# Assessing Succession

**Absence of successor liability following series of acquisitions yields defense win**



## THE CHALLENGE

In 2012, a New Mexico resident was injured in Texas while using a table saw that had been manufactured by Delta International Machinery Corporation in 2001. Three years after the date of manufacture, the Black & Decker Corp. acquired several of Pentair, Inc.'s subsidiaries, including Delta. Black & Decker Corp. in turn became a wholly owned subsidiary of The Stanley Works in 2010. The plaintiff in this case brought a products liability action in New Mexico State Court against various entities that included Delta, Pentair, Stanley Black & Decker, Inc., and Black & Decker (U.S.) Inc. in 2015. The plaintiff argued that the acquiring corporations were liable because, under New Mexico law, the product-line exception to the general rule of successor non-liability applied.

## THE SOLUTION

The defense, led by Modrall Sperling, removed the case to Federal Court for the District of New Mexico. The district court dismissed all defendants from the case for lack of personal jurisdiction excepting the Black & Decker defendants. Modrall Sperling attorneys including Tomas Garcia then moved for summary judgment for these defendants, arguing they were not liable "because they did not design, manufacture, market, or sell the subject table saw and, further, they are not subject to successor liability for any acts or omissions on the part of their predecessor." The Black & Decker defendants further argued that the substantive law of Texas, rather than that of New Mexico, applied to the facts of the case and they denied they had expressly assumed Delta's liability as part of its purchase agreement.

## THE RESULT

The district court determined that, because Texas substantive law applied, the product-line exception did not apply, and the purchase agreement unambiguously provided for a stock acquisition by Black & Decker Corp. of the subsidiaries it purchased, including Delta. This meant Delta's liabilities remained with Delta, as a subsidiary acquired by Black & Decker Corp.

Summary judgment was granted. The plaintiff appealed the ruling and denial of a Rule 59 motion. The issues on appeal included successor liability, choice of law, and rejection of plaintiff's request for continuance under 56(d).

The Tenth Circuit affirmed on all counts the challenged orders and the judgment of the district court.

## RELATED ATTORNEYS

Tomas J. Garcia

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## RELATED PRACTICES

Litigation

- Product Liability