

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

In re ) Case No. 18-11651-B-11  
)  
GREGORY JOHN te Velde, )  
)  
Debtor. )

\_\_\_\_\_)  
)  
RANDY SUGARMAN, CHAPTER 11 )  
TRUSTEE, ) Adv. Proc. No. 19-01033  
) (Consolidated by Doc. #94 for  
Plaintiff, ) trial purposes only)

v. ) DCN: DLF-2  
)

IRZ CONSULTING, LLC; aka IRZ )  
CONSTRUCTION DIVISION, LLC, )  
)  
Defendant. )

\_\_\_\_\_)  
)  
IRZ CONSULTING, LLC, aka IRZ )  
CONSTRUCTION DIVISION, LLC, )  
)  
Third-Party Plaintiff, )

v. )  
)

U.S. FARM SYSTEMS; 4 CREEKS, )  
INC.; JOHN FAZIO dba FAZIO )  
ENGINEERING; DARI-TECH, INC.; )  
LASER LAND LEVELING, INC.; MAAS )  
ENERGY WORKS, INC.; GEORGE )  
CHADWICK dba GEORGE CHADWICK )  
CONSULTING; VALMONT NURTHWEST, )  
INC.; and NUCO BUILDING SYSTEMS )  
UTAH LLC, )  
)  
Third-Party Defendants.)

\_\_\_\_\_)  
**REPORT AND RECOMMENDATION ON GEORGE CHADWICK dba GEORGE CHADWICK  
CONSULTING'S MOTION FOR ORDER ESTABLISHING GOOD FAITH SETTLEMENT**

1 \_\_\_\_\_  
2 Steven Alfieris, DIAS LAW FIRM, INC., Hanford, CA, for George  
3 Chadwick dba Chadwick Consulting, Third-Party Defendant.

4 Benjamin P. Tarczy, MILLER NASH LLP, Portland, OR, for IRZ  
5 Consulting, LLC, Defendant/Third-Party Plaintiff.  
6 \_\_\_\_\_

7  
8 RENÉ LASTRETO II, Bankruptcy Judge:

9  
10 INTRODUCTION

11 Third Party Defendant George Chadwick dba Chadwick  
12 Consulting, Inc. ("Chadwick"), moves for an order: (a)  
13 establishing that Chadwick settled the adversary proceeding in  
14 good faith with chapter 11 liquidating trustee Randy Sugarman  
15 ("Plaintiff" or "Trustee"), (b) barring cross-complaints against  
16 Chadwick by granting Chadwick a full release of all claims with  
17 a waiver of the provisions of Cal. Civ. Code § 1542 wherein each  
18 side shall bear its own attorney's fees and costs, and (c)  
19 dismissing this case with prejudice as to Chadwick.<sup>1</sup>

20 Third Party Plaintiff IRZ Consulting, LLC ("IRZ") timely  
21 filed written opposition.<sup>2</sup>

22 Chadwick replied.<sup>3</sup>

23 This motion was filed on 28 days' notice pursuant to Local  
24 Rule of Practice ("LBR") 9014-1(f)(1). At the December 20, 2022  
25 hearing, the court took the matter under submission and  
26 indicated that it would issue a report and recommendation for *de*  
27 *novo* consideration by the District Court because the outcome of  
28 this motion is dispositive as to Chadwick's involvement in this

<sup>1</sup> Mot., Doc. #579.

<sup>2</sup> IRZ's Mem. P. & A., Doc. #609.

<sup>3</sup> Reply, Doc. #620.

1 proceeding.<sup>4</sup> For the reasons stated below, the court recommends  
2 that this motion be GRANTED.

3  
4 BACKGROUND

5 The underlying facts in this case are largely undisputed.  
6 In contrast, substantial disputes exist concerning liability for  
7 the damages to the bankruptcy estate asserted by the liquidating  
8 trustee.

9 This case derives from the chapter 11 bankruptcy of Gregory  
10 John te Velde ("Debtor").<sup>5</sup> Before filing, Debtor owned and  
11 operated several large dairies spanning thousands of acres of  
12 land across the Western United States. In late-2015, Debtor  
13 hired IRZ to provide construction management services for the  
14 construction of a new dairy operation in Boardman, Oregon  
15 colloquially referred to as Lost Valley Farm ("LVF"). IRZ, in  
16 turn, hired subcontractors to perform certain services. Chadwick  
17 was not one of these subcontractors; instead, Chadwick was hired  
18 by Debtor directly, and later by Plaintiff Trustee.

19 Debtor's goal was to build a waste disposal system at the  
20 LVF dairy that would separate solids from usable effluent. The  
21 fully filtered effluent was to be used to irrigate adjacent  
22 land. However, the operation failed, and an environmental  
23 catastrophe followed, which ultimately became a substantial  
24 factor in Debtor's filing of a chapter 11 bankruptcy case in  
25 2018.

26 ///

27  
28 

---

<sup>4</sup> Civ. Mins. (Dec. 12, 2022), Doc. #623.

<sup>5</sup> Case No. 18-11651 (Bankr. E.D. Cal.) ("Bankr.") Doc. #1.

1 Chadwick was hired for two tasks. First, Chadwick was to  
2 perform a hydrogeologic characterization to estimate where  
3 monitoring wells should be drilled to comply with the Oregon  
4 Department of Agriculture's ("ODA") guidelines for Debtor's  
5 Confined Animal Feeding Operation ("CAFO") permit.<sup>6</sup> The purpose  
6 of the investigation and models was to determine flow  
7 directions, pathways, and rates of groundwater flow, potential  
8 receptors of groundwater, potential contaminants, and the extent  
9 of contamination in the sub-surface environment.<sup>7</sup>

10 Second, in working with the ODA, Chadwick took the lead on  
11 monitoring water contamination in various monitoring wells  
12 drilled around the dairy site.

13 After Debtor filed chapter 11 bankruptcy, Plaintiff was  
14 appointed as liquidating trustee.<sup>8</sup> He proposed and confirmed a  
15 *Plan of Reorganization* in November 2019 (the "Plan").<sup>9</sup> Plaintiff  
16 hired Chadwick to continue groundwater monitoring and reporting  
17 for CAFO compliance. Chadwick did not file a proof of claim in  
18 the bankruptcy case.

19 Plaintiff filed this adversary proceeding in 2019 objecting  
20 to the claim filed by IRZ and asserting claims related to  
21 alleged construction defects in the waste system, which resulted  
22 in approximately \$19 million in damages.<sup>10</sup>

23 IRZ subsequently filed a third-party complaint against nine  
24 third-party defendants, including Chadwick, asserting claims for

---

25 <sup>6</sup> Edmonds Decl., Doc. #584.

26 <sup>7</sup> *Hydrogeological Characterization and Modeling*, Geosyntec Consultants,  
27 [https://geosyntec.com/practices/contaminated-site-assessment-and-  
cleanup/hydrogeological-characterization-and-modeling](https://geosyntec.com/practices/contaminated-site-assessment-and-cleanup/hydrogeological-characterization-and-modeling) (visited Jan. 9, 2023).

28 <sup>8</sup> Bankr. Docs. #841; #850.

<sup>9</sup> Bankr. Doc. #2975

<sup>10</sup> Compl., Doc. #1.

