

2/1/19

Case No. 18-1288

**THE SUPREME
COURT OF THE
UNITED STATES**

Jean Coulter, Petitioner

v.

ADT Security Services,
Apollo Global Management,
Respondents

On Petition for Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

Petition for
Writ of Certiorari

Jean Coulter, Petitioner
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Butler, Pennsylvania 16001
412-616-9505

This Case presents a significant issue of Public Safety for 8 million American families!

After moving to New Jersey, Coulter could no longer contact the ADT Security System which Monitored a home in Pennsylvania. Frustrated, Coulter spoke with forty (40) of ADT's employees - before ADT finally took steps to correct the problem which produced ADT's complete failure to notify Coulter, and all affected customers, when their Security System was incapable of meaningful notification of alarms for burglary or fire!

ADT was most certainly aware of this critical failure of its "monitoring" for all of ADT's 8 million customers - yet ADT obviously chose to conceal this critical breakdown! This proves ADT's complete disregard for the safety of their customers, as ADT's Marketing Decision placed 8 million Americans families in jeopardy when they unknowingly placed their trust and their family's safety in an unscrupulous "security service" - and makes it clear that ADT's bottom-line is the only consideration - even when lives are at stake!

(a) Questions Presented for Review

1. Did "Fraud in Inducement" occur, and is it applicable for Renewals or later Implied Contracts (until the Fraud is discovered)?

2 & 3 are QUESTIONS OF FIRST IMPRESSION

2. a. Can a Written Contract "renew" if only portions of it are "renewed" or is it now an Implied Contract (without automatic renewals, Contractual Period of Limitations, new equipment, etc.)?

b. Does an Implied Contract "renew"?

3. Is Choice of Law incorrect as immediate sale of the Contract was scheduled, and cancellation provided for, in contract's terms, in case of non-sale?

(b)	<u>Parties in the Court Below</u>	
Petitioner	Jean Coulter	
Respondents	ADT Security Services	
	Apollo Global Management	

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(d) Reports of the Opinions and Orders

All decisions in this matter are characterized as unreported. The dockets of the cases are all found in the Eleventh Circuit (at 17-14829), or District Court for the Southern District of Florida (at 17-80355)

(e) Basis for Jurisdiction in this Court

The United States Supreme Court has jurisdiction pursuant to **28 USC § 1254 - Courts of appeals; certiorari; certified questions :**

"28 USC § 1254 - Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; ..."

The Eleventh Circuit Court of Appeal affirmed the District Court's decision dismissing Coulter's Complaint on July 31, 2018. Petition for Rehearing was denied on November 6, 2018.

The District Court denied the Motion to Amend the Findings on September 27, 2017, after the District Court's dismissal of the Civil Complaint on August 3, 2017.

(f.) Constitutional Provisions, Statutes, and Regulations

Constitution of the United States – Amendment XIV
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) citizens of different States; ...

(g). Concise Statement of the Case

Jurisdiction in the District Court was pursuant to **28 U.S. Code § 1332 - Jurisdiction on the Basis of Diversity :**

28 U.S. Code § 1332 - Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between—

(1) citizens of different States; ...

The Instant Matter concerns Claims by Coulter, a citizen of New Jersey, against ADT, a corporation with headquarters in Florida. Although

the Claims of Breach of Contract and Fraud(s) do not alone meet the Statutory Minimum for Diversity cases, significant **Punitive Damages are required to address the particularly egregious acts by ADT - as ADT's Fraud could easily have resulted in serious bodily injury** to Coulter (as well as significant fire losses) when the Alarm System was non-functioning and ADT's procedures had made ADT incapable of or unwilling to inform Coulter, as well as First Responders, when Coulter's Security System might "alarm".

Factual History of the Case

In 2007, Coulter contacted an ADT Authorized Dealer in Western Pennsylvania, to make arrangements for an Alarm System along with Monitoring. The single Contract signed by the Parties covered the (a) Purchase and Installation of components of the Alarm System (78a.) as well as (b) an Extended Warranty (13a.) and (c) Monitoring and Notification Services for Burglary, Fire and functionality of the Alarm System as a whole. (78a.)

The Contract assures Coulter that :

(a) ADT will be providing the Monitoring and Warranty Services - speaking of ADT's intended immediate purchase the Contract (from its Authorized Dealer) :

"Upon finalization of your contract, it will be submitted to ADT Security Services, Inc. for approval and purchase ..."

and

(b) Promises Coulter that there will be prompt notifications if ADT does not purchase the Contract for any reason :

"If this contract is ... not purchased, ADT Security Services, Inc. will promptly notify you of that decision so that you may make other arrangements if you so chose."

and

(c) Describes steps the disappointed Customer could take, , both in writing and verbally :

"... Customer acknowledges being verbally informed of Customer's right to cancel at the time of this Contract and receipt of this Notice. INITIAL JC." (81a.)

