

Damages

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Damages caused by a dog-bite incident can be extensive. They can be both physical and psychological, while also affecting those close to the victim. Recoverable damages may include present and future pain and suffering, permanent physical limitations, scarring and disfigurement, and present and future psychological issues including post-traumatic stress disorder. Damages also may include medical expenses, loss of earnings including future earnings, loss of consortium, impact on future social possibilities including marriage, punitive damages, loss of enjoyment of life, and overall damages to spouse and/or family. Obviously, more could be added to this list.

Some dog bite figures of note include the fact that in 2008, the overall hospital treatment for dog bite victims averaged \$18,200, and nearly 50 percent of those hospitalized for dog bites required treatment for skin and tissue infections, with more than half receiving grafts or debridement.¹ Dog bite claims accounted for more than one-third of all homeowners' insurance claims in 2012, costing over \$489 million.² The average amount paid out was \$29,752 in 2012.³ From 2003 to 2012, the average dog bite claim increased by 55.3 percent, although the number of claims dropped slightly from 16,695 in 2011 to 16,459 in 2012.⁴ Homeowners and renters insurance policies generally provide between \$100,000 to \$300,000 of coverage.⁵ However, some insurance

¹ Insurance Information Institute, *Dog Bite Liability*, May 2013, http://www.iii.org/issues_updates/dog-bite-liability.html (last visited May 23, 2013).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

companies now require customers to sign a waiver for dog bites or pay higher premiums when certain breeds of dogs are at issue.⁶

I. Types of Damages

A. Pain and Suffering

Pain and suffering takes many forms and has varied effects. For example, the pain a child suffers can be greater than an adult's. Psychological pain also obviously is an issue. Being mauled by a dog is an injury unlike almost any other. We are not talking about a car accident. We are talking about an animal that has gone wild and turned on a human and has the capacity to kill. Furthermore, if the dog has not been vaccinated for rabies, the victim may have to undergo painful preventative treatment, and certainly will experience stress until the issue is resolved. A parent might experience trauma over a child's dog bite incident, including as a result of witnessing the attack. A victim may feel humiliated after being attacked by a dog and also over the way the victim perceives her appearance. People may stare, point, or laugh, depending upon the extent of the injuries and the people in question. All of the things above are variations of pain and suffering that do not always come readily to mind.

B. Scarring and Disfigurement

Disfigurement from dog bites can take many forms, but typically the most common involve scarring. Positioning of scarring on the body can substantially impact damage awards. A scar in a place where few people, perhaps including the victim, will see it is not worth near the amounts justified by scars on the face, neck, or even arms.

It also is important to attempt to quantify the future impact scars may have. In certain cases it may even affect marriage prospects. Obviously trying to broach this issue with a client may be difficult, but finding a way to include this factor in the award is

⁶ *Id.*

incumbent on a competent attorney. Scarring also may have impact on employment opportunities. Too often victims, and especially their families, wish to “get past” the incident and not “dwell” on potential, or actually almost certain future negatives, but these future negatives are a very real part of the damage equation. Furthermore, scars from dog bites can be some of the most jarring scars in appearance, and plastic surgery, or multiple plastic surgeries, often can only do so much. The age of the victim also is a factor. How long is he going to have to endure the disfigurement?

Loss of enjoyment of life also often intersects with issues of disfigurement. Dog bite injuries can interfere with hobbies and interests, as many scarred clients also limit their social interactions because of embarrassment.

C. Post Traumatic Stress Syndrome

People may experience a range of psychological effects from being the victim of a dog attack or witnessing an attack. Victims or witnesses may experience, *inter alia*, nightmares, depression, anxiety, and generalized or specific fear.

D. Lost Income

Lost income obviously includes time off from work for medical diagnoses, treatment and rehabilitation, time lost to recuperation, and time expected in the future to be lost. However, in extreme cases, and also at times depending upon what the victim does for a living, an entire career can be wiped out. Furthermore, this may not always be immediately apparent to the victim or her providers. For example, if someone works in a field in which the person comes into somewhat regular contact with animals, the victim may never be able to work in that field again depending upon the severity of injury and its psychological effect.

E. Punitive Damages

Punitive damages are generally intended to punish the defendant and discourage others from committing the same offense, however, punitive damages are not available in

all states. Still, where they are available, they can substantially increase the payout if properly argued.

