

PHILADELPHIA COURT OF COMMON PLEAS  
**PETITION/MOTION COVER SHEET**

CONTROL NUMBER:  
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October \_\_\_\_\_ Term, 1986  
*Month Year*  
 No. 0001

In re: Asbestos Litigation  
 \_\_\_\_\_  
 vs.  
 \_\_\_\_\_

Name of Filing Party:  
 Crown Cork & Seal Co., Inc.  
 (Check one)  Plaintiff  Defendant  
 (Check one)  Movant  Respondent

**INDICATE NATURE OF DOCUMENT FILED:**  
 Petition (Attach Rule to Show Cause)  Motion  
 Answer to Petition  Response to Motion

Has another petition/motion been decided in this case?  Yes  No  
 Is another petition/motion pending?  Yes  No  
 If the answer to either question is yes, you must identify the judge(s):  
 Honorable Allan L. Tereshko

TYPE OF PETITION/MOTION (see list on reverse side) Reply In Support of Global Motion for Summary Judgment	PETITION/MOTION CODE (see list on reverse side) MTSJD
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**I. CASE PROGRAM**  
 Is this case in the (answer all questions):  
**A. COMMERCE PROGRAM**  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**B. DAY FORWARD/MAJOR JURY PROGRAM** — Year \_\_\_\_\_  
 Name of Judicial Team Leader: \_\_\_\_\_  
 Applicable Petition/Motion Deadline: \_\_\_\_\_  
 Has deadline been previously extended by the Court?  
 Yes  No  
**C. NON JURY PROGRAM**  
 Date Listed: \_\_\_\_\_  
**D. ARBITRATION PROGRAM**  
 Arbitration Date: \_\_\_\_\_  
**E. ARBITRATION APPEAL PROGRAM**  
 Date Listed: \_\_\_\_\_  
**F. OTHER PROGRAM:** \_\_\_\_\_  
 Date Listed: \_\_\_\_\_

**II. PARTIES**  
 (Name, address and **telephone number** of all counsel of record and unrepresented parties. Attach a stamped addressed envelope for each attorney of record and unrepresented party.)  
 See Attached Service List

**III. OTHER**  
 \_\_\_\_\_  
 Asbestos Litigation Phila. Ccp Vs. A.C.&S. I-REPLY



By filing this document and signing below, the moving party certifies that this motion will be served upon all counsel and unrepresented parties as required by rules of Court moving party verifies that the answers made herein are true and correct and understar answers.

If documents filed, 440). Furthermore, urate or incomplete

\_\_\_\_\_  
 (Attorney Signature/Unrepresented Party)      10/17/08      Mathieu J. Shapiro      76266  
 (Date)      (Print Name)      (Attorney I.D. No.)

**The Petition, Motion and Answer or Response, if any, will be forwarded to the Court after the Answer/Response Date. No extension of the Answer/Response Date will be granted even if the parties so stipulate.**

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**IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

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**CROWN CORK & SEAL CO. INC.'S  
GLOBAL MOTION  
FOR SUMMARY JUDGMENT**

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:  
: CIVIL ACTION --LAW  
:  
: OCTOBER TERM, 1986  
:  
: NO. 0001

**CROWN CORK & SEAL COMPANY, INC.'S  
REPLY IN SUPPORT OF ITS  
GLOBAL MOTION FOR SUMMARY JUDGMENT**

Defendant Crown Cork & Seal Company, Inc. ("Crown"), by and through its undersigned counsel, respectfully submits this Reply in Support of its September 3, 2008 Global Motion for Summary Judgment.

**INTRODUCTION**

In their responses, plaintiffs do not dispute the two basic premises in Crown's Global Motion for Summary Judgment: (1) Crown satisfies the factual predicate necessary to limit its asbestos-related successor liability under 15 Pa.C.S.A. § 1929.1 (the "Statute"); and, (2) because Crown satisfies the factual predicate, the Statute entitles Crown to summary judgment on all asbestos-related lawsuits. Setting limits on successor liability incurred in connection with a merger is certainly within the power of the Legislature – which created that liability in the first place. See, e.g., Posadas de Puerto

Rico Associates v. Tourism Co. of P.R., 478 U.S. 328, 345-46, 106 S.Ct. 2968, 2979, 92 L.Ed.2d 266 (1986) (“the greater power . . . necessarily includes the lesser power . . .”).

Nonetheless, two law firms have filed two responses opposing Crown’s Motion. The Brookman, Rosenberg Firm and the Paul, Reich & Myers Firm. Each response consists of a short letter and the attachment (and incorporation) of a brief previously filed in opposition to an earlier global motion for summary judgment. Each letter addresses Article III, § 32 of the Pennsylvania Constitution and claims that a newly decided case, Pennsylvania Turnpike Commission v. Commonwealth of Pennsylvania, should change this Court’s analysis. The Paul Firm also addresses in its letter the Commerce Clause of the United States Constitution.

The two incorporated briefs raise widely different issues and overlap only to a limited extent – though all of the remaining arguments were rejected previously by this Court. See In re Asbestos Litigation, 59 D.&C. 4<sup>th</sup> 62 (Pa. C.C.P. 2002), reversed on other grounds, Ieropoli v. AC&S, 577 Pa. 138, 842 A.2d 919 (2004).

In this Reply, Crown will first address those issues raised by both firms, which include the issues newly addressed in plaintiffs’ letters. Crown will then address the issues raised only by the attached Brookman Firm brief. Then it will address the issues raised by the attached Paul Firm brief.

**I. ARGUMENTS RAISED BY BROOKMAN AND PAUL THAT THIS COURT PREVIOUSLY REJECTED**

Each of the constitutional arguments raised by both the Brookman and Paul Firms in Response to Crown’s Global Motion was previously rejected by this Court. In re: Asbestos Litigation, 59 Pa. D. & C.4<sup>th</sup> at 72-80, 88-99. The Supreme Court, in Ieropoli, did not address the arguments. Nonetheless, Justice Newman, joined by Justice Eakin,

noted that she would “affirm the well-reasoned Opinion of the trial court rejecting each of these contentions.” Ieropoli, 577 Pa. at 164, 842 A.2d at 935 (Newman, dissenting).

