

litigation lawflash

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Recent French Case Law on Damages for Sudden Termination of Business

Companies should be aware that certain risks are attached to an insufficient notice period when terminating a business relationship.

This summary schedule highlights the risks attached to an insufficient notice period in the event that a business relationship is terminated. These recent case precedents show that, to date, the longest notice period accepted by the courts is two years and that the gross margin, on which the compensation amount is based, can be calculated using an average dating back to the last five years prior to termination. The rulings also confirm that the length of a relationship is calculated in the broadest sense.

Length of relationship / Reasonable notice period	Brief description of matter	Summary of ruling / Amount of damages for suddenness of termination	Name of court of appeal / Date of ruling
11 years / 12 months	Length of business relationship was 11 years. Notice period deemed insufficient considering the time required to restructure the company.	Valuation of damages on the basis of product seasonality, investments made, and difficulty to develop an alternative foreign market. Indemnification amount: €137,000	Aix-en-Provence, 8 March 2012
7 years / 1 year	Exclusive supply agreement. Wrongful termination as a result of a written undertaking from the purchaser and early termination with immediate effect. Noncompliance with the notice period by the contracting party.	Loss equal to loss over a gross margin year. Amount of damages: €204,037	Paris, 16 February 2012
44 years / 2 years	Wrongful termination at the licensor's initiative on the ground of insufficient performance by the licensee. No notice period. Agreement term was three years. Relationship was preexisting before the entry	Licensor sentenced to pay indemnities for the reduction in turnover and gross margin. Restructuring of the company required, along with compensation corresponding to the loss suffered during the notice period. Amount of damages: €50,000	Nîmes, 10 May 2012

	into the agreement and assumption by the licensor of his predecessor's undertakings. Economic dependence of the licensee.		
3 years / 6 months	Insufficient contractual notice (one month). Activity represented 85% of the co-contractor's business.	Compensation calculated on the basis of the gross margin. Amount of damages: €45,839	Paris, 4 April 2012
11 years / 14 months	Regular and long-standing relationship between the company and the successive insurers. Application of article L. 442-6 of the French Commercial Code provisions treated as being of public order. Insufficient contractual notice period (two months).	Amount valued according to the average gross margin achieved over the last five years. Amount of damages: €119,635	Paris, 8 June 2012
14 years / 12 months	No written contract but proof of an established relationship. Stability of business. Termination attributable to the licensor. Breach of duty of loyalty and shift in business policy. Insufficient notice period (one month).	Loss of gross margin on turnover during the notice period. Licensor sentenced to pay damages. Amount of damages: €341,561	Paris, 27 June 2012
20 years / 20 months	Termination by the supplier. Refusal of partnership offered by the distributor's new shareholder and alleged direct competition. Notice period taking account of product seasonality and activity attached to the Christmas season, and dependent on reference listings of toy retailers by supermarkets.	Determination of indemnity to compensate for the loss suffered by the distributor. Amount of damages: €320,000	Versailles, 12 June 2012
4 years / 1 year	Exclusive license agreement. Termination at the licensor's initiative and nonobservance	Conviction punishing the failure to observe the notice period. Valuation of loss by reference to the loss of gross margin	Versailles, 14 February 2012

	of notice period by the licensor. Transfer of business.	suffered during the notice period. Amount of damages: €30,000	
10 years / 1 year	Established business relationship. Addition of different business relationship durations. Nonobservance of notice period.	Compensation for the loss suffered by the assignee company. Indemnification valued according to the loss of gross margin over a one-year period, economic dependence of the assignee company, and 44% of annual turnover. Amount of damages: €100,000	Versailles, 31 January 2012
1 year / 6 months	Sudden termination of master agreement by contractor. Established business relationship. Failure to provide proof of exclusivity, bona fide belief of continuation of relationship, and existence of provisional schedule. Calculation of the reasonable notice period on the basis of significant investments, economic dependence, and time required to find another partner.	Compensation taking account of the expected gross margin during the insufficient notice period. Amount calculated on the basis of 10% of the turnover achieved for the year. Indemnification amount: €95,000	Paris, 6 June 2012
8 years / 1 year	Long-standing relationship and successive contracts. Reasonable notice period representing the time required to restructure the company.	Compensation for the suddenness of the termination: calculated based on average turnover achieved over the two years preceding termination. Loss ensuing from the loss of opportunity to achieve the gross profit margin during the notice period. Amount of damages: €350,000	Versailles, 5 June 2012
22 years / 18 months	Wrongful termination at the supplier's initiative. Insufficient notice period (three months).	Valuation of loss suffered by the distributors. Amount of damages: €294,000	Versailles, 2 October 2012
5 years / 6 months	Termination at the client's initiative. No notice period. Reduced orders and proof of faulty shipping by the contractor.	Compensation for loss suffered and indemnification corresponding to the loss of turnover in respect to the winter collection. Amount of damages: €45,000	Lyon, 8 June 2012
10 years / 6 months	Refusal to deliver the orders without notice in an agricultural undertaking.	Compensation for the loss suffered and loss resulting from the loss of profit over a six-month period and reference to the	Bordeaux, 8 March 2012

	Established business relationship. Prior notification of termination in 2006, subsequent continuation of the relationship, and a reduction in business since 2007.	gross margin achieved over the last three years. Amount of damages: €43,000	
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Contacts

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