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From Handling the Dog Bite Case

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Chapter Two

Insurance Statistics and Coverage Issues

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IMPACT OF DOG BITE CLAIMS ON INSURANCE INDUSTRY

Liability Issues

In the United States, recovery for injury to the person or property has historically been based upon common law torts. These concepts include trespass, negligence, and strict liability. Each theory of liability has its own distinct elements that must be proven to allow recovery. A person might be liable if he or she was negligent or maintained custody or control of the animal with knowledge that it was dangerous or aggressive. In cities with a "leash law," violation may constitute negligence. To succeed in a claim it is usually necessary to prove at least the following:

- The identity of the owner
- That the victim was actually bitten
- That the victim, at the time of the bite, was in a public place or lawfully in a private place
- That the bite caused injury, suffering, loss or harm

Depending on the state, there are exceptions to the general rules on liability. Some exceptions to the general rules may be as follows:

- The victim was a trespasser
- The victim was a veterinarian who was treating at the time of the incident
- The victim was committing a felony
- The animal was provoked by the victim
- The dog was assisting the police or the military at the time of the incident

Many states make the owner responsible for all bites, even if the animal has not shown any previous aggressive tendencies.

Pennsylvania common law has not imposed strict or absolute liability on the part of dog owners for injuries sustained because of a dog bite.¹ However, in about one-third of states, a strict liability standard applies. For example, in New Jersey: “[t]he owner of any dog which shall bite a person while such person is on or in a public place, or lawfully in a private place, including the property of the owner of a dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner’s knowledge of such viciousness.”²

In order to hold the keeper of a domesticated dog liable in Pennsylvania, proof of the owner’s negligence is necessary.³ The plaintiff is required to show that the dog had “unmistakably vicious tendencies,” and that owner knew or reasonably should have

¹ *Deardorff v. Burger*, 414 Pa. Super. 45, 606 A. 2d 489 (1992); *McCloud v. McLaughlin*, 2003 Pa. Super. 451, 837 A.2d 541, 544 (2003).

² N.J.S.A.4:19-16.

³ *Deardorff v. Burger*, *supra*.

known that such tendencies existed.⁴ The "one free bite rule" is not accepted as a defense in civil cases in Pennsylvania. Where a domesticated dog has demonstrated "vicious or ferocious propensities," the "one free bite rule" does not apply.⁵

*Deadorff v. Burger*⁶ is an example of the burden of proof necessary to impose liability. In *Deadorff*, a two-year-old was playing in the backyard of her father's friend's home, while the father and his friend were present raking leaves. The friend let a seventy-five pound German Shepherd, owned by the friend's mother (the defendant), out to roam in backyard. The child hugged the dog, and the dog tried to get away. The dog bit the child, requiring sutures to her face. The trial resulted in a defense verdict for the dog owner.

On appeal, the Superior Court re-examined law concerning liability of dog owners, and held that a prior bite incident was not sufficiently specific to advise the jury in unqualified terms that a single bite on a prior occasion was sufficient to put the owner on notice of an alleged "vicious propensity." Since the plaintiff failed to prove that the dog had "unmistakable" vicious tendencies known to the defendant, based on a single prior bite, she failed to make out a case warranting a single-bite instruction.

"[O]ne instance [of an attack by a dog] may show such unmistakable vicious propensity as to make the owner of the dog, with notice, liable for any subsequent act of a similar character."⁷ However, the necessary burden of proof does not require the dog to have bitten in the past. "As soon as the owner knows or has good reason to believe that the animal is likely to do mischief, he must take care of him; it makes no difference whether this ground of suspicion arises from one act or from repeated acts. The only restriction is that the act done must be such as to furnish a reasonable inference that the animal is likely to commit an act of the kind complained of."⁸ If a dog demonstrates ferocious propensities, but has never actually bitten anyone, "it is the master's duty to see that he is not afforded an opportunity to take a 'first bite.'"⁹ Such notice of vicious or ferocious propensity must also be of a character to inform the owner that the animal is likely to commit an act of the kind complained of.¹⁰

Liability may be excused: "A dog owner may always show that his or her dog escaped despite the exercise of reasonable care." In such case, the roving of the dog would not constitute negligence.¹¹

⁴ *Fink v. Miller*, 330 Pa. 193, 198 A. 666, 668 (1938).

