

Insurance Issues[™]



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Dog Bite Liability—Insurers’ Best Friend?

A Review of Experience, Claims and Coverage for Personal and Commercial Lines Insurers

by Frank Foster, Gen Re, Stamford

Americans have a love affair with their pets, especially dogs. Studies by the American Veterinary Medical Association estimate that some 62% of American households own pets. According to a study by the Pet Food Institute, there are currently some 78 million dogs owned in the United States. Certainly the benefits of dog ownership are obvious. They provide companionship, loyalty, and oftentimes security and protection. Hence, they became known by the popular moniker of “Man’s Best Friend.”

Dog ownership, however, does not come without risks. If a dog damages someone’s property, or worse, injures another person (or even another pet), is your insured dog owner liable? Will insurance cover the loss? The answer, of course, is “It depends.”

In this edition of *Insurance Issues*, we review the law, claims, exposures and coverage options surrounding dogs, with personal and commercial lines insurers in mind.

Call Us

This article reviews some dog bite liability issues for commercial and personal lines insurers. Do any of these trends matter to your business? We welcome a discussion of any issues affecting your book, and can offer insights and options from our ongoing research.

If you would like to start or continue a dialogue, please contact your Gen Re representative.

How Serious Is the Problem?

The issue of liability actually came to national attention from a famous 2001 case in San Francisco where a woman was attacked and killed by two dogs in her apartment building. The result of that case was that the dogs' owner was convicted of criminal charges.

Since 2003, the Insurance Information Institute has been tracking statistics on dog bite claims.

Estimated Number and Cost of Dog Bite Claims, Homeowners Insurance 2003–2010

	2003	2004	2005	2006	2007	2008	2009	2010	Percent change, 2009–2010	Percent change, 2003–2010
Value of claims (\$ millions)	\$324.2	\$319.0	\$321.1	\$322.3	\$356.2	\$387.2	\$412.0	\$412.6	0.15%	127.3%
Number of claims	16,919	15,630	14,295	14,661	14,531	15,823	16,586	15,770	-4.92%	-6.79%
Average cost per claim	\$19,162	\$20,406	\$22,464	\$21,987	\$24,511	\$24,461	\$24,840	\$26,166	5.34%	36.55%

Source: Insurance Information Institute

As the table indicates, the value of claims has steadily increased since 2003. Even though the frequency in claims declined in 2010, the average cost per claim increased to over \$26,000 last year. Since 2003, the cost of these claims has increased over 36%. The severity increase is in part attributable to the increased medical costs incurred. A study released by the Agency for Healthcare Research and Quality in December 2010 indicates that the number of people admitted to the hospital because of dog bites increased by 86%—from 5,100 to 9,500 hospital stays—between 1993 and 2008.¹

Dog bites account for more than one-third of all Homeowners liability claims.² We have been watching these claims since the 1990s and can provide reinsurance data from a longer period.

Gen Re's cause of loss studies show that dog bite claims account for about 10% of all Gen Re Treaty homeowner claims over the last 15 years. Of course, small dollar claims would probably not reach most reinsurance levels, which explains the difference. Chances are that dog bite claims would be found in any Homeowners book of business and in Umbrella and Habitational programs.

State Farm, the largest writer of Homeowners Multiperil business, recently released its top 10 states for claims involving dog bites for 2010.³

Dog bites account for more than one-third of all Homeowners liability claims.

Top Ten States for Dog Bite Claims

State	# of Claims	Aggregate Claims Paid (estimated)	# of Claims to Population
1. California	369	\$11.3 million	9.91
2. Illinois	317	\$9.7 million	24.71
3. Ohio	215	\$5.7 million	18.64
4. Texas	202	\$3.7 million	8.03
5. Michigan	166	\$5.2 million	16.80
6. Pennsylvania	155	\$3.9 million	12.20
7. Florida	146	\$5.6 million	7.77
8. Minnesota	139	\$3.4 million	26.21
9. New York	119	\$4.3 million	6.14
10. Indiana	114	\$1.8 million	17.58

Source: State Farm, PRNewswire, May 10, 2011. Last column was added by Gen Re based on Ill and State Farm data.

All told, State Farm paid out \$90 million from these claims in 2010, almost one-fourth the amount paid in total by all insurers. Based on the 2010 census, Midwest states generated the most claims by population—the top five in the list are Minnesota, Illinois, Ohio, Indiana and Michigan. The high incidence of claims in rural areas has been noted in other studies and may reflect different attitudes, perceived risks and population density. In any event, any expectation that biting dogs are only urban problems is an urban myth.

Dog Bite Liability Statutes

There are three kinds of laws that impose liability on dog owners:⁴

- 1. Dog-bite statute**—The dog owner is automatically liable for any injury or property damage the dog causes, even without provocation. These “strict liability” statutes and municipal laws do not require a showing of negligence, although they may permit limited defenses. Most states impose strict liability, including Arizona, California, Florida, Massachusetts, Michigan, Missouri, Ohio, Pennsylvania and Wisconsin.
- 2. “One-bite” rule**—In some states, the owner is not held liable for the first bite the dog inflicts. Once an animal has demonstrated vicious behavior, such as biting or otherwise displaying a “vicious propensity,” the owner can be held liable. This law actually dates back to English common law and became part of U.S. law with independence in 1776. Many states have moved away from the one-bite rule to embrace strict liability. States currently left in this one-bite group include Idaho, Kansas, Maryland, Mississippi, Nevada, North Carolina, Oregon, Texas and Vermont.
- 3. Negligence laws**—The dog owner is liable if the injury occurred because he or she was unreasonably careless (negligent) in controlling the dog. Typically, case law rather than statutes are the source for this rule. The few states in this group include Georgia and Hawaii.

