

# OADC OUTLOOK

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## President's Message

by Jeromy Brown

It is unreal to think my year as the 41<sup>st</sup> President of OADC is almost a third over as I sit to write this initial newsletter for 2010. I am truly honored to serve as the President of OADC this year and cannot believe my involvement in OADC has resulted in my serving in this position. Your involvement in and commitment to OADC are the keys to make 2010 another banner year. There are plenty of ways to get involved, and here are some examples -

This year began on the run and it looks like it will stay that way - on January 29 we had the Winter Meeting at the Skirvin. Despite the weather we experienced it was a wonderful turnout. Members stayed late hours visiting with one another and enjoying the wintry atmosphere. Grady Parker gave a presentation on the DRI Annual Meeting in San Diego this year - if you are interested in attending, get in touch with Grady at [gpark@lnjlaw.com](mailto:gpark@lnjlaw.com). Robert Lafferandre was awarded the Outstanding Defense Lawyer of the Year for 2009. Congratulations and keep up the good work! A special thanks goes to Burt Johnson for his attendance that night and his presentation on the history of OADC. Burt was an inspiration to all.

Next, I want to extend a special thanks to Tom Hird for the work he has already done in OADC this year. With his lead on the brief, OADC has already filed an Amicus Brief with the Oklahoma Supreme Court in *Geico v. Quine*, Case No. CQ-107876 on an important UM issue. Thanks also to Angela Ailles-Bahm, Roger Butler and Bob Naifeh for their contributions to that project.

The legislative session is going, and so is our Legislative Committee. Pete Serrata and Bob Naifeh are working hard in that respect. One of the ways OADC can have an impact in regard to legislation that may impact our members and your clients is by members getting involved with legislators and assuring they know where you and your clients stand on issues. Our legislative committee hopes to assist in that respect by keeping membership informed on issues, as they have already done this year.

June 17-20, is the Summer Meeting in Las Colinas! Be sure to block those dates and plan to attend! Malinda Matlock and Leslie Lynch have already started working hard on the CLE for the meeting and I think it will be one a little different and one you will enjoy.

I need to thank Mike Heron for all he did this past year for OADC as President - he served us well and continues to do so. I also want to thank Jon Starr for pushing the membership to new levels during the past year - we are over 400 strong thanks in large part to his push!

Thank you again for the opportunity to represent this group during 2010. I will work hard to assure my designation is worthy of the group I represent. I hope you have a great year in your practice and in OADC, and I think you can do that if you follow the lead of those mentioned herein and get involved!

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# Must Love Dogs?

Mathew Wade  
Angela D. Ailles & Associates

According to the Center for Disease Control, dog bites occur every 75 seconds in the United States. Each day, over 1,000 citizens need emergency care to treat a dog bite. A published report from 2001 examined the frequency of U.S. dog bite injuries treated by emergency care facilities and found:

1. In 1994, an estimated 4.7 million dog bites occurred in the United States and approximately 799,700 persons required medical care.
2. Of an estimated 333,700 patients treated for dog bites in emergency departments in 1994, approximately 6,000 were hospitalized.
3. In 2001, an estimated 368,245 persons were treated in U.S. emergency rooms for nonfatal dog bite-related injuries.

Dr. J. Gilchrist, M.D., et al., National Center for Injury Prevention and Control, Center for Disease Control, *Nonfatal Dog Bite-Related Injuries Treated in Hospital Emergency Departments – United States* (2001).

Oklahoma has long recognized the rule of strict liability of owners for their dog's bites. According to Title 4, Section 42.1 of the Oklahoma Statutes:

The owner or owners of any dog shall be liable for damages to the full amount of any damages sustained when his dog, without provocation, bites or injures any person while such person is in or on a place where he has a lawful right to be.

However, questions have remained in Oklahoma regarding the liability of a non-dog owner for the actions of a dog which occur on their property. More specifically, are landlords or owners of real property liable for the actions of their tenant's dogs? According to case law, the answer is simple. Yet, insurance companies (specifically this author) and their insureds are fighting more and more lawsuits aimed at the landlord/non-dog owner than ever before. Generally, this is because the tenant lacks insurance or assets to compensate someone injured by their own dog.

