

SEAN KIM 1787-0  
1188 Bishop Street, Suite 1210  
Honolulu, HI 96813  
Telephone: (808) 538-1812

Attorney for Defendants BEN RAMOS,  
MELVIN KAHELE and HAWAII  
TEAMSTERS AND ALLIED WORKERS,  
LOCAL 996

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

MICHAEL T. DOYLE fka	)	Case No. CV 08-00017 JMS KSC
MICHAEL T. DINGLEY,	)	(Other Civil Action)
	)	FINDINGS AND
Plaintiff,	)	RECOMMENDATION THAT
	)	DEFENDANTS HAWAII TEAMSTERS
v.	)	AND ALLIED WORKERS, LOCAL
	)	996, MELVIN KAHELE AND BEN
HAWAIIAN CEMENT, a Hawaii	)	RAMOS' MOTION FOR
General Partnership, KNIFE RIVER	)	DETERMINATION OF GOOD FAITH
DAKOTA, INC., a Delaware	)	SETTLEMENT UNDER HAWAI'I
corporation and general partner of	)	REVISED STATUTES SECTION
HAWAIIAN CEMENT, KNIFE	)	663-15.5 (FILED 4/7/09) BE GRANTED
RIVER HAWAII, INC., a Delaware	)	
corporation and general partner of	)	
HAWAIIAN CEMENT, MDU	)	
RESOURCES GROUP, INC., a	)	
Delaware corporation, JOHN	)	
DELONG, individually and as	)	Date: May 11, 2009
President of HAWAIIAN CEMENT,	)	Time: 9:30 a.m.
MICHAEL COAD, individually and	)	Judge: Hon. Kevin S.C. Chang
as Vice President of Human	)	
Resources of HAWAIIAN	)	Trial Date: 09/15/09
CEMENT, BRIAN DERAMOS,	)	
individually and as General Manager	)	

of HAWAIIAN CEMENT, JON )  
MATSUO, individually and doing )  
business as PRINCIPLE- )  
CENTERED SOLUTIONS, )  
HAWAII TEAMSTERS AND )  
ALLIED WORKERS, LOCAL 996, )  
a Hawaii unincorporated non-profit )  
organization, MELVIN KAHELE, )  
individually and as former President )  
of HAWAII TEAMSTERS AND )  
ALLIED WORKERS, LOCAL 996, )  
BEN RAMOS, individually and as )  
Shop Steward and Union Chair of )  
HAWAII TEAMSTERS AND )  
ALLIED WORKERS, LOCAL 996, )  
LIBERTY MUTUAL INSURANCE )  
COMPANY, DOES 1-10, )  
) )  
Defendants. )  
\_\_\_\_\_ )

**FINDINGS AND RECOMMENDATION THAT DEFENDANTS  
HAWAII TEAMSTERS AND ALLIED WORKERS, LOCAL 996,  
MELVIN KAHELE AND BEN RAMOS’ MOTION FOR  
DETERMINATION OF GOOD FAITH SETTLEMENT UNDER HAWAI‘I  
REVISED STATUTES SECTION 663-15.5 (FILED 4/7/09) BE GRANTED**

This matter arises from events that occurred in relation to the employment of Plaintiff Michael T. Doyle (“Plaintiff”) with Defendant Hawaiian Cement (“Hawaiian Cement”). Plaintiff alleges that he was injured during the course of his employment with Hawaiian Cement, by the action of Defendants Hawaii Teamster and Allied Workers, Local 996 (“Local 996), Melvin Kahele (“Kahele”) and Ben Ramos (“Ramos”), while they were performing their duties as the exclusive

representative of the organized employees of Hawaiian Cement, and the business representatives of Local 996.

Plaintiff reached a confidential settlement with Defendants Local 996, Kahele and Ramos. On April 7, 2009, Defendants Local 996, Melvin Kahele and Ben Ramos filed a Motion for Determination of Good Faith Settlement Under Hawai‘i Revised Statutes Section 663-15.5 (“Petition”). The settlement agreement was attached as Exhibit “1” to the Motion and was served upon all remaining parties to this lawsuit. Defendants HAWAIIAN CEMENT, KNIFE RIVER DAKOTA, INC., KNIFE RIVER HAWAII, INC., MDU RESOURCES GROUP, INC., JOHN DELONG, MICHAEL COAD, BRIAN DERAMOS and JON MATSUO submitted a Statement of No Position. No opposition to the Motion has been received.

The Motion came forth for hearing on May 11, 2009. After careful consideration of Local 996, Kahele and Ramos’ Motion and supporting memorandum, the totality of circumstances, and the absence of opposition to the Motion, the Court hereby FINDS that the settlement between Plaintiff and Local 996, Kahele and Ramos is in good faith and RECOMMENDS that a determination of good faith settlement be made.

