13 defendants who do not have existing cross-claims. In KOAM, the  
14 court held that "a cross-defendant who settles with a cross-  
15 complainant, but not the plaintiff" can seek a good faith  
16 determination under § 877.6. Id. at 551. This language, however,  
17 does not require the existence of a claim in litigation as a  
18 predicate for settlement.

19 Because Insurers provide no contrary authority, the Court  
20 applies § 877.6 to Gagliardi's settlement with Mr. Bassman and  
21 Valor.

22 B. Good Faith Determination

23 To determine a settlement's good faith, a court examines,  
24 among other things, "whether the amount of the settlement is within  
25 the reasonable range of the settling tortfeasor's proportional  
26 share of comparative liability for the plaintiff's injuries."  
27 Tech-Bilt, 38 Cal.3d at 499. A court must take into account "a  
28 rough approximation of plaintiffs' total recovery and the settlor's

1 proportionate liability, the amount paid in settlement, the  
2 allocation of settlement proceeds among plaintiffs, and a  
3 recognition that a settlor should pay less in settlement than he  
4 would if he were found liable after a trial." Id.

5 Insurers argue that Gagliardi's \$4,615 settlement with Mr.  
6 Bassman and Valor "does not reflect a fair settlement of potential  
7 claims for damages Bassman may subsequently assert in a cross-  
8 complaint against Gagliardi and [National Union Fire Insurance  
9 Company]." Opp'n at 5. They further assert that the settlement  
10 amount will not cover Mr. Bassman's costs in his bankruptcy  
11 proceedings or his tort exposure to Plaintiff. However, by  
12 analyzing whether Gagliardi's settlement with Mr. Bassman will  
13 cover his liability, Insurers' argument misapprehends the analysis  
14 required by § 877.6. Under Tech-Bilt, a court must compare the  
15 settlement amount to a settling tortfeasor's comparative share of a  
16 plaintiff's injuries. 38 Cal.3d at 499. Applied here, a § 877.6  
17 analysis requires comparing Gagliardi's settlement amount to its  
18 share of Plaintiff's injuries. That aggregated amount, which  
19 includes the sums paid to Plaintiff and Mr. Bassman, is \$74,615.

20 Because Insurers' objection does not address whether this  
21 amount "is so far out of the ballpark in relation" to Gagliardi's  
22 share of Plaintiff's injuries, Insurers do not satisfy their burden  
23 of proof to show that Gagliardi's settlement was not made in good  
24 faith. See Nutrition Now v. Superior Court, 105 Cal. App. 4th 209,  
25 213 (2003) (citing Tech-Bilt, 38 Cal. 3d at 499). There is no need  
26 to stay the Court's decision on this motion pending the completion  
27 of Mr. Bassman's bankruptcy proceedings. Therefore, the Court  
28 determines that Gagliardi's settlement with Mr. Bassman and Valor

1 was made in good faith.

2 CONCLUSION

3 Pursuant to California Code of Civil Procedure § 877.6, the  
4 Court determines that Gagliardi's settlements with Plaintiff and  
5 with Mr. Bassman and Valor were made in good faith. The Court  
6 therefore GRANTS Gagliardi's motions. These determinations bar  
7 Valor Fighting & Management, Rich Bassman, AIG Domestic Claims,  
8 Inc. and National Union Fire Insurance Company of Pittsburgh, PA  
9 and any other joint tortfeasors or co-obligors from pursuing any  
10 claims against Gagliardi Insurance Services, Inc. for equitable  
11 comparative contribution, or partial or comparative indemnity,  
12 based on comparative negligence or comparative fault. See Cal.  
13 Civ. Proc. Code § 877.6(c). Pursuant to the settlement,  
14 Plaintiff's claims against Gagliardi are DISMISSED with prejudice.

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16 IT IS SO ORDERED.

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18 Dated: October 20, 2009



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CLAUDIA WILKEN  
United States District Judge