IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MARGARET E. OSTROFF,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**C.A. No. 423-N**
	:	
QUALITY SERVICES LABORATORIES, INC., a Delaware corporation,	:	
	:	
	:	
Defendant.	:	

MEMORANDUM OPINION

Date Submitted: September 12, 2006
Date Decided: January 5, 2007

Thomas J. Eastburn, Esquire of Allmond & Eastburn, Wilmington, Delaware, Attorney for Plaintiff.

W. Donald Sparks, II, Esquire and Anne Shea Gaza, Esquire of Richards, Layton & Finger, P.A., Wilmington, Delaware, Attorneys for Defendant.

NOBLE, Vice Chancellor

I. INTRODUCTION

The plaintiff-widow of a founder of the defendant company, control of which was eventually acquired by a third-party, challenges the defendant's denial of life insurance benefits to her on her husband's death. The outcome depends on the interpretation of three interrelated agreements—a shareholders agreement, an agreement among shareholders for the purchase of life insurance policies for each of the founding shareholders, and an agreement establishing a trust to act as the recipient and conduit of policy proceeds. The plaintiff argues that these agreements, when read together, establish that she is entitled to the death benefits under her late husband's policy. She also argues that the defendant had no interest in his policy after termination of the shareholders agreement, which occurred as part of a sale of the defendant, and that the conduct of her husband and the other founding shareholders supports the conclusion that she, as sole beneficiary to her husband's estate, is entitled to the full proceeds. According to the defendant, however, the literal terms of the shareholders agreement provided the husband with thirty days in which to exercise an option to purchase the policy following termination of the shareholders agreement on the acquisition of the company. With the passage of the thirty-day period, the defendant asserts, the policy became a corporate asset and the husband's failure to obtain ownership and control of the

policy resulted in a relinquishment of any rights he or the plaintiff may have had in the policy or its death benefit proceeds.

Before the Court are the parties' cross-motions for summary judgment.

II. BACKGROUND

Plaintiff Margaret E. Ostroff ("Mrs. Ostroff" or the "Plaintiff") is the widow of Herman L. Ostroff ("Ostroff" or the "Decedent") and the sole beneficiary of his estate. Before his death on November 17, 2002, Ostroff was employed by Defendant Quality Services Laboratories, Inc. ("QSL," the "Company," or the "Defendant"), formerly QSL Inspection, Inc., a Delaware corporation, which was formed sometime in 1992 by Ostroff, Andrew F. Seraphim ("Seraphim"), and Michael J. Lange ("Lange"). Together, they were controlling shareholders until Mistras Holdings Corp. ("Mistras"), a Delaware corporation, acquired a controlling stake in QSL pursuant to the Stock Purchase Agreement executed on November 13, 2000.

A. *The Operative Agreements*

On June 21, 1994, not long after their formation of QSL, Ostroff, Seraphim, and Lange (the "founding shareholders") entered into three operative agreements (the "Operative Agreements"): (1) the Shareholders Agreement (the "1994 Shareholders Agreement"), (2) the QSL Trust Agreement, and (3) three separate Split Dollar Plan Agreements between QSL and each of the founding

shareholders.[1] At the time these agreements were executed, each of the founding shareholders owned one-third of the outstanding shares in QSL, or 100 shares each. In 1996, the 1994 Shareholders Agreement was amended and superseded by a new Shareholders Agreement (the "1996 Shareholders Agreement").

1. The 1994 Shareholders Agreement

In 1994, the founding shareholders entered into a Shareholders Agreement specifying, among other things, that QSL could purchase key man life insurance on behalf of each shareholder.[2] The life insurance that QSL had purchased pursuant to Section 3(c) was listed on Schedule A of the Shareholders Agreement. For Ostroff, a term policy was purchased from Transamerica Occidental Life Insurance Company in the face amount of $250,000; this is the policy at the center of the parties' dispute (the "Transamerica Policy").[3] Section 3(e) enabled QSL to transfer

[1] These agreements all contain choice of law provisions: the interpretation and enforcement of the agreements will be governed by Pennsylvania law. The parties agree that Pennsylvania law is consistent with Delaware's general principles of contract interpretation and have identified no questions for which Delaware and Pennsylvania contract law principles diverge materially.

[2] The Defendant's briefing repeatedly refers to this as "key man" life insurance. Although the Plaintiff correctly notes that this term is not used in the Operative Agreements, the term is helpful for describing a type of insurance product by which benefits are payable to the employer-corporation on the death of a key employee. *See* 1 ERIC MILLS HOLMES, HOLMES'S APPELMAN ON INSURANCE, § 1.25 (2d ed. 1996); *see, e.g.*, *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 901 A.2d 106, 111 (Del. 2006); *Nixon v. Blackwell*, 626 A.2d 1366, 1371–72 (Del. 1993). Although the purposes of such policies may vary, they, typically, act as funding mechanisms for a firm to transition more smoothly after the loss of an employee whose services were indispensable and to satisfy creditors or to buy out the deceased's shares, often as part of a buy-sell agreement. *See, e.g.*, *id.* at 1372; *Strulowitz v. Provident Life & Cas. Ins. Co.*, 815 A.2d 993, 995 (N.J. Super. Ct. App. Div. 2003).

[3] *See* Gaza Aff. ("Def.'s Ex.") at Ex. 4 (1994 Shareholders Agreement) at Schedule A (referencing the policy as number 40998949 and the QSL Trust as beneficiary).

ownership of the policies to a trust—which it did—that would be subject to the terms in the Shareholders Agreement. Section 3(f) addressed each shareholder's right to purchase his insurance policy upon either the termination of the Shareholders Agreement or a shareholder's withdrawal from it. Specifically, Section 3(f) provided that this right could "be exercised at any time within thirty (30) days after termination of this Agreement or withdrawal by payment of the purchase price to the Company."

2. The Split Dollar Plan Agreements

QSL also entered into three separate Split Dollar Plan Agreements (the "Split Dollar Agreements") with Ostroff, Seraphim, and Lange.[4] They were termed "split dollar plan agreements" because, although QSL was to pay annual premiums due on the policies, premium payments were "split" between QSL and the employee for income tax purposes and for determining the amount payable to the employee's designated beneficiary; QSL retained a 50% interest (the "Company's Interest")[5] in the death proceeds and the insured's beneficiary was

[4] The Split Dollar Agreements between QSL and Ostroff and Seraphim, respectively, were apparently identical in form and substance. Lange's Split Dollar Agreement, however, differed slightly because, unlike Ostroff and Seraphim, none of his family members was employed by QSL. *See* Def.'s Opening Br. in Supp. of Its Mot. for Summ. J. ("QSL Opening Br.") at 8 (citing Lange Dep. at 15–16).

