STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: March 21, 2025)

SUSAN SOARES and BRIAN SOARES	:	
	:	
Plaintiffs,	:	
	:	
v.	:	**C.A. No. PC-2024-01631**
	:	
AVON PRODUCTS INC. *et al.*,	:	
	:	
***Defendants*.**	:	

DECISION

GIBNEY, P.J. Before this Court for decision is a motion to dismiss from Defendants Johnson and Johnson Holdco (NA) Inc. ("New JJCI/Holdco"), Janssen Pharmaceuticals, Inc. ("Janssen"), Kenvue, Inc. ("Kenvue"), and LTL Management LLC ("LTL") (collectively "Defendants"). Defendants are all Johnson & Johnson subsidiaries. Due to many of the Defendants coming into existence as a result of a series of divisional mergers under the laws of the State of Texas, they argue that they cannot be held liable for Plaintiffs Brian and Susan Soares' (collectively "Plaintiffs") claims as a matter of law. For the following reasons the motion is denied. Jurisdiction is pursuant to G.L. 1956 § 8-2-14.

I

Facts and Travel

Plaintiffs allege that Defendants, among others, are liable for Susan's mesothelioma.[1] *See generally* Am. Compl. Beginning in 1966, Susan used cosmetic products such as baby powder,

[1] Due to both Plaintiffs sharing the same last name, they will be referred to by their first names to distinguish each individually. No disrespect is intended.

eyeshadows, blushes, bronzers, foundation, and more which included asbestos-containing talc products. *Id*. ¶ 3. As a result of using these products, Susan inhaled the asbestos-containing talc for decades, which Plaintiffs allege was the cause of her malignant pleural mesothelioma diagnosis on October 30, 2023. *Id*. ¶¶ 2, 5. Pertinent to these Defendants was Susan's use of Johnson & Johnson's baby powder, which is alleged to have contained asbestos. *See id*. ¶¶ 51, 53, 56.

Plaintiffs allege that from the 1890s until December 1978, Johnson & Johnson "designed, manufactured, marketed, distributed, and sold talc-containing Johnson's Baby Powder in the United States[.]" *Id*. ¶ 118. In 1972, Johnson & Johnson established Johnson & Johnson Baby Products' operating division and transferred all of the assets and liabilities associated with its baby products to it, including its baby powder. *See id*. ¶ 119(a). However, after a series of asset and liability transfers from January 1979 until October 2021, Johnson & Johnson Consumer Inc. ("Old JJCI") "designed, manufactured, marketed, distributed, and sold talc-containing Johnson's Baby Powder, including in Rhode Island[.]" *Id*. ¶ 119. On October 12, 2021, Johnson & Johnson initiated "Project Plato," where Old JJCI underwent a divisive merger resulting in the creation of two new entities. *Id*. ¶ 120(a). The first new entity created was LTL, which received all of Old JJCI's talc liabilities. *Id*. The second entity was Johnson & Johnson Consumer Inc. ("New JJCI"), a New Jersey corporation with its principal place of business also in New Jersey. *Id*.

Creation of New JJCI/Holdco and LTL

Creating the two new entities, as alleged by Plaintiffs, was a complicated endeavor. First, Janssen—another Johnson & Johnson subsidiary with its principal place of business in New Jersey—created Currahee Holding Company, another New Jersey corporation headquartered there. *Id*. ¶ 121(a). Next, Janssen transferred Old JJCI to Currahee Holding Company. *Id*. ¶ 121(b). Old JJCI then merged into Chenango Zero LLC, a newly created Texas limited liability

company. *Id*. ¶ 121(c). From there, Chenango Zero LLC went through its own divisional merger, becoming Chenango One, LLC and Chenango Two, LLC, both of which also were new Texas limited liability companies. *Id*. ¶ 121(d). Chenango One, LLC was then converted into a North Carolina limited liability company and became LTL, receiving all of the talc-liabilities of Old JJCI. *Id*. ¶ 121(e). Chenango Two, LLC was then merged back into Currahee Holding Company and converted to New JJCI. *Id*. ¶ 121(f). New JJCI received "substantially" all of the assets of Old JJCI and Old JJCI ceased to exist. *Id*. ¶ 121(h). During the time of the transactions, Old JJCI, Currahee Holding Company, Chenango Zero, Chenango One, Chenango Two, and New JJCI all shared the same president—Michelle Goodridge. *Id*. ¶ 121(g). On December 16, 2022, New JJCI changed its name to Johnson & Johnson Holdco (NA), Inc. (Holdco) and continued as a New Jersey corporation with its principal place of business in New Jersey.[2] *Id*. ¶ 121(i).

