



# FIRE SPREAD CLAIMS:

## Persistence Leads to Recovery

By

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**A**fter the fire trucks leave and only smoking embers remain, the challenge of recovery begins.

Ideally, when investigating fire losses, theories are discovered and refined, and responsible parties are identified. Often, however, the cause cannot be determined, and the responsible parties, when identifiable, are penniless and uninsured. Many subrogation professionals consider this the end of the road – but hard work, persistence, and creativity can yield recovery in cases that others abandon.

When a responsible party cannot be identified or a specific cause cannot be determined, one viable recovery theory may still exist: “Fire Spread.” Fire spread theories can even succeed in cases of intentional arson or negligence by the insured. When pursuing a fire spread case it is important to remember that what caused the fire is not the relevant question. The relevant question is why the fire spread and caused more damage than it otherwise would have.

### Elements of a Fire Spread Claim

The basic elements of a fire spread claim are defect, cause, and damages. More specifically, the plaintiff must prove that a defective system or condition existed, that

the defect caused the fire to spread or become more severe, and that the damages were quantifiably more severe than they would have been without the defect.

### Defect

Sprinklers, alarms, and other fire suppression systems should be inspected carefully after a fire to determine if they performed as



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expected. Were the specifications, design, installation and maintenance of systems appropriate for the existing use of the building? Often, business operations that create intense fuel loads from products and by-products of operations are located in buildings that were originally intended for less volatile uses many years ago. Who knew or should have known about dangerous conditions that contributed to the fire’s spread and destruction?

Passive fire protection features of a building, such as fire walls, should be considered as well. Most building codes and standards embrace the philosophy of fire containment through compartmentalization. Were there passive fire protection features in the building? If not, why? If there were, did they function as intended? Additions and retrofitted features of a building often contribute to fire spread. Did fire walls extend through the roof? Were wires, pipes, and other utilities added after the building’s initial construction leaving gaps or openings that allowed a fire to spread?

### Causation

Causation is another critical element of a successful fire spread recovery case. The plaintiff must prove that but for the defect, the fire would have been detected, contained, or extinguished more quickly. A detailed timeline should be developed through interviews with witnesses to show the fire’s progress and speed. Reviewing this timeline with a qualified expert will determine if the fire’s spread was unusual given the known circumstances of construction type, fuel load, weather, etc. Material performance standards can be used as a benchmark or performance testing can establish the benchmarks that prove the existence of a defect. Finally, subrogation professionals are advised to think broadly about legal concepts such as joint and several liability, breach of warranty, code compliance, violations of statute, and similar concepts of tort or contract that may support recovery.

### Damages

Once defect and causation are proven, damages must be shown to be quantifiably more severe than if the defect had not allowed the fire to spread. As in any dispute, a qualified damages expert is essential. Qualified reporting and testimony can demonstrate the value in dollars of the fire’s spread and will complete the case for recovery based on a fire spread theory.

### Fire Spread Claim Recoveries

Cases based in whole or in part on fire spread theories can be established by hard work, persistence and creativity. For example, an Illinois court held that landowners have a duty to maintain smoke detectors and fire extinguishers after they are installed in order to prevent the spread of fire. See, *Federal Ins. Co. ex rel. Singer v. ADT Sec. Systems, Inc.*, 222 F.R.D. 578 (N.D. Ill. 2004). We have seen numerous cases based solely on fire spread theories result in seven figure verdicts and significant settlements where the cause of loss was unknown or recovery was otherwise unlikely. Subrogation professionals should consider fire spread if they believe they may have reached the end of the road to recovery. ■