1 negligence, contribution, and indemnity.<sup>11</sup>

2 After being served with IRZ's third-party complaint,  
3 Chadwick moved to dismiss himself for IRZ's failure to state a  
4 claim upon which relief can be granted pursuant to Fed. R. Civ.  
5 P. ("Civ. Rule") 12(b)(6).<sup>12</sup> IRZ opposed.<sup>13</sup> Chadwick's motion was  
6 denied based on allegations that Chadwick provided assistance to  
7 determine feasibility of the design of the wastewater management  
8 system, prepared the groundwater monitoring plan, supervised  
9 construction of several wells on the dairy, and prepared a  
10 survey that was part of the process for environmental  
11 certification and ODA review.<sup>14</sup> Chadwick promptly filed an  
12 Answer.<sup>15</sup> Litigation, including discovery, ensued.

13 Recently, Chadwick entered into a *Settlement Agreement and*  
14 *Release of Claims* ("Settlement Agreement") with Plaintiff on or  
15 about September 6, 2022, a copy of which was included with this  
16 motion as an exhibit.<sup>16</sup> Plaintiff has authority under the Plan to  
17 settle litigation related to claims without notice and without  
18 bankruptcy court approval.<sup>17</sup>

19 Under the settlement, the parties agreed that there were no  
20 claims against Chadwick, and Chadwick will be dismissed from  
21 this action.<sup>18</sup> The parties agreed to a "walk-away" settlement to  
22 allow Chadwick to avoid spending his funds preparing and serving  
23 a motion for summary judgment, and so that the Plaintiff can  
24

---

25 <sup>11</sup> Third-Party Compl., Doc. #163.

26 <sup>12</sup> Mot., Doc. #194.

27 <sup>13</sup> Opp., Doc. #222.

28 <sup>14</sup> Civ. Mins. (June 5, 2021), Doc. #237; Order, Doc. #241.

<sup>15</sup> Answer, Doc. #251.

<sup>16</sup> Settlement Agreement, Ex. A, Doc. #582.

<sup>17</sup> Plan ¶ 6.8, Bankr. Doc. #2975.

<sup>18</sup> Settlement Agreement, Ex. A, Doc. #582.

1 avoid spending his funds opposing the same.<sup>19</sup> The Settlement  
2 contained a broad mutual release between Plaintiff and Chadwick  
3 over claims "relative to the Dispute." The mutual release  
4 included unknown claims under Cal. Civ. Code § 1542.

5 As evidence of good faith, Chadwick presented the  
6 declarations of (a) Plaintiff, (b) LVF dairy General Manager  
7 Joel Edmonds, and (c) Chadwick's attorney Michael A. Dias.

8 Plaintiff's declaration describes the formation of the  
9 Settlement Agreement:

- 10 - On August 31, 2022, Plaintiff participated in mediation  
11 with Chadwick, which resulted in the Settlement Agreement.
- 12 - Plaintiff and Chadwick agreed that there were no claims  
13 against Chadwick, and therefore he should be dismissed from  
14 this action.
- 15 - The release and covenant not to sue were negotiated and  
16 intended by the parties to release Chadwick from claims of  
17 the Debtor's estate and all parties related to the LVF  
18 dairy, including indemnity and contribution claims arising  
19 from any claim brought by Plaintiff against third parties,  
20 such as IRZ, for their role in LVF dairy.
- 21 - At no time did Plaintiff find any fault with Chadwick's  
22 work. In fact, Chadwick performed work for Plaintiff while  
23 LVF dairy was readied and sold.
- 24 - Chadwick continued to perform the groundwater monitoring  
25 and associated reporting that was required by the ODA-  
26 approved groundwater plan and reporting required by the  
27 CAFO permit, and also prepared hydrogeologic  
28 characterization reports for LVF dairy, which were a  
necessary component of the dairy's regulatory compliance.
- Plaintiff believes the Settlement Agreement represents a  
good faith arms-length resolution of the litigation against  
Chadwick and saves both Chadwick and Plaintiff from  
incurring additional attorney's fees should Chadwick file a  
motion for summary judgment.<sup>20</sup>

23 Since all of IRZ's claims against Chadwick are derivative  
24 of Plaintiff's claims against IRZ, Chadwick requests to be  
25 dismissed from this lawsuit.<sup>21</sup>

26 ///

---

27 <sup>19</sup> *Id.* at 2.

28 <sup>20</sup> Sugarman Decl., Doc. #583.

<sup>21</sup> Chadwick's Mem. P. & A., Doc. #585.



1 Chadwick replies, (i) IRZ cannot meet its burden of proof  
2 on its assertion of the lack of good faith, (ii) the Settlement  
3 Agreement accurately reflects Chadwick's proportionate share of  
4 liability and demonstrates good faith, (iii) consideration  
5 exists in the form of mutual release of claims, (iv)  
6 consideration is sufficient because Chadwick is waiving any  
7 right to future benefit from this bankruptcy case, (v)  
8 Chadwick's declarations are relevant, and (vi) although  
9 California law applies with respect to approval of the  
10 settlement, Oregon law is applicable to substantive claims, and  
11 therefore relevant to this motion.<sup>24</sup>

#### 13 DISCUSSION

##### 14 Good faith determination

15 Even though the substantive claims in this case involve  
16 Oregon law, both parties agree the good faith determination  
17 should be decided under California law.<sup>25</sup> CCP § 877 requires any  
18 settlement cutting off the right of contribution by non-settling  
19 defendants to be executed in good faith. *Fed. Sav. & Loan Ins.*  
20 *Corp. v. Butler*, 904 F.2d 505, 511 (9th Cir. 1990). CCP 877  
21 provides, in relevant part:

22 Where a release, dismissal with or without  
23 prejudice, or a covenant not to sue or not to  
24 enforce a judgment is given in good faith  
25 before verdict or judgment to one or more of  
26 a number of tortfeasors claimed to be liable  
for the same tort, or to one or more other co-  
obligors mutually subject to contribution  
rights, it shall have the following effect:

---

27 <sup>24</sup> Reply, Doc. #620.

28 <sup>25</sup> At the hearing, Chadwick's counsel also argued that the Settlement Agreement could be approved under Oregon law.

1 (a) It shall not discharge any other such  
2 party from liability unless its terms so  
3 provide, but it shall reduce the claims  
4 against the others in the amount stipulated by  
the release, the dismissal or the covenant, or  
in the amount of the consideration paid for  
it, whichever is greater.

5 (b) It shall discharge the party to whom it is  
6 given from all liability for any contribution  
to any other parties.

7 CCP § 877(a)-(b).

8 The Ninth Circuit has held that the procedures contained in  
9 CCP § 877.6 for making a motion for a "good faith" settlement  
10 determination are not binding on federal courts, but the  
11 provisions do create a "substantive" law that must be applied in  
12 an action in the federal courts to which California substantive  
13 law applies. *Butler*, 904 F.2d at 511 ("[N]othing is to prevent  
14 the district court from granting a motion for an early  
15 determination of the good faith question. In fact, it makes  
16 eminent good sense to do so."); see also *Trujillo v. Crescent*  
17 *Jewelers*, No. 99-55914, 2000 U.S. App. LEXIS 30235 (9th Cir.  
18 Nov. 29, 2000); *Medina v. Argent Mortg. Co.*, No. C05-02905 HRL,  
19 2007 U.S. Dist. LEXIS 48312 (N.D. Cal. June 27, 2007).

20 CCP § 877.6 provides, in relevant part:

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

25 (c) A determination by the court that the  
26 settlement was made in good faith shall bar  
any other tortfeasor or co-obligor from any  
further claims against the settling tortfeasor  
or co-obligor for equitable comparative  
27 contribution, or partial or comparative  
28 indemnity, based on comparative negligence or  
comparative fault.