Two days after it was conceived in Project Plato, on October 14, 2021, LTL declared Chapter 11 bankruptcy; however, the Third Circuit dismissed that case on April 4, 2023, finding that it was filed in bad faith. *Id*. ¶ 122(b); *see In re LTL Management, LLC*, 64 F.4th 84 (3d Cir. 2023). A few hours after the dismissal of that case, LTL again filed for bankruptcy, which was also dismissed on August 11, 2023. Am. Compl. ¶¶ 122(c)-(d). Sometime around December 2023, LTL changed its name to LLT Management, LLC ("LLT"). *Id*. ¶ 121(j).

Plaintiffs allege New JJCI/Holdco continued the same business as Old JJCI. *Id*. ¶ 123. New JJCI/Holdco included the same employees, the same management, and continued to operate from the same physical location as Old JJCI. *Id*. ¶¶ 123(a)-(c). The manufacturing, marketing, and distribution assets of Johnson & Johnson's baby powder were transferred from Old

[2] New JJCI will be referred to as "New JJCI/Holdco" to shed a light which will assist in slaying the Minotaur somewhere in the depths of this dark labyrinth of corporate divisions and mergers.

JJCI to New JJCI/Holdco. *Id*. ¶ 123(d). Additionally, "[New JJCI/Holdco] assumed and continued the same business licenses and business contracts with suppliers, manufacturers, vendors, retailers and other partners so that business operations would remain uninterrupted." *Id*. ¶ 123(g). Importantly, LTL received only *de minimus* revenue streams from New JJCI/Holdco. *Id*. ¶ 123(f). For those reasons, as well as others, Plaintiffs claim that New JJCI/Holdco is liable as the successor in interest to Old JJCI. *See id*. ¶ 123.

New JJCI/Holdco Asset Transfer to JJCI 3.0 and Kenvue's Acquisition

Shortly after the above transactions, a new series of mergers took place under the Johnson & Johnson umbrella. *See id*. ¶ 124. In June 2022, New JJCI/Holdco created a new subsidiary also named Johnson & Johnson Consumer, Inc. (JJCI 3.0). *Id*. ¶ 124(a). JJCI 3.0 was initially a Nevada corporation before converting to a Delaware corporation in January 2023, but retained its headquarters in New Jersey. *Id*. ¶ 124(b). It did business under the name JNTL Consumer Health (NA). *Id*. New JJCI/Holdco—parent company of JJCI 3.0—transferred assets, employees, and other business related to Johnson's Baby Powder to JJCI 3.0. *Id*. ¶ 124(c). Thereafter, New JJCI/Holdco transferred JJCI 3.0 to Janssen. *Id*. ¶ 124(d). Janssen then transferred JJCI 3.0 to JNTL Holdings 2, Inc, a Janssen subsidiary, which became the parent of JJCI 3.0. *Id*. JNTL Holdings 2, Inc. was subsequently transferred to Johnson & Johnson, and Johnson & Johnson transferred it to Kenvue—allowing it to become the parent of JJCI 3.0. *Id*. ¶¶ 124(e)-(f).

Plaintiffs allege that Kenvue continued the business of manufacturing and selling Johnson's Baby Powder. *Id*. ¶¶ 125-26. Kenvue received all of the assets necessary to do so from New JJCI/Holdco via JJCI 3.0, as described above. *Id*. ¶ 125. It retained the same employees, the management remained the same, it received all the intellectual property rights of New JJCI/Holdco, and operated from the same physical location. *Id*. ¶¶ 126(a), 126(b), 126(c). Kenvue

also assumed the same business licenses and business contracts with suppliers, manufacturers, vendors, and retailers to continue the business uninterrupted. *Id*. ¶ 126(f). Thus, Plaintiffs again argue that Kenvue can be held liable for their claims as the successor in interest to New JJCI/Holdco and Old JJCI.[3] *See id*. ¶ 125.

