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## Is homeowner liable if dog bites sitter?

**Dear Dale: Last year a woman who was baby-sitting our children in our home for the summer was bitten by our dog while she was playing tug-of-war with it. Our homeowner's insurance company won't cover us for our sitter's claim because it says she was an employee in our home. Do I have a defense under the dog bite statute? Also, will workers compensation come into play?**

Answer: You have a pretty complicated situation on your hands. Let's take a look at this piece by piece.

First, under Ohio law, the owner, keeper, or harbinger of a dog generally is liable for any injuries caused by the dog. That rule, however, is not absolute. For instance, if the person bitten was committing a criminal trespass, was committing or attempting to commit a criminal offense against someone, or was teasing, tormenting, or abusing the dog, the owner would not be liable under the statute.

So let's look at the situation in terms of the state law. For the purposes of liability under the statute, I don't think it makes a difference that you were employing your baby-sitter in some capacity. You asked about possible defenses. Your sitter obviously wasn't trespassing, so it would seem your best defense would be to argue that her game of tug-of-war could be construed as teasing the dog. As a lawyer who handles dog bite claims, I'd argue strongly against that, but there might be something there for you to hang your hat on, especially because you could be defending this on your own without the help of your insurance company.

That brings us to our next issue, which is whether your insurance company should be defending you for this claim. In my opinion it's outrageous that your insurance company is letting you dangle out there when you're facing what could be a pretty significant loss depending on the extent of your baby-sitter's injuries and any permanent scarring she may have.

But, looking for any reason not to provide coverage is standard operating procedure for some insurance companies. Their argument, I'm sure, would be that it's all a function of the policy language, and that if employees working in your home are excluded under the insurance policy, there's no obligation for them to provide coverage. And to the extent that there is a specific exclusion, that's a good argument. Still, don't we purchase insurance policies thinking we're going to be covered in these types of situations?

You'd have to examine the specific language of the policy. But don't quit fighting this just because someone with the insurance company tells you you're not covered. If the exclusionary language is ambiguous, Ohio case law is clear that it must be construed against the insurance company.

The problem is that you'll probably have to hire a lawyer to figure this out. If your baby-sitter sues, you may have to sue your insurance company to get a determination as to whether it's obligated to cover you. In fact, even if your baby-sitter doesn't sue, you may want to sue your insurance company if her attorney is still making a sizeable pre-suit demand on you. It may depend on the extent of your baby-sitter's injuries. If you can settle with her for less money than it would cost you to hire a lawyer to sue the insurance company, it may be the practical route to go.

Finally, you asked about whether workers compensation would come into play. That's really tough to say here because it would seem to depend on your baby-sitter's employment status under the law. If she was considered an employee, she could have a workers compensation claim. If under the law she would have been deemed an independent contractor, workers comp wouldn't come into play.

You'd have to look at a lot of factors, including such things as whether you contracted for her services with a company, how much you controlled her hours, the way she performed her work, and how often she worked for you.

Dale Emch practices law at the Charles E. Boyk Law Offices, LLC, in Toledo. In his column, he will discuss general legal principles and answer readers' questions. Neither Mr. Emch nor The Blade present or intend his column to be taken as legal advice. Readers seeking legal advice should consult with an attorney. Readers should send their questions to Mr. Emch at [demch@charlesboyk-law.com](mailto:demch@charlesboyk-law.com) or Dale Emch, 405 Madison Ave., Suite 1200, Toledo, OH 43604. His blog is at [www.toledocaraccidentlawyerblog.com](http://www.toledocaraccidentlawyerblog.com)

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