

SETTLEMENT DEMAND

March 04, 2018

Mr. Jed Witzer, Agent
Brockton Fire and Casualty Company
1440 Granular Road
Starville, Brockton 00011

Re: Claim Number: 34D20979
Company: Brockton Fire and Casualty Company
Our Client(s): Kurt Robertson and Carol Robertson
DOL: July 29, 2001
Your Insured(s): Marvin Adcock and Helen Adcock
Policy Number: 35-C9-8510-2

Dear Mr. Witzer:

We have now received the medical reports and bills to allow us to make a settlement demand in this manner. Documentation, including medical reports and bills, are enclosed within this Demand Packet. ***This letter is for settlement purposes only.***

LIABILITY

I. SUMMARY OF FACTS

This case demonstrates clear liability on the part of your insured, Marvin Adcock and Helen Adcock. On July 29, 2001, at approximately 7:00 p.m., Carol Robertson and her two daughters, 10-year old Maggie Robertson and 3-year old Sarah Robertson, entered the residence of your insured, the Adcocks, located on 7676 Brent Drive. The Robertsons were invited into the Adcocks' residence as guests for a home decorating party. At approximately 8:30 p.m., Sarah Robertson attempted to pet the Adcocks' pet dog, Bear, whereupon Bear suddenly and unexpectedly attacked Sarah; Bear attacked while being seemingly unprovoked. The attack left Sarah with horrific physical and psychological injuries—some temporary and others permanent.

Notwithstanding subsequent facts of liability presented in this letter, the foremost important consideration is that, pursuant to the Utah Code,¹ the Adcocks are statutorily liable in damages for any and all injuries committed by Bear—but for the Adcocks' negligence, Sarah and her family would not have suffered this horrendous incident.²

¹ See Utah Code § 18-1-1(1) (stating that “Every person owning or keeping a dog is liable in damages for injury committed by the dog . . .”).

² See Restat 2d of Torts, § 302, cmt. *h* (2nd 1979) (stating that “If the actor knows or should perceive circumstances which would lead a reasonable [person] to expect a particular [result], [s]he is required to provide against it.”).

Mrs. Adcock deposed her belief that Bear may have attacked Sarah due to a combination of (1) him being with Sarah in the kitchen, making him anxious; (2) being in the dining room while food was being passed around, and (3) the fact that Sarah got close to Bear's face when the attack happened.³

Notwithstanding Mrs. Adcock's surmise of what may have caused of the attack, she nevertheless deposed that she was not at all sure why Bear attacked,⁴ which in itself is one of the first evidences of negligence, considering that at that time she had already been owning Bear for approximately six years—a reasonably long enough time for a pet owner to understand their pet and, in this case, prevent the pet's injurious behavior. Mrs. Adcock deposed that Sarah was not doing anything in particular to annoy or anger Bear,⁵ which further adds to the evidence of her negligence to understand the animal.

II. DEPOSITION

Some important facts revealed during Mrs. Adcock's deposition (*see* attached Cross Examination document), which further prove the Adcocks' negligence, liability, and that their conduct was the actual and proximate cause of Sarah's injuries, are as follow:

- Mrs. Adcock did not warn her guests that Bear could be prone to biting; she neglected her duty to warn licensees of the potential danger Bear could pose, as well as neglected her duty to inspect and prevent injury from happening to her business invitee, Cathy Dunn.⁶ Notwithstanding the fact that Dunn was not the direct recipient of injury, the fact that Mrs. Adcock failed to take preventative measures for the safety of Dunn serves as further evidence of Mrs. Adcock's negligence toward her guests' safety.
- Bear had a prior history of biting children (Adcock Dep. 14:15-20). A reasonable person⁷ would have seen the risk of having Bear around children; the Adcocks failed to act appropriately in order to prevent undue harm from happening to another.⁸
- Notwithstanding Bear's first attack, Mrs. Adcock neglected to give Bear any type of corrective training (14:14-19; 19:16-20).

³ *See* Adcock Dep. 23:9-12.

⁴ *See id.* at 32:20; 33:1-2.

⁵ *See id.* at 26:3-4.

⁶ *See* Restat 2d of Torts, § 343 (serving as persuasive evidence, the Restatement states that "A possessor of land is subject to liability for physical harm caused to his invitees by a condition on the land...that [s]he knows or by the exercise of reasonable care would discover the condition.").

⁷ *See id.* at § 290 (depicting a reasonable person as follows: "For the purpose of determining whether the actor should recognize that [her] conduct involves a risk, [s]he is required to know the qualities and habits of human beings and animals and the qualities, characteristics, and capacities of things and forces in so far as they are matters of common knowledge at the time and in the community.").

⁸ *See id.* at § 918, cmt. *k* (stating that "one is not responsible in an action of tort for the unintended physical consequence of [her] acts *unless* as a [person] of reasonable prudence [s]he has reason to believe that an undue risk of harm to another would result from [her] conduct" (emphasis added)).

