

Complexities of Spread Theories

Presented By:

Virginia Markovich, Esq.

Kristy Miller, Esq.

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Spread



What is a “spread theory”?

- Oftentimes, the cause of a loss is not always the cause of the resulting damages.
- The fact that the immediate cause of a loss does not give rise to third party liability, or is unknown, does not necessarily mean there is no subrogation recovery available.

Crucial Question

- Was there something which caused the loss to be larger than it should have been?
 - A failure of an alarm? A sprinkler?
- If so, we have to consider whether there is a possible recovery via spread theory.

For Example

- Hypothetical situation in which there would be a possible spread theory:
- The insured is a car dealership. The insured location contains both offices and the car showroom. One of the employees who works in the office likes to keep a space heater underneath her desk because she gets cold in the winter. (Do you see where this is going?)

- One chilly Friday afternoon, she plugs the space heater into the power strip under her desk. Once five o'clock rolls around, she bolts for the door. It's Friday!
- But whoops – she's left the space heater running... in an enclosed space...near combustibles... plugged into a power strip.

Do you see where this is going?



Not good!

Luckily for our imaginary insured, the dealership has a smoke alarm system.

Like most alarm systems, it is intended to activate when it senses smoke and heat, both releasing water and notifying the fire department.

In our story, the alarm system detects the heat and smoke and triggers the sprinkler system, extinguishing the small fire before it gets out of control.



Unluckily for our insured, the alarm system fails to notify the fire department. So the sprinkler system runs unchecked – Friday night, Saturday, Sunday, until our insured comes strolling in Monday morning.

And instead of a small, neatly contained fire, he finds...



- So: is there any recovery potential on this loss?
- Assuming our experts can confirm the fire was caused by our insured's employees negligence, do we have a theory of recovery?
- Let's assume the employee, Space Heater Sally, was acting within the scope of her employment, and is not a likely target of recovery.

Initial Investigation of the Loss

- First, as in any loss, we need to know what the original cause of the leak/fire.
- But in order to properly investigate a spread theory, we also need to examine what went wrong that allowed the damage to continue.
- In our hypothetical, we need to know why the alarm failed to contact the Fire Department.

Initial Investigation of the Loss

- How do we do this? What are we investigating?
 - In our hypothetical, we need more information on alarm maintenance. Are there records? When was the last time the alarm was inspected? Does the law require it to be inspected? Was the insured ever notified of any issues?

Spread Theories

- However, alarm failures are not the only type of cases that give rise to spread theories. They can also occur in cases involving:
 - **Accumulation of trash, waste material, debris, etc. (commonly referred to as “creating a fire hazard”);**
 - **Unsafe storage or warehousing practices;**

Spread Theories

- **The inoperability of burglar alarm systems (did the alarm company receive the alarm and properly respond);**
- **Inadequate security guard protection;**
- **The lack of security of the building (areas of access into the building, locked doors, glazed windows, vacant buildings, deteriorated neighborhood conditions, broken windows);**
- **Inoperative fire doors;**
- **Improper construction of fire separation walls and/or fire rated walls;**

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- **Defects in sprinkler systems (failure of the system to activate, failure of the system to operate pursuant to its design, sprinkler heads which are blocked, control valves which are inoperable and the existence in and of itself of a sprinkler system);**
- **The inoperability of fire alarms;**
- **Insufficient or inappropriate fire extinguishers;**
- **Lack of smoke or heat detectors**

... and more!

Spread Theories

- It's not just fire cases: water or leak cases can also give rise to spread theories.
- Particular issues to look for in water or leak cases:
 - Mold
 - Failure of alarms
 - Failure of fire suppression systems – are they appropriate in scope and response?

What do we need for the investigation?

- Experts – what are their roles? What should our expectations be?
 - Cause and origin experts
 - Electrical and mechanical engineers

It's crucial to separate the source of the loss from the failure which led to the spread of damages.

Expert Questions for Fire Spread Cases

- **Where was the fire first observed?**
- **What was the condition or stage of the fire when it was first observed?**
- **What were the dimensions of the fire when first observed?**
- **What property or materials were involved in the fire when it was first observed; in other words, what was burning?**
- **What was the direction of the fire when first observed?**

What was the speed of the fire when first observed; in other words, was the fire burning slowly or was it moving fast?

What was the color, density and direction of smoke and flame when first observed?

What was the time chronology of the progress of the fire?

How many alarms were issued as a result of the fire and when were each of the alarms issued?

Preserving Evidence



Preserving Evidence

Because it is crucial to be able to separate the cause of the loss from the cause of the spread of damage, particular evidence must be preserved and identified with respect to both issues.

Preserving Evidence

- Witness Interviews
- Fire personnel



Preserving Evidence



- Photographs



Preserving Evidence

Inspection records

Documentary Evidence-Use of Public Officials & Government Reports

- Fire Department Officials
 - Responding fireman & fire marshal investigator
 - Fire Marshal Reports
 - Other Agencies

Damages

- Isolating Damages
- Damage experts
- Determining what damages are related to the spread
- Determining what the damage could have been if the fire/water loss was contained

Conclusion



Contact Information

Virginia Markovich

212.453.3731

vmarkovich@cozen.com

Kristy Miller

212.453.3722

kmiller@cozen.com