During the past decade, state and local laws have gravitated toward strict liability. Roughly 32 states and the District of Columbia are covered by these types of laws. The other 18 states follow



one-bite and/or negligence rules for dog-inflicted injuries. Under these laws, a dog is not considered dangerous and the owner not liable until proven that the dog previously caused injury or the dog owner was found to be negligent.⁵ We note that law can change quickly in this field, so that reference to the most current statutes and ordinances is needed.

Does the type of liability law influence the number of claims or total dollars paid? Of the top 10 states for State Farm, eight apply strict liability rules, the exceptions being Texas (one-bite) and New York (mixed law). Based on the State Farm data, it does appear to us that the liability rules are correlated with loss experience. States with strict liability experienced the highest claim number to population ratio, suggesting that liability rules do influence claim frequency (but regrettably not dog owner behavior, it appears). Similarly, for the ratio of claim dollars to population, the lowest ratios went to Texas and New York, suggesting that severity is higher when liability is more easily established. There is no surprise on that point.

There is an interesting case in New Jersey (a strict liability state) that is currently on appeal with the state Supreme Court, with a decision expected in 2012.⁶ In this case, a pet owner has sued for emotional distress resulting from witnessing her dog being attacked and killed by another dog. The lower courts ruled that emotional distress did not constitute injury, and that damages could only be awarded for the replacement value of her pet. If the New Jersey high court reverses, it will be the first to establish this new avenue of liability.

Some claims involve both personal and commercial liability issues. One such case occurred in Washington state, where an appeals court dismissed a negligence claim against the landlord and property manager of an apartment complex where a visitor suffered severe injuries from a dog attack. The court followed the “well-settled rule in Washington” whereby only “the owner, keeper, or harbinger of a dangerous or vicious animal is liable; the landlord of the owner, keeper, or harbinger is not.”⁷ As a result, the claim proceeded against the dog owner, but not the landlord. Therefore, exposures may depend on exactly the type of business you write.

How Are Insurers Handling the Exposures?

Since dog liability insurance is not generally sold on a stand-alone basis, coverage is provided via the Homeowners and Renters policy. Most base policies do not exclude canine exposures. It is up to insurers to then limit or control exposures through exclusions, liability waivers or underwriting guidelines. Carriers may also charge a higher premium for insureds that own a breed construed to be “dangerous.” For these reasons, many carriers’ Homeowners and Personal Umbrella applications will have specific questions about family pets and their temperament.



Liability is not always limited to the owner of the dog, but also extends to an animal in the care, custody or control of an insured.

The Center for Disease Control has published a listing of the seven most dangerous breeds:⁸

1. Pit Bull
2. Rottweiler
3. German Shepherd
4. Husky-type
5. Malamute
6. Doberman Pinscher
7. Chow Chow

These rankings by the CDC are based on the number of human fatalities caused between 1979 and 1988. Pit Bulls and Rottweilers account for roughly 60% of the deaths.

Insurers will often use the above list to restrict Homeowners coverage, but many rely more on the behavior or actions of a specific dog rather than a breed. Some state laws identify vicious breeds; Ohio law, for example, specifically defines a pit bull as a “vicious breed,” and some insurers apply a blanket exclusion to the breed. Otherwise, the approach of considering the actions of a specific animal is consistent with most of the state legislation, which addresses the definition of what makes a dog dangerous, i.e., what actions can be defined as vicious or dangerous.⁹ Thus, the blame is not

placed on the breed itself. Two states, Pennsylvania and Michigan, actually have laws that prohibit insurers from canceling or denying coverage to owners of specific breeds.¹⁰ Insurers may price for the additional risk or take action after a dog-related claim, but they may not refuse coverage solely on the basis of the breed.

The industry has not had a common starting point for canine exclusions until fairly recently. Both the Insurance Services Office (ISO) and the American Association of Insurance Services (AAIS) have filed multistate standardized canine exclusions for Homeowners and/or Personal Umbrella policies that would remove coverage for “bodily injury, property damage, and medical payments arising from ‘direct physical contact’ with a canine described in the endorsement.”¹¹ The AAIS has also filed two exclusions under its personal umbrella form, one of which only provides coverage if also provided in the underlying policy.

For a more detailed discussion about the exclusions, court cases, and underwriting and drafting considerations, please see the article reprinted at the end of this publication, “Dog Bites Underwriter, Underwriter Bites Back—With Exclusions.”

So, will the future trend toward more standardized or proprietary exclusions as insurers try to limit their exposures from pet owners? Thirty-six states and the District of Columbia have now approved the ISO HO exclusion (compared to 33 when we wrote our earlier article). However, a few statutory, regulatory, and social barriers—not to mention competitive considerations of insurers—may prevent exclusions from becoming a standard practice. This is certainly true for breed-specific guidelines and exclusions. Perhaps the trends in dog bite incidents, costs and liability will influence the future debate.

