

STATE OF WISCONSIN  
SUPREME COURT

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COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs-Appellants,

v.

AMERICAN FAMILY MUTUAL  
INSURANCE CO. and  
NANCY L. SEEFELDT,

Defendants-Respondents-Petitioners.

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**APPEAL FROM THE OCTOBER 9, 2007 ORDER OF THE  
WINNEBAGO COUNTY CIRCUIT COURT,  
HONORABLE THOMAS J. GRITTON, PRESIDING,  
CIRCUIT COURT CASE NO. 2006-CV-1307**

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**BRIEF AND APPENDIX OF  
DEFENDANTS-RESPONDENTS-PETITIONERS, AMERICAN FAMILY  
MUTUAL INSURANCE CO. AND NANCY L. SEELFELDT**

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## **STATEMENT ON ORAL ARGUMENT**

Pursuant to this Court's Order, dated March 16, 2009, this case will be argued before the Court.

## **STATEMENT OF ISSUES**

- I. Was Seefeldt liable as a keeper of the dog under Wis. Stat. § 174.02 at the time of this incident?

Trial Court Answered: No. (R. 29;p. 2; Pet'r R-Ap. 123).

Court of Appeals Answered: Yes. (Pet'r R-Ap. 113).

- II. Is imposing liability on an on-premises landlord who lacks custody or control over the dog at the time of the injury contrary to public policy?

Trial Court Answered: Yes. (R. 34;pp. 8-10; Pet'r R-Ap. 131-33).

Court of Appeals Answered: No. (Pet'r R-Ap. 115).

## **STATEMENT OF THE CASE**

### **Nature of the Case**

This is an appeal from a published Court of Appeals' decision, reversing the circuit court's decision granting summary judgment in favor of the Defendants-Respondents-Petitioners, Nancy L. Seefeldt ("Seefeldt") and American Family Mutual Insurance Company ("American Family"), in a personal injury law suit arising out of a dog bite to the Plaintiff-Appellant, Colleen Pawlowski ("Pawlowski"). (Pet'r R-Ap. 101-02).

### **Statement of the Facts**

This case arises out of an incident occurring on October 26, 2003, whereby the Plaintiff-Appellant, Pawlowski, was bit by a dog while walking down Glenview Drive in Neenah, Wisconsin. (R. 18:p. 5; Pet'r R-Ap. 140).

Pawlowski had almost passed Seefeldt's residence on Glenview Drive, when she heard a screen door open and saw two dogs jump off the porch and run towards her. (R. 18:p. 5; Pet'r R-Ap. 140). The dogs' owner, Walter Waterman ("Waterman"), was chasing the dogs and calling their names. (R. 18:p. 5; Pet'r R-Ap. 140). The gold-colored dog (hereinafter referred to as "Boo") bit Pawlowski. (R. 18:p. 5; Pet'r R-Ap. 140).

At the time of the incident, Waterman was staying with Seefeldt at 1203 Glenview Drive, Neenah, Wisconsin. (R. 18:pp. 7, 9; Pet'r R-Ap. 142, 144). Seefeldt met Waterman in June 2003 through Alicia Williams, a friend of Seefeldt's daughter. (R. 18:p. 8; Pet'r R-Ap. 143). Waterman lived with Alicia

and her mother, Cindy, while Alicia was growing up. (R. 18:p. 8; Pet'r R-Ap. 143). Alicia considered him to be like a father. (R. 18:p. 8; Pet'r R-Ap. 143). Waterman had lost his job and needed a place to live that allowed dogs. (R. 18:p. 8; Pet'r R-Ap. 143). Seefeldt had a large back yard with a fence, and Alicia and her mother asked if Waterman could stay with Seefeldt until he found a job. (R. 18:pp. 8-9; Pet'r R-Ap. 143-44).

Waterman moved into the Seefeldt residence around the end of June 2003. (R. 18:p. 9; Pet'r R-Ap. 144). Waterman had two dogs, which stayed with him in one of the bedrooms on the main floor of the house. (R. 18:p. 10; Pet'r R-Ap. 145). Seefeldt did not ask Waterman whether his dogs had ever bitten or injured anyone before he moved in. (R. 18:pp. 10-11; Pet'r R-Ap. 145-46). Waterman told Seefeldt that his dog, Boo, had nipped at a six-year-old girl's arm, and had scared her, but did not break the skin. (R. 18:p. 10; Pet'r R-Ap. 145). Alicia and her mother told Seefeldt that the dogs were friendly, and were not a threat to anyone. (R. 18:p. 11; Pet'r R-Ap. 146).

Seefeldt was home when the incident occurred; however, she was not outside the house with Waterman and the dogs when the bite occurred. (R. 18:pp. 11-12; Pet'r R-Ap. 146-47, R. 22:p. 6; Pet'r R-Ap. 156). Seefeldt did not find out that Waterman's dog bit Pawlowski until a police officer came to the house later that day. (R. 18:p. 12; Pet'r R-Ap. 147). When Waterman returned to the Seefeldt residence, he told Seefeldt that he had opened the front door, Boo ran into the street instead of going over to Waterman's car, and that Boo had bit a woman. (R.

18:p. 12; Pet'r R-Ap. 147). Seefeldt told Waterman he should put the dog to sleep. (R. 18:p. 12; Pet'r R-Ap. 147).

Prior to the incident, Seefeldt had never seen Waterman let the dogs out the front door without a leash. (R. 18:p. 14; Pet'r R-Ap. 149). Seefeldt was not aware that either of Waterman's dogs had bitten before. (R. 18:p. 13; Pet'r R-Ap. 148). Seefeldt would not have let Waterman stay in her house with the dogs if she had known the dogs had bit someone before. (R. 18:p. 15; Pet'r R-Ap. 150).

### **Procedural Posture**

On October 25, 2006, Plaintiffs-Appellants filed a Summons and Complaint in Winnebago County alleging negligence on Seefeldt's behalf, and seeking compensatory damages for pain, suffering, disability, past medical expenses and wage loss, and future medical expenses and loss of earnings sustained by Pawlowski, and damages for loss of society, companionship and household services sustained by Pawlowski's husband, Thomas Pawlowski, as a result of Pawlowski's injuries. (R. 1:pp. 1-4). On November 16, 2006, American Family and Seefeldt answered the Complaint denying negligence and liability on Seefeldt's behalf, and asserting various affirmative defenses. (R. 2:pp. 1-3).

On June 25, 2007, Seefeldt and American Family moved for summary judgment on the grounds that Seefeldt was not the "keeper" of the dog at the time of the incident, and additionally because public policy supports barring recovery against Seefeldt. (R. 16:p. 1; R. 17: pp. 1-10).

On June 27, 2007, Pawlowski filed an Amended Summons and Complaint, amending the Complaint to allege Seefeldt had knowledge that Waterman's dog had previously caused injuries to others, and incorporated a claim for double damages pursuant to Wisconsin law. (R. 19:pp. 1-3). On August 7, 2007 Seefeldt and American Family filed a Notice of Motion and Motion to Strike Amended Complaint and, in the Alternative, Answer to Amended Complaint. (R. 24:pp. 1-4). Pawlowski filed a motion on July 5, 2007, alleging that there was no genuine issue of material fact as to whether Seefeldt should be liable for double damages. (R. 20:p. 1).

After reviewing the briefs and hearing oral argument, the circuit court granted summary judgment in favor of Seefeldt and American Family. (R. 29:pp. 1-2; Pet'r R-Ap. 122-23; R. 34:pp. 1-12; Pet'r R-Ap. 124-35). The Circuit Court concluded that Seefeldt did not have custody and control over the dog, and thus, was not a keeper of the dog at the time Pawlowski was bit. (R. 34:pp. 7-8; Pet'r R-Ap. 130-31). Additionally, it concluded that public policy supported the dismissal of Plaintiffs-Appellants' claims against Seefeldt. (R. 29:p. 2; Pet'r R-Ap. 123).

On December 3, 2008, the Court of Appeals reversed the circuit court's decision.<sup>1</sup> (Pet'r R-Ap. 114). The Court of Appeals held that Seefeldt remained a keeper at the time of the injury, regardless of the fact that the legal owner let the

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<sup>1</sup> It should be noted that on September 25, 2008, the Court of Appeals heard oral arguments in this matter.

dog out the door. (Pet'r R-Ap. 113). It concluded Seefeldt was a keeper or statutory owner under Wis. Stat. § 174.02, and further, that she retained statutory ownership of the dog at the time of the injury to Pawlowski, and was thus strictly liable under Wis. Stat. § 174.02. (Pet'r R-Ap. 113-14).

On March 16, 2009, the Supreme Court accepted the Defendants-Respondents-Petitioners' Petition for Review.

### **STANDARD OF REVIEW**

The appellate court reviews a circuit court's grant of summary judgment independently, applying the same methodology as the circuit court. Town of Delafield v. Winkelman, 2004 WI 17, ¶ 15, 269 Wis.2d 109, 117, 675 N.W.2d 470, 475. Summary judgment shall be granted where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

To defeat summary judgment, the nonmoving party must demonstrate more than a mere existence of some alleged factual dispute; rather, there must be a genuine issue of material fact. Baxter v. DNR, 165 Wis. 2d 298, 312, 477 N.W.2d 648, 654 (1991). Where the material facts are not in dispute, the court is presented solely with a question of law, subject to de novo review. Town of Delafield, 2004 WI 17, ¶ 16, 269 Wis.2d at 117, 675 N.W.2d at 475.

## ARGUMENT

### I. SEEFELDT IS NOT LIABLE UNDER WIS. STAT. § 174.02 BECAUSE SHE WAS NOT A KEEPER AT THE TIME OF THE INCIDENT.

- A. Pursuant to Janssen v. Voss, Seefeldt was not a keeper of the dog at the time of the subject incident because the legal owner had assumed full custody and control of the dog, thereby terminating Seefeldt's responsibility and potential liability as a keeper.

The trial court was correct in concluding that Seefeldt was not liable for Pawlowski's injuries under Wis. Stat. § 174.02 because at the time of the subject incident the legal owner, Waterman, had assumed full custody, control and dominion of his dog, thereby terminating Seefeldt's responsibility and potential liability as a keeper of the dog.

An owner of a dog is liable for the full amount of damages caused by the dog. Wis. Stat. § 174.02(1)(a). Only an owner of a dog can be held strictly liable for damages caused by the dog under Wis. Stat. § 174.02. Fire Ins. Exch. v. Cincinnati Ins. Co., 2000 WI App. 82, ¶ 12, 234 Wis.2d 314, 324, 610 N.W.2d 98, 104, *citing* Wis. Stat. § 174.02. A statutory owner under Chapter 174 includes "any person who owns, harbors or keeps a dog." Id. *citing* Wis. Stat. §174.001(5).

For a person to be considered a keeper, and therefore an owner of the dog for imposing strict liability, the person in question must exercise some measure of custody, care or control over the dog. Armstrong v. Milwaukee Mut. Ins. Co., 202 Wis.2d 258, 267, 549 N.W.2d 723, 727 (1996). A keeper has been defined as one "who keeps, one who watches, guards, etc.; one having custody." Id. 202 Wis.2d

at 266, 549 N.W.2d at 727 quoting Janssen v. Voss, 189 Wis. 222, 225, 207 N.W. 279, 280 (1926).

Several factors are considered in determining who is a keeper. Fire Ins. Exch., 2000 WI App. 82, ¶ 12, 234 Wis.2d at 328, 610 N.W.2d at 106. Persons who have fed, cared for, and given a dog shelter have been found to be keepers. Id. A person's status as a keeper can change over time, with the focal point being *the time of the injury*. Armstrong, 202 Wis.2d at 267, 549 N.W.2d at 727 (emphasis added).

Janssen presented the issue of whether the mother of a fourteen-year-old dog owner “was a keeper at the time of the injury.” Janssen, 189 Wis. 222, 207 N.W. at 280. In Janssen, the dog owner's mother left town to attend a funeral and arranged for the dog to be placed at a dog hospital in her absence. Id., 189 Wis. 222, 207 N.W. at 279. The son, who was the registered and licensed owner of the dog, was staying with another family during his mother's absence. Id. While the mother was out of town, her son took the dog from the hospital and tied it in the yard of the home where he was staying. Id. The dog bit a child who wandered into the yard. Id. The injury child sued the dog owner's mother. Id.

The Court found that up until she departed for the funeral, the mother was a keeper of the dog: she bought the dog for her son, brought it to her home, and maintained the dog at her expense and under her control for over a year prior to the incident. Janssen, 189 Wis. 222, 207 N.W. at 280. However, when she placed

the dog in the hospital, her authority and responsibility for the dog were at an end.

Id. In reaching its decision, the court stated:

[w]here the keeper is not the owner, it may be assumed, as a general proposition, that the dominion or authority of the keeper over the dog is a limited one, subject to be terminated at any time by the owner. In the absence of special circumstances, the owner may terminate the dominion of the keeper over the dog at any time and remove the dog from the custody of the keeper. The moment that is done, the dual authority theretofore exercised over the dog by the owner and the keeper is merged in the owner, and at that very moment the keeper's rights and responsibilities concerning the dog are at an end.

Id.

Janssen is on point with the facts and circumstances in this case. Seefeldt is not the owner of the dog. At best, she is a limited keeper of Waterman's dog, limited in dominion and control by Waterman's ownership. Here, in the moments before the injury occurred, the dog was leaving the home with its legal owner, Waterman. (R. 18:pp. 11-12; Pet'r R-Ap. 161, R. 22:p. 6; Pet'r R-Ap. 147). Seefeldt was not involved in any way with the dog's whereabouts, actions or freedom of movement. (R. 18:pp. 11-12; Pet'r R-Ap. 161, R. 22:p. 6; Pet'r R-Ap. 147). She did not become aware that Waterman was leaving the home with his dogs until after the incident occurred. (R. 18:p. 12; Pet'r R-Ap. 147).

Applying the Janssen analysis, Waterman, the legal owner of the dog, terminated Seefeldt's limited keeper dominion when he left her house with his dog. The moment that was done, the "dual authority" shared by Seefeldt (the limited keeper) and Waterman (the legal owner) was "merged in the owner," and

Seefeldt's "rights and responsibilities concerning the dog [were] at an end." See Janssen, 189 Wis. 222, 207 N.W. at 280.

While concluding that Seefeldt was a keeper of Waterman's dog, the Court of Appeals failed to address and apply the Janssen distinction between a keeper whose "authority...over the dog is a limited one," and an owner, who "[i]n the absence of special circumstances . . . may terminate the dominion of the keeper over the dog at any time and remove the dog from the custody of the keeper." See Janssen, 189 Wis. 222, 207 N.W. at 280. The Court of Appeals does not identify any "special circumstances" that would negate the termination of Seefeldt's dual authority over the dog, negate the merger of all authority and control of the dog in its legal owner, or negate a conclusion that "at that very moment" of the injury to Pawlowski, Seefeldt's rights and responsibilities concerning the dog had ended.

**B. Koetting v. Conroy does not apply to this case.**

The Court of Appeals found that Koetting "appears to govern the outcome" of this case. (Pet'r R-Ap. 111). In Koetting v. Conroy, the adult daughter of the father homeowner owned the dog and lived in the father's home as a member of his family. 223 Wis. 550, 270 N.W. 625, 626 (1936). The adult daughter received board and lodging, and her entire support from her father. Id. The dog was allowed in the house and was fed food from the father's table. Id. On the date of the accident, the adult daughter brought the dog to the park alone, and unleashed the dog. Id., 223 Wis. 550, 270 N.W. at 625. The dog caused the plaintiff to fall and sustain injuries. Id. The Court found because he kept the dog on his premises

the father had not relinquished keeper status. Koetting, 223 Wis. 550, 270 N.W. at 626-27.

However, as the dissent in the Court of Appeal's decision explains, there are several reasons Koetting does not apply to this case:

[f]irst of all, it equates an adult daughter to a child. Second, the statement from Hagenau v. Millard, [182 Wis. 544, 547, 195 N.W.718 (1923)] that Koetting relies upon is dicta, Koetting having nothing to do with a father's responsibility for a child dog owner. Third, even if the father was the keeper of his daughter's dog at certain times under certain circumstances, the Koetting decision ignores the Janssen distinction between a legal owner and a limited keeper. See Koetting, 223 Wis. at 558-59. This is a distinction that the majority also fails to address here, limiting its holding only to whether Seefeldt was a keeper. The Koetting decision earlier established that the plaintiff must not only show facts "which made [the defendant] the keeper of the dog," but must also show facts "which brought the circumstances of the injury within the [strict liability] statute." Id. at 552 (emphasis added). Unfortunately, the Koetting court abandoned the latter standard, ignoring the Janssen proviso, as does the majority in this case.

(Pet'r R-Ap. 119).

According to the Court of Appeals decision in this case, a limited keeper cannot terminate his status as keeper by simply relinquishing control of the dog; rather, he must relinquish shelter, custody and control (i.e. the keeper's "authority" over the dog is not ended until he "relinquishes not only control, but also shelter or custody—such that the custody, care *and* control of the dog are *all* exercised by the owner" (Pet'r R-Ap. 111)). This additional requirement modifies the holdings in both Koetting and Janssen, thus going beyond the Court of Appeal's role as set forth in Cook v. Cook, 208 Wis.2d 166, 189, 560 N.W.2d 245, 255 (1997).

**C. Wisconsin law does not mandate that a landlord who allows a non-family member and his dog to live on her premises be held strictly liable under § 174.02 Wis. Stat. for injuries caused by the dog when the landlord is not exercising custody or control over the dog.**

Several Wisconsin cases have held that landlords cannot be held liable for injuries caused by their tenants' dogs under both § 174.02 Wis. Stat. and common-law negligence. See Smaxwell v. Bayard, 2004 WI 101, ¶ 55, 274 Wis.2d 278, 316, 682 N.W.2d 923, 942; see also Malone by Bangert v. Fons, 217 Wis.2d 746, 757-66, 580 N.W.2d 697, 702-06 (Ct. App. 1998); see also Gonzales v Wilkinson, 68 Wis.2d 154, 158, 227 N.W.2d 907, 910 (1975).

In Gonzales, the plaintiff sued the owner resident of a rented duplex and his tenant, who lived on the other side of the owner's duplex, for injuries inflicted by the tenant's dog on the duplex property. 68 Wis.2d at 155, 227 N.W.2d at 908-09. Plaintiffs' complaint alleged attractive nuisance and negligence on the part of the landlord for allowing a dog with known vicious propensities to be on the premises, and for failure to properly supervise the vicious dog in the yard, among other reasons. Id., 68 Wis.2d at 156, 227 N.W.2d at 909. The Court held the doctrine of attractive nuisance did not apply, and that the landlord could not be found liable for the acts of the dog because he was neither the owner nor the keeper of the dog, and there were no allegations he had dominion over the dog. Id., 68 Wis.2d at 157-58, 227 N.W.2d at 909-10.

Seefeldt's relationship with Waterman is similar to that of the landlord and tenant in Gonzalez. The fact that Waterman did not pay rent does not disqualify

the analogy of a landlord-tenant type relationship in this case. Seefeldt allowed Waterman and his dogs to stay in one of the bedrooms of her home for a limited time period in exchange for his help with home repairs. (R. 18:pp. 8-9; Pet'r R-Ap. 143-44). There is little distinction between a tenant living in an upstairs apartment or duplex unit adjacent to the landlord's living quarters, and Waterman staying in a bedroom of Seefeldt's home in exchange for performing home repairs.

Koetting is the only Wisconsin case that found a homeowner to be a keeper of a dog merely because he allowed the dog owner to reside at his residence with the dog. However, as discussed above, Koetting is unique because the dog owner was related to the homeowner, and the homeowner served as the sole source of lodging, board, and support for both the dog and its owner. 223 Wis. 550, 270 N.W. at 626-27. There is no evidence Seefeldt provided Waterman with food, money, or other support while he lived in her home.

There is no reason to hold an on-premises landlord strictly liable under Wis. Stat. § 174.02 for injuries caused by her tenant's dog where: (1) the landlord did not have custody or control of the dog at the time of the injury, (2) there is no familial relationship between the on-premises landlord and the dog-owning tenant, and (3) the landlord has not assumed the role of providing the sole source of lodging, board and support for the dog and its owner. An off-premises landlord has not been held liable as a keeper because the off-premises landlord does not exercise any control over the dog. Hagenau, 182 Wis. 544, 195 N.W. at 719; Gonzales, 68 Wis.2d at 158, 227 N.W.2d at 910; Malone, 217 Wis.2d at 766, 580

N.W.2d at 706. An on-premises landlord who does not have custody or control of the tenant's dog at the time of the injury is in no better position to prevent injury to third parties by the dog than an off-premises landlord.

The common thread between cases where a property owner has been found liable as a keeper or harbinger of a dog owned by an individual who is living with, or staying with, the property owner is the presence of a familial relationship between the property owner and the dog owner. See Koetting, 223 Wis. 550, 270 N.W. at 625-27 (1936) (property owner father deemed liable as keeper of dog owned by his adult daughter, who lived in his home as a member of his family, received her entire support from him, and the dog was kept at the father's house with his knowledge and permission and fed from table remnants); see also Abraham v. Ibsen, 213 Ill.App. 210, 1-6 (Ill.App.1 Dist.) (college student's father properly found by jury to be keeper of a bulldog owned by the student's fraternity and brought home from college by student the previous day); see also Adams v. Brown, 140 Mo.App. 434, 124 S.W. 1065, 1066 (1910) (defendant property owner found liable by jury as keeper of dog owned by his son when dog was kept in the property owner's home and lived with him as a part of his family with his knowledge and consent); Cummings v. Riley, 52 N.H. 368, 1872 WL 4383, 1-2 (1872) (jury was instructed that a head of the family may be regarded as a keeper of the dog under the statute allowing recovery from owner or keeper of the dog if the head of the family, having the possession and control of a house or premises, permits a dog to be kept on the premises in the way such domestic animals are

usually kept, as a member of the family). Extending liability to on-premises landlords who allow non-familial tenants or boarders to reside at their residence does nothing to further the underlying purpose of the strict liability statute, which is “to protect those people who are not in a position to control the dog.” Armstrong, 202 Wis.2d at 268, 549 N.W.2d at 728 (1996). Liability under Wis. Stat. § 174.02 should not be extended beyond its reasonable scope to punish an individual who is not in control of the animal, who does not have a close familial relationship with the dog owner, and who has not assumed the role of supporting the dog owner and the dog.

**II. TO HOLD SEEFELDT LIABLE UNDER WIS. STAT. § 174.02 AS A KEEPER IS CONTRARY TO PUBLIC POLICY**

The Court of Appeal’s decision in this case is contrary to public policy. A landlord/property owner should not be liable for injuries caused by a dog, when she does not own the dog, is not in control or custody of the dog, and merely permits the dog and its owner to live in her home in exchange for performing home repairs.

The fact that § 174.02 imposes strict liability does not preclude application of public policy factors. Fandrey v. Connell, 2004 WI 62, ¶ 20, 272 Wis.2d 46, 67, 680 N.W.2d 345, 355. Even where it is proven that a dog is the cause-in-fact of the plaintiff’s injuries under § 174.02 Wis. Stat., liability may still be denied on the basis of the public policy factors used to determine legal cause. Id. 2004 WI 62, ¶ 21, 272 Wis.2d at 67, 680 N.W.2d at 356.

The purpose of Wis. Stat. § 174.02 is to protect innocent third parties from injuries caused by a dog. This is accomplished by placing responsibility on those who are in a position to protect. The people who can protect are those who exercise control or dominion over the dog at the time of the incident. Limiting liability to those who exercise control or dominion over the dog promotes the “salutary policy of placing responsibility where it belongs, rather than fostering a search for a defendant whose affluence is more apparent than his culpability.” Smaxwell, 2004 WI 101, ¶ 46, 274 Wis.2d at 309-10, 682 N.W.2d at 938-39 quoting Malone, 217 Wis.2d at 767, 580 N.W.2d at 706.

Plaintiffs-Appellants have sought recovery from Seefeldt rather than Waterman because she is the defendant “whose affluence is more apparent.” However, this does not justify holding Seefeldt liable for injuries caused by Waterman’s dog when she lacked control or dominion over the dog at the time of the injury. Seefeldt should not be made economically responsible for Waterman, or turned into Waterman’s insurer, for an incident that occurred while Waterman, the legal owner, had complete custody and control of his dog, simply because Seefeldt allowed Waterman to stay at her home on a temporary basis.

Although Smaxwell was not brought under Wis. Stat. § 174.02,<sup>2</sup> it is relevant in its public policy discussion. Smaxwell expressed concern about the search for a defendant with more affluence and ability to pay. 2004 WI 101, ¶ 46, 274 Wis. 2d at 310-11, 682 N.W.2d at 938-39. The law employs the “salutary

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<sup>2</sup> Smaxwell was a negligence case involving a dog bite.

policy of placing responsibility where it belongs, rather than fostering a search for a defendant whose affluence is more apparent than his culpability.” Id.

Smaxwell sets forth the following six public policy factors to consider in limiting liability: (1) the injury is too remote from the negligence; (2) the injury is too wholly out of proportion to the tortfeasor’s culpability; (3) in retrospect, it appears too highly extraordinary that the negligence should have brought about the harm; (4) allowing recovery would place too unreasonable a burden upon the tortfeasor; (5) allowing recovery would be too likely to open the way to fraudulent claims; or (6) allowing recovery would have no sensible or just stopping point. Id. 204 WI 101, ¶ 40, 274 Wis.2d at 305, 682 N.W.2d at 936. Five of the six factors support barring Seefeldt’s liability under the fact of this case.

First, Seefeldt’s secondary role, as owner of the home and landlady, is significantly removed from the incident and too remote from Pawlowski’s injury. Second, Pawlowski’s injury is too wholly out of proportion to Seefeldt’s role because Seefeldt was not exercising any control over the dog at the time of the incident and had no ability to prevent the injury. Third, in retrospect, it appears too highly extraordinary that Seefeldt’s role in this case, as landlady and limited keeper of the dog, should have brought about the harm. Fourth, it is unreasonable to burden Seefeldt with strict liability under this statute because it makes her an insurer of the legal owner, Waterman. Finally, the sixth and last factor, as expressed by the trial court in this case, is a concern: allowing recovery would have no sensible or just stopping point. Essentially, by holding Seefeldt

responsible, she is becoming an insurer of the person who legally owned the dog, was present and in control of the dog and who was directly responsible for Pawlowski's injuries; i.e. Waterman.

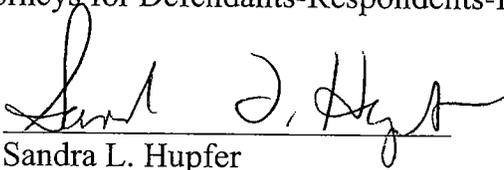
A public policy ruling in this case finding that Seefeldt is not liable does no disservice to the public policy that underlies Wis. Stat. § 174.02 since Waterman, acting both as legal owner and keeper of the dog at the time of the injury, remains liable under the statute. It further fosters the public policy of the statute by placing the liability on the true keeper of the dog; that is, the person in control of the dog at the time of the incident.

### **CONCLUSION**

For the above-mentioned reasons, the Defendants-Respondents-Petitioners, American Family Mutual Insurance Co. and Nancy L. Seefeldt, respectfully request that this Court reverse the Court of Appeal's decision and affirm the Circuit Court's Order Granting Summary Judgment and Dismissal, dated October 9, 2007.

Dated this 14<sup>th</sup> day of April, 2009.

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**CERTIFICATION PAGE**

I certify that this brief conforms to the rules contained in section 809.19(8)(b) and (c) of the Wisconsin Statutes for a brief produced using the following font:

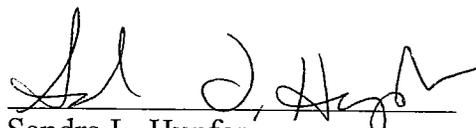
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- X Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4,681 words, excluding the certification page and appendix.

Dated this 14<sup>th</sup> day of April, 2009.

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STATE OF WISCONSIN  
SUPREME COURT

---

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs-Appellants,

Appeal No.: 2007AP002651  
Circuit Court Case No.: 06-CV-1307

v.

AMERICAN FAMILY MUTUAL  
INSURANCE CO. and  
NANCY L. SEEFELDT,

Defendants-Respondents-Petitioners.

---

**APPEAL FROM THE OCTOBER 9, 2007 ORDER OF THE  
WINNEBAGO COUNTY CIRCUIT COURT,  
HONORABLE THOMAS J. GRITTON, PRESIDING,  
CIRCUIT COURT CASE NO. 2006-CV-1307**

---

**APPENDIX TO THE BRIEF OF  
DEFENDANTS-RESPONDENTS-PETITIONERS, AMERICAN FAMILY  
MUTUAL INSURANCE CO. AND NANCY L. SEELFELDT**

---

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**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 3, 2008**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2651

Cir. Ct. No. 2006CV1307

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT II

---

COLLEEN PAWLOWSKI AND THOMAS PAWLOWSKI,

PLAINTIFFS-APPELLANTS,

v.

AMERICAN FAMILY MUTUAL INS. CO. AND NANCY L. SEEFELDT,

DEFENDANTS-RESPONDENTS.

---

APPEAL from a judgment of the circuit court for Winnebago County: T. J. GRITTON, Judge. *Reversed and cause remanded with directions.*

Before Brown, C.J., Snyder and Neubauer, JJ.

¶1. NEUBAUER, J. Colleen and Thomas Pawlowski appeal from a summary judgment granted in favor of American Family Mutual Insurance Company and Nancy L. Seefeldt. The Pawlowskis contend that the trial court

erred in its determination that Seefeldt was not strictly liable under the dog bite statute, WIS. STAT. § 174.02 (2005-06),<sup>1</sup> for injuries sustained by Colleen when a dog kept at Seefeldt's residence was let out the front door by its legal owner, Walter Waterman. The dog bite statute holds persons who "own, harbor or keep" a dog strictly liable for any damages the dog causes. A statutory keeper may be simultaneously liable with an owner. The trial court concluded that at the moment of injury, the dog's legal owner had control of the dog and, therefore, Seefeldt was not a statutory keeper under § 174.02. We reverse the trial court's ruling.

¶2 To be a keeper under WIS. STAT. § 174.02, one must exercise some measure of custody, care or control over the dog. Generally, one who provides shelter and protection for a dog in his or her own home, i.e., has custody, is a keeper. While a person's keeper status can change over time, with the focal point being the time of injury, Wisconsin case law instructs that a statutory keeper retains keeper status, despite an owner's temporary control, unless the keeper has relinquished custody, care *and* control of the dog to the owner at the time of the injury. Here, at the time of the injury, the dog was still kept at Seefeldt's home and the injury occurred when the dog charged out the door of her home. Thus, we conclude that she remained a keeper at the time of the injury, regardless of the fact that the legal owner let the dog out the door. We therefore conclude that she is liable for Colleen's injury and that the Pawlowskis are entitled to judgment as a matter of law. We reverse the judgment and remand with directions to enter judgment in favor of the Pawlowskis.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

### ***BACKGROUND***

¶3 Waterman and his two dogs moved into Seefeldt's residence in June 2003. Waterman had recently lost his job and needed a place to live that allowed dogs. He was unable to live with his girlfriend, as her apartment would not allow dogs. A mutual friend of Waterman and Seefeldt believed that Seefeldt's property, having a large fenced backyard, would be suitable for dogs. The friend approached Seefeldt about Waterman living there with the dogs until he found a job. Seefeldt also kept three dogs of her own at her house.

¶4 Waterman and the dogs lived at the house without event until October 26, 2003. On October 26, 2003, Seefeldt was home when Waterman opened the front door to go to the grocery store; Seefeldt stated in her deposition that Waterman "always put [the dogs] in his car and took them with him." The dogs immediately charged across the street, while Waterman chased them, and one of the dogs bit Colleen three times.

¶5 As a result of the incident, Colleen sustained sixteen puncture wounds and soft tissue damage. Waterman subsequently moved out of the house with his two dogs and could not be located for litigation. Colleen and her husband filed this action against Seefeldt and her insurer, American Family, on October 25, 2006.

¶6 Seefeldt and American Family sought summary judgment on grounds that the Pawlowskis failed to state a claim upon which relief could be granted because Seefeldt was not the "keeper" of the dogs at the time of the incident, and thus was not a statutory owner subject to liability under WIS. STAT.

§ 174.02.<sup>2</sup> The Pawlowskis opposed, arguing that summary judgment on the issue of whether Seefeldt was a statutory keeper should be denied as there are “several genuine issues of material fact that should be resolved by a jury.”<sup>3</sup>

¶7 After hearing oral argument from both parties, the trial court granted summary judgment for Seefeldt and American Family on grounds that Seefeldt was not a keeper of the dogs at the time of the attack, and to the extent Seefeldt was a keeper of the dogs, that status ended when Waterman “exercise[d] dominion” over the dogs by leaving the residence with them. The court noted that Seefeldt clearly would be the statutory keeper of the dogs if, for example, she had been the one leaving the house with them or if a different incident had occurred while Waterman was not there.

¶8 The Pawlowskis appeal.

### *DISCUSSION*

¶9 Under WIS. STAT. § 174.02, an “owner of a dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.” An “owner” is defined as “any person who owns, harbors or keeps a dog.” WIS. STAT. § 174.001(5). The strict liability statute’s purpose “is to protect those people who are not in a position to control the dog.”

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<sup>2</sup> The only cause of action under consideration is strict liability under WIS. STAT. § 174.02. The Pawlowskis have expressly disclaimed any pursuit of a common-law negligence claim.

<sup>3</sup> While the Pawlowskis opposed summary judgment on the “keeper” issue, they did move for summary judgment on the issue of double damages. Because the trial court granted Seefeldt’s motion for summary judgment on the keeper issue, it did not reach the issue of double damages. The Pawlowskis do not raise the issue of double damages on appeal.

*Armstrong v. Milwaukee Mut. Ins. Co.*, 202 Wis. 2d 258, 268, 549 N.W.2d 723 (1996). At issue on appeal is (1) whether the fact that Seefeldt sheltered the dog at her residence rendered her a statutory “keeper” and therefore a statutory “owner” at the time of Colleen’s injury and (2) if so, whether Seefeldt relinquished that status when the legal owner let his dog out the door of her home. The Pawlowskis argue that Seefeldt was a statutory owner and that her keeper status was not relinquished. The Pawlowskis contend that the trial court erred when it granted summary judgment in favor of Seefeldt.

¶10 The grant or denial of a motion for summary judgment is a matter of law that this court reviews de novo. *Torgerson v. Journal/Sentinel, Inc.*, 210 Wis. 2d 524, 536, 563 N.W.2d 472 (1997). Summary judgment is appropriate if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” WIS. STAT. § 802.08(2). Whether Seefeldt was an “owner” of the dog at the time of the injury within the meaning of WIS. STAT. § 174.02 also presents a question of law which we review de novo. *Braverman v. Columbia Hosp., Inc.*, 2001 WI App 106, ¶12, 244 Wis. 2d 98, 629 N.W.2d 66 (Ct. App. 2001) (application of statute to undisputed facts presents question of law).

¶11 In Wisconsin, both a legal owner and statutory keeper can be simultaneously strictly liable under WIS. STAT. § 174.02. See *Fire Ins. Exch. v. Cincinnati Ins. Co.*, 2000 WI App 82, ¶18, 234 Wis. 2d 314, 610 N.W.2d 98. “Reading the statute to allow both owners and keepers to be liable comports with the statute’s policy of assigning responsibility to those in a position to protect innocent third parties from dog bites.” *Id.*, ¶17. To be a keeper and therefore an owner, the person “must exercise some measure of custody, care or control over

the dog.” *Armstrong*, 202 Wis. 2d at 265 (citing *Hagenau v. Millard*, 182 Wis. 544, 547-48, 195 N.W. 718 (1923)) (exercise control over, or furnish with shelter, protection or food); *Janssen v. Voss*, 189 Wis. 222, 224, 207 N.W. 279, 280 (1926) (has custody, dominion or authority over); *Koetting v. Conroy*, 223 Wis. 550, 552, 270 N.W. 625 (1936) (keep at dwelling and feed); and *Pattermann v. Pattermann*, 173 Wis. 2d 143, 150, 496 N.W.2d 613 (Ct. App. 1992) (feed, care for, give shelter).<sup>4</sup>

¶12 Thus, one who shelters or maintains the dog on her premises, i.e., has custody of the dog at her home, is a “keeper.” *Armstrong*, 202 Wis. 2d at 266 (persons who have fed, cared for, and given a dog shelter have been found to be keepers). However, “[t]he casual presence of dogs will not suffice to transform a person into a keeper; there must be evidence that the person has ‘furnished them with shelter, protection, or food, or that they exercise control over the dogs.’” *Id.* (citing *Hagenau*, 182 Wis. at 547-48); see also *Koetting*, 223 Wis. at 552.

¶13 *Seefeldt as “Keeper.”* At the outset, we address the issue of whether Seefeldt was a keeper within the meaning of WIS. STAT. § 174.02. The parties dispute whether Seefeldt’s involvement with Waterman and his dogs was sufficient to qualify her as a keeper. Based on our review of the record, we conclude that Seefeldt was a keeper under § 174.02.

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<sup>4</sup> WISCONSIN JI—CIVIL 1391 provides:

A person is said to be a keeper of an animal if, even though not owning the animal, the person has possession and control of it or if the person permits another person who is a member of his or her family or household to maintain the animal on his or her premises.

¶14 While the facts of record are sparse, it is undisputed that Waterman and his dogs had resided at Seefeldt's personal residence for approximately four months prior to the incident. By permitting Waterman's dogs to reside at her home over a period of months, Seefeldt provided them with both shelter and protection on an ongoing basis and was therefore a keeper. *See, e.g., Armstrong*, 202 Wis. 2d at 265 (one who has furnished a dog with shelter and protection is a keeper).

