

DEAL POINTS SHORT TAKES 2021.05: FIND A COUNTERPARTY INSIDER

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***Deal Point: Find a Counterparty Insider***

In Deal Points Short Takes 2021.04: Don't Break the Camel's Back in Negotiations (available on our website at <https://kurtinlaw.com/articles-whitepapers/>) we discussed the strategic common sense of not abusing deal leverage by insisting on terms so bad for the other party that it may blow up the deal. Here's a deal point for finessing that line: find a counterparty corporate insider to guide you on what the other side's core needs in the transaction are, what issues it can yield on, and what it can't.

***Explanation and Takeaways***

As we said last time, everybody wants a good deal, a competitive deal, a market or better-than-market deal. But we've seen many clients and counterparties, especially those who had the edge in bargaining power, negotiate so hard for the last dollar or concession based upon that edge that a transaction that both sides initially wanted blew up. It's key to have a hierarchy not only of your own critical deal points, to know what you can give ground on and what you can't, but to have a good idea of the same critical and less critical deal considerations for your counterparty. If you know that a given issue is critical to the other party but not to you, you can accede to the other party's needs in exchange for some of your own. That's not weakness; that's smart negotiating to get your deal across the finish line.

How to know the other party's critical and less-than-critical deal issues to create that hierarchy? Some of it will be obvious from initial negotiations, term sheets, etc. Some more will be apparent from always critical industry knowledge and knowledge of each party's place in that industry. But for less obvious issues, find counterparty insider who's invested in getting the deal across the finish line. Sometimes information like that is conveyed, on or off the record, from lawyer to lawyer. But just as often, a line business unit officer in the counterparty, often below the top executives, will be able to subtly provide valuable information about what his or her company really needs out of the deal, or why a certain issue has become an unexpected sticking point and how it can be resolved. Sometimes, they have even been specifically tasked by their company superiors to convey that kind of information without attribution. Either way, especially in a transaction with unexplained and difficult-to-resolve sticking points, look out for that company insider on the other side who wants to help bring the deal across the finish line.

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