Motion to Dismiss

Defendants brought their motion to dismiss on April 26, 2024. *See* Docket. They claim that successor liability cannot be imposed upon them as a matter of law. (Defs.' Mem. in Supp. of Mot. to Dismiss (Defs.' Mem.) 2-3.) They characterize Plaintiffs' attempt to impose successor liability as a result of New JJCI/Holdco's transfer of assets to Janssen, which then transferred the same to Kenvue. *Id*. at 3. However, as LTL—not New JJCI/Holdco—received Old JJCI's liabilities due to the divisional merger under Texas law, and Texas law provides that a successor can only be liable for the obligations explicitly imposed on it in a merger, neither New JJCI/Holdco, Kenvue, nor Janssen can be held liable as successors in interest of Old JJCI. *Id*. at 3-4. Additionally, because LTL no longer exists—rather it is now LLT—it argues that LTL should also be dismissed. *Id*. at 4.

Plaintiffs contend that under Rhode Island's interest weighing approach to choice of law issues, Texas has no interest in this matter and Rhode Island law applies. (Pls.' Obj. to Mot. to Dismiss (Pls.' Obj.) 10-11.) As they made a prima facie claim of successor liability in their complaint against New JJCI/Holdco and Kenvue, they argue the Defendants' motion should be

[3] Plaintiffs further allege another series of mergers, beginning in August 2024, subsequent to Kenvue receiving the assets of New JJCI/Holdco. *See* Am. Compl. ¶¶ 131-34. Those mergers are equally complex and led to the creation of Red River Talc LLC, Pecos River Talc, LLC, and New Holdco (Texas) LLC. Am. Compl. ¶¶ 134(a)-(c). The latter two are parties to this action. *See generally id*. However, they were created after the instant motion was filed and are not movants here.

dismissed. *Id*. at 11-20. Notably, Plaintiffs concede that LTL should be dismissed from this matter. *Id*. at 2 n.3. Defendants replied by arguing that Texas does have an interest in this case. *See generally* Defs.' Reply Mem.

Oral argument was heard on October 24, 2024. *See generally* Hr'g Tr., Oct. 24, 2024. At the hearing, the Court granted Defendants' motion to dismiss LTL. *Id*. at 2:9-12. Additionally, it was represented to the Court that Plaintiffs agreed not to object to the motion as it applies to Janssen, so it too was dismissed. *Id*. at 2:13-18. Having been fully briefed and arguments heard, this matter is ripe for adjudication as it pertains to New JJCI/Holdco and Kenvue. However, since those arguments were heard, Plaintiffs moved the Court to file an amended complaint; the Court granted that motion and Plaintiffs filed their Amended Complaint on February 11, 2025. *See* Docket.

II

Standard of Review

"'The sole function of a motion to dismiss is to test the sufficiency of the complaint.'" *EDC Investment, LLC v. UTGR, Inc.*, 275 A.3d 537, 542 (R.I. 2022) (quoting *Pontarelli v. Rhode Island Department of Elementary and Secondary Education*, 176 A.3d 472, 476 (R.I. 2018)). In ruling on a motion to dismiss, the trial justice is "confined to the four corners of the complaint and must assume all allegations are true, resolving any doubts in plaintiff's favor." *Narragansett Electric Co. v. Minardi*, 21 A.3d 274, 278 (R.I. 2011). "A Rule 12(b)(6) motion 'does not deal with the likelihood of success on the merits, but rather with the viability of a plaintiff's bare-bones allegations and claims as they are set forth in the complaint.'" *Ferreira v. Child and Family Services*, 222 A.3d 69, 75 (R.I. 2019) (quoting *Hyatt v. Village House Convalescent Home, Inc.*, 880 A.2d 821, 823-24 (R.I. 2005)). "'A motion to dismiss may be granted only when it is

established beyond a reasonable doubt that a party would not be entitled to relief from the defendant under any set of conceivable facts that could be proven in support of its claim."' *Chase v. Nationwide Mutual Fire Insurance Company*, 160 A.3d 970, 973 (R.I. 2017) (quoting *Tri-Town Construction Co. v. Commerce Park Associates 12, LLC,* 139 A.3d 467, 478 (R.I. 2016)).

