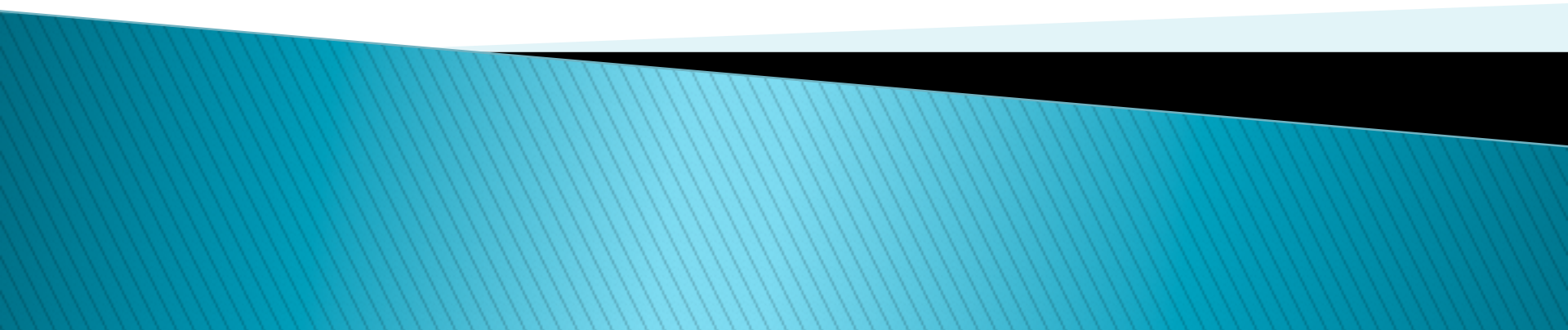


The Plaintiff's Guide to Dog-Bite Litigation



Tuesday, December 6, 2011. 11:00-12:30 p.m. Eastern Time.

Presented by Michael Kaiser, J.D.

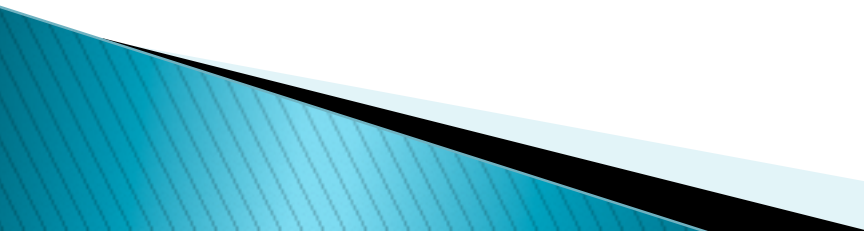
to a national audience in conjunction with the National
Business Institute and West Publishing.

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Michael Kaiser is president of the Kaiser Legal Group and founder of Seattle Legal Research, a company focused primarily on discovery and legal research. Seattle Legal Research's work has been integral to success at both the state appellate and federal levels. Seattle Legal Research also has been part of ground-breaking litigation, including a series of upcoming national cases seeking to redefine animals' standing in court. Mr. Kaiser also has reported on legal-affairs for local radio, and has been a law-school guest speaker on the subject of how different court systems address those suffering from mental illness. In addition, Mr. Kaiser has worked with local judges and members of the King County Bar Association's Judiciary and the Courts Committee to draft new rules for King County Superior Court. Mr. Kaiser also has served on the King County Bar Association's Judicial Evaluation Committee. He earned his B.A. degree from the University of Washington in Seattle, and his J.D. from Seattle University.


Facts

- ▶ Emergency rooms treated 368,245 dog bite victims in 2001. (Centers for Disease Control and Prevention).
 - ▶ The insurance industry pays out over \$1 billion a year in dog-bite claims. (Humane Society of the United States—National Pet Related Statistics, 2005).
 - ▶ In 2005 the average insurance claim paid out for a dog bite was \$ 21,000. (Insurance Information Institute).
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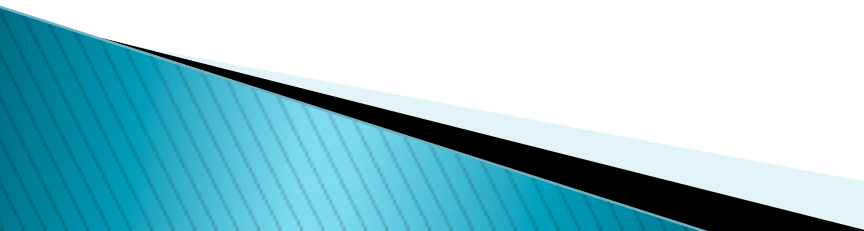
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- ▶ Initial Investigation of the Case
 - ▶ Applicable Laws For Liability
 - ▶ Who Can Be Held Liable
 - ▶ Insurance Coverage
 - ▶ Discovery Issues
 - ▶ Damages
 - ▶ Trial Evidence
 - ▶ Anticipating Legal Defenses
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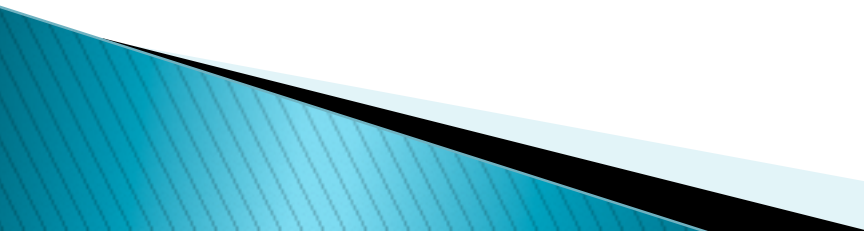
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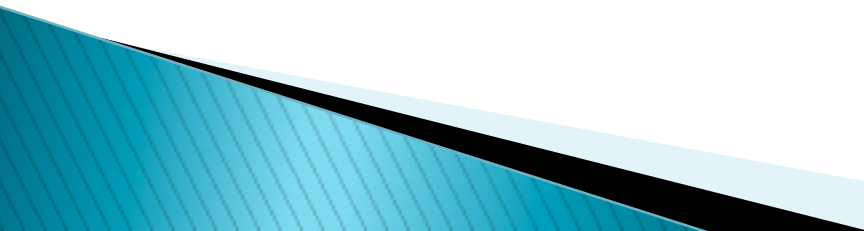
Upon Notification of Incident