¶15 In so holding, we reject Seefeldt's attempt to liken herself to a "pro bono" landlord in an effort to escape keeper status. The cases cited by Seefeldt involve traditional landlord/tenant arrangements, not a situation where the owner of a home permits another person in her house to maintain a dog on the same premises. *See Hagenau*, 182 Wis. at 546-47 (commercial landlord not a keeper of tenant's dogs); *Malone v. Fons*, 217 Wis. 2d 746, 764-65, 580 N.W.2d 697 (Ct. App. 1998) (an off-premise landlord is not a "harborer" for purposes of WIS. STAT. § 174.001); *Gonzales v. Wilkinson*, 68 Wis. 2d 154, 154-55, 227 N.W.2d 907 (1975) (off-premise landlord and no allegation that the landlord was either an owner or keeper).<sup>5</sup>

¶16 Although Waterman did not pay rent, he contributed to some household duties. Even if we assume Seefeldt's arrangement with Waterman was akin to a landlord/tenant relationship, she was clearly an on-premise landlord. More to the point, she personally provided shelter and protection to the dog in her

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<sup>5</sup> The court's decision in *Smaxwell v. Bayard*, 2004 WI 101, ¶23, 274 Wis. 2d 278, 682 N.W.2d 923, clarified, "under *Gonzales*[,] a landlord who is not the owner or keeper of his [or her] tenant's dog and who exercises no dominion or control over the dog cannot be held liable under common-law negligence for acts of his [or her] tenant's dog."

own home. Compare *Malone*, 217 Wis. 2d at 764, 766 (landlord is not strictly liable where “there is no evidence that [the landlord], aside from tacitly permitting [the tenant] to keep a dog in the house, afforded lodging, or gave shelter or refuge to the dog”). Here, there is no factual dispute as to whether Seefeldt provided the dog with shelter and protection in her home over a period of months. She did. As a result, Seefeldt is a keeper or statutory owner under WIS. STAT. § 174.02.

¶17 *Keeper at the time of the injury.* Seefeldt contends that she was not a keeper at the moment of the injury because Waterman went out the front door with the dog, and was thus exercising dominion and control over the dog.<sup>6</sup> The parties each point to *Armstrong*, *Janssen* and *Koetting* in support of their respective positions. Our review of these Wisconsin cases leads us to conclude that Seefeldt had not relinquished keeper status, as she still maintained the dog at her premises, and in fact, the dog charged out at Colleen from Seefeldt’s front door.

¶18 Turning first to *Janssen*, the issue presented was whether the mother of a fourteen-year-old dog owner “was a keeper at the time of the injury.” *Janssen*, 189 Wis. at 222, 224. The dog owner’s mother left town to attend a funeral and arranged for the dog to be placed at a dog hospital in her absence. *Id.* at 223-24. The son, who was the registered and licensed owner of the dog, was staying with another family in his mother’s absence. *Id.* Despite the mother’s explicit instructions to leave the dog at the hospital, her son took the dog from the hospital and tied it in the yard of the home where he was staying. *Id.* The dog bit

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<sup>6</sup> We note that there is some disagreement as to whether Waterman was actually “in control” of the dog when they left the home. Based on our holding that Seefeldt is a keeper regardless of whether the legal owner had control of the dog, we need not resolve this dispute.

a child who wandered into the yard. *Id.* at 223. The dog owner's mother was sued by the injured child. *Id.*

¶19 It was conceded that the mother in *Janssen* was the keeper of the dog up until she departed for the funeral—she bought the dog for her son, brought it to her home, and it had been maintained there at her expense and under her control for over a year prior to the incident. *Id.* at 223-24. However, when she placed the dog in the hospital with instructions that it was to stay there and the dog's owner removed the dog from the hospital and took it elsewhere, her authority and responsibility for the dog were at an end. In reaching its determination, the court observed:

Where the keeper is not the owner, it may be assumed as a general proposition, that the dominion or authority of the keeper over the dog is a limited one, subject to be terminated at any time by the owner. In the absence of special circumstances, the owner may terminate the dominion of the keeper over the dog at any time and remove the dog from the custody of the keeper. The moment that is done, the dual authority theretofore exercised over the dog by the owner and the keeper is merged in the owner, and at that very moment the keeper's rights and responsibilities concerning the dog are at an end.

*Id.* at 224. The court concluded that *by placing the dog in the dog hospital* during her absence, the mother was “discharge[d] of the duties resting upon her as keeper of the dog ....” *See id.* at 225.

¶20 The facts of *Koetting*, like *Janssen*, involve a parent homeowner who was not present at the time of injury. *Koetting*, 223 Wis. at 551-52. In *Koetting*, the adult daughter of the respondent owned the dog and lived in the respondent's home. *Id.* at 552. The adult daughter received board, lodging and support from her father. *Id.* The daughter's dog was allowed in the house and fed table scraps. *Id.* When the adult daughter took the dog to a park and let the dog

off of its leash, the dog ran into the plaintiff from behind causing her to fall down, inflicting serious and permanent injury to her hips. *Id.* at 551. The father did not know that his daughter had the dog at the park and was not present at the time of the incident; however, he knew that “she was in the habit of taking it out” as she had at the time of injury. *Id.* at 551-52.

¶21 The father in *Koetting* argued that his keeper status ended when the owner took control of the dog by taking it out of the home for a walk. *See id.* at 554. The court expressly rejected the argument “that the keeper is not liable for injuries done by a dog if the dog is under the control of another at the immediate time.” *Id.* The court noted that while the cases of *Janssen* and *Hagenau* “are claimed to sustain this view ... the [dog bite] statute does not permit of such a limitation. It is inconsistent with the purpose of the statute. If one is the keeper of a dog, he is made responsible by the statute for injuries inflicted by it.” *Koetting*, 223 Wis. at 555. Significantly, the court observed that in *Janssen*, the mother “particularly exempted herself from being its keeper by causing the dog to be kept for the period of her absence in a dog hospital.” By contrast, in *Hagenau*, the defendant landlord was not a keeper because the dogs were kept by the owner in an apartment rented by the dog owner from the landlord, and there was no evidence that the landlord or his wife “furnished [the dogs] with shelter, protection, or food, or that they exercised control over the dogs.” *Hagenau*, 182 Wis. at 548. Significantly, the *Koetting* court reviewed these cases and concluded that “[t]o be within the rule of [*Hagenau*], the defendant [*Koetting*] should have refused to permit the dog to be kept on his premises, should have compelled the daughter to keep it or have it kept elsewhere.” *Koetting*, 223 Wis. at 555 (emphasis added).

**Pet’r R-Ap. 110**

¶22 Thus, the *Koetting* court held that the father had not relinquished keeper status despite the fact that the owner took the dog out of the home, because the father kept the dog on his premises. *Id.* at 554-55. The court noted that the father “doubtless exercised no control over the dog except that he controlled whether the dog should be kept in his home or not, and whether it should be fed from the family larder or not, but *that sort of control is the thing that, in view of the statute and the [caselaw] ... makes him the dog’s keeper.*” *Id.* (emphasis added).

¶23 The holding in *Koetting* appears to govern the outcome in this case. However, Seefeldt contends, and the trial court agreed, that *Armstrong* modified *Koetting* and set forth the proposition that at the moment the owner takes control of the dog, the keeper status ends. We disagree. Our review of *Armstrong*, together with *Janssen* and *Koetting*, supports the conclusion that the keeper status ends when the keeper relinquishes not only control, but also shelter or custody—such that the custody, care *and* control of the dog are *all* exercised by the owner. It is then that the keeper’s “authority” over the dog is at an end.

¶24 In *Armstrong*, the dog owners left their dog at a kennel while on vacation. The dog bit a part-time employee at the kennel when she attempted to return the dog to its kennel. *Armstrong*, 202 Wis. 2d at 261-62. One issue was whether the employee was a keeper. *Id.* at 264. Significantly, the court found that the kennel employee became a keeper because the owners “affirmatively relinquished physical custody and entrusted their dog to the employees at [the kennel] for the purpose of providing her with care.” *Id.* at 267-68. Therefore, custody, care *and* control were all exercised by the employee. *Id.*

¶25 Seefeldt contends that in reaching its decision, the *Armstrong* court modified the holding in *Koetting*, or in the alternative, Seefeldt encourages this court to give less weight to *Koetting* as it “was decided over seventy years ago.” While *Koetting* and many of the dog bite cases are dated, *Armstrong* was decided by the supreme court in 1996 and cited favorably to *Koetting* when setting forth its summary of the law. See *Armstrong*, 202 Wis. 2d at 266.

¶26 When looking to the “moment in time,” *Janssen*, *Koetting* and *Armstrong* all find keeper status if the person exercised “custody, care or control” over the dog at the time of the injury. The disjunctive “or” recognizes that a dog may be under “dual authority” at the time of the injury. See *Janssen*, 189 Wis. at 224. If an individual retains the custody and care aspect of keeper status, he or she remains liable at the time of injury. Thus, because the mother in *Janssen* relinquished custody, care and control by taking the dog to the hospital, she relinquished keeper status. *Id.* at 225. In *Armstrong* because the custody, care and control of the dog were transferred to the dog kennel employee by the owner, the employee acquired keeper status. *Armstrong*, 202 Wis. 2d at 267-68. The *Koetting* father’s authority was not at an end when his adult daughter, the dog’s owner, took the dog out of the home for a walk to the park. *Koetting*, 223 Wis. at 554.

¶27 The purpose of WIS. STAT. § 174.02 “is to protect those people who are not in a position to control the dog.” *Armstrong*, 202 Wis. 2d at 268. This purpose is the common thread in each of the above cases, the landlord/tenant cases such as *Hagenau*, and those finding a dog’s “casual presence” at a home does not give rise to keeper status: the statute holds strictly liable those who *are in a position* to protect innocent third parties by exercising the authority arising from their custody, care or control relationship with the dog and its owner. Here, at the

time of injury, Seefeldt retained statutory ownership of the dog; she had not relinquished custody. She continued to maintain the dog at her home, and the incident happened when the dog charged out the front door of her home. Waterman and his dogs were still on her property when he let the dogs out the front door to go to his car. Whether she exercised control at that moment, the strict liability statute holds her liable as she was in a position to protect innocent persons walking by from dogs kept at her home. Unlike the facts of *Janssen*, Seefeldt had not expressly terminated her dual authority with the dog's owner, nor is there any evidence that Waterman had done so.<sup>7</sup> As a result, we conclude that Seefeldt was a keeper at the time of Colleen's injury and is strictly liable under § 174.02.

### **CONCLUSION**

¶28 We conclude as a matter of law that Seefeldt was a keeper of the dog and remained a keeper, despite the fact that the legal owner let the dog out the front door at the time of Colleen's injury. Because Seefeldt was a keeper at the time of injury, she is strictly liable as a statutory owner under WIS. STAT.

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<sup>7</sup> The dissent contends that the majority ignores *Janssen v. Voss*, 189 Wis. 222, 207 N.W. 279 (1926), and fails to address whether Seefeldt's keeper status was terminated by Waterman's "assumption of dominion and control over the dog at the time of the injury to Colleen." Dissent, ¶¶10-12. To the contrary, we both consider *Janssen* and its analysis of a keeper's limited status, as well as whether either Seefeldt or Waterman terminated that limited status. Namely, as we discuss above, the mother in *Janssen* ended her limited keeper status (her custody as well as her authority and responsibilities) when she placed the dog *outside the home* in the kennel. The supreme court subsequently instructed that to be within that *Janssen* result, i.e., relinquishment of the limited keeper status to the owner, the father in *Koetting* would have had to compel the daughter to keep the dog elsewhere. *Koetting v. Conroy*, 223 Wis. 550, 555, 270 N.W. 625 (1936). Here, Seefeldt had not relinquished her limited keeper status (nor had Waterman terminated it), because the dog was still kept at her home and was on her property when it charged out the front door at Colleen. Waterman did not have exclusive custody, care and control of the dog.

§ 174.02. We therefore reverse the trial court's grant of summary judgment in favor of Seefeldt and American Family. We remand with directions to enter judgment in favor of the Pawlowskis.<sup>8</sup>

*By the Court.*—Judgment reversed and cause remanded with directions.

Recommended for publication in the official reports.

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<sup>8</sup> The court is specifically authorized by statute to award summary judgment to the nonmoving party if it determines that party is entitled to judgment as a matter of law. *See* WIS. STAT. § 802.08(6). In other words, if the facts presented to the trial court are undisputed, the court may decide either party is entitled to a judgment as a matter of law, regardless of which moved for summary judgment.

No. 2007AP2651(C)

¶29 BROWN, C.J. (*concurring*). I join in the thoughtful and well considered majority opinion. It pulls together the arguably incongruous holdings in *Janssen v. Voss*, 189 Wis. 222, 207 N.W. 279 (1926); *Koetting v. Conroy*, 223 Wis. 550, 270 N.W. 625 (1936); and *Armstrong v. Milwaukee Mutual Insurance Co.*, 202 Wis. 2d 258, 549 N.W.2d 723 (1996), and shows how the cases are, at the end of the day, logically consistent after all. Far from “ignoring” the holding in *Janssen*, as the dissent contends, the majority opinion collates these opinions, and by so organizing and discussing, properly informs us.

¶30 I write just to touch, for a moment, on the public policy behind the dog bite statute. As I see it, the purpose of the statute is to protect from harm the surrounding neighbors, passers-by and those who come in proximity to a dog. If a neighbor agrees to keep and shelter a dog in the home, it means the dog is living in that home just as much as would be the case if the homeowner was the legal owner of the dog. Unless and until the homeowner’s status as keeper is intentionally terminated in time and space by the dog’s removal from the home, that homeowner is strictly liable for any dog-bite injury to his or her neighbors, passers-by and others in proximity. I do not believe the legislature meant to allow the keeper of the dog to avoid strict liability to his or her neighbor, passers-by or others in proximity by pointing a finger at someone else and arguing that at that certain moment in time, even though the dog was still within the perimeter of the owner’s property, he or she had temporarily stopped being the keeper. To allow such a result would be to drown the statute in a sea of minutiae.

No. 2007AP2651(D)

¶31 SNYDER, J. (*dissenting*). In reversing the trial court's summary judgment dismissal of this strict liability dog bite case, my colleagues relate that "[o]ur review of these Wisconsin cases leads us to conclude that Seefeldt had not relinquished keeper status, as she still maintained the dog at her premises, and in fact, the dog charged out at Colleen from Seefeldt's front door." Majority, ¶17. Whether a person is a keeper of a dog depends upon the peculiar facts and circumstances of each individual case. *Hagenau v. Millard*, 182 Wis. 544, 547, 195 N.W. 718 (1923). Because the undisputed facts and circumstances here, as applied under WIS. STAT. § 174.02(1), and the cases cited by the majority lead me, as it did the trial court, to conclude that Seefeldt had relinquished dominion, care, control, custody, responsibility for, and authority over Waterman's dog to Waterman at the time of the injury to Colleen, I respectfully dissent.

¶32 The majority concludes that the facts and circumstances are "sparse" but, for the purpose of summary judgment disposition, are "undisputed." Majority, ¶6. The majority then, citing to the holdings in *Armstrong v. Milwaukee Mutual Insurance Co.*, 202 Wis. 2d 258, 549 N.W.2d 723 (1996); *Janssen v. Voss*, 189 Wis. 222, 207 N.W. 279 (1926); and *Koetting v. Conroy*, 223 Wis. 550, 270 N.W. 625 (1936), opines that the case law supports its conclusion that Seefeldt's keeper status could only end when Seefeldt "relinquishes not only control, but also shelter or custody—such that the custody, care and control of the dog are *all* exercised by the owner. It is then that the keeper's 'authority' over the dog is at an end." Majority, ¶23. In arriving at this

opinion, the majority must concede that a keeper can relinquish authority over a dog to a legal owner. Consistent with that concession, the undisputed facts, the circumstances, and the applicable law here support a conclusion as a matter of law that Seefeldt's limited keeper authority over the dog had been relinquished to Waterman at the time of Colleen's injury.

¶33 A keeper relinquishing total authority and control over a dog to its legal owner is discussed in *Janssen*. *Janssen* held:

Where the keeper is not the owner, it may be assumed, as a general proposition, that the dominion or authority of the keeper over the dog is a limited one, subject to be terminated at any time by the owner. In the absence of special circumstances, the owner may terminate the dominion of the keeper over the dog at any time and remove the dog from the custody of the keeper. The moment that is done, the dual authority theretofore exercised over the dog by the owner and the keeper is merged in the owner, and at that very moment the keeper's rights and responsibilities concerning the dog are at an end.

*Janssen*, 189 Wis. at 224.

¶34 The *Janssen* holding is on point when applied to the facts and circumstances in this case. Seefeldt is not the owner of the dog. Seefeldt is a keeper of Waterman's dog, limited in dominion and control by Waterman's ownership. In seeking to distinguish this case from *Janssen*, the majority suggests that *Janssen* is limited by its facts and circumstances; specifically then, it would only apply to an owner who places a dog in a hospital with restrictions and when the issue involved a parent homeowner not present at the time of the injury. *Janssen* has a much broader application. Here, the dog, at the time of causing injury, was with its legal owner, Waterman. Seefeldt was not involved in any way with the dog's whereabouts, actions, or freedom of movement. Rather, Waterman was present and had custody and dominion over his dog at the time Colleen was

injured. According to the facts, Waterman acknowledged and acted upon his duty to control his dog by chasing after it as it ran for Colleen. Under *Janssen*, Waterman terminated Seefeldt's limited keeper dominion when he left the house with his dog. The moment that was done, the "dual authority" shared by Seefeldt and Waterman was "merged in the owner," and Seefeldt's "rights and responsibilities concerning the dog [were] at an end." *See id.* The *Janssen* analysis, it appears, has greater application to the appellate issue presented here than it did under the *Janssen* facts and circumstances, and, notably, in *Janssen* the dog bite victim was denied recovery under WIS. STAT. § 174.02(1).

¶35 While concluding that Seefeldt was a keeper of Waterman's dog, the majority fails to address and apply the *Janssen* distinction between a keeper whose "authority ... over the dog is a limited one," and an owner who "[i]n the absence of special circumstances ... may terminate the dominion of the keeper over the dog at any time and remove the dog from the custody of the keeper." *See Janssen*, 189 Wis. at 224. The majority does not point to any "special circumstances" that would negate the termination of Seefeldt's dual authority over the dog, negate the merger of all authority and control of the dog in its owner, Waterman, or negate a conclusion that "at that very moment" of the injury to Colleen that Seefeldt's rights and responsibilities concerning the dog had ended.

¶36 The majority also discusses the *Koetting* holding. In *Koetting*, the court imposed strict liability upon the father of the owner of a dog, the owner being an adult daughter who lived with and was supported by her father, where the adult daughter took her dog to a public park, let the dog run free off its leash, and the dog injured another park user. *Koetting*, 223 Wis. at 552. The *Koetting* decision states that the plaintiff had to show facts "which brought the circumstances of the injury within the [strict liability] statute." *Id.* Then,

somewhat mysteriously, the court abandoned that standard and, citing to prior case law, decided the question of the father's strict liability based upon the familial relationship between father and (adult) daughter:

It must be held that the [father of the adult daughter] was the keeper of the dog if we adhere to what was said in *Hagenau v. Millard*, 182 Wis. 544, 547, 195 N.W. 718:

“Where a child is the owner of a dog kept on the premises of the father, who supplies it with food and furnishes it with shelter upon his premises, the father is deemed to be a keeper of the dog.”

*Id.*

¶37 The *Koetting* decision lacks relevance to this case for several reasons. First of all, it equates an adult daughter to a child. Second, the statement from *Hagenau* that *Koetting* relies upon is dicta, *Koetting* having nothing to do with a father's responsibility for a child dog owner. Third, even if the father was the keeper of his daughter's dog at certain times under certain circumstances, the *Koetting* decision ignores the *Janssen* distinction between a legal owner and a limited keeper. See *Koetting*, 223 Wis. at 558-59. This is a distinction that the majority also fails to address here, limiting its holding only to whether Seefeldt was a keeper. The *Koetting* decision earlier established that the plaintiff must not only show facts “which made [the defendant] the keeper of the dog,” but must also show facts “which brought the circumstances of the injury within the [strict liability] statute.” *Id.* at 552 (emphasis added). Unfortunately, the *Koetting* court abandoned the latter standard, ignoring the *Janssen* proviso, as does the majority in this case.

¶38 The *Armstrong* case, cited in the majority as favorable to *Koetting*, addressed whether a person employed to care for dogs at a dog kennel is a

“keeper” of a dog under WIS. STAT. § 174.02(1). *Armstrong*, 202 Wis. 2d at 260. *Armstrong* relates that the “[r]esolution of this appeal therefore requires this court to interpret a statute *as it applies to a set of facts.*” *Id.* at 264. *Armstrong* held, under its set of facts, that “where a [dog] keeper is injured by the dog and there is no evidence of negligence on the part of the legal owners, a keeper may not recover damages from the legal owners of the dog under § 174.02(1).”

¶39 *Armstrong* is inapposite. This is not a case about a keeper suing an owner for injuries inflicted by the dog. Furthermore, *Armstrong* does not address *Janssen* or distinguish the liability of a keeper from an owner where the facts support the termination of dual responsibility of the keeper by the dog owner, the situation present here.

¶40 The majority terminates its analysis after concluding that Seefeldt was a keeper of the dog. The majority fails to address whether Seefeldt’s keeper status, limited by Waterman’s legal ownership of the dog in question, was terminated by Waterman’s presence and his assumption of dominion and control over the dog at the time of the injury to Colleen. Such an analysis is mandated by the language in *Janssen*, and Seefeldt is entitled to the application of all legal precedent applicable to her liability.

¶41 It is unfortunate that Waterman’s dog caused injury to Colleen. It is also unfortunate that Waterman cannot be located for the purpose of this litigation. *See* Majority, ¶5. However, this court has no authority to ignore the *Janssen* holding when analyzing Seefeldt’s strict liability exposure for injury caused by Waterman’s dog.

¶42 Because the majority fails to fully acknowledge and address the *Janssen* decision relating to the relinquishment of Seefeldt’s limited keeper status

to Waterman at the time of the injury to Colleen, I respectfully dissent. Applying the *Janssen* distinction to the undisputed facts and circumstances here, specifically the distinction between a limited keeper and a legal owner of the dog at the time of injury, the record supports the trial court's summary judgment conclusion. I would affirm the trial court summary judgment.

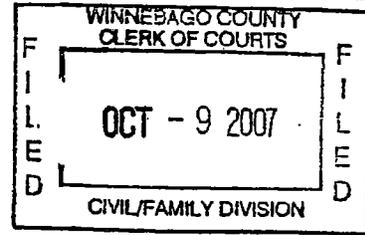
COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS CO.,  
a domestic insurance corporation, and  
NANCY L. SEEFELDT,

Defendants.



Case No. 06-CV-1307

Action Code: 301071

Personal Injury - Other

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**ORDER GRANTING SUMMARY JUDGMENT  
AND DISMISSAL**

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A Motion for Summary Judgment and Declaratory Judgment, having been filed by the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, along with supporting Affidavit and Brief; and

The plaintiffs, Colleen and Thomas Pawlowski, having filed a Brief and Affidavit in Opposition to said Motion; and

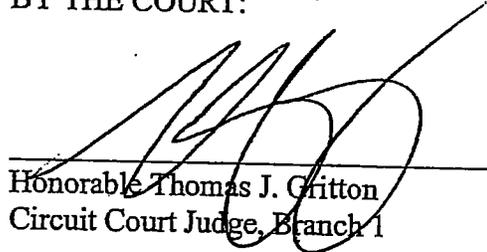
The case having come before the Court, the Honorable Thomas J. Gritton, Circuit Court Judge, Branch 1, Winnebago County, Wisconsin for hearing on September 10, 2007, with the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, having appeared by their counsel, Sandra L. Hupfer, and the plaintiffs, Colleen Pawlowski and Thomas Pawlowski, having appeared by their counsel, Michael S. Siddall; and

The Court, having considered the Briefs and Affidavits filed by all parties, and having heard arguments of counsel, makes the following Order:

IT IS HEREBY ORDERED that the defendants' Motion for Summary Judgment pursuant to sec. 802.08, Wis. Stats., is granted, on the grounds specifically set forth in the Court's decision on the record, which are incorporated herein by reference, as follows: that the defendant, Nancy L. Seefeldt, was not a keeper of the dog at the time of the dog attack, and further, that public policy precludes liability against Ms. Seefeldt. Thus, the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, are hereby dismissed from the above-captioned action, with prejudice.

Dated at Oshkosh, Wisconsin this 9 day of <sup>10</sup>~~September~~, 2007.

BY THE COURT:

  
\_\_\_\_\_  
Honorable Thomas J. Gritton  
Circuit Court Judge, Branch 1

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

WINNEBAGO COUNTY

-----  
COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

-vs-

CASE NO. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.,  
A domestic insurance corporation, and  
NANCY L. SEEFELDT,

Defendants.

COPY

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MOTION FOR SUMMARY JUDGMENT  
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DATE: September 10, 2007

PLACE: Winnebago County Courthouse  
415 Jackson Street  
Oshkosh, WI 54903

BEFORE: HONORABLE THOMAS J. GRITTON  
Circuit Court, Branch 1

APPEARANCES: MR. MICHAEL SIDDALL  
Attorney at Law  
Appearing on behalf of the  
Plaintiffs.

MS. SANDRA HUPFER  
Attorney at Law  
Appearing on behalf of the  
Defendants.

Stenographically reported by:  
Lynn M. Egan, RPR, CRR  
Official Court Reporter, Branch 1

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**THE CLERK:** Colleen Pawlowski, et. al., versus American Family Mutual Insurance Company, et. al., 06CV1307.

**THE COURT:** Appearances, please?

**MR. SIDDALL:** Mike Siddall on behalf of the plaintiffs.

**MS. HUPFER:** Your Honor, Sandra Hupfer on behalf of the defendants.

**THE COURT:** We are set for a summary judgment motion today. Ms. Hupfer, I'll allow you to go first. I would ask that you not regurgitate what I have already read. If you have any highlights you wish to cover, please do.

**MS. HUPFER:** That is fine. Thank you, your Honor.

I think that for purposes of this motion the facts are undisputed. The Court is aware this arose out a dog bite that occurred on October 26, 2003.

There are two issues that the defendants have brought before the Court. The first issue is whether as a keeper of the dog, Ms. Seefeldt was or actually whether at the time of the bite she was deemed to be a keeper of the dog or in fact whether she had basically given up her custody or control of the dog at the time of the injury and thus cannot be held liable. And the

1 second issue is whether or not she had prior notice of  
2 the injuries previously caused by this dog subjecting  
3 her to double damages in this case.

4 And I think that as to the first issue, it  
5 comes down to whether we can distinguish the -- I think  
6 it is the Koetting case or the Koetting case cited by  
7 Mr. Siddall in his brief, your Honor. I think that  
8 case, K-O-E-T-T-I-N-G, and the cites are already  
9 contained in the briefs so I won't repeat them, in that  
10 case the father was held liable even though the dog had  
11 left the premises of the house and was out of the  
12 father's direct control when the attack occurred.  
13 However, that case is 70 years old and since then the  
14 courts have increasingly focused on the fact that at the  
15 time of the injury or the attack who had control over  
16 the dogs.

17 And here I think this case is more attune to  
18 the idea of almost Mr. Waterman being akin to a tenant  
19 in Ms. Seefeldt's home, albeit, she was basically acting  
20 more as a pro bono landlord which is an analogous to the  
21 Smaxwell case, I think if you look at some of the  
22 language of that case, in particular the Court discussed  
23 the fact that it actually mentioned a salutary policy of  
24 placing responsibility where it belongs rather than  
25 fostering a search for the defendant whose affluence is

1 more apparent than his culpability.

2 The Court also in Smaxwell cited another case,  
3 Janssen v. Vos. It was a 1926 case that talks about the  
4 owner terminating the dominion of the keeper of the dog  
5 at any time and removing the dog from the custody of the  
6 keeper. The Court stated there that the moment this is  
7 done, the dual authority exercised over the dog by the  
8 owner and keeper is merged in the owner and at that very  
9 moment the keeper's rights of responsibilities  
10 concerning the dog are at an end.

11 Here Ms. Seefeldt was home at the time. She  
12 was in the back of the house. She was not exercising  
13 any dominium or control over those dogs. They were  
14 leaving the home with their owner, Walter Waterman, he  
15 was going out of the door with them, he did not put them  
16 on a leash. She had no opportunity to exercise  
17 ownership or control over them or anything at the time  
18 they broke away from him and attacked Ms. Pawlowski.

19 So I don't think at this point this is a  
20 situation where as the keeper, she had any control over  
21 those dogs when the attack occurred, and I don't think  
22 that dual situation of the keeper and the owner was  
23 actually operating at the time that this dog bit her so  
24 for those reasons and all of the reasons in the brief I  
25 believe summary judgment should be granted. I don't

1 think Ms. Seefeldt can be held liable in this particular  
2 case.

3 If the Court believes she can be held  
4 liable --

5 **THE COURT:** Let's address one issue at a  
6 time.

7 Mr. Siddall, your response?

8 **MR. SIDDALL:** Your Honor, I think it is clear  
9 that she was a keeper of this dog. An owner is defined  
10 as any person who harbors or keeps a dog. That cites  
11 the Wisconsin statute in the Armstrong case which states  
12 that a keeper or harborer of a dog is treated the same  
13 as the dog's legal owner and I cite the case. And it  
14 goes on to say that a keeper of a dog is one who  
15 furnishes the dog with shelter, protection, or food or  
16 that they exercise control over the dog. It can be any  
17 one of those, and clearly in this case she furnished  
18 shelter for those two dogs of Mr. Waterman's.

19 Another case cites the fact that an harborer  
20 is one who affords lodging to a dog so I think it is  
21 absolutely clear that she was an harborer of the dog,  
22 and the fact that the dog steps out of her house, and  
23 apparently this was against the rules, they had a rule  
24 that supposedly they would leash the dog between the  
25 house and the car, and that must have been for some

1 reason, but any way she let him out the front door and  
2 they immediately went to the edge of their property  
3 across the street -- into the street and attacked Mrs.  
4 Pawlowski.

5 If Mrs. Seefeldt had not been the keeper of  
6 those dogs, this dog attack never would have occurred so  
7 she certainly bears responsibility for being the keeper  
8 of the dog.

9 **THE COURT:** I have had the opportunity to  
10 read through the Armstrong v. Milwaukee case, and I  
11 think when I read through this and I am going to make a  
12 quote from Page 266: "A keeper is defined as one who  
13 keeps, one who watches, guards, et cetera. One having  
14 custody. It is apparent that the keeper of a dog may or  
15 may not be the owner of the dog. Where the keeper is  
16 not the owner, it may be assumed as general proposition  
17 that the dominion or authority of the keeper over the  
18 dog is limited -- is a limited one subject to be  
19 terminated at the time by the owner. The moment the  
20 owner removes the dog from the custody of the keeper,  
21 the dual authority therefore exercised over by the dog  
22 by the owner and the keeper is merged in the owner and  
23 at that very moment the keeper's rights and  
24 responsibilities concerning the dog are at an end."

25 This is the way I see it based upon that

1 definition and based upon my review of the cases that  
2 both parties have provided to me, and I think in many  
3 respects I think this is a very situational  
4 circumstance, and what I mean by that is that -- well, I  
5 don't think she was a keeper. But I think as an  
6 example, if she were the one leaving the house with the  
7 dogs, I think absolutely she would have been the keeper.

8 From what I read, and all of the information  
9 that I have been provided, I really did not see where  
10 she really exercised much control over these dogs other  
11 than the fact that there were times where Mr. Waterman  
12 would be absent from the residence and she would be  
13 there with the dogs. Even that, there was no indication  
14 that she necessarily -- did talk about the things -- but  
15 she clearly would be in custody of the dogs at that  
16 time. If something had happened and Mr. Waterman was  
17 not there and it happened as a result of her being alone  
18 with the dogs, I absolutely think she would have been  
19 the keeper of the dog. Well, actually there is one dog  
20 that did the biting. I never got that straight for  
21 sure.

22 MR. SIDDALL: I think that is correct, your  
23 Honor.

24 THE COURT: So from my perspective I think  
25 what is critical here is this definition of how --

1           although you can be a keeper, that keeper can come to an  
2           end when the owner exercises dominion over the dog; and  
3           clearly by leaving the front door, leaving the residence  
4           with the dog, the owner in this case, he was exercising  
5           complete dominion and the keeper had no control here. I  
6           mean Ms. Seefeldt.

7                        So I am finding that based upon the  
8           circumstances as I see them, there is no genuine issue  
9           of fact here and as a matter of law; I am finding her  
10          not to be the keeper of this dog; and as a result, I am  
11          going to grant the judgment for summary judgment on  
12          behalf of the defendants.

13                      The other thing that really leads me to that  
14          part or to that decision quite frankly is the public  
15          policy issue as well. We have a woman who accepted this  
16          gentleman in the home and she is given some limited  
17          information about this dog, and this might go in regards  
18          to the second issue, which I don't think I even have to  
19          make a finding on, but I also read that both of you  
20          discussed the public policy aspect of this. If the  
21          individual that is in the circumstance that this woman  
22          was in, isn't able to exercise dominion over these dogs  
23          but she is being, for lack of a better way to say it, a  
24          nice person in allowing this gentleman an opportunity to  
25          stay at her residence until the time period when he

1 finds his job, she really takes some liability upon  
2 herself but I don't think that is one hundred percent  
3 liability. If she was -- as I have indicated, if she  
4 was there alone or she was the one running out the front  
5 door or she had the dogs in the front yard and was  
6 playing with them and she was there, I think clearly  
7 that there is the possibility of liability here.

8 But under these circumstances just from a  
9 public standpoint, I don't think we want to put that  
10 incredible burden upon each and every person that may be  
11 having a dog owner over at their residence because I  
12 think that is effectively what you would do, even though  
13 I know the one case talks about the transient part of  
14 the dog with the son visiting the mother, where does  
15 that end. And I don't think we want to go down that  
16 road.

17 For all of those reasons I am finding that  
18 summary judgment is appropriate and, Ms. Hupfer, I would  
19 ask that you forward to the Court an order reflecting  
20 that and I'll sign off on it after five days. If you  
21 don't object, Mr. Siddall, I'll sign it.

22 **MR. SIDDALL:** Judge, just in response to your  
23 public policy argument if I may, it would seem to me  
24 that holding a keeper of a dog liable for this conduct  
25 best serves public policy especially when we have an

1 irresponsible owner of a dog who just had bitten two  
2 children within six months of these things, enough to  
3 cause them to go to the hospital, and this woman allows  
4 him, harbors the dogs for them, I don't think any of the  
5 case law says that it has to have dominion and control  
6 over them. She just harbors them.

7 **THE COURT:** I may be not using those words --  
8 they used the words custody or -- well, watches, guards,  
9 or one having custody, and I guess I see dominion and  
10 control, you could put those words into it as well so I  
11 don't think that there is a difference in those.

12 And the concern I have from a public policy  
13 standpoint, Mr. Siddall, if you have a brother that  
14 comes and he stays with you on a vacation for a week, is  
15 that more than transient, and they bring a dog into your  
16 residence and you have no opportunity when they are  
17 leaving on the last day they are there, you are not  
18 going to watch their dogs necessarily and they run out  
19 and they bite somebody, I don't think from a public  
20 standpoint we want that, and I think that is where we  
21 would be moving if I allowed -- and I don't think even  
22 the public policy part comes into it, I think that is a  
23 realistic consideration but I think from a legal  
24 standpoint it does not meet the definition.

25 Anything else?

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**MS. HUPFER:** No, your Honor.

**MR. SIDDALL:** No, your Honor.

*(THE PROCEEDINGS THEN CAME TO A CLOSE.)*



COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS CO.,  
a domestic insurance corporation, and  
NANCY L. SEEFELDT,

Defendants.

Case No. 06-CV-1307  
Action Code: 301071  
Personal Injury - Other

**AFFIDAVIT OF SANDRA L. HUPFER**

STATE OF WISCONSIN    )  
                                  )SS  
COUNTY OF BROWN    )

SANDRA L. HUPFER, being sworn on oath, states as follows:

1. That I am one of the attorneys representing the defendants, Nancy L. Seefeldt and American Family Mutual Insurance Co., and make this affidavit on personal knowledge.
2. That attached hereto and marked as Exhibit A is a copy of the pertinent portions of the deposition transcript of Colleen Pawlowski, taken May 7, 2007.
3. That attached hereto and marked as Exhibit B is a copy of the pertinent portions of the deposition transcript of Nancy Seefeldt, taken May 7, 2007.
4. This affidavit is made in support of defendants' motion and brief for summary judgment and declaratory judgment.

Dated this 22<sup>nd</sup> day of June, 2007.

Sandra L. Hupfer  
Sandra L. Hupfer

Sworn to and subscribed before me  
this 22 day of June, 2007.

Janet C. Gango  
Notary Public  
My Commission expires: 10-11-09

I certify that on June 22, 2007, I served the  
within document, by mail, postage prepaid, pursuant  
to Rule 801.14(2), Wis. Rules of Civil Procedure.

STELLPFLUG, JANSSEN, HAMMER,  
KIRSCHLING & BARTELS, S.C.

By: Michael S. Siddall  
TO: Michael S. Siddall, Esq.

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Deposition of:  
COLLEEN PAWLOWSKI  
May 7, 2007

Plaintiffs,

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

Deposition of COLLEEN PAWLOWSKI, a witness in the above-entitled action, taken at the instance of the Defendants, pursuant to notice, on the 7th day of May, 2007, commencing at 1:35 p.m., at the law offices of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive, Appleton, Wisconsin; pursuant to Chapter 804 of the Wisconsin Statutes; before and reported by Patricia J. Seidel, Registered Professional Reporter and Notary Public, State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

ALSO PRESENT: Thomas Pawlowski

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208

EXHIBIT

A

Pet'r R-Ap. 138

1 A My statement and, then, a little T.V. video.  
 2 Q Which statement did you look over?  
 3 A The police report.  
 4 Q The statement you gave to the police?  
 5 A Yes, the one that I wrote out the day in the Emergency  
 6 Room.  
 7 MS. VER BOORT: I don't know if we  
 8 have a copy of the statement that Colleen gave in the  
 9 Emergency Room. I don't remember seeing it in the  
 10 medical records.  
 11 MS. HUPFER: Mike, is that one she gave  
 12 to the police?  
 13 MR. SIDDALL: Yes.  
 14 MS. VER BOORT: Okay. That's the one  
 15 that was given in the Emergency Room. Okay. Sounds  
 16 good.  
 17 Q (By Ms. Ver Boort) And throughout this deposition  
 18 if I refer to the date of the accident or the date  
 19 of the incident, I'll be referring to the dog bite  
 20 incident on October 26, 2003.  
 21 A Okay.  
 22 Q Okay. Colleen, what's your full name?  
 23 A Colleen A. Pawlowski.  
 24 Q And have you ever used any other names?  
 25 A No.

