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Alaska
Bar Examination

JULY
2005

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Mackenzie, Asp & Norman LLP
Attorneys at Law
550 Enterprise Blvd., Suite 2500
Cypress, Franklin 33337

Ms. Jasmine Clarke, President
Clarke Corporation
800 Robinson Blvd.
Cypress, Franklin 33337

July 26, 2005

Dear Ms. Clarke:

We understand that you are concerned about your company's potential liabilities that may have been caused by Santory-manufactured Pure View by virtue of your company's acquisition of DMD.

There is indeed the possibility that the product line successor rule can be invoked to impose liability on Clarke Corporation for Mr. Jomas Regan's death.

This opinion is based on relevant facts that will surely be considered in such determination. I have detailed these relevant and important facts in the following:

1) Your company acquired DMD and continue to manufactur its products using identical manufacturing processes and the same product names used by the seller (Santoy).

2) Santoy, the seller, changed its name to comply with the terms of the sale agreement and later filed for bankruptcy and its assets were liquidated.

3) On your benefit, you informed all existing and prospectiv customers that Santoy was not manufacturing these products, and you did discontinue their production.

4) Mr. Thomas Regan received several doses of Pure View in connection with the treatment of an injury.

5) Mr. Regan developed a fatal malignant tumor which caused his death.

6) Three months ago, reports claimed that some study that tracked 100 individuals who received doses of Pure View developed certain forms of cancer and it is presumed to be linked to Pure View exposur

7) It is the first time that Pure View has been linked to any serious medical illness.

These are the most important facts so far, but with these facts and events, similar to your case we have found jurisprudence that similarly situates your company at the same liability risk

In Gray v. Ballard, a new exception was created ~~in addition to the four exceptions by then available~~ to the general rule, that a corporation was not liable for merely purchasing assets of another corporation, which ~~was~~ is the case of Santos and Clarke. The purpose of this rule is to ensure that the costs of injuries resulting from defective products are not borne by the injured persons who are powerless to protect themselves. This social concern justifies imposing liability upon a successor if three conditions are met; we do meet all three conditions in this case. We continued operation of

Santoy's business and enjoyed its goodwill, Santoy no longer exists and therefore, no remedy can be granted by Santoy to the injured or harmed, if any, and we can assume ~~the~~ Santoy's risk-spreading role. The first condition would burden Mrs. Many Regan to face formidable and probably insuperable obstacles in attempting to obtain satisfaction of the judgment from former stockholders or directors. She would have to go against a dissolved corporation. The second condition to consider is that by producing True View, your company virtually had the same capacity as Santoy

to estimate the risks of claims for injuries from any defects of the product. The third condition considers fair imposing vis-a-vis liability in view of your acquisitio of DMD. Your company became an integral part of the overall manufacturing interprise that should bear the cost of injuries resulting from defective products.

~~I~~, For the reasons stated above, we strongly suggest a closer consideration of the possible offer to settle from Ms. Regn attorney and by that avoiding any civil action that might result in greater harm to your company.

Your understanding and trust in our law firm is highly appreciated. Please feel free to contact us for future actions.

Margaret McKenzie, Esq.

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1)

Ms. Jasmine Clarke, President

Clarke Corp.

800 Robinson Blvd.

Cypress, Franklin 33337

Re: Liability to Mary Regan (Pure View Exposure)

Dear Ms. Clarke:

Recently I have undertaken a review of the pertinent case law regarding your companies possible liability to Ms. Regan resulting form the death of her husband from exposure to Pure View chemical. Based on this thorough review, my legal opinion is that you will not be held liable for any injury that Ms. Regan's husband has suffered despite the public policy concerns associated with holding companies liable for their products.

The relevant facts that come into play in your case are the following: 1) Clarke Corp. was not the manufacture of this chemical at the time of Mr. Regan's exposure; 2) the Company that did manufacture this product was in business for many years, and stayed in business for several years after Clarke Corp take-over; 3) Clarke Corp. has not assumed this liability, nor did it appreciate the possible risk that this chemical could cause; and finally 4) there are strong factual issues that weigh in favor of finding no liability on the part of Clarke Corp. to the Regans.

