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SUCCESSOR LIABILITY:

**Even if you didn't own it
then, you might be liable**

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SUCCESSOR LIABILITY

GENERAL RULE

- Company that acquires all of seller's assets is not liable for seller's liabilities

GENERAL EXCEPTIONS

- Buyer expressly or implicitly agrees to assume some or all of debts of seller
- *de facto* merger
 - same management, personnel, location & business obligations, continuity of shareholders, seller dissolves soon after sale
- Buyer is “merely a continuation” of seller
 - continued use of seller's name, location, employees
- Fraud intended to evade liability for debts
 - assets were purchased for inadequate consideration

PRE-PURCHASE PROTECTIONS

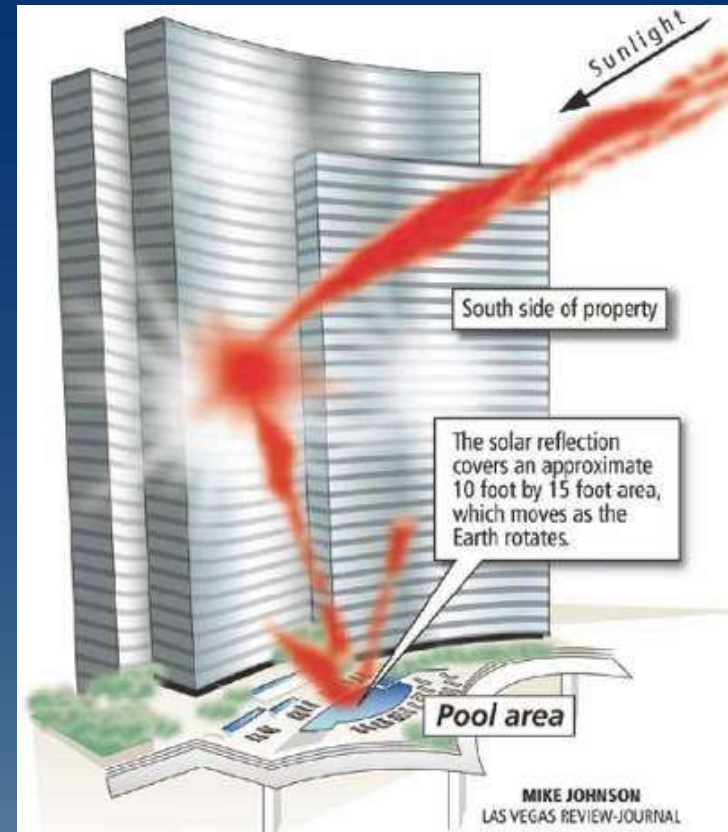
- Ascertain potential liability
- Have clear purchase agreement
 - express provision liabilities not assumed
- Have insurance
 - seller to maintain insurance coverage as part of the deal
- Avoid “red flags”
 - Don't have: continuity of ownership, management, personnel, etc.

POST-PURCHASE ACTIONS

REVIEW THE DUE DILIGENCE

What problems have existed?

- people falling at pool
- reports of illness from specific food product
- Las Vegas “Death Ray”



SOLVE THE PROBLEMS

- Slippery pool deck
 - check surface for compliance with building codes and other standards
 - is a protective coating appropriate?
 - what was the maintenance schedule of seller?
- Food illness
 - identify root cause
 - distributor
 - preparation
 - temperature issue

SOLVE THE PROBLEMS



POST-PURCHASE ACTIONS

UNDERSTAND SELLER'S POLICIES AND PROCEDURES

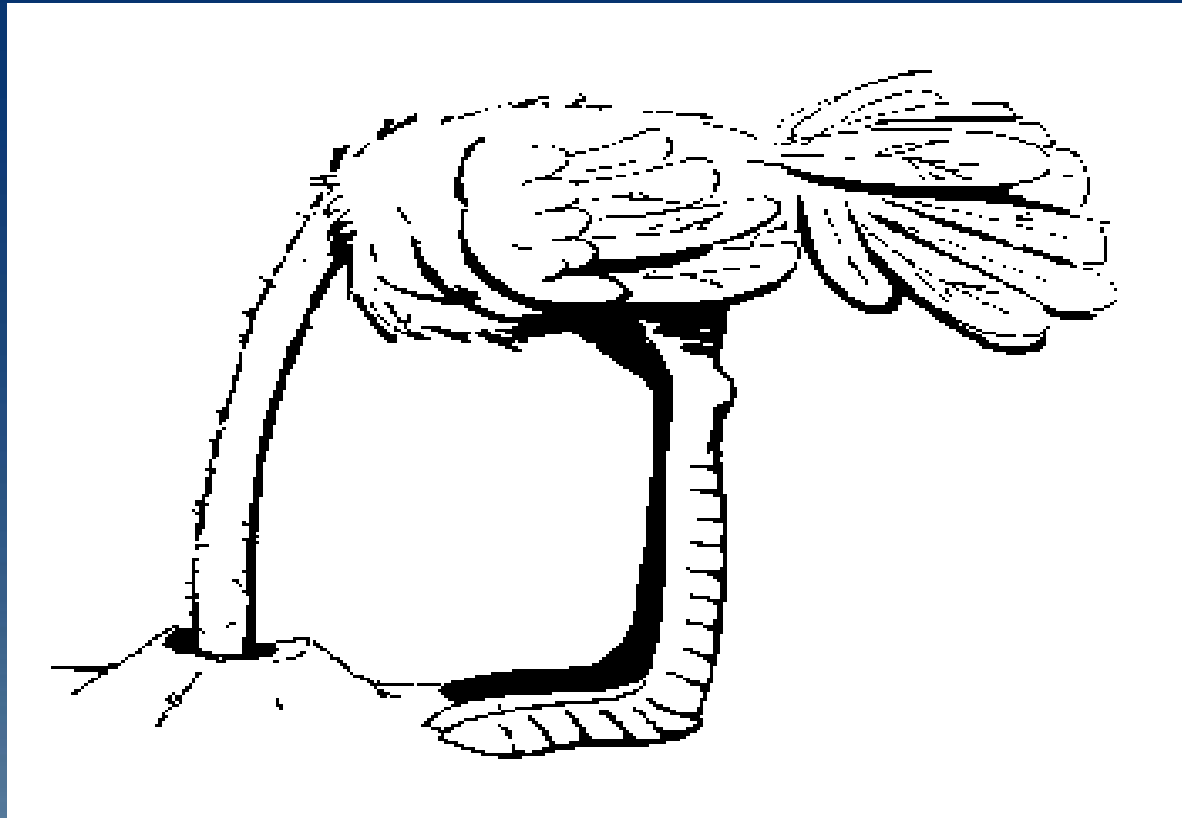
- Was maintenance kept up?
- Should seller's procedures be kept or modified?
- Review seller's claims history/risk management assessments (again)

POST-PURCHASE ACTIONS

EMPLOY GOOD RECORD-KEEPING

- Inventory and index seller's records
- Establish written document retention policy
 - identify Custodian of Records
 - follow the policy

DON'T BURY YOUR HEAD IN THE SAND



BE PROACTIVE IN IDENTIFYING AND SOLVING PROBLEMS

- INVESTIGATE
- TAKE ACTION



**DOCUMENT THE PROBLEMS AND
THE STEPS TAKEN TO CORRECT**

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THANK YOU.