Verdict Observations

We include a number of verdicts and settlements arising from dog attacks. A few themes emerge that are important to underwriting and policy forms:

- > Exposure is not always tied to a bite, or even to physical contact. In some cases, physical contact did not occur but the event resulted in bodily injury, e.g., falling or tripping while running from a dog; colliding while jumping into pool.
- > There are commercial as well as personal exposures, particularly for condominium associations and property managers, but also for any business allowing a dog on the premises. One case involves a dog on a used car lot.
- > While there is certainly frequency of claims and the average cost is relatively low, the potential

for severity does exist. We report eight verdicts or settlements of \$1 million or more.

- > Liability is not always limited to the owner of the dog, but also extends to an animal in the care, custody or control of an insured. These situations raise many underwriting concerns. Oftentimes, the insurer is not aware that a pet is on the premises, and the insured may not be skilled in controlling the pet.

When we report on verdicts taken from proprietary databases, readers need to keep limits in mind. Large losses are more likely to be reported to these databases, so any verdict sampling will indicate greater severity than the actual experience of insurers. The awards may not reflect application of a damage cap by the trial judge. Many awards are reduced or reversed on appeal. Not all case summaries provide allocation details affecting multiple defendants, including the pet owner. Even with these caveats, verdict reports provide insights into how dog attack claims arise and how juries view the responsibility of those involved—and for these reasons alone they are useful. ■



Frank Foster is a Second Vice President in Gen Re's Marketing Development and Support Department. Frank is the lead editor of Gen Re's NewsBrief, a daily electronic news service for our own associates and Gen Re clients. He also performs industry and market research for our underwriters on a variety of topics and often conducts jury verdict searches on specific exposures. Frank can be reached at 203 328 5757 or ffoster@genre.com.

Endnotes

- ¹ "Hospital Admissions for Dog Bites Increase 86 Percent Over a 16-Year Period," Agency for Healthcare Research and Quality, (2010)
- ² "Dog Bite Liability," Insurance Information Institute, August 2011
- ³ "It's Not the Breed, It's the Bite. State Farm Lists Top Ten States for Dog Bite Claims," *PR Newswire*, May 10, 2011
- ⁴ "Lawsuits Can Take a Bite Out of Your Wallet; Be a Responsible Dog Owner," Insurance Information Institute, August 2011
- ⁵ Pet Injury Liability, personalinjurylawyer.com
- ⁶ *McDougal v. Lamm*, No. A-99-10, N.J. Sup. Ct., cert. granted April 14, 2011
- ⁷ *Deane-Gordley v. Willett*, 2011 Wash. App. LEXIS 1455
- ⁸ "Top 7 Dangerous Dog Breeds," Christine Barlow & Eric Gilkey, *PropertyCasualty360*, July 27, 2011
- ⁹ *Ibid.*
- ¹⁰ "Dog Bite Liability," Insurance Information Institute, August 2011
- ¹¹ "Dealing With Dogs—Standardized canine exclusions under review by states," *Viewpoint*, AAIS, May 2011

Marketing Perspective

by Karen Meyer, Gen Re, Chicago

Dog bite claims seem to be on the minds of many insurers in the Midwest, where I visit with personal and commercial lines carriers. Recently I heard about two major losses that reached the company's Umbrella policy. Not long before, another insurer mentioned a serious injury resulting from an exotic pet. The severity of the losses got the attention of those carriers. Given the statistics presented earlier in this article, these insurers were not alone in this experience and concern.

From my viewpoint, several observations emerge from the statistical trends and actual claims:

- > **National Scope**—Dog claims are not limited to states with large urban areas. Half of State Farm's "Top 10" states—and three of the top five—are in the Midwest. Insurers writing anywhere in the country need to be thoughtful of the exposure.
 - > **Any Breed**—Although a handful of breeds account for most claims, even popular family dogs can cause losses when startled, scared or at play. The sample verdicts and settlements in this article involve Labs, Dalmatians and Boxers. The odds of a loss are lower, but they do still happen.
 - > **Omitted from Application**—Often the insured does not disclose the pet on the application, or the application does not ask for that information. Perhaps an agent fills it out for the insured, and the question is overlooked and/or the insured never signs the application. After an attack, the insurer learns of a previous bite or history of vicious behavior, but it is too late to take any underwriting action.
 - > **Mid-Term Addition**—The greatest challenge is learning about a dog that joins a family after the policy is issued. Perhaps the insured is caring for a dog owned by a grandchild or friend who can no longer provide housing. Companies typically update Homeowner renewal applications every five years. Periodic questionnaires or phone surveys can help insurers get this information earlier.
 - > **Exotic Animals**—It's not just dogs. The recent chimpanzee case in Connecticut put a spotlight on the exposure, and at Gen Re we've heard about other unusual pets causing serious injuries.
- > **Dog Sitting**—Many teens take on dog care responsibilities for neighbors on vacation. They might feed and walk the neighbor's pet but do not always know how to control it. If the dog(s) escape and bite a passerby, the teen could be sued along with the pet owner. This common scenario is probably beyond any underwriting solution, at least until the dog care rises to the level of a "business" subject to exclusion.

Commercial insurers with Habitational business have significant exposure, too, and the extent of liability will also depend heavily on the law of the state. Two reported cases illustrate the contrast. In one case, an apartment complex owner in Washington state had no liability for a dangerous dog on the premises because the statute holds the dog owner fully responsible. In contrast, Maryland law recognizes liability upon proof that the landlord was aware of the dangerous dog and failed to take adequate precautions. As a result, an absentee Maryland landlord that had visited the property could not escape litigation.