In approaching this case, the general rule is that a corporation that purchases the

principal assets of another corporation in arm's-length transactions is not liable for the debts and liabilities of the selling corporation. In this case, your father, engaged in just such a transaction in 1990 when he acquired Santoy's Manufacturing Co. for $2.5 mil. in arms-length negotiations. However, while this is the general rule, the court has also noted 4 traditional exceptions to the rule. The primary function of these four traditional exceptions is to protect commercial creditors and shareholders. If these exceptions to the general rule were all we needed to worry about, then you would be in the clear completely. That's not the case though, but not to worry.

What we are concerned with is the new rule (new exception) that deals with the underlying public policies that are geared toward protecting the consumer, or the little guy. That court is primarily concerned with making sure that large companies are not avoiding their personal injury liability simply by selling off their company to another that would be protected under the general rule. In drafting this exception, the court has focused on three main areas or conditions, that the Plaintiff must meet in order to overcome the general rule of no liability. The plaintiff must show that 1) the transaction from seller to successor virtually destroyed the plaintiff's ability to recover for personal injury suffered; 2) that the successor had assumed the original manufacturer's risk-spreading role; and 3) the fairness of requiring the successor to assume responsibility for defective products as a consequence of successor enjoying the original manufacture's goodwill in continuation of business. In reviewing these three requirements, I find that Ms. Regan's claim against Clarke Corp fails in several respects, outlined for your convenience below.

1. Virtual Destruction of Remedy:

Under this prong of the new rule, I will argue on your behalf that Clarke Corp. acquisition of

Santoys did not destroy Mr. Reagan's ability to recover from Santoy because Santoy remained in business for 2 years after the acquisition and that it had been primarily liable for the manufacture of the Pure View that supposedly injured him. The courts have held that lapse of time in bringing a valid claim against the manufacturer may be a valid defense for the successor where the manufacturing company remains in business post acquisition.

2. Successor's Ability to Estimate Risk:

Under this prong, the evidence that you have provided to me clearly demonstrates that Clarke Corp. did not expressly assume any responsibility for possible claims that may be made against Santoy's interest. And frankly, it is possible that the facts of your case may be held to demonstrate that Clarke did not even appreciate the possible risk of this product since all indications were that it only caused slight irritation or swelling to the skin. Also, since Santoy's production of this chemical constituted only a minor percentage of their company's production, it is hard to imagine that Clarke Corp. had a reasonable means of assessing further risk of harm associated with the production of this product. It is also helpful to note that Mr. Regan was exposed to this product almost a decade before your Father took over Santoy.

3. Balancing & fairness:

Under this prong, the facts of the case really speak for themselves. While this is a tragic case, and Ms. Regan has no doubt suffered a great loss, the equities of her claim (or that of her husband) do not amount to an imposition of liability on your company's part. I can never guarantee that a court will go one way or another, and so I say this with caution, however, given the substantial lapse of time in which Mr. Regan could have brought a suit against Santoy, and the probability that this type of injury was not a foreseeable risk that Clarke Corp. could estimate during the acquisition, it is very likely that the court would side in our favor.

I feel very confident that you have a strong case both legally and factually on which to

mount a defense in this particular suit. If you desire to retain this firm in undertaken representation of this case on your behalf, please do not hesitate to contact me. I hope that this letter is helpful to you in making this important decision.

Sincerely,

Margaret MacKenzie

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Mackenzie Asp & Norman LLP
Attorneys at Law
550 Enterprise Blvd, Suite 2500
Cypress, Franklin 33337

July 26, 2005

Ms. Jasmine Clarke, President
Clarke Corporation
800 Robinson Blvd.
Cypress, Franklin 33337

Dear Ms. Clarke,

You came to our firm after receiving a letter from William H. Bentley, Esq., who is representing Mary Regan, whose husband died from a malignant tumor they believe was caused by the product Pure View, which was manufactured briefly by Clarke Corporation in 1990 and 1991. You expressed concern to us about your company's potential liability for injuries that may have been caused in 20 years of manufacture of the product by the now-defunct Suntop, which Clark purchased in 1990.

After our initial research, we have determined that based on the "product line successor rule," you are exposed to liability for injuries caused by

this product.

