

# **WHEN THE DOG BITES**

**THE ESSENTIAL GUIDE TO DOG BITE  
CLAIMS IN WASHINGTON**

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## **DEDICATION**

This book is dedicated to my family, and of course, to our dog Bogie.



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## INTRODUCTION

I am a dog lover. I have owned at least a dozen dogs during the course of my life. My current dog, an 8-year-old Australian shepherd and collie mix named Bogie, wouldn't hurt a fly. Well, maybe a fly, but not a human being. I know this for a fact because I have done everything possible, including formal training, to make sure that this animal won't hurt me or my children. But I can't say that for everyone else's dog.

Dogs can be dangerous. In fact, some can be lethal. In my practice, I see that the people most at risk for dog bite attacks and injuries are small children—but I also see a fair percentage of dog bite cases involving adults. Not only can the physical injuries be horrific and life-changing for the victims involved, but the emotional damage can be devastating as well.

My office receives several inquiries each month about dog bite injuries, many of which involve children. I decided to write this book to help create awareness about the prevalence of dog bite attacks, to inform the public about the specific laws governing these cases, and to discuss the common legal issues and questions that often arise. If you or your child has been a victim of a dog bite attack, I hope this book offers some level of comfort and assistance.

*Christopher M. Davis*

November 2008



## DISCLAIMER

The information in this book is just that—INFORMATION. This book does not constitute legal advice and no attorney-client relationship has been formed by receiving and/or reading this book. Although the author is a licensed attorney in good standing in the State of Washington, Mr. Davis is not the reader's attorney without a signed agreement (as required by Washington State's attorney ethics rules). Many cases involving dog bite attacks and injuries are complex and may involve many different legal issues or questions where the outcomes are heavily, if not completely, dependent on the particular facts of the case. Therefore, for specific legal advice, you should consult with an attorney who has experience representing individuals in dog bite cases. For those of you who wish to consult with Mr. Davis about a specific case, his contact information is at the back of this book, or you may visit *[www.DavisLawGroupSeattle.com](http://www.DavisLawGroupSeattle.com)*.



## **BASIC FACTS ABOUT DOG BITES**

According to the Centers for Disease Control and Prevention (CDC), there are an estimated 68 million dogs kept as pets in the United States. There are more than 1 million dog bites reported each year. And there are estimates that an equal number of dog bites (1 million) go unreported every year. The CDC reports that at least 800,000 people each year suffer injuries from dog bites that are significant enough to require medical attention.

More than 60% of dog bites occur in the home of the dog owner. Approximately 77% of dog bite victims are members or close friends of the dog owner's family and are therefore familiar with the dog. Thus, contrary to popular belief, most dog bite cases occur where the victim either knew the dog or was at least somewhat familiar with it.

Here are some more interesting facts about dogs and dog bite attacks.<sup>1</sup>

- According to the American Medical Association, dog bites are the second leading cause of childhood injury, surpassing playground accidents.
- Approximately 20 people die every year as a result of a dog bite attack. (Most of the victims are children.)





- From 1979 to 1996, dog attacks resulted in more than 300 human deaths in the United States. (Most of the victims were children.)
- Male dogs are more likely to bite people than female dogs by a margin of 2 to 1.
- Dogs in the age range of one and five years are involved in more dog bite injury cases than dogs older than 6 years.
- Dogs not known to the victim account for approximately 10% to 20% of all reported dog bites.
- Mixed breed dogs (not purebred dogs) are most often involved in inflicting bites to people.
- The breeds most often involved in fatal dog bite attacks are Rottweilers and pit bulls.
- The most common purebred dogs that are involved in biting humans are German shepherds and chow chows.
- The list of breeds most involved in both bite injuries and fatalities changes from year to year and from one area of the country to another, depending on the popularity of the breed.
- In the United States, pit bulls make up 1% to 3% of the overall dog population but cause more than 50% of serious attacks.
- The CDC states that a chained dog is 2.8 times more likely to bite a person than an unchained dog.



- Dogs that are not spayed or neutered are three times more likely to bite a person than those dogs who have been sterilized.
- In 1994, the emergency room costs for dog bite victims in the United States was about \$102 million, and overall direct medical costs were about \$165 million.
- According to the Insurance Information Institute, dog bites accounted for about 25% of all claims on homeowner's insurance, costing more than \$321 million in 2003.
- In 2002 (the latest year for which numbers are available), the average settlement amount for a dog bite was \$16,600.
- According to the Western Insurance Information Service, the insurance industry paid out more than \$1 billion in dog-bite claims in 1998 alone.

The state of Washington does not maintain an accurate state-wide database of all dog bite attacks that occur. But in King County there are more than 1,000 dog bite incidences reported each year.<sup>2</sup> According to the Seattle Animal Shelter, pit bulls account for a disproportionate number of reported bites in Seattle alone.<sup>3</sup> While pit bulls account for just 4% of the total dog population in Seattle, they are involved in 22% of all reported dog attack incidents as of 2007.<sup>4</sup>

In Seattle so far in 2008, there have been 130 reported dog bites, a big drop from previous years. But almost half of the bites are attributed to pit bulls, which is double the rate of pit-bull bites reported in previous years. By comparison, Labrador retrievers account for 18% of all licensed dogs and



12% of dog bite incidences. German shepherds account for 6% of all licensed dogs and just 5% of dog bite attacks. Golden retrievers account for 6% of all dogs and zero percent of all dog bite incidences.

The local media has reported on more incidences involving severe dog attacks on humans in recent years. Many of these attacks involve pit bull breeds or their mixes. According to some medical personnel, there are more incidents involving serious injuries inflicted upon people by dogs than in recent years. Perhaps this is due to the population of dog owners increasing significantly. More than 85,000 dogs have been licensed in King County alone for the year 2006 – nearly double the rate in 1990.

Whatever the reason, I have seen more dog bite injury cases in my practice over the last 15 years. Although a high percentage of those involve pit bulls, there are a sizeable number involving other breeds, like German shepherds, labs, retrievers, Akitas, chow chows, and Rottweilers. More needs to be done to raise awareness among the public about how dangerous dogs can be and the damage that they can cause to people and children. I hope that this book will help in a small way to realize that goal.



## **WASHINGTON STATE'S DOG BITE STATUTE**

### **Overview of Washington's Dog Bite Statute**

Historically, a person could only recover damages against a dog owner if he could prove that the owner had prior knowledge of the dog's viciousness or propensity to bite. This law was called the "One Bite Rule" because it meant that every dog owner had one "free bite" before civil liability could be imposed (i.e., damages could be collected against the dog owner). This turned out to be an unjust rule because there were no mandatory reporting requirements when a dog injured a person. Consequently, a dog bite victim had difficulty proving that the dog had previously injured someone else. If a dog owner denied having knowledge that his dog had previously injured another person, it was virtually impossible for the dog bite victim to prove otherwise and the claim would fail.

Fortunately, the Washington state legislature recognized the difficulties dog bite victims faced by having to prove the dog owner's prior knowledge of the dog's viciousness. As a result, the legislature supplemented the "One Bite Rule" by enacting a specific statute that addressed the proof problems associated with that rule. Now, Washington State has its own "Dog Bite Statute," which removed the requirement of proving that the dog owner had prior knowledge of the dog's propensity to bite. That statute states as follows:



The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such 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.<sup>5</sup>

As written, the law effectively holds dog owners strictly liable for any injuries or bites their dogs inflict on others. This means the owner is liable for a dog bite injury even if the dog has never bitten another human being and even if the dog has never previously acted in an aggressive manner. However, there are certain facts that must be present before a dog owner can be held legally responsible under Washington's dog bite statute as discussed more fully below.

### **Liability Imposed Against the Dog's "Owner"**

Washington's dog bite statute only imposes liability against the "owner" of the dog. So occasionally a dispute arises about who actually owns the dog. For instance, if the person who harbors and takes care of the dog is not the true legal owner of the animal, can this person still be liable for the injuries inflicted by the dog? The answer is usually yes. Although the dog bite statute refers to liability of the dog "owner," there are court decisions that broadly define the owner to include one who possesses and/or cares for the dog.<sup>6</sup>

In one case that occurred back in 1988, the dog was purchased and "owned" by a young woman. But the woman kept her dog at her grandmother's home. The grandmother resided with and cared for the dog during a three-year period before the dog bit and injured another person. The question was whether the grandmother could be held liable for the injuries when she was not necessarily the true owner of the



dog. A Washington state court answered yes. The grandmother's conduct of harboring and caring for the dog over a three-year period was sufficient conduct to make her an "owner" of the dog for purposes of imposing liability under the statute.<sup>7</sup> The court seemed to focus on the fact that the grandmother acted like the owner of the dog over a long period of time. Perhaps this case sends the message that if you act like the dog's owner, or if you hold yourself out to others as the owner of the dog, you may be responsible for any injuries or damages that dog inflicts upon others.

Furthermore, there may be various local regulations and ordinances that also broadly define the owner of a dog. In King County a dog owner is broadly defined as "any person having an interest in or right of possession to the animal, or any person having control, custody, or possession of an animal...or by reason of the animal being seen residing consistently at a location, to an extent such that the person could be presumed to be the owner."<sup>8</sup> This definition is broad enough to include any person who harbors or keeps the dog for a period of time that is sufficient to cause one to believe that the person may be the true or legal owner, even if that person is not.

The question may arise: what period of time is sufficient to cause one to believe that one who harbors the dog is the true or legal owner of that dog? This is a factual question that may need to be resolved by a jury. Certainly, the longer a person acts like the dog's owner, or engages in conduct similar to the owner, means the greater likelihood that this person may also be legally responsible for the dog's dangerous or vicious propensities toward other human beings.

Although the dog's "owner" may be defined quite broadly, there are certain limitations that exist. For instance, the question has been raised whether a landlord can be considered an "owner" of the dog for purposes of subjecting



the landlord to liability under the dog bite statute. Washington courts have clearly stated no. A landlord will usually not be considered the dog's owner just based on that person's status as a landlord.<sup>9</sup> Thus, if the dog owner is a renter or if the dog attack occurred on property that was being leased, the victim cannot rely on the dog bite statute to attempt to impose liability on the person who either owns or controls the property, unless that person also shares the responsibility of keeping, feeding and harboring the dog – tasks usually performed by the dog's true owner.

### CASE ILLUSTRATION #1

I represented a man who found a dog in the pet section of the classified ads of the local newspaper. This man was looking for a specific breed. He wanted a dog for his two young children, but didn't want a puppy because of the time and effort it would take to train the animal.

My client did find a dog. The classified ad described the dog as "gentle, loving and good with children." He met the dog's owner and took possession of the animal. Within a few hours after taking the dog home, the animal severely bit and injured the man's 5-year-old daughter.

The insurance company for the dog's former owner argued that there was no liability under the dog bite statute because this person was no longer the dog's "owner" at the time of the attack. The argument raised a very interesting question, and there was no clear guidance under the law as to whether this contention had merit.

Fortunately, we were able to prove that the former dog owner had actual knowledge that his dog had bitten another young child before he decided to give the dog away. This evidence supported a claim of "common law" liability against the former owner. The theory of common law liability is explained more fully in the next chapter.