The Contract between Coulter and Defender Security and was sold immediately to ADT, and calls for an "initial" term of thirty-six (36) months (79a.), stating it would "automatically renew" for 30-day periods, until cancelled by either Party. (80a.) However, when it was time for "renewal" of the Contract, no mention was made by either of the Parties about new Equipment or installation/re-installation of existing components (along with the obligations contained in a number of other Paragraphs in the Written Contract). Additionally, at times when possible "Service Calls" might be required for battery replacement, etc. the (formerly) free nature of that service (pursuant to the Initial terms) was never offered/allowed :

"... And since the problem must lie exclusively inside Coulter's house, each and every ADT employee insisted that Coulter must arrange for, and agree to pay for, a service call." (59a.)

In January 2013, Coulter moved to New Jersey, and thus, essentially all of Coulter's contact with the Alarm System occurred when Coulter would

periodically telephone the Alarm System (to arm or dis-arm, etc.)

Early in March 2013, Coulter discovered that she could not get through to her Alarm System by telephone. **So, Coulter began what turned out to be an extensive search as to how Coulter was unable to communicate with her Alarm System, despite ADT apparently never becoming aware of this issue.**

In telephone conversations with ADT's Customer Service Employees, Coulter was informed that the most recent "In-Timer Test" occurred on February 22, 2013, so the next test would occur by March 24, 2013. So, when Coulter did not receive a call to notify her of any problems with her Security System, Coulter traveled to the home at the end of March 2013 – to see if she could learn why ADT was apparently receiving the In-Timer Test telephone calls from Coulter's Security System, yet Coulter was unable to contact the Base Unit by telephone. When Coulter arrived at the home, it was quickly evident that Coulter's Security System was completely incapable of either making or receiving telephone calls, as one of the wires "scabbed" into the wall jack (at the time of installation of the Security System) was loose and dangling free.

Eventually, **after conversations with literally dozens of ADT's Customer Service Employees**, Coulter was finally able to get one of those ADT Employees, to look into why, Coulter was never Notified of the problems with her Security System, despite ADT's computer certainly being programmed to have expected that call to occur on or before March 24, 2013!

Conclusion

It is completely inconceivable that ADT was unaware that its Monitoring Service was not taking steps to assure that ADT's Customers were informed of the Complete Failure of their Security System to make calls which would notify ADT of Alarms or other Issues – as absolutely none of the forty (40) of ADT's employees (which Coulter spoke with), were even aware that this could possibly occur! It is readily apparent that ADT never trained their employees of the methods that should be employed when addressing a situation where the Customer's Security System had failed to communicate with ADT's Monitoring Center during one of the monthly "In-Timer Test" of the Customer's Base Unit's ability to communicate with ADT's Monitoring Center! There is absolutely no way, with all of ADT's 8 million customers, that at least some of those ADT Security Systems had experienced a broken communications connection – particularly after natural disasters such as hurricanes or earthquakes have taken down telephone lines/systems for days at a time!

After the Issues with ADT's failure to report the complete failure of Coulter's Security System to contact ADT's Monitoring Center were finally resolved, Coulter contacted ADT to ask for a full refund of Monitoring Service charges. **ADT refused to refund even one penny of Coulter's fees for Equipment, Installation or Monitoring Services during the time between July 2007 and May 2013!**

Procedural History

On March 17, 2017, Coulter filed a Civil Action in the U. S. District Court in Fort Lauderdale, Florida, seeking Eight Million Dollars (\$8,000,000.00) in Compensatory and Punitive Damages from ADT, as the result of ADT's decision to deceive Coulter as well as all of ADT's other Customers, any time that ADT learned of the Complete Failure of the Customer's Alarm System!

Shortly after the case was assigned to Senior District Judge James I. Cohn, Coulter was called to a last-minute scheduling meeting with the judge and Parties from two (2) other cases, which, "coincidentally" occurred on a date when ADT's Counsel would be in town for another previously scheduled meeting before the same District Court. At the meeting with the Parties from the three separate cases, the District Court informed the Parties of his schedule of events for the case, and stressed that absolutely none of the dates were "flexible" for any reason – stating that all of the Parties were called in exclusively so that the judge could personally see each party write down the dates (which had been distributed to the Parties on court provided forms even before the judge was seated).

In filings in the district court, one of the Issues raised by ADT's Counsel was the question of Subject-Matter Jurisdiction, as ADT asserted that even with Punitive Damages, the amount would not reach the Statutory Minimum of \$75,000.00. And, in a subsequent conversation with Coulter, ADT's Counsel asked Coulter what she would do if the matter was dismissed for lack of Subject-Matter Jurisdiction. Coulter replied that she would simply re-file in State Court. "Interestingly" shortly after the call between ADT's Counsel and Coulter, the

District Court ruled that it did possess Subject-Matter Jurisdiction, as the District Court had successfully "argued" (for Coulter's apparent benefit) that the limitations on Punitive Damages were not as stringent as ADT's Counsel had repeatedly asserted. However, the District Court ruled that the Statute of Limitations as stated in their "automatically-renewed" Contract applied, rather than the States' Statutory Limits based exclusively on the basis that Fraud in Inducement was the result of solely the Spoken Contract (which was inapplicable due to the Integration Clause). What is shocking is that, this decision (which was affirmed by the Eleventh Circuit Court) still stands, despite the fact that Coulter's Civil Complaint (as well as subsequent filings/argument) clarified that the Fraud in Inducement applies to the Terms of the Written Contract as well as the spoken misrepresentations – thus the Integration Clause is irrelevant with respect to this Issue!

