

Strict Liability

SERVICES

Personal Injury

August 27, 2018

This was a strict liability claim brought by the plaintiff against the defendant seeking damages as a result of an injury involving a dog. The plaintiff claimed that the dog owned by the defendant caused the plaintiff to fall, resulting in five hip surgeries. I represented the defendant dog owner.

The plaintiff sought damages under the strict liability “dog bite” statute in Massachusetts. The plaintiff also sought punitive damages against the defendant pursuant to the statute.

The defense theory was that the dog did not cause the plaintiff to fall. The defense focused on the fact that the dog was chained to the defendant’s porch when the plaintiff untied the dog to take the dog for a walk. Although the statute indicates that the dog owner is strictly liable for injuries caused by a dog, the defense focused on the fact that the dog was attempting to run away from the plaintiff when she fell. Specifically, the plaintiff was attempting to restrain the dog when the dog pulled away from the plaintiff, causing her to fall.

The plaintiff, a 78-year-old widower, sustained a hip fracture. Due to advanced osteoporosis, the initial surgery was unsuccessful, resulting in four subsequent surgeries to repair and replace the hip joint. The medical bills which were ongoing, exceeded \$228,000 at the time of trial. Ultimately, after five surgeries to the hip, including hardware placed from the hip to the knee, the plaintiff was able to regain some mobility in her left lower extremity. The plaintiff, however, never regained full mobility and was confined to a wheelchair.

The jury returned a defense verdict. The court, however, overturned the verdict and entered a judgment against the defendant and marked up the case for a second trial on damages only. Plaintiff’s theory was the same except in the second trial, the only issue presented was damages and what amount of money would reasonably compensate the plaintiff.

Although damages were the only issue presented, I continued to argue that the injuries were the result of an accident and not from conduct involving the defendant homeowner. In addition, the defense argued that although the so called “eggshell plaintiff” defense was not viable, that the plaintiff had advanced osteoporosis that resulted in her significant medical injuries.

The jury returned a verdict of \$7,800.00 despite over \$200,000.00 in medical bills. I appealed the award of \$7,800.00, arguing that the defendant’s verdict should not have been set aside. After a two-year appeal period, the appeals court ruled in favor of my client setting aside the

plaintiff's verdict and reinstated the defense verdict. The only case I have ever handled that resulted in three separate jury trials with over forty jurors hearing evidence.

It was unclear why the jury only awarded \$7,800.00 despite the fact that the plaintiff had undisputed medical bills exceeding \$228,000.00. One factor was probably the fact that my client was also in her 70's and was a friendly and likeable person who worked full time to support her adult handicapped child.