

Stephen R. Cornwell, CA Bar #40737  
CORNWELL & SAMPLE, LLP

(SPACE BELOW FOR FILING STAMP ONLY)

Attorneys at Law  
7045 N. Fruit Avenue  
Fresno, CA 93711-0761  
Telephone: (559) 431-3142  
Facsimile: (559) 436-1135

Richard A. Belardinelli, CA Bar #65168  
GEORGESON AND BELARDINELLI  
7060 N. Fresno Street, Suite 250  
Fresno, CA 93720  
Telephone: (559) 447-8800  
Facsimile: (559) 447-0747

Mark P. Robinson, Jr., CA Bar #54426  
ROBINSON CALCAGNIE ROBINSON  
SHAPIRO DAVIS, INC.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
(949) 720-1288  
Fax: (949) 720-1292

Attorneys for Plaintiffs CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in interest to the estate of Marsha Kay LeDuc,

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO

CENTRAL DIVISION

CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in interest to the estate of Marsha Kay LeDuc,

CASE NO.: 13 CE CG 03811 MWS

Plaintiffs,

v.

GENERAL MOTORS LLC; TOYOTA MOTOR CORPORATION; NEW UNITED MOTOR MANUFACTURING, INC.; TROSS, INC. (F/K/A QUALITY SAFETY SYSTEMS COMPANY); TRW AUTOMOTIVE GMBH (F/K/A TRW GmbH; F/K/A TRW Repa GmbH) TRW CANADA LIMITED; MARIO ALBERTO GUERRA; DANIEL M. CANCHOLA; GUERRA PRODUCE; and DOES 1 to 50, inclusive,

**PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT**

PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT

Defendants. }

**TO DEFENDANTS DANIEL CANCHOLA AND MARIO ALBERTO GUERRA  
AND GUERRA PRODUCE AND THEIR ATTORNEYS OF RECORD HEREIN**

Plaintiffs CAL LeDUC, MANDY JOBE, LUKUS LeDUC, JAY LeDUC, and TORI ABBY as heirs of the decedent Marsha Kay LeDuc; CAL LeDUC as successor in interest to the estate of Marsha Kay LeDuc; TORI ABBY individually and TORI ABBY as the Guardian ad Litem of MILEY ABBY offer Defendants DANIEL CANCHOLA and MARIO ALBERTO GUERRA individually and dba GUERRA PRODUCE, pursuant to Section 998 of the California Code of Civil Procedure, a final disposition of the above-entitled action as a legal equivalent to a judgment, to execute a Release and Settlement Agreement and to file a dismissal with prejudice of the above named Defendants for the sum of \$750,000.00 with each of the parties to bear their own costs and attorneys fees. This offer to resolve this action is made pursuant to Code of Civil Procedure Section 998 and is intended to offer a complete and final resolution of all of the Plaintiffs' claims against the Defendants DANIEL CANCHOLA and MARIO ALBERTO GUERRA individually and dba GUERRA PRODUCE and upon the condition, if the Defendants so demand, upon the Court's Good Faith Determination of Good Faith pursuant to Code of Civil Procedure Section 877.6.

If the Defendants accept this offer, notify the Plaintiffs of your acceptance by dating and signing the accompanying Notice of Acceptance and filing the Offer and Notice of Acceptance in the above-entitled action or as otherwise provided by law prior to thirty (30) days after this offer has been served upon the Defendants through their counsel. If the Defendants refuse to accept this offer, it will be deemed to be a rejection of the opportunity to resolve this case with these Defendants for said amount. Pursuant to Code of Civil

PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT

1 Procedure Section 998 the failure of the Defendants to obtain a more favorable judgment  
2 will result in any sanctions imposed by Section 998 and the consequences of any claim that  
3 the Defendants failed to resolve this case for insurance coverage that does insure them for  
4 \$750,000.00.

5  
6 DATED: November 19, 2014.

CORNWELL & SAMPLE, LLP

7  
8  
9 By: 

Stephen R. Cornwell

Attorneys for Plaintiffs

10 CAL LeDUC; TORI ABBY; MILEY ABBY,  
11 a minor, by and through her Guardian ad  
12 Litem TORI ABBY; MANDY JOBE;  
13 LUKUS LeDUC; JAY LeDUC; and  
14 CAL LeDUC as successor in interest to the  
15 estate of Marsha Kay LeDuc  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 F:\Cases\ABBY.Tori\PLEADINGS\CCP 998.TO GUERRA AND CANCHOLA.doc  
27  
28

PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
CENTRAL DIVISION

CAL LeDUC; TORI ABBY; MILEY  
ABBY, a minor, by and through her  
Guardian ad Litem TORI ABBY;  
MANDY JOBE; LUKUS LeDUC; JAY  
LeDUC; and CAL LeDUC as successor in  
interest to the estate of Marsha Kay LeDuc,

Plaintiffs,

v.

GENERAL MOTORS LLC; TOYOTA  
MOTOR CORPORATION; NEW  
UNITED MOTOR MANUFACTURING,  
INC.; TROSS, INC. (F/K/A QUALITY  
SAFETY SYSTEMS COMPANY); TRW  
AUTOMOTIVE GMBH (F/K/A TRW  
GmbH; F/K/A TRW Repa GmbH) TRW  
CANADA LIMITED;  
MARIO ALBERTO GUERRA; DANIEL  
M. CANCHOLA; GUERRA PRODUCE;  
and DOES 1 to 50, inclusive,

Defendants.

CASE NO.: 13 CE CG 03811 MWS

**NOTICE OF ACCEPTANCE OF  
OFFER TO COMPROMISE  
(C.C.P. Section 998)**

TO PLAINTIFFS CAL LEDUC, MANDY JOBE, LUKUS LEDUC, JAY LEDUC, AND  
TORI ABBY AS HEIRS OF THE DECEDENT MARSHA KAY LEDUC; CAL LEDUC  
AS SUCCESSOR IN INTEREST TO THE ESTATE OF MARSHA KAY LEDUC; TORI  
ABBY INDIVIDUALLY AND TORI ABBY AS THE GUARDIAN AD LITEM OF  
MILEY ABBY:

PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT

1 NOTICE IS HEREBY GIVEN that Defendants DANIEL CANCHOLA and  
2 MARIO ALBERTO GUERRA individually and dba GUERRA PRODUCE hereby accept  
3 the Offer to Compromise made by Plaintiffs in the amount of SEVEN HUNDRED AND  
4 FIFTY THOUSAND DOLLARS (\$750,000.00) with each of the parties to bear their own  
5 costs and attorneys' fees in exchange for a Release and Settlement Agreement, a Court  
6 Order Determining the settlement is made in Good Faith, and the entry of an order made  
7 pursuant to Plaintiffs' Request for a Dismissal with prejudice of Defendants DANIEL  
8 CANCHOLA and MARIO ALBERTO GUERRA individually and dba GUERRA  
9 PRODUCE.

10 DATED:

11  
12  
13 Attorney for Defendants  
14 DANIEL CANCHOLA,  
15 MARIO ALBERTO GUERRA,  
16 individually and dba as  
17 GUERRA PRODUCE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE; NOTICE OF ACCEPTANCE; JUDGMENT

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years,  
3 and not a party to the within action. My business address is 7045 N. Fruit Avenue,  
4 Fresno, California. On November 19, 2014, I served the within documents:

5 ***PLAINTIFFS' CODE OF CIVIL PROCEDURE SECTION 998 OFFER TO COMPROMISE;***  
6 ***NOTICE OF ACCEPTANCE; JUDGMENT***

7 ☐

8 **BY FAX:** by transmitting via facsimile the document(s) listed above to  
9 the fax number(s) set forth below on this date before 5:00 p.m.

10 ☐

11 **BY HAND:** by personally delivering the document(s) listed above to the  
12 person(s) at the address(es) set forth below.

13 ☒

14 **BY MAIL:** by placing the document(s) listed above in a sealed envelope  
15 with postage thereon fully prepaid, in the United States mail at Fresno,  
16 California addressed as set forth below.

17 ☐

18 **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by  
19 an overnight delivery service company for delivery to the addressee(s) on  
20 the next business day.

21 ☐

22 **BY PERSONAL DELIVERY:** by causing personal delivery by  
23 \_\_\_\_\_ of the document(s) listed above to the person(s) at the  
24 address(es) set forth below

25 Richard A. Belardinelli  
26 GEORGESON AND BELARDINELLI  
27 7060 N. Fresno Street, Suite 250  
28 Fresno, CA 93720  
Facsimile: (559) 447-0747

Ryan A. McCarthy  
BOWMAN AND BROOKE LLP  
1741 Technology Drive, Suite 200  
San Jose, CA 95110  
Facsimile: (408) 279-5845

David B. Weinstein  
Philip McDaniel  
WEINSTEIN TIPPETTS &  
LITTLE LLP  
7500 San Felipe, Suite 500  
Houston, TX 77063  
Facsimile: (713) 244-0801

Mark P. Robinson, Jr.  
ROBINSON CALCAGNIE ROBINSON  
SHAPIRO DAVIS, INC.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
Fax: (949) 720-1292

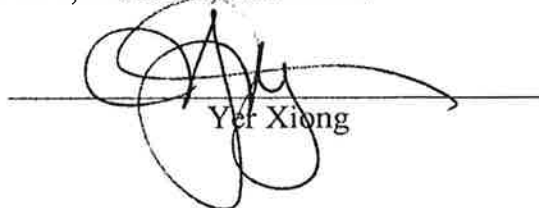
Joseph D. Cooper, Sr.  
COOPER & COOPER  
7519 N. Ingram Avenue, Suite 103  
Fresno, CA 93711  
Facsimile: (559) 442-1659

Gregory S. Mason  
MCCORMICK BARSTOW  
7647 N. Fresno Street  
Fresno, CA 93720  
Facsimile: (559) 433-2300

22 I am readily familiar with the firm's practice of collection and processing  
23 correspondence for mailing. Under that practice it would be deposited with the U.S.  
24 Postal Service on that same day with postage thereon fully prepaid in the ordinary course  
25 of business. I am aware that on motion of the party served, service is presumed invalid if  
26 postal cancellation date or postage meter date is more than one day after date of deposit  
27 for mailing in affidavit.

28 I declare under penalty of perjury under the laws of the State of California  
that the above is true and correct.

Executed on November 19, 2014, at Fresno, California.

  
Yef Xiong

LP0011059

# CORNWELL & SAMPLE, LLP

Attorneys At Law

Stephen R. Cornwell  
René Turner Sample

7045 N. Fruit Avenue  
Fresno, California 93711-0761

Telephone (559)431-3142  
Facsimile (559)436-1135  
[www.cornwellsample.com](http://www.cornwellsample.com)

March 24, 2015

Joseph D. Cooper, Sr.  
COOPER & COOPER  
7519 N. Ingram Avenue, Suite 103  
Fresno, CA 93711

Re: *LeDuc v. General Motors Corporation, et al.*

Dear Joe:

This confirms our conversation last week about the policy insuring Messrs. Guerra and Canchola. We discussed the policy insuring Guerra and Canchola for \$750,000. This was a private conversation and not in the way of any admissions in Court.

I think we both agree that the law in California requires that a commercial vehicle be insured for \$750,000. I think it is clear that Mr. Guerra's vehicle was his commercial vehicle and was being used in that manner that is to haul his own goods. And in fact that is exactly what Mr. Canchola was doing at the time of the incident.

The agent apparently wrote the policy for 25/50 whereas it is clear that under the law it is required to be \$750,000. After the damage to the vehicle, Mr. Guerra replaced that vehicle with another vehicle which weighed somewhat more than the crash vehicle. A new agent wrote substituted a new vehicle into the policy. The insurance carrier issued a certificate that that policy was for \$750,000 and had been since June 3, some days before the incident in question.

You indicated that I said in an earlier conversation I would accept the \$750,000 if offered. What I said then and reiterate now is I would have to speak to my clients and the referring attorney about it. It is not my decision to make alone.

LP0011060

Joseph D. Cooper, Sr.  
March 24, 2015  
Page 2

We are going to proceed with the depositions of the agents as I indicated.

Very truly yours,

Cornwell & Sample, LLP



Stephen R. Cornwell

SRC:yx

LP0011061



## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Monday, July 18, 2016 12:51 PM  
**To:** 'Joe Cooper'  
**Subject:** RE: Inspection demand of Guerra Produce truck

The inspection is on, no depo. I should talk to you about the mediation. I am doubting the value of your participation. If Infinity wants to offer \$750,000 then they have a lawyer that can do it. I am not going to settle for less than that and I may convince myself to just try the case, punitive damages and all and then sue Infinity. There is law that I can sue them for bad faith even without an assignment but I would expect both of your clients would prefer to be plaintiffs in that case. I see that you have personally represented Infinity. I also am concerned about your representing two clients both of whom may be subject to punitive damages. Isn't that a conflict?

Let me know and please confirm the inspection. Will someone from your office be there to facilitate it?

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Monday, July 18, 2016 10:58 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: Inspection demand of Guerra Produce truck

Ok, so it is off calendar. Thank you for getting back to me. Is there a mediation on calendar?

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Monday, July 18, 2016 11:22 AM  
**To:** Joe Cooper  
**Subject:** RE: Inspection demand of Guerra Produce truck

Not going to take Canchola's deposition now.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Friday, July 15, 2016 3:38 PM  
**To:** Stephen R. Cornwell  
**Subject:** RE: Inspection demand of Guerra Produce truck

Steve:

Any word on Mr.Canchola's deposition? I am in New York that week and return to my office the following Monday. I had advised of my unavailability that week when we were all cooperating to try and get a mediation date with Charlie Hawkins. I still don't have a mediation date.

In any event, please let me know plaintiffs position. Thank you,

Joe

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]

**Sent:** Friday, July 15, 2016 11:37 AM

**To:** Joe Cooper

**Subject:** RE: Inspection demand of Guerra Produce truck

Which deposition

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]

**Sent:** Thursday, July 14, 2016 6:41 PM

**To:** Stephen R. Cornwell

**Subject:** RE: Inspection demand of Guerra Produce truck

Steve, what about the deposition?

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]

**Sent:** Thursday, July 14, 2016 6:10 PM

**To:** Joe Cooper

**Cc:** Ryan A. McCarthy

**Subject:** RE: Inspection demand of Guerra Produce truck

We will move forward with the inspection as set at the location of the truck where it is now. I am not moving the vehicle.

A mediation is set or is about to be set. Yer can confirm. You represent the driver and the owner. Both are charged with punitive damages. It seems to be a conflict of interest but that is your issue, not mine.

Yer please advise Joe of the mediation date.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]

**Sent:** Thursday, July 14, 2016 5:00 PM

**To:** Stephen R. Cornwell

**Subject:** RE: Inspection demand of Guerra Produce truck

Steve: I have no idea if there is shade. If you want to move the vehicle, fine with me, but noticing party will have to pay the costs associated with that roundtrip; whatever those may be, and I do not know and haven't asked. They shouldn't be much.

Is the mediation set and am I invited? Can we please move the Canchiola deposition from July 28 to another day please? I will get Mr. Canchiola to whatever date is set and no need to re serve a dep notice or subpoena.

Please let me know.

Joe

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]

**Sent:** Thursday, July 14, 2016 5:12 PM

**To:** Joe Cooper

**Cc:** Ryan A. McCarthy; Philip McDaniel

**Subject:** RE: Inspection demand of Guerra Produce truck

Is there a site nearby that would afford some shade?

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]

**Sent:** Thursday, July 14, 2016 4:01 PM

**To:** Stephen R. Cornwell

**Subject:** RE: Inspection demand of Guerra Produce truck

Mr. Guerra's truck is at IAA. 1805 North Lafayette Ave. Fresno, Ca. It is stock number 17658697. Please renote the inspection to reflect the correct address. Thank you

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]

**Sent:** Thursday, July 14, 2016 12:34 PM

**To:** Joe Cooper

**Cc:** Ryan A. McCarthy; Philip McDaniel; 'Dean Tuft'

**Subject:** RE: Inspection demand of Guerra Produce truck

We don't need to move it. Where is it now? Is there shade? We aren't agreeing to pay to unwrap or rewrap it. We are entitled to examine the vehicle as it was. If you have wrapped it to preserve it that is Infinity's concern. It needs to be presented as unwrapped. No destructive testing is expected to be done.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]

**Sent:** Wednesday, July 13, 2016 9:47 AM

**To:** Stephen R. Cornwell

**Subject:** Inspection demand of Guerra Produce truck

Steve:

Plaintiffs notice has the place of inspection at Action Towing. I don't believe it is currently at Action towing. Please confirm that plaintiff will pay the costs associated with the transfer of the truck. That will include un wrapping and rewrapping the vehicle and returning it to IAA where it is currently being preserved. Absent a court order or stipulation, no destructive testing will be allowed. Please advise as to the costs and destructive testing matters. Thank you,

Joe

Joseph D. Cooper Sr.  
Cooper & Cooper LLP  
7519 North Ingram Suite 103  
Fresno, Ca. 93711  
559-442-1650 O  
559-442-1659 F  
[joe@coopllp.com](mailto:joe@coopllp.com)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Monday, August 08, 2016 6:37 PM  
**To:** 'Joe Cooper'  
**Cc:** 'Rick Belardinelli'  
**Subject:** Abby/LeDuc

I received your answers to interogs. I believe they are incomplete.