- ▶ Take pictures. A picture is worth a thousand words.
 - ▶ Investigate the location of the incident. Get a feel for the scene.
 - ▶ Contact Animal Control and Law Enforcement and have the matter investigated. Tactfully push to have the dog taken into custody.
 - ▶ Make contact with witnesses. Memories and often willingness fade quickly. Record statements.
- 


- ▶ Clearly identify the owner of the dog. Over time defendants will sometimes attempt to disclaim ownership. Try and get a statement from the defendant. *Then* ask to record the statement. You want to come across as someone who “understands that dogs will be dogs.”

Things to Ask the Owner


- ▶ Was he or she aware of any vicious or dangerous propensities?
 - ▶ Have there been past incidents?
 - ▶ Have there been past complaints?
 - ▶ Have people been injured in the past, even when the dog was simply “playing”?
 - ▶ What did the owner do to prevent the attack?
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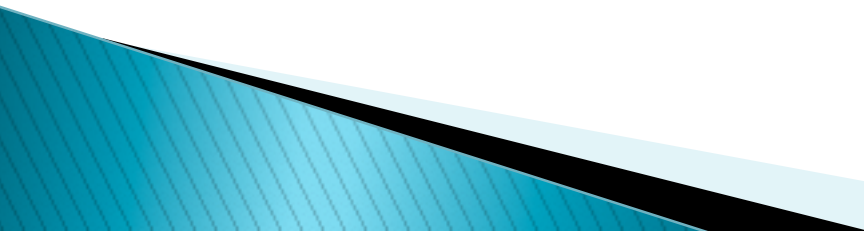
- ▶ Obtain the dog's entire history including the names of veterinarians, kennels, previous owners, dog-sitters, trainers if applicable, siblings and parents, and breeders. Also obtain the addresses for all locations where the owner and dog have lived, the dog's training history, the defendant's past and present ownership of other animals as well as their histories, and what the dog at-issue is used for. This list obviously is not inclusive.
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A. Common Law

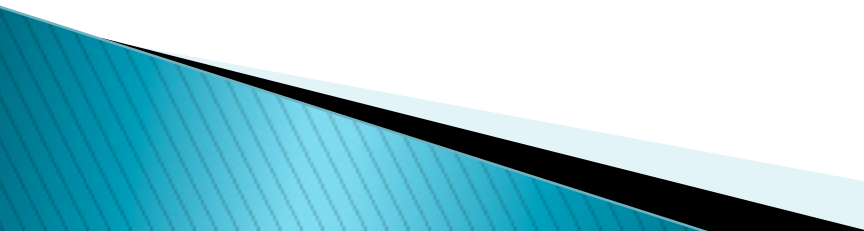
- ▶ Roughly half the states follow common law approaches to dog bite cases.
 - ▶ Under common law in many states—and arguably attitudinally everywhere—dogs are considered harmless unless it can be shown the animal has “dangerous and vicious” propensities.
- 

- ▶ §509, Restatement Second of Torts, comment f, states, “The majority of dogs are harmless . . . the possession of characteristics dangerous to mankind . . . is properly regarded as abnormal for them.”
 - ▶ §518, Restatement Second of Torts, comment j, states, “[T]here are certain domestic animals so unlikely to do harm if left to themselves and so incapable of constant control if the purpose for which it is proper to keep them is to be satisfied, that they have traditionally been permitted to run at large. This class includes dogs”
- 

“Vicious and Dangerous”

Black’s Law Dictionary defines a vicious animal as “(1) an animal that has shown itself to be dangerous to humans, (2) Loosely, one belonging to a breed or species that is known or reputed to be dangerous.”

