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Schumacher v. Richards Shear Co.: A Warning to Successor Corporations

I. Introduction

Traditional principles of corporate law, with several well-established exceptions,[1] protect successor corporations[2] from liability for claims arising from predecessor corporations' defectively manufactured products.[3] In *Schumacher v. Richards Shear Co.*,[4] the New York Court of Appeals allowed a cause of action against a successor corporation premised upon general tort, rather than corporate law, principles[5] for injuries caused by an allegedly defective machine. The court held that a corporation that purchases most of the assets of another firm may have an independent duty to warn users of the defects in the defunct firm's products, even though the corporation is not a legal successor.[6] Although allowing the negligence cause of action for breach of this duty to warn, the court declined to follow the lead of several states[7] in allowing a cause of action against the successor corporation under any of the recently developed exceptions to the rule of nonliability based on strict products liability law.[8]

1. *See infra* notes 11-14 and accompanying text.

2. A successor corporation has been defined as "another corporation which, through amalgamation, consolidation, or other legal succession, becomes invested with rights and assumes burdens of first corporation." BLACK'S LAW DICTIONARY 1283 (5th ed. 1979).

3. *See, e.g.*, Leannais v. Cincinnati, Inc., 565 F.2d 437, 439 (7th Cir. 1977); Travis v. Harris Corp., 565 F.2d 443, 446 (7th Cir. 1977). *See also* 15 W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 7122, at 188-90 (rev. perm. ed. 1973); 19 AM. JUR. 2D *Corporations* § 1546, at 922-23 (1965).

4. 59 N.Y.2d 239, 451 N.E.2d 195, 464 N.Y.S.2d 437 (1983).

5. *Id.* at 246, 451 N.E.2d at 199, 464 N.Y.S.2d at 441.

6. *Id.* at 247, 451 N.E.2d at 199, 464 N.Y.S.2d at 441.

7. *See, e.g.*, Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 431 A.2d 811 (1981) (where New Jersey followed the product line approach); Ray v. Alad Corp., 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977) (where California adopted the product line approach); Turner v. Bituminous Cas. Co., 397 Mich. 406, 244 N.W.2d 873 (1976) (where Michigan adopted the continuity of enterprise approach). See *infra* notes 24-43 and accompanying text for a discussion of these exceptions to corporate nonliability.

8. *Schumacher*, 59 N.Y.2d at 243, 451 N.E.2d at 197, 464 N.Y.S.2d at 439. *See infra* notes 24-43 and accompanying text.

Part II of this Note explains the traditional view of successor nonliability and its exceptions. It then describes the recent emergence of case law which provides injured product users with special protection when a corporation has purchased the assets of the original manufacturer. Part III presents the facts and decision of *Schumacher*, and Part IV analyzes the decision. Finally, the Note concludes that although *Schumacher* may signal increased liability for successor corporations, further case law is necessary to define the scope of the decision.

II. Background

As a general rule, a corporation that acquires the assets of another corporation is not liable for the torts of its predecessor,[9] although courts have recognized several exceptions. As noted by the New York Court of Appeals in *Hartford Accident & Indemnity Co. v. Canron, Inc.*,[10] a corporation may, in spite of the general rule, be held liable for the torts of its predecessor if (1) it expressly or impliedly assumes the predecessor's tort liability,[11]

9. *See* Annot., 49 A.L.R.3D 881 (1973); 19 AM. JUR. 2D *Corporations* § 1546 (1965); 19 C.J.S. *Corporations* § 1380 (1940). *See, e.g.*, Phillips, *Corporations: A Corporate and Commercial Perspective*, 11 HOFSTRA L. REV. 249 (1982); Note, Ramirez v. Amsted Industries, Inc.: *New Jersey Adopts the "Product Line" Approach to Successor Corporation Liability*, 33 MERCER L. REV. 681, 687 (1982).

The general rule of nonliability is explained in Chase v. Michigan Tel. Co., 121 Mich. 631, 80 N.W. 717 (1899).

> If A. [sells] his manufacturing plant or business of any kind to B., B. does not thereby assume the debts of A., unless he agrees to. B.'s liability is not affected by the fact that A. or B., or both, are corporations. The same rule of law applies to both. The mere fact of sale does not establish liability.

Id. at 636, 80 N.W. at 719.

10. 43 N.Y.2d 823, 373 N.E.2d 364, 402 N.Y.S.2d 565 (1977). *Hartford* involved an action for damages arising from the rupture of pipes. It was brought against the manufacturer-seller of the pipe and against the corporation which, in the interval between the installation and rupture of the pipe, had acquired some but not all of the assets of the manufacturer-seller. The court found the buyer corporation not liable. *Id.* at 824, 373 N.E.2d at 364, 402 N.Y.S.2d at 565.

11. *Id.* at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566. It has long been true that an express or implied agreement to assume a selling corporation's liabilities will impose liability upon the buying corporation. Whether such an assumption has been made rests on the interpretation of the purchase agreement. *See* 15 W. FLETCHER, *supra* note 3, §§ 7114-15, 7122, 7124. For cases finding no assumption of liability, see Kloberdanz v. Joy Mfg. Co., 288 F. Supp. 817 (D. Colo. 1968); McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98 (1970), *aff'd*, 118 N.J. Super. 480, 288 A.2d 585 (1972). For cases finding assumption of liability, see Turnbull, Inc. v. Commissioner, 373 F.2d 91 (5th Cir. 1967); Campbell v. Hickory Farms, 258 S.C. 563, 190 S.E.2d 26 (1972).

(2) there is a consolidation or merger of the selling and purchasing corporations,[12] (3) the purchasing corporation is a mere continuation of the selling corporation,[13] or (4) the transaction is entered into fraudulently to escape such liability.[14]

The general rule, based on corporate law principles designed to protect creditors and shareholders,[15] has led to harsh results

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12. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566. *See* Shannon v. Samuel Langston Co., 379 F. Supp. 797 (W.D. Mich. 1974); McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98 (1970).

