CONCURRING OPINION BY ACOBA, J.,
WITH WHOM DUFFY, J., JOINS

I concur with the result in this case, but note my qualification to the majority's holding that the Circuit Court of the First Circuit (the court) "erred when it concluded that an assignment by operation of law is consistent with Hawaii's rules governing construction of insurance policies." Majority opinion at 3. The majority's holding is premised on the determination that "an assignment by operation of law is merely an extension of the common law tort rule of successor liability"[1] that is superceded by the statutory mandate that insurance contracts are "subject to the general rules of contract construction." Id. at 22 (citing Hawai'i Revised Statutes (HRS) § 431:10-237 (2005)).[2] However, an explicit conveyance by contract is but one way to transfer insurance benefits. Because transfer by operation of law is an alternative, equitable device by which a successor

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[1] With all due respect, an assignment by operation of law is not an extension of successor liability but, rather, a consequence of it. See N. Ins. Co. of New York v. Allied Mut. Ins. Co., 955 F.2d 1353, 1358 (9th Cir. 1992) (holding that "the benefits of [the disputed] policy, including the right to a defense, transferred by operation of law to [the successor] when [it] purchased substantially all of [the predecessor's] assets[,]" i.e., when liability also transferred as a matter of law); see also Gen. Accident Ins. Co. of Am. v. Super. Ct. of Alameda County, 64 Cal. Rptr. 2d 781, 782 (Cal. Ct. App. 1997) (holding that "a finding of successor liability in tort does not create from whole cloth an insurance relationship" (emphasis added)). Thus, successor liability may result in assignment of insurance coverage by operation of law, which could be appropriate in certain situations.

[2] The portion of HRS § 431:10-237 quoted by the majority instructs that "[e]very insurance contract shall be construed according to the entirety of its terms and conditions as set forth in the policy, and as amplified, extended, restricted, or modified by any rider, endorsement or application attached to and made a part of the policy." This statute reiterates established precepts of construction and is not itself a prohibition to successor liability generally or specifically.

might obtain its predecessor's insurance benefits, analysis of the insurance contract language itself is not always dispositive.

I.

There are situations in which a non-assignment clause is not applicable. For example, an anti-transfer clause may be ineffective, even if it is undisputed that the parties did not attempt to transfer the insurance policy by contract and that the insurer did not consent to any transfer, in a statutory merger. Atlanta Gas Light Co. v. UGI Utils., Inc., No. 3:03-cv-614-J-20MMH, 2005 U.S. Dist. LEXIS 43592 at *53-55 (M.D. Fla. 2005) (citing Knoll Pharm. Co. v. Auto. Ins. Co. of Hartford, 167 F. Supp. 2d 1004 (N.D. Ill. 2001), aff'd in part, vacated in part by In re Synthroid Mktg. Litig., 264 F.3d 712 (7th Cir. 2001); Star Cellular Tel. Co. v. Baton Rouge CGSA, Inc., No. 12507, 1993 Del. Ch. LEXIS 158, 1993 WL 294847 at *8 (Del. Ch. 1993) aff'd, 1994 Del. LEXIS 190 (Del. 1994); Paxton & Vierling Steel Co. v. Great Am. Ins. Co., 497 F. Supp. 573 (D. Neb. 1980); Imperial Enter. v. Fireman's Fund Ins. Co., 535 F.2d 287 (5th Cir. 1976)). Such a clause may also be inapplicable in products liability suits against a successor corporation, see e.g., N. Ins., 955 F.2d at 1357-58; or where a successor corporation is liable for environmental contamination, see e.g., Total Waste Mgmt. Corp. v. Commercial Union Ins. Co., 857 F. Supp. 140 (D.N.H. 1994) (insurance benefits transferred by operation of law when successor purchased assets in corporation responsible for environmental contamination); Gopher Oil Co. v. Am. Hardware Mut.

Ins. Co., 588 N.W.2d 756 (Minn. Ct. App. 1999) (same).