The facts that are relevant in this determination are as follows. Clarke purchased Santoy, a manufacturer of pharmaceutical chemicals, a similar line of business. Clarke assumed liability for Santoy's business contracts. Clarke acquired no stock in Santoy, but did acquire all manufacturing, research, and other tangible facilities, which were used to make Pure View for another six months after the asset acquisition. Clarke held itself out to former Santos customers as "the" manufacturer of Pure-View, and acquired all logos, trade names, and goodwill. Although it was 2 years before what was formerly Santos dissolved entirely, Clarke acquired all of Santos pharmaceutical operations and continues making 4 of the 6 Santos products today, 15% of Clarke's business. Two years after Clarke acquired Santos, what remained of it in its Industrial Division filed for bankruptcy and was liquidated.

Here are the issues Raised by Mrs. Regan's claim of "product line successor" liability against the Clarke Corporation and the facts that lead us to believe that she has a chance at success with her claim. The "product line successor rule" is an exception to the general rule against holding successors (like Clarke Corp.) liable for the damage

caused by previous manufacturers of the same product (like Santoy) even when the actual product that caused the harm may not have been made, in reality, by the successor, or even if the product is no longer made at all.

Three elements must be established to hold a successor corporation such as Clarke liable for harm caused by its predecessor. These elements were first laid out in the Gray v. Ballard Case that Mr Bentley referred to in his letter on behalf of Mrs. Regan. First, the ability of the injured plaintiff to sue the predecessor has to be destroyed i.e. this means that there is no corporate entity there for her to sue, so she must look elsewhere. Second, the successor has to be in the position of assuming responsibility for the risk of the operations or sale of the product, a role formerly held by the original manufacturer of the product. This means that all of the basic business of making and selling a product, including the same manufacturing processes and customers, are in place. And third, it must be a situation where it is more fair to hold a successor corporation liable for a product that it may only have made a short time than to leave an injured person without a way to be compensated.

We looked at a few other cases to see if your situation was different enough from that in the Gray case to see if there would be no

way to hold you liable under this test. After reviewing the Shatner and Rollins cases, your situation appears similar to Gray.

First, Ms. Regan is totally unable to sue Sanyo, the original manufacturer of PureView. When Clarke acquired Sanyo, it completely turned over manufacture of all of its pharmaceutical products over to Clarke, and sunk the profits from the sale into the Industrial Division that went under just two years later. This is like the situation in Gray where Ballard II began making ladders once made by Ballard I, and Ballard II dissolved soon thereafter at the direction of the parent company Thunderbird. Unlike in Shatner where the original manufacturer of asbestos dissolved on its own, and was its own entity for a while before then, Clarke Corp. assumed title to the PureView product right away and Sanyo had no continuing control over it on its own. Ms. Regan logically would sue Clarke.

Second, despite the short amount of time Clarke made PureView, Clarke assumed all the risks and rewards of making PureView and replaced Sanyo as the entity positioned to allocate the risks. Unlike the situation in Shatner where the original manufacturer continued to be in a risk allocation role for a while before dissolving, Clarke took over all the benefits of making PureView right away via the Asset Purchase, § 2.5. By taking all the

benefits of the "ordinary course of business, Clarke can in the latter – the only – risk-allocation position. Santoy had only a small, unrelated concern going after the asset purchase. This is also like the situation in Rollins where even though the purchased equipment was later used to make different products than what the predecessor had made, the fact that it was the same capital asset (equipment) and same general business, the successor in Rollins was better positioned to handle the risks of defective products as these.

Finally, it is fairer to hold a manufacturer of a product liable in this situation, even where there is a latent defect, than to leave the consumer without anywhere to go. This is a close call, and be reassured that Mrs. Regan would still have to prove that Pure View caused cancer. But what is important here is not that you were only in the business a short period of time, you are still in the business of pharmaceutical chemicals. Unlike Barger, who "got out of" asbestos thirty years ago, Clarke still continues in the bulk of what was Santoy's business, and only quit making one of the products fifteen years ago.

We hope you find this helpful in considering how to proceed with the Regan case.

Regards, your attorney

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Question Presented

The question presented is whether the product line successor rule can be invoked to impose liability on Clarke Corporation for Mr. Regan's death solely by virtue of Clarke's acquisition of DMD.

The elements of the product line successor rule cannot be established; therefore, the rule cannot be invoked to impose liability on Clarke for Mr. Regan's death.