The court in *Shannon* summarized the characteristics of a de facto merger, a concept that had been introduced in *McKee:*

> (1). There is a continuation of the enterprise of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations.
>
> (2). There is a continuity of shareholders which result from the purchasing corporation paying for the acquired assets with shares of its own stock, this stock ultimately coming to be held by the shareholders of the seller corporation so that they become a constituent part of the purchasing corporation.
>
> (3). The seller corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible.
>
> (4). The purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the seller corporation.

Shannon v. Samuel Langston Co., 379 F. Supp. at 801. *See also* 15 W. FLETCHER, *supra* note 3, § 7121.

13. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566. *See* 19 AM. JUR. 2D *Corporations* § 1558 (1965). This exception involves the situation where one corporation sells its assets to another corporation but the same people own both corporations. Thus, the acquiring corporation is really a reincarnation of the acquired corporation, in essence, a reorganization.

See also Cyr v. B. Offen & Co., 501 F.2d 1145 (1st Cir. 1974) (expanding the mere continuation exception). While identical ownership will establish the exception, other factors might also be sufficient, such as whether the same employees and management continue in the succeeding corporation, the same products are produced, and the same facilities are used. Another significant factor is the nature of the continuation itself, exemplified by the use of the predecessor's goodwill. Use of the same name, while an important factor, is not essential for recovery. Turner v. Bituminous Cas. Co., 397 Mich. 406, 452, 244 N.W.2d 873, 894 (1976) (Coleman, J., dissenting) (citing Cyr v. B. Offen & Co., 501 F.2d at 1153).

14. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566. *See* 19 AM. JUR. 2D *Corporations* § 1558 (1965). The general rule of nonliability holds except where the transaction is fraudulent as to creditors of the transferor. The creditors may then follow the property to the transferee. "Indicia of fraud may be inadequate consideration paid to the transferor, and/or lack of good faith." Turner v. Bituminous Cas. Co., 397 Mich. at 437, 244 N.W.2d at 887 (Coleman, J., dissenting).

15. *See* Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 341, 431 A.2d 811, 816 (1981); Turner v. Bituminous Cas. Co., 394 Mich. at 417-18, 244 N.W.2d at 877-78.

when applied in products liability cases.[16] An injured plaintiff may be left without a remedy when the corporation that manufactured the defective product no longer exists and the successor corporation is shielded from liability.[17] The social policy behind products liability, however, is to provide compensation for those injured by defective products by placing the cost of such injuries on the manufacturer, who can insure against such losses or pass them on to the public as a cost of doing business.[18] To further this policy, some states have broadened successor liability to allow successor corporations to be sued for products liability claims arising out of the manufacture and sale of defective products by predecessor corporations in cases where the traditional exceptions to the general rule are inapplicable.[19] Courts have recognized causes of action against successor corporations primarily under three theories: (1) the continuity of enterprise doctrine,[20] (2) the product line approach,[21] and (3) the duty to warn principle.[22] The first two approaches are extensions of strict products liability law to successor corporations, while the third is based on traditional negligence principles.[23]

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16. *See* Sardell, *Products Liability and Successor Responsibility for Defects*, 6 CORP. L. REV. 82 (1983).

17. *See* Turner v. Bituminous Cas. Co., 397 Mich. at 419, 244 N.W.2d at 878-79. *See infra* notes 28-30.

18. Ray v. Alad Corp., 19 Cal. 3d 22, 30-31, 560 P.2d 3, 8-9, 136 Cal. Rptr. 574, 579-80 (1977); *see also* Sardell, *supra* note 16, at 83; Note, *Products Liability: Successor Corporations: Liability for Defective Products*, 35 OKLA. L. REV. 846, 850 (1982).

19. *See, e.g.*, Phillips, *supra* note 9, at 250-51; Sardell, *supra* note 16, at 83; Note, *supra* note 9, at 684-85.

20. *See, e.g.*, Turner v. Bituminous Cas. Co., 397 Mich. 406, 244 N.W.2d 873 (1976). *See infra* notes 24-33 and accompanying text.

21. *See, e.g.*, Ray v. Alad Corp., 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977); Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 431 A.2d 811 (1981). *See infra* notes 34-43 and accompanying text.

22. *See, e.g*, Gee v. Tenneco, Inc., 615 F.2d 857 (9th Cir. 1980), Leannais v. Cincinnati, Inc., 565 F.2d 437 (7th Cir. 1977); Travis v. Harris Corp., 565 F.2d 443 (7th Cir. 1977). *See infra* notes 44-54 and accompanying text.

23. A key distinction between "strict products liability" and traditional negligence is that when a court imposes "strict liability" the defendant must pay damages although he neither intentionally injured the plaintiff nor failed to meet the objective standard of reasonable care that traditionally has been at the root of negligence law. *See* W. PROSSER, LAW OF TORTS 641-82 (4th ed. 1971); Schwartz, *The Vitality of Negligence and the Ethics of Strict Liability*, 15 GA. L. REV. 963 (1981).

A. *Continuity of Enterprise*

Under the continuity of enterprise theory, the merger and consolidation exception and the mere continuation exception are extended under products liability law to situations in which they would be inapplicable under corporate law.[24] A common feature of these two traditional exceptions is the continuity of shareholders between the selling and purchasing corporations.[25] Thus, a sale for stock is more likely to result in liability than a sale for cash.[26] Under the continuity of enterprise theory, the distinction between types of consideration paid to acquire the assets of the predecessor corporation is eliminated as a factor in imposing liability on a successor corporation as long as the plaintiff can establish facts that prove a continuity of the business enterprise.[27]

The continuity of enterprise theory was articulated in *Turner v. Bituminous Casualty Co.*,[28] where the plaintiff, injured by

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24. *See* Note, *supra* note 18, at 855-56; Note, *Intermediate and Successor Corporations Strictly Liable Under Product Line Standard*, 12 SETON HALL L. REV. 327, 331-32 (1982); Recent Development, *Successor Corporation Strictly Liable for Defective Products Manufactured by the Predecessor Corporation*, 27 VILL. L. REV. 411, 416-17 (1981-1982) [hereinafter cited as *Successor Corporation*].

