Court of King's Bench of Alberta

Citation: OCL Group Inc v Wood Buffalo (Regional Municipality), 2025 ABKB 735

Date: 20251211
Docket: 1903 16538
Registry: Edmonton

Between:

OCL Group Inc

Plaintiff/Defendant by Counterclaim

- and -

Regional Municipality of Wood Buffalo

Defendant/Plaintiff by Counterclaim

Docket: 2503 01530
Registry: Edmonton

And between:

Regional Municipality of Wood Buffalo

Plaintiff

- and -

Urban Systems Ltd.

Defendant

Reasons for Decision
of the
Honourable Justice G.S. Dunlop

1. Introduction

[1] I am case managing two actions together:

- 1903 16538 OCL Group Inc v Regional Municipality of Wood Buffalo (the "First Action); and
- 2503 01530 Regional Municipality of Wood Buffalo v Urban Systems Ltd (the "Second Action")

[2] Urban Systems Ltd. ("Urban") was initially a defendant in the First Action, but it settled with OCL Group Inc. ("OCL"). Urban and OCL entered into a Pierringer Agreement dated December 13, 2023 which was disclosed to Regional Municipality of Wood Buffalo ("RMWB") with the settlement amount redacted. On March 13, 2024, all three parties consented to an order in the First Action which approved the Pierringer Agreement and removed Urban as a defendant in the First Action. On January 23, 2025 RMWB commenced the Second Action, in which Urban is the sole defendant.

[3] Both actions relate to a water and sanitary sewer project in Anzac, Alberta (the "Anzac Project").

[4] Urban applies for a declaration that the Pierringer Agreement imposes on OCL all liability Urban may have to RMWB in the Second Action and that OCL must indemnify Urban for any damages and costs awarded against Urban in the Second Action.

[5] Urban's application also seeks dismissal of the Second Action as an abuse of process but Urban did not pursue that relief in its submissions. OCL maintains in its written and oral submissions that the Second Action should be dismissed as an abuse of process.

[6] One aspect of Urban's application is not strenuously opposed. Urban seeks a declaration that OCL is barred by virtue of the Pierringer Agreement from claiming any contribution or indemnity from Urban for any damages awarded against OCL in RMWB's counterclaim in the First Action. RMWB agrees with Urban's position on this point. OCL says such a declaration is unnecessary because it is not seeking contribution or indemnity from Urban. Otherwise, OCL did not argue against that declaration.

[7] Urban submitted in its written submission that I should order OCL to amend its 3rd Amended Statement of Claim in the First Action to expressly waive any rights to recover any portion of damages awarded against OCL in RMWB's counterclaim in the First Action. That relief is not included in Urban's application. It is opposed by OCL.

[8] RMWB applies for consolidation of the two actions. The parties agree that the outcome of the consolidation application turns on the outcome of Urban's application, so I will address Urban's application first.

2. Declaration Application

[9] Interpretation of the Pierringer Agreement requires consideration of the factual matrix known to the parties at the time of the agreement: ***Sattva Capital Corp. v. Creston Moly Corp.,*** 2014 SCC 53 at para 47 and 56 – 61. The parties to the Pierringer Agreement are OCL and Urban, so facts not known to both at the time of the agreement are irrelevant.

[10] The most significant aspects of the factual matrix are the contracts among the parties for the Anzac Project and the pleadings in the First Action at the time of the Pierringer Agreement.

2.1 Contracts

[11] RMWB and Urban are parties to a contact dated March 15, 2013 relating to several projects including the Anzac Project and a second agreement in April 2015 for the design of the Anzac Project.

[12] RMWB and OCL are parties to two contracts relating to the Anzac Project. The first, dated August 3, 2017, is for the construction of a water and sanitary sewer. The second, dated May 27, 2019 reduces the scope of OCL's work.

[13] Urban is named as the Prime Consultant in the August 3, 2017 contract between RMWB and OCL. There is no contract directly between OCL and Urban.

[14] The contracts create a typical construction scenario in which RMWB is the owner, OCL is the contractor and Urban is the prime consultant. At a high level, OCL and Urban provide goods and services and RMWB pays them in exchange for the design and construction of municipal infrastructure.

[15] Alleged deficiencies arose in 2019 resulting in OCL ceasing work. At about the same time OCL commenced the First Action.