Please consider this a meet and confer.

I believe I am entitled to know if he is in the business of using a vehicle to make deliveries. If he is working in a warehouse I don't care. But if he is running a business such a transporting oranges I should know. It is a question I could ask him in a deposition.

If he has a motor carrier permit this is relevant because he is required to have one to operate a business that delivers his product. I can obtain this information from the DMV. Maybe its not admissible but it is relevant because it may lead to evidence.

As for the separate counsel issue, there is obviously a bad faith aspect to this case and a policy limits demand was made.

When the policy demand was made you may have advised Infinity to pay it. That is not attorney-client protected. And it is relevant to coverage and potential bad faith. Any response from them is not privileged either. I didn't ask these questions but I will so why do we have to get formal. If he has separate counsel, that is not privileged and if he was advised by Infinity of his right to counsel this is not privileged.

The law on the coverage issue is very clear. With that vehicle he was supposed to have \$750,000. I have the witnesses now to prove it. My intention is to try the case. I don't need his assignment to sue them for the policy. But he has rights which are assignable and rights to recover himself if the judgment is in excess of \$750,000, maybe even if it is less. Offering \$25,000 on a case that has value well in excess of \$750,000 is stupid. I know it was not your decision so I can say that.

Please respond so I can prepare a motion for the matters that are not privileged and the other noted above.

Steve C

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Tuesday, August 09, 2016 10:24 AM  
**To:** 'Joe Cooper'  
**Subject:** RE: Abby/LeDuc

Infinity had their chance to pay the \$750,000 and blew it. A communication to them by you for Guerra is not privileged. How can it be if you represent Guerra and are communicating with a third party?

I am not keen on a DRA because it would only delay the trial more.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Tuesday, August 09, 2016 9:44 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: Abby/LeDuc

I don't know if he is delivering- we do not have contact with him as I have mentioned to you a few times. In any event, I believe it is irrelevant in that it is not calculated to lead to the discovery of admissible evidence. I don't know if he has a carrier permit as we have no contact with him-plaintiffs have an avenue with which to obtain this information. There is no bad faith part of the operative pleading. Academy West sold Mr.Guerra a policy of insurance for an amount less than \$750,000. Pete Kapetan has made contact with you regarding Mr.Guerra. I know he communicated with Mr.Guerra's carrier also. These are matters plaintiffs are aware of and which you and I have spoken about.

We have discussed plaintiffs filing a DRA which plaintiffs are reluctant to do. Confidential communication is privileged. I have also mentioned to you that I believe if plaintiffs really want to make a demand within the policy limit and try and lift the lid on the policy, they should now make a policy limit demand as any defense, such as mistake of fact, agency malfeasance,... might be at least lessened if not eliminated. Plaintiffs choose not to make such a demand, and run the risks thereby.

Feel free to call me if you wish.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Monday, August 08, 2016 6:37 PM  
**To:** Joe Cooper  
**Cc:** 'Rick Belardinelli'  
**Subject:** Abby/LeDuc

I received your answers to interogs. I believe they are incomplete.

Please consider this a meet and confer.

I believe I am entitled to know if he is in the business of using a vehicle to make deliveries. If he is working in a warehouse I don't care. But if he is running a business such as transporting oranges I should know. It is a question I could ask him in a deposition.

If he has a motor carrier permit this is relevant because he is required to have one to operate a business that delivers his product. I can obtain this information from the DMV. Maybe it's not admissible but it is relevant because it may lead to evidence.

As for the separate counsel issue, there is obviously a bad faith aspect to this case and a policy limits demand was made.

When the policy demand was made you may have advised Infinity to pay it. That is not attorney-client protected. And it is relevant to coverage and potential bad faith. Any response from them is not privileged either. I didn't ask these questions but I will so why do we have to get formal. If he has separate counsel, that is not privileged and if he was advised by Infinity of his right to counsel this is not privileged.

The law on the coverage issue is very clear. With that vehicle he was supposed to have \$750,000. I have the witnesses now to prove it. My intention is to try the case. I don't need his assignment to sue them for the policy. But he has rights which are assignable and rights to recover himself if the judgment is in excess of \$750,000, maybe even if it is less. Offering \$25,000 on a case that has value well in excess of \$750,000 is stupid. I know it was not your decision so I can say that.

Please respond so I can prepare a motion for the matters that are not privileged and the other noted above.

Steve C

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Wednesday, January 25, 2017 9:43 AM  
**To:** 'Joe Cooper'  
**Cc:** Ryan A. McCarthy; 'Philip McDaniel'  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

A covenant to not execute would preclude any bad faith. Not interested in that.

The settlement is confidential so keep it confidential. I will obtain permission from the other defendants to share it with you. I assume they have because seeking good faith. Have they?

**Philip and Ryan** - Can I share the settlement amounts with Joe Cooper on the condition that he cannot reveal them to anyone other than his carrier and to his clients, if necessary. How can I do this?

Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Wednesday, January 25, 2017 8:46 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

No objection to time shortening. What are the settlement numbers. Are plaintiffs still interested in a stipulated judgment with a covenant not to execute?

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Tuesday, January 24, 2017 5:57 PM  
**To:** 'Philip McDaniel'; Ryan McCarthy; Joe Cooper  
**Cc:** Greg Mason; David Weinstein; Linda Cunha; Yer Xiong  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

I am about to file a minors comp on Miley. Aiming for Friday and will send you a copy by email. The court would not hear it normally until Mid May so we will ask the court to shorten time. Anyone have an objection to shortening time?

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Philip McDaniel [mailto:philip.mcdaniel@wtllaw.com]  
**Sent:** Tuesday, January 24, 2017 12:41 PM



(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]  
**Sent:** Wednesday, January 25, 2017 8:46 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

No objection to time shortening. What are the settlement numbers. Are plaintiffs still interested in a stipulated judgment with a covenant not to execute?

Joe

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]  
**Sent:** Tuesday, January 24, 2017 5:57 PM  
**To:** 'Philip McDaniel'; Ryan McCarthy; Joe Cooper  
**Cc:** Greg Mason; David Weinstein; Linda Cunha; Yer Xiong  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

I am about to file a minors comp on Miley. Aiming for Friday and will send you a copy by email. The court would not hear it normally until Mid May so we will ask the court to shorten time. Anyone have an objection to shortening time?

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Philip McDaniel [<mailto:philip.mcdaniel@wtllaw.com>]  
**Sent:** Tuesday, January 24, 2017 12:41 PM  
**To:** Ryan McCarthy; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell; Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Thank you very much, Ryan. Joe – will you agree to our stipulation for good faith settlement?

**Philip R. McDaniel**  
(713) 244-0808

**From:** Ryan McCarthy [<mailto:Ryan.McCarthy@bowmanandbrooke.com>]  
**Sent:** Friday, January 20, 2017 12:17 PM  
**To:** Philip McDaniel; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com)); Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Philip – here's my signature on your stipulation. Joe – What is the word, please?

**Ryan A. McCarthy**  
Bowman and Brooke LLP  
Direct: 1.408.961.4558

**From:** Philip McDaniel [<mailto:philip.mcdaniel@wtllaw.com>]  
**Sent:** Wednesday, January 11, 2017 1:44 PM  
**To:** Ryan McCarthy; [joe@coopllp.com](mailto:joe@coopllp.com)

**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com)); Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Joe and Ryan –

Please find attached a proposed stipulation for good faith settlement regarding Plaintiffs' settlement with our clients. This is similar to the one Ryan circulated over the weekend. Please advise ASAP your clients' position or return the signature page to me.

Thanks,

Philip

**Philip R. McDaniel**  
**(713) 244-0808**

**From:** Ryan McCarthy [<mailto:Ryan.McCarthy@bowmanandbrooke.com>]  
**Sent:** Saturday, January 07, 2017 10:22 AM  
**To:** Philip McDaniel; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com))  
**Subject:** LeDuc v NUMMI - proposed stipulation re good faith settlement

Good morning. Joe and Philip, I've conferred with each of you about our settlement with plaintiffs. We need to move forward with a good faith to ensure we don't need to be involved in the upcoming expert and trial-related activities. Please find the attached proposed stipulation for good faith settlement. Please advise ASAP your clients' position on this issue, or return the signature page to me. We plan to move forward with a motion or application by mid-week or so if we have not heard back.

Thanks, and have a good weekend.

**Ryan A. McCarthy**  
Partner  
Direct: 1.408.961.4558 | Email: [Ryan.McCarthy@bowmanandbrooke.com](mailto:Ryan.McCarthy@bowmanandbrooke.com)

***Bowman and Brooke*** LLP

1741 Technology Drive, Suite 200 | San Jose, CA 95110

---

Note: This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Wednesday, January 25, 2017 9:58 AM  
**To:** 'Joe Cooper'  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Sure. I have asked them to allow me to reveal it but you would get this eventually.

I have researched this issue extensively and depending on the verdict of the jury you will not get credit for any of the money received by the plaintiffs in this settlement.

My plan is to try the case. Whatever judgment I get I will sue the carrier for the policy and any bad faith I can either directly or by assignment from your clients.

Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Wednesday, January 25, 2017 9:14 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

I will need to know the breakdown.  
Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Wednesday, January 25, 2017 9:43 AM  
**To:** Joe Cooper  
**Cc:** Ryan A. McCarthy; 'Philip McDaniel'  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

A covenant to not execute would preclude any bad faith. Not interested in that.

The settlement is confidential so keep it confidential. I will obtain permission from the other defendants to share it with you. I assume they have because seeking good faith. Have they?

**Philip and Ryan** - Can I share the settlement amounts with Joe Cooper on the condition that he cannot reveal them to anyone other than his carrier and to his clients, if necessary. How can I do this?

Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711

**To:** Ryan McCarthy; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell; Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Thank you very much, Ryan. Joe – will you agree to our stipulation for good faith settlement?

**Philip R. McDaniel**  
(713) 244-0808

**From:** Ryan McCarthy [<mailto:Ryan.McCarthy@bowmanandbrooke.com>]  
**Sent:** Friday, January 20, 2017 12:17 PM  
**To:** Philip McDaniel; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com)); Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Philip – here's my signature on your stipulation. Joe – What is the word, please?

**Ryan A. McCarthy**  
Bowman and Brooke LLP  
Direct: 1.408.961.4558

**From:** Philip McDaniel [<mailto:philip.mcdaniel@wtllaw.com>]  
**Sent:** Wednesday, January 11, 2017 1:44 PM  
**To:** Ryan McCarthy; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com)); Greg Mason; David Weinstein  
**Subject:** RE: LeDuc v NUMMI - proposed stipulation re good faith settlement

Joe and Ryan –

Please find attached a proposed stipulation for good faith settlement regarding Plaintiffs' settlement with our clients. This is similar to the one Ryan circulated over the weekend. Please advise ASAP your clients' position or return the signature page to me.

Thanks,

Philip

**Philip R. McDaniel**  
(713) 244-0808

**From:** Ryan McCarthy [<mailto:Ryan.McCarthy@bowmanandbrooke.com>]  
**Sent:** Saturday, January 07, 2017 10:22 AM  
**To:** Philip McDaniel; [joe@coopllp.com](mailto:joe@coopllp.com)  
**Cc:** Stephen R. Cornwell ([Steve@CornwellSample.com](mailto:Steve@CornwellSample.com))  
**Subject:** LeDuc v NUMMI - proposed stipulation re good faith settlement

Good morning. Joe and Philip, I've conferred with each of you about our settlement with plaintiffs. We need to move forward with a good faith to ensure we don't need to be involved in the upcoming expert and trial-related activities. Please find the attached proposed stipulation for good faith settlement. Please advise ASAP your clients' position on this issue, or return the signature page to me. We plan to move forward with a motion or application by mid-week or so if we have not heard back.

Thanks, and have a good weekend.

**Ryan A. McCarthy**

Partner

Direct: 1.408.961.4558 | Email: [Ryan.McCarthy@bowmanandbrooke.com](mailto:Ryan.McCarthy@bowmanandbrooke.com)

***Bowman and Brooke***

1741 Technology Drive, Suite 200 | San Jose, CA 95110

---

Note: This electronic mail is intended to be received and read only by certain individuals. It may contain information that is attorney-client privileged or protected from disclosure by law. If it has been misdirected, or if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

## **Stephen R. Cornwell**

---

**From:** Stephen R. Cornwell  
**Sent:** Monday, March 20, 2017 6:05 PM  
**To:** 'Joe Cooper'  
**Subject:** mediation

My approach to mediation is simple. The value of the wrongful death of Marsha LeDuc is in excess of \$750,000. If the defense is prepared to pay a sum in excess of that the matter may be settleable. I suspect you will not be offering \$750,000 much less an amount in excess. Nonetheless we will be there in the hope that the matter can be resolved.

Best regards, Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

# COOPER & COOPER

ATTORNEYS AT LAW  
7519 North Ingram Avenue, Suite 103  
Fresno, California 93711

[joe@coopllp.com](mailto:joe@coopllp.com)

July 18, 2017

File No. 70028.14

Stephen Cornwell, Esq.  
Cornwell & Sample  
7045 North Fruit  
Fresno, CA 93711

Re: ***LeDuc vs. General Motors, et al.***  
Our Clients: Mario Guerra; Guerra Produce; Daniel Canchola

Dear Mr. Cornwell:

Now that the bankruptcy court has granted Plaintiffs relief to try the case as to the available insurance policy limits, my clients would like to again offer your clients the limits of Infinity Select Insurance Company Policy #504-65323-2013-001. The applicable limits of that particular policy are \$25,000/\$50,000. As such, my clients are offering the total available insurance policy limits pursuant to Infinity Select Insurance Company Policy #504-65323-2013-001 of \$50,000 to your clients. My clients will require a Dismissal with Prejudice of the Entire Action and a Release. Each party would assume their own fees and costs, and Plaintiffs would be responsible for any liens, known or unknown.

My clients recognize that Plaintiffs might take the position that there is \$750,000 in insurance coverage available. My clients have submitted their discovery responses, referencing that the policy covering them in this matter, Infinity Select Insurance Company Policy #504-65323-2013-001, is a \$25,000/\$50,000 policy. The operative pleading relates to the motor vehicle accident between our respective clients, and not as to the terms of Infinity Select Insurance Company Policy #504-65323-2013-001, or any other claim. As such, it would appear as though Plaintiffs' recovery is limited to \$50,000.

Please get back to me at your earliest opportunity so that we can further discuss this matter. I look forward to hearing from you at your convenience.

Very truly yours,

COOPER & COOPER

Joseph D. Cooper Sr.

JDC:so

LP0011076

5

**COOPER & COOPER**

ATTORNEYS AT LAW  
7519 North Ingram Avenue, Suite 103  
Fresno, California 93711

[joe@coopllp.com](mailto:joe@coopllp.com)

July 18, 2017

File No. 70028.14

Stephen Cornwell, Esq.  
Cornwell & Sample  
7045 North Fruit  
Fresno, CA 93711

Re: **LeDuc vs. General Motors, et al.**  
Our Clients: Mario Guerra; Guerra Produce; Daniel Canchola

Dear Mr. Cornwell:

Now that the bankruptcy court has granted Plaintiffs relief to try the case as to the available insurance policy limits, my clients would like to again offer your clients the limits of Infinity Select Insurance Company Policy #504-65323-2013-001. The applicable limits of that particular policy are \$25,000/\$50,000. As such, my clients are offering the total available insurance policy limits pursuant to Infinity Select Insurance Company Policy #504-65323-2013-001 of \$50,000 to your clients. My clients will require a Dismissal with Prejudice of the Entire Action and a Release. Each party would assume their own fees and costs, and Plaintiffs would be responsible for any liens, known or unknown.