25. *See* Shannon v. Samuel Langston Co., 379 F. Supp. 797 (W.D. Mich. 1974); McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98 (1970). *See supra* notes 12-13.

26. *See* Note, *supra* note 18, at 848. The stated difference between a stock payment and a cash payment is that with a stock payment there is a commonality of ownership and with a cash payment there is not. The shareholders of the first company become, as a result of the stock transfer, shareholders of the second corporation.

With cash, it may be asserted that "the two corporations were strangers before the sale and continued to remain strangers after the sale." McKee v. Harris-Seybold Co., 109 N.J. Super. at 566, 264 A.2d at 104.

27. *See* Note, *supra* note 18, at 856.

28. 397 Mich. at 430, 244 N.W.2d at 883-84. In 1969, while working at a power press, the plaintiff, Charles Turner, lost his hands in an accident. The power press had been purchased by Turner's employer in 1968; it had been manufactured by T.W. & C.B. Sheridan Company (Old Sheridan), a New York corporation established in 1903. In 1974, Harris Intertype (Harris) took over the total business, goodwill, name, and assets of Old Sheridan, and Old Sheridan filed a certificate changing its name. Harris then set up a new subsidiary corporation under the name of New Sheridan, which acquired the assets of Old Sheridan and took over the business liabilities shown in its books. Old Sheridan then dissolved. *Id.* at 411-13, 244 N.W.2d at 875-76.

Turner sued Harris and New Sheridan, which by then had become a Harris division. Harris and New Sheridan denied liability. Harris argued that it was a bona fide purchaser only of the corporate assets, that it paid over six million dollars in cash, and that while it had agreed to assume every known liability of the seller as of 1964, it definitely was not liable for a products liability claim against the seller that did not even occur

an allegedly defective power press, sued the corporation that had purchased the manufacturing corporation's assets for cash. The *Turner* court refused to distinguish between sales for cash and sales for stock.[29] The court reasoned that in a products liability case, the method by which the assets of the selling corporation were acquired is irrelevant to both the injured plaintiff and to the successor corporation.[30] The court found four factors that, despite the absence of shareholder continuity, established a prima facie showing of continuity of the enterprise:

> (1) There was basic continuity of the enterprise apparently, a retention of key personnel, assets, general business operations, and even the [predecessor's] name.
>
> (2) The seller corporation ceased ordinary business operations, liquidated, and dissolved soon after distribution of consideration received from the buying corporation.
>
> (3) The purchasing corporation assumed those liabilities and obligations of the seller ordinarily necessary for the continuation of the normal business operations of the seller corporation.
>
> (4) The purchasing corporation held itself out to the world as the effective continuation of the seller corporation.[31]

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until five years after the sale. *Id.* at 413, 244 N.W.2d at 875-76.

29. *Id.* at 422, 244 N.W.2d at 880. The court in *Turner* conceded that, technically, the distinction between cash and stock is viable. The presence of stock as consideration should be one factor to consider in ascertaining whether there is a sufficient nexus between the successor and predecessor corporations to establish successor liability. The absence of an exchange of stock, however, should not be conclusive. The proportionate number of shares paid out by the acquiring corporation may be very small in a corporate assets purchase, so that the strength of commonality of ownership is minimal. The continuity of shareholders is more likely to be a paper one, more symbolic than real. The actual owners of shares at the time of manufacture of the defective product and the actual owners at the time of the sale of the corporate assets may be entirely different individuals. *Id.* at 422, 244 N.W.2d at 880.

30. *Id.* at 421-24, 244 N.W.2d at 878-80. The court acknowledged that it

> is unfair and unbelievable that a corporate combination or acquisition decision would be principally made on the basis of cutting off the contingent right to sue of a products liability victim. From that, two conclusions suggest themselves. First, it would seem illogical that a merger or de facto merger be encumbered by liability for a products liability suit while a cash acquisition of corporate assets is free from such liability. Second, if there are no real business reasons for choosing a cash acquisition of corporate assets and the only real reason is to avoid products liability suits, then it would seem that the machinery of corporate law is unreasonably geared up to accomplish a purpose not really intended for it or in the public interest.

Id. at 422-23, 244 N.W.2d at 880.

31. *Id.* at 430, 244 N.W.2d at 883-84.

On the basis of these factors, the court reversed the summary judgment for the defendant.[32] The effect of the continuity of enterprise approach was to extend the merger and consolidation exception and the mere continuation exception to transactions that "resemble one of the traditional kinds without meeting the technical requirements."[33]

B. *Product Line Approach*

The product line approach, unlike the continuity of enterprise theory, is not an expansion of the traditional exceptions to nonliability, but a major departure from them based on the social policies underlying strict products liability.[34] The seminal case of the product line approach is *Ray v. Alad Corp.*,[35] where the California Supreme Court held that "a party which acquires a manufacturing business and continues the output of its line of products assumes strict tort liability for defects in units of the same product line previously manufactured and distributed by the entity from which the business was acquired."[36]

In *Ray*, the plaintiff brought an action in strict products liability against Alad Corporation for personal injuries arising from the use of a defective ladder. The defendant successor corporation had neither manufactured nor sold the ladder, but had bought the manufacturing corporation for cash. The successor corporation continued to manufacture the same line of ladders.[37]

32. *Id.* at 431, 244 N.W. 2d at 884.

33. Note, *supra* note 18, at 856.

34. *See* Note, *supra* note 9, at 686-87; *Successor Corporation, supra* note 24, at 417-18.

35. 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977).

36. *Id.* at 34, 560 P.2d at 11, 136 Cal. Rptr. at 582.