**A. The Statute Has Nothing To Do With Commerce And So Cannot Possibly Violate The Commerce Clause**

Brookman in its incorporated Brief and Paul in both its Brief and its letter argue that the Statute violates the Commerce Clause of the United States Constitution.” This Court previously rejected this contention for three compelling reasons. Underlying all three reasons, of course, is the well-settled doctrine that those seeking to nullify a statute on constitutional grounds bear an extremely heavy burden:

The strong presumption of constitutionality enjoyed by acts of the General Assembly and the heavy burden of persuasion on the party challenging an act have been so often stated as to now be axiomatic. Legislation will not be invalidated unless it clearly, palpably, and plainly violates the Constitution, and any doubts are to be resolved in favor of a finding of constitutionality.

Pennsylvania Liquor Control Board v. The Spa Athletic Club, 506 Pa. 364, 370, 485 A.2d 732, 735 (1984); see also Rust v. Sullivan, 500 U.S. 173, 191, 111 S.Ct. 1759, 1771, 114 L.Ed.2d 233 (1991). This presumption of constitutionality is further mandated by the Statutory Construction Act, 1 Pa.C.S. § 1922(3) (the Legislature does not intend to violate the Constitution).

**1. Plaintiffs Have No Standing**

As this Court previously and correctly concluded, plaintiffs have no standing to raise a Commerce Clause challenge to the Statute because the Statute “attempts to rationally relate state corporations’ successor liability to the value of the assets of the acquired corporations,” and it “is not even marginally related to the underlying purpose of the Commerce Clause.” In re Asbestos Litigation, 59 D.&C. 4<sup>th</sup> at 82.

To have standing to raise a Commerce Clause challenge, a party must “fall within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.” Valley Forge Christian College v. Americans United for Separation of Church & State, Inc., 454 U.S. 464, 475, 102 S.Ct. 752, 760, 70 L.Ed.2d 700 (1982); Upper Bucks County Vocational-Technical School Educ. Ass’n v. Upper Bucks County Vocational-Technical School Joint Committee, 504 Pa. 418, 423, 474 A.2d 1120, 1123 (1984), citing Assoc. of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). The Commerce Clause was intended primarily to limit the “power of the States to erect barriers against interstate trade.” Dennis v. Higgins, 498 U.S. 439, 446, 111 S.Ct. 865, 870, 112 L.Ed.2d 969 (1991).

Neither Brookman nor Paul asserts that the plaintiffs in the instant matter have been injured by a barrier against interstate trade, but rather, that they will be injured if their cases are dismissed. Their interest in pursuing litigation against Crown is, at most, only “marginally related to . . . the purposes implicit in” the Commerce Clause – preventing barriers to interstate trade. See Wyoming v. Oklahoma, 502 U.S. 437, 469, 112 S.Ct. 789, 808, 117 L.Ed.2d 1 (Scalia, J., dissenting) (1992); Individuals for Responsible Gov’t v. Washoe County, 110 F.3d 699, 703 (9<sup>th</sup> Cir.), cert. denied, 522 U.S. 966, 118 S.Ct. 411, 139 L.Ed.2d 315 (1997) (unlike garbage haulers or landfills owners excluded from a market by local waste regulations, waste generators forced to pay fees to in-state haulers or landfills lack standing under dormant Commerce Clause); On the Green Apts., L.L.C. v. Tacoma, 241 F.3d 1235, 1239-40 (9<sup>th</sup> Cir. 2001) (same); Ben Oehrleins & Sons & Daughter, Inc. v. Hennepin County, 115 F.3d 1372, 1381-82 (8<sup>th</sup> Cir.), cert. denied, 522 U.S. 1029, 1036, 118 S.Ct. 643, 139 L.Ed.2d 609, 621 (1997)

(same); Houlton Citizens' Coalition v. Houlton, 175 F.3d 178, 182-83 (1<sup>st</sup> Cir. 1999) (discussing, but not deciding the issue).

This Court correctly concluded in 2002 that asbestos plaintiffs lacked standing to raise a Commerce Clause challenge to the Statute, and it should do so once again.

## 2. **Section 1929.1 Does Not Affect Interstate Commerce**

This Court also correctly concluded that the ability to recover damages – which is what the Statute regulates – is not an article of commerce subject to the Commerce Clause. In re Asbestos Litigation, 59 D.&C. 4<sup>th</sup> at 75-76.

The dormant Commerce Clause prohibits states from “advanc[ing] their own commercial interests by curtailing the *movement of articles of commerce*, either into or out of the state.” H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 535, 69 S.Ct. 657, 663, 93 L.Ed. 865 (1949) (emphasis added); Okla. Tax Com'n v. Jefferson Lines, Inc., 514 U.S. 175, 179-80, 115 S.Ct. 1331, 131 L.Ed.2d 261 (1995) (dormant Commerce Clause prohibits states from “acting in a manner that burdens the flow of interstate commerce”). Altering the remedies available for a certain tort does not in any way affect “commerce.” City of Philadelphia v. New Jersey, 437 U.S. 617, 622, 98 S.Ct. 2531, 2534, 57 L.Ed.2d 475 (1978) (Commerce Clause protects “all objects of interstate trade”); Black’s Law Dictionary 269 (6<sup>th</sup> ed. 1990) (commerce is “the exchange of goods, productions, or property of any kind; buying, selling, and exchanging of articles”); 15A Am.Jur.2d Commerce §42 (2000) (“generally speaking, anything that can be bought and sold is a subject of commerce”). As this Court previously noted, a tort action is not an article of commerce; rather, it is the state-created right of a citizen to redress a wrong or a harm he has suffered. Moyer v. Phillips, 462 Pa. 395, 341 A.2d 441 (1975).

Because § 1929.1 does not affect interstate commerce, plaintiffs' dormant commerce clause challenge must fail. United Waste Systems of Iowa, Inc. v. Wilson, 189 F.3d 762, 765 (8<sup>th</sup> Cir. 1999) (in evaluating whether challenged regulation impermissibly infringes on interstate commerce, courts must first determine whether "regulation even affects interstate commerce").

**3. Section 1929.1 Does Not Discriminate Against Interstate Commerce**

Finally, § 1929.1 does not discriminate against interstate commerce.