Elements of a “Vicious or Dangerous” Damage Claim

1. Animal had “vicious or dangerous” propensities abnormal to its class or breed,
 2. The injury resulted from the animal’s “vicious or dangerous” propensities, and
 3. The animal’s owner or keeper knew or had reason to know of these propensities but failed to take reasonable care.
- 

One Court's Criteria Regarding Foreseeability of Dangerousness

- ▶ Dog was a particular breed. (German Shepherd)
- ▶ Dog was trained, and acted, as a watchdog.
- ▶ Dog was kept chained, indicating owner knew of animal's dangerous propensities.
- ▶ Dog weighed almost 100 pounds and stood close to six feet on its hind legs.

Radoff v. Hunter, 323 P.2d 202 (California Court of Appeals, 1958).

However, Eating a Cockatiel is Normal Dog Behavior

- ▶ Plaintiff was bitten on the lip by a Scottish Terrier when she tried to pet him.
- ▶ Court found that evidence introduced that the dog had previously eaten owner's pet Cockatiel was not indicative that the dog had dangerous or vicious propensities abnormal for its class.

Pfeffer v. Simon, No. 05-02-01130-CV, 2003 Tex. App. Lexis 2495 (Texas Court of Appeals).

Other Factors Indicating That Owner Was, or Should Have Been, on Notice

- ▶ Dog was kept muzzled. *Russell v. Lepre*, 470 N.Y.S. 2d 430 (Supreme Court of New York, 1984).
- ▶ Animal had been mistreated. *Denil v. Coopersmith*, 343 N.W.2d 136 (Wisconsin Court of Appeals, 1983).
- ▶ Animal had a reputation for being bad-tempered. *Butts v. Houston*, 86 S.E. 473 (Supreme Court of Appeals, West Virginia, 1915).

- ▶ Owner had a “beware of dog” sign. *Dargen v. King*, 742 P.2d 72 (Court of Appeals of Oregon, 1987).
- ▶ Animal was sick and thus irritable. *Rickrode v. Wistinghausen*, 340 N.W.2d 83 (Michigan Court of Appeals, 1983).

Humphries v. Rice, 600 So. 2d 975 (Supreme Court of Alabama, 1992).

- ▶ Allows someone to prove scienter by demonstrating the defendant had actual or *constructive* knowledge of the dog's "breed propensity."
- ▶ "Breed propensity" is an issue of fact for the jury.
- ▶ Who qualifies as an expert for purposes of defining a breed's propensity? Veterinarian, behaviorist, kennel worker, lay person with personal experience, or someone else?

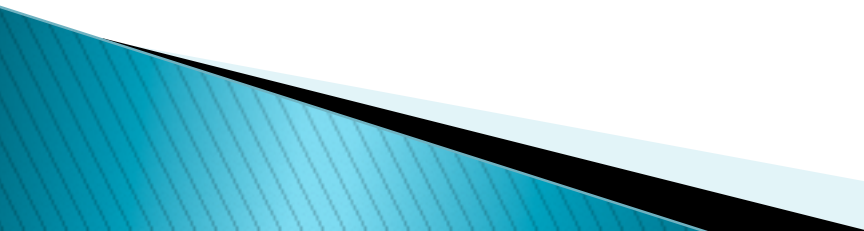
One-Bite Rule

One-Bite Rule—A dog can have one incident in which it bites someone. The rule provides a liability-shield for the owner the first time a dog bites someone, but afterward it is considered that the owner has been put on notice. Only about a half-dozen United States jurisdictions continue to use the rule.

Objective vs. Subjective

Plaintiff is always going to want to argue for an objective standard to be used regarding whether a defendant's failure to foresee a dog's dangerousness or viciousness was reasonable. Otherwise, you almost always are going to be up against the defendant's argument that they had no reason in their mind to suspect or foresee that their animal had the potential for harm.

B. Gross Negligence or Willful

- ▶ Eg. Allowing an animal to harm someone.
 - ▶ You need to be careful asserting this because the closer you get to alleging intentional behavior, the closer you get to negating the coverage that many insurance policies provide. Intentional acts are often not covered.
- 

Bushnell v. Mott, 254 S.W.3d 451 (Texas Supreme Court, 2008)


- ▶ Plaintiff was attacked by the defendant's three dogs when she visited the defendant's residence to drop off beauty products ordered by the defendant. When the front door opened the dogs pushed through and the defendant did nothing to stop the attack, including scolding the dogs.
- ▶ Court remanded the case because there was an issue of material fact as to whether defendant's response was negligent and, if so, to what extent.

C. Premises Liability

- ▶ Not seen that often in dog-bite cases because the focus typically is on the animal's propensities and the owner's alleged negligence.
- ▶ Court found attack was an “activity” rather than a “dangerous condition,” thus not triggering premises liability. *Boots ex rel. Boots v. Winters*, 179 P.3d 352 (Idaho Court of Appeals, 2008).

