Excluding Comparative Fault Evidence In The Fire Spread Case

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Often, the defendants in a fire subrogation case had nothing whatsoever to do with starting the fire. In the typical “fire spread” case, some condition or event for which one or more defendants are to blame allowed a fire to become more extensive and to cause more damage than would have occurred if the condition did not exist or the event did not occur. Typical examples include building construction defects, non-functional or dysfunctional fire suppression or alarm systems and other factors which delay discovery or fire department notification of the fire, or which impede the fire department’s suppression efforts.

In those cases where the evidence permits an apportionment between the damages attributable to the conditions which allowed the fire to “spread,” on the one hand, and those damages which inevitably would have occurred as a result of the fire, on the other hand, a defendant whose conduct contributed to the spread of the fire, but not its cause, can avoid responsibility for those damages which would have occurred under any circumstances. Restatement (Second) Torts §433A(1); Restatement (Third) Torts: Apportionment of Liability §26; Restatement (Third) Torts: Product Liability §16(b). In circumstances where the evidence does not permit apportionment between the “spread” damages and the damages which would have inevitably resulted from the fire, there is authority supporting the recovery of all fire-related damages; even from a defendant whose responsibility is based solely upon a “spread” theory. Restatement (Second) Torts §433A(2); Restatement (Third) Torts: Product Liability §16(c); Rozark Farms, Inc. v. Ozark Border Electric
Cooperative, 849 F.2d 306, 311 (8th Cir. 1988). In such circumstances, it would be hard to argue that evidence of the insured/subrogor’s role in causing the fire should be excluded from the jury’s consideration.

In most cases, however, the specific cause of a fire, and, in particular, any culpability of the insured/subrogor in accidentally starting the fire, is irrelevant to a fire spread claim. The specific cause of the fire usually has no bearing on the conditions or events which prevented the fire from being extinguished as quickly as it should have been. It, therefore, stands to reason that, so long as the plaintiff is not making a claim that any defendant in the case bears responsibility for the cause of the fire, and so long as the plaintiff concedes that it cannot recover those damages which would have inevitably occurred as a result of the fire, there is no reason or justification for allowing the jury to hear or consider arguments or evidence regarding the insured’s responsibility for starting the fire. Such arguments have no relevance to the actual damages at issue, which arise solely from the “spread” of the fire, as opposed to the “cause” of the fire.

Many courts have considered and accepted this argument. In Weyerhaeuser v. Thermogas Co., 620 N.W.2d 819 (Iowa 2000), the plaintiff alleged that a defective LP gas tank exploded prematurely when exposed to a fire, thereby increasing the damages which resulted from the fire. The Supreme Court of Iowa held that the trial court erred in refusing to instruct the jury that, as to “the LP gas tank manufacturer, the cause of the fire was irrelevant.” Weyerhaeuser, 620 N.W.2d at 822. The Court noted that the plaintiff was not claiming that the defendant caused the fire. Rather, the plaintiff’s argument was that, if the tank had not exploded prematurely when exposed to the fire, then, irrespective of the fire’s cause, the fire would not have resulted in the extensive damages which were sustained.

In reaching its decision, the Weyerhaeuser court relied upon earlier decisions that held that the cause of a fire is irrelevant in a spread case. New England Mobile Fair, Inc. v. City of Boston, 2 Mass. App. Ct. 404, 313 N.E. 2d 149 (1974); and Wollenhaupt v. Anderson Fire Equipment Co., 232 Neb. 275, 440 N.W. 2d 447 (1989). In New England, a fire in the plaintiff’s bookstore burned unabated, because the defendant city had improperly closed a water valve leading to the sprinkler system. The city alleged contributory negligence on the grounds that the bookstore’s employees started the fire. In a bench trial, the trial court found for the city on its defense of contributory negligence and barred recovery. However, given the distinction between cause and spread theories, the Massachusetts appellate court reversed and remanded for a determination of the amount of damages that resulted from the lack of water to the sprinkler system.