III

Analysis

A

Controlling Complaint

Given that Defendants filed their motion to dismiss against Plaintiffs' original Complaint and that Complaint was amended after hearing arguments, a question arises as to whether the original Complaint or the Amended Complaint controls this matter. It is well settled in Rhode Island that "[a]n amended pleading is a substitute for the original and supersedes it; the original no longer performs any function in the case." Kent, *Rhode Island Civil Practice* § 15.7 at 181 (2022). That principle has been reaffirmed by our Supreme Court on several occasions. *See Hall v. Insurance Co. of North America*, 666 A.2d 805, 806 (R.I. 1995) (holding that although an amended complaint supersedes an original complaint, the original complaint remains in the record for judicial admissions and to establish the date an action commenced); *see also Grieco v. Perry*, 697 A.2d 1108, 1109 (R.I. 1997) (holding that a defendant was not in default for failing to answer first amended complaint because second amended complaint superseded it regardless of whether defendant was served with the second amended complaint). Therefore, the Amended Complaint supersedes the original and is controlling in this matter.

However, that conclusion raises another question: is Defendants' motion to dismiss moot? Some courts, such as the United States District Court for the District of New Jersey, have held that

an "[a]mended [c]omplaint . . . supersedes [an] original [c]omplaint and renders [a] motion to dismiss moot" when the amended complaint does not explicitly reference or adopt the original complaint. *Asphalt Paving Systems, Inc. v. General Combustion Corp.*, No. 13-7318 (JBS/KMW), 2014 WL 12694205, at *1 (D.N.J. Mar. 5, 2014) (citing *West Run Student Housing Associates, LLC v. Huntington National Bank*, 712 F.3d 165, 171 (3d Cir. 2013)). Yet, other authorities have come to a different conclusion:

> "[D]efendants should not be required to file a new motion to dismiss simply because an amended pleading was introduced while their motion was pending. If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading. To hold otherwise would be to exalt form over substance." Wright, Miller & Kane, 6 *Federal Practice & Procedure* § 1476 (3d ed. 2010); *see* Kent § 15:7 n.2 (citing to Wright, Miller & Kane § 1476).

The Fifth Circuit has adopted the position of Wright, Miller, and Kane, holding that when an amended complaint contains the same deficiencies that a defendant's motion to dismiss argues are within the original complaint, a district court may consider the motion to dismiss relative to the amended complaint. *Rountree v. Dyson*, 892 F.3d 681, 683-84 (5th Cir. 2018).

Here, Defendants argue as a matter of Texas law that the Court cannot grant Plaintiffs the relief they request. *See generally* Defs.' Mem. While Plaintiffs' Amended Complaint provides a clearer picture of the divisional mergers that occurred in Texas than its original Complaint, it does not extinguish the choice of law argument that Defendants pose. *Compare* Am. Compl. ¶¶ 56-72, *with* Compl. ¶¶ 61-71. As a result, Defendants' motion to dismiss is not moot, and the Court will consider it relative to the Amended Complaint.

B

Choice of Law

1

Successor Liability Law in Rhode Island and Texas

Plaintiffs seek to hold Defendants liable as successors in interest to Old JJCI. The general rule of successor liability in Rhode Island is that "a company that purchases the assets of another is not liable for the debts of the transferor company." *H.J. Baker & Bro., Inc. v. Orgonics, Inc.*, 554 A.2d 196, 205 (R.I. 1989). Yet, our Supreme Court noted that there are exceptions to that general rule, including when the "new company 'is merely a continuation or a reorganization of another, and the business or property of the old corporation has practically been absorbed by the new [company].'" *Id*. (quoting *Cranston Dressed Meat Co. v. Packers Outlet Co.*, 57 R.I. 345, 348, 190 A. 29, 31 (1937)). It then adopted several factors from the New Jersey Superior Court to determine when a new corporate entity is the mere continuation of a former entity:

> "(1) there is a transfer of corporate assets; (2) there is less than adequate consideration; (3) the new company continues the business of the transferor; (4) both companies have at least one common officer or director who is instrumental in the transfer; and (5) the transfer renders the transferor incapable of paying its creditors because it is dissolved either in fact or by law." *Id*. (citing *Jackson v. Diamond T. Trucking Co.*, 241 A.2d 471, 477 (N.J. 1968)).

That is not an exhaustive list, and other courts have considered factors such as "the common identity of officers, directors, and stockholders . . . and the continued use of the same office space and service to the same client base[.]" *Id*. (internal citations omitted).

