SUPREME COURT NO. 97629-5

COURT OF APPEALS NO. 77870-6-I

SUPREME COURT OF THE
STATE OF WASHINGTON

EDWARD P. LEREN, as Executor of the Estate of MARVIN A. LEREN,

Plaintiff/Respondent

v.

KAISER GYPSUM COMPANY, INC., et al.,

Defendants/Appellants

PETITIONER ELEMENTIS CHEMICALS INC.'S PETITION FOR DISCRETIONARY REVIEW

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A. INTRODUCTION.

Petitioner Elementis Chemicals Inc. (Elementis) asks this Court to review the Court of Appeals decision terminating review designated in Part B of this petition, specifically whether under the facts of this case a shareholder becomes liable for the obligations of the corporation.

The jury found Benson Chemical Corporation had distributed Johns-Manville (J-M) Canadian asbestos that was a cause of decedent's fatal cancer. That finding is not in dispute here. The dispute is whether Elementis is liable for Benson Chemical's product liability.

Elementis is successor by merger to Harrisons & Crosfield (Pacific), Inc. (HCP). The controversy here relates to HCP's conduct in the 1970's. In January 1977, HCP purchased all the shares in Benson Chemical Corporation. Benson Chemical dissolved effective July 26, 1978. After satisfying all creditors' claims, Benson Chemical's remaining assets were distributed pursuant to RCW 23B.14.050 to its sole shareholder, HCP.

The trial court decided to look past the form of the transaction and treat that statutory distribution to the shareholder as if it had been a sale of assets. The trial court then held that HCP (and therefore Elementis) was liable for Benson Chemical's product liability under the "product line" rule adopted for asset sales under *Martin v. Abbott Labs.*, 102 Wn.2d 581, 689 P.2d 368 (1984)). The Court of Appeals affirmed.

Normally, of course, a shareholder is not responsible for corporate obligations (*see, e.g., Equipto Div. Aurora Equip. Co. v. Yarmouth*, 134 Wn.2d 356, 375, 950 P.2d 451, 460 (1998)). The courts below, however, decided that when the shareholder received the corporation's assets on dissolution, the shareholder became a successor, and lost its shield against liability for corporate obligations and also lost its right under RCW 23B.14.340 (Survival of Remedy After Dissolution Statute) to assert the time limitations within which claims against shareholders of dissolved corporations must be filed.

Elementis asks this Court to review the determination that HCP (and therefore Elementis) was liable for Benson Chemical's product liability under the product line rule. The Court of Appeals' decision is a significant change to the rule this Court described in *Martin* as "narrowly drawn" to achieve a "fair balance among the competing considerations of products liability and corporate acquisitions." The "fair balance" set forth in *Martin* is absent from the decision below, and this Court should accept review and reverse.

A copy of the Court of Appeals Decision, including the Order Denying Motion for Reconsideration and Changing Opinion, is in the Appendix at pages A-001-023 and A-039-040.

B. ISSUE PRESENTED FOR REVIEW.

When a corporation is dissolved and its remaining assets are distributed to its shareholder pursuant to RCW 23B.14.050, does the shareholder become liable for the dissolved corporation's obligations if the shareholder does not sell the product sold by the dissolved corporation, but sells another product manufactured by a different manufacturer in the same industry?

C. STATEMENT OF THE CASE.

1. Benson Chemical Corporation Distributed J-M Canadian Asbestos that Was a Cause of Mr. Leren's Death.

Marvin Leren died from mesothelioma resulting from asbestos exposures. Plaintiff Edward Leren is Marvin Leren's brother and executor of his estate. Marvin Leren worked from 1962 to 1974 for Vermiculite Manufacturing Company ("VMC") in Seattle when VMC used J-M Canadian asbestos in its manufacturing process. Benson Chemical Corporation distributed J-M Canadian asbestos to VMC between 1966 and late 1973. The jury found that Mr. Leren's exposure to J-M asbestos was a substantial factor in causing his death, and awarded damages of $975,000.

2. Benson Chemical's Distribution Business.

Benson Chemical distributed "the better part of 150" chemical products for numerous manufacturers. A-065 (RP 660:1-3). Benson Chemical's overall revenue was $4 million to $5 million a year; asbestos sales "had to be" less than one percent of that. A-064 (RP 659:12-22). Benson Chemical's total revenue for J-M asbestos sales to VMC in 1971 was $526.97. That was the highest amount Benson Chemical received in any year for its distribution of J-M asbestos to VMC, which was its largest customer for asbestos.

3. Benson Chemical's History and Dissolution.

W. Ronald Benson and Helen Benson incorporated their eponymous family business in 1950. After consultations with attorneys and accountants, on January 10, 1977 Mr. and Mrs. Benson sold their shares in Benson Chemical to HCP for $591,537. A-042 (¶ 2(a)). The transaction documents reflect HCP's desire—typical for a buyer—that all of Benson Chemical's liabilities be identified and accounted for. The Share Purchase Agreement required that all of Benson Chemical's assets, liabilities and potential liabilities be identified and that the share purchase price account for those liabilities. A-045 (¶ 5(c)-(d). Among other things, the Bensons represented and warranted that they did not know or have

reasonable ground to know of any basis for any liability action against Benson Chemical.

After HCP purchased the shares, Benson Chemical continued to operate as Benson Chemical out of its Seattle and Portland locations. There was no evidence (nor was it alleged) that HCP ignored corporate formalities or otherwise became the alter ego of Benson Chemical. Benson Chemical's board (now controlled by the new shareholder HCP) decided to dissolve the corporation, and Benson Chemical followed the procedures required by Washington law. Benson Chemical filed its Statement of Intent to Dissolve on June 14, 1977, and filed the Articles of Dissolution on July 26, 1978. A-057-060 and A-061-063. The Articles of Dissolution state that "[a]ll debts, obligations and liabilities of the corporation have been paid and discharged, or adequate provisions have been made therefor." A-062. The Department of Revenue of the State of Washington certified that Benson Chemical had paid every license fee, tax, and increase of penalty imposed under Chapter 180 of the Laws of Washington 1935. A-063.

In accordance with Washington law, Benson Chemical's assets remaining after satisfying creditors were distributed to its shareholder HCP.

4. HCP Distributed Union Carbide Calidria Asbestos Before and After the Dissolution of Benson Chemical Corporation.

Both HCP and Benson Chemical were distributors, not manufacturers. HCP distributed Union Carbide Calidria asbestos before and after it purchased the shares in Benson Chemical, and after Benson Chemical was dissolved. At trial, Plaintiff argued that HCP had sold J-M asbestos after the dissolution. Elementis believed there was no evidence HCP sold J-M asbestos after dissolution. The jury found that HCP '[sold] the same products under a similar name' post-dissolution. A-069. On appeal, Plaintiff and Elementis renewed their respective arguments as to whether HCP had sold J-M asbestos after dissolution.

The Court of Appeals chose not to address that argument, and instead interpreted the above-quoted jury finding to mean that the jury found the Johns-Manville Canadian asbestos and Union Carbide California asbestos were the same product—raw white asbestos—sold under a similar name.[1] *Leren v. Kaiser Gypsum Co., Inc., et al.,* 9 Wn. App. 2d, 55, 68, 442 P.3d 273 (2019).

[1] The only evidence about Union Carbide's California Calidria chrysotile asbestos was Mr. Mann's testimony. He testified it was produced from a mine in New Idria, California, and processed in King City. He said it was an asbestos fiber "in several grades." When asked if it was similar to the Johns-Manville Canadian chrysotile asbestos, he said "I can't really speak to that issue." A-066 – A-067.

For the purposes of this petition, Elementis accepts the Court of Appeals' interpretation of this jury finding, which is a basis for the Court of Appeals' determination that HCP sold the same product under a similar name, one of the elements required by *Martin.* Nevertheless, the Court of Appeals' interpretation should not have led to liability.

D. PROCEEDINGS BELOW.

After the jury determined that Benson Chemical was liable, the trial court determined that HCP was a successor to Benson Chemical under the product line exception as set forth in *Martin.* On appeal, Division I affirmed on all issues.

The Court of Appeals felt the product line doctrine/rule applied to a shareholder:

> Although stock purchasers are generally not responsible for the conduct of the companies in which they invest, if a business entity buys 100 percent of a corporation's stock in a single transaction and promptly begins the process of dissolving the corporation, thereby acquiring the predecessor's assets, then a court may look past the form of the combined stock purchase and dissolution to recognize the substance of an asset acquisition. And if, after acquiring the assets, the purchaser avails itself of the goodwill associated with the distributor's sales of unreasonably dangerous materials by holding itself out as a continuation of the acquired distributor, then the purpose, policy, and logic of the product line doctrine applies.

Leren v. Kaiser Gypsum Co., Inc., et al., 9 Wn. App. 2d at 59.

The Court of Appeals also decided that a shareholder that becomes a successor under the product line doctrine is not permitted to rely on the limitations period in RCW 23B.14.340. 9 Wn. App. 2d at 69.

Elementis moved for reconsideration arguing that the Court of Appeals had misunderstood the record, and based on that misunderstanding had reached an erroneous conclusion as to the applicability of the product line doctrine. A-024-038. The Court of Appeals denied Elementis' motion on August 8, 2019, amending its opinion but retaining its ultimate conclusions as set forth above. A-039-040.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED AS TO WHETHER THE PRODUCT LINE DOCTRINE MAY BE APPLIED TO A SHAREHOLDER ACQUIRING ASSETS THROUGH DISTRIBUTION AFTER DISSOLUTION.

1. Review Is Merited Under RAP 13.4(b)(4) Because the Balance between Shareholders' Rights and Claimants' Rights Is an Issue of Substantial Public Interest

When this Court adopted the product line rule in *Martin*, first enunciated in *Ray v. Alad,* 19 Cal. 3d 22 (1977), it recognized "the competing considerations of product liability and corporate acquisitions." The present case involves an additional consideration: the fundamental right of a shareholder not to become responsible for corporate obligations.

The *Martin* Court stated its belief that the product line rule fairly balanced the competing considerations then before the Court:

> This narrowly drawn rule strikes a fair balance among the competing considerations of products liability and corporate acquisitions. Imposition of liability is properly based on the successor's receipt of a benefit from the predecessor's product line. The benefit of being able to take over a going concern manufacturing a specific product line is necessarily burdened with potential products liability linked to the product line. This standard allows the parties to a transfer to consider potential products liability and in fairness to the competing considerations still leaves some claimants uncompensated and some forms of transfer immune.

Martin, 102 Wn.2d at 616. *Martin* set forth the elements as follows:

> The court's duty under the *Ray* rule is (1) to determine whether the transferee has acquired substantially all the transferor's assets, leaving no more than a mere corporate shell; (2) to determine whether the transferee is holding itself out to the general public as a continuation of the transferor by producing the same product line under a similar name; and (3) to determine whether the transferee is benefiting from the goodwill of the transferor.

Martin, supra, 102 Wn.2d at 614.

The Court of Appeals' decision in this case substantially alters the balance the *Martin* Court felt was fair. First, the Court of Appeals' decision ignores the fundamental right of a shareholder to be shielded from liability for the corporation's obligations. No Washington case has previously equated a stock purchase to an asset purchase. One California

decision, *Potlatch Corp. v. Superior Court*, 154 Cal.App.3d 1144, 201 Cal.Rptr. 750 (1984), refused to equate a stock purchase to an asset purchase and held that a shareholder cannot be held liable as successor to a dissolved corporation. The Court of Appeals here stated without explanation that *Potlatch* was factually distinguishable, and instead relied on another California case none of the parties had cited, but which the Court felt was "apt and compelling": *Kaminski v. Western MacArthur Company*, 175 Cal. App. 3d 445, 220 Cal. Rptr. 895 (Cal. Ct. App. 1985). *See Leren,* 9 Wn. App. 2d at 67 fn. 38.

However, *Kaminski* did not involve any shareholder. In *Kaminski,* a distributor of J-M products borrowed money it was unable to repay, and was taken over by the business that had lent the money, which was also a distributor of J-M products. The lender was not a shareholder, so *Kaminski* did not consider whether – let alone hold that – a stock purchase could be equated to an asset purchase.

Furthermore, the Washington Legislature has specifically addressed claims against shareholders of dissolved corporations, and the Court of Appeals' decision contravenes that legislative judgment. RCW 23B.14.340 (Survival of Remedy After Dissolution Statute) provides:

> The dissolution of a corporation . . . by administrative dissolution by the secretary of state . . . shall not take away or impair any remedy available against such corporation, its

> directors, officers, ***or shareholders***, for any right or claim existing, or any liability incurred, prior to such dissolution or arising thereafter, unless action or other proceeding thereon is not commenced . . . within two years after the effective date of any dissolution that was effective prior to June 7, 2006. . . . [Emphasis added.]