My clients recognize that Plaintiffs might take the position that there is \$750,000 in insurance coverage available. My clients have submitted their discovery responses, referencing that the policy covering them in this matter, Infinity Select Insurance Company Policy #504-65323-2013-001, is a \$25,000/\$50,000 policy. The operative pleading relates to the motor vehicle accident between our respective clients, and not as to the terms of Infinity Select Insurance Company Policy #504-65323-2013-001, or any other claim. As such, it would appear as though Plaintiffs' recovery is limited to \$50,000.

Please get back to me at your earliest opportunity so that we can further discuss this matter. I look forward to hearing from you at your convenience.

Very truly yours,

COOPER & COOPER

Joseph D. Cooper Sr.

JDC:so

LP0011077



**COOPER & COOPER***ATTORNEYS AT LAW**7519 North Ingram Avenue, Suite 103  
Fresno, California 93711*joe@coopllp.com**FACSIMILE TRANSMITTAL**

File No. 70028.14

TO : Stephen Cornwell

FAX : (559) 436-1135

DATE : July 18, 2017

FROM : Joseph D. Cooper Sr.

RE : LeDuc vs. General Motors Corporation, et al.  
Fresno Superior Case No. 13CECG03811

MESSAGE : **Please see attached correspondence of today's date.**

Number of pages (including this page): \_\_\_\_

Please notify our office immediately if you do not receive all pages in this transmittal, or if you have any questions regarding the material.

THE DOCUMENT BEING FAXED IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED, AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED, CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THE MESSAGE TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE UNITED STATES POSTAL SERVICE.

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Thursday, August 03, 2017 6:39 PM  
**To:** Joe Cooper  
**Cc:** Yer Xiong  
**Subject:** Abby/LeDuc

Joe

I am not interested in \$25,000.

Since we have the hospital records, it should not be necessary to subpoena them. We should be able to isolate some significant records and stipulate them in. Also Dr. Billello was impossible for the last trial setting. I ask that we agree he is unavailable and read his deposition. I also want to isolate some med records for Tori and Miley and admit them rather than a big pile of records. I also recall that Sandoval is unavailable. I searched for him and cannot find him. So can we stipulate that he is unavailable and read his deposition.

Please consider and advise.

S

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Monday, August 21, 2017 3:49 PM  
**To:** Joe Cooper  
**Cc:** Mandy Jobe  
**Subject:** LeDuc

Joe

Guerra did not obtain a release in BK. He is subject to punitive damages. The jury is going to hear all about licenses (no license) and that Canchola was going to be fired because he was using his cell phone too much.

I can resolve the entire case for \$1.5 MM. The claim that the policy is only \$25,000 doesn't withstand scrutiny based on the law and the policy. And the defendants will have no credit for anything paid by others.

Let me know if the carrier is interested. I presume they are not but wanted them at least to know what it would take. Otherwise I am ready for trial on October 2.

Do you have any intention of deposing my expert?

Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Joe Cooper <Joe@coopllp.com>  
**Sent:** Tuesday, August 22, 2017 9:50 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Steve:

Thank you for your clients settlement demand. I will be back in touch.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Monday, August 21, 2017 3:49 PM  
**To:** Joe Cooper  
**Cc:** Mandy Jobe  
**Subject:** LeDuc

Joe

Guerra did not obtain a release in BK. He is subject to punitive damages. The jury is going to hear all about licenses (no license) and that Canchola was going to be fired because he was using his cell phone too much.

I can resolve the entire case for \$1.5 MM. The claim that the policy is only \$25,000 doesn't withstand scrutiny based on the law and the policy. And the defendants will have no credit for anything paid by others.

Let me know if the carrier is interested. I presume they are not but wanted them at least to know what it would take. Otherwise I am ready for trial on October 2.

Do you have any intention of deposing my expert?

Steve

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## **Stephen R. Cornwell**

---

**From:** Stephen R. Cornwell  
**Sent:** Friday, September 01, 2017 10:46 AM  
**To:** Joe Cooper  
**Subject:** LeDuc

Joe

There is no sense in having the MSC. We are light years apart. Pls inform the court that the MSC should be taken off.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Joe Cooper <Joe@coopllp.com>  
**Sent:** Friday, September 01, 2017 11:36 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Thank you Steve. I believe I have mentioned that the authority I have with which to settle this case is \$50,000. The order of Judge Lastreto allows plaintiffs to proceed with the case up to the limits of the policy, which is \$50,000. Plaintiffs would appear to only be able to seek \$50,000 based upon the operative pleadings.

I will get back in touch with you regarding the issues referenced in your earlier email.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Friday, September 01, 2017 10:46 AM  
**To:** Joe Cooper  
**Subject:** LeDuc

Joe

There is no sense in having the MSC. We are light years apart. Pls inform the court that the MSC should be taken off.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Friday, September 01, 2017 1:15 PM  
**To:** Joe Cooper  
**Subject:** RE: LeDuc

That is with respect to Canchola. Guerra has no order and so we can obtain whatever verdict against him the jury renders. Guerra's BK was never concluded and was dismissed. Do we need to have a SC. We are not accepting \$50,000.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Friday, September 01, 2017 11:36 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Thank you Steve. I believe I have mentioned that the authority I have with which to settle this case is \$50,000. The order of Judge Lastreto allows plaintiffs to proceed with the case up to the limits of the policy, which is \$50,000. Plaintiffs would appear to only be able to seek \$50,000 based upon the operative pleadings.

I will get back in touch with you regarding the issues referenced in your earlier email.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Friday, September 01, 2017 10:46 AM  
**To:** Joe Cooper  
**Subject:** LeDuc

Joe

There is no sense in having the MSC. We are light years apart. Pls inform the court that the MSC should be taken off.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Joe Cooper <Joe@coopllp.com>  
**Sent:** Friday, September 01, 2017 2:25 PM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Steve:

Mr. Guerra's bankruptcy was not dismissed. He failed to appear for his first meeting of creditors. I am informed he had a flat tire on his way from Los Angeles. The trustee filed a motion to dismiss, as per protocol when a debtor fails to appear. He appeared at the rescheduled meeting of creditors and the motion was removed from calendar. He will be discharged from bankruptcy, probably Wednesday of next week. If that happens, and I am advised it will, then plaintiffs only can pursue a claim up to the policy of \$50,000 as per the court order.

Feel free to call me when you are able.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Friday, September 01, 2017 1:15 PM  
**To:** Joe Cooper  
**Subject:** RE: LeDuc

That is with respect to Canchola. Guerra has no order and so we can obtain whatever verdict against him the jury renders. Guerra's BK was never concluded and was dismissed. Do we need to have a SC. We are not accepting \$50,000.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Friday, September 01, 2017 11:36 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Thank you Steve. I believe I have mentioned that the authority I have with which to settle this case is \$50,000. The order of Judge Lastreto allows plaintiffs to proceed with the case up to the limits of the policy, which is \$50,000. Plaintiffs would appear to only be able to seek \$50,000 based upon the operative pleadings.

I will get back in touch with you regarding the issues referenced in your earlier email.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Friday, September 01, 2017 10:46 AM



**To:** Joe Cooper  
**Subject:** LeDuc

Joe

There is no sense in having the MSC. We are light years apart. Pls inform the court that the MSC should be taken off.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Friday, September 01, 2017 3:30 PM  
**To:** Joe Cooper  
**Subject:** RE: LeDuc

Joe

Well we will see about that. Read Canchola's discharge. It specifically says the BK does not stop creditors from collecting from anyone else who is also liable on the debt, "such as an insurance company". There is nothing about the order which limits the damages to \$50,000. I hope you have not advised the insurance carrier that that is the case as your deposition is certain to be taken someday soon.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

**From:** Joe Cooper [mailto:Joe@coopllp.com]  
**Sent:** Friday, September 01, 2017 2:25 PM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Steve:

Mr. Guerra's bankruptcy was not dismissed. He failed to appear for his first meeting of creditors. I am informed he had a flat tire on his way from Los Angeles. The trustee filed a motion to dismiss, as per protocol when a debtor fails to appear. He appeared at the rescheduled meeting of creditors and the motion was removed from calendar. He will be discharged from bankruptcy, probably Wednesday of next week. If that happens, and I am advised it will, then plaintiffs only can pursue a claim up to the policy of \$50,000 as per the court order.

Feel free to call me when you are able.

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Friday, September 01, 2017 1:15 PM  
**To:** Joe Cooper  
**Subject:** RE: LeDuc

That is with respect to Canchola. Guerra has no order and so we can obtain whatever verdict against him the jury renders. Guerra's BK was never concluded and was dismissed. Do we need to have a SC. We are not accepting \$50,000.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142

(559) 436-1135 (fax)

**From:** Joe Cooper [<mailto:Joe@coopllp.com>]  
**Sent:** Friday, September 01, 2017 11:36 AM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Thank you Steve. I believe I have mentioned that the authority I have with which to settle this case is \$50,000. The order of Judge Lastreto allows plaintiffs to proceed with the case up to the limits of the policy, which is \$50,000. Plaintiffs would appear to only be able to seek \$50,000 based upon the operative pleadings.

I will get back in touch with you regarding the issues referenced in your earlier email.

Joe

**From:** Stephen R. Cornwell [<mailto:Steve@CornwellSample.com>]  
**Sent:** Friday, September 01, 2017 10:46 AM  
**To:** Joe Cooper  
**Subject:** LeDuc

Joe

There is no sense in having the MSC. We are light years apart. Pls inform the court that the MSC should be taken off.

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

1 **JOSEPH D. COOPER SR. #139993**  
2 **COOPER & COOPER**

3 **ATTORNEYS AT LAW**

4 7519 N. Ingram Avenue, Suite 103

5 Fresno, California 93711

6 Telephone (559) 442-1650

7 Facsimile (559) 442-1659

COPY

8 Attorneys for Defendants,

9 MARIO ALBERTO GUERRA (erroneously sued herein as MARIO ALBERTO GUERRO),  
10 GUERRA PRODUCE and DANIEL CANCHOLA

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF FRESNO**

13 CAL LeDUC; TORI ABBY; MILEY )  
14 ABBY, a minor, by and through her )  
15 Guardian ad Litem TORI ABBY; MANDY )  
16 JOBE; LUKUS LeDUC; JAY LeDUC; and )  
17 CAL LeDUC as successor in interest to the )  
18 estate of Marsha Kay LeDuc, )

19 Plaintiffs,

20 vs.

21 GENERAL MOTORS CORPORATION; )  
22 TOYOTA MOTOR CORPORATION; )  
23 NEW UNITED MOTOR )  
24 MANUFACTURING, INC.; TRQSS, INC. )  
25 (F/K/A QUALITY SAFETY SYSTEMS )  
26 COMPANY); TRW AUTOMOTIVE )  
27 GMBH (F/K/A TRW GmbH; F/K/A TRW )  
28 Repa GmbH); TRW CANADA LIMITED; )  
MARIO ALBERTO GUERRA; DANIEL )  
M. CANCHOLA; GUERRA PRODUCE; )  
and DOES 1 to 50, inclusive, )

Defendants.

CASE NO. 13CECG03811

**MANDATORY SETTLEMENT  
CONFERENCE STATEMENT**

DATE: September 6, 2017

TIME: 10:00 a.m.

DEPT: 575

Complaint Filed: December 11, 2013

23 COMES NOW, Defendants, MARIO ALBERTO GUERRA (erroneously sued herein as  
24 MARIO ALBERTO GUERRO), GUERRA PRODUCE and DANIEL CANCHOLA, who hereby  
25 offer the following settlement conference statement.

26 ///

27 ///

28 ///

I

**PARTIES**

Plaintiffs, CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in interest to the estate of Marsha Kay LeDuc, are represented by Stephen Cornwell of Cornwell & Sample, Richard A. Belardinelli of Georgeson & Belardinelli, and Mark P. Robinson, Jr., of Robinson Calcagnie Robinson.

Defendants, Toyota Motor Corporation and New United Motor Manufacturing, Inc., are represented by Vincent Galvin, Ryan A. McCarthy, and Anne Hanna, at Bowman & Brooke, LLP. Defendants, TRQSS, Inc., TRW Automotive GMBH, and TRW Canada Limited, are represented by Gregory S. Mason of McCormick Barstow and David B. Weinstein and Philip McDaniel of WEINSTEIN TIPPETTS & LITTLE LLP.

II

**STATEMENT OF FACTS**

At all times relevant to this action, MARIO GUERRA operated a commercial business where he would buy and sell citrus fruits. He had a cold storage facility that he would use to store fruits that he had purchased. MARIO GUERRA owned a Dodge Ram 3500 truck that he used for his business.

MARIO GUERRA hired DANIEL CANCHOLA to help him at his cold storage. DANIEL CANCHOLA performed some general labor tasks around the facility, and on a couple of occasions he drove the Dodge Ram 3500 truck for various business related purposes. At the time he was hired, DANIEL CANCHOLA told MARIO GUERRA that he did not have a driver's license but that he was in the process of getting one. MARIO GUERRA had seen DANIEL CANCHOLA drive his father's truck on a number of occasions and knew that DANIEL CANCHOLA had worked at a nearby business, Huebert Farms, where he also drove a vehicle. DANIEL CANCHOLA had been employed by Guerra Produce for three days and the day of the incident was his last day of employment.

On approximately June 12, 2013, Defendant, DANIEL CANCHOLA was in the course and scope of his employment while operating a 2001 Dodge 3500 license no. 99223A1 owned by

1 Defendant MARIO GUERRA. DANIEL CANCHOLA was sent to Huebert Farm to deliver bins  
2 and was on his way back to the cold storage when the accident occurred. There were no  
3 passengers in the vehicle with DANIEL CANCHOLA, who was driving southbound on Alta  
4 Avenue approaching the intersection with Manning in the City of Reedley, California. That  
5 intersection is controlled by a traffic signal and the insured driver was approaching a red light.  
6 DANIEL CANCHOLA applied the brakes, but the brakes were not responding as expected, and  
7 he was unable to bring the vehicle to a stop before making impact with the rear of a 2003 Pontiac  
8 Vibe license no. 4XDR416 driven by Plaintiff TORI ABBY, and owned by Robert Abby. The  
9 passengers in that vehicle were two-year old Plaintiff MILEY ABBY and Plaintiff MARSHA  
10 LEDUC. The Plaintiff's vehicle sustained major rear and front end damages as it was pushed into  
11 a 2003 GMC Sonoma license no. 6X05698. The Sonoma was driven by its registered owner,  
12 Guadalupe Medina. Ms. Medina's vehicle sustained minor rear-end damages.

13 Immediately following the accident, Defendant, MARIO GUERRA came to the scene and  
14 Defendant, DANIEL CANCHOLA informed him that there was an issue with the brakes when he  
15 was attempting to stop. Plaintiff, TORI ABBY has not had any contact with Defendants, MARIO  
16 GUERRA and DANIEL CANCHOLA, and they never approached at the scene of the accident.  
17 Plaintiff, TORI ABBY called Plaintiff, CAL LeDUC to inform him of the accident and he  
18 subsequently drove to the hospital in hopes of seeing his wife, Plaintiff, MARSHA LeDUC.  
19 Plaintiffs have not had any interactions at any time with the Defendants, DANIEL CANCHOLA  
20 and MARIO GUERRA.

21 It is alleged that Plaintiff, MARSHA LEDUC'S seatbelt failed during the collision, as did  
22 the airbags in the Pontiac Vibe, and that such failure amounts to negligence on the part of General  
23 Motors Corporation, Toyota Motor Corporation, New United Motor Manufacturing, Inc, TRQSS  
24 Inc., TRW Automotive CMBH, and TRW Canada Limited.

### 25 III

#### 26 LIABILITY

27 It is submitted that there is no comparative fault upon plaintiffs in this matter. The evidence  
28 is clear that defendant DANIEL CANCHOLA attempted to stop the vehicle he was operating at  
the time of the incident but was unable to stop in time before impacting the rear end of the vehicle

1 being occupied by plaintiff and decedent. Plaintiff settled with the automobile manufacturers for  
2 a total of \$675,000 based upon allegations of defective design of the vehicle and components  
3 therein. These defendants are no longer participating in this lawsuit.