37. *Id.* at 25-28, 560 P.2d at 4-7, 136 Cal. Rptr. at 574-78. The plaintiff, Herbert Ray was injured by a fall from a defective ladder. The ladder had been manufactured by Alad Corporation (Alad I). One year before the accident, Alad I had sold its stock in trade, fixtures, equipment, inventory, and goodwill to Lighting Maintenance Corporation (Lighting). Alad I agreed to dissolve and to help Lighting set up a new corporation under the Alad name (Alad II). Lighting consented to accept and pay for materials previously ordered by Alad I in the course of its business and to fill Alad I's uncompleted orders. No discussion was made regarding defects in products previously sold or made by Alad I. When Alad II was organized, it continued to use Alad I's manufacturing plant, machinery, office fixtures, equipment, and inventory. It also continued to employ the same factory personnel and to manufacture the same type of ladder. With the exception of a new logo, there was no indication on Alad II's printed materials to show that a new company

After concluding that none of the four exceptions to the general rule of successor nonliability was applicable, the court considered the social policies behind imposing strict tort liability for defective products.[38] The court then found three justifications for imposing liability under the facts in *Ray*.[39] First, the court reasoned, the plaintiff's remedies against the predecessor corporation had been virtually destroyed by the corporate succession. Unless the plaintiff could sue the successor, procedural and pragmatic barriers[40] would bar recovery.[41] Second, the successor corporation would be able to spread the risk of the defective product throughout society, because it had acquired all the assets of the predecessor corporation and, by continuing to manufacture the product, could easily pass on the costs to new consumers.[42] Third, the successor corporation had received a benefit from the transfer to it of the predecessor corporation's goodwill. This benefit, along with the fact that the successor held itself out to customers as the same enterprise as its predecessor, made it fair that the successor should also assume the burden of com-

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was manufacturing the Alad ladder. Ray, therefore, sued Alad II. *Id.*

38. *Id.* at 31, 560 P.2d at 8-9, 136 Cal. Rptr. at 579-80. *See supra* note 18.

39. Ray v. Alad Corp., 19 Cal. 3d at 31, 560 P.2d at 9, 136 Cal. Rptr. at 580.

40. Assuming that the plaintiff was injured as a result of defects in a ladder manufactured by Alad I and thus could assert strict tort liability against Alad I, the practical value of the right of recovery against the original manufacturer was vitiated by the purchase of Alad I's tangible assets, trade name, and goodwill on behalf of Alad II and the dissolution of Alad I within two months thereafter in accordance with the purchase agreement. *Id.* at 31-32, 560 P.2d at 9, 136 Cal. Rptr. at 580. The injury giving rise to the plaintiff's claim against Alad I did not happen until more than six months after the filing of the dissolution certificate stating that Alad I's known debts and liabilities had been paid and its known assets had been distributed to its shareholders. *Id.* at 31, 560 P.2d at 9, 136 Cal. Rptr. at 580. This distribution was proper because there was no prerequisite that allowance be made for claims such as plaintiff's that had not yet come into existence. Thus, even if the plaintiff could get a judgment on his claim against the dissolved and assetless Alad I, he would encounter incredible obstacles in trying to obtain satisfaction of the judgment from former stockholders or directors. *Id.*

Products liability insurance was unlikely in *Alad* because it is usually limited to accidents or events taking place while the policy is in effect. Thus, the products liability insurance of a company that has gone out of business is not a good source of compensation for injury from a product the company previously manufactured. *Id.* at 32, 560 P.2d at 9-10, 136 Cal. Rptr. at 580-81.

41. *Id.* at 32-33, 560 P.2d at 10, 136 Cal. Rptr. at 581. *See generally* Sardell, *supra* note 16, at 83; Note, *supra* note 9, at 687.

42. Ray v. Alad Corp., 19 Cal. 3d at 25, 31, 560 P.2d at 5, 9, 139 Cal. Rptr. at 576, 580. *See also* Sardell, *supra* note 16, at 83; Note, *supra* note 9, at 687; Note, *supra* note 24, at 333; Note, *supra* note 18, at 851.

pensating for injuries caused by defective products.[43]

C. *Duty to Warn*

Unlike the continuity of enterprise and the product line theories, the duty to warn imposes liability on a successor corporation, not for the acts of its predecessor, but for the breach of its own duty.[44] Under this theory, a purchasing corporation may have a duty to warn users of defects found in the predecessor corporation's products.[45] Although the duty is that of the successor corporation, the rationale for imposing the duty is similar to that for imposing strict products liability on a successor corporation for the acts of its predecessor.[46] The successor that benefits from the predecessor's customer contacts and goodwill and that represents itself as the same enterprise as the predecessor should be given the responsibility of notifying the predecessor's customers of subsequently discovered defects in the predecessor's product.[47] In addition, the successor that continues manufacturing the product has the capability and duty to test and improve the product.[48] Therefore, it is arguably in the best position to discover the pre-existing defects.[49]

Although the rationale behind the duty to warn is similar to that behind strict products liability, the elements comprising the two theories of recovery are distinguishable. The judicially created product line theory places liability on the successor for the acts of its predecessor. On the other hand, the duty of the suc-

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43. Ray v. Alad Corp., 19 Cal. 3d at 34, 560 P.2d at 10-11, 136 Cal. Rptr. at 581-82. In Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 431 A.2d 811 (1981), the New Jersey Supreme Court followed the California Supreme Court's reasoning in adopting the product line approach to successor liability. The court held that "the social policies underlying strict products liability in New Jersey are best served by extending strict liability to a successor corporation that acquires the business assets and continues to manufacture essentially the same line of products as the predecessor." *Id.* at 358, 431 A.2d at 825.

44. *See* Sardell, *supra* note 16, at 84; Note, *supra* note 24, at 350.

45. *See* Note, *supra* note 18, at 857.

46. *See* Gee v. Tenneco, Inc., 615 F.2d 857 (9th Cir. 1980); W. PROSSER, LAW OF TORTS 641-82 (4th ed. 1971). *See also* Note, *supra* note 24, at 350.

47. Gee v. Tenneco, Inc., 615 F.2d at 866.

48. *See* Shane v. Hobam, Inc., 332 F. Supp. 526, 530 (E.D. Pa. 1971).