Applying the product line rule to a shareholder, for the purpose of imposing liability on the shareholder for a claim against the dissolved corporation, is simply an improper end run around that statutory provision. The Legislature's balancing of the competing interests of claimants and shareholders should be respected.

Second, whereas *Martin* required that the transferor produce "the same product line under a similar name," the Court of Appeals here imposes liability where the shareholder sells a different manufacturer's product under a different name. There was no evidence as to whether the Union Carbide California asbestos HCP distributed was similar to the J-M Canadian asbestos Benson Chemical had distributed. The one witness who was asked if those products were similar said "I can't really speak to that issue." A-066 – A-67. And, it is readily apparent the names are not similar.

In *George v. Parke Davis*, 107 Wn.2d 584, 588-90, 733 P.2d 507, (1987), this Court said that the "product line exception requires the corporation to manufacture the same type of product, and not merely stay

in the same type of manufacturing business." The Court explained that the successor would be liable if it "continued production of DES" and also said liability under *Martin* would extend "to a corporation which continued to manufacture its predecessor's line of DES." Manufacturing other pharmaceuticals, but not DES, would not be sufficient to impose liability.

George did not involve two different types or sources of DES; there was a fact question whether one alleged successor had actually continued to make its predecessor's DES. The Court said that if the successor continued to make that DES, liability would be imposed, but if the successor did not make DES, its manufacture of other pharmaceuticals was not enough. Here, the Court of Appeals concluded that because HCP sold Union Carbide California asbestos, that was close enough to J-M Canadian asbestos.

However, there was no continuation of "the predecessor's line" of J-M Canadian asbestos. To the contrary, J-M and Union Carbide were separate business manufacturers, albeit in the same industry. If Benson Chemical had been a Ford dealership selling Ford cars, and HCP had been a Chevrolet dealership, the fact that HCP sold Chevrolet cars should not impose successor liability for Benson's sales of Ford cars – but that is the functional equivalent of what the Court of Appeals did here. Elementis

believes the Court of Appeals' decision here has extended the "same product" concept too far, and this Court should grant review in order to address this important aspect of the product line rule.

Third, the Court of Appeals' decision ignores the "risk spreading" requirement of the product line rule. This is related to the "same product" requirement. In *Payne v. Saberhagen Holdings, Inc*., 147 Wn. App. 17, 33, 190 P.3d 102 (2008), the court noted that there must be a showing that the "successor company assumes the original manufacturer's risk spreading role. . . . [I]t is only through sales of the continued product(s) that the successor assumes such a role." HCP had no way to spread risks associated with J-M Canadian asbestos among users of J-M Canadian asbestos because HCP did not sell that product. Moreover, no Washington case has imposed the product line exception on a seller.[2] While sellers of products are subject to product liability, the risk spreading rationale for applying the product line exception is not present where the transferee sells a different manufacturer's product and the transferor's largest annual revenue from sales of the harmful J-M product was $526.97, less than 1 per cent of the transferor's total revenue.

[2] The California case the Court of Appeals relied upon sua sponte, *Kaminski,* did apply the rule to a product seller, but, as noted above, *Kaminski* did not involve a shareholder unlike the present case.

Fourth, the Court of Appeals' decision improperly extends *Martin's* requirement that the transferee benefit from the goodwill associated with the transferor's harmful product. The Court of Appeals here required only that HCP benefit from the goodwill generally associated with Benson Chemical's business as a whole, and that is inconsistent with prior case law.

The Court of Appeals' decision asserts that the "goodwill transfer contemplated in the product line doctrine is 'not that associated with individual products,' but rather 'that associated with the predecessor business entity'", citing to *Hall v. Armstrong Cork, Inc.* 103 Wn.2d 258, 616 (1984). But this misconstrues *Hall*. In *Hall,* this Court was denying application of the product line exception because the "predecessor" Unarco remained in business although the "successor" Pittsburgh Corning had acquired the entire product line. Both *Hall* and the Court's subsequent decision in *George* make clear that the product line doctrine requires *both* that the transaction leave no more than a corporate shell (which was not the case in *Hall*), *and* that the transferee produce "the same product under a similar name." *Hall,* 103 Wn.2d at 262-263; *George,* 107 Wn.2d at 588.

Other decisions clearly state that the goodwill must be associated with the particular product that causes the harm. *See, Martin*, 102 Wn.2d

at 614. In *Payne*, 147 Wn. App. at 34–35, the Court held that the goodwill-benefit test must be specific to sales of the product that caused the injury: "There is no proof that [the acquiring company] ever actually manufactured or sold any of the same fuel oil heaters or naval evaporators alleged to have caused Payne's injuries." Absent such proof, there was no way the acquiring corporation could assume the risk-spreading role that was the basis for the application of successor liability. *See also, George*, 107 Wn.2d at 590.

It is evident that HCP meant to structure its purchase in a way that minimized its possible risk, and it would have been commonly understood that purchasing shares would not subject HCP to liability for any corporate obligations of Benson Chemical.[3] Looking past the form of this transaction aids the claimant of course, but does so at the expense of legitimate expectations HCP had as a shareholder. Weighing those competing policy interests merits this Court's attention.

Discretionary review should be accepted so this Court can determine whether the distribution of assets on dissolution is equivalent to an asset purchase, resulting in a shareholder becoming liable for corporate

[3] There is nothing in the record to indicate whether HCP or its attorneys in the share purchase transaction were aware of the then pending case of *Ray v. Alad,* 19 Cal. 3d 22 (1977), but the opinion in that case was issued February 24, 1977—six weeks after the share purchase agreement here.

obligations. It is important for Washington businesses and their attorneys to know if this Court believes the deliberate structure of business transactions can be ignored.

2. **Discretionary Review Is Merited Under RAP 13.4(b)(1) and (2) Because the Court of Appeals' Decision Conflicts with Decisions of this Court and other Decisions from the Court of Appeals.**

Discretionary review is also warranted under RAP 13.4(b)(l) because the Court of Appeals' Decision is in conflict with other decisions of this Court in that it extends the product line doctrine to situations not involved or discussed in this Court's decisions including *Martin v. Abbott Labs.*, 102 Wn.2d 581, 689 P.2d 368 (1984), and *George v. Parke Davis*, 107 Wn.2d 584, 733 P.2d 507 (1987), in a manner that is inconsistent with those cases as discussed above. In the same way, the Court of Appeals' Decision conflicts with other decisions from the Court of Appeals, as discussed above, warranting discretionary review under RAP 13.4(b)(2).

3. **Discretionary Review Is Merited Under RAP 13.4(b)(4) Because the Issue Whether the Survival of Remedy Statute Is Available to a Successor Is of Substantial Public Interest**

No prior case has ruled that the limitations period in RCW 23B.14.340 is unavailable to a shareholder of a dissolved corporation, even if that shareholder is deemed to also be a successor. First there is a question of statutory interpretation: if a person or entity is both a

shareholder and a successor, does the statute protect the shareholder regardless of its status of successor?

Second is a question of what it means to be a successor. The successor is essentially required to stand in the shoes of the predecessor corporation, and be liable for the predecessor's obligations. But in general, the successor may also assert any defenses the predecessor may have asserted, such as assumption of the risk or collateral estoppel.

Nothing in existing case law explains why, or supports the Court of Appeals' holding that, a successor is not allowed to assert the defense based on RCW 23B.14.340. Elementis believes that it is fundamentally unfair to impose successor liability on a successor company without then also giving the successor company the protection of RCW 23B.14.340 that its predecessor would have as to the sale of the very product alleged to have caused the plaintiff's harm. This Court should accept review and hold that RCW 23B.14.340's time limitation applies in the successor liability setting.

F. CONCLUSION.

For the reasons set forth above, Elementis respectfully requests that this Court accept discretionary review and reverse the Court of Appeals on the issues discussed above.

DATED this 6th day of September, 2019.

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DECLARATION OF SERVICE

STATE OF WASHINGTON)
)
COUNTY OF KING)

I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action. My business address is Soha & Lang, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101-2570.

On this date, I filed and served in the manner noted, a true and correct copy of the above subjoined **PETITIONER ELEMENTIS CHEMICALS INC.'S PETITION FOR DISCRETIONARY REVIEW** on counsel for all parties in this action via *e-mail*:

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Executed on September 6, 2019, at Seattle, Washington.

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.

s/ Helen M. Thomas
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NO.

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EDWARD P. LEREN, as Executor of the Estate of MARVIN A. LEREN,

Plaintiff/Respondent

v.

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Defendant/Appellant

APPENDIX TO PETITIONER ELEMENTIS CHEMICALS INC.'S PETITION FOR DISCRETIONARY REVIEW

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APPENDIX

Bates No.	Description
A-000001 – A-000023	Published Opinion Court of Appeals Decision dated May 28, 2019
A-000024 – A-00038	Appellant/Defendant Elementis Chemical Inc.'s Motion for Reconsideration dated June 17, 2019
A-000039 - A-000040	Court of Appeals' Order Denying Motion for Reconsideration and Changing Opinion dated August 8, 2019
A-000041 - A-000056	Clerk's Papers 140-155: ???
A-000057 - A-000060	Exhibit 94: Exhibit 17 to the 30(b)(6) Deposition of Robert Mann taken on May 10, 2017
A-000061 - A-000063	Exhibit 95: Exhibit 18 to the 30(b)(6) Deposition of Robert Mann taken on May 10, 2017
A-000064	Excerpt of Report of Proceedings Page 659 – Trial Examination of William Clary – Cross by Armstrong
A-000065	Excerpt of Report of Proceedings Page 660 – Trial Examination of William Clary – Cross by Armstrong
A-000066 - A-000067	Excerpt of Report of Proceedings Pages 682-683 – Trial Examination of Robert Mann – Direct by Bergman
A-000068 - A-000069	CP: 1055-1056: Special Verdict form dated November 1, 2019

FILED
5/28/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

EDWARD P. LEREN, as Executor of the Estate of Marvin A. Leren, Respondent, v. KAISER GYPSUM COMPANY, INC., et al, Defendants. ELEMENTIS CHEMICALS, INC., Appellant.	)	No. 77870-6-I PUBLISHED OPINION FILED: May 28, 2019

VERELLEN, J. — We are asked to resolve whether the product line doctrine of successor liability applies to a distributor of raw asbestos where the acquired distributor faces strict liability under section 402A of the Restatement (Second) of Torts. We conclude the product line doctrine applies.

The purpose of the product line doctrine is to afford a product liability victim with a meaningful remedy when a successor business entity acquires the assets of a predecessor, leaving a mere corporate shell. Although stock purchasers are generally not responsible for the conduct of the companies in which they invest, if a business entity buys 100 percent of a corporation's stock in a single transaction and promptly begins the process of dissolving the corporation, thereby acquiring

the predecessor's assets, then a court may look past the form of the combined stock purchase and dissolution to recognize the substance of an asset acquisition. And if, after acquiring the assets, the purchaser avails itself of the goodwill associated with the distributor's sales of unreasonably dangerous materials by holding itself out as a continuation of the acquired distributor, then the purpose, policy, and logic of the product line doctrine applies.

Additionally, the limitations period in RCW 23B.14.340 regarding claims against dissolved corporations and their shareholders does not apply to defeat the product line doctrine of successor liability.

A jury award of noneconomic damages is sustainable under the wrongful death and survivor statutes where the required beneficiary under RCW 4.20.020 is an adult child with compelling bonds of affinity that survived the stepparent's divorce.

Finally, the court properly declined to give a superseding cause instruction because the requesting party failed to show the decedent's employer had actual, specific knowledge of the harm from prolonged asbestos exposure.

Therefore, we affirm.

FACTS

Marvin Leren graduated from Ballard High School in 1961 and went to work for the Z-Brick Company the following year. Leren worked at Z-Brick until 1981. Z-Brick made thin, decorative bricks. Benson Chemical Corporation supplied Z-Brick with raw asbestos used to make the bricks. Leren poured 100-pound

sacks of raw asbestos into large hoppers used to mix ingredients for the bricks. Pouring asbestos produced huge clouds of asbestos dust. After the bricks hardened, Leren cut them with a power saw, producing more dust. Generally, Z-Brick was "a mess" with "powder on the floor" and "particles floating in the air."[1] Leren never wore a mask or any other protective gear.

In 1969, Leren met and began dating fellow Z-Brick employee Gretha Zylstra. He soon met Zylstra's three-year-old daughter Jo because she accompanied Zylstra and Leren on their first date. Leren and Zylstra married in 1974. They divorced amicably in 1985.