Often the dog owner and building owner or landlord will share legal responsibility. In one recent New Jersey case, the jury apportioned 51% responsibility to the unit owner and 49% to the condo association. This particular claim involved a unit owner that had just taken in a family member's dog, a change in risk unknown to the insurer. As often happens, she did not know the dog well nor how to control it. Unfortunately, the \$2.4 million verdict plus interest exceeded the unit owner's insurance limits, which then triggered bad faith litigation that went all the way to the New Jersey Supreme Court. The condo association was assessed \$1.4 million in damages, which was appealed and affirmed in an unpublished decision.

Like millions of other Americans, many of us in the insurance industry are also dog owners and wouldn't have it any other way. But as an insurer, I appreciate the value of knowing about exposures and underwriting for them. These cases and marketing calls brought home to me the value of adequate insurance limits and the need for an Umbrella. The potential severity of the exposure to personal and commercial lines carriers can't be ignored, along with the availability of policy

wording options. More than anything else, these claims reinforced the importance of using and obtaining good applications and then keeping risk information current—be it for a new dog, trampoline or backyard pool. An insurer cannot apply underwriting and coverage solutions until it knows that a new exposure is present.

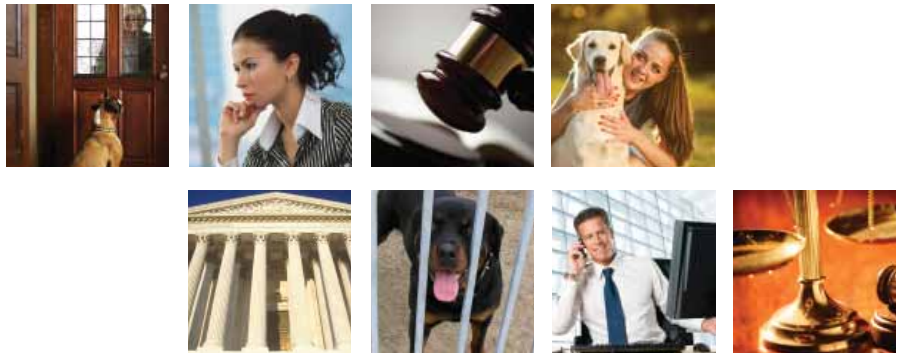


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Gen Re Personal Umbrella Experience

We reviewed our own claim database to examine the dog bite claims reported by our clients over a 15-year period. The facts of each dog bite incident in our Personal Umbrella claim database are unique, and most triggered the payment of significant loss dollars. We share some observations from our claim reports: Despite the long time frame, most claims emerged in the four most recent years. The largest loss payments were from 2006 and 2007 injuries. Also, we found it interesting that Florida generated more claims than any other state, a state that was seventh in the State Farm list. We looked at only Personal Umbrella claims, and might find different trends had we included our Homeowners and Commercial books.



“More than anything else, these claims reinforced the importance of using and obtaining good applications and then keeping risk information current—be it for a new dog, trampoline or backyard pool.”

Sample Verdicts and Settlements

All cases are obtained from Lexis/Nexis.

Green v. Slaughter, et al.

Location: Alabama
 Incident Date: July 3, 2009
 Trial Date: September 17, 2010
 Result: Verdict
Award: \$122,000

Defendant tenant had promised defendant landlord that he would remove his Rottweiler dogs from the premises, but eventually brought them back, unbeknownst to the landlord. Plaintiff became familiar with the dogs and often fed them and took care of them. One or more of the dogs bit her on the arm, necessitating emergency surgery and nine more subsequent surgeries. The plaintiff filed suit against the dog owner, claiming he was the owner of dangerous and aggressive dogs. She also named the landlord as a co-defendant for not having ensured that the dogs had been permanently removed from the rental premises. Jury found the dog owner liable, but not the landlord.

Avalos v. Rancho San Diego-Nitta Enterprises

Location: San Diego, California
 Incident Date: N/A
 Trial Date: February 26, 2002
 Result: Verdict
Award: \$6,000,000

A male plaintiff, in his mid-60s, was walking by the defendant golf course when two large dogs ran out of the open gate toward him. The plaintiff instinctively stepped into the bicycle lane of the roadway and was struck in the head by a side mirror of a passing truck. The plaintiff suffered severe trauma to the head, causing permanent brain damage. The plaintiff sued the corporate defendant owner of the golf course as well as against the lessee/groundskeeper. The corporate defendant leased a small house situated on the golf course to its groundskeeper, the codefendant in this case, who owned the two dogs. Witnesses testified that the defendants had received numerous complaints from golf course employees, golfers and the

general public regarding the dogs. The defendants contended that the dogs were not vicious and that there were no incidents of biting or attacking involving these dogs. The jury found for the plaintiff and returned a verdict of \$6 million apportioning liability equally between the golf course and the employee. The jury assessed no comparative fault to the plaintiff.

Maciel v. Wilkins

Location: Los Angeles County, California

Incident Date: September 6, 2006

Trial Date: February 26, 2009

Result: Settlement

Award: \$230,000

Postal worker delivering mail was attacked on the defendant's porch by an alleged dangerous dog. The plaintiff fended off the dog with pepper spray, but was knocked off balance when the dog bit his mail satchel, causing him to fall off the porch. The plaintiff suffered a fractured leg and cartilage damage requiring arthroscopic surgery and post-operative physical therapy.