Additionally, there is an exception known as the *de facto* merger theory. The Rhode Island Superior Court has recently stated that "[o]ur Supreme Court has recognized the existence of such a theory but has yet to apply it." *Great Point, Inc. v. NE Fibers, LLC*, No. KC-2019-0705, 2024

WL 4646426, at *6 (R.I. Super. Oct. 25, 2024) (citing *Douglas v. Bank of New England*, 566 A.2d 939, 941 (R.I. 1989)). The factors to consider when applying that exception are:

> "'1. that there was a continuation of the enterprise of the selling corporation vis a vis a continuation of management personnel, physical location, assets, and general business operation;
> "2. that there is a continuity of shareholders resulting from the purchase of the assets with shares of stock, rather than cash;
> "3. that the selling corporation ceases operations, liquidates, or dissolves as soon as possible; and
> "4. that the purchasing corporation assumes the obligations of the selling corporation necessary for uninterrupted continuation of business.'" *Id.* (quoting *Blouin v. Surgical Sense, Inc.*, No. PC-07-6855, 2008 WL 2227781, at *6 (R.I. Super. May 12, 2008).

The mere continuation and *de facto* merger exceptions to the general rule of successor liability have been treated as the same theory by persuasive authorities. See Timothy J. Murphy, *A Policy Analysis of a Successor Corporation's Liability for its Predecessor's Defective Products when the Successor has Acquired the Predecessor's Assets for Cash*, 71 Marq. L. Rev. 815, 821 (1988) ("In essence, the policy behind [the "mere continuation"] exception is the same as that behind the *de facto* merger exception in that a corporation should not be able to avoid liabilities merely due to a change in its form or name.").

However, as noted above, Defendants argue that Texas law should apply, and Texas law only allows for liabilities to transfer to a successor corporation when such liabilities were explicitly allocated to it during the divisional merger, "except as otherwise provided by the plan of merger or by law or contract[.]" *See* Tex. Bus. Orgs. Code Ann. § 10.008(a)(4). That statute mirrors the general rule of successor liability in Rhode Island. Yet, Texas law does not provide for the mere continuation and *de facto* merger exceptions that Rhode Island law allows. *See Shapolsky v. Brewton*, 56 S.W.3d 120, 137-38 (Tex. App. 2001); *see also Sammi Machinery Co. Ltd. v. Mathews*, No. 09-19-00017CV, 2019 WL 3022550, at *8 (Tex. App. July 11, 2019). "The only

two circumstances in which a successor business that acquires the assets of another business also acquires its liabilities or debts are (1) the successor expressly agrees to assume liability or (2) the acquisition results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor." *United States v. Americus Mortgage Corp.*, No. 4:12-cv-02676, 2013 WL 4829284, at *4 (S.D. Tex. Sept. 10, 2013). Thus, the applicability of those exceptions hinges on the determination of whether Rhode Island law or Texas law applies to the instant matter.

2

Interest Weighing Approach

Rhode Island courts have adopted an interest-weighing approach when it comes to determining choice of law questions. *See Smile of the Child v. Estate of Papadopouli*, 272 A.3d 99, 107 (R.I. 2022); *see also Harodite Industries, Inc. v. Warren Electric Corp.*, 24 A.3d 514, 534 (R.I. 2011). In doing so, the Court will "'look at the particular facts and determine therefrom the rights and liabilities of the parties in accordance with the law of the state that bears the *most significant relationship* to the event and the parties.'" *Smile of the Child*, 272 A.3d at 107 (quoting *Harodite Industries*, 24 A.3d at 534). There are five policy considerations to reach a determination of which law applies: "'(1) Predictability of results[;] (2) Maintenance of interstate and international order[;] (3) Simplification of the judicial task[;] (4) Advancement of the forum's governmental interests[;] (5) Application of the better rule of law.'" *Smile of the Child*, 272 A.3d at 107 (quoting *Harodite Industries*, 24 A.3d at 534). Those considerations are appropriately named the Policy Considerations.

There are four additional factors to be considered when an action sounds in tort. *See Harodite Industries*, 24 A.3d at 534; *see also Brown v. Church of the Holy Name of Jesus*, 105 R.I. 322, 326-27, 252 A.2d 176, 179 (1969). Those factors are:

> "(a) the place where the injury occurred,
> "(b) the place where the conduct causing the injury occurred,
> "(c) the domicil[e], residence, nationality, place of incorporation and place of business of the parties, and
> "(d) the place where the relationship, if any, between the parties is centered." *Harodite Industries*, 24 A.3d at 534 (internal quotation omitted).

