Dog Bite Liability—Insurers’ Best Friend?

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

by Frank Foster, Gen Re, Stamford

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

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

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

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

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

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

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Value of claims ($ millions)</strong></td>
<td>$324.2</td>
<td>$319.0</td>
<td>$321.1</td>
<td>$322.3</td>
<td>$356.2</td>
<td>$387.2</td>
<td>$412.0</td>
<td>$412.6</td>
<td>0.15%</td>
<td>127.3%</td>
</tr>
<tr>
<td><strong>Number of claims</strong></td>
<td>16,919</td>
<td>15,630</td>
<td>14,295</td>
<td>14,661</td>
<td>14,531</td>
<td>15,823</td>
<td>16,586</td>
<td>15,770</td>
<td>-4.92%</td>
<td>-6.79%</td>
</tr>
<tr>
<td><strong>Average cost per claim</strong></td>
<td>$19,162</td>
<td>$20,406</td>
<td>$22,464</td>
<td>$21,987</td>
<td>$24,511</td>
<td>$24,461</td>
<td>$24,840</td>
<td>$26,166</td>
<td>5.34%</td>
<td>36.55%</td>
</tr>
</tbody>
</table>

*Source: Insurance Information Institute*

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

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

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

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

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

### Top Ten States for Dog Bite Claims

<table>
<thead>
<tr>
<th>State</th>
<th># of Claims</th>
<th>Aggregate Claims Paid (estimated)</th>
<th># of Claims to Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. California</td>
<td>369</td>
<td>$11.3 million</td>
<td>9.91</td>
</tr>
<tr>
<td>2. Illinois</td>
<td>317</td>
<td>$9.7 million</td>
<td>24.71</td>
</tr>
<tr>
<td>3. Ohio</td>
<td>215</td>
<td>$5.7 million</td>
<td>18.64</td>
</tr>
<tr>
<td>4. Texas</td>
<td>202</td>
<td>$3.7 million</td>
<td>8.03</td>
</tr>
<tr>
<td>5. Michigan</td>
<td>166</td>
<td>$5.2 million</td>
<td>16.80</td>
</tr>
<tr>
<td>6. Pennsylvania</td>
<td>155</td>
<td>$3.9 million</td>
<td>12.20</td>
</tr>
<tr>
<td>7. Florida</td>
<td>146</td>
<td>$5.6 million</td>
<td>7.77</td>
</tr>
<tr>
<td>8. Minnesota</td>
<td>139</td>
<td>$3.4 million</td>
<td>26.21</td>
</tr>
<tr>
<td>10. Indiana</td>
<td>114</td>
<td>$1.8 million</td>
<td>17.58</td>
</tr>
</tbody>
</table>

*Source: State Farm, PRNewswire, May 10, 2011. Last column was added by Gen Re based on III and State Farm data.*
All told, State Farm paid out $90 million from these claims in 2010, almost one-fourth the amount paid in total by all insurers. Based on the 2010 census, Midwest states generated the most claims by population—the top five in the list are Minnesota, Illinois, Ohio, Indiana and Michigan. The high incidence of claims in rural areas has been noted in other studies and may reflect different attitudes, perceived risks and population density. In any event, any expectation that biting dogs are only urban problems is an urban myth.

Dog Bite Liability Statutes

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

1. **Dog-bite statute**—The dog owner is automatically liable for any injury or property damage the dog causes, even without provocation. These “strict liability” statutes and municipal laws do not require a showing of negligence, although they may permit limited defenses. Most states impose strict liability, including Arizona, California, Florida, Massachusetts, Michigan, Missouri, Ohio, Pennsylvania and Wisconsin.

2. **“One-bite” rule**—In some states, the owner is not held liable for the first bite the dog inflicts. Once an animal has demonstrated vicious behavior, such as biting or otherwise displaying a “vicious propensity,” the owner can be held liable. This law actually dates back to English common law and became part of U.S. law with independence in 1776. Many states have moved away from the one-bite rule to embrace strict liability. States currently left in this one-bite group include Idaho, Kansas, Maryland, Mississippi, Nevada, North Carolina, Oregon, Texas and Vermont.

3. **Negligence laws**—The dog owner is liable if the injury occurred because he or she was unreasonably careless (negligent) in controlling the dog. Typically, case law rather than statutes are the source for this rule. The few states in this group include Georgia and Hawaii.

During the past decade, state and local laws have gravitated toward strict liability. Roughly 32 states and the District of Columbia are covered by these types of laws. The other 18 states follow one-bite and/or negligence rules for dog-inflicted injuries. Under these laws, a dog is not considered dangerous and the owner not liable until proven that the dog previously caused injury or the dog owner was found to be negligent.5 We note that law can change quickly in this field, so that reference to the most current statutes and ordinances is needed.

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

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

Some claims involve both personal and commercial liability issues. One such case occurred in Washington state, where an appeals court dismissed a negligence claim against the landlord and property manager of an apartment complex where a visitor suffered severe injuries from a dog attack. The court followed the “well-settled rule in Washington” whereby only “the owner, keeper, or harborer of a dangerous or vicious animal is liable; the landlord of the owner, keeper, or harborer is not.”7 As a result, the claim proceeded against the dog owner, but not the landlord. Therefore, exposures may depend on exactly the type of business you write.
How Are Insurers Handling the Exposures?
Since dog liability insurance is not generally sold on a stand-alone basis, coverage is provided via the Homeowners and Renters policy. Most base policies do not exclude canine exposures. It is up to insurers to then limit or control exposures through exclusions, liability waivers or underwriting guidelines. Carriers may also charge a higher premium for insureds that own a breed construed to be “dangerous.” For these reasons, many carriers’ Homeowners and Personal Umbrella applications will have specific questions about family pets and their temperament.