2.2 Pleadings

[16] The 2nd Amended Statement of Claim, filed August 1, 2023 is the most recent statement of claim filed prior to the Pierringer Agreement. It alleges poor planning and mismanagement, breaches of contract, breaches of common law duties of care and misrepresentations by RMWB and Urban resulting in loss or damages to OCL of not less than $11,300,000. It alleges:

- wrongful backcharges, holdbacks and penalty charges of approximately $6,191,435 attributable to breaches by RMWB and Urban;

- refusal by RMWB and Urban to approve changes totaling $1,655,950 and refusal to engage in dispute resolution regarding those changes; and

- wrongful termination of the contract between RMWB and OCL, attributable to breaches by both RMWB and Urban, resulting in damages of $4,359,435.

[17] The 2nd Amended Statement of Claim also alleges that RMWB agreed to pay claims advanced by OCL's subcontractor totalling $528,897.57. The subcontractor claim is advanced against RMWB alone, not Urban.

[18] RMWB filed a Notice to Co-Defendant on June 25, 2020 claiming contribution or indemnity or both against Urban under the *Tort-feasors Act* or the *Contributory Negligence Act*.

[19] RMWB filed a Counterclaim on July 26, 2023 against OCL but not against Urban. It alleges breaches of contract and negligence by OCL in the form of deficient work, claiming costs of remediation and completion of work started by OCL as follows:

- $3,699,753 for road work;
- $5,437,273 for water and sanitary sewer lines;
- $325,773 for landscaping; and
- $567,618 for underground infrastructure.

[20] The Counterclaim also claims $4,000,000 for additional consulting fees and liquidated damages pursuant to the contract between OCL and RMWB.

[21] The claims in OCL's claim and RMWB's counterclaim are distinct. OCL's claims are for payment for its work and reimbursement of its costs. RMWB's claims are for its costs to remediate and complete OCL's work, plus additional consulting fees. Each party claims what they allege they are out of pocket. RMWB also claims liquidated damages for delayed completion. There is no overlap between OCL's claims against RMWB and Urban, on the one hand and RMWB's claims against OCL, on the other.

[22] OCL filed a Statement of Defence to Counterclaim on August 22, 2023 which includes allegations of shoddy work by Urban, and attributes whatever damages RMWB may have suffered to Urban's shoddy work. Those allegations are a potential defence to the counterclaim. In the context of a Statement of Defence to Counterclaim, they are not claims, because the Statement of Defence to Counterclaim seeks only a dismissal of the counterclaim. No other relief is pled in the Defence to Counterclaim. In particular, OCL's Statement of Defence to Counterclaim does not seek any relief against Urban.

[23] The 3rd Amended Statement of Claim, authorized by the March 13, 2024 Consent Order, removes Urban as a defendant and all allegations against Urban. It also contains the following paragraph, under the heading "Pierringer Agreement":

> 38. In December 2023, OCL entered into a Pierringer-style settlement agreement with the former defendant, Urban Systems Ltd. (the "Pierringer Agreement"). In accordance with the terms of that Pierringer Agreement, OCL is limiting its claims in this Action as against the Municipality to the Municipality's

> respective share of several liability or potential liability. OCL waives any and all rights to recover from the Municipality, or any other party, any portion of OCL's damage, loss, or other remedy that may be attributable to any act (wrongful or otherwise), omission, representation, breach of contract (including warranty), negligence, breach of duty (statutory or otherwise), fault, or other theory of liability or responsibility at law or at equity, of Urban Systems Ltd. and for which the Municipality, or any other party, might reasonably be entitled to claim contribution, indemnity or apportionment, either at common law, in equity, pursuant to the *Tort-Feasors Act*, R.S.A. 2000, c.T-5, or any other statute.

2.3 Pierringer Agreement

[24] The Pierringer Agreement begins with seven recitals, a) through g), followed by 31 numbered paragraphs. The most relevant provisions, with underlining added by me, are set out in Schedule "A" to these reasons.

[25] RMWB is not a party to the Pierringer Agreement. The agreement does not purport to bind RMWB. Instead, it requires OCL to limit its claims against RMWB to exclude Urban's portion of any joint or several liability owed by both Urban and RMWB to OCL.

[26] The agreement clearly makes OCL responsible for contribution and indemnity claims RMWB has against Urban arising out of claims by OCL against RMWB in relation to the Anzac Project. It does not explicitly say that OCL is also responsible for other claims by RMWB against Urban. Urban submits the hold harmless provisions of the agreement, particularly paragraphs b, c and f of the recitals and paragraphs 3, 4 and 22 of the body of the agreement imply that OCL is responsible for all claims RMWB may have against Urban.

