

ACT 146

H.B. NO. 980

A Bill for an Act Relating to Civil Settlements.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 663-15.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:

- (1) Not discharge any other [party] joint tortfeasor or co-obligor not released from liability unless its terms so provide;
- (2) Reduce the claims against the other [party] joint tortfeasor or co-obligor not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and
- (3) Discharge the party to whom it is given from all liability for any contribution to any other [party-] joint tortfeasor or co-obligor.

This subsection shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(b) For purposes of subsection (a), [a] any party shall petition the court for a hearing on the issue of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, serving notice to all other known joint tortfeasors or co-obligors. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The petition shall indicate the settling parties and, except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the basis, terms, and settlement amount.

~~[Except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the]~~ The notice, petition, and proposed order shall be served as provided by rules of court or by certified mail, return receipt requested. Proof of service shall be filed with the court. Within twenty-five days of the mailing of the notice, petition, and proposed order, a nonsettling [party] alleged joint tortfeasor or co-obligor may file an objection to contest the good faith of the settlement. If none of the nonsettling ~~[parties]~~ alleged joint tortfeasors or co-obligors files an objection within the twenty-five days, the court may approve the settlement without a hearing. An objection by a nonsettling [party] alleged joint tortfeasor or co-obligor shall be served upon all ~~[other]~~ parties. ~~[The party]~~ A nonsettling alleged joint tortfeasor or co-obligor asserting a lack of good faith shall have the burden of proof on that issue.

Where a confidentiality agreement has been entered into regarding the claim or settlement terms, the court shall hear the matter in a manner consistent with preventing public disclosure of the agreement while providing other joint tortfeasors and co-obligors sufficient information to object to a proposed settlement.”

2. By amending subsection (d) to read:

“(d) A determination by the court that a settlement was made in good faith shall ~~[bar]~~:

- (1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor [for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault], 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.”

SECTION 2. If any provision of section 663-15.5, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of section 663-15.5, which can be given effect without the invalid provision or application, and to this end the provisions of section 663-15.5 are severable.

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 4, 2003.)