#### 4 IV

#### 5 ARGUMENT

6 It is submitted that the injuries to the occupants of the vehicle are inconsistent. The  
7 plaintiffs MILEY ABBY and TORI ABBY are completely resolved from their relatively minor  
8 injuries. MILEY ABBY had a black right eye for a period of time, and TORI ABBY had an injured  
9 lower left leg and has resolved that for a few months. Both relatively minor injuries are completely  
10 inconsistent with the fractured neck of MARSHA LEDUC which resulted in her death. It is  
11 submitted that MARSHA LEDUC was not wearing her seatbelt at the time of the incident. TORI  
12 ABBY was wearing her seatbelt and MILEY ABBY was restrained in a booster seat with a  
13 seatbelt. First responders noticed the seatbelt draped over the right shoulder of the decedent but  
14 were unable to verify that she had her seatbelt on. In fact, nobody has testified that she was  
15 wearing her seatbelt at the time of the incident. So that its logical to assume that had MARSHA  
16 LEDUC been wearing her seatbelt she would have suffered similar type injuries as those of the  
17 other occupants. Instead, she suffered a C-3 interior fracture which ultimately lead to her death.  
18 As such, it is submitted that had she been wearing her seatbelt, she would have sustained similar  
19 injuries to the other occupants and thereby mitigate her damages; effectively eliminating any  
20 wrongful death claims of the parties.

#### 21 V

#### 22 SETTLEMENT DISCUSSIONS

23 Neither Defendants MARIO GUERRA, GUERRA PRODUCE, or DANIEL CANCHOLA,  
24 have any assets from which to recover. They are in essence judgement proof. The only asset to  
25 which they have with which to satisfy this claim is \$50,000 of available insurance coverage. That  
26 insurance coverage was offered to plaintiffs at the inception of the case. Plaintiffs take the position  
27 that defendant MARIO GUERRA was to procure a policy of \$750,000 given that the "GDW  
28 vehicle weight" of the Dodge 3500 DANIEL CANCHOLA was operating at the time of the  
incident required such a policy limit. Plaintiffs have indicated repeatedly that they would not settle

1 the case and that they are going to try the case against defendants and obtain a big a verdict as  
2 possible and then seek relief against defendant's insurer.

3 Defendants have attempted to get this matter to mediation, as required by the Fresno County  
4 local rules, but have been ignored. Defendants are informed to believe that when the automobile  
5 defendants were involved in the case, the mediation was undertaken with plaintiffs. That defendant  
6 MARIO GUERRA, GUERRA PRODUCE, and DANIEL CANCHOLA were not allowed to  
7 participate in that mediation. The available policy limits of \$50,000 has been on the table for  
8 plaintiffs since the inception of the case.

9 VI

10 **BANKRUPTCY ORDER**

11 Defendants filed for bankruptcy protection. The Hon. Rene Lastrcto issued an Order after  
12 Plaintiffs had sought relief from bankruptcy. The Court issued an Order allowing Plaintiffs to seek  
13 the available insurance policy limits of Defendants/Debtors MARIO GUERRA and DANIEL  
14 CANCHOLA. That amount is \$50,000. True and correct copies of the Bankruptcy Orders are  
15 attached hereto and incorporated herein by reference as Exhibit "A."

16 VII

17 **CONCLUSION**

18 Defendants have offered their policy limits. Plaintiffs cannot pursue any claims against  
19 Defendants beyond the available insurance policy limits of the Defendants pursuant to the  
20 Bankruptcy Order.

21 WHEREFORE, it is respectfully requested that the Court assist the parties in settling this  
22 matter.

23 Respectfully submitted,

24 Dated: September 1, 2017

COOPER & COOPER

25 By: 

26 JOSEPH D. COOPER SR.  
27 Attorneys for Defendants,  
GUERRA PRODUCE and  
28 DANIEL CANCHOLA



# **EXHIBIT “A”**

Filed 07/07/17

Case 17-11365

Doc 30

1 WALTER WILHELM LAW GROUP

(SPACE BELOW FOR FILING STAMP ONLY)

a Professional Corporation

2 Michael L. Wilhelm #101495

Matthew P. Bunting #306034

3 205 E. River Park Circle, Suite 410

Fresno, CA 93720

4 Telephone: (559) 435-9800

Facsimile: (559) 435-9868

5 E-mail: mwillhelm@W2LG.com

mbunting@W2LG.com

6 Attorneys for Movants

7 CAL LeDUC; TORI ABBY; MILEY ABBY, a

Minor, by and through her Guardian ad Litem

8 TORI ABBY; MANDY JOBE; LUKUS LeDUC;

JAY LeDUC; and CAL LeDUC as successor

9 In interest to the estate of Marsha Kay LeDUC,

## 10 IN THE UNITED STATES BANKRUPTCY COURT

## 11 EASTERN DISTRICT OF CALIFORNIA

## 12 FRESNO DIVISION

13 In re

CASE NO. 17-11365

14 MARIO A. GUERRA,

Chapter 7

15 Debtor.

DC NO. WW-1

17 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
18 Minor, by and through her Guardian ad  
Litem TORI ABBY; MANDY JOBE; LUKUS  
19 LeDUC; JAY LeDUC; and CAL LeDUC as  
successor In interest to the estate of  
20 Marsha Kay LeDUC,**ORDER GRANTING RELIEF FROM  
STAY TO PURSUE PENDING ACTION  
IN NON-BANKRUPTCY FORUM  
PURSUANT TO 11 U.S.C. 362(d)(1)**

21 Movants.

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street

Fresno, CA 93721

Courtroom 13

Judge: Honorable René Lastreto II

22 v.

23 MARIO A. GUERRA and TRUDI G.  
24 MANFREDO, Chapter 7 Trustee,

25 Respondents.

26 //

27 //

RECEIVED

July 05, 2017

CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0006081609G RELIEF FROM STAY TO  
A ACTION IN NON-BANKRUPTCY  
UT TO 11 U.S.C. 362(d)(1)

-1-

00148194-MPB-07.05.2017

LP0011095

Filed 07/07/17

Case 17-11365

Doc 30

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action in Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in  
6 interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of MARIO A. GUERRA (the "Debtor"), came before  
8 the Court for hearing at the above date and time in the above entitled courtroom. The  
9 matter was resolved without oral argument.  
10

11 The Court considered the Motion, the Memorandum of Points and Authorities  
12 and other papers submitted in support of the Motion including the Declaration of  
13 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
14 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
15 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
16 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
17 foregoing:  
18

19 IT IS HEREBY ORDERED that:  
20

21 1. The Motion is GRANTED.

22 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
23 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
24 13CECG03811, pending before the Superior Court of California for the County of  
25 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
26 including the entry of judgment, including any post-judgment motions, appeals or other  
27 appellate review. Relief from the automatic stay is granted to permit enforcement of  
28

Filed 07/07/17

Case 17-11365

Doc 30

1 judgment against any insurance proceeds resulting from the litigation. Relief from the  
2 automatic stay is not granted to permit enforcement of any judgment against the Debtor.

3 3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.  
4  
5

6 b  
7 c  
8  
9

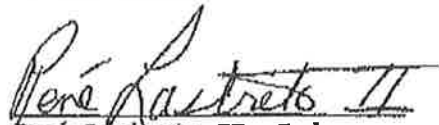
10 Submitted by:  
11 WALTER WILHELM LAW GROUP

12 

13 Michael L. Wilhelm, Attorneys for  
14 Movants CAL LeDUC; TORI ABBY;  
15 MILEY ABBY, a Minor, by and  
16 through her Guardian ad Litem  
17 TORI ABBY; MANDY JOBE;  
18 LUKUS LeDUC; JAY LeDUC; and  
19 CAL LeDUC as successor in interest  
20 to the estate of Marsha Kay LeDUC  
21  
22  
23

24 Dated: Jul 07, 2017

By the Court

25 

26 René Lastrato II, Judge  
27 United States Bankruptcy Court, Jrt  
28

Filed 07/07/17

Case 17-11346

Doc 26

1 WALTER WILHELM LAW GROUP  
 a Professional Corporation  
 2 Michael L. Wilhelm #101495  
 Matthew P. Bunting #306034  
 3 205 E. River Park Circle, Suite 410  
 Fresno, CA 93720  
 4 Telephone: (559) 435-9800  
 Facsimile: (559) 435-9868  
 5 E-mail: mwilhelm@W2LG.com  
 mbunting@W2LG.com

(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Movants  
 7 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 Minor, by and through her Guardian ad Litem  
 8 TORI ABBY; MANDY JOBE; LUKUS LeDUC;  
 JAY LeDUC; and CAL LeDUC as successor  
 9 In interest to the estate of Marsha Kay LeDUC,

10 IN THE UNITED STATES BANKRUPTCY COURT  
 11 EASTERN DISTRICT OF CALIFORNIA  
 12 FRESNO DIVISION

In re

DANIEL M. CANCHOLA,

Debtor.

CASE NO. 17-11346

Chapter 7

DC NO. WW-1

17 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 18 Minor, by and through her Guardian ad  
 Litem TORI ABBY; MANDY JOBE; LUKUS  
 19 LeDUC; JAY LeDUC; and CAL LeDUC as  
 successor In interest to the estate of  
 20 Marsha Kay LeDUC,

Movants.

v.

23 DANIEL M. CANCHOLA, and JAMES E.  
 SALVEN, Chapter 7 Trustee,

Respondents.

ORDER GRANTING RELIEF FROM  
 STAY TO PURSUE PENDING ACTION  
 IN NON-BANKRUPTCY FORUM  
 PURSUANT TO 11 U.S.C. 362(d)(1)

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street  
Fresno, CA 93721

Courtroom 13

Judge: Honorable René Lastrato II

//

//

RECEIVED  
 July 05, 2017  
 CLERK, U.S. BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 0006091610

RELIEF FROM STAY TO  
 ACTION IN NON-BANKRUPTCY  
 IT TO 11 U.S.C. 362(d)(1)

-1-

00148180-MPB-07.06.2017

LP0011098

Filed 07/07/17

Case 17-11346

Doc 26

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action in Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor In  
6 Interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of DANIEL M. CANCHOLA (the "Debtor"), came  
8 before the Court for hearing at the above date and time in the above entitled courtroom.  
9

10 The matter was resolved without oral argument.

11 The Court considered the Motion, the Memorandum of Points and Authorities  
12 and other papers submitted in support of the Motion including the Declaration of  
13 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
14 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
15 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
16 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
17 foregoing:  
18

19 IT IS HEREBY ORDERED that:  
20

21 1. The Motion is GRANTED.

22 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
23 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
24 13CECG03811, pending before the Superior Court of California for the County of  
25 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
26 including the entry of judgment, including any post-judgment motions, appeals or other  
27 appellate review. Relief from the automatic stay is granted to permit enforcement of  
28

Filed 07/07/17


Case 17-11346

Doc 26

1 judgment against any insurance proceeds resulting from the litigation. Relief from the  
2 automatic stay is not granted to permit enforcement of any judgment against the Debtor.


3 3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.  
4  
5  
6  
7  
8  
9

10 Submitted by:  
11 WALTER WILHELM LAW GROUP

12   
13 Michael L. Wilhelm, Attorneys for  
14 Movants CAL LeDUC; TORI ABBY;  
15 MILEY ABBY, a Minor, by and  
16 through her Guardian ad Litem  
17 TORI ABBY; MANDY JOBE;  
18 LUKUS LeDUC; JAY LeDUC; and  
19 CAL LeDUC as successor in interest  
20 to the estate of Marsha Kay LeDUC  
21  
22  
23

24 Dated: Jul 07, 2017

By the Court

25   
26 René Lastrato II, Judge  
27 United States Bankruptcy Court MT  
28

3 **PROOF OF SERVICE**

4 I am a citizen of the United States of America, a resident of Fresno County, California,  
5 over the age of eighteen 18 years and not a party to the within entitled cause or matter. My  
6 business address is 7519 North Ingram Avenue, Suite 103, Fresno, California 93711. On the date  
7 this document was executed, specified below, I served the foregoing **MANDATORY**  
8 **SETTLEMENT CONFERENCE STATEMENT**, to the parties in this action by serving \_\_\_ an  
9 original, X a true copy as follows:

10 X **(By Mail)** I am readily familiar with the business practice at my place of business for  
11 collection and processing of correspondence for mailing with the United States Postal  
12 Service. Correspondence so collected and processed is deposited with the United States  
13 Postal Service that same day in the ordinary course of business.

14 \_\_\_ **(By Overnight)** By placing the document(s) listed above in a sealed envelope, and placing  
15 the same for overnight delivery by Federal Express at Fresno, California.

16 \_\_\_ **(By Hand)** I caused each envelope to be delivered by hand.


17 \_\_\_ **(By Telecopy)** I caused each document to be sent by telecopier.

18 Stephen Cornwell  
19 Cornwell & Sample  
20 7045 North Fruit  
21 Fresno, CA 93711  
22 **Tel: (559) 431-3142**  
23 **Fax: (559) 436-1135**  
**Counsel for Plaintiffs, Cal LeDuc, et al.**

Mark P. Robinson, Jr.  
Robinson Calcagnie Robinson  
Shapiro Davis, Inc.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
**Tel: (949) 720-1288**  
**Fax: (949) 720-1292**  
**Counsel for Plaintiffs, Cal LeDuc, et al.**

24 Richard A. Belardinelli  
25 Georgeson & Belardinelli  
26 7060 N. Fresno Street, Suite 250  
27 Fresno, CA 93720  
28 **Tel: (559) 447-8800**  
**Fax: (559) 447-0747**  
**Counsel for Plaintiffs, Cal LeDuc, et al.**

I declare under the penalty of perjury that the foregoing is true and correct. Executed and  
served on September 1, 2017, at Fresno, California.

  
Sylvia Sais



## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Wednesday, September 06, 2017 9:48 AM  
**To:** <mailto:cvalentine@FRESNO.COURTS.CA.GOV>  
**Cc:** Joe Cooper; [sylvia@coopllp.com](mailto:sylvia@coopllp.com)  
**Subject:** LeDuc

Good Morning Camille

Regarding the MSC, there is no reason to have an MSC. The defendants have declared bankruptcy. The BK court has specifically permitted an action against any insurance carrier that would insure the judgment. The LeDuc case is about a death and injuries caused by the two defendants. The insurance carrier claims that the insurance company can only be responsible for the declared policy limits. This is not true in this case and nothing can prevent me from trying the value of the death of Mrs. LeDuc and the injuries to Mrs. LeDuc's daughter and granddaughter. Once the jury has made that determination, I will sue the insurance carrier for the judgment. The parties are at a complete impasse'. The insurance company claims that the collection of the judgment will be limited to the \$50,000 policy limits. My learned counsel in bankruptcy is 100% certain that if the policy limits are actually \$750,000 that the plaintiffs may pursue the insurance company for this amount or whatever the amount of the judgment is if it is less than \$750,000. So, the parties are fixed in their determination. Nothing can be accomplished at the MSC. It would be a waste of time.

I hope that this clears matters up. If there are any questions, feel free to call me. And please put me on your email list along with Yer.

Thank You.

Steve C

Stephen R. Cornwell  
Cornwell & Sample  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)

## Stephen R. Cornwell

---

**From:** Sylvia <Sylvia@coopllp.com>  
**Sent:** Thursday, September 07, 2017 8:01 AM  
**To:** cvalentine@fresno.courts.ca.gov  
**Cc:** Stephen R. Cornwell; Yer Xiong; Joe Cooper  
**Subject:** Guerra adv. LeDuc; FSC Case No. 13CECG03811  
**Attachments:** Court.pdf; MSC Stmt.pdf

Hi, Camille –

Please see attached correspondence. Thank you.

Sylvia Sais  
Paralegal to Joseph D. Cooper Sr.  
Cooper & Cooper  
7519 N. Ingram Avenue; Suite 103  
Fresno, CA 93711  
(559)442-1650 (phone)  
(559)442-1659 (fax)  
[sylvia@coopllp.com](mailto:sylvia@coopllp.com)

**COOPER & COOPER**

ATTORNEYS AT LAW  
7519 North Ingram Avenue, Suite 103  
Fresno, California 93711

joe@coopllp.com

September 7, 2017

File No.70028.14

**VIA EMAIL ONLY**

Fresno County Superior Court  
Attn: Camille Valentine  
1130 O Street  
Fresno, CA 93721

Re: ***Guerra adv. LeDuc***  
Fresno County Superior Court Case No. 13CECG03811

Dear Ms. Valentine:

I am in receipt of an email forwarded to you by counsel for Plaintiffs. Enclosed is a copy of the Mandatory Settlement Conference Statement my clients proffered. The Bankruptcy Order is attached to my client's Mandatory Settlement Conference Statement.

The Order of the Bankruptcy Court does not provide for the removal of the Mandatory Settlement Conference from the Court's calendar. Defendants request that the Court schedule the Mandatory Settlement Conference again. There was no clear explanation as to why it was removed from calendar. As it stands now, I still don't have any confirmation as to how or why the Mandatory Settlement Conference was removed from calendar. Plaintiffs certainly would like to have had it removed and were requesting that it be removed. Defendants believe that the settlement conference should go forward.

