

Insurer Springs a Leak in Its Pursuit of Subrogation

Katherine Dempsey
The Subrogation Strategist
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In *Nationwide Prop & Cas. Ins. Co. v. Fireline Corp.*, No. 1:20-cv-00684, 2023 U.S. Dist. LEXIS 104241, the United States District Court for the District of Maryland (District Court) considered whether the events giving rise to the plaintiff's claims fell within the scope of a previously formed agreement, thereby rendering the plaintiff's claims subject to the agreement's time limitation and waiver of subrogation provisions. The District Court found that the claims fell within the scope of the agreement.

The plaintiff, Nationwide Property & Casualty Insurance Company (Insurer), provided property insurance to Maple Lawn Homeowners Association, Inc. (Maple Lawn) for common property located in Fulton, Maryland, including a community center (the Subject Premises). On January 18, 2018, Maple Lawn entered into an Inspection Agreement (the Agreement) with defendant, Fireline Corporation (Fireline), wherein Fireline agreed to provide:

- annual fire alarm inspection and testing services,
- quarterly sprinkler inspection and testing, and
- annual portable fire extinguisher testing and inspection.

On January 24, 2019, water accumulated in a section of the sprinkler system and led to a pipe freezing, splitting, and releasing water into the community center, causing damage to the Subject Premises (the Incident). On March 14, 2020, Insurer as subrogee of Maple Lawn, filed suit against Fireline, alleging (1) negligence and (2) breach of express and/or implied warranties.

Fireline filed a motion for summary judgment alleging that Insurer's claims were barred by the Agreement's time limitation and waiver of subrogation provisions. Insurer argued that Fireline's services caused the Incident but that such services were part of the regular maintenance services that Fireline had customarily provided *well before* Maple Lawn and Fireline entered into the Agreement. Fireline, on the other hand, contended that the actions causing the Incident were considered testing and inspection services, falling squarely within the scope of the Agreement. The time limitation provision in the Agreement required that all claims be brought within one year after the cause of action accrued or the act occurred (whichever was earlier). The waiver of subrogation provision in the Agreement eliminated Insurer's standing to assert any claims against Fireline.

The District Court determined that Fireline's actions fell within the scope of the Agreement, thereby rendering Insurer's claims subject to the Agreement's two provisions. With regard to the time limitation provision, the District Court agreed that Insurer's claims were barred because their claims were brought more than one year after the cause of action accrued.

With regard to the waiver of subrogation provision, the District Court disagreed with Insurer's argument that the waiver of subrogation provision was unenforceable because it sought "to insulate Fireline from its own negligence in violation of a life safety code (NFPA 25), which cannot be permitted". The District Court explained that Insurer's allegation that Fireline violated code and industry requirements did not render the waiver of subrogation clause void for public policy reasons, nor was it otherwise unenforceable. Rather, the District Court noted that Insurer waived its right to subrogation and therefore lacked standing to assert any claims against Fireline on Maple Lawn's behalf. As such, the District Court ruled in favor of Fireline and granted its motion for summary judgment.

Subrogation professionals should be mindful of waivers of subrogation as well as contractual time limitation provisions prior to filing suit. Although these provisions are often overlooked or minimized due to the complexity of a case, they can quickly bring to a halt any recovery efforts.

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