Typically, one must demonstrate that the dog owner's behavior was, to put it in layman's terms, beyond the pale. Perhaps the owner acted in an extremely malicious or reckless manner. Did the owner know about the dog's dangerous propensities? Should the owner have known, thus also implicating constructive knowledge arguments? Had the dog escaped in the past? Was there proper containment? Did the dog have a poor history with other animals, children, or people in general? What was the defendant's attitude before and after the incident? What is the affect punitive damages may have on others? Will the defendant be held criminally liable, and to what extent?

It is important to remember, however, that establishing a basis for punitive damages often means establishing clearly willful conduct on the part of the defendant, which can negate insurance coverage. It is important to look at the assets of the defendant, separate from insurance coverage, before pursuing this option. A trier-of-fact typically also considers a defendant's assets in determining punitive damages.

Certain states allow for a multiplier effect to punish the owner. For example, Wisconsin allows doubling of the award if the dog had previously injured a person, animal, or property and the owner knew it.⁷

Other factors to look at include whether the dog had a history of barking at strangers, threatening or jumping on people, or fighting with other dogs. Was the dog muzzled? This cuts both ways, however. It may indicate the owner did, at least at times, take certain precautions, although obviously the muzzling precaution almost certainly was not, for whatever reasons, being used at the time of a dog bite incident. Muzzling also indicates that an owner apparently is aware of dangerous propensities. Also, did the owner have a "Beware of Dog" sign? This too, however, can cut both ways.

⁷ Wis. Stat. § 174.02 (1999).

F. Loss of Quality of Life

Quality of life means different things to different people, but depending upon the injuries, a dog bite can have substantial impact. If someone regularly does something, including just a hobby, that involves frequent use of the hands, the loss or impairment of a finger or hand can have substantial effect. Conversely, if someone is wheelchair-bound, an injury to the leg is probably going to have less impact. Between these two examples, however, lies the impact that every other victim will experience. The only limits are the level of creativity employed by the attorney in defining these effects.

G. Loss of Consortium

Loss of consortium can take many forms including a parent's loss of a child's normal level of companionship and services. A New York woman received \$4,500 for the loss of her nine-year-old son's normal companionship after a dog bit him.⁸

Another aspect particular to dog bite cases is that a victim may feel less physically attractive, and thus less interested in sexual relations, because of injuries and scarring resulting from a dog bite attack.

II. Representative Cases

As my role is as a consultant on dog-bite cases, as opposed to prosecuting these cases, I chose not to broach with my clients whether I could discuss their cases publically. However, I found the following publically available cases to be quite representative.

Case A

In this case the adult plaintiff was bitten on his face, neck, and head by his brother's dog and suffered a five-inch gash as a result. He required emergency surgery to close the wound and follow-up treatment and physical therapy. He suffered permanent

⁸ Graham ex rel. Graham v. Murphy, 525 N.Y.S.2d 414 (1988).

scarring. The victim also claimed psychological effects including nightmares and flashbacks, and he saw a psychologist for 18 months for issues including a deterioration of his relationship with his brother as a result of the incident. The plaintiff sued for pain and suffering, medical bills, and wage loss. He received \$124,336 in arbitration.⁹

Case B

In this case a youngish grandmother was attacked by a pit bull at her cousin's residence. The pit bull locked onto her leg between the calf and ankle and only released its grip after being hit with a shovel. The bite exposed nerve, bone, and muscle, and shattered her tibial shaft. The victim also went into shock. She required surgery to repair nine wounds on her leg and a split-thickness graft was taken from her thigh to cover areas where muscle tissue had been removed. She had residual nerve damage, swelling, and scarring, and at times required the use of a cane. She required further scarring treatment and suffered from post-traumatic stress disorder and depression. Although unemployed at the time of the incident, she had marketable skills as a social worker and estimated lost wages of between \$60,000 and \$80,000. Prior to jury selection in the suit, the insurance company settled for \$495,000 on a policy with a \$500,000 cap.¹⁰

Case C

A nine-year-old girl suffered the loss of the tip of her middle finger of her non-dominant hand and bites on her face and right arm while being attacked by a dog after going along with her older sister to the defendants' home. She had numerous stitches and severe scarring. She also claimed emotional distress and trouble with sleep. The defendants claimed that the victim had not asked permission to enter their back yard, where the dog was kept, that the victim had exceeded the scope of her invitation when

⁹ Keefe Bartels Trial Attorneys, <http://www.keefebartels.com/content/practice-areas-dog-bite-cases-verdicts-and-settlements>, (last visited May 24, 2013).