The Tort Factors require this Court to making findings of fact. *See id*. However, the Court notes the procedural posture of this motion; it is a motion to dismiss pursuant to Rule 12(b)(6) of the Superior Court Rules of Civil Procedure, thus, the Court must accept the allegations pled in the Amended Complaint as true to test its legal sufficiency. *See Narragansett Electric Co.*, 21 A.3d at 278.

3

Applying the Tort Factors

The Court begins its analysis by first applying the Tort Factors. Regarding the first Tort Factor, the place where the injury occurred, Plaintiffs allege that Susan's injury occurred in the state of Rhode Island as that is where she purchased and consumed Johnson's Baby Powder and was diagnosed with mesothelioma. *See* Am. Compl. ¶¶ 1, 2, 14. Regarding the second factor, the place where the conduct causing the injury occurred is alleged to be the sale of the defective baby powder in Rhode Island. *See id*. ¶¶ 14, 15, 51, 53. Therefore, the first two factors weigh in favor of only Rhode Island having an interest in this matter.

As to the third factor—the place of residence, incorporation, and principal place of business of the parties—New JJCI/Holdco is alleged to be a New Jersey corporation with its principal place of business in New Jersey. *Id*. ¶ 51. Kenvue is alleged to be a Delaware corporation with its principal place of business in New Jersey. *Id*. ¶ 53. Susan is a resident of Rhode Island. *Id*. ¶ 1. While this factor only slightly leans toward the application of Rhode Island law, neither New

JJCI/Holdco nor Kenvue are Texas corporations with a principal place of business there; therefore, this factor does not lean in favor for the application of Texas law. Finally, if there is any relationship between the parties, such a relationship would center in Rhode Island as that is the state where Susan allegedly purchased, consumed, and was injured by Defendants' products. Further, even if Rhode Island is not the correct center of relationship between the parties, there is nothing to persuade the Court that Texas could be properly considered the center of the relationship. The only allegation tying Texas into this matter is the fact that Defendants unilaterally decided to undergo a divisional merger there. Thus, the Tort Factors overwhelmingly lead to the conclusion that Rhode Island is the only state interested in this matter and that its laws should be applied.

4

Policy Considerations

Regarding the first Policy Consideration, predictability of results, the Court notes that this action "was initiated in a Rhode Island court, [thus], the parties should be able to expect Rhode Island law to apply to the case." *Smile of the Child*, 272 A.3d at 107-08. Additionally, Defendants have not argued that this Court lacks jurisdiction over them; therefore, it was foreseeable that they could be sued in this forum applying its own laws. As a result, "the predictability-of-results factor favors the application of Rhode Island law." *Id*. at 108.

The second factor—maintenance of interstate order—also points toward application of Rhode Island law. Neither New JJCI/Holdco nor Kenvue are Texas corporations; thus, it is doubtful that Texas would be offended by Rhode Island applying its own law against two corporations that are foreign to both forums, despite New JJCI/Holdco coming into existence under a divisional merger in Texas. *See Harodite Industries*, 24 A.3d at 527, 534-35 (holding that

Massachusetts would not be offended by applying Rhode Island law against a non-Massachusetts corporation). The third factor, simplification of the judicial task, does weigh in favor of the application of Texas law; should Texas law be applied then there is no need to determine if New JJCI/Holdco or Kenvue is the mere continuation of Old JJCI or if a *de facto* merger occurred.

However, the third factor is almost immediately nullified by the fourth factor, advancement of the forum's governmental interests. Rhode Island's interest in allowing a claimant the opportunity to recover from injuries and wrongs done to him or her is so strong that it is enshrined in our state's constitution. *See* R.I. Const. art. 1, § 5 ("Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character."). Texas, on the other hand, has no interest in protecting either a Rhode Island resident, a New Jersey corporation, or a Delaware corporation. Therefore, the fourth factor leans in favor of Rhode Island.