[27] All the language in the Pierringer Agreement, including the language in the hold harmless provisions, refers to claims by OCL. None of the language refers to claims by RMWB except claims for contribution or indemnity with respect to claims by OCL.

[28] At the time of the Pierringer Agreement the claims pled in the First Action by OCL against RMWB and by RMWB against OCL were distinct. OCL sued for what it alleged it was out of pocket as a result of alleged breaches by RMWB and Urban and RMWB sued for what it alleged it was out of pocket as a result of alleged breaches by OCL, plus liquidated damages pursuant to contract. There was no overlap in the legal bases for their claims and no overlap in the damages sought.

[29] If OCL agreed to assume Urban's independent liability to RMWB (i.e. liability other than for indemnity or contribution with respect to OCL's claims against RMWB), one would expect to find language to that effect in the indemnity provisions of the Pierringer Agreement. The operative paragraph is 22. It clearly requires OCL to indemnify Urban for any amount OCL recovers attributable to Urban for which Urban is found liable to RMWB. It does not require OCL to indemnify Urban for anything else.

[30] Urban argues that the reference in the Pierringer Agreement to settling all claims and possible claims in the First Action includes all potential claims by RMWB against Urban with respect to the Anzac Project, not limited to indemnity and contribution claims. In support of that

position, Urban points to its allegations against Urban in OCL's defence to counterclaim. However, there are no claims against Urban in OCL's defence to counterclaim. There are only allegations.

[31] Urban submits that the Pierringer Agreement includes a settlement of the counterclaim and the defence to counterclaim. The Pierringer does not do so explicitly. All references in the Pierringer Agreement are to claims by OCL against Urban or claims for contribution or indemnity by RMWB against Urban. The counterclaim is not mentioned in the Pierringer Agreement. Urban is not a party to the counterclaim, so it was in no position to settle the counterclaim.

[32] RMWB submits that paragraphs 3 and 4 of the Pierringer Agreement, stating the parties' intention that Urban have no liability in respect of the First Action and no liability to pay any party in the First Action implies that OCL assumed all of Urban's liability to RMWB relating to the Anzac Project. I disagree. The Pierringer Agreement must be read as a whole. When paragraphs 3 and 4 are read in light of the indemnity provisions in paragraph 22, and in light of the absence of any reference to RMWB's counterclaim, it is clear that OCL took on Urban's liability to RMWB with respect to OCL's claims against RMWB and Urban, and nothing more.

[33] The Pierringer Agreement, read in the context of the contracts among the parties and the pleadings in the First Action, does not support the declaration Urban seeks, except the limited declaration which OCL does not strenuously oppose and which RMWB agrees to.

2.4 Conclusion on Declaration Application

[34] I grant Urban's application for a declaration that OCL is barred by virtue of the Pierringer Agreement from claiming any contribution or indemnity from Urban for any damages awarded against OCL in the Counterclaim, because this flows from paragraphs 3, 4 and 5 of the Pierringer Agreement.

[35] I dismiss Urban's application for declarations that OCL assumes responsibility for some or all damages claimed against and attributable to Urban in the Second Action and that OCL must indemnify Urban for any damages and costs awarded against Urban in the Second Action. Instead I grant a declaration that OCL did not assume that responsibility or grant that indemnity in the Pierringer Agreement.

3. Amendment Application

[36] Urban submits that I should order OCL to amend its 3rd Amended Statement of Claim to add a waiver of OCL's rights to recover from Urban any portion of damages awarded against OCL in RMWB's counterclaim. OCL was not provided with proper notice of this part the relief sought by Urban because it is not included in Urban's application filed October 3, 2025. However, OCL responded and it is easily disposed of.

[37] Urban argues that the Pierringer Agreement requires OCL to make the waiver amendment. However, Urban consented to the March 13, 2024 order which required OCL to file its 3rd Amended Statement of Claim, without the waiver amendment. If Urban considered that the waiver amendment was required, the time to raise that issue was before it consented to the March 13, 2024 order. By consenting to that order, Urban acknowledged that the 3rd Amended Statement of Claim

without the waiver amendment satisfied OCL's obligation to amend its pleadings pursuant to the Pierringer Agreement.

[38] I dismiss this aspect of Urban's proposed relief, sought for the first time in its brief filed October 10, 2025.