[5] The Split Dollar Agreement defined the "Company's Interest" in the Transamerica Policy insuring Ostroff's life as 50% of the policy proceeds payable under the policy. Def.'s Ex. 7 (Ostroff Split Dollar Agreement) at ¶ 4.

entitled to the remaining 50% interest.[6] It is undisputed that from June 1994 to November 2000, 50% of the policy premiums for the Transamerica Policy were attributed to Ostroff as taxable income.[7]

The Split Dollar Agreement between QSL and Ostroff was made in recognition of his past services and in consideration of his continued employment with QSL.[8] It provided him with the right to designate a beneficiary to the portion of the proceeds in excess of the Company's Interest, which he apparently exercised by naming his grandson, Jason Ostroff, and not the Plaintiff.[9] The agreement also referenced a trust that QSL had established both to own the Transamerica Policy and to collect death proceeds in order to ensure that they would be distributed in accordance with the Split Dollar Agreement.[10] As for termination, Section 6 of Ostroff's Split Dollar Agreement provided:

> Termination of Agreement or Employee's Employment. This Agreement may be terminated at any time while the Employee is living by written notice thereof by either the Company or the Employee to the other; and in the event of Employee's termination of service, this Agreement will terminate upon the termination of the

[6] *See id.* at ¶¶ 1, 4; QSL Opening Br. at 6 n.3.
[7] QSL Opening Br. at 3; Pl.'s Ans. Br. to QSL Opening Br. and Pl.'s Opening Br. in Supp. of Its Mot. for Summ. J. ("Ostroff Ans. Br.") at 8.
[8] Ostroff Split Dollar Agmt. at Second Whereas Clause ("[T]he company recognizes the valuable services hereto performed for it by the Employee and wishes to encourage Employee's continued employment.").
[9] *See* Def.'s Exs. 8 (Transamerica Policy) & 9 (Plaintiff's Responses to Defendant's First Set of Requests for Admission); QSL Opening Br. at 9–10 (noting that it is uncontested that Mrs. Ostroff was never designated a beneficiary of the Transamerica Policy); Ostroff Ans. Br. at 35–36.
[10] Ostroff Split Dollar Agmt. at Ninth Whereas Clause.

> Employee's employment. Upon termination, the Policy shall be canceled or acquired by Employee at Employee's option at a cost equal to the unearned premium.[11]

3. The QSL Trust Agreement

Adopted concurrently with and supplementary to the 1994 Shareholders and the Split Dollar Agreements,[12] the QSL Trust Agreement established a trust (the "QSL Trust") to serve as the owner, recipient, and escrow agent of the key man life insurance policies and their corresponding death benefit proceeds.[13] It recognized QSL's "obligat[ion]" to make payment to the beneficiaries of its founding shareholders and QSL's right "to retain a certain benefit on the death of a shareholder."[14] All rights and privileges under the life insurance policies, except for the insured shareholder's right to name a beneficiary, were reserved to the Company.[15] As for termination, the QSL Trust Agreement would terminate upon the termination of the Shareholders and the Split Dollar Agreements.[16]

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[11] *Id.* at ¶ 6.

[12] *See* Def.'s Ex. 5 (QSL Trust Agreement) at Third Whereas Clause; *see also id.* at § 11 ("This agreement is supplementary to the Agreements and it shall supersede or alter such Agreements insofar as this agreement may be inconsistent with the terms thereof."). The QSL Trust Agreement refers collectively to the 1994 Shareholders and Split Dollar Plan Agreements as "the Agreements." *See id.* at First Whereas Clause.

[13] *See id.* at § 4(a). ("The Company has purchased various life insurance policies on the lives of its shareholders, set forth and identified on Schedule 'A' of this Trust. The Company and shareholder [have] designated the Trustee as owner and revocable beneficiary . . . it being the intention of the parties that Trustee shall act as escrow agent.").

[14] *See id.* at First and Second Whereas Clauses.

[15] *See id.* at § 4(b).

[16] *See id.* at § 8(b).

4. The 1996 Shareholders Agreement Supersedes the 1994 Shareholders Agreement and Ownership Composition of QSL Changes

On January 1, 1996, a new shareholders agreement was executed among QSL; the founding shareholders; and Seraphim's son, Robert A.P. Seraphim, a new shareholder who had acquired a portion of his father's shares at some point.[17] The new agreement amended and superseded the 1994 Shareholders Agreement.[18] Many provisions in the 1996 Shareholders Agreement, including those pertaining to life insurance policies and the QSL Trust,[19] were identical or substantially similar to those found in the 1994 Shareholders Agreement.[20] The 1996 Shareholders Agreement, however, differed with respect to transfer of shares upon death. Under the new agreement, the shares of a deceased shareholder could either be purchased by QSL or be transferred, at the shareholder's election, to a blood relative who was also employed by QSL.[21]

[17] *See* Def.'s Ex. 10 (1996 Shareholders Agreement).
[18] *See id.*
[19] *Compare* 1994 S'holders Agmt. at § 3(c)-(f) *with* 1996 S'holders Agmt. at § 3(c)-(f).
[20] For example, both the 1994 and 1996 Shareholders Agreements required the Company to purchase the stock owned by a deceased shareholder. *See* ¶ 3(a) ("The Company shall purchase from Decedent's personal representatives and [they] shall sell to the Company all of the Stock of the Company owned by the Decedent at the price and schedule of payments set forth in Section 5."). Section 3(c) of each agreement referenced QSL's purchase of life insurance to fund this obligation. For Ostroff, the Transamerica Policy on his life was to fund QSL's purchase of his shares upon his death. *See* 1996 S'holders Agmt. at ¶ 3(c) & Schedule A. The purchase price of the shares would be determined by a "Formula of Agreed Value," which would also be used to calculate the value of shares that a living shareholder held when selling them to QSL pursuant to the Company's purchase option right. *See id.* at ¶ 5.
[21] *See* 1996 S'holders Agmt. at § 3.

After the 1996 Shareholders Agreement was executed, but before Mistras acquired its interest in QSL, the ownership composition of QSL changed once again. Ostroff transferred a portion of his shares to his grandson, Jason Ostroff, who was also a QSL employee.[22] Thus, the ownership composition of QSL until the sale to Mistras was: Ostroff (76 shares), Jason Ostroff (24 shares), Seraphim (76 shares), Robert A.P. Seraphim (24 shares), and Lange (100 shares).