Moreover, while the analysis of the insurance contract language itself is "subject to the general rules of contract construction[,]" it must be tempered by the admonition that such contracts "must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer." Dairy Rd. Partners v. Island Ins. Co., 92 Hawai'i 398, 411-12, 992 P.2d 93, 106-07 (2000) (citations and brackets omitted). Having determined that the insurance policies did not transfer to Plaintiff-Appellee Del Monte Fresh Produce (Hawaii), Inc. (DMF) through its contractual relationship with Del Monte Corporation (DMC), the next step is to determine whether they were conveyed under some other principle. See Koppers Indus. v. N. River Ins. Co., No. 94-1706, 1996 U.S. Dist. LEXIS 22860 at *13-14 (W.D. Pa. 1996), aff'd, 103 F.3d 113 (3d Cir. 1996) (noting that "[h]aving held that [the successor] did not obtain an interest in the . . . insurance policies by way of contract, the Court must go on to consider [its] arguments that such an interest was transferred by operation of law") (emphasis omitted). Thus, this appeal requires us to determine whether the law in this jurisdiction should allow for transfer of insurance policies by operation of law in the environmental contamination context. As discussed below, I would hold that the specific circumstances of this case militate against such a transfer. I would therefore reach the same result as the majority, holding that DMF is not entitled to insurance benefits under policies issued to its predecessors,

California Packing Company (CPC) and DMC, but on different grounds.

II.

A.

The issue of whether an insurance policy has transferred by operation of law arises when a successor corporation is found to be liable for an obligation of its predecessor, the named insured. The common law rule of successor liability begins with the proposition that, in general, a successor corporation is not liable for the debts and liabilities of its predecessor corporation. Evanston Ins. Co. v. Luko, 7 Haw. App. 520, 522, 783 P.2d 293, 295 (1989) (citing 19 Am. Jur. 2d Corporations § 2704 at 513 (1986)) (noting the "general rule . . . that liability of a new corporation for the debts of another corporation does not result from the mere fact that the former is organized to succeed the latter" (internal quotation marks omitted)); see also Koppers Indus., 1996 U.S. Dist. LEXIS 22860 at *17 (noting that "[a]s a general rule, when a company sells or transfers all of its assets to a successor company, the successor does not acquire the liabilities of the transferor corporation merely because of its succession to the transferor's assets" (citations and internal quotation marks omitted)); B.S.B. Diversified Co. v. Am. Motorists Ins. Co., 947 F. Supp. 1476, 1479 (W.D. Wash. 1996) (noting that "Washington law does not generally recognize that liability follows the purchase of

corporate assets") (citation omitted). However, the common law recognizes exceptions to the general rule. Evanston Ins., 7 Haw. App. at 522, 783 P.2d at 295. Specifically,

> the transferee corporation may be held liable for the debts and liabilities of the transferor corporation when [(1)] there is an express or implied assumption of liability; [(2)] the transaction amounts to a consolidation or merger; [(3)] the transaction was fraudulent; [(4)] some of the elements of a purchase in good faith were lacking, as where the transfer was without consideration and the creditors of the transferor were not provided for; [or (5)] the transferee corporation was a mere continuation or reincarnation of the old corporation.

Id. at 523, 783 P.2d at 295-96 (citation omitted).[3]

The jurisprudence regarding exceptions to the general rule of successor non-liability is most robust in the area of products liability. See, e.g., Savage Arms, Inc. v. W. Auto Supply Co., 18 P.3d 49, 51 (Alaska 2001) (holding successor corporation liable for injuries caused by defectively manufactured rifle); Ray v. Alad Corp., 560 P.2d 3, 5 (Cal. 1977) (holding successor corporation liable for injuries caused by defectively manufactured ladder); City of New York v. Aaer Sprayed Insulations, Inc., 722 N.Y.S.2d 20, 21 (N.Y. App. Div. 2001) (holding that successor liability applied in suit seeking to recover cost of removing asbestos from government buildings); Drexler v. Highlift, Inc., 715 N.Y.S.2d 722, 723 (2000) (reversing a grant of summary judgment in favor of defendant

[3] Although the Intermediate Court of Appeals in Evanston Insurance seemed to recognize five exceptions to the general rule, "[t]here are four well-recognized exceptions," [hereinafter referred to as "the traditional exceptions"] including (1) assumption of obligations, (2) merger of the two corporations, (3) mere continuation of the predecessor, and (4) fraudulent transactions designed to escape liability. Red Arrow Prods. Co., Inc. v. Employers Ins. of Wausau, 607 N.W.2d 294, 300 n.3 (Wis. Ct. App 2000) (citation omitted).

because "[a] corporation may have successor liability" for "injuries caused by defective products manufactured by its predecessor" under the four traditional exceptions); Putt v. Yates-Am. Mach. Co., 722 A.2d 217, 224 (Pa. Super. Ct. 1998) (imposing successor liability in products liability case where successor expressly assumed such liability).[4] However, the doctrine is not limited to products liability cases. See A&R Teeters & Assocs. v. Eastman Kodak Co., 836 P.2d 1034, 1039-41 (Ariz. Ct. App. 1992) (applying the four traditional factors to determine if the successor corporation was liable for the predecessor's past due balances); Bielagus v. EMRE of N.H. Corp., 826 A.2d 559, 570 (N.H. 2003) (holding "that New Hampshire law recognizes the four traditional exceptions to the prohibition against imposing successor liability in commercial law").