During the springtime of 2015, Leren felt short of breath and began losing energy. In late September or early October of that year, he had a lung biopsy and began feeling "immense pain."[2] Soon after, he was diagnosed with the rare myloxoid variant of mesothelioma and began chemotherapy. Leren was admitted to the hospital after having a bad reaction to his first round of chemotherapy. He never left. Doctors placed him on palliative care. Leren made out a will on November 10, naming his brother Edward as administrator of his estate (the Estate), providing a monetary bequest to Jo. He filed a complaint seeking damages for negligence and product liability on November 19. He died on November 24, 2015.

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[1] Report of Proceedings (RP) (Oct. 24, 2017) at 611.

[2] RP (Oct. 19, 2017) at 302-03.

The Estate maintained the lawsuit. Over the next 10 months, the Estate added a claim for wrongful death and added Elementis as a defendant. In the late 1970s, Harrisons & Crosfield (Pacific), Inc. (HCP) acquired 100 percent of Benson's stock and dissolved Benson as an independent company. Elementis is the undisputed successor to HCP.

Elementis was the sole defendant at trial. Based on the jury's special verdict and its own findings of fact, the court relied on the product line doctrine and entered judgment in favor of the Estate.

Elementis appeals.

ANALYSIS

I. Corporate Successor Liability

Leren alleged personal injuries from mesothelioma caused by frequent asbestos exposure. Because these exposures occurred prior to enactment of the Washington Product Liability Act,[3] we evaluate potential liability using common law principles embodied in the Restatement (Second) of Torts.[4] Under section 402A of the Restatement, strict liability may be imposed on any party involved in distributing an unreasonably dangerous product.[5] It is undisputed that asbestos is unreasonably dangerous and that Benson distributed the raw asbestos that

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[3] Ch. 7.72 RCW.

[4] Simonetta v. Viad Corp., 165 Wn.2d 341, 348, 354, 197 P.3d 127 (2008).

[5] Id. at 354-55 (citing Seattle-First Nat. Bank v. Tabert, 86 Wn.2d 145, 148-49, 542 P.2d 774 (1975); Restatement (Second) of Torts § 402A cmt. f (1965)).

caused Leren's mesothelioma. The question is whether Elementis is liable for those sales based upon HCP's acquisition of Benson's assets.

Elementis argues it cannot be liable for Leren's injuries because HCP was a mere investor who acquired Benson's assets by automatic transfer upon dissolution rather than by purchase. The trial court disagreed. We review conclusions of law de novo.[6]

Generally, a successor corporation is not responsible for its predecessor's liabilities simply because it acquired the predecessor's assets.[7] But case law provides well-established exceptions.[8] In product liability cases, successor liability arises where one corporation benefits from another's goodwill after acquiring its product line.[9] Washington adopted the product line doctrine of corporate successor liability for the "essential purpose" of

> afford[ing] a products liability claimant an opportunity to bring an action against the successor corporation when his or her rights against the predecessor corporation have been essentially extinguished either de jure, through dissolution of the predecessor,

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[6] Blackburn v. State, 186 Wn.2d 250, 256, 375 P.3d 1076 (2016).

[7] Cambridge Townhomes, LLC v. Pac. Star Roofing, Inc., 166 Wn.2d 475, 481-82, 209 P.3d 863 (2009) (citing Hall v. Armstrong Cork, Inc., 103 Wn.2d 258, 261-62, 692 P.2d 787 (1984)).

[8] Exceptions include where "(1) the purchaser expressly or impliedly agrees to assume liability; (2) the purchase is a de facto merger or consolidation; (3) the purchaser is a mere continuation of the seller; or (4) the transfer of assets is for the fraudulent purpose of escaping liability." Martin v. Abbott Labs., 102 Wn.2d 581, 609, 689 P.2d 368 (1984). These four exceptions are not at issue here.

[9] Hall, 103 Wn.2d at 261-63; Martin, 102 Wn.2d at 609.

> or de facto, through sale of all or substantially all of the assets of the predecessor.[10]

We consider the following questions to decide whether the product line doctrine applies: (1) did the successor acquire substantially all the predecessor's assets, leaving no more than a mere corporate shell, (2) did the successor hold itself out to the general public as a continuation of the predecessor by producing the same product line under a similar name, (3) did the successor benefit from the goodwill of the predecessor?[11]

Product line successor liability requires an asset transfer from predecessor to successor, though the transfer need not be a direct sale.[12] Our Supreme Court adopted the product line doctrine to protect "otherwise defenseless victims" by ensuring they can seek "meaningful remed[ies]" while simultaneously protecting corporations from unexpected liability by requiring "a causal connection between the successor's acquisition and the unavailability of the predecessor."[13] Reflecting this balance, a court should consider two issues when determining if these policy

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[10] Hall, 103 Wn.2d at 264.

[11] Id. at 262-63 (quoting Martin, 102 Wn.2d at 614); Fox v. Sunmaster Prods., Inc., 63 Wn. App. 561, 570-71, 821 P.2d 502 (1991).

[12] See Eagle Pac. Ins. Co. v. Christensen Motor Yacht Corp., 135 Wn.2d 894, 901, 959 P.2d 1052 (1998) (Successor "[l]iability may be imposed regardless of the exact form of [the] transfer of assets between the corporations.") (citing Stoumbos v. Kilimnik, 988 F.2d 949, 961 (9th Cir. 1993) (citing Martin, 102 Wn.2d at 609)); see also Hall, 103 Wn.2d at 264 ("The policy justifications for our adoption of the product line [doctrine] require the transfer of substantially all of the predecessor's assets to the successor corporation as a prerequisite to imposing liability on the successor.") (emphasis added).

[13] Hall, 103 Wn.2d at 264-65.

concerns are present: first, whether an asset transfer of any kind occurred between an alleged predecessor and its alleged successor, and second, whether the successor corporation by its acquisition actually "played some role in curtailing or destroying the claimants' remedies."[14] These questions turn on the substance of an asset transfer rather than its form.

Typically, when a plaintiff seeks to hold a successor strictly liable through the product line doctrine, a successor holds itself out as a continuation of the predecessor by continuing to manufacture and sell the predecessor's product line.[15] A manufacturer's goodwill is often associated with its specifically branded product lines. But section 402A allows strict liability for all sellers of unreasonably dangerous products, including distributors.[16] The goodwill for a distributor of raw materials is associated with the distributor's customer relationships and reputation for quality service, quality materials, reliability, and competitive pricing.[17] Thus, the goodwill transfer contemplated in the product line doctrine is "not that associated with individual products," but rather "that associated with the predecessor business entity."[18] Where a successor distributor acquires a predecessor's goodwill, holds itself out as akin to the predecessor by continuing to distribute similar

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[14] Hall, 103 Wn.2d at 264, 265-66.

[15] See, e.g., Martin, 102 Wn.2d at 609-12.

[16] Simonetta, 165 Wn.2d at 354-55.

[17] RP (Oct. 24, 2017) at 696-98, 739.

[18] Hall, 103 Wn.2d at 267.

unreasonably dangerous products, and realizes benefits from those distributions, then the product line doctrine applies.

Elementis argues, though, that the product line doctrine is limited to manufacturers who produce unreasonably dangerous products because they can spread the cost of those products across their customer base. We disagree.

Consistent with the principles discussed above, California has held for over 30 years that a distributor of unreasonably dangerous goods may be strictly liable under the product line doctrine for its predecessor's conduct. In Kaminski v. Western MacArthur Company,[19] a former welder's assistant suffering from mesothelioma sued the successor of the distributor that sold asbestos products to his employer.

In 1967, the predecessor asbestos distributor, Western Asbestos Company, was struggling. It made an agreement with the MacArthur Company to turn over all operational control in exchange for a large loan of operating capital.[20] Western viewed the investment as a prelude to a purchase.[21] It notified customers and suppliers of the potential change but emphasized that longtime corporate officers would remain to share their expertise.[22] Seventeen months later, it was running out of money.[23] MacArthur announced Western would dissolve and would let

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[19] 175 Cal. App. 3d 445, 450-51, 220 Cal. Rptr. 895 (Cal. Ct. App. 1985).

[20] Id. at 451.

[21] Id. at 452.

[22] Id.

[23] Id.

MacArthur purchase inventory and other assets equal to its debt, take over all outstanding contracts, and buy Western's records and customer lists.[24] MacArthur then created a new company, Western MacArthur Company, to do this work. The new company retained 90 percent of Western's employees, kept similar board members, kept similar customers, supplied the same products, referred to itself as "Western," and honored work orders made out to the dissolved Western.[25]

Under these facts, the court concluded the product line doctrine applied. It explained why the policy concerns underlying the doctrine were present:

> When a distributor or retailer acquires a corporation and takes advantage of its goodwill and other corporate assets and facilities to inject the predecessor's product line into the stream of commerce, it continues "the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products."[26]

The analysis in Kaminski is compelling. First, the court relied on our Supreme Court's reasoning in Hall v. Armstrong Cork, Inc.[27] and explained MacArthur used its financial leverage and operational control to "engineer a takeover."[28] Second, the "essence of the takeover" resulted in an asset transfer from Western to the new company that left the plaintiff without a meaningful remedy.[29] Third, the new company was better positioned than the plaintiff to guard

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[24] Id. at 452-53.

[25] Id. at 453.

[26] Id. at 456 (quoting Vandermark v. Ford Motor Co., 61 Cal. 2d 256, 391 P.2d 168, 37 Cal. Rptr. 896 (1964)).

[27] 103 Wn.2d 258, 265-66, 692 P.2d 787 (1984).

[28] Kaminski, 175 Cal. App. at 458.

[29] Id.

against the risks of injury and to spread the costs of injury around by seeking indemnification from the product's manufacturer.[30] Thus, the court held the successor distributor was properly held liable because "[n]othing in [the product line doctrine] conceptually limits its reasoning to manufacturers."[31]

Similarly, the product line doctrine applies to HCP's acquisition of Benson. On January 10, 1977, HCP purchased 100 percent of Benson's stock from its founder and his wife.[32] Just five weeks later, HCP's board of directors voted to dissolve Benson.[33] HCP soon began making personnel decisions, including promoting a long-time Benson sales employee to regional manager and retaining Benson's founder as a consultant.[34] On June 14, 1977, HCP filed a statement of intent to dissolve Benson. On July 26, 1978, HCP filed Benson's articles of dissolution.[35] HCP then received all of Benson's assets.[36] HCP expressly identified Benson as a division, maintained largely the same suppliers and customers, and continued operating in the same region.[37] These details show a series of intentional steps to take control of Benson, making the company's assets

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[30] Id. at 456-57.

[31] Id. at 456.

[32] RP (Oct. 24, 2017) at 587, 700.

[33] CP at 985.

[34] RP (Oct. 24, 2017) at 594-95, 701.

[35] CP at 107.

[36] RP (Oct. 24, 2017) at 736.

[37] Id. at 595-98, 712-13, 714-16; Ex. 90.

part of HCP and leveraging Benson's goodwill while extinguishing Leren's ability to hold Benson liable for his injuries. We agree with the Kaminski court that the rationale behind the product line doctrine applies to a distributor in these circumstances.[38]

As discussed, HCP acquired all of Benson's assets and left it "no more than a mere corporate shell."[39] And there can be no question that HCP held itself out as a continuation of Benson post-dissolution. Substantial evidence supports findings of fact 6, 11, 12, and 13, which, in turn, support the court's conclusions "that Benson Chemical's goodwill was transferred to HCP and that HCP benefited from Benson's goodwill in its sale of asbestos products to consumers."[40] For example, HCP, which did not operate in Washington or Oregon, acquired Benson's Pacific Northwest distribution network upon dissolution.[41] And long after Benson's dissolution, HCP continued to place ads describing Benson as a

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[38] Elementis relies on another California case, Potlatch Corporation v. Superior Court of Riverside County, 154 Cal. App. 3d 1144, 1146, 201 Cal. Rptr. 750 (Cal. Ct. App. 1984), to argue a stock purchaser cannot be liable as a result of the purchase. But Potlatch is factually distinguishable, predates Kaminski, and, most importantly, the logic of Kaminski is apt and compelling.

[39] Martin, 102 Wn.2d at 614.