In Oklahoma, the owner of real property is not liable for damages resulting from the actions of a dog owned by a tenant. In the case of Bishop By and Through Childers v. Carroll, 1994 OK CIV APP 37, 872 P.2d 407, the Court of Civil Appeals considered a case with issues about the ownership and control of a renter's dog. The defendant Carroll had purchased a house for the use of her adult daughter. After a brief period of time, the daughter moved out and rented the property to friends identified in the case as the VanScoys. The VanScoys paid rent to the daughter's mother, defendant Carroll. The VanScoys owned three Rottweilers. One of the dogs, Rowdy, "exhibited past conduct sufficient to classify it as 'vicious' under the Oklahoma City ordinance" applicable at the time. Plaintiff's minor child, Karrlinda Bishop, was bitten by

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Rowdy. Plaintiff filed suit against the VanScoys as well as Carroll who owned the property. The court refused to hold the owner of the property, Ms. Carroll, liable for a dog bite perpetrated by a dog owned by her tenants, the VanScoys.

Plaintiffs in Bishop relied upon the case of Hampton ex rel. Hampton v. Hammons, 1987 OK 77, 743 P.2d 1053. Therein, a father was found liable for injuries sustained as a result of a bite committed by a dog “owned” by his son. However, the facts in Hampton were distinguishable from the facts in Bishop. In Hampton, the son lived with the father in the same house and the father was found to be a care taker of the dog. Also, Hampton was based upon an interpretation of a City of Tulsa Municipal Ordinance that clearly made anyone who took it upon himself to care for or maintain custody and control of a dog an “owner” under the law and, therefore, liable for the dog’s vicious conduct. Such was not the case in Bishop. In distinguishing Bishop, and refusing to hold the **owner** of the property liable for the conduct of a **tenant’s** dog, the court said the following:

Plaintiffs urge here extension of Hampton to this matter. This we are unable to do for the reasons set out below. There was no evidence that:

1. The attacking dog, “Rowdy,” was of a vicious breed;
2. Carroll’s daughter had any knowledge the dog Rowdy was of a vicious propensity;
3. Carroll had any direct knowledge dogs were kept on the rental premises;
4. Carroll in any way contributed to the maintenance of the dog Rowdy;
5. Carroll had or exercised any care, custody or control over the actions of the dog Rowdy; or
6. Carroll in any manner violated the Oklahoma City ordinance by “harboring” a vicious animal.

Under the above facts, Carroll cannot be forced into a set of tort elements from which liability would attach to her for an alleged violation of the Oklahoma City ordinance or an extension of Hampton based upon a “harboring” rationale.”

Bishop, 1994 OK CIV APP 37 at ¶ 6, 872 P.2d at 408.

Bishop went even further and abrogated the use of the above criteria for determining if a landlord or owner of property could be held liable for injuries sustained as a result of a bite committed by a tenant’s dog. The Bishop court stated the following:

Moreover, we are persuaded by the application of the language in Clemmons v. Fiddler, 58 Wash. App. 32, 791 P.2d 257, 259 (1990), stating that prior cases had given the wrong impression in that the cases:

Mentioned that there was no evidence that the property owners in question had knowledge or reason to know that the dogs were on the property or had vicious tendencies, and observed in dicta that had the defendant property owners known of the dog and its tendencies, a different question might have been presented. *These dicta fostered the impression that if the property owners or landlords knew of the dog’s tendencies, liability would attach. . . . This impression should be dispelled.* The common law rule, which is the settled law of Washington, is clear: *only the owner, keeper, or harbinger of such a dog is liable.*

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*The landlord of an owner, keeper or harbinger is not.*

. . . There is here no evidence of record of a substantial controversy upon which reasonable men could disagree and which would allow liability to attach to the defendant Carroll for this unfortunate incident.

(Emphasis added.) Bishop, Id. at ¶ 7, 872 P.2d at 408-409.