B.

Once liability has been imposed on a successor corporation for the deeds of its predecessor, the question of whether the predecessor's insurance covers the successor's liability arises. Courts holding that insurance policies

[4] The theory of successor liability in products liability cases evolved to protect consumers who had no way to protect themselves from losing a cause of action when the producer of the dangerous product sold its assets to a new company. As the Utah Court of Appeals explained, the rationales for imposing tort liability on a successor entity are that "[(1)] the buyer company is in a better position to bear the expense of the injury than the victim[, (2)] . . . a manufacturer buyer is able to spread the cost of the injury to future consumers[, and (3)] . . . because a manufacturer buyer profits from the predecessor's goodwill and reputation, it is unfair to allow the buyer to succeed to the seller for purposes of sales but not liability." Decius v. Action Collection Serv. Inc., 105 P.3d 956, 960 (Utah App. 2004), cert. denied, 124 P.3d 251 (Utah 2005) (internal citations omitted). If the successor company were not held liable for the products liability torts of the predecessor company, innocent consumers would be without recourse.

transferred by operation of law in such cases reasoned that (1) the rationale for honoring non-assignment clauses did not apply when the liability arose from "pre-sale activity," N. Ins., 955 F.2d at 1358 (citing Ocean Accident & Guar. Corp. v. Southwestern Bell Tel. Co., 100 F.2d 441, 444 (8th Cir. 1939)); Total Waste Mgmt., 857 F. Supp. at 152 (finding Northern Insurance's reasoning persuasive); (2) such a rule did not increase the risk to insurers, Henkel Corp. v. Hartford Accident & Indem. Co., 106 Cal. Rptr. 2d 341, 355 (Cal. Ct. App. 2001) rev'd 62 P.3d 69 (Cal. 2003); and (3) the changes in corporate ownership should not hinder plaintiffs' ability to recover damages. Class v. Am. Roller Die Corp., 683 A.2d 595, 611 (N.J. Super. Ct. Law Div. 1996), rev'd on other grounds, 705 A.2d 390 (N.J. Super. Ct. App. Div. 1998) (citation omitted).

I would reaffirm this rule, because it is fair to both general creditors and insurance companies. Transfer of insurance policies by operation of law where (1) the incident creating the liability occurred during the effective period of the insurance policy and (2) the successor corporation falls under at least one criterion set forth in Evanston Insurance, see supra at 3, serves the public policy favoring recovery by a plaintiff without increasing the risks facing insurance companies.

III.

A.

Under the Comprehensive Environmental Response,

Compensation, and Liability Act (CERCLA),[5] 42 United States Code (U.S.C.) § 9601 et seq., successor liability arises from the statute itself. The section entitled "Liability," 42 U.S.C. § 9607, provides in pertinent part:

> (a) Covered persons; scope; recoverable costs and damages; interest rate; "comparable maturity" date
>
> Notwithstanding any other provision or rule of law, and subject only to the defenses set forth in subsection (b) of this section--
>
> (1) the owner and operator of a vessel or a facility,
>
> (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
>
> . . .
>
> . . . shall be liable for--
>
> (A) all costs of removal or remedial action incurred by the United States Government or a State or an Indian tribe not inconsistent with the national contingency plan;
>
> (B) any other necessary costs of response incurred by any other person consistent with the national contingency plan;
>
> (C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release; and
>
> (D) the costs of any health assessment or health effects study carried out under section 9604(i) of this title.

(Emphases added.)

