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## **Strategic & Practical Liability Insights from Historic Hotel, Restaurant, and Nightclub Fires**

### **I. Determining When You Have a Fire Spread Case**

Hotel, restaurant and nightclub fires are often catastrophic. They involve places of public assembly. The sheer magnitude of the number of catastrophic fires occurring annually and the losses suffered are astounding. It is this fire landscape that spawns countless claims and lawsuits. Fire spread liabilities arise out of catastrophic fires where increased fire damages and risks are avoidable. The fire spread liabilities are often due to inadequate maintenance, construction defects, improper modifications and impairments. More than 1,000,000 fires are reported annually, resulting in billions of dollars for property damage and other economic losses, as well as loss of human life and bodily injury. A significant number of these fire losses occur from structure fires, including retail, restaurant and hospitality facilities.

### **II. Fire Spread Case Law Insights – Distinct From Fire Cause**

Fire spread liabilities are separate and distinct from liabilities arising out of any acts or omissions that cause the underlying fire. Several cases echo this critical point. In *Weyerhaeuser Co. v. Thermogas Co.*, 620 N.W. 819 (2000), the Iowa court stated: “Because the fire and resulting explosion were foreseeable intervening causes, the cause of the fire was irrelevant to [defendant’s] liability.” In another case, *New England Mobile Fair, Inc. v. City of Boston*, 313 N.E. 2d 149, 154 (Mass App. Ct 1976), a book store burned unabated. The city had improperly closed the water valve to the sprinkler system. The city claimed the bookstore was at fault for employees smoking near combustible materials. The trial court barred recovery on contributory fault. The Appellate Court reversed, allowing bookstore to recover 60% of damaged inventory caused by lack of a working sprinkler. The Court aptly made the important point: “[A] sprinkler system is designed to control or contain a fire which might start through negligence. Plaintiff [never] sought to blame the city for allowing the fire to start... plaintiff had suffered a further loss resulting directly from the city’s negligence in preventing the proper operation of the sprinkler.”

A third case similarly illustrates the liability for dangerous conditions that exacerbate the fire damages. In *Wollenhaupt v. Anderson Fire Equipment Co.* 440 N.W. 2d 447, 449-50 (Neb. 1989), plaintiff was working with highly flammable solvents when a fire erupted on his employer’s premises. The plaintiff tried to run but the fire caught him, inflicting severe burns. The plaintiff and his employer sued a fire equipment company that was responsible for the maintenance & testing of a fire protection system at the employer’s plant. They alleged that

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**Note: This general discussion is a quick, overview reference tool and a source of general information. It is not intended, nor should it be considered, the rendition of legal or technical advice.**

defendant negligently serviced the fire protection system and as a result the system failed to extinguish the fire. They further alleged that had the system properly functioned, the plaintiff-employee would have suffered only slight injuries or no injuries at all. The defendant defended on the ground that the employer's negligence caused the fire. The trial court had instructed the jury to determine whether the employer's negligence was the sole proximate cause of the fire. The appellate court reversed verdict in favor of def. The court stated, "Again the claim is not that [the def.] 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, [plaintiff] would not have suffered injury. The court further summed it up:

"[Plaintiff] is not claiming that [defendant] cause the fire that injured him. Instead, the claim is that if [defendant] had properly served [the fire protection system], the fire, whatever its origin, would not have caused [plaintiff] to suffer severe injury. The origin of the fire ... was therefore irrelevant."

### **III. Fire Spread – Big \$ at Stake**

Thousands of fires occur each year, and many of these arise in restaurants and similar hospitality facilities. For example, from 2007 to 2009 there were nearly 6,000 restaurant fires causing \$172M in property damage. These restaurants covered the gamut of the varied types of restaurants in use. They include fast food, family owned, catering halls, nightclubs, hotels, etc. Restaurants are unique fire risks as they involve heavy cooking activities, and frequently a significant number of patrons. Cooking is the leading cause of restaurant fires. When fires are confined to the cooking equipment themselves, they rarely result in serious injury or substantial property losses. While many restaurant fires are confined to the object of origin, there are still many fires that spread beyond the object of origin as well as the room of origin. Cooking and electrical malfunctions are some of the leading causes of non-confined restaurant fires. Human error and other human factor failures are significant causes as well.

Smoke alarms are critical elements of the fire protection system. A significant number of non-confined restaurant fires have occurred where there were no functioning smoke alarms. Another vital element of fire protection is effective sprinklers. Without a doubt, functioning sprinklers make a huge impact on controlling fire spread. It has been reported that direct property damage has been lower when sprinklers are present. Sprinkler systems failures are due to many reasons. They include system shut-off, impairments that defeated the system, inadequate water pressure, and instances where the water spray did not reach the fire.

### **IV. Fire Spread Analysis & Investigation - Practicalities**

Numerous parties are interested stakeholders in investigating, responding, remediating, restoring, and regulating the fire scene. These include the liability and property insurers, property owners, tenants, neighbors and adjoining properties, business owners, fire departments, various public authorities, community representatives, media, and other interested parties.