1 CCP § 877.6(b) & (c).

2        Though procedural, the Ninth Circuit has determined that it  
3 “makes eminent sense” for a good faith determination under this  
4 statute to be made by a federal trial court. *Butler*, 904 F.2d at  
5 511. The party asserting the lack of good faith has the burden  
6 of proof on that issue. CCP 877.6(d); *Tech-Bilt, Inc. v.*  
7 *Woodward-Clyde & Assocs.*, 38 Cal. 3d 488, 499-500, 698 P.2d 159,  
8 166-67 (1985). However, the party seeking a good faith  
9 determination has the initial burden of presenting a *prima facie*  
10 case.

11        CCP § 877.6 requires complete notice to non-settling  
12 parties as a prerequisite to a determination of good faith.  
13 Assuming adequate notice is given, the California Supreme Court  
14 has outlined four factors a court should consider in determining  
15 good faith of a settlement, as well as two additional  
16 considerations:

- 17        • A rough approximation of plaintiff’s total recovery and the  
18        settlor’s proportionate liability.
- 18        • The amount paid in settlement.
- 19        • The allocation of settlement proceeds among plaintiffs.
- 20        • A recognition that a settlor should pay less in settlement  
21        than he would if he were found liable after a trial.
- 21        • The financial condition and insurance policy limits of the  
22        settling tortfeasor.
- 22        • The existence of collusion, fraud, or tortious conduct  
22        intended to injure the interests of the non-settling  
22        parties.

23 *Tech-Bilt*, 38 Cal. 3d at 499-500, 698 P.2d at 167. These  
24 statutes serve the policies under California law of sharing  
25 liability among parties potentially jointly at fault, while  
26 encouraging reasonable settlements. *Id.* at 494, 698 P.2d at 162.

27 ///

28 ///

1 A finding of good faith under CCP § 877 is a finding of  
2 fact for the trial court to be made under the factors stated in  
3 *Tech-Bilt*. See, *Owen v. United States*, 713 F.2d 1461, 1466 (9th  
4 Cir. 1983)

5 The California Supreme Court has also stated that bad faith  
6 is not necessarily "established by a showing that a settling  
7 defendant paid less than his theoretical proportionate or fair  
8 share." *Tech-Bilt*, 38 Cal. 3d at 499, 698 P.2d at 166. "Such a  
9 rule would unduly discourage settlements" because it would not  
10 consider various unknown and speculative factors such as the  
11 amount of damages, probability of legal liability, the solvency  
12 of the defendant, and the risk of going through trial. *Ibid*.

13 1. Rough approximation of Plaintiff's total recovery and  
14 the settlor's proportionate liability. A settling party's  
15 proportionate liability is one of the most important factors in  
16 making a good faith determination. *Toyota Motor Sales U.S.A. v.*  
17 *Superior Ct.*, 220 Cal. App. 3d 864, 871, 269 Cal. Rptr. 647, 650  
18 (1990). There must be "substantial evidence to support a  
19 critical assumption as to the nature and extent of a settling  
20 defendant's liability . . ." *Toyota Motor Sales*, 220 Cal. App.  
21 3d at 871, 269 Cal. Rptr. at 651 (substantial is not "any"  
22 evidence; it must be "reasonable in nature, credible, and of  
23 solid value, . . . [and] must actually be substantial proof of  
24 the essentials which the law requires in a particular case.")  
25 (internal quotations omitted).

26 Here, Chadwick oversaw the installation of the alluvial  
27 monitoring wells at the direction of the ODA and monitored the  
28 groundwater and associated reporting required by the ODA

1 pursuant to Debtor's CAFO permit.<sup>26</sup> In contrast to the  
2 groundwater supply wells, the alluvial monitoring wells are  
3 small in diameter (*i.e.*, 2-inch), and are only used to measure  
4 groundwater levels and water quality of the alluvial aquifer.  
5 Post-bankruptcy, Plaintiff continued to use Chadwick's services  
6 to remediate and sell the LVF dairy.<sup>27</sup> Since Chadwick was not  
7 involved in the construction or planning of the waste disposal  
8 system, did not drill any wells, and was solely involved in  
9 groundwater monitoring and reporting for CAFO permit compliance,  
10 Chadwick contends that IRZ cannot proportion any liability to  
11 Chadwick on its claims for negligence, contribution, and  
12 indemnity brought under Oregon law.<sup>28</sup> Therefore, Chadwick argues  
13 the \$0.00 "walk-away" settlement is proportionate to his share  
14 of liability.

15 IRZ responds that Chadwick's proportionate settlement  
16 amount is zero percent (0%) of Plaintiff's claimed \$18.8 million  
17 dollars in damages.<sup>29</sup> Chadwick has conceded that he provided  
18 hydrogeologic characterization and groundwater monitoring,  
19 including oversight on the installation of alluvial monitoring  
20 wells, and preparing a groundwater monitoring plan relied upon  
21 by Debtor for the LVF dairy. Meanwhile, Plaintiff's claims are  
22 based on the allegation that the water management system of the  
23 dairy failed.<sup>30</sup> If, based on Chadwick's involvement with the  
24 dairy, he is found to be one percent (1%) liable, then his  
25 liability would be \$188,000, which vastly exceeds the \$0.00

---

26 <sup>26</sup> Sugarman Decl., Doc. #583; Edmonds Decl., Doc. #584.

27 <sup>27</sup> Sugarman Decl., Doc. #583.

28 <sup>28</sup> Chadwick's Mem. P. & A., Doc. #585; Reply, Doc. #620.

29 IRZ's Mem. P. & A., Doc. #609.

30 Compl., Doc. #1.

1 settlement. Since substantial evidence supporting a critical  
2 assumption as to the nature and extent of Chadwick's liability  
3 has not been provided, IRZ contends this factor supports denial  
4 of this motion.

5 Chadwick replies that IRZ has not, nor can it, proportion  
6 any liability to Chadwick.<sup>31</sup> Plaintiff accepted the Settlement  
7 Agreement, which demonstrates that Plaintiff has estimated  
8 Chadwick's proportionate liability to be zero. Plaintiff found  
9 no fault in Chadwick's work at any time, including when he  
10 engaged Chadwick to continue monitoring the groundwater during  
11 the pendency of the sale.<sup>32</sup>

12 Moreover, Chadwick contends that IRZ has not plead,  
13 discovered, disclosed, or otherwise established that the  
14 services performed by Chadwick were in any way connected to the  
15 failure of the LVF dairy's failed waste-water management  
16 system.<sup>33</sup> IRZ addresses the hydrogeologic characterization and  
17 groundwater monitoring performed by Chadwick as required by and  
18 under the supervision of the ODA, but IRZ has not made any  
19 connection between that characterization and monitoring to the  
20 failure of the waste-water management system. Further, IRZ  
21 ignores that groundwater monitoring is different than dairy  
22 waste-water management, and IRZ has not explained how Chadwick's  
23 supply and installation of four alluvial monitoring wells is  
24 relevant to the failure of the waste-water management system.

25 The complaint alleges nearly \$19 million dollars in *alleged*  
26 damages, but there is no basis from Plaintiff that can be

---

27 <sup>31</sup> Reply, Doc. #620.

28 <sup>32</sup> Sugarman Decl. ¶ 8 at 3, Doc. #583.

<sup>33</sup> Reply at 4-5, Doc. #620.

1 construed as evidence of possible recovery. Plaintiff's and his  
2 general counsel's experience has never been presented to the  
3 court as "in depth" in litigation matters concerning dairy  
4 construction processes. In fact, Plaintiff has special counsel  
5 representing him in this litigation.

