

Oh, THAT Contract: Ohio Court Bars Plaintiff's Negligence Claim Based on Subrogation Waiver and Accelerated Limitations Period in Contract

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In *Ohio Sec. Ins. Co v. Brakefire, Inc.*, CA. No. 5:24-cv-267, 2024 U.S. Dist. LEXIS 97606 (*Brakefire*), the United States District Court for the Northern District of Ohio considered whether a subrogating plaintiff's negligence claim against a fire sprinkler maintenance company was barred by the maintenance contract between the parties. The court held that even though the plaintiff only asserted a negligence claim, the action was essentially rooted in the contract and, thus, the subrogation waiver and accelerated one-year limitations period in the contract barred the plaintiff's action entirely. In addition, the court held that because the claim was based on the obligations set forth in the contract, the plaintiff could not proceed in tort.

In *Brakefire*, the plaintiff's insured, Skyways Petroleum, LLC owned and operated a Comfort Inn & Suites Hotel (Comfort) in Kent, Ohio. Prior to February 2022, Comfort contracted with defendant Brakefire, Inc. (*Brakefire*) for maintenance of the fire suppression sprinkler system. The contract contained a limitation of liability provision which stated that no action shall be brought against the service provider "more than one (1) year after the accrual of the cause of action." The provision also stated that the parties "agree that their respective insurance companies shall have no right of subrogation against the other on account thereof." In February 2022, the hotel experienced a severe water loss caused by a sprinkler pipe freezing and bursting. As the hotel's property insurance carrier, the plaintiff paid over \$3.5 million to repair the damages.

Roughly two years after the incident, the plaintiff filed a subrogation lawsuit against Brakefire alleging a single count of negligence. The plaintiff did not include a count for breach of contract. The defendant filed an answer and included the contract as an exhibit.

Brakefire filed a motion for judgment of the pleadings pursuant to Fed. R. Civ. P 12(c) on grounds that the contract's one-year statute of limitations and mutual waiver of subrogation provisions barred the action. Brakefire also argued that the plaintiff could not assert a tort claim because the plaintiff was alleging a breach of a contract and no independent duty existed beyond the contract.

When considering Brakefire's motion, the court included the contract as part of its analysis because the contract was included as an exhibit in the defendant's answer. The court found that the subrogation waiver in the contract unambiguously established the intent of the parties to extinguish any rights held by the other's insurance company. The court also found that the contractual provision shortening of the four-year statute of limitations to one year was reasonable because the provision was clear and stated in plain language. Lastly, the court found that the facts did not establish that the defendant owed the plaintiff an independent duty of care outside the terms of the contract.

Under Ohio law, the existence of a contract generally precludes a plaintiff from asserting both a tort claim and a breach of contract claim. A tort claim exists only if the defendant breached a duty, it owed the plaintiff independently of the contract. The allegations in the complaint alleged improper maintenance of the sprinkler system and the contract involved maintenance of the sprinkler system. The court held that since the plaintiff did not sufficiently establish the existence of a duty that was independent of the underlying maintenance contract, there could be no liability in tort.

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The *Brakefire* case confirms that under Ohio law, a plaintiff cannot assert a tort claim where a contract with the defendant exists unless the plaintiff can establish a duty owed by the defendant beyond the obligations set forth in the contract. This case also establishes that the provisions in a contract, such as a subrogation waiver or accelerated statutory period, may apply to tort claims as well. Subrogation professionals handling matters in Ohio where there is a contractual relationship with the targets should be mindful of the *Brakefire* case when deciding whether to proceed.

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