Like any forensic investigation, a prompt investigation is vital. In the context of investigating a fire for cause and/or fire spread, it is important to document the fire scene before conditions change. To the extent reasonably possible, efforts should be made to preserve the fire scene and relevant evidence. Witnesses should be interviewed. Potentially responsible parties should be placed on notice and afforded the opportunity to investigate as reasonably possible. Having a practical plan of action that is effectively executed significantly

enhances the ability to effectively investigate the fire. Often times, real world constraints play significant challenges on the fire scene investigation. These include safety, environmental, the need to mitigate the loss and to resume business operations, and the interests of public officials and others.

The nature and scope of the fire investigation often turns on the dollars at stake, the complexity of the fire scene and the interest of government agencies. Selecting the right experts is critical. It is never a cooking-cutter program. An origin and cause expert and other forensic experts are frequently required. Experts in the areas of electrical engineering, mechanical engineering, material scientists and other specialized consultants are worth considering. A fire protection engineer is frequently valuable to evaluate material flammability, adequacy of fire protection systems, adequacy of fire suppression, fire detection and alarm systems, smoke spread, structural issues involving containment of the fire, as well as issues of evacuation and egress.

In selecting an expert, it's imperative to examine the expert's qualifications, educational background, publications, experience and overall expertise. It is also vital to consider how well the expert will play before a local jury or court. Is the expert an effective communicator and credible? On a practical level, budgets are always important to consider. After all, cost efficiencies and sticking to reasonable budgets are necessary in today's bottom-line environment.

#### **V. Fire Spread Liability and Failure Analysis**

Fire-spread liabilities occur where a fire would have been limited in scope to the area of fire origin, but for the failures of building systems, fire suppression, detection and alarm systems, human factors, flammability of materials, inadequate water supplies for fire suppression and firefighting, and other failures. Against this failure mode backdrop is the push-pull between fire-spread liability chasers and defenders.

Essentially, the thread throughout all fire-spread claims is the pivotal question: What exacerbated or enabled a small fire to grow large? This core question raises numerous issues on the adequacy of: structural design, construction and components; building fire stops and separations; ventilation systems; defective or improperly maintained fire, detection and alarm protection equipment; flammable contents and unreasonably dangerous materials; inadequately segregated construction or other combustible materials; fire spread from adjoining properties; fire safety management and staff training; and compliance with building and fire codes, among other causal or contributing factors.

It is important to emphasize that all of these spread inquiries are irrespective of the cause of the fire when determining the fault for the exacerbated fire spread. Foreseeability, the essence of negligence, remains the key. Indeed, even if a fire is caused by accident, arson, intentional conduct or a fortuitous act of nature, fire spread liability may exist when a failed fire protection system, life-safety system, building system or structural component, or human error foreseeably allows a fire to cause further and subsequent losses that increased the incipient damages and/or bodily injuries. This is illustrated by when a fire suppression system fails to perform as expected. It is the enhancement of the loss that is the focal point of the fire spread claim.

Thorough investigation is essential for developing reliable, credible findings, and a provable hypothesis, based on facts, reliable methodologies, good science, good documentation and data, and the applicable standards of care. Many potential experts come into possible play for investigating the fire scene to determine whether the fire spread to areas beyond the area of fire origin, and, if so, what were the causal or contributing factors. A qualified fire protection engineer is often valuable for investigating fire suppression and sprinkler

systems, detection and alarm systems, smoke/heat/fire detection systems, and structural issues that may have impacted fire/smoke propagation. Other valuable experts include origin and cause, structural engineers, mechanical engineers, electrical engineers, materials, architects, human factors and the like.

There are many important considerations. Undertaking an NFPA 921 compliant investigation is critical. You want your expert to be able to withstand a *Daubert* challenge. The factors leading to the increased fire spread damages must be carefully investigated and considered. Spoliation of evidence needs to be mitigated, where possible, Prompt notice to interested parties and site inspections are critical steps in the investigation journey. At the outset, the investigation should consider to what extent the fire spread is due to acts and/or omissions or failures of design, specification, manufacture, construction, installation, maintenance, inspection, testing, human factors, operations or use, or other factors. Fire spread investigations, like all others, should carefully consider whether applicable codes and standards, including building codes, were deviated. If so, to what extent those deviations caused or contributed to the exacerbated fire spread loss and/or injuries. Need to also consider whether any applicable codes were retroactive.

The investigation should consider: fire sprinkler systems, fire alarm systems and structural building systems.

- Fire Sprinkler and Alarm Systems

Fire protection systems provide a reliable method for detecting, alarming, containing and controlling fire spread. Such systems include sprinklers, smoke alarms, heat sensors etc. But when such safety systems fail to function as designed and intended, the resulting fire damages may be exacerbated. Many factors often contribute to system failure, including improper selection, specification, design, manufacture, installation, operation and use, maintenance, inspection, testing and the like. As for fire sprinklers, key components comprise sprinkler heads, water supply piping, valves and the like. Wet systems contain water, while dry systems are filled with air until activated, at which time the valve opens with a drop in pressure and allows water to fill the system. Sprinkler heads have faced many recalls.