(h) Argument

A. Did "Fraud in Inducement" occur, and is it applicable for Renewals or later Implied Contracts (until the Fraud is discovered)?

Review by This Honorable Court is required as *the Decisions by the District Court and the 11th Circuit Court of Appeals conflicts with decisions in other Circuits, and further, a United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by*

a lower court, as to call for an exercise of this Court's supervisory power.

The decisions in the Eleventh Circuit determined, somehow, that **while Fraud in Inducement related to the Written Contract clearly existed, because it also existed in relation to the description of Services made by ADT's Authorized Dealer – somehow, Fraud in Inducement it is no longer available for utilization by Coulter.** And, therefore, both of the lower federal courts ruled that the Contract's Period of Limitations applied – and Coulter's Civil Complaint could be dismissed for failing to comply with the Contractual Period of Limitations!

Introduction

When ADT's Contract with the customer includes the Extended Limited Warranty, the Parties' Written Contract requires that the "functionality" of the Security System be monitored by ADT, at least once each month, and failures in the System be reported to the customer :

**"Basic Monthly Service, Burglary with Extended Limited Warranty (Residential Customer Only)
Service Includes : Customer Monitoring Center Signal Receiving and Notification Service for Burglary, Manual Fire, and Manual Police Emergency along with Extended Limited Warranty ..."** (emphasis added) (74a.)

In addition to this Promise in the Written Contract, ADT's Authorized Dealer also spoke with Coulter about how her Security System reports to the Monitoring Center, mis-

informing Coulter that this "In-Timer Test" occurs each night (in the middle of the night). Coulter mentioned this fact in the Civil Complaint, in order to describe what Coulter believes is another example of ADT's willful deception. In the Amended Complaint, Coulter described that, upon learning of the spoken misrepresentations, Coulter then relied exclusively upon the promises contained in the Written Contract :

"8.) After discussions with many ADT employees, Coulter learned that ... the last scheduled check-in had been on February 22, and the next scheduled check-in by her system was not scheduled to occur until March 24, 2013.

...

10.) Coulter noted that March 24 had come and gone without Coulter receiving a call from ADT about the alarm system, ..."

Both the District Court and the Eleventh Circuit chose to grasp upon Coulter's mention of the Spoken Mis-Representations as justification for a decision to Dismiss Coulter's Complaint, and, thus permit ADT to escape responsibility for their obvious failure to comply with ADT's "promise" of Monitoring and Notifications as to the non-functionality of Coulter's Security System at least monthly (as part of the Extended Limited Warranty)! So, both of the Federal Courts chose to rely on the "Integration Clause" without considering the totality of Claims and circumstances described in the Civil Complaint, to permit dismissal (precluding recovery for Injuries) – despite the fact that ADT also failed to notify

Coulter of the failed Contractually Required "In-Timer Test" as described in the Written Contract (to occur at least monthly) – a situation which was clearly explained in Coulter's Response to ADT's Motion to Dismiss, as well as the Amended Complaint.

Argument

In Coulter's Amended Complaint, Coulter speaks of the deceptions involving the promises of daily "In-Timer Test" – as well as describing ADT's failure to comply with the much less stringent promise of a once-monthly test of the functionality of the Alarm System (the "In-Timer Test") which is clearly part of their "Written Contract".

While it is not specifically described in the Written Contract, it is helpful to understand how the "functionality" of the Base unit is tested. The monthly "In-Timer Test" tests the System to see if the Base Panel is capable of communicating with ADT's Monitoring Center. To perform this test, the Base Unit is pre-programmed to call ADT's Monitoring Center at least once each month during a certain period of days. Any time that an Alarm System does not call in as scheduled, ADT's Monitoring Center is supposed to alert the Customer that the "In-Timer Test" was not received on the pre-scheduled date/time. Notification to the Customer of their System's failure to complete the "In-Timer Test" is the only way that the Customer can learn that their Alarm System is not communicating - short of intentionally tripping an alarm and waiting for ADT to call the Customer directly – thus risking a monthly "false alarm" - which frequently results in

the imposition of significant financial penalties by many municipalities.

However, both of the lower federal courts chose to ignore the fact that ADT's Monitoring and Notification system was, and likely still is, by design, "incapable" of providing Notifications of Catastrophic Failures of their Security System! And, ADT indeed, failed to provide the promised Notification on March 24. Instead, that Notification did not actually occur until after Coulter finally succeeded in convincing one of ADT's Customer Service Employees to research the situation in early May 2013 :

Event History Request (1/1/2008 – 3/29/2017).