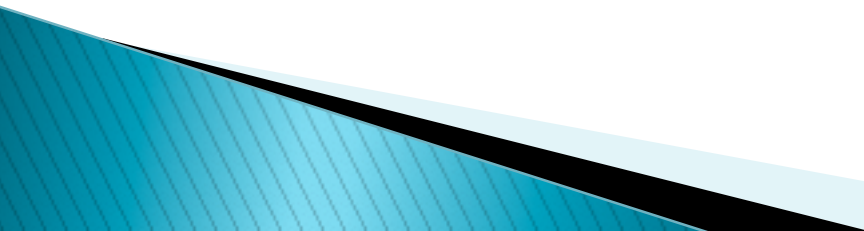
- ▶ Patron of business injured while lawfully on business property was allowed to argue premises liability. (Hartford Casualty Ins. v. Litchfield Mutual Fire Ins., 274 Conn. 457 (2005); Burke v. Fischer, 182 S.W.2d 638 (Ky. 1944)).

D. Strict Liability

- ▶ Strict liability traditionally applied when farm animals got loose.
 - ▶ Even in jurisdictions that purportedly follow a “strict liability” standard, the reality is many also examine foreseeability and negligence.
- 

Michigan Compiled Laws 287.351(1)

“If a dog bites a person, without provocation while the person is on public property, or lawfully on private property, including the property of the owner of the dog, the owner of the dog shall be liable for any damages suffered by the person bitten, regardless of the former viciousness of the dog or the owner’s knowledge of such viciousness.”



“Attacks or Injures”

Court held that the strict liability statute affixing liability when a dog “attacks or injures” applied in case where running Springer Spaniel bumped into plaintiff, causing him to fall and injure himself. Boitz v. Preblich, 405 N.W. 2d 907 (Minn. Ct. App. 1987).

Nickell v. Summer, 943 P.2d 625 Okla. (1997).

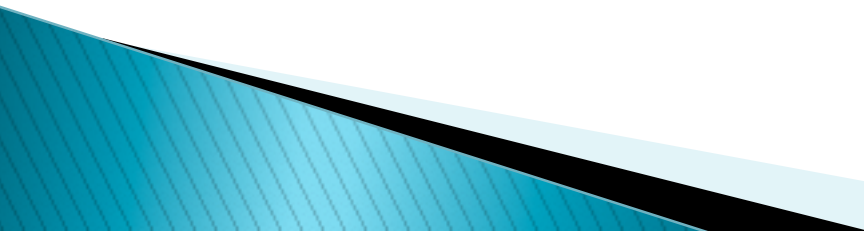
- ▶ A dog bit a horse who in turn threw its rider.
- ▶ Court found the owner not liable under strict liability statute that held owners liable when dog bites or injures “any person.”
- ▶ Dog bit the horse, not the person.

Drake v. Dean, 15 Cal.App.4th 915 (1993).

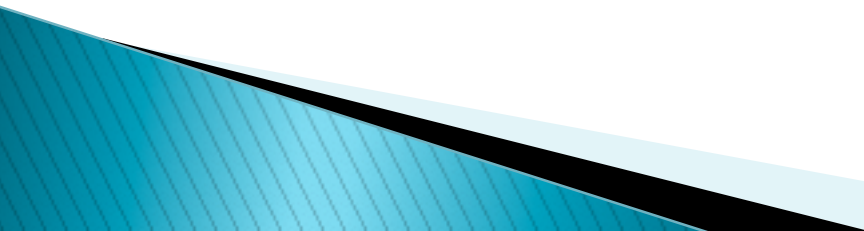
- ▶ Jehovah Witnesses were canvassing a neighborhood. As they walked up the driveway of a residence, a chained pit bull pushed one of the Jehovah Witnesses to the ground and she broke her hip.
- ▶ Plaintiff was allowed to bring out that pit bulls were historically bred for aggression and that the dog-at-issue weighed upwards of 70 pounds and had a tendency to jump on people.
- ▶ Jury found pit bull was not abnormally dangerous.
- ▶ Court found the jury should have been instructed on the standard of negligence and ordinary care related to the manner in which the pit bull was, or was not, restrained in the yard.

Pursue Common Law And Statutory Causes-Of-Action

Court found that doctrine of election of remedies allows simultaneous pursuit of both common law and statutory causes-of-action because the statutory and common law remedies were not repugnant or inconsistent with each other. *Beckett Et. Al., v. Warren Et. Al.*, 124 Ohio St.3d 256 (2010).



E. Attractive Nuisance

- ▶ Generally designed to address situations involving children. It is argued that there was something dangerous that had features that attracted a child.
 - ▶ Typically a difficult case to make when the issue is an animal. What makes one animal more “attractive” than another?
 - ▶ However, if you can find something else about the premises that was “attractive” and argue that brought the child onto the premises where in turn the child was attacked, then you have a stronger argument that there is an “attractive nuisance” element to your dog-bite case.
- 


F. Negligence Per Se

- ▶ Must establish that the law-at-issue was designed specifically to prevent dog bites.
- ▶ It has been held that leash laws are intended to prevent dog bites. (Eg. See Miller v. Hurst, 448 A.2d 614 (Pennsylvania Superior Court, 1982)).