1 A Neenah High School and secretarial courses.  
 2 Q What year did you graduate from Neenah High School?  
 3 A 1959.  
 4 Q And where did you go after graduating from high  
 5 school?  
 6 A I worked at the George Banta Company in Menasha for  
 7 five years, and then I stayed home to raise my  
 8 children, and then I worked at Theda Clark for  
 9 20 years.  
 10 Q What year did you start working at Theda Clark?  
 11 A In '73.  
 12 Q You said you took some secretarial courses?  
 13 A Um-hmm, after.  
 14 Q After --  
 15 A After a while, after I worked quite a while. Then I  
 16 became executive secretary to the vice-president.  
 17 Q Oh, wow. That must have been an interesting --  
 18 A Nice job.  
 19 Q -- position.  
 20 Did you -- Where did you take those  
 21 secretarial courses?  
 22 A Different places.  
 23 Q So it wasn't just a --  
 24 A A school. No.  
 25 Q -- associate degree?

1 Q What was your maiden name?  
 2 A Mahoney.  
 3 Q Mahoney. Okay.  
 4 What's your address?  
 5 A 550 Spring Road Drive in Neenah.  
 6 Q Your date of birth?  
 7 A 5/14/40.  
 8 Q And did you grow up around this area?  
 9 A Yes.  
 10 Q Where did you grow up?  
 11 A In Neenah.  
 12 Q In Neenah. Okay.  
 13 You have a lot of family close by in  
 14 the area?  
 15 A Um-hmm.  
 16 Q Are your mom and dad still living?  
 17 A No.  
 18 Q Brothers and sisters in the area?  
 19 A Yeah, brothers.  
 20 Q What are their names?  
 21 A Peter and Mike.  
 22 Q Okay. And did you attend school in the area?  
 23 A Um-hmm.  
 24 Q What high school and post secondary high school  
 25 education do you have?

1 A No.  
 2 Q Okay. And you're retired now, so there's no wage  
 3 loss or loss of earning capacity claim being made?  
 4 A Correct.  
 5 Q Have you ever been involved in any other litigation  
 6 besides this lawsuit?  
 7 A No.  
 8 Q So you've never sued anyone?  
 9 A No.  
 10 Q Have you ever brought a claim against anyone for  
 11 personal injuries that didn't lead to a lawsuit?  
 12 A No.  
 13 Q Do you know Nancy Seefeldt?  
 14 A No.  
 15 Q Never met her before?  
 16 A No.  
 17 Q Do you know what she looks like or --  
 18 A No.  
 19 Q Okay. Do you know Walter Waterman?  
 20 A No.  
 21 Q The only time you ever talked to Walter was on the  
 22 date of the accident?  
 23 A Yes.  
 24 Q Who's Jeremy Clark?  
 25 A He's a neighbor that gave me a ride home the day of

1 Q Glenview. -- when you started walking on Glenview.  
 2 A When I was walking on Glenview I was walking to the  
 3 right of the road, kind of in the center to the right  
 4 of the road, and as I walked by the house, I was  
 5 almost past it, and I heard, like, a screen door or  
 6 a door opening, and, so, I turned my head to look, and  
 7 I looked behind me, and as I did I saw two dogs jump  
 8 off the porch and their ears were lowered and they  
 9 were charging. And I had time for three thoughts at  
 10 that time. It was: Here they come, don't run, and  
 11 when their feet lift the ground, turn your back. And  
 12 that's -- That was it. And I went like this, and he  
 13 hit -- hit me up here and bit, and, then, down where  
 14 my thigh is and, then, on my calf twice, and it  
 15 sounded like an apple, when you bite into an apple.  
 16 When that happened I kind of turned just a little bit  
 17 and just fell to my knee. And Mr. Waterman was  
 18 chasing them and calling their name, but they didn't,  
 19 you know, pay any attention. And he got there and he  
 20 grabbed them both. And he asked me if I wanted a ride  
 21 home, but I was just upset and said, no, that I was  
 22 fine. And, so, then I started to walk, and that's  
 23 when I walked to the end of that street, and that's  
 24 where Jeremy Clark lives, so then he gave me a ride  
 25 home.

1 Q Just a couple questions to follow up on that.  
 2 When you say you were walking on the right side of  
 3 the road, would you say that you were walking closer  
 4 to the curb than on --  
 5 A Probably on this -- The center of the road's here.  
 6 I was probably in the middle. There's not -- Cars  
 7 don't come down that road.  
 8 Q So you were walking about down the middle of the road?  
 9 A Yeah, just to the -- to the right of the middle. And  
 10 their house is on the left.  
 11 Q Okay. And you said that your three thoughts were  
 12 the dogs are running towards you, don't run and --  
 13 and then after that you said --  
 14 A Here they come, don't run, when their feet leave the  
 15 ground, you know, turn, and just -- just like that  
 16 they -- they jumped.  
 17 Q So I'm going to describe that for the record now.  
 18 You're kind of turning over with -- and pulling your  
 19 arms up against you and -- Did you bend over or lean  
 20 over?  
 21 A Just like this, not real bent but just so my head was  
 22 like this, because they were big, you know, and I knew  
 23 he would hit me hard, and he did.  
 24 Q So you tucked your arms up against you and turned away  
 25 from the dogs?

1 A Um-hmm.  
 2 Q So when you first saw the dogs approaching you, they  
 3 were actually behind you, you had already passed the  
 4 Seefeldt residence?  
 5 A Yes. Yes.  
 6 Q Did you take any action to move away from the dogs  
 7 when you saw them running towards you?  
 8 A I didn't have time. It happened that fast.  
 9 Q Did you scream at all?  
 10 A No.  
 11 Q Did you try to, you know, push the dogs away or kick  
 12 them to get them off of you?  
 13 A No. That's why I went like this, because I thought,  
 14 you know, he -- that would kind of, you know -- I  
 15 wouldn't take the brunt of the bite or whatever.  
 16 Q So you pulled your arms up against you so they --  
 17 A And turned my back.  
 18 Q And turned your back so they wouldn't get bit.  
 19 Did you have any food on you that day?  
 20 A No.  
 21 Q Do you know if it was only one of the dogs that bit  
 22 you or do you believe both dogs bit you?  
 23 A I don't recall that because my back was like this,  
 24 but when I -- When he got my calf, I looked down and  
 25 the golden was right there, so he was the one that

1 his mouth was on my leg.  
 2 Q Do you know which dog jumped up on you initially?  
 3 A The gold one.  
 4 Q Where was the darker one standing?  
 5 A Behind him. They came, you know, running like that.  
 6 He was just behind him.  
 7 Q Did you ever see the darker dog jump on you or -- or  
 8 bite you?  
 9 A No. I don't recall if he, you know --  
 10 Q Where did the golden dog bite you?  
 11 A Up here on my coat and, then, my thigh and --  
 12 MS. VER BOORT: Let the record reflect  
 13 that the witness is touching her --  
 14 Q (By Ms. Ver Boort) Is that your --  
 15 A Left shoulder.  
 16 Q Left shoulder.  
 17 A And left thigh. And because I had a winter coat on  
 18 he couldn't get through here, but it was all slobber,  
 19 but he ripped the coat where he bit here. And I've  
 20 got the coat where -- where, you know, he bit, here.  
 21 And then, of course, he got -- got me in my calf.  
 22 Q Were there any physical injuries from the bite on your  
 23 thigh, on your left thigh?  
 24 A No.  
 25 Q It just tore through the jacket?

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

vs.

Deposition of:  
NANCY L. SEEFELDT  
May 7, 2007

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

Deposition of NANCY L. SEEFELDT, a witness in the above-entitled action, taken at the instance of the Plaintiffs, pursuant to notice, on the 7th day of May, 2007, commencing at 3:15 p.m., at the law offices of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive, Appleton, Wisconsin; pursuant to Chapter 804 of the Wisconsin Statutes; before and reported by Patricia J. Seidel, Registered Professional Reporter and Notary Public, State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208

EXHIBIT

B

Pet'r R-Ap. 141

STATE OF WISCONSIN CIRCUIT COURT WINNEBAGO COUNTY  
BRANCH I

TRANSCRIPT OF PROCEEDINGS

\* \* \*

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,  
Plaintiffs,

Deposition of:  
NANCY L. SEEFELDT  
May 7, 2007

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,  
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Deposition of NANCY L. SEEFELDT, a witness  
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Seidel, Registered Professional Reporter and Notary Public,  
State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lyndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELPFUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUFFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

COPY

2  
3 NANCY L. SEEFELDT, called as a witness  
4 herein, having been first duly sworn, was examined and  
5 testified as follows:

6 EXAMINATION

- 7 BY MR. SIDDALL:
- 8 Q Would you state your name, please.
- 9 A Nancy Louise Seefeldt.
- 10 Q Where do you live?
- 11 A 1784 Sanctuary Court, Apartment No. 1, Appleton.
- 12 Q Who do you live there with?
- 13 A My daughter Stephanie.
- 14 Q How old is Stephanie?
- 15 A Fifteen.
- 16 Q Are you employed outside of the home?
- 17 A Yes, I am.
- 18 Q Where are you employed?
- 19 A Wisconsin Resource Center.
- 20 Q What do you do there?
- 21 A I'm a social worker.
- 22 Q Who is actually your employer?
- 23 A State of Wisconsin.
- 24 Q How long have you been so employed?
- 25 A Seven years.

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- 1 Q I take it -- Are you single?
- 2 A Yes.
- 3 Q Divorced?
- 4 A Yes.
- 5 Q When were you divorced?
- 6 A 1995.
- 7 Q First marriage?
- 8 A Yes, and only.
- 9 Q And only marriage. Okay.
- 10 And did you just have one child as a
- 11 result of that marriage?
- 12 A Two.
- 13 Q Your other child's name?
- 14 A Andrea.
- 15 Q How old is Andrea?
- 16 A Twenty-one.
- 17 Q Okay. Back in October of 2003 where were you living?
- 18 A 1203 Glenview Drive, Neenah.
- 19 Q Was that an apartment, a residence, single-family
- 20 residence or --
- 21 A Single-family home.
- 22 Q And who owned that home?
- 23 A Myself.
- 24 Q How long had you owned that?
- 25 A Thirteen years.

\*\*NOTE: Original transcript filed with Attorney Siddall.

NANCY L. SEEFELDT 5/7/07

- 1 Q When did you first move into that home?
- 2 A December 1st, 1990.
- 3 Q And when did you leave the home?
- 4 A March of 2004 -- 2005.
- 5 Q What was your reason for selling the house?
- 6 A My youngest daughter was living with her father out of state and I was living there alone and with one income I didn't want to -- it was just becoming very costly. I didn't need that big of a house.
- 10 Q Who was living there with you in October of '03?
- 11 A My daughter Andrea, myself and Walt Waterman, Walter Waterman.
- 13 Q Okay. Stephanie was not?
- 14 A No.
- 15 Q Okay. And Andrea was in high school at that time?
- 16 A Um-hmm.
- 17 Q Answer is yes?
- 18 A Yes.
- 19 Q What is Waterman's first name?
- 20 A Walter.
- 21 Q How do you know him?
- 22 A Through my daughter Andrea, her friend, Alicia, they were very close. Alicia's mother lived with Walt all the while Alicia was growing up and Alicia considered him like a father.

- 1 Q Do you know whether or not she's living with her mother?
- 2 mother?
- 3 A Last time I heard, no, she was not.
- 4 Q Do you know where Alicia's mother's living?
- 5 A No.
- 6 Q Do you know what her first name is?
- 7 A Cindy.
- 8 Q Is Alicia still good friends with your daughter Andrea?
- 9 Andrea?
- 10 A Somewhat.
- 11 Q Where is your daughter living?
- 12 A Appleton.
- 13 Q And what does she do?
- 14 A She's a housewife.
- 15 Q And her husband's name?
- 16 A Joshua.
- 17 Q And their last name?
- 18 A Korslin.
- 19 Q Could you spell that, please.
- 20 A K-o-r-s-l-i-n.
- 21 Q What does Joshua do for a living?
- 22 A He works at Savers. It's a store that just opened on Casaloma.
- 23 on Casaloma.
- 24 Q Prior to that what did he do?
- 25 A He was working at the Shell Service Station.

- 1 Q How long had you known him?
- 2 A I didn't.
- 3 Q When did you first meet him?
- 4 A The month or -- Probably June 2003.
- 5 Q And how did you meet him?
- 6 A Andrea and Alicia and Alicia's mother brought Walter over to meet with me.
- 7 over to meet with me.
- 8 Q For what purpose?
- 9 A To see if he would live with me until he found a job.
- 10 Q Do you recall when that was?
- 11 A Not the exact date, no.
- 12 Q How about the month?
- 13 A I'm not sure if it was June or July. I can't remember.
- 14 Q Do you recall when he moved in?
- 15 A No, I don't.
- 16 Q What is Alicia's last name?
- 17 A Williams.
- 18 Q What is Alicia's mother's last name?
- 19 A I don't know. I don't remember.
- 20 Q Is it different?
- 21 A Yes.
- 22 Q Where does Alicia live now?
- 23 A I believe Menasha.
- 24 Q Do you know who she lives with?
- 25 A No.

- 1 Q Which one?
- 2 A It's the road from the mall, taking Highway 10, is it? I believe that's Highway 10. Greenville.
- 3 is it? I believe that's Highway 10. Greenville.
- 4 Q Okay. Do you know what Alicia is doing now?
- 5 A No.
- 6 Q Do you know who she lives with?
- 7 A No.
- 8 Q Do you know whether or not she's married or single?
- 9 A I don't know.
- 10 Q Would Andrea know the answers to those types of questions?
- 11 questions?
- 12 A I don't know.
- 13 Q Do you know how long this Walter and Cindy were living together?
- 14 living together?
- 15 A Apparently for many years as -- while Alicia was growing up.
- 16 growing up.
- 17 Q Do you know why they stopped living together?
- 18 A No.
- 19 Q What did they tell you when Cindy brings him over to your house and says, Here's my live-in boyfriend but I want him to live with you now? What explanation was given to you?
- 20 to your house and says, Here's my live-in boyfriend
- 21 but I want him to live with you now? What explanation
- 22 was given to you?
- 23 A She lived in a small apartment that could not take dogs, and Walt had dogs, had lost his job, and he was collecting unemployment and he needed a place to go
- 24 dogs, and Walt had dogs, had lost his job, and he was
- 25 collecting unemployment and he needed a place to go

1 that would accept dogs, and I had a big backyard with  
 2 a fence, and, so, they wanted him to stay there so he  
 3 could find a job.  
 4 Q Had Cindy just moved into an apartment?  
 5 A No. She had been there for quite some time  
 6 apparently. I don't know.  
 7 Q With him living there?  
 8 A No. They hadn't been living together for a while.  
 9 Q Oh. Do you know when they stopped living together?  
 10 A No.  
 11 Q Were they dating?  
 12 A No.  
 13 Q Do you know when they stopped dating?  
 14 A No.  
 15 Q Do you have any records that would show when he moved  
 16 into your home?  
 17 A No.  
 18 Q Did he pay rent?  
 19 A No.  
 20 Q How long did he live there?  
 21 A Approximately four months, three to four months.  
 22 Q When did he leave after this dog attack?  
 23 A One to two weeks after this happened.  
 24 Q So if this happened on October 26th, he moved in  
 25 probably in June?

1 A Or the end of June, yeah.  
 2 Q During the period of time he lived there he paid  
 3 no rent; correct?  
 4 A Correct.  
 5 Q Did he get a job?  
 6 A He got one at Ariens on the assembly line putting  
 7 together snow blowers and then quit the job, and  
 8 that was in October right before this happened.  
 9 Q Why did he quit the job?  
 10 A He didn't like it.  
 11 Q What was the reason he left your residence?  
 12 A It was time for him to move on because --  
 13 Q Did you tell him?  
 14 A Yes. Yes.  
 15 Q Did you ever have a romantic relationship with him?  
 16 A No.  
 17 Q How long did he work at Ariens?  
 18 A Just a couple weeks.  
 19 Q Does he have any relatives in the area?  
 20 A He has a brother, but he's out in Fremont.  
 21 Q Do you know what his brother's first name is?  
 22 A I don't remember.  
 23 Q Same last name?  
 24 A Yes.  
 25 Q Okay. Full brother. Sometimes they have

1 half-brothers and stepbrothers.  
 2 Do you know where Walt Waterman is  
 3 now?  
 4 A No.  
 5 Q Do you -- How would you find him if you wanted to  
 6 find him? How would you go about it?  
 7 A I would probably ask Alicia, which I did a year  
 8 ago, and she didn't know where he was. She hadn't  
 9 seen him. She thought he was probably out of state.  
 10 Q Did he have any other relatives in the area?  
 11 A He had elderly parents.  
 12 Q That lived in the area here?  
 13 A Um-hmm.  
 14 Q Your answer is yes?  
 15 A Yes.  
 16 Q Do you know whether or not they're alive?  
 17 A No.  
 18 Q Do you know their names?  
 19 A No.  
 20 Q Do you know where he last worked before he  
 21 lost his job before he moved in with you?  
 22 A I believe it was at a gas station.  
 23 Q How old a guy is he?  
 24 A I don't know.  
 25 Q Give me your best estimate.

1 A Early forties.  
 2 Q Is that about the same age as Alicia's mother?  
 3 A Yes.  
 4 Q What was the reason that you would allow this stranger  
 5 to move into your house with two dogs and not pay  
 6 rent?  
 7 A They were looking for a place for him to go and --  
 8 Q Is this a guy that can't do these things on his own?  
 9 A No. I was getting my house ready to sell, and they  
 10 said that he could help out with some of the repairs  
 11 if -- in exchange for living there temporarily while  
 12 he could find a job.  
 13 Q Did he do any repairs?  
 14 A Yes.  
 15 Q What repairs did he do?  
 16 A He replaced the boards in the bathroom. We had to  
 17 tear out the linoleum and the boards in the bathroom.  
 18 Q Okay. Anything else?  
 19 A Yes. He helped me in the basement. We painted the  
 20 basement. Andrea had a bedroom down there, so we  
 21 wanted to clean that area up and paint the floor and  
 22 get it ready, put new carpet in.  
 23 Q Anything else?  
 24 A He did -- He mowed the lawn, and I made him vacuum  
 25 every day.

- 1 Q How many bedrooms is that house?  
 2 A Three.  
 3 Q Was it a ranch?  
 4 A Um-hmm.  
 5 Q Answer is yes?  
 6 A Yes.  
 7 Q And where did he stay, which -- One of the bedrooms on  
 8 the main floor?  
 9 A Yes,  
 10 Q And Andrea was downstairs in the basement bedroom?  
 11 A Yes.  
 12 Q Where did the dogs stay?  
 13 A With him.  
 14 Q So they were indoor dogs?  
 15 A Yes.  
 16 Q How did the dogs behave in your house?  
 17 A Fine.  
 18 Q I take it they were house trained?  
 19 A Yes.  
 20 Q Do you know how long he had the dogs?  
 21 A No.  
 22 Q Do you know how old the dogs were?  
 23 A I believe that the oldest, Boo, was three or four,  
 24 and Diesel was a puppy yet, he was eight or nine  
 25 months, and he was from a previous litter. She had

- 1 just had a litter.  
 2 Q Who is she?  
 3 A Boo.  
 4 Q Boo had had a litter?  
 5 A Yes, recently, when she came to my house, because she  
 6 was -- had just -- was nursing, and Diesel was trying  
 7 to nurse on her.  
 8 Q But Diesel --  
 9 A It's not -- wasn't the last litter, because he was  
 10 eight or nine months old.  
 11 Q Was he a pup from a previous litter of hers?  
 12 A Um-hmm. Yes.  
 13 Q So he had -- She had about two litters in nine  
 14 months?  
 15 A Correct.  
 16 Q What did he do with the pups?  
 17 A He gave them away.  
 18 Q Did he talk about getting her fixed or anything?  
 19 A I don't remember.  
 20 Q The dog wasn't a purebred, was it?  
 21 A No.  
 22 Q Did you ask him whether the dog had ever bitten  
 23 anybody or injured anybody at the time that you  
 24 met him and he moved in?  
 25 A No.

- 1 Q Did he ever tell you?  
 2 A No.  
 3 Q You made no inquiries at all as to the temperament of  
 4 the dog, whether or not it had ever injured anybody?  
 5 A No.  
 6 Q Do you have -- Do you have dogs?  
 7 A Yes.  
 8 Q What kind of dogs do you have?  
 9 A Currently?  
 10 Q Right.  
 11 A None.  
 12 Q What kinds did you have?  
 13 A Had a black lab mix and -- They were all mixes.  
 14 Q Is this when you were growing up or when you were  
 15 married?  
 16 A No; when I was living at the house.  
 17 Q Did you have dogs that were there at the time he was  
 18 there?  
 19 A Um-hmm.  
 20 MS. HUPFER: Is that yes?  
 21 A Yes.  
 22 Q (By Mr. Siddall) What kind of dogs did you have?  
 23 A I had three mixes, one was a black lab mix and another  
 24 black lab mix and Maggie was a border collie mix.  
 25 Q Where did those dogs stay?

- 1 A Where? In the house.  
 2 Q Where did they sleep?  
 3 A Anywhere they wanted to.  
 4 Q Did the five dogs get along together?  
 5 A Yes. Yes.  
 6 Q Had your dogs ever bitten anyone?  
 7 A No.  
 8 Q Knocked anyone down, off a bike, anything like t  
 9 A No.  
 10 Q There was some indication in an answer to an  
 11 interrogatory that he had told you that that dog  
 12 did injure somebody, that Boo did injure somebo  
 13 MS. HUPFER: I'll object to the form of  
 14 the question.  
 15 Q (By Mr. Siddall) -- before moving in. Do you r  
 16 that?  
 17 A Injured somebody?  
 18 Q Yes.  
 19 A Nipped at somebody, not a bite. He did not say that  
 20 his dog had bit anyone.  
 21 Q What did he tell you happened?  
 22 A He said that a six-year-old neighbor girl had come  
 23 into the house, Boo had puppies, he didn't realize  
 24 that she was in the house, it was a neighbor girl,  
 25 and the dog had nipped at her arm and scared her.

1 He said it did not break the skin.  
 2 Q Did he say when that was?  
 3 A No. Apparently it was recently.  
 4 Q Shortly before he moved in?  
 5 A Right.  
 6 Q Did you undertake any investigation as a result of  
 7 that?  
 8 A No.  
 9 Q How did that conversation happen to come up?  
 10 A I believe it was the night that he came. They were  
 11 discussing the dogs and --  
 12 Q Who's they?  
 13 A Alicia's mother, Alicia, Andrea, Walt and myself.  
 14 Q Okay. And what was said?  
 15 A They said that the dogs were great, they were not a  
 16 threat to anybody, they were friendly, they got along  
 17 with everyone, there was no problems with the dogs.  
 18 Q Except -- And then they relayed the story?  
 19 A Right, and then this story.  
 20 Q Did it appear to you that Alicia's mom, Cindy, had  
 21 familiarity with these dogs?  
 22 A Yes. She had lived with them.  
 23 Q I thought it had been quite some time that they had  
 24 lived together. No? I thought quite some time had  
 25 elapsed since they had lived together.

1 that sounds familiar.  
 2 Q I've got an incident report here which is dated  
 3 June 3rd of '04. Wait a minute. Yes, June --  
 4 June 4th of '03. Wait a minute. I'm sorry. It's  
 5 dated June 4th, 2003. This would be close to the  
 6 time he moved in; correct?  
 7 A I would think a couple weeks prior.  
 8 Q Okay. And here's what the notes say: Neighbor's  
 9 dog bit reporter's daughter as she was riding her  
 10 bike.  
 11 He didn't tell you that, though,  
 12 did he?  
 13 A No.  
 14 Q And that the person was requesting that the dog be  
 15 put to sleep and that the dog -- the child was taken  
 16 for medical attention, he never told you that?  
 17 A No.  
 18 Q Did he tell you that the dog, while he lived at that  
 19 same address, bit another person in March of '03?  
 20 A No.  
 21 Q Did you do any checking after the dog attacked Colleen  
 22 Pawlowski about that dog?  
 23 A No.  
 24 Q Are you aware of any other incidents that that dog  
 25 injured anyone?

1 A I don't know.  
 2 Q How would I find out where Cindy is? How would I get  
 3 ahold of her? through Alicia?  
 4 A Yes.  
 5 Q And you said Alicia, her last name is Williams, and  
 6 she lives in Appleton?  
 7 A Menasha.  
 8 Q Menasha.  
 9 Did they tell you where that dog bite  
 10 occurred, in what municipality?  
 11 MS. HUPFER: Object to form.  
 12 A I don't remember.  
 13 MS. HUPFER: It misstates her  
 14 testimony. You can answer.  
 15 THE WITNESS: Huh?  
 16 MS. HUPFER: You can answer. I'm just  
 17 making a record.  
 18 A I don't remember.  
 19 Q (By Mr. Siddall) Do you know where he lived before  
 20 moving in with you?  
 21 A I don't remember what he told me.  
 22 Q If I indicated that he lived on Erdine, E-r-d-i-n-e,  
 23 Lane in Dale, Wisconsin, in June of '03, would that  
 24 ring a bell?  
 25 A Dale does, but I didn't know a street. Dale, yes,

1 A No.  
 2 Q Did it -- Did he tell you the name of the child that  
 3 that dog nipped?  
 4 A No.  
 5 Q And you believe that was sometime in June of '03 when  
 6 that incident occurred?  
 7 MS. HUPFER: Object to form.  
 8 A He didn't say.  
 9 Q (By Mr. Siddall) But you knew it was relatively  
 10 shortly before he moved in?  
 11 A Right.  
 12 Q Okay. At the time of this attack by those two dogs  
 13 you were working as a social worker?  
 14 A Yes.  
 15 Q What were your normal hours?  
 16 A 7:45 to 4:30.  
 17 Q Okay.  
 18 A Monday through Friday.  
 19 Q Do you recall, did you work the day of this incident?  
 20 A No. I was home.  
 21 Q What day of the week was it?  
 22 A A Sunday.  
 23 Q All right. Do you recall approximately what time it  
 24 happened?  
 25 A In the afternoon.

- 1 Q Do you have any idea as to approximate time, early
- 2 afternoon, mid, late?
- 3 A Mid to late. I don't really remember.
- 4 Q Do you recall whether or not you were home all
- 5 morning?
- 6 A No.
- 7 Q Would you have gone to church or the grocery store or
- 8 anything like that in the morning?
- 9 A It's possible.
- 10 Q Do you recall what you did that morning?
- 11 A No.
- 12 Q How do your dogs, your three dogs, get exercise?
- 13 A Walking in the neighborhood on leashes or the
- 14 backyard. The backyard is very big.
- 15 Q And you said that's fenced in?
- 16 A Yes.
- 17 Q Do you recall -- Do you normally take your dogs for
- 18 a walk?
- 19 A Yes.
- 20 Q How often?
- 21 A Oh, once a week.
- 22 Q How many dogs do you take at a time?
- 23 A Two.
- 24 Q Then you go a second time with the third dog?
- 25 A The third dog was Andrea's. It was her responsibility

- 1 after it had happened?
- 2 A Some time after it had happened, the same day.
- 3 Q So after it happened Walt didn't tell you anything
- 4 about it?
- 5 A No.
- 6 Q Did he remain at the house that day?
- 7 A No.
- 8 Q What happened?
- 9 A He went to the grocery store.
- 10 Q What did he do with his dogs?
- 11 A He always put them in his car and took them with him.
- 12 Q What kind of a car did he have?
- 13 A Some kind of a black -- I don't know the make.
- 14 Q Was it a regular sedan?
- 15 A Four door.
- 16 Q When did you first have a discussion with him about
- 17 the attack?
- 18 A When he came back from the grocery store.
- 19 Q Sometime that afternoon?
- 20 A Um-hmm.
- 21 Q Your answer is yes?
- 22 A Yes.
- 23 Q What did he tell you?
- 24 A That he opened the door -- He was going to go to the
- 25 grocery store, he opened the front door, and the dogs

- 1 to take her for a walk.
- 2 Q Okay. What were your two dogs?
- 3 A Maggie and Jack.
- 4 Q And Maggie was what kind of a dog?
- 5 A A border collie mix.
- 6 Q And Jack was a mixed lab?
- 7 A Yeah.
- 8 Q What was the name of the other mixed lab?
- 9 A Molly.
- 10 Q Did both Jack and Molly, did they appear to be black
- 11 in color?
- 12 A Yes. They were pure black.
- 13 Q Okay.
- 14 A Except for Jack, I think, had just a tiny bit -- well,
- 15 both of them had a little, tiny white on their chest.
- 16 Q Okay. What color was Maggie?
- 17 A Maggie was tri-colored.
- 18 Q Brown and white and dark -- and black?
- 19 A Black, yes.
- 20 Q Do you recall where you were when you found out that
- 21 his dogs had attacked a walker?
- 22 A Yes.
- 23 Q Where were you?
- 24 A At the front door talking to a police officer.
- 25 Q Was this long after it had happened or some time

- 1 always run to the car, and instead of running to the
- 2 car they ran in the street, and Boo had bit this
- 3 woman, and he called them back and he went and asked
- 4 her if she was okay, and she said, Yes, I'm okay,
- 5 I'm fine. He said, Can I take you somewhere? Can I
- 6 take you to the doctor? Can I take you home? She
- 7 said, No.
- 8 Q Did he have any explanation as to why the dog bit
- 9 this woman?
- 10 A No.
- 11 Q Did you have any additional questions to him about
- 12 what kind of a dog this was?
- 13 A I told him that the dog should be put to sleep.
- 14 Q What did he say?
- 15 A He said he couldn't do that. Because I had a dog
- 16 before I had Maggie and Jack that I put to sleep.
- 17 He never bit anyone, but he was acting like he wanted
- 18 to bite, and one of my daughter's mothers came over to
- 19 get her little girl, and his name was Jake, and he
- 20 went after this mother when he was at the door, and,
- 21 so, I had talked to the veterinarian and I put this
- 22 dog to sleep.
- 23 Q What kind of a dog was Jake?
- 24 A He was a springer spaniel mix.
- 25 Q How long had you had Jake?

- 1 A Two years, a year to two years.
- 2 Q How old was he?
- 3 A How old was he?
- 4 Q Right.
- 5 A A year to two years. I got him as a puppy.
- 6 Q Okay. Did you get Maggie as a puppy?
- 7 A No. I adopted her.
- 8 Q How old was Maggie when you got her?
- 9 A Two, around two.
- 10 Q Do you still have either of these dogs?
- 11 A No.
- 12 Q What happened to them?
- 13 A I returned them to the place where I adopted them.
- 14 Q Where was that?
- 15 A The company that comes to Petco adopts out animals.
- 16 It's an organization. And if for any reason you
- 17 want to -- have to give up your animals, they will
- 18 take them back, so --
- 19 Q You had to give them up because of your move?
- 20 A Yes.
- 21 Q Okay. How old was Maggie when you moved in '05?
- 22 A She was probably going on three then.
- 23 Q Okay.
- 24 A So I hadn't had her very long.
- 25 Q How about Jack, how old was Jack?

- 1 A He was younger. He was probably a year.
- 2 Q And you got him from the same place?
- 3 A Yes.
- 4 Q What about Molly?
- 5 A Molly was older, and she had been in the house a long
- 6 time. She was maybe eight, seven or eight.
- 7 Q Did Andrea get her as a puppy?
- 8 A Um-hmm.
- 9 Q Answer is yes?
- 10 A Yes. Molly came to the house when Jake did, the dog
- 11 I had to put down. We got two dogs as puppies.
- 12 Q Okay.
- 13 A And I had to put Jake to sleep.
- 14 Q Okay. And Molly ended up being Andrea's dog?
- 15 A Yes.
- 16 Q When did you next find out that this dog had injured
- 17 someone before, Boo?
- 18 A I don't remember.
- 19 Q At some point in time did you find out that, in fact,
- 20 this dog had bitten people before Walt moved in with
- 21 you?
- 22 A I found out last Friday at my attorney's -- at the
- 23 attorney's office that this dog had bitten three
- 24 times. I did not know that prior to last Friday.
- 25 Q When this occurred did you ask Walt whether or not

- 1 he had any kind of insurance?
- 2 A No.
- 3 Q Did you report it to your insurance company right
- 4 away?
- 5 A I don't remember.
- 6 Q Do you recall whether or not at any point you ever
- 7 filled out an incident report for the insurance
- 8 company?
- 9 A No, I did not that I know of.
- 10 Q Did you give a statement to your insurance company,
- 11 whether it was written or tape recorded or --
- 12 A Yes.
- 13 Q -- over the telephone?
- 14 A Yes.
- 15 Q When did you do that?
- 16 A I don't remember.
- 17 Q When did you last see that statement?
- 18 A I never saw it.
- 19 Q Did anybody read it to you recently?
- 20 A No.
- 21 Q Did anybody read parts of it to you?
- 22 A No.
- 23 Q How do you remember that you gave a statement?
- 24 Did somebody tell you?
- 25 A I was at work. They called me at work.

- 1 Q Did you ever get a copy of that statement?
- 2 A No.
- 3 Q When was that in relation to the dog attack?
- 4 A I believe they called me four months afterwards --
- 5 Q Okay.
- 6 A -- that I had first heard anything.
- 7 Q In interrogatories that you answered, Nancy --
- 8 May I call you Nancy?
- 9 A Sure.
- 10 Q Back in January you signed these answers to questions.
- 11 Do you recall that your lawyer probably prepared
- 12 these?
- 13 A Yes.
- 14 Q Okay. And right here you were asked the question, 4,
- 15 it says: State whether or not you gave a written or
- 16 recorded statement to anyone about a dog -- about
- 17 this -- this dog attack. And you stated: No.
- 18 A Gave a written or recorded --
- 19 Q Statement to anyone about this dog attack.
- 20 Maybe you just didn't think of the
- 21 insurance company at the time?
- 22 A Yeah. Actually, I think I read over the "recorded."
- 23 I just read "written."
- 24 Q Okay. So this is just an error, and we can correct
- 25 that now on the record? The fact is you did give a

1 statement to your insurance company?  
 2 A When was this?  
 3 Q January of '07.  
 4 A Yeah. I would assume so, yes. Yes.  
 5 Q Okay.  
 6 MR. SIDDALL: Do you have a copy of  
 7 that, Sandy?  
 8 MS. HUPFER: Do I have a copy of  
 9 what? the interrogatories?  
 10 MR. SIDDALL: The statement.  
 11 MS. HUPFER: Yes, I do.  
 12 MR. SIDDALL: May I see it, please?  
 13 MS. HUPFER: I have to talk to the  
 14 company and see if I can disclose it.  
 15 MR. SIDDALL: Okay.  
 16 Q (By Mr. Siddall) Do you know what vet he used, he,  
 17 being Walt, for his dogs?  
 18 A The only veterinarian I know that he went to is  
 19 Country View Animal Hospital because I told him that  
 20 the dogs had to be licensed, and he had to go to the  
 21 Town of Menasha.  
 22 Q Did he get them licensed?  
 23 A Yes, but he had to get one of the dogs up to date on  
 24 shots, I believe.  
 25 Q And where is Country View Animal Hospital?

1 A A gas station.  
 2 Q A gas station.  
 3 A I don't remember where.  
 4 Q How did he exercise his dogs?  
 5 A The backyard.  
 6 Q That's all?  
 7 A Yes.  
 8 Q He didn't take them for walks?  
 9 A No.  
 10 Q Did he ever let them -- Did you ever see him let them  
 11 loose in the front yard?  
 12 A No.  
 13 Q Did you -- When you saw him let the dogs out the front  
 14 door to go to his car, did you warn him or reprimand  
 15 him?  
 16 A I did not see him. I did not see him go out the front  
 17 door, letting the dogs out.  
 18 Q I mean on any other occasion.  
 19 A No, I haven't. He usually put them on a leash. He  
 20 put the dogs on a leash and took them to his car.  
 21 Q Did he tell you why he didn't do that on the day of  
 22 this dog attack?  
 23 A No.  
 24 Q Did you ask him?  
 25 A I don't remember.

1 A Tullar Road.  
 2 Q Okay. Who are the vets there? That's your vet, I  
 3 take it?  
 4 A Yes. He was bought out. They're all retired now.  
 5 Q Okay. Who were the vets at the time?  
 6 A Good question.  
 7 Q That's all right if you don't know.  
 8 A I don't remember. I could if I thought about it.  
 9 Q Did he say how out of -- or how behind his dog was  
 10 on shots?  
 11 A No.  
 12 Q I note from the police report from the March bite that  
 13 the dog hadn't had shots since November of '01. Did  
 14 he ever tell you that?  
 15 A No.  
 16 Q Can you tell me again -- I don't think I quite nailed  
 17 it down. But the Shell gas station that you thought  
 18 Walt worked at --  
 19 A No. I did not say that.  
 20 Q What am I -- All right.  
 21 MR. HUPFER: You're thinking of her  
 22 son-in-law.  
 23 MR. SIDDALL: Son-in-law. Okay.  
 24 Q (By Mr. Siddall) Where was the last place you believe  
 25 Walt worked?

1 Q You believe it was a couple weeks after that that you  
 2 asked him to move out? Maybe I'm wrong. When did he  
 3 leave in relation to the dog attack?  
 4 A One to two weeks.  
 5 Q And that was at your request?  
 6 A Yes.  
 7 Q Did it frustrate you that he had a job and then quit  
 8 it?  
 9 A Yes, but, also, it was time.  
 10 Q Do you know where he went from your house?  
 11 A To his brother's.  
 12 Q In Fremont?  
 13 A Yes.  
 14 Q Okay. Did you ever hear anything more about him after  
 15 he left your house?  
 16 A No.  
 17 Q How did you hear that he went to his brother's?  
 18 A I believe it was through Alicia and Andrea.  
 19 Q Do you know whether or not Cindy ever started dating  
 20 him again?  
 21 A No.  
 22 Q Do you know whether or not he lived anyplace else  
 23 after he lived with his brother?  
 24 A No.  
 25 Q Where did you hear that he was maybe out of state?