In finding liability under CERCLA, the federal courts

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[5] As set forth in Am. Color & Chem. Corp. v. Tenneco Polymers, Inc., 918 F. Supp. 945, 955 (D.S.C. 1995),

> CERCLA was enacted for the "protection and preservation of public health . . . ." Gen. Elec. v. Litton Bus. Sys., 715 F. Supp. 949, 961 (W.D. Mo. 1989), aff'd, 920 F.2d 1415 (8th Cir. 1990). Such statutes are "to be given an extremely liberal construction for the accomplishment of their beneficial objectives." Id. at 961. The goal of § 107 is "to induce [private parties] voluntarily to pursue appropriate environmental response actions . . . ." Id. at 962 [(emphasis omitted)]. CERCLA was enacted "to encourage . . . private cleanup efforts, . . . to preserve the limited resources of the government and the Superfund, and to make those responsible bear the burden of the conditions they created." Con-Tech Sales Defined Benefit Trust v. Cockerham, [No. 87-5137,] 1991 U.S. Dist. LEXIS 14624, 1991 WL 290791, at *4 (E.D. Pa. 1991).

have held that the four traditional common law exceptions to the general rule of successor non-liability discussed above are applicable. See, e.g., Atchison, Topeka, & Santa Fe Ry. Co. v. Brown & Bryant, Inc., 159 F.3d 358, 361 (9th Cir. 1997), aff'd in part, rev'd in part on other grounds by United States v. Burlington N. & Santa Fe Ry., 502 F.3d 781 (9th Cir. 2007) (reaffirming rule that "assets purchasers are not liable as successor corporations unless" one of the four traditional exceptions applies (citing Louisiana-Pac. Corp. v. Asarco, Inc., 909 F.2d 1260, 1263 (9th Cir. 1990))); Cal. Dep't of Toxic Substances Control v. Cal.-Fresno Inv. Co., No. CV F 06-0488 LJO SMS, 2007 U.S. Dist. LEXIS 37314 at *12, 2007 WL 1345580 at *4 (E.D. Cal. 2007) (noting that "CERCLA authorizes successor liability, and asset purchasers are not liable as successor corporations unless" one of the four traditional exceptions applies) (citations omitted).

B.

CERCLA does not address whether insurance coverage follows liability by operation of law and several courts have refrained from finding that insurance policies transfer by operation of law in such cases. See Century Indem. Co. v. Aero-Motive Co., 318 F. Supp. 2d 530, 539 (W.D. Mich. 2003), aff'd, 155 Fed. Appx. 833 (6th Cir. 2005) (rejecting the operation of law theory because "the relationship between an insurer and an insured is determined under contract principles" and "the successor's liability in a case such as this did not

exist at the time of the asset sale, but rather was imposed years later when CERCLA was enacted"); Quemetco Inc. v. Pac. Auto. Ins. Co., 29 Cal. Rptr. 2d 627, 632 (Cal. Ct. App. 1994) (holding that the predecessor's insurance policies were not transferred to the successor because such an assignment, without consent, would leave the predecessor "without any insurance to cover any potential liability assessed against it" under CERCLA and because the predecessor was still "entitled to a defense and may have a defense to the claim of indemnity" in a CERCLA enforcement action); Liberty Mut. Ins. Co. v. Black & Decker Corp., No. 96-10804-DPW, 2003 U.S. Dist. LEXIS 25397 at *18-19 (D. Mass. 2003) (construing Massachusetts's equivalent of CERCLA and concluding that "the duty to defend [is not] triggered simply because an entity that acquired property formerly owned or used by an insured has since been sued as a 'successor' to earlier parties (i.e., the insured) that were responsible for depositing waste"); Red Arrow, 607 N.W.2d at 302-03 (concluding that "the policy reasons that bolster rules of strict liability and product-line successor liability do not support their application" in CERCLA cases).[6] The reluctance to do so has been grounded on various considerations.

[6] Other courts have reached the opposite conclusion. See B.S.B. Diversified, 947 F. Supp. at 1481-82 (holding that "[i]f the law holds the successor liable for its predecessor's tortious acts--no matter the nature of those acts--then the law likewise transfers the insurance benefits covering liability for those acts to the successor") (quoting Quemetco, 29 Cal. Rptr. 2d at 634-35 (Johnson, J., dissenting)); Gopher Oil, 588 N.W.2d at 761 (affirming lower court's finding that successor's environmental clean up costs were covered under predecessor's insurance policy).

First, several courts have given great weight to timing, i.e., whether CERCLA was in effect when the policies were issued such that the insurer could have considered potential risks under CERLCA. See, e.g., Atlanta Gas, 2005 U.S. Dist. LEXIS 43592 at *60 (explaining that its conclusion that there was no transfer by operation of law was "extremely influen[ced]" by the fact that "successor liability in a case such as this CERCLA action did not exist at the time of the asset sale, but rather was imposed decades later with the drafting of [CERCLA]" (citations omitted)); Century Indem., 318 F. Supp. 2d at 539 (declining to follow Northern Insurance in a CERCLA case because, inter alia, "the successor's liability in a case such as this did not exist at the time of the asset sale, but rather was imposed years later when CERCLA was enacted").

