

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SUNTERRA CORPORATION,  
et al.,

Plaintiffs,

## ORDER

PERINI BUILDING COMPANY, INC.,  
et al.,

## Defendants.

AND ALL RELATED CROSS ACTIONS.

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21 In the present action, Plaintiff sued Defendant Perini  
22 Building Company ("Perini") for various breach of contract and  
23 breach of warranty claims in connection with the construction of  
24 Plaintiff's EVR Lake Tahoe Resort facility located in Lake Tahoe  
25 California. Perini acted as the general contractor on the  
26 project and it, in turn, filed cross claims against a variety of  
27 subcontractors involved with the project, including Cross-  
28 Defendant TW Construction, Inc. ("TW").

1 TW now seeks to obtain a judicial determination that its  
2 settlement with Perini in the amount of \$150,000.00 is a good  
3 faith settlement within the meaning of California Code of Civil  
4 Procedure § 877.6. That section provides in pertinent part, as  
5 follows:

6

7 (a) (1) Any party to an action wherein it is alleged  
8 that two or more parties are joint tortfeasors shall be  
9 entitled to a hearing on the issue of the good faith of  
a settlement entered into by the plaintiff or other  
claimant and one or more alleged tortfeasors . . .

10 . . . . .

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

15 (d) The party asserting the lack of good faith shall have  
16 the burden of proof on that issue.

17 Cal. Code of Civ. Proc. § 877.6.

18

19 The California Supreme Court, in Tech-Bilt, Inc. v.  
20 Woodward-Clyde & Assoc., 38 Cal. 3d 488, 494 (Cal. 1985) found  
21 that the main purpose of § 877.6 is to encourage both settlement  
22 and the equitable sharing of costs among the parties at fault. A  
23 district court may properly consult the provisions of § 877.6 in  
24 determining whether an early settlement meets the requisite good  
25 faith scrutiny. See, e.g., Federal Sav. and Loan Ins. Corp. v.  
26 Butler, 904 F.2d 505, 511 (9<sup>th</sup> Cir. 1990).

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1 The party asserting an absence of good faith has the burden or  
2 proof in establishing that the settlement is so far out of the  
3 ballpark in relation to the factors identified by Tech-Bilt<sup>1</sup> so as  
4 not to merit protection under § 877.6.

5 Significantly, no opposition has been filed by any of the  
6 numerous parties to this litigation suggesting that TW's  
7 settlement was not made in good faith. The evidence shows that  
8 the settlement was reached following extensive negotiations with  
9 Peter Dekker, the special master assigned to this case. In  
10 addition, TW has produced evidence suggesting that the amount of  
11 the settlement substantially exceeds its share of the remediation  
12 costs claimed by Plaintiffs in connection with the construction  
13 project underlying this litigation.

14 Given these factors, and good cause appearing, TW's Motion  
15 for Good Faith Settlement Determination is GRANTED.<sup>2</sup> The Court  
16 accordingly finds as follows:

17 1. That the settlement between TW and Perini in the amount  
18 of One Hundred and Fifty Thousand Dollars (\$150,000.00) was made  
19 in good faith pursuant to California Code of Civil Procedure §  
20 877.6 and the standards for good faith as set forth in Tech-Bilt,  
21 supra;

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23 <sup>1</sup> Those factors include, inter alia, consideration of the  
24 amount paid in settlement in relation to the settlor's  
25 proportionate liability, the existence of fraud or collusion in  
reaching the settlement, and recognition that the settlor should  
pay less in settlement than if found liable following trial.  
26 Tech-Bilt, 38 Cal. 3d at 494.

27 <sup>2</sup> Because oral argument was not be of material assistance,  
28 the Court ordered this matter submitted on the briefs. E.D. Cal.  
Local Rule 78-230(h).

1       2. That such settlements bars any pending or future cross  
2 claims or complaints by alleged joint tortfeasors or co-obligors,  
3 against TW Construction Company, Inc., for equitable contribution  
4 or partial, comparative, or implied indemnity related in any way  
5 to the construction project at issue herein;

6       3. That Pereini's cross claim, to the extent it names TW  
7 Construction Company, Inc., shall be dismissed, with prejudice.

8       IT IS SO ORDERED.

9       Dated: April 3, 2009

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11       MORRISON C. ENGLAND, JR.  
12       UNITED STATES DISTRICT JUDGE