Event Date	Zone ID ...	Description ...
...		
1/23/2013 10:35:00PM	E602 ...	IN-TIMER TEST
2/22/2013 10:34:59PM	E602 ...	IN-TIMER TEST
5/1/2013 1:46:50PM	49537 ...	OA-Reset Timer Test
5/1/2013 2:00:28PM	49537 ...	OA-Reset Timer Test
5/1/2013 2:01:29PM	49537 ...	OA-Reset Timer Test
5/1/2013 2:30:01PM	49537 ...	FT-TMR TST
NOT REC'D (71a.)		

The District Court's decision which dismissed the Civil Complaint With Prejudice, states:

"the parties' contract specifies a one-year period of limitations ... her contract claims are clearly barred by the one-year limitations period in the contract.⁷

...

⁷ Plaintiff attempts to avoid the application of this contractual provision by arguing that ADT's alleged fraudulent inducement voids the entire contract, including the one-year limitations period. [DE 25 at 13.] ADT correctly counters, however, that because the contract contains an integration clause, Pennsylvania's parol evidence rule bars Plaintiff's attempt to avoid application of the one-year limitations period by claiming fraudulent inducement. [DE 24 at 11] (citing *Partners Coffee Co., LLC v. Oceana Services & Products Co.*, 700 F. Supp. 2d 720, 730-731 (W.D. Pa. 2010).” (29a.)

And, the Eleventh Circuit similarly determined that Coulter's Complaint could be dismissed, for the same reason :

“... The district court construed Plaintiff's fraud claim as two separate claims : (1) a fraudulent inducement claim based on ADT's alleged representations in 2007 that plaintiff's alarm system would be checked daily (‘2007 fraud claim’); and (2) a claim based on ADT's alleged representations in 2013 that Plaintiff's system was functioning properly when it in fact was unable to communicate with ADT's central monitoring system due to a loose wire (‘2013 fraud claim’).

...

We reject [Coulter's] contention that the ADT Contract is voidable on grounds that [Coulter] was fraudulently induced to enter the ADT Contract. Because the ADT Contract contained

both (1) an integration clause and (2) an unambiguous description of services provided by ADT under the contract ... " (emphasis added) (68a.)

However, Coulter's Response to ADT's Motion to Dismiss clearly explains that the Claims of Fraud in Inducement refer to the contents of the Parties' Written Contract and **not just the Fraudulent Statements** by ADT's Authorized Dealer :

"... As the result of the fraudulent assurances of Monitoring ***in both the contract as well as statements by ADT's Authorized Dealer*** (who sold Coulter the Alarm System and Monitoring), **both of which are believed to result from Defendant ADT's "business decision" to not provide the Monitoring Services which constitute an integral part of the Monitoring Contract**, Coulter was deceived into purchasing an Alarm System with monitoring. ..." (36a. – 37a.) (***emphasis added***)

and

Coulter decided to accept the new (renewed) Contract for Monitoring Services of Defendant ADT, if any (sic) ***only if ADT could be convinced that they must promptly notify Coulter (and other Customers) when their Alarm Systems failed to check-in each month.*** (49a.) (***emphasis added***)

Similarly, Coulter's Amended Complaint clearly described the fact that Coulter recognized that ADT's Fraud in Inducement must be considered only with respect to the terms of the Written Contract (because of the Integration Clause), and, thus, **the Amended**

Complaint explains that *ADT's Fraud in Inducement applies to the promises in the Written Contract. Still though, for inexplicable reasons, neither federal court considered these clearly stated claims before ruling that Coulter was arguing solely that Fraud in Inducement resulted from the false Statements by ADT's Authorized Dealer :*

"8.) After discussions with many ADT employees, *Coulter learned that ... the last scheduled check-in had been on February 22, and the next scheduled check-in by her system was not scheduled to occur until March 24, 2013.*

9.) ... And, Coulter hoped that the problem would be noticed and identified during the check-in on March 24, and perhaps her trip would not be necessary.

...

10.) Coulter noted that March 24 had come and gone without Coulter receiving a call from ADT about the alarm system, and *Coulter considered this to be evidence of the blatant failure by ADT to even attempt to "monitor" the system on March 24! So Coulter became intent on learning why, when her system was so clearly unable to have completed the monthly check-in, yet there was still no notification made by ADT ...*" (61a.)
(*emphasis added*)

Despite these allegations and argument, the Eleventh Circuit determined that, because Coulter mentioned that the Fraud in Inducement was also part of the spoken representations, (even though the

fact that the Fraud is also contained in the Written Contract (and is clearly Claimed in the Amended Complaint and other filings)), that Coulter's Complaint could be dismissed on the basis of the Contractual Period of Limitations :

"Plaintiff knew of ADT's alleged contractual breaches when she cancelled the ADT Contract in 2013. Because Plaintiff filed her complaint almost four years later, the district court dismissed properly Plaintiff's contract claims as time-barred by the one-year limitations clause: a clause enforceable under Pennsylvania law." (6a.)