6       Though Mr. Sugarman certainly had much time observing the  
7 damage the failed system caused, his declaration suffers from  
8 foundational problems with respect to Chadwick's pre-petition  
9 services.<sup>34</sup> That said, Plaintiff hired Chadwick post-bankruptcy  
10 to continue his work while Plaintiff endeavored to bring the  
11 dairy into compliance with ODA's demands. Mr. Sugarman does have  
12 personal knowledge of Chadwick's post-petition services. He has  
13 opined his finding of no fault with Chadwick's work, and likely  
14 would not want to continue using Chadwick's services if there  
15 were issues about his performance.

16       Chadwick also includes the declaration of Joel Edmonds, the  
17 General Manager of LVF dairy, in support of this motion. As  
18 General Manager, Mr. Edmonds had the opportunity to work with  
19 Chadwick during the time he performed the groundwater monitoring  
20 and associated reporting required by the ODA and CAFO permit,  
21 and such work product was "impeccable."<sup>35</sup> Chadwick monitored  
22 water quality and water wells, which required running numerous  
23 tests on the water for nitrogen concentrations and other  
24 parameters. Chadwick did not drill any wells.<sup>36</sup>

25       Unlike other third-party defendants, Chadwick was on the  
26 periphery of the dairy and physically far away from it. Chadwick

---

27 <sup>34</sup> Sugarman Decl., Doc. #583.

28 <sup>35</sup> Edmonds Decl. ¶ 2 at 2, Doc. #584.

<sup>36</sup> *Id.* ¶ 3.

1 did not prepare the final lagoon design, did not design the  
2 irrigation plan, was not retained to design lagoons, did not  
3 design lagoons, did not design piping for waste pipes, did not  
4 design the overflow pipes relates to the effluent, and did not  
5 design the overflow drains related to the effluent system.

6 When pressed at the hearing, IRZ was unable to say with any  
7 specificity anything Chadwick did or did not do that could have  
8 contributed to failure of the waste-water management system. IRZ  
9 did not allege that Chadwick failed to report on anything with  
10 respect to water quality, nor that such reporting directly or  
11 indirectly resulted in the system's failure. IRZ repeated prior  
12 arguments that allowed the third-party complaint to survive  
13 Chadwick's motion to dismiss, but such arguments were previously  
14 presented pre-discovery and are less persuasive now. Since then,  
15 it has become clear that Chadwick's planning pertained to  
16 monitoring only, rather than to the design, planning, or  
17 installation of the system, and Chadwick's alluvial wells were  
18 separate monitoring wells that did not affect the operation of  
19 the system itself.

20 Meanwhile at the hearing, Chadwick's counsel clarified that  
21 Chadwick was not testing the effluent leaving the dairy. The  
22 path of the effluent and its effect on the groundwater was a  
23 critical component of the dairy's compliance with the CAFO  
24 permit. Obviously, the dairy did not comply with the CAFO  
25 permit, but there does not appear to be any evidence that  
26 Chadwick had any hand in that. Since Chadwick was not involved  
27 in either the design, planning, installation, or operation of  
28 the waste-water management system, it seems far-fetched that he

1 would have any liability unless he failed to properly report  
2 what his monitoring revealed, and such failed reporting  
3 contributed to failure of the system itself. IRZ could not point  
4 to any specifics.

5 This contrasts Chadwick's situation from the other third-  
6 party defendants who were part of the design and operation of  
7 the waste-water management system itself. The only area that may  
8 be questionable is whether Chadwick was asked to opine whether  
9 the hydrogeologic characterization of the groundwater flow made  
10 the dairy site improper for such a large operation. Chadwick's  
11 attorney was unable to tell the court whether Chadwick had any  
12 involvement of that sort. But nothing in IRZ's presentation  
13 suggested Chadwick was so involved.

14 The inquiry is the proportionate liability of the settling  
15 party estimated by a reasonable person at the time of the  
16 settlement. *Torres v. Union Pac. R.R. Co.*, 157 Cal. App. 3d 499,  
17 508, 203 Cal. Rptr. 825, 831 (1984). Based on the evidence at  
18 the time of the Settlement Agreement, it appears that Chadwick  
19 had no liability since he was not involved in the design,  
20 construction, or operation of the waste-water management system;  
21 instead, he merely monitored the groundwater.

22 Under CCP § 877.6(d), IRZ has the burden of proof on the  
23 lack of good faith issue. IRZ has presented no proof  
24 establishing Chadwick's potential proportionate share of  
25 liability. The lack of proof is a flaw in IRZ's position.

26 2. Amount paid in settlement: IRZ says that the amount paid  
27 in settlement does not suggest good faith.<sup>37</sup> Relying on *Mattco*,

---

28 <sup>37</sup> IRZ's Mem. P. & A., Doc. #609.

1 IRZ contends here that Chadwick's \$0.00 settlement is not within  
2 the reasonable range of its share of the \$18.8 million in  
3 liability alleged by the Plaintiff. *Mattco Forge, Inc. v. Arthur*  
4 *Young & Co.*, 38 Cal. App. 4th 1337, 1351, 45 Cal. Rptr. 2d 581,  
5 589 (1995), *reh'g denied*, 39 Cal. App. 4th 1210 (\$250,000  
6 settlement out of a \$39 million claim (0.006%) was not within  
7 the reasonable range or "ballpark" of the settlor's share of  
8 proportionate liability). Since paying nothing is the smallest  
9 amount a party could pay in settlement, IRZ claims the  
10 Settlement Agreement's terms do not suggest good faith.

11 Chadwick replies that *Mattco* is distinguishable. In *Mattco*,  
12 a plaintiff contractor had its suit dismissed because they  
13 fabricated estimate sheets to increase damages. *Mattco*, 38 Cal.  
14 App. 4th at 1354, 45 Cal. Rptr. 2d at 591. The court ordered  
15 *Mattco* to pay \$1.4 million in sanctions or the matter would be  
16 dismissed. *Mattco* entered into a mutual release and sued its  
17 accounting firm. The good faith settlement in question was  
18 between *Mattco* and its own attorney for malpractice, and the  
19 court refused to approve the good faith settlement because the  
20 allegations against the settlement included fraud. *Id.* at 1357,  
21 45 Cal. Rptr. 2d at 593. The issue in *Mattco* was the  
22 sufficiency, or lack thereof, of the evidence that the  
23 settlement was in the "ballpark" of the proportionate liability.  
24 Additionally, the proportionate liability issues in *Mattco* were  
25 secondary to claims of actual fraud in rejection of the good  
26 faith of the settlement.

27 But here, Chadwick presented a declaration from LVF dairy's  
28 General Manager that suggests Chadwick was likely not liable.

1 Chadwick has set forth an evidentiary basis for the settlement.  
2 The settlement was reached in an adversarial manner, after the  
3 third-party complaint was litigated, and after a mediation.<sup>38</sup>

4 The fact that Chadwick is paying nothing should not  
5 control. The settlement may be in good faith even if it is for a  
6 sum grossly disproportionate to what the trial court might have  
7 considered the probable recovery from the settling joint  
8 tortfeasor. *Kohn v. Superior Court*, 142 Cal. App. 3d 323, 327-  
9 28, 191 Cal. Rptr. 78, 81-82 (1983).

10 3. Allocation of settlement proceeds among plaintiffs:

11 Allocation of settlement proceeds is inapplicable because  
12 Plaintiff Trustee is the only plaintiff here. If there were  
13 other plaintiffs, allocation would be inapplicable because the  
14 settlement is \$0.00.