Thank you for your efforts in getting the settlement conference in this matter back on calendar. Plaintiffs mediated this matter outside of the Defendants' participation and now are seeking to avoid the settlement conference. My clients are entitled to a settlement conference and attempted to comply with a Court Order to mediate. My clients and I look forward to hearing back from you.

Very truly yours,

COOPER & COOPER

*(Dictated but not read – sent to avoid delay)*

Joseph D. Cooper Sr.

JDC:ss

Enclosure

cc (w/enclosure; via email only): Stephen Cornwell, Esq.

N:\secty\70028.14\CORRESP\Court.MSC

1 **JOSEPH D. COOPER SR. #139993**  
2 **COOPER & COOPER**

3 **ATTORNEYS AT LAW**

4 7519 N. Ingram Avenue, Suite 103

5 Fresno, California 93711

6 Telephone (559) 442-1650

7 Facsimile (559) 442-1659

8 Attorneys for Defendants,

9 MARIO ALBERTO GUERRA (erroneously sued herein as MARIO ALBERTO GUERRO),  
10 GUERRA PRODUCE and DANIEL CANCHOLA

11 **SUPERIOR COURT OF CALIFORNIA**

12 **COUNTY OF FRESNO**

13 CAL LeDUC; TORI ABBY; MILEY )  
14 ABBY, a minor, by and through her )  
15 Guardian ad Litem TORI ABBY; MANDY )  
16 JOBE; LUKUS LeDUC; JAY LeDUC; and )  
17 CAL LeDUC as successor in interest to the )  
18 estate of Marsha Kay LeDuc, )

19 Plaintiffs, )

20 vs. )

21 GENERAL MOTORS CORPORATION; )  
22 TOYOTA MOTOR CORPORATION; )  
23 NEW UNITED MOTOR )  
24 MANUFACTURING, INC.; TRQSS, INC. )  
25 (F/K/A QUALITY SAFETY SYSTEMS )  
26 COMPANY); TRW AUTOMOTIVE )  
27 GMBH (F/K/A TRW GmbH; F/K/A TRW )  
28 Repa GmbH); TRW CANADA LIMITED; )  
MARIO ALBERTO GUERRA; DANIEL )  
M. CANCHOLA; GUERRA PRODUCE; )  
and DOES 1 to 50, inclusive, )

Defendants. )

CASE NO. 13CECG03811

**MANDATORY SETTLEMENT  
CONFERENCE STATEMENT**

DATE: September 6, 2017

TIME: 10:00 a.m.

DEPT: 575

Complaint Filed: December 11, 2013

COMES NOW, Defendants, MARIO ALBERTO GUERRA (erroneously sued herein as  
MARIO ALBERTO GUERRO), GUERRA PRODUCE and DANIEL CANCHOLA, who hereby  
offer the following settlement conference statement.

///

///

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**I**

**PARTIES**

Plaintiffs, CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in interest to the estate of Marsha Kay LeDuc, are represented by Stephen Cornwell of Cornwell & Sample, Richard A. Belardinelli of Georgeson & Belardinelli, and Mark P. Robinson, Jr., of Robinson Calcagnie Robinson.

Defendants, Toyota Motor Corporation and New United Motor Manufacturing, Inc., are represented by Vincent Galvin, Ryan A. McCarthy, and Anne Hanna, at Bowman & Brooke, LLP. Defendants, TRQSS, Inc., TRW Automotive GMBH, and TRW Canada Limited, are represented by Gregory S. Mason of McCormick Barstow and David B. Weinstein and Philip McDaniel of WEINSTEIN TIPPETTS & LITTLE LLP.

**II**

**STATEMENT OF FACTS**

At all times relevant to this action, MARIO GUERRA operated a commercial business where he would buy and sell citrus fruits. He had a cold storage facility that he would use to store fruits that he had purchased. MARIO GUERRA owned a Dodge Ram 3500 truck that he used for his business.

MARIO GUERRA hired DANIEL CANCHOLA to help him at his cold storage. DANIEL CANCHOLA performed some general labor tasks around the facility, and on a couple of occasions he drove the Dodge Ram 3500 truck for various business related purposes. At the time he was hired, DANIEL CANCHOLA told MARIO GUERRA that he did not have a driver's license but that he was in the process of getting one. MARIO GUERRA had seen DANIEL CANCHOLA drive his father's truck on a number of occasions and knew that DANIEL CANCHOLA had worked at a nearby business, Huebert Farms, where he also drove a vehicle. DANIEL CANCHOLA had been in employed by Guerra Produce for three days and the day of the incident was his last day of employment.

On approximately June 12, 2013, Defendant, DANIEL CANCHOLA was in the course and scope of his employment while operating a 2001 Dodge 3500 license no. 99223A1 owned by

1 Defendant MARIO GUERRA. DANIEL CANCHOLA was sent to Huebert Farm to deliver bins  
2 and was on his way back to the cold storage when the accident occurred. There were no  
3 passengers in the vehicle with DANIEL CANCHOLA, who was driving southbound on Alta  
4 Avenue approaching the intersection with Manning in the City of Reedley, California. That  
5 intersection is controlled by a traffic signal and the insured driver was approaching a red light.  
6 DANIEL CANCHOLA applied the brakes, but the brakes were not responding as expected, and  
7 he was unable to bring the vehicle to a stop before making impact with the rear of a 2003 Pontiac  
8 Vibe license no. 4XDR416 driven by Plaintiff TORI ABBY, and owned by Robert Abby. The  
9 passengers in that vehicle were two-year old Plaintiff MILEY ABBY and Plaintiff MARSHA  
10 LEDUC. The Plaintiff's vehicle sustained major rear and front end damages as it was pushed into  
11 a 2003 GMC Sonoma license no. 6X05698. The Sonoma was driven by its registered owner,  
12 Guadalupe Medina. Ms. Medina's vehicle sustained minor rear-end damages.

13 Immediately following the accident, Defendant, MARIO GUERRA came to the scene and  
14 Defendant, DANIEL CANCHOLA informed him that there was an issue with the brakes when he  
15 was attempting to stop. Plaintiff, TORI ABBY has not had any contact with Defendants, MARIO  
16 GUERRA and DANIEL CANCHOLA, and they never approached at the scene of the accident.  
17 Plaintiff, TORI ABBY called Plaintiff, CAL LeDUC to inform him of the accident and he  
18 subsequently drove to the hospital in hopes of seeing his wife, Plaintiff, MARSHA LeDUC.  
19 Plaintiffs have not had any interactions at any time with the Defendants, DANIEL CANCHOLA  
20 and MARIO GUERRA.

21 It is alleged that Plaintiff, MARSHA LEDUC'S seatbelt failed during the collision, as did  
22 the airbags in the Pontiac Vibe, and that such failure amounts to negligence on the part of General  
23 Motors Corporation, Toyota Motor Corporation, New United Motor Manufacturing, Inc, TRQSS  
24 Inc., TRW Automotive CMBH, and TRW Canada Limited.

### 25 III

### 26 LIABILITY

27 It is submitted that there is no comparative fault upon plaintiffs in this matter. The evidence  
28 is clear that defendant DANIEL CANCHOLA attempted to stop the vehicle he was operating at  
the time of the incident but was unable to stop in time before impacting the rear end of the vehicle

1 being occupied by plaintiff and decedent. Plaintiff settled with the automobile manufacturers for  
2 a total of \$675,000 based upon allegations of defective design of the vehicle and components  
3 therein. These defendants are no longer participating in this lawsuit.

#### 4 IV

#### 5 ARGUMENT

6 It is submitted that the injuries to the occupants of the vehicle are inconsistent. The  
7 plaintiffs MILEY ABBY and TORI ABBY are completely resolved from their relatively minor  
8 injuries. MILEY ABBY had a black right eye for a period of time, and TORI ABBY had an injured  
9 lower left leg and has resolved that for a few months. Both relatively minor injuries are completely  
10 inconsistent with the fractured neck of MARSHA LEDUC which resulted in her death. It is  
11 submitted that MARSHA LEDUC was not wearing her seatbelt at the time of the incident. TORI  
12 ABBY was wearing her seatbelt and MILEY ABBY was restrained in a booster seat with a  
13 seatbelt. First responders noticed the seatbelt draped over the right shoulder of the decedent but  
14 were unable to verify that she had her seatbelt on. In fact, nobody has testified that she was  
15 wearing her seatbelt at the time of the incident. So that its logical to assume that had MARSHA  
16 LEDUC been wearing her seatbelt she would have suffered similar type injuries as those of the  
17 other occupants. Instead, she suffered a C-3 interior fracture which ultimately lead to her death.  
18 As such, it is submitted that had she been wearing her seatbelt, she would have sustained similar  
19 injuries to the other occupants and thereby mitigate her damages; effectively eliminating any  
20 wrongful death claims of the parties.

#### 21 V

#### 22 SETTLEMENT DISCUSSIONS

23 Neither Defendants MARIO GUERRA, GUERRA PRODUCE, or DANIEL CANCHOLA,  
24 have any assets from which to recover. They are in essence judgement proof. The only asset to  
25 which they have with which to satisfy this claim is \$50,000 of available insurance coverage. That  
26 insurance coverage was offered to plaintiffs at the inception of the case. Plaintiffs take the position  
27 that defendant MARIO GUERRA was to procure a policy of \$750,000 given that the "GDW  
28 vehicle weight" of the Dodge 3500 DANIEL CANCHOLA was operating at the time of the  
incident required such a policy limit. Plaintiffs have indicated repeatedly that they would not settle

1 the case and that they are going to try the case against defendants and obtain a big a verdict as  
2 possible and then seek relief against defendant's insurer.

3 Defendants have attempted to get this matter to mediation, as required by the Fresno County  
4 local rules, but have been ignored. Defendants are informed to believe that when the automobile  
5 defendants were involved in the case, the mediation was undertaken with plaintiffs. That defendant  
6 MARIO GUERRA, GUERRA PRODUCE, and DANIEL CANCHOLA were not allowed to  
7 participate in that mediation. The available policy limits of \$50,000 has been on the table for  
8 plaintiffs since the inception of the case.

9 VI

10 BANKRUPTCY ORDER

11 Defendants filed for bankruptcy protection. The Hon. Rene Lastreto issued an Order after  
12 Plaintiffs had sought relief from bankruptcy. The Court issued an Order allowing Plaintiffs to seek  
13 the available insurance policy limits of Defendants/Debtors MARIO GUERRA and DANIEL  
14 CANCHOLA. That amount is \$50,000. True and correct copies of the Bankruptcy Orders are  
15 attached hereto and incorporated herein by reference as Exhibit "A."

16 VII

17 CONCLUSION

18 Defendants have offered their policy limits. Plaintiffs cannot pursue any claims against  
19 Defendants beyond the available insurance policy limits of the Defendants pursuant to the  
20 Bankruptcy Order.

21 WHEREFORE, it is respectfully requested that the Court assist the parties in settling this  
22 matter.

23 Respectfully submitted,

24 Dated: September 1, 2017

COOPER & COOPER

25 By: 

26 JOSEPH D. COOPER SR.  
27 Attorneys for Defendants,  
28 MARIO ALBERTO GUERRA  
GUERRA PRODUCE and  
DANIEL CANCHOLA



# **EXHIBIT “A”**

Filed 07/07/17

Case 17-11365

Doc 30

1 WALTER WILHELM LAW GROUP  
 a Professional Corporation  
 2 Michael L. Wilhelm #101495  
 Matthew P. Bunting #306034  
 3 205 E. River Park Circle, Suite 410  
 Fresno, CA 93720  
 4 Telephone: (559) 435-9800  
 Facsimile: (559) 435-9868  
 5 E-mail: mwillhelm@W2LG.com  
 mbunting@W2LG.com

(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Movants  
 7 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 Minor, by and through her Guardian ad Litem  
 8 TORI ABBY; MANDY JOBE; LUKUS LeDUC;  
 JAY LeDUC; and CAL LeDUC as successor  
 9 In Interest to the estate of Marsha Kay LeDUC,

10 IN THE UNITED STATES BANKRUPTCY COURT  
 11 EASTERN DISTRICT OF CALIFORNIA  
 12 FRESNO DIVISION

In re

MARIO A. GUERRA,

Debtor.

CASE NO. 17-11365

Chapter 7

DC NO. WW-1

17 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 18 Minor, by and through her Guardian ad  
 Litem TORI ABBY; MANDY JOBE; LUKUS  
 19 LeDUC; JAY LeDUC; and CAL LeDUC as  
 successor In Interest to the estate of  
 20 Marsha Kay LeDUC,

Movants.

v.

23 MARIO A. GUERRA and TRUDI G.  
 MANFREDO, Chapter 7 Trustee,

Respondents.

ORDER GRANTING RELIEF FROM  
 STAY TO PURSUE PENDING ACTION  
 IN NON-BANKRUPTCY FORUM  
 PURSUANT TO 11 U.S.C. 362(d)(1)

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street

Fresno, CA 93721

Courtroom 13

Judge: Honorable René Lastreto II

//

//

RECEIVED

July 05, 2017

CLERK, U.S. BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 006081609

RELIEF FROM STAY TO  
 ACTION IN NON-BANKRUPTCY  
 NT TO 11 U.S.C. 362(d)(1)

-1-

00148184-MPB-07.05.2017

LP0011111

Filed 07/07/17

Case 17-11365

Doc 30

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action In Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in  
6 interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of MARIO A. GUERRA (the "Debtor"), came before  
8 the Court for hearing at the above date and time in the above entitled courtroom. The  
9 matter was resolved without oral argument.  
10

11 The Court considered the Motion, the Memorandum of Points and Authorities  
12 and other papers submitted in support of the Motion including the Declaration of  
13 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
14 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
15 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
16 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
17 foregoing:  
18

19 IT IS HEREBY ORDERED that:  
20

- 21 1. The Motion is GRANTED.
- 22 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
23 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
24 13CECG03811, pending before the Superior Court of California for the County of  
25 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
26 including the entry of judgment, including any post-judgment motions, appeals or other  
27 appellate review. Relief from the automatic stay is granted to permit enforcement of  
28

Filed 07/07/17

Case 17-11365

Doc 32

1 judgment against any insurance proceeds resulting from the litigation. Relief from the  
2 automatic stay is not granted to permit enforcement of any judgment against the Debtor.

3 3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.  
4  
5

6 b  
7 c  
8  
9

10 Submitted by:  
11 WALTER WILHELM LAW GROUP



13 Michael L. Wilhelm, Attorneys for  
14 Movants CAL LeDUC; TORI ABBY;  
15 MILEY ABBY, a Minor, by and  
16 through her Guardian ad Litem  
17 TORI ABBY; MANDY JOBE;  
18 LUKUS LeDUC; JAY LeDUC; and  
19 CAL LeDUC as successor in interest  
20 to the estate of Marsha Kay LeDUC  
21  
22  
23

24 Dated: Jul 07, 2017

By the Court



René Lastrato II, Judge  
United States Bankruptcy Court

Filed 07/07/17

Case 17-11346

Doc 26

1 WALTER WILHELM LAW GROUP  
 a Professional Corporation  
 2 Michael L. Wilhelm #101495  
 Matthew P. Bunting #308034  
 3 205 E. River Park Circle, Suite 410  
 Fresno, CA 93720  
 4 Telephone: (559) 435-9800  
 Facsimile: (559) 435-9868  
 5 E-mail: mwilhelm@W2LG.com  
 mbunting@W2LG.com

(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Movants  
 7 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 Minor, by and through her Guardian ad Litem  
 8 TORI ABBY; MANDY JOBE; LUKUS LeDUC;  
 JAY LeDUC; and CAL LeDUC as successor  
 9 In interest to the estate of Marsha Kay LeDUC,

10 IN THE UNITED STATES BANKRUPTCY COURT  
 11 EASTERN DISTRICT OF CALIFORNIA  
 12 FRESNO DIVISION

13 In re  
 14 DANIEL M. CANCHOLA,  
 15 Debtor.

CASE NO. 17-11346

Chapter 7

DC NO. WW-1

16  
 17 CAL LeDUC; TORI ABBY; MILEY ABBY, a  
 18 Minor, by and through her Guardian ad  
 Litem TORI ABBY; MANDY JOBE; LUKUS  
 19 LeDUC; JAY LeDUC; and CAL LeDUC as  
 successor in interest to the estate of  
 20 Marsha Kay LeDUC,

**ORDER GRANTING RELIEF FROM  
 STAY TO PURSUE PENDING ACTION  
 IN NON-BANKRUPTCY FORUM  
 PURSUANT TO 11 U.S.C. 362(d)(1)**

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street  
 Fresno, CA 93721  
 Courtroom 13

Judge: Honorable René Lastreto II

Movants.

v.

