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## BLOGS

### Terminations

# West Virginia Supreme Court Affirms Termination of Distributorship

The Supreme Court of Appeals of West Virginia recently affirmed the termination of an alcohol distribution agreement based on the distributor's repeated failure to timely pay for goods delivered by the supplier. *N. Cent. Distribs., Inc. v. Moats*, 2013 W. Va. LEXIS 1236 (W. Va. Nov. 8, 2013). Attempts by the supplier, Labatt, to withdraw payment from the distributor, NCDI, through electronic funds transfer failed for four consecutive months due to insufficient funds in the distributor's account. Accordingly, Labatt notified NCDI that it had breached the parties' distribution agreement and demanded cure by payment of the owed amounts. Upon NCDI's failure to meet the notice's payment deadline, Labatt terminated the agreement. NCDI ultimately remitted its outstanding balance six months after the payments were due. An administrative body reviewing the termination concluded that Labatt had complied with relevant law governing the termination of alcohol distribution agreements, which prohibited the termination of any such agreement "without due regard for the equities" and without "just cause." NCDI appealed a trial court's affirmance of the administrative ruling.

In its substantive challenge to the termination, NCDI argued that the termination was inequitable and without "just cause" because, under the parties' established business practice, Labatt should have notified NCDI before withdrawing funds from its account and should have credited NCDI for certain damaged goods. NCDI also argued that, under the parties' established business practice, it was permitted to withhold payment during an invoice dispute. In affirming the trial court, the appellate court balked at NCDI's reliance on established business practice to withhold payment. The court noted that Labatt had a strong business interest in the timely collection of amounts it was owed. Further, the court affirmed the finding of "just cause" for the termination, because the distribution agreement expressly provided that timely payment was essential and that failure to timely pay provided "just cause" for termination. Finally, the court affirmed the trial court and administrative body's upholding of the termination, notwithstanding the fact that Labatt's termination notice referenced an outdated version of the parties' agreement.

## Related People

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