

Unrestrained Dog Creates Mayhem Causing Injury to Neighbor and Liability on Owner

In early 2009, 73-year-old Jerry Flaherty (not his real name) was heartbroken at the thought of “putting down” his beloved black lab, Major Boone. Rather than allow the dog to suffer, he did what needed to be done. Jerry, a widower, lived alone in a small, single-family home in Lake Worth, Florida. He truly missed the joy and companionship of having a dog. In spring of 2010, he visited a local animal shelter and found a black lab puppy who was the spitting image of Major Boone. Needless to say, Jerry had to bring the dog home. He named the puppy Colonel Boone.

One beautiful spring evening, Jerry walked Colonel Boone along South Palm Way, a dog-friendly street divided by a grassy median, replete with signs reminding dog owners to keep their dogs leashed. He noticed Brenda Smith (not her real name) walking two Schnauzers along the opposite side of the street. Jerry saw that Ms. Smith was trying to restrain her Schnauzers, who were trying to pull her across the grassy median toward him.

At first, the Schnauzers seemed friendly. Suddenly, the two Schnauzers began barking. One of them turned, backed out of his collar, and ran barking and snarling toward Colonel Boone.

Ms. Smith apologized and quickly grabbed the aggressive Schnauzer and replaced the collar around the dog’s neck. As she tried to pull the dog away, the Schnauzer suddenly turned and spun out of its collar a second time. This time, it attacked Colonel Boone, who, unlike his namesake of French and Indian War fame, quickly retreated, running behind Jerry with the snarling Schnauzer following him.

The frightened Colonel Boone ran circles around Jerry, whose legs became tangled in the dog’s leash. Jerry was abruptly thrown onto the pavement, landing on his right hip. He immediately felt severe pain and could not stand up or move his legs. Ms. Smith struggled to control her dogs who, by this time, were barking incessantly.



Colonel Boone:
target of unrestrained dog.

Hearing the commotion, neighbors ran out to aid Jerry. Upon learning that Jerry was in severe pain and unable to stand or walk, the neighbors called an ambulance. He was taken to the emergency room of a local hospital. X-rays disclosed a complete transverse acute right femoral fracture with displacement. The following day, Jerry was taken to surgery for a total hip replacement. He remained in the hospital as an

in-patient for five days, and then went through painful in-patient physical rehabilitation for the next thirty days. Jerry was obviously unable to care for Colonel Boone. Fortunately, friends contacted him and took Colonel Boone into their home for care while Jerry was rehabilitating.

The bills for the retiree’s medical treatment and care exceeded \$90,000. Jerry called Ms. Smith to report his injuries and outstanding bills. Rather than offer to help, she claimed Jerry’s dog was responsible for his injuries, not her Schnauzers. Ms. Smith then said, “Call my

insurer...” Jerry did so and was surprised when the insurance adjuster told him that he and his dog were responsible for his injuries.

Outraged, he contacted **SDSBS** attorneys **Karen Terry** and **Brian Sullivan** who knew that owners of dogs are liable for any damage done by their dogs to a person, or to any other animal. The Florida statute imposes strict liability on the owner of an aggressive dog which injures anyone. Florida courts are quite fond of pointing out that the statute virtually makes the owner an insurer of the dog’s conduct. This statute is distinguished from the so-called “dog bite” statute in that the latter applies to injuries caused

(Continued on page ten.)

The Florida statute imposes strict liability on the owner of an aggressive dog which injures another...the statute virtually makes the owner an insurer of the dog’s conduct.

Ms. Smith, as the owner of the dog, had a strict duty to properly control and restrain it. In this instance, she failed to do so.



Greg Barnhart



John Shipley



Jim Gustafson



Darryl Lewis



Ed Ricci



Chris Speed



Karen Terry



Cal Warriner



Chris Searcy



Jack Scarola

Ten SDSBS Attorneys Selected for Inclusion in 'The Best Lawyers in America 2012'

Since its inception in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. Selection is based on an exhaustive peer-review survey in which more than 41,000 leading attorneys cast almost 3.9 million votes on the legal abilities of other lawyers in their practice areas. The survey includes the selection of the practice areas in which lawyers are recognized by their peers. Lawyers are not required or allowed to pay a fee to be listed. Inclusion in *Best Lawyers* is considered a singular honor.

U. S. News & Best Lawyers also announced the selection of **SDSBS** in its 2011-2012 listing of *Best Law Firms*. SDSBS was listed in the West Palm Beach Tier 1 for the following areas of practice: Mass Tort Litigation/Class Actions – Plaintiffs; Medical Malpractice Law – Plaintiffs; Personal Injury Litigation – Plaintiffs; Product Liability Litigation – Plaintiffs. SDSBS was also listed in Tier 2 for areas of practice including Commercial Litigation and Litigation – Eminent Domain and Condemnation Litigation. ♦

Unrestrained Dog Creates Mayhem Causing Injury to Neighbor and Liability on Owner

(Continued from page 5.)

by the bite of a dog, while the former encompasses any other injury caused by a dog. Based upon Florida law, Ms. Smith, as the owner of the dog, had a strict duty to properly control and restrain it. In this instance, she had failed to do so. A settlement demand for Ms. Smith's homeowner's policy limits was made, but the assigned adjuster continued to deny liability and took the position that where there was no contact between Ms. Smith's Schnauzers and Colonel Boone, Ms. Smith had no liability for Jerry's injuries.

Initial settlement negotiations were met with painfully small offers. A lawsuit was filed on Jerry's behalf against Ms. Smith. It included claims for Jerry's medical bills, pain, and suffering. Attorneys Terry and Sullivan began discovery, setting a date for depositions of Ms. Smith and other witnesses to the incident. This was followed by a proposal for settlement for just under policy limits.

During Ms. Smith's deposition, she admitted that had she properly secured and restrained her Schnauzers this unfortunate incident would not have happened. Following the deposition of Ms. Smith, the insurance company finally tendered limits which resulted in a \$295,000 recovery for Jerry.

Because of the injury to his hip, Jerry asked the kind family who took care of Colonel Boone during his rehabilitation if they would be able to continue to care for his dog. By then, Colonel Boone had become a member of his new family, and they gladly agreed to keep him. Jerry continues to visit Colonel Boone on a regular basis and is hopeful, should his physical condition continue to strengthen and improve, that he may get another dog in the future. ♦