



C A L I F O R N I A

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RE: *Emma Bell v. Geomar, S.A. et al.*, First Appellate District Case No. A173526
Attorney General Position on Review of Settlements

Dear Counsel:

It has come to the attention of the Attorney General's Office ("AGO") that defendant Geomar, S.A. ("Geomar"), has made representations in an appellate brief in the matter above concerning the legal effect of AGO review of a private party settlement under Health and Safety Code section 25249.5 et seq. ("Proposition 65") as it applies to the San Francisco County Superior Court's review of the settlement for approval. We are writing to correct any statements that imply that the AGO's review of a Proposition 65 settlement constitutes an "approval" of the settlement.

Procedural Background:

A Proposition 65 private enforcer, Ema Bell (“Bell”), filed a motion for judicial approval of a settlement of a Proposition 65 matter with defendant Geomar, S.A. The AGO reviewed the settlement, as it does all settlements, and requested that the parties make certain revisions to the agreement. The parties complied with the AGO’s request, made the changes, and the AGO exercised its discretion not to object to entry of the agreement by the court.

Subsequently, another Proposition 65 private enforcer, Consumer Advocacy Group (“CAG”), attempted to intervene in the matter, arguing that the settlement should not be approved. The trial court denied CAG’s motion to intervene and approved the settlement agreement. This appeal followed.

Discussion

Consistent with the statutory amendment requiring judicial approval of settlements (Health & Saf. Code, § 25249.7, subd. (f)(4)), in 2003, the AGO enacted regulations requiring private enforcers to serve any settlement on the AGO within five days after its execution or concurrently with the service of the motion for judicial approval, whichever is earlier. (Cal. Code Regs., tit. 11, § 3003, subd. (a).) The regulations further require the enforcer to serve the motion and all supporting papers on the AGO no later than 45 days prior to the date of the hearing, and state that the papers filed with the court “*shall advise the court that the fact that the Attorney General does not object or otherwise respond to a settlement shall not be construed as endorsement of or concurrence in any settlement.*” (*Ibid.*, emphasis added; see also *id.*, subd. (d).)

Pursuant to its authority under Proposition 65, the AGO reviews all Proposition 65 settlements. If the parties seek judicial approval of the settlement, the AGO can exercise its discretion to appear in the matter and object to the settlement.¹ The decision not to object to the settlement is not to be construed as “endorsement of or concurrence in any settlement.” (Cal. Code Regs., tit. 11, § 3003, subds. (a), (d).) In certain cases, the AGO will contact the parties and request that the settlement be amended in some manner. As noted above, in this case, the AGO reviewed the settlement, requested that the parties make certain revisions, and, after they complied, exercised its discretion not to object to the settlement.

In its brief, Geomar suggests that the AGO’s review of the settlement agreement, along with the request for certain revisions to the agreement, and the ultimate decision not to object to

¹ If the settlement is not filed with the court, the AGO can exercise its discretion to issue a public letter stating that the settlement is inconsistent with the law. (See, e.g., <https://oag.ca.gov/system/files/media/ag-letter-settlement-of-proposition-65-notices-04-04-2025.pdf>.)

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the settlement, constitute the AGO's *approval* of the settlement as a whole. Geomar states, in particular:

Affirmative approval [of the revisions to the agreement] suggests that the Attorney General saw no major issue with the amended consent judgment and found nothing that is contrary to the public interest. (*Ema Bell v. Geomar, S.A.* [First Appellate District, No. A173526] Respondent's Brief at p.53.)

In sum, CAG asks the Court to overturn the trial court's grant of a Consent Judgment premised on an agreement between parties that was sanctioned by the Attorney General (*Id.* at p. 56)

The fact that the parties reached the Consent Judgment after undergoing Attorney General scrutiny was a testament to the trial court's statement that agency oversight ensures just settlements. (*Id.* at p. 57.)

The Attorney General supervised the parties in the process of drafting the proposed consent judgment (*Id.* at p. 61.)

The above statements suggest that, in reviewing a settlement agreement and requesting and obtaining revisions, the AGO has signaled its approval of every aspect of the revised agreement, including aspects of the agreement that may not have been considered by the AGO. This is incorrect. Nothing in the review process, whether the AGO seeks revisions or not, changes the AGO's position that "*the fact that the Attorney General does not object or otherwise respond to a settlement shall not be construed as endorsement of or concurrence in any settlement.*" (Cal. Code Regs., tit. 11, § 3003, subds. (a), (d).) It is ultimately the responsibility of the courts to review settlement agreements to determine if they meet the criteria for approval set out in the statute. (See Health & Saf. Code, § 25249.7, subd. (f)(4).)

We hope this clarifies our position on the effect of AGO review of settlements under Proposition 65.

Sincerely,

/s/ Susan S. Fiering

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