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

The Center for Disease Control has published a listing of the seven most dangerous breeds:8
1. Pit Bull
2. Rottweiler
3. German Shepherd
4. Husky-type
5. Malamute
6. Doberman Pinscher
7. Chow Chow
These rankings by the CDC are based on the number of human fatalities caused between 1979 and 1988. Pit Bulls and Rottweilers account for roughly 60% of the deaths.

Insurers will often use the above list to restrict Homeowners coverage, but many rely more on the behavior or actions of a specific dog rather than a breed. Some state laws identify vicious breeds; Ohio law, for example, specifically defines a pit bull as a “vicious breed,” and some insurers apply a blanket exclusion to the breed. Otherwise, the approach of considering the actions of a specific animal is consistent with most of the state legislation, which addresses the definition of what makes a dog dangerous, i.e., what actions can be defined as vicious or dangerous.9 Thus, the blame is not placed on the breed itself. Two states, Pennsylvania and Michigan, actually have laws that prohibit insurers from canceling or denying coverage to owners of specific breeds.10 Insurers may price for the additional risk or take action after a dog-related claim, but they may not refuse coverage solely on the basis of the breed.

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

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

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

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

> Exposure is not always tied to a bite, or even to physical contact. In some cases, physical contact did not occur but the event resulted in bodily injury, e.g., falling or tripping while running from a dog; colliding while jumping into pool.

> There are commercial as well as personal exposures, particularly for condominium associations and property managers, but also for any business allowing a dog on the premises. One case involves a dog on a used car lot.

> While there is certainly frequency of claims and the average cost is relatively low, the potential
for severity does exist. We report eight verdicts or settlements of $1 million or more.

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

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

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

Endnotes
2 “Dog Bite Liability,” Insurance Information Institute, August 2011
4 “Lawsuits Can Take a Bite Out of Your Wallet; Be a Responsible Dog Owner,” Insurance Information Institute, August 2011
5 Pet Injury Liability, personalinjurylawyer.com
7 Deane-Gordley v. Willett, 2011 Wash. App. LEXIS 1455
9 Ibid.
10 “Dog Bite Liability,” Insurance Information Institute, August 2011
Gorman v. Pierce County et al.
Location: Pierce County, Florida
Incident Date: August 21, 2007
Trial Date: August 12, 2011
Result: Verdict
Award: $2,200,000

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

Dennison v. Tueche, Siffrar, as trustee of the Amesbury Avenue Trust Number 7000; and Penn Properties, Inc.
Location: Brevard County, Florida
Incident Date: June 3, 2003
Trial Date: March 24, 2004
Result: Settlement
Award: $1,000,000

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

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

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

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

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

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

The plaintiff, a two-year-old boy, was bitten on the face by his babysitter’s 70 lb. Labrador while at the defendant babysitter’s residence. The boy was left alone with the dog and when he tried to play with him, the dog was startled and bit him on the cheek.
The plaintiffs’ contended that defendant babysitter had a special responsibility to keep the boy out of danger. She failed to supervise him properly, failed to take proper precautions to control the dog, and failed to provide a safe environment for the toddler. Additionally, the plaintiffs argued that the defendant had to warn them of the dog’s dangerous propensities since he was used as a hunting dog. The defendants argued that there was comparative negligence as they claimed that the boy provoked the dog, but because of his age, the court ruled he was legally incapable of being negligent.

Kasempunthai v. Yacoubou et al.
Location: Baltimore County, Maryland
Incident Date: N/A
Trial Date: January 7, 2008
Result: Verdict
Award: $325,050

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

Antutor v. Scott
Location: Essex County, Massachusetts
Incident Date: N/A
Trial Date: October 16, 2001
Result: Verdict
Award: $1,150,000 (including interest)

The 50-year-old plaintiff, an anesthesiologist, was bitten on his forearm by a mixed-breed dog. The incident occurred after hours on the business property of the dog’s owners. The plaintiff claimed that the injury prevented him from continuing in his profession as an anesthesiologist. The business insurance carrier wanted to settle the claim, but would do so only if the plaintiff signed a release. The plaintiff would not release the owner of the dog because the owner had assets. The business insurance carrier filed for declaratory relief, claiming that it didn’t have to indemnify the owners because the dog bite fell under a business exclusion in the policy. The plaintiff claimed that he had a personal relationship with the dog owner and came in after business hours. The judge ruled that the defendant husband was engaged in a business enterprise when the dog bit the plaintiff so that the policy did not provide protection to the husband. However, a severability clause provided that the insurance company was bound to defend and indemnify the defendant wife because she was not involved in the business pursuit. The jury found in favor of the plaintiff and awarded the sum of $775,000. With interest, the amount of the award totaled $1,150,000.

Green and Johnson v. Usztics
Location: Wayne County, Michigan
Incident Date: N/A
Trial Date: July 31, 2003
Result: Verdict
Award: $400,000

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