

DEAL POINTS SHORT TAKES 2021.04: DON'T BREAK THE CAMEL'S BACK IN NEGOTIATIONS

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Deal Point: Don't Break the Camel's Back in Negotiations

In Deal Points Short Takes 2021.01: Use Other Parties' Deal Leverage (available on our website at <https://kurtinlaw.com/articles-whitepapers/>) we discussed strategies for negotiating a transaction against a counterparty that thinks it's in the driver's seat, has greater leverage than you, and can dictate "take it or leave" terms. Here's a consideration for the opposite situation: when *you're* the party in the driver's seat, don't break the camel's back by insisting on terms so bad for the other party that it may refuse your business altogether or (sometimes worse) accept the terms but de-prioritize and poorly perform it.

Explanation and Takeaways

There's a bad old joke that goes: "I lose money on every sale, but I make it up on volume." Everybody wants a good deal, a competitive deal, a market or better-than-market deal. But we've seen many clients and counterparties who had the edge in bargaining power negotiate so hard for the last dollar based upon that edge that the other party pulled out of the negotiation, sometimes abruptly and without warning, because the price demanded had gone so low that they felt that the business wasn't worth having and made a snap decision to pull out, sometimes even angered by what it viewed as excessive demands, the rubber band snapping before showing any signs of strain. We've seen this happen in M&A, financing, licensing, distribution, service, manufacturing and other transactions. Sometimes something potentially even worse happens: the other party doesn't pull out, but accepts an unprofitable deal, and performs it in a de-prioritized, resentful and poor manner, maybe short of breach, but to everyone's ultimate dissatisfaction. Some less sophisticated deal-makers congratulate themselves on being great negotiators because they always drive the hardest bargain possible, but it's usually bad, primitive, short-term thinking disguising itself in their minds as toughness. By all means insist on a competitive, market or better-than-market deal, but don't negotiate to the point that the other party doesn't think your business is worth having, or worth having only to perform when it has nothing better to do. Know your market and your counterparty's core interests. Leave something on the table. Successful transactions are win-win, not win-lose.

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