21  
 22  
 23 DANIEL M. CANCHOLA, and JAMES E.  
 SALVEN, Chapter 7 Trustee,

Respondents.

//

//

RECEIVED  
 July 05, 2017  
 U.S. BANKRUPTCY COURT  
 EASTERN DISTRICT OF CALIFORNIA  
 0005081610

RELIEF FROM STAY TO  
 ACTION IN NON-BANKRUPTCY  
 IT TO 11 U.S.C. 362(d)(1)

-1-

00148180-MPB-07.06.2017

LP0011114

Filed 07/07/17

Case 17-11346

Doc 26

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action in Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in  
6 interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of DANIEL M. CANCHOLA (the "Debtor"), came  
8 before the Court for hearing at the above date and time in the above entitled courtroom.  
9 The matter was resolved without oral argument.

10 The Court considered the Motion, the Memorandum of Points and Authorities  
11 and other papers submitted in support of the Motion including the Declaration of  
12 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
13 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
14 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
15 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
16 foregoing:

17 IT IS HEREBY ORDERED that:

- 18 1. The Motion is GRANTED.
- 19 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
20 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
21 13CECG03811, pending before the Superior Court of California for the County of  
22 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
23 including the entry of judgment, including any post-judgment motions, appeals or other  
24 appellate review. Relief from the automatic stay is granted to permit enforcement of

Filed 07/07/17

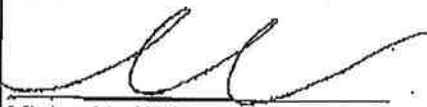
Case 17-11346

Doc 26

1 judgment against any insurance proceeds resulting from the litigation. Relief from the  
2 automatic stay is not granted to permit enforcement of any judgment against the Debtor.


3 3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.  
4  
5  
6  
7  
8  
9

10 Submitted by;  
11 WALTER WILHELM LAW GROUP

12   
13 Michael L. Wilhelm, Attorneys for  
14 Movants CAL LeDUC; TORI ABBY;  
15 MILEY ABBY, a Minor, by and  
16 through her Guardian ad Litem  
17 TORI ABBY; MANDY JOBE;  
18 LUKUS LeDUC; JAY LeDUC; and  
19 CAL LeDUC as successor in interest  
20 to the estate of Marsha Kay LeDUC  
21  
22  
23

24 Dated: Jul 07, 2017

By the Court

25   
26 René Castrejo II, Judge  
27 United States Bankruptcy Court JT  
28

3 **PROOF OF SERVICE**

4 I am a citizen of the United States of America, a resident of Fresno County, California,  
5 over the age of eighteen 18 years and not a party to the within entitled cause or matter. My  
6 business address is 7519 North Ingram Avenue, Suite 103, Fresno, California 93711. On the date  
7 this document was executed, specified below, I served the foregoing **MANDATORY**  
8 **SETTLEMENT CONFERENCE STATEMENT**, to the parties in this action by serving \_\_\_ an  
9 original, X a true copy as follows:

- 10 X **(By Mail)** I am readily familiar with the business practice at my place of business for  
11 collection and processing of correspondence for mailing with the United States Postal  
12 Service. Correspondence so collected and processed is deposited with the United States  
13 Postal Service that same day in the ordinary course of business.  
14 \_\_\_ **(By Overnight)** By placing the document(s) listed above in a sealed envelope, and placing  
15 the same for overnight delivery by Federal Express at Fresno, California.  
16 \_\_\_ **(By Hand)** I caused each envelope to be delivered by hand.  
17 \_\_\_ **(By Telecopy)** I caused each document to be sent by telecopier.

16 Stephen Cornwell Cornwell & Sample 7045 North Fruit Fresno, CA 93711 17 <b>Tel: (559) 431-3142</b> 18 <b>Fax: (559) 436-1135</b> 19 <b>Counsel for Plaintiffs, Cal LeDuc, et al.</b>	Mark P. Robinson, Jr. Robinson Calcagnie Robinson Shapiro Davis, Inc. 19 Corporate Plaza Drive Newport Beach, CA 92660 <b>Tel: (949) 720-1288</b> <b>Fax: (949) 720-1292</b> <b>Counsel for Plaintiffs, Cal LeDuc, et al.</b>
20 Richard A. Belardinelli Georgeson & Belardinelli 21 7060 N. Fresno Street, Suite 250 Fresno, CA 93720 22 <b>Tel: (559) 447-8800</b> 23 <b>Fax: (559) 447-0747</b> <b>Counsel for Plaintiffs, Cal LeDuc, et al.</b>	

24 I declare under the penalty of perjury that the foregoing is true and correct. Executed and  
25 served on September 1, 2017, at Fresno, California.

26   
27 Sylvia Sais  
28



1 **JOSEPH D. COOPER SR. #139993**  
2 **COOPER & COOPER**

3 **ATTORNEYS AT LAW**  
4 7519 N. Ingram Avenue, Suite 103  
5 Fresno, California 93711  
6 Telephone (559) 442-1650  
7 Facsimile (559) 442-1659

8 Attorneys for Defendants,  
9 MARIO ALBERTO GUERRA, GUERRA PRODUCE, and DANIEL CANCHOLA

10 **SUPERIOR COURT OF CALIFORNIA**  
11 **COUNTY OF FRESNO**

12 CAL LeDUC; TORI ABBY; MILEY )  
13 ABBY, a minor, by and through her )  
14 Guardian ad Litem TORI ABBY; MANDY )  
15 JOBE; LUKUS LeDUC; and JAY LeDUC; )  
16 Plaintiffs, )

17 vs. )

18 MARIO ALBERTO GUERRA; DANIEL )  
19 M. CANCHOLA; GUERRA PRODUCE; )  
20 and DOES 1 to 50, inclusive, )  
21 Defendants. )

CASE NO. 13CECG03811

**TRIAL BRIEF OF DEFENDANTS,**  
**MARIO ALBERTO GUERRA,**  
**GUERRA PRODUCE, AND DANIEL**  
**CANCHOLA**

Complaint Filed: December 11, 2013

**DATE: October 2, 2017**  
**TIME: 9:00 a.m.**  
**DEPT: 501**

*(Assigned to Judge Mark W. Snauffer for  
all purposes)*

22 COME NOW, Defendants, MARIO ALBERTO GUERRA (erroneously sued herein as  
23 MARIO ALBERTO GUERRA), GUERRA PRODUCE, and DANIEL CANCHOLA  
24 ("Defendants"), and submit the following trial brief.

25 **I**

26 **INTRODUCTION**

27 This case involves a rear-end motor vehicle accident that occurred when the car driven by  
28 Defendant, DANIEL CANCHOLA (and owned by Defendant, MARIO ALBERTO GUERRA)  
rear-ended the vehicle driven by Plaintiff, TORI ABBY (and owned by Robert Abby), which  
caused MARSHA KAY LEDUC to sustain fatal injuries. TORI ABBY and her daughter,  
MILEY ABBY, who was in the backseat, also sustained personal injury.

1 Defendants, DANIEL CANCHOLA and MARIO ALBERTO GUERRA, filed petitions  
2 for bankruptcy protection. Plaintiffs were successful in their efforts to remove from Bankruptcy  
3 Court jurisdiction, the instant action to the extent of the insurance policy limits of Defendants.  
4 Defendants have been discharged by the Bankruptcy Court. As such, this case is limited to  
5 \$50,000, the available insurance policy limits of Defendants. [Please see Declaration of Joseph D.  
6 Cooper Sr. in support of Motion in Limine, exhibits 2, 3, and 4.]

## 7 II

### 8 SUMMARY OF FACTS

9 At all times relevant to this action, Defendant, MARIO GUERRA, operated a commercial  
10 business whereby he would buy and sell citrus fruit. He had a cold storage facility that he would  
11 use to store fruit that he had purchased. Defendant, MARIO GUERRA, owned a Dodge Ram  
12 3500 truck that he used for his business.

13 Defendant, MARIO GUERRA hired Defendant, DANIEL CANCHOLA, to help him at  
14 his cold storage. Defendant, DANIEL CANCHOLA, performed some general labor tasks around  
15 the facility, and on a couple of occasions, he drove the Dodge Ram 3500 truck for various  
16 business-related purposes. At the time he was hired, Defendant, DANIEL CANCHOLA, told  
17 Defendant, MARIO GUERRA, that he did not have a driver's license but that he was in the  
18 process of getting one. Defendant, MARIO GUERRA, had seen Defendant, DANIEL  
19 CANCHOLA, drive his father's truck on a number of occasions and knew that Defendant,  
20 DANIEL CANCHOLA, had worked at a nearby business, Huebert Farms, where he also drove a  
21 vehicle. Defendant, DANIEL CANCHOLA, had been employed by Defendant, GUERRA  
22 PRODUCE for only three days. The day of the incident was his last day of employment.

23 At approximately 9:30 a.m. on June 12, 2013, Defendant, DANIEL CANCHOLA, was in  
24 the course and scope of his employment while operating a 2001 Dodge 3500, License No.  
25 99223A1, owned by Defendant MARIO GUERRA and Maria Medina. Defendant,  
26 DANIEL CANCHOLA, was sent to Huebert Farm to deliver bins, and was on his way back to the  
27 cold storage when the accident occurred. There were no passengers in the vehicle with Defendant,  
28 DANIEL CANCHOLA, who was driving southbound on Alta Avenue approaching its intersection

1 with Manning in the City of Reedley, California. That intersection is controlled by a traffic signal  
2 and Defendant, DANIEL CANCHOLA, was approaching a red light. He applied the brakes, but  
3 the brakes were not responding as he had anticipated, and he was unable to bring the vehicle to a  
4 stop before making impact with the rear of a 2003 Pontiac Vibe, License No. 4XDR416, driven  
5 by Plaintiff TORI ABBY, and owned by Robert Abby. The passengers in that vehicle were two-  
6 year-old Plaintiff, MILEY ABBY, and Decedent, MARSHA LEDUC. The Plaintiffs' vehicle  
7 sustained major rear and front-end damage as it was pushed into a 2003 GMC Sonoma License  
8 No. 6X05698. The Sonoma was driven by its registered owner, Guadalupe Medina. Ms. Medina's  
9 vehicle sustained minor rear-end damage.

### 10 III

#### 11 LEGAL ARGUMENTS

12 The Third Amended Complaint on file herein consists of several causes of action against  
13 Defendants. The first cause of action alleged is entitled "Wrongful Death." Paragraph 24 of the  
14 Complaint, contained within the wrongful death cause of action, sets forth that Defendant,  
15 DANIEL CANCHOLA, was negligent in the operation of the vehicle which had been negligently  
16 entrusted to him by Defendant, MARIO GUERRA.

17 The Second Cause of Action in the Complaint is for the personal injuries sustained by  
18 Plaintiff, TORI ABBY, and contains only one allegation as to Defendants, that they were the legal  
19 cause of the personal injuries suffered by her. (See Paragraph 30 of the Complaint.) It also  
20 realleges Paragraph 24 as set forth above. The Third Cause of Action in the Complaint is for the  
21 personal injuries sustained by Plaintiff, MILEY ABBY, and incorporates by reference Paragraph  
22 24. In the Fourth Cause of Action, Plaintiff, TORI ABBY, alleges a bystander claim.

23 The operative pleading relates exclusively to a motor vehicle accident. Plaintiffs sought  
24 with their most recent effort to amend their Complaint, to narrow the triable issues to the motor  
25 vehicle accident. They didn't seek to expand the scope of the case at bench, they sought to limit  
26 the scope. Plaintiffs haven't sought to address any extraneous matters by way of filing another  
27 claim or declaratory relief action.

28 ///

1 In light of the fact that Defendants have been discharged in bankruptcy, save the available  
2 insurance policy benefits of \$50,000.00, the Court must recognize that Plaintiffs have some motive  
3 for wanting to try this case. A motive that is not within the operative pleading.

4 IV

5 CONCLUSION

6 The case at bench is a motor vehicle accident case. It is based in negligence. The  
7 Defendants filed for bankruptcy protection. Pursuant to an order of the Bankruptcy Court, the *only*  
8 claims available to Plaintiffs in this matter are the insurance policy proceeds in this matter.  
9 Plaintiffs are not entitled to pursue any other damages.

10 Defendants stand ready, willing and able to participate in the trial of this matter.

11  
12 Dated: September 26, 2017

COOPER & COOPER

13  
14 By: 

15 JOSEPH D. COOPER SR.  
16 Attorneys for Defendants,  
17 MARIO ALBERTO GUERRA,  
18 GUERRA PRODUCE and  
19 DANIEL CANCHOLA  
20  
21  
22  
23  
24  
25

26 N:\secty\70028.14\PLEADINGS\Trial Brief.rev.so.wpd  
27  
28

1 *LeDuc vs. General Motors, et al.*  
2 Fresno County Superior Court Case No. 13CECG03811

3 **PROOF OF SERVICE**

4 I am a citizen of the United States of America, a resident of Fresno County, California,  
5 over the age of eighteen 18 years and not a party to the within entitled cause or matter. My  
6 business address is 7519 North Ingram Avenue, Suite 103, Fresno, California 93711. On the date  
7 this document was executed, specified below, I served the foregoing **TRIAL BRIEF OF**  
8 **DEFENDANTS, MARIO ALBERTO GUERRA, GUERRA PRODUCE, AND DANIEL**  
9 **CANCHOLA**, to the parties in this action by serving \_\_\_ an original, X a true copy as follows:

10 X **(By Mail)** I am readily familiar with the business practice at my place of business for  
11 collection and processing of correspondence for mailing with the United States Postal  
12 Service. Correspondence so collected and processed is deposited with the United States  
13 Postal Service that same day in the ordinary course of business.

14 \_\_\_ **(By Overnight)** By placing the document(s) listed above in a sealed envelope, and placing  
15 the same for overnight delivery by Federal Express at Fresno, California.

16 X **(By Hand)** I caused each envelope to be delivered by hand.

17 \_\_\_ **(By Telecopy)** I caused each document to be sent by telecopier.

18 **HAND-DELIVERED**

19 Stephen Cornwell  
20 Cornwell & Sample  
21 7045 North Fruit  
22 Fresno, CA 93711  
23 ***Tel: (559) 431-3142***  
24 ***Fax: (559) 436-1135***  
***Counsel for Plaintiffs, Cal LeDuc, et al.***


25 **VIA U.S. MAIL ONLY**

26 Mark P. Robinson, Jr.  
27 Robinson Calcagnie Robinson  
28 Shapiro Davis, Inc.  
19 Corporate Plaza Drive  
Newport Beach, CA 92660  
***Tel: (949) 720-1288***  
***Fax: (949) 720-1292***  
***Counsel for Plaintiffs, Cal LeDuc, et al.***

29 **VIA U.S. MAIL ONLY**

30 Richard A. Belardinelli  
31 Georgeson & Belardinelli  
32 7060 N. Fresno Street, Suite 250  
33 Fresno, CA 93720  
34 ***Tel: (559) 447-8800***  
***Fax: (559) 447-0747***  
***Counsel for Plaintiffs, Cal LeDuc, et al.***

35 I declare under the penalty of perjury that the foregoing is true and correct. Executed and  
36 served on September 26, 2017, at Fresno, California.

37   
38 Sylvia Sais

1 Stephen R. Cornwell, CA Bar #40737  
CORNWELL & SAMPLE, LLP

2 Attorneys at Law  
7045 N. Fruit Avenue  
3 Fresno, CA 93711-0761  
Telephone: (559) 431-3142  
4 Facsimile: (559) 436-1135

5 Richard A. Belardinelli, CA Bar #65168  
GEORGESON AND BELARDINELLI  
6 7060 N. Fresno Street, Suite 250  
Fresno, CA 93720  
7 Telephone: (559) 447-8800  
8 Facsimile: (559) 447-0747

9 Mark P. Robinson, Jr., CA Bar #54426  
ROBINSON CALCAGNIE ROBINSON  
10 SHAPIRO DAVIS, INC.  
19 Corporate Plaza Drive  
11 Newport Beach, CA 92660  
(949) 720-1288  
12 Fax: (949) 720-1292

13 Attorneys for Plaintiffs CAL LeDUC; TORI ABBY; MILEY ABBY, a minor, by and  
14 through her Guardian ad Litem TORI ABBY; MANDY JOBE; LUKUS LeDUC; and JAY  
LeDUC

15  
16 SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO  
17 CENTRAL DIVISION

18 CAL LeDUC; TORI ABBY; MILEY  
19 ABBY, a minor, by and through her  
Guardian ad Litem TORI ABBY;  
20 MANDY JOBE; LUKUS LeDUC; and  
JAY LeDUC

21 Plaintiffs,

22 v.