⁵ *Andrews v. Smith*, 324 Pa. 455, 188 A. 146 (1936); *Deadorff, supra*; *Miller, supra*.

⁶ *Id.*

⁷ *Mann v. Weiland*, 81 Pa. 243 (1875); accord, *Fink v. Miller*, 330 Pa. 193, 195, 198 A. 666 (1938). See also *Commonwealth v. Baldwin*, 2001 Pa. Commw. LEXIS 31, 767 A.2d 644 (2001)(holding that the legislature, in enacting the Dog Law, intended to permit a finding of a propensity to attack human beings by virtue of a single incident, and the injury to the victim did not have to be severe).

⁸ *Deadorff*, 414 Pa. Super. at 52; *Andrews*, 324 Pa. at 458, 459.

⁹ *Andrews, supra*.

¹⁰ *Id.*

¹¹ *Deadorff*, 414 Pa. Super. at 54, fn 8; see also *Miller, supra*.

In addition to the owner of the dog, an owner or occupier of the property on which the dog bite occurs can be liable where there is evidence that he or she knew or had reason to know of the dog's vicious propensity. In *Crance v. Sohanic*¹², the Plaintiff recovered from dog owner, as well as occupant of house where attack occurred. Of interest, the *Crance* court held that subsequent incidents were admissible at trial to show that the dog had dangerous propensities.

In addition to actual knowledge, the right to control is important to assess liability against an owner of property. In *Palermo v. Nails*¹³, the landlord knew his nephew's dog was vicious, and had been instructed by police eighteen months earlier to keep dog tied up because it had bitten a child. The court held that a landlord out of possession of the premises can be liable for injuries caused by a dog owned and maintained by a tenant, where the landlord had actual knowledge of the presence of a dangerous animal and had the right to control or remove the animal by reclaiming possession of premises.

In *Govan v. Philadelphia Housing Authority*¹⁴, immunity was granted to Philadelphia Housing Authority where the Authority did not have "direct" control over dog. In *Govan*, a resident at a development tied the dog to a tree in a common area, where she left the dog unattended. The dog bit a child, who sustained serious injuries. The Authority had a policy regarding dog ownership and reserved the right to remove from the development any pet which threatened the health or safety of tenants. Prior to this incident, tenants had complained about the dog, and the injured child's parents claimed that the Authority was responsible for their son's injuries because the Authority had "control" over the dog and could have removed it. The court held that "constructive control" by means of reserving the right to remove threatening dogs does not rise to the level of control required to invoke the exception to sovereign immunity regarding the care, custody, or control of animals.

In *Kormos v. Urban*¹⁵, the court upheld a nonsuit against the plaintiff, and rejects the assertion of Pennsylvania's Dog Law (see below) as a basis to assert negligence *per se* in a civil action. This decision was affirmed by the Pennsylvania Superior Court, and a petition for appeal to the Pennsylvania Supreme Court was denied.

In *Mangino v. Cowher*¹⁶, plaintiffs alleged violations of the Dog Law resulted in negligence *per se*. The court noted that even having proven negligence *per se*, a plaintiff cannot recover unless it is demonstrated that the negligence was the proximate cause of the injury. The violation of the statute must be shown to be a substantial factor in causing the injury, which is normally is a question of fact for the jury, and may be removed from the jury's consideration only where it is clear that reasonable minds cannot differ on the issue.

¹² 344 Pa. Super. 526, 496 A.2d 1230 (1985)

¹³ 334 Pa. Super. 544, 483 A.2d 871 (1984)

¹⁴ 2004 Pa. Commw. LEXIS 321, 848 A.2d 193 (2004)

¹⁵ 2005 Pa. Dist & Cty Dec. LEXIS 361, affirmed without opinion 911 A.2d 193 (Pa. Super. 2006),

Appendix "A"

¹⁶ 2010 Pa. Dist. & Cty Dec. LEXIS 252 (Lawrence Cty. 2010)

3 P.S. § 459-305 of the Dog Law prohibits an owner of any dog from failing to keep the dog at all times either: (1) confined within the premises of the owner; (2) firmly secured by means of a collar and chain or other device so that it cannot stray beyond the premises on which it is secured; or (3) under the reasonable control of some person. 3 P.S. § 459-305(a). This section of the Dog Law was enacted to protect against personal injury, property damage and other hazards created by roving dogs. The court noted that an unexcused violation of § 459-305 constitutes negligence *per se*, but absolute liability is not imposed on a dog owner for damages caused by a roving dog. Liability will only attach where the violation of the Dog Law is a substantial factor in bringing about the injuries sustained. Normally, the trier of fact will determine whether the violation is a substantial factor in causing the injury.

