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LEGAL ALERT

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Georgia Court of Appeals: Fine Print Too Small to Save Limitation-of-Liability Clause in Home Security Contract

A decision by the Georgia Court of Appeals has potentially far-reaching consequences for companies that include limitation-of-liability clauses in their customer contracts. In *Monitronics International v. Veasley*, the Georgia Court of Appeals upheld a $9 million jury verdict against an alarm company that had failed to properly warn a customer about repeated alarms at her home. A13A0090 (Ga. Ct. App, July 16, 2013).

The customer, who was brutally assaulted by an intruder, filed suit against the company alleging, among other claims, breach of contract and negligence. The alarm company argued that a limitation-of-liability clause in its customer contract limited liability to $250 for any loss resulting from the company's service. The trial court, however, ruled that the clause was void as a matter of public policy, and allowed the case to be heard by a jury.

The Court of Appeals upheld that decision, although on different grounds. Notably, no majority opinion was reached on the limitation of liability issue. In the plurality opinion, which is physical precedent only (*i.e.*, not binding precedent for other cases), Judge Stephen Dillard explained that it is "well settled that exculpatory clauses in which a business seeks to relieve itself from its own negligence are valid and binding in this State" and "are not void as against public policy unless they purport to relieve liability for acts of gross negligence or willful or wanton conduct." Nonetheless, the clause in the contract at issue was "written in the same small, single-spaced typeface as the majority of the contract." Because the exculpatory clause was neither "explicit" nor "prominent," Judge Dillard concluded that the clause was unenforceable.

The Court of Appeals decision included three separate concurrences, each analyzing the limitation-of-liability clause in different ways. One argued that the clause could be interpreted to apply only to property damage, rather than personal injury. Another argued that the clause was sufficient to preclude a contract-based claim, but that the clause was not sufficiently explicit to preclude a negligence-based claim. And yet another argued that the clause was irrelevant because the alarm company had a duty, independent of the contract, to exercise reasonable care to avoid increasing the risk of harm to the plaintiff. The decision also included a dissent, which held that the exculpatory clause was valid, and that the judgment should be reduced to $250.

Despite the varying opinions, the take-away from the Court of Appeals seems to be that, to increase the chances of a limitation-of-liability clause being enforced, the clause should (1) have an explicit typeface and prominent location in the contract; and (2) have explicit language setting forth the specific claims (property damage versus personal injury; contract versus tort/negligence) it seeks to limit. Companies with customer contracts containing such clauses may want to review their contracts in light of this decision.

The Court of Appeals, however, may not have the final word. On July 22, 2013, Monitronics filed a notice of intent to petition the Georgia Supreme Court to review the decision. The decision would appear to be a strong candidate for further review, given the divided Court of Appeals and the importance of the issue to the business community.

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