The Statute distinguishes Pennsylvania from non-Pennsylvania companies only in that it applies solely to a certain class of Pennsylvania corporations. It is well-settled that a state's enactment of legislation that affects solely domestic corporations is not an instance of discrimination against either foreign corporations or interstate commerce. CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 88, 107 S.Ct. 1637, 1649, 95 L.Ed.2d 67 (1987). Rather, it is entirely appropriate: "As long as a State's corporation law governs only its own corporations and does not discriminate against out-of-state interests, it should survive this Court's scrutiny under the Commerce Clause, whether it promotes shareholder welfare or industrial stagnation." CTS Corp., 481 U.S. at 95-96, 107 S.Ct. at 1653 (Scalia, concurring). As the United States Supreme Court explained:

So long as each State regulates . . . only in the corporations it has created, each corporation will be subject to the law of only one State. No principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations . . .

481 U.S. at 89, 107 S.Ct. at 1649.

Besides regulating only those corporations that Pennsylvania has created, the Statute does not discriminate. This Court previously noted that the "cast of plaintiffs

immediately affected by the legislation include both Pennsylvania residents and non-Pennsylvania residents.” 59 D.&C. 4<sup>th</sup> at 77. Indeed, in the prior motion, thirty-three percent of the plaintiffs were non-Pennsylvania residents. Id. Further, as to the “vast majority” of asbestos defendants, “whose respective liabilities arise out of direct culpability,” the Statute “makes no distinction between Pennsylvania companies and foreign companies.” Id. For these reasons, the Court previously concluded that the Statute “does not include any protectionist scheme.” Id. at 77-78.

Because the Statute does not discriminate against foreign corporations, but rather, regulates only Pennsylvania corporation law, it does not violate the dormant Commerce Clause.

#### **4. Plaintiffs Relied Upon Inapposite Cases Below**

As they did in the prior litigation, plaintiffs argue that § 1929.1 is “obviously” unconstitutional under several inapposite cases: Annenberg v. Commonwealth, 562 Pa. 570, 757 A.2d 333 (1998) and 562 Pa. 581, 757 A.2d 338 (2000); Juzwin v. Asbestos Corp., Ltd., 900 F.2d 686 (3d Cir.), cert. denied, 498 U.S. 896, 111 S.Ct. 246, 112 L.Ed.2d 204 (1990); and, C & A Carbone, Inc. v. Town of Clarkstown, N.Y., 511 U.S. 383, 114 S.Ct. 1677, 128 L.Ed.2d 399 (1994).

Annenberg is inapposite because it is a tax case, and there are “special values applicable to Commerce Clause challenges to state taxes.” Norfolk Southern Corp. v. Oberly, 822 F.2d 388, 399 n.16 (3d Cir. 1987), citing Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 287, 97 S.Ct. 1076, 1083, 51 L.Ed.2d 326 (1977). Because § 1929.1 does not impose a *tax* on any transaction or incident, Annenberg is entirely inapposite to the instant matter.

Even if Annenberg were applicable, however, it is readily distinguishable. Unlike the taxing statute in Annenberg, § 1929.1 is not facially discriminatory. In Annenberg, the plaintiff challenged a statute that imposed a tax on stock ownership of foreign corporation that did not do business in Pennsylvania. 562 Pa. at 577, 757 A.2d at 336. “The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce.” Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 126, 98 S.Ct. 2207, 2214, 57 L.Ed.2d 91 (1978). Rather, the challenged statute must *discriminate*. Taxing statutes discriminate if they “tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State.” Fulton Corp. v. Faulkner, 516 U.S. 325, 331, 116 S.Ct. 848, 854, 133 L.Ed.2d 796 (1996). By taxing a transaction or incident, the state engages in the “economic protectionism – that is, ‘regulatory measures designed to benefit in state economic interests by burdening out-of-state competitors’” – prohibited by the dormant Commerce Clause. Fulton, 516 U.S. at 330, 116 S.Ct. at 853. The taxing statute challenged in Annenberg discriminated because the only stock on which an owner was liable to pay Pennsylvania tax was the stock of foreign corporations that did not do business in Pennsylvania. 562 Pa. at 577, 757 A.2d at 336.

In contrast, the Statute in the instant matter simply sets a limit on the successor liability that has itself been created by Pennsylvania corporate merger law. It is entirely and appropriately silent as to both the remainder of all Pennsylvania corporations and all out-of-state corporations. The United States Supreme Court has unequivocally held that a state’s regulation of its own corporations does not constitute discrimination against corporations incorporated in the other forty-nine states: “[n]o principle of corporation law

and practice is more firmly established than a State's authority to regulate domestic corporations . . ." CTS Corp. v. Dynamics Corp., 481 U.S. 69, 89, 107 S.Ct. 1637, 1649, 95 L.Ed.2d 67 (1987). If the Statute is facially discriminatory because it regulates *only* Pennsylvania corporations, and therefore treats Pennsylvania corporations differently from out-of-state corporations, then every state's corporate business law unconstitutionally discriminates. This is obviously untenable.

Juzwin v. Asbestos Corp., Ltd. is equally inapplicable. In Juzwin, the defendant challenged the constitutionality of New Jersey's tolling law. 900 F.2d 686 (3d Cir. 1990). The law effectively denied foreign corporations the protection of New Jersey's statute of limitations. The law tolled the running of the statute for foreign corporations that were not represented in New Jersey, but allowed the statute to run with respect to New Jersey corporations and foreign corporations with registered agents in New Jersey. Id. at 688. The Third Circuit found the tolling statute to be facially discriminatory and unconstitutional because it "applie[d] to out-of-state corporations but not to New Jersey corporations . . ." and placed a "real burden" on them: "foreign corporations unrepresented but possibly amenable to long-arm service must make the difficult choice whether to file designations (with uncertain consequences) or forego a potential limitations defense, a burden that neither New Jersey corporations nor foreign corporations registered to do business in New Jersey bear." Id. at 689, 691.

In contrast, § 1929.1 applies only to Pennsylvania corporations – those created by the Commonwealth of Pennsylvania. See Posadas, supra ("the greater power . . . necessarily includes the lesser power . . .). As is set forth above, "[n]o principle of corporation law and practice is more firmly established than a State's authority to

regulate domestic corporations . . .” CTS Corp., 481 U.S. at 89, 107 S.Ct. 1637. And, as importantly, the Statute places no burden whatsoever on the decision-making or future transactions of out-of-state corporations. Unlike the tolling statute in Juzwin, § 1929.1 is entirely silent as to out-of-state corporations. And, every other state remains free to enact similar legislation regarding any corporate successor liability that that state has created. Thus, Juzwin is entirely inapplicable to the instant matter.