49. Gee v. Tenneco, Inc., 615 F.2d at 865-66. *See also* Shane v. Hobam, Inc., 332 F. Supp. at 530. The successor corporation owes a higher standard of care because its control over the product enables it to have power to prevent harm from a pre-existing defect.

cessor corporation to warn arises from its own activities in servicing and continuing to manufacture the product.[50]

A duty to warn is not automatically imposed on a successor corporation, but arises from two factors spelled out by a federal court in *Leannais v. Cincinnati, Inc.*:[51] the successor knew or should have known of the defect in the product, and a special relationship existed between the successor and the buyer of the product.[52] Although there is no definitive test for such a special relationship, essentially it is the continuation by the successor of the relationship that the predecessor had with the customer.[53] Such relationship, the *Leannais* court suggested, may exist where the successor takes over the predecessor's service contracts, actually services the product, has knowledge of the defect, and knows the owner's identity and location.[54]

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50. *See* Travis v. Harris Corp., 565 F.2d 443, 449 (7th Cir. 1977). *See also* Shane v. Hobam, Inc., 332 F. Supp. at 530 (where succession to the assets of the predecessor does not trigger the duty to warn about pre-existing defects).

51. 565 F.2d 437 (7th Cir. 1977). Plaintiff was injured while operating a machine during the course of his employment and brought suit against the corporate successors to the original manufacturer of the machine. The plaintiff alleged causes of action based on strict liability, negligence in the design and manufacture of the machine, and a failure to warn of a defect in the machine. *Id.* at 438.

The machine in question had been manufactured by Forte Equipment Co. and sold to the plaintiff's employer in 1964. In 1967, Forte sold its assets to Cincinnati, Inc. Cincinnati, Inc. established a subsidiary named Cincinnati-Forte to accept the Forte assets. The subsidiary was dissolved in 1973 and the assets of Cincinnati-Forte were purchased by Cincinnati, Inc. *Id.*

In the Forte-Cincinnati, Inc. agreement, Cincinnati, Inc. expressly limited its liability for personal injury caused by Forte to five years, 1967-1972. Cincinnati, Inc. was first notified of the plaintiff's injury in 1975, more than seven years after the acquisition of Forte's assets. *Id.* at 438-39.

The court held that a question of material fact existed as to whether the successor corporation received notice of injury claims and thus, had a duty to warn present and former purchasers of the dangerous condition of the machine. *Id.* at 442-43. Therefore, the case was remanded.

52. *Id.* at 442. *See* Note, *supra* note 18, at 857.

53. Gee v. Tenneco, Inc., 615 F.2d at 866. The common denominator in cases holding that a successor corporation has a duty to warn has been the existence of an ability to control the product. This control is exhibited by a continuation of business ties between the successor corporation and the customers of the predecessors. Jacobs v. Lakewood Aircraft Serv., Inc., 512 F. Supp. 176, 180 (E.D. Pa. 1981). *See also* Sardell, *supra* note 16, at 84.

54. Leannais v. Cincinnati, Inc., 565 F.2d at 442. *See also* Travis v. Harris Corp., 565 F.2d at 449.

D. *Summary*

For reasons of social policy, courts have fashioned new theories under which liability can be imposed on successor corporations.[55] The continuity of enterprise theory expands the traditional exceptions to the rule of nonliability by focusing on the relationship between the predecessor and successor corporations as business enterprises.[56] The product line theory takes a more direct approach, de-emphasizing the relationship between the two corporations.[57] Under this approach, the fact that a successor continues to manufacture the same or nearly the same product, benefiting from the goodwill of the predecessor, is material.[58] Finally, the duty to warn theory, based on general negligence principles, looks not to the relationship between the corporations or to the continued production of the product, but to the relationship between the successor and the customer of the predecessor.[59] Prior to *Schumacher v. Richards Shear Co.*,[60] the New York Court of Appeals had adopted none of these approaches to successor liability.

III. *Schumacher v. Richards Shear Co.*

A. *Facts and Lower Court Decisions*

In April, 1978, plaintiff lost the sight of his right eye when he was struck by a piece of metal thrown from a hydraulic shearing machine he was operating in the course of his employment. The machine had been sold to plaintiff's employer, Wallace Steel and Supply Co. (Wallace Steel), by Richards Shear Company (Richards Shear) in 1964. In 1968, Richards Shear entered into an agreement with Logemann Brothers Co. (Logemann), granting Logemann the exclusive right to manufacture and sell its products and to use the trade name "Richards." The transac-

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55. *See supra* notes 9-54 and accompanying text.
56. *See, e.g.*, Note, *supra* note 24, at 331-32; *see also supra* notes 24-33 and accompanying text.
57. *See* Note, *supra* note 9, at 689; *see also Successor Corporation*, *supra* note 24, at 418.
58. *See supra* notes 34-43 and accompanying text.
59. *See* Sardell, *supra* note 16, at 84.
60. Schumacher v. Richards Shear Co., 59 N.Y.2d 239, 243, 245, 451 N.E.2d 195, 197, 198, 464 N.Y.S.2d 437, 439, 440 (1983).

tion was, essentially, a sale of assets. Richards Shear discontinued its business, although it survived as a corporate entity with minor assets.[61]

A month after the agreement, Logemann notified Wallace Steel of its acquisition of Richards Shear and of its availability to replace parts and service equipment.[62] In July, 1968, Logemann serviced the Richards Shear machine at Wallace Steel. Other than complying with requests for replacement parts, the only other contact between the successor corporation and Wallace Steel prior to the commencement of plaintiff's suit was an advisory letter dated April 16, 1976, in which Logemann notified the president of Wallace Steel that it had entered into a service contract with a named individual to provide service for Richards Shear machinery.[63]

Plaintiff contended in his action against Richards Shear and Logemann that the machine was defective in design and manufacture in that it did not have a protective guard or shield to prevent metal from being thrown by the machine and that the defendants should have warned users of the existing dangerous condition, or taken corrective action to remedy it.[64] The trial court dismissed the plaintiff's complaint against the successor corporation, finding "no factual basis upon which it could be cast in liability as a 'successor' to Richards Shear."[65]

The appellate division affirmed the trial court's dismissal, finding that none of the four traditional exceptions to nonliability set forth in *Hartford Accident & Indemnity Co. v. Canron, Inc.*[66] applied.[67] While the plaintiff in *Hartford* based its claim of successor liability on theories of negligence and breach of warranty,[68] the court in *Schumacher* perceived no reason why a claim in strict products liability should not be subject to the

61. *Id.* at 242-44, 451 N.E.2d at 196-97, 464 N.Y.S.2d at 438-40.