## The Location of the Incident is Important

Washington's dog bite law states that liability can only be imposed against the dog owner if the victim "is in or on a public place or lawfully in or on a private place including the property of the owner..." Essentially, the dog bite injury must occur either while the victim is in a public place or while lawfully present on the dog owner's property. If the injury occurs on the property of the dog owner, the law requires that the victim must have been present on this property with the owner's consent or permission. The term "consent" can also be defined quite broadly. For example, the law recognizes that a person may be on a person's property with the owner's *express consent* or with the owner's *implied consent*.

The term "express consent" usually occurs when the dog owner specifically invites you onto his property. For example, if you invite me to your house for dinner and while I am there your dog bites me, then I may pursue a claim against you under the dog bite statute. By inviting me into your home, you have expressly consented to my presence on your private property.

The term "implied consent" usually occurs when the dog owner has allowed you onto his property without ever expressly inviting you. A property owner is said to *impliedly* consent to someone entering onto their land if that person is present in the performance of a duty imposed by law.<sup>10</sup> For instance, the person who delivers the mail or makes a parcel delivery is usually one who is said to have been impliedly invited upon the owner's private property to complete the delivery. Similarly, the boy who ventures onto a homeowner's property to deliver the newspaper is entering the property with the implied consent of the owner. Whether implied consent exists will obviously depend on the facts and circumstances of why the victim was present on the dog owner's property.



## CASE ILLUSTRATION #2

I was contacted by the parents of a 15-year-old boy who was severely injured by a dog while on private property. It turns out the young boy had been trespassing on the dog owner's property. While the boy was walking across the dog owner's property, the animal chased him down and inflicted severe bite marks on the boy's face, arms and legs.

The insurance company for the dog owner denied the claim. It argued that the boy was not on the dog owner's property with his consent. The boy, argued the insurance carrier, was a trespasser and therefore no liability could attach under the dog bite statute.

The insurance company had a compelling argument. I could not find any evidence to show that the dog had bitten other trespassers before the boy was injured. Had this evidence existed, it might have been possible to argue that the dog owner knew that people walked across his property and that his dog represented a danger. With this prior knowledge, it might have been possible to argue that the dog owner was negligent for failing to keep trespassers off his property, or failed to control his dog, or failed to warn trespassers that they would encounter a dangerous dog.

Without such evidence, I had to decline the case.

### **Provocation of the Dog is a Complete Defense**

Even if a person is injured by a dog while in a public place or while lawfully on private property, the dog owner may not be liable if the dog was provoked. Washington law states that the provocation of the animal is a complete defense to a claim against the dog owner.<sup>11</sup> Whether the dog is provoked prior to the attack will depend on the facts and circumstances involved. Usually, if the dog is intentionally hit, teased, or taunted, and, as a result, bites the perpetrator, a claim for damages against the owner will likely not succeed. In that situation the dog owner will argue quite convincingly that the



dog only inflicted injury after being subjected to conduct that most people would expect to cause a dog to act aggressively. The “provocation defense” appears to be a reasonable part of the law since it would be unfair to allow someone to profit from a dog bite injury which was only caused by that person’s desire to intentionally provoke the animal in the first place.

### CASE ILLUSTRATION #3

I represented a 9-year-old girl who was bitten on the face by a German shepherd. The dog was owned by the girl’s neighbor. It turns out that the girl and her friend were teasing the dog by dangling food in front of the animal. The dog would lunge for the food and the girls would pull away the food at the last second. The girl was holding food in front of her face, not realizing that the dog was closely watching her. She had turned away for a moment, and in that second the dog lunged toward the food. When the girl turned her face toward the dog, the animal had bitten her face while lunging for the food.

The insurance company for the dog owner initially denied the claim by arguing that the girl had provoked the dog. Since provocation of the dog is a complete defense under the dog bite statute, the insurer refused to pay any compensation.

Fortunately, I was able to show that several minutes had elapsed from the time that the girl was teasing the dog to the time that the bite occurred. This meant that the animal had bitten the girl, not when the dog was being teased, but when there was food nearby and the dog lunged for it. I was also able to show through other neighbors familiar with the dog that the animal had lunged for food on other occasions despite not being teased. Thus, I argued it did not matter that the dog had been previously teased by the girl. The dog would have bitten the girl while lunging for food nearby regardless of whether the dog had been teased several minutes earlier.



In the end, the insurance company agreed to settle the case, albeit for a much lower sum given the facts to support its provocation defense. Had the case gone to trial, a jury could have found that the girl did in fact provoke the dog, which would have meant no compensation would have been paid to take care of the girls' medical expenses. The decision to settle was a wise one.

As you can see, the “Dog Bite Statute” imposes certain conditions and restrictions on when a victim may recover compensation against the dog owner. Not every dog bite case will meet the requirements of the statute. However, in those cases the victim may still successfully pursue a claim under Washington common law, which I explain more fully in the next chapter.



## **COMMON LAW LIABILITY OF DOG OWNERS**

In the last chapter I discussed Washington State’s “Dog Bite Statute” which holds dog owners strictly liable for damages caused by injuries inflicted by their dogs. The phrase “strictly liable” means that the dog owner is liable regardless of whether the owner knew about the dog’s dangerous propensities and regardless of whether the owner did anything wrong. To impose strict liability under the law, you simply must meet the elements of the statute.

But there is another basis to hold a dog owner liable for damages caused by the dog. In Washington a dog owner can also be held liable for damages under the common law. In this chapter I explain what “common law” means and how a dog owner can still be obligated to pay damages even if the terms of the “Dog Bite Statute” cannot be met.

### **What Is “Common Law”?**

In our system of government, laws are usually created in two ways. The first way is when elected representatives draft a law and then enact it. At the state level, this body of representatives is called the “legislature.” The Washington state legislature creates laws known as “statutes.” At the local or city level, the body is often called the “city council” and it can create laws known as “ordinances.” At the county level these laws may be called “codes.” The “Dog Bite Statute” is an example of a law created by the Washington state legislature.



The second way that laws can be created is through the courts. This is also called “judge-made law” or more accurately, the “common law.” Essentially, the “common law” refers to a body of law that is created by the decisions or opinions of judges. These judge-made decisions must be followed and enforced by the lower courts, often called trial courts. A leading judge-made law is often referred to as “precedent” because a lower court must comply with the decision and also enforce it in other cases with similar fact patterns.

The courts are only permitted to decide issues of law based on the narrow set of facts before it. The courts cannot make law based on hypothetical facts. This means that the common law can take many years to develop. As a result, the common law may be created in a patch-work fashion. At times, seemingly inconsistent or contradictory laws can be reached by two different courts when the facts of the case are nearly identical or similar. The application of the common law can be much less predictable since the facts giving rise to the laws may be slightly different in subsequent cases. The existence of a new fact or the omission of a small fact in a new case can give rise to new exceptions or changes in the common law addressing that particular issue.

It is important to understand that the state legislature can enact a law that overrules or changes the common law on a particular subject. This can only occur if the legislature’s law is determined to be constitutional, which is a question left up to the courts. For example, by enacting the “Dog Bite Statute,” the Washington state legislature essentially supplemented or added to the common law by creating a new cause of action as long as the elements of the statute are met.

In Washington, there is a body of judge-made law (or common law) that has been created over the years with respect to liability of dog owners for injuries or damages



inflicted by their dogs. The “common law” liability of dog owners is more fully explained below.

### **Overview of Common Law Liability for Dog Bites**

First, a common law claim against a dog owner may be pursued *in addition* to a claim brought under Washington’s specific dog bite statute. The two types of claims are not mutually exclusive. Thus, a bite victim can pursue both common law and statutory violations against the dog owner. This only means that there are two theories being alleged to impose liability. It does not give a victim the right to collect any additional damages.

Under Washington common law, a person who keeps or harbors a dog, and who knows or should reasonably know the dog has vicious or dangerous propensities likely to cause the injuries complained of, is strictly liable for the injuries caused by the dog regardless of negligence committed by either the keeper of the dog or the injured person.<sup>12</sup> Any injury caused by such an animal subjects the owner to strict liability without the need to prove that the dog owner was negligent. The term “negligent” requires that you prove the dog inflicted injury due to the owner’s failure to exercise reasonable and ordinary care.

Thus, a dog owner may be held liable for a dog bite if it can be proved that the owner merely had some prior knowledge of the dog’s dangerous tendencies. It is not necessary to prove that the owner acted unreasonably or that the owner was careless—only that the owner knew that his or her dog was potentially dangerous to people. The courts have also stated that it is irrelevant how the dog became unusually dangerous, i.e., whether the injury happens intentionally or inadvertently, or whether it is due to the dog’s heredity.



## CASE ILLUSTRATION #4

Case Illustration #1 discusses a case that I handled where a dog owner used the classified ads to give a dog away to another family. Although the dog was described in the newspaper ad as “gentle, loving and good with children,” the animal viciously attacked the child of the person who answered the classified ad.

In that case, we were able to present a strong common law claim against the dog’s former owner by discovering that the dog had previously bitten a child. We were also able to prove that the former owner knew about this previous attack, yet still chose to give the dog away to another family with children. Without evidence showing that the former dog owner had prior knowledge of his dog’s viciousness, a successful common law claim would have been difficult to pursue. The case eventually settled for an amount that was well above six figures.

Washington common law does not restrict liability only to the dog “owner.” The law makes it clear that anyone who “keeps or harbors” the dog can be liable for injuries and damages inflicted by the dog as long as that person had prior knowledge of the dog’s viciousness. The term “harbor” has been defined as one who protects the dog and keeps or treats the animal as his own.<sup>13</sup> Thus, anyone who watches or keeps a dog, despite not being the dog’s true owner, can still be liable for injuries inflicted by the dog if you can show that person had prior knowledge of the dog’s dangerous tendencies.



## CASE ILLUSTRATION #5

In one case,<sup>14</sup> a business owner took in a stray dog and occasionally tied the dog up on his property. Some of the evidence showed that this person fed the dog on at least one occasion and that he also instructed his employees to take care of the dog at various times.

A person was viciously attacked by the stray dog when he ventured onto the business owner's property to make a delivery. The victim then sued the business owner to recover damages. Evidence was introduced at trial to show that the business owner and his employees knew the dog was aggressive towards people. The jury rendered a verdict against the business owner by finding that he harbored and kept the dog as his own.

On appeal, the court ruled that it did not matter that the business owner was not the "true owner" of the dog. It only mattered that the business owner harbored the dog while also knowing that the dog was potentially dangerous to other people. Thus, the jury's verdict was upheld.

Under Washington common law, it is not necessary for a dog to have previously bitten someone for its owner to be presumed to have knowledge that it was likely to do so.<sup>15</sup> The only requirement is that the dog owner had some knowledge of a trait or propensity of the animal likely to cause the accident or injury complained of.<sup>16</sup> This means it is not necessary to show that the dog has previously inflicted the same kind of injury as the current injury. For example, if the owner previously knew that the dog liked to growl and snarl, or bare its teeth at people, then this may be enough evidence to hold the owner liable for injuries if the dog later attacks and bites a person.

### **Negligence**

Washington common law also permits an action against



the owner of a dog based on a theory of negligence. The term negligence means that a person has failed to exercise reasonable and ordinary care under the circumstances, giving rise to injuries or damages. Thus, if you can show that the dog bite was caused by the owner's failure to exercise ordinary care in some way, then the dog owner is legally responsible for the injury. Also, if the owner failed to restrain or care for the dog in a particular manner and that omission was a proximate cause of the injury inflicted by the dog, then the owner is liable for the harm.