Statement of the Facts

It is alleged by Mrs. Regan that her husband's death resulted from a malignant tumor caused by his exposure to PureView, a contrast dye material used for X-ray purposes. PureView was manufactured by Santoy Enterprises, Clark Corporation's predecessor, from 1970 to 1990. In 1983, Mr. Regan received several doses of PureView in connection with the treatment for an injury. He developed a fatal malignant tumor as a result of his exposure to Pureview and died in November 2004.

Clarke Corporation ("Clarke") acquired DMD from Santoy through an Asset Purchase Agreement dated September 1, 1990. Pursuant to the Agreement, Clarke purchased certain assets from and assumed certain liabilities of Santoy in exchange for cash consideration of $2.5 million. Specifically, Clarke purchased DMD and all assets, licenses, permits, contracts,

operations and rights owned by Santoy, including, all manufacturing facilities, machinery, and equipment; all items of inventory; all laboratory supplies and related research materials; all customer lists and mailing lists used by DMD; all trade secrets; all goodwill associated with DMD; and all rights, title and interest in the names "Santoy," "Santoy Drugs," and "Pureview."

Following the sale of DMD, pursuant to the terms of the Agreement, Santoy changed its name to "Sentinel Enterprises." However, because its fledging Industrial Chemical Division never took off, and because it sold its other assets to Clarke, Sentinal was forced to shut down its operations. In 1992, two years after the DMD transaction, Sentinal filed bankruptcy and its assets were liquidated.

Mrs. Regan claims that Clarke Corporation, as the successor to the original manufacturer of PureView, is liable for all damages resulting from Mr. Regan's exposure to PureView.

Analysis

Mrs. Regan cites *Gray v. Ballard* in support of her argument that Clarke, as successor to the original manufacturer of PureView, should be liable for all damages resulting from Mr. Regan's exposure to PureView. In *Ballard*, the Franklin Supreme Court established the Product Line Successor Rule exception to the general rule that a corporation that purchases the principal assets of another corporation in an arm's-length transaction is not liable for the debts adn liabilities of the selling corporation.

Under the product line successor rule, imposing liability upon a successor to the original manufacturer is justified where the plaintiff can meet each of the following three conditions: (1)

the virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business; (2) the successor's ability to assume the original manufacturer's risk-spreading role; and (3) the fairness of requiring the successor to assume responsibility for defective products as a consequence of the successor enjoying the original manufacturer's goodwill in its continued operation of the business. The following is an analysis of each element with respect to the facts of this case.

Whether Clarke's acquisition of DMD caused the virtual destruction of Mrs. Regan's remedies against Santoy

The court in *Ballard* found that the practical value of the plaintiff's right of recovery against the original manufacturer was vitiated by the purchase of its tangible assets, trade name, and goodwill, and dissolution of the original manufacturer in accordance with the purchase agreement. Here, Clarke purchased all of DMD's tangible assets, its trade name, and its goodwill. However, Santoy did not dissolve its corporate existence pursuant to the Agreement. Santoy did change its corporate name, but it continued in existence for two years after the DMD transaction. This makes the *Ballard* case somewhat distinguishable in that the plaintiff's injury in *Ballard* did not occur until six months after the predecessor dissolved. According to the court, the plaintiff, therefore, would face "formidable and probably insuperable obstacles" in attempting to obtain satisfaction from the dissolved corporation.
However, the study that came out recently in the *Journal of American Medicine* suggests that the injuries caused by PureView may not have been detectable until many years later.

In *Kramer v. Macintosh*, the Franklin Court of Appeals held that the first condition was satisfied where the successor corporation, by purchasing nearly all of the assets of the financially

strapped predecessor and obtaining financial and managerial control over the predecessor, substantially contributed to the predecessor's demise. DMD comprised approximately 80% of Santoy's manufacturing operations. The other 20% consisted of a fledging Industrial Chemicals division. However, PureView was DMD's least profitable product, accounting for less than 5% of DMD's total sales. Sentinal did not shut down its operations because of the DMD transaction. On the contrary, Sentinal operated for two years. Sentinal invested the proceeds of the DMD sale in its Industrial Chemical Division, which never took off. Therefore, the DMD transaction did not substantially contribute to Sentinal's demise.

