



## Alerts

### Court Ruling Underscores Importance of Certain Contract Provisions for Alarm Companies

February 24, 2015

*Alarm & Security Services Industry Alert*

In *Nickens v. Tyco Integrated Sec., LLC*, No. 3:14-CV-00011-RLY, 2014 WL 6910463 (S.D. Ind. Nov. 25, 2014), Plaintiff, Larry Nickens, purchased a residential burglar alarm system from ADT LLC, f/k/a ADT Security Services, Inc. (ADT). He alleged that, in October 2011, the alarm activated for no apparent reason and emitted a sound so loud that, by the time he was able to disarm the system, he had sustained permanent hearing damage. Plaintiff's Amended Complaint against ADT alleged four causes of action. Count I asserts a claim of common law negligence, and Counts II–IV assert claims under the Indiana Products Liability Act (IPLA). In particular, Count I alleged that ADT negligently advised Plaintiff to expose himself to the sound of the alarm, causing him personal injury. Count II alleged that ADT failed to warn the public and the Plaintiff of the health risks arising from exposure to the alarm sound, and failed to provide proper training concerning the safe and effective use of the alarm. Count III alleged that the burglar alarm was defective in its design, rendering it unreasonably dangerous to the average consumer, and Count IV alleges a breach of the implied warranty of merchantability under the IPLA—i. e., the burglar alarm is not reasonably fit for the ordinary purposes for which such goods are used, nor minimally safe for its intended purpose.

ADT filed a motion to dismiss Plaintiff's Amended Complaint, arguing in part that Plaintiff's claims were barred because he did not bring his claims within one year of the incident, as required by paragraph 10 of the contract. The limitations period set forth in paragraph 10 of the ADT contract read as follows:

YOU AGREE TO FILE ANY LAWSUIT ... YOU MAY HAVE AGAINST US ... WITHIN ONE (1) YEAR FROM THE DATE OF THE EVENT THAT RESULTED IN THE LOSS, INJURY, DAMAGE OR LIABILITY OR THE SHORTEST DURATION PERMITTED UNDER APPLICABLE LAW IF SUCH PERIOD IS GREATER THAN ONE (1) YEAR.

The court initially denied ADT's motion, but upon ADT's motion to reconsider, granted the motion to dismiss finding the provision was enforceable and would have been superfluous and meaningless had the court's initial interpretation (that the provision was either one year from the date of the event that resulted in a loss or the shortest period which is permitted under Indiana law) been given.

#### Attorneys

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In light of this decision, alarm companies should undertake a review of their contract forms to consider including provisions limiting the time a customer has to file suit. As with all contract provisions, the enforceability of such provisions will vary depending upon state law.

For more information or for assistance with your alarm company contracts, please contact [Philip R. Kujawa](#).

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