While I have not discovered Case Law to support my contention that the Courts in the Eleventh Circuit **cannot "refuse to consider" the facts supporting Coulter's Claims of Fraud in Inducement with respect to the contents of their Written Contract, merely because there also were mis-representations made by ADT's Authorized Dealer** – there are cases decided by both This Honorable Court as well as lower federal courts, which describe each Judge's obligation to consider the totality of the case, before rendering a final decision, under other circumstances. This Honorable Court has decided in **Black & Decker Disability Plan v. Nord, 538 US 822 - Supreme Court 2003**, that a Judge may not refuse to consider "reliable evidence", stating :

"Plan administrators, of course, may not arbitrarily refuse to credit a claimant's reliable evidence, including the opinions of a treating physician."

Indeed, in the Instant Matter, the Eleventh Circuit En Banc (as well as the District Court), did just that – refusing to consider not only Coulter's allegations in the Amended Complaint, but also ignoring the documents filed in Response to the portion of Coulter's Discovery Requests which ADT eventually provided – as ADT's documents prove that the "In-Timer Tests" were not even performed, following the failure of Coulter's System in March 2013!

"... 1/23/2013 10:35:00PM E602 ... IN-TIMER TEST

2/22/2013 10:34:59PM E602 ... IN-TIMER TEST

5/1/2013 1:46:50PM 49537 ... OA-Reset Timer Test ..." (71a.)

Additionally, in the decision for Glenn v. MetLife, 461 F. 3d 660 - Court of Appeals, 6th Circuit 2006, the 6th Circuit determined that :

"... the plan administrator need not accord special deference to the opinion of a treating physician. By the same token, *it may not arbitrarily repudiate or refuse to consider* the opinions of a treating physician. ..."

Similarly, in the decision for Akhtar v. Mesa, 698 F. 3d 1202 - Court of Appeals, 9th Circuit 2012, the Ninth Circuit determined that it is an Abuse of Discretion, to "refuse to consider" a Party's argument :

"We also explained that, given that the plaintiff was pro se and had presented a "relatively novel claim under a relatively new statute...., even if the district court had 'exercised its discretion,' it would have been *an abuse of that discretion to refuse to*

consider petitioner Brown's equitable tolling claim." Id. ..."

See also On Davis v. The Gap, Inc., 246 F. 3d 152 - Court of Appeals, 2nd Circuit 2001, Calvert v. Firststar Finance, Inc.

Conclusion

In both of the lower federal courts, Coulter's Complaint was dismissed on the basis of the expiration of the Contract's Period of Limitations—rather than the States' Statutory Periods of Limitations. That conclusion was **based exclusively upon the determination that simply because Coulter described further frauds, the Fraud in Inducement related to the terms of the Written Contract need not be considered!** **Clearly however, this never should have occurred, as this determination both conflicts with decisions in other Circuits and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.**

A QUESTION OF FIRST IMPRESSION

B. The Decisions by the District Court and the En Banc decision by the Eleventh Circuit Court of Appeals, determining that the Contract was actually "renewed" despite the fact that numerous significant portions of the Initial Contract are missing from or modified from the Initial Contract – conflicts with decisions in other Circuits. (As noted in the Decision by the Third Circuit - there are only a very limited number of other Circuits which actually have any decisions related to the Issue of renewals in

situations where there are modifications or other differences between the "initial" and supposed "renewed" contracts).

And, thus, a United States court of appeals has decided an important question of federal law that conflicts with that of another Circuit, resulting in a situation where an important question has not been, but should be, settled by this Court.

A QUESTION OF FIRST IMPRESSION

- a. Can a Written Contract "renew" if only portions of it are "renewed" or is it now an Implied Contract (without automatic renewals, Contractual Period of Limitations,, etc.)?
and
- b. Does an Implied Contract "renew"?

Introduction

The District Court granted ADT's Motion for Dismissal based on ADT's assertion that the Contract specifies a one-year period of Limitations for filing Coulter's Civil Action, so Coulter was time-barred from recovery, even for damages suffered during the period when both courts determined that the Choice of Law was that of the State of New Jersey.

The Eleventh Circuit Court of Appeals agreed with the District Court, despite the fact that in both the Eleventh Circuit Court of Appeals and in the District Court, Coulter argued that because **the Contract between the Parties expired in July 2010, and was never actually "renewed", the Parties were instead acting under an Implied Contract, which only concerned very limited**

portions of the original Contract – and thus the Statutory Period of Limitations applies.

Argument

The single Contract signed by Coulter and ADT's Authorized Representative, extends over five (5) legal-sized, small print, pages, including three (3) "boilerplate" pages (82a.) as well as two (2) pages which are individual to the particular circumstances of the Contract (77a. - 81a.) (one of these is the signature page). That multi-page contract, covers :

a.) The purchase/sale of the "alarm system" (one "base unit", along with a limited number and variety of remote sensors, as well as the purchase/sale of additional sensors chosen by Coulter) (78a. - 79a.)

and

b.) The Installation of the entire Alarm System (78a.)

as well as

c.) "Basic Monthly Service, Burglary with Extended Limited Warranty (Residential Customer Only)". (78a.)