## **DISCUSSION**

Pursuant to Hawai‘i Revised Statutes (“HRS”) Section 663-15.5(a), a good faith settlement: (1) discharges the settling party of liability for contribution to joint tortfeasors; and (2) reduces a plaintiff’s claims against joint tortfeasors by the “amount stipulated to in the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater[.]” Subsection (b) of Section 663-15.5 provides that a party may petition the court for a determination on the issue of good faith of a settlement entered into by a plaintiff and one or more alleged joint tortfeasors. Subsection (d) of Section 663-15.5 provides that a determination by the court that a settlement was made in good faith bars other joint tortfeasors from any further claims against the settling tortfeasor for contribution or indemnity.

In Troyer v. Adams, 102 Hawai‘i 399, 77 P.3d 83 (2003), the Hawai‘i Supreme Court adopted the “totality of circumstances” analysis for a trial court’s determination of whether a settlement is made in good faith under HRS Section 663-15.5. This approach is grounded in the underlying notion that HRS Section 663-15.5 is intended to encourage settlements and the good faith provision is meant to “merely provide the court with an opportunity to prevent collusive settlements aimed at injuring the interests of a non-settling joint tortfeasor.” Id. at 110, 77 P.3d at 426.

Whether a settlement is made in good faith is determined by the states of mind of the settling parties, the circumstances that the parties were aware of at the time of settlement, and what might or might not be proven at trial. Troyer, 102 Hawai‘i at 430, 77 P.3d at 114. The Hawai‘i Supreme Court set forth a nonexclusive list of issues that may be considered when deciding whether a settlement was made in good faith:

- (1) the type of case and difficulty of proof at trial, e.g., rear-end motor vehicle collision, medical malpractice, product liability, etc.;
- (2) the realistic approximation of total damages that the plaintiff seeks;
- (3) the strength of the plaintiff’s claim and the realistic likelihood of his or her success at trial;
- (4) the predicted expense of litigation;
- (5) the relative degree of fault of the settling tortfeasors;
- (6) the amount of consideration paid to settle the claims;
- (7) the insurance policy limits and solvency of the joint tortfeasors;
- (8) the relationship among the parties and whether it is conducive to collusion or wrongful conduct; and
- (9) any other evidence that the settlement is aimed at injuring the interests of a non-settling tortfeasor or motivated by other wrongful purpose.

Id. at 427, 77 P.3d at 112. Other factors may be considered when deciding whether a settlement was in good faith. Id.

Therefore, an agreement to settle a claim is made in good faith when the totality of circumstances reflects the settlement was not collusive or aimed at injuring the interests of the non-settling parties. HRS Section 663-15.5 does not require the settling parties to explain the rationale for the amount of the settlement payment. Whirlpool Corporation v. CIT Group/Business Credit, Inc., 293 F. Supp. 2d 1144, 1154 (D. Haw. 2003). The non-settling defendant opposing the motion has the burden of proof that the settlement agreement was not reached in good faith. HRS § 663-15.5(b). Given the totality of the circumstances, and the absence of opposition thereto, a finding of good faith settlement is appropriate here. The Court has reviewed the factors set forth in Troyer v. Adams and finds that the essential terms of the settlement agreement meet the purpose of HRS Section 663-15.5 and are reasonable and in good faith. Accordingly, the Court recommends that the District Court grants Local 996, Kahele and Ramos' Motion.

## **CONCLUSION**

After careful consideration of Local 996, Kahele and Ramos's Motion and

no opposition thereto, and the totality of the circumstances, the Court hereby FINDS that the settlement between Plaintiff and Local 996, Kahele and Ramos is in good faith and RECOMMENDS that a determination of good faith settlement be made and that Local 996, Kahele and Ramos' Motion be GRANTED.

DATED: Honolulu, Hawai'i, May 26, 2009.



  
Kevin S.C. Chang  
United States Magistrate Judge

APPROVED AS TO FORM:

/s/ Peter C. Hsieh  
PETER C. HSIEH  
DENNIS CHANG  
Attorneys for Plaintiff MICHAEL DOYLE

Michael Doyle v. Hawaiian Cement et al., Civil No. 08-00017 JMS/KSC; Findings and Recommendations That Defendants Hawaii Teamsters and Allied Workers, Local 996, Melvin Kahele and Ben Ramos' Motion For Determination of Good Faith Settlement Under Hawai'i Revised Statutes Section 663-15.5 (Filed 4/7/09) Be Granted

/s/ William N. Ota

BARRY W. MARR

WILLIAM N. OTA

Attorneys for Defendants HAWAIIAN CEMENT,  
KNIFE RIVER DAKOTA, INC., KNIFE RIVER  
HAWAII, INC., MDU RESOURCES GROUP, INC.,  
JOHN DELONG, MICHAEL COAD, BRIAN DERAMOS and  
JON MATSUO

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Michael Doyle v. Hawaiian Cement et al., Civil No. 08-00017 JMS/KSC; Findings and  
Recommendations That Defendants Hawaii Teamsters and Allied Workers, Local 996, Melvin  
Kahele and Ben Ramos' Motion For Determination of Good Faith Settlement Under Hawai'i  
Revised Statutes Section 663-15.5 (Filed 4/7/09) Be Granted