Finally, in C & A Carbone, Inc. v. Town of Clarkstown, the town of Clarkstown entered into a consent decree with the New York State Department of Environmental Conservation that required it to build a new solid waste transfer station, and then planned to finance the station by having a private contractor construct the facility and operate it for five years. 511 U.S. 383, 386-87, 114 S.Ct. 1677, 1680, 128 L.Ed.2d 399 (1994). During the five years, the town guaranteed a minimum waste flow of 120,000 tons, which it ensured by requiring all non-hazardous solid waste within the town to be deposited at the station. Id. The Court found that requiring waste to be deposited in the station was “a financing measure” insufficient to justify the substantial restriction the ordinance placed on the free flow of commerce. Id. at 393, 114 S.Ct. at 1684. The Court held that “having elected to use the open market to earn revenues for its project, the town may not employ discriminatory regulation to give that project an advantage over rival businesses from out of State.” Id. at 394, 114 S.Ct. at 1684.

Carbone is obviously different from the instant matter. Unlike the flow control ordinance in Carbone, the Statute has no impact on the free flow of any item of commerce. Further, the Statute does not constitute an election by the Commonwealth of Pennsylvania to use any “open market” to earn any “revenues.” To the contrary, and as

stated above, the Statute simply regulates domestic corporations. CTS Corp., 481 U.S. at 89, 107 S.Ct. 1637. Thus, Carbone bears no resemblance to the instant matter.

Because the cases relied on by the plaintiffs are inapposite, the Statute does not violate the Commerce Clause.

**B. Section 1929.1 Benefits A Class Of Pennsylvania Companies And So Cannot Be A “Special Law”**

Brookman and Paul speculate that Crown is the only corporation that will ever benefit from § 1929.1, thereby making the statute a “special law” prohibited by Article 3, §32 of the Pennsylvania Constitution. The Supreme Court has held, however, that this kind of theorizing cannot invalidate § 1929.1.

As discussed above, all legislation has a strong presumption of constitutionality, and those attempting to invalidate a statute have a heavy burden of persuasion. Harristown Dev. Corp. v. Com., 532 Pa. 45, 52, 614 A.2d 1128, 1132 (1992). Again, the Court may not declare § 1929.1 unconstitutional unless it “clearly, palpably and plainly violates the Constitution, with any doubts being resolved in favor of constitutionality.” Id.

Section 32 “requires that any statutory classification have a rational relationship to a proper state purpose.” Wilkesburg Police Officers Ass’n v. Commonwealth, 535 Pa. 425, 436, 636 A.2d 134, 140 (1993). Brookman sets out the allegedly “suspect” classifications found in § 1929.1: the Statute “impermissibly” distinguishes between corporations and other business entities; Pennsylvania corporations and foreign corporations; corporations incorporated before or after May 1, 2001; and corporations with successor-related liability as opposed to corporations with other types of liability.

Taken as a whole, Brookman contends that “the classifications are plainly intended solely to benefit Crown.” (Brookman Opposition, p. 14).

The Supreme Court rejected this argument in Harristown. There, the plaintiff challenged a statute (“Act 153”) that applied the provisions of the Sunshine Act and the Right to Know Law to all nonprofit corporations that had leases with the Commonwealth worth in excess of \$1,500,000. 532 Pa. at 49, 614 A.2d at 1130. The Harristown Development Corporation argued that Act 153 violated § 32 because the only nonprofit corporation in the Commonwealth that leased in excess of \$1,500,000 worth of space to the government was Harristown itself, and Act 153 was written specially for it. 532 Pa. at 51, 614 A.2d at 1131. The Supreme Court rejected the argument because there was a “rational basis” for the classifications:

Because Harristown is the largest supplier of rented space to the Commonwealth, and because the viability of state government depends upon assurance that it will continue to be able to have space for its various departments and agencies, the Commonwealth needs to be able to monitor the soundness of Harristown’s business operations and to avoid impending difficulty which may threaten Harristown’s continued operations and ability to provide rental space for government operations.

Id. at 52, 614 A.2d at 1132. The Court was not troubled that Harristown was the only known member of the class created by Act 153: “This court has held that a classification of one member is not unconstitutional so long as other members might come into that class.” 532 Pa. at 53 n.9, 614 A.2d at 1132 n.9.

Harrisburg Sch. District v. Hickock, which is cited by Brookman and discussed by Paul, illustrates the unsoundness of plaintiffs’ argument. In Harrisburg, a portion of the Education Empowerment Act was challenged. 563 Pa. 391, 761 A.2d 1132 (2000).

The Act generally required that poorly performing school districts be identified and assisted by the Department of Education. Plaintiff challenged the Reed Amendment to the Act, which exempted from the Act “a school district of the second class with a history of low test performance which is coterminous with the city of the third class which contains the permanent seat of government.” 563 Pa. at 395-96, 761 A.2d at 1135.

Unlike the class presently before this Court, the class in the Reed Amendment was, by its terms, explicitly limited to one member. As the Court pointed out, the statute authorizing the location of the capital specifies that there be only one capital city, and, therefore, there could be no more than one member of the class. 563 Pa. at 398, 761 A.2d at 1136. Further, there was no rational basis for treating the Harrisburg School District differently from other school districts with failed educational systems. 563 Pa. at 397-98, 761 A.2d at 1136.

The Supreme Court’s decision in Pennsylvania Turnpike Commission, 587 Pa. 347, 899 A.2d 1085 (2006), which both Brookman and Paul cite in their letters, is not to the contrary. Rather, it confirms that the Statute – whose protections are available to any Pennsylvania corporation – is not “special legislation” under Article III, § 32 of the Pennsylvania Constitution.

In Pennsylvania Turnpike Commission, the Commission challenged the constitutionality of the First-Level Supervisor Collective Bargaining Act, 43 P.S. §§ 1103.101 – 1103.701 (“FLSCBA”) on the grounds that it applied to a single public employer, the Turnpike Commission, and mandated collective bargaining with the Commission’s first-level supervisors. 899 A.2d at 1087.

Prior to adoption of the FLSCBA, the relationship between the Commission and its first-level supervisors was governed by the Public Employee Relations Act, which did not allow those supervisors either to collectively bargain or to strike. Id. As originally proposed, the FLSCBA mandated collective bargaining between first-level supervisors and all “public employers,” which the legislature defined broadly to include: “The Commonwealth, its political subdivisions including school districts and any officer, board, commission, agency, authority or other instrumentality thereof and any nonprofit organization or institution and any charitable, religious, scientific, literary, recreational, health, educational or welfare institution receiving grants or appropriations from Federal, State or local governments . . .” Id.