[40] CP at 989 (finding of fact 7). Findings of fact are supported by substantial evidence where there is sufficient evidence "'to persuade a rational, fair-minded person of the truth of the finding.'" Blackburn, 186 Wn.2d at 256 (quoting Hegwine v. Longview Fibre Co., 162 Wn.2d 340, 353, 172 P.3d 688 (2007)). When reviewing a jury verdict, we make all inferences in its favor. Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 782, 295 P.3d 1179 (2013). Unchallenged findings of fact are verities on appeal. Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

[41] RP (Oct. 24, 2017) at 621-22, 677, 680.

division.[42] HCP also continued to use Benson's name when distributing goods, maintained the same office in Seattle, maintained the same phone number for the Seattle office, maintained many of the same employees, and honored Benson's outstanding contracts.[43] Further, it is undisputed Benson distributed raw asbestos before dissolution and HCP continued to distribute raw asbestos under Benson's name after dissolution.[44]

Elementis contends, though, sufficient evidence does not support the court's conclusion that it sold similar products as Benson because HCP sold only Union Carbide's brand of raw asbestos, whereas Benson sold only Johns-Manville's brand of raw asbestos before its dissolution.[45] Elementis is correct that the product line doctrine applies to a successor manufacturer where it continues producing the same product under a similar name,[46] but the doctrine does not limit liability to only those particular circumstances. The product line doctrine requires continued sales of "the same type of product" for a successor distributor to be held liable; the products do not need to be identical.[47] A

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[42] Id. at 714-16; Ex. 90.

[43] Id. at 595-96, 701-02, 712-13, 717, 737.

[44] Id. at 718; see Exs. 270, 281 (Benson-branded invoices showing post-dissolution sales of raw asbestos in Washington and Oregon).

[45] Elementis does not argue that the raw asbestos distributed before and after the dissolution were different types or grades of asbestos.

[46] E.g., Martin, 102 Wn.2d at 614.

[47] See George v. Parke-Davis, 107 Wn.2d 584, 588, 590, 733 P.2d 507 (1987) ("The product line [doctrine] requires the corporation to manufacture the same type of product, and not merely stay in the same type of manufacturing business.") (emphasis added).

distributor's goodwill is necessarily associated with the grade, quality, and price of the raw materials it provides, regardless of the materials' brands. On this record, the Johns-Manville and Union Carbide brands of asbestos were the same type of product: raw white asbestos.

Benson's goodwill was associated with its ability to deliver raw asbestos generally, and HCP leveraged that goodwill to continue selling raw asbestos after it dissolved Benson. HCP benefitted from those sales. Accordingly, the policies, essential purpose, and requirements of the product line doctrine support holding Elementis strictly liable.[48]

Elementis argues Leren's recovery should be limited to the value of the corporate assets HCP received from Benson. Elementis relies on Lonsdale v. Chesterfield[49] and Smith v. Sea Ventures, Inc.[50] for this proposition. Neither case is compelling because, unlike the instant case, both involve lawsuits against a dissolved corporation. In absence of any persuasive authority, we decline Elementis's invitation to impose a cap on awards in successor liability cases.

In a related argument, Elementis contends Leren's claims are time-barred under the limitations period in RCW 23B.14.340 for a dissolved corporation or its shareholders. The court denied Elementis's motion for summary judgment

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[48] Leren argued additional theories of successor liability. Due to our reasoning, there is no need to address those theories unsuccessfully advocated at trial.

[49] 99 Wn.2d 353, 662 P.2d 385 (1983).

[50] 93 Wn. App. 613, 969 P.2d 1090 (1999).

seeking to dismiss this suit as untimely. We review summary judgment orders de novo.[51]

The general rule at common law held that dissolved corporations ceased to exist and could not be sued, but the enactment of chapter 23B.14 RCW "showed the legislature's intent to cut any remaining ties" to that rule.[52] RCW 23B.14.340 governs the survival of remedies against a dissolved corporation, its directors, its officers, or its shareholders. Dissolution does not strip a claimant of the ability to file a lawsuit.[53] For a dissolution with an effective date prior to June 7, 2006, claims are timely when filed within two years of the date of dissolution.[54]

Benson was dissolved in 1978, and Leren filed suit in 2015. But Elementis provides no authority for the proposition that the legislature intended to bar successor liability claims when it enacted the dissolution statute. Notably, Benson, the dissolved corporation, is not party to this lawsuit. Nor is Elementis a defendant in its capacity as successor to a former Benson shareholder. Rather, Elementis is a defendant because the Estate alleges it is liable as HCP's successor when HCP is in turn a successor to Benson. Therefore, RCW 23B.14.340 does not apply. The court did not err by denying Elementis's motion for summary judgment.

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[51] Ballard Square Condo. Owners Ass'n v. Dynasty Const. Co., 158 Wn.2d 603, 608, 146 P.3d 914 (2006).

[52] Id. at 609, 611.

[53] RCW 23B.14.050(2)(e)-(f).

[54] Ballard Square, 158 Wn.2d at 616. For dissolutions effective after June 7, 2006, claims are timely when filed within three years of the effective date of dissolution. RCW 23B.14.340.

II. Wrongful Death and Survivor Actions

Elementis argues the court erred by denying its motion for judgment as a matter of law that the Estate lacked the statutory beneficiary required to maintain a wrongful death claim or receive an award of noneconomic damages under the survivor statute.

"We review judgments as a matter of law de novo."[55] A motion for judgment as a matter of law admits the truth of the evidence and reasonable inferences favoring the nonmoving party.[56] Statutory interpretation is also a matter of law reviewed de novo.[57]

In its damages instructions, the court told the jury to consider economic damages, such as medical costs, and noneconomic damages, such as "pain, suffering, anxiety, emotional distress, and loss of enjoyment of life experienced," when calculating the extent of Leren's injury.[58] The court also told the jury to "consider what Marvin Leren reasonably would have been expected to contribute to [stepdaughter] Jo Lefebvre in the way of love, care, companionship, and guidance."[59] The jury awarded the Estate, on Leren's behalf, $294,000 in

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[55] Paetsch v. Spokane Dermatology Clinic, P.S., 182 Wn.2d 842, 848, 348 P.3d 389 (2015).

[56] Tapio Inv. Co. I v. State ex rel. the Dep't of Transp., 196 Wn. App. 528, 538, 384 P.3d 600 (2016).

[57] In re Est. of Blessing, 174 Wn.2d 228, 231, 273 P.3d 975 (2012).

[58] CP at 1933.

[59] CP at 1934.

economic damages and $681,000 in noneconomic damages.[60] The jury awarded Lefebvre "$0."[61]

At issue here is the interplay between the general survival statute, RCW 4.20.046, and the wrongful death statute, RCW 4.20.020. The survival statute allows "[a]ll causes of action by a person" to "survive to the personal representatives of the [person] . . . whether such actions arise on contract or otherwise."[62] But the survival statute has an exception "[t]hat the personal representative shall only be entitled to recover damages for pain and suffering . . . personal to and suffered by a deceased on behalf of those beneficiaries enumerated in RCW 4.20.020."[63] That statute allows wrongful death actions only "for the benefit of the wife, husband, state registered domestic partner, child or children, including stepchildren, of the person whose death shall have been so caused."[64]

Elementis argues the Estate was not entitled to noneconomic damages under the survival statute because Lefebvre is not a statutory stepchild. Any legal relationship between Lefebvre and Leren was severed, Elementis contends, when Leren and Lefebvre's mother divorced in 1985.

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[60] CP at 916.

[61] Id.

[62] RCW 4.20.046(1).

[63] Id.

[64] RCW 4.20.020 (emphasis added).

A statutory stepchild under RCW 4.20.020 is "'a child of one's [spouse] by a former marriage.'"[65] The definition does not require "that stepchildren are necessarily the children of a present spouse by a previous marriage or a former partner."[66] This is because "'the relationship by affinity is in fact . . . continued beyond the death of one of the parties to the marriage which created the relationship, and where the parties continue to maintain the same family ties and relationships, considering themselves morally bound to care for each other.'"[67] Relationships by "affinity" are formed by marriage rather than blood.[68]

The Estate relies on In re Estate of Blessing to argue Lefebvre is a statutory beneficiary.[69] In Blessing, our Supreme Court held that the death and remarriage of a nonbiological parent did not sever the bond between a stepparent and her stepchildren.[70] A woman married her first husband, and they had three children together.[71] After their divorce, she married her second husband, who had four children from a previous marriage.[72] They raised all seven children together,

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[65] Blessing, 174 Wn.2d at 232 (quoting WEBSTER'S THIRD NEW INT'L DICTIONARY 2237 (2002)).

[66] Id.

[67] Id. at 234 (quoting In re Estate of Bordeaux, 37 Wn.2d 561, 579-80, 225 P.2d 433 (1950)).

[68] Id. at 233 n.3.

[69] 174 Wn.2d 228, 273 P.3d 975 (2012).

[70] Id. at 235.

[71] Id. at 230.

[72] Id.

although she never adopted her second husband's children.[73] He died after almost 30 years of marriage.[74] The woman married for a third time, and her third husband died a few years later.[75] After the woman died in a car accident, her estate brought wrongful death claims on behalf of her three biological children and four stepchildren.[76] The court reasoned that the stepchildren "[i]ndisputably . . . at least during the marriage, had legal status as 'stepchildren.'"[77] And the "step relationship" continued even after they had become adults and the marriage terminated upon their father's death.[78] The court rejected the argument "that once a marriage ends, the step relationship ends," so the fact of the woman's remarriage was not germane.[79] Accordingly, the stepchildren "retained" their status under RCW 4.20.020.[80]

Similarly, here, Lefebvre indisputably became Leren's stepdaughter from age seven through to adulthood. Lefebvre's mother testified that people regarded Leren as Lefebvre's biological father.[81] As a child, Lefebvre did not have a relationship with her biological father, and she has always regarded Leren as her

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[73] Id.

[74] Id.

[75] Id.

[76] Id.

[77] Id. at 231.

[78] Id. at 235.

[79] Id.

[80] Id.

[81] RP (Oct. 25, 2017) at 757.

father.[82] Leren taught Lefebvre how to tie her shoes, ride a bike, and catch a fish.[83]

Further, Lefebvre and Leren "'continue[d] to maintain the same family ties and relationships, considering themselves morally bound to care for each other'"[84] even after the divorce. Leren, Lefebvre, and her mother regularly celebrated Lefebvre's birthdays together.[85] For the five years Lefebvre lived overseas, she and Leren spoke by phone every week.[86] Leren and Lefebvre regularly went camping together until she married.[87] At Lefebvre's wedding, Leren walked her down the aisle and danced with her for the traditional father/daughter dance.[88] Leren attended funerals for Lefebvre's maternal grandmother and uncle.[89] Leren was present when Lefebvre's son was born, and Leren "was a strong figure" in her son's life.[90] After learning of his diagnosis, Lefebvre spent every night at the hospital with Leren until he died.[91] She informed her mother of his death.[92] Leren left a bequest for Lefebvre in his will, which he made in the weeks before his

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[82] Id. at 757-59, 762.

[83] Id. at 814.

[84] Blessing, 174 Wn.2d at 234 (quoting Bordeaux, 37 Wn.2d at 579-80).

[85] RP (Oct. 25, 2017) at 773.

[86] Id. at 835.

[87] Id. at 772-73.

[88] Id. at 774.

[89] Id.

[90] Id. at 822.

[91] Id. at 803.

[92] Id. at 776.

death.[93] Although Elementis distinguishes Blessing because that marriage terminated by death rather than divorce, the bonds of affinity between Leren and Lefebvre indisputably lasted until the end of Leren's life. The logic of Blessing controls here and requires a similar result.

Elementis warns that absurd results will flow from ruling in the Estate's favor. Specifically, Elementis fears that former spouses will be able to maintain wrongful death claims. But spouses are not stepchildren. The bonds of affinity formed by marriage have ceased to exist between spouses who choose to divorce—hence, the divorce. Divorces do not, in theory, sever the bonds of affinity between a stepparent and a stepchild any more than between a parent and a biological child. "Any concerns over the result or regarding which stepchildren should be entitled to recover in a wrongful death suit are far more appropriately factored into any damages determination."[94] Lefebvre was a statutory beneficiary under RCW 4.20.020, and the Estate was properly allowed to collect noneconomic damages under RCW 4.20.046. The court did not err by denying Elementis's motion for judgment as a matter of law.[95]

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[93] Id. at 835-36.

[94] Blessing, 174 Wn.2d at 238.

