CLAIMS JOURNAL

View this article online: http://www.claimsjournal.com/news/midwest/2013/07/11/231734.htm

Vandalism, Fire Losses and the Doctrine of 'Inferred Intent'

By Gary Wickert | July 11, 2013

Property subrogation professionals routinely see cases involving fires caused by uninsured minors playing in buildings. Subrogation is the business of recovering money, not punishing delinquent children. Often carriers won't pursue subrogation cases against uninsured minors for fear of throwing good money after bad. A new decision by the Ohio Court of Appeals is a stark reminder to carriers to look carefully at such cases. Not only is there "easy" – albeit limited – money to be recovered by applying the straightforward parental responsibility laws in all 50 states, but liability coverage through the parent's homeowner's policies might be more accessible than previously thought. At the very least, such cases should be looked at critically to determine whether there is any liability coverage available.

The recent Ohio case of *Royal Paper Stock, Co. v. Robinson, 2013 WL 1286698 (Ohio App. 2013)* is a classic example. This case involved a subrogation action filed by Royal Paper and its insurer Grange Mutual Casualty Company for damages incurred as a result of a fire that occurred at Royal Paper's warehouse on May 3, 2009.

At first blush, subrogation looked remote.

Seventeen–year–old Kyle Robinson ("Kyle") and 12–year–old Tyler Robinson ("Tyler") were living with their grandparents, Edward and Doramarie Sterling. Though Kyle had spent the previous night at 16–year–old Alexander Roller-Knapp's house, on the morning of May 3, Alexander's mother, Diane Roller, drove Alexander, Kyle, and another boy to an area in the vicinity of Royal Paper's property. At some point after Alexander's mother dropped them off, the boys entered the warehouse. Once inside, the boys began playing inside of the warehouse and jumping on the bales of paper. Thereafter, the boys left the warehouse and returned home with Alexander's mother. Later that day, Kyle received permission from his grandmother to use her car so that he, Alexander, and Tyler could go "skate at a warehouse," and Kyle drove himself and the two boys to Royal Paper's property. They gained entry to the property by going through a fence and subsequently gained entry to the warehouse whereupon the boys began playing. According to Kyle, the boys jumped on paper stacks and played on the machines even though the machines were not actually working. The boys then began playing with lighters and started

lighting fires. A resulting fire destroyed the warehouse and Grange paid for the damages under their property coverage with Royal Paper Stock Company.

Subrogation looked grim.

An intentional act by minor children rarely affords liability coverage. Recovery of amounts up to $15,000 and more are readily available under a variety of state statutes in all 50 states which deal with the liability of a parent for the vandalism and intentional acts of minor children. A complete state-by-state list of these laws can be found here. The *Robinson* case is a good example of how and why aggressive investigation can pay off in the long run.

Investigation and extensive interviews revealed that the boys first set fire to small pieces of paper that they would subsequently extinguish with a fire extinguisher. The boys began by playing with the fire extinguishers and then they connected fire extinguisher with fire. They wanted to experiment putting fires out with these fire extinguishers. They started with paper on the cement floor and progressed to bales of hay. They went off to a different part of the building and then came back and to discover a fire burning out of control. The intent all along was to go to the warehouse to go skateboarding, but once inside the warehouse, they began jumping on the large bales of paper. At some point, the boys turned to playing with the fire extinguishers. After the fire got "too big," the boys left the building.

Grange filed a subrogation suit against Kyle, Tyler, the Sterlings, Alexander, Roller, and Knapp. It alleged that, while on a joint venture, Kyle, Tyler, and Alexander negligently and/or intentionally set fire to Royal Paper's warehouse. Appellants also alleged that, as Kyle and Tyler's legal guardians, the Sterlings were liable under a theory of negligent supervision. As to Alexander's parents, Roller and Knapp, appellants alleged negligent supervision and liability pursuant to Ohio Revised Code § 3109.09, which imposes liability on parents when a child willfully causes damage to property. State Farm issued a homeowner's insurance policy under which Alexander, Roller, and Knapp are insureds and USAA issued a homeowner's insurance policy that provided coverage for Kyle, Tyler, and the Sterlings. State Farm and USAA both argued no coverage as a result of an intentional act. The policy exclusion read as follows:

SECTION II—EXCLUSIONS

*1. Coverage E—Personal Liability * * * do not apply to bodily injury or property damage: a. caused by the intentional or purposeful acts of any insured, including conduct that would reasonably be expected to result in bodily injury to any person or property damage to any property.*

The trial court granted summary judgment to State Farm and USAA, determining that the policy's exclusions precluded coverage. It concluded that, under the doctrine of *inferred intent*, the acts of the insureds, Kyle and Tyler, were intentional or purposeful such that damages resulting therefrom were excluded under the policy. The trial court also concluded that, even absent the application of the inferred intent doctrine, coverage under USAA's policy was not available because the policy excluded coverage for damages caused by intentional acts, irrespective of whether or not the insured's intended to cause harm.

The Court of Appeals reversed the decision, holding that the doctrine of inferred intent applies only in cases in which the insured's intentional act and the harm caused are intrinsically tied so that the act has necessarily resulted in the harm. With respect to USAA's coverage, the Court held that the exclusionary language in USAA's policy did not require an analysis of whether Kyle or Tyler *intended* to cause harm, but, rather, required a determination of whether the harm was caused by Kyle's and Tyler's intentional acts. It noted that Kyle and Tyler were *intentionally* lighting pieces of paper on fire inside of a warehouse housing paper. It is also undisputed that they attempted to extinguish the fires and thought the fires were extinguished. Though they originally acted intentionally, this is really an accident caused by negligent conduct, specifically, leaving the area with the belief that the fires were sufficiently extinguished. USAA's policy was held to provide coverage for the fires.

About Gary Wickert

Gary Wickert is an insurance trial lawyer and a partner with Matthiesen, Wickert & Lehrer, S.C., and is regarded as one of the world's leading experts on insurance subrogation. He is the author of several subrogation books and legal treatises and is a national and international speaker and lecturer on subrogation and motivational topics. He can be reached at gwickert@mwl-law.com. **More from Gary Wickert**