

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

WEST MAUI RESORT	)	CIVIL NO. 06-00482 BMK
PARTNERS, L.P., a Delaware	)	
limited partnership,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ADVANCED STRUCTURES,	)	
INCORPORATED, a Texas	)	
corporation, ARB, INC., a	)	
California corporation; JOHN	)	
DOES 1-50; JANE DOES 1-50; DOE	)	
PARTNERSHIPS 1-50; DOE	)	
CORPORATIONS 1-50; and DOE	)	
ENTITIES 1-50,	)	
	)	
Defendants.	)	
	)	
_____	)	
	)	
ADVANCED STRUCTURES, INC., now	)	
known as INNOVATIVE CONSTRUCTS,	)	
INC., a Texas Corporation,	)	
	)	
Third-Party	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
ARB, INC.; Ener-Tech METALS,	)	
INC.; JOHN DOES 1-50; JANE DOES	)	
1-50; DOE PARTNERSHIPS 1-50;	)	
DOE CORPORATIONS 1-50; and DOE	)	
ENTITIES 1-50,	)	
	)	
Third-Party	)	
Defendants.	)	
	)	
_____	)	

**ORDER ADOPTING FINDINGS AND RECOMMENDATION TO GRANT DEFENDANT AND  
THIRD-PARTY PLAINTIFF ADVANCED STRUCTURES, INCORPORATED'S (NKA  
INNOVATION CONSTRUCTS, INC.'S) PETITION FOR DETERMINATION OF GOOD  
FAITH SETTLEMENT AND FOR DISMISSAL OF ALL CLAIMS AGAINST ADVANCED  
STRUCTURES INCORPORATED**

On June 25, 2008, Magistrate Judge Chang filed his Findings and Recommendation to Adopt Advanced Structures, Incorporated's Motion for Determination of Good Faith Settlement and Motion for Dismissal of All Claims Against Advanced Structures, Incorporated. (Doc. 187, "F&R".)<sup>1</sup>

After hearing on ASI's Petition, Magistrate Judge Chang found that ASI and Plaintiff West Maui Resort Partners West Maui entered into the settlement in good faith for purposes of Haw. Rev. Stat. § 663-15.5.

On July 10, 2008, Third-Party Defendant Ener-Tech Metals, Inc. filed a request to modify the F&R. (Doc. 198.) Ener-Tech Metals objects that ASI is permitted to remain as a Third-Party Plaintiff and continue to litigate claims against Ener-Tech, while Ener-Tech's Counterclaim against ASI is dismissed by operation of Haw. Rev. Stat. § 663-15.5(d)(2).<sup>2</sup>

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<sup>1</sup>Advanced Structures, Incorporated ("ASI") and Plaintiff West Maui Resort Partners ("West Maui") have since filed a Stipulation for Dismissal With Prejudice of Plaintiff West Maui Resort Partners, L.P.'s Claims Against Advanced Structures Incorporated (NKA Innovaton Constructs, Inc.) that has been approved by Order of this Court. (Doc. 196.)

<sup>2</sup> H.R.S. § 663-15.5 (d) provides:

Both Plaintiff West Maui (Doc. 205) and Defendant and Third-Party Plaintiff ASI (Doc. 203) filed responses to Ener-Tech's request to modify the F&R.

The Court concludes that the F&R correctly found that ASI and Plaintiff entered into the settlement in good faith for purposes of Section 663-15.5. The Court does not modify the F&R, as requested by Ener-Tech, to remove the reference to the express language of Section 663-15.5(d). The statement in the F&R is based on the plain language of the statute. The issue of whether it is proper to dismiss not only all claims against ASI, but also all of ASI's claims against defendant or third-party defendants in light of the settlement agreement, was not before the Magistrate Judge as part of the Petition for Good Faith Settlement and is not presently before this Court.

The Court notes that ASI's July 11, 2008 filing (Doc. 203), in response to Ener-Tech's request to modify the F&R, indicates that it would stipulate to the dismissal of its existing claims against other parties. On July 15, 2008 Plaintiff West Maui's

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A determination by the court that a settlement was made in good faith shall:

(1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor, except those based on a written indemnity agreement; and

(2) Result in a dismissal of all cross-claims filed against the settling joint tortfeasor or co-obligor, except those based on a written indemnity agreement.

filing (Doc. 205) indicated it does not agree that Ener-Tech's objections are timely or that ASI will have the ability to so stipulate if the F&R is adopted. The Court adopts the F&R as written and the parties may file motions to bring the issue of the viability of ASI's claims against the remaining parties before the Court if the issue is not resolved among the parties.

For the foregoing reasons,

The F&R, dated June 25, 2008, (Doc. 187) is **ADOPTED**.

IT IS SO ORDERED.

DATED: September 9, 2008, Honolulu, Hawaii.



/s/ Helen Gillmor

Chief United States District Judge

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**WEST MAUI RESORT PARTNERS, L.P. v. ADVANCED STRUCTURES, INCORPORATED, ET AL.; CIV. NO. 06-00482 BMK; ORDER ADOPTING FINDINGS AND RECOMMENDATION TO GRANT DEFENDANT AND THIRD-PARTY PLAINTIFF ADVANCED STRUCTURES, INCORPORATED'S (NKA INNOVATION CONSTRUCTS, INC.'S) PETITION FOR DETERMINATION OF GOOD FAITH SETTLEMENT AND FOR DISMISSAL OF ALL CLAIMS AGAINST ADVANCED STRUCTURES INCORPORATED**