23 MARIO ALBERTO GUERRA; DANIEL  
24 M. CANCHOLA; GUERRA PRODUCE;  
and DOES 1 to 50, inclusive,

25 Defendants.  
26

CASE NO.: 13 CE CG 03811 MWS

27 **PLAINTIFFS' MANDATORY  
SETTLEMENT CONFERENCE  
STATEMENT**

28 Date: September 29, 2017  
Time: TBD  
Dept.: 575

///

///

PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT

1 **I. INTRODUCTION**

2 This is an action arising out of a crash of a truck with an automobile. This  
3 occurred on June 12, 2013, on Alta Avenue near its intersection with Manning Avenue.  
4 The truck was being driven by Daniel Canchola ("Canchola"). Canchola was driving a  
5 truck owned by Mario Guerra ("Guerra") while an employee of Guerra's business, Guerra  
6 Produce. The truck Canchola was driving was a Dodge RAM 3500. The truck struck a  
7 Pontiac Vibe. The Vibe was being driven by Tori Abby. Her mother, Marsha LeDuc, was  
8 riding in the passenger seat. Also in the vehicle was Ms. Abby's daughter and Marsha  
9 LeDuc's granddaughter, Miley, who was seated behind her mother. Marsha LeDuc was 55  
10 years old.

11 This lawsuit seeks damages alleging that as a result of the crash, Marsha  
12 LeDuc, then 55 years of age, was killed and that Tori Abby and her daughter, Miley were  
13 injured. The Plaintiffs are Cal LeDuc, Marsha's husband, and Marsha's children, Tori  
14 Abby, Mandy Jobe, Jay LeDuc and Lukus LeDuc. They seek damages for the wrongful  
15 death of Marsha. Tori Abby seeks damages for her injuries and for the injuries to Miley.  
16 Tori Abby also seeks damages for her emotional distress in viewing the injury to her  
17 mother and to her daughter.

18 The Defendants are Daniel Canchola and Mario Guerra.

19 **II. PLEADINGS**

20 The Third Amended Complaint seeks damages against the driver and his  
21 employer for the death of Marsha LeDuc and the injuries to Tori and Miley Abby. Prior  
22 complaints sought damages from other defendants that manufactured the car or provided  
23 parts to it. Those defendants resolved the case with the Plaintiffs and the court has ruled  
24 that those settlements are in good faith. This finding of good faith bars any claim for  
25 indemnity and/or contribution.

26 The Defendants had not sought any indemnity or contribution by cross-  
27 complaint. The Third Amended Complaint names only the driver, Canchola, and his  
28 employer, Guerra as Defendants.

PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT

### III. LIABILITY

There can be no question of the liability of the Defendants in this matter. However, the defense claims that it somehow can limit damages in this case to \$50,000. It bases this contention on the declarations of the insurance policy insuring the defendants which is \$25,000/\$50,000. This was issued by Infinity Select Insurance. It also bases this contention on bankruptcy filed by both Defendants simultaneously immediately before this case was to proceed to trial earlier this year. Both Defendants have successfully obtained relief from the Bankruptcy Court. That Court has issued its order. A copy of the order is attached hereto as Exhibit "A." It plainly does not prohibit proceeding against the insurance carrier for whatever the carrier may be liable for. Here is where the parties differ.

The defense claims that the Plaintiffs, after they obtain a judgment, cannot proceed against the carrier for more than \$50,000 total, if the judgments for the death and injuries amount to that much. The Plaintiffs contend that the policy issued to Guerra as the owner of the truck was required by law to insure the truck for \$750,000. The law clearly requires that this truck, which has a gross vehicle weight in excess of 10,000 pounds and which was being used in Guerra's business to transport the merchandise of the insured, must have insurance in the amount of \$750,000. In fact, later in the year after this crash, the carrier amended the policy as of the day before the crash to state limits of \$750,000. Further, and more importantly, the policy contains a provision that if the law of the state in which the policy is written requires higher limits than declared, the law of the state amends the policy limits. California law clearly provides that this truck must be insured for \$750,000. Any contention to the contrary is simply incorrect.

Thus, given the posture of the insurance carrier in failing to admit that its policy actually has limits of \$750,000, the Plaintiffs have no alternative but to first obtain a judgment for whatever amount the jury finds are the damages. The Plaintiffs intend then to file an action against the carrier to establish, among other things, that the policy actually insures the incident for the \$750,000 limits. Potential other theories of liability may also

PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT



exist inasmuch as the Plaintiffs made a demand for the \$750,000 over two years ago which was declined.

Thus the parties are at loggerheads. Defense counsel believes that somehow the Plaintiffs are precluded from obtaining any judgment for over \$50,000 but the defense has no authority to support its position. Furthermore, Insurance Code section 11580 provides specifically that a policy issued in California must contain a provision that even if the insured becomes bankrupt, this does not preclude any rights against the carrier. The actual language of that provision is also provided as an attachment hereto as Exhibit "B."

## IV. CONCLUSION

This conference is a waste of time. The defense steadfastly maintains that somehow this court is precluded from rendering a judgment in excess of the stated policy limits. Stated differently, and by way of example, if the insurance carrier, Infinity, had issued a policy insuring a car for \$5,000/\$10,000 when the law required \$15,000/\$30,000, the defense contends that Plaintiffs would be precluded, if the insured declared bankruptcy, to sue for more than the policy limits even though the law required the policy to insure the vehicle for the higher limits. This simply is not the law. The insurance company gains no rights because the insured declared bankruptcy. Since Infinity is insisting that it does not have to pay more than the policy limits, we have the need to proceed to obtain rulings on the law and determine what rights the Plaintiffs have against Infinity for collection. Infinity has known this for several years. The Plaintiffs have steadfastly maintained that Infinity's policy will insure up to \$750,000 because the law requires that amount of coverage. The Plaintiffs will never resolve this case on Infinity's terms. It is a waste of the Court's time and counsel's time to argue about this. If Infinity wanted to it could have filed a companion action to obtain a Court Judgment that its policy is only \$25,000/\$50,000 but it has not done so.

/ / /

/ / /

/ / /

PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT

1 DATED: September 27, 2017.

CORNWELL & SAMPLE, LLP

2  
3  
4 By: \_\_\_\_\_



Stephen R. Cornwell  
Attorneys for Plaintiffs

5 CAL LeDUC; TORI ABBY; MILEY ABBY,  
6 a minor, by and through her Guardian ad  
7 Litem TORI ABBY; MANDY JOBE;  
8 LUKUS LeDUC; and JAY LeDUC  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT

TAB A

(SPACE BELOW FOR FILING STAMP ONLY)

WALTER WILHELM LAW GROUP  
a Professional Corporation  
Michael L. Wilhelm #101495  
Matthew P. Bunting #306034  
205 E. River Park Circle, Suite 410  
Fresno, CA 93720  
Telephone: (559) 435-9800  
Facsimile: (559) 435-9868  
E-mail: mwilhelm@W2LG.com  
mbunting@W2LG.com

Attorneys for Movants  
CAL LeDUC; TORI ABBY; MILEY ABBY, a  
Minor, by and through her Guardian ad Litem  
TORI ABBY; MANDY JOBE; LUKUS LeDUC;  
JAY LeDUC; and CAL LeDUC as successor  
In interest to the estate of Marsha Kay LeDUC,

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

MARIO A. GUERRA,  
Debtor.

CASE NO. 17-11365

Chapter 7

DC NO. WW-1

CAL LeDUC; TORI ABBY; MILEY ABBY, a  
Minor, by and through her Guardian ad  
Litem TORI ABBY; MANDY JOBE; LUKUS  
LeDUC; JAY LeDUC; and CAL LeDUC as  
successor In interest to the estate of  
Marsha Kay LeDUC,

Movants.

v.

MARIO A. GUERRA and TRUDI G.  
MANFREDO, Chapter 7 Trustee,

Respondents.

**ORDER GRANTING RELIEF FROM  
STAY TO PURSUE PENDING ACTION  
IN NON-BANKRUPTCY FORUM  
PURSUANT TO 11 U.S.C. 362(d)(1)**

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street  
Fresno, CA 93721  
Courtroom 13

Judge: Honorable René Lastreto II

//

//

RECEIVED  
July 05, 2017  
CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0006081609

ORDER GRANTING RELIEF FROM STAY TO  
PURSUE PENDING ACTION IN NON-BANKRUPTCY  
FORUM PURSUANT TO 11 U.S.C. 362(d)(1)

-1-

00148184-MPB-07.05.2017

LP0011129

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action in Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor In  
6 interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of MARIO A. GUERRA (the "Debtor"), came before  
8 the Court for hearing at the above date and time in the above entitled courtroom. The  
9 matter was resolved without oral argument.  
10

11 The Court considered the Motion, the Memorandum of Points and Authorities  
12 and other papers submitted in support of the Motion including the Declaration of  
13 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
14 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
15 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
16 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
17 foregoing:  
18

19 IT IS HEREBY ORDERED that:  
20

21 1. The Motion is GRANTED.

22 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
23 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
24 13CECG03811, pending before the Superior Court of California for the County of  
25 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
26 including the entry of judgment, including any post-judgment motions, appeals or other  
27 appellate review. Relief from the automatic stay is granted to permit enforcement of  
28

judgment against any insurance proceeds resulting from the litigation. Relief from the automatic stay is not granted to permit enforcement of any judgment against the Debtor.

3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.

b

c

Submitted by:  
WALTER WILHELM LAW GROUP



Michael L. Wilhelm, Attorneys for  
Movants CAL LeDUC; TORI ABBY;  
MILEY ABBY, a Minor, by and  
through her Guardian ad Litem  
TORI ABBY; MANDY JOBE;  
LUKUS LeDUC; JAY LeDUC; and  
CAL LeDUC as successor In interest  
to the estate of Marsha Kay LeDUC

Dated: Jul 07, 2017

By the Court



René Lastrero II, Judge  
United States Bankruptcy Court

(SPACE BELOW FOR FILING STAMP ONLY)

WALTER WILHELM LAW GROUP  
a Professional Corporation  
Michael L. Wilhelm #101495  
Matthew P. Bunting #306034  
205 E. River Park Circle, Suite 410  
Fresno, CA 93720  
Telephone: (559) 435-9800  
Facsimile: (559) 435-9868  
E-mail: mwilhelm@W2LG.com  
mbunting@W2LG.com

Attorneys for Movants  
CAL LeDUC; TORI ABBY; MILEY ABBY, a  
Minor, by and through her Guardian ad Litem  
TORI ABBY; MANDY JOBE; LUKUS LeDUC;  
JAY LeDUC; and CAL LeDUC as successor  
In interest to the estate of Marsha Kay LeDUC,

IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re

DANIEL M. CANCHOLA,  
Debtor.

CASE NO. 17-11346

Chapter 7

DC NO. WW-1

CAL LeDUC; TORI ABBY; MILEY ABBY, a  
Minor, by and through her Guardian ad  
Litem TORI ABBY; MANDY JOBE; LUKUS  
LeDUC; JAY LeDUC; and CAL LeDUC as  
successor In interest to the estate of  
Marsha Kay LeDUC,

Movants.

v.

DANIEL M. CANCHOLA, and JAMES E.  
SALVEN, Chapter 7 Trustee,

Respondents.

**ORDER GRANTING RELIEF FROM  
STAY TO PURSUE PENDING ACTION  
IN NON-BANKRUPTCY FORUM  
PURSUANT TO 11 U.S.C. 362(d)(1)**

Date: July 6, 2017

Time: 9:30 a.m.

Place: 2500 Tulare Street  
Fresno, CA 93721

Courtroom 13

Judge: Honorable René Lastreto II

//

//

RECEIVED  
July 05, 2017  
CLERK, U.S. BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
0006081610

ORDER GRANTING RELIEF FROM STAY TO  
PURSUE PENDING ACTION IN NON-BANKRUPTCY  
FORUM PURSUANT TO 11 U.S.C. 362(d)(1)

-1-

00148180-MPB-07.05.2017

LP0011132

1 AT FRESNO, IN THE EASTERN DISTRICT OF CALIFORNIA.

2 The hearing on the Motion for Relief from Stay to Pursue Pending Action in Non-  
3 Bankruptcy Forum Pursuant to 11 U.S.C. § 362(d)(1) ("Motion") filed by CAL LeDUC;  
4 TORI ABBY; MILEY ABBY, a Minor, by and through her Guardian ad Litem TORI  
5 ABBY; MANDY JOBE; LUKUS LeDUC; JAY LeDUC; and CAL LeDUC as successor in  
6 interest to the estate of Marsha Kay LeDUC, ("Movants"), parties in interest in the  
7 Chapter 7 bankruptcy proceeding of DANIEL M. CANCHOLA (the "Debtor"), came  
8 before the Court for hearing at the above date and time in the above entitled courtroom.  
9 The matter was resolved without oral argument.

10 The Court considered the Motion, the Memorandum of Points and Authorities  
11 and other papers submitted in support of the Motion including the Declaration of  
12 Stephen Cornwell, the record in this case, and admissible evidence presented to the  
13 Court on the Motion, and having received no objection to the Motion, hereby finds that:  
14 (a) notice of the Motion and hearing thereon were adequate, proper, and in compliance  
15 with B.R. 7004; (b) there is good cause to modify the automatic stay. Based on the  
16 foregoing:  
17

18 IT IS HEREBY ORDERED that:

19 1. The Motion is GRANTED.

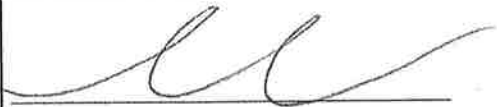
20 2. The automatic stay under 11 U.S.C. §362 is modified to permit the action  
21 styled as *Cal LeDuc et. al. v. General Motors Corporation et. al.* Case No.  
22 13CECG03811, pending before the Superior Court of California for the County of  
23 Fresno County (the "Car Crash Litigation"), to proceed to conclusion through and  
24 including the entry of judgment, including any post-judgment motions, appeals or other  
25 appellate review. Relief from the automatic stay is granted to permit enforcement of  
26  
27  
28



1 judgment against any insurance proceeds resulting from the litigation. Relief from the  
2 automatic stay is not granted to permit enforcement of any judgment against the Debtor.


3 3. The 14 day stay imposed by FRBP 4001(a)(3) is waived.  
4  
5  
6  
7  
8  
9

10 Submitted by:  
11 WALTER WILHELM LAW GROUP

12   
13 Michael L. Wilhelm, Attorneys for  
14 Movants CAL LeDUC; TORI ABBY;  
15 MILEY ABBY, a Minor, by and  
16 through her Guardian ad Litem  
17 TORI ABBY; MANDY JOBE;  
18 LUKUS LeDUC; JAY LeDUC; and  
19 CAL LeDUC as successor In interest  
20 to the estate of Marsha Kay LeDUC  
21  
22  
23

24 Dated: Jul 07, 2017

By the Court

25   
26 René Lastreto II, Judge  
27 United States Bankruptcy Court nrt  
28

TAB B

a particular rate or rating plan, if the failure materially increases any of the risks insured against, in which event **we** will give **you** at least thirty (30) days' notice.

6. A determination by the commissioner that the loss of, or changes in, **our** reinsurance covering all or part of the risk would threaten **our** financial integrity or solvency, in which event **we** will give **you** at least thirty (30) days' notice.
7. A determination by the commissioner that a continuation of the policy coverage would place **us** in violation of the laws of this **state** or the **state** of its domicile or that the continuation of coverage would threaten **our** solvency, in which event **we** will give **you** at least thirty (30) days' notice.
8. A change by **you** or **your** representative in the activities or property of the commercial or industrial enterprise which results in a materially added risk, a materially increased risk, or a materially changed risk, in which event **we** will give **you** at least thirty (30) days' notice.

**We** will mail to **you** at the address shown on the Declarations Page or deliver to **you** notice of nonrenewal not less than sixty (60) days before the end of the policy period, if **we** decide not to renew or continue this policy.

Proof of mailing is sufficient proof of notice. Mailing is equivalent to delivery.