Hagen v. Larson, 263 P.2d 489 (California Court of Appeals 1953).

- ▶ Court found the defendant not liable in negligence or negligence per se. The negligence per se claim was based on violation of an ordinance that dogs could not be loose off of the property where they reside between the hours of 6:00 p.m. and 6:00 a.m. Dogs had been running off of the property while playing, although the incident-at-issue occurred on the owner's property.
- ▶ Dogs were Irish Setters and playing. Defendant could not have foreseen the potential danger that the dogs would run into a stationary object—a lady—and knock her over, breaking her hip. Dogs had no history of running into stationary objects.
- ▶ Furthermore, the court said, the plaintiff had seen the dogs playing and still walked on to the property.

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Property Owner

- ▶ Courts generally do not hold third-party property owners responsible, especially if they do not know the dog is present or dangerous.
- ▶ Absentee landlord held not liable. Batra v. Clark, 110 S.W.3d 126 (Tex. Ct. App. 2003).
- ▶ Owner of property where tenant's dog exceeded lease's size restrictions held not liable. Braun v. York Property, Inc. 583 N.W.2d 503 (Mich. Ct. App. 2003).

Landlords

- ▶ Court held that even if the dog-at-issue was vicious, which the court found the plaintiff had failed to establish, there was no evidence landlord was aware of dog's propensities. Carter v. Metro North Associates, 680 N.Y.S.2d 239 (App. Div. 1998).
- ▶ Landlord could not be held liable even if he knew of animal's vicious propensities, could have foreseen the injury, and failed to terminate the tenant's month-to-month lease. Mitchell v. Bazzle, 404 SE 2d. 910 (South Carolina Court of Appeals, 1991).

Conversely

- ▶ In North Carolina a landlord can be held liable. In this case the landlord did not remove dogs who had committed two attacks prior to the attack-at-issue. *Holcomb v. Colonial Associates LLC*, 597 SE 2d 710 (N.C. 2004).
- ▶ Florida also imposes a duty on landlords to protect tenants from known vicious dogs. *Ramirez v. M.L. Management Co.*, 920 So.2d 36 (Florida Court of Appeals, 2006).

Harboring a Dog

- ▶ Mother let acquaintance of her daughter reside at mother's residence with his two dogs.
- ▶ Four months later the dogs bit a passerby.
- ▶ Wisconsin statute defined owner as one who “owns, harbors, or keeps the dog.”
- ▶ Court found mother strictly liable as statutory owner. She had harbored the two dogs for four months at time of incident. *Pawlowski v. American Family Mutual Ins. Co.*, 777 N.W.2d 799 (2009).

Hill v. Hughes, 2007-Ohio-3885

- ▶ A child was mauled by a Lab/Rottweiler mix.
- ▶ The dog belonged to the adult son of the owner of the house where the incident took place. The son was renting the house from his father on a month-to-month tenancy.
- ▶ Question was whether the dad was a “harborer” because he had possession and control of the premises and allowed the dog to remain.
- ▶ Court found the father could be held liable because the father and son lived on contiguous properties, the son worked for the father on the premises where he lived, there was no written lease, and the father acknowledged in a deposition that he had the power to have his son remove the dog.

Former Owner of Dog


Court found no precedent or support for the proposition that propensities of certain dogs related by blood or breed create an obligation for a person to provide such information to someone whom that person is transferring control of a dog. *Mieloch v. Country Mutual Insurance Company*, 628 N.W.2d 439 (Wis. Ct. App. 2001).

Real Estate Agents


- ▶ Real estate agent was aware the owner of a house had two dogs but the agent never had witnessed dangerous behavior by the dogs. When the agent listed the house she indicated the owners had dogs.
- ▶ Another agent was showing the house and did not indicate the presence of the dogs, who bit some prospective buyers.
- ▶ The court granted summary judgment to both agents and their agency because it was highly questionable they were “occupiers” of the home and, furthermore, they did not know the dogs were dangerous.

Gibson v. Rezvanpour, 601 S.E.2d 848 (Court of Appeals of Georgia, 2004).

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Potential Sources of Coverage

- ▶ Homeowners—In 2005, 15% of money paid out on homeowners' policies involved dog bites. (Insurance Information Institute).
 - ▶ Renters
 - ▶ Umbrella
 - ▶ Automobile
 - ▶ Business
- 

Homeowners

- ▶ Insured's adult son was housesitting and his dog bit a passerby. The court ruled that just because the son was "at" the home did not mean he "lived" in the home for purposes of homeowner's coverage. *Felton v. Nationwide Fire Insurance Co.*, 839 N.E. 2d 34 (Ohio Court of Appeals, 2005).
- ▶ Daughter was living in her mother's second home when the daughter's dog bit a visitor at that residence. Kentucky Court of Appeals ruled the daughter was not covered under the mother's homeowner's policy because the daughter did not live with the mother. *Grimes v. Smith*, No. 2004-CA-001756-MR (2005). Unpublished.

