



By Order of the Court, Associate Judge JOSEPH N. CAMACHO

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**IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH PORTS)	CIVIL CASE NO. 13-0085
AUTHORITY,)	
)	
Plaintiff,)	ORDER RE DEFENDANT LEO A.
)	DALY’S REQUEST TO FILE CROSS-
v.)	CLAIMS AND THIRD-PARTY
)	COMPLAINT; PLAINTIFF’S REQUEST
LEO A. DALY COMPANY and GPPC,)	FOR GOOD FAITH SETTLEMENT
INC.,)	DETERMINATION
)	
Defendants.)	

I. INTRODUCTION

On April 8, 2013, Plaintiff Commonwealth Ports Authority (“CPA”) filed suit against Defendant Leo A. Daly Company (“LAD”) and Defendant GPPC, Inc. (“GPPC”) alleging that they breached professional and contractual duties and were negligent in designing and constructing the West Addition to the Saipan International Airport. Defendants were both subcontractors of Boeing Service Company for the West Addition project. LAD is an architecture and engineering firm. GPPC is a construction company. CPA brought six claims against LAD: breach of contract, professional malpractice, negligence, violations of the Consumer Protection Act, fraud, and violation of the Building Safety Code. CPA brought three claims against GPPC: breach of contract, violations of the Consumer Protection Act, and violations of the Building Safety Code.

Also on April 8, 2013, CPA brought an action against The Boeing Company and Boeing Service Company (collectively “Boeing”) in the United States District Court for the Northern

1 Mariana Islands. The allegations in the District Court case also stem from alleged faults with the
2 West Addition project.

3 In this action in the Commonwealth Superior Court, there are several outstanding motions:

- 4 1. LAD's Motion for Leave to File Cross-Claims and Third-Party Complaint;
- 5 2. CPA's Motion for an Order Approving Settlement in Good Faith Between Plaintiff
6 Commonwealth Ports Authority and the Boeing Company and Boeing Service Company;
7 and
- 8 3. Three motions to strike various documents filed in support of or in opposition to CPA's
9 motion.

10 Based on a review of the filings, oral argument, and applicable law, the Court grants in part
11 and denies in part both CPA's and LAD's motions. The functional result of these rulings is as
12 follows: LAD may bring claims against GPPC; LAD may bring claims of indemnity and
13 declaratory relief against Boeing; and the Court finds that the settlement between CPA and Boeing
14 was made in good faith, but declines to make the specific findings requested by CPA as the findings
15 requested conflict with Commonwealth statutes.

16 **II. CROSS-CLAIMS AND THIRD-PARTY COMPLAINT**

17 **A. Procedural Background**

18 On October 3, 2013, LAD filed a Motion for Leave to File Cross-Claims and Third-Party
19 Complaint and the proposed Cross-Claims and Third-Party Complaint. LAD seeks to add Boeing as
20 a third-party defendant, alleging claims of total equitable indemnity, comparative equitable
21 indemnity, equitable contribution, violation of the Consumer Protection Act, and fraudulent
22 misrepresentation. LAD requests leave to bring cross-claims of total equitable indemnity,
23 comparative equitable indemnity, and equitable contribution against GPPC. LAD also seeks
24 declaratory relief against GPPC and Boeing.

1 On October 16, 2013, Plaintiff CPA filed an opposition to LAD’s motion for leave to file a
2 third-party complaint, opposing the addition of Boeing as a third-party defendant. LAD filed a reply
3 to CPA’s opposition on October 24, 2013. GPPC did not file a written opposition to LAD’s motion.

4 The Court heard argument on this matter on November 14, 2013 at 1:30 p.m. in Courtroom
5 220A. LAD was represented by Joseph E. Horey. GPPC was not present or represented at the
6 hearing. CPA was represented by Matthew Gregory.

7 **B. Cross-Claims Against GPPC**

8 Rule 13(g) of the Commonwealth Rules of Civil Procedure governs cross-claims, or claims
9 asserted by a party against a co-party that “aris[e] out of the same transaction or occurrence”
10 already being litigated. While the rule states that cross-claims may be filed in the pleading, there is
11 no prohibition against requesting leave to file a cross-claim at a later time. *See Luyster v. Textron,*
12 *Inc.*, 266 F.R.D. 54, 64 (S.D.N.Y. Feb. 8, 2010). When the court is asked for leave to file a cross-
13 claim after the initial pleading, the court exercises discretion and balances judicial economy against
14 possible prejudice or surprise to the other parties. *Id.* (citing 6 WRIGHT & MILLER, FEDERAL
15 PRACTICE AND PROCEDURE § 1431 at 243).

16 LAD requests leave from the Court to bring cross-claims of total equitable indemnity,
17 comparative equitable indemnity and equitable contribution against GPPC, along with a request for
18 declaratory relief. LAD’s motion is unopposed as neither CPA nor GPPC opposed LAD’s motion
19 for leave to file these cross-claims against GPPC. GPPC is a co-defendant in this case. All four of
20 the cross-claims suggested by LAD are claims that GPPC is or may be liable to LAD for all or part
21 of the claims asserted against LAD by CPA. *See NMI R. Civ. P. 13(g)* (“Such cross-claim may
22 include a claim that the party against whom it is asserted is or may be liable to the cross-claimant
23 for all or part of a claim asserted in the action against the cross-claimant.”). Thus, the Court finds
24 that for the purposes of Rule 13(g), all four proposed cross-claims against GPPC are proper.

1 Moreover, having received no argument suggesting that GPPC or CPA would be prejudiced
2 or surprised by the addition of these cross-claims, the Court finds that the interests of judicial
3 economy weigh in favor of settling these related claims in one action.