The dog had a known history of abuse by prior owners and was therefore thought to be dangerous. On a prior occasion, a meter-reader was chased away from defendant's property by the same dog, which resulted in defendant being required by Animal Services to keep the dog in a cage—something defendant failed to do on the date of the subject incident. Plaintiff alleged that defendant was liable for failing to keep her dog confined, which she knew was necessary, given the dog's history. Defendant denied that the dog was dangerous and disputed the nature and extent of plaintiff's injuries and contested negligence.

Elkins, et al. v. Lozefski

Location: Hartford County, Connecticut

Incident Date: N/A

Trial Date: June 9, 2008

Result: Settlement

Award: \$285,000

A 35-year-old female plaintiff suffered a knee injury from a dog attack. The plaintiff was standing in her driveway with her Poodle. The Poodle wrapped its leash around the plaintiff's legs when it attempted to hide under a car during an attack by the defendant's Husky. The plaintiff was wrenched down onto her knees, causing injury that required multiple surgeries. She alleged that the defendant's

dog had already killed two other animals (kitten and puppy) and the defendant was negligent in failing to restrain the dog. The defendant did not deny liability but contested damages on the basis that not all the surgeries were related to the incident. The plaintiff had fallen after the initial incident and maintained that the attack weakened her knee and contributed to the further injuries.

Tyron v. Town of North Branford, Turner, et al.

Location: New London County, Connecticut

Incident Date: N/A

Trial Date: August 17, 2001

Result: Verdict

Award: \$716,774

Plaintiff was attending a firefighter's convention parade when she kneeled down to pet a Dalmatian owned by defendant Turner. The dog lunged forward and bit off the tip of plaintiff's nose. The defendant Turner, a member of defendant fire department, and the dog, were scheduled to march in the parade. Defendant Turner and the dog lived with Turner's father; therefore, the father was also named as a defendant as the keeper of the dog. Plaintiff settled with defendant father prior to trial for the sum of \$85,000. Defendants contended that they had governmental immunity from liability. Defendant Turner contended that plaintiff had provoked the dog. The plaintiff argued that (1) she was an identifiable person subject to imminent harm and, as such, governmental immunity did not apply; (2) the dog had previously bitten a jogger and therefore had vicious propensities; and (3) she did not provoke the dog.

Fernandez v. Vfalterama

Location: Miami-Dade County, Florida

Incident Date: N/A

Trial Date: April 23, 2009

Result: Verdict

Award: \$100,000

The plaintiff was walking on the sidewalk outside the defendant's used car lot when a German Shepherd escaped from the lot through an open fence and attacked him. The plaintiff sustained bite wounds to his arms, stomach and legs, requiring sutures. He suffers permanent scarring, psychological damage and nerve damage to his arm.

Gorman v. Pierce County et al.

Location: Pierce County, Florida
Incident Date: August 21, 2007
Trial Date: August 12, 2011
Result: Verdict
Award: \$2,200,000

Plaintiff was asleep when she was mauled by two Pit Bulls that entered her home through an open sliding-glass door. The plaintiff suffered severe bite wounds to her face, arms and legs. She filed suit against the dog owners and the county, alleging that the latter failed to take appropriate action against the owners, despite the fact that animal control had received numerous complaints about the dogs terrorizing others in the past. The jury found the county 42% liable, while the owners of one of the dogs was found 52% liable and responsible for \$1,176,000 of the total award. One of the dogs was in the care of the defendants, and that dog's owner was found 5% liable. The jury found the plaintiff to be 1% to blame.

Dennison v. Tueche, Siffrar, as trustee of the Amesbury Avenue Trust Number 7000; and Penn Properties, Inc.

Location: Brevard County, Florida
Incident Date: June 3, 2003
Trial Date: March 24, 2004
Result: Settlement
Award: \$1,000,000

Plaintiff was reading a utility meter at the home rented by defendant Tueche from defendants Siffrar and Penn Properties when four Pit Bulls jumped a fence and attacked her. Despite the plaintiff's attempts at pepper spraying the dogs, they dragged her around the yard causing severe wounds to her scalp, and they chewed off her right ear. Plaintiff sued the dog owner, the property's owner and the property management company, defendant Penn Properties. The plaintiff also claimed that neighbors had previously made complaints about the dogs to the property owner and property manager.

Hiller v. Calinoa

Location: Broward County, Florida
Incident Date: January 2002
Trial Date: November 17, 2003
Result: Verdict
Award: \$982,000

The plaintiff was a professional folk singer who was bitten in the face by the defendants' Pit Bull. The plaintiff claimed that the bite wound and loss of a portion of her lower lip altered her speech and affected her singing career. The defendants admitted liability, but maintained that additional plastic surgery could significantly improve the appearance of the plaintiff's lip scar. The defendant argued that the plaintiff returned to work two weeks after the incident and has continued a successful career as a folk singer. The jury found for the plaintiff in the amount of \$982,380. The award included \$5,780 in past medical expenses, \$24,000 in future medical expenses, \$469,000 in past pain and suffering, and \$483,600 in future pain and suffering.

Wildrick v. Cobb

Location: Brevard County, Florida
Incident Date: May 18, 2004
Trial Date: March 14, 2005
Result: Settlement
Award: \$2,300,000

Plaintiff dove into deep end of the defendant's pool and collided in mid-air with one of the defendant's dogs. The dog's mass and momentum was enough to cause the plaintiff to veer off course on his dive when the impact with the dog occurred. When the plaintiff veered, his head struck the corner of the pool resulting in a broken neck. Plaintiff sustained a spinal cord injury at C4 and is now a quadriplegic from chest down.

