



THE CALIFORNIA RAILROAD INDUSTRY



The Voice of Small Business.®



May 4, 2016

The Honorable Mike Gatto
California State Assembly
State Capitol, Room 5136
Sacramento, CA 95814

**SUBJECT: AB 2748 (GATTO) ENVIRONMENTAL DISASTER: RELEASE OF CLAIMS:
STATUTE OF LIMITATIONS: ATTORNEYS' FEES
OPPOSE/JOB KILLER – AS AMENDED MAY 2, 2016**

Dear Assembly Member Gatto:

The California Chamber of Commerce and the organizations listed below must continue to **OPPOSE** your **AB 2748**, which has been labeled by the California Chamber of Commerce as a **JOB KILLER**. **AB 2748** would eliminate incentives to settle lawsuits and would instead expose businesses to multiple rounds of litigation by creating statutory prohibitions on “release” clauses in settlements pertaining to “environmental disasters.” California’s public policy has long been to encourage settlement over litigation in the interests of efficiency and economy for the courts and for the parties involved. (See, e.g., *Kaufman v. Goldman*, (2011) 195 Cal. App. 4th 734, 745.) However, **AB 2748** would encourage just the opposite, instead requiring that otherwise resolvable claims be fully litigated at great expense to the parties, the courts, and the public.

AB 2748 contains two sections pertaining to release clauses. First, **AB 2748** states that a partial or interim payment or reimbursement of any kind made in connection with an environmental disaster by a responsible polluter to any recipient shall not release the polluter from liability for any claim related to the environmental disaster or any future claim by the recipient against the polluter. Second, **AB 2748** states that a final settlement of any kind made in connection with an environmental disaster shall not release any claim unconnected to the environmental disaster. The use of the word “any” is operative because it suggests that a release pertaining to *present* claims in these contexts are precluded under **AB 2748**.

Release clauses are one of the primary incentives for defendants to settle disputes and avoid prolonged, expensive litigation. Indeed, California law and case law both recognize the ability for parties to contract to extinguish claims (See, e.g., Civil Code § 1541). The Civil Code also states that a general release does not extend to claims which the person granting the release does not know or suspect to exist in his or her favor at the time of executing the release (Civil Code § 1542). Notwithstanding this provision, parties to a dispute are permitted to *agree* to waive the protections of Civil Code Section 1542, which must be accompanied by evidence that the releasing party intended to release unknown claims. (*McCray v. Casual Comer, Inc.* (C.D. Cal. 1992) 812 F.Supp. 1046). It is critical to preserve litigants’ ability to waive Section 1542 to maximize the potential to settle potential litigation. Indeed, when a business settles a claim with a party, the business should have certainty that the same party will not sue the business the day after a settlement is reached regarding a claim that could have been raised at the time

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of settlement. Yet, **AB 2748** would essentially assure such an outcome, thereby eliminating the incentive to settle.

AB 2748 impedes the ability of litigants to reach a settlement related to environmental disasters and, in turn, encourages disputes to be fully litigated by statutorily prohibiting parties' ability to waive Civil Code Section 1542 in settlement agreements. Parties should be permitted to enter into a mutually agreeable settlement to avoid prolonged litigation and thus promote the long-held California policy to encourage settlement over litigation; however, **AB 2748** attempts to dictate contractual provisions and, in doing so, will guarantee an influx of litigation.

For these reasons, we must **OPPOSE** your **AB 2748** as a **JOB KILLER**.

Sincerely,



Anthony Samson, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

American Chemistry Council
California Independent Petroleum Association
California Manufacturers and Technology Association
California Metals Coalition
California Railroad Industry
Chemical Industry Council of California
Civil Justice Association of California
National Federation of Independent Business
Western Plant Health Association
Western Plastics Association
Western States Petroleum Association

cc: Martha Guzman-Aceves, Office of the Governor
Daniel Seeman, Office of the Governor
District Office, The Honorable Mike Gatto