¹⁰ *Id.*

she entered the yard, and that the victim may have provoked the dog. Prior to a trial on damages, the defendants' insurance carrier settled for \$250,000.¹¹

Case D

A lead guitarist in a rock band was bitten on his nose at his girlfriend's house after his girlfriend's dog, several weeks removed from leg surgery and perhaps still sore and more easily irritated, jumped on the victim's lap. The guitarist suffered a gash on his nose that could not be repaired with plastic surgery and nerve damage to the upper lip which affected his speech. He began wearing makeup to cover the scar when he performed. The dog also had previously bitten another dog and the defendant had not warned her boyfriend. The victim claimed \$5,000 in medical expenses and pain and suffering. The case was settled in mediation for \$375,000.¹²

Case E

In this case five free-roaming German shepherds at the defendant's home attacked a landscaper. The landscaper suffered bite marks over his entire body and a deep wound to his right thigh, which had to remain open to allow dog saliva to drain out. He was hospitalized for two days and missed four weeks of work. He had scarring that would cost \$15,000 to lessen, according to counsel, as well as \$26,000 in medical expenses. The case was settled pre-suit for \$250,000.¹³

Case F

As more and more establishments allow animals to enter the premises either as service animals or just generally, incidents involving innocent patrons in these

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

establishments getting bit are going to rise substantially. An interesting case that addresses this issue involved a Café that allowed dogs on the premises.¹⁴

The victim was waiting for her dining check in the eating area and leaned over to pet a leashed, 110-pound Weimaraner. The dog proceeded to rear its head back and bite the victim on the face, causing lacerations that required thirty stitches to the face and ear, as well as a hospital stay of two weeks. She required an additional three weeks of recovery time at home. Her medical bills came to \$45,500 plus \$500 for medications and ointments. Her lost wages, as an hourly worker, were \$3,500. She requested \$250,000 for pain and suffering.

The owner of the dog had few assets and also immediately filed for bankruptcy. The Café became the substantive defendant and claimed the victim had assumed responsibility both by eating frequently at the Café and by not previously raising the issue of dogs on the premises. The Café also claimed that in 12 years there had been no other incidents, and so, absent complaints or previous incidents, the attack was not foreseeable. The Café further claimed that most dogs were kept tethered to a railing outside the eating area, but there was no hard and fast rule that required such. The Court awarded \$49,500 in damages for medical costs and lost wages as well as \$100,000 for pain and suffering. The Court dismissed the assumption of risk argument by stating that, while the victim may have known there was potential for risk because of the frequent presence of animals on the premises, accepting the defense of assumption of risk under these circumstances in which dogs were frequently known to be present would inappropriately absolve the owners of dogs that cause harm.

Case G

An example of why a lawyer needs to stick to the facts and not try to embellish the physical effects of a dog attack occurred in a case in which a \$40,000 general damages award was reduced to \$15,000 by an appellate court based, in part, on the trial

¹⁴ *Dog Bite Case Where Plaintiff Sustains Multiple Facial Wounds*, Injury Settlement Guide, <http://www.injury-settlement-guide.com/dog-bite-case.html>, (last visited May 25, 2013).

court's own statement that three puncture wounds were "not as significant as [the plaintiff] would have us believe" and that "if [the plaintiff] had not told me what they were, I certainly would not be concerned that they were disfiguring in any way."¹⁵ There is much room to emphasize the traumatic effects of being mauled by an animal, and the effects overall going forward, but one simply cannot inflate more minor physical effects into something, in itself, warranting a substantial damage award.

III. Damages Involving Pet Victims

Damages from a dog bite incident also can encompass the effects on an owner of an animal victimized in a dog bite attack. This is an area of law that is continuing to evolve and is beginning to encompass larger and larger awards as the valuation of pets to humans is slowly rising in all animal law matters.

