

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CHESTER NOYES, et al., )  
 )  
 Plaintiffs )  
 )  
 v. ) Civil No. 97-78-B  
 )  
 HUNGER UNITED STATES SPECIAL )  
 HYDRAULIC CYLINDER CORP., )  
 and )  
 PEERLESS DIVISION, LEARS- )  
 SIEGLER, INC., )  
 )  
 Defendants )

**MEMORANDUM AND ORDER<sup>1</sup> ON HUNGER'S  
AND PEERLESS'S CROSS MOTIONS FOR  
SUMMARY JUDGMENT**

This matter is before the Court on cross-motions for summary judgment filed by Third-Party Defendant Hunger United States Special Hydraulic Cylinders Corp. a/k/a Hunger Hydraulics (Hunger) and by Third-Party Plaintiff Peerless Division, Lear Siegler, Inc. (Peerless). The Plaintiff in this case, Chester Noyes, was injured while utilizing an acetylene torch to facilitate work on a hydraulic cylinder. Hunger supplied the cylinder and integrated it into a truck dumper later sold by Peerless to Noyes's employer. The Plaintiff settled his claim against both Defendants. Each Defendant paid Noyes roughly an equal amount. The third-party cross-claim between Peerless and Hunger remains pending before this court.

A second injured individual, Arthur Mann, filed a similar action in the Superior Court (Penobscot County). That case proceeded to trial on both the complaint and the third-party

---

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

action between Hunger and Peerless. At trial the jury found in Mann's favor and in a special verdict, the jury found both Hunger and Peerless negligent and apportioned the fault for the accident between them at 40% for Hunger and 60% for Peerless. Here the issue is whether that determination of common liability applies to this case.

If one applies the *Mann* determination of common liability to the Noyes settlement, Peerless has not yet paid any money attributable to Hunger's negligence, because Peerless has paid less than 60% of the total settlement amount. If the 60/40 determination is applicable, Hunger, by paying 50% of the total settlement amount, has more than satisfied its obligations under the indemnification provisions in the purchase order, assuming for purposes of this case that those provisions are fully enforceable.

Peerless argues, nonetheless, that the determination of relative fault in the *Mann* case is not binding upon this litigation because Noyes was not a party in that case and there has never been a determination of the apportioned fault between Noyes and Hunger and Peerless.<sup>2</sup> However, Peerless is not really seeking an apportionment of its share of Noyes's damages, if a factfinder finds that Peerless was negligent viz-a-vis Noyes. What Peerless seeks by this third-party action against Hunger is reimbursement pursuant to the indemnification provision for the settlement amount which it has already paid. A determination of the respective liabilities of joint tortfeasors, as between themselves, requires a determination of the extent of their common liability. *Peerless Division*, 1999 ME 189 at ¶ 9. Thus the first component of any contribution

---

<sup>2</sup>The effect of settlement in actions sounding in tort is an unsettled area of Maine law and one which has generated a number of cases and provoked interesting comment. See Arlyn H. Weeks, *The Unsettled Effect of Maine Law on Settlement in Cases Involving Multiple Tortfeasors*, 48 ME. L. REV. 78 (1996). This case distinguishes itself from most, however, because both putative tortfeasors have chosen to settle with the plaintiff.

action involves the determination of the contribution defendant's liability for damages to the original injured party. The issues for adjudication in this portion of a contribution action are negligence, causation and damages. *Thermos Co. v. Spence*, 1999 ME 129 ¶ 11, 735 A.2d 484, 487. Most commonly the defendant has the right to have those issues determined anew in the third party contribution action which can be brought well after the initial plaintiff's case has been resolved by verdict or by settlement. This case is novel because the party seeking the fresh determination is the third-party plaintiff who has voluntarily chosen to settle with the original plaintiff rather than have its own negligence proven during a trial.

Noyes's complaint for negligence as to both Peerless and Hunger no longer exists. It was voluntarily dismissed as to defendant Hunger on September 22, 1997 (Docket No. 18) and there was a stipulation of dismissal as to defendant Peerless on January 15, 1998 (Docket No. 21). In this case each of the responsible parties has independently agreed to a settlement amount. Peerless now invokes the indemnification provision because of the amount it paid to Noyes. The full settlement amount has become the functional equivalent of a jury verdict returned in Noyes's favor and the only thing left to determine is the relative fault of Peerless and Hunger. *Peerless*, 1999 ME 189, at ¶ 12 ("a settlement, . . . , replaces a jury verdict only when the settlement extinguishes the liability of both defendants on the verdict.") By settling with Noyes and stipulating to the dismissal of his action after Hunger had already extinguished any possibility that Noyes could obtain a verdict against it, Peerless eliminated the only possible vehicle for determining Noyes's comparative fault in relationship to it for this accident. The question which this Court would have to determine in the remaining contribution action is

whether Peerless could prove by a preponderance of the evidence that Hunger negligently caused injury to Noyes as a result of this accident and if so, to what percentage degree of fault.<sup>3</sup>

