## BY JOSEPH "TREY" L. WOOD, III | APRIL 10, 2013

## DON'T BUY MORE THAN YOU BARGAINED FOR

## CONSIDERING BUYING A COMPANY?

(!)

\$

It is important to know that the transaction could end up with you having to pay for the sins of another.

When a company is sold in an asset sale as opposed to a stock sale, the buyer acquires the company's assets but not necessarily its liabilities.

## **EX** SEVENTH CIRCUIT U.S. COURT OF APPEALS DECISION



JT Packard & Associates was sued by employees for overtime violations



Packard settled for \$500,000 and became insolvent, issuing its stock to a third party, which then sold the stock to a bank.

Thomas & Betts bought the assets through a receiver's auction "free and clear of all liabilities."



Thomas & Betts continued to run the business as it had been run in the past, with little being changed.

**FLSA** The Fair Labor Standards Act considers the following factors when determining potential successor liability:



d success



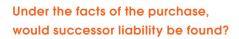
and successor?

have notice of the lawsuit?

Did successor

Could predecessor provide relief before the sale? Could predecessor provide relief after the sale? Could successor provide the relief sought in the suit?

**WHAT SHOULD DUE DILIGENCE SHOULD BE THE COURSE OF CONDUCT.** If the company to be acquired has any liabilities under federal labor and employment laws:





Is there a way to structure the transaction to avoid this type of unexpected liability?



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