The court also discusses that a dog owner may always show that his or her dog escaped despite the exercise of due care. In such cases, the roving of the dog would not constitute negligence. Whether an owner exercised due care despite the dog's escape is also a question for the trier of fact in certain circumstances. The court concluded that plaintiffs had alleged sufficient triable facts to require Defendants' motion for summary judgment to be denied on the negligence *per se* counts.

In *Underwood v. Wind*¹⁷, a minor child was bitten by two pit bulls, which also bit two "good Samaritans". The victims recovered civil judgments against the owner of the dogs, and the lessor of the rental premises where the dog owner lived. The dog owner rented from her aunt, with the express condition that she not have the two pit bulls reside with her. The dog owner never told her aunt that the dogs were living with her, and had escaped two months earlier, due to a faulty latch. The trial court instructed the jury that the dog owner was negligent *per se*. She objected that the jury did not have an opportunity to consider her explanation for the escape. The court held as follows:

While the court's jury charge may have been inarticulate at times, we find the charge, when considered in its entirety, *with regard to this specific argument* was legally sound and adequately informed the jury of the law of liability as it applies to dog owners whose dogs escape and harm someone. The crux of the instruction advised the jurors to consider whether [the dog owner's] explanation for the dogs' escape was reasonable, or whether their escape and the subsequent harm they caused were due to [the dog owner's] negligence. The court's charge was in accordance with *Villaume*, relied upon by appellant. The *Villaume* Court explained that the *Miller* holding did not "impose absolute liability upon dog owners whose dog is unrestrained despite their exercise of due care." *Villaume* at 795. Citing *Miller*, the *Villaume* Court stated that a mere violation of the Dog Law does not establish the causation factor required for a finding of liability; "Where proof of

¹⁷ 954 A.2d 1199 (Pa. Super. 2008), Appendix "C"

negligence rests upon a violation of the Dog Law, liability does not attach unless the violation is a substantial factor in bringing about the injuries sustained.” *Id.* This is exactly the law with which the jury was charged. The court's charge was accurate and adequate on this point.

The court also held that the trial court did not err in instructing the jury that the dogs' actions on the day in question could be considered in determining whether the dogs had “violent propensities,” citing *Commonwealth v. Hake* for the proposition that a single incident can show such propensities.

The court affirms the judgment against the dog owner, and turns to the judgment against the lessor aunt. The lessor argued that the trial court's charge misstated the law as to an out-of-possession landlord's duty of care: (1) by wrongly referencing and applying to the landlord the Dog Law, 3 P.S. §459-101 *et seq.*, which is applicable only to an owner or keeper of dogs, and (2) by incorrectly inserting the phrase “*or should have known*,” in addition to the correct standard “*knows* of the presence of a dangerous animal,” when instructing on the standard to be employed when considering the liability of an out-of-possession landlord for a vicious dog. The court holds that the trial court failed to make a distinction between the dog owner and the lessor, resulting in reversible error.

In *Janosevich v. Raines*¹⁸, the trial court sustained preliminary objections of the landlord Defendants where the theory against them was that they permitted a violent and vicious dog (a pit bull) to be housed on the premises could have prevented the danger the dog presented by not allowing the dog to be on their premises. The attack by the dog was alleged to have occurred off the premises. It was also alleged that the Raines' minor child was walking the dog at the time. In other words, there was no allegation that the dog had escaped from the premises or from its owner's control. The dismissal of the counts was upheld. The court holds that the Landlord had no duty: there was no invitee being injured on the premises, and the landlord did not maintain possession or control.

In *Rosenberry v. Evans*¹⁹, the landlord was sued for a dog bite that occurred at the leased premises, where an invitee came to choose a pit bull puppy from a litter. The trial court granted summary judgment to the landlord, which decision was appealed.

