

Buying company, acquiring liability
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The Record

Q. My company is buying a corporation that makes and distributes products. Will my company be liable for product liability claims brought against the acquired company?

It depends. The liability of successor corporations for product liability claims is a heavily litigated issue in the United States. While each state has its own laws regarding successor liability, there are some general guidelines all courts follow.

Generally, unless otherwise provided by statute, when one company sells or transfers all or substantially all of its assets to another company, that company acquiring those assets does not also buy the liabilities of the transferor corporation.

The four common exceptions to that rule are: (1) the purchasing corporation expressly or impliedly agrees to assume those liabilities; (2) the transaction constitutes a consolidation or merger of the corporations; (3) the purchasing corporation is a "mere continuation" of the selling corporation; or (4) the corporations effected the transaction for fraudulent purposes to escape liability.

In some states, including New Jersey, the courts have adopted a fifth exception. Often known as the "products line exception," this provides that a successor company will be liable for the predecessor's defectively made goods when the successor continues to manufacture or distribute the same line of products.

The general rule of non-liability has been criticized as leading to unjust results for those injured by defective products. As a result, there is a tendency in the courts to develop and expand the recognized exceptions to the general rule.

Courts consider each successor liability claim based on the unique facts of the particular case.

You should contact an attorney to evaluate the specific facts of your case.

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