4 Accordingly, the Court grants LAD's motion for leave to file cross-claims against GPPC.

5 **C. Third-Party Complaint Against Boeing**

6 Under Rule 14(a) of the Commonwealth Rules of Civil Procedure, a defendant may bring a
7 third-party defendant into the action if that third party is or may be liable to the defendant for all or
8 part of the plaintiff's original claim. Because the third-party defendant's liability must stem from
9 the original claim, only derivative claims, such as indemnity, contribution, subrogation or warranty
10 may be brought against the third-party defendant. *See RPM Corp. v. Kang*, Civ. No. 10-0180 (NMI
11 Super. Ct. Jan. 2, 2011) (Order Partially Granting Plaintiff's Motion to Quash Summons and
12 Denying Plaintiff's Motion to Dismiss at 2). If more than ten days have passed since the defendant
13 filed its original answer to the plaintiff's complaint, the defendant must obtain leave of the court to
14 file a third-party complaint. NMI R. Civ. P. 14(a).

15 The court exercises broad discretion in determining whether such leave should be given.
16 *Manglona v. Camacho*, 1 CR 820, 829 (Dist. Ct. App. Div. 1983). Because the interests of judicial
17 economy are supported by allowing impleader, timely requests for impleader are generally "freely
18 granted." *M.O.C.H.A. Soc'y, Inc. v. City of Buffalo*, 272 F. Supp. 2d 217, 220 (W.D.N.Y. 2003).
19 The court may deny such a request if impleader would delay the existing action, prejudice the
20 plaintiff or third-party defendant, or promote a clearly meritless third-party claim. *See Prop. Mgmt.*
21 *Inc. v. Inoue*, Civ. No. 92-1455 (NMI Super. Ct. May 25, 1994) (Decision and Order on
22 Defendant's Motions for Leave to File Third-Party Complaint and to Dismiss for Failure to Name
23 Indispensable Party at 3-4); *Karon Bus. Forms, Inc. v. Skandia Ins.*, 80 F.R.D. 501, 505 (D.P.R.
24 1978).

1 **1. Timeliness of Motion**

2 As a preliminary matter, the Court considers whether the timing of LAD’s request warrants
3 a denial. CPA argues that LAD’s request to implead Boeing should be denied because it was not
4 timely filed. LAD responds that, although this case has been pending for some time, it is still in the
5 earliest stages of development. LAD points out that this motion was filed less than a month after
6 CPA filed its Declaration of Service for GPPC.

7 The Court finds that the timing of this request is not dispositive. While CPA cited to one
8 case in which a request to implead was denied based solely on the timing of the denial, the facts of
9 this case are distinct. Unlike *Rivera v. Kmart Corp.*, 2009 U.S. Dist. Lexis 5932 at *1 (D.V.I.
10 January 27, 2009), discovery is not closed in this case, nor has it already been pending for over
11 three years, with a trial quickly approaching. The Court finds that the instant motion is better
12 determined on its merits than on the issue of timing alone.

13 **2. Compliance with Rule 14(a)**

14 Rule 14(a) only allows impleader of a third-party defendant for claims that concern the
15 third-party defendant’s liability for the underlying claim between the plaintiff and defendant. Two
16 of the claims that LAD is asserting are not derivative claims, so are inappropriate for the impleader
17 process under Rule 14(a). The Consumer Protection Act claim and fraudulent misrepresentation
18 claim do not relate to the liability of either Boeing or LAD for CPA’s underlying claim. Therefore
19 the Court does not grant leave to file such claims through the impleader process in the case at hand.

20 However, the remaining claims for total equitable indemnity, comparative equitable
21 indemnity, equitable contribution, and declaratory relief do meet the requirements of Rule 14(a) as
22 they all concern possible liability of Boeing for the underlying claim of CPA against LAD. *See*
23 *RPM Corp. v. Kang*, Civ. No. 10-0180 at 2.

24

1 **3. Delay, Prejudice to CPA or Boeing and Merits of Third-Party Claims**

2 **a. Equitable Contribution**

3 CPA opposes LAD’s proposed claim of equitable contribution against Boeing arguing that it
4 is futile because CPA has settled with Boeing, and thus, LAD’s right to contribution is governed by
5 statute. Based on subsequent filings the Court is aware that CPA and Boeing have entered a
6 settlement agreement. As discussed below, the Court finds the settlement agreement was entered in
7 good faith, and thus, under both 7 CMC § 4305(b) and 7 CMC § 2906, Boeing is released from
8 liability for contribution.

9 Thus, the Court denies LAD’s motion for leave to file a third-party complaint against
10 Boeing as to the claim for equitable contribution.

11 **b. Indemnity**

12 CPA agrees that LAD’s claims for equitable indemnity against Boeing are potentially proper
13 third-party claims, but argues that LAD should not be granted leave to file these claims because
14 they are inadequately pled in the proposed third-party complaint.

15 The Court agrees with both of these assessments. As discussed above, indemnity claims are
16 proper third-party claims. But the proposed third-party complaint does not allege sufficient facts to
17 make those claims. Instead, the proposed third-party complaint is full of legal conclusions
18 unsupported by fact. As an example, instead of alleging facts concerning the actual contract and
19 indemnity provisions governing the relationship between Boeing and LAD, LAD merely alleges
20 that Boeing has refused to provide a copy of the contract to LAD.

21 The Court also recognizes, however, that it is often not possible to claim the facts to support
22 an indemnity claim, which by its nature is derivative, until some issues in the underlying claim have
23 been resolved. *See* Restatement 3d of Torts: Apportionment of Liability, § 22, cmt. b (“An
24 indemnitee may, however, assert a *claim* for indemnity and obtain a contingent judgment in an

1 action where the indemnitee is sued by the plaintiff . . . even though liability of the indemnitor has
2 not yet been discharged.). The Court finds that the failure to plead specific facts in the proposed
3 third-party complaint is not determinative of the merits of the potential indemnity claims. These
4 shortcomings could be addressed in the filing of the actual third-party complaint.

