

INSUREBLOG

INSURANCE ISSUES, PRINCIPLES & SOLUTIONS

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Koch vs Cato

No: **Cato**, as in "Cato Institute," the well-know libertarian think-tank. *That*Cato's been in the news of late, because several of its founders are embroiled in a lawsuit regarding the ownership of shares owned by a now-deceased partner.

There are, of course, political overtones in this case, but I'd like to concentrate on something else: the buy-sell agreement.

As we've mentioned before, a buy-sell agreement is a contract between the owners of a company (or other enterprise) about how to handle each other's ownership interests should one partner die. There are two basic methods (and copious variations thereon): Entity Plans and Cross-Purchase Plans.

Entity Plans are most often used when there are more than two owners. Under these plans, the company purchases the shares from the deceased's estate (or widow, or whatever). There is often a life insurance policy on each owner, payable to the company to fund that transaction.

Under a *Cross-Purchase Plan*, each shareholder agrees to buy out the interest of a deceased partner's estate (or widow, etc). Again, a life insurance policy on each partner's life is quite helpful in ensuring a fair and timely disposition.

Both methods, however, share a common theme: properly executed, they are legally binding contracts. That is, the widow or other heir doesn't get to decide whether or not to sell those shares.

Which brings us to the Koch/Cato kerfluffle [*ed: I see what you did there*]: based on the (admittedly sparse) information available, it doesn't appear that the partners' buy-sell agreement was well-written. Else how to explain this:

"[Ownership of] Cato was divided between four shareholders: the two Koch brothers, Cato president Ed Crane, and former Cato chairman William Niskanen ... At the heart of the dispute is the fate of the shares owned by Niskanen, who died in October .. The Koch brothers believe that they have the option to buy Niskanen's shares, while Cato officials believethat the shares belong to Niskanen's widow" [emphasis added]

A properly executed, legally binding buy-sell agreement would leave no room for the term "*believe*" in this context. Obviously, it's too late now to determine the late Mr Niskanen's desires or plans. But it could be a **great** lesson for still-vertical business owners to review their own agreements, to make sure that their heirs and partners don't have to resort to the courts for resolution.

POSTED BY HENRY STERN, LUTCF, CBC AT 1:30 PM