One example of a negligent dog owner is someone who knew that his dog had a propensity to jump on people and then failed to exercise ordinary care to prevent this conduct from happening. If the owner's failure to control his dog was a cause of harm to another person, then a claim for negligence may exist. In that situation, the owner is responsible for any injuries and damages inflicted by the dog.

### **CASE ILLUSTRATION #6**

In one case,<sup>17</sup> a man and his daughter were on a motorcycle. A neighbor's dog ran into the street to chase the motorcycle, causing the motorcycle to crash. Both the man and his daughter were seriously injured.

There was evidence to show that the dog owner knew his dog had chased other vehicles before this incident. Thus, the victims were permitted to claim that the dog owner was negligent for failing to control and restrain the dog so it could not chase motorcycles. It did not matter that the dog had never caused a similar accident, only that there was some evidence to show that the owner failed to exercise ordinary care in allowing his dog to roam free and chase a motorcycle.



It is also important to remember that a theory of negligence can be asserted *in addition* to theories of common law strict liability (i.e., the dog owner had prior knowledge of the dog's dangerous propensity) and a violation of the dog bite statute. Again, these three legal theories of recovery are not mutually exclusive (i.e., they can all be asserted in the same case against the dog owner).

### **Contributory Negligence**

The concept of contributory negligence and assumption of risk may also apply in cases involving dog bite injuries. The phrase “contributory negligence” refers to the negligent conduct of the person who was bitten by the dog. If that person failed to exercise care, and this failure was a cause of the dog inflicting injury, then this person may be judged to be partially or wholly responsible for the dog bite injury.

However, the concept of contributory negligence may not apply in a claim brought under the dog bite statute. That is, a compelling argument can be made that since the statute imposes strict liability against the dog owner, it does not matter that the victim was also partially negligent or at fault in some way. Another convincing argument is that the dog bite statute only expressly allows a defense of provocation of the dog. Had the legislature intended to allow a defense of contributory negligence asserted against the victim, it could have written this exception into the statute. The fact that the legislature did not expressly allow a defense of contributory negligence offers persuasive support for the contention that the dog owner should not be allowed to escape or minimize liability based on the omissions and/or conduct of the victim.

Under Washington common law, the courts have made it clear that a dog owner who has prior knowledge of his dog's vicious or dangerous propensities is strictly liable for injuries inflicted by his dog. The courts have ruled that it does not



matter if the victim was also somehow negligent or partially responsible for causing the dog to inflict injury. Thus, under common law the dog owner could not argue that the victim was negligent as long as the victim could prove that the owner knew his dog was dangerous or had vicious propensities. The reasoning was that a dog owner had an absolute duty to either destroy or confine a dog known to be dangerous and make sure that it could not injure another human being.

However, in 1986 the Washington legislature enacted a law now known as “comparative fault.” This law states that the fault of all potential individuals and entities must be determined when deciding whether a person is legally obligated to pay damages. This law was enacted after most of the body of law addressing common law liability for dog owners was created by Washington courts. Thus, there may be a question about whether certain aspects of the common law addressing dog owner liability is still good law. This may not be known for sure until a higher court is asked to decide this issue.

### **Assumption of Risk**

The defense of assumption of risk states that a person cannot recover damages for an incident if that person knowingly assumes a risk that gave rise to the injury. There are strong arguments to suggest that a dog owner cannot allege the defense of assumption of risk. For starters, the “Dog Bite Statute” does not appear to permit this defense. The only defense under the statute is provocation of the dog. Under common law, the dog owner is strictly liable if it can be shown that the dog owner had prior knowledge of the dog’s dangerous propensities. Thus, a finding of strict liability would appear to eliminate any potential argument that the victim assumed a known risk associated with the animal. Nonetheless, a resolution of these issues will likely depend



heavily on the particular facts involved. There may be some fact pattern where a court might allow the dog owner to argue that the victim assumed a known risk associated with the dog which gave rise to the injury.

### **Landlord Liability for Dog Bite**

Occasionally I come across a case where the dog attack occurred on property that was being leased to or rented by the dog owner. The question is therefore, can the landlord be held responsible for the dog bite injury under the common law even though the landlord doesn't own or harbor the dog? The answer is usually no. The Washington Supreme Court has held that a landlord cannot be held liable for the harm caused by a tenant's dog, even if the landlord had knowledge of the dog's vicious or dangerous propensities.<sup>18</sup> Now, if the facts show that the landlord also participated in caring for the dog, this may be an exception. However, there is no current Washington court case that has expressly addressed this issue.

### **Statute of Limitations**

The law imposes strict time requirements on when a claim must be settled or filed in court. In Washington, a dog bite victim generally has three years from the date of injury to settle or file his claim. For victims who are children, this three-year period does not begin to commence until the child turns 18. This means that a child has until his or her 21<sup>st</sup> birthday to settle or file a claim. However, in most dog bite cases involving young children, the claim should usually be settled or resolved well before the child's 21<sup>st</sup> birthday.



## **NINE MISTAKES DOG BITE VICTIMS SHOULD AVOID**

A person who is the victim of a dog bite attack has a legal right to recover compensation as long as liability can be imposed against the owner or person responsible for the dog. Given this right, the insurance company who is legally obligated to compensate the victim will go to great lengths to either deny the claim or minimize the amount of compensation it has to pay. In fact, most people who enter the claims process are very much surprised to discover just how far the insurance company will go to avoid paying a fair settlement. As a result, there are certain steps that a dog bite victim can take to protect his or her rights and maximize recovery. Or put another way, there are at least nine mistakes that I see dog bite victims make. Committing one or more of these mistakes can have devastating consequences in the legal claim, or significantly reduce the amount of compensation the insurance company is required to pay.

That being said, you should understand that this chapter is *not* intended for people who may wish to bring a frivolous claim or for those who may want to recover an unreasonable amount of compensation for an injury that is minor or insignificant. If you bring a frivolous or unfounded claim, it doesn't matter what you do or don't do because the insurance company will go to extraordinary lengths to defeat that claim. Also, when I say that victims should *maximize their recovery*, I



mean that there are certain mistakes to avoid so you have the greatest chance that the insurance company will pay out the maximum amount of dollars to settle the claim. Here are the mistakes to avoid:

**1. Failing to seek medical treatment promptly.** If the injury is serious enough to warrant medical attention, then you need to promptly consult with a doctor, or go to your local emergency room. Insurance companies may refuse to believe that the injury is serious unless prompt medical attention has been received. Also, a visit to the doctor will result in the creation of a chart note that becomes a permanent record in the case. The magnitude of the injury, as well as your symptoms, will be recorded by a professional and this information can be used later to prove how bad the injury is.

**2. Failing to notify the proper authorities.** If you have been bitten, the proper authorities should be immediately notified. This may include the police or the local animal control agency. An investigation by the authorities can produce information and witness statements that may be critical in helping you establish liability against the animal's owner. Sometimes the most important question to answer is, "Who owns the dog?" If you are not familiar with the dog, or if the dog runs away after the attack, then an investigation by the proper authorities may become even more important to your subsequent legal claim.

**3. Failing to take multiple photographs of your injuries and wounds.** This is extremely important. Often times the value of a dog bite injury is heavily dependent on the appearance of the initial injury, along with the appearance of subsequent disfigurement and scarring that



develops over time. You should take multiple photographs over the period of time that it takes the injury or wound to heal. Insurance companies will often put a great deal of weight on photographs, especially if the injury is significant and any subsequent scar or disfigurement is severe. We have all heard the adage, “A picture is worth a thousand words.” This is no less true with photographs depicting severe dog bite injuries, disfiguring wounds, or prominent scars.

**4. Giving a recorded statement to the insurance company.** If the dog owner has insurance, the carrier will almost always ask you for a recorded statement. Don’t do it! The statement will be used by the company to look for any “holes” in your story. There are always minor discrepancies, and sometimes errors, when a person is asked to recount a traumatic incident. The carrier knows this and will use these to either reject your claim entirely or to minimize the amount of compensation it has to pay out. The only reason to give a statement is to help the insurance company. Sometimes it may be beneficial to give a statement to the company, but you should always consult with an attorney first to determine if that situation applies to your case.

**5. Signing insurance company forms and medical authorizations.** For the same reasons you should not give a recorded statement to the insurance company, you should not sign any forms or medical authorizations that it requests. Again, these forms are used to protect the carrier’s interest. The insurance company will be looking for any information in your past medical history to build its case against you. In one case of mine, the client had executed medical authorizations allowing the company to dig far back into her medical history. These records revealed unflattering information about my client to the extent that the



information damaged her reputation and made it difficult for me to settle the case for a much higher amount. Please don't help the insurance company by signing documents it asks you to sign.

**6. Failing to document everything.** You should write a statement about the incident while everything is fresh in your mind. Your claim may take many months, or even years, to resolve. Writing things down will help you to record and recall important facts that may be useful later on. You should keep a file to store documents, photographs, and records related to the claim, like receipts, medical records, names and phone numbers of witnesses, correspondence from the insurance company, the address and phone number of the dog owner, information about the dog, investigative reports from the authorities, etc. If you decide to hire a lawyer, your file of records and documents can provide enormous assistance to the attorney and his or her staff in representing your interests. I remember one case where the person had previously written down the dog owner's name, address and telephone number, but then lost this piece of paper by the time he came to see me nearly three years later. By that time it was virtually impossible for me to track down the identity and location of the dog owner so I had to decline the case (which I believed had a settlement value of at least \$50,000 to \$75,000).

**7. Settling your claim too soon, or appearing too eager to settle your claim soon.** If the injuries are severe, it may take many months or years before your injuries heal or before they reach maximum improvement. The insurance company will likely want to pressure you into making a quick settlement. *Don't!* The carrier knows that quick settlements mean much lower pay-outs. And if you have experienced any



disfigurement or scarring, it may take a long time before the doctors know whether it is permanent or whether future revision surgery may be necessary. The existence of permanent scars or disfigurement can dramatically increase the value of your claim, so you are always wise to wait to resolve your claim.

Also, if you appear too eager to settle the claim, this can negatively impact the case. Insurance adjustors are trained to look for signs that may weaken your negotiating position. If you are in debt or need money fast, the insurance company will use this fact to its advantage by making much lower settlement offers than might otherwise be warranted. In one case of mine, the client had tried to negotiate a settlement on his own. But during negotiations he also revealed that he had substantial debt and needed the money fast. When I got into the case, the insurance adjustor used this information against me to keep the settlement unreasonably low. The client ultimately had to accept this unreasonably low offer because the insurance adjustor knew that filing a lawsuit would delay resolution of the claim for at least another 18 months. The insurance adjustor knows that a person who really needs the money fast is in a much weaker position to ask for a higher settlement. Therefore, don't appear too eager to settle. Take your time. In fact, be willing to negotiate the claim over a period of days or even weeks. Patience is usually met with a much higher settlement figure.

**8. Not being absolutely honest with your doctors and the authorities.** The credibility of the dog bite victim is extremely important. Oftentimes an incident or claim can only be proven based on what the victim says and what the dog owner says. Thus, if you give statements to your doctors or the authorities that turn out to be false, this will likely cause severe damage to your case—if not completely destroy it.



