

Subrogation Against Parents for Actions of Their Children

Can parents be held responsible for property damage caused by their children? Almost every state in the country has adopted some form of a parental liability statute, which forms the legal basis for holding parents vicariously liable for the acts of their children. Parental liability statutes can vary widely from state to state, but typically these laws attach parental liability to the willful and malicious acts of minor children. But in the context of large property losses, these statutes do not necessarily pave the way to meaningful subrogation recoveries. Almost every parental liability statute in the country limits the total amount of damages available to claimants, and claims arising from these statutes may not trigger liability coverage for at-fault parties.

By way of example, Wisconsin's parental liability statute caps the maximum available recovery at \$5,000 in most circumstances. *Wis. Stat. § 895.035(4)*. In Michigan, *M.C.L. 600.2913* limits parental liability for the acts of minor children to \$2,500. In Minnesota, the statute limits damages to \$1,000. *M.S.A. 540.18*. As a technical proposition, these statutes form a basis for a viable theory of recovery. However, the reality is that these damage limitations so severely curtail opportunities to make meaningful subrogation recoveries that, in the context of large losses, claims based on parental liability statutes must be combined with other strategies. Accordingly, an understanding of causes of action and theories of recovery that fall outside of parental liability statutes is critical to protecting subrogation rights.

Most states recognize the common law tort of negligent supervision. Parents are under a duty to exercise reasonable care over their children, and to prevent their children from creating an unreasonable risk of harm. Negligent supervision claims will generally require a plaintiff to prove (1) a child exhibited a propensity for the type of behavior that led to a loss; (2) the parents were aware of that propensity; and (3) the parents had an opportunity to exercise control over the child. This type of common law negligence claim is generally not limited by any statutory cap on damages, and, therefore, can be a creative approach to pursuing property losses without being limited by the limitations on damages promulgated in parental liability statutes. A claim against the parent(s) for negligent supervision avoids the potential declination of coverage that a direct claim against the minor might involve.

It's not uncommon in these types of cases for potentially adverse insurance carriers to deny liability coverage to a defendant based on an "intentional acts exclusion," taking the position that a minor child's act, setting a fire, for example, was intentional. One strategy for triggering coverage is to argue that the child is not old enough to appreciate the nature of the action, and, therefore, was not acting intentionally. For example, a young child who plays with a matchbook may intend to light a match, but that same child likely did not intend to burn down an entire building. This argument may be supported by state statutes or case law that lay out the age at which a minor can form criminal intent, or when a minor is old enough to commit a negligent act.

Almost every state in the country has enacted a statute that forms the legal basis for parents' vicarious liability for their children's actions. Parental liability statutes technically create an avenue to recovery, but the reality is that the very stringent limitations on damages contained in these statutes can prevent truly meaningful subrogation recoveries. Therefore, common law negligence claims such as negligent supervision may provide an opportunity for recovery of greater damages, and should be carefully investigated and considered when assessing subrogation potential.

Protecting and pursuing subrogation opportunities in the context of a loss caused by the acts of a minor child can be challenging, but with the right set of facts and a carefully considered strategy, statutory damage caps and coverage issues can be addressed.



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Related Practice Areas

- Subrogation & Recovery

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