15 4. Recognition that a settlor should pay less in settlement  
16 than if found liable at trial: Chadwick believes that he and  
17 Plaintiff have each performed a reasonable risk analysis of  
18 potential outcomes.<sup>39</sup> Chadwick characterizes IRZ's position as  
19 obfuscating the nature of settlement agreements generally. The  
20 Settlement Agreement accomplishes the two objectives of CCP  
21 § 877.6: equitable sharing of costs among the parties at fault  
22 and encouragement of settlements.

23 Citing *Tech-Bilt*, IRZ acknowledges that a party settlor  
24 should pay less in settlement than it would if it were to be  
25 found liable after a trial, but that such recognition should not  
26 extend to the "extreme" that a settlor should pay nothing in

---

27 <sup>38</sup> Dias Decl., Doc. #581; Sugarman Decl., Doc. #583.

28 <sup>39</sup> Chadwick's Mem. P. & A., Doc. #585.

1 settlement.<sup>40</sup> *Tech-Bilt*, Cal. 3d at 499, 698 P.2d at 166.

2 The court must also consider not only the settlor's  
3 potential liability to the Plaintiff, but also its proportionate  
4 share of culpability as among the parties alleged to be liable  
5 for the same injury. *TSI Seismic Tenant Space, Inc. v. Superior*  
6 *Court*, 149 Cal. App. 4th 159, 166, 56 Cal. Rptr. 3d 751, 756  
7 (2007).

8 It does not appear that any of the third-party codefendants  
9 have a problem with Chadwick's settlement. None have appeared in  
10 opposition, which suggests that none of the non-settling third-  
11 party defendants would seek indemnity against Chadwick. See,  
12 *Long Beach Mem'l Med. Ctr. V. Superior Court*, 172 Cal. App. 4th  
13 865, 875, 91 Cal. Rptr. 3d 494, 502 (2009) (comparative  
14 indemnity); *TSI Seismic Tenant Space*, 149 Cal. App. 4th at 167,  
15 56 Cal. Rptr. 3d at 756-57 (implied indemnity). Additionally,  
16 Chadwick's counsel has indicated that Chadwick is retired and  
17 has no insurance, so he is not a "deep pocket defendant." If  
18 Chadwick was in fact not responsible, his settlement would not  
19 be injurious to the interests of other third-party defendants or  
20 to IRZ. *Long Beach Mem'l Med. Ctr.*, 172 Cal. App. 4th at 875-76,  
21 91 Cal. Rptr 3d at 502-03.

22 5. Financial condition and insurance policy limits of  
23 settling defendants: A good faith settlement can account for  
24 limitations arising from the financial condition and insurance  
25 policy limits of settling defendants. *Tech-Bilt*, 38 Cal. 3d at  
26 499-500, 698 P.2d at 166-67. As noted above, Chadwick's counsel  
27 indicated at the hearing that Chadwick is retired, has no

---

28 <sup>40</sup> IRZ's Mem. P. & A., Doc. #609.

1 insurance, and has paid over \$130,000.00 in legal fees so far.  
2 The lack of insurance coverage suggests a compromise in a  
3 smaller sum should be within the "range of reasonableness."

4 6. The existence of collusion, fraud, or tortious conduct  
5 intended to injure the interests of the non-settling defendants:

6 The existence of collusion, fraud, or tortious conduct aimed to  
7 injure the interests of non-settling defendants is the final  
8 determining factor enumerated in *Tech-Bilt*. *Techbilt*, Cal. 3d at  
9 499, 698 P.2d at 166. Here, the settlement was reached in an  
10 adversarial manner after the third-party complaint was  
11 litigated, and after a mediation. This suggests a lack of  
12 collusion. Chadwick's attorney, Michael A. Dias, declares that  
13 no collusion occurred during the negotiation of the Settlement  
14 Agreement.<sup>41</sup>

15 On the other hand, IRZ alleges the existence of collusion,  
16 fraud, or tortious conduct aimed to injure its interests as a  
17 non-settling party.<sup>42</sup> IRZ compares this matter to *Mattco*, where  
18 the plaintiff did not bring an action against the settling  
19 party, and the settling party was only involved through a cross-  
20 complaint by a non-settling defendant. *Mattco*, 38 Cal. App. 4th  
21 at 1353, 45 Cal. Rptr. 2d 590. Ultimately, the *Mattco* court  
22 found that the disproportionately low settlement was aimed at  
23 injuring the non-settling defendants' interests.

24 As in *Mattco*, Chadwick and Plaintiff here do not have  
25 claims against each other, and Chadwick is only involved through  
26 IRZ's third-party complaint. The purpose of the Settlement

---

27 <sup>41</sup> Dias Decl., Doc. #581.

28 <sup>42</sup> IRZ's Mem. P. & A., Doc. #609.

1 Agreement, as in *Mattco*, is to allow Chadwick to “avoid the  
2 costs of litigation” in its action with IRZ.<sup>43</sup> In effect,  
3 Chadwick is avoiding its defense against IRZ without IRZ’s  
4 consent to dismiss. Though procuring a dismissal of IRZ’s claims  
5 through a third party, such dismissal is based on the merits of  
6 Plaintiff’s claim and the probability that Chadwick will not be  
7 found liable due his lack of involvement in the planning,  
8 installation, or operation of the waste-water management system.

9 Moreover, IRZ has failed to specifically identify any such  
10 collusion, fraud, or tortious conduct. No affirmative evidence  
11 of collusive interaction has been presented. The evidence  
12 appears to establish very little interaction between Chadwick’s  
13 counsel and Plaintiff.

14 In sum, Chadwick has set forth an evidentiary basis for the  
15 settlement, which justifies the presumption that a reasonable  
16 valuation of the claim against Chadwick was reached. *See,*  
17 *Erreca’s v. Superior Court*, 19 Cal. App. 4th 1475, 1495-96, 24  
18 Cal. Rptr. 2d 156, 170 (1993). Having met his *prima facie*  
19 burden, we turn to whether IRZ has met its burden of proof under  
20 CCP § 877.6(d). The court finds IRZ has not.

21 Under CCP § 877.6(d), the party asserting the lack of good  
22 faith shall have the burden on that issue. IRZ is required to  
23 show that the Settlement Agreement is so far “out of the  
24 ballpark” in relation to the factors set forth in *Tech-Bilt* and  
25 its progeny as to be inconsistent with the equitable objectives  
26 of the statute. *Horton v. Superior Court*, 194 Cal. App. 3d 727,  
27 735, 238 Cal. Rptr. 467, 471 (1987); *Rutgard v. Haynes*, 61 F.

---

28 <sup>43</sup> Settlement Agreement, Ex. A, Doc. #582.

1 Supp. 2d 1082, 1086 (S.D. Cal. 1999) (finding settling defendant  
2 did not have "an integral or primary role" in prosecuting the  
3 case that led to malicious prosecution claim). IRZ has provided  
4 no declarations and has presented nothing except argument about  
5 how settling the case with no payment is bad faith. But IRZ  
6 could not even articulate how Chadwick was responsible for any  
7 part of the damage.