Although it sounds like a cliché, honesty is absolutely the best policy. Be above reproach when it comes to describing what happened in the incident and how the injuries have affected you. Even minor exaggerations or incomplete versions of the incident to the doctor can cause major problems in the claim. Also, be aware that statements you make to others can be used against you. If you make a false statement to someone like a witness or co-worker or friend, that person can be used as a witness against you. So being honest to everyone is the best policy.

**9. Failing to hire a lawyer if the injuries appear to be serious, disfiguring or permanent.** If your injuries are serious or permanent, then it is usually in your best interest to hire a lawyer to help you resolve the claim. Please remember that insurance companies go to great lengths to train their adjustors on how to dig up information to use against you, and then teach them how to use this information to negotiate and minimize your claim. Adjustors usually handle thousands of claims every year so they are expert negotiators and evaluators of injury claims. Many times the insurance company will assign a dog bite case to the person who has the most knowledge and experience with these types of claims. So that adjustor will be well-versed on the law and understand the defenses and arguments available in a dog bite case. In most cases involving severe injury or scarring, the experienced dog bite lawyer will be able to obtain much more compensation than the unrepresented victim can recover on his or her own (and this is even true after the attorney subtracts his fee!). I handle dog bite cases on contingency so there is no out-of-pocket cost to see me, and I can usually tell you whether the case is worth pursuing with a lawyer or if you can go it alone (please refer to the last chapter of the book if you wish to speak to me about your dog bite case).



Also, by attempting to settle your case on your own you take the risk that you might do or say something that might permanently damage the case in some way. Even if you hire a lawyer later on, that lawyer is pretty much stuck with whatever has happened in the case. If you make statements that contradict the medical records, or say something to the adjustor that reveals what amount you are willing to accept as a settlement, or seek out inappropriate treatment, this can make it virtually impossible for the lawyer to resolve the case for maximum value. Oftentimes the best thing a dog bite victim can do is to immediately hire counsel to act on his or her behalf to ensure that no mistakes are made and that everything is handled professionally so the chances of recovering a satisfactory settlement is maximized.



## **WHEN DOG OWNERS COMMIT A CRIME**

In previous chapters I discussed Washington state’s “Dog Bite Statute” as well as this state’s common law regarding the dog owner’s civil liability for injuries and damages inflicted by the dog upon another person. These laws give dog bite victims the legal right to recover monetary compensation from the dog owner (usually paid by the owner’s insurance company). However, Washington state has laws in place that may also subject the dog owner to criminal responsibility. Unlike civil liability, which only obligates a person to pay monetary damages to another, the conviction of a crime will subject the dog owner to possible jail time or monetary fines, or both.

In Washington, the owner of a known “dangerous dog” or a “potentially dangerous dog” that aggressively attacks and causes severe injury or death of any human being shall be guilty of a Class C felony.<sup>19</sup> In non-death cases, the injury must be severe enough to cause broken bones or disfiguring lacerations requiring multiple sutures or cosmetic surgery. The conviction of a Class C felony may result in punishment of up to five years in jail, or up to a \$5,000 monetary fine, or both.

The term “dangerous dog” refers to one that inflicts severe injury on a human being without provocation, or kills a domestic animal without provocation while off the owner’s property, or that has been previously found to be a potentially dangerous dog with the owner’s knowledge. So for instance,



a dog that has killed another person's pet dog or cat while off the owner's property and then later inflicts severe injury on a person may subject its owner to prosecution for a criminal offense with possible jail time and/or monetary fines.

The owner of a "dangerous dog" can also be convicted of a gross misdemeanor, a criminal charge that is less serious than a felony, and which carries a maximum sentence of up to one year in jail or a \$1,000 fine, or both. This can occur if: (1) the "dangerous" dog is not properly registered with the local animal control authority, (2) the owner fails to obtain an adequate surety bond or insurance for the animal, or (3) the dog is not kept in the proper enclosure or is outside the enclosure and outside the owner's residence without proper physical restraint.<sup>20</sup> If any of these circumstances occur (in addition to a possible criminal conviction), the dog shall be immediately confiscated by the animal control authority.

Similarly, the owner of a "potentially dangerous dog" may also face criminal charges. The Washington state legislature has defined a "potentially dangerous dog" as one that: (1) inflicts bites on a human or a domestic animal either on public or private property, (2) chases or approaches a person upon the streets, sidewalks, or any public grounds in a menacing fashion or apparent attitude of attack, or (3) has a known propensity, tendency, or disposition to attack unprovoked, to cause injury, or to cause injury or otherwise to threaten the safety of humans or domestic animals. For example, let's say you own a dog that has been known to chase people or act in menacing ways toward others. If that dog later inflicts severe injury or kills a person, you could also be found guilty of a criminal offense that may subject you to possible jail time and/or fines.

One necessary fact that must be proved beyond a reasonable doubt to support a criminal conviction against the owner of a dangerous dog or a potentially dangerous dog is



the dog owner's prior knowledge of his dog's dangerous propensities. The Washington State Supreme Court has ruled that a dog owner may only be convicted of a crime if the owner knew, or should have known, that his dogs were dangerous or potentially dangerous.<sup>21</sup> This "prior knowledge" requirement may be difficult to satisfy because it forces prosecutors to show what the person actually knew about the dog before the incident giving rise to the crime occurred. Presumably, this is why criminal prosecutions under the "dangerous dog" statute are quite rare. To meet this difficult burden, the government usually will have to rely heavily on the statements of other witnesses, like neighbors or other caretakers for the dog, to establish that the owner knew his dog was dangerous or potentially dangerous. Without this evidence, assuming there are no damaging statements or admissions from the dog owner himself, a criminal conviction is unlikely.

There are certain defenses available to a dog owner who is criminally prosecuted for owning a dangerous or potentially dangerous dog. One defense is provocation of the animal, which is the same defense available under the civil "Dog Bite Statute" discussed in Chapter 2. There is one difference however. To invoke the provocation defense, the dog must have been on the owner's property and the dog must be securely confined on the property and unable to escape.<sup>22</sup> The dog's enclosure must be secure enough to prevent children or other trespassers from coming into contact with the animal. The owner must also erect appropriate signs on the property that warn people of a dangerous dog and not to trespass. If any one of these conditions is unmet, then the provocation defense will fail. Similarly, if the dog owner violates the statute while the dangerous or potentially dangerous dog is in a public place, the provocation defense is not available.



A dog owner also has a defense if it can be shown that the victim was a trespasser on the owner's property where the dog attack occurred. Of course, the owner must also show that the fencing around the property was secure and that appropriate signs warning about the dog were erected on the property. Thus, a trespasser who is seriously injured while on property that does not adequately secure or enclose a dog may still subject the dog owner to criminal liability.

Although the state prosecutor has the burden of proving beyond a reasonable doubt that the dog owner committed a crime by owning a dangerous or potentially dangerous dog, the burden of proof regarding the available defenses is upon the dog owner. This means the dog owner must prove by a preponderance of the evidence (i.e., that the facts supporting the defense are more likely true than not), that the dog was provoked, his property was properly fenced off, that appropriate warning signs were erected, and that the person attacked was actually a trespasser.

Interestingly, the Washington state legislature has specifically stated that the dog's breed cannot be used by the prosecutor to convict the owner of owning a dangerous dog. This means the prosecutor cannot argue in court that the owner should have known that his dog was dangerous or potentially dangerous based on the fact that the dog was a certain breed, like a pit bull or Rottweiler or some other breed with a reputation for being unusually aggressive (whether that reputation is deserved or not).

Despite the possible criminal repercussions that exist, a person may still own a dangerous dog. But only if the owner registers the dog with the proper animal control authority, properly confines the dog on the owner's property (by fence or other means), conspicuously displays warning signs about the dog (that are sufficient to warn children), *and* carries liability insurance (e.g., homeowner's policy) in an amount of no less than \$250,000.<sup>23</sup>



In the end, I have to question someone's decision to own a dangerous or potentially dangerous dog. Even if the dog is used as a means of protection, there are far better methods of self-defense that won't risk the health and lives of other people, especially children. As stated previously, the criminal prosecution of dog owners is very rare. Even if there is sufficient evidence that justifies a criminal prosecution, I have found that many times the government will only decide to prosecute in cases that are particularly egregious or noteworthy (i.e., those cases involving death or grievous bodily injury). When the government declines to prosecute, even if the facts would support a criminal conviction, the victim's only other recourse is to seek monetary compensation under Washington's civil "Dog Bite Statue" and/or the state's common law.

My advice to dog owners is this: don't risk keeping or harboring a dog that you know or should know is dangerous or potentially dangerous. If your dog acts aggressively or in a menacing way towards other people, or has bitten someone before, that dog should usually be put down. When it comes to protecting the life of a dog versus a human, it is best to err on the side of protecting human life.



## **BASIC FACTS ABOUT CHILDREN AND DOG BITES**

Of the one million dog bites that are reported each year, about 60% involve an injury to a child. Approximately 70% of dog bite wounds are inflicted on the child's face. Children ages 5 to 9 have the highest dog bite-related injuries. This is true in my own law practice. I see a disproportionately higher percentage of dog bite cases involving children. In my experience, the odds that a dog bite case involves a child are nearly 4 to 1. That means for every five dog bite cases I see, about four of them (or 80%) will involve a young child.

Contrary to popular myth, there is no such thing as a child-friendly dog breed. Although some breeds may be more suitable for children, a dog's propensity to bite is dependent on many different factors, including without limitation, the dog's inherited traits, environment, training, and socialization. Studies have shown that the most positive influence on a dog's comfort around children is the opportunity to positively interact with children when the dog is a young puppy.

There are some guidelines that, if followed, can reduce the chance that a dog will bite a young child. The critical age for socializing a dog is between the ages of three and fourteen weeks. A dog in this age range who is introduced to young children has a much lower rate of biting kids. Neutering male dogs also decreases the chance of aggressive behavior. If you plan to have young children and a dog, it is best to bring in the



dog while it is young and introduce it to the children when they are toddler age.

Dogs also need to be introduced to children of all ages. For instance, a young toddler will act differently around the dog than a 10-year-old child. Children should also be involved with training the dog. This allows the dog to experience the child as an authoritative figure and thereby decrease the chances of a bite. Children should also be involved in other caretaking activities, like feeding, grooming and bathing the dog. All of these activities will increase the dog's comfort level around the child and dramatically reduce the likelihood of a bite incident.

Parents should also never leave young children alone with a dog, particularly if the dog has limited experience with that child. You can also teach children to recognize fearful or aggressive behavior in dogs so the child can take steps to avoid or minimize the risk of a bite. And finally, parents should be good examples of how to treat the dog. Children often emulate their parents' behavior and this also applies to each parent's own interaction with the dog.

### **The Settlement Process for Dog Bite Cases Involving Children<sup>24</sup>**

In Washington, there are special conditions that must be met for the settlement of a child injury claim. In every settlement of a minor's claim, whether filed in court or not, the Superior Court shall determine the adequacy of the proposed settlement and decide whether to reject or approve it.<sup>25</sup> To assist the court in determining whether a minor child settlement is reasonable, the court will also appoint a Settlement Guardian ad Litem (SGAL). Usually, the SGAL is an experienced attorney, but not always. The SGAL has the job of investigating the facts of the case, reviewing records and pleadings, interviewing the parents or legal guardians, and then determining whether the amount of the settlement is reasonable.



