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CASE SUMMARIES

SUCCESSOR CORPORATION LIABILITY IN A PRODUCTS LIABILITY ACTION. *Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 431 A.2d 811 (1981).

In 1962, Amsted Industries, Inc. purchased for cash the assets of Johnson Machine and Press Company from Bontrager Construction Company, which had previously acquired all of Johnson's assets and liabilities. Amsted continued to manufacture a line of power presses under the trade name "Johnson Machine and Press Corporation." In 1975, Ramirez was injured while operating an allegedly defective power press manufactured by Johnson. Ramirez brought a products liability action against Amsted as a successor corporation to Johnson.

Following the traditional rule that a sale of assets for cash results in corporate successor nonliability, the trial court granted summary judgment for Amsted. The New Jersey Superior Court reversed on the ground that the exculpatory contractual language used in the purchase agreement was insufficient to avoid liability. The Supreme Court of New Jersey affirmed the decision of the superior court. The supreme court held that when the assets of one corporation are purchased for cash by another corporation, the successor corporation will be liable for personal injuries resulting from a defective product manufactured by the predecessor corporation, as long as the successor continues to produce essentially the same product line as the product which caused the injury.

Historically, courts have followed the rule of corporate law that a corporation which acquires the assets of another corporation for cash does not assume the liabilities of the acquired corporation. The *Ramirez* court rejected this approach, basing its decision on the rationale that the traditional corporate approach was inconsistent with the principles of strict liability, unresponsive to the legitimate interests of the injured party, and that strict interpretation of the traditional rule would place too much emphasis on the form of the transfer rather than on the practical effect of the transaction.

The "product line" approach was formulated by the California Supreme Court in *Ray v. Alad Corp.*, 19 Cal. 3d 22, 560 P.2d 3, 136 Cal. Rptr. 574 (1977). In adopting this approach, New Jersey became the second jurisdiction to abandon the traditional rule of corporate successor nonliability in products liability actions. Recently, in *Dawejko v. Jorgensen Steel Co.*, ___ Pa. Super. ___, 434 A.2d 106 (1981), the Pennsylvania Superior Court also adopted the product line approach. The adoption of the rule by these three courts evidences a trend toward general acceptance; thus attorneys and business planners should be aware of the increased risks involved in acquisitions in those jurisdictions that have adopted the product line approach.

The traditional rule of corporate successor nonliability is still followed in Missouri, but the Missouri courts have yet to deal with the issue in the context of products liability. Missouri's expansive acceptance of strict liability may indicate, however, that Missouri courts would follow the product line approach in successor corporation products liability actions.

JAMES C. MORROW

TAVERN OWNER LIABLE FOR INJURY TO UNDER-AGE PURCHASER OF INTOXICANTS. *Sampson v. W. F. Enterprises, Inc.*, 611 S.W.2d 333 (Mo. App., W.D. 1980).

The plaintiffs alleged that two defendant bars had served intoxicating liquor to their son in violation of Missouri Revised Statutes section 311.310 (1978), which makes it a misdemeanor for a liquor licensee to sell, give away, or otherwise supply intoxicating liquor to any individual under the age of twenty-one. They further alleged that their son became intoxicated by drinking the liquor served him. Later that evening, he was killed when the truck he was driving overturned. The plaintiffs sought damages for the wrongful death of their son.

Alsup v. Garvin-Wienke, Inc., 579 F.2d 461 (8th Cir. 1978), was the only previous Missouri law decision on this issue. In *Alsup*, a minor plaintiff was injured in an automobile accident after she had been illegally served intoxicants by the defendant bar. The *Alsup* court refused to impose tort liability on suppliers of alcohol for two primary reasons. First, the common law did not recognize such a cause of action. Second, the court concluded that the Missouri legislature would have retained or reinstated the Dram Shop Act if it had intended to allow this theory of recovery.

Sampson rejected the holding in *Alsup* and implied a cause of action from the statute. Relying on the decision of the Missouri Supreme Court in *Moore v. Riley*, 487 S.W.2d 555 (Mo. 1972), the court found that the purpose of section 311.310 is to protect minors. Therefore, the *Sampson* court reasoned, violation of the statute prohibiting the sale of intoxicants to minors could give rise to a civil cause of action.

Sampson allows an unprecedented cause of action: a judicial dram shop act. It will allow recovery for minors injured as a result of drinking liquor served to them in bars. If a minor can prove that he was served alcohol illegally by a licensed dealer, that he thereby became intoxicated, and that this intoxication led to injury, he will have a strong case for damages.

RITA FAY SOWARDS

PERVASIVE BANKRUPTCY JURISDICTION CONFIRMED.

In re State of Missouri v. United States Bankruptcy Court, 647 F.2d 768 (8th Cir. 1981), *cert. denied*, 102 S. Ct. 1035 (1982).