[95] We note that the legislature recently enacted amendments to the wrongful death and survival statutes. LAWS OF 2019, ch. 159, §§ 1-4. Significantly, the amendments remove the requirement that a decedent's second tier beneficiaries, which include siblings, must have been dependent on the decedent to be a statutory beneficiary for a wrongful death action or for receipt of noneconomic damages in a survivor action. Id. at §§ 2-3. These amendments apply retroactively to any case pending in any court as of the law's effective date. Id. at § 6. This could provide an alternative legal theory that retroactively supports

III. Superseding Cause of Injury

Elementis argues the court erred by denying its request for a jury instruction that Z-Brick's conduct was a superseding cause of Leren's injuries.[96]

We review jury instructions de novo for legal errors.[97] But the decision to provide a jury instruction depends on the facts of the case and is reviewed for abuse of discretion.[98] A court abuses its discretion where its ruling is based on untenable grounds.[99] Jury instructions are generally sufficient if they are supported by the evidence, allow each party to argue its theories of the case, and, read together, properly inform the jury of the applicable law.[100]

As a general matter, the superseding cause theory applies to product liability actions.[101] If an employer's conduct is at issue, failure to protect an employee from a product that is unreasonably unsafe can be a superseding cause

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an award of noneconomic damages regardless of Lefebvre's status as a statutory beneficiary because Leren's brother is the Estate's personal representative.

[96] Although the court granted a partial motion for summary judgment on this issue in the Estate's favor, Elementis does not appeal that order and instead argues the court should have modified its order during trial and allowed the instruction.

[97] Paetsch, 182 Wn.2d at 849.

[98] Fergen v. Sestero, 182 Wn.2d 794, 802-03, 346 P.3d 708 (2015).

[99] Hizey v. Carpenter, 119 Wn.2d 251, 268, 830 P.2d 646 (1992).

[100] Fergen, 182 Wn.2d at 803.

[101] Taylor v. Intuitive Surgical, Inc., 187 Wn.2d 743, 767-68, 389 P.3d 517 (2017).

where "the employer had actual, specific knowledge that the product was unreasonably unsafe and failed to warn or protect."[102]

An industrial hygienist testified that it was widely known by 1964 that direct and indirect asbestos exposure could cause mesothelioma and that major studies were published as early as 1949 linking asbestos exposure to lung cancer.[103] Additional testimony stated that all asbestos would have come with a warning printed on it beginning in 1972.[104] But no one testified about Z-Brick's actual, specific knowledge during the years Leren worked with asbestos.

Elementis relies heavily on testimony from a former employee that beginning around 1963, workers would say, "Put on your mask. I'm going to add the asbestos now," before pouring it into a hopper.[105] This, according to Elementis, "shows an awareness of a hazard."[106] But that same employee explained the masks were just basic dust masks costing around 10 cents apiece.[107] Another Z-Brick employee testified the masks were for "nuisance dust" only.[108] Elementis's

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[102] Campbell v. ITE Imperial Corp., 107 Wn.2d 807, 817, 733 P.2d 969 (1987) (emphasis added). An employer's conduct also may constitute a superseding cause where "(1) the employer's intervening negligence created a different type of harm; or (2) the employer's intervening negligence operated independently of the danger created by the manufacturer." Id. Elementis does not argue either of these applies.

[103] RP (Oct. 23, 2017) at 437-38, 450.

[104] RP (Oct. 26, 2017) at 924-25.

[105] Appellant's Br. at 15, 37.

[106] Id. at 37.

[107] Ex. 328 at 16:00-16:30.

[108] RP (Oct. 25, 2017) at 769.

evidence merely proves some workers were generally aware of the hazards from dust. It is not the same as an employer's knowledge of risks from repeated exposure to asbestos dust. Given the lack of testimony about Z-Brick's actual, specific knowledge, the court did not abuse its discretion.

Therefore, we affirm.

WE CONCUR:

NO. 77870-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

EDWARD P. LEREN, as Executor of the Estate of MARVIN A. LEREN,

Plaintiff/Respondent

v.

KAISER GYPSUM COMPANY, INC., et al.,

Defendants/Appellants

APPELLANT/DEFENDANT ELEMENTIS CHEMICALS INC.'S MOTION FOR RECONSIDERATION

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I. IDENTITY OF MOVING PARTY

Defendant/Appellant Elementis Chemicals Inc. ("Elementis") asks for the relief designated in Part II.

II. STATEMENT OF RELIEF SOUGHT

Elementis moves for reconsideration pursuant to RAP 12.4 of this court's Opinion filed on May 28, 2019, in particular the determination that HCP continued to sell the same product after the dissolution of Benson Chemical, and requests that this Court reverse the decision of the trial court.

III. FACTS RELEVANT TO MOTION

Elementis relies on and incorporates by reference the facts set forth in its opening brief and the facts set forth in its reply brief.

IV. GROUNDS FOR RELIEF AND SUPPORTING ARGUMENT

A. Plaintiff Failed to Meet His Burden to Prove that the Johns-Manville Product Used in Decorative Bricks, and Union Carbide's Calidria, Are the Same Product, and Further Failed to Meet His Burden to Prove that HCP Sold Calidria Under a Name Similar to Johns-Manville.

While Elementis respectfully disagrees with this Court's opinion in several respects, it brings this motion to address only one issue the Court appears to have misapprehended: the evidence (and the burden of proof) to show that the claimed successor (HCP) continued to sell "the same

product under a similar name" as its claimed predecessor Benson Chemical. The Court's misunderstanding of the facts led the Court to an incorrect legal conclusion about successor liability, and to affirming rather than reversing the trial court.

This Court stated that "Elementis contends, though, sufficient evidence does not support the [trial] court's conclusion that it [HCP] sold similar products as Benson because HCP sold only Union Carbide's brand of raw asbestos, whereas Benson sold only Johns-Manville's brand of raw asbestos before its dissolution." (Slip Opinion, at p. 12). In footnote 45 at the end of that sentence, this Court states: "Elementis does not argue that the raw asbestos distributed before and after the dissolution were different types or grades of asbestos."

This Court's statement of the trial court's conclusion misapprehends the trial court record. The trial court found that ". . . HCP continued to transact business under the Benson trade name and sold Johns-Manville asbestos fiber under the Benson name for some period following the July 1978 dissolution." Finding of Fact No. 12 (CP 986). The trial court did not conclude that Union Carbide Calidria California chrysotile was the same as the Johns-Manville Canadian product Benson had sold.

In the trial court and in his briefing in this appeal, Plaintiff asserted that HCP had "continued to sell Johns-Manville asbestos fibers even after the acquisition and dissolution of Benson Chemical." *See,* Respondent's Brief at p. 28. Elementis pointed out in its briefing to this Court that neither the testimony of Mr. Clary nor any other evidence supported *that* conclusion. (Evidently this Court agreed, because it did not discuss the trial court's conclusion or Plaintiff's argument in this appeal that HCP continued to sell Johns-Manville asbestos, and stated in the passage quoted above that "HCP sold only Union Carbide's brand of raw asbestos . . . .")

Plaintiff did not claim in the trial, and the trial court did not find, that the Union Carbide Calidria from California was the same product (or the same type of product) as the Johns-Manville Canadian chrysotile asbestos. Footnote 45 (and the related discussion) also overlook the fact that, in the trial court, Plaintiff argued in closing (based on the testimony of Mr. Mann) that Union Carbide's conduct regarding its Calidria products was different (and better) than Johns-Manville's because Union Carbide had provided warnings for its Calidria asbestos earlier in the 1960's than Johns-Manville had, and that "Union Carbide, in partnership with HCP during this time, went to the different customers and even assisted them in doing asbestos fiber counts in their own facility . . ." RP 993:21 - 994:8.

Elementis argued in closing that: "The plaintiffs have pointed out to you that HCP, before it bought shares of Benson Chemical, was a distributor of California produced Calidria asbestos, mined and sold by Union Carbide. *It's a different product.* And certainly, the names of the products are not similar. Johns-Manville Union Carbide." RP 1048:5-17 (emphasis added.) So in the trial court, Plaintiff differentiated the Johns-Manville product from that Union Carbide product based on different warning history, and Elementis explicitly argued "It's a different product." Although none of that was raised by either party during the appeal, footnote 45 overlooks Elementis' explicit argument to the jury that the two products were different.

Moreover, this Court's conclusion that the Johns-Manville Canadian chrysotile asbestos is the same as the Union Carbide California chrysotile asbestos overlooks the fact that it was Plaintiff's burden to show that those products were "the same product under a similar name" and Plaintiff did not even try to do that. Instead, this Court concluded on its own that the Union Carbide Calidria was the same type of product as the Johns-Manville asbestos. The parties did not brief that issue, and it was not raised at oral argument, so Elementis had no reason or opportunity to the address the distinctions between the California chrysotile Union Carbide produced and the Canadian chrysotile Johns-Manville produced.

The evidence about Union Carbide's California Calidria chrysotile was sparse, because Plaintiff did not claim during trial that the Johns-Manville Canadian chrysotile used in making the decorative brick product was the same as the Calidria chrysotile product. Mr. Mann testified Calidria was produced from a mine in New Idria, California, and processed in King City. RP 682:21 – 683:5 He said it was an asbestos fiber "in several grades." RP 682:2-12. When asked if it was similar to the Johns-Manville Canadian chrysotile, he said "I can't really speak to that issue." RP 682:13-17. And no other witness did, either.

Because Plaintiff did not claim during trial that the Johns-Manville Canadian chrysotile was the same as the Union Carbide Calidria product, Elementis had no reason to introduce evidence regarding the differences between the two products. This Court decided the appeal based upon a factual error, on an issue that was not raised or litigated in the trial, and about which virtually no evidence was presented. This Court's opinion effectively ambushed Elementis, because Elementis was never on notice that evidence of the differences between the two products would have been relevant: Plaintiff in the trial did not claim the two products were the same. Even more importantly, it would have been Plaintiff's burden to prove that the two products were the same, and that the products were sold under similar names.

This Court stated that a "distributor's goodwill is necessarily associated with the grade, quality, and price of the raw materials it provides . . . ." Slip Opinion, at p. 13. There was no evidence in this record as to how the Union Carbide product compared to the Johns-Manville product with respect to grade, quality or price. There was no evidence that Calidria was ever used by Z-Brick or by any other manufacturer of decorative brick. Indeed, there was no evidence as to what Calidria was used for. Based on Washington's well-established case law, this absence of proof by Plaintiff that the two products were the same, or that the two products were sold under similar names, together with the demonstrated lack of evidence to support the trial court's Finding of Fact No. 12, required reversal of the trial court.

The two cases that involve the most analogous facts are *Martin v. Abbott Labs.*, 102 Wn.2d 581, 689 P.2d 368 (1984) and *George v. Parke Davis*, 107 Wn.2d 584, 733 P.2d 507 (1987). Both involved claims arising from the use of a prescription drug known as DES. The *Martin* court described the product line exception as a "narrowly drawn rule" (*Martin,* 102 Wn.2d at 616) and noted that the benefit of taking over a "specific product line" was burdened with potential product liability "linked to the product line." *Id.* In the portion of *Martin* that addressed market share liability, the Court required that the defendant be shown to

have marketed the same "type" of DES, explaining that meant "(*e.g.* dosage, color, shape, markings, size or other identifiable characteristics)". *Martin,* 102 Wn.2d at p. 605.

This Court's Opinion here asserts that the "goodwill transfer contemplated in the product line doctrine is 'not that associated with individual products,' but rather 'that associated with the predecessor business entity'", citing to *Hall v. Armstrong Cork, Inc.* 103 Wn.2d 258, 616 (1984). But in *Hall,* the Court was denying application of the product line exception because the "predecessor" Unarco remained in business although the "successor" Pittsburgh Corning had acquired the entire product line. Both *Hall* and the Court's subsequent decision in *George* make clear that the product line doctrine requires *both* that the transaction leave no more than a corporate shell (which was not the case in *Hall*), *and* that the transferee produce "the same product under a similar name." *Hall,* 103 Wn.2d at 262-263; *George,* 107 Wn.2d at 588.

In *George,* the Court said that *Martin* "required the production of essentially the same product line." *George,* 107 Wn.2d at p. 589; see also *Fox v. Sunmaster Products, Inc.*, 63 Wn. App. 561, 570-571, 821 P.2d 502 (1991). The *George* Court concluded that a company that did not manufacture DES, but manufactured other pharmaceuticals, would not be subject to the product line exception. Other pills—even if they were the

same color as DES pills—would not trigger the doctrine. *Martin* indicates that not all suppliers of DES would be treated as selling the same type of product. The pharmaceuticals should have the same "dosage, color, shape, markings, size or other identifiable characteristics." *Martin,* 102 Wn.2d at 605.