Williams v. Garner

Location: Marion County, Indiana
Incident Date: June 7, 2005
Trial Date: April 16, 2008
Result: Verdict
Award: \$79,166

The plaintiff, a two-year-old boy, was bitten on the face by his babysitter's 70 lb. Labrador while at the defendant babysitter's residence. The boy was left alone with the dog and when he tried to play with him, the dog was startled and bit him on the cheek.

The plaintiffs' contended that defendant babysitter had a special responsibility to keep the boy out of danger. She failed to supervise him properly, failed to take proper precautions to control the dog, and failed to provide a safe environment for the toddler. Additionally, the plaintiffs argued that the defendant had to warn them of the dog's dangerous propensities since he was used as a hunting dog. The defendants argued that there was comparative negligence as they claimed that the boy provoked the dog, but because of his age, the court ruled he was legally incapable of being negligent.

Kasempunthai v. Yacoubou et al.

Location: Baltimore County, Maryland

Incident Date: N/A

Trial Date: January 7, 2008

Result: Verdict

Award: \$325,050

A 45-year-old woman was attacked by a dog and pursued claims against both the dog owner and the landlord of the property where the dog lived. The plaintiff was walking her dog on a public street when she was attacked by defendant dog owners' Rottweiler mixed breed, and sustained a tearing flesh wound to her arm as a result of the attack. She contended that the dog got loose from the property that the dog owner rented from defendant landlord. The plaintiff contended the dog owner failed to properly secure his dog, and that the landlord was vicariously liable since the property was not secure for a large dog. The landlord contended that he was not liable for the acts of the dog owner's animal. The jury found that both defendants were liable and returned a total award of \$325,050, with \$175,025 against the dog owner and \$150,025 against the landlord.

Antutor v. Scott

Location: Essex County, Massachusetts

Incident Date: N/A

Trial Date: October 16, 2001

Result: Verdict

**Award: \$1,150,000
(including interest)**

The 50-year-old plaintiff, an anesthesiologist, was bitten on his forearm by a mixed-breed dog. The incident occurred after hours on the business property of the dog's owners. The plaintiff claimed that the injury prevented him from continuing in his profession as an anesthesiologist. The business insurance carrier wanted to settle the claim, but would do so only if the plaintiff signed a release.

The plaintiff would not release the owner of the dog because the owner had assets. The business insurance carrier filed for declaratory relief, claiming that it didn't have to indemnify the owners because the dog bite fell under a business exclusion in the policy. The plaintiff claimed that he had a personal relationship with the dog owner and came in after business hours. The judge ruled that the defendant husband was engaged in a business enterprise when the dog bit the plaintiff so that the policy did not provide protection to the husband. However, a severability clause provided that the insurance company was bound to defend and indemnify the defendant wife because she was not involved in the business pursuit. The jury found in favor of the plaintiff and awarded the sum of \$775,000. With interest, the amount of the award totaled \$1,150,000.

Green and Johnson v. Usztics

Location: Wayne County, Michigan

Incident Date: N/A

Trial Date: July 31, 2003

Result: Verdict

Award: \$400,000

Defendant dog owners had two Pit Bulls that were let out into a residential yard but put on cables because of an allegedly defective fence. Defendant Usztics, a girlfriend of one of the dog owners, was visiting the house and let the dogs out without attaching their cables. The dogs broke through the fence and attacked the plaintiff, an 11-year-old neighborhood child. He suffered severe arm and facial bites in the incident for which future revision surgery was possible. Defendant owners settled with plaintiff for \$85,000 and the case continued against the remaining defendant, the teenage girl who had been visiting the house. Plaintiffs contended that she was negligent in that she knew the fence was defective and that the dogs were supposed to be placed on a cable. Defendant argued that she was not under the owners' statute and claimed no fault and no negligence. The jury awarded \$400,000 with 50% negligence attributed to defendant Usztics and 50% to owner defendants. Defendant Usztics, a teenager, was covered by her parents' homeowners insurance.

Rich v. Mctigue

Location: Wayne County, Michigan

Incident Date: N/A

Trial Date: February 2010

Result: Verdict

Award: \$400,000 less 25% comparative negligence for a net verdict of \$300,000

Plaintiff was playing with her unleashed Boxer in her backyard, which backs up to a local park. The plaintiff's dog and the defendant's dog, a Great Dane/Labrador mix, had on numerous prior occasions played together in the park. The area was not a dog park and therefore required the animals to be on a leash. The defendant's dog was unleashed when it ran into the plaintiff's backyard, where plaintiff was kneeling down while attempting to leash her dog. The defendant's dog knocked her over and she suffered fractures of the right tibial plateau and right wrist, necessitating surgery for bone grafts and the insertion of screws. Defendants testified that the dogs had played together in the park with plaintiff's permission on three prior occasions and, on the day in question, plaintiff had given permission for the dogs to play off-leash. The plaintiff denied that she had given such permission. The jury found the plaintiff 25% comparatively negligent, thereby reducing the award to \$300,000.