4. Abuse of process

[39] OCL takes up Urban's application to strike RMWB's Statement of Claim in the Second action and submits that the Second Action is an abuse of process to the extent it seeks contribution or indemnity from Urban for OCL's claims against RMWB. As set out below, the Second Action does not do that.

[40] RMWB's Statement of Claim in the Second Action, filed January 23, 2025, alleges breaches of contract and negligence by Urban resulting in the following damages:

- $2,913,122 to remediate and repair roadways constructed by OCL that settled due to Urban's improper design and field testing;
- $240,458 to reconstruct and repair Townsend Drive due to Urban's failure to inspect OCL's work;
- $360,000 to test and repair sanitary mains due to Urban's improper design and failure to direct OCL to perform deflection testing;
- $1,442,334 to test and repair sanitary services installed by OCL due to Urban's improper design;
- $3,211,282 to remediate and repair infiltration damage and prevent future infiltration due to Urban's improper design and failure to monitor OCL's work;
- the portion of $4,744,905 in additional consulting fees that "are the direct result of Urban's errors, omissions or deficiencies in the Services as described in this Statement of Claim and in OCL's 3rd Amended Statement of Claim".

[41] RMWB also claims solicitor client costs "to the extent Urban is determined to be liable for the claims in OCL's 3rd Amended Statement of Claim".

[42] The claims in RMWB's counterclaim in the First Action and its Statement of Claim in the Second Action overlap. They both claim RMWB's costs to repair and remediate work done by OCL. There are also some portions that do not overlap. For example, RMWB seeks liquidated damages from OCL but not from Urban. To some extent, RMWB is seeking the same damages from OCL in its counterclaim as it is seeking from Urban in the Second Action.

[43] There is no overlap between the damages OCL is seeking in the First Action and the damages RMWB is seeking in its counterclaim and in the Second Action. RMWB has not sued Urban in the Second Action for any portion of what RMWB may be liable to pay OCL in the First Action. That would be a claim for contribution or indemnity, but RMWB has no right to claim

contribution or indemnity because OCL's 3rd Amended Statement of Claim limits its claim against RMWB to RMWB's portion of any liability it shares with Urban. Given that pleading, there cannot be a judgment in the First Action against RMWB for the portion of any loss suffered by OCL attributable to Urban's negligence or breach of contract.

[44] There is a connection between OCL's claim in the First Action and RMWB's claim in the Second Action: both relate to OCL's construction work on the Anzac Project. OCL claims it did the work correctly and is entitled to be paid. RMWB claims Urban did the design and supervision of that work incorrectly and RMWB is entitled to recover the costs of remediation from Urban. They could both succeed. If they did, RMWB would be liable to OCL and Urban would be liable to RMWB, but they would not be liable for the same damages, which is why RMWB's claim against Urban is not a claim for contribution or indemnity.

[45] RMWB's damages from Urban's alleged design and supervision errors, as pled in the Second Action, do not include what RMWB may be found liable to pay OCL in the First Action. This dovetails with the 3rd Amended Statement of Claim, which excludes any loss suffered by OCL attributable to Urban, so there is no prospect of OCL obtaining a judgment against RMWB for Urban's share of any liability for OCL's damages.

[46] OCL also submits that RMWB is barred from advancing claims against Urban for which OCL could be partially liable. It provides not basis for that submission. I disagree. The Pierringer Agreement describes in paragraphs 3 and 4 the shared intention of the parties that Urban have no further liability in the First Action and no liability to any of the parties to the First Action. While RMWB is a party to the First Action, it is not a party to the Pierringer Agreement. Consequently, it is not bound by the Pierringer Agreement. RMWB consented to the Order approving the Pierringer Agreement but that does not make it a party to or bound by the Pierringer Agreement. RMWB is bound by the Consent Order, but that Order does not restrict RMWB's ability to sue Urban.

[47] For those reasons, I dismiss the application to strike the Second Action.

5. Irrelevant Facts

[48] The parties adduced into evidence and made submissions regarding correspondence among counsel leading up to the Consent Order and between the Consent Order and the filing of the Statement of Claim in the Second Action. None of that correspondence is relevant to the issues before me on these applications. The parties did not submit that that correspondence was contractual or created a waiver or an estoppel, so there is no basis on which it could alter the parties' rights and obligations. All of that correspondence occurred after the Pierringer Agreement, so it is irrelevant to the interpretation of that agreement.