5 CPA provides no argument specific to how allowing LAD to file third-party claims of
6 indemnity against Boeing would unduly delay resolution of the underlying claim or prejudice CPA
7 or Boeing. Absent such concerns, the Court finds that it is in the interests of judicial economy for
8 all claims concerning liability for the alleged issues with the West Addition project to be litigated in
9 one action.

10 Thus, the Court grants LAD's motion for leave to file a third-party complaint against
11 Boeing as to the indemnity claims.

12 **c. Declaratory Relief**

13 Similarly, LAD's request for declaratory relief can be understood as one of derivative
14 liability. The request concerns the terms of the subcontracts between LAD and Boeing, and their
15 respective rights under those contracts, including indemnification rights. A finding that Boeing is
16 required to indemnify LAD under the subcontract between those parties concerns Boeing's
17 potential liability for CPA's claim against LAD.

18 Again, CPA provides little argument that allowing a third-party claim of declaratory relief
19 could unduly delay the resolution of the underlying claim or prejudice CPA or Boeing. CPA asserts
20 that the subcontract between Boeing and LAD requires LAD to indemnify Boeing, however, such
21 an assertion absent any evidentiary support is neither procedurally proper nor analytically useful to
22 the Court.

23 CPA generally argues that any claims LAD has against Boeing will be litigated in the
24 pending federal case. However, CPA chose to bring its claims in two separate forums; and LAD, as

1 a third-party plaintiff, may choose in which forum it prefers to bring its claims. The Court finds that
2 should such claims be brought by LAD in the Commonwealth Superior Court, it is in the interests
3 of judicial economy to allow impleader of Boeing in the pending action.

4 Thus, the Court grants LAD's motion for leave to file a third-party complaint against
5 Boeing as to the declaratory relief claim.

6 **4. Deadline for Filing**

7 The Court grants leave for LAD to file a third-party complaint that reflects the rulings in this
8 order. Such complaint must be filed and served on or before June 30, 2014.

9 **III. GOOD FAITH SETTLEMENT**

10 The second outstanding motion is CPA's request for a good faith determination from this
11 Court concerning the settlement agreement between CPA and Boeing. The specific order requested
12 by CPA is the following:

13 (a) [T]he Agreement between CPA and Boeing is a reasonable, good faith
14 settlement of all claims that the CPA may have against Boeing consistent with 7
CMC § 4305, and the amount paid in settlement is reasonable; and

15 (b) [B]ecause the Agreement is a reasonable, good faith settlement, pursuant
16 to 7 CMC § 4305, the Agreement discharges Boeing from any liability for
contribution or indemnity to LAD or any other party, and all parties are barred from
pursuing such claims against Boeing, but all parties (including Boeing and CPA)
may pursue any and all claims against LAD or any other third parties.

17 Pl.'s Motion at 6.

18 Based on a review of the filings and applicable law, the Court grants in part CPA's motion
19 and finds that the settlement agreement meets the good faith requirement of 7 CMC § 4305, and as
20 such relieves Boeing from liability for contribution. The Court denies CPA's motion as to the
21 remainder of the requested language.

22 **A. Procedural Background**

23 CPA filed its Motion for an Order Approving Settlement in Good Faith Between Plaintiff
24 Commonwealth Ports Authority and the Boeing Company and Boeing Service Company ("Good

1 Faith Settlement Motion”) on December 19, 2013. LAD filed an opposition on January 6, 2014, to
2 which CPA filed a reply along with declarations and supporting documentation on January 14,
3 2014. On January 15, 2014 LAD filed a supplemental declaration to its opposition. This motion was
4 set for hearing on January 16, 2014. The parties appeared. CPA was represented by Matthew
5 Gregory and LAD was represented by Robert O’Connor and Joseph Horey. However, the parties
6 requested a short continuance to the following day. When the parties returned the following day,
7 January 17, 2014, LAD requested another continuance, which was granted. During both
8 appearances, the Court heard limited argument from both parties concerning the issues underlying
9 the Good Faith Settlement Motion. On January 17, 2014 the Court issued an order directing CPA to
10 file Exhibits A and B to the settlement agreement and the Court granted leave for supplemental
11 briefing. LAD filed its supplemental opposition and supporting declaration on January 24, 2014,
12 and CPA filed its supplemental reply and supporting declarations on January 31, 2014.

13 On January 29, 2014, LAD filed a motion for another continuance, which the Court denied.
14 The Court also vacated the motions hearing on this matter, finding that additional argument by the
15 parties was unnecessary to decide the matter.

16 On February 1, 2014, LAD filed a document entitled “Stipulation as to Court Approval of
17 Settlement, or in the alternative Request for Recalendaring of Hearing” along with an exhibit. On
18 February 2, 2014, CPA moved to strike this entire filing (“Motion to Strike LAD’s
19 Stipulation/Recalendaring Request”).

20 In addition to CPA’s Motion to Strike LAD’s Stipulation/Recalendaring Request, LAD filed
21 two motions to strike. The first, filed on January 16, 2014, moved to strike the documents filed in
22 support of CPA’s reply brief, and any portion of the reply brief dependent on those declarations
23 (“Motion to Strike CPA’s Reply Brief Declarations”). CPA filed an opposition to this Motion to
24

1 Strike CPA’s Reply Brief Declarations on January 30, 2014 along with notarized copies of the
2 affidavits, and LAD filed a reply the next day, January 31, 2014.

3 LAD’s second motion to strike was filed on February 3, 2014, and moved to strike the
4 declarations filed in support of CPA’s Supplemental Reply (“Motion to Strike CPA’s Supplemental
5 Reply Declarations”). CPA filed an opposition to this Motion to Strike CPA’s Supplemental Reply
6 Declarations on February 4, 2014.