- Fire Alarm Systems

Fire detection and alarm systems are vital for providing effective fire protection and reducing the extent of fire damage and risks to human lives. As with all fire protection systems, it is critical to consider whether the applicable system and devices were properly specified, selected, designed, manufactured, installed, operated, maintained, tested and inspected. If any of these critical activities were improper or less than adequate, then the margin of safety for limiting the scope of the fire has been compromised. At the outset, all fire protection systems require some level of risk analysis of the property and the intended fire safety goals (*e.g.*, life/safety, property protection, mission protection) in order to determine the appropriate system to have in place.

- Fire Sprinkler systems

Fire sprinkler systems detect fires and upon activation are designed to control and suppress fires. Numerous failures modes loom for fire sprinkler and alarm systems. Some of the relevant failure inquiries include: a) was the sprinkler system properly specified, designed, manufactured, installed, operated, maintained, tested and inspected? b) was the system code compliant? c) did the sprinkler system activate timely?

- Building Systems

A structure's design, materials used, and manner of construction are all important variables for fire spread. On the one hand, the structural features and components may confine or impede fire spread or, on the other hand, they may exacerbate the growth and spread of fire beyond the original area of origin. Fire confinement is critical to containing fire to the area of fire origin. Inadequate or unprotected openings or penetrations are frequent spread pathways. Other structural component spread pathways include fire doors that fail to close, inadequate compartmentation, defective or inadequate fire resistance assemblies (walls/ceilings), HVAC systems that continue to operate during a fire, failed dampers, windows, and other structural components. Building materials also affect fire spread. The types of materials used in building interiors can greatly increase the fire load, like plastics and synthetic materials.

#### **VI. Case Studies to Highlight Fire Spread Learning Points in the Context of Historic Hotel, Nightclub & Restaurant Fires**

History repeats itself. As such, there are many valuable lessons by going back in time and looking at the circumstances surrounding historic hotel, nightclub and restaurant fires. One of the most historic night fires occurred at the Cocoanut Grove nightclub on November 28, 1948 in Boston. The Cocoanut Grove fire resulted in 492 deaths. It is one of the deadliest nightclub fires. The interior of The Cocoanut Grove nightclub was decorated heavily with flammable materials and decorations. Amazingly, just eight days before the fire, fire department inspectors had found no flammable decoration and that the exits and extinguishers were adequate. On the night of the fire, the Cocoanut had over 1,000 occupants. An artificial palm tree was accidentally ignited by a bus-boy who was using a match for lighting as he was addressing a faulty lightbulb on a tree. The tree ignited in seconds. The fire spread rapidly. The Cocoanut Grove Nightclub Fire teaches us about the dangers of flammable materials and the importance of adequate exits. At the time of the fire, there was no automatic sprinkler system.

Another insightful historic fire involved the Beverly Hills Supper Club. This fire has been considered the third deadliest nightclub fire in the United States. The fire occurred during the Memorial weekend of 1977. 165 persons died and over 200 were injured. There were more than 3,000 individuals were inside the club. The fire spread rapidly. The only fire protected consisted of portable fire extinguishers. The facility was not equipped with a sprinkler system. The building did not have a fire alarm or smoke detection system. Critical lessons involve the importance of over-crowding, flammable interior materials, lack of sprinklers and fire alarms. The Beverly Hills Supper Club fire led to significant changes in the Life Safety Code including the requirement that public assembly occupancies with an occupant load exceeding 300 were required to have a fire alarm system.

There are many other historic fires, including the MGM Grand Hotel, Cosmopolitan Hotel, The Station Nightclub, The Collective Nightclub and Philadelphia Food Truck. The common lessons throughout these historic fires involve combustible interior finishes and materials, inadequate egress, over crowding, inadequate fire protection systems, inadequate fire detection and alarm systems, fire propagation through inadequate containment, including open penetrations, stairwells, HVAC systems and the like. By appreciating the historic fire calamities, we remind ourselves of the important lessons for fire protection and fire safety. We also use these historic examples as springboards for recognizing the liabilities that arise out of hotel, restaurant and nightclub fires and the practical liability insights, whether for pursuing subrogation recoveries or defense.

### Selected References: Standards and Guidelines

- NFPA 13: Standard for Installation of Sprinkler Systems
- NFPA 25: Standard for the Inspection, Testing and Maintenance of water — Based Fire Protection
- NFPA 72: National Fire Alarm Code
- NFPA 80: Standard for Fire Doors and Other Opening Protective
- NFPA 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures
- NFPA 101: Life Safety Code
- NFPA 221: Standard for High Challenge Fire Walls, Fire Walls, and Fire Barrier Walls
- NFPA 5000: Building Construction and Safety Code
- The International Building Code and International Fire Code/International Code Council
- NFPA 921 & 1033
- NFPA Fire Protection Handbook