- Bear was under treatment for a skin staph infection when the incident with Sarah happened, which could explain his aggression when petted. Mrs. Adcock neglected to anticipate the possibility of Bear attacking defensively due to the infection (16:9-15).
- Mrs. Adcock failed to seclude Bear even after realizing that Mrs. Robinson would be bringing her two children, who were unfamiliar to Bear at the time (21:19-20; 22:1-2). In addition, Mrs. Robertson recalls Bear barking and coming toward her and her children when they first arrived; the Adcocks responded appropriately at first, taking Bear upstairs, but later recklessly allowed Bear to come back down stairs. There was no real benefit in allowing Bear back downstairs, but there instead existed a foreseeable risk of potential injury from doing so; the Adcocks had no reasonable justification to neglect this risk.⁹
- Previously that same evening, Mrs. Adcock neglected to take appropriate action when she saw that Sarah was pulling on Bears tail. She gave Sarah—a 3-year old child¹⁰—an unsatisfactory verbal warning against pulling Bear’s tail, but failed to directly warn Mrs. Robinson—Sarah’s parent—of the danger (23:1-20; 24:1-4).
- The Adcocks failed to take any appropriate action to mitigate damages after the bite; they sought no professional advice whatsoever for what to do with Bear or how to prevent the behavior from reoccurring (30:11-16; 31:3-4). This failure to act shows poor faith and negligence, and recklessness.
- Mrs. Adcock fails to see Bear as dangerous, although he had already bitten two people (32:13-15). This suggests a refusal to accept responsibility for her dangerous pet, as well as an attempt to justify her lack of precaution when handling Bear around children.
- Mrs. Adcock was negligent in the fact that she was not aware of what was happening in her home or with her guests and failed to take proper precautions before commencing the social gathering (32:20; 33:1). Letting Bear roam around people while unsupervised is reckless, negligent, and the proximate cause of Sarah’s injuries.

INJURIES

Sarah suffered horrific injuries from this incident. Enclosed within this Demand Packet are photographs¹¹ of Sarah’s face following the dog bite.

Sarah suffered three separate lacerations, with the third laceration going through her cheek.¹² During an interview with Carol Robertson, we discovered that Sarah’s whole right cheek had a hole in it that one could almost see through, and her lip was split all the way to her chin. Sarah has suffered significant physical and psychological damages.

⁹ See *id.* at § 291 (explaining that “[w]here an act is one which a reasonable [person] would recognize as involving a risk of harm to another, the risk is unreasonable and the act is negligent if the risk is of such magnitude as to outweigh what the law regards as the utility of the act or of the particular manner in which it is done.”).

¹⁰ See *id.* at § 283A (stating that “[i]f the actor is a child, the standard of conduct to which [she] must conform to avoid being negligent [in this case, Sarah being negligent of her own safety] is that of a reasonable person of like age, intelligence, and experience under like circumstances.”).

¹¹ See Figures 4.1, 4.2, 4.3, and 4.4.

¹² See Figure 1: Emergency Room Intake Form.

I. INTERVIEW OF CAROL ROBERTSON

Immediately after the bite, Sarah was not crying, due to being in shock. An ambulance arrived and placed Sarah on a stretcher. The wound was bleeding profusely. After arriving at the emergency room, the ER staff examined Sarah, but determined that her wounds were too severe for them to assess; consequently, Dr. Munson, head of plastic surgery, was called in to examine Sarah. Unfortunately, it took several hours for the doctor to arrive. In addition, because Sarah had recently eaten, the medical staff had to wait several hours before anesthetizing Sarah to suture her wounds. All these delays only added to Sarah's and her parents' pain and suffering. Sarah remained at the hospital for three days and was in a great deal of pain.

Two days after returning home, Sarah returned to the hospital for a checkup and removal of some stitches; she screamed in agony the entire time the doctor was removing the stitches. Sarah could not eat anything but popsicles for the first week, and it took seven to eight weeks before she could eat soft foods. Prior to this incident, Sarah had no other deformities or physical impairments and was in good physical health.

II. SHORT-TERM AND LONG-TERM INJURIES

Follow-up medical examinations were administered to Sarah in order to gauge her physical and psychological injuries. Subsequently, reports and written evaluations have been provided within this Demand Package, revealing the following facts about Sarah's short-term and long-term injuries.

A. Short-term Injuries:

1. Psychological Aftereffects of Dog Bite: *Starville Children's Medical Center* – Patient Evaluated on July 15 and 23, 2002.
 - a. Significant pain during removal of stitches.
 - b. Inquiries about her face make Sarah hide her face and become silent.
 - c. In the Summer and Fall of 2001, Sarah was reluctant to go outside for fear of encountering a dog. She even became frightened by a relative's familiar dog.
 - d. Sarah has directly and indirectly expressed concerns about her appearance, making comments such as “did you know me when I was pretty” and describing her face as “all chewed up.”
2. Physical Evaluation: *Starville Children's Medical Center* – Patient Examined on December 23, 2002.
 - a. Scars across her right cheek, some 3 or 4 cm. in length.
 - b. Vertical scar on right lower lip.
3. Psychological Evaluation: *Dr. Timothy V. Ward & Associates, Inc.* – Patient Interviewed on September 9, 2003.
 - a. Sarah is still undergoing some psychological distress.
 - b. Adapts to her scarring by use of denial and avoidance.
 - c. Refuses to talk about her scarring.
 - d. Still frightened by some dogs.
 - e. Demonstrates agitation and tearfulness when cut, as she wants to avoid scarring.
 - f. Described on testing as “sad” or “unhappy.”
 - g. Complains about aches and pains.
 - h. Negative body image and appearance.

