

HOW ONE SQUIRREL TAUGHT US A SURPRISING AMOUNT ABOUT INSURANCE INVESTIGATION LESSONS LEARNED FROM THE IOWA SUPREME COURT

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A recent decision issued by the Iowa Supreme Court, *City of West Liberty, Iowa v. Employers Mutual Casualty Company*, highlights the importance for a policyholder to investigate a loss fully so that a wide range of evidence can be gathered and presented to show why there is coverage. The facts of *City of West Liberty* are a little unusual, but its lesson is not limited to Iowa insurance law; the issues litigated in this case show the value of investigating what caused a loss regardless of whether the loss occurred in California, Iowa, or elsewhere

Background on the Case

City of West Liberty involved an insurance coverage dispute between a municipality owned electrical power plant and its insurance company. The dispute arose from a single adventurous squirrel who climbed onto an outdoor electrical transformer, touching two different parts of the power plant: a portion of the steel frame and a bare cable clamp. In doing so, the squirrel created a “conductive path,” in the words of the Iowa Supreme Court, between the high voltage clamp and the grounded frame. The path, once created, caused significant damage to the transformer and other electrical equipment at the city’s power plant.

The city submitted a claim for the resulting damage, but the insurance company denied it. The insurer denied based on an exclusion in the insurance policy for property damage “caused by arcing or by electrical currents other than lightning.” According to the insurance company, the squirrel had no role in causing the damage; all of the damage resulted from arcing, which was excluded from coverage. The ensuing lawsuit focused upon whether the squirrel had a role in causing the damage. If yes, then there would be coverage according to Iowa insurance law; when a loss results from two causes, one of which is covered and the other is not, then there is coverage if the loss occurs from the covered cause. Due to this legal standard, the city contended that, apart from the arcing causing any damage, the squirrel caused the damage too. Because the insurance policy provided protection against mischievous actions performed by squirrels, the city contended that it was entitled to coverage, even if the excluded arcing contributed to the same damage too. Unfortunately, for the city, the Iowa Supreme Court rejected that argument, finding instead that the property damage resulted only from the arcing, which was excluded from coverage. In reaching its conclusion, the court absolved the squirrel of any wrongdoing, finding that it did not cause any of the property damage.

Framing Your Position – Understanding Exactly What Happened to Protect Your Coverage

While there were several shortcomings with the rationale of the Iowa Supreme Court’s decisions, this case highlights the importance of:

1. Investigating what caused a loss; and
2. Understanding the applicable insurance law in analyzing an insurance policy for coverage for a loss resulting from multiple events interacting together.



Some losses could be relatively straightforward to investigate and understand what happened. However, some losses are more complex, requiring the policyholder to spend time and effort to understand what happened and when. A loss that might appear, at first glance, to be caused by a single event could, in fact, be caused by multiple events. While the scope of coverage will depend on the applicable law and the wording of a specific insurance policy, when multiple events interact to cause a loss, a policyholder will typically only need to show that one of those events are covered to secure the promised insurance coverage protection.

Opening the Door for Discovery

In the *City of West Liberty* case, for example, there was some evidence that the equipment touched by the squirrel should have had a protective cover over it, but that the cover was missing when the squirrel made contact. Why was this protective cover missing? An investigation into why that cover was missing, and how did the missing protective cover contribute to the property damage, might have led to the discovery of additional facts which could have shown that the damage did not result only from arcing, as the insurance company contended. There are other unanswered questions too, such as how did the squirrel get onto the equipment in the first instance and why was the squirrel even there. Understanding the how and why of the squirrel being on top of the equipment might have led to the discovery of additional facts that could have shown that the property damage to the power plant resulted from a series of events that the squirrel started.

Investigate, Investigate, Investigate

While an investigation into a loss by a policyholder can seem unnecessary, the *City of West Liberty* case reminds us of the value of doing an investigation. Too often, unfortunately, some insurance companies will conduct a result-orientated investigation designed to focus only on those facts supporting the conclusion that there is not coverage, rather than taking a more holistic approach to the investigation, the result of such can be the discovery of facts showing that there is coverage. It is important for any business that has suffered a loss to remember that there can be value investigating what caused a loss and not just assuming that the insurance company's investigation will be sufficient. This investigation can be significant, whether to show that a covered cause was a factor in the loss (as required in some jurisdiction) or the "effective proximate cause" (as required in others). Ultimately, a policyholder's own investigation can be of great assistance in cases where an insurer focuses only on a "non-covered" cause of a loss.

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