62. *Id.* at 244, 451 N.E.2d at 198, 464 N.Y.S.2d at 440.

63. Schumacher v. Richards Shear Co., 88 A.D.2d 1071, 1071-72, 452 N.Y.S.2d 736, 736-37 (3d Dep't 1982).

64. *Schumacher*, 59 N.Y.2d at 244, 451 N.E.2d 197, 464 N.Y.S.2d at 439.

65. Schumacher v. Richards Shear Co., 88 A.D.2d at 1072, 452 N.Y.S.2d at 737.

66. 43 N.Y.2d 823, 825, 373 N.E.2d 364, 365, 402 N.Y.S.2d 565, 566 (1977); *see supra* notes 12-15 and accompanying text.

67. Schumacher v. Richards Shear Co., 88 A.D.2d at 1072, 452 N.Y.S.2d at 737.

68. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566.

same rule.[69] Moreover, the court emphasized, no duty should be imposed directly upon Logemann to warn or instruct Wallace Steel on the use of a machine provided by Richards Shear when the injury happened some fourteen years after the purchase.[70]

B. *The Decision of the New York Court of Appeals*

The issue on appeal, as stated by the court, was whether "Logemann [was] liable to the plaintiff for the tortious conduct of Richards Shear or for its own conduct subsequent to acquiring Richards Shear's assets."[71] The court modified the trial court's decision by affirming the dismissal of the strict products liability cause of action, but denying the dismissal of the cause of action based on negligence.[72] The rule of *Hartford*,[73] the court held, protected Logemann from liability as a successor corporation for Richards Shear's actions.[74] The court recognized, however, that a successor corporation may be liable in negligence because of its independent duty to warn those injured by unsafe machinery manufactured and sold by its predecessor corporation. Such a duty is based upon the special relationship between the successor corporation and the purchaser and upon the knowledge the successor corporation possesses or has reason to possess about the machine. The court found sufficient evidence to create an issue of fact, thus making summary judgment for the defendant on the duty to warn issue inappropriate.[75]

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69. Schumacher v. Richards Shear Co., 88 A.D.2d at 1072, 452 N.Y.S.2d at 737.

70. *Id.* The court further added that "the time element alone bears heavily on the lack of foreseeability that such an incident would occur and leads inescapably to the conclusion that, applying the ordinary rules of negligence, there was no lack of reasonable care under the circumstances." *Id.* at 1072, 452 N.Y.S.2d at 737-38 (citing Torrogrossa v. Towmotor Co., 44 N.Y.2d 709, 710, 376 N.E.2d 920, 921, 405 N.Y.S.2d 448, 449 (1978); Micallef v. Miehle Co., Div. of Miehle-Goss Dexter, 39 N.Y.2d 376, 387, 348 N.E.2d 571, 578, 384 N.Y.S.2d 115, 122 (1976)).

71. *Schumacher*, 59 N.Y.2d at 242, 451 N.E.2d at 197, 464 N.Y.S.2d at 439.

72. *Id.* at 243, 451 N.E.2d at 198, 464 N.Y.S.2d at 440.

73. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d at 825, 373 N.E.2d at 365, 402 N.Y.S.2d at 566; *see supra* notes 12-15 and accompanying text.

74. *Schumacher*, 59 N.Y.2d at 243, 451 N.E.2d at 198, 464 N.Y.S.2d at 440.

75. *Id.* at 248-49, 451 N.E.2d at 200, 464 N.Y.S.2d at 442. In deciding against summary judgment, the court declared that other than the single service call (which by itself may not be enough to sustain a duty to warn), Logemann knew of the location and owner of the machine and willingly offered to service it. In addition, Logemann held itself out on at least two occasions as having expertise in the product line it had acquired from

The dissenters in *Schumacher* agreed with the dismissal of the strict products liability cause of action.[76] They also acknowledged that a successor corporation may have an independent duty to warn customers of product defects.[77] According to the dissenters, however, the facts in the record were insufficient as a matter of law to establish the special relationship necessary to create such a duty.[78]

The dissenters also contended that the plaintiff had failed to plead an essential element of a negligence cause of action: that the defendant's breach of duty was the proximate cause of the plaintiff's injury.[79] In addition, one dissenter reasoned, no duty to warn existed in this case, because the alleged defect was open and obvious, thus negating the need for such warning.[80]

Richards Shear. Although Logemann apparently did not officially assume Richards Shear's service contracts, it did offer to service the machine to the potential economic benefit of both parties. *Id.*

The court stated that at trial, plaintiff must establish that a duty to warn existed based upon these contacts between defendant Logemann and plaintiff's employer. "Its liability, if any, arises out of this relationship, not because of any successor liability or because it acted as a serviceman or repairman for the machine." *Id.* at 249, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

76. *Id.* at 250, 451 N.E.2d at 201, 464 N.Y.S.2d at 443 (Jasen, J., dissenting); *see also id.* at 257, 451 N.E.2d at 205, 464 N.Y.S.2d at 447 (Jones, J., dissenting). Judge Simons wrote the opinion. Chief Judge Cooke and Judges Wachtler and Meyer concurred.

77. *Id.* at 250, 451 N.E.2d at 201, 464 N.Y.S.2d at 443 (Jasen, J., dissenting); *see also id.* at 257-58, 451 N.E.2d at 205, 464 N.Y.S.2d at 447 (Jones, J., dissenting).

78. *Id.* at 250-54, 451 N.E.2d at 201-03, 464 N.Y.S.2d at 443-45 (Jasen, J., dissenting); *see also id.* at 257-60, 451 N.E.2d at 205-07, 464 N.Y.S.2d at 447-49 (Jones, J., dissenting).

79. *Id.* at 250, 451 N.E.2d at 201, 464 N.Y.S.2d at 443 (Jasen, J., dissenting); *see also id.* at 261, 451 N.E.2d at 207, 464 N.Y.S.2d at 449 (Jones, J., dissenting).

