

Security & Alarm Litigation

Select Case Studies and Analysis



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Professional Background

Education

- Bucknell University, B.A., 1993
- Boston College Law School, J.D., 1996

Public service

- US Air Force
 - Assistant Staff Judge Advocate (JAG)
- US Department of Justice
 - Special Assistant US Attorney

Private practice

- Buchanan Ingersoll PC
 - Associate/Partner
- Duval & Stachenfeld LLP
 - Partner

Summary

- Introduction to litigation
 - Preliminary Considerations
 - Phases of litigation
- Types of litigation in this industry
- Controlling litigation before it happens
- Case studies
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

What is Litigation?

- A dispute between two or more parties which may require the attention or intervention of a court
- Litigation vs. arbitration & mediation
- Litigation may never even reach a court or arbitrator/mediator

Preliminary Considerations

- Jurisdiction
 - State vs. federal court
- Venue
 - Which state or county within a state
- Choice of law
 - Sometimes determined by contract
 - Sometimes determined by strategy
- Parties
 - Who are the players?
 - Are there business reasons not to proceed with litigation?

Phases of a Litigation

- Initial pleadings
 - Summons & Complaint
 - Answer and Counterclaim(s)
- Discovery
 - Exchange documents, take testimony from fact and expert witnesses, develop evidence
- Motion practice
- Pre-trial
- Trial
- Post-trial enforcement
- Appeals

Common Types of Litigation in this Industry

- Alarm failures
 - Fire
 - Freezers
 - Perimeter
 - False alarms
- Employment disputes
 - Discrimination
 - Harassment
 - Wrongful discharge
 - Wage claims
- Anti-competitive practices
 - Violations of non-compete agreements
 - Breaches of confidentiality
 - Theft of trade secrets

Controlling Litigation... Before it Happens

- You can't eliminate litigation...
- But you can minimize or reduce it by...
 - Anticipating litigation in all you do
 - Being proactive every day
 - Seeking counsel early and often
- Minimizing/Reducing litigation can result in...
 - Substantial cost savings
 - Continuity of business operations
 - Less time with people like me

Controlling Litigation... Before it Happens

- Document everything
 - Installation and testing
 - Monitoring history
 - Customer preferences
 - Maintenance
 - Telephone logs
 - Correspondence
- Create/Review standard forms
 - Make it easy on your people in the field

Controlling Litigation... Before it Happens

- Preserve your documents
 - Formulate a document retention policy
 - Consider investing in storage (physical or electronic)
 - Common pitfalls in document preservation
 - Mergers/Acquisitions
 - Change of personnel (business or legal staff)
 - Lack of understanding
 - Laziness

Controlling Litigation... Before it Happens

- Train your people
 - Training results in short term costs, but long term gains
 - Every litigation is an opportunity to train
 - Emphasize financial impact of litigation
 - How it hurts or can hurt the company
 - Emphasize personal impact of litigation
 - Testifying (not fun for some!)
 - Answering to management (even less fun!)

Controlling Litigation... Before it Happens

- Carefully draft and review your contracts
 - Stay updated on changes in state law
 - Don't rely on limitation of liability or third-party indemnification provisions
 - Every case has different facts, different parties, different judge, different law...
 - Know who signs your contracts (including your own people)
 - Actual or apparent authority required
 - Beware of your internal authorizations
- Seek counsel early and often

Case Studies

- Alarm failures
 - Freezers
 - Fire
 - Premises liability
 - False alarms
- Employment disputes
 - Discrimination
 - Harassment
 - Wrongful discharge
 - Wage claims
- Anti-competitive practices
 - Violations of non-compete agreements
 - Breaches of confidentiality
 - Theft of trade secrets

Case Studies – What to Consider

- Documentary evidence
- Witnesses (fact and expert)
- Defenses & Counterclaims
- Practicalities

Case Studies – What to Consider

- Documentary evidence
 - Letters
 - E-mails
 - Contracts
 - Alarm monitoring history
 - Telephone logs
 - Customer lists
 - Maintenance and testing records
 - Statements/Records of your adversary