Ikram v. Albenesius

Location: Union County, New Jersey

Incident Date: N/A

Trial Date: January, 2002

Result: Verdict

Award: \$1,372,000

The plaintiff contended that the defendant dog owner/homeowner negligently failed to keep the back fence gate latched. The plaintiff also contended that the defendant, a single parent who went on vacation for a week, left the dogs in the care of her elderly mother and 15-year-old son, who were additional defendants. The plaintiff maintained that the dogs had also escaped from the yard some three days earlier. The plaintiff contended that this dog suddenly ran into the roadway out of a wooded area into the path of the 45-year-old male decedent driver. The decedent instinctively swerved to his left in an unsuccessful attempt to avoid the dog, directly into the path of an on-coming non-party driver. The plaintiff named the defendant homeowner on a

negligent entrustment theory and also maintained that the grandmother and teenage son were her agents for whose actions she should be liable. The defendant contended that there were no prior incidents and that the homeowner would have no reason to believe that her dogs could create a hazard. The jury found for the plaintiff against the defendant homeowner on a negligent entrustment theory and that she was vicariously liable for the codefendants. The jury assessed 50% negligence against the homeowner, 25% against the teenage son, 15% against the grandmother and 10% comparative negligence against the decedent.

Woods v. Harris

Location: Essex County, New Jersey

Incident Date: N/A

Trial Date: February, 2008

Result: Settlement

Award: \$495,000

A 48-year-old plaintiff was attending a backyard barbecue and family gathering, and while holding her one-month-old granddaughter, the homeowners' dog jumped onto her. Trying to protect her granddaughter, she raised the baby high over head at which time the dog bit into her leg for 10 to 15 minutes, sending the plaintiff into shock. Once the dog was beaten off with a shovel, she was brought to the hospital in severe shock with significant exposed muscle and bone from large lacerations of the right ankle and leg. She was hospitalized for six days and suffers post-traumatic stress disorder. The child did not sustain significant injuries and was not a party. The defendant had \$500,000 in liability coverage. The case settled prior to trial for \$490,000, plus \$5,000 for previously paid medical bills.

Crawford v. New York City Housing Authority

Location: Kings County, New York

Incident Date: September 9, 2000

Trial Date: July 28, 2004

Result: Verdict

Award: \$700,000

The female plaintiff was visiting friends in an apartment building that was owned and operated by the City of New York. When exiting the elevator, she was greeted by two barking dogs, a Pit Bull

and a German Shepherd. Although both dogs were leashed, they broke away and chased the plaintiff out of the building, knocking her down and biting her on the face, arms and legs, which resulted in permanent scarring. The plaintiff also contends that she suffers from post-traumatic stress disorder manifesting in a fear of dogs. The plaintiff contended that the defendant housing authority was aware that the two dogs were present in its building and that they had displayed vicious propensities, having attacked and killed a Poodle in the same building two years earlier. The housing authority testified that they had asked the tenant dog owner to remove the dogs following that attack, but the dog owner did not cooperate. The jury's verdict assigned 60% liability to the housing authority and 40% liability to the dogs' owner.

Kohlhorst v. Nicholas

Location: Miami County, Ohio

Incident Date: October 23, 2000

Trial Date: March 11, 2004

Result: Verdict

Award: \$584,560

Plaintiff was working on a residential construction job at the defendants' home. The defendants' two dogs got into a fight in the area where plaintiff was working. One of the dogs fell on plaintiff's shoulder as he was squatting on the floor. A hammer was knocked loose from the plaintiff's hand. When he reached for the hammer, one of the dogs bit his hand. The plaintiff suffered a torn rotator cuff, resulting in a diminished work capacity. The defendants disputed that this event even took place and also disputed causation and damages.

Clinton Individually and as Representative of the Estate of Clinton, Deceased v. George

Location: Rusk County, Texas

Incident Date: June 15, 2009

Trial Date: September 17, 2010

Result: Verdict

Award: \$7,020,600

The defendants' dogs, a Pit Bull mix and an American Bulldog, escaped through an alleged poorly maintained fence and then attacked and mauled a 10-year-old boy to death while he was riding his skateboard past the defendants' house. The plaintiff contended that the defendants failed to properly restrain their dogs, which they knew were dangerous to humans. The defendants denied the allegations and maintained that a third dog, which was not owned by them, was responsible for the attack on the child. The plaintiff alleged that the defendants were aware that the dogs had previously attacked others and were dangerous dogs. The plaintiff sought \$10 million in damages. Although the defendants did not have insurance, making it unlikely that the plaintiff mother of the deceased child will receive any of the monies awarded by the jury, she is attempting to get a law passed to regulate dangerous dog breeds.

Moisio v. Stegmeier

Location: Pierce County, Washington

Incident Date: October 10, 1999

Trial Date: July 15, 2002

Result: Verdict

Award: \$1,349,279

Plaintiff, a 63-year-old female realtor, was showing a house when one of the defendant's Rottweilers ran out of the garage and leaped on her back and shoulder, hurling her through the air. The plaintiff landed on her hands and knees on defendant's driveway. The dog could not reach the plaintiff after she was knocked to the ground because it was restrained by a leash and collar.

