

INSURANCE LAW UPDATE: DECEMBER 19, 2018

DOG BITE: NO COVERAGE FOR DOG WITH BITE HISTORY

Baumann-Mader et al. v. Integrity Mutual Insurance Co. et al., No. 2017AP1369, 2018 WL 2247197 (Wis. Ct. App. May 16, 2018).

Specific Dog Breed and Prior Injury Exclusions are increasingly common. The Wisconsin Court of Appeals enforced a Prior Bite Exclusion in a decision that should travel well to other jurisdictions.

Insurance policy unambiguously excludes coverage for injuries caused by a dog that has previously injured a person. Prior attack by the insured's dog made any subsequent attack a non-covered occurrence.

Two women who were attacked by their neighbors' bulldog cannot recover damages for their injuries under the neighbors' homeowners policy. The Wisconsin Court of Appeals affirmed that the policy issued by Integrity Mutual unambiguously excluded coverage for bodily injuries caused by dogs who had previously caused an injury. The panel also denied the victims' request that the policy be reformed. Finally, the court concluded that the insurer owed no coverage for Taser and gunshot injuries caused by police who attempted to stop the attack.

Background Facts

The dispute began when Tank, an English bulldog, broke loose from her enclosure and bit neighbor Sara Hanson before being captured by another neighbor, Kathryn Baumann-Mader. The police arrived and, while the officer was attempting to get Tank into his squad car the officer was also bit. The dog then knocked plaintiff Baumann-Mader to the ground and bit her repeatedly. At that point, the officer attempted to stun Tank with a Taser, but hit Baumann-Mader instead. The officer then shot the dog, but also shot Baumann-Mader in the foot.

The victims sued the dog owners' insurer, Integrity. Integrity moved for summary judgment on the grounds that the policy excluded injuries caused by a dog that had previously bitten someone. Tank had bitten another person in February 2015, six months prior.

The trial court granted summary judgment to the insurer, saying the exclusion unambiguously barred coverage.

Policy Exclusion

The policy covers injury caused by dogs, but excludes coverage for injury caused by dogs with a history of bites. The policy states that Integrity does not cover:

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This Case Update is intended as a general overview of the case presented and certain aspects of the law. It should be used as a starting point for understanding the legal principles discussed.

...“[b]odily injury or property damage caused by ... [a]ny dog with a prior history of causing: (1) Bodily injury to a person,” which is “established through insurance claims records, or through the records of local public safety, law enforcement or other similar regulatory agency.”

No Reformation

The policyholders did not meet the required elements for reformation of the policy. Reformation is allowed in cases of fraud or "mutual mistake." There was no mutual mistake in this case because the insureds never specifically requested coverage for a dog with a history of biting. Weighing on this decision was the fact that the policyholders had not reported Tank's first bite to the insurer, nor had they sought coverage for the resulting injury.

Independent Causation?

The appellants contended that the subsequent Taser and gunshot injuries should be covered, arguing that only damages with a "direct causal connection" to the excluded event are excluded by the policy. Integrity argued that police were at the scene because of Tank's attack, and if the dog had not caused the initial injuries, plaintiffs would not have been injured.

Dissatisfied with both arguments, the appeals panel invoked Wisconsin's "independent concurrent cause rule." When an insurance policy expressly insures against loss caused by one risk, but excludes loss caused by another risk, coverage is extended to a loss caused by the insured risk even though the excluded risk is a contributory cause."

However, the independent cause must not require the excluded event to make it actionable. Because the police-inflicted gunshot injury was not actionable against the policyholders without the excluded dog attack, the injury was not an independent concurrent cause.

Public Policy

The exclusion did not conflict with Wisconsin public policy holding dog owners liable for injuries caused by their dog. Insurers are not compelled to pay damages for a dog which has already shown a history of causing injury.

Take-Away

There is no reason to believe that this Wisconsin decision would not be followed in other jurisdictions. Most importantly, the common statutory requirement that the owner of a dog is liable for injuries caused by their dog does not mandate insurance coverage for certain dog breeds or dogs with a history of aggressive behavior.