7 **B. Motions to Strike**

8 As a preliminary matter, the Court addresses the parties’ various motions to strike.

9 **1. LAD’s Motion to Strike CPA’s Reply Brief Declarations**

10 The Court denies LAD’s Motion to Strike CPA’s Reply Brief Declarations. LAD originally
11 moved to strike the declarations of Elizabeth Hess, William R. Satterberg Jr. and Terague Gillham
12 arguing that there were defects in form, and that some content was inadmissible. CPA re-filed the
13 affidavits on January 30, 2014, and LAD agrees that the defects as to form were cured. The Court
14 finds that in making this good faith determination, it is appropriate and efficient to consider the
15 affidavits submitted by CPA. *See Mahathiraj v. Columbia Gas of Ohio, Inc.*, Ohio App. 3d 554,
16 561 (1992) (noting that the trial court has discretion to determine the type of evidence it will rely
17 upon in making a good faith determination).¹

18 As to the particular evidentiary objections, the Court has considered each one and found
19 them all to be without merit. Mr. Satterberg’s affidavit describes his experience throughout the
20 settlement negotiation process. The Court finds that all of the statements objected to as hearsay
21 describe Mr. Satterberg’s or his client’s state of mind during the negotiation process and are thus,
22 admissible. *See* NMI R. Evid. 803(3). The Court notes that the portions of the affidavit objected to

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24 ¹ The Ohio statute interpreted in this decision is substantively identical to 7 CMC § 4305(b). *See* OHIO REV. CODE § 2307.32(F) (repealed 2003).

1 as hearsay, insofar as they express Mr. Satterberg's then-existing beliefs or understandings, are not
2 being introduced to prove the truth of the matter described, but to explain the settlement process. As
3 to the improper opinion objection, the Court finds that Mr. Satterberg is describing his client's
4 position during the settlement negotiations, which is something he is competent to offer evidence
5 about.

6 LAD objected to two statements in Mr. Gillham's affidavit as hearsay, both concerning Mr.
7 Gillham's understanding of the status/opinion of other persons. The portions of the affidavit
8 objected to are not offered to prove their truth; they are offered to indicate Mr. Gillham's
9 understanding of the situation, which sheds light on the negotiation and settlement process.
10 Similarly, for the purposes of this motion, the affidavit contains sufficient foundation to support Mr.
11 Gillham offering his opinion as an engineer concerning the retrofit plans embodied in the settlement
12 agreement.

13 Finally, LAD objects to Ms. Hess' affidavit on grounds of lack of foundation. The Court
14 finds that the affidavit lays sufficient foundation to show that as Boeing's attorney, Ms. Hess has
15 knowledge of the communications between Boeing and LAD that occurred while Boeing and CPA
16 were in settlement negotiations.

17 Accordingly, LAD's Motion to Strike CPA's Reply Brief Declarations is denied.

18 **2. LAD's Motion to Strike CPA's Supplemental Reply Declarations**

19 The Court also denies LAD's Motion to Strike CPA's Supplemental Reply Declarations.
20 LAD argues that Ms. Hess's affidavit contains inadmissible hearsay, lacks foundation, and is
21 impermissibly vague. There is no need to strike portions of Ms. Hess's affidavit because (1) the
22 Court did not find the affidavit vague; (2) any statement ascribed to LAD would be a statement by
23 party-opponent, and not hearsay; *see* NMI R. Evid. 801(d)(2); (3) the other alleged hearsay
24 statements recount the fact that certain communications occurred, not the truth of the matters

1 discussed during those communications; and (4) as Boeing's attorney, Ms. Hess has laid the
2 foundation to indicate that she has knowledge of the communications between Boeing and LAD.

3 As to Mr. Sablan's declaration, LAD first objects to many portions of the declaration as
4 improper legal opinion, vague and lacking foundation. For the purposes of making the good faith
5 determination, the Court did not find Mr. Sablan's declaration to be vague. By establishing that he
6 is the permitting official and that he has conditionally approved the permit for the building
7 proposed in the settlement agreement, he has laid enough foundation to support the statements
8 made in his declaration. Concerning the improper legal opinion argument, Mr. Sablan is the
9 permitting authority, so he is in the position to determine whether or not proposed buildings meet
10 the requirements to obtain a permit. For the purposes of the good faith determination, his opinions
11 concerning the permitting process and whether the retrofit plans are in compliance with the
12 permitting requirements are not impermissible. He is not opining on whether the settlement
13 agreement was entered in good faith, his opinion is based on his position as the permitting
14 authority, his familiarity with the relevant regulations, and his familiarity with the requested permit
15 for the retrofit. *See* NMI R. Evid. 702.

16 Accordingly, LAD's Motion to Strike CPA's Supplemental Reply Declarations is denied.

17 **3. CPA's Motion to Strike LAD's Stipulation/Recalendaring Request**

18 Finally, the Court grants CPA's Motion to Strike LAD's Stipulation/Recalendaring Request
19 and denies LAD's request for recalendaring. The Court allowed supplemental briefing on the
20 underlying motion and has already found that further proceedings are unnecessary to making the
21 good faith determination. The Court did not grant leave for LAD to file a second supplemental
22 opposition, nor did LAD offer any procedural authority to support its February 1, 2014 filing. Thus,
23 the Court strikes LAD's Stipulation/Recalendaring Request. *Cf. Estate of Mendiola v. Mendiola*, 2
24

1 NMI 233, 238-40 (1991) (affirming trial court’s decision to strike affidavits because they did not
2 comply with the scheduling order).