The court noted that under Pennsylvania law, in order to establish a cause of action in negligence against a landlord for injuries caused by a tenant's dog, it must be proven that the landlord owed a duty of care, that the landlord breached that duty, and that the injuries were proximately caused by the breach. A landlord out of possession is not liable for attacks by animals kept by his tenant on leased premises where the tenant has exclusive control over the premises. However, a duty to use reasonable care will attach to prevent such injuries if the landlord has knowledge of a dangerous animal on the rented premises and if the landlord enjoyed the right to control or remove the animal by retaking the premises.

¹⁸ 2011 Pa. Dist. & Cty. Dec. LEXIS 411 (Allegheny Cty. 2011)

¹⁹ 2012 Pa. Super. 91 (Pa. Super. 2012)

Here, the court finds triable issues of fact from the fact that the dog had a facial tic as possibly being knowledge of a dog's dangerous propensities. However, the court refused to impute knowledge of the facial tic by an odd job handyman to the landlords, where the handyman was not a property manager or an employee. The court holds that there was no evidence from which one could infer actual knowledge of the dog's dangerous propensities to the landlord.

Impact of Claims

Dog bite claims cost insurance companies a tremendous amount of money. One estimate by the Centers for Disease Control and Prevention ("CDC") is that 4.7 million injuries occur from dog bites each year in the United States, with 800,000 requiring medical treatment. Children are three times more likely to require medical treatment for dog bites. The vast majority of children who suffer dog bites are bitten on the face, neck and head, requiring plastic and reconstructive surgery. One estimate is that getting bitten by a dog is the fifth most frequent cause of emergency room visits by children.

In 1997 the Personal Injury Verdict Reviews reported a number of dog bite cases in which settlement amounts vary: \$1,500 for dog bite with puncture wounds to the upper thigh, \$30,000 for dog bit causing laceration of the lip causing scarring, and \$100,000 for an attack by two pit bulls that bit a 10 year-old male causing facial scarring. Jury verdicts may be unpredictable. In one New Hampshire case, a woman received 27 dog bits from two pit bulls while in a friend's apartment. She was in the hospital for two weeks and had \$40,000 in medical bills, but was unemployed. On the basis of common law duty to keep rented premises free from dangerous conditions, she sued the landlord of the building, but not the owners of the dogs, as the owner was her friend. A jury returned a verdict of \$2.14 million. The attorneys settled the case for \$1.1 million while the judge was considering a motion for judgment notwithstanding the verdict.

In 2001, the CDC estimated that 368,000 non-fatal victims are seen in hospital emergency rooms, which averages out to over 1000 per day. In 2007, another estimate is that there were 33 fatal dog maulings in the United States, in seventeen states. According to the CDC, there were 17 dog bite-related fatalities in 1997.

Dog bite claims account for more than one-third of all liability claims paid under homeowners insurance policies in 2011²⁰.

State Farm Insurance Company, the largest homeowners insurer in the United States, paid out more than \$109 million as a result of its nearly 3,800 dog bite claims in 2011. In 2010, there were about 3,500 claims and \$90 million in payouts. California led the way in 2011. State Farm received 527 claims and paid \$20.3 million, an increase of 31% over 2010.

²⁰ Insurance Information Institute

According to industry sources²¹, the estimated number and cost of dog bite claims between 2003 and 2011 is:

YEAR	VALUE OF CLAIMS	NUMBER OF CLAIMS	AVERAGE COST PER CLAIM
2003	\$324.2 M	16,919	\$19,162
2004	\$319.0 M	15,630	\$20,406
2005	\$321.1 M	14,295	\$22,464
2006	\$322.3M	14,661	\$21,987
2007	\$356.2 M	14,531	\$24,511
2008	\$387.2 M	15,823	\$24,461
2009	\$412.0 M	16,586	\$24,840
2010	\$412.6 M	15,770	\$26,166
2011	\$478.9 M	16,292	\$29,396
PERCENT CHANGE 2010-2011	16.1%	3.3%	12.3%
PERCENT CHANGE 2003-2011	47.7%	- 3.7%	53.4%

Types of Insurance Impacted by Dog Bite Claims

Dog bite insurance may be provided by homeowner's insurance, renter's insurance, landlord's insurance, or dog owner's insurance. Business liability insurance can also afford coverage if the dog is owned by or under the control of a business such as a breeder or pet shop. Approximately 50% of dog bites occur on the owner's property. The vast majority of biting dogs belong to a victims' family or friends.

