RECENT APPELLATE OPINION OFFERS LITIGANTS REASON TO REVISIT THE APPLICATION OF "PRODUCT LINE" SUCCESSOR LIABILITY IN ASBESTOS CASES

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For over 40 years, courts in several states, including California, New Jersey, Washington, and Pennsylvania, have applied the “product line”[1] theory of successor liability in asbestos personal injury cases.[2] During that time, courts and litigants may have presumed that a company that continues a product line that once included asbestos-containing units can be held legally responsible for those asbestos-containing units, even if the acquiring company never incorporated asbestos into the products it manufactured. Now, however, a recent appellate opinion from Washington may challenge those previously held notions and create new strategic opportunities for defendants facing the product line theory in asbestos cases.

As traditionally formulated, the product line theory of successor liability seeks to impose liability on an entity that purchases most or all of the assets of a company that made and/or sold an allegedly injurious product. The two principal components of the doctrine are that (1) the alleged successor's asset purchase effectively precluded the plaintiff's ability to sue the company that made the allegedly injurious product and (2) the alleged successor entity has benefitted from the conduct that led to plaintiff's injuries by continuing to sell the same product under the same brand name.

In this setting, there may have been a presumption that a company that purchases and continues a line of products that once included asbestos but never itself made products that contained asbestos, can still beheld responsible for those pre-acquisition products. For example, in *Fisher v. American International Industries*,[3] a maker and seller of talcum powder was held liable for asbestos-related injuries related to talcum powder sold by a prior entity under the same brand name, even though there was no evidence that the defendant entity ever made or sold its talcum powder with any asbestos.[4]

The notion that asbestos-related liability within the “product line” continues through entities whose version of the product never contained asbestos was recently undermined by the Court of Appeals of the State of Washington, Division One, in its opinion in *Little v. Hardie-Tyres Co., Inc*.[5] In *Little*, the Court held that, for a successor entity to be held liable under the “product line” theory, the alleged *successor's* version of the product must also have contained asbestos. In other words, if the successor entity did not make the product with the same alleged “defect” as its predecessor (i.e., the inclusion of asbestos), then the successor entity cannot be held liable for continuing a “defective” product line.

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Given the outcome in *Fisher*, it is likely that there are entities currently facing asbestos liabilities under the presumption that they are responsible for asbestos-containing materials when they never made or sold any product containing asbestos. The *Little* case gives these entities good reason to challenge any decisions that may have applied an overbroad version of the product liability theory.

FOOTNOTES

[1] The "product line" theory of successor liability is based on the premise that, when one corporation acquires all or substantially all of the manufacturing assets of another corporation, and it undertakes essentially the same manufacturing operation as the selling corporation, the purchasing entity can be held liable for defective units in the same product line, even if the defective unit was manufactured by the selling company. *Amader v. Pittsburgh Corning Corp.*, 546 F. Supp. 1033 (E.D. Pa. 1982) (citing *Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 431 A.2d 811 (1981)). While it is currently a minority view, it has been applied in several states with active asbestos litigation, including California, Pennsylvania, New Jersey, and Washington.

[2] *See, supra, Amader.*

[3] 313 A.3d 1140 (Pa.Super. 2024).

[4] The trial court opinion in *Fisher* attributed the presence of asbestos in defendant's "Clubman" product line to the presence of Italian-sourced talc in that product. Case No. 190700877 (C.P. Phila. City, PA, Opinion dated June 13, 2023) at p.4. However, defendant's brief on appeal pointed out that the post-acquisition talc was made entirely of Montana-sourced talc, and there was no evidence that talc from Montana contained asbestos. Opening brief of Appellant *American Int'l Industries* at pp. 29-30.

[5] Case No. 86318-5-1 (Filed 8/25/2025).

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