The wording of the Contract explains that the Contract was initially between Coulter and "Defender Security" (located in Pittsburgh, PA) - but that the Contract was always intended to be immediately sold to ADT, which would provide, for at least the term of the Initial Contract the Limited Warranty (which covered any defects in materials or workmanship of the components and their installation) and Extended Warranty, as well as the Monitoring/ Notification Services (instead of Defender Security (ADT's Authorized Dealer) providing these services) :

a.) The Contract will be submitted to ADT for approval of ADT's purchase of the Contract, and

b.) ADT has the option to buy "the Contract", but if ADT chose to not buy "the Contract", Coulter would have been promptly of that fact (a notification that neither Party has said ever occurred) :

" Notice to Consumers – This is to advise you that Authorized Dealer is an Independent Authorized Dealer of ADT Security Services, Inc. The company with which you are now contracting for the installation and/or monitoring of your electronic security system is not an employee or agent of ADT Services, Inc. Upon finalization of your contract, it will be submitted to ADT Security Services, Inc. for approval and purchase ADT Security Services, Inc. reserves the right to reject or otherwise not purchase this contract. If this contract is tendered and rejected or otherwise not purchased, ADT Security Services, Inc. will promptly notify you of that decision so that you may make other arrangements if you so choose." (80a.)

It is important to note that while the Contract specifies that ADT was always intended to provide the monitoring of the Alarm System, it repeatedly speaks of ADT's purchase of "the Contract", **not mentioning ADT purchasing only a portion of the Contract.** It is ADT's **actual assumption of only the responsibilities related to the monitoring/ notification and the Extended Limited Warranty, which requires a determination by of This Honorable Court.**

Indeed, the "renewal" of the Initial Contract (pursuant to decisions in federal courts outside of the Eleventh Circuit), would require that ADT accept and behave as though the entire contract was renewed. So, ADT would be responsible for supply and installation of an entirely new "Security System", as often as every 30 days, so long as the Customer would pay the \$99.00 fee. And, because of the fact that the batteries used in Coulter's Security System cost almost \$6.00 each, and their replacement involves ladders, tools, etc., even Coulter (who is "thrifty" to put it politely), would have paid that fee (probably every 6 months), just to minimize the expenses for new batteries and the inconvenience, danger and general bother replacing them. **However, ADT never offered to fulfill the "Supply and Install" portion of their Contract, and even repeatedly spoke with Coulter about their demand that she pay their fee of \$25.00 to have even one of the batteries replaced by their workers :**

"11. INSTALLATION, We will install the equipment listed in Section 2 Schedule of Protection in a workmanlike manner under the following conditions: ... (82a.)

and

"... each and every employee that Coulter spoke with, simply repeated ADT's "company line" which consistently and exclusively claimed that there must be some other problem with Coulter's system as there was no issue with their system, And since the problem must lie exclusively inside Coulter's house, each and every ADT employee insisted that

Coulter must arrange for, and agree to pay for, a service call." (59a.)

Further evidence that the Contract was not expected or considered to be actually renewing, exists in the "Limited Warranty"(which actually ended 3 months after the Initial Contract commenced) :

12. LIMITED WARRANTY. During the first three (3) months after installation, we will repair, or at our option, replace any defective parts of the system, including wiring and batteries, and will make any needed mechanical adjustments, all at no charge to you. We will use new or functionally operative parts for the replacements. ..." (59a.)

If indeed, the Limited Warranty were to repeatedly "renew" (every three months after the customer recognized that it was time to replace the batteries), there would be no reason for Coulter (and all 8 million other customers of ADT) to be expected to pay for the "Extended Limited Warranty" or Service Calls :

13. EXTENDED LIMITED WARRANTY (Quality Service Plan). If you purchased our Extended Limited Warranty, we will repair or, at our option, replace any part of the System requiring such repair or replacement due to ordinary wear and tear or malfunction of the System not due to external causes.

... will continue for the term of this contract, except you will after the three (3) month Limited Warranty Period, be charged a \$25 trip charge for each service call during the Extended Limited Warranty period. ..." (82a.)

Also among the Paragraphs in the Initial Contract that Coulter discussed in their filings in the lower courts, **which were never part of any "renewal" is Paragraph 3 :**

"INCREASES IN CHARGES. We have the right to increase the annual service charge at any time after the first year. ..." (82a.)

If indeed the Parties were operating under a series of "renewals" of the initial contract, there never could be any increase in the charges for the service, as the Initial Contract specifies that it will not increase during the first year of the Contract. Thus, because the renewal terms were only for 30 days, no increase could ever be put in place – but of course it was – proving that even ADT chose to behave as though they were not attempting to comply with the "renewal" of this portion of the Initial Contract.