8  
9 Consideration

10 IRZ's next objection to the Settlement Agreement is lack of  
11 consideration.<sup>44</sup> All contracts require consideration to be  
12 legally enforceable. "Consideration is present when the promisee  
13 confers a benefit or suffers a prejudice." *Prop. Cal. SCJLW One*  
14 *Corp. v. Leamy*, 25 Cal. App. 5th 1155, 1165, 236 Cal. Rptr. 3d  
15 500, 508 (2018), citing *Steiner v. Thexton*, 48 Cal. 4th 411,  
16 420-21, 106 Cal. Rptr. 3d 252, 259-60, 226 P.3d 359, 365-66  
17 (2010). Here, IRZ argues that Chadwick provides no benefit to  
18 Plaintiff under the Settlement Agreement, so the Settlement  
19 Agreement lacks consideration and is void. IRZ notes that no  
20 claims against Plaintiff are being released and Chadwick is not  
21 required to do anything at all, so he is neither conferring any  
22 benefit to Plaintiff, nor proffering a detriment to Chadwick.  
23 Instead, the parties have agreed to "walk away" from this action  
24 despite having no claims against each other. In effect, they  
25 have agreed that Chadwick may walk away from its defense against  
26 IRZ without IRZ's consent, says IRZ.

27 ///

28 

---

<sup>44</sup> IRZ's Mem. P. & A., Doc. #609.

1           Moreover, IRZ says that the attorney's fees provision  
2 within the Settlement Agreement cannot constitute a benefit  
3 granted as a waiver of costs because Plaintiff has not sued  
4 Chadwick and they are not adverse parties. Since Chadwick cannot  
5 be considered a "prevailing party" in any future judgment  
6 against Plaintiff, Chadwick cannot waive a right that he does  
7 not have—specifically, the right to fees and costs as a  
8 prevailing party.

9           Chadwick replies that the Settlement Agreement was entered  
10 into by Chadwick and Plaintiff after an arm's length good faith  
11 negotiation with the intent to resolve "any and all past,  
12 present, and future claims which are, were, or could have been  
13 asserted by or between them . . . which could have been filed  
14 arising out of or related to the Disputes."<sup>45</sup>

15           IRZ's claim that Plaintiff and Chadwick have no claims  
16 against each other disregards that IRZ's allegations are  
17 derivative of Plaintiff's complaint against IRZ.<sup>46</sup> Under the  
18 Settlement Agreement, Chadwick is expressly waiving and  
19 releasing any future claims that may arise against Plaintiff.  
20 Chadwick insists such release is neither hollow nor illusory.  
21 Additionally, Chadwick contests that he "is not required to do  
22 anything at all as a result of this agreement" because he is  
23 foregoing any remedies he may hold, now or in the future,  
24 whether or not those claims are meritorious. Chadwick has not  
25 and will not file a proof of claim in this bankruptcy as a  
26 creditor, lienholder, or any other party with standing to make

---

27 <sup>45</sup> Reply, Doc. #620, citing Settlement Agreement at 1, ¶ F.

28 <sup>46</sup> *Id.*

1 such claim. In contrast to the other third-party defendants,  
2 Chadwick will never receive any benefit from this bankruptcy  
3 case. Valid consideration exists because Chadwick has waived any  
4 right to future benefit should facts later arise showing a  
5 potential benefit to Chadwick.

6 "[S]urrender of a possibly meritless claim which is  
7 disputed in good faith is valid consideration. The rationale of  
8 these cases is that parties who settled in order to avoid  
9 litigation should be given the benefit of their bargain." *Murphy*  
10 *v. T. Rowe Price Prime Reserve Fund, Inc.*, 8 F.3d 1420, 1423  
11 (9th Cir. 1993). As noted above, Chadwick did not file a proof  
12 of claim in this bankruptcy case. He has paid over \$130,000.00  
13 in legal fees so far. The "walk away" settlement results in  
14 waiver of any possibility of filing a claim or recovering fees,  
15 which suffices as valid consideration.

#### 16 17 Applicable Oregon Law

18 Chadwick argues that the settlement resolves all claims  
19 asserted by IRZ under Oregon law.

#### 20 Negligence

21 "[W]hen a plaintiff does not join a tortfeasor as a  
22 defendant, the comparative negligence statutes permit the named  
23 defendant to file a third-party complaint against the  
24 tortfeasor." *Lasley v. Combined Transp., Inc.*, 351 Or. 1, 21-22,  
25 261 P.3d 1215, 1227 (2011), citing Or. Rev. Stat. ("ORS")  
26 § 31.600(3). Such "third-party defendant will not be liable to  
27 the defendant but, potentially, will be liable to the  
28 plaintiff." *Id.* at 22. As noted above, Chadwick was not retained

1 by IRZ. Chadwick was hired by Debtor and by Plaintiff to  
2 supervise installation of alluvial groundwater monitoring wells.  
3 Chadwick did not contract with IRZ or perform services on IRZ-  
4 owned property. Therefore, Chadwick contends that IRZ's claim of  
5 negligence is derived from the Trustee's claims against IRZ, so  
6 the settlement agreement between Trustee and Chadwick resolves  
7 IRZ's negligence claim against Chadwick.<sup>47</sup>

8 IRZ responds that Chadwick's arguments are inappropriate,  
9 irrelevant, and, in effect, a dispositive motion for summary  
10 judgment under a different name.<sup>48</sup>

11 The court disagrees. IRZ attempts to reverse the burden of  
12 proof. Chadwick's involvement in the ill-fated dairy waste  
13 project was as a tangential monitoring professional. IRZ has not  
14 established any factual or legal basis for Chadwick's  
15 responsibility for the damages alleged in this case. No evidence  
16 of Chadwick's culpability has been presented by IRZ. This  
17 analysis supports a finding that the Settlement Agreement was  
18 executed in good faith because there is no evidence that  
19 Chadwick's probable, proportionate share of liability exceeds  
20 the settlement amount.

## 21 22 Indemnity

23 To prevail on a cause of action for indemnity, "the  
24 claimant must plead and prove that (1) it has discharged a legal  
25 obligation owed to a third party; (2) the defendant was also  
26 liable to the third party; and (3) as between the claimant and

---

27  
28 <sup>47</sup> Chadwick's Mem. P. & A., Doc. #585.

<sup>48</sup> IRZ's Mem. P. & A., Doc. #609.

1 the defendant, the obligation ought to be discharged by the  
2 latter." *Rains v. Stayton Builders Mart, Inc.*, 359 Or. 610, 640,  
3 375 P.3d 490 (2016), quoting *Eclectic Inv., LLC v. Patterson*,  
4 357 Or. 25, 33, 346 P.3d 468, 472 (2015), *opinion adhered to as*  
5 *modified on recons.*, 357 Or. 327, 354 P.3d 678 (2015).

6 Chadwick claims IRZ failed to plead the existence of an  
7 independent contractual relationship between IRZ and Chadwick.  
8 Since privity of contract between IRZ does not exist, Chadwick  
9 contends that IRZ's derivative indemnity claims against Chadwick  
10 are resolved by this settlement.

11 IRZ responds, potential liability for indemnity to a non-  
12 settling defendant is an important consideration for determining  
13 whether to approve a settlement by an alleged tortfeasor.<sup>49</sup> *TSI*  
14 *Seismic Tenant Space*, 149 Cal. App. 4th at 166, 56 Cal. Rptr. 3d  
15 at 756. The Settlement Agreement results in Chadwick sharing  
16 none of the liability alleged here. If, for example, Chadwick  
17 was found 90% liable for Plaintiff's \$18.8 million dollar damage  
18 claim, he would not be required to pay anything in damages. IRZ  
19 says there must be substantial evidence to support a critical  
20 assumption as to the nature and extent of its liability, and  
21 Chadwick cannot show substantial evidence that it is not liable  
22 for indemnity in this action.

23 A defendant may, as third-party plaintiff, "serve a summons  
24 and complaint on a nonparty *who is or may be liable* to it for  
25 *all or part* of the claim against it." Civ. Rule 14(a)(1)  
26 (emphasis added). "A third-party claim may be asserted under  
27 [Civ.] Rule 14(a) only when the third party's liability is in

---

28 <sup>49</sup> IRZ's Mem. P. & A., Doc. #609.