This first consideration is a factor in this case considering that the policies issued to DMC by Fireman's Fund, London Market Insurers, Commercial Union, American Re-Insurance, National Continental, and Lexington Insurance Company all expired before CERCLA went into effect. See majority opinion at 8 & 9 n.5. Fireman's Fund argues that "[i]f an assignment is upheld, Fireman's Fund's risks have been increased by the corporate transactions that occurred, all of them after termination of the Fireman's Fund policies." (Emphases and internal quotation marks omitted.) It cannot be fairly said that these insurers considered CERCLA risks when determining whether to insure DMC

and at what rates.[7]

[7] The majority implies that too much weight is given to the timing factor in this concurrence. See majority opinion at 23 n.14. According to the majority, this opinion "assumes that liability could not be imposed under similar circumstances prior to the enactment of CERCLA." Id. That is not so. Nothing in this opinion disputes that DMC, the named insured, could be held liable for contamination caused by its actions while it owned the subject property. However, while DMC might have been held subject to liability under other paradigms, e.g., negligence or nuisance, CERCLA introduced an entirely new risk -- strict liability. See United States v. Atl. Research Corp., __ U.S. __, __, 127 S. Ct. 2331, 2336 (2007) (noting that "CERCLA § 9607 is a strict liability statute" (quoting United States v. Alcan Aluminum Corp., 315 F.3d 179, 184 (2d Cir. 2003) (internal quotation marks omitted))). I note that CERCLA actions present the risk of joint and several strict liability, see 42 U.S.C. § 9607, which differ in nature from the risks of loss presented by environmental contamination before its passage. Thus, the timing factor is a relevant consideration in whether to exercise equitable power to effect a transfer of insurance benefits by operation of law.

Further, although the majority contends that "the more germane consideration is whether an insurable loss existed," majority opinion at 23 n.14, this concurrence expressly stated that the issue of whether the loss was covered is not implicated in the instant appeal. See infra note 9. However, it may be noted that the only issue in Minnesota Mining & Mfg. Co. v. Traveler's Indemnity Co., 457 N.W.2d 175, 177-78 (Minn. 1990), cited by the majority, was limited to whether the claimed losses were covered inasmuch as the claimants were named insureds. Thus, the Minnesota Supreme Court's conclusion that the nature of the liability, environmental contamination, was more important than the vehicle by which the liability was imposed, CERCLA and its Minnesota counterpart, is inapposite to this case. Furthermore, the majority's reliance on the pronouncement in Gopher Oil that "[a] loss occurs at the time of the contamination, even if the claim is brought under the subsequently enacted legislation[,]" majority opinion at 23 n.14 (quoting Gopher Oil, 588 N.W.2d at 764), is misplaced. That conclusion was a rejection of the insurer's assertion that "because the claims . . . are based on CERCLA and [its state counterpart], no loss could have occurred until these laws were enacted." Gopher Oil, 588 N.W.2d at 764 (citation omitted). The majority apparently misunderstands this concurrence's consideration of the timing factor to be analogous to that position, which it is not.

The question before this court is whether the insurers who issued policies to DMC should be compelled to provide benefits to DMF in an action arising under CERCLA. Under the circumstances of this case, the pertinent issue is not what is covered by the policy, but who is covered. For insurers whose policies expired before CERCLA was enacted, to whom they anticipated providing benefits is likely to be different than insurers who issued policies after CERCLA was enacted. The latter would be on notice that all of the named insured's successors could be held strictly liable for contamination caused by the predecessor corporation, whereas the former were not.

The majority also points out that the timing factor is not relevant to the two insurers whose policies were in effect after CERCLA was enacted, namely American Home and Motor Vehicle. Majority opinion at 23 n.14. But, as clearly indicated supra at 11, this opinion did not consider the timing of CERCLA's passage as relevant to those insurers.