3 **C. Commonwealth Statutes Governing Effect of Settlement on Joint Tortfeasors**

4 CPA requests a determination from the Court that the settlement agreement was made in
5 good faith as is required by 7 CMC § 4305. CPA also requests the Court to issue an order
6 concerning the reasonableness of the settlement and the effect of the settlement on the rights and
7 liabilities of Boeing, LAD and any other joint tortfeasors. In the Commonwealth, there are two
8 statutes that govern the effect of settlement on the rights and liabilities of joint tortfeasors: the
9 Contribution Among Joint Tortfeasors Act, 7 CMC §§ 4301-06 and the Uniform Comparative Fault
10 Act, 7 CMC §§ 2901-07.

11 The Court notes that some portions of these two Acts cannot be harmonized.² One principal
12 difference between these two Acts is the effect on a non-settling tortfeasor when another tortfeasor
13 enters into a settlement agreement. *Compare* 7 CMC §§ 2902 and 2906 (value of claim is reduced
14 by the amount of the equitable share of the settling tortfeasor(s)) *with* 7 CMC § 4305(a) (value of
15 claim is reduced by the amount stipulated in the settlement or the consideration paid for the release,
16 whichever is greater). The issue of which of these Acts governs contribution rights in the current
17 case is not before the Court at present, and the Court leaves open the question of the relationship of
18 the Acts and how they apply in this case. However, in making the determination of good faith, and
19 deciding whether to make the other orders requested by CPA, the Court takes into account the
20 provisions of both Acts.

21

22

23 ² The Commonwealth Legislature adopted Sections 1 through 7 of the Uniform Comparative Fault Act on October 19,
24 2000, but did not repeal the Contribution Among Joint Tortfeasors Act. This has created statutory provisions that are in
conflict with each other. *See* UNIFORM COMPARATIVE FAULT ACT § 11 cmt. (“A state that has adopted either of the two
Uniform Contribution Among Tortfeasors Acts will of course plan to repeal it. This is also true of other statutory
provisions on contribution for tortfeasors.”).

1 **1. Contribution Among Joint Tortfeasors Act, 7 CMC §§ 4301-06**

2 Under 7 CMC § 4305, “[w]hen a release or a covenant not to sue or not to enforce judgment
3 is given in good faith to one of two or more persons liable in tort for the same injury or the same
4 wrongful death: [. . .] (b) It discharges the tortfeasor to whom it is given from all liability for
5 contribution to any other tortfeasor.” Thus, a tortfeasor who enters a settlement agreement in good
6 faith may not later be sued for contribution by a joint tortfeasor who did not settle and was found
7 liable.

8 The Contribution Among Joint Tortfeasors Act also addresses the contribution rights of a
9 settling tortfeasor in 7 CMC § 4302(d): “A tortfeasor who enters into a settlement with a claimant is
10 not entitled to recover contribution from another tortfeasor whose liability for the injury or
11 wrongful death is not extinguished by the settlement[.]” As a matter of law, a settling tortfeasor’s
12 failure to extinguish liability of another tortfeasor who is not a party to the settlement agreement is
13 fatal to any future potential contribution claim against the non-settling tortfeasor. *See Doctors Co*,
14 120 Nev. at 652-53 (applying Nevada law identical in relevant part to 7 CMC § 4302(d)).

15 A good faith settlement, and the resultant limitation on contribution rights, has no effect on
16 existing indemnity rights:

17 [The Contribution Among Joint Tortfeasors Act] does not impair any right of
18 indemnity under existing law. Where one tortfeasor is entitled to indemnity from
19 another, the right of the indemnity obligee is for indemnity and not contribution, and
the indemnity obligor is not entitled to contribution from the obligee for any portion
of his or her indemnity obligation.

20 7 CMC § 4302(f).

21 However, a good faith settlement does reduce the amount of the plaintiff’s claim for which
22 the non-settling tortfeasors may be liable. The claim amount is reduced “to the extent of any
23 amount stipulated by the release or the covenant, or in the amount of consideration paid for it,
24 whichever is greater.” 7 CMC § 4305(a). For example, if a claim is worth \$1,000, and two

1 tortfeasors are equally liable, but one of the tortfeasors settles with the claimant for \$1, then the
2 liability of the non-settling tortfeasor is reduced to \$999. Under this statute, the risk that the
3 settlement is disproportionately small compared to the share of liability truly owed by the settling
4 party is born by the non-settling tortfeasor, who will end up paying \$999 of the \$1000. *See United*
5 *States v. GenCorp, Inc.*, 935 F. Supp. 928, 932-33 (N.D. Ohio 1996). Hence, the good faith
6 requirement is necessary to prevent collusion between the settling tortfeasor and the claimant.

7 **2. Uniform Comparative Fault Act, 7 CMC §§ 2901-07**

8 In contrast to the Contribution Among Joint Tortfeasors Act, the Uniform Comparative
9 Fault Act, 7 CMC §§ 2901-07, discharges the settling tortfeasor from contribution liability without
10 imposing a good faith requirement. *See* 7 CMC § 2906. However, the procedure for liability
11 apportionment under the Uniform Comparative Fault Act already includes an equitable protection
12 for non-settling tortfeasors, because the value of the claim is reduced by the settling tortfeasor's
13 equitable share of liability as determined by the trier of fact. *See* 7 CMC §§ 2902 and 2906. For
14 example, if a claim is worth \$1,000, and two tortfeasors are equally liable, but one of the tortfeasors
15 settles with the claimant for \$1, the jury or court would still apportion liability between the two
16 tortfeasors at trial (for this example, assume the liability is apportioned 50% / 50%), and the non-
17 settling tortfeasor's liability would be reduced to \$500. Under this statute, the risk that the
18 settlement amount was too small is born by the claimant, who now can only recover a maximum of
19 \$501. *See GenCorp, Inc.*, 935 F. Supp. at 932-33. Because there is already this equitable safeguard
20 built into the Uniform Comparative Fault Act, there is no need for a good faith determination.