1 some way dependent on the outcome of the main claim or when the  
2 third party is secondarily liable to defendant. The basis of the  
3 third-party claim may be *indemnity*, *subrogation*, *contribution*,  
4 express or implied warranty, or some other theory." *SCD RMA, LLC*  
5 *v. Farsighted Enters., Inc.*, 591 F. Supp. 2d 1141, 1145 (D. Haw.  
6 2008) (emphasis added; citations omitted). This policy is  
7 designed to "promote judicial efficiency by eliminating the  
8 necessity for the defendant to bring a separate action against a  
9 third party who may be derivatively liable to the defendant for  
10 all or part of the plaintiff's original claim." *Kim v. Fujikawa*,  
11 871 F.2d 1427, 1434 (9th Cir. 1989).

12 "To require a defendant who raises an indemnity cross-claim  
13 to plead and prove actual discharge of a judgment before the  
14 judgment is entered against the defendant raising it would  
15 contravene the purpose and destroy the usefulness of the cross-  
16 claim rule." *Kahn v. Weldin*, 60 Or. App. 365, 371-72, 653 P.2d  
17 1268, 1272-73 (1982).

18 Oregon law no longer provides for joint liability of  
19 multiple tortfeasors. "[T]he Oregon Legislative Assembly has  
20 instituted a system of comparative fault in which (1) the trier  
21 of fact allocates fault and responsibility for payment of  
22 damages between the parties; and (2) each tortfeasor is liable  
23 for damages attributable to only its own negligence." *Eclectic*,  
24 357 Or. at 35-36, 346 P.3d at 474 ("Oregon's comparative fault  
25 system eliminates the need for judicially created indemnity in  
26 situations like this one-in which a defendant is liable, if at  
27 all, for only the damages that resulted from its own  
28 negligence[.]").

1           *Rains* involved strict products liability, which is treated  
2 differently than negligence with respect to indemnity and  
3 contribution. See also, *Wyland v. W.W. Grainger, Inc.*, 2015 U.S.  
4 Dist. LEXIS 76156, at \*6 (D. Or. June 11, 2015) (“[T]he Oregon  
5 Legislature set product liability apart from all other tort  
6 claims covered by comparative fault.”).

7           When ORS § 31.610 applies, common law indemnity is not  
8 available. *Eclectic*, 357 Or. at 330, 354 P.3d at 679. “Thus, in  
9 the circumstances presented here—in which ORS § 31.610 applies,  
10 joint tortfeasors are liable only for their own negligence, and  
11 a jury determines the relative fault and responsibility of each  
12 tortfeasor—a judicially created claim for common-law indemnity  
13 is unnecessary.” *Ibid.*

14           IRZ’s indemnity claim does not initially appear to be  
15 applicable under *Rains* because (1) this case does not involve  
16 claims of strict products liability, and (2) ORS § 31.610  
17 applies to the negligence claims. However, Trustee’s second  
18 cause of action against IRZ is for breach of contract under the  
19 September 30, 2015 written work order and November 17, 2015  
20 agreement.<sup>50</sup> ORS § 31.610 only applies to indemnity for  
21 negligence causes of action, so indemnity may still be available  
22 for contractual liability.

23           [The claim] cannot simply be an independent or  
24 related claim but must be based upon  
25 plaintiff’s claim against defendant. The  
26 crucial characteristic of a [Civ.] Rule 14  
27 claim is that defendant is attempting to  
28 transfer to the third-party defendant the  
liability asserted against [the defendant] by  
the original plaintiff. The mere fact that the  
alleged third-party claim arises from the same

---

<sup>50</sup> Doc. #1.

1 transaction or set of facts as the original  
2 claim is not enough.

3 *Stewart v. Am. Int'l Oil & Gas Co.*, 845 F.2d 196, 200 (9th Cir.  
4 1988), quoting 6 *Fed. Prac. & Proc.* § 1446 at 257 (1971 ed.).

5 But Chadwick was not hired by IRZ. Chadwick was first hired  
6 by Debtor, and later by Plaintiff. Since no privity of contract  
7 exists between IRZ and Chadwick, it appears that indemnity  
8 liability for breach of contract is also unavailable, which  
9 supports the finding that the Settlement Agreement was executed  
10 in good faith because there is no evidence that Chadwick's  
11 probable, proportionate share of liability exceeds the  
12 settlement amount.

13  
14 Contribution

15 Under ORS § 31.800(1), contribution is available when two  
16 or more persons are liable in tort for the same injury to  
17 property. The right of contribution exists even if judgment has  
18 not yet been entered against any of them. Since Trustee asserted  
19 a claim for negligence against IRZ for construction defects, IRZ  
20 has asserted a negligence claim against third-party defendants,  
21 including Chadwick, for those same defects.

22 When the Oregon legislature changed its comparative  
23 negligence scheme in 1995 to eliminate joint and several  
24 liability, claims for contribution were modified as well.

25 ORS § 31.610. The Oregon Supreme Court in *Lasley* stated:

26 [U]nder Oregon's current comparative  
27 negligence scheme, no tortfeasor is liable for  
28 more than its percentage of fault, and that  
percentage of fault is determined in the  
original negligence action brought by the

1 plaintiff. ORS [§] 31.610(2); ORS [§] 31.805.  
2 A defendant cannot bring a contribution action  
3 to seek a different determination of its  
4 percentage of fault. A contribution action  
5 serves only to permit a defendant who has  
6 "paid more" than its "proportional share of  
7 the common liability" to obtain contribution  
8 from another person who is also liable for the  
9 same injury or death. ORS [§] 31.800(2).

6 *Lasley*, 351 Or. at 19, 261 P.3d at 1226. "[M]uch like  
7 contribution, a claim of common-law indemnity is unnecessary and  
8 unjustified 'in cases . . . in which jurors allocate fault'  
9 pursuant to [ORS] § 31.605, which allows a party to pose special  
10 questions to a fact-finder as to each party's degree of fault."  
11 *Wyland v. W.W. Grainger, Inc.*, 2015 U.S. Dist. LEXIS 76156 at \*6  
12 (D. Or. June 11, 2015).

13 Plaintiff asserted a negligence claim against IRZ for  
14 construction defects and IRZ asserted a third-party negligence  
15 claim against Chadwick and other third-party defendants for  
16 those same construction defects. Since Chadwick's use of  
17 alluvial wells to monitor groundwater levels and quality was  
18 unrelated to the construction defects, Chadwick insists that  
19 IRZ's derivative claim of contribution is resolved by this  
20 settlement agreement.

21 As with negligence, Chadwick's role in the waste-water  
22 management system was as a tangential monitoring professional.  
23 No evidence of Chadwick's culpability has been presented by IRZ,  
24 so Chadwick's probable, proportionate liability appears to be  
25 zero based on this record. This supports a finding that the  
26 Settlement Agreement was executed in good faith.

27 ///

28 ///

1 Good faith settlement under Oregon law

2 ORS § 31.815 (formerly § 18.455 and renumbered in 2003)  
3 provides:

4 (1) When a covenant not to sue or not to  
5 enforce judgment is given in good faith to one  
6 of two or more persons liable in tort for the  
7 same injury to person or property or the same  
8 wrongful death or claimed to be liable in tort  
9 for the same injury or the same wrongful  
10 death:

11 (a) It does not discharge any of the other  
12 tortfeasors from liability for the injury or  
13 wrongful death unless its terms so provide;  
14 but the claimant's claim against all other  
15 persons specified in ORS 31.600 (2) for the  
16 injury or wrongful death is reduced by the  
17 share of the obligation of the tortfeasor who  
18 is given the covenant, as determined under ORS  
19 31.605 and 31.610; and

20 (b) It discharges the tortfeasor to whom it is  
21 given from all liability for contribution to  
22 any other tortfeasor.

