UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARY A. KELLOGG,

                    Plaintiff,

        v.

NATIONAL RAILROAD PASSENGER
CORPORATION,

                    Defendant.

CASE NO. C20-5664BHS

ORDER CERTIFYING QUESTIONS

        THIS MATTER is before the Court on the parties' Responses, Dkts. 19, 20, and

21, to the Court's prior Order, Dkt. 18, which denied Amtrak's Motion to Dismiss and

sought input on the Court's proposed Certified Questions to the Washington Supreme

Court. That Order includes the background to this dispute, which will not be repeated

here.

        The Court proposed certifying two questions of novel Washington law to the

Washington Supreme Court under RCW 2.60.020:

        1.   Is the revised RCW 4.20.020 remedial, such that it applies retroactively to

permit second tier beneficiaries who were not eligible to assert wrongful death claims at

the time of the decedent's death, or at the time the Estate's Personal Representative

settled all claims arising out of the death, to assert wrongful death claims notwithstanding

ORDER - 1

1 the tortfeasor's settlement with, payment to, and release by, the Personal Representative,

2 so long as such new claims are not time-barred?

3   2.   If so, does the application of the revised RCW 4.20.020 to permit such

4 claims in this context affect Amtrak's vested substantive rights, thus violating the

5 Washington Constitution's Due Process (Wash. Const., art. I, § 3) or Contracts (Wash.

6 Const., art. I, § 23) Clauses?

7 Dkt. 18 at 10-11. The parties do not object to Certification or to the Court's proposed

8 questions.

9   Plaintiff Kellogg proposes an additional question, which she claims may moot the

10 other two, and which she claims has not been answered by Washington law:

11   Does a duly-appointed Personal Representative, when acting as statutory
         agent on behalf of extant wrongful death beneficiaries pursuant to RCW
12   4.20.010(1), also have the authority or legal capacity to assert or settle
         wrongful death claims for other third parties, where those third parties are
13   not themselves lawful wrongful death beneficiaries at the time the Personal
         Representative is appointed and serving in that capacity?
14
    Dkt. 20 at 3.
15
         Amtrak opposes certifying this third question to the Washington Supreme Court. It
16
    argues that the question is confusing, and that it would not moot the other two questions.
17
    Dkt. 21. It argues persuasively that a negative answer to that question would only
18
    highlight the need to address the first two questions, in order to protect settling tortfeasors
19
    and thus to promote the public policy goal of encouraging settlements.
20
         The Court agrees, and indeed assumed for purposes of the motion that though
21
    Amtrak's Release was amply broad, it could not release claims that did not exist when it
22

1   was executed. The core issue is whether the application of revised RCW 4.20.020 to

2   settled cases deprives a tortfeasor of vested rights, violating the Washington Constitution.

3   The Court will therefore respectfully decline to Certify Kellogg's proposed

4   additional question to the Washington Supreme Court and will instead certify the two

5   questions above.

6   The Court acknowledges that the decision to answer a certified question is within

7   the Washington Supreme Court's discretion, and that the Court may reformulate the

8   questions in its consideration of the case. This court certifies that the record contains all

9   matters in the pending case deemed material for consideration of the local law question

10   certified for answer under RCW 2.60.010(4)(b).

11   Under Wash. Rules App. Proc. 16.16(d)(1), this court designates Amtrak as the

12   party to file the first brief in the Washington Supreme Court.

13   The Clerk shall forward copies of this Order under official seal to the Washington

14   State Supreme Court, along with certified copies of the Court's prior Order, Dkt. 18, and

15   the underlying briefing and declarations (with exhibits), Dkts. 6, 7, 8, 9, 10, and 11.

16   The Clerk shall STAY this case pending the Washington Supreme Court's

17   Answer.

18   **IT IS SO ORDERED**.

19   Dated this 29th day of April, 2021.

20

21

22   BENJAMIN H. SETTLE
                              United States District Judge