The majority finally opines that its application of "HRS §§ 431:10-237 and 431:10-228(a) . . . to the facts and circumstances presented in this case[]" resolves the issue of who is covered under the insurance policies, thus eliminating the need for any inquiry into what is covered under the policies. Majority opinion at 23 n.14. With all due respect, as pointed out supra at 1-2, this position disregards the distinction between express

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Second, because of the nature of CERCLA enforcement, the fact that the successor corporation is liable for clean up costs does not preclude liability on the part of the predecessor corporation. Red Arrow, 607 N.W.2d at 302 (noting that "the EPA sought recovery from [the successor] and [the predecessor] for CERCLA response costs") (emphasis added). Fireman's Fund raises this point in its brief, noting that both CPC and DMC,[8] "the entities to which Fireman's Fund issued the relevant policies, remain potentially liable for damages arising out of the Kunia plantation contamination." It emphasizes the fact that "the currently constituted [DMC] remains a corporation separate and apart from [DMF], and still remains at risk to the EPA if [DMF] does not investigate and remediate the Kunia site." (Internal citations omitted.) Fireman's Fund further avers that it has "accepted tenders of the EPA claim"[9] and two other related actions "from both [DMC] and [DMF], under reservation of rights." (Internal citations and emphasis omitted.)[10]

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[7](...continued)
transfers of insurance benefits and transfer by operation of law, specifically that transfers by operation of law may be in derogation of the terms of the policies themselves.

[8] CPC and DMC are DMF's predecessors.

[9] There may be issues, not presently before this court, as to whether the insurance policies cover the CERCLA action. Those issues would, of course, be resolved by interpreting the language of the policies themselves pursuant to the precepts set forth in Dairy Road, 92 Hawai'i at 411-12, 992 P.2d at 106-07 (citations omitted), that insurance policies are "subject to the general rules of contract construction" but "must be construed liberally in favor of the insured and any ambiguities must be resolved against the insurer."

[10] The court in Red Arrow articulated, without elaboration or authority, a third rationale, namely, that "the need to spread the costs
(continued...)

C.

Such considerations would appear relevant in the instant case. First, policy considerations that support transferring insurance policies by operation of law in the products liability arena, such as fairness to injured consumers, see Class, 683 A.2d at 611; Decius, 105 P.3d at 960, are inapplicable in CERCLA cases. Here, the injured party is not an innocent consumer but the successor corporation. It is in privity of contract with the predecessor corporation, and could have protected itself from the damages arising from the contamination. Notably, in this case, the successor chose not to do so, and in fact, relieved the predecessor of responsibility for liability related to groundwater contamination.[11]

Second, unlike in products liability cases, the predecessor corporation is not relieved of liability under CERCLA simply because it no longer owns the contaminated site. Because the predecessor corporation may still be liable, so too might its insurance carriers. Thus, the declaration in Northern Insurance, 955 F.2d at 1358, that if an insurer is required to cover a successor for "pre-sale activit[ies,]" "the insurer still covers

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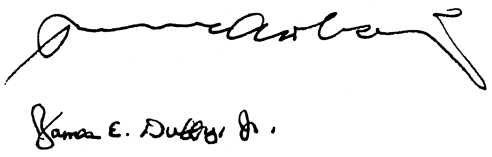
[10](...continued)
associated with environmental cleanup has not risen to the same level of public concern as the need to protect otherwise defenseless victims from manufacturing defects." Red Arrow, 607 N.W.2d at 302. In light of the lack of support for this proposition, I doubt it is a persuasive one.

[11] Specifically, in the Assumption Agreement, DMF agreed to "undertake[], assume[], and . . . perform, pay or discharge when due . . . all liabilities and obligations arising out of and relating to the operations of [DMC's] Hawaiian Business, including, without limitation, any and all contingent liabilities related to the contamination of ground water or the use of heptachlor[.]" (Emphasis added.)

only the risk it evaluated when it wrote the policy[,]" is inapplicable under the particular circumstances of the instant case.[12] A rule enforcing the transfer of insurance policies by operation of law in some CERCLA cases such as the instant one would force insurers to assume responsibility for more than what they bargained for when they agreed to insure only the predecessor. As Fireman's Fund maintains, its "insurance contracts with CPC and [DMC] did not contemplate that Fireman's Fund would have to pay the defense costs of two (or more) entities, allegedly liable for the same loss, resulting from the operations of CPC or [DMC] at the Kunia plantation." (Emphasis omitted.)

IV.

Under the particular circumstances of this case, I would hold that the benefits of DMC's insurance policies were not transferred to DMF by contract or by operation of law.



Kama E. Duffy, Jr.

[12] Total Waste Management and Gopher Oil, which allowed for transfer of insurance benefits by operation of law in environmental contamination cases, were premised on the rationale that allowing for the transfer by operation of law would not impose a greater risk on the insurers. See Total Waste Mgmt., 857 F. Supp. at 152; Gopher Oil, 588 N.W.2d at 763. This rationale is inapplicable under the facts of the present case.