1 Q Okay.

2 MR. SIDDALL: Okay. Okay. Thank you,  
3 Nancy. That's all I have.

4 THE WITNESS: Okay.

5 MS. HUPFER: Nancy, would you have let  
6 Mr. Waterman move in with those dogs if you knew the  
7 dogs had bit anyone before?

8 THE WITNESS: Absolutely not.

9 MS. HUPFER: That's all I have.

10 MR. SIDDALL: Thank you.

11 MS. HUPFER: Thanks for coming in.

12 \* \* \*

13 (Which concluded the deposition of  
14 NANCY L. SEEFELDT at 4:05 p.m.)

15 \* \* \*

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 STATE OF WISCONSIN )  
2 OUTAGAMIE COUNTY ) ss

3  
4 I, Patricia J. Seidel, a Notary Public  
5 in and for the State of Wisconsin, do hereby certify  
6 that the deposition of NANCY L. SEEFELDT, otherwise  
7 than as a witness upon the trial, was taken before me  
8 on the 7th day of May, 2007, at the law offices of  
9 Herrling Clark Law Firm Ltd., 800 North Lynndale  
10 Drive, Appleton, Wisconsin.

11 That before said witness testified,  
12 she was first duly sworn by me to testify the truth,  
13 the whole truth, and nothing but the truth relative  
14 to said cause.

15 That the foregoing proceedings are  
16 true and correct as reflected by my original machine  
17 shorthand notes taken at said time and place.

18  
19 Dated at Appleton, Wisconsin,  
20 this 1st day of June, 2007.

21  
22   
23 Patricia J. Seidel, RPR  
24 Notary Public, State of Wisconsin  
25 My commission expires: 7/29/07

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Case No. 06-CV-1307

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

**AFFIDAVIT OF MICHAEL S. SIDDALL**

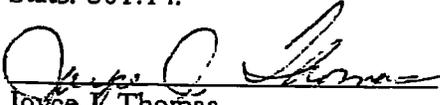
STATE OF WISCONSIN    )  
                                  )SS  
COUNTY OF BROWN    )

MICHAEL S. SIDDALL, being sworn on oath, states as follows:

1. That I am the attorney representing the plaintiffs, Colleen and Thomas Pawlowski, and make this affidavit on personal knowledge.
2. That attached hereto and marked as Exhibit A is a copy of the pertinent portions of the deposition taken of Colleen Pawlowski, taken May 7, 2007.
3. That attached hereto and marked as Exhibit B is a copy of the pertinent portions of the deposition taken of Nancy Seefeldt, taken May 7, 2007.
4. That attached hereto and marked as Exhibit C is a true and accurate representation of the police reports obtained from American Family Mutual Insurance Company's Response to Plaintiffs' Demand for Production of Documents.
5. This affidavit is made in support of the plaintiff's motion and brief for summary judgment.

Dated this 1<sup>st</sup> day of August, 2007.

I certify that on 8/1/07  
I served the within paper  
on other counsel of record  
by mail, pursuant to Wis.  
Stats. 801.14.

  
Joyce J. Thomas  
(Hupfer)

  
Michael S. Siddall, Attorney for Plaintiffs

HERRLING CLARK LAW FIRM LTD.

800 N. Lynndale Drive,  
Appleton, WI 54914  
(920)739-7366  
State Bar No. 01015242

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

-----  
COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Deposition of:  
COLLEEN PAWLOWSKI  
May 7, 2007

Plaintiffs,

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.  
-----

Deposition of COLLEEN PAWLOWSKI, a witness  
in the above-entitled action, taken at the instance of  
the Defendants, pursuant to notice, on the 7th day of  
May, 2007, commencing at 1:35 p.m., at the law offices  
of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive,  
Appleton, Wisconsin; pursuant to Chapter 804 of the  
Wisconsin Statutes; before and reported by Patricia J.  
Seidel, Registered Professional Reporter and Notary Public,  
State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

ALSO PRESENT: Thomas Pawlowski

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208

Pet'r R-Ap. 153

1 the accident.  
 2 Q Do you know what his address is?  
 3 A He lives on Crestview. I'm not sure of the address.  
 4 Q How well do you know Mr. Clark?  
 5 A Not real well, just as a neighbor, passing by.  
 6 Q And how did it come to be that he gave you a ride  
 7 home that day?  
 8 A After I got bit I thought I would walk home, and as  
 9 I walked just a little ways I started getting really  
 10 shaky, and he was out in his yard, and, so, I called  
 11 to him and asked him to give me a ride home.  
 12 Q Did you talk to Mr. Clark at all on the way home?  
 13 A Yes. I told him what happened, because he has two  
 14 dogs, also, and he's -- this neighbor is just three  
 15 down the street, maybe three houses down the street.  
 16 Q What did you tell Mr. Clark?  
 17 A I told him what happened.  
 18 Q Could I have a little bit more detail about --  
 19 A Well, I told him that I had just been bit by dogs  
 20 there, and I showed him my leg. Then he said that if  
 21 his dogs would do something like that he'd have them  
 22 put down. But it's not very far to my house, so we  
 23 were home in the driveway and then he let me off.  
 24 Q Did he say anything about Mr. Waterman's dogs or  
 25 anything that he had noticed about Mr. Waterman's

1 and North Street and Deerwood, and I walk into the  
 2 Oak Hill Cemetery and then down Cooke Road to Spring  
 3 Road School and then back to my house.  
 4 Q Do you do this walk every day in the winter, summer,  
 5 spring, fall?  
 6 A Um-hmm.  
 7 Q Rain or shine?  
 8 A Um-hmm.  
 9 Q Wow. You are --  
 10 MS. HUPFER: Excuse me. Is that yes?  
 11 A Yes.  
 12 MR. SIDDALL: You have to say yes or  
 13 no, Colleen.  
 14 A Yes.  
 15 Q (By Ms. Ver Boort) Wow. You are very dedicated.  
 16 Did you ever switch up the route or  
 17 did you always take that same route?  
 18 A Well, it depended on the wind, which way it went.  
 19 Q Since the accident have you changed that route at all?  
 20 A Yes. I don't go -- I don't go in that block at all.  
 21 Q But you still walk for about an hour a day?  
 22 A Um-hmm.  
 23 MS. HUPFER: Is that yes?  
 24 A Yes.  
 25 MS. HUPFER: You should clarify with

1 dogs?  
 2 A No. No.  
 3 Q Okay. Were there any other witnesses that you know  
 4 of to the actual bite?  
 5 A No; just that Mr. Waterman, I think.  
 6 Q And where did you live at the time of the incident?  
 7 A 550 Spring Road Drive. It's probably three blocks  
 8 away.  
 9 Q So same address as you live now?  
 10 A Yes.  
 11 Q Okay. And on average how many times a week did you  
 12 walk in the months leading up to the accident?  
 13 A Every day.  
 14 Q Every day. Outside?  
 15 A Um-hmm.  
 16 Q Same route?  
 17 A Um-hmm.  
 18 Q What was that route?  
 19 A Oh, it's kind of an involved route because it's an  
 20 hour walk.  
 21 Q Um-hmm.  
 22 A But it's the same route that I always took. Did you  
 23 want the streets or --  
 Q Sure. Sure. That sounds good.  
 25 A Spring Road and then Glenview and then Crestview

1 her if she does that.  
 2 MS. VER BOORT: I agree. I agree.  
 3 Q (By Ms. Ver Boort) Can you give us a ballpark figure  
 4 of the number of times you passed this Seefeldt  
 5 residence prior to the -- to the bite?  
 6 A Well, I started walking in 1999, so, I don't know,  
 7 seven, seven, eight years. Different people had lived  
 8 in the house.  
 9 Q Had you ever seen Mr. Waterman's dogs before --  
 10 A Never.  
 11 Q -- the Seefeldt residence?  
 12 A Never.  
 13 Q Have you ever had any contact with them since?  
 14 A No.  
 15 Q What were you wearing on the day of the incident?  
 16 A Kind of like jogging pants and a winter coat,  
 17 green winter coat.  
 18 Q Did you have gloves on and boots?  
 19 A I had gloves, tennis shoes.  
 20 Q And what is your recollection of the events leading  
 21 up to the dog bite incident on October 26, 2003?  
 22 Just tell me in as much detail as possible starting  
 23 from when you started walking on the -- What's the  
 24 name of the street where the --  
 25 A Glenview.

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1 Q Glenview. -- when you started walking on Glenview.  
 2 A When I was walking on Glenview I was walking to the  
 3 right of the road, kind of in the center to the right  
 4 of the road, and as I walked by the house, I was  
 5 almost past it, and I heard, like, a screen door or  
 6 a door opening, and, so, I turned my head to look, and  
 7 I looked behind me, and as I did I saw two dogs jump  
 8 off the porch and their ears were lowered and they  
 9 were charging. And I had time for three thoughts at  
 10 that time. It was: Here they come, don't run, and  
 11 when their feet lift the ground, turn your back. And  
 12 that's -- That was it. And I went like this, and he  
 13 hit -- hit me up here and bit, and, then, down where  
 14 my thigh is and, then, on my calf twice, and it  
 15 sounded like an apple, when you bite into an apple.  
 16 When that happened I kind of turned just a little bit  
 17 and just fell to my knee. And Mr. Waterman was  
 18 chasing them and calling their name, but they didn't,  
 19 you know, pay any attention. And he got there and he  
 20 grabbed them both. And he asked me if I wanted a ride  
 21 home, but I was just upset and said, no, that I was  
 22 fine. And, so, then I started to walk, and that's  
 23 when I walked to the end of that street, and that's  
 24 where Jeremy Clark lives, so then he gave me a ride  
 25 home.

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1 Q Just a couple questions to follow up on that.  
 2 When you say you were walking on the right side of  
 3 the road, would you say that you were walking closer  
 4 to the curb then on --  
 5 A Probably on this -- The center of the road's here.  
 6 I was probably in the middle. There's not -- Cars  
 7 don't come down that road.  
 8 Q So you were walking about down the middle of the road?  
 9 A Yeah, just to the -- to the right of the middle. And  
 10 their house is on the left.  
 11 Q Okay. And you said that your three thoughts were  
 12 the dogs are running towards you, don't run and --  
 13 and then after that you said --  
 14 A Here they come, don't run, when their feet leave the  
 15 ground, you know, turn, and just -- just like that  
 16 they -- they jumped.  
 17 Q So I'm going to describe that for the record now.  
 18 You're kind of turning over with -- and pulling your  
 19 arms up against you and -- Did you bend over or lean  
 20 over?  
 21 A Just like this, not real bent but just so my head was  
 22 like this, because they were big, you know, and I knew  
 23 he would hit me hard, and he did.  
 24 Q So you tucked your arms up against you and turned away  
 25 from the dogs?

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1 A Um-hmm.  
 2 Q So when you first saw the dogs approaching you, they  
 3 were actually behind you, you had already passed the  
 4 Seefeldt residence?  
 5 A Yes. Yes.  
 6 Q Did you take any action to move away from the dogs  
 7 when you saw them running towards you?  
 8 A I didn't have time. It happened that fast.  
 9 Q Did you scream at all?  
 10 A No.  
 11 Q Did you try to, you know, push the dogs away or kick  
 12 them to get them off of you?  
 13 A No. That's why I went like this, because I thought,  
 14 you know, he -- that would kind of, you know -- I  
 15 wouldn't take the brunt of the bite or whatever.  
 16 Q So you pulled your arms up against you so they --  
 17 A And turned my back.  
 18 Q And turned your back so they wouldn't get bit.  
 19 Did you have any food on you that day?  
 20 A No.  
 21 Q Do you know if it was only one of the dogs that bit  
 22 you or do you believe both dogs bit you?  
 23 A I don't recall that because my back was like this,  
 24 but when I -- When he got my calf, I looked down and  
 25 the golden was right there, so he was the one that

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1 his mouth was on my leg.  
 2 Q Do you know which dog jumped up on you initially?  
 3 A The gold one.  
 4 Q Where was the darker one standing?  
 5 A Behind him. They came, you know, running like that.  
 6 He was just behind him.  
 7 Q Did you ever see the darker dog jump on you or -- or  
 8 bite you?  
 9 A No. I don't recall if he, you know --  
 10 Q Where did the golden dog bite you?  
 11 A Up here on my coat and, then, my thigh and --  
 12 MS. VER BOORT: Let the record reflect  
 13 that the witness is touching her --  
 14 Q (By Ms. Ver Boort) Is that your --  
 15 A Left shoulder.  
 16 Q Left shoulder.  
 17 A And left thigh. And because I had a winter coat on  
 18 he couldn't get through here, but it was all slobber,  
 19 but he ripped the coat where he bit here. And I've  
 20 got the coat where -- where, you know, he bit, here.  
 21 And then, of course, he got -- got me in my calf.  
 22 Q Were there any physical injuries from the bite on your  
 23 thigh, on your left thigh?  
 24 A No.  
 25 Q It just tore through the jacket?

1 A Yeah.  
 2 Q Did it tear through the jacket on the shoulder bite?  
 3 A No. It was just a bite, like a bite mark and, like,  
 4 slobber from the dog up there.  
 5 Q Okay. And then just the one bite on the left calf?  
 6 A Yes. He bit and bit again, you know, like that --  
 7 Q Okay.  
 8 A -- sort of thing.  
 9 Q Do you know what the other dog was doing when --  
 10 A No.  
 11 Q -- Boo was -- or the golden dog was on you? When  
 12 I say Boo, we found out that the golden dog was named  
 13 Boo and, then, the darker dog was named Diesel, so if  
 14 I say Boo or the golden dog, we'll be referring to the  
 15 dog that actually bit you.  
 16 A Okay.  
 17 Q So you didn't see where the other dog was at that  
 18 time?  
 19 A No. They were just coming together, you know, running  
 20 together.  
 21 Q There's a reference in the November 1st, 2004,  
 22 counseling record with Dr. Cummings, and it states  
 23 that the dog bit you in three places, resulting in  
 24 16 puncture wounds and soft tissue damage. Do you  
 25 know where Dr. Cummings got that figure for the 16

1 Q So it's your recollection that you told Mr. Waterman  
 2 that he would -- that you were going to the Emergency  
 3 Room --  
 4 A Yes.  
 5 Q -- for the bite?  
 6 A (Nods head.)  
 7 Q What did he do with the dogs after he pulled them off  
 8 of you?  
 9 A I don't know. I don't recall that. I don't remember  
 10 him walking back because I walked off.  
 11 Q So when you were talking to him and he was talking  
 12 to you, though, he just had them there at his side,  
 13 holding onto them?  
 14 A Yes. He had them by the collars.  
 15 Q And were they barking at you?  
 16 A I don't recall.  
 17 Q Okay. Is it fair to say that the only physical injury  
 18 that you sustained in the dog bite was the bite on the  
 19 left calf?  
 20 A Physical injury, yes.  
 21 Q You didn't have any other scrapes or --  
 22 A No.  
 23 Q -- bruises, marks?  
 24 A No.  
 25 Q Would you describe that bite for us on your left

1 puncture wounds?  
 2 A I -- No, I don't, unless he got it from the Emergency  
 3 Room records.  
 4 Q Do you remember telling him that there were 16  
 5 puncture wounds?  
 6 A I don't recall saying that, no.  
 7 Q Okay. Is it your recollection today that there were  
 8 16 puncture wounds?  
 9 A Oh, yeah.  
 10 Q Okay. Do you know if anyone else was home at the  
 11 Seefeldt residence at the time of the bite?  
 12 A Well, I know he was because I saw him, but I don't  
 13 know if she was there.  
 14 Q He, as in Walter Waterman?  
 15 A Um-hmm.  
 16 Q Okay. And you said that after the incident  
 17 Mr. Waterman came up to you?  
 18 A Um-hmm. He -- he came to grab the dogs, and he  
 19 grabbed the dogs and said, Are you all right? Can  
 20 I give you a ride home? But I said -- I told him  
 21 I had to go to the Emergency Room because they had  
 22 broke the skin and it was bleeding, but I said, no,  
 23 I didn't need a ride.  
 24 Q Did he say anything else to you at that point?  
 25 A No.

1 calf, just --  
 2 A It was just round, all the way around, twice.  
 3 Q Were there -- Could you see the two separate bites?  
 4 You said that he clamped onto you two times.  
 5 A Yes. You could see it was, you know, like a line  
 6 here and then two circles, like, where he bit.  
 7 Q And what was about the size of the circles?  
 8 A About -- about like this.  
 9 Q That looks like about two to three inches in  
 10 diameter?  
 11 A Yeah. Here's a picture of it. Yeah.  
 12 Q Okay.  
 13 MR. SIDDALL: Second page is a little  
 14 better.  
 15 MS. VER BOORT: Okay.  
 16 Q (By Ms. Ver Boort) Can you see -- This looks like  
 17 the closest pictures that we have. Would you be  
 18 able to point out the two separate circles where  
 19 you believe --  
 20 A The outer one is, like, here, and then there was an  
 21 inner one.  
 22 Q Okay. So there's the start of the inner one right  
 23 there?  
 24 A Um-hmm.  
 25 Q And the outer one right there. Okay.



- 1 Q When did you first move into that home?
- 2 A December 1st, 1990.
- 3 Q And when did you leave the home?
- 4 A March of 2004 - 2005.
- 5 Q What was your reason for selling the house?
- 6 A My youngest daughter was living with her father out
- 7 of state and I was living there alone and with one
- 8 income I didn't want to -- it was just becoming very
- 9 costly. I didn't need that big of a house.
- 10 Q Who was living there with you in October of '03?
- 11 A My daughter Andrea, myself and Walt Waterman, Walter
- 12 Waterman.
- 13 Q Okay. Stephanie was not?
- 14 A No.
- 15 Q Okay. And Andrea was in high school at that time?
- 16 A Um-hmm.
- 17 Q Answer is yes?
- 18 A Yes.
- 19 Q What is Waterman's first name?
- 20 A Walter.
- 21 Q How do you know him?
- 22 A Through my daughter Andrea, her friend, Alicia,
- 23 they were very close. Alicia's mother lived with
- 24 Walt all the while Alicia was growing up and Alicia
- 25 considered him like a father.

- 1 Q How long had you known him?
- 2 A I didn't.
- 3 Q When did you first meet him?
- 4 A The month or -- Probably June 2003.
- 5 Q And how did you meet him?
- 6 A Andrea and Alicia and Alicia's mother brought Walter
- 7 over to meet with me.
- 8 Q For what purpose?
- 9 A To see if he would live with me until he found a job.
- 10 Q Do you recall when that was?
- 11 A Not the exact date, no.
- 12 Q How about the month?
- 13 A I'm not sure if it was June or July. I can't remember.
- 14 Q Do you recall when he moved in?
- 15 A No, I don't.
- 16 Q What is Alicia's last name?
- 17 A Williams.
- 18 Q What is Alicia's mother's last name?
- 19 A I don't know. I don't remember.
- 20 Q Is it different?
- 21 A Yes.
- 22 Q Where does Alicia live now?
- 23 A I believe Menasha.
- 24 Q Do you know who she lives with?
- 25 A No.

- 1 Q Do you know whether or not she's living with her
- 2 mother?
- 3 A Last time I heard, no, she was not.
- 4 Q Do you know where Alicia's mother's living?
- 5 A No.
- 6 Q Do you know what her first name is?
- 7 A Cindy.
- 8 Q Is Alicia still good friends with your daughter
- 9 Andrea?
- 10 A Somewhat.
- 11 Q Where is your daughter living?
- 12 A Appleton.
- 13 Q And what does she do?
- 14 A She's a housewife.
- 15 Q And her husband's name?
- 16 A Joshua.
- 17 Q And their last name?
- 18 A Korslin.
- 19 Q Could you spell that, please.
- 20 A K-o-r-s-l-i-n.
- 21 Q What does Joshua do for a living?
- 22 A He works at Savers. It's a store that just opened
- 23 on Casaloma.
- 24 Q Prior to that what did he do?
- 25 A He was working at the Shell Service Station.

- 1 Q Which one?
- 2 A It's the road from the mall, taking Highway 10,
- 3 is it? I believe that's Highway 10. Greenville.
- 4 Q Okay. Do you know what Alicia is doing now?
- 5 A No.
- 6 Q Do you know who she lives with?
- 7 A No.
- 8 Q Do you know whether or not she's married or single?
- 9 A I don't know.
- 10 Q Would Andrea know the answers to those types of
- 11 questions?
- 12 A I don't know.
- 13 Q Do you know how long this Walter and Cindy were
- 14 living together?
- 15 A Apparently for many years as -- while Alicia was
- 16 growing up.
- 17 Q Do you know why they stopped living together?
- 18 A No.
- 19 Q What did they tell you when Cindy brings him over
- 20 to your house and says, Here's my live-in boyfriend
- 21 but I want him to live with you now? What explanation
- 22 was given to you?
- 23 A She lived in a small apartment that could not take
- 24 dogs, and Walt had dogs, had lost his job, and he was
- 25 collecting unemployment and he needed a place to go

1 that would accept dogs, and I had a big backyard with  
 2 a fence, and, so, they wanted him to stay there so he  
 3 could find a job.  
 4 Q Had Cindy just moved into an apartment?  
 5 A No. She had been there for quite some time  
 6 apparently. I don't know.  
 7 Q With him living there?  
 8 A No. They hadn't been living together for a while.  
 9 Q Oh. Do you know when they stopped living together?  
 10 A No.  
 11 Q Were they dating?  
 12 A No.  
 13 Q Do you know when they stopped dating?  
 14 A No.  
 15 Q Do you have any records that would show when he moved  
 16 into your home?  
 17 A No.  
 18 Q Did he pay rent?  
 19 A No.  
 20 Q How long did he live there?  
 21 A Approximately four months, three to four months.  
 22 Q When did he leave after this dog attack?  
 23 A One to two weeks after this happened.  
 24 Q So if this happened on October 26th, he moved in  
 25 probably in June?

1 half-brothers and stepbrothers.  
 2 Do you know where Walt Waterman is  
 3 now?  
 4 A No.  
 5 Q Do you -- How would you find him if you wanted to  
 6 find him? How would you go about it?  
 7 A I would probably ask Alicia, which I did a year  
 8 ago, and she didn't know where he was. She hadn't  
 9 seen him. She thought he was probably out of state.  
 10 Q Did he have any other relatives in the area?  
 11 A He had elderly parents.  
 12 Q That lived in the area here?  
 13 A Um-hmm.  
 14 Q Your answer is yes?  
 15 A Yes.  
 16 Q Do you know whether or not they're alive?  
 17 A No.  
 18 Q Do you know their names?  
 19 A No.  
 20 Q Do you know where he last worked before he got --  
 21 lost his job before he moved in with you?  
 22 A I believe it was at a gas station.  
 23 Q How old a guy is he?  
 24 A I don't know.  
 25 Q Give me your best estimate.

1 A Or the end of June, yeah.  
 2 Q During the period of time he lived there he paid  
 3 no rent; correct?  
 4 A Correct.  
 5 Q Did he get a job?  
 6 A He got one at Ariens on the assembly line putting  
 7 together snow blowers and then quit the job, and  
 8 that was in October right before this happened.  
 9 Q Why did he quit the job?  
 10 A He didn't like it.  
 11 Q What was the reason he left your residence?  
 12 A It was time for him to move on because --  
 13 Q Did you tell him?  
 14 A Yes. Yes.  
 15 Q Did you ever have a romantic relationship with him?  
 16 A No.  
 17 Q How long did he work at Ariens?  
 18 A Just a couple weeks.  
 19 Q Does he have any relatives in the area?  
 20 A He has a brother, but he's out in Fremont.  
 21 Q Do you know what his brother's first name is?  
 22 A I don't remember.  
 23 Q Same last name?  
 24 A Yes.  
 25 Q Okay. Full brother. Sometimes they have

1 A Early forties.  
 2 Q Is that about the same age as Alicia's mother?  
 3 A Yes.  
 4 Q What was the reason that you would allow this stranger  
 5 to move into your house with two dogs and not pay  
 6 rent?  
 7 A They were looking for a place for him to go and --  
 8 Q Is this a guy that can't do these things on his own?  
 9 A No. I was getting my house ready to sell, and they  
 10 said that he could help out with some of the repairs  
 11 if -- in exchange for living there temporarily while  
 12 he could find a job.  
 13 Q Did he do any repairs?  
 14 A Yes.  
 15 Q What repairs did he do?  
 16 A He replaced the boards in the bathroom. We had to  
 17 tear out the linoleum and the boards in the bathroom.  
 18 Q Okay. Anything else?  
 19 A Yes. He helped me in the basement. We painted the  
 20 basement. Andrea had a bedroom down there, so we  
 21 wanted to clean that area up and paint the floor and  
 22 get it ready, put new carpet in.  
 23 Q Anything else?  
 24 A He did -- He mowed the lawn, and I made him vacuum  
 25 every day.

- 1 Q How many bedrooms is that house?  
 2 A Three.  
 3 Q Was it a ranch?  
 4 A Um-hmm.  
 5 Q Answer is yes?  
 6 A Yes.  
 7 Q And where did he stay, which -- One of the bedrooms on  
 8 the main floor?  
 9 A Yes.  
 10 Q And Andrea was downstairs in the basement bedroom?  
 11 A Yes.  
 12 Q Where did the dogs stay?  
 13 A With him.  
 14 Q So they were indoor dogs?  
 15 A Yes.  
 16 Q How did the dogs behave in your house?  
 17 A Fine.  
 18 Q I take it they were house trained?  
 19 A Yes.  
 20 Q Do you know how long he had the dogs?  
 21 A No.  
 22 Q Do you know how old the dogs were?  
 23 A I believe that the oldest, Boo, was three or four,  
 24 and Diesel was a puppy yet, he was eight or nine  
 25 months, and he was from a previous litter. She had

- 1 just had a litter.  
 2 Q Who is she?  
 3 A Boo.  
 4 Q Boo had had a litter?  
 5 A Yes, recently, when she came to my house, because she  
 6 was -- had just -- was nursing, and Diesel was trying  
 7 to nurse on her.  
 8 Q But Diesel --  
 9 A It's not -- wasn't the last litter, because he was  
 10 eight or nine months old.  
 11 Q Was he a pup from a previous litter of hers?  
 12 A Um-hmm. Yes.  
 13 Q So he had -- She had about two litters in nine  
 14 months?  
 15 A Correct.  
 16 Q What did he do with the pups?  
 17 A He gave them away.  
 18 Q Did he talk about getting her fixed or anything?  
 19 A I don't remember.  
 20 Q The dog wasn't a purebred, was it?  
 21 A No.  
 22 Q Did you ask him whether the dog had ever bitten  
 23 anybody or injured anybody at the time that you  
 24 met him and he moved in?  
 25 A No.

- 1 Q Did he ever tell you?  
 2 A No.  
 3 Q You made no inquiries at all as to the temperament of  
 4 the dog, whether or not it had ever injured anybody?  
 5 A No.  
 6 Q Do you have -- Do you have dogs?  
 7 A Yes.  
 8 Q What kind of dogs do you have?  
 9 A Currently?  
 10 Q Right.  
 11 A None.  
 12 Q What kinds did you have?  
 13 A Had a black lab mix and -- They were all mixes.  
 14 Q Is this when you were growing up or when you were  
 15 married?  
 16 A No; when I was living at the house.  
 17 Q Did you have dogs that were there at the time he was  
 18 there?  
 19 A Um-hmm.  
 20 MS. HUPFER: Is that yes?  
 21 A Yes.  
 22 Q (By Mr. Siddall) What kind of dogs did you have?  
 23 A I had three mixes, one was a black lab mix and another  
 24 black lab mix and Maggie was a border collie mix.  
 25 Q Where did those dogs stay?

- 1 A Where? In the house.  
 2 Q Where did they sleep?  
 3 A Anywhere they wanted to.  
 4 Q Did the five dogs get along together?  
 5 A Yes. Yes.  
 6 Q Had your dogs ever bitten anyone?  
 7 A No.  
 8 Q Knocked anyone down, off a bike, anything like that?  
 9 A No.  
 10 Q There was some indication in an answer to an  
 11 interrogatory that he had told you that that dog  
 12 did injure somebody, that Boo did injure somebody --  
 13 MS. HUPFER: I'll object to the form of  
 14 the question.  
 15 Q (By Mr. Siddall) -- before moving in. Do you recall  
 16 that?  
 17 A Injured somebody?  
 18 Q Yes.  
 19 A Nipped at somebody, not a bite. He did not say that  
 20 his dog had bit anyone.  
 21 Q What did he tell you happened?  
 22 A He said that a six-year-old neighbor girl had come  
 23 into the house, Boo had puppies, he didn't realize  
 24 that she was in the house, it was a neighbor girl,  
 25 and the dog had nipped at her arm and scared her.

1 He said it did not break the skin.  
 2 Q Did he say when that was?  
 3 A No. Apparently it was recently.  
 4 Q Shortly before he moved in?  
 5 A Right.  
 6 Q Did you undertake any investigation as a result of  
 7 that?  
 8 A No.  
 9 Q How did that conversation happen to come up?  
 10 A I believe it was the night that he came. They were  
 11 discussing the dogs and --  
 12 Q Who's they?  
 13 A Alicia's mother, Alicia, Andrea, Walt and myself.  
 14 Q Okay. And what was said?  
 15 A They said that the dogs were great, they were not a  
 16 threat to anybody, they were friendly, they got along  
 17 with everyone, there was no problems with the dogs.  
 18 Q Except -- And then they relayed the story?  
 19 A Right, and then this story.  
 20 Q Did it appear to you that Alicia's mom, Cindy, had  
 21 familiarity with these dogs?  
 22 A Yes. She had lived with them.  
 23 Q I thought it had been quite some time that they had  
 24 lived together. No? I thought quite some time had  
 25 elapsed since they had lived together.

1 that sounds familiar.  
 2 Q I've got an incident report here which is dated  
 3 June 3rd of '04. Wait a minute. Yes, June --  
 4 June 4th of '03. Wait a minute. I'm sorry. It's  
 5 dated June 4th, 2003. This would be close to the  
 6 time he moved in; correct?  
 7 A I would think a couple weeks prior.  
 8 Q Okay. And here's what the notes say: Neighbor's  
 9 dog bit reporter's daughter as she was riding her  
 10 bike.  
 11 He didn't tell you that, though,  
 12 did he?  
 13 A No.  
 14 Q And that the person was requesting that the dog be  
 15 put to sleep and that the dog -- the child was taken  
 16 for medical attention, he never told you that?  
 17 A No.  
 18 Q Did he tell you that the dog, while he lived at that  
 19 same address, bit another person in March of '03?  
 20 A No.  
 21 Q Did you do any checking after the dog attacked Colleen  
 22 Pawlowski about that dog?  
 23 A No.  
 24 Q Are you aware of any other incidents that that dog  
 25 injured anyone?

1 A I don't know.  
 2 Q How would I find out where Cindy is? How would I get  
 3 ahold of her? through Alicia?  
 4 A Yes.  
 5 Q And you said Alicia, her last name is Williams, and  
 6 she lives in Appleton?  
 7 A Menasha.  
 8 Q Menasha.  
 9 Did they tell you where that dog bite  
 10 occurred, in what municipality?  
 11 MS. HUPFER: Object to form.  
 12 A I don't remember.  
 13 MS. HUPFER: It misstates her  
 14 testimony. You can answer.  
 15 THE WITNESS: Huh?  
 16 MS. HUPFER: You can answer. I'm just  
 17 making a record.  
 18 A I don't remember.  
 19 Q (By Mr. Siddall) Do you know where he lived before  
 20 moving in with you?  
 21 A I don't remember what he told me.  
 22 Q If I indicated that he lived on Erdine, E-r-d-i-n-e,  
 23 Lane in Dale, Wisconsin, in June of '03, would that  
 24 ring a bell?  
 25 A Dale does, but I didn't know a street. Dale, yes,

1 A No.  
 2 Q Did it -- Did he tell you the name of the child that  
 3 that dog nipped?  
 4 A No.  
 5 Q And you believe that was sometime in June of '03 when  
 6 that incident occurred?  
 7 MS. HUPFER: Object to form.  
 8 A He didn't say.  
 9 Q (By Mr. Siddall) But you knew it was relatively  
 10 shortly before he moved in?  
 11 A Right.  
 12 Q Okay. At the time of this attack by those two dogs  
 13 you were working as a social worker?  
 14 A Yes.  
 15 Q What were your normal hours?  
 16 A 7:45 to 4:30.  
 17 Q Okay.  
 18 A Monday through Friday.  
 19 Q Do you recall, did you work the day of this incident?  
 20 A No. I was home..  
 21 Q What day of the week was it?  
 22 A A Sunday.  
 23 Q All right. Do you recall approximately what time it  
 24 happened?  
 25 A In the afternoon.

1 Q Okay.

2 MR. SIDDALL: Okay. Okay. Thank you,  
3 Nancy. That's all I have.

4 THE WITNESS: Okay.

5 MS. HUPFER: Nancy, would you have let  
6 Mr. Waterman move in with those dogs if you knew the  
7 dogs had bit anyone before?

8 THE WITNESS: Absolutely not.

9 MS. HUPFER: That's all I have.

10 MR. SIDDALL: Thank you.

11 MS. HUPFER: Thanks for coming in.

12 \* \* \*

13 (Which concluded the deposition of  
14 NANCY L. SEEFELDT at 4:05 p.m.)

15 \* \* \*

1 STATE OF WISCONSIN

) ss

2 OUTAGAMIE COUNTY )

3  
4 I, Patricia J. Seidel, a Notary Public  
5 in and for the State of Wisconsin, do hereby certify  
6 that the deposition of NANCY L. SEEFELDT, otherwise  
7 than as a witness upon the trial, was taken before me  
8 on the 7th day of May, 2007, at the law offices of  
9 Herring Clark Law Firm Ltd., 800 North Lynndale  
10 Drive, Appleton, Wisconsin.

11 That before said witness testified,  
12 she was first duly sworn by me to testify the truth,  
13 the whole truth, and nothing but the truth relative  
14 to said cause.

15 That the foregoing proceedings are  
16 true and correct as reflected by my original machine  
17 shorthand notes taken at said time and place.

18 Dated at Appleton, Wisconsin,  
19 this 1st day of June, 2007.

20  
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23 Patricia J. Seidel, RFR  
24 Notary Public, State of Wisconsin  
25 My commission expires: 7/29/07

NANCY L. SEEFELDT 5/7/07

**APPENDIX CERTIFICATION PAGE**

I hereby certify that filed with this brief, as part of this brief, is an appendix that complies with section 809.19(2)(a) of the Wisconsin Statutes and that contains:

- (1) a table of contents;
- (2) the decision of the court of appeals;
- (3) the findings or opinion of the circuit court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

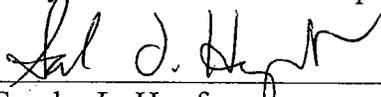
I further certify that if this appeal is taken from a circuit court order of judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and the final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 14<sup>th</sup> day of April, 2009.

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STATE OF WISCONSIN  
SUPREME COURT  
Case No. 2007AP2651

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COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs-Appellants,

v.

Appeal No.: 2007AP002651  
Circuit Court Case No.: 06-CV-1307

AMERICAN FAMILY MUTUAL  
INSURANCE CO. and  
NANCY L. SEEFELDT,

Defendants-Respondents-Petitioners.

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**APPEAL FROM THE OCTOBER 9, 2007 ORDER OF THE  
WINNEBAGO COUNTY CIRCUIT COURT,  
HONORABLE THOMAS J. GRITTON, PRESIDING,  
CIRCUIT COURT CASE NO. 2006-CV-1307**

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**BRIEF OF PLAINTIFFS-APPELLANTS**

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**NOTE: The Plaintiffs-Appellants-Respondents will be referred to interchangeably as the “Respondents” or “Pawlowski” herein, and the Defendants-Respondents-Petitioners will be referred to interchangeably as the “Petitioners” or “Seefeldt” herein.**

### STATEMENT OF FACTS

On October 26, 2003, Colleen Pawlowski was taking her daily walk around the neighborhood. (R. 18, at 5, Deposition of Colleen Pawlowski, Appendix at Ap.5). As she was walking on Glenview Drive, she passed by the home owned by the Petitioner, Nancy Seefeldt. *See id.* Ms. Pawlowski heard a screen door open, turned back to look in the direction of the noise, saw two dogs charging at her and was promptly attacked:

When I was walking Glenview I was walking to the right of the road, kind of in the center to the right of the road, and as I walked by the house, I was almost passed it, and I heard, like, a screen door or a door opening, and, so, I turned my head to look, and I looked behind me, and as I did I saw two dogs jump off the porch and their ears were lowered and they were charging. And I had time for three thoughts at that time. It was: Here they come, don't run, and when their feet lift off the ground turn your back. And that's – That was it. And I went like this, and he hit – hit me up here and bit, and, then, down where my thigh is and, then, on my calf twice, and it sounded like an apple, when you bite into an apple. When that happened I kind of turned just a little bit and fell to my knee.

(R.18 at 5, Deposition of Colleen Pawlowski, Appendix at Ap.5)

The bites resulted in 16 puncture wounds and soft tissue damage. (R.22 at 6, Deposition of Colleen Pawlowski, Appendix at Ap.21). Although, the attacking dogs were owned by an individual, Walter Waterman, the dogs resided at the house owned and occupied by the Petitioner, Nancy Seefeldt. (R.18 at 8, 9 Deposition of Nancy Seefeldt, Appendix at Ap.8, 9). Walter Waterman also resided in Ms. Seefeldt's home at the time of the attack. *Id.* Because Mr.

Waterman was not able to move into his girlfriend's apartment (because the apartment would not accept dogs), Ms. Seefeldt allowed Mr. Waterman and his dogs to move in with her. *Id.* Mr. Waterman and the dogs lived at Ms. Seefeldt's home for approximately three to four months. *Id.* Although Mr. Waterman did not pay rent, Ms. Seefeldt allowed Mr. Waterman and the dogs to reside at her home and Mr. Waterman agreed to help with upkeep throughout the home. (R.18 at 9, Deposition of Nancy Seefeldt, Appendix at Ap.9).

