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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

U-HAUL CO. OF NEVADA, INC., ET AL.,

Plaintiff,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 2:08-CV-00729-KJD-PAL

ORDER

Before the Court is the Join Motion for Determination of Good Faith Settlement (#128) filed by Plaintiff U-Haul and Defendant United States of America (the “Government”). Interested party Gregory J. Kamer, Ltd. filed a response (#130) to this motion, to which interested party Debra Wilcher joined (#133). U-Haul and the Government filed a reply (#132). This matter came before the Court for argument on November 6, 2012.

I. Background

This action stems from an Unfair Labor Practice proceeding against U-Haul before the National Labor Relations Board (“NLRB”) in 2004. The NLRB utilized two attorneys to prosecute the proceeding against U-Haul: Stephen Wamser (“Wamser”) and Nathan Albright (“Albright”).

1 During the proceeding, U-Haul’s counsel, Kamer, Zucker, Abbot, hired Debra Wilcher (“Wilcher”)
2 as a paralegal. U-Haul asserts Albright instigated a sexual relationship with Wilcher during a period
3 between 2004 and October 2005. U-Haul alleges that Wilcher disclosed certain confidential
4 information belonging to U-Haul. U-Haul asserts causes of action against the Government for
5 conversion, trespass to chattels, and aiding and abetting.

6 U-Haul agreed to release the Government from all claims in exchange for \$75,000, and
7 assurance that NLRB staff will handle potential proceedings against U-Haul, rather than counsel
8 connected with this matter. U-Haul and the Government seek a determination, pursuant to NRS
9 17.245, that this settlement (the “Settlement”) is in good faith. The Settlement is not contingent on a
10 finding of good faith.

11 Gregory J. Kamer, Ltd., d/b/a/ Kamer Zucker Abbott (the “Kamer Law Firm”) and Debra
12 Wilcher are defendants in a related matter, U-Haul Co. Of Nevada, Inc., et al, v. Gregory J. Kamer,
13 Ltd., et al., 2:12-cv-231-KJD-RJJ (D. Nev). The Kamer Law Firm and Wilcher do not object to the
14 Settlement, but argue that the Court should not find that it is in good faith.

15 II. Discussion

16 A. Legal Standard

17 NRS 17.245 provides, in pertinent part:

18 1. When a release or a covenant not to sue or not to enforce judgment is given in
19 good faith to one of two or more persons liable in tort for the same injury or
20 the same wrongful death:

21 (a) It does not discharge any of the other tortfeasors from liability for the injury or
22 wrongful death unless its terms so provide, but it reduces the claim against the others
to the extent of any amount stipulated by the release or the covenant, or in the amount
of the consideration paid for it, whichever is the greater; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution
and for equitable indemnity to any other tortfeasor.

23 The determination of whether a settlement is “in good faith” under this statute is left to the discretion
24 of the trial court, based upon all relevant facts. Velsicol Chem. Corp. v. Davidson, 107 Nev. 356,
25 360, 811 P.2d 561, 563 (1991); Candow v. Dust, 2012 WL 1231889 *1 (D. Nev. 2012). These
26 factors may include the amount paid, the parties’ financial condition, and the existence or

1 non-existence of collusion or fraud aimed to injure the interests of non-settling defendants. Candow
2 at *1 (citing In re MGM Grant Hotel Fire Litig., 570 F.Supp. 913, 927 (D.Nev.1983)). A settling
3 defendant has the burden of proving that the settlement was in good faith. Doctors Co. v. Vincent,
4 98 P.3d 681, 686–87 (Nev.2004)

5 B. Good Faith

6 U-Haul claimed that its damages arising out of this matter were \$1.8 million. The
7 Government argues that the \$75,000 Settlement amount is reasonable because U-Haul “had virtually
8 no chance of ever proving an entitlement to that amount.” The Government further argues that the
9 offers of judgment by the Kamer Law Firm and Wilcher for \$200,000 and \$50,000 respectively
10 demonstrate that the Settlement amount is reasonable.

11 The Court does not agree that the Settlement amount is reasonable. The Government’s
12 optimistic argument that U-Haul cannot hope to recover the amount it seeks does not satisfy its
13 burden to demonstrate that the Settlement is good faith. Notwithstanding the Government’s belief, if
14 a jury accepts the claims as asserted by U-Haul, the non-settling Defendants would be left to face a
15 huge award with no right of contribution against the Government. The dollar value of the Settlement
16 between U-Haul and the Government is about 4% of U-Haul’s alleged damages.¹ Because of the
17 disproportion between the Settlement and the claimed damages, the Court cannot say with certainty
18 that this Settlement is reasonable. Further, making an offer of judgment involves strategic and other
19 considerations not at play here and the non-settling parties should not be constrained by those
20 numbers in arguing that the settlement amount is unreasonable. At most, the offers of judgment
21 represent the Kamer Law Firm and Wilcher’s attempt to resolve the case for the minimum realistic
22 amount. Accordingly, the Motion for Determination of Good Faith Settlement is denied.

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25 ¹ U-Haul also argues that the Settlement provision requiring NLRB staff to handle future proceedings represents
26 valuable consideration. The Court believes that the value of barring two specific attorneys from involvement is of limited
value and this does not affect the determination of good faith.

1 III. Conclusion

2 **IT IS HEREBY ORDERED** that the Joint Motion for Determination of Good Faith
3 Settlement (#128) is **DENIED**.

4 DATED this 4th day of December 2012.

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Kent J. Dawson
United States District Judge

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