The FLSCBA subsequently was amended, and the expansive definition of “public employer” was replaced by as narrow a definition as is possible: “The Pennsylvania Turnpike Commission.” Id. at 1089. In its final form, the legislation thus drew a distinction, for purposes of labor relations, between first-level supervisors who work for the Turnpike Commission and first-level supervisors who work for all other government employers. Id. at 1095.

The Supreme Court held “that there is no rational reason to treat first-level supervisors of the Commission differently than all other first-level supervisors of other public employers when it comes to collective bargaining.” Id. at 1096. The Court went on to explain that there “is nothing distinctive about the Commission and its relationship with its first-level supervisors that separates it from all other Commonwealth public employers . . .” Id. Because the “narrow classification” did not bear a “reasonable relationship” to the legislature’s purpose, the statute was unconstitutional. Id. at 1097.

The Court also found that the FLSCBA “created a class with one member and did so in a fashion that makes it impossible for another member to join the class.” Id. at 1098. The Court explained that the class “will never open to more than one member” because the definition of “public employer” is “The Pennsylvania Turnpike Commission.” Id. Accordingly, the Court held that the FLSCBA could be deemed “*per se* unconstitutional.” Id.

The instant matter is entirely distinguishable from Pennsylvania Turnpike Commission because the Statute is not even remotely similar to the FLSCBA. The Statute does not favor one successor corporation over others. To the contrary, by its very terms, the Statute applies to any “domestic business corporation that was incorporated in this Commonwealth prior to May 1, 2001.” 15 Pa.C.S.A. § 1929.1(a).

The class defined by § 1929.1 is not limited in any way to Crown, nor have plaintiffs offered any evidence that only Crown currently satisfies its classifications. Indeed, until plaintiffs have finished suing every company with potential for asbestos-related damages, it will be impossible to know how many companies satisfy the classification. Further, and as discussed above, the Statute is obviously rational: it protects businesses and jobs by fairly and equitably limiting the successor liability to the value of the purchase that caused the liability. In these circumstances, § 1929.1 plainly does not violate § 32.

**C. The Statute Does Not Violate Equal Protection**

The Statute does not deny plaintiffs – or anyone else – equal protection of the law. As an initial matter, plaintiffs have no standing to challenge the Statute on this ground; the operation of the statute does not deprive plaintiffs of recovery since they may

potentially recover full compensation from one or more of the many other defendants they have sued here.

Paul's "equal protection" argument is not readily comprehensible. Paul argues that when it passed §1929.1, the Legislature believed Crown was an "unknowing victim of its own incompetence." The Legislature's alleged belief – which Paul presumes to know based on the statements of only two Legislators, not on any official Legislative findings of fact – somehow combines with a 1980 insurance coverage lawsuit to "establish" a violation of equal protection. (Paul, p. 8). Paul also cites "the desire to force others to pay Crown's share," although it is not clear whose "desire" is being referenced. (Paul, p. 8). It is not even clear who is allegedly being treated differently from whom. It is, thus, exceptionally difficult to analyze Paul's equal protection claim.

In any event, the Statute does not discriminate based on a suspect classification nor does it affect any fundamental rights. Accordingly, its constitutionality under the Equal Protection clause must be analyzed under the minimal "rational-basis" review applicable to general social and economic legislation. Bd. of Trustees of the Univ. of Alabama v. Garrett, 531 U.S. 356, 366, 121 S.Ct. 955, 963, 148 L.Ed.2d 866 (2001). Under the rational-basis test, a statute is constitutional unless the treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the Court can only conclude that the statute is irrational. Kimel v. Florida Board of Regents, 528 U.S. 62, 84, 120 S.Ct. 631, 646, 145 L.Ed.2d 522 (2000). The burden is on plaintiffs to negate "any reasonably conceivable state of facts that could provide a rational basis for the classification." Bd. of Trustees of the Univ. of Alabama, 531 U.S. at 367, 121 S.Ct. at 964.

The Statute is obviously rational: it protects businesses and jobs by fairly and equitably limiting the successor liability to the value of the assets involved in the merger that caused the liability. Because the Commonwealth has the power to create corporations, to allow them to merge, and to legislate the successor liability consequences of the merger, the Commonwealth is rationally permitted to set limits on that liability. See Posadas, supra (“the greater power . . . necessarily includes the lesser power . . .”). The Statute also is directed at the accomplishment of a legitimate interest: the attempted preservation of businesses and jobs. It does so in a fair and equitable manner: by altering the remedies available to asbestos plaintiffs, so that a protected defendant’s successor liability for asbestos-related injuries is no greater than the inflation-adjusted value of the assets of the company with which the defendant merged. This rational, laudable Statute in no way violates the Equal Protection clause of the Constitution. See Freezer Storage, Inc. v. Armstrong Cork Co., 476 Pa. 270, 276, 382 A.2d 715, 718 (1978) (upholding statute of repose for builders, as opposed to landowners, on the basis that builders faced greater potential liability); Lyles v. City of Philadelphia, 88 Pa. Commw. 509, 515-17, 490 A.2d 936, 941 (1985), aff’d, 512 Pa. 322, 516 A.2d 701 (1986) (upholding cap on tort damages).

## **II. ISSUES RAISED BY BROOKMAN’S INCORPORATED BRIEF**

### **A. The Statute Does Not Limit Personal Injury Damages**

Turning to the Pennsylvania Constitution, Brookman argues that § 1929.1 violates Article III, § 18 of the Pennsylvania Constitution, which prohibits “the General Assembly [to] limit the amount to be recovered for injuries to persons.”

As this Court previously noted: “[o]n its face, the Act says nothing about any such individual limitations. Further, there can be no logical inference that plaintiffs’ recovery will be diminished in any way.” In re Asbestos Litigation, 59 D.&C. 4<sup>th</sup> at 88. The Court then noted that the 378 cases included in the previous Motion included over 7,000 defendants, all of whom were subject to joint and several tort liability. Id. Although the numbers have presumably changed from the previous motion to the instant motion, the point remains the same: asbestos plaintiffs “remain free to recover without limit” for their asbestos-related injuries. Singer v. Sheppard, 464 Pa. 387, 397, 346 A.2d 897, 902 (1975).