To start the settlement process for a child, a petition must be filed in court, formally asking the judge or commissioner to appoint the person who will act as the SGAL. That person must be approved by the court. Essentially the role of the SGAL is to investigate the relevant facts concerning the child's case and the proposed settlement. The SGAL analyzes the course(s) of action available to the child in the underlying action. The SGAL identifies the course(s) of action that the SGAL thinks will best serve the child's interests, and makes a report and recommendation to the court concerning those interests. The role of other parties involved, who often include the child's attorney and parents or guardian, is to assist the SGAL by providing information, answering questions, and highlighting any concerns.

The SGAL must conduct an investigation and compile a report containing his or her recommendation on whether the settlement should be approved or rejected. The SGAL's investigation usually includes reviewing all of the medical records, expert reports, pleadings, and other documentation to support the claim. The SGAL usually will want to talk to the child and/or the child's parents or guardian about the effect of the child's injuries and the settlement proposal. The SGAL will also want to talk to the child's attorney to understand all of the legal issues involved and the attorney's rationale for recommending that the settlement offer be approved.

One of the issues for the SGAL to investigate and report on to the court is what to do about the child's net settlement proceeds (i.e., the amount of money left over after fees, costs, and liens have been paid). Basically, there are three options: (1) establishing a blocked bank account for the minor, (2) purchasing an annuity that will make future payments to the minor after he or she turns 18, or (3) creating a managed trust account for the benefit of the minor child. Sometimes a



combination of the three options is utilized, depending on the amount of the settlement and the age of the child.

Once the SGAL has concluded the investigation and issued a report, the child's attorney must draft and file a petition with the court asking the judge or court commissioner to approve the settlement. A hearing will be set. The child's attorney, the parents, and the SGAL will usually have to attend the hearing. Sometimes it is a good idea for the child to appear, depending on age and the issues involved. The hearing allows the court to ask any questions about the SGAL's investigation and report. Sometimes the court will ask the parents questions to learn more about the child's injuries or prognosis. If the court approves of the settlement, an order will be entered setting forth the basis for approval and ruling how the settlement proceeds will be disbursed and held and/or invested on behalf of the child.

It is important to understand that the settlement approval process concerning a minor child injury claim can take weeks or even several months, depending on the complexity of the case and the amount of the settlement proceeds involved. Sometimes the settlement process can be initiated early in the claim, enabling the SGAL to participate in settlement discussions with the other party's insurance carrier. Sometimes this may not be practical if there are other demands involved with the claim, like litigation or an impending trial date. Every case is different, and the parents should expect to speak to the attorney about what to expect in their child's claim.

### **The Legal Process for Dog Bite Cases Involving Children**

The legal process for child injury claims differs from the legal process for cases brought by adults. For starters, a child under the age of 18 is considered a minor. In Washington, a minor cannot file a lawsuit on his or her own. This can only



be done by a *guardian* appointed by the court. A guardian is someone who the court believes will adequately protect the child's interests and do what is best for the child in the legal case that is being filed on the child's behalf.

If the child's dog bite case cannot be settled with the dog owner's insurance company, the next step is to file a lawsuit. To start a lawsuit, a *petition* must be filed, asking the court to appoint a suitable guardian who will bring the lawsuit on the child's behalf. Oftentimes the guardian appointed by the court will be the child's parent or parents. However, there may be a problem with using the child's parents to act as guardians. If there is a potential argument that the parent was somehow responsible for causing the child's injury, then there may be a conflict of interest between the interests of the child and those of the parent. In that situation a parent may be prohibited from acting as the child's guardian for purposes of bringing a lawsuit.

Once the court grants the petition, an order is entered stating that the guardian is authorized to bring a lawsuit on behalf of the child. In addition to filing the petition, there are additional documents called *pleadings* that must be filed in court along with a fee paid to the clerk. These pleadings are called the *summons* and *complaint*. The case then proceeds in much the same way that one would for an adult. Please refer to chapter eight for a detailed discussion of the legal process of a dog bite case.

### **Parental Immunity**

One question that arises is whether a child's parent can be held responsible for injuries inflicted upon the child by the family dog. The answer is often no. Washington State recognizes a law called the Parental Immunity Doctrine. Under this doctrine, a negligent parent is immune from liability for injuries caused to the child unless the parent was



acting outside his or her parental capacity, or if the child's injuries were caused by a parent's willful and wanton misconduct. In the case of a family dog injuring a child, the parents will likely be immune from liability under this doctrine.

### **Negligence or Provocation by the Child**

Washington law states that a child can be held negligent and therefore wholly or partially responsible for that child's injuries and damages. Thus, the dog owner may be permitted to argue that the child was comparatively negligent for causing the injury. But in Washington there are certain limitations when it comes to accidents and injuries involving negligent children. First, the law in Washington is that children under the age of 6 years cannot be held negligent as a matter of law. The Washington State Supreme Court has decided that a child under age 6 does not have the mental capacity to be negligent.<sup>26</sup> This means that any time a child under age 6 has been injured by a dog, the dog owner's is not permitted to argue that the child was at fault.

Although the issue has not been considered by Washington courts, one could also convincingly argue that a child under 6 does not have the mental capacity to intentionally "provoke" a dog. Thus, the provocation defense available to the dog owner under the "Dog Bite Statute" may not be available in the case where the victim was a child under the age of 6.

Children age 6 and older can be held negligent, but only for failing to exercise the ordinary care that a "reasonably careful child of the same age, intelligence, maturity, training, and experience" would exercise under the same or similar circumstances. Thus, a dog owner may be able to argue that an older child was wholly or partially responsible for the child's injuries, or that the child provoked the dog and



recovery should therefore be denied under the “Dog Bite Statute.” Whether such an argument against the child is successful will depend heavily upon the particular facts of the case.

**Statute of Limitations for Dog Bite Cases Involving Children**

For adults, the statute of limitations in dog bite cases in Washington is three (3) years from the date of injury. This means the claim must be settled or filed in court within three years. But for children, this three-year period does not begin to run until a minor child turns 18. Thus, a child will usually have until his or her 21<sup>st</sup> birthday to settle the claim or file a lawsuit in court. Usually however, a young child’s claim should be resolved well before that child turns 21.



## **DETERMINING THE VALUE OF A DOG BITE CASE**

There is no magic formula or process by which someone can predict with certainty the amount of money that a dog bite case may be worth. About 25 to 30 years ago there was some limited consensus among lawyers and insurance adjustors that a general personal injury claim may be worth three times the amount of medical expenses plus lost wages. But that so-called rule was really just a guideline for predicting how a jury might determine the value of the case. Today no such guideline or consensus exists. There are so many different factors that may influence the value of a claim that it is virtually impossible to create some type of formula that can reliably predict the value of any given case.

There are some differences with dog bite cases compared to your typical personal injury claim, like car accidents and other general negligence claims. First, because dog bites often involve the laceration, puncturing and tearing of tissue, the existence of a lasting scar or disfigurement is usually present. Although each case is different and highly dependent on the individual facts involved, I can make some general observations about these types of cases when it comes to value. Generally speaking, bites that occur to the face will command a higher settlement value than an injury inflicted on another part of the body. Obviously, a prominent scar that affects a person's appearance will have more impact and value



then if the scar is located in a place that is not easily detectable by the public.

Usually, dog bite cases involving permanent scarring or disfigurement to a female victim will command a higher settlement value than if the victim is a male. This is because most people agree that women place much more emphasis and value on their physical appearance as compared to men. But if the male victim can show that his appearance has been significantly damaged or impacted, the claim may also have high value. An example would be if the male victim were a model or other professional who relies heavily on his appearance for his livelihood.

When it comes to evaluating dog bite cases, photographs of the wound are extremely important. The photographs can help demonstrate the severity of the injury and subsequent scarring much better than the cold medical record or chart that merely contains a description from the physician. Thus, a case that involves low medical bills but has photographs showing severe and extensive wounds and/or scarring can command a very high value.

Many dog bite cases involve children. But injury cases involving children can be even more difficult when it comes to determining a value. This has to do with the child being young and physically immature. Estimates about the impact of an injury on future employment, appearance and relationships (e.g. marriage) can be highly speculative because the child has not yet attained the age when the results of the injury may be fully manifested. Sometimes the dog bite wound can take years to resolve. Sometimes scarring that appears severe and extensive in childhood can look remarkably better when that child becomes an adult. For these reasons, trying to determine the future impact of a child's dog bite injury may be highly speculative and therefore more difficult to calculate when compared to those dog bite cases involving adults.



People should also understand that there is a big difference between the *settlement value* of a case and the *actual value* a jury may determine. Settlement value is always less than actual value. This is because the settlement value takes into account the enormous expense and risk of going to trial. The settlement value is always a subjective judgment made by the parties. The settlement offer has to be high enough to persuade the dog bite victim to accept the offer to avoid the increased risk and expense of going forward with litigation and a trial.

A strong defense concerning the dog owner's liability can significantly affect the value of a dog bite case. That is, if the defense can show that a jury might not find the dog owner at fault, or find that the victim provoked the animal, then the settlement value of the case will be reduced to reflect the risk that no recovery or a reduced recovery may occur. The merits of a particular defense alleged by the dog owner should be thoroughly evaluated by competent and experienced counsel so an appropriate risk-benefit analysis can be made about whether to go forward with a trial.

Generally speaking, a case is worth the amount of damages inflicted on the person who has been injured. These damages may be easy to calculate, like past and future medical charges, lost earnings, lost earning capacity, and property loss. But the law also states that the injured person has the right to recover compensation for other "intangible" harms. It is these "intangible" harms that are more difficult to calculate.

Such intangible harms may include those subjective harms that the dog bite victim has experienced from the injury, including pain, agony, disability, disfigurement, loss of enjoyment, inconvenience, and mental anguish. These intangible harms are purely subjective, difficult to determine and their existence or degree may often vary among the



people (or jurors) who are deciding the case. Ultimately, the value of a dog bite case is determined by the jury (or a judge if the case is a bench trial). When a claim arises, the injured person's attorney and the at-fault person's insurance company (and the defense attorney if the case is in litigation) continually try to evaluate how a jury might see the case and how much money a jury might award. Then each side will assign a value or a value range, and try to negotiate a settlement close to each side's own range.

An attorney will use his or her experience and expertise to help establish a reasonable range of money into which a jury's verdict might fall. Nothing is certain however. Any case can be lost at trial because juries are very unpredictable. You never know what group of people you will get on a jury. Two different juries can produce two very different verdicts, even when presented with the same evidence and testimony. You may get a "good" group of jurors or a "bad" group. Common to popular myth, you cannot "select" a good jury over a bad one. The law only allows each side to strike 3 jurors out of a panel of 30 to 40 people. Thus, a trial is always to a certain extent a gamble. There is no guarantee that a jury will reach a favorable verdict, no matter how good you or the attorney believe the case is.

As stated previously, sometimes it may take many months or years before the value of a dog bite case can be adequately assessed. One reason for this is because of the slow progress of the person's recovery or rehabilitation. Another reason is the complexity of the injury or condition that may cause a significant delay in a firm diagnosis by the treating physician. Another reason is that it may take a long time before the person's scarring and/or disfigurement is considered permanent according to the doctor.