[49] The fact that RMWB did not file any claim against Urban, other than its Notice to Co-Defendant in the First Action, until it filed its Statement of Claim in the Second Action, is irrelevant. If it was a change in litigation strategy, as OCL submits, nothing turns on that. Parties are entitled to change their strategy. Opposing parties have no right to insist otherwise.

[50] The August 12, 2020 Standstill Agreement between RMWB and Urban may explain why RMWB waited to sue Urban. It is not relevant to the interpretation of the Pierringer Agreement because the evidence before me does not establish that OCL was aware of it.

[51] The fact that RMWB considered pleading its claim against Urban as a Counterclaim or Third-Party Notice in the First Action before settling on a Statement of Claim in the Second Action, is a procedural choice. It does not affect the parties' rights and responsibilities.

6. Consolidation

[52] RMWB applies for consolidation of the First Action and the Second Action. Urban agrees that the actions should be consolidated if the Second Action is not struck. OCL agrees that the actions should be consolidated if I find that the Second Action does not seek contribution or indemnity. I have not struck the Second Action and I have held that the Second Action does not seek contribution or indemnity. I therefore order the two actions consolidated, based on the parties' agreement.

[53] OCL is concerned that the two actions proceed quickly, particularly the Second Action. RMWB believes that will not be a problem. If necessary, issues of timing can be addressed in case management.

7. Conclusion

[54] For the reasons set out above I find that OCL is barred by virtue of the Pierringer Agreement from claiming any contribution or indemnity from Urban for any damages awarded against OCL in the Counterclaim, but that the Pierringer Agreement does not oblige OCL to bear any liability Urban has to RMWB in the Second Action nor does it require OCL to indemnify Urban for any damages awarded against Urban in that action. I issue declarations to that effect and I order the First Action and the Second Action consolidated.

[55] If the parties cannot agree on costs, a procedure for addressing costs of these applications may be discussed at a future case management meeting.

Heard on the 13th day of November, 2025.
Dated at the City of Edmonton, this 11th day of December 2025.

G.S. Dunlop

J.C.K.B.A.

Appearances:

Michael Mysak and
Lamont Bartlett
Bennett Jones LLP
for OCL Group Inc.

Marco S. Poretti
Reynolds Mirth Richards & Farmer LLP
for Regional Municipality of Wood Buffalo

Kember Handzic
MLT Aikins LLP
for Urban Systems Ltd.

Schedule “A”

Excerpts from the Pierringer Agreement

a) The Plaintiff commenced Action No. 1903 16538 in the Court of the King's Bench of Alberta, Judicial District of Edmonton, (the "Action") claiming damages against Regional Municipality of Wood Buffalo (the "Non-Settling Defendant") and the Settling Defendant arising from the design and construction of water and sanitary services in the hamlet of Anzac, Alberta as described in the pleadings of the Action;

b) The Plaintiff and the Settling Defendant desire and intend to resolve and settle all claims or possible claims between them, including all claims advanced against the Settling Defendant in the Action;

c) The Plaintiff has agreed to accept consideration to be paid or made by the Settling Defendant as provided herein in full and final settlement of any claims it has or may have against the Settling Defendant in relation to the Action;

…

f) The Plaintiff desires and intends to preserve and continue any claims which it may have as against the Non-Settling Defendant, but on the basis that they are seeking recovery only for the amount of any damages related to the several liability or fault of the Non-Settling Defendant, plus pre-judgment interest and costs, if any. The execution of this Agreement shall not in any manner affect the Plaintiff’s rights and claims against the Non-Settling Defendants, subject to paragraphs 13, 20 and 2l of this Agreement;

g) The Plaintiff and the Settling Defendant desire and intend that, other than the consideration to be paid or made as provided herein, the Settling Defendant not be exposed to or liable for any portion of the Plaintiff's claims in the Action, either directly or indirectly, including all contribution or indemnity claims made by the Non-Settling Defendant in respect to the claims in the within Action.

…

3. Notwithstanding any other terms of this Settlement Agreement, it is the intent of the parties hereto that the Settling Defendant shall not be liable to make any payments or deliver any other or further consideration whatsoever to the Plaintiff or to Non-Settling Defendant in respect of this Action, other than the consideration described in paragraphs l and 2 above.

4. The Plaintiff hereby acknowledges that, notwithstanding any other terms of this Settlement Agreement, it is the intent of the patties hereto that the Settling Defendant will not be liable to make any payment whatsoever to the Plaintiff or any other party in the Action, other than as expressly provided for in this Settlement Agreement.