- ▶ Federal District Court upheld a non-licensed dog exclusion in homeowner's policy because dog's license and vaccinations had expired. *Nationwide Mutual Fire Insurance Co. v. Creech*, 431 F.Supp. 2d 710 (E.D. Kentucky, 2006).

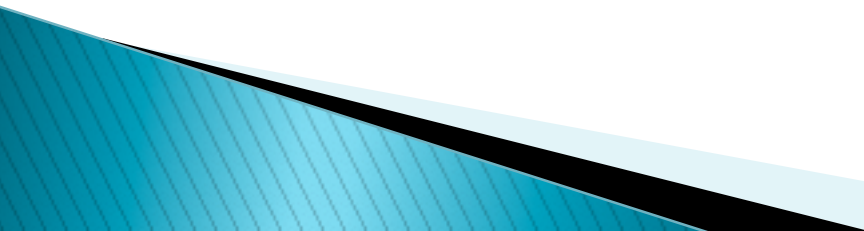
Automobile Insurance

- ▶ Insured transported dog in back seat of car. A passenger entered the front seat and the dog lunged forward and bit her. Insured had homeowner's and automobile policy.
- ▶ Homeowner's insurance company filed a declaratory judgment seeking a ruling that the auto insurance policy covered the incident.
- ▶ Court found there must be a causal connection between the vehicle itself or its permanent attachments and the dog to render injury "arising out of" the ownership, maintenance, or use of the vehicle. *Farmers v. Allied Property and Casualty*, 253 Neb. 177 (1997).


Diehl v. Cumberland Insurance,
686 A.2d 785 (N.J. Super A.D., 1997).

- ▶ Plaintiff was bitten by dog while walking around the back of a pickup.
- ▶ The court ruled that the auto insurance should cover the injury because the incident occurred while the dog was in the open rear deck of the pickup truck because the truck was transporting the dog. Moreover, the court reasoned the incident was facilitated by the height and open design of the deck.

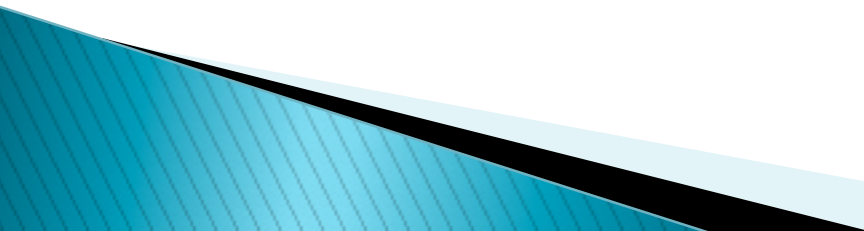
Breed-Specific

- ▶ More and more insurance companies are refusing to issue policies to homeowners who own certain breeds.
 - ▶ Examples of breeds that have drawn scrutiny or been excluded include, among others, Pit Bulls, Dobermans, Rottweilers, Chow Chows, German Shepherds, and Bulldogs.
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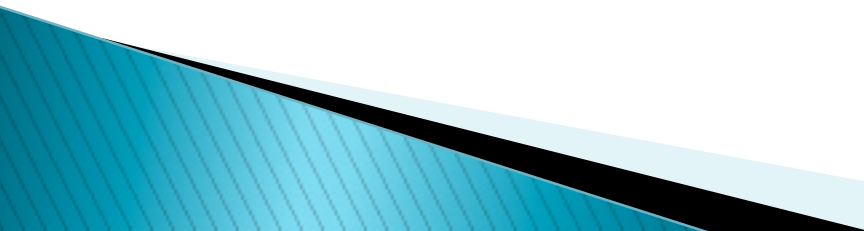
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Investigation

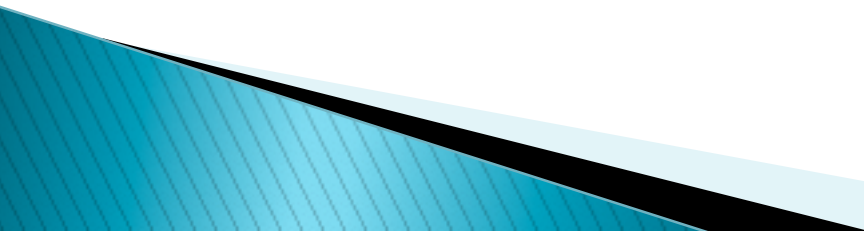
- ▶ Look near fence lines for signs the dog raced back and forth as people or other animals passed by. Look for bite marks on the fence. Was the fence of adequate height?
 - ▶ Look inside the house for signs of damage and aggression by the dog as well as signs of how the dog was cared for and treated.
 - ▶ Attempt to have dog examined—on film—by a behaviorist of your choosing.
- 

People to Speak to Regarding Dog's History

- ▶ Veterinarian
 - ▶ Kennel
 - ▶ Neighbors
 - ▶ Mailman
 - ▶ Breeder
 - ▶ Animal's behaviorist, if one has been used
 - ▶ Former owners of dog
 - ▶ Babysitter
- 

