Intermediate Successor Liability In New Jersey: Who is Liable?

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Intermediate Successor Liability

As noted in our previous article, the New Jersey Supreme Court in Ramirez v. Armsted Industries, Inc., 86 N.J. 332 (1981), reevaluated the traditional approach to successor liability and set forth the "Product Line Exception." Daniel R. Kuszmerski and Jason R. Gosnell, *Successor Liability in New Jersey: Am I Buying a Lawsuit?* NJDA Fall 2014 at 3. On the same day it decided Ramirez, the Court also decided Nieves v. Bruno Sherman Corp., 86 N.J. 361 (1981). In Nieves, the question before the Court was whether the Product Line Exception should "be extended to impose liability on an intermediate successor corporation -- one that acquired all the business assets from the original manufacturer and thereafter transferred those assets to its successor and discontinued the offending product line, all several years before plaintiff's accident occurred." Id. at 364. The Court ultimately held, "that the Ramirez rationale is not necessarily so limited as to visit liability upon only the current, viable manufacturer of the product line. In certain situations both the current successor corporation and the intermediate manufacturer may be responsible under Ramirez." Id. at 365.

In Nieves, plaintiff, Luis A. Nieves, Jr., suffered a severe injury to his right arm when it was crushed in a die-cutting power press manufactured by T.W. & C.B. Sheridan Company ("Old Sheridan"). Prior to the injury, Old Sheridan sold its entire manufacturing business, good will, trade name and substantially all other assets to Harris Intertype Corporation ("Harris"). Harris then formed a wholly owned subsidiary, T.W. & C.B. Sheridan Company ("New Sheridan") to receive the assets and continue the operation of Old Sheridan. Additionally, Harris executed a separate agreement with Old Sheridan whereby New Sheridan assumed certain debts, obligations and liabilities necessary for the uninterrupted continuation of the normal business operations. Ibid. Shortly, thereafter, Old Sheridan underwent dissolution. Approximately, four years after the sale, New Sheridan (the wholly owned subsidiary) and Harris (its parent corporation) merged and became the Sheridan Division of Harris-Intertype. Id. at 366.

Still prior to the injury, Harris sold to Bruno-Sherman ("Bruno") all the assets used in the manufacture of the Sheridan die-cutting press and related spare parts, including the good will, historical data, business records, customer correspondence, trade secrets, patents, trademarks, designs, patterns, jigs, fixtures, and equipment involved in the manufacturing operation. After the sale to Bruno, Harris changed its name, but remained in business and continued to manufacture a different product line. Ibid.

Thereafter, as indicated above, Nieves injured his right arm. He sought recovery from both Harris and Bruno as successor corporations to Old Sheridan, the original manufacturer of the machine that caused his injury. In separate motions for summary judgment heard and decided by two different trial judges, both Harris and Bruno argued that they were not successor corporations to Old Sheridan and therefore not liable for injuries caused by defects in products previously manufactured and distributed by the original manufacturer. Ibid.

Using the traditional McKee approach, one trial judge granted Bruno's summary judgment. The second trial judge however, relying on the Appellate Division's holding in Ramirez v. Armsted Industries, Inc., 171 N.J. Super. 261

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(App. Div. 1979), denied Harris' motion. Both Harris and the plaintiff were granted leave to appeal to the Appellate Division from the denial of summary judgment to Harris and the grant of summary judgment to Bruno. The Supreme Court ordered direct certification of Harris' and the plaintiff's appeals to consider them with Ramirez. Nieves, supra, 86 N.J. at 367-68.

The Court dispensed with issues regarding Bruno's liability rather quickly. Using the analysis in Ramirez, the Court held that Bruno was a successor, even though there was an intermediary owner. To the Court, it was obvious that Bruno benefited from its use of the trade name and good will of Old Sheridan in manufacturing the same line of products and from holding itself out to customers and the public as substantially the same manufacturing enterprise. It also held that the imposition on Bruno of potential liability for injuries caused by defects in the Old Sheridan product line was justified as a fair and equitable burden necessarily attached to the substantial benefit that it enjoyed in the "deliberate albeit legitimate exploitation of [Old Sheridan's] established reputation as a going concern manufacturing a specific product line." Ray v. Alad Corp., 560 P.2d 3, 11, (1977) (the California case the Court in Ramirez relied upon when establishing the Product Line Exception). The Court further justified the imposition of liability on Bruno, because Bruno was able to gauge the risks of injury from defects in the Old Sheridan product line and to bear accident-avoidance costs. "As stated in Ramirez, because the successor corporation acquired the resources that had previously been available to the original manufacturer for meeting its responsibilities to persons injured by defects in its line of products, the successor remains in a better position than the user of the product to bear accident avoidance costs." Nieves, supra, 86 N.J. 369.