The debtors owned and operated public grain elevators in Missouri and Arkansas. Amid deepening financial problems, they first authorized the State of Missouri to exercise provisions of its Grain Warehouse Laws to assume control of all grain stored in Missouri elevators; three days later, they filed Chapter VII liquidation proceedings in the United States Bankruptcy Court. As rumors of substantial shortages in the Arkansas elevators circulated, the question of jurisdiction over the Missouri grain assumed increasing significance for both Arkansas and Missouri farmer-depositors. For months, the state-appointed receiver and the federally-appointed bankruptcy trustee argued the issue in state and federal courts. In the first case of this type to reach the Eighth Circuit Court of Appeals since enactment of the Bankruptcy Reform Act of 1978, the court upheld the broad jurisdictional grant expressed in the 1978 Code and awarded sole jurisdiction over the Missouri grain to the bankruptcy court.

On appeal, the State of Missouri argued that the bankruptcy court lacked subject matter jurisdiction over the Missouri grain because under Missouri law the grain was not the property of the debtors but was owned by the farmer-depositors. The court found, however, that the debtors had possession of the grain plus a minute ownership interest derived from liens for storage fees. Under the 1978 Bankruptcy Code, which contains an extremely broad definition of "property of the estate," this interest was held sufficient to trigger at least preliminary jurisdiction in the bankruptcy court.

Alternatively, Missouri claimed the right to distribute the grain in accordance with its Grain Warehouse Laws under section 362(b) of the 1978 Bankruptcy Code, which provides that governmental units may enforce their police and regulatory powers against debtors or their estates, bankruptcy proceedings notwithstanding. The court of appeals rejected this contention also, holding that section 362(b) was intended to apply only to actions designed to protect the public health, welfare, safety, and morals, not to actions designed to protect a "private pecuniary interest" in the debtor's estate. Furthermore, the Missouri regulatory scheme contemplated interference with the property of the bankruptcy estate directly conflicting with the bankruptcy court's control of the property. The court of appeals noted that in such circumstances the bankruptcy court has the power, under other Code provisions, to enjoin physical interference with the property of the estate, indicating that even previously recognized police and regulatory powers are not automatically shielded from federal bankruptcy jurisdiction. This indication is significant in view of the already limited avenues available to escape federal bankruptcy jurisdiction.

The court of appeals' rejection of Missouri's challenge to federal bankruptcy jurisdiction affirms and clarifies the broad jurisdictional grant conferred on the bankruptcy courts by enactment of the 1978 Bankruptcy Code. It is apparent that the federal bankruptcy courts will no longer

countenance interference with their administration and control of the debtor's estate.

NANCY L. SHELEDY

TRIAL-LIKE SENTENCING PROCEDURE TRIGGERS DOUBLE JEOPARDY PROTECTION *Bullington v. Missouri*, 451 U.S. 430 (1981).

Missouri law requires that a separate presentence hearing be held at the conclusion of all trials for capital murder resulting in a verdict of guilty. In accordance with this procedure, a jury convicted Robert Bullington of capital murder and sentenced him to imprisonment for life without eligibility for probation or parole for fifty years. The prosecution was unable to obtain the death sentence, the only other possible sentence for a defendant convicted of capital murder.

Bullington's motion for a new trial was granted on procedural grounds, and the prosecution again filed the required notice stating that the state intended to seek the death penalty. The defense moved to strike this notice contending that the double jeopardy clause of the fifth amendment barred imposition of the death penalty on retrial when the first jury had not imposed the death penalty.

The United States Supreme Court, in a 5-4 decision, reversed the Missouri Supreme Court and held that the double jeopardy clause would prohibit imposition of the death penalty at Bullington's retrial. The Court reasoned that since Missouri's sentencing procedure is similar to a trial on the issue of guilt or innocence and, unlike usual sentencing proceedings, involves well-defined sentencing standards, a sentence less than the statutory maximum constitutes a decision that the prosecution has failed to prove its case. Therefore, the sentence of life imprisonment meant that the jury already had acquitted Bullington of whatever was necessary to impose the death sentence. The Court concluded that the jury's decision that the prosecution has failed to prove its case at the sentencing hearing is to be accorded the same absolute finality as a verdict of acquittal on the issue of guilt or innocence.

The Court found that Missouri's sentencing procedure was significantly different from those considered in earlier cases in which the Court had concluded that the imposition of a particular sentence was not an acquittal of a more severe sentence. The differences included Missouri's requirement of a separate sentencing proceeding at which the prosecution must prove additional facts beyond a reasonable doubt in order to justify a particular sentence and the presence of well-defined standards which limited the

sentencer's discretion and presented the jury with only two choices of punishment. In addition, the Court considered it undesirable to allow the government the opportunity to convince a second factfinder of its view of the facts presented at the sentencing hearing.

The possibility of imposition of the death sentence on retrial was doubtless an important factor in the *Bullington* decision. Because the death sentence was the only harsher punishment available to the Missouri jury, however, it is unclear whether *Bullington* precludes consideration of any harsher penalty or only of the death penalty. It is also unclear how many of the hallmarks of a trial on the issue of guilt or innocence present in the Missouri sentencing procedure would be necessary to trigger double jeopardy protection at the sentencing stage. It does appear, however, that the reasoning of *Bullington* could logically be extended to sentencing decisions not involving the death penalty, thus prohibiting the imposition of any greater sentence on retrial when the original sentence has been imposed at a trial-like sentencing procedure.

MICHAEL A. CLITHERO