21 Under both Acts, the contribution rights of the settling tortfeasor are similar. The Uniform
22 Comparative Fault Act provides that, “[c]ontribution is available to a person who enters into a
23 settlement only (1) if the liability of the person against whom contribution is sought has been
24 extinguished and (2) to the extent that the amount paid in settlement was reasonable.” 7 CMC

1 § 2904(b). Thus, as a matter of law, if a non-settling tortfeasor's liability is not extinguished by the
2 settling tortfeasor, the settling tortfeasor may not pursue a claim of contribution against the non-
3 settling tortfeasor.

4 **D. Application of Commonwealth Statute to Settlement Agreement**

5 The settlement agreement³ entered into by Boeing and CPA provides that Boeing will
6 oversee and fund the design and construction of a retrofit of the West Addition and reimburse CPA
7 for expert and attorney's fees. The agreement also contains provisions concerning future possible
8 settlements with third parties and the allocation of recovery from those parties should the recovery
9 be in excess of Boeing's out-of-pocket expenses in retrofitting the West Addition. In exchange,
10 CPA agreed to release and discharge Boeing from all claims related to the original West Addition
11 Project, and to dismiss with prejudice the lawsuit pending in District Court. The settlement
12 agreement is conditioned on (1) obtaining the applicable building permits; and (2) obtaining the
13 order requested from this Court in the instant motion.

14 As stated above, the specific order requested by CPA is the following:

15 (a) [T]he Agreement between CPA and Boeing is a reasonable, good faith
16 settlement of all claims that the CPA may have against Boeing consistent with 7
CMC § 4305, and the amount paid in settlement is reasonable; and

17 (b) [B]ecause the Agreement is a reasonable, good faith settlement, pursuant
18 to 7 CMC § 4305, the Agreement discharges Boeing from any liability for
contribution or indemnity to LAD or any other party, and all parties are barred from
19 pursuing such claims against Boeing, but all parties (including Boeing and CPA)
may pursue any and all claims against LAD or any other third parties.

19 Pl.'s Motion at 6.

20 The Court finds that the settlement between Boeing and CPA meets the good faith
21 requirement of 7 CMC § 4305, thus Boeing is relieved of any contribution liability to any joint
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23 ³ The Court acknowledges that the settlement agreement was filed under seal by CPA. CPA did not request leave to file
24 any supplemental briefs or supporting documents under seal or to close the hearings. The Court describes the terms of
the settlement agreement only in as much detail as is required to understand this order, which is available to the public.

1 tortfeasors. However, the Court denies CPA’s motion insofar as it requests an order beyond that
2 good faith determination.

3 **1. Denial of Requested Orders Beyond Good Faith Determination**

4 LAD argues, and the Court agrees, that CPA’s requests go beyond what is authorized by the
5 applicable statutes. Section (b) of the proposed order states a legal conclusion that does not follow
6 from the good faith determination and is contrary to Commonwealth law. CPA requests an order
7 from the Court that states that Boeing may pursue “all claims” against LAD and other third parties.
8 However, Boeing may not seek contribution from LAD or any other third parties because the
9 settlement agreement does not extinguish LAD’s or any other third party’s liability. 7 CMC
10 §§ 2904(b) & 4302(d).

11 Additionally, CPA requests an order from the Court that states that Boeing is discharged
12 from liability for indemnity to LAD, but the Contribution Among Joint Tortfeasors Act provides
13 that settlement does not relieve the settling tortfeasor from any existing indemnity obligations.
14 7 CMC § 4302(f).

15 As to the request for a determination of reasonableness, CPA offers no legal authority to
16 support that request, nor is there any statutory authority that applies in this situation. The Uniform
17 Comparative Act only allows the settling tortfeasor to seek contribution from a non-settling
18 tortfeasor if the settlement was reasonable; however, that provision only applies if the settling
19 tortfeasor extinguished the non-settling tortfeasor’s liability. 7 CMC § 2904(b). Boeing did not
20 extinguish LAD’s or any other third party’s liability in this settlement agreement, so there is no
21 need for the Court to make a reasonableness determination here.

22 Accordingly, the Court declines to make the findings requested by CPA beyond the good
23 faith determination because the requested order does not comply with the mandates of
24 Commonwealth statute.

1 **2. Good Faith Determination**

2 **a. Legal Standard**

3 The statute, 7 CMC § 4305, which contains the good faith requirement, is silent concerning
4 the procedure for making that determination, and also on the meaning of the term “good faith.” Nor
5 does case law from this jurisdiction provide guidance on making a good faith determination. As
6 such, the Court looks to the case law from jurisdictions with similar statutes for guidance. *In re*
7 *Estate of Camacho*, 2012 MP 8 ¶ 19.

8 When the Court is called upon to determine whether a settlement was made in good faith,
9 the parties to the settlement agreement bear the initial burden and must make a preliminary showing
10 of good faith. *See Johnson v. United Airlines*, 203 Ill. 2d 121, 128 (2003); *and Noyes v. Raymond*,
11 28 Mass. App. Ct. 186, 191 (1990).⁴ To make this preliminary showing, the settling parties must
12 establish the nature and terms of the agreement and that it is legally valid, i.e. supported by
13 consideration. *See Johnson*, 203 Ill. 2d at 128; *Noyes*, 28 Mass. App. Ct. at 191; *and Solimini v.*
14 *Thomas*, 293 Ill. App. 3d 430, 437 (1997). Once the settling parties meet this initial burden, the
15 burden then shifts to the party challenging the good faith of the settlement to show a lack of good
16 faith. *See Johnson*, 203 Ill. 2d at 132; *Noyes*, 28 Mass. App. Ct. at 191. The standard of proof
17 required for this determination is preponderance of the evidence. *See Johnson*, 203 Ill. 2d at 132.