- ▶ Pet sitter
 - ▶ Gardeners
 - ▶ Utility workers
 - ▶ Homeowner's association
 - ▶ Domestic help
- 

Documents to Obtain

- ▶ Insurance company documents pertaining to any previous incidents involving the owner or the dog.
 - ▶ Veterinarian records including hand-written notes. Hand-written notes often times are the only place you will find notations regarding problems the veterinary staff had with the dog or caution they felt should be taken with the dog.
 - ▶ Court records
 - ▶ Kennel records
- 


Public Records Requests

- ▶ Be specific as possible while at the same time leaving the door as wide open as possible. Agencies like to cite lack of specificity as a reason for not providing documents. On the other hand, they also like to look at the request as narrowly as possible so as to rule out providing certain documents.
- ▶ Obtain Animal Control and Police records including records relating to any quarantining of the animal. Start early. Agencies like to stall when they do not want to provide the information and know you are under a time constraint. Agencies also are often worried they will become defendants.

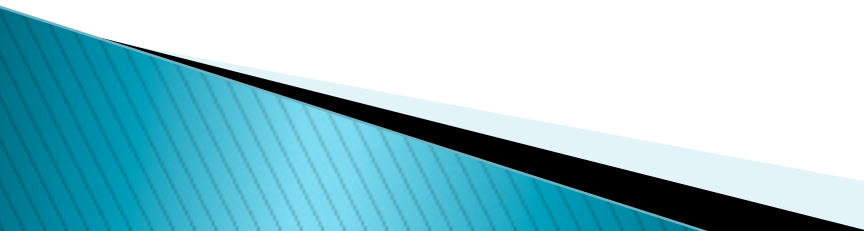
Public Record Requests (cont)


If you disagree with the results of the investigation, get personnel records of the officers-at-issue, records related to past investigations conducted by both the officer and the agency that involved similar incidents, and agency manuals and procedures for conducting investigations.

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Damages

- ▶ Loss of consortium
 - ▶ Lost wages
 - ▶ Loss of future earning capacity
 - ▶ Present and future pain and suffering
 - ▶ Mental health—present and future
 - ▶ Physical damages
 - ▶ Permanent scarring and/or disfigurement
 - ▶ Impact on future social possibilities including marriage
- 

- ▶ Current and future medical costs
 - ▶ Life care
 - ▶ Punitive damages
 - ▶ Loss of enjoyment of life
 - ▶ Post Traumatic Stress Disorder
 - ▶ Damage to spouse and family
- 

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Jury Verdicts vs. Settlement

One study has indicated that jury verdicts are on average 24% higher than settlement amounts in animal injury cases.

(Personal Injury Verdict Reviews, March, 3, 1997).

Exhibits

- ▶ Use pictures. Blow up a couple big ones. Get a “Before” and “After” picture and, once they are introduced, leave them up the entire trial.
- ▶ If you can afford it, prepare a video reconstruction. An image of a dog ravaging your client, combined with “Before” and “After” pictures, will have lasting impact.

Benjamin Leleu



After Being Attacked





Experts

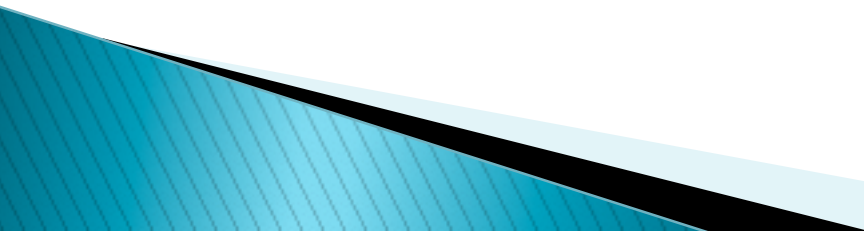
- ▶ Can be expensive, especially in relation to the average payout in a dog-bite case.
- ▶ Often times experts are going to be testifying as to “what was the animal thinking?” Dangerous territory in which to expend substantial resources unless you have a very credible and convincing expert.
- ▶ “Experts” in animal behavior are many times going to be up against the trier-of-facts’s own ideas of what makes an animal tick. And who can refute whom? Ultimately no one knows what goes on inside an animal’s head.

Witnesses


Make sure you do not put a witness on the stand who evinces a distaste for dogs in general. You already will have a hard time keeping your victim from coming across as someone who dislikes or thinks poorly of dogs. Percentages indicate there will be dog lovers on your jury. They need to see the dog-at-issue in your case as a very isolated example.

Selecting A Jury

You are looking for people who probably have had bad experiences with dogs.