80. *Id.* at 254-55, 451 N.E.2d at 203-04, 464 N.Y.S.2d at 445.

At common law the duty to warn extended only to hidden (latent) dangers or to products that were inherently dangerous in a way which would likely remain undetected by a consumer. If the danger was obvious (patent), there was no duty to warn. *Id.* at 254, 451 N.E.2d at 203, 464 N.Y.S.2d at 445 (Jasen, J., dissenting).

The majority believed that the court's decision in Micallef v. Miehle Co., Div. of Miehle-Goss Dexter, 39 N.Y.2d 376, 348 N.E.2d 571, 384 N.Y.S.2d 115 (1976), had eliminated the distinction between latent and patent defects. *Schumacher*, 59 N.Y.2d at 249, 451 N.E.2d at 200, 464 N.Y.S.2d at 442. The dissent, on the other hand, argued that the distinction had been eliminated only in strict products liability causes of action based on design defects, not in causes of action based on the duty to warn. *Id.* at 255, 451 N.E.2d at 204, 464 N.Y.S.2d at 446 (Jasen, J., dissenting).

The application of the latent/patent distinction to the duty to warn is not specifically related to the issue of successor liability and is thus beyond the scope of this Note.

IV. Analysis

The court of appeals found correctly that none of the traditional exceptions to nonliability set out in *Hartford Accident & Indemnity Co. v. Canron, Inc.*[81] was applicable in *Schumacher v. Richards Shear Co.*[82] Since the plaintiff's causes of action sounded in strict products liability and negligence, however, the court had the opportunity to consider the more recently formulated exceptions to the rule of nonliability.[83] The decision is unclear, however, as to whether the court is amenable to recognizing a cause of action based on either the continuity of enterprise or the product line approach. The court stated only that the facts alleged did not warrant its consideration or application of those theories.[84] The court proceeded, however, to distinguish the facts of *Schumacher* from those of the cases where these theories were formulated.[85]

In announcing the continuity of enterprise approach, the court in *Turner v. Bituminous Casualty Co.*[86] found that the successor corporation had retained key management personnel of its predecessor,[87] a factor not present in *Schumacher.*[88] As the *Schumacher* court pointed out, the only employees of Richards Shear who became employees of Logemann were two servicemen.[89] Furthermore, the predecessor corporation in *Turner* dissolved shortly after the sale of assets, and the successor corpora-

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81. Hartford Acc. & Indem. Co. v. Canron, Inc., 43 N.Y.2d 823, 825, 373 N.E.2d 364, 365, 402 N.Y.S.2d 565, 566 (1977).

82. 59 N.Y.2d 239, 243, 451 N.E.2d 195, 197, 464 N.Y.S.2d 437, 439 (1983).

83. *Id.* at 245-46, 451 N.E.2d at 198-99, 464 N.Y.S.2d at 440-41.

84. *Id.*

85. *Id.* at 245-48, 451 N.E.2d at 198-200, 464 N.Y.S.2d at 440-42; *see* Cyr v. B. Offen & Co., 501 F.2d 1145 (1st Cir. 1974) (continuity of enterprise); Ray v. Alad Corp., 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 374 (1977) (product line); Turner v. Bituminous Cas. Co., 397 Mich. 406, 244 N.W.2d 873 (1976) (continuity of enterprise); Ramirez v. Amsted Indus., Inc., 86 N.J. 332, 431 A.2d 811 (1981) (product line); McKee v. Harris-Seybold Co., 109 N.J. Super. 555, 264 A.2d 98 (1970), *aff'd*, 118 N.J. Super. 480, 288 A.2d 585 (1972) (continuity of enterprise); *see also supra* text accompanying notes 24-43.

86. 397 Mich. 406, 244 N.W.2d 873.

87. *Id.* at 430, 244 N.W.2d at 884.

88. *Schumacher*, 59 N.Y.2d at 246, 451 N.E.2d at 198, 464 N.Y.S.2d at 440. The *Schumacher* court observed that the exception that came closest to being applicable was the "mere continuation exception." This exception, the court noted, applies to corporate reorganization where only one corporation survives. *Id.* at 245, 451 N.E.2d at 198, 464 N.Y.S.2d at 440.

89. *Id.*

tion assumed its name.[90] In *Schumacher*, Richards Shear continued to exist after the sale, and although Logemann had acquired the right to use the trade name "Richards,"[91] there is no indication that it actually did so.

The court indicated that a stronger claim could be asserted based on the product line theory developed in *Ray v. Alad Corp.*,[92] but distinguished the facts of *Ray*.[93] The successor corporation in *Ray* continued to use the manufacturing plant and inventory of its predecessor.[94] It continued to manufacture the same product under the same trade name.[95] Logemann, on the other hand, did not produce the same type of machine as Richards Shear.[96] Moreover, the successor corporation in *Ray* continued to deal with its predecessor's customers "with no outward indication of any change in the ownership of the business."[97] There is no indication from the facts in *Schumacher* that Logemann ever held itself out as being the same entity as Richards Shear. In fact, by notifying Wallace Steel of its purchase of Richards Shear's assets and its willingness to continue servicing the shearing machine,[98] it made it clear that it was a separate entity.

After sufficiently demonstrating that the facts of *Schumacher* did not warrant the court's adoption of either the continuity of enterprise or the product line theory, the court considered whether Logemann had a duty of its own to warn Wallace Steel of defects in the machine.[99] The court applied the test articulated in *Leannais v. Cincinnati, Inc.*[100] and *Travis v. Harris, Inc.*[101]

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90. Turner v. Bituminous Cas. Co., 397 Mich. at 430, 244 N.W.2d at 884.
91. *Schumacher*, 59 N.Y.2d at 244, 451 N.E.2d at 197, 464 N.Y.S.2d at 439.
92. 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 374.
93. *Schumacher*, 59 N.Y.2d at 246, 451 N.E.2d at 198-99, 464 N.Y.S.2d at 440-41.
94. Ray v. Alad Corp., 19 Cal. 3d at 27, 560 P.2d at 6, 136 Cal. Rptr. at 577.
95. *Id.* at 28, 560 P.2d at 6-7, 136 Cal. Rptr. at 577-78.
96. *Schumacher*, 59 N.Y.2d at 253, 451 N.E.2d at 203, 464 N.Y.S.2d at 445 (Jasen, J., dissenting).
97. Ray v. Alad Corp., 19 Cal. 3d at 25, 560 P.2d at 5, 136 Cal. Rptr. at 576.
98. *Schumacher*, 59 N.Y.2d at 244, 451 N.E.2d at 198, 464 N.Y.S.2d at 440.
99. *Schumacher*, 59 N.Y.2d at 246, 451 N.E.2d at 199, 464 N.Y.S.2d at 441.
100. 565 F.2d 437, 442 (7th Cir. 1977). *See supra* notes 51-54 and accompanying test.
101. 565 F.2d 443, 449 (7th Cir. 1977). *See supra* notes 51-54 and accompanying text.

