



ABRAMS LANDAU, LTD.

L a n d a u L a w S h o p

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Brought to you by
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Abrams Landau helps clients attacked by dogs

New Jersey dog attacks police officer and postman



This summer, we had animal-attack cases pending in courts in Virginia, New Jersey, and Connecticut.

At trial in a dog-attack case in New Jersey, we were able to convince the trial judge to allow evidence of prior *and* subsequent attacks on others in the neighborhood, despite strict liability statute and case law that said such evidence is not allowed. The defense lawyers hired by the insurance company would not admit liability, even in the face of the New Jersey Statute (N.J.S.A. 4:19-16) that says:

“The owner of any dog which shall bite a person while such person is on or in a public place, or lawfully on or in a private place, including the property of the owner of the dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner’s knowledge of such viciousness.”

We went to court three times on pretrial motions in order to present the best possible case for our client, a detective with the Hudson County Prosecutor’s Sex Crimes Unit. She was attacked by a neighbor’s dog. Our client was sitting on her front stoop, saw the defendant pull into the driveway, and walked over to help the defendant with groceries. While she was in front of the defendant’s house, the defendant’s dog came out of the door and dropped his toy down onto the stairs leading up to the house. When the plaintiff reached down to get the toy, the dog attacked. The dog stood on her and continued to bite her arm until he was pulled off. There were bruises on her thighs where the animal was trying to use her own body as leverage to get a better grip with its jaws and teeth.

The plaintiff had medical treatment, medical bills, lost wages, and had a long scar on her right forearm. She also had a 5 percent permanency rating, and continued pain and discomfort in her shooting arm when practicing with her personal and service weapons. Future plastic surgery and scar revision meant additional time loss from work.

After she was attacked, the plaintiff learned that this dog had attacked an elderly neighbor on the street. After her attack, this same dog bit the postman on the corner of her street. *We represented the postman in his case, which settled prior to the trial of the police officer’s case.* This dog, a Labrador mix, had three known attacks on three different individuals.

The defendant’s lawyers alleged that the plaintiff was not lawfully on the property, that there was no invitation, and that the defendant had waved off and told the plaintiff not to come over. Furthermore, the defendant maintained that the plaintiff caused the attack by grabbing the dog’s toy and looking the dog in the eye, and that she was contributorily negligent, guilty of assumption of the risk (she knew she would get bitten), and her damages for future care were speculative.

As the result of several pretrial motions, the judge ruled that the dog’s prior and subsequent attacks *could* be introduced at trial; the police officer who investigated the first and second attacks and the postman/victim of the third attack could both testify at trial. The end result was \$112,200 for our client in a case in which the only offer prior to trial was \$25,000.

Thank you for your referrals

Since **Abrams Landau, Ltd.**, does not advertise on television or radio, or in the *Yellow Pages* or newspapers, etc., people often ask us how we get our cases.

The answer is simple. Satisfied clients refer their friends, neighbors, and family members to us to help them with their legal needs. Likewise, doctors, lawyers, and other professionals with whom we have worked in the past refer people to us who need help with their **social security disability, personal injury, and workers’ compensation cases.**

We believe that “word of mouth” is more important than our listing in “Super Lawyers,” “Best Lawyers in America,” and “Preeminent Lawyers in America,” and even our “A-V” rating (the highest rating for legal skill and ethics) in the *Martindale-Hubbell* international directory of lawyers. So if you know of someone who needs our legal assistance, have them contact us at once.

Our agenda is clear...justice for all.

DOG-BITE LAWS

In a *New York Times* National Report (p. A-12, July 12, 2007), the headline ran:

States Try to Weigh Safety With Dog Owners' Rights Dangerous Dog Registry is Latest Effort

Virginia has a Web site that lets citizens find dogs in their county that have attacked a person or an animal and which a judge has decided could cause injury again. The Virginia Dangerous Dog Registry, modeled after the state's sex-offender registry, displays their mug shots, misdeeds, and addresses.

However, despite reports in the national press about the killings of a toddler and an elderly woman in Virginia, the law protects dog owners from liability for a first attack. Virginia is one of 17 states that have a "One Free Bite Rule." In other words, the injured person must show that the dog owner knew or should have known that the animal was dangerous by presenting proof of prior bites! If you are the victim of a dog's first attack, in Virginia, the defendant might not be found liable.

In a case involving an elderly Virginia woman who was knocked down by a dog, we were able to get her compensation by showing that the dog had nipped at neighbors and had other "prior bad acts." The Fairfax County Circuit Court judge noted that we did not need to show a prior bite, only that *the owners had notice as to the dog's dangerous propensities*.

