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THE FAILURE OF THE AGENT IN MEETING THE REQUEST OF THE INSURANCE COMPANY TO INCREASE ITS SALES HAS BEEN ACCEPTED AS A JUST CAUSE FOR THE TERMINATION OF THE AGENCY AGREEMENT (1)

The case(1) involves the termination of the agency agreement with a just cause. The Supreme Court stated that in order to determine whether the agency is entitled to goodwill indemnity, it is necessary to determine whether the agreement has been terminated by the insurance company with a just cause or not, whether the customer base gained by the agency is used by the insurance company after the termination of the agreement, and whether the payment of goodwill indemnity is in accordance with the principle of equity. [Page 2]

THE MERE FACT OF A WIDE CUSTOMER BASE DOES NOT AUTOMATICALLY LEAD TO A CLAIM FOR GOODWILL INDEMNITY AS THE DEALER SHALL STILL BE DEEMED UNDER THE BURDEN OF PROVING EXCLUSIVITY (3)

The case again involves a claim for goodwill indemnity due to the termination of the dealership agreement between the parties. [Page 2]

NO LEGAL BASIS FOR A DISCRETIONARY DEDUCTION IN THE AMOUNT OF GOODWILL INDEMNITY CALCULATED BY THE COURT, THE FULL AMOUNT SHALL BE DECIDED (2)

The case(2) relates to a goodwill indemnity claim due to unjust termination of the exclusive dealership agreement between the parties. [Page 2]

(1)Decision of the 11th Chamber of the Turkish Supreme Court- 11. HD., E. 2019/3459 K. 2020/1928 T. 24.2.2020

(2)Decision of the 11th Chamber of the Turkish Supreme Court - 19. HD., E. 2018/2901 K. 2020/38 T. 23.1.2020

(3)Decision of the 11th Chamber of the Turkish Supreme Court - 11. HD., E. 2021/6168 K. 2023/654 T. 7.2.2023

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The Supreme Court, applying the principles referred above, stated that the insurance company formally requested the agent to increase sales and terminated the agreement due to failure to meet such request. This shall mean that the termination has based on just cause. For this reason, it has been ruled that the conditions for goodwill indemnity do not exist in the case.

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The Regional Court of Justice, following the decision of the Court of First Instance, ruled that the exclusive dealership agreement has unjustly been terminated by the supplier. After calculating a goodwill indemnity for an amount of TL 177,573.00, the Court of First Instance ruled that a discretionary deduction shall be made from such amount due to the nature of the indemnity and that this ratio should be at least 50% in accordance with the course of the agreement between the parties.

However, the Supreme Court, ruled that no legal basis exists for court's discretionary deduction from the calculated goodwill indemnity and that the court shall decide for the full amount. For this reason, the decision of the Regional Court of Justice, which included a 50% discretionary discount, has been reversed by the Supreme Court.

THE MERE FACT OF A WIDE CUSTOMER BASE DOES NOT AUTOMATICALLY LEAD TO A CLAIM FOR GOODWILL INDEMNITY AS THE DEALER SHALL STILL BE DEEMED UNDER THE BURDEN OF PROVING EXCLUSIVITY (3)

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The Supreme Court assessed that, although the dealer created a large and profitable client portfolio, the claimant dealer has been designated as a non-exclusive dealer in the agreement between the parties. Based on this, it was ruled that the mere fact of a large customer base created by the claimant shall not convert the nature of the agreement to an exclusive dealership, and thus claim of goodwill indemnity shall be rejected.

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About the Firm

Founded in 1998 by Dr. Tennur Koyuncuoğlu and reorganized in 2005, Koyuncuoğlu & Köksal is a boutique law firm especially practicing in business law including corporate and commercial law, competition law, commercial litigation, labor law, data protection, project finance and mergers & acquisitions.

We assist local and foreign legal entities, public and private companies, state owned entities, financial institutions, governments and individuals in a wide range of sectors and transactions with high level of quality and involvement.



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*The explanations contained in our study have been prepared on the basis of the legislation in force in the Republic of Turkey and the information provided to the public by the relevant official authorities, and we recommend that you seek our opinion and support in case of any doubts before finalising the final transactions. Otherwise, our Law Office cannot be held responsible for the transactions to be made on the basis of the explanations given herein and the consequences thereof.