B. Long-term Injuries:

1. Psychological Aftereffects of Dog Bite: *Starville Children's Medical Center* – Patient Evaluated on July 15 and 23, 2002.
 - a. Sarah's symptoms and behaviors suggest that this was a psychologically significant event for her.
 - b. Sarah still does not feel safe about dogs.
 - c. Sarah very clearly retains concerns about her appearance and overall attractiveness.
2. Physical Evaluation: *Starville Children's Medical Center* – Patient Examined on December 23, 2002.
 - a. All of Sarah's scars are permanent.
3. Psychological Evaluation: *Dr. Timothy V. Ward & Associates, Inc.* – Patient Interviewed on September 9, 2003.
 - a. Issues about her appearance and body image will become even more significant when Sarah goes through puberty.
 - b. Sarah will have diminished vocational opportunities. Sarah's choices about careers will be permanently negatively affected by her facial scars.
 - c. Scars and damage will cause a self-perceived internal belief about an "inability to compete."

SPECIAL DAMAGES

Listed below are the reasonable and essential medical costs necessitated by the negligence of your insured.

STARVILLE CHILDREN'S MEDICAL CENTER			
Date of Treatment	Type of Service	Amount Billed	Subtotal
July 29–31, 2001	ER, Surgery, and Hospitalization	\$ 994.01	\$ 994.01
August 2 & 6, 2001	Suture Removal	\$ 54.14	\$ 1,048.15
January 7, 2002	Facial Examination	\$ 20.00	\$ 1,068.15
May 26, 2002	Facial Examination	\$ 20.00	\$ 1,088.15
June 2, 2002	Facial Examination	\$ 20.00	\$ 1,108.15
July 10, 2002	Psychological Evaluation of Sarah	\$ 100.00	\$ 1,208.15
July 10, 2002	Psychological Evaluation of Parents	\$ 225.00	\$ 1,433.15
July 22, 2002	Facial Examination	\$ 20.00	\$ 1,453.15
December 23, 2002	Facial Examination	\$ 20.00	\$ 1,473.15
July 14, 2003	Facial Examination	\$ 20.00	\$ 1,493.15
January 5, 2004	Facial Examination	\$ 20.00	\$ 1,513.15
TOTAL EXPENSES:			\$ 1,513.15

Sarah will need additional surgeries and revisions throughout her life in order to achieve full recovery, accumulating a significant cost overtime; consider that the follow-up revision of her cheek and lip scars alone will total approximately \$4,200.00. Furthermore, Sarah will have to undergo many counseling sessions throughout her life, costing a considerable amount; only taking

into account the coming years until Sarah reaches adulthood, we estimate that she and her family will need to spend approximately \$7,500.00 in counseling sessions. In addition, Sarah's father, Kurt Robertson, suffered lost wages for the three days he spent at the hospital with Sarah and Carol, losing approximately \$750.00.

A Psychological Evaluation of Sarah reveals that her future earning capacity will be impaired due to the permanent nature of her injuries. Recovery for this sad fact can only be roughly estimated within the General Damages presented below. In addition, any and all legal and non-legal fees accrued by our client, within the scope of this litigation process, will be accounted for within General Damages.

GENERAL DAMAGES

In determining an appropriate amount for general damages, several factors were considered. Sarah and her family's grievances, pain, and suffering were evaluated in light of the type of injuries sustained, existing case law, and recent jury and bench awards in comparable cases.

Type of Damages	Amount
Special Damages	\$ 13,963.15
General Damages	\$ 162,000.00
TOTAL DAMAGES	\$ 175,963.15

CONCLUSION

We are convinced that this case would realistically result in an award for general damages in a range from \$162,000.00 to \$168,000.00. However, for the purpose of arriving at a reasonable settlement short of trial, we propose a final settlement for \$147,000.00 in addition to special damages of \$13,963.15 for a total of \$160,963.15.

Pursuant to your insured's Insurance Policy, Declarations Page Section II, we demand \$100,000.00 for Personal Liability Coverage, as well as an additional \$1,225.00 for the Medical Payments Coverage of Sarah's numerous procedures and evaluations (\$1,000.00), and her parents' psychological evaluation (\$225.00) done on July 10, 2002, totaling \$101,225.00, in addition to the remaining \$59,738.15; wherefore, we demand the total sum of \$160,963.15, as has herewith been described.

We expect a response within 10 business days of receipt of this demand, and we anticipate that you will be able to evaluate our demand and respond appropriately.

Thank you for your cooperation. We look forward to working with you to settle this case in a fair, timely, and appropriate manner.

Sincerely,

ALTIOREM LEGAL SERVICES