Virginia pro-business

Forbes Magazine confirms what workers' compensation claimants and their families know: Virginia is pro-business

While housing and transportation issues plague Northern Virginia, the state continues to welcome businesses with open arms. This is the second year in a row that Virginia has finished in first place as the best state in the country for business, according to *Forbes Magazine*. Factors the magazine looked at included tax environment, quality of life, and economic and regulatory climates. Maryland ranked 12th this year, as compared to 11th last year, as it ranked 41st in terms of the cost of doing business there. The pro-business attitude in Virginia makes it very hard for advocates of injured workers to seek positive change in the legislature and the courts. Nevertheless, we will continue to seek justice on behalf of our clients and their families.

Virginia dog attacks child

In another case, **Doug Landau** went to Henrico Circuit Court for the infant (a minor under the age of 18) settlement of another dog-attack case.

Our now seven-year-old client was an invited guest at the defendant's home for a Memorial Day weekend party. Within minutes of arrival, this two-year-old was attacked, pinned to the ground, and bitten in the face by the homeowner's dog. She received seven sutures under her right eye. Presently, the scar is not readily apparent, and Mr. Landau noted that many children heal exceptionally well from this type of incident if treated immediately, if the scar is addressed in the short "window of opportunity" that exists after such an injury, and if no infection sets in.

The court-approved settlement resulted in funds being deposited with the Clerk of the Court for safe-keeping. The settlement is then for the child's use when she becomes of age. She can then use the money for scar revision (if she wants to undergo this elective procedure), school, or other needs. In many states, the settlement of a case for someone under 18 years of age requires the approval of the court. This is for the protection of the children we represent.

The team at **Abrams Landau, Ltd.**, has experience helping children, adults, and the elderly who have been injured by canine attacks. We have a history of successfully prosecuted dog-bite cases.

If you or someone you know has been the victim of an animal attack, please contact us so we can be of assistance. Getting the right medical care and immediate legal representation in these cases is essential.

There are time limits for pursuing your rights in every jurisdiction, and prompt investigation in these cases is critical.



Auto body shops WHAT YOU NEED TO KNOW

If you are in a crash and your car is damaged, do not expect the insurance company to pay "full value" for the vehicle, the remainder of your loan, or for your inconvenience in getting the repairs done. Our FREE REPORT helps those with car-crash cases get fair compensation from the insurance companies. Send for your copy today.

Under Virginia law, the at-fault driver (or their insurance company) is responsible for the LESSER of the fair replacement value or repair.

Auto body shops are not all the same; knowing what happens "behind the scenes" could save you time, money, and headaches.

Kiplingers Personal Finance reports that...

1. Before you decide to have your car repaired at a particular shop, check the local Better Business Bureau and government consumer affairs offices for complaints or other problems. Some mechanics blame missed deadlines on delays in parts delivery. However, the unfortunate truth is that some shops take on more business than they can handle in a timely fashion. You may also want to know if they have the parts you need in stock or what their delivery time will be.

2. Generic or salvage parts are sometimes used to make repairs. Original equipment manufacturer (OEM) parts are designed to match precisely. They may also be safer. Car insurance companies prefer that repair shops use generic or salvage replacement parts because they

are cheaper. If a crash is your fault, your insurance contract may say that aftermarket parts can be used. Or, your policy may state that if you use OEM parts, you are responsible to pay the difference in price. But if someone else is at fault in crashing into you, tell the repair shop to use OEM parts.

3. While your car is in the shop, you will still need to get around. Renting a car for three weeks can cost \$1,000 or more. Some people have rental-car insurance. This is optional (not required under Virginia law) and can cost several dollars a month. However, even with this type of insurance, your daily reimbursement rate may be limited to the cost of a compact car. If you or your family needs a minivan while your own vehicle is in the shop, make sure you have minivan-size coverage.

4. If the collision is your fault, and you have the usual \$500 deductible, you will have to pay it, as repair shops charge \$982 for replacing a 1998 Buick LaSabre fender and \$1,350 for a 2006 Mercedes E-Class front bumper, according to *Consumers Checkbook*. In the second example, you would pay your \$500 deductible, and your insurance company would pay the next \$850. You may want to talk to your insurance agent about your deductible.

5. There are "behind the scenes" contracts in the auto repair business that "cap" what the people who fix your car can charge the insurance company that refers you to them. Just like managed-care companies that have

contracts with networks of doctors for a set fee for services, car insurance companies have contracts with certain shops to repair vehicles at a prenegotiated rate. This cost-cutting can result in less-than-satisfactory repairs. The insurance companies have gotten these shops in their network to give them so many discounts in order to get the volume of business, that they do the bare minimum to stay alive. For a list of independent repair shops that meet certain quality criteria, check out www.assuredperformancecare.com.

6. Car insurance companies will also offer warranties on the parts for as long as you own the car in order to get you to go to the shops in their "network." But it is the shop's warranty that counts. Nearly all shops will guarantee (warranty) their work. Parts makers guarantee their parts. So what is the real value of the car insurance company warranty?