At the time of the attack, Ms. Seefeldt was at home. (R.18 at 11, Deposition of Nancy Seefeldt, Appendix at Ap.11). Mr. Waterman had merely opened the door, when the dogs charged out of Ms. Seefeldt's house and attacked Ms. Pawlowski. (R.18 at 12, Deposition of Nancy Seefeldt, Appendix at Ap.12).

Both Mr. Waterman and the dogs continued to reside with Ms. Seefeldt for a period of time after the attack, before leaving Ms. Seefeldt's house permanently. (R.18 at 9, Deposition of Nancy Seefeldt, Appendix at Ap.9). Their whereabouts are presently unknown. (R.18 at 9, Deposition of Nancy Seefeldt, Appendix at Ap.9).

#### **PROCEDURAL POSTURE AND STATEMENT OF THE CASE**

On October 25, 2006, the Respondents filed a Summons and Complaint in Winnebago County alleging negligence on Ms. Seefeldt. (R.1:pp. 1-4). On November 16, 2006, the Petitioners denied negligence and liability and asserted various affirmative defenses. (R.2:pp. 1-3).

On June 25, 2007, the Petitioners moved for summary judgment on the grounds that Ms. Seefeldt was not a “keeper” of the dog at the time of the incident. (R.16:p.1;R.17:pp. 1-10).

The Honorable Thomas J. Gritton dismissed the Respondents’ claims on summary judgment, finding:

I have had the opportunity to read through the Armstrong v. Milwaukee case, and I think when I read through this and I am going to make a quote from Page 266: “A keeper is defined as one who keeps, one who watches, guards, et cetera. One having custody. It is apparent that the keeper of a dog may or may not be the owner of the dog. Where the keeper is not the owner, it may be assumed as general proposition that the dominion or authority of the keeper over the dog is limited – is a limited one subject to be terminated at the time by the owner. The moment the owner removes the dog from the custody of the keeper, the dual authority therefore exercised over by the dog by the owner and the keeper is merged in the owner and at that very moment the keeper’s rights and responsibilities concerning the dog are at an end.” This is the way I see it based upon the definition and based upon my review of the cases that both parties have provided to me, and I think in many respects I think this is a very situational circumstance, and what I mean by that is that – well, I don’t think she was a keeper. But I think as an example, if she were the one leaving the house with the dogs, I think absolutely she would have been the keeper.

From what I read, and all of the information that I have been provided, I really did not see where she really exercised much control over these dogs other than the fact that there were times where Mr. Waterman would be absent from the residence and she would be there with the dogs. Even that, there was no indication that she necessarily – did talk about the things – but she clearly would be in custody of the dogs at that time. If something had happened and Mr. Waterman was not there and it happened as a result of her being alone with the dogs, I absolutely think she would have been the keeper of the dog. Well, actually there is one dog that did the biting. I never got that straight for sure.

...

So from my perspective I think what is critical here is this definition of how – although you can be a keeper, that keeper can come to an end when the owner exercises dominion over the dog; and clearly by leaving the front door, leaving the residence with the dog, the owner in this case, he was exercising complete dominion and the keeper had no control here. I mean Ms. Seefeldt.

So I am finding that based upon the circumstances as I see them, there is no genuine issue of fact here and as a matter of law; I am finding her not to be the keeper of this dog; and as a result, I am going to grant the judgment for summary judgment on behalf of the defendants.

(R.34 at 6-9, Transcript of Proceedings at Motion Hearing for Summary Judgment, Appendix at Ap.35-38).

Accordingly, the circuit court held that, although Ms. Seefeldt was a keeper anytime she was home alone with the dogs, she ceased being a keeper any time Walter was present, and, in the instant case, she ceased being a keeper when Walter arrived home and opened the front door, allowing the dogs to escape.

On December 3, 2008, the Court of Appeals reversed the circuit court's decision and remanded with directions to enter judgment in favor of the Respondents. (Pet'r R-Ap. 114). The Court of Appeals concluded that Ms. Seefeldt remained a keeper at the time of the injury, regardless of the fact that the legal owner opened the door, allowing the dogs to escape. (Pet'r R-Ap. 113). The Court of Appeals found that, because Ms. Seefeldt was a keeper at the time of injury, she was strictly liable as a statutory owner under Wis. Stat. § 174.02.

On March 16, 2009, the Wisconsin Supreme Court accepted the Petitioners' Petition for Review.

### ARGUMENT

- I. **MS. SEEFELDT WAS A "KEEPER" AT THE TIME OF THE ATTACK AND IS LIABLE UNDER WIS. STAT. § 174.02 BECAUSE A STATUTORY "KEEPER" OF A DOG DOES NOT CEASE BEING A "KEEPER" MERELY BECAUSE A GUEST OF THE KEEPER OPENS THE FRONT DOOR OF THE KEEPER'S HOME AND THE DOGS IMMEDIATELY RUN OUT OF THE HOUSE, CROSS INTO THE STREET, AND ATTACK AND INJURE A PEDESTRIAN.**

Wisconsin Statutes §174.02, provides, in pertinent part:

(a) *Without Notice.* ...The owner of dog is liable for the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property.

(b) *After Notice.* ...The owner of a dog is liable for two times the full amount of damages caused by the dog injuring or causing injury to a person, domestic animal or property if the owner was notified or knew that the dog previously injured or caused injury to a person, domestic animal or property.

The term, “owner,” is defined by Wisconsin Statute 174.001(5):

“Owner” includes any person who owns, **harbors** or **keeps** a dog.  
Wis. Stat. 174.001(5) *Emphasis Added.*

The strict liability statute’s purpose, “is to protect those people who are not in a position to control the dog.” *Armstrong v. Milwaukee Mut. Ins. Co.*, 202 Wis.2d 258, 268, 549 N.W.2d 723 (1996). As a threshold matter, “owner” includes anybody who “harbors” a dog, in addition to anybody who “keeps” a dog. Because the Court will always first look to the plain language of the statute, a definition of “harbor” should end the entire inquiry. “Harbor” is defined by Webster’s New Collegiate Dictionary (G. & C. Merriam Company, Springfield, MA, 1981 Edition), as:

1. To give shelter or refuge to
2. To have (an animal) in one’s keeping
3. To be the home or habitat of

The facts of the present matter fit squarely within the definition of “harbor;” therefore, Ms. Seefeldt qualifies as an owner under §174.02 and no further inquiry should be necessary.

However, for some reason, the majority of reported cases interpreting “owner” under §174.02 have focused on the word “keeper.” Accordingly, the remainder of this response will focus on whether Ms. Seefeldt was a statutory keeper.

In Wisconsin, both a legal owner and statutory keeper can be simultaneously strictly liable under Wisconsin Statute § 174.02. See *Fire Ins. Exch. v. Cincinnati Ins. Co.*, 2000 WI App 82, ¶18, 234 Wis. 2d 314, 610 N.W.2d 98. “Reading the statute to allow both owners and keepers to be liable comports with the statute’s policy of assigning responsibility to those in a position to protect innocent third parties from dog bites.” *Id.*, ¶17. To be a keeper and therefore an owner, the person “must exercise **some measure** of custody, care **or** control over the dog.” *Armstrong*, 202 Wis. 2d at 267, *emphasis added* (citing *Hagenau v. Millard*, 182 Wis. 544, 547-48, 195 N.W. 718 (1923)) (exercise control over, or furnish with shelter, protection or food); *Janssen v. Voss*, 189 Wis. 222, 224, 207 N.W. 279 (1926) (has custody, dominion **or** authority over); *Koetting v. Conroy*, 223 Wis. 550, 552, 270 N.W. 625 (1936), *emphasis added* (keep at dwelling and feed); and *Pattermann v. Pattermann*, 173 Wis. 2d 143, 150, 496 N.W.2d 613 (Ct. App. 1992) (feed, care for, give shelter).

Thus, one who shelters or maintains the dog on his or her premises, i.e., has custody of the dog at his or her home, is a “keeper.” *Armstrong*, 202 Wis. 2d at 266. However, “[t]he casual presence of dogs will not suffice to transform a person into a keeper; there must be evidence that the person has ‘furnished them

with shelter, protection, or food, or that they exercised control over the dogs.”  
*Id.* (citing *Hagenau*, 182 Wis. at 547-48); see also *Koetting*, 223 Wis. at 552,  
*emphasis added.*

**A. Seefeldt’s Responsibility And Potential Liability as a Keeper Was Not Terminated When Waterman Opened the Front Door.**

The Petitioners contend that, under *Janssen*, Ms. Seefeldt was not a keeper at any time after the dogs bolted out of the front door of her residence. The facts of the present matter are far different than the facts in *Janssen*. In *Janssen*, the dog owner’s mother left town to attend a funeral and arranged for the dog to be placed at a dog hospital in her absence. *Janssen*, 189 Wis. at 223-24. The son, who was the registered and licensed owner of the dog, was staying with another family in the mother’s absence. *Id.* Despite the mother’s explicit instructions to leave the dog at the hospital, her son took the dog from the hospital and tied it in the front yard of the home where he was staying, which was not his mother’s home. *Id.* The dog subsequently bit a child who wandered into the yard. *Id.* at 223. The dog owner’s mother was sued by the injured child. *Id.*

It was conceded that the mother in *Janssen* was the keeper of the dog until she departed for the funeral – she bought the dog for her son, brought it to her home, and it had been maintained there at her expense and under her control for over a year prior to the incident. *Id.* at 223-24. However, when she placed the dog in the hospital with instructions that it was to stay there, and the dog’s owner

removed the dog from the hospital and took it elsewhere, her authority and responsibility for the dog were at an end.

The court concluded that by placing the dog in the dog hospital during her absence, the mother was discharged of the duties resting upon her as keeper of the dog. *See Id.* at 225. Thus, in *Janssen*, the mother's keeper status terminated because the mother **intentionally** relinquished control, **and** shelter **and** custody. In the present matter, Ms. Seefeldt didn't even know that Waterman had opened the front door. She had no intention to relinquish custody, care, control, or shelter to the dog, and there is no evidence that Waterman intended to remove the dogs from Ms. Seefeldt's home. Even if the Petitioners could prove that Ms. Seefeldt had relinquished control or custody to Mr. Waterman, Ms. Seefeldt would have still been providing shelter to the dogs on an ongoing basis. To the contrary, Mr. Waterman and the dogs returned to the premises on the night of the attack, and remained there for a period of time following the attack.

Accordingly, *Jansen* is inapplicable to the facts in the present matter because 1) there is no evidence that Ms. Seefeldt intentionally relinquished control or custody, and, more importantly, 2) even if she had relinquished control and custody, she still intended to provide shelter to the dogs on an ongoing basis.

**B. *Koetting v. Conroy* Directly Applies to the Facts in the Present Case and Mandates that Ms. Seefeldt was a Keeper at the Time of the Attack.**

It is interesting that heading I(A) of Petitioner's Brief states, "Seefeldt was not a keeper of the dog at the time of the subject incident because the legal owner

had assumed full custody and control of the dog, thereby terminating Seefeldt's responsibility and potential liability as a keeper." (Pet'r Br. at 6). The Petitioners provide no support, and the record is void of any support for the claim that Waterman had assumed full custody of the dogs. The Record is fairly clear that Mr. Waterman merely opened the front door of Ms. Seefeldt's home when the dogs bolted into the street and attacked Ms. Pawlowski. (R. 18 at 12, Deposition of Nancy Seefeldt, Appendix at Ap. 12). It is not clear how the Petitioner leaps to the conclusion that Mr. Waterman assumed full custody and control of the dog when he clearly never had any control at all. Mr. Waterman has never been deposed, Ms. Seefeldt didn't learn of the incident until after the attack, and the only witness to the incident, Ms. Pawlowski, testified that the dogs began charging as soon as she heard the door open. These are the only facts that are known. Moreover, even if Waterman had assumed full control, Ms. Seefeldt remained the ongoing provider of shelter, making her a "harborer" under the plain language definition of the term or a "keeper" under *Koetting v. Conroy*.

*Koetting v. Conroy*, at 223 Wis. 550, 270 N.W. 625 (1936), is directly on point. The facts of *Koetting* are strikingly similar to the facts of the present matter. In *Koetting*, the dog in question was owned by the *adult* daughter of the defendant. *Koetting*, 223 Wis. at 552. The adult daughter received board, lodging and support from her father. *Id.* When the adult daughter took the dog to a park and let the dog off of its leash, the dog ran into the plaintiff from behind, causing her to fall down and inflicting serious and permanent injury to her hips. *Id.* at 551.

The father did not know that his daughter had the dog at the park and was not present at the time of the incident; however, he knew that “she was in the habit of taking it out” as she had at the time of the injury. *Id.* at 551-52. The *Koetting* court expressly rejected the argument “that the keeper is not liable for injuries done by a dog if the dog is under the control of another at the immediate time.” *Id.*

In its Opinion, the Court of Appeals correctly summarized *Koetting*:

Thus, the *Koetting* court held that the father had not relinquished keeper status despite the fact that the owner took the dog out of the home, because the father kept the dog on his premises. *Citation omitted.* The court noted that the father “doubtless exercised no control over the dog except that he controlled whether the dog should be kept in his home or not, and whether it should be fed from the family larder or not, but *that sort of control is the thing that, in the view of the statute and the [caselaw] . . . makes him the dog’s keeper.*” *Koetting*, 223 Wis. at 555.

Ct. App. Op. at 11.

The Petitioners attempt to distinguish *Koetting* from the present case. Their primary argument, at page 10 of their Brief, is that the dog’s owner was also the adult daughter of the homeowner. Accordingly, the Petitioners argue, they were members of the same family. However, this is a distinction without a difference. Note that Wisconsin Statute § 49.90 clarifies that, “no parent shall be required to support a child 18 years of age or older.” Accordingly, like the father in *Koetting*, Ms. Seefeldt provided shelter for Mr. Waterman and the dog out of the goodness of her heart.

The Petitioners also argue that Mr. Waterman was a resident at Ms. Seefeldt’s home for a “limited period of time.” (Pet’r Br. at 10). Again, even if this were true, this is a distinction without a difference. Mr. Waterman had

resided at Ms. Seefeldt's home for three to four months prior to the attack, and did so for a period of time thereafter. (R. 18 at 8, 9, Deposition of Nancy Seefeldt, Appendix at Ap. 8, 9). This is far beyond a casual presence. It certainly can be inferred that the only reason that Mr. Waterman left when he did is because he realized that he might be liable as a joint owner or joint keeper of his dog. However, we will never know because Mr. Waterman was never deposed and his whereabouts are unknown.

**C. Wisconsin Does Not Recognize the Concept of a Pro Bono Landlord, and None of the Cases Cited by the Petitioners are on Point.**

Finally, the Petitioners argue that Ms. Seefeldt was more akin to a pro bono landlord. (Pet'r Br. at 12). Unlike the body of case law that addresses the situation that might arise when a landlord owns hundreds of apartment units, the dog in the present matter lived in the same house as Ms. Seefeldt and was allowed to roam as it pleased. (App's Ap. 10, Deposition of Nancy L. Seefeldt as attached to the Affidavit of Sandra L. Hupfer). The dog lived under her roof and within her walls. This is far different than an arm's-length landlord who has no right to enter a tenant's apartment to gain knowledge of a tenant's activities, possessions, and resident animals. There is a very good reason why arms-length landlords are treated differently – even if an arm's length landlord established rules prohibiting dogs, such rules would be impractical, if not impossible to enforce under Wisconsin's landlord-tenant laws and privacy laws. Would such a landlord be liable because he or she *should have known* that a tenant harbored a dog? Would a

landlord be liable if a dog attacked after a tenant had been evicted but while the tenant was holding over (before the sheriff executed a writ of restitution)?

As stated by the Court of Appeals, the cases cited by Seefeldt involve traditional landlord/tenant arrangements, not a situation where the owner of a home permits another person in her house to maintain a dog on the same premises. *See Hagenau*, 182 Wis. at 548-49 (commercial landlord not a keeper of tenant's dogs); *Malone v. Fons*, 217 Wis. 2d 746, 764-65, 580 N.W.2d 697 (Ct. App. 1998) (an off-premise landlord is not a "harborer" for purposes of Wis. Stat. § 174.001); *Gonzales v. Wilkinson*, 68 Wis. 2d 154, 158, 227 N.W.2d 907 (1975) (off-premise landlord and no allegation that the landlord was either an owner or keeper).

Not surprisingly, the various provisions of Wisconsin's landlord-tenant law do not even apply to a live-in guest who does not pay rent. *See* ATCP 134.01. In other words, Wisconsin does not recognize "pro bono landlords" as landlords at all. Quite simply, there is no such thing as a pro bono landlord in Wisconsin. Such an individual would likely be considered a houseguest, as would his or her dog. If a homeowner who voluntarily provides shelter to a dog is allowed to escape liability from the dog bite statute simply because another adult lives on the premises who happens to be the legal owner, § 174.001(5) would be rendered substantially meaningless.

**D. A Statutory Keeper Cannot Escape Liability Because He or She Does Not Have Complete Control Over a Dog at the Time of an Attack.**

Again, the circuit court held that, although Ms. Seefeldt may have been a keeper prior to the dogs exiting the house, she was not a keeper beginning at the moment when the dogs left the premises. If this contention were to stand, presumably any owner or keeper could escape liability merely by asserting that he or she was not in complete control of the dogs at the time of attack. This would be an easy argument to make, because what owner, having complete control of her dogs, would allow the dogs to attack and injure a pedestrian? Moreover, if the circuit court's holding is affirmed, neither a postman standing on a property owner's front porch, nor a child wandering into a property owner's backyard would be protected. "Reading the statute to allow both owners and keepers to be liable comports with the statute's policy of assigning responsibility to those in a position to protect innocent third parties from dog bites." *Fire Ins. Exch* at ¶ 17. As the owner and primary occupant of the house in which the dogs lived, in the least, Ms. Seefeldt could have established ground rules concerning the manner in which any other "owner" of the dogs handled the dogs when on and immediately off her premises. If she had done so, the present attack would have never occurred. Both Waterman and Seefeldt were in a position to protect Pawlowski from injury, Pawlowski was not in a position to protect herself.

The *Dissent* appears particularly convinced that Waterman's act of opening the front door terminated Seefeldt's keeper status. Even if the Court assumes that

Waterman took the first steps toward his exercise of custody and/or control of the dog, he clearly never got to the point of controlling the dog. If he had, the accident presumably never would have happened. Moreover, even if we falsely assume that Waterman had exercised some heightened level of custody, care and control of the dog by opening the front door, there is no evidence that Seefeldt intentionally did anything to surrender her joint custody, care or control. Finally, and most importantly, even if we falsely assume that Waterman had complete custody, care, and control of the dog, Seefeldt still provided continuing shelter to the dog, and she would still be considered to be an owner according to the disjunctive language in the prevailing case law as well as the plain language definition of the word "harbor."

Unless the Court of Appeals decision is affirmed, a preposterous result would occur any time that a dog's legal owner could not be identified. A stray dog, for instance, could receive shelter at a homeowner's house, causing the homeowner to become a keeper. Would the homeowner escape liability if a neighbor opened the front door? What if the neighbor intended to take the stray for a walk? Under those facts, nobody would be liable (if Seefeldt is held not liable). We do not believe that the mere act of opening a front door, under any circumstances, is sufficient to terminate a keeper's liability. To hold that it is, would water the statute down to the point of uselessness, and would resolve homeowners harboring dogs from the responsibility of protecting innocent third parties from dog bites.

**II. PUBLIC POLICY DEMANDS THAT A HOMEOWNER WHO PROVIDES SHELTER TO A DOG IS LIABLE UNDER WISCONSIN STATUTE § 174.02.**

The Petitioners state that the Court of Appeal's decision in this case is contrary to public policy because "[a] landlord/property owner should not be liable for injuries caused by a dog, when she does not own the dog, is not in control or custody of the dog, and merely permits the dog and its owner to live in her home in exchange for performing home repairs." (Pet. Br. at 16). Once again, we must point out that Waterman did nothing to assume full custody and control and Seefeldt did nothing to surrender her joint custody and control. Notwithstanding, there is a very good reason why a homeowner who permits a dog to live in his/her home should be liable for injuries caused by the dog – because the express language of Wisconsin Statute § 174.001(5) demands it. Again, that section defines "owner" as any person who owns, harbors, or keeps a dog. Certainly, a homeowner voluntarily providing shelter to a dog harbors it.

Next, the Petitioners state, "[t]he purpose of Wis. Stat. § 174.02 is to protect innocent third parties from injuries caused by a dog." Thus, the Legislature has placed responsibility on those who are in a position to protect innocent bystanders. Even if Mr. Waterman was also in a position to protect innocent bystanders, Ms. Seefeldt owned the home where she lived, purchased liability insurance for the premises and other associated liabilities, and was in the best position to make ground rules for the keeping of dogs on her property. It would be preposterous to assume that any houseguest, such as Waterman, would

be in a position to establish ground rules for a home when the homeowner lives on site. Moreover, if Seefeldt had not kept and harbored the dogs, the dogs would absolutely not have been in the neighborhood to injure Pawlowski.

The Supreme Court has already addressed the Petitioners' public policy concerns on several occasions. Even in *Koetting*, the Court held that the father had control over the dog to the extent that he could have refused to permit the dog to be kept on his premises or should have compelled the daughter to keep it elsewhere. *Koetting*, 223 Wis. at 555.

The Petitioners cite *Smaxwell v. Bayard*, 2004 WI 101, 274 Wis.2d 278, 682 N.W.2d 923, for the proposition that six public policy factors should be considered in limiting liability. Amazingly, *Smaxwell* dealt with common law negligence principles only, as the plaintiff conceded that the defendant was neither an owner nor a keeper. The entire case revolved around only principles of common-law negligence, and not the dog bite statute. Does this mean that Wisconsin courts should apply the six public policy factors before deciding whether to apply Wisconsin Statute § 174.02? Of course not, because the Legislature has already taken public policy into consideration when it decided to impose strict liability on dog keepers. Wisconsin Statute § 174.02 applies in all cases concerning dog bite liability, notwithstanding the *Smaxwell* factors, which may be applicable to other common-law negligence cases.

The obvious intention of the Legislature was to make both dog owners and owners of homes where dogs are kept liable for damages. Presumably, any time a

dog attacks, the owner or keeper of the dog is not in full control of the dog. The Petitioners are asking this Court to undo the long established dual liability of owner and keeper at any time a dog wanders out of a physical structure into a homeowner's front yard or abutting street, simply because the dog has escaped the physical premises of the home. Presumably, the majority of dog bite liability cases occur when a passerby is bit by a dog outside of a dog owner's home. Accordingly, it would be against public policy if this Court allows Ms. Seefeldt to escape liability merely because the dogs bolted out of the front door before attacking Ms. Pawlowski.

As much as Mr. Watterman was in a position to control the dogs by putting them on a leash before opening the door, Ms. Seefeldt was in a position to control the dogs by not allowing them to reside in her personal residence, or, in the least, by establishing ground rules. In contrast, Ms. Pawlowski had no ability to control the dogs at any time before or after the attack.

Finally, it is noteworthy that the Concurrence to the Court of Appeals' Opinion wisely relates a homeowner's liability to the dual concepts of time and space:

I write just to touch, for a moment, on the public policy behind the dog bite statute. As I see it, the purpose of the statute is to protect from harm the surrounding neighbors, passers-by and those who come in proximity to a dog. If a neighbor agrees to keep and shelter a dog in the home, it means the dog is living in that home just as much as would be the case if the homeowner was the legal owner of the dog. Unless and until the homeowner's status as keeper is intentionally terminated in time and space by the dog's removal from the home, that homeowner is strictly liable for any dog-bite injury to his or her neighbors, passers-by and others in proximity. I do not believe the legislature meant to allow the keeper of the dog to avoid strict liability for his or her neighbor,

passers-by or others in proximity by pointing a finger at someone else and arguing that at that certain moment in time, even though the dog was still within the perimeter of the owner's property, he or she had temporarily stopped being the keeper. To allow such a result would be to drown the statute in a sea of minutiae.

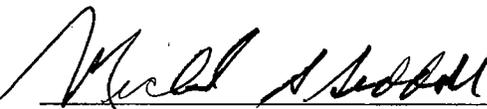
*Ct. App. Op., Brown, C.J. (concurring)*

### CONCLUSION

For the above-mentioned reasons, the Plaintiffs-Appellants respectfully request that this Court affirm the Court of Appeal's decision. However, if this Court finds that further fact finding is necessary to reach a proper decision, the proper remedy would be to reverse the Summary Judgment finding of the Circuit Court and remand for additional fact finding.

Dated this 30<sup>th</sup> day of April, 2009.

HERRLING CLARK LAW FIRM LTD.  
Attorneys for Plaintiffs-Appellants

BY:   
MICHAEL S. SIDDALL  
State Bar No. 1015242

BY:   
ANDREW J. ROSSMEISSL  
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ADDRESS:

800 N. Lynndale Drive  
Appleton, WI 54914  
(920) 739-7366

**CERTIFICATION**

I hereby certify that this Response in Opposition to Petition for Review conforms to the rules contained in Wisconsin Statutes Section 809.19 (8)(b) for a brief produced using the following font:

Proportional font: double-spaced, 1.5-inch margin on left side and 1-inch margins on the other 3 sides. The length of this brief is 18 pages and contains 5,324 words.

Dated this 30<sup>th</sup> day of April, 2009.

HERRLING CLARK LAW FIRM LTD.  
Attorneys for Plaintiffs-Appellants-  
Respondents

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State Bar No. 1015242

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(920) 739-7366

COURT OF APPEALS OF WISCONSIN  
DISTRICT II

---

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs – Appellants,

Case No. 07 AP 2651

v.

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Case No. 06 CV 1307

Defendants- Respondents.

---

**APPENDIX OF PLAINTIFFS-APPELLANTS**

---

**Appeal from a judgment entered on October 9, 2007, in the Circuit Court  
for Winnebago County, by the Honorable Thomas J. Gritton, granting  
summary judgment in favor of the defendants and against the plaintiffs.**

---

HERRLING CLARK LAW FIRM LTD.  
Attorneys for Plaintiffs-Appellants

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## **APPENDIX**

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COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS CO.,  
a domestic insurance corporation, and  
NANCY L. SEEFELDT,

Case No. 06-CV-1307  
Action Code: 301071  
Personal Injury - Other

Defendants.

**AFFIDAVIT OF SANDRA L. HUPFER**

STATE OF WISCONSIN    )  
                                  )SS  
COUNTY OF BROWN    )

SANDRA L. HUPFER, being sworn on oath, states as follows:

1. That I am one of the attorneys representing the defendants, Nancy L. Seefeldt and American Family Mutual Insurance Co., and make this affidavit on personal knowledge.
2. That attached hereto and marked as Exhibit A is a copy of the pertinent portions of the deposition transcript of Colleen Pawlowski, taken May 7, 2007.
3. That attached hereto and marked as Exhibit B is a copy of the pertinent portions of the deposition transcript of Nancy Seefeldt, taken May 7, 2007.
4. This affidavit is made in support of defendants' motion and brief for summary judgment and declaratory judgment.

①

Dated this 22<sup>nd</sup> day of June, 2007.

Sandra L. Hupfer  
Sandra L. Hupfer

Sworn to and subscribed before me  
this 22 day of June, 2007.

Janet C. Gango  
Notary Public  
My Commission expires: 10-11-09

I certify that on June 22, 2007, I served the  
within document, by mail, postage prepaid, pursuant  
to Rule 801.14(2), Wis. Rules of Civil Procedure.

STELLPFLUG, JANSSEN, HAMMER,  
KIRSCHLING & BARTELS, S.C.

By: Michael S. Siddall  
TO: Michael S. Siddall, Esq.

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Deposition of:  
COLLEEN PAWLOWSKI  
May 7, 2007

Plaintiffs,

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

Deposition of COLLEEN PAWLOWSKI, a witness  
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May, 2007, commencing at 1:35 p.m., at the law offices  
of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive,  
Appleton, Wisconsin; pursuant to Chapter 804 of the  
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Seidel, Registered Professional Reporter and Notary Public,  
State of Wisconsin.

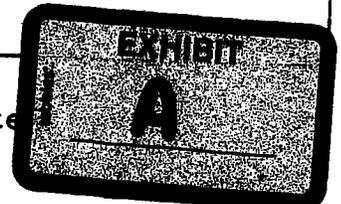
APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

ALSO PRESENT: Thomas Pawlowski

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208

Ap.3



1 A My statement and, then, a little T.V. video.  
 2 Q Which statement did you look over?  
 3 A The police report.  
 4 Q The statement you gave to the police?  
 5 A Yes, the one that I wrote out the day in the Emergency  
 6 Room.  
 7 MS. VER BOORT: I don't know if we  
 8 have a copy of the statement that Colleen gave in the  
 9 Emergency Room. I don't remember seeing it in the  
 10 medical records.  
 11 MS. HUPFER: Mike, is that one she gave  
 12 to the police?  
 13 MR. SIDDALL: Yes.  
 14 MS. VER BOORT: Okay. That's the one  
 15 that was given in the Emergency Room. Okay. Sounds  
 16 good.  
 17 Q (By Ms. Ver Boort): And throughout this deposition  
 18 if I refer to the date of the accident or the date  
 19 of the incident, I'll be referring to the dog bite  
 20 incident on October 26, 2003.  
 21 A Okay.  
 22 Q Okay. Colleen, what's your full name?  
 23 A Colleen A. Pawlowski.  
 24 Q And have you ever used any other names?  
 25 A No.

1 A Neenah High School and secretarial courses.  
 2 Q What year did you graduate from Neenah High School?  
 3 A 1959.  
 4 Q And where did you go after graduating from high  
 5 school?  
 6 A I worked at the George Banta Company in Menasha for  
 7 five years, and then I stayed home to raise my  
 8 children, and then I worked at Theda Clark for  
 9 20 years.  
 10 Q What year did you start working at Theda Clark?  
 11 A In '73.  
 12 Q You said you took some secretarial courses?  
 13 A Um-hmm, after.  
 14 Q After --  
 15 A After a while, after I worked quite a while. Then I  
 16 became executive secretary to the vice-president.  
 17 Q Oh, wow. That must have been an interesting --  
 18 A Nice job.  
 19 Q -- position.  
 20 Did you -- Where did you take those  
 21 secretarial courses?  
 22 A Different places.  
 23 Q So it wasn't just a --  
 24 A A school. No.  
 25 Q -- associate degree?

1 Q What was your maiden name?  
 2 A Mahoney.  
 3 Q Mahoney. Okay.  
 4 What's your address?  
 5 A 550 Spring Road Drive in Neenah.  
 6 Q Your date of birth?  
 7 A 5/14/40.  
 8 Q And did you grow up around this area?  
 9 A Yes.  
 10 Q Where did you grow up?  
 11 A In Neenah.  
 12 Q In Neenah. Okay.  
 13 You have a lot of family close by in  
 14 the area?  
 15 A Um-hmm.  
 16 Q Are your mom and dad still living?  
 17 A No.  
 18 Q Brothers and sisters in the area?  
 19 A Yeah, brothers.  
 20 Q What are their names?  
 21 A Peter and Mike.  
 22 Q Okay. And did you attend school in the area?  
 23 A Um-hmm.  
 24 Q What high school and post secondary high school  
 25 education do you have?

1 A No.  
 2 Q Okay. And you're retired now, so there's no wage  
 3 loss or loss of earning capacity claim being made?  
 4 A Correct.  
 5 Q Have you ever been involved in any other litigation  
 6 besides this lawsuit?  
 7 A No.  
 8 Q So you've never sued anyone?  
 9 A No.  
 10 Q Have you ever brought a claim against anyone for  
 11 personal injuries that didn't lead to a lawsuit?  
 12 A No.  
 13 Q Do you know Nancy Seefeldt?  
 14 A No.  
 15 Q Never met her before?  
 16 A No.  
 17 Q Do you know what she looks like or --  
 18 A No.  
 19 Q Okay. Do you know Walter Waterman?  
 20 A No.  
 21 Q The only time you ever talked to Walter was on the  
 22 date of the accident?  
 23 A Yes.  
 24 Q Who's Jeremy Clark?  
 25 A He's a neighbor that gave me a ride home the day of

1 Q Glenview. -- when you started walking on Glenview.  
 2 A When I was walking on Glenview I was walking to the  
 3 right of the road, kind of in the center to the right  
 4 of the road, and as I walked by the house, I was  
 5 almost past it, and I heard, like, a screen door or  
 6 a door opening, and, so, I turned my head to look, and  
 7 I looked behind me, and as I did I saw two dogs jump  
 8 off the porch and their ears were lowered and they  
 9 were charging. And I had time for three thoughts at  
 10 that time. It was: Here they come, don't run, and  
 11 when their feet lift the ground, turn your back. And  
 12 that's -- That was it. And I went like this, and he  
 13 hit -- hit me up here and bit, and, then, down where  
 14 my thigh is and, then, on my calf twice, and it  
 15 sounded like an apple, when you bite into an apple.  
 16 When that happened I kind of turned just a little bit  
 17 and just fell to my knee. And Mr. Waterman was  
 18 chasing them and calling their name, but they didn't,  
 19 you know, pay any attention. And he got there and he  
 20 grabbed them both. And he asked me if I wanted a ride  
 21 home, but I was just upset and said, no, that I was  
 22 fine. And, so, then I started to walk, and that's  
 23 when I walked to the end of that street, and that's  
 24 where Jeremy Clark lives, so then he gave me a ride  
 25 home.

1 A Um-hmm.  
 2 Q So when you first saw the dogs approaching you, they  
 3 were actually behind you, you had already passed the  
 4 Seefeldt residence?  
 5 A Yes. Yes.  
 6 Q Did you take any action to move away from the dogs  
 7 when you saw them running towards you?  
 8 A I didn't have time. It happened that fast.  
 9 Q Did you scream at all?  
 10 A No.  
 11 Q Did you try to, you know, push the dogs away or kick  
 12 them to get them off of you?  
 13 A No. That's why I went like this, because I thought,  
 14 you know, he -- that would kind of, you know -- I  
 15 wouldn't take the brunt of the bite or whatever.  
 16 Q So you pulled your arms up against you so they --  
 17 A And turned my back.  
 18 Q And turned your back so they wouldn't get bit.  
 19 Did you have any food on you that day?  
 20 A No.  
 21 Q Do you know if it was only one of the dogs that bit  
 22 you or do you believe both dogs bit you?  
 23 A I don't recall that because my back was like this,  
 24 but when I -- When he got my calf, I looked down and  
 25 the golden was right there, so he was the one that

1 Q Just a couple questions to follow up on that.  
 2 When you say you were walking on the right side of  
 3 the road, would you say that you were walking closer  
 4 to the curb then on --  
 5 A Probably on this -- The center of the road's here.  
 6 I was probably in the middle. There's not -- Cars  
 7 don't come down that road.  
 8 Q So you were walking about down the middle of the road?  
 9 A Yeah, just to the -- to the right of the middle. And  
 10 their house is on the left.  
 11 Q Okay. And you said that your three thoughts were  
 12 the dogs are running towards you, don't run and --  
 13 and then after that you said --  
 14 A Here they come, don't run, when their feet leave the  
 15 ground, you know, turn, and just -- just like that  
 16 they -- they jumped.  
 17 Q So I'm going to describe that for the record now.  
 18 You're kind of turning over with -- and pulling your  
 19 arms up against you and -- Did you bend over or lean  
 20 over?  
 21 A Just like this, not real bent but just so my head was  
 22 like this, because they were big, you know, and I knew  
 23 he would hit me hard, and he did.  
 24 Q So you tucked your arms up against you and turned away  
 25 from the dogs?

1 his mouth was on my leg.  
 2 Q Do you know which dog jumped up on you initially?  
 3 A The gold one.  
 4 Q Where was the darker one standing?  
 5 A Behind him. They came, you know, running like that.  
 6 He was just behind him.  
 7 Q Did you ever see the darker dog jump on you or -- or  
 8 bite you?  
 9 A No. I don't recall if he, you know --  
 10 Q Where did the golden dog bite you?  
 11 A Up here on my coat and, then, my thigh and --  
 12 MS. VER BOORT: Let the record reflect  
 13 that the witness is touching her --  
 14 Q (By Ms. Ver Boort) Is that your --  
 15 A Left shoulder.  
 16 Q Left shoulder.  
 17 A And left thigh. And because I had a winter coat on  
 18 he couldn't get through here, but it was all slobber,  
 19 but he ripped the coat where he bit here. And I've  
 20 got the coat where -- where, you know, he bit, here.  
 21 And then, of course, he got -- got me in my calf.  
 22 Q Were there any physical injuries from the bite on your  
 23 thigh, on your left thigh?  
 24 A No.  
 25 Q It just tore through the jacket?

**COPY**

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

vs.

Deposition of:  
NANCY L. SEEFELDT  
May 7, 2007

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

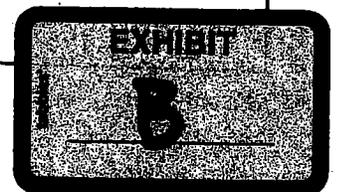
Defendants.

Deposition of NANCY L. SEEFELDT, a witness in the above-entitled action, taken at the instance of the Plaintiffs, pursuant to notice, on the 7th day of May, 2007, commencing at 3:15 p.m., at the law offices of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive, Appleton, Wisconsin; pursuant to Chapter 804 of the Wisconsin Statutes; before and reported by Patricia J. Seidel, Registered Professional Reporter and Notary Public, State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208  
Ap.6



COPY

TRANSCRIPT OF PROCEEDINGS  
\* \* \*

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,  
Plaintiffs,

Deposition of:  
NANCY L. SEEFELDT  
May 7, 2007

vs.

