7/05 MPT 1

To: Margaret Mackenzie
Fr: Applicant
Date: July 26, 2005
Re: In Re Clarke Corporation - Whether Product Line Successor Rule can be invoked to impose liability - "PureView"

~~INTRODUCTION~~ Please see attached draft for your signature.

To: Jasmine Clarke, President
Clarke Corporation
800 Robinson Blvd
Cypress, Franklin 33337

Dear Ms. Clarke

The question raised by your inquiry and our research is whether your acquisition of Santoy's Drug Manufacturing Division (hereafter "DMD") and their product "PureView" results in subsequent liability

for your corporation as a result of Mr. Regan's death. While the answer is somewhat unclear, we believe that there should not be any liability to Clarke Corporation from products liability of Pureview for Mr. Regans death.

Facts

The facts in your case are that: 1) Clarke Corporation (hereafter "Clarke") acquired DMD in 1990; (2) DMD comprised approximately 80% of Santay's Manufacturing operations; (3) PUREVIEW was one of five products; (4) the asset purchase agreement only has Clarke assuming

liability for "business transactional" liabilities (e.g. contracts); (5) Clarke did acquire most of the employers, but none of the upper management or stock; (6) $2.5 million was paid for DMD; (7) Santoy changed its name to Sentinel pursuant to the purchase agreement; (8) Sentinel continued to operate for 2 years then decided to file for bankruptcy; (9) Clarke notified Santoy's previous customers of the change in manufacturing; (10) Clarke discontinued the manufacture of PureView only six (6) months after acquiring DMD; and (11) PureView has not been linked to any serious medical illness before the 2005 study

Issues and issue analysis

In the letter on behalf of Mrs. Regan (July 21, 200
a case is referenced ~~claim to~~ which Mrs. Regan
(and her representatives) believe supports her
claim that Clarke is liable for the defective
product and her husband's death. This
case Gray v. Ballard (1987), in short, states
that ~~if~~ a purchasing corporation is
liable for the defective products of the
earlier corporation if a three part test
is met. However, a few subsequent cases,
namely Shatner v. Burger Co (Fr. Ct. Appl, 1999)
~~have~~ has elucidated that three part

test and contrasts it to Gray in a way which we believe more closely aligns with Clarke's situation. The following discussion states each factor of the three part test from Gray, then contrasts it with Ehrlher and will place the facts of your situation in the appropriate place.

~~Frost~~ The first issue is whether the practical right of the victim's recovery against the original manufacturer was destroyed by the acquisition of by the subsequent purchaser. In Gray, the original Manufacturer Sold all of its assets and was dissolved, per the purchase agreement, within two months

of the purchase. The original manufacturer did not continue business, and the subsequent purchaser did not notify any of ~~its~~ the original manufacturer's customer base of any changes in ownership. In Shatner, the original Corporation did change its name pursuant to the purchase agreement, but was not dissolved. The original Corporation was paid what the court deemed "adequate consideration", the subsequent manufacturer played "no role" in the decision to dissolve the original manufacturers business, and there was no Corporate overlap. In two ~~subsequent~~ other cases, Kramer v. Macintosh (1995) and Rollins v Hardy Systems (19

The Courts found that "if a successor corporation purchased nearly all of the assets of the financially strapped predecessor & the successor did contribute to the predecessor's collapse (Kramer) and if the successor was in the same general business as the predecessor (Rollins) the successor retained liability.

While Clarke did purchase the bulk of Santay's operations (80%) and Santay-Sentmel did subsequently claim bankruptcy, the facts are very much like Shatner where Santay continued operation, Clarke notified customers,

Clarke had no part in Sentinel's dissolution, and Sentry was paid adequate consideration for the purchase. Therefore, we do not believe that Clarke meets this first part of the test. the business was not generally the same

The second factor is whether the successor has the ability to assume the original manufacturer's risk spreading role. Again, in Gray, the differences between manufacturers appear at to anyone outside the purchase was virtually non-existent. In Shatner, the Court held that where the successor left the business will before any notice of risk arose, then

the successor had no ability to calculate the significant health risks and incorporate those into its business. Clarke was never in the same general business as Santay, and ended manufacture of Parview only 6 months after the purchase of DMD. Additionally, while there were some side effects, the significant health risks were not known or even ~~ponds~~ pored prior to the study of 2005. This study of 100 individuals which cannot be conclusive unto itself. Therefore we believe Clarke does not

meet the second part of the three part test.

The final element is the fairness of requiring the ~~successor~~ successor to assume the responsibility because of its "enjoyment" of the original manufacturer customer base. Again, in Gray the successor significantly "enjoyed" or profited from the original manufacturer's customer base and continued the original manufacturer's success. In Shatner, much like ~~the~~ our case, the successor ended manufacture shortly after purchasing the

product line. Here, Purevieu was only one of ~~only~~ 5 products and was made virtually obsolete within six months resulting in Clarke's ending the Manufacture of Purevieu. Therefore, we do not believe our situation meets the third element either.

In conclusion, because of the lack of corporate overlap, the adequate consideration, the lack of notice, the many years intervening, and the lack of any real "enjoyment" of the benefit of Purevieu, we do not believe that Clarke is liable for Mr. Regan's death.