23 (2) When a covenant described in subsection  
24 (1) of this section is given, the claimant  
25 shall give notice of all of the terms of the  
26 covenant to all persons against whom the  
27 claimant makes claims.

28 ORS § 31.815.

Application of the law has two requisites. First, direct  
evidence of good faith. *State by State Acci. Ins. Fund Corp. v.*  
*Barkman*, 101 Or. App. 20, 26, 789 P.2d 8 (1990). Second, it  
requires notice to all persons against whom the claimant makes  
claims. *McCarthy v. Hensel Phelps Constr. Co.*, 64 Or. App. 256,  
259, 667 P.2d 558 (1983). Though good faith is a question of  
fact, Oregon courts have not yet defined good faith in the  
settlement context.<sup>51</sup> *Id.*

---

<sup>51</sup> Neither party has provided any controlling Oregon authority to the contrary.

1           There is no dispute that Chadwick has provided proper  
2 notice.

3           Chadwick provided evidence of good faith. The declarations  
4 supporting the motion have been summarized above. The evidence  
5 is there was no known problem with Chadwick locating the  
6 alluvial wells or his monitoring of the groundwater connected to  
7 the failure of the waste management system. IRZ presented no  
8 facts contesting this—only vague speculation. Plaintiff himself  
9 hired Chadwick to assist in the post-petition phase of the  
10 project to help satisfy the ODA's requirements and demands  
11 during the misfortunate failure of the dairy waste system and  
12 ensuing administration of the property.

13  
14 Supporting Affidavits

15           Lastly, IRZ contests Chadwick's declarations in support of  
16 the motion as lacking personal knowledge of Chadwick's work on  
17 this project.<sup>52</sup> The declarants, Attorney Michael A. Dias,  
18 Plaintiff Trustee Randy Sugarman, and General Manager Joel  
19 Edmonds are individuals who were not involved in the operations  
20 of the farm during the relevant time period, and thus IRZ claims  
21 the declarations should be considered irrelevant as to any  
22 determination of Chadwick's liability.

23           Chadwick replies that IRZ has failed to define the  
24 "relevant period."<sup>53</sup> On the contrary, Chadwick was hired by  
25 Plaintiff to work for him while the dairy was being remediated  
26 for sale. And though Joel Edmonds became involved in the dairy

27  
28 

---

<sup>52</sup> IRZ's Mem. P. & A., Doc. #609.

<sup>53</sup> Reply, Doc. #620.

1 post-petition, he managed its operations while Chadwick was  
2 still performing groundwater monitoring services. Thus, both  
3 Plaintiff and Edmonds have first-hand knowledge of the  
4 groundwater monitoring and reporting performed by Chadwick, as  
5 well as the requirements by the ODA to maintain the CAFO permit.  
6 Attorney Dias' declaration authenticates the Settlement  
7 Agreement and how it was reached.

8 The court agrees that the three declarations are all  
9 relevant. Further, the declarations are dispositive in the  
10 absence of contrary evidence submitted by IRZ.

11  
12 CONCLUSION

13 Chadwick has set forth an evidentiary basis for finding  
14 that the Settlement Agreement was executed in good faith. IRZ  
15 has failed to meet its burden of proving the Settlement  
16 Agreement was executed in bad faith. Accordingly, the court  
17 recommends the District Court GRANT the motion.

18 The court will issue a subsequent order setting deadlines  
19 for objections to this proposed report and recommendation to be  
20 heard in District Court before the Honorable Ana de Alba.

21  
22 **Dated: Jan 17, 2023**

**By the Court**

23  
24   
25 **René Lastrero II, Judge**  
26 **United States Bankruptcy Court**

1                                   **Instructions to Clerk of Court**  
2                                   **Service List - Not Part of Order/Judgment**

3           The Clerk of Court is instructed to send the Order/Judgment  
4 or other court generated document transmitted herewith to the  
5 parties below. The Clerk of Court will send the Order via the  
6 BNC or, if checked , via the U.S. mail.

6 Tracy A. Agrall  
7 246 W. Shaw  
8 Fresno CA 93704

8 Steve Alfieris  
9 502 West Grangeville Blvd  
10 Hanford CA 93230

10 Hagop T. Bedoyan  
11 7647 N. Fresno Street  
12 Fresno CA 93720

12 Michael Brown  
13 1809 West Main Street, Suite H  
14 Visalia CA 93291

14 D. Gary Christensen  
15 3400 U.S. Bancorp Tower 111 S.W. 5th Ave  
16 Portland OR 97204

16 Paula C. Clark  
17 502 West Grangeville Blvd  
18 Hanford CA 93230

18 Ronald A. Clifford  
19 1100 Town and Country Rd., Ste 1250  
20 Orange CA 92868

20 Michael A. Dias  
21 502 W Grangeville Blvd  
22 Hanford CA 93230

22 Anthony Dutra  
23 425 Market Street  
24 26th Floor  
25 San Francisco CA 94105

25 Mark F. Enenbach  
26 First National Tower #3700  
27 1601 Dodge St  
28 Omaha NE 68102

27 David A. Foraker  
111 SW 5th Ave #3400  
28 Portland OR 97204

1 Vanessa Triplett Kuchulis  
111 S. W. 5th Ave #3400  
2 Portland OR 97204

3 Sanford R. Landress  
3400 U.S. Bancorp Tower  
4 111 SW 5th Ave  
Portland OR 97204

5  
6 John H. MacConaghy  
645 First St., West, Suite D  
Sonoma CA 95476

7  
8 Randy Sugarman  
583 1st St W  
Sonoma CA 95476

9  
10 Aaron Moore  
1600 West St.  
Redding CA 96001

11  
12 James J. Niemeier  
First National Tower, Suite 3700  
1601 Dodge Street  
13 Omaha NE 68102

14 Kyle D. Sciuchetti  
111 SW Fifth Ave #3400  
15 Portland OR 97204

16 Lindy H. Scoffield  
3043 Gold Canal Dr #100  
17 PO Box 269127  
Sacramento CA 95826-9127

18  
19 Shanon J Slack  
2030 Main Street  
Suite 1300  
20 Irvine CA 92614

21 Randy Sugarman  
583 1st St W  
22 Sonoma CA 95476

23 Benjamin P. Tarczy  
111 SW Fifth Avenue, Suite 3400  
24 Portland OR 97204

25 Duncan C. Turner  
Badgley Mullins Turner PLLC  
26 19929 Ballinger Way NE #200  
Seattle WA 98155

27  
28

1 Scot M. Tyler  
100 N. Tryon St #4700  
2 Charlotte NC 28202

3 Kurt F. Vote  
265 E. River Park Circle, Suite 310  
4 Fresno CA 93720

5 Riley C. Walter  
265 E. River Park Circle Suite 310  
6 Fresno CA 93720

7 Brianna J. Wellman  
111 SW Fifth Ave #3400  
8 Portland OR 97204

9 Neal L. Wolf  
425 Market St 26th Fl  
10 San Francisco CA 94105

11 Tracy Hope Davis  
Gregory S. Powell  
12 U.S. Trustee's Office  
2500 Tulare St #1401  
13 Fresno CA 93721

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28