Although many attorneys believe a case should not settle until the person obtains maximum improvement from the



injury, it may not be prudent in the case of dog bite to a child. Sometimes it may take many years before a child's condition may become fixed and stable, but there may be a stronger need to recover compensation to help fund the child's treatment expense or other special needs. Sometimes the child's injuries can resolve or even disappear over many years (like a significant scar), so waiting to resolve the claim can actually produce a lower settlement value. The time frame involved in settling a child's injury claim is really a judgment call by the child's parents, the attorney, and the Settlement Guardian ad Litem.<sup>27</sup>

There is another reason to start the litigation and/or settlement process sooner in the case of an injured child. The child's young age may also provide a compelling basis for the jury or insurance company to determine a higher level of compensation. Simply put, a young child can often evoke more sympathy and concern among jurors than an adult. A jury may be much more willing to award higher compensation if they see how vulnerable the child was at the time of injury. If the settlement of the claim is delayed until the child reaches young adulthood then this compelling advantage may be lost.

In most instances the value of a dog bite case is driven primarily by the extent and severity of the person's injuries. The particular facts giving rise to the claim of liability against the dog owner may also have some influence. Other important factors to consider include the type, extent and frequency of past medical treatment and the need for future treatment. Other factors that may affect the value of a case include, but are not limited to, the victim's likeability and credibility, the extent and duration of the injuries, the victim's age, whether the victim missed time from work, the identities and reputations of the dog owner's insurance company and the defense attorney, the specific legal or evidentiary issues



involved in the case, the county or venue where the case has been or will be filed, and the amount of settlements and verdicts for similar types of cases in the past.

You should note that no two cases are alike, even if the incident and/or injuries involved are nearly identical. This means that the evaluation of two cases that appear to be similar on the surface may actually produce widely different evaluations due to the other factors listed above. For example, a dog bite that causes a permanent scar to a person who relies on his or her appearance for his or her livelihood (e.g., a model, television personality, etc.) will be worth much more than if the person works as a coal miner or construction worker.

People need to understand that evaluating dog bite cases takes a lot of knowledge, experience and some hard-earned intuition. Without these traits you may be at a serious disadvantage when negotiating with the dog owner's insurance company. And unless you are in the business of evaluating and settling dog bite cases for a living, you should look to an experienced personal injury attorney for guidance. The dog owner's insurance company will evaluate the case by deciding the odds of winning against the range of a likely verdict. The company will decide on a settlement range that will always be less than the expected range of a jury's verdict. It's important to understand that the insurance company's settlement offer can never be introduced at trial. The jury will also never know that an insurance company exists, or how much the last offer was received. These facts are routinely kept away from the jury according to Washington State's rules governing the admissibility of evidence.

If the attorney for a dog bite victim makes a settlement demand that is too far over the insurance company's settlement range, then negotiation of the claim is usually terminated. You cannot ask for a huge amount of money and



expect the insurance company to take you or your lawyer seriously. Insurance companies rigorously keep track of verdicts and settlements in similar types of cases. They also keep track of which attorneys will take cases to trial and how well they do. Consequently, those attorneys who have a good reputation as trial lawyers, with a proven track record, will usually command the best settlement offers from the insurance company.

In the end, the attorney must balance the risk of loss at trial, or the risk of a jury verdict for less than the last settlement offer, against the likelihood of a larger verdict being awarded. There is no magic formula for this analysis, and it is often an uncertain “guesstimate.” That is why the wise person will usually consult with and retain an experienced attorney when it comes time to settle a dog bite case.



## THE LEGAL PROCESS FOR DOG BITE CASES

### Commencing a Lawsuit

If you cannot settle the case with the dog owner's insurance company, the next step is to start a lawsuit in court. Documents, called *pleadings*, must be filed in court along with a fee paid to the court clerk. These pleadings are called the *summons* and *complaint*. The summons informs the person being sued that a lawsuit is being filed and that a response to the lawsuit is due within a certain period of time (usually 20 days). The complaint describes the particular cause of action or legal theory that is being alleged against the person being sued, along with a description of the facts that support that theory. A complaint must be reasonably specific and inform the person being sued of the specific grounds supporting the claim.

The person who files a lawsuit is called the *plaintiff*. The dog owner who is being sued is called the *defendant*. The plaintiff must arrange to serve personally a copy of the summons and complaint on the defendant. The plaintiff only has a certain amount of time to settle the claim or file a lawsuit and then personally serve the defendant. In Washington, this time is usually 3 years from the date of the incident giving rise to the claim.<sup>28</sup> This deadline is called the *statute of limitations*. In claims involving minor children, the statute of limitations period is usually tolled (delayed) and will not start to run until the child's 18<sup>th</sup> birthday. Then the child



has three years until his or her 21<sup>st</sup> birthday to settle the claim or file a lawsuit.

It is a dangerous practice to wait until the statute of limitations period is about to expire before settling a claim or filing a lawsuit. If a lawsuit is filed right before the deadline and if the defendant cannot be found, or if the wrong defendant is served, the case could be dismissed and the plaintiff would get nothing. For this reason, it may be prudent to hire an attorney well before the statute of limitations expires. Many attorneys will refuse to accept a case when the statute of limitations period is about to expire because there may be insufficient time to investigate the case, file suit, and locate and personally serve the proper defendant.

### **The Discovery Process**

After the lawsuit is filed and the defendant is served, both sides participate in a process of asking for and exchanging information about the case. This process is called *discovery*. Each side is allowed to investigate what evidence and witnesses may be introduced at trial. The discovery process may entail sending or answering written questions (called *interrogatories*) and requests for production of documents and other tangible materials that are relevant to the case.

The discovery process may also include a *deposition*. A deposition is a face-to-face meeting where the attorneys are allowed to ask a witness questions under oath while a court reporter transcribes the session. Any witness who may offer testimony at trial can be deposed, including the plaintiff, the plaintiff's doctors, and the plaintiff's friends and family. The deposition is an important legal proceeding that should involve preparation on the part of the attorney and the person who is going to be deposed. In my office, we make great efforts to make sure our client (the dog bite victim) is well prepared.



In cases involving the deposition of a child, certain conditions may be requested by the attorney and ordered by the court. The purpose of these conditions may be to implement certain safeguards and limitations for the protection of the child, like how long the deposition will last, what subjects may be inquired into, and where the deposition will take place. The attorney should speak to the child and the child's parents and guardian about what to expect at the deposition. The guardian and/or parents will usually want to attend the deposition as well.

The discovery phase may also include a request by the other side that the plaintiff must submit to a medical examination, a psychological or neuropsychological evaluation, or all three. When a lawsuit involves a claim for personal and psychological injuries, the law permits the defendant to use a doctor or psychologist chosen by the defense to examine and evaluate the injured person. This can be a stressful event, particularly in cases involving children. The attorney representing the plaintiff will want to make sure there are certain safeguards and limitations in place before the examination goes forward. Oftentimes those conditions will be contested by the defendant's attorney and a judge will need to decide the matter. Sometimes these conditions may include having the examination videotaped, allowing a representative for the plaintiff to attend the exam, as well as other conditions to ensure that the exam is fair and does not unduly burden or distress the plaintiff. For instance, in my office we have a fairly specific stipulation, that must be signed by the defense attorney, that imposes several conditions and restrictions on how the examination may proceed.

## **Mediation**

Depending on which county the lawsuit is filed in, the discovery phase can take many months or sometimes more



than a year. When discovery is completed, and each side knows what evidence will be offered at trial, the parties may then begin to conduct settlement discussions. Sometimes the parties will engage in alternative ways to resolve the case, such as mediation. In mediation, the parties agree to hire a retired judge or an experienced attorney who will assist the parties in reaching a settlement.

The process of mediation is voluntary and nonbinding (unless a settlement is reached). This means that a mediator cannot force a party to settle. But the parties are expected to participate in mediation in good faith with the goal to settle the case. In fact, some superior courts in Washington State (like the King County Superior Court) require that the parties participate in mediation or some other recognized form of alternative dispute resolution. A mediation session is also confidential, so anything that is said during the session cannot be used at trial. Many times mediation can be used successfully to resolve a case involving dog bite injuries. Mediation sessions can be held over the course of one day or over several days, depending on the complexity of the case. In my office we make sure the client is well-versed on the process of mediation and the steps to take during the session.

### **Preparing for Trial**

If the case does not settle after discovery has ended, the case will proceed to trial. Each side has the option of trying the case before a judge or jury. A jury trial does not happen automatically. One party must specifically request that the case be decided by a jury as opposed to a judge. Most often the defense will request a jury by filing a document in court called a *jury demand* and then paying a *jury fee* to the clerk. Court rules usually require that certain documents must be filed and exchanged within 30 to 60 days before the trial date. These documents may include witness and exhibit lists,



motions, trial memorandums, and jury instructions, among others.

Going to trial can require tremendous resources, time and preparation. The insurance companies and their attorneys know this and, as a result, use this fact to their advantage. Oftentimes the carrier will make a settlement offer that is considered on the very low end of a reasonable settlement range on the theory that the plaintiff and her attorney will not want to incur the substantial expense and time of going to trial to beat that offer.

Understandably, most plaintiffs want to avoid going to trial. Trials are stressful and can cause additional anxiety for everyone involved. Usually a trial is the last resort to resolve the claim. Oftentimes the insurance company will not want a serious or significant dog bite injury case to go to trial, particularly when there is no serious dispute about the dog owner's fault and if the injuries are severe. However, some insurance companies have a reputation for utilizing "scorched earth" litigation tactics, needlessly forcing and prolonging the litigation process in an effort to wear down the plaintiff's attorney to force a smaller settlement. Sometimes this will include forcing an unnecessary trial, particularly if the insurance company is convinced that the plaintiff's attorney has little experience in trying injury cases in court.

Usually, it is only by threatening and preparing for trial that the plaintiff's attorney will be able to secure a reasonable and just settlement offer for the plaintiff. This is why it is extremely important that a plaintiff retains an attorney who has experience trying cases in court. You don't want to hire a lawyer for a serious injury case only to find out a few weeks or months before trial that the lawyer has either never tried a case in court or that the lawyer is afraid to try the case. In those situations, it may be too late to hire another attorney to take over. Many of the most experienced and reputable



personal injury attorneys who handle dog bite cases refuse to take over a case so late in the process, especially if the trial date is only a few months away. Of course, there may be exceptions, but this is usually a situation for people to avoid.



## **INFORMATION ABOUT DOG BREEDS**

### **Does the Dog's Breed Matter?**

This is a controversial issue. There are some who believe quite strongly that certain breeds have innate traits of aggression that make them more likely to inflict harm on human beings than other types of breeds. Opponents of this view state that a dog's propensity for aggressive behavior is dictated primarily by the dog's owner or handler and how that dog was trained and cared for early in its life.

On the one hand, there are certain breeds that appear to have a higher incident rate of inflicting harm on people, including children. According to Merritt Clifton, editor of the newspaper publication *Animal People*, the breeds of pit bull terriers, Rottweilers, Presa Canarios and their mixes accounted for 74 percent of reported attacks from 1982 through 2005. Sixty-eight percent of those attacks involved children. Following these breeds, the next group representing the highest occurrence of attacks included German shepherds, chows, and Akitas. But the question remains whether these breeds were responsible because of some innate characteristic associated with the animal or because they were more likely to be groomed and trained by their owners to act in an aggressive manner.