In *Shatner v. Burger*, in which the court of appeals held that the product line successor rule did not apply, the court of appeals distinguished *Ballard* by pointing out that the corporate entity that had been the original manufacturer continued to exist for 15 months, when it dissolved and liquidated. Here, Sentinal's demise occurred two years after the DMD transaction and was caused by something that had nothing to do with Clarke. Furthermore, the defendant in *Shatner* paid $3.7 million in cash as adequate consideration for the predecessor's assets and that the successor played no role in the predecessor's demise. Here, Clarke paid adequate consideration of $2.5 million--a figure that may have been too high considering the fact that DMD products have never been as profitable as initially projected. Therefore, the undisputed evidence shows that Sentinal obtained adequate consideration for DMD, it continued as an ongoing business for two years, and that Clarke played no role in its demise. Thus, the first element is not satisfied.

<u>Whether the Clarke had acquired from Santoy those resources essential to its ability to meet its responsibility to people injured by product defects</u>

This element is satisfied if the successor had essentially the same capacity as its predecessor to estimate teh risk of claims against it for injuries caused by product defects and to make appropriate arrangements for insurance. In this case, after acquiring DMD, Clarke initially continued to manufacture the former Santoy products using identical manufacturing processes and the same product names that had been used by Santoy. However, none of Santoy's officers, directors, or shareholders became affiliated with Clarke, although Clarke hired most of DMD's existing employees. Although Clarke solicited former Santoy customers for business, Clarke informed all existing and prospective customers that it, not Santoy, was now the manufacturer of those products.

In March 1991, just six months after the DMD acquisition, Clarke discontinued production of PureView. Like the defendant in *Shatner*, Clarke was not engaged in the same business at the time of Mr. Regan's death. Clark discontinued production of PureView in 1991. Furthermore, like in *Shatner*, Clarke entered and left the PureView manufacturing business well before the risks where known. Thus, Clarke had no way to calculate the health risks posed by PureView and to incorporate those risks into its pricing and insurance decisions.

Whether it would be fair to require Clarke to assume responsibility for defective products as a consequence of enjoying Santoy's goodwill

In *Ballard* the court found that the defendant's acquisition of the predecessor's trade name, goodwill, and customer lists, its continuing production of the same line of ladders, and its holding itself out to potential and existing customers as the same enterprise made it fair to impose liability for the predecessor's defective products.

In this case, Clarke did not take and assume Santoy's trade name. Clarke informed all of Santoy's customers and prospective customers that it, not Santoy, was now the manufacturer of the products is bought. Therefore, unlike in *Ballard*, Clarke did not deliberately exploit Santoy's established reputation as a going concern manufacturing PureView. Furthermore, the fact that Clarke only spent six months in the business of manufacturing PureView distinguishes this case from *Ballard* as well.

Thus, because Clarke did not cause Sentinal's demise by virtue of its acquisition of DMD, and because of the impossibility at the time of the acquisition of envisioning the need to insure against an unknown risk, and because Clarke did not take advantage of Santoy's goodwill and reputation in continuing to manufacture PureView, the product line successor rule should not be applied to this case.

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Issue

Will Clarke Corporation be held liable, under a theory of successor liability, for the death of Thomas Regan from exposure to the product "PureView?"

Conclusion

Clarke Corporation will not be held liable for the death of Thomas Regan, because Clarke Corporation's acquisition of Santoy Corporation's Drug Manufacturing Division, does not meet the requirements for successor liability as formulated in *Gray v. Ballard* (Franklin Supreme Court, 1987).

Facts

Clarke Company is a pharmaceutical company specializing in blood-thinning medications. In the mid-eighties, Clarke began negotiations with Santoy Company, an unrelated entity. Eighty percent of Santoy's manufacturing operations was their Drug Manufacturing Division (DMD). The remaining 20% consisted of a fledgling Industrial Chemicals Division. DMD manufactured a product called "Pure View," a contrast dye material used for enhancing medical x-rays. DMD manufactured Pure View from 1970 to 1990.

Clarke Company acquired Santoy Company's Drug Manufacturing Division (DMD) through an arm length Asset Purchase Agreement dated September 1, 1990. Clarke purchased all of DMD's manufacturing assets, stock in trade, trade names (including "Pure View" and

"Santoy", inventory, and good will in exchange for cash consideration of $2.5 million.

Santoy Company changed its name to "Sentinel Enterprises" and invested the proceeds from the transaction to its Industrial Chemical Division, which never took off. Sentinel Enterprises shut down and filed for bankruptcy within 2 years.

