

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 09/25/2020                      EVENT TIME: 08:20:00 AM                      DEPT.: 20  
JUDICIAL OFFICER: Matthew P. Guasco

CASE NUM: 56-2019-00535055-CU-PA-VTA  
CASE TITLE: STEWART VS. CITY OF OJAI

CASE CATEGORY:    Civil - Unlimited                                      CASE TYPE: PI/PD/WD - Auto

EVENT TYPE: Motion - Other (CLM) - to Contest the Application for Good Faith Settlement between Esther Bishop  
CAUSAL DOCUMENT/DATE FILED: Motion to Contest Good Faith Settlement, 09/01/2020

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Notice Regarding Courtroom 20 Law & Motion Procedures: The law and motion calendar in Courtroom 20 before Judge Matthew P. Guasco starts promptly at 8:30 a.m. Ex parte applications will be heard at the same time as matters on the law and motion calendar. Parties appearing by Court Call must check in with the Judicial Assistant by 8:20 a.m. No notice of intent to appear is required. Parties wishing to submit on the tentative decision must so notify the Court by e-mail at [Courtroom20@ventura.courts.ca.gov](mailto:Courtroom20@ventura.courts.ca.gov) or by fax to Judge Guasco's secretary, Lori Jacques at (805) 477-5892. **Do not call in lieu of sending an e-mail or fax.** If a party submits on the tentative decision without appearing, but another party appears, the hearing will be conducted in the absence of the non-appearing party. Effective February 13, 2018, all cases assigned to Courtroom 20 are assigned for all purposes (including trial) to Judge Guasco.

**COVID-19 NOTICE:** Pursuant to the administrative orders of the Presiding Judge and the Civil Reopening Plan, effective June 10, 2020, and until further notice, all attorneys and self-represented parties in law and motion hearings must appear telephonically via Court Call; there shall be no personal appearances in the courtroom without the prior express approval of Judge Guasco. You may contact Court Call as follows: [www.courtcall.com](http://www.courtcall.com) or call 888-882-6878.

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The following is the Court's tentative decision concerning the motion of defendant, State of California ("State"), contesting the application of defendant, Esther Bishop Holland ("Holland"), for a determination of good faith settlement within the meaning of Code of Civil Procedure section 877.6 as to the Complaint of plaintiffs, Wayne J. Stewart, John Manning, and Susan Manning ("plaintiffs"), arising from the death of plaintiffs' decedent, Edith Rubaloff ("Ms. Rubaloff"):

The Court **OVERRULES** State's objections to Holland's declaration and references to the court file in the criminal case against Holland (which was dismissed).

The Court **DENIES** the motion of State and **GRANTS** the application of Holland for a determination of good faith settlement for the following reasons:

(1) Code of Civil Procedure section 877.6 provides, in pertinent part, as follows:

"(a)(1) Any party to an action in which it is alleged that two or more parties are joint tortfeasor . . . shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff . . . and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005 . . . .

"(b) The issue of the good faith of a settlement may be determined by the court on the basis of affidavits served with the notice of hearing, an any counteraffidavits filed in response, or the court may, in its discretion, receive other evidence at the hearing.

". . .

"(d) A determination by the court that the settlement is in good faith shall bar any other joint tortfeasor . . . from any further claims against the settling tortfeasor . . . for equitable comparative contribution or comparative indemnity, based on comparative negligence or comparative fault."

(2) The party asserting lack of good faith has the burden of proof on that issue. (Code of Civ. Proc., § 877.6, subd. (d).)

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TENTATIVE RULINGS

"[I]n moving under section 877.6 for a good faith settlement determination, the moving party must set forth the value of the consideration paid and an evidentiary basis for that valuation, and must demonstrate that the valuation 'was reached in a sufficiently adversarial manner to justify the presumption that a reasonable valuation was reached.' [Citations.] A nonsettling defendant may then challenge the settlement by 'attempt[ing] to prove that the parties' assigned value is too low and that a greater reduction in plaintiff's claims against the remaining defendants is actually warranted.' [Citation.]" (*Franklin Mint Co. v. Superior Court (Manatt, Phelps & Phillips)* (2005) 130 Cal.App.4th 1550, 1559-1560, 31 Cal.Rptr.3d 319; see also Code of Civ. Proc., § 877.6(a)(2).)