B. *Mistras Acquires a Controlling Stake in QSL*

In 2000, Ostroff, Jason Ostroff, Seraphim, and Robert A.P. Seraphim entered into the Stock Purchase Agreement with Mistras under which it would purchase their respective shares of capital stock in QSL.[23] For the Ostroffs and the Seraphims, it meant they no longer had an equity interest in QSL; for Mistras, the transaction made it the controlling stockholder. As part of the closing under the Stock Purchase Agreement, several other documents were executed, including resignations by Ostroff and Seraphim; employment agreements between QSL and Ostroff and Seraphim, respectively; and a consent and waiver by all of QSL shareholders as to the termination of the 1996 Shareholders Agreement. It was common knowledge at closing that Ostroff was in very poor health.[24]

[22] *See* Lange Aff. ¶ 13.
[23] Def.'s Ex. 12 (Stock Purchase Agreement). Lange, not a party to the Stock Purchase Agreement, retained his shares in QSL.
[24] *See* Ostroff Aff. ¶ 3; Couris Aff. ¶¶ 2–3; Seraphim Dep. at 100.

1. The Stock Purchase Agreement

The Stock Purchase Agreement, executed on November 13, 2000, established the structure for Mistras's payments to the Ostroffs and the Seraphims, detailing, among other things, post-sale royalty payments for a period of five years.[25] Significantly, the Stock Purchase Agreement contains no reference to the key man life insurance policies or, more specifically, to the Split Dollar and QSL Trust Agreements.

2. Employment Agreements

Pursuant to the Stock Purchase Agreement, Ostroff and Seraphim resigned their positions as directors and as officers of QSL.[26] Ostroff had previously served as both vice president and treasurer of the Company; Seraphim was its chairman and secretary. With the sale to Mistras, both Ostroff and Seraphim entered into nearly-identical employment agreements with QSL "[i]n consideration of . . . agreeing to not compete" for a five-year period.[27]

Ostroff was employed as a "Sales Applications Developer" and, under his Employment Agreement with QSL, his compensation was based on a percentage of net product sales in the first five years following the Mistras acquisition.[28] It also provided that Ostroff was "entitled to participate in the Company's group

[25] Stock Purchase Agmt. at §§ 1.01, 4.07.
[26] *See id.* at § 1.03; *see also* Def.'s Exs. 1, 13.
[27] Stock Purchase Agmt. at § 4.07.
[28] *See* Def.'s Ex. 2 (Ostroff Employment Agreement) at § 5.

health, life and disability insurance benefits made available from time to time for its employees generally."[29]

3. QSL Shareholders' Consent and Waiver

In conjunction with the sale to Mistras, all of the QSL shareholders, including Lange who was not party to the Stock Purchase Agreement, executed a Consent and Waiver to terminate the 1996 Shareholders Agreement pursuant to Section 20(d) of that agreement and to waive the share transfer restrictions that would have affected the sale to Mistras.[30]

C. *Following the Mistras Sale*

After the termination of the 1996 Stock Purchase Agreement and the sale to Mistras, Ostroff had thirty days in which to exercise his option to purchase outright the Transamerica Policy insuring his life. It is undisputed that Ostroff never exercised this option.[31] It is also undisputed that, after the sale to Mistras, no portion of the Transamerica Policy premiums paid by QSL was attributed to Ostroff as taxable income.[32]

Also, at some point after closing, Ostroff noticed that QSL had missed a premium payment on the Transamerica Policy and he alerted QSL of the apparent

[29] *Id.* at § 6.
[30] *See* Def.'s Ex. 11 (Consent and Waiver).
[31] *See* QSL Opening Br. at 3–4; Ostroff Ans. Br. at 8–9.
[32] *Id.*

lapse.[33] The Company eventually made the payment and the coverage on Ostroff's life was reinstated.[34]

Finally, after the sale, Ostroff was an employee of QSL, although in a different capacity. Shortly after his death on November 17, 2002, Mrs. Ostroff asked Transamerica about the policy at issue and was informed that, as security for a loan to QSL, it had been collaterally assigned to the Delaware County Economic Development Board ("Delco") in late 1997.[35] Even though Mrs. Ostroff would eventually obtain a release from Delco, she was informed by QSL's counsel in early 2003 that, because her husband had failed to exercise his option, the Company had taken over the Transamerica Policy and that the proper beneficiary was not her, but the QSL Trust for the Company's exclusive benefit.[36]

III. CONTENTIONS

With QSL's refusal to recognize her claim to death benefit proceeds under the insurance policy on her late husband's life, Mrs. Ostroff petitioned this Court for a new trustee; for instructions; for reformation of the 1996 Shareholders Agreement, the Split Dollar Agreement, and the Consent and Waiver to accomplish their intended purpose; to estop QSL from claiming an ownership

[33] *See* Couris Aff. ¶ 6; Lange Aff. ¶ 32.
[34] *Id.*
[35] *See* Pl.'s Reply Br. at Ex. 8.
[36] *See* Def.'s Ans. at ¶¶ 20, 24.

interest in the policy; for damages from QSL's breach of contract; and for a declaratory judgment. At bottom, she argues that directing payment of the death benefit proceeds to her is consistent with Ostroff's continued employment with QSL, with the terms of the Operative Agreements and those documents executed in connection with the Mistras closing, and with the parties' post-closing conduct.

QSL counterclaimed for a declaratory judgment as to Mrs. Ostroff's rights to the policy proceeds and has moved for summary judgment. It asserts that the plain language of the 1996 Shareholders Agreement supports a conclusion that it is the rightful owner to the policy insuring Ostroff's life because he failed to act timely with respect to the option right to purchase the policy after the agreement's termination. To hold otherwise, QSL argues, would be inconsistent with the language and purpose of the contemporaneously executed Operative Agreements, as well as the parties' conduct during and following the sale to Mistras.

Mrs. Ostroff subsequently filed a cross-motion for summary judgment.