5. The Plaintiff, for itself and its successors, executors and assigns, does hereby covenant to not sue the Settling Defendant or its successors, directors, officers, partners, agents, employees, insurers, executors and assigns in respect of any causes of action, claims, counterclaims, demands, damages (including

punitive and exemplary damages), interest, costs, expenses, taxes and compensation of any kind whatsoever and howsoever arising, whether at law or in equity, whether known or unknown, and which the Plaintiff has or at any time hereafter can, shall or may have in any way resulting or arising from or in connection with the design and construction of the water and sewer system in Anzac, Alberta, including any and all matters relating to or arising directly or indirectly out of the matters referred to in the pleadings of the Action. Such covenant is not intended to operate as a release or partial release of any claim of the Plaintiff against the Non-Settling Defendant, or covenant not to sue the Non-Settling Defendant, for its respective liability or fault.

…

11. The Plaintiff agrees to cooperate with the Settling Defendants in any application to strike any third-party claims or any other claims for contribution and indemnity against the Settling Defendant which the Settling Defendant may currently face or face in the future in respect to the claims pled in the Action, regardless of the legal basis for such claims for contribution and indemnity.

…

13. The parties hereto shall, within 15 business days of the execution of this Agreement make application(s) to the Court of King's Bench of Alberta for the following relief:

a) Court approval of the within Settlement Agreement;

b) Leave to the Plaintiff to amend its Statement of Claim, and any amendments thereto, to: (i) remove the Settling Defendant as a party, (ii) to remove all allegations against the Settling Defendants (iii) to expressly limit its claims in the Action as against the Non-Settling Defendant to the Non-Settling Defendant's respective share of several liability or potential liability, and (iv) to waive any and all rights to recover from the Non-Settling Defendant, or any other party, any portion of the Plaintiff's damage, loss, or other remedy that may be attributable to any act (wrongful or otherwise), omission, representation, breach of contract (including warranty), negligence, breach of duty (statutory or otherwise), fault, or other theory of liability or responsibility at law or at equity, of the Settling Defendant and for which the Non-Settling Defendant, or any other party, might reasonably be entitled to claim contribution, indemnity or apportionment, either at common law, in equity, pursuant to the *Tort-Feasors Act*, R.S.A. 2000, c.T-5, or any other statute.

…

16. The Plaintiff hereby acknowledges satisfaction in full of that portion of its total damages, losses, expenses, and claims arising in relation to the Action and the loss for which the Settling Defendants may be found liable or at fault.

17. The Plaintiff shall forbear from initiating any further proceedings or actions for claims, causes or causes of action whatsoever which the Plaintiff has or may hereinafter have against the Settling Defendant, its insurers, successors or

assigns with respect to any and all matters relating to or arising directly or indirectly out of the matters referred to in the pleadings of the Action.

…

20. The Plaintiff shall be entitled to continue to proceed with the Action as against the Non- Settling Defendant, to settle, pursue, or relinquish its claim against the Non-Settling Defendant, in the Plaintiffs sole discretion. However, the Plaintiff shall not, under any circumstances, seek to recover, directly or indirectly, from the Non-Settling Defendant any more than the Non-Settling Defendant's respective percentage or portion of the Plaintiff's total damages, losses and expenses based upon the respective share or degree of liability or fault of the Non-Settling Defendant as found by the Court or as agreed upon between the Plaintiff and the Non-Settling Defendant, whether due to negligence, breach of contract or any other act, default or basis of liability. In effect, the Non-Settling Defendant shall not be exposed to joint or several liability with respect to any share or degree of liability or fault for which the Settling Defendant might have been found liable or at fault. The Plaintiff shall limit any recovery from the Non-Settling Defendant to that percentage or portion of the Plaintiff's total damages, losses or expenses (either found by the Court, or agreed upon between the Plaintiff and the Non-Settling Defendant) which relates to the respective, several liability or fault of the Non-Settling Defendant.

…

22. In the event that, through any Judgment or order of a court, or through any settlement agreement between the Plaintiff and the Non-Settling Defendant, the Plaintiff should recover an amount attributable to the fault of the Settling Defendant and the Settling Defendant is found liable to the Non-Settling Defendant for such amount, regardless of the legal basis for liability alleged therein, then the Plaintiff shall fully and immediately indemnify and hold harmless the Settling Defendant for any such amount, including costs, required to be paid by the Settling Defendant pursuant to that judgment, order, settlement or agreement.

(underlining added)