Alternatively, the issues regarding Harris' liability were unique as in both Ramirez and Ray, there was no intermediary company. Harris argued that once a company ceased manufacturing the product in question, and another viable company acquired the assets related to the manufacturing operation and continued to manufacturer the product line, there was no justification for imposing successor liability under Ramirez on the intermediate company. Indeed, Harris contended that there was an essential functional prerequisite missing for the imposition of successor liability on it, namely, the unavailability of a viable manufacturer of the product line against which plaintiff may seek recompense. Id. at 370.

The Court held however, that Harris misinterpreted Ramirez, and Ray, as the Court was not as concerned with the availability of one particular successor, as it was the unavailability of the original manufacturer. Nieves at 370-371. It opined:

> [t]he fact that there are two such successors to Old Sheridan in the present case does not alter the reality that Harris' acquisition of the business assets and manufacturing operation of Old Sheridan contributed to the destruction of the plaintiff's remedies against the original manufacturer. By acquiring the business assets of Old Sheridan and continuing the established operation of manufacturing and selling Sheridan die-cutting products, Harris became an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products.
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> [Id. at 371. (internal citations omitted.)]

Ultimately the Court found, at least to an injured plaintiff, any successor company or companies, to a virtually destroyed manufacturer, following the Product Liability Exception, is an available source of restitution. In fact, the Court in Nieves emphasized that regardless of contractual provisions as to indemnity and liabilities between two successor companies, neither Ramirez nor the injured plaintiff is concerned how the liability will eventually

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be borne or allocated to the successor companies. Contracting away liability will not prevent a plaintiff from seeking allocation from a successor company. Although, "between the two successor corporations the provisions of [an] indemnification agreement, if applicable to the particular fact situation presented, should be given [its] intended effect as a risk-spreading and cost-avoidance measure." Nieves, supra, at 372.

Allocation of Liability When There is No Applicable Indemnification Agreement

Neither Ramirez nor Nieves, address the issue of allocation of liability among successor corporations when there was no indemnity. This issue was instead decided by the Appellate Division in Class v. American Roller Die Corp., 308 N.J. Super. 47 (App. Div. 1998). In Class, the Appellate Division reversed the trial court's order directing an equal apportionment of damages among successor corporations and held alternatively that plaintiffs' damages should be apportioned based upon the benefits obtained by each successor. The court in Class found that because a strong policy reason for the imposition of successor liability is that the corporation "benefits from trading its product line on the name of the predecessor and takes advantage from its accumulated good will, business reputation and established customers," Ramirez, supra, 86 N.J. at 358, that apportioning damages based on the benefits received by each successor corporation was the appropriate method to allocate plaintiff's damages. Class, supra, 308 N.J. Super. at 53-55.

The Appellate Division further held that because the benefits received by any individual successor may be difficult to measure, a reasonable basis for allocation would be calculated based on the number of units produced by each successor corporation in relation to the total number of units produced by all successor corporations up to the date of plaintiff's accident. However, in cases like Class, where the number of units produced by each successor could not be determined, apportionment of damages should be calculated by the number of years each successor corporation manufactured the product line in relation to the total number of years the product line was produced by all successor corporations up to the date of plaintiff's accident. Either way, the difference in units or time between each successor, fairly reflects the difference in the benefits that each successor received from the good will they enjoyed in the continued operation of the original manufacturer's product line. Id. at 55-56.

Consequently, in the event the original manufacturer is virtually destroyed, the case law in New Jersey is clear, all successor corporations which continue the original manufacturer's product line shall be liable to the plaintiff. It is further evident that provided there are no contractual provisions between successors, liability will subsequently be apportioned pursuant to the amount of units produced and in the alternative according to the amount of years units are manufactured.

Therefore, as indicated in our previous article, purchase agreements clearly need to express who will assume any of the original manufacturer's liabilities. Moreover, as a result of Nieves, an additional indemnity clause within the purchase agreement should be included, as an injured party may collect an award from any successor corporation. Post-sale insurance which will cover the original manufacturer's product line should also be considered. Furthermore, a determination of whether to dissolve upon the sale of assets and thereafter reforming as a new company should also be discussed with your client.

*** Daniel Kuszmerski and Jason Gosnell are both associates of the law firm Hoagland, Longo, Moran, Dunst & Doukas, LLP in New Brunswick, NJ. This article is the second in a series which discusses many of the issues they have encountered concerning successor liability including: intermediary successors, viability of the original manufacturer, continuation of the product or a substantial similar product, and supplier successor liability.**