IV. ANALYSIS

A. *Standard Applicable on Cross-Motions for Summary Judgment*

Court of Chancery Rule 56 sets the standard for summary judgment motions. Under this rule, a motion for summary judgment may be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together

with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[37] When deciding a motion for summary judgment, the Court must view the facts in the light most favorable to the nonmoving party, and the moving party has the burden of demonstrating that no material question of fact exists.[38] A party opposing such a motion, however, "may not rest upon the mere allegations or denials of [her] pleading, but . . . must set forth specific facts showing that there is a genuine issue for trial. If [she] does not so respond, summary judgment, if appropriate, shall be entered against [her]."[39] That the parties have filed cross-motions for summary judgment does not necessarily change the standard. Although the parties dispute the extrinsic evidence and the inferences that may be drawn from it regarding the interpretation of the various agreements, there is no dispute as to the authenticity of the various documents upon which the parties rely or the general factual sequence leading up to the Mistras acquisition.[40]

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[37] Ct. Ch. R. 56(c).
[38] *See Advanced Litig., LLC v. Herzka*, 2006 WL 2338044, at *4 (Del. Ch. Aug. 10, 2006); *Tanzer v. Int'l Gen. Indus., Inc.*, 402 A.2d 382, 385 (Del. Ch. 1979) (citing *Judah v. Del. Trust Co.*, 378 A.2d 624, 632 (Del. 1977)).
[39] Ct. Ch. R. 56(e).
[40] *See Chambers v. Genesee & Wyoming, Inc.*, 2005 WL 2000765, at *5 n.21 (Del. Ch. Aug. 11, 2005) ("Because both sides have alleged that there are outstanding issues of fact material to the resolution of the other's motion, Rule 56(h) does not apply by its own terms.").

B. *The Effect of the Purchase Option Provision*

Of initial consideration for the Court is the purchase option provision of the 1996 Shareholders Agreement and the effect, if any, it has on the disposition of death benefit proceeds under the Transamerica Policy insuring Ostroff's life.

As part of the sale to Mistras and as expressed by the Consent and Waiver, all of the QSL shareholders agreed on November 13, 2000 to terminate the 1996 Shareholders Agreement pursuant to Section 20(d) thereof.[41] This is undisputed. What is disputed is whether termination triggered another provision—Section 3(f)—and whether Ostroff's lack of an affirmative act in response to that provision's terms, which is also undisputed, necessarily resulted in a relinquishment, or waiver, of his and Mrs. Ostroff's rights under the policy.

In response to QSL's motion for summary judgment, Mrs. Ostroff has urged the Court to conclude that Section 3(f) does not govern the disposition of the death benefit proceeds because the agreement of which it is part—the 1996 Shareholders Agreement—was terminated.[42] That argument, however, eventually fails. By its terms, Section 3(f) was drafted to take effect upon termination of the 1996 Shareholders Agreement or a shareholder's withdrawal. Both Pennsylvania and Delaware courts have acknowledged the ability of parties to contract freely

[41] *See* Consent and Waiver at iii.
[42] *See* Ostroff Ans. Br. at 13.

for rights and obligations arising after termination of an existing agreement,[43] and there is nothing in this case which would lead the Court to conclude that Section 3(f) was somehow negated by the Consent and Waiver.

In bringing forth its motion, QSL characterizes the language of Section 3(f) as clear-cut. It contends that the express terms of Section 3(f) alone support a conclusion that neither Ostroff nor anyone claiming through him had any rights in the Transamerica Policy after the thirty day period had expired. Unfortunately, a reading of Section 3(f) confuses more than it illuminates.

Section 3(f) provides as follows:

> Purchase of Insurance Policies on Termination or Withdrawal of Shareholder. Upon termination of this Agreement, each Shareholder shall have the right, or upon withdrawal of a Shareholder, such withdrawing Shareholder shall have the right, to purchase from the Company any or all of the policies of insurance on such Shareholder's life. The purchase price shall equal the cash surrender value of the policies at the date of termination of this Agreement or date of withdrawal, whichever is applicable, plus the unearned portion of any premiums as of said date. This right may be exercised at any time within thirty (30) days after termination of this Agreement or withdrawal by payment of the purchase price to the Company. Payment of the purchase price shall be made in cash or by delivery of a certified check. Upon receipt of the purchase price, the Company shall deliver the insurance policies to the purchaser. In the event that any withdrawing or terminating Shareholder does not exercise this right within the thirty (30) day period provided herein, such Shareholder shall have no further rights to the policies owned by the remaining Shareholders on the life of the withdrawing or terminating Shareholder.

[43] *See Unit Vending Corp. v. Lacas*, 190 A.2d 298, 299 (Pa. 1963); *Bell Atl. Meridian Sys. v. Octel Commc'ns Corp.*, 1995 WL 707916, at *11 (Del. Ch. Nov. 28, 1995).

The provision is important not only for what it says but for what it does not say. Significantly, it is silent as to whether the Company or "the remaining shareholders" would continue making premium payments should the insured not exercise the purchase option. It is silent as to whether the insured or the insured's estate would cease having *any* interest in, or *any* expectation of, death benefit proceeds, even if another party or entity had ownership of or rights to a particular policy. And, finally, the last sentence of Section 3(f)—declaring a shareholder not electing to exercise the purchase option as having no further rights to those policies "owned by the remaining Shareholders on the life of the withdrawing or terminating Shareholder"—offers no clarification as to the first sentence of the provision, which expressly gives a terminated or withdrawn shareholder the right to purchase *his* respective policy. As the Plaintiff's briefing notes, nothing in the record suggests that any of the shareholders owned an insurance policy on another shareholder's life. That recognition, correct as it is, would not, of course, render Section 3(f) itself ambiguous, but it does suggest that other portions of Section 3(f) offer little illuminative value.[44]

[44] Although the Court concludes that Section 3(f) alone does not answer the question as to the proper ownership and disposition of the Transamerica Policy, it does not assume that Section 3(f) was without some purpose. At the very least, it both contemplated and established some temporal pressure on a shareholder to secure his interest in a policy once the underlying agreement among the shareholders had been terminated or once the shareholder himself withdrew from the Company. Should the option period end without a shareholder's taking the affirmative act of electing to purchase the policy, the Company could presumably take it over

The heart of this case is one of contract interpretation. For Pennsylvania courts, as well as this one, the central aim in interpreting a contract is to determine the intent of the parties at the time they contracted,[45] and it is well-settled that a court should not venture beyond the four corners of an agreement when its express terms are unambiguous.[46] In determining whether ambiguity exists, this Court must consider whether a contract's terms are "reasonably or fairly susceptible of different interpretations or may have two or more different meanings."[47] At this point, it would be premature to conclude that the 1996

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in its entirety, and nothing in Section 3(f) prohibited the Company from doing so. It, therefore, would have made little, if any, sense for the Company to continue making premium payments, either in part or in whole, without some expectation of future benefit. Indeed, it would have also been illogical to include a purchase option provision if a terminated or withdrawn shareholder could continue having an interest in a policy's proceeds without taking any action different from what had been done in the past. The rational course for Ostroff, especially given his poor health, was to act promptly and purchase the Policy within thirty days. He, of course, did not.