Even if Noyes could somehow be brought back into the case in order to make a determination of his comparative fault as to both Hunger and Peerless, the Maine Law Court has said that in a contribution action a joint tortfeasor is entitled to contribution from another joint tortfeasor whose negligence also proximately caused the accident but who was not legally liable under the comparative negligence statute because his fault was equal to that of the injured party. *Otis Elevator Co. of Maine v. F.W. Cunningham & Sons*, 454 A.2d 335 (Me. 1983). Peerless has already assumed the status of joint tortfeasor. Therefore even if Noyes was negligent, the only actual controversy which remains is a contribution action between Hunger and Peerless. By definition a contribution action is an action between joint *tortfeasors*. *Packard v. Whitten*, 274 A.2d 169 (Me. 1971). Hunger, by arguing for the res judicata effect of the *Mann* determination of common liability, and Peerless, by settling with Noyes and assuming the status of joint tortfeasor in a contribution action, have essentially both eliminated the “first component” of a contribution action, that being the issues of negligence, causation and damages.

The *Mann* determination of common liability as a joint tortfeasor responsible for the *accident* which caused injury to both Mann and Noyes was the precise issue which was fairly and fully litigated in the prior case. Peerless’s goal in that case was to minimize its responsibility and

---

<sup>3</sup>Hunger, as the defendant in the contribution action, would probably have a right to assert that Noyes was negligent and had no right to recover from either Peerless or Hunger. Were Hunger to prevail with this affirmative defense as part of the *Thermos Co.*, supra. “first component” of the contribution action, we would be faced with the odd result under the Law Court’s holding in *Peerless*, supra., that Hunger did not owe Peerless anything under the terms of the indemnification agreement because Hunger had proven that neither its negligence nor Peerless’s negligence had caused damage to Noyes. At the Noyes trial, then, Peerless would want to assert that it was negligent, but that Hunger was more negligent. In fact the precise issue, and the only issue which Peerless wants to try, is the percentage of fault between itself and Hunger.

maximize Hunger's. Under Maine law in order to satisfy the doctrine of res judicata the Court must first satisfy itself that "(1) the same parties or their privies are involved; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision were, or might have been litigated in the prior action." *Kradoska v. Kipp* 397 A.2d 562, 565 (Me. 1979). The Maine Law Court has also said "substance over form controls the inquiry into whether privity will be found." *Northeast Harbor Golf v. Mount Desert*, 618 A.2d 225 (Me. 1992). Likewise, Federal Courts have precluded the relitigation of issues presented in a prior state court case, even though all the parties were not exactly identical. See *Keating v. State of Rhode Island*, 785 F. Supp. 1094, 1099 (D. R.I. 1992). ("[w]hen a conflict arises between the doctrine of mutuality and the policy behind res judicata and collateral estoppel against endless litigation. . . the requirements of sound public policy should prevail over the mechanical application of the requirements of mutuality and privity. ")

Judge Carter of this Court has held that Maine law applies the "transactional" analysis of a claim when testing the preclusive effect of any judgment. *Dall v. Goulet*, 871 F. Supp. 518 (D. Me. 1994). Pursuant to this analysis, "the measure of a cause of action is the aggregate of connected operative facts that can be handled together conveniently for purposes of trial." *Kradoska*, 397 A.2d at 568. In the prior state court action, it is clear that all of the operative facts pertaining to the relative negligence of the joint tortfeasors as they relate to the accident itself could have been litigated and in fact they were litigated. While under some circumstances the difference between the comparative negligence of Mann and Noyes would prevent the preclusive use of the prior judgment, in this particular contribution action the principles of res judicata should control. *St. Paul Ins. Co. v. Hayes*, 676 A.2d 510 (Me. 1996) ("[a]n action for

contribution is an equitable action and not one for damages.”). Pursuant to the indemnification agreement, Hunger agreed to indemnify Peerless for any loss of money attributable to Hunger’s negligence. *Peerless*, 1999 ME 189, at ¶ 14. Whatever role Chester Noyes’s own negligence may have played in his damages, the parties have effectively foreclosed inquiry into the extent of their common *liability* for this accident beyond the settlement amount. Since the fact of common liability and the amount of damages have both been established, the only issue remaining is the percentage attributable to each tortfeasor. The State court judgment preclusively establishes that percentage.

### **Conclusion**

Based upon the foregoing, the Third-Party Plaintiff Peerless’s Motion for Summary Judgment (Docket No. 43) is **DENIED** and Third-Party Defendant Hunger’s Motion for Summary Judgment is **GRANTED**. (Docket No. 41). Judgment is entered for Hunger on the Third Party Complaint.

***SO ORDERED.***

---

Margaret J. Kravchuk  
U.S. Magistrate Judge

Dated this 28<sup>th</sup> day of February, 2000.