

THOUGHT LEADERSHIP

News

CIGARS DESTROYED BY FIRE NEITHER AN “ACCIDENT” NOR A SINGLE CLAIM, SAYS FORT WORTH JUDGE

Newsbrief

01 APR 2019

A Fort Worth judge recently examined the intersection of “accident,” “property damage,” and number of claims in a curious case involving a series of alleged arsons. *Loblaw v. Texas Ritz Indemnity Plan (TRIP)*, 765 S.W.4th 432 (Tex. App –Arlington March 30, 2019) involved a claim made by local Arlington attorney Bob Loblaw for loss to his extensive and expensive collection of imported cigars by a series of small fires which inexplicably were extinguished before doing any damage to any other part of his property. On summary judgment motions, the court held that while there was some evidence the loss of the cigars constituted “property damage,” in the sense of an alteration in color, shape, or physical constitution, there was also incontrovertible evidence the cigars had been destroyed at different times, creating as many as 42 individual claims, each of which would be subject to a separate deductible.

TRIP also argued that Loblaw intentionally destroyed the cigars himself in an attempt to collect insurance benefits, but the court held there was conflicting evidence on the question of whether Loblaw burned the cigars or played any role in the setting of the fires, which created a fact issue and precluded summary judgment. TRIP stipulated that if the loss was found to be “property damage,” it would pay the claims, as long as Mr. Loblaw both paid the per-claim deductible and agreed to cooperate in the apprehension and prosecution of the arsonist. Late in a rambling, somewhat byzantine opinion, the court declared, “April Fools!”