[45] *See Supermex Trading Co. Ltd. v. Strategic Solutions Group, Inc.*, 1998 WL 229530, at *2 (Del. Ch. May 1, 1998) (stating that the "primary goal of contract interpretation is to satisfy the reasonable expectations of the parties at the time they entered into the contract," a process which "often requires a court to engage in an analysis of the intent or shared understanding of the parties" at the time of the contract) (citations omitted); *Seven Springs Farm, Inc. v. Croker*, 801 A.2d 1212, 1215 (Pa. 2002) ("The primary objective of a court when interpreting a contract is to ascertain the intent of the parties."); *see also* RESTATEMENT (SECOND) OF CONTRACTS § 201 cmt. c (1981) ("The objective of interpretation in the general law of contracts is to carry out the understanding of the parties rather than to impose obligations on them contrary to their understanding . . . .").

[46] *See Robert F. Felte, Inc. v. White*, 302 A.2d 347, 351 (Pa. 1973) ("When a written contract is clear and unequivocal, its meaning must be determined by its contents alone. It speaks for itself and a meaning cannot be given to it other than that expressed.") (citation omitted); *Progressive Int'l Corp. v. E.I. du Pont de Nemours & Co.*, 2002 WL 1558382, at *7 (Del. Ch. July 9, 2002) ("[U]nder the objective theory of contracts to which Delaware adheres, it is presumed that the language of a contract governs when no ambiguity exists.") (citations omitted).

[47] *Rhone-Poulenc Basic Chems. Co. v. Am. Motorists Ins. Co.*, 616 A.2d 1192, 1196 (Del. 1992). Similarly, under Pennsylvania law, ambiguity is found where a contract's language "is reasonably susceptible of different constructions and capable of being understood in more than

Shareholders Agreement, because of Section 3(f), suffers from ambiguity, and that resort to extrinsic evidence is necessary, without first considering other documents that were executed contemporaneously with the 1996 Shareholders Agreement's predecessor agreement.[48] At this level of analysis, consideration of these other Operative Agreements—namely, the Split Dollar Agreement and the QSL Trust Agreement—is particularly appropriate because both QSL and Mrs. Ostroff are in agreement that they are integral to understanding the founding shareholders' overall intent with respect to the Company's purchase of key man life insurance.[49] Next, the Court considers Ostroff's Split Dollar Agreement.[50]

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one sense." *Wilcha v. Nationwide Mut. Fire Ins. Co.*, 887 A.2d 1254, 1259 (Pa. Super. Ct. 2005).

[48] *See Am. Legacy Found. v. Lorillard Tobacco Co.*, 831 A.2d 335, 346 (Del. Ch. 2003) (examining contemporaneously executed documents). *See also Supermex Trading Co.*, 1998 WL 229530, at *3 ("A court may look beyond the four corners of an agreement to those other agreements that have been referred to and incorporated by reference."); *W. Dev. Group, Ltd. v. Horizon Fin.*, 592 A.2d 72, 75 (Pa. Super. Ct. 1991) ("[W]hen a contract refers to a separate document, a court may examine the language of the other document to ascertain the intent of the parties.").

[49] *See also* Pet. ¶ 32 ("The 1994 Shareholders Agreement, the Split Dollar Agreement and the QSL Trust [Agreement] are inter-related and integrated instruments representing an agreement and common understanding among the then owners of QSL . . . ."); QSL Opening Br. at 19–20 ("Contemporaneously executed documents, such as the QSL Trust Agreement and the Split Dollar Agreement, are to be read with the 1994 and 1996 Shareholders Agreements since together they reflect the overall agreement between [the parties].") (citations omitted).

[50] I do not consider separately the QSL Trust Agreement. The parties generally agree that the QSL Trust remained as the owner and named beneficiary of Ostroff's Transamerica Policy. The Plaintiff argues that the QSL Trust Agreement remains in effect. Curiously, the Defendant agrees, despite its central argument that both the Shareholders Agreement and the Split Dollar Agreement were terminated with the sale to Mistras. Section 8 of the QSL Trust Agreement, however, provides in part:

> 8. This Agreement shall terminate upon the occurrence of any one of the following events:

C. *The Split Dollar Agreement and Ostroff's Employment After the Mistras Acquisition*

At the core of the parties' cross-motions is a fundamental disagreement concerning Ostroff's Split Dollar Agreement: whether it remains in force or whether it has been terminated. As with the contemporaneously executed Operative Agreements, the Split Dollar Agreement between Ostroff and QSL contained a termination provision. Section 6 of that agreement established two methods by which the agreement could be terminated: (i) a written notice by either party while Ostroff was still an employee of QSL or (ii) a termination of Ostroff's employment. There is agreement that the former did not occur: QSL admits that the Consent and Waiver executed as part of the Mistras sale did not constitute "written notice" for the purposes of Section 6.[51] It is the latter method, termination of the Decedent's employment, to which the Court now turns.

(a) A vote of all the outstanding shares of stock of Company.
(b) The termination of the Agreements.

Thus, the Defendant's argument, appears to conflict with the language of Section 8 itself. By its terms, the QSL Trust Agreement makes plain that it shall terminate upon the termination of both the Shareholders Agreement and the Split Dollar Agreement. Logically, an argument that those two agreements had been terminated would include the ancillary argument that the QSL Trust Agreement had also been terminated. Where there is no dispute between the parties, however, the Court will not create one.

[51] As QSL views it, the Consent and Waiver did not terminate the Split Dollar Agreement, but "merely memorialized the shareholders' agreement to terminate the 1996 Shareholders Agreement." QSL Reply Br. at 14 n.12.

1. The Effect of Ostroff's Resignation and New Employment Agreement with QSL

On November 13, 2000, in conjunction with the sale to Mistras, both Ostroff and Seraphim resigned their positions as directors and officers of QSL.[52] QSL relies principally on Ostroff's resignation as the basis for its argument that the Split Dollar Agreement was terminated. Mrs. Ostroff counters that, because Ostroff was an employee of QSL after the sale to Mistras and until his death, Ostroff's resignation letter does not exactly signify termination of the Split Dollar Agreement. The Court, however, concludes that both Ostroff's resignation letter and the new Employment Agreement demonstrate that the Split Dollar Agreement had been terminated.