Upon cancellation **you** may be entitled to a premium refund. If so, **we** will send it to **you** but **our** offer of a refund is not a condition of cancellation. If **you** cancel, the refund will be computed in accordance with **our** customary cancellation procedure. If **we** cancel, the refund will be computed on a pro-rata basis. The effective date of cancellation stated in a notice is the end of the policy period.

This policy will automatically terminate at the end of the current policy period if **you** or **your** representative do not accept **our** offer to renew or continue it. **Your** failure to pay the required continuation or renewal premium when due means that **you** have declined **our** offer.

## **TWO OR MORE AUTO POLICIES**

With respect to an **accident** to which this and any other **auto** policy **we** issue to **you** applies, the total limit of **our** liability under all the policies shall not exceed the highest applicable limit of liability under any one (1) policy.

## **SUITS AGAINST US**

**We** may not be sued unless there is full compliance with all the terms of this policy. **We** may not be sued under the Part A - Liability Coverage until the obligation of an **insured** to pay is finally determined either by judgment against that person after actual trial or by written agreement of that person, the claimant, and **us**. No one shall have any rights to make **us** a party to a suit to determine the liability of an **insured**. Any lawsuit brought against **us** under this policy must be commenced within two (2) years.

## **TRANSFER OF YOUR INTEREST IN THIS POLICY**

Interest in this policy may not be assigned without **our** written consent. If the policyholder named on the Declarations Page is an individual and dies, the policy will cover until the end of the policy period:

1. Any survivor;

2. The legal representative of the deceased person while acting within the scope of duties of a legal representative and while having proper custody of **your insured auto**; or
3. Any person having proper custody of **your insured auto** until a legal representative is appointed, but in no event for more than thirty (30) days after the date of such death.

In the event of a sale of **your insured auto**, coverage terminates as soon as the buyer takes possession of the **auto** and will not transfer to the new owner.

## **BANKRUPTCY**

**We** are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an **insured**.

## **OUR RECOVERY RIGHTS**

In the event of a payment under this policy, **we** are entitled to all the rights of recovery that the person or organization to whom payment was made has against another. That person or organization must sign and deliver to **us** any legal papers relating to the recovery, do whatever else is necessary to help **us** exercise those rights, and do nothing after **loss** to harm **our** rights.

When a person has been paid by **us** under this policy and also recovers from another, the amount recovered from the other shall be held by that person in trust for **us** and reimbursed to **us** to the extent of **our** payment.

## **TERMS OF POLICY CONFORMED TO STATUTES**

Terms of this policy which are in conflict with the statutes of the **state** in which **we** issue this policy are hereby amended to conform to such statutes.

## **FRAUD AND MISREPRESENTATION**

The statements made by **you** in the application are deemed to be representations. If any representation contained in the application is false, misleading, or materially affects the acceptance or rating of the risk by **us**, by either direct misrepresentation, omission, concealment of facts, or incorrect statements, this policy may be voided from its inception.

If any representation contained in any notification of change is false, misleading, or materially affects the acceptance or rating of the risk by **us**, by either direct misrepresentation, omission, concealment of facts, or incorrect statement, this policy may be voided from the effective date of the change. **We** reserve the right to void or deny coverage.

This provision shall also apply to misstatements of use and omissions of fact. **We** do not provide coverage for any **insured** who has made fraudulent statements or engaged in fraudulent conduct in connection with any **accident** or **loss** for which coverage is sought under this policy.

**We** may void this policy or deny coverage for fraud or misrepresentation even after the occurrence of an **accident** or **loss**. This means that **we** will not be liable for any claims or damages that would otherwise be covered.

If **we** are not permitted to void this policy or deny coverage, any first-party claims will be reduced by the amount of any additional premium owed to **us**. Any

1 **PROOF OF SERVICE**

2 I am a resident of the State of California, over the age of eighteen years,  
3 and not a party to the within action. My business address is 7045 N. Fruit Avenue,  
4 Fresno, California. On September 27, 2017, I served the within documents:

5 ***PLAINTIFFS' MANDATORY SETTLEMENT CONFERENCE STATEMENT***

6 ☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to  
the fax number(s) set forth below on this date before 5:00 p.m.

7 ☒ **BY HAND:** by personally delivering the document(s) listed above to the  
person(s) at the address(es) set forth below.

8 ☐ **BY MAIL:** by placing the sealed envelope for collection and processing  
9 for mailing, following this business's usual practices, with which I am  
10 readily familiar. On the same day correspondence is placed for collection  
and mailing, it is deposited in the ordinary course of business with the  
11 United States Postal Service.

12 ☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by  
an overnight delivery service company for delivery to the addressee(s) on  
13 the next business day.

14 ☐ **BY PERSONAL DELIVERY:** by causing personal delivery by  
\_\_\_\_\_ of the document(s) listed above to the person(s) at the  
15 address(es) set forth below.

16 ☒ **BY ELECTRONIC MAIL:** to the electronic mail address(es) below.

17 **By Electronic Mail Only to:**

18 Richard A. Belardinelli  
[Crgdanelaw@sbcglobal.net](mailto:Crgdanelaw@sbcglobal.net)  
19 GEORGESON AND  
BELARDINELLI  
7060 N. Fresno Street, Suite 250  
20 Fresno, CA 93720  
Facsimile: (559) 447-0747  
21 Co-Counsel for Plaintiffs

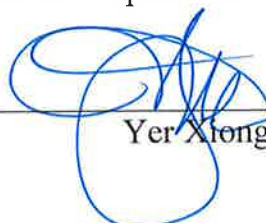
**By Electronic Mail Only to:**

Mark P. Robinson, Jr.  
[dfolia@rcrlaw.net](mailto:dfolia@rcrlaw.net)  
22 ROBINSON CALCAGNIE  
ROBINSON SHAPIRO  
DAVIS, INC.  
19 Corporate Plaza Drive  
23 Newport Beach, CA 92660  
Fax: (949) 720-1292  
24 Co-Counsel for Plaintiffs

**By Hand Delivery to:**

Joseph D. Cooper, Sr.  
[joe@coopllp.com](mailto:joe@coopllp.com)  
25 COOPER & COOPER  
7519 N. Ingram Avenue, Suite 103  
26 Fresno, CA 93711  
Facsimile: (559) 442-1659  
Counsel for Defendants  
27 GUERRA, GUERRA  
PRODUCE and CANCHOLA

28 I am readily familiar with the firm's practice of collection and processing  
correspondence for mailing. Under that practice it would be deposited with the U.S.  
Postal Service on that same day with postage thereon fully prepaid in the ordinary course  
of business. I am aware that on motion of the party served, service is presumed invalid if  
postal cancellation date or postage meter date is more than one day after date of deposit  
for mailing in affidavit. I declare under penalty of perjury under the laws of the State of  
California that the above is true and correct. Executed on September 27, 2017, at Fresno,  
California.

  
Yerron Xiong

LP0011137

## Stephen R. Cornwell

---

**From:** Joe Cooper <Joe@coopllp.com>  
**Sent:** Monday, October 09, 2017 4:57 PM  
**To:** Stephen R. Cornwell  
**Subject:** RE: LeDuc

Steve:

Did the plaintiffs offer a stipulated Judgment for 2.5m at the settlement conference? If so, please put it in writing. Do you have the stipulation regarding liability prepared?

Joe

**From:** Stephen R. Cornwell [mailto:Steve@CornwellSample.com]  
**Sent:** Thursday, October 05, 2017 4:45 PM  
**To:** Joe Cooper  
**Cc:** Rene Sample; Stephen R. Cornwell  
**Subject:** LeDuc

Joe

Attached are the Summary of the Case. I changed the title in view of the rulings and stipulation. Also attached is the Stipulation of Liability.

Please read these over and comment on any reservations.

Under separate cover I will send you the pages of the medical records re Tori, Miley and Marsha. Very few pages. In Marsha's case only 4 pages. I'll also send you the photos of the vehicle that I intend to use without any commitment that I am restricted to just these if for some reason I would feel it necessary to use more than just these.

We are fixing the exhibit books including yours which I brought back with me. Adding in your exhibits as 100 to whatever.

Steve

# CORNWELL & SAMPLE, LLP

Attorneys At Law

Stephen R. Cornwell  
René Turner Sample  
Catherine M. Houlihan

7045 N. Fruit Avenue  
Fresno, California 93711-0761

Telephone (559)431-3142  
Facsimile (559)436-1135  
www.cornwellsample.com

October 10, 2017

Joseph D. Cooper  
COOPER & COOPER  
7519 N. Ingram Avenue, Suite 103  
Fresno CA 93711

Re: *LeDuc v. Guerra*

Dear Mr. Cooper:

This will confirm that we attended a settlement conference in this matter before the Honorable Rosemary McGuire. At that time we proposed to the defense that the matter be resolved in this case by the entry of a stipulated judgment for \$2,500,000.00. There was no response to this proposal.

We are now willing to enter into a stipulated judgment as follows:

1. A judgment in the wrongful death matter for \$2,562,941.28. This takes into account Marsha's medical expenses.
2. A judgment in favor of Tori Abby for \$79,677.52;
3. A judgment in favor of Miley Abby for \$136,079.64;
4. An Order the Plaintiffs recover their costs of suit and that they may seek all rights subject to court approval pursuant to the CCP 998 offer in November of 2014 including interest, appropriate expert fees and any other rights to recover costs to which they would be entitled at the conclusion this trial.

Please let us know if you have authority to agree to this proposal.

Very truly yours,

Cornwell & Sample, LLP

Stephen R. Cornwell

SRC:yx

## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Thursday, October 12, 2017 3:51 PM  
**To:** Peter Klee (PKlee@sheppardmullin.com)  
**Cc:** Rene Sample; Richard Belardinelli  
**Subject:** Abby /LeDuc

Peter

This confirms our discussion this morning regarding the trial in which we are currently engaged. You represent Infinity. As a result of the collision of Infinity's insured truck, Mrs. LeDuc, 55 years of age, was killed and Tori, her daughter and Miley, her granddaughter, were injured./ We are proceeding on four causes of action: the injury to Tori with medical expenses, the injury to Miley with medical expenses, the death of Marsha with burial and medical expenses and the Dillon claim of Tori for observing her mother's death and the serious injury to her daughter, then 3 years old.

At a recent settlement conference another judge than the trial judge suggested a stipulated judgment for \$2,500,000. Since there was no representative of Infinity there this went nowhere. At Mr. Cooper's suggestion I did prepare a letter of our willingness to accept a stipulated judgment but did not sign it. I handed it to him. Enclosed is a copy. The figures are self-explanatory.

I am willing to enter into an agreement with Infinity to avoid the necessity of this trial proceeding further so long as it protects my rights to proceed with my clients to litigate coverage and bad faith against Infinity without any claim of collusion in obtaining the judgment. You suggested that to do this, subject to the final approval of Infinity, we would first dismiss our present case. We would enter into an agreement as if the insureds Guerra and Canchola had assigned to my clients all contractual rights necessary to pursue the rights under the policy just as if we had actually obtained a verdict and final judgment. A jury or the court in the coverage/bad faith case would be presented with a judgment in writing setting for the amounts and the costs, etc. The jury in that case would not be given any information about any agreed-to judgment. This would enable me, on behalf of my clients, to pursue coverage of the policy which I claim is \$750,000 and costs in the tort case on any basis (that it is owed under a duty to defend or any other basis) and any bad faith damages based on the agreed to judgments.

The amounts of the presumed agreed to judgments would be as set forth in my letter. Thus, there would be judgments for the heirs of Marsha LeDuc in the amount set forth in my letter as well as presumed judgments for Tori and Miley Abby as set forth in my letter. Infinity would stipulate the such judgments had been rendered by the court in the tort case in the event of a jury trial on issues of bad faith. We would have an actual judgment to show a jury.

As for the fourth topic in my letter, we need to file a cost bill and to pursue our rights under CCP 998 for interest and expert fees or any other rights we may have just as if we proceeded to final judgment in this trial. Thus, while we would agree to the amounts of the judgments if the case were to proceed to finality, we would still need to file a cost bill pursuant to CCP 1032 and to pursue our rights under CCP 998. We could either agree to those amounts just as we have approached the judgment or require our judge in this case to dismiss the jury and for us to file our papers and for the judge to allow Mr. Cooper to oppose the costs and then to make rulings on the costs so that they would ultimately become part of the presumed final judgment. Because of this, if we could not agree on those amounts, we would dismiss the jury but could not finally dismiss our case until we had those rulings. Once the court made those rulings they would become part of the presumed final judgment in the coverage/bad faith case, no court judgment for those costs would be entered in the trial we are now engaged and we would then dismiss our case now in session.

To make certain that we have a clear understanding, no judgment would be entered in the court in which we are trying a case for any damages or costs. But, a form of judgment typically used by the court would be prepared setting forth each cause of action as well as costs just as if we had prepared it in this court and filed it after all final court proceedings in the tort case. Any jury in the bad faith case would not know that a verdict had not in fact been actually rendered.

While preparing this email you advised me that I should not stand down with respect to our current trial and we will not do so. Our plan is to proceed with the evidence this coming Monday. I have provided my cell number to you in the event that you believe we can proceed with an agreement. In the meantime we are assuming that our trial will continue to judgment.

Steve Cornwell

Stephen R. Cornwell  
Cornwell & Sample, LLP  
7045 No. Fruit Ave.  
Fresno, CA 93711  
(559) 431-3142  
(559) 436-1135 (fax)  
[steve@cornwellsample.com](mailto:steve@cornwellsample.com)  
[www.cornwellsample.com](http://www.cornwellsample.com)



## Stephen R. Cornwell

---

**From:** Stephen R. Cornwell  
**Sent:** Monday, October 16, 2017 7:16 AM  
**To:** Peter Klee  
**Subject:** RE: LeDuc

Peter

This looks OK based on my reading at this time. I want to make sure that I do not have to prove bad faith to recover what I contend are the policy limits imposed by law. If the law effectively reforms the policy to \$750,000 and the policy, by its express provisions, modifies its limits to the \$750,000, that amount is paid regardless of any showing of bad faith. That has been my approach from the very beginning. I also want to prove Infinity was in bad faith for not recognizing or acknowledging that its policy is \$750,000 under California law and that it should have settled, was in bad faith etc. But these may prove to be two different matters and I do not want a court to interpret this agreement as being a one for all bad faith or not case. I think I need a provision that clearly states this. I'll read it over now that I have printed it out and see if it satisfies my need. As I told you I need to have an insurance expert look at this agreement and presume that I can accomplish this early today.

Also concerned that we stipulate that for all purposes of the case against Infinity that a judgment was entered. We almost say that. I'll read it over but have to get ready and head to court.

Steve

**From:** Peter Klee [mailto:PKlee@sheppardmullin.com]  
**Sent:** Sunday, October 15, 2017 7:40 PM  
**To:** Stephen R. Cornwell  
**Cc:** Joe Cooper  
**Subject:** RE: LeDuc

Steve, pursuant to our discussion this evening, attached is a revised copy of the agreement you sent to me this evening. The revisions have been highlighted in yellow. In addition, with your approval, I deleted the sentence stating that the agreement would have no effect on the insureds' rights. As we agreed, because the agreement results in a dismissal of the lawsuit, it will have an effect on them.

Peter H. Klee  
619.338.6624 | direct  
619.515.4122 | direct fax  
[PKlee@sheppardmullin.com](mailto:PKlee@sheppardmullin.com) | [Bio](#)

## SheppardMullin

Sheppard Mullin Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, CA 92101  
619.338.6000 | main  
[www.sheppardmullin.com](http://www.sheppardmullin.com)

**From:** Stephen R. Cornwell [<mailto:steve@cornwellsample.com>]  
**Sent:** Sunday, October 15, 2017 5:43 PM  
**To:** Peter Klee <[PKlee@sheppardmullin.com](mailto:PKlee@sheppardmullin.com)>  
**Cc:** Joe Cooper <[Joe@coopllp.com](mailto:Joe@coopllp.com)>  
**Subject:** LeDuc

We are ready to put on evidence tomorrow morning.

Here is the modified Agreement. I have added Brandt fees as a potential. I made a few other modifications. Please read over and advise. Obviously we have to have this finished by later tonight.

When someone signs for Infinity I need a separate document from the corporation stating who he is (officer, claims manager, etc) and that he has authority from the corporation to enter into this agreement signed by someone important.

You can call me if you would to advise that the final Agreement is done.

Steve

**Attention:** This message is sent by a law firm and may contain information that is privileged or confidential. If you received this transmission in error, please notify the sender by reply e-mail and delete the message and any attachments.