### **Breed-Specific Legislation: aka Breed Ban Laws**

A hot topic these days is the issue of breed-specific





legislation, or sometimes called “breed ban laws.” There are some cities in various states that have enacted specific legislation against certain breeds. They include cities in the states of California, Colorado, and Ohio. In Washington, the city of Yakima has adopted an ordinance that completely bans the ownership of pit bulls and their mixes, wolf-hybrids, and others. I am also aware that the city of Seattle has informally considered the issue, but the city council has so far refused to address the topic formally due to the lack of consensus among experts and/or council members.

In 1987, the city of Yakima adopted an ordinance that banned dogs known to be pit bulls, and specifically included those breeds which included the bull terrier, American pit bull terrier, Staffordshire bull terrier, American Staffordshire terrier, and those dogs having any identifiable pit bull variety as an element of their breeding. The new ordinance was in response to three vicious attacks by pit bull dogs on unsuspecting citizens in Yakima. Our Washington State Supreme Court ultimately upheld this ordinance as constitutional, despite the law’s effect of also banning those pit bull dogs deemed safe.<sup>29</sup>

The question is whether breed-ban laws have any appreciable effect on the reduction of attacks against humans. According to the American Society for the Prevention of Cruelty to Animals (ASPCA), the answer is no. This organization relies on a 2003 study that addressed the effectiveness of a pit bull ban passed by Prince Georges County, Maryland. The ban forced the county to spend more than \$250,000 each year to enforce the law. But the study concluded that “public safety is not improved as a result of [the ban]” and that “there is no transgression committed by owner or animal that is not covered another non-breed specific portion of the [County’s code] (e.g., vicious animal, nuisance animal, leash laws).” The study recommended that the breed-ban law be repealed.



ASPCA also points to a study by the United States Center for Disease Control (CDC) which did not support breed specific legislation because of several problems associated with this type of law, including the inaccuracy of dog bite data and the difficulty of identifying dog breeds (especially mixed breeds). The CDC also was concerned that the breed-ban laws would merely encourage irresponsible dog owners to turn to other breeds in an attempt to make the non-regulated breeds more aggressive and dangerous to human beings.

ASPCA also argues that breed-ban laws actually help to compromise rather than enhance public safety. ASPCA states that when scarce animal control resources are used to regulate specific breeds without regard to behavior the focus is shifted away from routine, effective enforcement of laws that have the best chance of making communities safer: license laws, leash laws, animal fighting laws, and laws that require all pet owners to control their dogs regardless of breeds.

On the other side of the debate is the newspaper publication *Animal People* ([www.animalpeoplenews.org](http://www.animalpeoplenews.org)), which writes that certain breeds are statistically much more responsible for attacks upon people (e.g., pit bulls and their mixes can account for nearly three-fourths of all attacks). It further asserts that the harm inflicted upon a human being by a dog may be irreparable and no amount of punishment can undo the damage. Thus, breed specific legislation can prevent the most gruesome and extreme injuries and attacks by prohibiting possession of those high-risk dogs that are more likely to cause them. The essence of breed specific laws, *Animal People* argues, is that they better protect public safety from dangerous dogs than by relying on the uncertain deterrent effect of punishment after-the-fact.

Central to the argument that certain breeds should be banned, according to *Animal People*, is that those uniquely dangerous breeds like pit bull mixes and Rottweilers often



tend to attack without the series of warnings that most other dogs provide first, and then often inflict immediate and severe injuries, whereas most other breed-types will inflict disabling, disfiguring, or fatal injuries only in sustained attacks or pack attacks. Thus, the breed-specific law will help to prevent if not eliminate those types of severe attacks that often come without any advance warning. Essentially, with certain breeds *Animal People* argues that it is much better to be safe than sorry after a gruesome attack has occurred.

However, organizations like *Animal People* do not consider breed-specific legislation a success if it does not actually stop the reproduction of problematic breeds, stop illegal dog fighting and speculation on fighting bloodlines, curtail shelter intakes of pit bulls and other “fighting” dogs, end shelter killing of dogs of all kinds to make room for the rising influx of pit bulls, and stop dog attacks on people and other animals. Thus, breed ban laws appear to be just one prong of a multitude of actions needed to successfully reduce and eliminate serious attacks on humans by high-risk dogs.

If we, as a community, continue to see more and more incidents of serious and unprovoked attacks committed by one or more of the notorious breeds (like pit bull mixes and Rottweilers), more municipalities or even the state legislature will likely start to enact breed-specific laws to assuage public concerns. Whether these laws have any appreciable effect on reducing dog-bite incidents among specific breeds appears to be a question that cannot be answered without a clear consensus among public officials and dog experts.



## **CONCERNS ABOUT INSURANCE**

A primary concern in dog bite cases is whether there is adequate insurance to pay for the victim's damages. Most homeowner insurance policies will provide coverage for injuries inflicted by the family dog. But each policy is different and should be reviewed carefully. If there is no insurance, then it is extremely unlikely that the dog bite victim will be able to receive compensation for damages.

### **Can You Sue Without insurance?**

A question I hear often from prospective clients is: even if there's no insurance, can't you still sue the dog owner? Yes, of course you can. But lawsuits cost money. In many instances a lot of money. I'm not talking about the lawyer's fees, although that certainly adds to the cost of litigation. What I'm referring to are the *costs* of litigation. The costs of litigation may include filing fees, expert fees, investigative costs, charges assessed to collect medical and other important records, costs incurred to create trial exhibits, and deposition and court reporter expenses. In many cases these costs can add up to several thousands of dollars – even in the smallest of cases. Since Washington attorney ethics rules require that a client is always responsible for costs, an attorney has to be sure that the economic value of the case justifies the expected costs associated with litigation.



When no insurance exists, there is no guaranteed source of recovery. This means the client may be stuck with several thousands of dollars of costs, even if he or she wins at trial! Contrary to popular belief, a person who wins at trial will usually have to pay his own attorney and most of the costs. This is also true in dog bite cases. A win at trial only means you are entitled to a judgment against the person who is being sued. With a judgment, you can garnish a small portion of the person's wages, or try to execute on the defendant's personal assets. But there are costs associated with these collection efforts, and again, there is no guarantee that you will be successful in recovering money, or enough money to pay the attorney for his or her time and effort spent in collection. And the collection process can take a lot of time and effort. The person who was successfully sued may also file for bankruptcy, which may wipe out the judgment or the debt, leaving the dog bite victim with a worthless piece of paper.

Given the difficulties associated with the collection process, along with the sizeable outlay of money necessary to pay the costs of litigation, most contingency fee lawyers will decline to accept a case unless there is an insurance policy to pay a verdict. Without a guaranteed source of recovery, most attorneys will refuse to incur the thousands of dollars of expense and spend the hundreds of hours necessary to prepare the case and take it to trial.

### **Private Insurance**

Oftentimes the dog owner has a homeowner's insurance policy. Most homeowner's policies will provide coverage for damages or injuries inflicted by the owner's dog. However, most coverage questions are dictated by the terms of the insurance policy. And many times you cannot get access to the dog owner's insurance policy until you actually file a lawsuit against the owner. Thus, a lawsuit may be necessary



just to find out if there is an insurance policy, and if so, whether that policy will provide coverage to pay a settlement or verdict.

In addition to homeowner's coverage, there is also renter's coverage. A renter's insurance policy is designed to protect those people who rent their home or apartment. Many renter's insurance policies also provide coverage for dog bites. Most homeowner's and renter's policies that do provide coverage for animal bites usually will provide coverage of at least \$100,000 or more. This means that the carrier will pay up to the maximum coverage allowed under the policy to someone who has been injured or harmed by the policyholder's dog.

At present however, there are some insurance companies that have refused to provide coverage for dog bite attacks, or have refused to provide coverage for certain breeds of dogs, like Rottweilers, chow chows, Presa Canarios, and pit bull mixes. These insurance companies have alleged that certain breeds are more responsible for the claims that are filed by victims, and as a result have attempted to limit their exposure to claim payouts. Those dog owners who purchase homeowner's and renter's insurance should carefully read the policy to make sure what limitations of coverage actually do exist for injuries inflicted by their dogs.

Insurance coverage may also exist for a dog bite incident under an umbrella policy. Umbrella insurance is designed to give an added layer of protection above and beyond the limits of a homeowner's policy. An umbrella policy can add an extra one to five million dollars in liability coverage. This protection is designed to "kick in" when the liability coverage on other current policies (like a homeowner's policy) has been exhausted.

As stated earlier, you may not even know whether the dog owner has insurance and if so, whether the carrier will



actually offer coverage. Sometimes the only option available is to file a lawsuit against the dog owner so that this information can be produced during the discovery process. In that situation the dog bite victim is wise to hire an attorney immediately so proper steps can be taken to analyze insurance coverage limits and defenses to coverage that the carrier may assert.



## **THE ADVANTAGES OF HIRING A LAWYER**

If you have suffered injuries caused by a dog, you may want to hire a professional who has years of experience dealing with insurance companies to protect your interests. Remember, the insurance company will be doing everything it can to minimize the claim and avoid paying fair compensation to cover the injured person's past expenses, damages and future needs. Don't help the adjustor by going it alone. Please give serious thought to hiring an experienced attorney to handle your dog bite injury claim, especially when the injuries are serious or permanent or when they involve significant scarring and/or disfigurement.

### **Whether a Lawyer is Necessary**

Not every case requires a lawyer. How do you know if one is necessary? There are no hard and fast rules about the decision to hire an attorney. But generally speaking, a person usually has to suffer a fairly serious dog bite injury to justify the expense of hiring a lawyer. The economic value of the claim has to be high enough to justify the expense of hiring a lawyer and the costs associated with pursuing a claim.

What is a serious dog bite injury? Well, again there are no hard and fast rules. A serious dog bite injury can require several thousands of dollars in past and future medical expense. But I have also seen serious dog bite injuries when the total medical charges are low, but the injury leaves





significant or permanent scarring and disfigurement. In the latter type of case, a significant scar injury, especially one to the victim's face, can command a settlement figure well into six figures.

In dog bite cases involving children, a lawyer may be advisable. When the child has received permanent scars and/or disfigurement, I usually recommend that the parents hire an experienced attorney. There are other legal requirements involved in child injury claims that will usually justify the involvement of an attorney.

When it comes to making a decision about hiring a lawyer, the reader should remember that each case is different and the decision to hire counsel will depend on the individual facts involved. When in doubt, a dog bite victim should at least consult with an experienced lawyer to learn more about his or her rights and to determine whether hiring an attorney is the best decision. Most reputable attorneys will be upfront about whether a particular case is too small to justify the expense of a lawyer.

### **Contingency Fee**

Understandably, most people are wary of hiring an attorney because of the expense. Cases involving injury claims, including those involving dog bite injuries, are usually handled by experienced lawyers on a contingency basis. With a contingent fee agreement, the lawyer agrees to defer his or her fee until the case successfully resolves. The fee is based on a percentage of the recovery obtained by the lawyer. If there is no recovery, then no attorney fee is owed. Most contingency fees can range anywhere from one-third to 50% of the recovery. Usually the customary contingent fee rate is around one-third of the settlement or recovery obtained by the lawyer.