Case Studies – What to Consider

- Witnesses
 - Fact witnesses
 - Customer
 - Technician
 - Branch manager
 - Employee
 - Competitor
 - Expert witnesses
 - Taxi drivers know the roads – they are experts
 - Fire, burglary, robbery, freezer, other (non-alarm)
 - Always depends on what you need to prove your claims or defenses
 - Any testimony that is helpful to the trier of fact (judge or jury)

Case Studies – What to Consider

- Defenses
 - Limitation of Liability
 - Third-Party Indemnification
 - Estoppel
 - Waiver
 - Contributory/Comparative negligence
 - Many others...
- Counterclaims
 - When a defendant brings a claim against a plaintiff in the same lawsuit
 - Flipping of roles
 - Any claim based on same set of facts alleged by plaintiff

Case Studies – What to Consider

- Practicalities
 - Cost
 - Time
 - Business disruption
 - Discovery, trial preparation, etc.
 - Publicity (adverse or otherwise)
 - Principle
 - Long term implications
 - For your business
 - For your industry
 - For the law

Case Study # 1 Alleged Alarm Failure

- **Facts:** Major state university alleged lost tissue samples and lost grant funding as a result of the alleged failure of certain alarms connected to freezers in a research facility. Large claims brought by the university and its professor against alarm company and the installing subcontractor.
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 2 Alleged Alarm Failure

- **Facts:** Two young boys die in a house fire. Parents allege that fire/smoke alarm did not function and proximately caused wrongful death. Alarm company who installed system had been acquired a few years earlier and was no longer in business. Acquiring company is named in suit along with several other defendants.
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 3 Alleged Alarm Failure

- **Facts:** Mansion is destroyed by fire resulting in multi-million dollar litigation claim. Your company installed fire and security system about 1 year prior to the fire, monitored the system for the first few months, but then ceded the monitoring responsibility to other companies. The manufacturer of the alarm panel, the monitoring companies and your company are named as defendants.
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 4 Alleged Alarm Failure

- **Facts:** Personal injury claims made by three bank employees as a result of an armed robbery of a bank. Plaintiffs allege that alarm company was negligent in the design of the Bank's electronic alarm monitoring system as to the rear door of the bank where the robber allegedly gained access as the bank was opening for business. Plaintiffs allege that the rear door of the bank should have had a 24-hour alarm. Alarm had been in place for nearly three years prior to the robbery.
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 5 False Alarm

- **Facts:** Homeowners hurriedly leave their house for an appointment, but invite a relative over to the house in the meantime. Relative enters home and triggers alarm. Alarm company calls house. Relative answers phone, but cannot provide passcode. Alarm company contacts police. Police travel to home and are startled by angry watch dogs upon arrival. One of the officers feels threatened, draws her weapon, fires...and hits her partner in the leg! The partner sues the alarm company, the homeowners, the relative and, of course, his partner (the shooter).
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 6 Employment Claim

- **Facts:** Seemingly qualified candidate applies for an at-will position with your company. Position may require that he interface with commercial and residential customers. Offer of employment extended to candidate subject to background check, etc. Candidate quits his long-standing job in reliance on your offer and with expectation that he can begin work with you in a matter of days. Background check eventually reveals that candidate is a registered sex offender. Offer withdrawn before employee begins work. Candidate sues claiming that he relied upon your offer of employment in quitting his existing job.
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 7 Business Protection Claim

- Facts: You learn that certain of your competitors are informing your customers that your company is going out of business and that no one will be left to provide security and alarm services to the customer. You have credible evidence that competitors are affirmatively trying to enter into contracts with your customers by capitalizing on their fears about your business prospects. What rights do you have?
 - Documentary evidence
 - Witnesses (fact and expert)
 - Defenses & Counterclaims
 - Practicalities

Case Study # 8 Business Protection Claim

- Facts: One of your major sales representatives leaves your company to work for a competitor. You are concerned that he will attempt to solicit his old accounts – which have remained with you. What do you do to protect your business? What should you have done long ago...?
 - Documentary evidence
 - Witnesses (fact and expert)
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QUESTIONS???

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