

Beware: A Security Company's Contract May Eliminate Your Causes of Action

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In *Jewels by Iroff, Inc. v. Securitas Tech. Corp.*, No. 1:23-CV-556-TWT, 2023 U.S. Dist. LEXIS 172391, a Georgia federal court addressed a suit against a security/alarm company arising from a break-in at a jewelry store where the thieves stole over \$1 million in jewelry. The court addressed numerous provisions in the alarm company's contract – such as a waiver of subrogation, exculpatory and limitation of liability provision – and concluded that the provisions were enforceable. Thus, the court dismissed the plaintiff's complaint (although it gave the plaintiff the opportunity to try and amend its complaint to state a cause of action).

In February 2022, a break-in occurred in Alpharetta, Georgia at Jewels by Iroff, Inc. (Iroff). Iroff's insurer, Jewelry Mutual Insurance Company (Insurer), reimbursed Iroff for more than \$1.2 million in losses following the incident. Insurer then filed a subrogation action against Iroff's alarm security contractor, Securitas Tech. Corp. (Securitas), alleging gross negligence, breach of contract and fraudulent misrepresentation.

As alleged, Securitas was tasked with remotely monitoring the jewelry store 24/7, as defined by Underwriting Laboratories certification requirements. During the February 2022 break-in, thieves were able to cut Iroff's communication lines and disable the alarm system. As a result, neither Iroff nor the police were alerted of the situation as it took place. Consequently, Insurer asserted that the alarm system did not comply with Underwriting Laboratories standards, including requiring a feature that would monitor communication line interruption and use of a cellular backup.

Securitas moved to dismiss Insurer's complaint, arguing that its 2008 contract with Iroff prevented subrogation claims and contained enforceable exculpatory and limitation of damages provisions. The court agreed. Discussing the waiver of subrogation clause, which included an exculpatory provision, the court found that it specifically prohibited the plaintiff from seeking damages beyond the scope of Iroff's insurance coverage and exculpated Securitas from liability. The exculpatory clause also barred Insurer's claims for breach of contract and negligence. Although the court stated that neither a waiver of subrogation clause nor an exculpatory clause are enforceable as to grossly negligent or fraudulent conduct, Insurer failed to state a claim for gross negligence. Similarly, the court held that Insurer failed to state a claim for fraudulent misrepresentation. Even if the waiver and exculpatory clauses were enforceable, the court held that the contract's limitation of liability provision – limiting liability to \$199.00 – was not an exculpatory provision but a valid limitation of liability clause. Based on the terms of the contract, the court dismissed Insurer's complaint, but gave Insurer the opportunity to amend the complaint to attempt to state a cause of action.

Although subrogation professionals often recognize subrogation waivers as roadblocks to recovery, the same attention should be given to exculpatory and limitation of damages provisions. This is especially true with respect to contracts involving alarm companies, which frequently contain waiver, exculpatory and/or limitation of liability provisions. When subrogation professionals consider pursuing claims against security/alarm companies, they should consider whether there are enforceable contract provisions that either bar subrogation or limit the recovery from the security/alarm company.

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