



Texas Insurance Company v. Athena Logistic Solutions LLC et al

2024 | Cited 0 times | D. Arizona | March 1, 2024

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Texas Insurance Company,

Plaintiff, v. Athena Logistic Solutions LLC, et al.,

Defendants.

No. CV-23-00038-TUC-RM ORDER

The Court previously appointed Burr Udall of the Udall Law Firm, LLP to serve as a special master to review the fairness and reasonableness of the proposed settlement -captioned matter. (Doc. 93.) Mr. Udall has provided to the Court the attached report finding that the proposed settlement is fair and reasonable. *Salmeron v. United States*, 724 F.2d

1357, 1363 (9th Cir. 1983). This duty, which arises from Federal Rule of Civil Procedure

Id.; *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011) (duty derives from Rule 17(c)). In *Robidoux*, the Ninth Circuit held that district courts each minor plaintiff is fair and reasonable in light of their claims and average recovery in *Robidoux* addressed the settleme *Id.* at 1179 n.2. Nevertheless, district courts have looked to the

Robidoux standard for guidance when evaluating a proposed settlement of state-law claims. See, e.g., *DeRuyver v. Omni La Costa Resort & Spa, LLC*, No. 3:17-CV-0516-H- AGS, 2020 WL 563551, at *2 (S.D. Cal. Feb. 4, 2020); *Allison v. Gramercy YZE, LLC*, No. CV-14-00862-MWF (RZx), 2014 WL 12569372, at *2 (C.D. Cal. Dec. 9, 2014); *R.J. ex rel. Jain v. Mitsubishi Motors N. Am., Inc.*, No. C 13 2165 LB, 2013 WL 2303784, at *1 n.4 (N.D. Cal. May 24, 2013); *Guerrero v. Brentwood Union Sch. Dist.*, No. C 13 03873 LB, 2014 WL 1351208, at *2 n.2 (N.D. Cal. Apr. 4, 2014); *Mitchell v. Riverstone*

Residential Grp., No. CIV. S-11-2202 LKK/CKD, 2013 WL 1680641, at *1 (E.D. Cal. Apr. 17, 2013) (collecting cases). Bas \$84,168.92 for



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each of Erika s (Orozco) children and \$49,384.85 for Claudia Lilian Vega Munoz (Vega) child is fair and reasonable in light o average recoveries in similar actions. See, e.g., Benedict v. Total Transit Inc., 499 P.3d

wrongful death lawsuit). To the extent it is appropriate to look beyond the Robidoux

criteria and consider how the interpleaded funds have been allocated in the proposed continues to find the settlement fair and reasonable. The division of the interpleaded

funds between the Reyes Parties 1

and the Carlon Solis Parties 2

is fair and equitable given the evidence indicating Mario Alberto Carlon Solis was the driver of the vehicle at the time of the fatal collision at issue in this case. The Court approves as fair and reasonable 1 The Reyes Parties include Erika Orozco and minors R.Y.R.O, KN.R.O, and KL.R.O. 2 The Carlon Solis Parties include Vega and minor T.I.C.V. litigation, customary fees, and the risks inherent in contingency fee arrangements. The

Court also approves as fair and reasonable the allocation of 50% of case expenses to T.I.C.V. and that the overall allocation of funds between the minors and their mothers is fair and

reasonable, particularly given that Orozco and Vega are now the sole living parents of the minor children, and it appears that they will likely use a significant portion of their portions of the interpleaded funds to pay for the expenses associated with raising the children. (See Doc. 73 at 6; Doc. 78 at 4; Udall Report.) The Court finds that it is in the

annuities, as doing so will ensure the preservation and growth of the proceeds, prevent mismanagement, and allow the minors to receive funds at a time when they have sufficient maturity. Accordingly, IT IS ORDERED that the Petitions to Approve Settlement (Docs. 73, 78, 81-1) are granted approved, as follows:

1. \$757,520.24 of the remaining interpleaded funds deposited into the Court registry

shall be allocated to the Reyes Parties and \$200,000.00 shall be allocated to the Carlon Solis Parties. 2.

Erika Orozco, with the remaining 50% split evenly between minors R.Y.R.O, KL.R.O, and KN.R.O. 3. of 40% and case expenses of \$17,142.21 shall be deducted from

\$210,113.86. 4. KL.R.O. and KN.R.O., resulting in a net recovery of \$84,168.92 to each of these



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minor litigants. 5.

to Claudia Lilian Vega Munoz, with the remaining 50% allocated to T.I.C.V. 6. s of \$17,281.82 shall be deducted from

\$42,718.18.

7. nds, resulting in a net recovery

to T.I.C.V. of \$49,384.85. 8. The Reyes and Carlon Solis Parties shall place the shares of the interpleaded funds

allocated to the minors into annuities purchased from a AAA-rated life insurance company, as discussed in the Pe 9. Texas Insurance Company shall cooperate with the parties to allow for the

purchase of annuities for the minors including, as necessary, signing Qualified Assignments. 10. Orozco as next friend of R.Y.R.O., KL.R.O., and KN.R.O. is authorized to execute

all documents to effectuate this settlement on behalf of R.Y.R.O., KL.R.O., and KN.R.O., including signing Settlement Agreements and Releases. 11. Vega as next friend of T.I.C.V. is authorized to execute all documents to

effectuate this settlement on behalf of T.I.C.V., including signing Settlement Agreements and Releases. 12. Upon payment of the interpleaded funds as outlined above and execution of

Settlement Agreements and Releases, the parties shall file a stipulation of dismissal of the above-entitled action.

