

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>CHESTER NOYES, ET AL.,</b>	)	
	)	
<b>Plaintiffs</b>	)	
	)	
<b>v.</b>	)	<b>Civil No. 97-78-B</b>
	)	
<b>HUNGER UNITED STATES SPECIAL HYDRAULIC CYLINDER CORP.,</b>	)	
	)	
<b>and</b>	)	
	)	
<b>PEERLESS DIVISION, LEARS - SIEGLER, INC.,</b>	)	
	)	
<b>Defendants</b>	)	

**MEMORANDUM AND ORDER<sup>1</sup>**

This action arises out of a suit filed by Plaintiffs, Chester and Kelly Noyes, against Peerless Division, Lears-Siegler (“Peerless”) and Hunger United States Special Hydraulic Cylinder Corporation (“Hunger”), alleging that a telescopic hydraulic cylinder manufactured by Hunger and incorporated into a truck dumpster sold by Peerless exploded and caused Plaintiff Chester Noyes severe physical injury. Both Defendants have reached a settlement with Plaintiffs. Presently before the Court is Peerless’s cross-claim against Hunger seeking contribution and indemnification from Hunger. Hunger has filed a motion for summary judgment stating that the indemnification provision relied on by Peerless is unenforceable as a matter of law. Peerless has countered with its own motion for summary judgment stating that a state court has already determined that the provision is enforceable thereby precluding the issue from being relitigated in

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<sup>1</sup> Pursuant to 28 U.S.C. 636(c) (1993), the parties have consented to proceed before the United States Magistrate Judge.

this Court. After carefully reviewing the record the Court STAYS any determination of the issues raised in the summary judgment motions for the reasons set forth below.

### **Background**

Plaintiff Chester Noyes and Arthur Mann, a co-worker, were injured on April 11, 1991 while performing maintenance work on a telescopic hydraulic cylinder manufactured by Hunger. Peerless incorporated the hydraulic cylinder into a truck dumpster that was later sold to Chester Noyes's employer. Mann filed suit in Maine Superior Court against Hunger and Peerless. Peerless filed a cross-claim against Hunger claiming that according to the purchase order signed by Hunger, Hunger agreed to indemnify Peerless against any damage caused by the hydraulic cylinder. After Mann settled his claim against Hunger, the trial was conducted on Mann's claim against Peerless and on Peerless's cross-claim against Hunger. A jury determined that Peerless was sixty percent negligent and Hunger forty percent negligent for the injuries sustained by Mann. Initially, the court held that the indemnification clause in Peerless's purchase order was unenforceable against Hunger. The court later entered an amended judgment stating that the indemnification clause was enforceable. However the court stated:

While it is reasonable for Peerless to seek to protect itself from damages attributable to the negligence of others, there is no logical reason why Hunger would agree to a contract to indemnify Peerless for its own negligence after Hunger had delivered the product and completed its responsibility. Accordingly, Peerless is entitled to indemnification of that portion of the judgment and damages paid attributable to the negligence of Hunger, 40 percent. Amended Judgment at 5.

The court then entered judgment for Peerless on its cross-claim for indemnification of forty percent of the damages awarded to Mann. Hunger has now moved for a new trial, to amend the pleadings in the case, and to have the judgment discharged because Peerless has not paid part of

the judgment attributable to Hunger. Those motions are currently pending before the state court.

Plaintiffs' suit against Defendants was removed to this Court in April. After removal, both Defendants entered into separate settlements with Plaintiffs. Peerless filed a cross-claim against Hunger seeking contribution or indemnification from Hunger. In its summary judgment motion Hunger argues that a) it never agreed to the indemnification provision in the purchase order, b) that even if the Court determines Hunger did agree to the provision the Court should find that Peerless is bound by the state court jury verdict that Hunger was forty percent at fault. Since Hunger has paid to Plaintiffs an amount equal to Peerless, or fifty percent, the Court should then find that Hunger has fulfilled its responsibility to Peerless.

Peerless has filed a summary judgment motion on only its indemnification claim. Peerless maintains that the issue of whether Hunger entered into a binding contract with Peerless was tried in the state court and determined in Peerless's favor and therefore Hunger is precluded from raising the issue again. Further, Peerless maintains that it seeks indemnification for the settlement amount paid by Peerless to Plaintiffs, thereby making any amount Hunger chose to pay Plaintiffs irrelevant.

### **Analysis**

On September 18, 1998 the Court heard oral argument from the parties regarding the summary judgment motions pending in this matter. At the hearing the Court ordered the parties to file briefs discussing whether this Court should stay this matter pending the ultimate disposition of the *Mann* case. After reviewing the record and the requested briefs, the Court is satisfied that the appropriate path to follow at this time is to stay this matter pending ultimate disposition of the judgment in the *Mann* case.

In Maine, a state court proceeding is deemed final for res judicata purposes, even though that state court proceeding may later be reversed by a post-judgment motion or on appeal. *See Diversified Foods v. First Nat'l Bank of Boston*, 785 F. Supp. 8, 13 (D. Me. 1992); *Bartlett v. Pullen*, 586 A.2d. 1263, 1265; Restatement (Second) of Judgments § 13, comment (f) (1982). Although this rule encourages a speedy resolution of the matter, its application “may give rise to a problem of inconsistent judgments when a judgment under appeal, relied on as a basis for a second judgment, is later reversed.” Restatement (Second) of Judgments § 13, comment (f) (1982). Recognizing this problem, the drafters of the Restatement suggested that in some circumstances it may be appropriate for the Court to stay the matter pending the ultimate disposition of the proceedings in state court. *Id.* at §13, comment (f); § 16 at comment (b).

The Court recognizes Hunger’s desire to proceed with this matter but after reviewing the record the Court is satisfied that this matter should be stayed pending the ultimate disposition of the *Mann* case in the state court. Of particular concern to this Court is that this Court and the state court may ultimately render inconsistent judgments on identical issues of law. After reviewing the judgment and amended judgment in the *Mann* case, the Court is satisfied that the wisest course to follow is to await the ultimate disposition of the state court action. It would be a waste of judicial resources, not to mention the parties’ time, to rely upon the amended judgment for res judicata purposes, when it is possible that the judgment may later be amended. Utilizing the Court’s discretion to manage its own docket, *Taunton Gardens Co. v. Hills*, 557 F.2d 877, 879 (1<sup>st</sup> Cir. 1977), this matter is STAYED pending resolution of the proceedings before the state court.

*Conclusion*

For the reasons delineated above the matter is stayed until resolution of the state action.

***SO ORDERED.***

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Eugene W. Beaulieu  
U.S. Magistrate Judge

Dated on November 13, 1998.