Because of Ostroff's resignation letter, he no longer served as a director, vice president, or treasurer of QSL.[53] Mrs. Ostroff characterizes QSL's resignation-equals-termination argument as an effort to contort Ostroff's resignation letter to fit the Split Dollar Agreement's termination provision.[54] In other words, she suggests that some expression of a "general resignation" by Ostroff is lacking because Ostroff was also an employee of QSL post-sale. It is difficult, however, to see how the second basis under Section 6 (*i.e.*, that

[52] *See* Stock Purchase Agmt. at § 1.03; *see also* Def.'s Exs. 1 (Ostroff Resignation Letter) & 13 (Seraphim Resignation Letter).
[53] In some sense, Ostroff's resignation letter was supplementary in nature because Section 22 of the 1996 Shareholders Agreement provided that, upon ceasing to be a QSL shareholder, a party to the agreement was "deemed to have resigned as a Director and as an Officer of the Company."
[54] *See* Ostroff Ans. Br. at 24.

termination of the Split Dollar Agreement occurs upon "termination of the Employee's employment") was not triggered when Ostroff effectively resigned from every position he, based on the record, had at QSL at the time of the Mistras closing. No evidence indicates that Ostroff held an employed position other than vice president and treasurer and, at oral argument, Mrs. Ostroff's counsel was unable to refer to anything in the record that suggested otherwise.[55]

Although Ostroff did serve as a QSL employee until his death, he did so in a capacity that was separate and distinct from his former roles and functions. At closing, Ostroff and QSL, newly acquired by Mistras, entered into an Employment Agreement, which commenced on November 13, 2000. The particular position to which this agreement referred was for Ostroff to serve as a Sales Applications Developer.[56] As there is nothing in the record to indicate that he had held this position before, there is also no reference in the Employment Agreement as to a continuation of certain titles or functions already held by Ostroff.[57] Moreover, the Employment Agreement does not reference the continuation of any specific benefits connected with Ostroff's employment. For

[55] *See* Transcript of Oral Arg. ("Tr.") at 31.
[56] *See* Ostroff Employment Agmt. at § 3.
[57] Interestingly, Ostroff's compensation as a Sales Applications Developer was not based on any particular labor performed or time expended. Instead, his "salary" was to be paid over a five-year period and based, in part, on a percentage of QSL's net sales. He was entitled to this compensation regardless of whether he continued to be employed by QSL or its successor. Furthermore, even if Ostroff were to die within the five-year period, the arrangement provided for the compensation still to be paid to Ostroff's beneficiaries or his estate. *See id.* at § 5; *see also* Stock Purchase Agmt. at § 4.07.

example, although the Employment Agreement provides that Ostroff would be "entitled to participate in the Company's group health, life and disability insurance benefits made available from time to time for its employees generally,"[58] there is no specific reference either to Ostroff's Transamerica Policy or, indeed, to the Split Dollar Agreement itself. The only reasonable and rational conclusion from this is that the agreement had been terminated.

2. The Stock Purchase Agreement

In addition to Ostroff's resignation letter and Employment Agreement supporting the Court's determination that the Split Dollar Agreement had been terminated, the Stock Purchase Agreement also informs the Court's conclusion. On the face of the agreement, there is tension between two provisions: Section 4.07, which concerns the "continued employment" of the sellers, and Section 9.04, which is an integration clause.

Section 4.07 of the Stock Purchase Agreement, which was executed in conjunction with the Employment Agreement, provided for the sellers to be subject to an employment contract or non-competition agreement. It states, in pertinent part:

> Continued Employment of Sellers; Non-Competition Agreements. In consideration of Sellers agreeing to not compete and any restrictive provisions for a period of five (5) years following the Closing, each of the Sellers shall enter into and be subject to an

[58] Ostroff Employment Agmt. at ¶ 6.

> Employment Contract or Non-Compete Agreement which will provide that their salaries shall be paid, at a minimum, on a pro-rata basis in proportion to their respective stock ownership in the Company immediately prior to Closing, an amount equal to 1.25% of net sales of products or services . . . . Salaries shall be paid to each of the Sellers or their beneficiaries or their estate regardless of whether they continue to be employed by the Company or its successor. Notwithstanding anything to the contrary [here], each of the Sellers shall be at-will employees of the Company.

Section 9.04, the integration clause, provides in part:

> Entire Agreement; Assignment. Except for those agreements identified in Section 4.07, [the Stock Purchase Agreement] constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof.

Not surprisingly, the heading of Section 4.07 itself adds to the confusion that the Operative Agreements have presented. While it may appear to lend support to the Plaintiff's claim that there had been no termination of service (*i.e.*, there was continued employment notwithstanding Ostroff's termination letter), it does not create a dispute of fact as to whether there, in fact, had been a termination of Ostroff's service as a vice president and treasurer—the only positions that he is known to have held up until the transfer of ownership to Mistras.[59]

[59] Section 9.02 of the Stock Purchase Agreement also states descriptive headings, such as the one used for Section 4.07, do not have any interpretative effect, but are used only for convenience. Thus, the use of "continued" in the heading of Section 4.07 does not help Mrs. Ostroff.

It is the interplay of Sections 4.07 and 9.04 which is more problematic. In essence, the Court is confronted with the question of whether the Stock Purchase Agreement, by way of Section 9.04, had a neutralizing effect on certain agreements, such as the Split Dollar Agreement, which were not specifically referenced in Section 4.07. I conclude that it did.

The Split Dollar Agreement made explicit reference to Ostroff's continued employment and provided that QSL would purchase the Transamerica Policy and pay its premiums "so long as Employee remains in the active employ of the Company."[60] That agreement, however, is not identified in Section 4.07. At oral argument, Mrs. Ostroff's counsel argued that, because the Stock Purchase Agreement's integration clause only pertained to the "subject matter hereof," the Split Dollar Agreement was not superseded because neither it nor any of the key man life insurance policies were ever referenced in the Stock Purchase Agreement or its corresponding schedules.[61] In other words, the argument is that, because the Split Dollar Agreement (and Transamerica Policy) was not referenced elsewhere in the agreement, the integration clause had no effect on it. That argument, however, is unpersuasive.

As noted previously, the Split Dollar Agreement (and the corresponding Transamerica Policy) related to Ostroff's employment with QSL. Ostroff's

[60] Ostroff Split Dollar Agmt. at ¶ 7.
[61] *See* Tr. at 33–35.

relationship with QSL as an employee, along with an insurance policy on his life in recognition of that employment, was expressly a subject matter of the Split Dollar Agreement. Section 4.07 referenced only an "employment contract or non-competition agreement." For Ostroff, this was the Employment Agreement executed by QSL and him at the time of the Mistras transaction.[62] Because the subject matter of both Section 4.07 and the Split Dollar Agreements did concern employment, the Stock Purchase Agreement, by way of Section 9.04, superseded those other related agreements—namely, Ostroff's Split Dollar Agreement—that had not been identified in Section 4.07 and were related, at least in part, to Ostroff's employment.

