



## Alerts

### Limitation of Liability Provision Upheld

**August 28, 2012**

*Alarm & Security Services Industry Alert*

The U.S. District Court for the Eastern District of Michigan upheld defendant home alarm and security services company's limitation of damages provision in a services contract and limited recoverable damages on plaintiff customer's breach of contract claim to a maximum of \$500. Further, the court dismissed plaintiff's negligent hiring and fraud claims.

The customer sued the company to recover an excess of \$45,000 of property stolen from his home after the company allegedly intentionally failed to dispatch police to his home. The customer brought claims for breach of the services contract, negligent hiring, and fraud and racketeering. The security company claimed that the customer was contractually limited to \$500 in damages for any alleged failure to perform under the alarm services contract and moved to dismiss the other claims.

Despite the customer's claim that he did not read two of the six contract pages, the court held that "where additional documents or terms are made part of a written contract by reference, the parties are bound by those additional terms even if they have never seen them." The customer argued that the limitations of damages clause constituted a contract of adhesion. However, the court concluded that "a clause limiting [security company's] liability in the event the alarm system did not work properly is not unconscionable." The services contract was upheld and the customer's damages were limited to the \$500 maximum in the limitation of damages provision.

The court dismissed the negligent hiring claim stating, "Michigan courts have limited liability for negligent hiring to acts that result in physical injury." As the customer only alleged economic damages, the court dismissed his negligent hiring claim. The court also dismissed the customer's fraud claim and found that the customer's reliance on the dispatcher's statement that police would be dispatched is a promise to perform in the future and fraud (absent bad faith or a fiduciary relationship) "must be predicated upon a statement relating to a past or existing fact." Further, the customer's fraud claim was dismissed for a failure to plead sufficient facts.

*Travis v. ADT Security Services, Inc.*, 2012 WL 3516548 (E.D. Mich. August 16, 2012)

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