The facts in *Schumacher*[102] fall between those in *Leannais* and *Travis*. Ironically, at first glance, *Schumacher* appears to be more comparable to *Travis*, where no duty to warn was imposed.[103] Both cases involved a single service call,[104] and in neither was there a formal takeover of service contracts as in *Leannais*.[105]

There are important differences between *Travis* and *Schumacher*, however. In *Travis*, the single service call made by the defendant corporation's employee was to a prior purchaser of the defective machine,[106] not to the plaintiff's employer as in *Schumacher*.[107] Thus the service call did nothing to create a relationship between Travis and the subsequent purchaser, plaintiff's employer. Furthermore, the record in *Travis* does not indicate that the defendant was aware of the defects in the machine.[108] In *Schumacher*, there was at least an issue of fact as to whether the defendant knew or, on the basis of the service call, should have known of the defect.[109] While the defendant in *Travis* may not have known of the location and owner of the machine,[110] Logemann clearly knew these facts and actively offered to service the machine.[111]

Schumacher and *Leannais*, where the successor corporations had a duty to warn, are distinguishable from *Travis*, where it did not. The distinction may be the ongoing nature of the relationship between the successor corporation and the buyer of the defective product. In *Travis*, there was minimal contact, a single service call, between the defendant and the buyer of the product, none between the defendant and its present owner.[112]

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102. *Schumacher*, 59 N.Y.2d at 247-49, 451 N.E.2d at 199-200, 464 N.Y.S.2d at 441-42.

103. Travis v. Harris, Inc., 565 F.2d at 449.

104. *Id.*; *Schumacher*, 59 N.Y.2d at 253, 451 N.E.2d at 203, 464 N.Y.S.2d at 445 (Jasen, J., dissenting).

105. Leannais v. Cincinnati, Inc., 565 F.2d at 442; *see* Travis v. Harris, Inc., 565 F.2d at 449; *Schumacher*, 59 N.Y.2d at 253, 451 N.E.2d at 203, 464 N.Y.S.2d at 445 (Jasen, J., dissenting).

106. Travis v. Harris, Inc., 565 F.2d at 449.

107. *Schumacher*, 59 N.Y.2d at 248, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

108. Travis v. Harris, Inc., 565 F.2d at 449.

109. *Schumacher*, 59 N.Y.2d at 249, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

110. Travis v. Harris, Inc., 565 F.2d at 449.

111. *Schumacher*, 59 N.Y.2d at 248, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

112. Travis v. Harris, Inc., 565 F.2d at 449.

In both *Leannais* and *Schumacher*, there were repeated contacts between the defendant corporations and the owners of the products.[113] Most of these contacts were initiated by the defendants in the expectation of an economic advantage.[114] Such continuous contacts may create the special relationship necessary to create a duty to warn, where a single contact may not. The court in *Schumacher* stressed that it was not imposing a duty to warn on the basis of the service call alone, but because Logemann attempted to maintain a relationship with Wallace Steel that would be to Logemann's economic advantage.[115]

One factor distinguishing *Leannais* and *Travis* from *Schumacher* is that in the two earlier cases, the failure to allege proximate cause does not appear to have been an issue. The dissent in *Schumacher*, while agreeing that a successor corporation may be liable for failure to warn of defects, would have dismissed the negligence cause of action where the plaintiff failed to allege, as necessary under general tort principles, that the breach of duty to warn was the proximate cause of his injury.[116] The dissent suggests that the court may be eliminating this element for reasons of social policy, lest the plaintiff be left without a remedy.[117] If this is so, the court may be creating a new cause of action, labelled negligence, but more akin to strict products liability against successor corporations.

V. Conclusion

In *Schumacher v. Richards Shear Co.*,[118] the New York Court of Appeals fashioned a remedy for a person injured by an allegedly defectively designed product by imposing an independent duty to warn of the defect on the corporation acquiring the assets of the manufacturer of the product. The court failed to impose liability on the successor corporation for the acts of its predecessor under either the continuity of enterprise theory or

113. Leannais v. Cincinnati, Inc., 565 F.2d at 442; *Schumacher*, 59 N.Y.2d at 248, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

114. Leannais v. Cincinnati, Inc., 565 F.2d at 442; *Schumacher*, 59 N.Y.2d at 249, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

115. *Schumacher*, 59 N.Y.2d at 249, 451 N.E.2d at 200, 464 N.Y.S.2d at 442.

116. *Id.* at 250, 451 N.E.2d at 201, 464 N.Y.S.2d at 443 (Jasen, J., dissenting).

117. *Id.* at 252, 451 N.E.2d at 202, 464 N.Y.S.2d at 444 (Jasen, J., dissenting).

118. 59 N.Y.2d 239, 451 N.E.2d 195, 464 N.Y.S.2d 437 (1983).

the product line approach.

Although *Schumacher* appears to extend successor liability, it is unclear how far-reaching the decision will be. Future decisions will clarify what factors create a special relationship between the successor and buyer of the product. They will also indicate whether the court has in fact eliminated proximate cause as an element of the successor's breach of duty to warn. Furthermore, the court did not reject the continuity of enterprise or the product line theory, leaving open the possibility that, given the proper case, it may embrace one or both of these theories. Successor liability could, therefore, expand even further.

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