D. *The Language of the Operative Agreements and the Mistras Transactional Documents*[63] *Leads to One Conclusion: There is No Legal or Factual Basis to Award Mrs. Ostroff the Transamerica Policy Proceeds*

Mrs. Ostroff maintains that she is entitled to all proceeds of the Transamerica Policy because, after the sale to Mistras, the Company had no interest in the policy proceeds and, to hold otherwise, would require the Court to accept that someone in poor health would simply "walk away" from $250,000. She points to the Operative Agreements themselves: first, the Split Dollar Agreement was made for the practical purpose of enabling QSL to buy out the

[62] That agreement, of course, did not reference the Split Dollar Agreement or Transamerica Policy either.

[63] The Mistras Transactional Documents include the Stock Purchase Agreement, the Consent and Waiver, the Ostroff Employment Agreement, and the resignation letters.

founding shareholders' shares and that purpose was negated when Mistras acquired her husband's shares outright;[64] second, the Split Dollar Agreement, by its terms, continued because Ostroff remained an employee of QSL; and, finally, the Shareholders Agreement, of which the purchase option provision was part, had been expressly terminated and no longer was to govern the disposition of the Policy's proceeds. She adds that her husband's conduct in not purchasing the Policy within thirty days was consistent with that understanding. On the other hand, QSL points to the ripple effect(s) that the sale to Mistras had: termination of the Shareholders Agreement; Ostroff's resignation as an officer and director; and Ostroff's new employment relationship with QSL as a sales applications developer. As does Mrs. Ostroff, QSL relies upon the Operative Agreements as supporting its interpretation comporting with the founding shareholders' shared expectations.

[64] *See* Ostroff Ans. Br. at 28. As part of the sale, Ostroff received approximately $988,000 for his 76 shares as well as $283,000 in "salary" payments over a five-year period. *See* Lange Aff. ¶¶ 21, 24. Thus, Mrs. Ostroff is correct in arguing that there was no longer a need (under Section 3(c) of either shareholders agreement) for the Transamerica Policy to fund a buyout of Ostroff's shares. Still, the Transamerica Policy on Ostroff's life continued. With Ostroff's resignation of his employment as a vice president and treasurer of QSL, the Split Dollar Agreement, as discussed previously, had also terminated. Upon the agreement's termination, however, Section 6 of the Split Dollar Agreement contemplated only two scenarios: "the Policy shall be canceled or acquired by Employee at Employee's option at a cost equal to the unearned premium." Neither, of course, occurred. QSL, however, not only continued to make payments on the Policy's premiums, but paid them entirely without any allocation of income to Ostroff. Once Ostroff died, the insurer was, therefore, obligated to make the face amount of $250,000 payable to the beneficiary on the Policy. There is no dispute that the listed beneficiary was, at all times, the QSL Trust.

Of course, in resolving the dispute as to the ownership of and the disposition of proceeds from the Transamerica Policy, the intent of the parties at the time they contracted is routinely the Court's lodestar.[65] The approach under Pennsylvania law is no different. Viewing the intention of the parties to be "paramount," the Pennsylvania Supreme Court instructs courts to "adopt the interpretation, which under all of the circumstances of the case, ascribes the most reasonable, probable and natural conduct of the parties, bearing in mind the objects manifestly to be accomplished."[66]

A contract's express terms provide the starting point in approaching a contract dispute. As it is often said: where the terms are clear on their face, they are to be given their ordinary and usual meaning.[67] Sometimes, however, a contract's terms are ambiguous or fairly susceptible to different interpretations.[68] In such instances, courts are permitted to use extrinsic evidence "to uphold, to the extent possible, the reasonable shared expectations of the parties at the time of

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[65] *See, e.g.*, *Comrie v. Enterasys Networks, Inc.*, 837 A.2d 1, 13 (Del. Ch. 2003); *Bell Atlantic*, 1995 WL 707916, at *5 ("The primary consideration in the construction of contract language is to fulfill, to the extent possible, the reasonable expectations of the parties at the time they contracted.") (citations omitted).

[66] *Unit Vending Corp.*, 190 A.2d at 300.

[67] *See BAE Sys. N. Am., Inc. v. Lockheed Martin Corp.*, 2004 WL 1739522, at *4 (Del. Ch. Aug. 3, 2004); *True N. Commc'ns, Inc. v. Publicis S.A.*, 711 A.2d 34, 38 (Del. Ch. 1997), *aff'd*, 705 A.2d 244 (Del. 1997) (TABLE); *see also Rhone-Poulenc*, 616 A.2d at 1195 ("Clear and unambiguous language in an insurance policy should be given its ordinary and usual meaning.").

[68] *See Comrie*, 837 A.2d at 13.

contracting."[69] In giving effect to the parties' intentions, it is generally accepted that the parties' conduct before any controversy has arisen is given "great weight."[70]

Both parties have moved for summary judgment, and each contend that there are no material facts in dispute and that the terms of the contract, or contracts, at issue are clear and unambiguous.[71] Although a judge's function in considering a motion for summary judgment "is not to weigh evidence and to accept that which seems to him to have greater weight," the Court is also not permitted to ignore extrinsic evidence "[a]s long as the court is aware that doubts

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[69] *Id.*

[70] *See Shields Dev. Co. v. Shields*, 1981 WL 7636, at *4 (Del. Ch. Dec. 8, 1981) ("Even [where there is ambiguity], it is the general rule that a construction given by acts and conduct of the parties before any controversy has arisen is entitled to great weight and will be adopted and enforced when reasonable."); *see also Radio Corp. of Am. v. Phila. Storage Battery Co.*, 6 A.2d 329, 340 (Del. 1939) ("It is a familiar rule that when a contract is ambiguous, a construction given to it by the acts and conduct of the parties with knowledge of its terms, before any controversy has arisen as to its meaning, is entitled to great weight . . . . The reason underlying the rule is that it is the duty of the court to give effect to the intention of the parties where it is not wholly at variance with the correct legal interpretation of the terms of the contract, and a practical construction placed by the parties upon the instrument is the best evidence of their intention.").

[71] Furthermore, with cross-motions, neither party's motion will be granted unless one demonstrates that no genuine dispute of material fact exists and one of the parties is entitled to summary judgment as a matter of law. *Empire of Am. Relocation Servs., Inc. v. Commercial Credit Co.*, 551 A.2d 433, 435 (Del. 1988); *see also Rains v. Cascade Indus. Inc.*, 402 F.2d 241, 245 (3d Cir. 1968) ("Cross-motions are no more than a claim by each side that it alone is entitled to summary judgment, and the making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or that the losing party waives judicial consideration and determination whether genuine issues of material fact exist. If any such issue exists it must be disposed of by a plenary trial and not on summary judgment.").

and uncertainty lurk in the meaning and application of agreed language."[72] An interpretative venture into extrinsic evidence, however, is not warranted simply because the parties disagree as to a contract's proper construction or their intent upon executing the contract.[73] That is precisely the case here.