7. Just like it helps to have a doctor who speaks your language and is in the right specialty, your car needs the same care. Replacement parts for late-model European vehicles need specially trained mechanics. The shop where your car is taken should be certified by the manufacturer to do the work on your kind of car, truck, or minivan. This means that the shop has specialized equipment and training. Car insurance companies may not recommend these certified shops, as their rates may be higher, but they should be willing to pay the tab.

Health Savings Accounts

Some of our clients have asked me about Health Savings Accounts (or "HSAs"). HSAs started out as a way to help pay medical expenses. There are tax advantages to HSAs, and they may also be a way to save for retirement. To qualify, you had to sign up for a health or medical insurance plan with a high deductible. The deductible amount necessary was \$1,100 for individuals and \$2,200 for family coverage. The rule used to be that you could then contribute money up to the amount of your deductible (the maximum in 2007 was \$2,850 for individuals and \$5,650 for families).

Congress changed the law in December to allow you to contribute the maximum amount to your HSA regardless of your deductible. This makes it a more attractive tool for long-term savings instead of purely a medical expense payment plan. The tax benefits are also an important consideration.

Contributions are tax-deductible, and the money grows, tax-deferred. Regardless of your age, withdrawals are tax-free if you use the money for medical expenditures. Withdrawals for other reasons are taxable, plus there is a 10 percent penalty. After age 65, the money can be withdrawn penalty-free, and you are only liable to pay income tax on any amount used for nonmedical purposes.

An injured client who may need medical care in the future, but who is not currently being treated, may want to look into an HSA. Because the first \$1,100 would come out of the HSA (if that is the deductible agreed upon when setting up the account), the insurance premiums might be lower than if there was a low deductible. And, if no major medical intervention was used in the first several years, the account could grow without taxation to provide for future care, with perhaps an even higher deductible in order to reduce the premiums paid in later years.

Some HSA administrators and financial planning firms may offer mutual funds for long-term savers. You can also roll over money from an IRA to an HSA and use it (tax-free) for medical expenditures. As with all important financial and economic decisions, you should meet with your financial adviser or planner before starting any long-term medical care, savings, retirement, or other account. For more information on HSAs, go to HSAinsider.com or HSAfinder.com.

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The example of Anna Nicole Smith

TIDY UP YOUR ESTATE SO THAT OTHERS WILL NOT HAVE TO...

All the drama about oil-tycoon widow and *Playboy* centerfold Anna Nicole Smith made clear what a mess famous people can make of things for their families and friends when they do not clean up their legal and financial affairs. Rather than go over the gory details of her messy life, what can we learn and what can be done?

Have a will

Even a simple one. Lawyers generally detest going to see lawyers for their own wills, but it is something that every adult, and especially those with children, should do. It will help avoid fights later; it will cause you to focus on things that are truly important to you; and it will enable your loved ones to celebrate your life without being tied up in the complicated laws of intestacy and distribution.

Plan for contingencies

The Smith will was written in 2001, before the birth of her daughter and the death of her son. You can avoid leaving an heir "out in the cold" by building in flexibility. You can have alternative beneficiaries and state your intentions towards unborn children. We represented a welder who died fixing the damaged Pentagon after 9/11. He left behind a teenager as well as a child who was born after he died. We were successful before the Workers' Compensation Commission in getting an award for benefits for both children as the result of this fatal workplace accident. His two daughters have been sharing equally in the proceeds.

Appoint a guardian

If a parent dies, the other parent generally gets custody. However, you should name a guardian in your will if the other parent is not available or if both parents perish at the same time. If you believe that the other parent is unfit, outline your

reasons. Indicate who you want raising your children, and hope the court agrees.

Design your own funeral

Putting your burial and funeral instructions in your will can help avoid family fighting or confusion. A living will might make the process even easier, as it may be more readily available to survivors and loved ones than a regular will.

Have a lawyer write and review the document to make sure the terms are legally enforceable. Put the same instructions in your will, and give your executor the authority to pay the funeral bills out of the estate. Funerals can be very expensive. Avoid saddling loved ones with the costs.

Legalize your love

Depending in what state you live, getting married entitles your surviving spouse to half the property you acquire during your marriage, or to a significant portion of your estate. Some states give these same rights to domestic partners. Find out what protection your state provides so that someone important to you is not neglected or shut out entirely when you pass away.

Tie up loose ends

When there is no will, it is not money that causes the majority of disputes. Rather, it is children (their custody and upbringing), burial and funeral arrangements, religion, special items of sentimental value, and real estate that lead to family feuds, unnecessary lawsuits, and expenses. If there are special things and/or people in your life, make sure they are included in your will. You get the last word, so make it count. Unpleasant to think about? Yes, but necessary. If you would like to make or change a will, or want to have a "living will," please call us so we can assist you.