Response of Insurance Industry

The insurance industry response to increased dog bite claims is varied. Insurance companies say they're only trying to reduce costs and are only eliminating coverage for breeds known to have high bite rates. Several high-profile dog mauling cases, such as the fatal attack on a San Francisco woman by two Presa Canarios in 2001, have increased safety -- and insurance -- concerns.

Some insurance companies, which represent household names, either have canceled or refused to write homeowners' policies for individuals with certain dog breeds. While subject to change based on claims data or dog bite-related fatalities, the "usual suspect" breed list, according to industry sources, includes Pit Bulls, Rottweilers, German

²¹ Insurance Information Institute

Shepherds, Doberman Pinschers, Chow Chows, Wolf hybrids and Presa Canarios. Many insurance companies do not automatically reject owners of certain breeds but may require letters from veterinarians, dog obedience certificates, or a home visit by an insurance agent.

At least one insurance industry spokesperson has acknowledged that the industry isn't positioned to determine which dogs should be deemed vicious. However, industry claim experience has revealed that certain breeds, when they do attack, tend to cause a lot more damage when they do bite, not because they bite most often.

Most insurance companies with "breed lists" say they base their positions on data from claims and CDC statistics. About 25 breeds of dogs were involved in 238 fatal dog bites, according to a 20-year study conducted by the CDC and published in 2000. According to the report, pit bulls and Rottweilers were involved in more than half of fatalities resulting from dog bites.

Why many insurers have adopted breed-exclusion policies, however, is linked to the bottom line: homeowners' insurers are losing millions on dog bite claims.

PENNSYLVANIA'S UNFAIR INSURANCE PRACTICES ACT

Termination of a homeowners policy is an unfair insurance trade practice, unless the reason for termination is allowable under Unfair Insurance Practices Act of July 22, 1974, P.L. 589, No. 205, 40 P.S. §§ 1171.1 – 1171.15 (Act 205). Allowable reasons for termination include:

- 1) The policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact, which are material to the acceptance of the risk by the insurer.

The insurer must prove that:

- a) The statement was false;
 - b) The subject is material to the underwritten risk;
 - c) The person making the statement knew the statement was false or the statement was made in bad faith.
- 2) After the policy was issued, there has been a subsequent change or increase in hazard in the risk assumed by the insurer.
 - 3) There is an increased probability of loss due to particular conditions.

Application of Act

***Salsgiver v. Northern Mutual*, PH90-19 (1991):**

The Act applies to owner-occupied, private, residential properties. When a property is no longer owner-occupied, an insurer may cancel a homeowners policy.

***Scarnati Estate v. American Motorist*, PI96-06-007 (1998):**

Where a beneficiary of a trust owns the residence, the property is not owner-occupied.

***Wituci v. State Farm*, PH94-12-063 (1995):**

The property was no longer owner-occupied where both insureds had died, and cancellation of the homeowners policy was held proper under the Act.

***Boczar v. Standard Fire*, P92-09-23 (1994):**

The Act is inapplicable to a policy cancellation involving new construction.

***Ritter v. Aetna*, P92-02-12 (1993); *Wharen v. Old Guard*, PH02-08-018:**

The Act does not apply to commercial properties. Rental property owned by an insured is not owner-occupied.

PENNSYLVANIA'S DOG LAW

Selected Portions of the Act

The Dog Law of December 7, 1982, P.L. 225, No. 225, 3 P.S. §§ 459-101-459-1205 (as amended), provides in part:

§ 459-502-A. Registration

(a) Summary Offense of Harboring a Dangerous Dog.—Any person who has been attacked by one or more dogs, or anyone on behalf of such person, a person whose domestic animal has been killed or injured without provocation, the State Dog Warden or the local police officer may file a complaint before a District Justice, charging the owner or keeper of such a dog with harboring a dangerous dog. The owner or keeper of the dog shall be guilty of the summary offense of harboring a dangerous dog if the District Justice finds beyond a reasonable doubt that the following elements of the offense have been proven.

(1) The dog has done one or more of the following:

- (i) Inflicted severe injury on a human being without provocation on public or private property.
- (ii) Killed or inflicted severe injury on a domestic animal without provocation while off the owner's property.
- (iii) Attacked a human being without provocation.

