

## *SIGA Technologies, Inc.* v. *PharmAthene, Inc.*: Delaware Supreme Court Finds Commitment to Negotiate in Good Faith Applies to Non-Binding Term Sheet

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On May 24, 2013, the Delaware Supreme Court issued an opinion in *SIGA Technologies, Inc., v. PharmAthene, Inc.*, reaffirming the rule that an obligation to negotiate in good faith according to a term sheet that stated it was non-binding can be enforceable.

It is common practice to outline the basic terms of a business deal in a term sheet that explicitly states that the term sheet is non-binding in order to avoid contractual obligations until a formal agreement containing all of the terms is executed. In *SIGA Technologies*, the Court determined that *SIGA Technologies, Inc.* (“*SIGA*”) was acting in bad faith when it proposed terms that were substantially different from those embodied in the term sheet, despite the term sheet’s inclusion of an explicit provision indicating that the term sheet was non-binding. Further, the Court provided clear direction that expectation damages could be awarded if the trial judge determines that the parties would have reached an agreement but for the defendant’s breach.

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