Most recently, the Oklahoma Court of Civil Appeals reviewed the trial court's decision to grant summary judgment in the matter of Eastin v. Aggerwal, et. al., 2009 OK CIV APP 67, 218 P.3d 523. The Aggerwals, residents of India, owned property in Tulsa County which was maintained through a power of attorney held by their son. The property was rented to the co-defendants and the lease agreement excluded the possession of pets on the property without express permission from the landlord and an additional security deposit. Sometime after the property was occupied by the tenant, a dog was brought to the home and kept chained in the back yard. Subsequently, the minor plaintiff was severely attacked and bitten. Plaintiffs alleged that the defendant Aggerwals negligently maintained their property when they failed to properly repair a chain link fence. However, the evidence supported the finding that the defendants were not aware of the existence of the animal and had not repaired the fence (done before the tenant moved in) with the intention of offering protection to the tenants or third parties. Summary judgment was affirmed. Id.

As more and more Oklahomans purchase investment property in the form of rental homes, condominiums and apartments, they need to be aware of the liability issues surrounding their tenants' use of the property. Certainly, lease agreements should contain specific language regarding the tenant's right to have pets on the property, remedies for when the tenant violates these provisions, and possibly additional security deposits for when pets are allowed. As yet, the Courts have not extended liability for an absentee landlord beyond the scope discussed above and have even limited the liability by reiterating that the landlord has no duty to return to the property and check to see if animals are present in violation of the lease. In this author's opinion, so long as the landlord does not exercise dominion and control, or otherwise harbor a tenant's pet, no liability exists for injuries or damages caused by a tenant's pet. Therefore, absent a showing that the landlord assisted in the care and maintenance of a tenant's pet, a landlord should be relatively confident that they are shielded from liability for the actions of that pet.

## ***Coming in the Next Issue:***

### **“What Happens at Mediation Does Not Necessarily Stay at Mediation”**

Amy R. Steele

Pierce Couch Hendrickson Baysinger & Green, LLP  
Oklahoma City, Oklahoma

Anyone who has ever attended a mediation has heard the mediator assure the parties that what happens during the mediation process is confidential and cannot be used or shared outside the mediation. The mediator’s statements give the parties the same assurance provided by the Las Vegas tourism board – “What happens here, stays here.” Often, those involved in mediation have heard these assurances so many times that they internalize the mediator’s words, and the parties trust that the participants hold the mediation process and disclosures in confidence. However, the assurances are overstated, and there are a number of incidents where courts allow the sharing of information disclosed during the mediation or settlement negotiation process and allow a party to use the communications against the party making the original disclosure.

## **2010 OADC Officers & Directors**

President .....	Jeromy Brown
President Elect .....	G. Calvin Sharpe
Vice President .....	Nathan Clark
Immediate Past President .....	Michael Heron
Treasurer .....	Angela Ailles-Bahm
Secretary .....	Jennifer Annis
Board of Directors .....	Brad Jackson
Board of Directors .....	Carrie Palmer
Board of Directors .....	Whitney Eschenheimer
Board of Directors .....	Michael Maloan
Board of Directors .....	Malinda Matlock
Board of Directors .....	David McPhail
Board of Directors .....	David Russell
Board of Directors .....	Mike Carter
Board of Directors .....	Jimmy Secret III
DRI Representative .....	Grady Parker
Executive Director .....	Skoshi Heron

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# OADC Summer Meeting

The Four Seasons - Las Colinas, Texas  
June 17 - 19

## **Thursday, June 17**

1:30 - 4:30 CLE

5:30 - 6:30 Reception

## **Friday, June 18**

8:30 - 11:30 CLE

Golf Tournament

6:30 - 9:30 President's Reception, Dinner & Dance\*

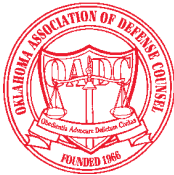
## **Saturday, June 19**

No Activities planned

\*Please note the change of day for the President Reception. It has been moved from Saturday night to Friday night. NO official OADC activities are planned for Saturday.

6 Hours CLE  
\$400 Members  
\$500 Non-Members  
\$100 late fee after 6/1

**Watch your email for registration information!**



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