(iv) Been used in the commission of a crime.

(2) The dog has either or both of the following:

(i) A history of attacking human beings and/or domestic animals without provocation.

(ii) A propensity to attack human beings and/or domestic animals without provocation. A propensity to attack may be proven by a single incident of the conduct described in paragraph (1)(i), (ii), (iii) or (iv).

(3) The defendant is the owner or keeper of the dog.

(a.1) Effect of a Conviction.—A finding by a District Justice that a person is guilty under subsection (A) of harboring a dangerous dog shall constitute a determination that the dog is a dangerous dog for purposes of this Act.

...

§ 459-503-A. Requirements

(a) Enclosure and Insurance. The Department shall issue, upon payment of all fees under subsection (b), a certificate of registration to the owner of such animal within 30 days of notification, in writing, by the Department that the dog has been determined to be dangerous and that the owner presents sufficient evidence of:

(1) A proper enclosure to confine a dangerous dog and the posting of a premises with a clearly visible warning sign that there is a dangerous dog on the property. In addition, the owner shall conspicuously display a sign with a warning symbol that informs children of the presence of a dangerous dog.

(2)(i) A surety bond in the amount of \$ 50,000 issued by an insurer authorized to do business within this Commonwealth, payable to any person injured by the dangerous dog; or

(ii) a policy of liability insurance, such as homeowner's insurance, issued by an insurer authorized to do business within this Commonwealth in the amount of at least \$ 50,000, insuring the owner for any personal injuries inflicted by the dangerous dog. The policy shall contain a provision requiring the secretary to be named as additional insured for the sole purpose of being notified by the insurance company of cancellation, termination or expiration of the liability insurance policy.

...

(d) Other Requirements.—The owner shall sign a statement attesting that

(1) The owner shall maintain and not voluntarily cancel the liability insurance required by this section during the period for which licensing is sought unless the owner ceases to own the dangerous dog prior to expiration of the license.

....

§ 459-507-A. Construction of article

(a) Enforcement. – This article shall be enforced by all except counties

(b) Abusive or Unlawful Conduct of Victim.—This article shall not apply if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing or assaulting the dog or has, in the past, been observed or reported to have tormented, abused or assaulted the dog, or was committing or attempting to commit a crime.

(c) Local Ordinances.—Those provisions of local ordinances relating to dangerous dogs are hereby abrogated. A local ordinance otherwise dealing with dogs may not prohibit or otherwise limit a specific breed of dog.

(d) Insurance Coverage Discrimination.-- No liability policy or surety bond issued pursuant to this Act or any other Act may prohibit coverage from any specific breed of dog.

....

§ 459-901. Enforcement of this act by the secretary; provisions for inspections

(a) General Rule.—The Secretary, through State Dog Wardens, employees of the Department and policy officers, shall be charged with the general enforcement of this law. The secretary may employ all proper means for the enforcement of this Act and may enter into agreements pursuant to section 1002, which shall be filed with the Department, for the purpose of dog control. State dog wardens and employees of the Department are hereby authorized to enter upon the premises of any persons for the purpose of investigation. A dog warden or employee of the Department may enter into a home or other building only with the permission of the occupant or with a duly issued search warrant.

...

§ 459-903. Violations

Unless heretofore provided, any person found in violation of any provision of Article II through Article VIII of this act shall be guilty of a summary offense for the first violation and for a second and subsequent violation which occurs within one year of sentencing for the first violation shall be guilty of a misdemeanor of the third degree

Application of Act

***Lerro v. Upper Darby Township*, 798 A.2d 817 (Pa. Cmwlth. 2002)**

The party charged with enforcement of the Act is the Secretary of Agriculture. To the extent that the Township failed to fulfill its duty under the Dog Law, it is the responsibility of the Secretary of Agriculture to take appropriate action, and enforcement by private individuals is prohibited.²²

PENNSYLVANIA DECISIONS

Courts

***Lititz Mut. Ins. Co. v. Commonwealth, et al.*, 401 A.2d 606 (Pa. Cmwlth. 1979):**

The acquisition of a large dog by a homeowner is not a substantial increase in hazard that justifies an insurer's refusal to renew a homeowner's policy. The mere presence of a dog, even of a breed known to be aggressive, is not a basis for finding a substantial increase of hazard absent some showing that the particular dog creates that risk.²³

***Old Guard Mut. Ins. Co. v. Quigley*, 4 Pa. D&C 4th 620 (CCP Adams Cty 1990):**

Despite a homeowner breeding and selling wolf-hybrids, the court held after balancing various facts, that the business pursuits exclusion in the homeowner's policy did not delete coverage for a liability claim.