13. A stipulation of dismissal or a further status report is due within thirty (30) days

of the date this Order is filed. Dated this 27th day of February, 2024. UDALL LAW FIRM, LLP
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Texas Insurance Company, Plaintiffs VS. Athena Logistics Solutions, LLC; Texas Department of Transportation; Roller Express, Inc.; The Estate of Mario Alberto Carlon Solis; Erika Ortiz, Ind. and as Rep. of the Estate of Carlos Armando Reyes Hurtado; and Cameron Grant. Defendants.



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Case No. 4:23-cv-00038-RM REPORT OF SPECIAL MASTER

Assigned to: The Honorable Rosemary Márquez

The Court has appointed me to review the fairness and reasonableness of the proposed that report.

I have been practicing law in Pima County for over 65 years. My primary focus and practice has been as a civil defense attorney, including trying and evaluating cases; giving coverage opinions; and doing civil appeals. I have tried over 300 civil cases and I feel safe in saying I have evaluated over 3,000 personal injury and wrongful death cases. I have handled over 100 appeals which resulted in published opinions. I feel qualified to give you my recommendations.

Everyone understands that evaluating a personal injury or wrongful death case is not an exact science. It is based on many, many factors. I have taken all of those factors into consideration.

Everyone understands that the final decision is that of the Court, and not mine. Texas Ins. Co. will pay my fee. There are two wrongful death claims. In Arizona, the persons who can recover for wrongful death are parents, spouse and children. No one else.

Texas Ins. Co. needs for the survivors in both cases to sign a release. The attorneys for both plaintiffs agree that is a reasonable requests and once the Court rules, the appropriate releases will be prepared by the attorney for Texas Ins. Co.

WRONGFUL DEATH OF CARLON SOLIS Due to the wrongful death of Carlon Solis, the claimants are his surviving wife, Claudia Vega, and three-year-old daughter. I have reviewed all of the written material filed by their attorney with this Court. I have conferred with her and her attorney by Zoom. She is a Spanish speaker only. She has a limited education and relied on her husband to provide for her and her daughter. Since his death, she has made a small amount of money selling goods on the street and at swap meets. She receives some support from the Mexican government. She receives some assistance from friends and relatives, but basically, she is the sole support of her daughter. She is 42 years old. She has two children from a prior relationship, ages 21 and 16, but they do not live with her. She owns her own home. Basically, she has no skills to make her employable.

Mrs. Vega and her attorney agreed that of the \$200,000.00, 50% would go to her and 50% would go to her daughter.

Her daughter, age 3, is T V . The amount for the death of her husband, going to her and her daughter is \$200,000.00. once costs and attorneys fees are deducted, the amount going to the wife is \$42,718.18.

After costs and attorneys fees, the daughter T will receive \$49,384.83. That money will be placed in an annuity, which will pay her at age 18, and again at age 21, the total amount of \$97,357.75. I believe



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that placing her money in an annuity is the best and most appropriate way to handle her settlement.

It is clear that most of the money received by Mrs. Vega will be used to raise her child and support herself.

Mrs. Vega and her daughter live in Nogales, Sonora. Considering all of the circumstances, I feel that 50% going to Mrs. Vega, and 50% going to her child is fair and reasonable, and I would recommend to the Court that the Court approve that settlement.

WRONGFUL DEATH OF CARLOS ARMANDO REYES Mr. Reyes left surviving his parents, who have agreed in writing that they do not want to make a claim and all the money should go to his wife and his children. The persons entitled to make a claim are his wife Erika Orozco and his three daughters, R (age 17), and twins K and K (age 13).

Mrs. Orozco is 41 years old and only a Spanish speaker. She has a BA from a Mexican

and the children. Since his death, she has obtained a desk job for a company that imports food to the USA. Clearly, a lot of her money will be used to support her children.

I talked by Zoom to Mrs. Orozco and R. I did not talk to the twins since I did not believe they are old enough to give pertinent information to help me do my job. Both R and Mrs. Orozco and their attorney agree that the funds should be distributed 50% to Mrs. Orozco and the other 50% equally to the three daughters. Considering everything, I believe that is a fair distribution of those funds and would recommend to the Court that the Court approve that distribution.

R and the twins will receive annuities and again, I think that is the way to go to make their recovery greater.

After deducting fees and costs, Erika Orozco will receive \$210,713.80 and each of the three daughters would receive \$84,168.92.

The structure for R would pay \$95,473.00. The structure for the twins would pay each \$123,955.

Mrs. Orozco anticipates that her three daughters will attend college in Mexico and obtain a degree. By structuring the money, it makes college a very viable option for the three girls.

MY RECOMMENDATIONS I feel that in both cases a 50-50 split between the surviving spouse and the children is reasonable and fair. I would recommend to the Court that the Court approve the two settlements, giving each spouse 50% of each settlement, and giving her children 50% of each settlement. **RESPECTFULLY SUBMITTED** this 22 nd



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day of February, 2024. UDALL LAW FIRM, LLP

By_____

D.B. Udall Special Master

CERTIFICATE OF SERVICE I hereby certify that on February 22, 2024, I electronically transmitted the attached documents to the transmitted a notice of electronic filing to the following CM/ECF registrants:

Clerk of Court United States District Court District of Arizona Tucson 405 W. Congress Street, Suite 500

Tucson, Arizona 85701

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Phoenix, AZ 85012 Mchapa@chapalawgroup.com agonzalez@chapalawgroup.com Attorneys for Estate of Mario Alberto Carlon Solis DATED: February 22, 2024.

By D.B. Udall