18 The determination of whether a settlement is made in good faith is a matter up to the
19 discretion of the trial court. *See, e.g., Mahathiraj*, 84 Ohio App. 3d at 561; *Cahill v. San Diego Gas*
20 *& Electric Co.*, 194 Cal. App. 4th 939, 960 (2011);⁵ *and Doctors Co. v. Vincent*, 120 Nev. 664, 652

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23 ⁴ Both Illinois and Massachusetts have statutes that are substantively identical to the CNMI’s Contribution Among Joint
Tortfeasors Act. 740 ILL. COMP. STAT. 100/2 (2013); *and* MASS. GEN. LAWS ch. 231B, § 4 (2013).

24 ⁵ California’s statute is substantively similar to CNMI’s Contribution Among Joint Tortfeasors Act, but procedurally it
is more specific and includes provisions governing the procedure for obtaining a good faith determination. *See* CAL.
CIV. PROC. CODE § 877.6 (2013).

1 (2004).⁶ The Court considers the totality of the circumstances and determines whether the
2 settlement meets the good faith requirement of the Contribution Among Joint Tortfeasors Act. *See*,
3 *e.g.*, *Johnson*, 203 Ill. 2d at 135; *Troyer v. Adams*, 102 Haw. 399, 427 (2003);⁷ and *Mahathiraj*, 84
4 Ohio App. 3d at 561. The Act promotes two public policies: It encourages settlements; and also
5 safeguards against unfair distribution of liability, or double satisfaction of claims. *Mahathiraj*, 84
6 Ohio App. 3d at 561; *Bd. of Ed. v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 606 (1990)
7 (citing cases from Alaska, Florida, Hawaii, Michigan, Missouri, Montana and Wyoming); and
8 *Johnson*, 203 Ill. 2d at 133. A settlement that conflicts with the policies underlying the Act or with
9 the terms of the Act does not meet the good faith requirement. *Johnson*, 203 Ill. 2d at 135.

10 Courts consider a variety of factors in making the good faith determination. The court's
11 assessment of the factors is case specific: Not all factors apply in all cases, nor is any factor
12 dispositive. *See, e.g.*, *Mahathiraj*, 84 Ohio App. 3d at 562; and *Troyer*, 102 Haw. at 427. The
13 factors considered by courts include: (1) the anticipated damages, (2) the parties' relative liability;
14 (3) the portion of the liability assumed by the settling party in relation to the total liability; (4)
15 evidence of bad faith, collusion, or dishonesty; (5) the interests of the joint tortfeasors not being
16 released; (6) whether the settlement was motivated by an attempt to obtain wrongful tactical gain by
17 singling out a non-settling party; (7) the relationships of the parties; (8) the financial conditions of
18 the parties including applicable insurance limits; (9) the merits of the various liability and defense
19 theories; (10) the expense of continued litigation. *See Tech-Bilt, Inc. v. Woodward-Clyde & Assocs.*,
20 38 Cal. 3d 488, 499-500 (1985); *Doctors Co.*, 120 Nev. at 651-52; *Troyer v. Adams*, 102 Haw. at

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23 ⁶ Nevada's statute is similar to the CNMI's Contribution Among Joint Tortfeasors Act, with one major exception; the Nevada statute also discharges the settling tortfeasor's liability for equitable indemnity. *See* NEV. REV. STAT. § 17.245 (2013).

24 ⁷ Hawaii's statute, like California's is substantively similar to the CNMI's, but includes provisions governing the procedure for obtaining a good faith determination. *See* HAW. REV. STAT. § 663-15.5 (2013).

1 427; *Mahathiraj*, 84 Ohio App. 3d at 562; *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 246
2 (1993).

3 There is no procedure prescribed for making the good faith determination, nor are there
4 specific requirements concerning the type of evidence to be considered. *See Mahathiraj*, 84 Ohio
5 App. 3d 554, 561 (1992) (“[T]he trial court’s discretion in determining the good faith of a
6 settlement allows it to choose both the type of proceeding it will conduct to determine good faith in
7 an individual case [. . .] as well as its evidentiary sources, including affidavits, depositions, and
8 other discovery materials of record, or even evidence from an evidentiary hearing, if appropriate.”)

9 **b. Discussion**

10 CPA has met its initial burden by demonstrating that that there is a settlement agreement
11 and that it is supported by consideration.⁸ *See Johnson*, 203 Ill. 2d at 128; *Noyes*, 28 Mass. App. Ct.
12 at 191; and *Solimini*, 293 Ill. App. 3d at 437. CPA submitted a copy of the settlement agreement to
13 the Court for review and it is supported by consideration. In the most general terms, Boeing has
14 agreed to fund a retrofit of the West Addition that has been approved by CPA. In exchange, CPA is
15 releasing Boeing from liability for all claims arising out of the original West Addition Project,
16 which includes dismissing the lawsuit CPA brought against Boeing in the District Court. Thus, the
17 burden of proof shifts to LAD to show that the settlement agreement was not entered in good faith.

18 Much of LAD’s opposition to CPA’s motion concerned the issues beyond CPA’s request for
19 a good faith determination. Indeed, in the brief hearings on January 16 and 17, 2014, counsel for
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22 ⁸ LAD argued that this Court lacks jurisdiction to make a good faith determination because Boeing is not a party to this
23 action in the Commonwealth Superior Court. The Court finds that it is appropriate to make a good faith determination
24 in this instance for two reasons: (1) The policy underlying the Contribution Among Joint Tortfeasors’ Act is to
encourage settlement, and it will often be the case that one party to the settlement is not an active party to pending
litigation; and (2) Boeing voluntarily submitted to the jurisdiction of this Court for the purposes of the good faith
determination.

1 LAD represented that LAD would be willing to withdraw opposition to CPA's motion, so long as
2 LAD's rights were not improperly curtailed.