The Supreme Court has previously admonished that § 18 challenges to legislation must be evaluated specifically “in the light of the evil intended to be remedied by [§ 18’s] adoption.” Singer, 464 Pa. at 396, 346 A.2d at 901, quoting Lewis v. Hollahan, 103 Pa. 425, 430 (1883). The evil intended to be remedied was the Act of April, 1868, which “placed absolute dollar maximums on the damages recoverable by the negligently injured plaintiff” of \$3,000.00 for personal injuries and \$5,000.00 for injuries resulting in death. Singer, 464 Pa. at 394, 396, 346 A.2d at 900-01. Section 1929.1 does not place a similar limit on a plaintiff’s recovery. Id. at 397, 346 A.2d at 902. Accordingly, § 1929.1 does not violate § 18.

**B. Section 1929.1’s Purpose, Subject, And Enactment  
Are Manifestly Proper**

The Pennsylvania Supreme Court long-ago recognized that attacks on the enactment of a bill are frequently invoked as the final ploy of litigants with no hope of success. McSorley v. Fitzgerald, 359 Pa. 264, 272, 59 A.2d 142, 146 (1948) (“As is not unusual in attempts to establish that a statute is unconstitutional, the final assault is made

on the title of the Act . . .”); Ewalt v. Pennsylvania Turnpike Comm’n, 382 Pa. 529, 536, 115 A.2d 729, 732-33 (1955) (same). This Court previously and correctly rejected Brookman’s “final ploy.”

Brookman argues that § 1929.1 was enacted in a flawed manner, in violation of Article III, §§ 1 and 3 of the Pennsylvania Constitution. Section 1 states that no bill “shall be so altered or amended, on its passage through either House, as to change its original purpose.” Section 3 states that “No bill shall be passed containing more than one subject, which shall be clearly expressed in its title . . .”

This Court previously found “uncontested that this Act qualifies under the Enrolled Bill Doctrine.” In re Asbestos Litigation, 59 D.&C. 4<sup>th</sup> at 96. Pursuant to the Enrolled Bill Doctrine, courts will not look beyond certified enactment of the legislation to the process by which the law came to be passed. Fumo v. Pa. Public Utility Com’n, 719 A.2d 10, 12 (Pa.Comm.w. 1998); Common Cause of Pa. v. Commonwealth, 668 A.2d 190, 195 (Pa.Comm.w. 1995), aff’d, 544 Pa. 512, 677 A.2d 1206 (1996) (when law has been passed, approved, and certified in due form, it is not part of the duty of the judiciary to go behind law to inquire into observance of form in its passage). This is because §§ 1 and 3 of Article III are not intended to allow second-guessing by the judiciary of the Legislature. Consumer Party of Pennsylvania v. Commonwealth, 510 Pa. 158, 180, 507 A.2d 323, 334 (1986) (“we must not inquire into every allegation of procedural impropriety in the passage of legislation”). They are intended only to prevent the passage of “sneak” legislation. L.J.W. Realty Corp. v. Philadelphia, 390 Pa. 197, 205, 134 A.2d 878, 883 (1957). As the Court rightly concluded previously, the instant matter presents neither the “limited” nor the “compelling” circumstances under which the Court should

look beyond the certified law to the enactment process. See Fumo, 719 A.2d at 13; Consumer Party, 510 Pa. at 180, 507 A.2d at 334.

If the Court were nonetheless to evaluate the enactment process, §1929.1 would once again enjoy a strong presumption of constitutionality, and plaintiffs would bear a heavy burden of persuasion. Common Cause/Pennsylvania v. Commonwealth, 710 A.2d 108, 116 (Pa. Commw. 1998), aff'd, 562 Pa. 632, 757 A.2d 367 (2000). The Court's inquiry still would be limited under §§ 1 and 3 to ensuring "that interested parties, and especially members of the General Assembly charged with representing the citizens of the Commonwealth, are on notice of the contents of a bill and are not misled by the title or general contents of a bill." Fumo, 719 A.2d at 13; Barasch v. Pennsylvania Public Utility Com'n, 516 Pa. 142, 168, 532 A.2d 325, 338 (1987), aff'd, 488 U.S. 299, 109 S.Ct. 609, 102 L.Ed.2d 646 (1989); In re Condemnation by Commonwealth, Department of Transportation, 511 Pa. 620, 515 A.2d 899 (1986); L.J.W. Realty, 390 Pa. 197, 134 A.2d 878; In re Gumpert's Estate, 343 Pa. 405, 23 A.2d 479 (1942). "All that is required is that the title shall contain words sufficient to cause one having a reasonably inquiring state of mind to examine the statute to determine whether he may be affected by it." Barasch, 516 Pa. at 168, 532 A.2d at 338; Boyertown Burial Casket Co. v. Commonwealth, 366 Pa. 574, 79 A.2d 449 (1951).

Plaintiffs do not allege that anyone was confused or deceived as to the content of the bill. Fumo, 719 A.2d at 14, citing, Consumer Party, 510 Pa. at 181, 507 A.2d at 335; Common Cause, 710 A.2d at 119-20. No evidence suggests either that members of the General Assembly did not fully understand the legislation, or that they were denied the

opportunity of considering the measure before its passage. Consumer Party, 510 Pa. at 182, 507 A.2d at 335.

Plaintiffs' only challenge concerns the process by which the bill went through the two Houses and was changed by Committee. (Brief, pp. 16-17). The Supreme Court has explicitly stated that this cannot form the basis for a constitutional challenge:

The practice of sending legislation to a conference committee is by its nature designed to reach a consensus. . . . It is therefore to be expected that the legislation that emerges from such a process may materially differ from the bills sent to the Committee for consideration. To unduly restrict this process would inhibit the democratic process in its traditional method of reaching accord and would unnecessarily encumber the heart of the legislation process, which is to obtain a consensus.

Consumer Party, 510 Pa. at 181, 507 A.2d at 334. Accordingly, the courts have countless times rejected constitutional challenges even after a statute has undergone "substantial amendments" during the legislative process. Common Cause, 710 A.2d at 119; see also, Fumo, 719 A.2d at 14; League of Women Voters of Pennsylvania v. Commonwealth, 692 A.2d 263, 272 (Pa. Commw. 1997); Pennsylvania AFL-CIO by George v. Commonwealth, 683 A.2d 691, 696 (Pa. Commw. 1996); Ritter v. Commonwealth, 120 Pa. Commw. 374, 380, 584 A.2d 1317, 1320 (1988), aff'd, 521 Pa. 536, 557 A.2d 1064 (1989); Parker v. Commonwealth, 115 Pa. Commw. 93, 121, 540 A.2d 313, 328 (1988), aff'd, 521 Pa. 531, 557 A.2d 1061 (1989).