Case No. 06-CV-1307

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800 North Lyndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUFFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

3 NANCY L. SEEFELDT, called as a witness  
4 herein, having been first duly sworn, was examined and  
5 testified as follows:

EXAMINATION

- 7 BY MR. SIDDALL:
- 8 Q Would you state your name, please.
- 9 A Nancy Louise Seefeldt.
- 10 Q Where do you live?
- 11 A 1784 Sanctuary Court, Apartment No. 1, Appleton.
- 12 Q Who do you live there with?
- 13 A My daughter Stephanie.
- 14 Q How old is Stephanie?
- 15 A Fifteen.
- 16 Q Are you employed outside of the home?
- 17 A Yes, I am.
- 18 Q Where are you employed?
- 19 A Wisconsin Resource Center.
- 20 Q What do you do there?
- 21 A I'm a social worker.
- 22 Q Who is actually your employer?
- 23 A State of Wisconsin.
- 24 Q How long have you been so employed?
- 25 A Seven years.

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25	**NOTE: Original transcript filed with Attorney Siddall.

- 1 Q I take it -- Are you single?
- 2 A Yes.
- 3 Q Divorced?
- 4 A Yes.
- 5 Q When were you divorced?
- 6 A 1995.
- 7 Q First marriage?
- 8 A Yes, and only.
- 9 Q And only marriage. Okay.
- 10 And did you just have one child as a
- 11 result of that marriage?
- 12 A Two.
- 13 Q Your other child's name?
- 14 A Andrea.
- 15 Q How old is Andrea?
- 16 A Twenty-one.
- 17 Q Okay. Back in October of 2003 where were you living?
- 18 A 1203 Glenview Drive, Neenah.
- 19 Q Was that an apartment, a residence, single-family
- 20 residence or --
- 21 A Single-family home.
- 22 Q And who owned that home?
- 23 A Myself.
- 24 Q How long had you owned that?
- 25 A Thirteen years.

- 1 Q When did you first move into that home?
- 2 A December 1st, 1990.
- 3 Q And when did you leave the home?
- 4 A March of 2004 -- 2005.
- 5 Q What was your reason for selling the house?
- 6 A My youngest daughter was living with her father out of state and I was living there alone and with one income I didn't want to -- it was just becoming very costly. I didn't need that big of a house.
- 7
- 8
- 9
- 10 Q Who was living there with you in October of '03?
- 11 A My daughter Andrea, myself and Walt Waterman, Walter Waterman.
- 12
- 13 Q Okay. Stephanie was not?
- 14 A No.
- 15 Q Okay. And Andrea was in high school at that time?
- 16 A Um-hmm.
- 17 Q Answer is yes?
- 18 A Yes.
- 19 Q What is Waterman's first name?
- 20 A Walter.
- 21 Q How do you know him?
- 22 A Through my daughter Andrea, her friend, Alicia, they were very close. Alicia's mother lived with
- 23
- 24 Walt all the while Alicia was growing up and Alicia
- 25 considered him like a father.

- 1 Q Do you know whether or not she's living with her
- 2 mother?
- 3 A Last time I heard, no, she was not.
- 4 Q Do you know where Alicia's mother's living?
- 5 A No.
- 6 Q Do you know what her first name is?
- 7 A Cindy.
- 8 Q Is Alicia still good friends with your daughter
- 9 Andrea?
- 10 A Somewhat.
- 11 Q Where is your daughter living?
- 12 A Appleton.
- 13 Q And what does she do?
- 14 A She's a housewife.
- 15 Q And her husband's name?
- 16 A Joshua.
- 17 Q And their last name?
- 18 A Korslin.
- 19 Q Could you spell that, please.
- 20 A K-o-r-s-l-i-n.
- 21 Q What does Joshua do for a living?
- 22 A He works at Savers. It's a store that just opened
- 23 on Casaloma.
- 24 Q Prior to that what did he do?
- 25 A He was working at the Shell Service Station.

- 1 Q How long had you known him?
- 2 A I didn't.
- 3 Q When did you first meet him?
- 4 A The month or -- Probably June 2003.
- 5 Q And how did you meet him?
- 6 A Andrea and Alicia and Alicia's mother brought Walter
- 7 over to meet with me.
- 8 Q For what purpose?
- 9 A To see if he would live with me until he found a job.
- 10 Q Do you recall when that was?
- 11 A Not the exact date, no.
- 12 Q How about the month?
- 13 A I'm not sure if it was June or July. I can't remember.
- 14 Q Do you recall when he moved in?
- 15 A No, I don't.
- 16 Q What is Alicia's last name?
- 17 A Williams.
- 18 Q What is Alicia's mother's last name?
- 19 A I don't know. I don't remember.
- 20 Q Is it different?
- 21 A Yes.
- 22 Q Where does Alicia live now?
- 23 A I believe Menasha.
- 24 Q Do you know who she lives with?
- 25 A No.

- 1 Q Which one?
- 2 A It's the road from the mall, taking Highway 10,
- 3 is it? I believe that's Highway 10. Greenville.
- 4 Q Okay. Do you know what Alicia is doing now?
- 5 A No.
- 6 Q Do you know who she lives with?
- 7 A No.
- 8 Q Do you know whether or not she's married or single?
- 9 A I don't know.
- 10 Q Would Andrea know the answers to those types of
- 11 questions?
- 12 A I don't know.
- 13 Q Do you know how long this Walter and Cindy were
- 14 living together?
- 15 A Apparently for many years as -- while Alicia was
- 16 growing up.
- 17 Q Do you know why they stopped living together?
- 18 A No.
- 19 Q What did they tell you when Cindy brings him over
- 20 to your house and says, Here's my live-in boyfriend
- 21 but I want him to live with you now? What explanation
- 22 was given to you?
- 23 A She lived in a small apartment that could not take
- 24 dogs, and Walt had dogs, had lost his job, and he was
- 25 collecting unemployment and he needed a place to go

1 that would accept dogs, and I had a big backyard with  
 2 a fence, and, so, they wanted him to stay there so he  
 3 could find a job.  
 4 Q Had Cindy just moved into an apartment?  
 5 A No. She had been there for quite some time  
 6 apparently. I don't know.  
 7 Q With him living there?  
 8 A No. They hadn't been living together for a while.  
 9 Q Oh. Do you know when they stopped living together?  
 10 A No.  
 11 Q Were they dating?  
 12 A No.  
 13 Q Do you know when they stopped dating?  
 14 A No.  
 15 Q Do you have any records that would show when he moved  
 16 into your home?  
 17 A No.  
 18 Q Did he pay rent?  
 19 A No.  
 20 Q How long did he live there?  
 21 A Approximately four months, three to four months.  
 22 Q When did he leave after this dog attack?  
 23 A One to two weeks after this happened.  
 24 Q So if this happened on October 26th, he moved in  
 25 probably in June?

1 A Or the end of June, yeah.  
 2 Q During the period of time he lived there he paid  
 3 no rent; correct?  
 4 A Correct.  
 5 Q Did he get a job?  
 6 A He got one at Ariens on the assembly line putting  
 7 together snow blowers and then quit the job, and  
 8 that was in October right before this happened.  
 9 Q Why did he quit the job?  
 10 A He didn't like it.  
 11 Q What was the reason he left your residence?  
 12 A It was time for him to move on because --  
 13 Q Did you tell him?  
 14 A Yes. Yes.  
 15 Q Did you ever have a romantic relationship with him?  
 16 A No.  
 17 Q How long did he work at Ariens?  
 18 A Just a couple weeks.  
 19 Q Does he have any relatives in the area?  
 20 A He has a brother, but he's out in Fremont.  
 21 Q Do you know what his brother's first name is?  
 22 A I don't remember.  
 23 Q Same last name?  
 24 A Yes.  
 25 Q Okay. Full brother. Sometimes they have

1 half-brothers and stepbrothers.  
 2 Do you know where Walt Waterman is  
 3 now?  
 4 A No.  
 5 Q Do you -- How would you find him if you wanted to  
 6 find him? How would you go about it?  
 7 A I would probably ask Alicia, which I did a year  
 8 ago, and she didn't know where he was. She hadn't  
 9 seen him. She thought he was probably out of state.  
 10 Q Did he have any other relatives in the area?  
 11 A He had elderly parents.  
 12 Q That lived in the area here?  
 13 A Um-hmm.  
 14 Q Your answer is yes?  
 15 A Yes.  
 16 Q Do you know whether or not they're alive?  
 17 A No.  
 18 Q Do you know their names?  
 19 A No.  
 20 Q Do you know where he last worked before he got --  
 21 lost his job before he moved in with you?  
 22 A I believe it was at a gas station.  
 23 Q How old a guy is he?  
 24 A I don't know.  
 25 Q Give me your best estimate.

1 A Early forties.  
 2 Q Is that about the same age as Alicia's mother?  
 3 A Yes.  
 4 Q What was the reason that you would allow this stranger  
 5 to move into your house with two dogs and not pay  
 6 rent?  
 7 A They were looking for a place for him to go and --  
 8 Q Is this a guy that can't do these things on his own?  
 9 A No. I was getting my house ready to sell, and they  
 10 said that he could help out with some of the repairs  
 11 if -- in exchange for living there temporarily while  
 12 he could find a job.  
 13 Q Did he do any repairs?  
 14 A Yes.  
 15 Q What repairs did he do?  
 16 A He replaced the boards in the bathroom. We had to  
 17 tear out the linoleum and the boards in the bathroom.  
 18 Q Okay. Anything else?  
 19 A Yes. He helped me in the basement. We painted the  
 20 basement. Andrea had a bedroom down there, so we  
 21 wanted to clean that area up and paint the floor and  
 22 get it ready, put new carpet in.  
 23 Q Anything else?  
 24 A He did -- He mowed the lawn, and I made him vacuum  
 25 every day.

- 1 Q How many bedrooms is that house?
- 2 A Three.
- 3 Q Was it a ranch?
- 4 A Um-hmm.
- 5 Q Answer is yes?
- 6 A Yes.
- 7 Q And where did he stay, which -- One of the bedrooms on
- 8 the main floor?
- 9 A Yes.
- 10 Q And Andrea was downstairs in the basement bedroom?
- 11 A Yes.
- 12 Q Where did the dogs stay?
- 13 A With him.
- 14 Q So they were indoor dogs?
- 15 A Yes.
- 16 Q How did the dogs behave in your house?
- 17 A Fine.
- 18 Q I take it they were house trained?
- 19 A Yes.
- 20 Q Do you know how long he had the dogs?
- 21 A No.
- 22 Q Do you know how old the dogs were?
- 23 A I believe that the oldest, Boo, was three or four,
- 24 and Diesel was a puppy yet, he was eight or nine
- 25 months, and he was from a previous litter. She had

- 1 Q Did he ever tell you?
- 2 A No.
- 3 Q You made no inquiries at all as to the temperament of
- 4 the dog, whether or not it had ever injured anybody?
- 5 A No.
- 6 Q Do you have -- Do you have dogs?
- 7 A Yes.
- 8 Q What kind of dogs do you have?
- 9 A Currently?
- 10 Q Right.
- 11 A None.
- 12 Q What kinds did you have?
- 13 A Had a black lab mix and -- They were all mixes.
- 14 Q Is this when you were growing up or when you were
- 15 married?
- 16 A No; when I was living at the house.
- 17 Q Did you have dogs that were there at the time he was
- 18 there?
- 19 A Um-hmm.
- 20 MS. HUFFER: Is that yes?
- 21 A Yes.
- 22 Q (By Mr. Siddall) What kind of dogs did you have?
- 23 A I had three mixes, one was a black lab mix and another
- 24 black lab mix and Maggie was a border collie mix.
- 25 Q Where did those dogs stay?

- 1 just had a litter.
- 2 Q Who is she?
- 3 A Boo.
- 4 Q Boo had had a litter?
- 5 A Yes, recently, when she came to my house, because she
- 6 was -- had just -- was nursing, and Diesel was trying
- 7 to nurse on her.
- 8 Q But Diesel --
- 9 A It's not -- wasn't the last litter, because he was
- 10 eight or nine months old.
- 11 Q Was he a pup from a previous litter of hers?
- 12 A Um-hmm. Yes.
- 13 Q So he had -- She had about two litters in nine
- 14 months?
- 15 A Correct.
- 16 Q What did he do with the pups?
- 17 A He gave them away.
- 18 Q Did he talk about getting her fixed or anything?
- 19 A I don't remember.
- 20 Q The dog wasn't a purebred, was it?
- 21 A No.
- 22 Q Did you ask him whether the dog had ever bitten
- 23 anybody or injured anybody at the time that you
- 24 met him and he moved in?
- 25 A No.

- 1 A Where? In the house.
- 2 Q Where did they sleep?
- 3 A Anywhere they wanted to.
- 4 Q Did the five dogs get along together?
- 5 A Yes. Yes.
- 6 Q Had your dogs ever bitten anyone?
- 7 A No.
- 8 Q Knocked anyone down, off a bike, anything like that?
- 9 A No.
- 10 Q There was some indication in an answer to an
- 11 interrogatory that he had told you that that dog
- 12 did injure somebody, that Boo did injure somebody --
- 13 MS. HUFFER: I'll object to the form of
- 14 the question.
- 15 Q (By Mr. Siddall) -- before moving in. Do you recall
- 16 that?
- 17 A Injured somebody?
- 18 Q Yes.
- 19 A Nipped at somebody, not a bite. He did not say that
- 20 his dog had bit anyone.
- 21 Q What did he tell you happened?
- 22 A He said that a six-year-old neighbor girl had come
- 23 into the house, Boo had puppies, he didn't realize
- 24 that she was in the house, it was a neighbor girl,
- 25 and the dog had nipped at her arm and scared her.

1 He said it did not break the skin.  
 2 Q Did he say when that was?  
 3 A No. Apparently it was recently.  
 4 Q Shortly before he moved in?  
 5 A Right.  
 6 Q Did you undertake any investigation as a result of  
 7 that?  
 8 A No.  
 9 Q How did that conversation happen to come up?  
 10 A I believe it was the night that he came. They were  
 11 discussing the dogs and --  
 12 Q Who's they?  
 13 A Alicia's mother, Alicia, Andrea, Walt and myself.  
 14 Q Okay. And what was said?  
 15 A They said that the dogs were great, they were not a  
 16 threat to anybody, they were friendly, they got along  
 17 with everyone, there was no problems with the dogs.  
 18 Q Except -- And then they relayed the story?  
 19 A Right, and then this story.  
 20 Q Did it appear to you that Alicia's mom, Cindy, had  
 21 familiarity with these dogs?  
 22 A Yes. She had lived with them.  
 23 Q I thought it had been quite some time that they had  
 24 lived together. No? I thought quite some time had  
 25 elapsed since they had lived together.

1 that sounds familiar.  
 2 Q I've got an incident report here which is dated  
 3 June 3rd of '04. Wait a minute. Yes, June --  
 4 June 4th of '03. Wait a minute. I'm sorry. It's  
 5 dated June 4th, 2003. This would be close to the  
 6 time he moved in; correct?  
 7 A I would think a couple weeks prior.  
 8 Q Okay. And here's what the notes say: Neighbor's  
 9 dog bit reporter's daughter as she was riding her  
 10 bike.  
 11 He didn't tell you that, though,  
 12 did he?  
 13 A No.  
 14 Q And that the person was requesting that the dog be  
 15 put to sleep and that the dog -- the child was taken  
 16 for medical attention, he never told you that?  
 17 A No.  
 18 Q Did he tell you that the dog, while he lived at that  
 19 same address, bit another person in March of '03?  
 20 A No.  
 21 Q Did you do any checking after the dog attacked Colleen  
 22 Pawlowski about that dog?  
 23 A No.  
 24 Q Are you aware of any other incidents that that dog  
 25 injured anyone?

1 A I don't know.  
 2 Q How would I find out where Cindy is? How would I get  
 3 ahold of her? through Alicia?  
 4 A Yes.  
 5 Q And you said Alicia, her last name is Williams, and  
 6 she lives in Appleton?  
 7 A Menasha.  
 8 Q Menasha.  
 9 Did they tell you where that dog bite  
 10 occurred, in what municipality?  
 11 MS. HUPFER: Object to form.  
 12 A I don't remember.  
 13 MS. HUPFER: It misstates her  
 14 testimony. You can answer.  
 15 THE WITNESS: Huh?  
 16 MS. HUPFER: You can answer. I'm just  
 17 making a record.  
 18 A I don't remember.  
 19 Q (By Mr. Siddall) Do you know where he lived before  
 20 moving in with you?  
 21 A I don't remember what he told me.  
 22 Q If I indicated that he lived on Erdine, E-r-d-i-n-e,  
 23 Lane in Dale, Wisconsin, in June of '03, would that  
 24 ring a bell?  
 25 A Dale does, but I didn't know a street. Dale, yes,

1 A No.  
 2 Q Did it -- Did he tell you the name of the child that  
 3 that dog nipped?  
 4 A No.  
 5 Q And you believe that was sometime in June of '03 when  
 6 that incident occurred?  
 7 MS. HUPFER: Object to form.  
 8 A He didn't say.  
 9 Q (By Mr. Siddall) But you knew it was relatively  
 10 shortly before he moved in?  
 11 A Right.  
 12 Q Okay. At the time of this attack by those two dogs  
 13 you were working as a social worker?  
 14 A Yes.  
 15 Q What were your normal hours?  
 16 A 7:45 to 4:30.  
 17 Q Okay.  
 18 A Monday through Friday.  
 19 Q Do you recall, did you work the day of this incident?  
 20 A No. I was home.  
 21 Q What day of the week was it?  
 22 A A Sunday.  
 23 Q All right. Do you recall approximately what time it  
 24 happened?  
 25 A In the afternoon.

- 1 Q Do you have any idea as to approximate time, early  
2 afternoon, mid, late?  
3 A Mid to late. I don't really remember.  
4 Q Do you recall whether or not you were home all  
5 morning?  
6 A No.  
7 Q Would you have gone to church or the grocery store or  
8 anything like that in the morning?  
9 A It's possible.  
10 Q Do you recall what you did that morning?  
11 A No.  
12 Q How do your dogs, your three dogs, get exercise?  
13 A Walking in the neighborhood on leashes or the  
14 backyard. The backyard is very big.  
15 Q And you said that's fenced in?  
16 A Yes.  
17 Q Do you recall -- Do you normally take your dogs for  
18 a walk?  
19 A Yes.  
20 Q How often?  
21 A Oh, once a week.  
22 Q How many dogs do you take at a time?  
23 A Two.  
24 Q Then you go a second time with the third dog?  
25 A The third dog was Andrea's. It was her responsibility

- 1 to take her for a walk.  
2 Q Okay. What were your two dogs?  
3 A Maggie and Jack.  
4 Q And Maggie was what kind of a dog?  
5 A A border collie mix.  
6 Q And Jack was a mixed lab?  
7 A Yeah.  
8 Q What was the name of the other mixed lab?  
9 A Molly.  
10 Q Did both Jack and Molly, did they appear to be black  
11 in color?  
12 A Yes. They were pure black.  
13 Q Okay.  
14 A Except for Jack, I think, had just a tiny bit -- well,  
15 both of them had a little, tiny white on their chest.  
16 Q Okay. What color was Maggie?  
17 A Maggie was tri-colored.  
18 Q Brown and white and dark -- and black?  
19 A Black, yes.  
20 Q Do you recall where you were when you found out that  
21 his dogs had attacked a walker?  
22 A Yes.  
23 Q Where were you?  
24 A At the front door talking to a police officer.  
25 Q Was this long after it had happened or some time

- 1 after it had happened?  
2 A Some time after it had happened, the same day.  
3 Q So after it happened Walt didn't tell you anything  
4 about it?  
5 A No.  
6 Q Did he remain at the house that day?  
7 A No.  
8 Q What happened?  
9 A He went to the grocery store.  
10 Q What did he do with his dogs?  
11 A He always put them in his car and took them with him.  
12 Q What kind of a car did he have?  
13 A Some kind of a black -- I don't know the make.  
14 Q Was it a regular sedan?  
15 A Four door.  
16 Q When did you first have a discussion with him about  
17 the attack?  
18 A When he came back from the grocery store.  
19 Q Sometime that afternoon?  
20 A Um-hmm.  
21 Q Your answer is yes?  
22 A Yes.  
23 Q What did he tell you?  
24 A That he opened the door -- He was going to go to the  
25 grocery store, he opened the front door, and the dogs

- 1 always run to the car, and instead of running to the  
2 car they ran in the street, and Boo had bit this  
3 woman, and he called them back and he went and asked  
4 her if she was okay, and she said, Yes, I'm okay,  
5 I'm fine. He said, Can I take you somewhere? Can I  
6 take you to the doctor? Can I take you home? She  
7 said, No.  
8 Q Did he have any explanation as to why the dog bit  
9 this woman?  
10 A No.  
11 Q Did you have any additional questions to him about  
12 what kind of a dog this was?  
13 A I told him that the dog should be put to sleep.  
14 Q What did he say?  
15 A He said he couldn't do that. Because I had a dog  
16 before I had Maggie and Jack that I put to sleep.  
17 He never bit anyone, but he was acting like he wanted  
18 to bite, and one of my daughter's mothers came over to  
19 get her little girl, and his name was Jake, and he  
20 went after this mother when he was at the door, and,  
21 so, I had talked to the veterinarian and I put this  
22 dog to sleep.  
23 Q What kind of a dog was Jake?  
24 A He was a springer spaniel mix.  
25 Q How long had you had Jake?

- 1 A Two years, a year to two years.
- 2 Q How old was he?
- 3 A How old was he?
- 4 Q Right.
- 5 A A year to two years. I got him as a puppy.
- 6 Q Okay. Did you get Maggie as a puppy?
- 7 A No. I adopted her.
- 8 Q How old was Maggie when you got her?
- 9 A Two, around two.
- 10 Q Do you still have either of these dogs?
- 11 A No.
- 12 Q What happened to them?
- 13 A I returned them to the place where I adopted them.
- 14 Q Where was that?
- 15 A The company that comes to Petco adopts out animals.
- 16 It's an organization. And if for any reason you
- 17 want to -- have to give up your animals, they will
- 18 take them back, so --
- 19 Q You had to give them up because of your move?
- 20 A Yes.
- 21 Q Okay. How old was Maggie when you moved in '05?
- 22 A She was probably going on three then.
- 23 Q Okay.
- 24 A So I hadn't had her very long.
- 25 Q How about Jack, how old was Jack?

- 1 A He was younger. He was probably a year.
- 2 Q And you got him from the same place?
- 3 A Yes.
- 4 Q What about Molly?
- 5 A Molly was older, and she had been in the house a long
- 6 time. She was maybe eight, seven or eight.
- 7 Q Did Andrea get her as a puppy?
- 8 A Um-hmm.
- 9 Q Answer is yes?
- 10 A Yes. Molly came to the house when Jake did, the dog
- 11 I had to put down. We got two dogs as puppies.
- 12 Q Okay.
- 13 A And I had to put Jake to sleep.
- 14 Q Okay. And Molly ended up being Andrea's dog?
- 15 A Yes.
- 16 Q When did you next find out that this dog had injured
- 17 someone before, Boo?
- 18 A I don't remember.
- 19 Q At some point in time did you find out that, in fact,
- 20 this dog had bitten people before Walt moved in with
- 21 you?
- 22 A I found out last Friday at my attorney's -- at the
- 23 attorney's office that this dog had bitten three
- 24 times. I did not know that prior to last Friday.
- 25 Q When this occurred did you ask Walt whether or not

- 1 he had any kind of insurance?
- 2 A No.
- 3 Q Did you report it to your insurance company right
- 4 away?
- 5 A I don't remember.
- 6 Q Do you recall whether or not at any point you ever
- 7 filled out an incident report for the insurance
- 8 company?
- 9 A No, I did not that I know of.
- 10 Q Did you give a statement to your insurance company,
- 11 whether it was written or tape recorded or --
- 12 A Yes.
- 13 Q -- over the telephone?
- 14 A Yes.
- 15 Q When did you do that?
- 16 A I don't remember.
- 17 Q When did you last see that statement?
- 18 A I never saw it.
- 19 Q Did anybody read it to you recently?
- 20 A No.
- 21 Q Did anybody read parts of it to you?
- 22 A No.
- 23 Q How do you remember that you gave a statement?
- 24 Did somebody tell you?
- 25 A I was at work. They called me at work.

- 1 Q Did you ever get a copy of that statement?
- 2 A No.
- 3 Q When was that in relation to the dog attack?
- 4 A I believe they called me four months afterwards --
- 5 Q Okay.
- 6 A -- that I had first heard anything.
- 7 Q In interrogatories that you answered, Nancy --
- 8 May I call you Nancy?
- 9 A Sure.
- 10 Q Back in January you signed these answers to questions.
- 11 Do you recall that your lawyer probably prepared
- 12 these?
- 13 A Yes.
- 14 Q Okay. And right here you were asked the question, 4,
- 15 it says: State whether or not you gave a written or
- 16 recorded statement to anyone about a dog -- about
- 17 this -- this dog attack. And you stated: No.
- 18 A Gave a written or recorded --
- 19 Q Statement to anyone about this dog attack.
- 20 Maybe you just didn't think of the
- 21 insurance company at the time?
- 22 A Yeah. Actually, I think I read over the "recorded."
- 23 I just read "written."
- 24 Q Okay. So this is just an error, and we can correct
- 25 that now on the record? The fact is you did give a

1 statement to your insurance company?  
 2 A When was this?  
 3 Q January of '07.  
 4 A Yeah. I would assume so, yes. Yes.  
 5 Q Okay.  
 6 MR. SIDDALL: Do you have a copy of  
 7 that, Sandy?  
 8 MS. HUPFER: Do I have a copy of  
 9 what? the interrogatories?  
 10 MR. SIDDALL: The statement.  
 11 MS. HUPFER: Yes, I do.  
 12 MR. SIDDALL: May I see it, please?  
 13 MS. HUPFER: I have to talk to the  
 14 company and see if I can disclose it.  
 15 MR. SIDDALL: Okay.  
 16 Q (By Mr. Siddall) Do you know what vet he used, he,  
 17 being Walt, for his dogs?  
 18 A The only veterinarian I know that he went to is  
 19 Country View Animal Hospital because I told him that  
 20 the dogs had to be licensed, and he had to go to the  
 21 Town of Menasha.  
 22 Q Did he get them licensed?  
 23 A Yes, but he had to get one of the dogs up to date on  
 24 shots, I believe.  
 25 Q And where is Country View Animal Hospital?

1 A A gas station.  
 2 Q A gas station.  
 3 A I don't remember where.  
 4 Q How did he exercise his dogs?  
 5 A The backyard.  
 6 Q That's all?  
 7 A Yes.  
 8 Q He didn't take them for walks?  
 9 A No.  
 10 Q Did he ever let them -- Did you ever see him let them  
 11 loose in the front yard?  
 12 A No.  
 13 Q Did you -- When you saw him let the dogs out the front  
 14 door to go to his car, did you warn him or reprimand  
 15 him?  
 16 A I did not see him. I did not see him go out the front  
 17 door, letting the dogs out.  
 18 Q I mean on any other occasion.  
 19 A No, I haven't. He usually put them on a leash. He  
 20 put the dogs on a leash and took them to his car.  
 21 Q Did he tell you why he didn't do that on the day of  
 22 this dog attack?  
 23 A No.  
 24 Q Did you ask him?  
 25 A I don't remember.

1 A Tullar Road.  
 2 Q Okay. Who are the vets there? That's your vet, I  
 3 take it?  
 4 A Yes. He was bought out. They're all retired now.  
 5 Q Okay. Who were the vets at the time?  
 6 A Good question.  
 7 Q That's all right if you don't know.  
 8 A I don't remember. I could if I thought about it.  
 9 Q Did he say how out of -- or how behind his dog was  
 10 on shots?  
 11 A No.  
 12 Q I note from the police report from the March bite that  
 13 the dog hadn't had shots since November of '01. Did  
 14 he ever tell you that?  
 15 A No.  
 16 Q Can you tell me again -- I don't think I quite nailed  
 17 it down. But the Shell gas station that you thought  
 18 Walt worked at --  
 19 A No. I did not say that.  
 20 Q What am I -- All right.  
 21 MR. HUPFER: You're thinking of her  
 22 son-in-law.  
 23 MR. SIDDALL: Son-in-law. Okay.  
 24 Q (By Mr. Siddall) Where was the last place you believe  
 25 Walt worked?

1 Q You believe it was a couple weeks after that that you  
 2 asked him to move out? Maybe I'm wrong. When did he  
 3 leave in relation to the dog attack?  
 4 A One to two weeks.  
 5 Q And that was at your request?  
 6 A Yes.  
 7 Q Did it frustrate you that he had a job and then quit  
 8 it?  
 9 A Yes, but, also, it was time.  
 10 Q Do you know where he went from your house?  
 11 A To his brother's.  
 12 Q In Fremont?  
 13 A Yes.  
 14 Q Okay. Did you ever hear anything more about him after  
 15 he left your house?  
 16 A No.  
 17 Q How did you hear that he went to his brother's?  
 18 A I believe it was through Alicia and Andrea.  
 19 Q Do you know whether or not Cindy ever started dating  
 20 him again?  
 21 A No.  
 22 Q Do you know whether or not he lived anyplace else  
 23 after he lived with his brother?  
 24 A No.  
 25 Q Where did you hear that he was maybe out of state?

14

1 Q Okay.

2 MR. SIDDALL: Okay. Okay. Thank you,  
3 Nancy. That's all I have.

4 THE WITNESS: Okay.

5 MS. HUPFER: Nancy, would you have let  
6 Mr. Waterman move in with those dogs if you knew the  
7 dogs had bit anyone before?

8 THE WITNESS: Absolutely not.

9 MS. HUPFER: That's all I have.

10 MR. SIDDALL: Thank you.

11 MS. HUPFER: Thanks for coming in.

12 \* \* \*

13 (Which concluded the deposition of  
14 NANCY L. SEEFELDT at 4:05 p.m.)

15 \* \* \*

16  
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18  
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1 STATE OF WISCONSIN )  
2 OUTAGAMIE COUNTY ) ss

3  
4 I, Patricia J. Seidel, a Notary Public  
5 in and for the State of Wisconsin, do hereby certify  
6 that the deposition of NANCY L. SEEFELDT, otherwise  
7 than as a witness upon the trial, was taken before me  
8 on the 7th day of May, 2007, at the law offices of  
9 Herrling Clark Law Firm Ltd., 800 North Lynddale  
10 Drive, Appleton, Wisconsin.

11 That before said witness testified,  
12 she was first duly sworn by me to testify the truth,  
13 the whole truth, and nothing but the truth relative  
14 to said cause.

15 That the foregoing proceedings are  
16 true and correct as reflected by my original machine  
17 shorthand notes taken at said time and place.

18  
19 Dated at Appleton, Wisconsin,  
20 this 1st day of June, 2007.

21  
22   
23 Patricia J. Seidel, RFR  
24 Notary Public, State of Wisconsin  
25 My commission expires: 7/29/07

NANCY L. SEEFELDT 5/7/07

15

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Case No. 06-CV-1307

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

**AFFIDAVIT OF MICHAEL S. SIDDALL**

STATE OF WISCONSIN    )  
                                  )SS  
COUNTY OF BROWN     )

MICHAEL S. SIDDALL, being sworn on oath, states as follows:

1. That I am the attorney representing the plaintiffs, Colleen and Thomas Pawlowski, and make this affidavit on personal knowledge.
2. That attached hereto and marked as Exhibit A is a copy of the pertinent portions of the deposition taken of Colleen Pawlowski, taken May 7, 2007.
3. That attached hereto and marked as Exhibit B is a copy of the pertinent portions of the deposition taken of Nancy Seefeldt, taken May 7, 2007.
4. That attached hereto and marked as Exhibit C is a true and accurate representation of the police reports obtained from American Family Mutual Insurance Company's Response to Plaintiffs' Demand for Production of Documents.
5. This affidavit is made in support of the plaintiff's motion and brief for summary judgment.

①

Dated this 1<sup>st</sup> day of August, 2007.

I certify that on 8/1/07  
I served the within paper  
on other counsel of record  
by mail, pursuant to Wis.  
Stats. 801.14.

  
Joyce J. Thomas  
(Hupfer)

  
Michael S. Siddall, Attorney for Plaintiffs

HERRLING CLARK LAW FIRM LTD.

800 N. Lynndale Drive,  
Appleton, WI 54914  
(920)739-7366  
State Bar No. 01015242

**COPY**

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH I

WINNEBAGO COUNTY

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Deposition of:  
COLLEEN PAWLOWSKI  
May 7, 2007

Plaintiffs,

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,

Defendants.

Deposition of COLLEEN PAWLOWSKI, a witness in the above-entitled action, taken at the instance of the Defendants, pursuant to notice, on the 7th day of May, 2007, commencing at 1:35 p.m., at the law offices of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive, Appleton, Wisconsin; pursuant to Chapter 804 of the Wisconsin Statutes; before and reported by Patricia J. Seidel, Registered Professional Reporter and Notary Public, State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPFLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUPFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

ALSO PRESENT: Thomas Pawlowski

PATRICIA J. SEIDEL  
Registered Professional Reporter  
(920) 993-1208  
Ap.18

1 the accident.  
 2 Q Do you know what his address is?  
 3 A He lives on Crestview. I'm not sure of the address.  
 4 Q How well do you know Mr. Clark?  
 5 A Not real well, just as a neighbor, passing by.  
 6 Q And how did it come to be that he gave you a ride  
 7 home that day?  
 8 A After I got bit I thought I would walk home, and as  
 9 I walked just a little ways I started getting really  
 10 shaky, and he was out in his yard, and, so, I called  
 11 to him and asked him to give me a ride home.  
 12 Q Did you talk to Mr. Clark at all on the way home?  
 13 A Yes. I told him what happened, because he has two  
 14 dogs, also, and he's -- this neighbor is just three  
 15 down the street, maybe three houses down the street.  
 16 Q What did you tell Mr. Clark?  
 17 A I told him what happened.  
 18 Q Could I have a little bit more detail about --  
 19 A Well, I told him that I had just been bit by dogs  
 20 there, and I showed him my leg. Then he said that if  
 21 his dogs would do something like that he'd have them  
 22 put down. But it's not very far to my house, so we  
 23 were home in the driveway and then he let me off.  
 24 Q Did he say anything about Mr. Waterman's dogs or  
 25 anything that he had noticed about Mr. Waterman's

1 and North Street and Deerwood, and I walk into the  
 2 Oak Hill Cemetery and then down Cooke Road to Spring  
 3 Road School and then back to my house.  
 4 Q Do you do this walk every day in the winter, summer,  
 5 spring, fall?  
 6 A Um-hmm.  
 7 Q Rain or shine?  
 8 A Um-hmm.  
 9 Q Wow. You are --  
 10 MS. HUPFER: Excuse me. Is that yes?  
 11 A Yes.  
 12 MR. SIDDALL: You have to say yes or  
 13 no, Colleen.  
 14 A Yes.  
 15 Q (By Ms. Ver Boort) Wow. You are very dedicated.  
 16 Did you ever switch up the route or  
 17 did you always take that same route?  
 18 A Well, it depended on the wind, which way it went.  
 19 Q Since the accident have you changed that route at all?  
 20 A Yes. I don't go -- I don't go in that block at all.  
 21 Q But you still walk for about an hour a day?  
 22 A Um-hmm.  
 23 MS. HUPFER: Is that yes?  
 24 A Yes.  
 25 MS. HUPFER: You should clarify with

1 dogs?  
 2 A No. No.  
 3 Q Okay. Were there any other witnesses that you know  
 4 of to the actual bite?  
 5 A No; just that Mr. Waterman, I think.  
 6 Q And where did you live at the time of the incident?  
 7 A 550 Spring Road Drive. It's probably three blocks  
 8 away.  
 9 Q So same address as you live now?  
 10 A Yes.  
 11 Q Okay. And on average how many times a week did you  
 12 walk in the months leading up to the accident?  
 13 A Every day.  
 14 Q Every day. Outside?  
 15 A Um-hmm.  
 16 Q Same route?  
 17 A Um-hmm.  
 18 Q What was that route?  
 19 A Oh, it's kind of an involved route because it's an  
 20 hour walk.  
 21 Q Um-hmm.  
 22 A But it's the same route that I always took. Did you  
 23 want the streets or --  
 24 Q Sure. Sure. That sounds good.  
 25 A Spring Road and then Glenview and then Crestview

1 her if she does that.  
 2 MS. VER BOORT: I agree. I agree.  
 3 Q (By Ms. Ver Boort) Can you give us a ballpark figure  
 4 of the number of times you passed this Seefeldt  
 5 residence prior to the -- to the bite?  
 6 A Well, I started walking in 1999, so, I don't know,  
 7 seven, seven, eight years. Different people had lived  
 8 in the house.  
 9 Q Had you ever seen Mr. Waterman's dogs before --  
 10 A Never.  
 11 Q -- the Seefeldt residence?  
 12 A Never.  
 13 Q Have you ever had any contact with them since?  
 14 A No.  
 15 Q What were you wearing on the day of the incident?  
 16 A Kind of like jogging pants and a winter coat,  
 17 green winter coat.  
 18 Q Did you have gloves on and boots?  
 19 A I had gloves, tennis shoes.  
 20 Q And what is your recollection of the events leading  
 21 up to the dog bite incident on October 26, 2003?  
 22 Just tell me in as much detail as possible starting  
 23 from when you started walking on the -- What's the  
 24 name of the street where the --  
 25 A Glenview.

1 Q Glenview. -- when you started walking on Glenview.  
 2 A When I was walking on Glenview I was walking to the  
 3 right of the road, kind of in the center to the right  
 4 of the road, and as I walked by the house, I was  
 5 almost past it, and I heard, like, a screen door or  
 6 a door opening, and, so, I turned my head to look, and  
 7 I looked behind me, and as I did I saw two dogs jump  
 8 off the porch and their ears were lowered and they  
 9 were charging. And I had time for three thoughts at  
 10 that time. It was: Here they come, don't run, and  
 11 when their feet lift the ground, turn your back. And  
 12 that's -- That was it. And I went like this, and he  
 13 hit -- hit me up here and bit, and, then, down where  
 14 my thigh is and, then, on my calf twice, and it  
 15 sounded like an apple, when you bite into an apple.  
 16 When that happened I kind of turned just a little bit  
 17 and just fell to my knee. And Mr. Waterman was  
 18 chasing them and calling their name, but they didn't,  
 19 you know, pay any attention. And he got there and he  
 20 grabbed them both. And he asked me if I wanted a ride  
 21 home, but I was just upset and said, no, that I was  
 22 fine. And, so, then I started to walk, and that's  
 23 when I walked to the end of that street, and that's  
 24 where Jeremy Clark lives, so then he gave me a ride  
 25 home.