Finally, the fifth policy consideration, the better rule of law, suggests Rhode Island law should be applied. The application of Texas law in this instance would deprive a Rhode Island resident from recovering against two corporations, one a New Jersey corporation and the other a Delaware corporation. That result would effectively immunize New JJCI/Holdco and Kenvue from any liability whatsoever for mesothelioma their products may have caused in any jurisdiction. *See Dodson v. Ford Motor Co.*, No. PC 96-1331, 2006 WL 2642199, at *7 (R.I. Super. Sept. 5, 2006) (providing that Rhode Island punitive damage law was better because Michigan law would effectively immunize the defendant's actions verging on criminality). Such a result would be shocking, considering the allegation that LTL and LLT both have not received any assets from the divisional merger, greatly decreasing Plaintiffs' chances to recover if they were to be found liable.

5

Rhode Island Law Applies

Both the Tort Factors and the Policy Considerations overwhelmingly support the contention that Rhode Island is the only state with an interest in this matter and that Texas has no interest whatsoever. Accordingly, Rhode Island law applies to the action at hand. Defendants' unilateral decision to perform a divisive merger under Texas law—and then transfer those entities to new jurisdictions—is insufficient to provide Texas an overriding interest in this action.

C

Prima Facie Case for Successor Liability

The Court notes that Defendants do not argue that Plaintiffs have not sufficiently pled a prima facie case to suggest New JJCI/Holdco and Kenvue are the successors in interest to Old JJCI; rather, their entire argument consists of Texas law being the appropriate law to apply. *See generally* Defs.' Mem.; *see also* Defs.' Reply Mem. Nevertheless, the Court will address the allegations of the Amended Complaint to determine, independently, if such a case has been made.

Once more the Court notes the procedural posture of this motion; Rhode Island has a liberal notice pleading standard, meaning "a pleading need not include the ultimate facts that must be proven in order to succeed on the complaint or to set out the precise legal theory upon which his or her claim is based." *Oliver v. Narragansett Bay Insurance Company*, 205 A.3d 445, 451 (R.I. 2019) (internal quotation omitted). "Rather, the pleading simply must provide the opposing party with fair and adequate notice of the type of claim being asserted." *Id*. (internal quotation omitted).

Plaintiffs have clearly met this minimal burden. New JJCI/Holdco is alleged to be the successor in interest to Old JJCI. Am. Compl. ¶ 51. Kenvue is alleged to be the successor in interest to both New JJCI/Holdco and Old JJCI. *Id*. ¶ 53. Further, Plaintiffs explicitly provide that they

will argue for successor liability under four different theories; (1) the mere continuation theory, (2) the *de facto* merger theory, (3) that the mergers were fraudulent to escape liability, and (4) the product line exception. *Id*. ¶¶ 123, 125. Those allegations alone are sufficient to put Defendants on notice of the type of claim and legal theory Plaintiffs will utilize in attempting to have them held liable. *See Oliver*, 205 A.3d at 451.

However, Plaintiffs go above and beyond, as they allege in detail the exact process of the divisive merger and follow the assets flowing from Old JJCI to first New JJCI/Holdco and then to Kenvue. *See id*. ¶¶ 121(a)-(j) (assets from Old JJCI to New JJCI/Holdco); *see also id*. ¶¶ 124(a)-(f) (assets from New JJCI/Holdco to Kenvue). Additionally, the Amended Complaint contains allegations that the employees and management of Old JJCI remained the same with New JJCI/Holdco. *Id*. ¶¶ 123(a)-(b). Further, it is alleged that New JJCI/Holdco operated out of the same facilities as Old JJCI and assumed the necessary contracts and obligations of Old JJCI—minus the talc liabilities—to resume business operations uninterrupted. *Id*. ¶¶ 123(c)-(g). There are also similar allegations made relative to Kenvue. *Id*. ¶¶ 125(a)-(j). Those allegations directly address the mere continuation and *de facto* merger factors.

Accordingly, Plaintiffs' Amended Complaint states a legally and factually sufficient claim against Defendants that adequately provides notice of what is being asserted relative to successor liability.