This Court's Opinion states that for asbestos products the grade, quality and price would be points of comparison (although there is no evidence in the record that such factors are regarded by anyone in the business as significant, or whether other factors are equally or more important). But there is no evidence in the record by which to compare the Union Carbide California chrysotile to Johns-Manville Canadian chrysotile. Exhibit 201 has the code "5R-04" which may be a grade—there is no explanatory testimony—but there is no evidence that code applied to any Union Carbide product. Mr. Mann said the Union Carbide product came in various grades, and Exhibits 270 and 281 – invoices apparently for sales of Union Carbide chrysotile from King City – refer to codes SG 210, RG 144, and RG 244, but there is no evidence that those are grades or that the Johns-Manville Canadian product was a similar grade.

Moreover, the cases require that the products be sold under a similar name. Exhibits 201 and 202 depict the package of the Johns-

Manville product that was used at Z-Brick; it says "Johns-Manville Asbestos 5R-04 Product of Canada." The invoices referenced in this Court's opinion (Exhibits 270 and 281), do not reflect what name was on the bags that were the subject of the invoices, and only refer to numeric codes as set forth above. Slip Opinion at FN 44. Mr. Mann testified that Calidria came in various grades, but there is no evidence as to how any of those references might compare with the Johns-Manville product previously sold by Benson.

In summary, the notion that the Union Carbide California Calidria product sold by HCP after the share purchase was the same or similar to the Johns-Manville Canadian product used at Z-Brick years before the share purchase was not asserted by anyone in the trial, and the parties did not brief or argue the point below or in this Court. There is no evidence in the record to support a conclusion that the Union Carbide product and the Johns-Manville product were the same as required by the cited case law on the product line exception, and it is apparent that the products did not bear a similar name.

B. Because Plaintiff Failed to Meet His Burden to Prove that the Johns-Manville Product Used in Decorative Bricks, and Union Carbide's Calidria Are the Same Product or that The Two Products Were Sold Under Similar Names, this Court Erred in Finding Successor Liability under the California *Kaminski* case.

This Court imposed successor liability on Elementis based upon a case that Plaintiff did not rely on or even mention, *Kaminski v. Western MacArthur Company*, 175 Cal. App. 3d 445, 220 Cal. Rptr. 895 (Cal. Ct. App. 1985). *Kaminski* held that a distributor could be a successor to another distributor, and subject to the product line exception set forth in *Ray v. Alad,* 19 Cal. 3d 22 (1977).[1] The important point for this motion is that *Kaminski* applied that exception to a successor distributor that distributed exactly the same products as its predecessor. "Western MacArthur continued to supply the same products and services as Western." *Kaminski,* 175 Cal. App. 3d at 453. Western had been a distributor of Johns-Manville products and Western MacArthur took over distribution of that exact product line. *Kaminski* offers no support for imposing the product line exception on a successor that does not continue selling Johns-Manville products, and instead sells a different company's products.

[1] Elementis notes that the successor in *Kaminski* purchased assets and was not a shareholder, but that distinction is not the issue for this motion.

CONCLUSION

Based upon this record, Plaintiff did not meet his burden of proving either that the Johns-Manville Canadian chrysotile used in making decorative brick was the same as the Union Carbide Calidria Califonria chrysotile product, or that HCP sold the Union Carbide Calidria product under a name similar to Johns-Manville. Washington's case law on the product line exception (and *Kaminski*) required that he prove both. Respectfully, this Court's opinion reflects both a misunderstanding of the facts, and also an improper shifting of Plaintiff's burden of proof on an issue that was not before the trial court and never briefed in the appeal. Had Plaintiff claimed the products were the same, he would have had the burden of proving they were; Elementis would not have the burden of showing they were not. This court should reconsider its decision and reverse the trial court.

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DATED this 17th day of June, 2019.

SOHA & LANG, P.S.

By: *s/Nathaniel J.R. Smith*
Nathaniel J. R. Smith, WSBA # 28302
Kyle M. Butler, WSBA #44290
Attorneys for Defendant/Appellant Elementis Chemicals Inc.

DEHAY & ELLISTON, LLP

By: *s/William H. Armstrong*
William H. Armstrong,
admitted pro hac vice
Attorneys for Defendant/Appellant Elementis Chemicals Inc.

DECLARATION OF SERVICE

STATE OF WASHINGTON)
)
COUNTY OF KING)

I am employed in the County of King, State of Washington. I am over the age of 18 and not a party to the within action. My business address is Soha & Lang, PS, 1325 Fourth Avenue, Suite 2000, Seattle, WA 98101-2570.

On this date, I filed and served in the manner noted, a true and correct copy of the above subjoined **APPELLANT/DEFENDANT ELEMENTIS CHEMICALS INC.'S MOTION FOR RECONSIDERATION** on counsel for all parties in this action via the court's electronic service with a courtesy copy to counsel via *e-mail*:

Matthew P. Bergman
Glenn Draper
Colin Mieling
Craig Sims
Bergman Draper Oslund PLLC
821 2nd Avenue, Suite 2100
Seattle, WA 98104
Tel: (206) 463-8510 dir.
Fax: (206) 463-4470
Email: service@bergmanlegal.com
Attorneys for Respondent

Executed on June 17, 2019, at Seattle, Washington.

I declare under penalty of perjury under the laws of the State of Washington that the above is true and correct.

s/ Helen M. Thomas
Helen M. Thomas
Legal Assistant to Nathaniel J.R. Smith

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

EDWARD P. LEREN, as Executor of the Estate of Marvin A. Leren, Respondent, v. KAISER GYPSUM COMPANY, INC., et al, Defendants. ELEMENTIS CHEMICALS, INC., Appellant.	)	No. 77870-6-I ORDER DENYING MOTION FOR RECONSIDERATION AND CHANGING OPINION

Appellant Elementis Chemicals, Inc. filed a motion for reconsideration of the court's opinion filed May 28 2019. Respondent Leren filed an answer at the court's request. The panel has determined that the motion should be denied and that the opinion be changed as noted below.

Now therefore, it is hereby

ORDERED that on page 12, second paragraph, delete: "Elementis is correct that the product line doctrine applies to a successor manufacturer where it continues producing the same product under a similar name, but the doctrine does not limit liability to only those particular circumstances." Replace that sentence with "But the jury concluded HCP '[sold] the same products under a similar name' postdissolution." Delete the citation to Martin in footnote 46 and replace it with citation to CP at 914.

It is further

ORDERED that on page 12, second paragraph, change the next sentence to read, "Elementis is correct that the product line doctrine requires continued sales of the 'same type of product' for a successor distributor to be held liable, but the products do not need to be identical."

It is further

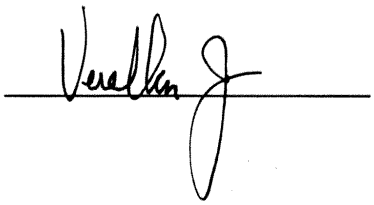
ORDERED that on page 13, the second complete sentence be changed to read "Taking all inferences in its favor, this record supports the jury finding that the Johns-Manville and Union Carbide brands of asbestos were the same product—raw white asbestos—sold under a similar name."

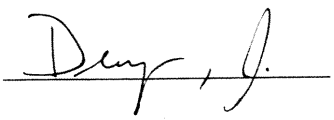
It is further

ORDERED that the remainder of the opinion shall remain the same.

It is further

ORDERED that appellant's motion for reconsideration is denied.





AGREEMENT entered into this 10th day of January, 1977, by and between W. RONALD BENSON and HELEN S. BENSON (hereinafter referred to as "Sellers") and HARRISONS & CROSFIELD (PACIFIC) INC., a California Corporation (hereinafter referred to as "Buyer"), WITNESSETH:

WHEREAS, Sellers own fifteen (15) shares of the capital stock of BENSON CHEMICAL CORPORATION (hereinafter referred to as "Company") constituting all of the issued and outstanding capital stock of such Company, and

WHEREAS, Buyer desires to acquire from Sellers all of the issued and outstanding capital stock of Company and good title thereto and Sellers desire to sell to Buyer all of the issued and outstanding capital stock of Company and good title thereto, all upon the terms, provisions and conditions hereinafter set forth:

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. Subject to the terms, provisions and conditions of this Agreement, Sellers agree with Buyer that at the time and place of closing hereunder, Sellers will sell, transfer and deliver to Buyer all of the issued and outstanding shares of capital stock of Company and good title thereto, free and clear of all liens, claims and encumbrances, and will deliver to Buyer the certificates representing such shares of capital stock duly endorsed, free and clear of all liens, claims and encumbrances,

properly transferable of record on the books of Company to and in the name of Buyer. The company's authorized capital stock consists of 400 shares of common stock with $100. par value, of which 15 shares are issued and outstanding and owned of record and beneficially by Sellers, of which 14 shares are owned of record by W. RONALD BENSON and 1 share is owned of record by HELEN S. BENSON.

2. (a) Subject to the terms, provisions and conditions of this Agreement, Buyer hereby agrees with Sellers that at the time and place of Closing, Buyer will purchase from Sellers all of the 15 issued and outstanding shares of the capital stock of Company and good title thereto, free and clear of all liens, claims and encumbrances for a price of $39,435.80 per share for a maximum aggregate purchase price of $591,537.00 subject to adjustment if any as provided herein.

(b) The above price per share is a result of an audit made by Price Waterhouse and Company as modified by additions as adjusted by Agreement of the Buyer and Sellers.

(c) The sale and purchase of said stock and Closing hereunder are conditioned and contingent upon the Buyer obtaining the approval of the Bank of England for the Buyer to acquire said stock. Such approval has now been granted.

3. Payment by Buyer for the purchase of capital stock of Company shall be made as follows: $100,000. to be paid by certified check to Sellers as set forth in paragraph 8 (b) at

time of Closing and the balance of the purchase price, subject to any adjustments as provided herein, shall be payable by the Buyer to the Sellers over a five-year period in five equal annual installments, with interest at 7-1/2% per annum on the unpaid balance, (the payment of principal and interest to be made in accordance with promissory note executed of even date herewith). The obligation of the Buyer to Sellers shall be evidenced by a non-negotiable promissory note of Buyer, a form of the note being attached hereto, payment to be made at the direction of Buyer under a letter of credit to be issued by Toronto Dominion Bank of California.

4. Closing shall be held at the offices of Howard Tuttle, Esquire, in Seattle, Washington.

5. Sellers hereby represent and warrant to Buyer as follows:

(a) The Company is validly organized, existing and in good standing under the laws of the State of Washington, and the shares of Company transferred hereunder constitute all of the outstanding shares of Company and are validly issued, fully paid and non-assessable; the Articles of Incorporation and By-Laws as amended to date which have been delivered to Buyer are complete and correct; the Company has no subsidiaries and does not own any interest in any corporation, partnership or proprietorship;

neither the execution and delivery of this Agreement or the fulfillment of the terms hereof, will conflict with the provisions of the Articles of Incorporation of the By-Laws of the Company, or any instrument to which the Company or the Seller is now a party; the Company is duly qualified and in good standing as a foreign corporation in the State of Oregon, the only state where the character of the properties owned by the Company or the nature of the business transacted by it makes such qualification necessary;

(b) The balance sheets of the Company for the fiscal years ending February 28 of 1970 through 1976, and the balance sheet as of October 31, 1976, and the statements of profit and loss and of retained earning of the Company for the years ending on said dates, together with the related exhibits, schedules and notes, if any, prepared by Jay T. DeFriel, Jr., and the balance sheet as of October 31, 1976 together with the related exhibits, schedules and notes prepared by Price Waterhouse and Company, for and on behalf of the Buyers, under which the price per share has been based in accordance with paragraph 1 hereof, copies of all of which have previously been furnished to the Buyer, are true, correct and complete and have been prepared in accordance with generally accepted accounting principles applied on a consistent basis during the periods involved and fairly present the financial condition, assets, liabilities

and results of operations of the Company at the dates and for the periods mentioned.

(c) Except as and to the extent reflected or reserved against in the Company's balance sheet as of October 31, 1976, the Company as of such date had no liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, including without limitation, tax liabilities due or to become due.

(d) Since October 31, 1976 (i) there has been no material adverse change in the Company's condition (financial or otherwise) assets, liabilities or business as reflected in the aforesaid balance sheet of October 31, 1976; (ii) there has not been any damage, destruction or loss (whether or not covered by insurance) materially and adversely affecting the Company's properties or business; (iii) the Company has not redeemed, purchased or acquired any of its capital stock or entered into any contract outside of the ordinary course of its business; (iv) the Company has not declared or paid any dividends or made any other distribution or payment with respect to its stock; (v) the Company has not increased the compensation payable to officers or employees; (vi) there has been no event or condition of any character, materially and adversely affecting the Company's business or future prospects except that the two principal employees in the Portland office have terminated.

