



Alerts

The Contract Does Not Always Protect the Alarm Company

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Hinshaw Alert

A recent U.S. Court of Appeals for the Eighth Circuit decision involving Minnesota law illustrates the difficulty that courts face when asked to enforce exculpatory clauses in situations where an alarm company has violated and disregarded its own policies. [*Gage v. HSM Electronic Protection Services Inc.*, No. 10-2545 \(8th Cir. Sept. 14, 2011\)](#).

The parties in *Gage* entered into a “residential agreement” for the installation and monitoring of a security system. The agreement contained an exculpatory clause in which the customer agreed that the alarm company was not responsible for personal injury or other losses that were alleged to be caused by improper operation or non-operation of the system or service. This included cases in which the system or service failed to function due to defects in the system or the alarm company’s acts or omissions in receiving and responding to alarm signals.

The alarm company’s policy directed an operator upon receiving an alarm to first contact the customer’s residence. If no response was received, the operator was then instructed to call persons identified on the customer’s call list.

The alarm company received an alarm indicating that the temperature at the customer’s residence was low. The alarm company operator, who happened to be a contract employee from a temporary agency, acknowledged the alarm and initiated a call to the customer’s residence. The operator entered that she had received a response to her call and closed the incident. However, the operator did not actually speak to anyone at the residence; in fact, the number she called for the customer number was disconnected. Nor did the operator contact anyone on the customer’s contact list. No one was then residing at the customer’s home and the low temperature was not corrected. A water pipe burst in the residence, resulting in \$252,310.79 in property damage.

The customer sued the alarm company under theories of negligence and willful and wanton misconduct, among others. The trial court found that the alarm company’s actions did not rise to anything more than negligence. It therefore granted summary judgment in favor of the alarm company based upon the exculpatory clause.

The Eighth Circuit reversed, finding that as a matter of public policy exculpatory

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clauses are disfavored and unenforceable if the clause releases a party from intentional or willful and wanton acts. The court found that there was a genuine issue of material fact as to whether the alarm company's operator acted willfully and wantonly in failing to follow required procedures. The Eighth Circuit noted that the alarm company could not find the recording of the operator's alleged call to the customer and that there was evidence indicating the same operator had disregarded an alarm on an earlier occasion.

For more information, please contact [Philip R. Kujawa](#) or your regular [Hinshaw](#) attorney.

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