Finally, the existence of Paragraph 18's limitations on alarm responses by ADT during the 7-days after the start of the Contract, would essentially make Coulter completely unprotected for nearly 25% of the time during each supposed "renewal", as this Paragraph requires ADT not respond in any manner to alarms during that is termed the "Familiarization Period" :

"18. FAMILIARIZATION PERIOD. UNLESS ... YOU AGREE THAT DURING A SEVEN (7) DAY FAMILIARIZATION PERIOD FOLLOWING COMPLETION OF THE INSTALLATION (AND DURING ANY APPLICABLE EXTENSIONS) WE HAVE NO OBLIGATION TO, AND WILL NOT, RESPOND TO ANY ALARM SIGNAL FROM YOUR PREMISES THAT IS RECEIVED AT

OUR ALARM MONITORING CENTER.
..."(83a.)

It is abundantly clear that ADT only accepted limited responsibilities with respect to the Terms of the Contract – and this raises the Issue of whether or not the Contract should be considered to have "renewed. There is really very little Case Law on this Issue, as was noted by the Court in the Case Law which Coulter brought to the attention of the judges from the Federal Courts in Florida with the decision from Indian Harbor Insurance Co v. F&M Equipment Ltd, 14-1897 (3rd Cir. 2015), which states :

"This case concerns the contractual meaning of the word "renewal."

...

We conclude that, for a contract to be considered a renewal, it must contain the same, or nearly the same, terms as the original contract.

...

a reasonable change in price should not alone render a new contract a nonrenewal. But the remaining terms must be recognizable extensions of the initial Policy, ..."

Indian Harbor Insurance, cites a case from the Eighth Circuit, McCuen v. American Casualty Co. of Reading, Pennsylvania, which determined that renewals must be essentially under identical circumstances (with minor adjustments for price) :

" "[r]efusing to provide coverage and refusing to renew coverage are not identical concepts.... [The insurer] did not refuse to provide (deny) any coverage at all, it simply refused to

provide the same coverage as was provided under the existing policy — it refused to renew."

While both of the lower Federal Courts determined that Choice of Law requires that the law of Pennsylvania be utilized, neither the Eleventh Circuit nor the District Court, accepted the decision by the Third Circuit, which is believed forms precedent for this case as well (particularly because Indian Harbor was filed in Pennsylvania, which both courts determined is Choice of Law for this case).

b. Does an Implied Contract "renew"?

I have not discovered any Case Law related to this Issue, other than the fact that the "terms" of an Implied Contract are evidenced by the actions of the Parties. However, I see no basis on which there can be a determination of intentions for "renewal", by either Party, other than the "Invoice Summary Report". That Report, which was provided by ADT (in response to Discovery Requests), which ended the fees with August 2013's charges for Monitoring. This evidence proves that ADT did not act as though Coulter was bound by the Terms of the Written Contract anymore, because, despite the fact that Coulter had not informed ADT of the desire to terminate the contract, without the notice required by their Initial Contract (until a matter of several days after she decided not to have ADT replace her Security System following the Panel's destruction during a break-in in late July 2013 — yet ADT did not continue to charge for the next 30 day period.

Conclusion

The decision by the Eleventh Circuit, En Banc, permitting the Panel's determination to stand, despite the fact that it finds that the Contract "renewed", both permits a determination that the "renewal" of the Contractual Period of Limitations should allow ADT to escape responsibility for its actions – and also produces a situation where the **Federal Appellate Courts have produced conflicting decisions in relation to this important element in Contract Law!**

It is Patently Unfair to require Coulter to comply (during supposed "renewals") with the Contractual Limitations Period, when all portions of the supposed renewals are not required of ADT – permitting ADT to benefit in all situations, while simultaneously permitting ADT to escape responsibility for complying with any portion of the Contract which ADT choses not to comply with. (Indeed, it is believed that it would not have been financially "feasible" for ADT to comply with the recurring requirement that every 30 days, the equipment be replaced (with installation), particularly as ADT does not have actual "employees" available in the extreme majority of the country.) Therefore, it is unreasonable to conclude that the Contractual Period of Limitations applies, despite the renewal of the very limited sections of the Contract which were actually renewed, for any point after the Initial Contract's Term. **Further, because there was no actual "renewal", and the Initial Contract had expired long before Coulter learned of ADT's Frauds, Breach of Contract, etc., the Parties were acting under an Implied Contract – so the States' Statutory Period of**

Limitations must be applied and Coulter's Civil Complaint must be permitted to proceed to trial.

A QUESTION OF FIRST IMPRESSION

3. Is Choice of Law incorrect as immediate sale of the Contract was scheduled, and cancellation provided for, in contract's terms, in case of non-sale?

