

## **Tentative Rulings – August 4, 2004**

To request a hearing on any matter on this calendar, you must call the Court at (209) 223-6360 by 5:00 p.m. today. Notice of the intention to appear must also be given to all other parties. If the clerk is not notified of a party's intention to appear, there will be no hearing and the tentative ruling becomes the order of the court.

### **Al Saadoon v. DeGussan – 03CV2642 – Motion to Contest Determination of Good Faith Settlement**

The motion to Contest the Determination of Good Faith Settlement of DeGussa Construction, Master Builders, Inc. and James John Condon (referred to as the “defendants”), is denied.

If the defendants contest the good faith of the proposed settlement, the burden is on them to establish a lack of good faith. (Code of Civil Procedure Section 877.6(d).) The DeGussa defendants contend that the settlement is collusive. Therefore, they must establish that the settlement is not based on the requisite good faith.

The defendants contend that the settlement is collusive because Al Saadoon's claim against Woods is time barred. This argument was rejected in Widson v. International Harvester Co. (1984) 153 Cal.App.3d 45, 200.) A cross-defendant may settle directly with the plaintiff even though the plaintiff does not have a viable claim against the cross defendant. Direct settlement promotes the policy of the law, which is to discourage litigation and favor compromises

The fact Woods and Al Saadoon may be domestic partners or may have been involved in a dating relationship does not, by itself, establish the settlement was collusive per se. Under similar facts the court in City of Grand Terrace v. Superior Court (1987) 192 Cal.App.3d 1251, approved a settlement between a husband driver and wife passenger.

The defendants contend that the settlement is collusive because Woods insurance policy may not provide coverage for this claim. There is no evidence to support this contention. A review of the policy suggests that Al Saadoon would not be considered a family member as that term is used in the policy, and therefore would not fall with the exclusion from liability coverage for insured persons. Furthermore, there is no evidence that Woods' insurance carrier is contesting coverage and defendants offer no explanation for Farmers agreeing to pay policy limits on an uncovered claim.

The settlement is reasonably related to Wood's proportionate liability for Al Saadoon's claim and falls with the Tech-Bilt ballpark. Al Saadoon will receive a net settlement of \$100,000.00 with no reduction for attorney fees. Based on the deposition of Lawrence E. Newman, it could be argued that the defendants will be held 100% liable for this accident. It is not unreasonable to assume that a jury might conclude that Woods liability, if any, was less than 5%. Given the cost of defending the cross complaint, Woods paying \$100,000.00 is not "grossly disproportionate to what a reasonable person at the time of settlement would estimate the settlor's liability to be." (Torres v. Union Pacific R.R. Co. (1984) 157 Cal.App.3d 499, 509.)

Finally, the defendant request for a continuance to discover information regarding Woods' financial condition is denied. Discovery for this purpose is only allowed if the court were to conclude that the settlement amount is disproportional to Woods potential liability.

Unless a hearing is requested, this minute order is effective immediately. No formal order per California Rules of Court, Rule 391 is needed, nor is further notice of this ruling required.