Dog Bites Underwriter, Underwriter Bites Back—With Exclusions

by Karen Meyer, Gen Re, Chicago and Mindy Pollack, Gen Re, Stamford

Reprinted from Gen Re's Policy Wording Matters publication, June 2011

Dog bites are not a new exposure, but several recent large losses have surprised insurers. The typical dog bite claim falls in the \$30,000–\$50,000 range, with more serious injuries commanding higher amounts. However, a recent \$7 million award in Texas following a fatal mauling creates fear of just how high awards can go. When we last discussed the issue in our 2005 edition of *Policy Wording Matters*, the ISO canine exclusion was approved for use in only one state. Given the heightened concern and changing regulatory picture, we thought it might be time for a brief review of current canine exclusions and wording issues.

ISO and AAIS Exclusions

The Canine Exclusions filed by ISO and AAIS are very similar. ISO HO 24 77 and AAIS HO 2001 07 11 exclude liability and med pay coverage of bodily injury and property damage arising out of:

- > Canine described in Schedule
- > Direct physical contact
- > Owned by or in care, custody or control of insured

As of early June 2011, 33 states and the District of Columbia have approved ISO's HO exclusion. The AAIS exclusion must be signed by the policyholder. ISO does not have a Personal Umbrella counterpart. AAIS includes two options in its new PU filing, both of which drop the owned/care/custody control requirement. The difference is that one exclusion will follow the wording in the underlying primary policy. Various state-specific filings reflect local laws or provide grounds for cancellation. Of interest is that most of these company forms do not require direct physical contact with the canine. Several forms applied to all animals and had no distinction for canines. These differences can be very important when claims arise.

In the Courts

The good news is that the standard canine exclusions have been upheld and applied by the courts. We reviewed half a dozen rulings in Lexis/

Nexis since January 1, 2008, and all but one enforced the exclusion. Courts in California and New Jersey found the relevant wording “clear and unambiguous” and denied coverage. The language in both cases was proprietary and extended to liability arising out of *all animals*.

For an example, we suggest reading the *Stafford v. Scottsdale* ruling from the Third Circuit, applying New Jersey law. The Homeowner policy excluded bodily injury “caused by any animal, whether owned or not owned by an insured.” The insured argued that the injury was the result of negligent oversight as well as a dog bite, thus attempting to avoid the exclusion. The court would not bite, responding that the two causes were intertwined and that negligent supervision still involved the animal. *Stafford v. Scottsdale Ins. Co.*, 2010 U.S. App. LEXIS 24802. The insured homeowner had been caring for her brother's dog, but this fact did not affect the outcome.

The only decision finding coverage involved a state-specific endorsement with wording found ambiguous. The Ohio exclusion (see ISO HO 01 34 03 01) applied to a “vicious” or “dangerous” dog while “on the premises of the owner, keeper or harbinger.” The issue was whether structures on the property, such as a garage or dog cage, were on the “premises.” The court looked to the dog bite statute and legislative intent before concluding that the policy language was susceptible to two interpretations and therefore ambiguous. The “premises” language is found only in the Ohio ISO endorsement. *Konik v. Motorists Mutual Ins. Co.*, 2010 Ohio App. LEXIS 1234.



Underwriting and Drafting Considerations

Often insurers rely on underwriting rather than policy wording to address an exposure, and that is often the case with canines. A homeowner might be asked if they own a dog, the breed, and if the dog has attacked anyone in the past before the insurer takes on the risk. The insurer might use this information to apply breed-specific guidelines. One case highlights the pitfalls of this approach. The insured homeowner did not own any dog at the time the policy was issued but later agreed to take temporary care of a pet for a family member. When the front door was opened, the dog raced out and attacked a passerby. At the time of the initial application, there was no dog on the premises so the insurer did not underwrite the exposure. Change in risk is an underwriting challenge not limited to dogs. When most homeowners buy a family pet, insurance coverage is probably not top of mind. Insurers may send out questionnaires asking about new dogs or recent bites (and updates regarding pools, trampolines and home renovations), but sometimes after two or three years. This information gap can be costly.

As for drafting, the Bureau requirement of “direct physical contact” can be important to many claims. We have seen cases where a claimant fell while running from a dog and there was no “direct physical contact” with the animal. However, the injuries were as serious as if the dog had actually bitten. Also, the “canine” versus “animal” scope of the exclusion can arise, in view of the unusual pets in many households. The standard canine exclusion might be enough for your underwriting needs, but knowing the variations can inform your discussions.

If the Homeowner policy excludes or limits canine claims, the drop down potential looms large for Personal Umbrella carriers. The Personal Umbrella policy can follow form, require maintenance of underlying/enforce attachment level, or exclude the exposure, just as we mentioned in our first article. In any event, it’s critical to know what coverage is or is not provided in the underlying policy. An exclusion in the Homeowner policy may signal a problem for greater underwriting attention.

So while dog bites may be an old issue, there are some new wording tools available. ■



This viewpoint was originally printed in our June 2011 *Policy Wording Matters* publication.

To read about other policy wording issues, contact your Gen Re representative for a copy.

Here are some recent Gen Re Research publications:

- > Wind and Solar Energy Time Element—More Than Meets the Eye—*Facultive Matters*, August 2011
- > UM/UIM Updated Law Survey for Second Quarter 2011—*E-News Auto*, July 2011
- > Emerging Exposures and New Wordings—Are Your Forms Keeping Up?—*Policy Wording Matters*, June 2011
- > Workers' Compensation—Managing Through Tough Times (and Not Just Living Through Them)—*Gen Re Viewpoint*, June 2011
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OUR DOGS

The Gen Re associates who contributed to this publication are also dog lovers. Meet some of our dogs!



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