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Nature of Action: Personal Injury: dog bite

Injuries: facial injuries, scarring

County: Milwaukee County

Case name: Price v. Chubb Insurance Company

Judge: Charles Stierman, mediator

Verdict or settlement: Settlement

Original demand: \$500,000 after a double damages stipulation once the prior incident was discovered

Amount: \$250,000

Plaintiff's attorney: Jay Urban, Urban Taylor & Lee s.c., Milwaukee

Defendant's attorney: Frederick Strampe, Borgelt, Powell, Peterson & Frauen S.C., Milwaukee

Plaintiff's expert: Michael Bimdorf, M.D., Kenosha (plaintiff's plastic surgeon); Sarah Kalnajs, Blue Dog Training, Madison (plaintiff's dog behavior expert)

Issues: Provocation defense to strict liability; value of physical and emotional injuries where plastic surgery led to minimal scarring; double damages

Plaintiff counsel's summary of the facts: This case arises out of a dog bite that occurred on June 1, 2003. Plaintiff, a male adult, was bitten on the face by a female Alaskan Malamute. The bite caused serious injuries which required 40-45 stitches to close Geoffrey's facial lacerations and included treatment for an infection and subsequent surgeries. The bite took place at the home of the owners during a dinner party hosted by the defendants.

The defense employed the "provocation" defense. The party guests testified that the plaintiff leaned down to pet the dog and "stared it down" in close proximity after it growled. Plaintiff testified that he leaned his hand toward the dog in a friendly gesture. Shortly after the attack, the dog was destroyed. To counter this defense, through investigation, plaintiff counsel learned of a previous incident where the dog either bit or scratched a young girl at a party. In requests for admission, defendants denied this bite. Further information about the aggressive tendencies of the dog were obtained by subpoena to the veterinarian after this was also denied.

The expert witness retained by plaintiff on the "provocation" issue gave the opinion that to issue a finding regarding the conduct of the dog and the negligence of the plaintiff and the defendants, an examination of Isabella would be necessary. This was impossible as the dog was destroyed. Absent meeting with the dog, the expert required a full behavioral history from Isabella's owners. Plaintiffs sent out discovery requests for the purpose of obtaining this information. The case settled at the conclusion of this discovery.

Theory: Wisconsin Statute § 174.02(1)(a) — the Dog Bite Statute — imposes strict liability on the owner of a dog for a person's full damages if a dog bites a person. If owners know their dog has caused injury or bitten before, then they may be held liable for two times the full amount of damages.

Defenses: Dog owner contended the dog was "provoked" by the plaintiffs attempt to get too close and entice the dog. Damages were minimized by leaving hardly visible scarring after the reconstruction surgery.

Disposition: \$250,000 settlement (original demand \$500,000 after a double damages stipulation once the prior incident was discovered, original offer was zero because the claim was denied). Case settled through mediation with Charles Stierman.

Defense attorney's response: Original demand was \$700,000, not \$500,000. Plaintiffs also identified Richard Polsky, PhD, Los Angeles, animal behavior expert, as an expert witness.

Reference to provocation defense in "issues section" is inaccurate. The defendants relied on a contributory negligence defense. There were issues in this case relating to punitive damages and loss of society and companionship for Mr. Price's family.

Plaintiff was injured when defendant's dog bit him in the face. There were no witnesses to the incident. Other guests at the defendants' home testified that the plaintiff told them shortly after the accident that the plaintiff had knelt down in front of the dog to pet it. The dog growled at the plaintiff. After the dog growled, the plaintiff leaned into the dog while making eye contact in an attempt to establish dominance over the dog. This is when the bite occurred. In contrast, the plaintiff testified that the defendants' dog jumped up and bit the plaintiff while the plaintiff was walking across the room.

Dog owners contended that the plaintiff failed to act reasonably with regard to his own safety. The main issue is the case was comparing the plaintiff's contributory negligence with the strict liability imposed by section 174.02, Stats.