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# 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:

-  Did successor have notice of the lawsuit?
-  Could predecessor provide relief before the sale?
-  Could predecessor provide relief after the sale?
-  Could successor provide the relief sought in the suit?
-  Continuity between ops and work force of predecessor and successor?

## WHAT SHOULD YOU DO?

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

-  Under the facts of the purchase, would successor liability be found?
-  Is there a way to structure the transaction to avoid this type of unexpected liability?