***Aegis Sec. Ins. Co. v. Maleski*, 626 A.2d 658 (Pa. Cmwlth. 1993):**

The insurance commissioner recognized that a dog bite was a sufficient increase in hazard to support a cancellation. The commissioner's decision that the cancellation notice was not clear was reversed.

***Commonwealth v. Hake*, 738 A.2d 46 (Pa. Cmwlth. 1999), petition for allowance of appeal denied, 561 Pa. 679, 749 A.2d 473 (Pa. 2000):**

A dog was determined to be dangerous when it escaped from a house, ran into the street and attacked without provocation.

***Commonwealth v. Baldwin*, 767 A.2d 644 (Pa. Cmwlth. 2001):**

A dog is dangerous where a person who did not excite or provoke a dog in any way was attacked while walking away from it.

***Aegis Sec. Ins. Co. v. PA Insurance Department*, 798 A.2d 330 (Pa. Cmwlth. 2002):**

Dog that was provoked into biting does not mean that there is a substantial increase in hazard after a homeowners policy was issued, sufficient to justify

²² See, Appendix "D".

²³ See, Appendix "F"

cancellation. Court refers to insurance department determinations involving provocation which, although not binding, were instructive.²⁴

Commonwealth v. Morgera, 836 A.2d 1070 (Pa. Cmwlth. 2003):

Two sheep were bit without provocation by a dog off the owner's premises. The sheep recovered. The Commonwealth Court held that the injuries sustained were not "disfiguring lacerations requiring multiple sutures or cosmetic surgery" within the meaning of Section 102 of the Dog Law. No sutures were used in treatment, and there was no evidence that sutures were "required" but not used. A removal of a flap of skin also was not "cosmetic surgery". The District Court's finding that the owner was guilty of the summary offense of harboring a dangerous dog due to the infliction of severe injury on a domestic animal without provocation, while off the owner's property, was reversed.

Commonwealth v. Seyler, 929 A.2d 262 (Pa. Cmwlth. 2007):

A male and female pit bull bit a neighbor numerous times, after attacking the neighbor's dog. The Commonwealth Court held that an "owner", within the meaning of Section 102 of the Dog Law includes both a person that has a property right in the dog, as well as a person who permits a dog to remain on or about any premises occupied by the person. Under the latter standard, the owner of the premises who was taking care of the dogs, but disputed ownership, is deemed an owner. The court also held that this single incident was sufficient to support the trial court's finding that the single incident demonstrated the dogs' propensity to attack human beings without provocation.

Insurance Department

In re White (Liberty Mutual), PH97-07-016 (1997):

A dog biting a person who entered a property through a gate marked "Beware of Dog" and ignored a sign instructing those who entered to ring a bell is not a substantial increase in hazard involving the particular dog.

In re Ranieli (White Hall Mutual), P94-11-030 (1997):

An increase in hazard did not exist where a child was bitten when it approached a dog that had just been given its dinner where the dog had never before shown aggression.

In re Witmyer (Lititz Mutual), P94-03-13 (1995):

An increase in hazard did exist where the incident was the third in which a particular dog had bitten people.

In re Wetzel & Bresinger (Charter Oak), PH96-09-019 (1998):

An increase in hazard did exist where a Rottweiler left its owners' property, followed and viciously attacked a person.

²⁴

See, Appendix "E"

In re Anspach (State Farm), PH93-12-35 (1995):

Cancellation was proper where the application submitted by the insureds stated that no business was conducted on their property and a later inspection revealed farm animals on the property and the existence of a petting zoo.

In re Fletcher (Liberty Mutual), PI98-02-011 (1998):

An insurer must establish either that the insureds had no dog at the policy inception or did not have a dog with vicious propensities, where an insurer asserts that there is an increase in hazard after a policy inception.

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