Plaintiffs cite two "recent" cases they should believe should persuade this Court to reverse its prior decision. In fact, they merely confirm the propriety of the process by which the Statute was enacted. In City of Philadelphia v. Commonwealth of Pennsylvania, the Supreme Court held unconstitutional a statute that was converted on

the second-to-last day of the legislative session from a modest five-page bill to a multi-subject 127-page bill. 575 Pa. 542, 838 A.2d 566, 571-72 (2003). The Court found that the bill, as enacted, contained “voluminous and varying provisions: many are substantial, most appeared at the last minute, and some are only hinted at in the title in the vaguest of terms . . . , if at all.” The Court concluded: if constitutional requirement was intended “to put members of the Assembly and others interested on notice, by the title of the measure submitted, so that they might vote on it with circumspection,” then “that objective was not fulfilled here.” *Id.* at 589. In contrast, and as plaintiffs recognize, the title in the instant matter explicitly states that the bill “provid[es] limitations on asbestos-related liabilities relating to certain mergers or consolidations.” Thus, unlike City of Philadelphia, the objective of putting interested persons on notice absolutely was fulfilled.

In DeWeese v. Weaver, the legislature added a provision requiring DNA samples from incarcerated felony sex offenders to a bill addressing joint and several liability for acts of negligence. 824 A.2d 364, 370 (Pa. Commw. 2003). Although it found those widely diverse topics unrelated, the Court actually reaffirmed its reasoning in Fumo, supra, where it found regulations of taxicabs and deregulation of electrical utility service sufficiently related for a single bill because both subjects fall within the regulation of public utilities. *Id.* at 370, citing Fumo, 719 A.2d 10. Similarly, the subjects of the instant bill – limiting asbestos-related liabilities and changing certain statutes of limitation – both pertain to remedies and the judicial process. DeWeese further confirms, regarding § 1, that the bill, in its final form, only need “not be deceptive.” *Id.* at 371.

Thus, unless the title is “actually deceptive” or “no reasonable person could have been on notice as to the bill’s contents,” § 1 of Article III is not violated. *Id.*

Contrary to Brookman’s argument, both City of Philadelphia and DeWeese confirm that this Court’s prior decision was correct and that the Statute is constitutional.

### **III. ISSUES RAISED BY PAUL’S INCORPORATED BRIEF**

#### **A. The Statute Is In Accord With The Pennsylvania Constitution’s Conferral Of Rights**

Paul asserts, in a vague and imprecise manner, that §1929.1 violates Article I, §§1 and 26 of the Pennsylvania Constitution because it interferes with plaintiffs’ rights by “barring plaintiffs from recovering damages for their injuries.” (Paul, pp. 8-9).

First, as demonstrated above, the Statute does not bar plaintiffs from recovering anything. Indeed, should the Court dismiss Crown, the instant lawsuits will continue against the myriad remaining defendants from whom plaintiffs presumably will recover damages when appropriate. And, to the extent the Statute limits the ability to recover against Crown, it limits rights that plaintiffs did not have until *after* they were created by the Commonwealth – and Crown already has paid in excess of \$450 million to satisfy the rights created by the Commonwealth.

Article I, §1 provides that, “[a]ll men are born equally free and independent, and have certain inherent and inalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Section 26 provides that, “[n]either the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any

civil right.” Because §1929.1 has a rational relationship to a legitimate government interest, it violates neither of these provisions.

Article I, §§1 and 26 of the Pennsylvania Constitution are analyzed under the same standards used by the United States Supreme Court when reviewing claims under the Fourteenth Amendment to the United States Constitution. Love v. Borough of Stroudsburg, 528 Pa. 320, 325, 597 A.2d 1137, 1139-40 (1991); James v. Southeastern Pennsylvania Transportation Authority, 505 Pa. 137, 477 A.2d 1302 (1984). The alteration of remedies found in §1929.1 involves "neither suspect classes nor fundamental rights." See James, 505 Pa. at 145, 477 A.2d at 1305-1306. Accordingly, the appropriate standard to be applied is the "rational basis" test, which requires that the Statute “be directed at the accomplishment of a legitimate governmental interest, and to do so in a manner which is not arbitrary or unreasonable.” Fischer v. Department of Public Welfare, 509 Pa. 293, 310, 502 A.2d 114, 123 (1985).

As is set forth in the discussion of Article III, §32 above, §1929.1 is unquestionably directed at the accomplishment of a legitimate interest: the attempted preservation of businesses and jobs. It does so in a fair and equitable manner: by altering the remedies available to asbestos plaintiffs, so that a protected defendant’s successor liability for asbestos-related injuries is no greater than the inflation-adjusted value of the assets of the company with which the defendant merged. This rational, laudable Statute in no way violates §§1 or 26.

**B. Paul’s Brief Itself Confirms The Propriety of Senator Stack’s Legislative Actions**

Paul argues that the Court should strike down the Statute because Senator Stack voted on it, purportedly in violation of the Pennsylvania Constitution, Article III, §13,

which requires any “member who has a personal or private interest in any measure of bill proposed or pending before the General Assembly” to “disclose the fact to the House of which he is a member, and shall not vote thereon.”

Had Paul simply read the legislative history attached to its own Brief, it would have been obvious that this argument is nonsense. Senator Stack not only disclosed that his law firm represented Crown, but also asked whether he ought to vote on the Statute. Senator Stack was directed by the Presiding Officer of the Senate that he was “required” to vote on the Statute.

#### POINT OF ORDER

The PRESIDING OFFICER. The Chair recognizes the gentlemen from Philadelphia, Senator Stack.

Senator STACK. Madam President, I rise to ask the Chair for a ruling under Senate Rule XXI, section 2. As a partner in a law firm that represents Crown Cork & Seal, is it appropriate for me to vote on this bill, or should I recuse myself?

The PRESIDING OFFICER. The Senator has requested a ruling from the Chair as to whether he is required to vote on the motion. He cites his membership in a law firm that is involved in the matter. The rules require that a Member not voting have a direct pecuniary interest in the outcome of the matter before this body. We find that as an attorney, Senator Stack is a member of a class and has, at best, if any interest, an indirect pecuniary interest, and it is the ruling of the Chair that you are required to vote on the motion.