3 LAD basically argues that CPA and Boeing's settlement is not in good faith because the
4 retrofit that Boeing has agreed to provide goes beyond what LAD believes is reasonable. In other
5 words, LAD argues that the amount of the settlement is too great, and that the amount of the
6 settlement points to collusive behavior between CPA and Boeing that will eventually result in CPA
7 recovering more than what is necessary to satisfy its claim. This position is not supported by
8 Commonwealth statute.

9 As described above, there is some uncertainty about how CPA's settlement with Boeing will
10 impact the value of CPA's claim against LAD, but under both the Uniform Comparative Fault Act
11 and the Contribution Among Joint Tortfeasors Act, the amount of CPA's claim will be reduced.
12 Under the Uniform Comparative Fault Act, CPA's claim against LAD will be reduced by Boeing's
13 equitable share of the liability, as determined by the jury, regardless of the amount of the
14 settlement. 7 CMC §§ 2902 & 2906. So, for example, if the jury finds that Boeing is liable for 50%
15 of CPA's claims, and the total value of the claim is \$1,000, then the most LAD will be liable for,
16 regardless of the value of the settlement, is \$500. Under the Contribution Among Joint Tortfeasors
17 Act, the value of CPA's claim against LAD will be reduced by the value of the consideration paid
18 by Boeing for the release. 7 CMC § 4305. Using the same example as above, even if Boeing is
19 liable for 50% of the claim, if CPA's claim is worth \$1,000, and the value of the settlement with
20 Boeing is \$999, then LAD's liability would be only \$1. Thus, under the Contribution Among Joint
21 Tortfeasors Act, LAD's liability to CPA decreases as the value of the settlement paid by Boeing
22 increases.

23 The Court finds that the totality of the circumstances demonstrates that the settlement
24 agreement was entered in good faith. In making this determination, the Court considers the fact that

1 CPA and Boeing are not related entities. To the contrary, the agreement was the result of an
2 adversarial process, involving litigation between the settling parties. Such a process is not indicative
3 of collusion or bad faith, but a sincere attempt to efficiently address the damages.

4 The Court notes that Boeing and CPA have agreed to share information and cooperate
5 concerning any remaining litigation against LAD or other tortfeasors. This could indicate that the
6 settling parties are attempting to obtain wrongful tactical gain against non-settling parties and not
7 sufficiently considering the interests of the non-settling parties. However, based on a review of the
8 affidavits and the information presented at the brief hearings, the Court is convinced that the
9 settling parties are motivated not by gaining litigation advantage, but by expediently resolving this
10 claim in a manner that results in a functional and safe airport rather than continued litigation. It is
11 clear from the affidavits that information about the terms of this settlement agreement, the design
12 for the retrofit of the West Addition, has been consistently communicated to LAD and that
13 settlement negotiations were open to LAD, but LAD did not participate. This also points to a lack
14 of collusion or motive of improper tactical advantage. Moreover, absent the improper requested
15 language from the proposed order, LAD's interests are not infringed by the settlement agreement.

16 As to the proportionality of the liability assumed by Boeing in the settlement agreement,
17 Boeing has essentially agreed to assume all liability at this stage. The evidence available at this
18 point indicates that it is unlikely that Boeing is liable for all of the alleged damages caused by the
19 flaws in the West Addition Project. Boeing's willingness to front the cost of the retrofit, even
20 though Boeing does not believe it is solely liable for the harm, is indicative of the good faith of the
21 settlement agreement. The issue of indemnity is not before the Court in this motion, nor does the
22 settlement affect indemnity rights. *See* 7 CMC § 4302(f). LAD's concern that its interests are
23 unfairly curtailed by the allegedly inflated value of the settlement does not mesh with LAD's own
24 indemnity claim. Even assuming to the contrary, that in the subcontract between Boeing and LAD,

1 LAD agreed to indemnify Boeing, the fact that LAD may eventually be liable for the cost of the
2 retrofit is not enough, alone, to cast doubt on the good faith of the settlement agreement between
3 Boeing and CPA.

4 LAD has the burden of proving its assertion that the settlement agreement between Boeing
5 and CPA was entered in bad faith. In reviewing the affidavits, declarations, exhibits and arguments
6 of counsel, the Court finds that LAD has not met this burden.

7 Accordingly, based on the totality of the circumstances, the Court finds that the settlement
8 agreement was entered in good faith.

9 **V. CONCLUSION**

10 In accordance with the above analysis, the Court issues the following rulings:

- 11 1. LAD's motion for leave to file cross-claims against GPPC is **GRANTED**.
- 12 2. LAD's motion for leave to file a third-party complaint against Boeing is **DENIED IN**
13 **PART** as to the claims of fraudulent misrepresentation, Consumer Protection Act
14 violation and contribution.
- 15 3. LAD's motion for leave to file a third-party complaint against Boeing is **GRANTED IN**
16 **PART** as to the claims of indemnity and declaratory relief. Such complaint must be filed
17 and served on or before **June 30, 2014**.
- 18 4. LAD's motion to strike CPA's Reply Brief Declarations is **DENIED**.
- 19 5. LAD's motion to strike CPA's Supplemental Reply Declarations is **DENIED**.
- 20 6. CPA's motion to strike LAD's Stipulation/Recalendaring Request is **GRANTED**.
- 21 7. CPA's Good Faith Settlement Motion is **GRANTED IN PART**. The Court finds that the
22 settlement agreement between Boeing and CPA meets the good faith requirement of
23 7 CMC § 4305.

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8. CPA's Good Faith Settlement Motion is **DENIED IN PART**. The Court denies CPA's request for findings beyond the good faith determination.

IT IS SO ORDERED this 20th day of June, 2014.

/s/
JOSEPH N. CAMACHO,
Associate Judge