

# Implied Covenant Will Not Save You From Your Agreement If You Negotiated Away Your Rights

A recent ruling is a powerful reminder that the broad freedom of contract that Delaware law accords entities such as LLCs offers both the promise of great latitude to contracting parties and the threat of serious pitfalls for parties that fail to carefully protect their interests in the agreement, according to **a post on the website** of Cadwalader, Wickersham & Taft.

The decision also underscores the limits on an implied covenant breach claim under Delaware law.

The authors offer some takeaways from the ruling, discussing in detail:

- The implied covenant of good faith and fair dealing as applied in Delaware does not operate to rewrite contract simply because regretful plaintiffs wished they had negotiated a better or different deal
- The negotiated, mutual waiver of fiduciary duties narrows the already slim chance a Delaware court will apply the implied covenant of good faith and fair dealing
- Waiver of fiduciary duties, conditioned on a sale to an unaffiliated third party, granted the board unfettered discretion to determine the marketing and structure of the company's sale
- Plaintiffs offered no reason to believe defendants' conduct frustrated their reasonable expectations
- The court highlighted certain conduct that may be

sufficiently egregious to implicate the implied covenant  
in similar situations

**Read the article.**