Senator STACK. Thank you, Madam President.

Legislative Journal – Senate, December 11, 2001, p. 1233 (attached to Paul Brief at Exhibit “A”).

In these circumstances, the propriety of Senator Stack’s actions may not reasonably be questioned. Manifestly, there was no violation of §13.

**C. The Statute Is Not Being Applied Retroactively**

Paul's Brief includes the previously asserted argument that the Legislature may not retroactively abolish a cause of action. In Ieropoli, the Supreme Court agreed, concluding that retroactive application of the Statute violated Article I, § 11 of the Pennsylvania Constitution. 824 A.2d at 930.

As set forth in Crown's Global Motion, none of the cases at issue in this motion accrued prior December 2001, when the Statute was enacted. The Pennsylvania Legislature unquestionably has the power *prospectively* to limit or abolish any cause of action. See, e.g., Kline v. Arden H. Verner Co., 503 Pa. 251, 254, 469 A.2d 158, 159 (1983) (citing Singer v. Sheppard, 464 Pa. 387, 346, A.2d 897 (1975) for proposition that "nothing in Article I, Section 11 prevents the Legislature from extinguishing a cause of action"); Freezer Storage, Inc. v. Armstrong Cork Co., 476 Pa. 270, 279, 382 A.2d 715, 720 (1978) (citing Singer, *supra*, for proposition that "no one has a vested right in the continued existence of an immutable body of negligence law"); see also, Jenkins v. Hospital of the Medical College of Pennsylvania, 535 Pa. 252, 634 A.2d 1099 (1992)). Furthermore, the legislature may enact civil legislation that has retroactive effects, so long as the legislation does not impair a contractual or other vested right. See Barasch v. Pennsylvania Public Utility Commission, 516 Pa. 142, 167, 532 A. 2d 325, 337 (1987). Civil legislation does not impair contractual or vested rights if it is "applied to a condition existing on its effective date, even though the condition results from events that occurred prior to that date." Sanders v. Armored, Inc., 418 Pa. Super. 375, 380, 614 A. 2d 320,

322 (1992), citing Pope v. Pennsylvania Threshermen & Farmer's Mutual Casualty Ins. Co., 176 Pa. Super 276, 278, 107 A. 2d 191, 192 (1954).

As applied to the cases at issue here, the Statute affects only claims that accrued after the Statute was enacted -- and not to any claims that already had accrued at the time of enactment. Accordingly, as applied to these cases, the Statute is well within the legislature's constitutional authority.

**D. Without Any Basis, Paul Seeks Discovery Into Non-Material Facts**

Finally, Paul seeks discovery to investigate "whether Crown is an innocent victim or a knowing assumer of Mundet's liability." (Paul, p. 9). As grounds for this factual "question," Paul attaches a 1980 Court of Common Pleas decision, and deposition and affidavit excerpts from a 1983 Texas case. These documents, according to Paul, are presumably intended to demonstrate that Crown actually manufactured asbestos. This assertion is all the more remarkable because: 1) the documents show no such thing; and, 2) the assertion is contrary to plaintiffs' allegation of successor liability only in all the complaints pending against Crown.

In the Aetna case Paul cites, Crown sought the protection of certain insurance coverage purchased years before, when Mundet manufactured asbestos-containing insulation products. Crown Cork & Seal, Inc. v. Aetna Casualty & Surety Co., 16 Pa.D.&C.3d 525 (1980). There is absolutely nothing in that decision to suggest that Crown "conceded it manufactured asbestos." (Paul, p. 1). On the contrary, Judge Prattis's analysis simply confirms what plaintiffs have alleged here: that Crown is a successor through merger to Mundet and so is entitled to the protection of §1929.1.

The 1983 Texas documents Paul offers evidently were part of a motion filed by another law firm in a case pending in Cleveland, Ohio. They offer no support at all for Paul's baseless "suspicion" that Crown "manufactured" asbestos products. At most, these documents (which were available to plaintiffs well before they filed the complaints pending before the Court), confirm what plaintiffs have long known: that at some point prior to its 1966 merger with Crown, Mundet manufactured and installed asbestos-containing insulation products. This does not remotely create even the suggestion that Crown itself manufactured asbestos products. Such a non-existent evidentiary predicate is hardly a basis to take discovery. This is especially true because the discovery Paul seeks to take relates exclusively to a non-material fact: all the plaintiffs before the Court have alleged that Crown's asbestos liability is exclusively as a successor to Mundet.

Pursuant to §1929.1, the relevant facts which entitle Crown to summary judgment are as follows: (1) Crown is a Pennsylvania corporation; (2) Crown merged with Mundet Cork in 1966; (3) the fair market value of the acquired Mundet Cork assets adjusted for inflation pursuant to §1929.1(c) is in the range of \$50 to \$55 million dollars; (4) Crown's cumulative asbestos related payments exceeded \$336 million as of December 31, 2001. Paul has not challenged those four facts. Accordingly, §1929.1 dictates that plaintiffs have no remedy against Crown for successor liability - - the only theory of liability plaintiffs advance. No discovery is necessary, and summary judgment is appropriate.

### **CONCLUSION**

For all of the foregoing reasons, as well as the reasons stated in its Global motion for Summary Judgment, Crown respectfully requests summary judgment be entered in its

favor, and against plaintiffs, in all asbestos-related cases filed against Crown and currently pending in the Philadelphia County Court of Common Pleas.

Respectfully submitted,



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IN RE: ASBESTOS LITIGATION : COURT OF COMMON PLEAS  
Global Motion for Summary Judgment : PHILADELPHIA COUNTY  
of Crown, Cork & Seal Company, Inc. :  
: NO. 0001

**CERTIFICATE OF SERVICE**

I, MATHIEU J. SHAPIRO, hereby certify that on September 3, 2008, I served a copy of the foregoing Reply in Support of Global Motion for Summary Judgment, by first-class mail, United States Postal Service, postage pre-paid, to all counsel listed below:

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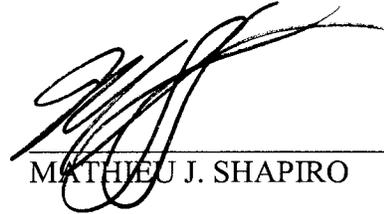
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