(e) The Company has filed all federal, state and local tax returns which are required to be filed, and the Company has paid all taxes which have become due pursuant to such returns or pursuant to any assessment received by the Company, and adequate provision has been and is being made for all federal, state and local taxes for the current fiscal year.

(f) The Company has good and marketable title in fee to its properties and assets, including the properties and assets reflected in the balance sheets hereinabove described, except properties and assets since disposed of in the ordinary course of business, subject to no liens, claims or encumbrances. All Company equipment is in good condition and repair. All of the items comprising inventories consist of currently acquired merchandise, materials, and supplies in good saleable or usable condition. All of the present accounts receivable are current and fully collectible. The loan receivable from Pacific Rim Import Corporation is current and fully collectible. Said loan is evidenced by a promissory note under which principal payments of $2,000 are due the first of each month, together with interest on the unpaid balance at the rate of 1-1/2% over prime bank rate as may be in effect from month to month by People's National Bank of Washington, with acceleration of principal in event of default, and said payment of note to be guaranteed by Sellers.

(g) The Company is not a party to any contract or agreement, and is not subject to any charter or other corporate restriction, which materially and adversely affects its business, properties, assets, operations or condition, financial or otherwise. The company is not a party to any lease, employment contract, labor contract, license agreement, contract for future purchase or delivery of goods or rendition of services, bonus, pension, profit sharing or retirement plans, or insurance agreements, or other material contracts or commitments of any kind, excepting those listed on Schedule A hereto, true and correct copies having been delivered to Buyer. The Company has complied with all the provisions of such contracts and commitments required to be complied with by it and is not in default under any thereof.

(h) There is no litigation or proceeding pending, or to the Sellers' knowledge threatened, against or relating to the Company, its properties, or business, nor do the Sellers know or have reasonable ground to know of any basis for any such action, or of any governmental investigation relative to the Company, its properties or business.

(i) The Company holds insurance fully protecting its properties against loss or damage with reputable insurance companies, in adequate amounts. The Company holds public liability insurance fully protecting the Company from any and all liability including product liability occasioned by accident

or disaster in adequate amounts, said amounts have been verified to Buyer and Buyer is satisfied with the existing coverage for the purpose of this representation.

(j) There has been delivered to the Buyer an accurate list as of the date of this agreement showing (i) the names of employees whose current compensation from the Company will equal or exceed $15,000.00; (ii) the names of directors and officers of the company; (iii) the name of each bank in which the Company has an account or safe deposit box, and the names of all persons authorized to draw thereon, or to have access thereto; and (iv) the names of all current agencies and suppliers.

(k) No legal, accounting or other fees, commissions or expenses will have been incurred or agreed to be paid by Company for or with respect to this Agreement.

6. The Sellers covenant that, from October 31, 1976:

(a) The Company's business has been conducted only in the ordinary course.

(b) No change has been made in the Company's Certificate of Incorporation or its by-laws, except as may be first approved in writing by the Buyer.

(c) No dividend or other distribution or payment has been declared or made in respect to Company's stock or made any change in the stock.

(d) No increase has been made in the compensation to be paid to the officers and employees or any change will be made in banking arrangements.

(e) The Company has not sold, transferred, leased or otherwise disposed of any of its assets other than in the ordinary course of business.

(f) No contract or commitment has been entered into by or on behalf of the Company, except contracts or commitments made in the ordinary course of business, the terms of which are consistent with the Company's past practice and reasonable in light of current conditions.

(g) Except as otherwise requested by the Buyer, the Sellers will cause the Company to use its best efforts to preserve the Company's business organization intact; to keep available to the Company the services of its present employees; and to preserve for the Company the goodwill of its suppliers, customers and others having business relations with the Company.

7. Sellers represent that Intercon Pacific, Inc. owns no inventory and is in the process of dissolution.

8. At the closing:

(a) The Sellers shall deliver to the Buyer (i) certificates for 15 shares of capital stock in proper form for transfer; (ii) written resignations of directors and officers as may be requested by the Buyer; and (iii) a certificate of good standing for the Company certified and issued by the appropriate office of the State of incorporation.

(b) The Buyer shall deliver to W. RONALD BENSON a certified check in the amount of $93,333.33 payable to his order and shall deliver to HELEN S. BENSON a certified check in the amount

of $6,666.67 payable to her order and shall deliver to the Sellers a promissory note referred to in paragraph 3. Buyer will furnish within 10 days from the date hereof, Letter of Credit issued by the Toronto Dominion Bank of California, covering payment of the unpaid balance of the note referred to in paragraph 3 hereof in accordance with letter from said bank dated the 9th day of December, 1976.

(c) The Buyer and Sellers will enter into an employment agreement for the consulting services of the Sellers in the form attached hereto.

9. All obligations of the Buyer under this Agreement are subject to the fulfillment, prior to, or at the Closing, of each of the following conditions:

(a) The representations and warranties of the Company and the Sellers contained in this Agreement shall be true at and as of the time of closing as though such representations and warranties were made at and as at such time.

(b) The Sellers shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing.

(c) There shall not have been, since the date of this Agreement, any materially adverse change in the Company's financial condition, assets, liabilities, or business.

(d) The Sellers shall have delivered to the Buyer an opinion of counsel for the Company dated the closing date in the form and substance satisfactory to the Buyer, that the Company's

corporate existence, good standing and authorized and issued stock are as stated in paragraphs 1, 2 and sub-paragraphs (a) of paragraph 5; that the Company has good and marketable title to all its property and assets as set forth in sub-paragraph (f) of paragraph 5; and that, counsel does not know or has any reasonable grounds to know of any litigation pending or threatened, nor has any material claim been made or asserted against the Company, its properties or business; nor are there any proceedings threatened or pending before any federal, state or local government, or any department, board or agency thereof, involving the Company; and as to such other matters incident to the transactions contemplated by this Agreement as Buyer may reasonably request.

10. All covenants, agreements, representations and warranties made herein or any certificates delivered pursuant hereto shall survive Closing hereunder and Sellers shall indemnify and save Buyer and the Company harmless from all claims, costs or losses arising from any breach of such covenants or agreements or any inaccuracy of said representations or warranties. Without limitation of Sellers liability for indemnification hereunder, any and all installments due Sellers may be reduced by the amount of any claims, costs, or losses to which the foregoing indemnity relates. Without limitation of the foregoing, in the event there is default in the payments due from Pacific Rim Export Corporation, under the note referred to in paragraph 5 (f) whereby the entire balance of principal becomes immediately due

and payable, Buyer may reduce the next installment due Sellers (and succeed installments, if necessary) by the amount of the entire balance of principal then due on said loan, together with interest thereon at the rate set forth in said note to the date when the next installment is payable under the terms of this Agreement.

11. All the terms and provisions of this Agreement shall bind and enure to the benefit of the Seller and the Buyer and the respective heirs, and executors, administrators, successors, and assigns.

12. This Agreement shall be construed in accordance with and governed by the laws of the State of Washington.

13. All notices shall be in writing and shall be deemed to have been duly given if delivered or if mailed first class postage prepaid to the Buyer at 4000 Birch Street, Newport Beach, California 92660 and to the Sellers at 2330 - 43rd E. Apt. 302 B, Seattle, Washington 98102.

14. This agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which shall construe one and the same instrument.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above written.

Attest: Howard Tuttle

W. Ronald Benson.
W. RONALD BENSON

Helen S. Benson
HELEN S. BENSON

ATTEST:
Assistant Secretary

HARRISONS & CROSFIELD (PACIFIC) INC.

By: Murray R. Boon

EXHIBIT "A"

1. Agreement dated 1976 between Benson Chemical Company and Driver, Salesmen & Warehouseman Local Union No. 117, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

2. Lease agreement dated April 26, 1976 between North Coast Electric Company (Lessor) and Benson Chemical Corporation (Lessee) for Bays 9, 10 & 11 containing 16,380 sq. ft. of warehouse space located at 2450 - 8th Ave. So. Seattle, Washington 98134 for term of 10 years commencing May 1, 1976 at a rent of $2,153.97 per month for first 3 years, $2,317.77 per month for next 2 years and rental for balance of term to be negotiated and if no agreement to be fixed by an appraiser.

3. Lease Agreement dated April 24, 1974 between U.S. Bancorp Realty and Mortgage Trust (Lessor) and Benson Chemical Company, Incorporated (Lessee) for office and warehouse space at 2728 NW Nela Street, Portland, Oregon 97210 for a term of 3 years commencing July 1, 1974 at a rental of $1,050 per month.

4. Agreement dated July 5, 1973 between Pitney-Bowes Inc. and Benson Chemical Corp. for rental of meter and scale.

W. Ronald Benson
Helen S. Benson
2330 - 43rd Ave. E.
Apt. 302 B
Seattle, WA 98102

This letter is supplemental to Agreement dated January 10, 1977 wherein the addressees are the Seller and the writer is the purchaser of Benson Chemical Corporation. It is understood that the parties have reached the following understanding with reference to items which need clarification so far as such Agreement is concerned:

1. It is understood and agreed that certain personal property taxes are payable by Benson Chemical which are not reflected in the financial statements and audits referred to in the agreement, and that such personal property taxes pro rated as of October 31, 1976 will be credited to the Buyer and shall be deducted from the first principal installment on the promissory note of Buyer;

2. The last sentence of paragraph 10 on page 11 of the aforesaid Agreement provides that in the event there is a default in payments on a note held by the corporation executed by Pacific Rim Import Corporation, that the full sum owing thereon shall become immediately due and payable. Since said note is guaranteed by the sellers, you are advised that the buyer agrees that in the event of such default, it will notify Benson in writing and give Benson 10 days within which to cure any such default before

accelerating payment of said note;

3. It is further understood and agreed that Pacific Rim Import Company shall not be required to pay its indebtedness to Benson Chemical down to the sum of $90,000.00 until such time as the Letter of Credit referred to in the Sales Agreement has been furnished to the sellers or to Peoples National Bank of Washington.

4. In determining the price per share being paid seller by buyer, there has been deducted from the Last In First Out inventory valuation, the estimated amount of income tax which would be payable upon the liquidation of such inventory on the basis that such tax liability would amount to 48% of the Last In First Out inventory which figure amounts to $64,238.00, the tax on which has been computed to be $30,834.00.

Accountants advice has indicated that under some circumstances, such tax may never be payable either by Benson Chemical or Harrisons and Crosfield (Pacific), and it is the understanding of the parties that should this eventuality occur, the sellers should be reimbursed to the extent of such tax saving, including interest thereon at the rate stated in the note from closing to the time of reimbursement to the sellers and the buyer agrees to keep seller informed with respect to such situation and to make such reimbursement at such time as either: (1) Buyer's accountants have advised buyer that no such tax is payable, or, (2) the statute of limitations shall have run on any claim incident to the collection of such a tax, whichever is earlier.

HARRISONS AND CROSFIELD (PACIFIC) INC.

By: Murray Wilson
Murray Wilson, President

APPROVED:

W. Ronald Benson
W. Ronald Benson

D-268425
FILE NUMBER

DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, **BRUCE K. CHAPMAN,** Secretary of State of the State of Washington and custodian of its seal, hereby certify that

STATEMENT OF INTENT TO DISSOLVE

of BENSON CHEMICAL CORPORATION

a domestic corporation of Seattle, Washington,

was filed for record in this office at 8:00 o'clock a. m, on this date, and I further certify that such Articles remain on file in this office.