In Wollenhaupt, the plaintiff was working with highly flammable solvents when a fire erupted on his employer’s premises. The plaintiff tried to escape, but was injured. The plaintiff sued the fire equipment company that was responsible for the maintenance and testing of the fire protection system, alleging that the fire equipment company had negligently serviced the fire protection system and, as a result, the system failed to extinguish the fire. The plaintiff further alleged that, had the system properly functioned, the plaintiff would have only suffered slight injuries. The defendant argued that the plaintiff caused the fire, and the trial court instructed the jury to determine whether the plaintiff’s negligence was the sole proximate cause of the fire.
In reversing the trial court’s instructions, the Nebraska Supreme Court held:

The plaintiff is not claiming that the defendant caused the fire that injured him. Instead the claim is that if the defendant had properly serviced the fire protection system the fire, whatever its origin, would not have caused the plaintiff to suffer severe injury. The origin of the fire in this case was, therefore, irrelevant. Again, the claim is not that the defendant negligently started the fire, but that the fire, whatever its origin, would have been extinguished had the fire protection system been properly maintained and had it been so maintained, the plaintiff could not have suffered injury. If a defendant has a duty to foresee a particular type of harmful force, such as fire, and guard others against the harm that the force can do, and the defendant fails in its duty, the cause of the fire is irrelevant to the liability of the defendant.

440 N.W.2d at 456.

Based on this analysis, the Court ruled that the cause of the fire was irrelevant and should have been excluded from consideration by the jury with respect to the plaintiff’s claimed injuries.

In Cartel Capital Corporation v. Fireco of New Jersey, 81 N.J. 548, 410 A.2d 674 (1980), the Supreme Court of New Jersey addressed a similar factual scenario. In Cartel, a restaurant owner sued the retailer and manufacturer of a fire extinguishing system that failed to operate, which resulted in extensive damage to the restaurant. One of the employees of the restaurant had stacked paper plates near an unattended grill and the plates, combined with a grease accumulation, caused a fire to ignite. Although Cartel was premised under a product liability theory, the plaintiff in that case also alleged theories of negligence.

In rejecting the defense argument that the conduct of the plaintiff’s employees should be considered by the jury in determining whether such conduct constituted either a contributory proximate cause of the fire and/or the resulting damages, which could serve to bar or reduce the plaintiff’s recovery, the Cartel Court reasoned:

A serious question exists whether these factors could be deemed, as a matter of law, to be a proximate cause of the damage since the purpose of the Ansul equipment was to extinguish a fire on the grill irrespective of its origin. See Bahlman v. Hudson Motor Car Co., 290 Mich. 683, 282 N.W. 309 (Super. Ct. 1939) . . . .

* * * *

Plaintiff had no fair warning that the system he purchased which was designed to extinguish fires, irrespective of cause, would fail to function as a consequence of a design defect. Defendant did not meet its burden of proof.
In Avoyelles Country Club, Inc. v. Walter Kidde & Co., 338 So.2d 379 (La. App. 3rd Cir. 1976), the court reviewed a lower court decision barring a restaurant owner’s product liability claim against the manufacturer of a fire suppression system which failed to operate when a fire occurred. Responding to the defendant’s contention that the country club was contributorily negligent for its failure to instruct the club employees in the manual operation of the fire extinguishing system, the court ruled that, despite the club’s failure to properly maintain the system, and its failure to install a manual control in a place readily accessible to the employees, there was significant evidence to demonstrate that the fire would have been extinguished if the suppression system had functioned properly. As noted by the court:

It is obvious the system was designed, and was intended, to operate automatically in the event of fire, without the intervention of man. The fusible link was located in the area to be protected, the hood over the grill. The link was designed to melt when it was heated to a temperature of 360° F and automatically trigger the system to extinguish the fire. Thus, absent some defect in the system, there was no need for manual activation. . . . From the information supplied by the manufacturer, the country club had no reason to suspect the extinguisher would not operate automatically in case of fire. We find the plaintiff’s expectation that the extinguisher would function automatically was reasonable, and plaintiff’s did not misuse the extinguisher by failing to take steps to ensure that the system would be triggered manually in the event of fire.

[Id. at 382-382]

The court held that, either under a negligence theory or implied warranty theory, the relevant inquiry was whether the plaintiff was making the normal or intended use of the product. The court held that since the fire would have been extinguished by a properly working fire suppression system, the cause of the fire was not relevant to a determination on liability.

CONCLUSION

The argument for exclusion of the plaintiff’s, or the plaintiff’s insured/subrogor’s, comparative fault in causing the fire in a fire spread case is a veritable Trifecta for subrogation professionals:

1. It is logical;

2. It is fair; and

3. It helps maximize subrogation recoveries.