(3) Once the moving party makes a threshold showing, the burden shifts to the nonsettling party opposing a good faith determination to demonstrate that the settlement is not in good faith. (*Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499, 213 Cal.Rptr. 256, 698 P.2d 159 ("*Tech-Bilt*").)

(4) In making the determination of whether a settlement is in good faith within the meaning of Code of Civil Procedure section 877.6, the Court addresses the following factors:

- (a) The "rough approximation of plaintiffs' total recovery and the settlor's proportionate liability";
- (b) The amount paid in settlement;
- (c) The "allocation of settlement proceeds among plaintiffs";
- (d) The "recognition that a settlor should pay less in settlement than he would if he were found liable after a trial";
- (e) The "financial conditions and insurance policy limits of settling defendants"; and
- (f) The "existence of collusion, fraud, or tortious conduct aimed to injure the interests of nonsettling defendants." (*Tech-Bilt, supra*, 38 Cal.3d 488, 499, 213 Cal.Rptr. 256, 698 P.2d 159.)

(5) The Court's evaluation of the *Tech-Bilt* factors is as follows:

(a) A rough approximation of plaintiffs' total recovery is difficult given the information presented. The Court finds, based on its considerable experience over the years with the litigation, mediation, and trial of major personal injury actions, including wrongful death automobile/pedestrian accidents, that Holland's estimate of \$250,000-\$400,000 total potential verdict range for economic and non-economic damages is on the low end of the spectrum. A potential gross verdict in a much higher range is probable on these facts.

Assessing Holland's probable proportionate liability is easier. Holland's car struck Ms. Rubaloff while Ms. Rubaloff was walking in or around the pedestrian cross-walk. Holland, therefore, is directly responsible for the impact between her car and Ms. Rubaloff, thus enhancing the likelihood of a substantial comparative fault assessment against her by the trier of fact. The precise numerical range of that apportionment is speculative based on the information presented.

Other defendants, including the City of Ojai ("City") and State may face substantial comparative fault exposures depending upon the success of plaintiffs' case against them on a dangerous condition of public property theory. Thus, there is a probability that comparative fault will be apportioned between Holland, City and State. The precise apportionment as between these three defendants is speculative based on the information presented.

(b) The amount paid in settlement consists of the policy limit of \$100,000 by Holland's automobile liability insurer. Given Holland's substantial, direct contributory role in the fatal accident, this settlement is low in comparison to the probable potential apportionment of fault to Holland and the probable jury verdict damages range.

(c) The Court was not provided with any information about the allocation of the settlement proceeds among the plaintiffs.

(d) The policy limit settlement of \$100,000 is consistent with a reasonable discount for settlement as opposed to the risk of trial.

(e) The settlement is for the full policy limit of \$100,000, and Holland has declared that she has no other insurance available to indemnify her as to this accident. State has not presented the Court with any evidence Holland has other assets available in the event of an excess recovery. Plaintiffs are represented by skilled and experienced counsel. If Holland had assets which could be reached in the event of an excess recovery, the Court doubts plaintiffs would have agreed to accept the policy limit. State has not presented any evidence Holland has assets available to pay for an excess judgment. Holland's declaration refers to a renter's insurance policy which does not cover this risk, from which the Court infers that Holland rents and does not own her current residence.

(f) There is no evidence of collusion, fraud or tortious conduct aimed at harming the interests of the non-settling defendants.

(6) Weighing and balancing the above factors, the Court finds that the settlement between Holland and plaintiffs is in good faith, and it is within the ballpark of reasonable settlements for cases of this nature.

(7) Accordingly, the Court enters its ORDERS that State's motion contesting the settlement is DENIED, and that Holland's motion for determination of good faith settlement pursuant to Code of Civil Procedure section 877.6 is GRANTED.

(8) The Court enters its further ORDER that any and all other joint tortfeasors shall be forever barred from bringing any claims against Holland for equitable comparative contribution or comparative indemnity, based on comparative negligence or comparative fault arising from the accident which is the subject of this action. Counsel for Holland shall serve and file a notice of ruling and proposed order consistent with the above and in conformity with the Code of Civil Procedure and the Rules of Court. A copy of this tentative decision (if adopted by the Court as its final decision) may be attached to and incorporated in the proposed order in lieu of quoting same verbatim in the body of the document.