Obviously, I have no legal training, but I bring this question to your attention at this point, because it raises serious concerns in this case. The behaviors described and evidenced here, most certainly prove that ADT has consciously chosen to act in a manner which requires that This Court question whether Procedures in the Federal Courts permit the formation and implementation of such "improper" acts to develop and flourish. There is no doubt that the "ethics" of a company, any company, are beyond the complete control of any court. But, one must ask, if there are reasons why ADT has chosen to run its business in this manner. The "instantaneous purchase/sale" of their Contracts, has certain obvious "advantages", which permit ADT to place profit over Public Safety. ADT's hunger for each property's continuing Monitoring fees which amount to a mere \$40 per month – results in ADT's exclusive commitment being to the almighty dollar, even placing the priority for this small amount of money, over the lives of its Customers!

Because of Rules of Court (for Forum), combined with Choice of Law calculations, the reason behind ADT's decision have Authorized Agents working on commission rather than employees, along with the instantaneous purchase/sale of

essentially every Contract, means that essentially all of cases involving ADT are heard, exclusively in the Federal Court in the Southern District of Florida. – (The Choice of Law for the Contract is always determined to lie in the state where the property being protected, is located – despite the fact that ADT ought to be considered to have been part of the Initial Contract, this is only going to be the case in the five (?) States where ADT has its offices or a regional Monitoring Center.)

(i) Conclusion

The result of the current situation, is that Civil Complaints involving damages inflicted by ADT, essentially must be filed in the federal courts in the Southern District of Florida. And, this fact, along with the "unjust enrichment" collected by ADT (from Monitoring Fees collected on properties where complete failure of the Security System has occurred), creates a significant "pot" for "off-the-books" expenditures! And, it is unreasonable to expect that with such a large pool of cash available, there won't be at least some situations of Corruption of Justice occur!

Assuming that Coulter's situation is "normal" (systemic failures occur, on average, every once every 66 months), and the average fee for monitoring is \$40/month, each month ADT would collect \$ 4,848,484.85, for Monitoring Services which ADT knows/knew would never be provided! (1/66 (odds of failure each month) x 8,000,000 (number of customers) x \$40.00 (average fee per month that was unearned) = \$ 4,848,484.85 of unearned fees

which would be available *each month* for a "Slush Fund" (as these monies are not required in order to pay for Services actually being rendered)!

By essentially assuring that every Civil Complaint that ADT must answer, is always filed in the District Court for the Southern District of Florida (or the State Court in that area), it makes it that much more predictable that ADT could find a receptive jurist (or reasonably predict whether Plaintiff's Attorney would likely be a receptive) - as ADT is essentially always dealing with the identical pool of jurists (and Civil Lawyers) for every case ADT has to defend against!

But there doesn't appear to me to be any reasonable "justification" for a determination that the existence of another Party (the Authorized Dealer in place of ADT), should result in Choice of Law calculations being found to be outside of Florida, while Forum is inside Florida. Simply because ADT "subbed out" the job of Sales and Installation, the location of the Contract should not always be in another state. This is particularly true as the "Authorized Dealer" is only involved in the Contract, for a matter of minutes, out of 1095 (plus) days that the Contract is in force – and frequently, as is the situation in the Instant Matter, neither Party in Florida Courts, is actually a "resident" of the Choice of Law state.

It does not make sense to restrict the location of any case brought against ADT, to be in Florida, but to have these cases (essentially always) concern application of laws from outside of Florida – simply because the "home" of ADT's Authorized Dealer, is outside of Florida.

Public Safety Issues

According to Census figures, the average "Household" in the United States, has 2.58 Americans living there. Assuming that each of ADT's Customers represents a Customer with ADT only providing Security Services for either their home or their place of work (and that the place of work, does not have a large number of individuals present on a frequent basis (above the average household size)), then 2.58 Americans in each location x 8,000,000 locations (with each failure being only out-of-service for a single month before the occupants discover the issue themselves) = the lives and health of more than 20 million Americans are placed in jeopardy each month despite the fact that they are supposedly protected by ADT but only when ADT complies with the Terms of its Contracts, as they are written!

However, because ADT has, by design, assured that 8,000,000 (locations) x 2.58 (Americans at each location) x 1 / 66 (odds of System Failure in a single month) = more than 312,000 Americans are placed in jeopardy of injuries from Fire or Burglary Alarms not being reported each month!

All of these statistics are being presented for the sole purpose of allowing This Honorable Court to understand that this Matter be returned to the District Court – and readied for trial, because there is no reason to justify an assumption that ADT has changed its corporate culture to the extent that ADT is now willing to "risk" losing nearly \$5,000,000.00 (five million dollars) of income being lost each month!

ADT refused to provide information about the other Customers who were supposedly Notified of their Systems' failures at the same time as Coulter

was! And there is no reason to assume that ADT has developed a moral character now! So, while it is true that it is possible that the Attorneys General of each of the fifty states could act to correct this problem, on a state-by-state basis, this should not be necessary, as **bringing Justice for Coulter would surely result in ADT's actions making the nightly news on every major network – and then all Americans could protect themselves from this type of behavior from ADT in the future!**

Respectfully Submitted,

Jean Coulter, Petitioner