1 A Um-hmm.  
 2 Q So when you first saw the dogs approaching you, they  
 3 were actually behind you, you had already passed the  
 4 Seefeldt residence?  
 5 A Yes. Yes.  
 6 Q Did you take any action to move away from the dogs  
 7 when you saw them running towards you?  
 8 A I didn't have time. It happened that fast.  
 9 Q Did you scream at all?  
 10 A No.  
 11 Q Did you try to, you know, push the dogs away or kick  
 12 them to get them off of you?  
 13 A No. That's why I went like this, because I thought,  
 14 you know, he -- that would kind of, you know -- I  
 15 wouldn't take the brunt of the bite or whatever.  
 16 Q So you pulled your arms up against you so they --  
 17 A And turned my back.  
 18 Q And turned your back so they wouldn't get bit.  
 19 Did you have any food on you that day?  
 20 A No.  
 21 Q Do you know if it was only one of the dogs that bit  
 22 you or do you believe both dogs bit you?  
 23 A I don't recall that because my back was like this,  
 24 but when I -- When he got my calf, I looked down and  
 25 the golden was right there, so he was the one that

1 Q Just a couple questions to follow up on that.  
 2 When you say you were walking on the right side of  
 3 the road, would you say that you were walking closer  
 4 to the curb then on --  
 5 A Probably on this -- The center of the road's here.  
 6 I was probably in the middle. There's not -- Cars  
 7 don't come down that road.  
 8 Q So you were walking about down the middle of the road?  
 9 A Yeah, just to the -- to the right of the middle. And  
 10 their house is on the left.  
 11 Q Okay. And you said that your three thoughts were  
 12 the dogs are running towards you, don't run and --  
 13 and then after that you said --  
 14 A Here they come, don't run, when their feet leave the  
 15 ground, you know, turn, and just -- just like that  
 16 they -- they jumped.  
 17 Q So I'm going to describe that for the record now.  
 18 You're kind of turning over with -- and pulling your  
 19 arms up against you and -- Did you bend over or lean  
 20 over?  
 21 A Just like this, not real bent but just so my head was  
 22 like this, because they were big, you know, and I knew  
 23 he would hit me hard, and he did.  
 24 Q So you tucked your arms up against you and turned away  
 25 from the dogs?

1 his mouth was on my leg.  
 2 Q Do you know which dog jumped up on you initially?  
 3 A The gold one.  
 4 Q Where was the darker one standing?  
 5 A Behind him. They came, you know, running like that.  
 6 He was just behind him.  
 7 Q Did you ever see the darker dog jump on you or -- or  
 8 bite you?  
 9 A No. I don't recall if he, you know --  
 10 Q Where did the golden dog bite you?  
 11 A Up here on my coat and, then, my thigh and --  
 12 MS. VER BOORT: Let the record reflect  
 13 that the witness is touching her --  
 14 Q (By Ms. Ver Boort) Is that your --  
 15 A Left shoulder.  
 16 Q Left shoulder.  
 17 A And left thigh. And because I had a winter coat on  
 18 he couldn't get through here, but it was all slobber,  
 19 but he ripped the coat where he bit here. And I've  
 20 got the coat where -- where, you know, he bit, here.  
 21 And then, of course, he got -- got me in my calf.  
 22 Q Were there any physical injuries from the bite on your  
 23 thigh, on your left thigh?  
 24 A No.  
 25 Q It just tore through the jacket?

1 A Yeah.

2 Q Did it tear through the jacket on the shoulder bite?

3 A No. It was just a bite, like a bite mark and, like,

4 slobber from the dog up there.

5 Q Okay. And then just the one bite on the left calf?

6 A Yes. He bit and bit again, you know, like that --

7 Q Okay.

8 A -- sort of thing.

9 Q Do you know what the other dog was doing when --

10 A No.

11 Q -- Boo was -- or the golden dog was on you? When

12 I say Boo, we found out that the golden dog was named

13 Boo and, then, the darker dog was named Diesel, so if

14 I say Boo or the golden dog, we'll be referring to the

15 dog that actually bit you.

16 A Okay.

17 Q So you didn't see where the other dog was at that

18 time?

19 A No. They were just coming together, you know, running

20 together.

21 Q There's a reference in the November 1st, 2004,

22 counseling record with Dr. Cummings, and it states

23 that the dog bit you in three places, resulting in

24 16 puncture wounds and soft tissue damage. Do you

25 know where Dr. Cummings got that figure for the 16

1 puncture wounds?

2 A I -- No, I don't, unless he got it from the Emergency

3 Room records.

4 Q Do you remember telling him that there were 16

5 puncture wounds?

6 A I don't recall saying that, no.

7 Q Okay. Is it your recollection today that there were

8 16 puncture wounds?

9 A Oh, yeah.

10 Q Okay. Do you know if anyone else was home at the

11 Seefeldt residence at the time of the bite?

12 A Well, I know he was because I saw him, but I don't

13 know if she was there.

14 Q He, as in Walter Waterman?

15 A Um-hmm.

16 Q Okay. And you said that after the incident

17 Mr. Waterman came up to you?

18 A Um-hmm. He -- he came to grab the dogs, and he

19 grabbed the dogs and said, Are you all right? Can

20 I give you a ride home? But I said -- I told him

21 I had to go to the Emergency Room because they had

22 broke the skin and it was bleeding, but I said, no,

23 I didn't need a ride.

24 Q Did he say anything else to you at that point?

25 A No.

1 Q So it's your recollection that you told Mr. Waterman

2 that he would -- that you were going to the Emergency

3 Room --

4 A Yes,

5 Q -- for the bite?

6 A (Nods head.)

7 Q What did he do with the dogs after he pulled them off

8 of you?

9 A I don't know. I don't recall that. I don't remember

10 him walking back because I walked off.

11 Q So when you were talking to him and he was talking

12 to you, though, he just had them there at his side,

13 holding onto them?

14 A Yes. He had them by the collars.

15 Q And were they barking at you?

16 A I don't recall.

17 Q Okay. Is it fair to say that the only physical injury

18 that you sustained in the dog bite was the bite on the

19 left calf?

20 A Physical injury, yes.

21 Q You didn't have any other scrapes or --

22 A No.

23 Q -- bruises, marks?

24 A No.

25 Q Would you describe that bite for us on your left

1 calf, just --

2 A It was just round, all the way around, twice.

3 Q Were there -- Could you see the two separate bites?

4 You said that he clamped onto you two times.

5 A Yes. You could see it was, you know, like a line

6 here and then two circles, like, where he bit.

7 Q And what was about the size of the circles?

8 A About -- about like this.

9 Q That looks like about two to three inches in

10 diameter?

11 A Yeah. Here's a picture of it. Yeah.

12 Q Okay.

13 MR. SIDDALL: Second page is a little

14 better.

15 MS. VER BOORT: Okay.

16 Q (By Ms. Ver Boort) Can you see -- This looks like

17 the closest pictures that we have. Would you be

18 able to point out the two separate circles where

19 you believe --

20 A The outer one is, like, here, and then there was an

21 inner one.

22 Q Okay. So there's the start of the inner one right

23 there?

24 A Um-hmm.

25 Q And the outer one right there. Okay.

COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,  
Plaintiffs,

Deposition of:  
NANCY L. SEEFELDT  
May 7, 2007

vs.

Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL INS. CO.  
and NANCY L. SEEFELDT,  
Defendants.

Deposition of NANCY L. SEEFELDT, a witness  
in the above-entitled action, taken at the instance of  
the Plaintiffs, pursuant to notice, on the 7th day of  
May, 2007, commencing at 3:15 p.m., at the law offices  
of Herrling Clark Law Firm Ltd., 800 North Lynndale Drive,  
Appleton, Wisconsin; pursuant to Chapter 804 of the  
Wisconsin Statutes; before and reported by Patricia J.  
Seidel, Registered Professional Reporter and Notary Public,  
State of Wisconsin.

APPEARANCES: HERRLING CLARK LAW FIRM LTD.  
by MICHAEL S. SIDDALL, ATTORNEY AT LAW  
800 North Lynndale Drive  
Appleton, Wisconsin 54914  
appeared on behalf of the Plaintiffs.

STELLPLUG, JANSSEN, HAMMER, KIRSCHLING &  
BARTELS, S.C.  
by SANDRA L. HUFFER, ATTORNEY AT LAW  
KATHRYN M. VER BOORT, ATTORNEY AT LAW  
444 Reid Street, Suite 200  
De Pere, Wisconsin 54115-5637  
appeared on behalf of the Defendants.

TRANSCRIPT OF PROCEEDINGS

\* \* \*

NANCY L. SEEFELDT, called as a witness  
herein, having been first duly sworn, was examined and  
testified as follows:

EXAMINATION

7 BY MR. SIDDALL:

8 Q Would you state your name, please.

9 A Nancy Louise Seefeldt.

10 Q Where do you live?

11 A 1784 Sanctuary Court, Apartment No. 1, Appleton.

12 Q Who do you live there with?

13 A My daughter Stephanie.

14 Q How old is Stephanie?

15 A Fifteen.

16 Q Are you employed outside of the home?

17 A Yes, I am.

18 Q Where are you employed?

19 A Wisconsin Resource Center.

20 Q What do you do there?

21 A I'm a social worker.

22 Q Who is actually your employer?

23 A State of Wisconsin.

24 Q How long have you been so employed?

25 A Seven years.

I N D E X

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3	Examination of NANCY L. SEEFELDT by:	Page:
4	Mr. Siddall. . . . .	3
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1 Q I take it -- Are you single?

2 A Yes.

3 Q Divorced?

4 A Yes.

5 Q When were you divorced?

6 A 1995.

7 Q First marriage?

8 A Yes, and only.

9 Q And only marriage. Okay.

10 And did you just have one child as a  
11 result of that marriage?

12 A Two.

13 Q Your other child's name?

14 A Andrea.

15 Q How old is Andrea?

16 A Twenty-one.

17 Q Okay. Back in October of 2003 where were you living?

18 A 1203 Glenview Drive, Neenah.

19 Q Was that an apartment, a residence, single-family  
20 residence or --

21 A Single-family home.

22 Q And who owned that home?

23 A Myself.

24 Q How long had you owned that?

25 A Thirteen years.

\*\*NOTE: Original transcript filed with Attorney Siddall.

NANCY L. SEEFELDT 5/7/07

- 1 Q When did you first move into that home?
- 2 A December 1st, 1990.
- 3 Q And when did you leave the home?
- 4 A March of 2004 -- 2005.
- 5 Q What was your reason for selling the house?
- 6 A My youngest daughter was living with her father out
- 7 of state and I was living there alone and with one
- 8 income I didn't want to -- it was just becoming very
- 9 costly. I didn't need that big of a house.
- 10 Q Who was living there with you in October of '03?
- 11 A My daughter Andrea, myself and Walt Waterman, Walter
- 12 Waterman.
- 13 Q Okay. Stephanie was not?
- 14 A No.
- 15 Q Okay. And Andrea was in high school at that time?
- 16 A Um-hmm.
- 17 Q Answer is yes?
- 18 A Yes.
- 19 Q What is Waterman's first name?
- 20 A Walter.
- 21 Q How do you know him?
- 22 A Through my daughter Andrea, her friend, Alicia,
- 23 they were very close. Alicia's mother lived with
- 24 Walt all the while Alicia was growing up and Alicia
- 25 considered him like a father.

- 1 Q How long had you known him?
- 2 A I didn't.
- 3 Q When did you first meet him?
- 4 A The month or -- Probably June 2003.
- 5 Q And how did you meet him?
- 6 A Andrea and Alicia and Alicia's mother brought Walter
- 7 over to meet with me.
- 8 Q For what purpose?
- 9 A To see if he would live with me until he found a job.
- 10 Q Do you recall when that was?
- 11 A Not the exact date, no.
- 12 Q How about the month?
- 13 A I'm not sure if it was June or July. I can't remember.
- 14 Q Do you recall when he moved in?
- 15 A No, I don't.
- 16 Q What is Alicia's last name?
- 17 A Williams.
- 18 Q What is Alicia's mother's last name?
- 19 A I don't know. I don't remember.
- 20 Q Is it different?
- 21 A Yes.
- 22 Q Where does Alicia live now?
- 23 A I believe Menasha.
- 24 Q Do you know who she lives with?
- 25 A No.

NANCY L. SEEFELDT 5/7/07

- 1 Q Do you know whether or not she's living with her
- 2 mother?
- 3 A Last time I heard, no, she was not.
- 4 Q Do you know where Alicia's mother's living?
- 5 A No.
- 6 Q Do you know what her first name is?
- 7 A Cindy.
- 8 Q Is Alicia still good friends with your daughter
- 9 Andrea?
- 10 A Somewhat.
- 11 Q Where is your daughter living?
- 12 A Appleton.
- 13 Q And what does she do?
- 14 A She's a housewife.
- 15 Q And her husband's name?
- 16 A Joshua.
- 17 Q And their last name?
- 18 A Korslin.
- 19 Q Could you spell that, please.
- 20 A K-o-r-s-l-i-n.
- 21 Q What does Joshua do for a living?
- 22 A He works at Savers. It's a store that just opened
- 23 on Casaloma.
- 24 Q Prior to that what did he do?
- 25 A He was working at the Shell Service Station.

- 1 Q Which one?
- 2 A It's the road from the mall, taking Highway 10,
- 3 is it? I believe that's Highway 10. Greenville.
- 4 Q Okay. Do you know what Alicia is doing now?
- 5 A No.
- 6 Q Do you know who she lives with?
- 7 A No.
- 8 Q Do you know whether or not she's married or single?
- 9 A I don't know.
- 10 Q Would Andrea know the answers to those types of
- 11 questions?
- 12 A I don't know.
- 13 Q Do you know how long this Walter and Cindy were
- 14 living together?
- 15 A Apparently for many years as -- while Alicia was
- 16 growing up.
- 17 Q Do you know why they stopped living together?
- 18 A No.
- 19 Q What did they tell you when Cindy brings him over
- 20 to your house and says, Here's my live-in boyfriend
- 21 but I want him to live with you now? What explanation
- 22 was given to you?
- 23 A She lived in a small apartment that could not take
- 24 dogs, and Walt had dogs, had lost his job, and he was
- 25 collecting unemployment and he needed a place to go

1 that would accept dogs, and I had a big backyard with  
2 a fence, and, so, they wanted him to stay there so he  
3 could find a job.  
4 Q Had Cindy just moved into an apartment?  
5 A No. She had been there for quite some time  
6 apparently. I don't know.  
7 Q With him living there?  
8 A No. They hadn't been living together for a while.  
9 Q Oh. Do you know when they stopped living together?  
10 A No.  
11 Q Were they dating?  
12 A No.  
13 Q Do you know when they stopped dating?  
14 A No.  
15 Q Do you have any records that would show when he moved  
16 into your home?  
17 A No.  
18 Q Did he pay rent?  
19 A No.  
20 Q How long did he live there?  
21 A Approximately four months, three to four months.  
22 Q When did he leave after this dog attack?  
23 A One to two weeks after this happened.  
24 Q So if this happened on October 26th, he moved in  
25 probably in June?

1 A Or the end of June, yeah.  
2 Q During the period of time he lived there he paid  
3 no rent; correct?  
4 A Correct.  
5 Q Did he get a job?  
6 A He got one at Ariens on the assembly line putting  
7 together snow blowers and then quit the job, and  
8 that was in October right before this happened.  
9 Q Why did he quit the job?  
10 A He didn't like it.  
11 Q What was the reason he left your residence?  
12 A It was time for him to move on because --  
13 Q Did you tell him?  
14 A Yes. Yes.  
15 Q Did you ever have a romantic relationship with him?  
16 A No.  
17 Q How long did he work at Ariens?  
18 A Just a couple weeks.  
19 Q Does he have any relatives in the area?  
20 A He has a brother, but he's out in Fremont.  
21 Q Do you know what his brother's first name is?  
22 A I don't remember.  
23 Q Same last name?  
24 A Yes.  
25 Q Okay. Full brother. Sometimes they have

1 half-brothers and stepbrothers.  
2 Do you know where Walt Waterman is  
3 now?  
4 A No.  
5 Q Do you -- How would you find him if you wanted to  
6 find him? How would you go about it?  
7 A I would probably ask Alicia, which I did a year  
8 ago, and she didn't know where he was. She hadn't  
9 seen him. She thought he was probably out of state.  
10 Q Did he have any other relatives in the area?  
11 A He had elderly parents.  
12 Q That lived in the area here?  
13 A Um-hmm.  
14 Q Your answer is yes?  
15 A Yes.  
16 Q Do you know whether or not they're alive?  
17 A No.  
18 Q Do you know their names?  
19 A No.  
20 Q Do you know where he last worked before he got --  
21 lost his job before he moved in with you?  
22 A I believe it was at a gas station.  
23 Q How old a guy is he?  
24 A I don't know.  
25 Q Give me your best estimate.

1 A Early forties.  
2 Q Is that about the same age as Alicia's mother?  
3 A Yes.  
4 Q What was the reason that you would allow this stranger  
5 to move into your house with two dogs and not pay  
6 rent?  
7 A They were looking for a place for him to go and --  
8 Q Is this a guy that can't do these things on his own?  
9 A No. I was getting my house ready to sell, and they  
10 said that he could help out with some of the repairs  
11 if -- in exchange for living there temporarily while  
12 he could find a job.  
13 Q Did he do any repairs?  
14 A Yes.  
15 Q What repairs did he do?  
16 A He replaced the boards in the bathroom. We had to  
17 tear out the linoleum and the boards in the bathroom.  
18 Q Okay. Anything else?  
19 A Yes. He helped me in the basement. We painted the  
20 basement. Andrea had a bedroom down there, so we  
21 wanted to clean that area up and paint the floor and  
22 get it ready, put new carpet in.  
23 Q Anything else?  
24 A He did -- He mowed the lawn, and I made him vacuum  
25 every day.

- 1 Q How many bedrooms is that house?
- 2 A Three.
- 3 Q Was it a ranch?
- 4 A Um-hmm.
- 5 Q Answer is yes?
- 6 A Yes.
- 7 Q And where did he stay, which -- One of the bedrooms on
- 8 the main floor?
- 9 A Yes.
- 10 Q And Andrea was downstairs in the basement bedroom?
- 11 A Yes.
- 12 Q Where did the dogs stay?
- 13 A With him.
- 14 Q So they were indoor dogs?
- 15 A Yes.
- 16 Q How did the dogs behave in your house?
- 17 A Fine.
- 18 Q I take it they were house trained?
- 19 A Yes.
- 20 Q Do you know how long he had the dogs?
- 21 A No.
- 22 Q Do you know how old the dogs were?
- 23 A I believe that the oldest, Boo, was three or four,
- 24 and Diesel was a puppy yet, he was eight or nine
- 25 months, and he was from a previous litter. She had

- 1 Q Did he ever tell you?
- 2 A No.
- 3 Q You made no inquiries at all as to the temperament of
- 4 the dog, whether or not it had ever injured anybody?
- 5 A No.
- 6 Q Do you have -- Do you have dogs?
- 7 A Yes.
- 8 Q What kind of dogs do you have?
- 9 A Currently?
- 10 Q Right.
- 11 A None.
- 12 Q What kinds did you have?
- 13 A Had a black lab mix and -- They were all mixes.
- 14 Q Is this when you were growing up or when you were
- 15 married?
- 16 A No; when I was living at the house.
- 17 Q Did you have dogs that were there at the time he was
- 18 there?
- 19 A Um-hmm.
- 20 MS. HUPFER: Is that yes?
- 21 A Yes.
- 22 Q (By Mr. Siddall) What kind of dogs did you have?
- 23 A I had three mixes, one was a black lab mix and another
- 24 black lab mix and Maggie was a border collie mix.
- 25 Q Where did those dogs stay?

- 1 just had a litter.
- 2 Q Who is she?
- 3 A Boo.
- 4 Q Boo had had a litter?
- 5 A Yes, recently, when she came to my house, because she
- 6 was -- had just -- was nursing, and Diesel was trying
- 7 to nurse on her.
- 8 Q But Diesel --
- 9 A It's not -- wasn't the last litter, because he was
- 10 eight or nine months old.
- 11 Q Was he a pup from a previous litter of hers?
- 12 A Um-hmm. Yes.
- 13 Q So he had -- She had about two litters in nine
- 14 months?
- 15 A Correct.
- 16 Q What did he do with the pups?
- 17 A He gave them away.
- 18 Q Did he talk about getting her fixed or anything?
- 19 A I don't remember.
- 20 Q The dog wasn't a purebred, was it?
- 21 A No.
- 22 Q Did you ask him whether the dog had ever bitten
- 23 anybody or injured anybody at the time that you
- 24 met him and he moved in?
- 25 A No.

- 1 A Where? In the house.
- 2 Q Where did they sleep?
- 3 A Anywhere they wanted to.
- 4 Q Did the five dogs get along together?
- 5 A Yes. Yes.
- 6 Q Had your dogs ever bitten anyone?
- 7 A No.
- 8 Q Knocked anyone down, off a bike, anything like that?
- 9 A No.
- 10 Q There was some indication in an answer to an
- 11 interrogatory that he had told you that that dog
- 12 did injure somebody, that Boo did injure somebody --
- 13 MS. HUPFER: I'll object to the form of
- 14 the question.
- 15 Q (By Mr. Siddall) -- before moving in. Do you recall
- 16 that?
- 17 A Injured somebody?
- 18 Q Yes.
- 19 A Nipped at somebody, not a bite. He did not say that
- 20 his dog had bit anyone.
- 21 Q What did he tell you happened?
- 22 A He said that a six-year-old neighbor girl had come
- 23 into the house, Boo had puppies, he didn't realize
- 24 that she was in the house, it was a neighbor girl,
- 25 and the dog had nipped at her arm and scared her.

1 He said it did not break the skin.  
 2 Q Did he say when that was?  
 3 A No. Apparently it was recently.  
 4 Q Shortly before he moved in?  
 5 A Right.  
 6 Q Did you undertake any investigation as a result of  
 7 that?  
 8 A No.  
 9 Q How did that conversation happen to come up?  
 10 A I believe it was the night that he came. They were  
 11 discussing the dogs and --  
 12 Q Who's they?  
 13 A Alicia's mother, Alicia, Andrea, Walt and myself.  
 14 Q Okay. And what was said?  
 15 A They said that the dogs were great, they were not a  
 16 threat to anybody, they were friendly, they got along  
 17 with everyone, there was no problems with the dogs.  
 18 Q Except -- And then they relayed the story?  
 19 A Right, and then this story.  
 20 Q Did it appear to you that Alicia's mom, Cindy, had  
 21 familiarity with these dogs?  
 22 A Yes. She had lived with them.  
 23 Q I thought it had been quite some time that they had  
 24 lived together. No? I thought quite some time had  
 25 elapsed since they had lived together.

1 A I don't know.  
 2 Q How would I find out where Cindy is? How would I get  
 3 ahold of her? through Alicia?  
 4 A Yes.  
 5 Q And you said Alicia, her last name is Williams, and  
 6 she lives in Appleton?  
 7 A Menasha.  
 8 Q Menasha.  
 9 Did they tell you where that dog bite  
 10 occurred, in what municipality?  
 11 MS. HUPFER: Object to form.  
 12 A I don't remember.  
 13 MS. HUPFER: It misstates her  
 14 testimony. You can answer.  
 15 THE WITNESS: Huh?  
 16 MS. HUPFER: You can answer. I'm just  
 17 making a record.  
 18 A I don't remember.  
 19 Q (By Mr. Siddall) Do you know where he lived before  
 20 moving in with you?  
 21 A I don't remember what he told me.  
 22 Q If I indicated that he lived on Erdine, E-r-d-i-n-e,  
 23 Lane in Dale, Wisconsin, in June of '03, would that  
 24 ring a bell?  
 25 A Dale does, but I didn't know a street. Dale, yes,

NANCY L. SEEFELDT 5/7/07

1 that sounds familiar.  
 2 Q I've got an incident report here which is dated  
 3 June 3rd of '04. Wait a minute. Yes, June --  
 4 June 4th of '03. Wait a minute. I'm sorry. It's  
 5 dated June 4th, 2003. This would be close to the  
 6 time he moved in; correct?  
 7 A I would think a couple weeks prior.  
 8 Q Okay. And here's what the notes say: Neighbor's  
 9 dog bit reporter's daughter as she was riding her  
 10 bike.  
 11 He didn't tell you that, though,  
 12 did he?  
 13 A No.  
 14 Q And that the person was requesting that the dog be  
 15 put to sleep and that the dog -- the child was taken  
 16 for medical attention, he never told you that?  
 17 A No.  
 18 Q Did he tell you that the dog, while he lived at that  
 19 same address, bit another person in March of '03?  
 20 A No.  
 21 Q Did you do any checking after the dog attacked Colleen  
 22 Pawlowski about that dog?  
 23 A No.  
 24 Q Are you aware of any other incidents that that dog  
 25 injured anyone?

1 A No.  
 2 Q Did it -- Did he tell you the name of the child that  
 3 that dog nipped?  
 4 A No.  
 5 Q And you believe that was sometime in June of '03 when  
 6 that incident occurred?  
 7 MS. HUPFER: Object to form.  
 8 A He didn't say.  
 9 Q (By Mr. Siddall) But you knew it was relatively  
 10 shortly before he moved in?  
 11 A Right.  
 12 Q Okay. At the time of this attack by those two dogs  
 13 you were working as a social worker?  
 14 A Yes.  
 15 Q What were your normal hours?  
 16 A 7:45 to 4:30.  
 17 Q Okay.  
 18 A Monday through Friday.  
 19 Q Do you recall, did you work the day of this incident?  
 20 A No. I was home.  
 21 Q What day of the week was it?  
 22 A A Sunday.  
 23 Q All right. Do you recall approximately what time it  
 24 happened?  
 25 A In the afternoon.

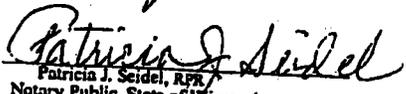
1 Q Okay.  
 2 MR. SIDDALL: Okay. Okay. Thank you,  
 3 Nancy. That's all I have.  
 4 THE WITNESS: Okay.  
 5 MS. HUPFER: Nancy, would you have let  
 6 Mr. Waterman move in with those dogs if you knew the  
 7 dogs had bit anyone before?  
 8 THE WITNESS: Absolutely not.  
 9 MS. HUPFER: That's all I have.  
 10 MR. SIDDALL: Thank you.  
 11 MS. HUPFER: Thanks for coming in.  
 12 \* \* \*  
 13 (Which concluded the deposition of  
 14 NANCY L. SEEFELDT at 4:05 p.m.)  
 15 \* \* \*

3  
 4 I, Patricia J. Seidel, a Notary Public  
 5 in and for the State of Wisconsin, do hereby certify  
 6 that the deposition of NANCY L. SEEFELDT, otherwise  
 7 than as a witness upon the trial, was taken before me  
 8 on the 7th day of May, 2007, at the law offices of  
 9 Herrling Clark Law Firm Ltd., 800 North Lynndale  
 10 Drive, Appleton, Wisconsin.

11 That before said witness testified,  
 12 she was first duly sworn by me to testify the truth,  
 13 the whole truth, and nothing but the truth relative  
 14 to said cause.

15 That the foregoing proceedings are  
 16 true and correct as reflected by my original machine  
 17 shorthand notes taken at said time and place.

18  
 19 Dated at Appleton, Wisconsin,  
 20 this 1st day of June, 2007.

21  
 22   
 23 Patricia J. Seidel, RPN  
 24 Notary Public, State of Wisconsin  
 25 My commission expires: 7/29/07

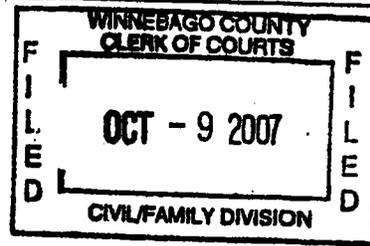
COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs,

v.

AMERICAN FAMILY MUTUAL INS CO.,  
a domestic insurance corporation, and  
NANCY L. SEEFELDT,

Defendants.



Case No. 06-CV-1307  
Action Code: 301071  
Personal Injury - Other

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**ORDER GRANTING SUMMARY JUDGMENT  
AND DISMISSAL**

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A Motion for Summary Judgment and Declaratory Judgment, having been filed by the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, along with supporting Affidavit and Brief; and

The plaintiffs, Colleen and Thomas Pawlowski, having filed a Brief and Affidavit in Opposition to said Motion; and

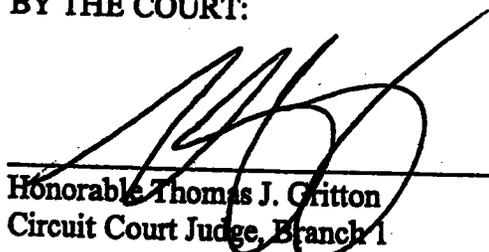
The case having come before the Court, the Honorable Thomas J. Gritton, Circuit Court Judge, Branch 1, Winnebago County, Wisconsin for hearing on September 10, 2007, with the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, having appeared by their counsel, Sandra L. Hupfer, and the plaintiffs, Colleen Pawlowski and Thomas Pawlowski, having appeared by their counsel, Michael S. Siddall; and

The Court, having considered the Briefs and Affidavits filed by all parties, and having heard arguments of counsel, makes the following Order:

IT IS HEREBY ORDERED that the defendants' Motion for Summary Judgment pursuant to sec. 802.08, Wis. Stats., is granted, on the grounds specifically set forth in the Court's decision on the record, which are incorporated herein by reference, as follows: that the defendant, Nancy L. Seefeldt, was not a keeper of the dog at the time of the dog attack, and further, that public policy precludes liability against Ms. Seefeldt. Thus, the defendants, American Family Mutual Insurance Company and Nancy L. Seefeldt, are hereby dismissed from the above-captioned action, with prejudice.

Dated at Oshkosh, Wisconsin this 8 day of <sup>10</sup>September, 2007.

BY THE COURT:



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Honorable Thomas J. Gritton  
Circuit Court Judge, Branch 1



1           **THE CLERK:** Colleen Pawlowski, et. al., versus  
2 American Family Mutual Insurance Company, et. al.,  
3 06CV1307.

4           **THE COURT:** Appearances, please?

5           **MR. SIDDALL:** Mike Siddall on behalf of the  
6 plaintiffs.

7           **MS. HUPFER:** Your Honor, Sandra Hupfer on  
8 behalf of the defendants.

9           **THE COURT:** We are set for a summary judgment  
10 motion today. Ms. Hupfer, I'll allow you to go first.  
11 I would ask that you not regurgitate what I have already  
12 read. If you have any highlights you wish to cover,  
13 please do.

14           **MS. HUPFER:** That is fine. Thank you, your  
15 Honor.

16           I think that for purposes of this motion the  
17 facts are undisputed. The Court is aware this arose out  
18 a dog bite that occurred on October 26, 2003.

19           There are two issues that the defendants have  
20 brought before the Court. The first issue is whether as  
21 a keeper of the dog, Ms. Seefeldt was or actually  
22 whether at the time of the bite she was deemed to be a  
23 keeper of the dog or in fact whether she had basically  
24 given up her custody or control of the dog at the time  
25 of the injury and thus cannot be held liable. And the

1 second issue is whether or not she had prior notice of  
2 the injuries previously caused by this dog subjecting  
3 her to double damages in this case.

4 And I think that as to the first issue, it  
5 comes down to whether we can distinguish the -- I think  
6 it is the Koetting case or the Koetting case cited by  
7 Mr. Siddall in his brief, your Honor. I think that  
8 case, K-O-E-T-T-I-N-G, and the cites are already  
9 contained in the briefs so I won't repeat them, in that  
10 case the father was held liable even though the dog had  
11 left the premises of the house and was out of the  
12 father's direct control when the attack occurred.  
13 However, that case is 70 years old and since then the  
14 courts have increasingly focused on the fact that at the  
15 time of the injury or the attack who had control over  
16 the dogs.

17 And here I think this case is more attune to  
18 the idea of almost Mr. Waterman being akin to a tenant  
19 in Ms. Seefeldt's home, albeit, she was basically acting  
20 more as a pro bono landlord which is an analogous to the  
21 Smaxwell case, I think if you look at some of the  
22 language of that case, in particular the Court discussed  
23 the fact that it actually mentioned a salutary policy of  
24 placing responsibility where it belongs rather than  
25 fostering a search for the defendant whose affluence is

1 more apparent than his culpability.

2 The Court also in Smaxwell cited another case,  
3 Janssen v. Vos. It was a 1926 case that talks about the  
4 owner terminating the dominion of the keeper of the dog  
5 at any time and removing the dog from the custody of the  
6 keeper. The Court stated there that the moment this is  
7 done, the dual authority exercised over the dog by the  
8 owner and keeper is merged in the owner and at that very  
9 moment the keeper's rights of responsibilities  
10 concerning the dog are at an end.

11 Here Ms. Seefeldt was home at the time. She  
12 was in the back of the house. She was not exercising  
13 any dominium or control over those dogs. They were  
14 leaving the home with their owner, Walter Waterman, he  
15 was going out of the door with them, he did not put them  
16 on a leash. She had no opportunity to exercise  
17 ownership or control over them or anything at the time  
18 they broke away from him and attacked Ms. Pawlowski.

19 So I don't think at this point this is a  
20 situation where as the keeper, she had any control over  
21 those dogs when the attack occurred, and I don't think  
22 that dual situation of the keeper and the owner was  
23 actually operating at the time that this dog bit her so  
24 for those reasons and all of the reasons in the brief I  
25 believe summary judgment should be granted. I don't

1 think Ms. Seefeldt can be held liable in this particular  
2 case.

3 If the Court believes she can be held  
4 liable --

5 **THE COURT:** Let's address one issue at a  
6 time.

7 Mr. Siddall, your response?

8 **MR. SIDDALL:** Your Honor, I think it is clear  
9 that she was a keeper of this dog. An owner is defined  
10 as any person who harbors or keeps a dog. That cites  
11 the Wisconsin statute in the Armstrong case which states  
12 that a keeper or harbinger of a dog is treated the same  
13 as the dog's legal owner and I cite the case. And it  
14 goes on to say that a keeper of a dog is one who  
15 furnishes the dog with shelter, protection, or food or  
16 that they exercise control over the dog. It can be any  
17 one of those, and clearly in this case she furnished  
18 shelter for those two dogs of Mr. Waterman's.

19 Another case cites the fact that an harbinger  
20 is one who affords lodging to a dog so I think it is  
21 absolutely clear that she was an harbinger of the dog,  
22 and the fact that the dog steps out of her house, and  
23 apparently this was against the rules, they had a rule  
24 that supposedly they would leash the dog between the  
25 house and the car, and that must have been for some

1 reason, but any way she let him out the front door and  
2 they immediately went to the edge of their property  
3 across the street -- into the street and attacked Mrs.  
4 Pawlowski.

5 If Mrs. Seefeldt had not been the keeper of  
6 those dogs, this dog attack never would have occurred so  
7 she certainly bears responsibility for being the keeper  
8 of the dog.

9 **THE COURT:** I have had the opportunity to  
10 read through the Armstrong v. Milwaukee case, and I  
11 think when I read through this and I am going to make a  
12 quote from Page 266: "A keeper is defined as one who  
13 keeps, one who watches, guards, et cetera. One having  
14 custody. It is apparent that the keeper of a dog may or  
15 may not be the owner of the dog. Where the keeper is  
16 not the owner, it may be assumed as general proposition  
17 that the dominion or authority of the keeper over the  
18 dog is limited -- is a limited one subject to be  
19 terminated at the time by the owner. The moment the  
20 owner removes the dog from the custody of the keeper,  
21 the dual authority therefore exercised over by the dog  
22 by the owner and the keeper is merged in the owner and  
23 at that very moment the keeper's rights and  
24 responsibilities concerning the dog are at an end."

25 This is the way I see it based upon that

1 definition and based upon my review of the cases that  
2 both parties have provided to me, and I think in many  
3 respects I think this is a very situational  
4 circumstance, and what I mean by that is that -- well, I  
5 don't think she was a keeper. But I think as an  
6 example, if she were the one leaving the house with the  
7 dogs, I think absolutely she would have been the keeper.

8 From what I read, and all of the information  
9 that I have been provided, I really did not see where  
10 she really exercised much control over these dogs other  
11 than the fact that there were times where Mr. Waterman  
12 would be absent from the residence and she would be  
13 there with the dogs. Even that, there was no indication  
14 that she necessarily -- did talk about the things -- but  
15 she clearly would be in custody of the dogs at that  
16 time. If something had happened and Mr. Waterman was  
17 not there and it happened as a result of her being alone  
18 with the dogs, I absolutely think she would have been  
19 the keeper of the dog. Well, actually there is one dog  
20 that did the biting. I never got that straight for  
21 sure.

22 **MR. SIDDALL:** I think that is correct, your  
23 Honor.

24 **THE COURT:** So from my perspective I think  
25 what is critical here is this definition of how --

1           although you can be a keeper, that keeper can come to an  
2           end when the owner exercises dominion over the dog; and  
3           clearly by leaving the front door, leaving the residence  
4           with the dog, the owner in this case, he was exercising  
5           complete dominion and the keeper had no control here. I  
6           mean Ms. Seefeldt.

7                        So I am finding that based upon the  
8           circumstances as I see them, there is no genuine issue  
9           of fact here and as a matter of law; I am finding her  
10          not to be the keeper of this dog; and as a result, I am  
11          going to grant the judgment for summary judgment on  
12          behalf of the defendants.

13                       The other thing that really leads me to that  
14          part or to that decision quite frankly is the public  
15          policy issue as well. We have a woman who accepted this  
16          gentleman in the home and she is given some limited  
17          information about this dog, and this might go in regards  
18          to the second issue, which I don't think I even have to  
19          make a finding on, but I also read that both of you  
20          discussed the public policy aspect of this. If the  
21          individual that is in the circumstance that this woman  
22          was in, isn't able to exercise dominion over these dogs  
23          but she is being, for lack of a better way to say it, a  
24          nice person in allowing this gentleman an opportunity to  
25          stay at her residence until the time period when he

1 finds his job, she really takes some liability upon  
2 herself but I don't think that is one hundred percent  
3 liability. If she was -- as I have indicated, if she  
4 was there alone or she was the one running out the front  
5 door or she had the dogs in the front yard and was  
6 playing with them and she was there, I think clearly  
7 that there is the possibility of liability here.