Filed at request of
Kevlin & Irwin, Attys. At Law
Ste. 1400, Philadelphia Nat'l Bank Bldg.
Broad & Chestnut Sts.
Philadelphia, PA 19107
Attn: Henry M. Irwin

Filing and recording fee . . . $
License to June 30, 19..... $
.....Excess pages @ 25¢ $
Microfilmed, Roll No. 1390
Page 068-071

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol,

June 14, 1977

BRUCE K. CHAPMAN
SECRETARY OF STATE

SSF 86-B

226490 JUN1577

FILED

JUN 14 1977

SECRETARY OF STATE
STATE OF WASHINGTON

STATEMENT OF INTENT TO DISSOLVE CORPORATION

ON CONSENT OF SHAREHOLDERS

PURSUANT TO RCW 23A.28.020

OF

BENSON CHEMICAL CORPORATION

To the Secretary of State of the State of Washington:

The undersigned Corporation hereby executes in triplicate its statement of intent to dissolution of said Corporation on the written consent of the shareholder of said Corporation pursuant to the provisions of the revised Code of Washington 23A.28.020 and declares its intent to dissolve said Corporation and states as follows:

1. The name of the Corporation is Benson Chemical Corporation.

2. The names and respective addresses of the officers of the Corporation are as follows:

Title	Name	Address
President	Murray P. Wilson	Harrisons & Crosfield (Canada) Ltd. 4 Banigan Drive Toronto, Ontario, Canada M4H 1G1
Vice President	Wharton Jackson	Harrisons & Crosfield (Pacific) Inc. 4000 Birch Street Newport Beach, Calif. 92660
Secretary-Treasurer	Ila A. Fitzgerald	Harrisons & Crosfield (Pacific) Inc. 4000 Birch Street Newport Beach, Calif. 92660

3. The names and respective addresses of the directors of the Corporation are as follows:

Name	Address
Murray P. Wilson	Harrisons & Crosfield (Canada) Ltd. 4 Banigan Drive Toronto, Ontario, Canada M4H 1G1
Wharton Jackson	Harrisons & Crosfield (Pacific) Inc. 4000 Birch Street Newport Beach, Calif. 92660
R. A. Goddard	Harrisons & Crosfield (Canada) Ltd. Vancouver British Columbia, Canada

4. A copy of the written Consent to Dissolution of the Corporation signed on behalf of the sole shareholder of the Corporation is set forth as follows:

WHEREAS, it is deemed advisable and for the best interest of the Shareholder of the Benson Chemical Corporation, a Washington Corporation, that this Corporation voluntarily dissolve;

NOW, THEREFORE, the undersigned, President of, and duly authorized to act on behalf of Harrisons & Crosfield (Pacific) Inc., holding of record fifteen shares, constituting all the issued and outstanding shares of this Corporation, does hereby consent to the voluntary dissolution of this Corporation.

The undersigned, President of, and acting on behalf of Harrisons & Crosfield (Pacific) Inc., does further direct the officers and directors of this Corporation to take such further action as may be necessary and proper to dissolve this corporation.

IN WITNESS WHEREOF, the undersigned has hereunto signed his name as President and duly authorized to act on behalf of Harrisons & Crosfield (Pacific) Inc., and the date of signing and the number of shares of the Corporation held by it of record on said date.

Name	Date	No. of Shares
Harrisons & Crosfield (Pacific) Inc.	February 15, 1977	15

By /s/ Murray P. Wilson
President

5. Said written consent of the shareholder has been signed in its behalf by its President duly authorized to do so.

Dated: May 19, 1977

BENSON CHEMICAL CORPORATION

By Wharton Jackson
Vice President

Secretary

STATE OF CALIFORNIA :
ss
COUNTY OF LOS ANGELES :

The undersigned, a notary public, in and for the State and County above set forth, hereby certifies that on the aforementioned date personally appeared before me Wharton Jackson, being by me first duly sworn, declared that he is the Vice President of the aforementioned Corporation, that he signed the foregoing document, and that the statements therein contained are true.

OFFICIAL SEAL
HELEN R. HOBSON
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires OCT 6, 1978

Helen R. Hobson
Notary Public

D-114991
FILE NUMBER

DOMESTIC

STATE OF WASHINGTON | DEPARTMENT OF STATE

I, **BRUCE K. CHAPMAN,** Secretary of State of the State of Washington and custodian of its seal, hereby certify that

ARTICLES OF DISSOLUTION

of BENSON CHEMICAL CORPORATION

a domestic corporation of Seattle, Washington,

was filed for record in this office at 8:00 o'clock a. m., on this date, and I further certify that such Articles remain on file in this office.

Filed at request of
Kevlin & Irwin, Attys. At Law
Ste. 1400, Philadelphia Nat'l BAnK Bldg.
Broad & Chestnut Sts.
Philadelphia, PA 19107
Attn: Henry M. Irwin

Filing and recording fee . . . $.....

License to June 30, 19..... $.....

..... Excess pages @ 25¢ $.....

Microfilmed, Roll No. 1439

Page 364-366

In witness whereof I have signed and have affixed the seal of the State of Washington to this certificate at Olympia, the State Capitol,

July 26, 1978.

BRUCE K. CHAPMAN
SECRETARY OF STATE

SSP 66-b

ARTICLES OF DISSOLUTIC

00643 JUL 177

PURSUANT TO RCW 23A.28.110

FILED

OF

JUL 26 1978

BENSON CHEMICAL CORPORATION

SECRETARY OF STATE
STATE OF WASHINGTON

Pursuant to the provisions of RCW 23A.28.110, the undersigned corporation adopts the following Articles of Dissolution for the purpose of dissolving the corporation:

FIRST: The name of the corporation is Benson Chemical Corporation.

SECOND: A statement of intent to dissolve the corporation was filed by the Secretary of State of Washington on June 14, 1977, pursuant to the provisions of RCW 23A.28.020.

THIRD: All debts, obligations and liabilities of the corporation have been paid and discharged, or adequate provision has been made therefor.

FOURTH: All remaining property and assets of the corporation have been distributed among its shareholders, in accordance with their respective rights and interests.

FIFTH: There are no suits pending against the corporation in any court in respect of which adequate provision has not been made for the satisfaction of any judgment, order or decree which may be entered against it.

Dated June 24, 1977.

Wharton Jackson
Vice-President

Secretary

STATE OF California)
) ss.
COUNTY OF Orange)

The undersigned, a notary public, in and for the state and county above set forth, hereby certifies that on the aforementioned date, personally appeared before me Wharton Jackson, who, being by me first duly sworn, declared that he is the Vice-President of the aforementioned corporation, that he signed the foregoing document, and that the statements therein contained are true.

OFFICIAL SEAL
JAYNE H. ARMSTRONG
NOTARY PUBLIC-CALIFORNIA
PRINCIPAL OFFICE IN
ORANGE COUNTY
My Commission Expires May 27, 1980

(NOTARIAL SEAL)

Jayne H. Armstrong
Notary Public

State of Washington
Department of Revenue
FIELD OPERATIONS DIVISION
Audit Procedures & Review
Olympia, Washington 98504

TO THE HONORABLE SECRETARY OF STATE OF THE STATE OF WASHINGTON

In Re Petition for Dissolution or Withdrawal of
BENSON CHEMICAL CORPORATION
2450 8TH AVENUE SOUTH
SEATTLE, WASHINGTON
A Corporation organized under the laws of the
State of WASHINGTON

Reg. No. 178 096 741

CERTIFICATE OF
DEPARTMENT OF REVENUE

This is to certify that every license fee, tax, increase or penalty imposed under Chapter 180, Laws of Washington, 1935, as amended, upon the above mentioned corporation has been paid or provided for.

DATED This 18TH day of JULY, 1978

DEPARTMENT OF REVENUE
STATE OF WASHINGTON

By Richard P. Dittrich

RICHARD P. DITTRICH, AUDITOR

FORM REV 31 0016 (11-74)

A. $248 was pretty good money then.
Q. Okay. Certainly better now. But do you remember, in 1971, in addition to yourself and Mr. and Mrs. Benson, how many other people were working at Benson?
A. At Benson Chemical Company?
Q. Right.
A. The total corporation? There were two ladies that worked in our Seattle office, one lady that worked in the Portland office, a manager by the name of Dick Barchy; one salesman, Crookshenk, myself and Frank Gasco. I think that was it.
Q. All right. And would it be fair to say that this asbestos distribution was not a major part of Benson Chemical's total business?
A. Well, at $248 an order, there weren't very many people. I would say that the gross sales of asbestos we received, the $2,300, or whatever it was, we were selling probably four or five million dollars a year. And our -- I don't know what the profit was because Ron knew that, but it was certainly more than -- so I would say it had to be less than one percent of our gross profit.
Q. All right. And do you have any memory of -- you talked about a product book of some kind that you would have as a salesperson. I'm trying to get a sense of,

other than asbestos, how many other products did Benson Chemical distribute at the time you were involved?

A. Probably the better part of 150.

Q. Okay.

A. Well, I think, in any business, 20 percent of your products represent 20 percent of your sales. And asbestos was not 20 percent of our sales.

Q. Okay. And Benson Chemical had a warehouse?

A. Yes.

Q. I think you mentioned in that paper that you had?

A. But going back to your employees, add two more. We had a warehouseman in Seattle and a warehouseman in Portland that I didn't mention.

Q. All right. So altogether, about maybe ten people?

A. Yep, yep.

Q. All right. Now, let me ask you about the question of the asbestos bags. I think you had indicated in that paper that you signed back in May that at any given time, Benson might have had seven or eight bags of asbestos in its warehouse?

A. In its warehouse in Seattle and its warehouse in Portland.

Q. Seven or eight each?

A. Yeah.

Q. Okay.

that determination?
A. Yes.
Q. What you do know about, sir, is the relationship between HCP and Union Carbide; correct?
A. Yes.
Q. And Union Carbide was a distributor or a manufacturer of asbestos fibers; is that correct?
A. Yes, they manufactured in the State of California.
Q. And they manufactured a product called Calidria?
A. That's correct.
Q. And Calidria was an asbestos fiber; is that correct?
A. Yes, in several grades.
Q. And it was very similar to Johns-Manville fiber, was it not?
A. I can't really speak to that issue.
Q. Okay.
A. That's a technical question.
Q. Okay. And HCP was a distributor of Calidria, was it not?
A. Yes.
Q. And just so the jury is clear, can you tell us what Calidria is?
A. Calidria is a trade name of Union Carbide for its line of asbestos products. Mined in King City, California, and -- no, I think the mine was in New

Idria, that's where the "idria" came from, and it was processed in King City.

Q. Okay.

A. So it's California, Idria, and that's how they came up with the name.

Q. Okay. And HCP became a distributor of Calidria in 1968; correct?

A. 1968, that's correct.

Q. And HCP was the exclusive distributor of Calidria on the West Coast?

A. This takes some explanation. Distributor agreements between a manufacturer and distributor are never, at least in all my years, I have never seen it exclusive. The producer always maintains the right to sell direct. Because if the distributor, for some reason, dissatisfies the manufacturer on their performance, they always have a right to protect the business, which is very important to them, so -- but it can operate as a exclusive distributorship if they don't set up anybody else to sell. So Harcross was the only distributor they had on the West Coast. They had distributors all over the country, but no other besides HCP on the West Coast. Therefore, it was a non-exclusive exclusive distributorship.

Q. Not exclusive exclusive?

HONORABLE JIM ROGERS

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

EDWARD P. LEREN, as Executor of the Estate of MARVIN A. LEREN,

Plaintiff,

v.

ELEMENTIS CHEMICAL INC., et al,

Defendants.

NO. 15-2-28006-6 SEA

SPECIAL VERDICT FORM

We, the jury, answer the following questions submitted by the Court:

(Please answer all eight questions before signing this special verdict form and notifying the bailiff.)

QUESTION 1: Did Benson Chemical's business continue to function with substantially the same personnel and maintain the same physical location after Benson Chemical was dissolved on July 26, 1978?

ANSWER: Yes

QUESTION 2: Did Harrison & Crosfield (Pacific), Inc. retain the Benson Chemical brand name following Benson's dissolution on July 26, 1978?

ANSWER: Yes

QUESTION 3: Did Harrison & Crosfield (Pacific), Inc. expressly or impliedly assume Benson Chemical's obligations following its purchase of Benson's stock on January 27, 1977?

ANSWER: No

ORIGINAL

QUESTION 4: Did Harrison & Crosfield (Pacific), Inc. acquire and benefit from the goodwill of Benson Chemical following its purchase of Benson's stock on January 27, 1977?

ANSWER: Y

QUESTION 5: Did Harrison & Crosfield (Pacific), Inc. benefit from the goodwill of Benson Chemical following its dissolution of Benson Chemical on July 26, 1978?

ANSWER: Y

QUESTION 6: Did Harrison & Crosfield (Pacific), Inc. hold itself out to the public as a continuation of Benson Chemical by selling the same products under a similar name?

ANSWER: Y

QUESTION 7: Did Harrison & Crosfield (Pacific), Inc. acquire substantially all of Benson Chemical Corporation's assets following the dissolution of Benson on July 26, 1978?

ANSWER: Y

QUESTION 8: Was one of Harrison & Crosfield (Pacific), Inc.'s intentions in dissolving Benson Chemical on July 26, 1978 avoiding liability for asbestos products sold by Benson prior to its acquisition in January 1977.

ANSWER: N

(INSTRUCTION: Sign this verdict and notify the Judicial Assistant.)

Dated this 1 day of ~~October~~ November, 2017. PCG 2:21pm

Presiding Juror

SOHA & LANG

September 06, 2019 - 4:20 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	Edward P. Leren, Resp v. Kaiser Gypsum Company, Inc., App (778706)

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