

## BLOGS

Terminations

# Federal Court Upholds Manufacturer's Right to Terminate

A Washington federal court granted Volvo's motion for partial summary judgment, finding that the implied covenant of good faith and fair dealing had no bearing on the exercise of Volvo's unrestricted contractual right to terminate a dealership agreement. *Volvo Constr. Equip. N. Am., LLC v. Clyde/West, Inc.*, 2014 U.S. Dist. LEXIS 168264 (W.D. Wash. Dec. 3, 2014). Volvo terminated its dealership agreement with Clyde, a dealer of Volvo's heavy construction equipment, under a provision of the agreement that allowed either party to terminate the relationship for any reason after providing 180 days advance written notice. A different section of the dealership agreement specified that, in the event of a breach, either party "may" give the breaching party written notice and sixty days to cure. If the breach was not timely cured, the nonbreaching party was allowed to terminate the dealership agreement. After the termination, Clyde alleged that Volvo had ended the relationship because it believed that Clyde had breached the agreement by underperforming in the marketplace. Clyde contended that the covenant of good faith and fair dealing required Volvo to provide it with sixty days to cure the breach before termination.

The court refused to apply the implied covenant of good faith and fair dealing because the parties had expressly agreed that either of them could terminate the agreement for any reason after providing 180 days written notice. Volvo's reason for termination was irrelevant, the court held, because its right to terminate was unrestrained. The court also held that a claim Clyde brought under the Federal Dealer Act failed as a matter of law because the parties did not manufacture or deal in "automobiles" as contemplated by the Act.

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