For example, in 2005 a plaintiff was awarded \$45,000 in Washington state for the loss of her 12-year-old cat attacked and killed by a Chow-Chow dog.¹⁶ The plaintiff received \$90.00 for cremation, \$80.00 for medical bills, \$30,000 for the cat's "intrinsic value," and, in a further somewhat groundbreaking turn of events, \$15,000 for the emotional distress of witnessing the attack. Courts have moved very slowly, if at all, toward awarding humans emotional damages for incidents involving their pets. However, if the incident is egregious and, as for example in this case, the owner witnessed it, the chances of an emotional distress recovery increase. Quantifying the "intrinsic value" has been a more typical manner in which the issue of emotional damages has been finessed.

In this case the plaintiff's attorney was Adam Karp, the state of Washington's most noted animal-law attorney. Mr. Karp often pushes for a very broad array of damages and/or causes of action in animal law matters. While this case ultimately

¹⁵ Thibodeaux v. Krouse, 991 So. 2d 1126, 1133 (La. Ct. App. 2008).

¹⁶ Roemer v. Gray, King County (Washington) District Court, Case No. 45-09514.

involved a default judgment, obtaining \$45,000 from a judge for the loss of a pet, including emotional damages, was quite an achievement.

A 2010 case in Louisiana also addressed the issue of emotional damages, albeit in a case not directly implicating a dog bite. In *Smith v. University Animal Clinic*,¹⁷ an animal clinic mistakenly switched nametags of two boarded cats and then released a cat to the wrong owner, whereupon the cat subsequently ran away from the new home and was never found. A trial court, while not awarding emotional damages, due to the fact the hospital had waived boarding costs and thus negated obvious baseline damage amounts, still found that emotional damages could have been recovered under appropriate circumstances. The appellate court, however, reversed in part, finding that emotional damages were only allowable:

- (1) When the property was damaged by an intentional or illegal act;
- (2) when the property was damaged by acts giving rise to strict or absolute liability;
- (3) when the property was damaged by activities amounting to continuous nuisance; and
- (4) under circumstances where the owner was present or nearby at the time the damage occurred and suffered psychic trauma in the nature of or similar to a physical injury as a direct result of the incident itself.¹⁸

Still, extrapolating this to a dog bite case, a dog running free is illegal in most urban and many suburban jurisdictions, and the damages typically are certainly intentional, at least on the part of the dog, although the Court probably had human intentions more in mind in this particular case. Furthermore, many jurisdictions have variations of strict liability regarding dog bites even if in practice these jurisdictions take much more into account before finding for strict liability. Also, often times a dog that bites has been what certainly could be considered an ongoing nuisance. In fact, an attorney doing a good job of discovery should almost always at least be able to make the argument that there is past evidence of the dog's propensities for damage and nuisance-based behavior. Lastly, and

¹⁷ 30 So. 3d 1154 (La. Ct. App. 2010).

¹⁸ *Id.* (citing Frank L. Maraist & Thomas C. Galligan Jr., *Louisiana Tort Law* § 7.02[6] (2d ed. 2004)).

touching squarely on the Washington case awarding emotional damages, the court took into account whether an injury is witnessed.

IV. Police Dog Bite Cases

One area of dog bite law that can be very lucrative involves citizens bitten by police dogs. However, it still is important to keep in mind that the citizenry has allowed these agencies to construct defense apparatuses that ensure that anyone suing a police department is going to have his work cut out for him. Still, the payouts are there. In the 2007 Washington state case of *Rogers v. City of Kennewick*¹⁹, a victim received \$750,000 after being mistakenly mauled by a police dog and beaten by the police while sleeping in his stepson's backyard. In this federal cause of action, the jury found for the plaintiff on the issue of unlawful seizure.

In another Washington case²⁰, this one involving a 2008 incident, Mark Roberts was awakened in his home by the sound of a helicopter. When he stepped outside to investigate, he was mauled by a sheriff's German-Shepherd and suffering a muscle-crushing wound to his right thigh that took nearly two years to heal. Furthermore, the dog tore away flesh extending from the victim's left leg to his left arm, also leaving permanent scars. After Roberts filed a federal suit, the Pierce County Sheriff's Department settled for \$350,000.

¹⁹ 2007 WL 2055038 (E.D. Wash. July 13, 2007).

²⁰ Mike Carter, *Cop Dogs' Miscues Prove Grisly, Costly*, The Seattle Times (March 2, 2013), http://seattletimes.com/html/localnews/2020474412_k9dogbitesxml.html (last visited May 25, 2013).