Clarke manufactured and sold "Pure View" for six months after the purchase, but "Pure View" became obsolete and Clarke discontinued it.

Three months ago, the *Journal of American Medicine* reported that a chemical in "Pure View" causes cancer. Neither Santoy nor Clarke any knowledge of this before the study, as Pure View had only been linked to minor irritations and swelling.

Last week Clarke received a letter from a law firm representing the widow of a man who received doses of Pure View when it was being manufactured and distributed by Santoy, more than two decades ago. The man died from a malignant tumor, purportedly caused by Pure View.

Analysis

Generally, a corporation that purchases the principal assets of another corporation in an arm-length's transaction is not liable for the debts and liabilities of the selling corporation. *Gray v. Ballard* (Franklin Supreme Court, 1987). However, this general rule was designed to protect commercial creditors and shareholders, not persons inured from defective products "who are powerless to protect themselves." *Id.* In cases of injured persons, the *Gray* court held that the costs should be borne by the manufacturers that put such products on the market, as they are able to spread the cost of compensation throughout their customer base. In *Gray*, the Franklin Supreme Court articulated a three-part test for determining whether liability should be imposed on a corporate successor. Liability is appropriate if the plaintiff can meet each of the following

three conditions:

1. The virtual destruction of the plaintiff's remedies against the original manufacturer caused by the successor's acquisition of the business,
2. The successor's ability to assume the original manufacturer's risk-spreading role, and
3. The fairness of requiring the successor to assume the responsibility for defective products as a consequence of the successor enjoying the original manufacturer's goodwill in its continued operation of the business.

Gray v. Ballard (Franklin Supreme Court, 1987).

Condition 1:

In *Gray*, the manufacturer was dissolved within two months after the successor's purchase of the assets, trade name, and goodwill, in accordance with the purchase agreement. Thus, because of the purchase agreement, the predecessor dissolved and any remedies against it were dissolved along with it. Here, however, Santoy continued operation. Even though Santoy gave its name to Clarke, Santoy continued operation in the form of its Industrial Chemical Division (ICD). As it turned out, that business venture failed to turn out. However, it can not be said that it was caused by Clarke's acquisition of DMD. Clarke played no role in ICD's decision to dissolve. The facts here are very similar to the facts in *Shatner vs. Burger Company* (Franklin Court of Appeal 1999). In *Burger,* Burger corp purchases the assets of Oliver Corp. Fifteen months later, Oliver, then Laurel Products, dissolved due to financial instability. The *Burger* court put emphasis on the fact that Burger Corp. played no role in Oliver Corp's decision to dissolve. The *Burger* court said "The legitimate considerations of fairness that were implicated by the circumstances in *Gray* and *Kramer* are not present here. To conclude that the first condition has been satisfied under the facts of this case would essentially eviscerate the

general rule of successor nonliability by potentially exposing successors to liability in every case where the predecessor eventually and unilaterally dissolved after selling off its assets." *Id.* Correspondingly, the first condition is not satisfied here.

Condition 2:

At first blush, the facts here do appear to very similar to *Gray* because Clarke, acquired its predecessor's physical assets, equipment, and inventories, as well as its trade secrets. It would appear, therefore, that Clarke would have the ability to assume Santoy's risk-spreading role, and in that sense Clarke does have this ability. However, Clarke entered and left the business of manufacturing and distributing Clear View well before the dangers of the product were known. Thus, unlike the defendant in *Gray*, who could reasonably anticipate injuries to those using their products, Clarke had no way to calculate the health risks posed by Clear View and incorporate those risks into its pricing and insurance decisions. The *Burger* court reached the same conclusion under similar facts. In *Burger*, Burger Corp had long left the asbestos business when the health risks of asbestos became known. The court found this to be a central factor in determining that the second condition was not met. *Shatner vs. Burger Company* (Franklin Court of Appeal 1999).

Condition 3:

It would also be unfair to Clarke Corporation to impose products liability for Pure View. The fact that Clarke only manufactured Pure View for six months fourteen years ago, the payment of more than adequate consideration for DMD, the unknown risk of Pure View at the time Clarke manufactured the product, and that Santoy continued operations after Clarke acquired DMD support the conclusion that Clarke should not be held liable for any products liability claims stemming from the Pure View product.