

Montgomery Co. jury awards more than \$500K to dog-bite victim

By: [Heather Cobun](#) Daily Record Legal Affairs Writer August 10, 2017



Toro, a pit bull, bit a 7-year-old girl in Silver Spring in 2012, causing scarring on her leg and multiple surgeries, according to the family's lawyer. The dog's owner was ordered by a Montgomery County jury Wednesday to pay the girl and her family \$545,000 for the attack. (Courtesy Richard E. Schimel)

A Montgomery County jury Wednesday awarded \$545,000 to a 7-year-old girl who was bitten by a pit bull owned by her father's landlord in 2012.

The girl, who has scarring on her leg, required five surgeries and has post-traumatic stress, received \$275,000 in economic damages and \$270,000 noneconomic damages, according to attorney Timothy F. Maloney.

The attack occurred during the period after the Court of Appeals ruled in *Tracey v. Solesky* that pit bulls were inherently dangerous and owners would be strictly liable for injuries and is believed to be the first case from that time to make it to trial.

The plaintiff was visiting her father, was renting a room in Silver Spring from Andrew Kaupert who in turn was renting the house from his parents, co-defendants William Kaupert Jr. and Isobel Ruth Kaupert. Andrew Kaupert had left the house when his pit bull, Toro attacked her, biting her in the leg twice as she and her father tried to get him to stop.

Toro had previously bitten a mail carrier in 2011, and Kaupert had numerous run-ins with animal control prior to the incident, according to Maloney, a principal at Joseph, Greenwald & Laake P.A. in Greenbelt.

"This was a case where the community had been crying out for relief for years and something was bound to happen because of the demonstrated negligence of the owner," he said.

The plaintiff argued Kaupert should be held strictly liable for the incident and also claimed he and his parents were negligent because of Kaupert's lengthy history of complaints and court orders regarding his dogs.

"This (case) dealt not only with the dangerous propensities of Toro but also the negligence of the dog owner that he was not a proper and fit dog owner and the parents should have known that," Maloney said.

Kaupert's attorney, Greenbelt solo practitioner Sean R. Day, declined to comment Thursday.

The defense debated whether Toro was a pit bull, calling experts on the breed that discussed the varying problems defining what a pit bull is and arguing they are not inherently dangerous, according to Maloney. The expert also testified that Toro was not dangerous.

The jury deliberated for less than five hours following an eight-day trial.

Legislative issues

The elder Kauperts settled while the jury was deliberating. They were represented by Richard E. Schimel, who was on the losing end in the *Solesky* case.

The recent trial "was a very interesting case which raised some very interesting gaps in Maryland common law," said Schimel, of counsel to Bregman, Berbert, Schwartz & Gilday LLC in Bethesda, citing the definitions of harboring a dog as well as provocation. Robert A. "Bobby" Zirkin of Zirkin & Schmerling Law in Pikesville, the plaintiffs' co-counsel, said the case highlights the inadequacies in the law on dog bites passed after *Solesky*.

The case "came out the way it was supposed to come out but clearly our law is not where it's supposed to be on those issues," said Zirkin, a Baltimore County Democrat who chairs the Senate Judicial Proceedings Committee. "It was an interesting trial that highlighted a lot of undecided issues under the law."

The Maryland General Assembly passed breed-neutral legislation in 2014 holding dog owners liable for injuries and death caused by their dogs unless they can prove they had no way of knowing their dog was dangerous or vicious.

Zirkin said he agrees with breed neutrality but he and others are looking into how to improve the law in the upcoming session.

"It's not the dog, it's the owner, but at the end of the day, the focus should be on the victim," he said. "If the victim is blameless, then they should be compensated for dog bite attacks."