

# The “Daily Plan-It™”

LAW OFFICES OF GARY R. WAITZMAN, L.L.C.

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## *Interesting Court Decision Illustrates Mistake in Buy-Sell Agreement*

A well thought through Buy-Sell (or sometimes called shareholder agreement) is critical in any business for succession planning. But what happens when the need is no longer there for the insurance, but one of the parties desires to keep the policies in place?

A recent Indiana court case, Hilliard v. Jacobs, 916 N.E. 2d 689, highlights the need for business owners to close the loop on ownership of life insurance policies that fund a buy-sell arrangement when such coverage is no longer needed.

Typically, buy-sell agreements use life insurance to fund buy-out obligations that are created by the death of a business owner. Most such policies are owned by the business or its owners. Sometimes, they are owned by a Trust, an LLC or a partnership.

### **Hilliard v. Jacobs Case**

In this case, two business owners bought a \$2,500,000 life insurance policy on each other to fund a cross-purchase buy-sell agreement. This is a common and prudent approach. The twist came later when they sold their business to a third-party. After the sale, Hilliard requested an exchange of policies. Jacobs refused and continued to pay premiums on the policy he owned.

Hilliard filed a lawsuit requesting that the policy either be transferred to him or canceled, arguing that Jacobs no longer held an insurable interest in Hilliard’s life. The court disagreed, saying Indiana law did not require the presence of a continuing insurable interest.

Interestingly, the owners had two chances to address final disposition of life insurance policies before things elevated to a lawsuit. Their first opportunity was the buy-sell agreement itself. A second arose through a settlement agreement when the company was sold. It’s hard to tell from the reported case itself

whether the parties attempted to address the issue in either the agreement or through the closing documents of the sale of the business.

### **Lessons for Us as Advisors**

The takeaway for us as fellow professionals is to make sure our Buy-Sell agreements address the disposition of life insurance policies when the need for coverage ends. (Usually we are just excited to get our clients to put the agreement together in the first place!) An alternative approach is to include language that gives an insured party the opportunity to acquire ownership of a life insurance policy originally intended for buy-sell funding purposes.

As always, I hope this article has helped you and your clients. If you have a specific question or case, please call our office.

## **UPCOMING ESTATE PLANNING WORKSHOPS**

Plan to bring clients who will find learning about Estate Planning and Medicaid helpful

Tuesday, February 22<sup>nd</sup> at 1:00 pm to 3:00 pm  
OR

Tuesday, March 1<sup>st</sup> at 4:30 pm to 6:30 pm

To be held at:  
Hampton Suites

1400 Milwaukee Avenue in Lincolnshire, IL

Please RSVP by contacting Linda at 847.793.9103



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Please note: If you would like to be removed from our list, please call (847.793.9103), fax or email our office and we will be happy to comply with your request. Thank you.