The central disagreement between the parties is, of course, whether the Split Dollar Agreement—and the original purpose of the key man life insurance policies—continued after the sale to Mistras in 2000 and what actions, if any, were required of Ostroff to maintain his pre-sale interest in the Transamerica Policy.

To support their positions, both parties cite to extrinsic evidence. Mrs. Ostroff, for example, has offered the affidavit of Bernard P. Couris ("Couris"), the Ostroffs' personal financial planner, which indicates that her late husband was concerned after learning of a lapsed premium payment on the Transamerica Policy and soon after alerted the Company to correct the problem.[74] Couris also recalled that Ostroff referred to the policy as his own and apparently incorporated

[72] *Empire of Am.*, 551 A.2d at 435.
[73] *See, e.g.*, *Rhone-Poulenc*, 616 A.2d at 1196; *Bell Atlantic*, 1995 WL 707916, at *6 n.5 ("This is not to say, however, that contract language is rendered ambiguous simply because the parties disagree over its meaning in litigation; the objective theory of contract demands that any understanding of the meaning of the language be reasonable given the objective evidence as known by the party arguing for that meaning.") (citation omitted).
[74] *See* Couris Aff. ¶ 6 ("In causing the cure of the lapse of premium payment, Mr. Ostroff believed the policy benefits were his."); Lange Dep. at 43–44; Lange Aff. ¶ 32.

this belief and expectation of future proceeds into the estate planning models that he had prepared for the Ostroffs.[75]

On the other hand, there is extrinsic evidence that could favor QSL. First, Lange, in his affidavit, recalled a discussion that Ostroff and he had with Mistras representatives as to the continuation of the key man life insurance policies and "how [QSL] would simply continue the policies, pay the premiums for the policies, and keep the benefits of the policies as purely business assets [*i.e.*, for the exclusive benefit of QSL] going forward."[76] His deposition testimony also suggested that Ostroff understood that the QSL Trust would retain all of the policy proceeds and, in the context of a lapsed premium payment, that QSL was responsible for 100% of the premium payments under the Transamerica Policy.[77] Second, Seraphim, in his deposition, noted his understanding that the nature of the policies had changed after the sale to Mistras; unlike Ostroff, he had taken affirmative steps to acquire his policy.[78] Finally, there is extrinsic evidence illustrating that the manner by which premium payments were made and accounted for had also changed: once Ostroff no longer had a financial stake in QSL, the Company paid all of the premiums on the Transamerica Policy and no

[75] *See* Couris Aff. ¶¶ 2, 4, 6–7.
[76] *See* Lange Aff. ¶¶ 18–19; *id.* ¶ 31 ("Prior to the sale, we discussed what would happen to the key man life insurance policies since we were not going to purchase them. As part of these discussions, Mistras decided that it was going to take over the Transamerica Policy and the Lincoln Benefit Life policy and maintain them as business assets post-sale . . . .").
[77] *See* Lange Dep. at 43–44.
[78] *See* Seraphim Dep. at 55–57, 73.

portion of the premium paid was ever attributed to Ostroff as taxable income—unlike the practice before the Mistras purchase.

Consideration of this extrinsic evidence is inappropriate for one reason: it is irrelevant because the Operative Agreements and the Mistras Transactional Documents are not ambiguous with respect to Mrs. Ostroff's claim to the policy proceeds.[79] Disagreement as to facts after the parties have contracted does not prove ambiguity in the documents themselves. Although the focus here is on the common intent of the parties when they contracted, a search for their intent does not "invite a tour through the plaintiff's cranium, with the plaintiff [or the plaintiff's survivor] as the guide."[80]

The Operative Agreements and the Mistras Transactional Documents, on their face, are susceptible to only one meaning. By their terms, the 1996 Shareholders Agreement and Ostroff's Split Dollar Agreement provided methods for those agreements to be terminated. Under Section 20(d) of the 1996 Shareholders Agreement, termination would occur upon unanimous agreement of all shareholders. Under Section 6 of the Split Dollar Agreement, termination would occur upon termination of Ostroff's employment. Both of these methods were used on November 13, 2000. The shareholders' Consent and Waiver

[79] If consideration of the extrinsic evidence were required, summary judgment would not be available to either party because of conflicting inferences that could reasonably be drawn from the evidence.

[80] *See Progressive Int'l Corp.*, 2002 WL 1558382, at *7 (citing E. ALLAN FARNSWORTH, FARNSWORTH ON CONTRACTS § 3.6 (2d ed. 2000)).

effectively terminated the 1996 Shareholders Agreement and Ostroff's letter to QSL, in which he resigned as vice president and treasurer, effectively terminated the Split Dollar Agreement.[81] That Mrs. Ostroff reads these agreements to say otherwise does not establish ambiguity. Even if Mrs. Ostroff's extrinsic evidence is taken as true (and the Court agrees that it is surprising that her late husband, in light of his poor health and the difficulty in obtaining any comparable coverage otherwise, did not exercise his option to acquire the Transamerica Policy), the language of the Operative Agreements and the Mistras Transactional Documents nonetheless leads reasonably and rationally to only one conclusion: that Ostroff, and thus Mrs. Ostroff, had no interest in the Transamerica Policy or its proceeds. The Operative Agreements and the Mistras Transactional Documents are not models of clarity, but they are not ambiguous. The material facts are not in dispute, and, therefore, summary judgment against Mrs. Ostroff is appropriate.[82]

[81] Although Ostroff entered into an Employment Agreement with QSL on the same day, his relationship with QSL was separate and distinct from what it had been before, not least of all because the Plaintiff has not alleged that there was a continuation of any title or function. *See* Part IV.C.1, *supra*.

[82] With this conclusion, it follows that Mrs. Ostroff's request for other relief, such as the appointment of a successor trustee and a declaratory judgment, must also be denied. Conversely, QSL is entitled to a declaration that Mrs. Ostroff has no claim to the proceeds of the Transamerica Policy.

V. CONCLUSION

Accordingly, QSL's Motion for Summary Judgment is granted, and Mrs. Ostroff's Cross-Motion for Summary Judgment is denied. Counsel are requested to confer and to submit a form of order to implement this Memorandum Opinion.