

HUMBOLDT COUNTY**ANIMALS**

Dog Bite — Animal control — Strict Liability — Negligence

County employee failed to control vicious dog: plaintiff**VERDICT** \$401,786
ACTUAL \$301,339**CASE** Elena Esquivel v. County of Humboldt,
No. DR090344
COURT Superior Court of Humboldt County, Eureka
JUDGE J. Michael Brown
DATE 8/5/2011**PLAINTIFF**
ATTORNEY(S) Patrik Griego, Janssen Malloy LLP,
Eureka, CA
Michael Morrison, Janssen Malloy LLP,
Eureka, CA**DEFENSE**
ATTORNEY(S) Nancy K. Delaney, Mitchell, Brisso, Delaney
& Vrieze, Eureka, CA**FACTS & ALLEGATIONS** On Sept. 15, 2008, plaintiff Elena Esquivel, 26, a receptionist, was working at McKinleyville Animal Care Center in McKinleyville. In the morning, Traci Barnwell, a Humboldt County Animal Control employee, arrived at the center with a pit bull mix to give the dog a rabies vaccination. The animal was in custody and control of the county of Humboldt, and was to be released from quarantine and returned to its owner after the vaccination.

Upon arrival, Esquivel and a veterinarian tech, came to the parking lot to assist Barnwell, at her request, in the vaccination of the dog, which was in the back of the county-owned pickup truck. Barnwell wrapped a leash around the dog's muzzle

(a muzzle wrap) and held the dog, as the veterinarian tech administered the shot while Esquivel looked on. After the vaccination, Barnwell released the muzzle wrap and pushed the dog further back in the truck. However, as Barnwell was closing the upper window of the truck's camper shell, the dog leaped out of the truck and attacked Esquivel as she was walking from the parking lot. The dog bit her on her stomach and left arm, causing a serious degloving injury.

Esquivel sued the Barnwell's employer, county of Humboldt. She alleged negligence, as well as strict liability, on the part of the defendant.

Esquivel claimed that Barnwell was transporting a known vicious and people-aggressive dog in a kennel truck, instead of an animal control vehicle. Plaintiff's counsel noted that an animal control vehicle, by the defendant's own admission, is the safer method to transport known vicious, people-aggressive dogs. Counsel also noted that Barnwell, by her own admission, insisted on maintaining custody and control of the dog before the shot was given, and while the shot was being given.

The county argued that Esquivel assumed the risk of being bitten based on the fact that she worked for a veterinary office. It also argued that Esquivel was negligent because she was informed about the bite history of the dog and stood within a leash length of the back of the vehicle. The county further argued that the plaintiff's employer contractually agreed to be legally responsible for the vaccination and provide adequately trained personnel.

INJURIES/DAMAGES *debridement; degloving injury; physical therapy; scar and/or disfigurement, arm; skin grafting; sutures*

Esquivel was taken from the scene of the incident by ambulance and presented to an emergency room. She was treated for dog bites to her on her stomach and left arm, including receiving stitches to the degloving injury on her left, nondominant arm. She was also prescribed pain medication and antibiotics, and referred a plastic surgeon.

Two days after the incident, Esquivel presented to the expert plastic surgeon, who observed that she had a 14 x 10 centimeter wound on her arm. The surgeon testified that due to the severity of the wound, Esquivel was immediately admitted to St. Joseph Hospital in Orange.

While a patient at the hospital, Esquivel underwent four procedures under general anesthesia — three excisional debridements of dead and fat tissue, combined with application and subsequent removal of a wound VAC, and finally a skin graft from her scalp. She remained hospitalized for 19 days and followed up with 11 physical therapy wound treatments from Oct. 6 to Oct. 22, 2008.

Esquivel claimed that her physical injuries healed well, but that she has a permanent injury to her lymphatic system (which is crucial for fighting off bacteria and infection), a permanent injury to her sensory nerves, and a large, permanent disfiguring scar to her left arm. She also claimed that, for the duration of her life, she will require the use of a specially compounded numbing cream to apply to her

left arm to aid in pain control and to relieve the sensitivity of the scar area, as well as the use of a compression sleeve, which is important to maintain the integrity of the graft and surrounding skin when a patient suffers a disruption in her lymphatic system.

Esquivel claimed that she intended to pursue a career in the veterinary field, but that she now has a fear of large unfamiliar dogs, and will seek other employment and career opportunities. She claimed severe emotional trauma as a result of the attack, in addition to her residual medical injuries. Esquivel claimed she missed seven weeks of work, at 40 hours per week at a rate of \$10.75 per hour, and 14 additional days at the same rate of pay. Thus, Esquivel asked the jury to award \$4,214 in damages for past lost earnings, \$169,690 in damages for past medical costs, \$224,460 in damages for future medical costs, and an unspecified amount of damages for her pain and suffering.

The county did not present any expert witness testimony on damages, but noted that Esquivel's plastic surgeon testified that young skin is more sensitive to pain than older skin. Thus, counsel argued that the plaintiff's future suffering would be less.

RESULT The court permitted the jury to decide the case under the negligence cause of action, and refused to give either a strict-liability or an assumption-of-risk instruction.

The jury found the county 75 percent at fault for the incident, and Esquivel 25 percent at fault. Thus, the plaintiff was awarded \$548,364.59 in total damages. However, the total award was reduced to \$401,785.91 to account for a lien on the plaintiff's past medical costs, making Esquivel's net award \$301,339.44, after the 25 percent reduction for comparative fault.

ELENA ESQUIVEL \$23,112 past medical cost
 \$224,460 future medical cost
 \$4,214 past lost earnings
 \$100,000 past pain and suffering
\$50,000 future pain and suffering
 \$401,786

DEMAND \$450,000 (CCP 998)
OFFER none

INSURER(S) self-insured County of Humboldt

TRIAL DETAILS Trial Length: 5 days
 Trial Deliberations: 16 hours
 Jury Vote: 11-1
 Jury Composition: 4 male, 8 female

PLAINTIFF
EXPERT(S) Ron Berman, animal wound analysis,
 Manhattan Beach, CA
 Thomas F. Krenek, M.D., neurology,
 Eureka, CA
 Mark B. Pardoe, M.D., plastic surgery/
 reconstructive surgery, Eureka, CA
 (treating physician)

DEFENSE
EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

-Dan Israeli