Often a serious dog bite case can take years to resolve and the lawyer will spend hundreds of hours on the case before he



or she gets paid. The riskier and more complex the case, the higher the contingency fee will be. If a lawyer takes on a case that has a high risk of failure, and hence the possibility of receiving no fee, that lawyer will usually want a higher contingency fee as a premium for taking on this risk. Contingency fees allow people of limited financial resources to hire the best legal representation possible. This helps to level the playing field because the dog owner's insurance company will usually retain some of the most expensive and experienced defense attorneys to help deny, delay, and/or defend the claim.

The costs associated with a claim are a different matter. As previously discussed, the term "costs" refers to those expenses that are incurred while investigating the claim and, if necessary, prosecuting it in court. Examples of typical costs include expert fees, court costs, deposition fees, and record retrieval expenses. In Washington, an attorney is permitted to advance all costs and then deduct them from the client's recovery at the conclusion of the case. This allows the client to hire an attorney without ever having to pay out of pocket. Most experienced and reputable accident attorneys will agree to advance costs in a case. There are exceptions, of course, depending on the type of case and the facts involved.

### **What a Good Lawyer Can Do For You**

Many people do not know what an experienced lawyer can do in these types of cases. I can't speak for every experienced personal injury attorney, but here is a list of the types of services that my office will often provide to our clients:

- Conduct initial interview with client.
- Educate and teach the client about the claim process.



- Educate and teach parents and/or child about the court approval and Settlement Guardian ad Litem process (in cases involving injured children).
- Educate and teach client about the litigation process.
- Draft and file petition to appoint the Settlement Guardian ad Litem (SGAL) (in those cases involving children).
- Gather written records and documents to support the claim, including medical records, school records, police report, etc.
- Perform investigation of the client's claim, including gathering witness statements, photographs, diagrams, and physical evidence.
- Read and analyze applicable insurance policies that may apply (e.g., auto, homeowners, health) to see what coverage is available to pay for the client's damages, like medical, hospital, and wage loss benefits.
- Meet and confer with the client's medical doctors and other healthcare providers to fully understand the client's condition.
- Meet and confer with the SGAL to discuss the case and provide all relevant information regarding the child's claim (in cases involving children).
- Obtain specific reports from experts to support the client's claim.



- Analyze any pertinent legal issues that may affect the client's case, such as the dog bite statute, common law principles, contributory negligence, assumption of risk, comparative fault, etc.
- Analyze client's health insurance or governmental benefit plan to ascertain whether any money spent by either entity for the benefit of the client (like health care expenses, wage loss benefits, etc.) must be repaid.
- Analyze and address any liens asserted against the settlement recovery. (Various healthcare providers, insurers, or governmental agencies may file liens seeking to be repaid money for benefits already paid to or on behalf of the client.)
- Assist client in locating available resources to assist with his or her recovery (local, state, federal, and nonprofit assistance programs).
- Contact the insurance company about the claim and conduct periodic discussions with the carrier about the case so that appropriate reserves are set aside to settle it.
- Conduct negotiations with the insurance adjustor in an effort to settle the claim, either prior to litigation or trial.
- If a lawsuit will be filed, prepare and draft the summons and complaint to file in court.
- Perform an investigation to locate the defendant so that personal service of the summons and complaint can be achieved.



- Arrange for personal service of the summons and complaint on the defendant as required by law.
- Prepare and draft written questions for information from the other side (called *interrogatories* and *requests for production*).
- Prepare the client for deposition.
- Prepare for and conduct the deposition of the defendant and other lay witnesses.
- Meet with the client's physicians to prepare for their own depositions when requested by the defense attorney.
- Prepare to take the deposition of the defendant's experts, including medical experts.
- Prepare the client for his or her medical examination by the defendant's medical experts.
- Answer questions and produce information and records requested by the other side.
- Review and analyze the client's medical records and billings.
- Hire other necessary experts to support or prove the claim, including other physicians, economists, engineers, vocational experts, etc.
- Review and analyze expert reports about the case, including those addressing liability, injuries, and damages.



- File the necessary documents in court as required by the judge, including witness lists, trial readiness, settlement conferences, etc.
- Prepare the client and other witnesses for trial.
- Create and prepare exhibits for trial.
- Organize records and other documentary evidence intended to be introduced at trial.
- Prepare for mediation and/or arbitration by organizing records and other documents for submission to the mediator or arbitrator.
- Research and write briefs and file motions to keep out or let in certain evidence at trial.
- Perform or participate in mock trials or focus groups to prepare for trial.
- Try the case over the course of several days before a judge or jury.
- Analyze verdict and research any issues that occurred at trial.
- Write briefs or motions following the verdict to obtain post-trial relief, including motions for attorney fees, or to overturn the verdict.
- Analyze trial record to determine if an appeal is warranted.



- Research and write briefs and motions if an appeal is filed. Negotiate subrogation claims submitted by a third party (the client's insurance company, or a government agency) that has the right to be paid back out of the settlement recovery for benefits previously paid to or on behalf of the injured client.
- Review and analyze the SGAL's report regarding the recommendation to approve or reject the child's settlement (in cases involving injured children).
- Draft and prepare the petition asking the court to approve the minor child's settlement (in cases involving injured children).
- Attend and argue the court hearing regarding the approval of the minor child's settlement (in cases involving injured children).
- If a blocked account is to be opened for the child, provide the financial institution with necessary information (in cases involving injured children).
- If an annuity is to be purchased, provide the furnisher of that annuity with all necessary information and complete all necessary paperwork, release forms, disclosure statements, etc. (in cases involving injured children).
- If a trust fund is to be created for the benefit of the child, review and complete all necessary paperwork, release forms, disclosure statements, etc. (in cases involving injured children).



- Draft and file in court the appropriate written proof or receipts showing creation of the blocked account, annuity purchase, or managed trust account (in cases involving injured children).

Please keep in mind that this is a general list of various tasks that the lawyer may need to perform and complete in any given case. There may be additional tasks, depending on the facts of the case and the client's needs. This list will give the reader some idea of the type of work that may be necessary to pursue a successful legal claim on behalf of a dog bite victim.

## ABOUT THE AUTHOR

Washington attorney Christopher Michael Davis has been representing children and adults in accident cases and against insurance companies since 1994. In 2006, he was named a **Rising Star Attorney** by *Washington Law & Politics* magazine (a recognition given only to the top 2.5% of lawyers age 40 and under in Washington State). In 2007 and 2008, *Washington Law & Politics* named Mr. Davis a **Super Lawyer** (the top 5% of all lawyers in Washington). Mr. Davis has also been named in the “Top 100 Trial Lawyers” in the State of Washington by the American Trial Lawyers Association for years 2007 and 2008.

Mr. Davis speaks at Continuing Legal Education seminars on topics related to personal injury. He teaches and instructs other lawyers in Washington State on topics such as jury selection, proving damages and developing winning trial techniques.

Mr. Davis has been licensed to practice law in Washington State since 1993. He has obtained millions of dollars in verdicts and settlements for his clients. He has successfully represented numerous children in serious accident cases involving traumatic brain injury, paralysis, and wrongful death. Mr. Davis is a member of numerous professional organizations, including the Washington State Trial Lawyers Association, American Association for Justice, and the North American Brain Injury Society.

For a sampling of verdicts and settlements achieved by Mr. Davis in a variety of cases, please visit [www.DavisLawGroupSeattle.com](http://www.DavisLawGroupSeattle.com).





## ENDNOTES

- <sup>1</sup> *Courtesy*: www.dogexpert.com.
- <sup>2</sup> “Dog-bit Victims Suffer Long After Attack.” *The Seattle Times*, October 11, 2008.
- <sup>3</sup> “Rare Felony Charge Filed Against Owner in Pit-bull Attack.” *The Seattle Times*, November 8, 2008.
- <sup>4</sup> “Pit bulls on the Loose? You May Be on Your Own.” *The Seattle Times*, September 11, 2008.
- <sup>5</sup> See RCW 16.08.040.
- <sup>6</sup> See *Beeler v. Hickman*, 50 Wn. App. 746, 750 P.2d 1282 (1988).
- <sup>7</sup> See *Beeler v. Hickman*, 50 Wn. App. 746, 750 P.2d 1282 (1988).
- <sup>8</sup> See King County Code 11.04.020(P).
- <sup>9</sup> See *Shafer v. Beyers*, 26 Wn. App. 442, 613 P.2d 554, *review denied*, 94 Wn.2d 1018 (1980).
- <sup>10</sup> See *Dominick v. Christensen*, 87 Wn.2d 25, 548 P.2d 541 (1976).
- <sup>11</sup> See RCW 16.08.060.
- <sup>12</sup> See *Johnston v. Ohls*, 76 Wn.2d 398, 457 P.2d 194 (1969); *Brewer v. Furtwangler*, 171 Wash. 617, 18 P.2d 837 (1933).
- <sup>13</sup> See *Harris v. Turner*, 1 Wn. App. 1023, 466 P.2d 202 (1970).
- <sup>14</sup> This is a true dog bite case that happened back in 1918. See *Miller v. Reeves*, 101 Wash. 642, 172 P. 815 (1918).
- <sup>15</sup> See *Mailhot v. Crowe*, 99 Wash. 623, 170 P. 131 (1918).
- <sup>16</sup> See *Johnston v. Ohls*, 76 Wn.2d 398, 457 P.2d 194 (1969).
- <sup>17</sup> See *Johnston v. Ohls*, 76 Wn.2d 398, 457 P.2d 194 (1969).
- <sup>18</sup> See *Frobig v. Gordon*, 124 Wn.2d 732, 881 P.2d 226 (1994).
- <sup>19</sup> See RCW 16.08.100(3).
- <sup>20</sup> See RCW 16.08.100(1).
- <sup>21</sup> See *State v. Bash*, 130 Wn.2d 594, 925 P.2d 978 (1996).
- <sup>22</sup> The proper enclosure of a dangerous dog means, while on the owner’s property, a dangerous dog shall be securely confined indoors or in a securely enclosed and locked pen or structure, suitable to prevent the entry of young children and designed to prevent the animal from



escaping. Such pen or structure shall have secure sides and a secure top, and shall also provide protection from the elements for the dog. See RCW 16.08.070(4).

<sup>23</sup> There may be more restrictive local ordinances placed on people who own dangerous dogs. You should check with your municipality and/or county for additional restrictions that may exist.

<sup>24</sup> For a more thorough discussion on the legal and settlement procedures in injury claims involving children, including those involving dog bites, you may also wish to read my book, *Little Kids, Big Accidents: What Every Parent Should Know About Children and Accidents*, published by Word Association. Go to [www.ChildAccidentBook.com](http://www.ChildAccidentBook.com) for more information.

<sup>25</sup> See SPR 98.16W.

<sup>26</sup> *Price v. Kitsap Transit*, 125 Wn.2d 456, 886 P.2d 556 (1994).

<sup>27</sup> Please refer to previous chapters for a description of a Settlement Guardian ad Litem and what this person does.

<sup>28</sup> There are exceptions, of course, depending on the facts of the case. That is why an experienced attorney should be consulted if there are any questions about what time limit may apply to a particular case.

<sup>29</sup> See *American Dog Owners Ass'n v. City of Yakima*, 113 Wn.2d 213, 777 P.2d 1046 (1989).

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