8 But under these circumstances just from a  
9 public standpoint, I don't think we want to put that  
10 incredible burden upon each and every person that may be  
11 having a dog owner over at their residence because I  
12 think that is effectively what you would do, even though  
13 I know the one case talks about the transient part of  
14 the dog with the son visiting the mother, where does  
15 that end. And I don't think we want to go down that  
16 road.

17 For all of those reasons I am finding that  
18 summary judgment is appropriate and, Ms. Hupfer, I would  
19 ask that you forward to the Court an order reflecting  
20 that and I'll sign off on it after five days. If you  
21 don't object, Mr. Siddall, I'll sign it.

22 **MR. SIDDALL:** Judge, just in response to your  
23 public policy argument if I may, it would seem to me  
24 that holding a keeper of a dog liable for this conduct  
25 best serves public policy especially when we have an

1 irresponsible owner of a dog who just had bitten two  
2 children within six months of these things, enough to  
3 cause them to go to the hospital, and this woman allows  
4 him, harbors the dogs for them, I don't think any of the  
5 case law says that it has to have dominion and control  
6 over them. She just harbors them.

7 **THE COURT:** I may be not using those words --  
8 they used the words custody or -- well, watches, guards,  
9 or one having custody, and I guess I see dominion and  
10 control, you could put those words into it as well so I  
11 don't think that there is a difference in those.

12 And the concern I have from a public policy  
13 standpoint, Mr. Siddall, if you have a brother that  
14 comes and he stays with you on a vacation for a week, is  
15 that more than transient, and they bring a dog into your  
16 residence and you have no opportunity when they are  
17 leaving on the last day they are there, you are not  
18 going to watch their dogs necessarily and they run out  
19 and they bite somebody, I don't think from a public  
20 standpoint we want that, and I think that is where we  
21 would be moving if I allowed -- and I don't think even  
22 the public policy part comes into it, I think that is a  
23 realistic consideration but I think from a legal  
24 standpoint it does not meet the definition.

25 Anything else?

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**MS. HUPFER:** No, your Honor.

**MR. SIDBALL:** No, your Honor.

*(THE PROCEEDINGS THEN CAME TO A CLOSE.)*

C E R T I F I C A T I O N   P A G E

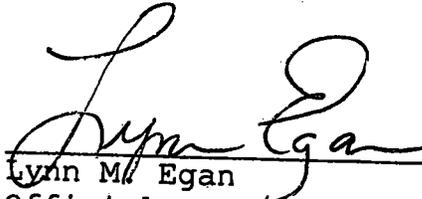
STATE OF WISCONSIN )

)      SS:

COUNTY OF WINNEBAGO )

I, LYNN M. EGAN, hereby certify that I am the Official Court Reporter for the Circuit Court, Branch 1, of Winnebago County, Oshkosh, Wisconsin. I made full and correct stenographic notes of the foregoing proceedings; that the same was later reduced to written form by Computer-Aided Transcription; and that the foregoing is a true and correct transcript of my original stenographic notes so taken.

Dated at Oshkosh, Wisconsin, this 14th day of SEPTEMBER, 2007.

  
Lynn M. Egan  
Official Court Reporter  
Circuit Court Branch 1  
Winnebago County Courthouse  
Oshkosh, Wisconsin.

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## CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with 809.19 (2) (a) and that contains:

- (1) a table of contents
- (2) relevant trial court entries
- (3) the findings or opinion of the trial court; and
- (4) portions of the record essential to an understanding of the issues raised including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 30<sup>th</sup> day of April, 2008.

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STATE OF WISCONSIN  
SUPREME COURT

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COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs-Appellants,

Appeal No.: 2007AP002651  
Circuit Court Case No.: 06-CV-1307

v.

AMERICAN FAMILY MUTUAL  
INSURANCE CO. and  
NANCY L. SEEFELDT,

Defendants-Respondents-Petitioners.

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**APPEAL FROM THE OCTOBER 9, 2007 ORDER OF THE  
WINNEBAGO COUNTY CIRCUIT COURT,  
HONORABLE THOMAS J. GRITTON, PRESIDING,  
CIRCUIT COURT CASE NO. 2006-CV-1307**

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**REPLY BRIEF OF  
DEFENDANTS-RESPONDENTS-PETITIONERS, AMERICAN FAMILY  
MUTUAL INSURANCE CO. AND NANCY L. SEELFELDT**

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## ARGUMENT

### **I. SEEFELDT IS NOT AN “OWNER” UNDER WISCONSIN STATUTE §174.02 BECAUSE THE LEGAL OWNER REMOVED THE DOG FROM SEEFELDT’S CUSTODY AND CONTROL, THEREBY TERMINATING SEEFELDT’S RESPONSIBILITY**

Pawlowski contends Nancy Seefeldt (“Seefeldt”) is an “owner” under Wis. Stat. §174.02 because “owner” under the statute includes anyone who “harbors” a dog. (App. Br. p. 5). Pawlowski relies on the definition of “harbor” in the Webster’s New Collegiate Dictionary:

1. To give shelter or refuge to
2. To have “an animal” in one’s keeping
3. To be the home or habitat of

(App. Br. p. 5).

Chapter 174 does not define “harbor” or “keeper.” There appears to be little distinction between “harborer” and “keeper” since the definition of “harbor” includes a keeper; i.e. “to have an animal in one’s keeping.” Where the meaning of a statute is plain, the Court ordinarily stops inquiry and gives the language its “common, ordinary, and accepted meaning, except that technically or specially-defined words or phrases are given their technical or special definitional meaning.” Noffke ex rel. Swenson v. Bakke, 2009 WI 10, ¶10, 760 N.W.2d 156, 160 *citing* State ex rel. Kalal v. Circuit Court for Dane County, 2004 WI 58, ¶44, 681 N.W.2d 110.

A dictionary may be used to guide the common, ordinary meaning of words. Id. The context and structure of a statute also is important to the meaning

of a statute. Id. at ¶11. Dictionaries often furnish more than one meaning of a word and a Court must be careful not to select a friendly definition to support its interpretation of the statute and the Court’s holding. Noffke at ¶60, (Abrahamson, C.J., concurring).

Reliance on a standard dictionary for guidance in defining a word in easily understood terms is not always appropriate due to legal nuances in statutory terms and language. State v. Harvey, 2006 WI App 26 ¶16, 710 N.W.2d 482. The Court must ascertain the legal definition consistent with the legislative intent. Id. “A standard dictionary definition should not by default become the legal definition of a term if it unfairly or inaccurately states the law or misconveys the legislative intent.” Id. at ¶17.

The dictionary definitions can be read to support either view. Seefeldt temporarily gave Waterman’s dog a place to stay, which arguably fits the first dictionary definition. However, at the time of the incident, Seefeldt did not have Walter Waterman’s (“Waterman”) dog in her keeping, and had no control over the dog or its whereabouts, which negates Seefeldt being found a keeper under the second definition.

If the Court had applied the strict dictionary definition of “harbor” in Malone by Bangert v. Fons, 217 Wis.2d 746, 580 N.W.2d 697 (Ct. App. 1998), it could have found the landlord was harboring the dog, since the dog was living on property he owned. It did not. Id. In Pattermann v. Pattermann, 173 Wis. 2d 143, 496 N.W.2d 613 (Ct. App. 1992), under the strict dictionary definition of

“harbor,” the court could have found the defendant mother was “harboring” the dog because the dog was in her home, she was giving it shelter/refuge at the time of the incident, and she directed her son where the dog should be kept. It did not. Id. In both cases the court looked at the facts and applied common sense to the definitions and the meaning of the statute.

Temporarily providing refuge to a dog’s legal owner and his dog is insufficient to hold a homeowner strictly liable as a §174.02 “owner.” The fact that Waterman, the dog’s legal owner, was temporarily staying with Seefeldt does not automatically transform Seefeldt into a statutory owner of the dog at all times and under all scenarios. The purpose behind §174.02 is to assign “responsibility to those in a position to protect innocent third parties from dog bites.” See Fire Ins. Exch. v. Cincinnati Ins. Co., 2000 WI App 82, ¶17, 610 N.W.2d 98. Thus, in order to further the statute’s purpose, there must be some element of custody or control to hold a homeowner who is not the dog’s legal owner strictly liable.

Pawlowski cites Armstrong v. Milwaukee Mut. Ins. Co., 202 Wis.2d 258, 549 N.W.2d 723 (1996) for the proposition that an individual who shelters or maintains a dog on her premises, or has custody of the dog at her home, is strictly liable under the statute as a “keeper.” (App. Br. p. 6). However, Pawlowski fails to address the Armstrong language providing that a person’s status as a keeper can change over time, with the focal point being the time of the injury. Id. at 267, 727. At the time of Pawlowski’s injury, the legal owner had assumed custody, control

and dominion of his dog, thereby terminating Seefeldt's responsibility and potential liability as a keeper.

**A. Waterman terminated Seefeldt's responsibility and potential liability as a keeper when he assumed full custody and control of his dog as he opened the door to leave Seefeldt's home.**

Pawlowski contends Janssen v. Voss, 189 Wis. 222, 207 N.W. 279 (1926) does not apply because: (1) there is no evidence Seefeldt intentionally relinquished custody and control of Waterman's dog, and (2) even if she had, she still provided shelter to the dog on an on-going basis. (App. Br. p. 8). These arguments fail.

First, Seefeldt is not required to affirmatively relinquish custody or control of the dog. At the point Waterman, the legal owner, opened the door to leave the house with his dogs, he terminated any dual authority Seefeldt may have exercised over the dog.

Second, Seefeldt's provision of "shelter" to Waterman and his dog on a temporary basis does not automatically make her an "owner" of the dog under §174.02. The statute does not require a homeowner who allows a dog and its legal owner to reside with her to be held strictly liable for injuries caused by the dog. The inquiry ought to be focused on who was in a position to control the dog at the time of the incident and thus prevent the injury. It follows that Seefeldt was not in a position to control Waterman's dog or prevent injury because she was not exercising any dominion or control over the dog. She was not present and was not participating in Waterman's activity of leaving the house with his dogs.

**B. Koetting v. Conroy does not apply.**

Koetting v. Conroy, 223 Wis. 550, 270 N.W. 625 (1936), can be distinguished from this case. The dog owner in Koetting was also the adult daughter of the homeowner. Although Wisconsin law does not obligate parents to support a child eighteen years or older, this familial relationship appeared to be a significant factor in the Koetting court's decision. That factor is not present here. However, setting the family relationship aside, the father in Koetting provided full lodging, board and support for his daughter and her dog. This factor also distinguishes Koetting from this case. Waterman was staying with Seefeldt temporarily while he got back on his feet. There record is void of any evidence Seefeldt provided Waterman or his dog with food or support beyond a roof over their heads.

Pawlowski contends the record does not support the claim that Waterman had assumed full custody of the dogs. (App. Br. p. 9). Although Waterman was not deposed, Seefeldt testified Waterman did not remain at the house after the incident, but proceeded to the grocery store with his dogs; she spoke to him upon his return and he said he had opened the front door to leave with the dogs, and Boo ran into the street and bit a woman. (R. 18:p. 12; Pet'r R-Ap. 147). Seefeldt's uncontroverted testimony is part of the appellate record. Further, Pawlowski's testimony corroborates this scenario:

[W]hen I was walking on Glenview I was walking to the right...and as I walked by the house, I was almost past it, and I heard, like a screen door or a door opening, and, so, I turned my head to look, and

I looked behind me, and as I did I saw two dogs jump off the porch....And Mr. Waterman was chasing them and calling their name, but they didn't, you know, pay any attention. And he got there and he grabbed them both. And he asked me if I wanted a ride home, but I was just upset and said, no, that I was fine.

(R. 18:p. 5; Pet'r R-Ap. 140). There is no contrary evidence in the record.

**C. An on-premises landlord who allows a non-family member and his dog to live on her property should not be held strictly liable under §174.02 for injuries caused by the dog when the landlord is not exercising custody or control over the dog.**

Pawlowski contends Seefeldt must be held strictly liable under §174.02 because Wisconsin does not recognize the concept of a pro-bono landlord, and the cases cited in Seefeldt's Brief relating to liability of landlords for injuries caused by their tenants dogs are not on point. (App. Br. p. 11). However, the fact that Waterman resided in Seefeldt's home and did not pay rent does not disqualify the analogy of a landlord/tenant relationship.<sup>1</sup>

An off-premises landlord has not been held liable as a keeper of his/her tenant's dogs because the off-premises landlord does not exercise any control over the dog. See Hagenau v. Millard, 182 Wis. 544, 195 N.W 718 (1923), Gonzales v. Wilkinson, 68 Wis.2d 154, 227 N.W.2d 907 (1975), Malone by Bangert v. Fons, 217 Wis.2d 746, 580 N.W.2d 697 (Ct. App. 1998). Similarly, Seefeldt, an on-premises landlord, was not exercising control or dominion over the dogs at the time of the incident.

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<sup>1</sup> "On-premises landlord" is a better term describing Seefeldt's role because Waterman and his dogs were allowed to stay in one of the bedrooms of her home on a temporary basis in exchange for Waterman's assistance with home repairs.

Pawlowski suggests Waterman could be considered a houseguest in Seefeldt's home. Even if this is an accurate description, this does not make Seefeldt a statutory owner under §174.02. Though Waterman and his dogs were temporarily staying at Seefeldt's residence, Seefeldt did not have custody or control of Waterman's dog at the time of the injury. Thus, Seefeldt was in no better position to prevent injury to Pawlowski than an off-premises landlord.

**D. A limited keeper is not liable for injuries caused by the dog after the legal owner has assumed custody and control of the dog, effectively terminating the responsibilities of the limited keeper towards the dog.**

Pawlowski asserts that Seefeldt could have established ground rules concerning Waterman's handling of the dogs when on and immediately off her premises. (App. Br. p. 13). However, there is no evidence in the record that Seefeldt observed any vicious tendencies by Waterman's dogs. She had never seen Waterman let the dogs out the front door without a leash. (R.18; p.14, Pet'r R-Ap. 149), thus there was no reason to create a leash rule. Finally, she was not aware that either of Waterman's dogs had bitten before. (R.18: p.13; Pet'r R-Ap. 148).

Pawlowski argues Seefeldt's responsibility as a limited keeper was not terminated by Waterman because Waterman also lacked control over the dogs at the time of the incident (App. Br. p. 14); i.e. Waterman's dog would not have bit Pawlowski if he had control over it. Id. This argument is circular and nonsensical. Waterman was exercising dominion over the dogs as he was exiting

Seefeldt's home to get in his car and go to the store. The fact that he did not effectively control his dog to prevent it from biting does not change this.

Pawlowski urges the Court to affirm the Court of Appeals' decision to avoid a preposterous result occurring any time a dog's legal owner could not be identified. (App. Br. at p. 14). However, here, the dog's legal owner can be, and was, identified. Waterman was the dog's legal owner. The problem here is that Pawlowski could not locate him for litigation purposes.

Pawlowski next presents hypothetical scenarios involving a stray dog. (App. Br. p. 14). However, these hypotheticals are not relevant to the case at bar. Waterman's act of opening the front door did not in and of itself terminate Seefeldt's liability. It was Waterman's assumption of custody, control and dominion over his dogs that terminated Seefeldt's liability as a keeper. If one of Seefeldt's neighbors came to the house and took the dog on a walk, for example, and the dog caused injury to a third person, the neighbor would have assumed care, custody and control of the dog, and only the neighbor and the legal owner of the dog, Waterman, should be liable under §174.02.

Pawlowski contends that absolving homeowners of liability for injuries caused by dogs temporarily residing at their homes would render the statute useless. (App. Br. p. 14). We disagree. There is no reason to hold a homeowner strictly liable under §174.02 for injuries caused by a tenant/houseguest's dog where: (1) the home owner did not have custody or control of the dog at the time of the injury, (2) there is no familial relationship between the homeowner and the

dog owning tenant/houseguest, and (3) the homeowner does not provide the sole source of lodging, board and support for the dog and its owner.

## **II. TO HOLD SEEFELDT LIABLE UNDER WIS. STAT. § 174.02 IS CONTRARY TO PUBLIC POLICY**

Pawlowski criticizes Seefeldt for applying the six public policy factors considered in Smaxwell v. Bayard, 2004 WI 101, 682 N.W.2d 923, because Smaxwell dealt with common law negligence questions only. However, Pawlowski fails to address Fandrey v. Connell, 2004 WI 62, 680 N.W.2d 345, which held that public policy factors can be applied to cases involving strict liability. The Fandrey court specifically stated:

The legislature has not in any way indicated that the judiciary is precluded from applying public policy factors to temper the sometimes-harsh results of strict liability under § 174.02. Thus, we hold that Wisconsin courts may utilize the traditional six public policy factors, formerly referred to as “proximate cause,” to limit liability in appropriate cases under § 174.02.

Id. at ¶ 19.

Pawlowski argues that Waterman did nothing to assume full custody and control of the dogs and Seefeldt did nothing to surrender her joint custody and control. (App. Br. p. 15). However, the undisputed evidence in the record shows that Waterman did act affirmatively to assume full custody and control: he was taking his dogs with him on a trip to the store and thus opened the door to leave the home. Seefeldt was not present and was exercising no control over the dogs during this enterprise. Although Waterman was not able to prevent his dog from biting Pawlowski, as he began his trip by opening the front door, he was

exercising control or dominion over the dog. Seefeldt, on the other hand, was not participating in the store outing, was not in the room where he opened the door, and did not learn that Waterman's dog ran out of the house without a leash and bit Pawlowski until the police informed her of the incident later.

Pawlowski contends §174.02 requires strict liability for homeowners who voluntarily provide shelter to a dog. (App. Br. p. 15). However, the word "shelter" does not appear in the definition of "owner" under §174.001(5). The legislature used the word "harbor" in the statute, not "shelter," when defining who can be held strictly liable as a statutory "owner." See §§ 174.001(5) and 174.02. Merely providing shelter to a dog's legal owner and his/her dog is not enough to hold a homeowner strictly liable for injuries caused by the dog. There must be some element of dominion (care, custody, or control) over a dog for a homeowner to be held strictly liable as a statutory "owner" of the dog, particularly when the dog's legal owner is present and is in fact exercising dominion over the animal at the time of the incident.

Pawlowski argues that Seefeldt was in a position to protect innocent bystanders from injury by Waterman's dog because she owned the home, purchased liability insurance for the premises, and was in the best position to make ground rules for the keeping of dogs on her property. (App. Br. p. 15). The same could be said about off-premises landlords and their tenants. Off-premises landlords own the property, purchase liability insurance for the premises, and are in a position to make ground rules regarding the keeping of dogs on their property.

Though Seefeldt could have prohibited Waterman from bringing the dog to her home, the same can be said about off-premises landlords and their tenants. However, Wisconsin Courts have not held off-premises landlords strictly liable for injuries caused by tenants' dogs under §174.02 because the off-premises landlord does not exercise any control over the dog. Hagenau, 195 N.W. at 719; Gonzales, 68 Wis.2d at 158; Malone, 217 Wis.2d at 766.

Seefeldt was in no better position to exercise control over Waterman's dog at the time of Pawlowski's injury than an off-premises landlord. Similar to an off-premises landlord, Seefeldt was not in the immediate vicinity of the incident, did not become aware that her "tenant" was leaving the home with his dogs until after the incident and was not involved in any way with the dog's whereabouts, actions or freedom of movement. (R. 18:pp. 11-12; Pet'r R-Ap. 161, R. 22:p. 6; Pet'r R-Ap. 147).

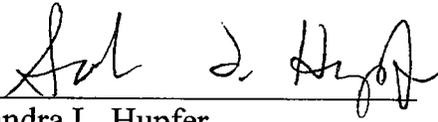
### **CONCLUSION**

Based upon the arguments set forth above, along with the arguments set forth in the Brief of Defendants-Respondents-Petitioners, Defendants-Respondents-Petitioners respectfully request this Court reverse the Court of Appeal's decision and affirm the Circuit Court's Order Granting Summary Judgment and Dismissal, dated October 9, 2007.

Dated this 14<sup>th</sup> day of May, 2009.

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**CERTIFICATION PAGE**

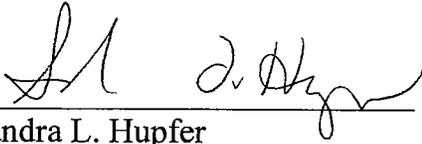
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Dated this 14<sup>th</sup> day of May, 2009.

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STATE OF WISCONSIN  
SUPREME COURT

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COLLEEN PAWLOWSKI and  
THOMAS PAWLOWSKI,

Plaintiffs-Appellants,

Appeal No. 2007AP002651

v.

Cir Ct. Case No. 06-CV-1307

AMERICAN FAMILY MUTUAL  
INSURANCE COMPANY and  
NANCY SEEFELDT,

Defendant-Respondents. *-Petitioners*

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REVIEW OF DECISION OF COURT OF APPEALS, DISTRICT II  
REVERSING AN OCTOBER 9, 2007 ORDER OF THE WINNEBAGO  
COUNTY CIRCUIT COURT, THE HONORABLE THOMAS J. GRITTON,  
PRESIDING

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AMICUS CURIAE BRIEF  
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## INTRODUCTION

The issue before this Court is whether a homeowner is liable for injuries caused by a dog she allows to be "kept" in her home when the dog injures a third party after being let outdoors by its legal owner. Stated differently, the issue is whether the liability of a dog's "keeper" under Wis. Stat. § 174.02 is extinguished when the dog's legal owner takes momentary control of the animal while it is residing at the keeper's home. The court of appeals correctly answered this question in the negative, as should this Court.

Dog bite injuries are a common occurrence in Wisconsin and affect many of the Wisconsin Association for Justice's members' clients. According to a 2001 study by the United States Center for Disease Control and Prevention, an estimated 68 million canines are kept as pets in the United States. Each year there are approximately 368,245 persons treated for dog bite injuries in emergency rooms across the country. Nearly half of those victims are children under the age of 14. Nonfatal dog bite-related injuries treated in Hospital Emergency Departments—United States, 2001, MMWR 52(26);605-610 (July 4, 2003).

Because of the frequency and severity of dog bite injuries, the Wisconsin Legislature enacted Wis. Stat. § 174.02, which holds statutory "owners" strictly liable for injuries caused by a dog to a person, domestic animal, or property. Wis. Stat. § 174.02(1)(a). Under the statute, an "owner" "includes any person who owns, harbors or keeps a dog." Wis. Stat. § 174.001(5) (emphasis added).

The purpose of § 174.02 is to protect people "from injury by dogs by whomsoever the dogs are kept or harbored and to make a person who keeps or harbors a dog responsible for all injuries inflicted by it . . . ." Koetting v. Conroy, 223 Wis. 550, 270 N.W. 625, 627 (1936). See also Fire. Ins. Exch. v. Cincinnati Ins. Co., 2000 WI App 82, ¶ 18, 234 Wis. 2d 314, 610 N.W.2d 98 (the statute "assigns responsibility to those in a position to protect innocent third parties from dog bites"—including both the actual owner of the dog and those who keep and harbor dogs).

American Family Mutual Insurance Company (American Family) argues that the liability of a person who "keeps" or "harbors" a dog ceases the moment its actual owner exercises some measure of control of the dog. However, cases interpreting § 174.02 establish that a statutory "keeper" is subject to strict liability so long as the keeper continues to afford shelter, protection, and lodging to the animal—regardless of who is "handling" the dog at the time of injury. To hold that the liability of one who keeps or harbors a dog is terminated anytime the dog's legal owner opens the door to the house would, as Judge Brown poignantly observed, "drown the statute in a sea of minutiae." Pawlowski v. Am. Family Mut. Ins. Co., 2009 App 7, ¶ 30, slip op., Appeal No. 2007AP2651 (Dec. 3, 2008).

Therefore, this Court should affirm the decision of the court of appeals and hold that a "keeper" remains strictly liable for injuries caused by a dog until the legal owner assumes full custody, care, and control of the animal.

## FACTUAL BACKGROUND

The facts of this case are relatively straightforward and undisputed. Nancy Seefeldt allowed Walter Waterman and his two dogs to move into her residence in June 2003 because Waterman had recently lost his job and needed a place to stay. Pawlowski, 2009 App 7, ¶ 3. Seefeldt owned dogs of her own and possessed a large, fenced-in backyard. Id. Although Waterman helped out with household chores, there is no indication that Seefeldt charged Waterman rent or treated the living arrangement as a landlord-tenant relationship. Instead, Waterman stayed in one of the bedrooms on the main floor of the home with his dogs as a house guest. (Am. Fam. Br. at 1-2.)

After approximately three months, one of Waterman's dogs injured a pedestrian, Colleen Pawlowski, after Waterman opened the front door to Seefeldt's home and allowed the dogs to proceed outside without a leash. Pawlowski, 2009 App 7, ¶ 4. The dog bit Colleen three times, causing 16 puncture wounds and soft tissue damage. Id., ¶ 5. Seefeldt was home when the injury occurred. Waterman continued to stay with Seefeldt for a period of time and then moved out.

## ARGUMENT

### **I. A STATUTORY "OWNER" UNDER § 174.02 INCLUDES ANYONE WHO SHELTERS AND PROVIDES LODGING AND REFUGE FOR DOGS IN THEIR HOME.**

"Wisconsin Stat. § 174.02 is a 'strict liability' statute wherein the legislature has made the policy choice to place the burden of damage caused by a dog on the dog's owner." Cole v. Hubanks, 2004 WI 74, ¶ 22, 272 Wis. 2d 539, 681 N.W.2d

147. As noted, an "owner" of a dog for purposes of Wis. Stat. § 174.02 "includes any person who owns, harbors or keeps a dog." Wis. Stat. § 174.001(5).

A statutory "keeper" is "one who keeps, watches or has custody" of a dog. Pattermann v. Pattermann, 173 Wis. 2d 143, 150, 496 N.W.2d 613 (Ct. App. 1992) (citing Janssen v. Voss, 189 Wis. 222, 224, 207 N.W. 279 (1926)), abrogated on other grounds by Smaxwell v. Bayard, 2004 WI 101, ¶ 42 n.8, 274 Wis. 2d 278, 682 N.W.2d 923 (relating to common-law negligence of landowners). Similarly, "[h]arboring" a dog "means to afford lodging, to shelter or to give refuge to a dog." Id. at 151.

Thus, one who keeps, "shelters" or affords housing to a dog meets the statutory definition of "owner." See Armstrong v. Milwaukee Mut. Ins. Co., 202 Wis. 2d 258, 266, 549 N.W.2d 723 (1996) ("a person who allows a dog to be kept at his dwelling" is liable for its conduct); Koetting, 270 N.W. at 626 (providing a dog with "shelter on his premises" renders homeowner a "keeper" of the dog.); Hagenau v. Millard, 182 Wis. 544, 195 N.W. 718, 719 (1923) ("the keeper is one who treats the dog as living at his house"); Malone v. Fons, 217 Wis. 2d 746, 766, 580 N.W.2d 697 (Ct. App. 1998) (a "harborer" is one who "afforded lodging, or gave shelter or refuge to the dog"); John P. Ludington, L.L.B., Who "harbors" or "keeps" dog under animal liability statute, 64 A.L.R. 4th 963 (1988) ("courts have expressly stated that "harboring" a dog . . . means sheltering or giving refuge to the dog.") As such, one who provides shelter and lodging for a dog at her residence is strictly liable for the conduct of the dog under § 174.02(1)(a).

It is undisputed that Seefeldt allowed Waterman and his dogs to reside in the main floor of her home for several months both before and after Colleen Pawlowski was seriously injured by one of the dogs. Because Seefeldt provided lodging, shelter, and refuge to Waterman's dogs, she "kept" and/or "harbored" his dogs and was thus a statutory "owner" thereof. Because the dogs were still being "kept" and/or "harbored" by Seefeldt at the time Colleen Pawlowski was injured, Seefeldt is liable for their conduct.

**II. A HOMEOWNER IS STRICTLY LIABLE FOR INJURIES CAUSED BY A DOG IF IT IS BEING "KEPT" OR "HARBORED" BY THE HOMEOWNER AT THE TIME OF INJURY, REGARDLESS OF WHO IS HANDLING THE DOG AT THE TIME OF INJURY.**

Although a keeper's status is subject to change over time and must be evaluated at the time of injury, Armstrong, 202 Wis. 2d at 266, the appropriate inquiry is whether the keeper was still providing shelter and protection to the dog at the time of injury—not whether the keeper was actually handling the dog. As the court of appeals correctly observed: "Wisconsin case law instructs that a statutory keeper retains keeper status, despite an owner's temporary control, unless the keeper has relinquished, custody, care *and* control of the dog to the owner at the time of the injury." Pawlowski, 2009 App 7, ¶ 2.

In Armstrong, an employee of a dog kennel sued the owners of a dog that injured him after they left the dog at the kennel before going on vacation. Id. at 261-62. The court held that the employee was a "keeper" at the time of injury and that the legal owners of the dog were not responsible for its injuries because they

"affirmatively relinquished physical custody and entrusted their dog to the employees at [the kennel] for the purpose of providing her with care." Id. at 267.

Armstrong must be read in light of this Court's earlier decision in Janssen v. Voss, 189 Wis. 222, 224, 207 N.W.2d 279 (1926). In Janssen, the court held that the keeper of a dog was not liable for its conduct after she had left it with an animal hospital while she was out of town. Her son, the dog's legal owner, subsequently removed the dog from the hospital and returned it to her home where it injured someone. The court held that the mother's "authority over and liability for the dog . . . immediately ceased" when she left it at the animal hospital and her son took possession of the dog. Id. at 280.

Both Armstrong and Janssen hinged on the fact that the absentee defendants in each case had relinquished complete care, custody, and control of their dogs and could not exercise any power or authority over the animals at the time of injury. Thus, these cases recognize that a keeper is not absolved of liability for a dog's conduct until the dog is placed in the care, custody, and control of another.

Conversely, if the dog is still receiving the protection and shelter of the keeper's home at the time of injury, the keeper remains liable, regardless of who is actually controlling the dog at the time of injury. For instance, in Koetting, 270 N.W. at 626, the plaintiff was injured by an unleashed dog running in a public park. The court held the dog's owner's father liable for the plaintiff's injuries

because the dog (and the daughter) lived at the father's house at the time of injury and received shelter and protection. Id. at 625.

Notably, the court in Koetting held that the father could be held liable as a "keeper" even though: (1) "There was no evidence that the [father] ever took the dog with him when he was alone either in the automobile or when out walking, or that he took the dog out for exercise"; (2) "The [father] had no knowledge that the daughter had the dog out at the immediate time"; and, most importantly; (3) even though "[t]he [father] exercised no control over the dog except that he controlled whether the dog should be kept in his home or not and whether it should be fed from the family larder or not." Id. at 626, 627. Indeed, the court held that *the fact that the father controlled whether the dog stayed at his house* was the "sort of control . . . that, in view of the statute and the cases above cited, *makes him the dog's keeper.*" Id. at 627 (emphasis added).

This case and Koetting both involve a homeowner's responsibility for a dog owned by another household member that injured a third party off-premises while being handled by its legal owner.<sup>1</sup> In both cases, the only connection between the homeowner and the dog was that the homeowner provided the dog and its owner with lodging and shelter. Koetting therefore forecloses any argument that the liability of a keeper is extinguished by the temporary assumption of control by the dog's legal owner. Under Koetting, liability is based on the keeper's continuing

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<sup>1</sup> Notably, the injury in the present case occurred *as the dog was being let out of Seefeldt's residence*, whereas in Koetting, the injury occurred when the dog and its owner were in a public park.

provision of shelter and lodging and is not dependent upon the identity of the person handling the dog at the time of injury.

American Family suggests that Koetting should be limited to cases involving a keeper that is a blood-relative of the dog's legal owner. However, this rationale was expressly rejected by the court in Janssen. There, the court held:

The dominion of the mother over the dog was not by reason of the fact that she was the guardian of the property of the son. . . . Her action in [placing the dog in an animal hospital] was simply in discharge of duties resting upon her as keeper of the dog.

207 N.W. at 280 (emphasis added). Therefore, Janssen makes it crystal clear that the liability of a "keeper" is not dependent on a familial relationship between the keeper and the dog's legal owner.

Further, by focusing on the identity of the dog's handler at the time of injury, American Family ignores the pronouncement in Armstrong, 191 Wis. 2d at 569, that "[t]he statute offers no basis to say that liability for one 'owner' precludes liability for another 'owner' as a matter of law . . . [T]he statute does allow the potential for 'dual liability' of a legal owner and a keeper/owner." Under American Family's view of the law, anytime the legal owner of a dog is handling the dog in or around the yard of a statutory "harborer" or "keeper," the homeowner is absolved of all liability. This means that anytime the dog's owner is present, the "dual liability" discussed in Armstrong would disappear.

Additionally, American Family's argument, if accepted, would indeed "drown the statute in a sea of minutiae." For example, imagine a scenario in

which an adult owns a dog and resides with her parents. One weekend, the dog bites a guest as the family is holding a barbeque in the backyard. The daughter is at the other end of the yard at the time of injury, and all family members interacted with the dog before the injury. If a court were to employ American Family's analysis, it would need to examine such things as which family member was in closest proximity with the dog before the injury, which family member last had contact with the dog, and which family member, if any, was supposed to be watching the dog at the time, etc.

However, § 174.02 does not require this type of picayune analysis as related to the liability of a "keeper." Under § 174.02, only one question is pertinent: was the homeowner providing shelter and refuge to the dog at the time it injured a third party? If so, then the homeowner was a "keeper" and is liable—even if the dog's legal owner was handling the dog or supposed to be watching it at the time of injury.

Therefore, under § 174.02, a "keeper" remains strictly liable for injuries caused by a dog up until the point in time when the legal owner assumes full custody, care, and control of the dog, and the dog ceases to be "kept" at the premises.

### **III. PUBLIC POLICY DOES NOT PRECLUDE A KEEPER'S "DUAL LIABILITY" WITH A DOG'S LEGAL OWNER UNDER THE FACTS OF THIS CASE.**

In this case, it is undisputed that Waterman and his dogs lived on the main floor in Seefeldt's household. Seefeldt made a conscious choice to afford lodging,

shelter, and protection to Waterman and his dogs. Waterman's dog injured Pawlowski just as it was let out the door of Seefeldt's house, and Seefeldt was present at the time. Imposing liability in this case furthers the policy embodied in Wis. Stat. § 174.02 of protecting innocent people "from injury by dogs by whomsoever the dogs are kept or harbored and . . . mak[ing] a person who keeps or harbors a dog responsible for all injuries inflicted by it . . . ." Koetting, 270 N.W. at 627. As between Colleen and Seefeldt, Seefeldt was in the best position so as to guard against injuries from Waterman's dogs. Holding Seefeldt responsible for the conduct of the dogs she permitted to be kept at her home comports with the legislative policy underlying § 174.02 and ensures that an innocent victim of a dog bite receives justice.

Although American Family makes much of the fact that Seefeldt supposedly did not know Waterman's dogs were "dangerous," this fact is irrelevant under Wis. Stat. § 174.02. Under the statute, a statutory "owner's" knowledge of an animal's dangerous propensities is relevant only to the issue of double damages—not the owner's initial liability. See Wis. Stat. § 174.02(1)(b).

American Family also argues that the court should consider Waterman to be the equivalent of a "tenant" and Seefeldt an "off-premises" landlord. Pawlowski's Response Brief succinctly explains that there is no authority in Wisconsin for treating a houseguest or cohabitant as a "tenant." (Resp. Br. at 11-12),

In addition to being legally unsound, American Family's landlord/tenant argument fails to take into account that the primary "policy" concern in the landlord tenant cases is the fear that imposing liability on landlords for their tenants' dogs would have "no sensible just stopping point" and would result in the abolishment of animals in rental properties. See, e.g., Smaxwell, 274 Wis. 2d 278, ¶ 46; Malone, 217 Wis. 2d at 766-767. This concern is based on an off-premises landlord's inability to control the daily actions of tenants and their dogs and manage the risk of dog-bite injuries. See id.

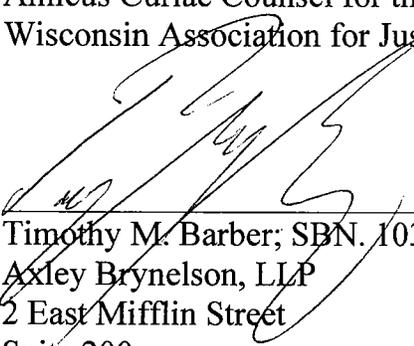
In contrast, a houseguest is subject to the constant direction and control of the homeowner and may be forced to leave at any time. A homeowner has the ability to control the circumstances under which a houseguest's pet is kept and can supervise and control the daily activities of the dog and its owner. Therefore, the policy concerns identified in the landlord/tenant cases have no bearing in the case at hand.

### **CONCLUSION**

For the foregoing reasons, this Court should affirm the decision of the court of appeals and hold that the liability of a "keeper" is not extinguished by a dog owner's momentary assertion of control of his dog while the dog is residing at the keeper's home.

Respectfully submitted this <sup>29<sup>th</sup></sup> day of June, 2009

Amicus Curiae Counsel for the  
Wisconsin Association for Justice



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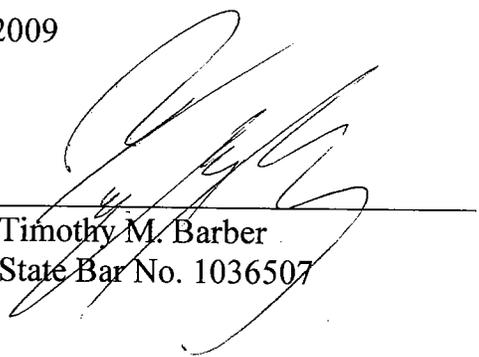
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**FORM AND LENGTH CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font (Times New Roman 13 pt for body text and 11 pt for quotes and footnotes).

The length of this brief is 2973 words.

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