D

Fraudulent Transfer

Finally, the Court notes that in addition to the mere continuation and *de facto* merger theories of successor liability, Plaintiffs additionally allege that the divisional mergers Defendants underwent to achieve Project Plato were performed fraudulently to escape liability from asbestos

and other litigation. *See id*. ¶¶ 123, 125. Specifically, Plaintiffs claim that "[p]er the sworn testimony of Johnson & Johnson and Kenvue executives, the purpose and intent of Project Plato was to create an entity (LTL Management, LLC) to 'allocate talc liabilities' and 'stop litigation completely.'" *Id*. ¶ 120(f). Additionally, "[a]n October 5, 2021, internal Johnson & Johnson e-mail[] expressed [that] the purpose of Project Plato was to ensure the talc liabilities would have 'no impact on the Enterprise' (the 'Enterprise" was internal lingo for Johnson & Johnson, the parent entity)." *Id*. ¶ 120(g). Those allegations meet the heightened pleading requirement for fraud. *See* Super. R. Civ. P. 9(b); *see also* Kent, *Rhode Island Civil Practice* § 9.2 at 109 ("What constitutes sufficient particularity necessarily depends upon the nature of the case and should always be determined in the light of the purpose of the rule to give fair notice to the adverse party and to enable him to prepare his responsive pleading.").

Rhode Island law recognizes an exception to the general rule against successor liability when "the divesting corporation transferred its assets with actual fraudulent intent to avoid, hinder, or delay its creditors[.]" *Ed Peters Jewelry Co., Inc. v. C & J Jewelry Co., Inc.*, 124 F.3d 252, 266 (1st Cir. 1997) (applying Rhode Island law); *see H.J. Baker*, 554 A.2d at 205-06; *see also* G.L. 1956 § 6-16-4(a)(1) ("A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation: (1) [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor[.]"). In determining whether a transfer was fraudulent, the General Assembly has provided eleven non-exclusive factors for consideration including:

> "(1) The transfer or obligation was to an insider . . .
> "(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
> "(5) The transfer was of substantially all the debtor's assets . . .

> "(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
> "(10) The transfer occurred shortly before or shortly after a substantial debt was incurred[.]" Section 6-16-4(b).

As stated above, Plaintiffs allege that the asset transfers and divisive mergers occurred between Johnson & Johnson subsidiaries and that they were in response to ongoing talc litigation to "stop litigation completely." Thus, Plaintiffs have adequately pled that Defendants made the transfers fraudulently to hinder or delay talc related litigation.

What separates this theory of successor liability from the mere continuation and *de facto* merger theories is that Texas law also recognizes an exception to its statutory rule against successor liability when "the acquisition results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor." *Americus Mortgage Corp.*, 2013 WL 4829284, at *4. The text of the Texas statute, the Texas Uniform Fraudulent Transfer Act, matches the Rhode Island statute almost verbatim. *Compare* § 6-16-4, *with* Tex. Bus. Orgs. Code Ann. § 24.005. It includes the same eleven factors for consideration of when a transfer is fraudulent as the Rhode Island statute. *See id*. Defendants aver that the Third Circuit did not "take[] issue with the propriety of the [initial] corporate restructuring" and that "[t]his Court should not either[,]" however, the Third Circuit was only tasked with finding if LTL's bankruptcy proceedings were initiated in bad faith—which it did find—and not whether the restructuring was fraudulent. *See* Defs.' Mem. at 8; *see generally In re LTL Management, LLC*, 64 F.4th 84.

Therefore, even if Texas law were to apply to the instant action—and Plaintiffs were precluded from asserting either the mere continuation or *de facto* merger theories of liability—Defendants still would not be properly dismissed because they still could be held liable via the alleged fraudulent transfers under Texas law.

IV

Conclusion

For the foregoing reasons, Defendants' motion to dismiss is **DENIED**. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Susan and Brian Soares v. Avon Products Inc., et al.**
CASE NO:	**PC-2024-01631**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**March 21, 2025**
JUSTICE/MAGISTRATE:	**Gibney, P.J.**
ATTORNEYS:	
For Plaintiff:	**Brian P. Kenney, Esq.**
For Defendant:	**Stephen T. Armato, Esq.; Andrew R. McConville, Esq.; Christopher C. Storm, Esq.; James R. Oswald, Esq.; Jacqueline A. Crockwell, Esq.; Kelly Kincaid, Esq.; Peter Mathieu, Esq.; Matthew C. Oleyer, Esq.; Stephanie M. Batchelder, Esq.; Paul E. Dwyer, Esq.; Karlene E. Manley, Esq.; Lisa O. White, Esq.; Emyr T. Remy, Esq.; Michael F. McVinney, Esq.; Nancy Kelly, Esq.; Kimberly A. Caplik, Esq.; Benjamin A. Pushner, Esq.**