- ▶ Delivery people.
 - ▶ Law enforcement.
 - ▶ Many veterinarians and their employees.
 - ▶ Cat owners.
 - ▶ Some older people become more wary of dogs.
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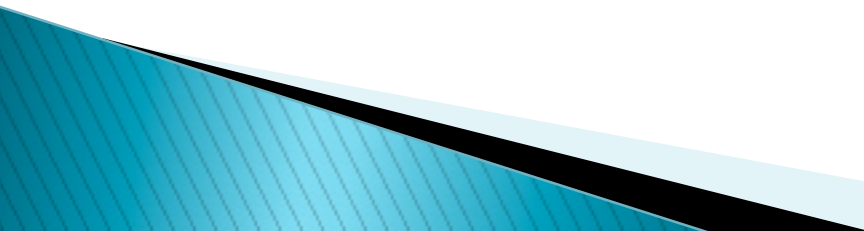
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Assumption of Risk

- ▶ Usually requires a showing that the plaintiff had knowledge of the potential danger and voluntarily exposed himself to the risk.
- ▶ Typically not applicable in dog-bite cases.
- ▶ However, it has been applied in cases involving veterinary workers, kennel employees, and behavior-modification specialists. (*Priebe v. Nelson*, 39 Cal. 4th 1112 (2006)).

Comparative or Contributory Negligence.

- ▶ There are very few jurisdictions that follow the contributory negligence rule. (ie. Plaintiff gets nothing if they contributed in any way to damages.)
 - ▶ Vast majority follow the comparative model, which apportions fault.
 - ▶ This leaves the door open to all kinds of creative arguments by the defense because we only can speculate in most cases as to what incited a dog to attack and, furthermore, how aware the owner was of the dog's dangerous propensities.
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Sovereign Immunity

(Typically Used in Police Dog-Bite Cases)

In a case involving a wife who was bitten by a police dog while her husband was being arrested, the court found the police department had immunity and that the police dogs were protected by vicarious liability. *Hyatt v. Anoka Police Department*, 700 N.W.2d 502 (Minnesota Court of Appeals, 2005).

Citizens' Rights

- ▶ Citizen has a right to a warning before police release a bite-and-hold trained animal. *Kuha v. City of Minnetonka*, 365 F.3d 590 (8th Cir. 2003).
- ▶ Innocent man sleeping in backyard of stepson's home was attacked by police dog and beaten by the police. Jury found for plaintiff on issue of unlawful seizure and awarded \$750,000. *Rogers v. City of Kennewick*, 2007 WL 2055038 (E.D. Wash. July 13, 2007).

Qualified Immunity

Saucier v. Katz, 533 U.S. 194 (2001). Two-part test for determining if a public official is entitled to qualified immunity.

(1) Court must ask whether “the facts alleged show the official’s conduct violated a constitutional right.”

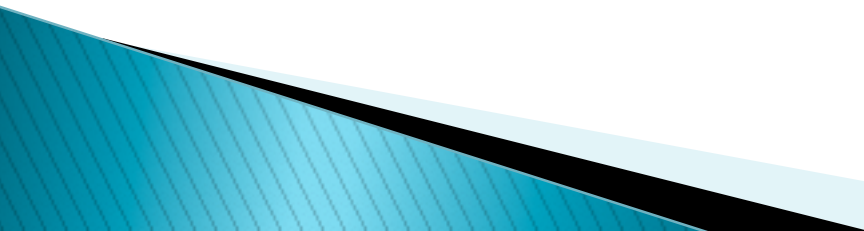
(2) If so, Court must determine if the constitutional right was “clearly established.”

However, Saucier was substantially modified by Pearson v. Callahan, 555 U.S. 223 (2009), in which the Court stated that courts have discretion to base the inquiry solely on Saucier’s second prong.


San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose, 402 F.3d 962 (C.A.9 (Cal.) 2005).

- ▶ Police serving a search warrant on a Hells Angels' clubhouse decided to preemptively kill three pit bulls on the premises. Very gruesome details.
- ▶ Court held that the shooting of the dogs was an unreasonable seizure.
- ▶ Court ruled the 4th Amendment was also violated by the manner in which the search warrant was executed. The police had a week to plan how they were going to deal with the pit bulls.

City of Delray Beach v. St. Juste, 989 So. 2d 655 (Fla. Dist. Ct. App. 2008).

- ▶ Plaintiff was severely injured by two dogs who escaped their enclosure.
 - ▶ In the nine months prior to the attack, five complaints had been lodged with police and animal control about the dogs attacking or biting people as well as killing a neighbor's cat.
 - ▶ Each time the police or animal control investigated they declined to impound the dogs even though a local ordinance required impoundment of dogs found running at large.
 - ▶ Court reversed judgment in favor of the plaintiff, equating animal control officers with police officers and then relying on Florida precedent that provides that government is not liable for a police officer's discretionary decision not to make an arrest.
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Parental Immunity

- ▶ In certain states, such as Washington, a negligent parent is immune from liability unless the parent was acting outside their official parental capacity or their conduct was willful and wanton.
 - ▶ Very fact-intensive inquiry.
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Other Potential Defenses

- ▶ Plaintiff provoked the dog.
 - ▶ Plaintiff was trespassing.
 - ▶ Argument that a dog who is playing and causes an injury is not an example of a vicious or dangerous dog as envisioned by common law or statute.
 - ▶ Animal's breed does not automatically qualify dog as dangerous or vicious. People can get very emotional over this issue.
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