

Subject: Dog bites the hand that feeds it, and the insurance fur flies.

Q. We're in the early stages of a dog bite claim, and I'm looking for a second opinion regarding coverage under a Homeowners Policy. During the week between Christmas and New Year's, my insured spent the week at her condo in Panama City Beach, Florida. She has a Doberman, but did not want to take him on such a long trip. She asked a friend who lives down the street to come by on her way to and from work each day to check on the dog.

For some unknown reason, the dog suddenly bit the friend one afternoon. Unfortunately, it was a deep bite, and injured some nerves in her arm. We notified our insured's carrier as soon as we found out about the incident. Late yesterday afternoon, we got an initial email response from the adjuster indicating that they would probably offer medical payments coverage, but deny the liability claim that is surely coming, given the seriousness of the injury. The basis seems to be that since the friend was taking care of the dog, she is considered an insured in the Homeowners Policy of the dog's owner (our insured), and there is an exclusion for BI to an insured.

The adjuster also mentioned that she had just read an article about a Supreme Court case handed down last month in Nebraska, which upheld the exclusion in a similar situation. I am not completely convinced that this should be excluded, and would appreciate your views.

A. Based on my understanding of the claim situation as you described it, I agree with you. I believe this claim would be covered under the ISO (Insurance Services Office) Homeowners Policy, barring any other facts we don't know about at present. More on that in a minute.

I also read an article in the trade press on the Nebraska case, and being the insurance nerd that I am, I pulled the case and read it. (*Van Kleek v. Farmers Insurance*, 289 Neb. 730.) As it turns out, the Homeowners Policy that was the focus of the case is similar to ISO, but not in every detail. Importantly, one of the differences is that the ISO form would have covered the claim, whereas the actual Homeowners Policy under which coverage was sought, did not.

First, here are pertinent excerpts from the current ISO Homeowners Policy:

HO 00 03 05 11

Definitions

5. "Insured" means:

- a.** *You and residents of your household who are:*
- (1) *Your relatives; or*
 - (2) *Other persons under the age of 21 and in your care or the care of a resident of your household who is your relative;*
- b.** *A student enrolled in school full-time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:*
- (1) *24 and your relative; or*
 - (2) *21 and in your care or the care of a resident of your household who is your relative; or*
- c. Under Section II:**
- (1) *With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person described in 5.a. or b. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner;*

The non-ISO form from the court case includes essentially the same definition of "insured." The key difference between the two forms is the exclusion for bodily injury TO an "insured." Here is the ISO form :

HO 00 03 05 11

Section II – Liability Coverages

Section II – Exclusions

F. Coverage E – Personal Liability

Coverage E does not apply to:

6. *"Bodily injury" to you or an "insured" as defined under Definition 5.a. or b.*

The comparable exclusion in the court case reads as follows:

Section II – Liability Exclusions

Coverage E (Personal Liability) and Coverage F (Medical Payments to Others), do not apply to:

1. *Any "insured."*

Note the important difference. The ISO exclusion for bodily injury to "insureds" only applies to "insureds" described in 5.a. and 5.b. of the definition of "Insured." The exclusion does not apply to "insureds" described in 5.c., which is "any person legally responsible for these animals." The non-ISO form excludes bodily injury to "any insured." So I think you can quickly determine whether or not there is coverage in your insured's Homeowners Policy by reviewing these provisions.

This case is a textbook example of how coverage forms differ. With the deluge of insurance ads on TV these days, consumers could easily conclude that the only difference between insurance is the price. In fact, there are occasionally articles in the trade press discussing the issue of insurance being portrayed as a “commodity,” meaning all coverage is the same except for price and service. On the contrary, I get questions every day from insurance agents, and in so many cases where coverage is involved, differences such as the ones discussed here come to light.

That’s not to say that every coverage form that provides less coverage than ISO is bad. In the free market, insurers are allowed to offer variations on coverages in any way they like, so long as the respective state department of insurance approves. But like most things in a free market, price is usually an indicator of value. On the other hand, consumers are free to purchase a lower-priced product if they wish to. That’s capitalism. At the same time, some insurers offer policies which provide broader coverages than ISO, and that gives consumers even more choice. One additional note is that coverage can differ from one edition date to another, whether ISO or non-ISO. In fact, an earlier edition of the Homeowners Policy in the court case would have covered the claim, based on my reading of that form.

Insurance practitioners need to be observant of details such as this. For example, ISO forms have the following footer note on each page: “©Insurance Services Offices, Inc.” or “© ISO Properties, Inc.” But some proprietary forms are based on ISO language, but contain differences. Often, the footer on these forms says, “Includes copyrighted material of Insurance Services Office, Inc.”

One important issue for agents is to know what they’re selling, and be able to discuss coverage differences with insureds as the need or situation arises.

As I mentioned in the beginning, there could be other facts present in a similar dog bite case which would cause the claim to be excluded, even under an ISO Homeowners Policy. One that comes to mind is where people “dog sit” as a business. The growing popularity of Uber, Airbnb, and other well-known names in the so-called “sharing economy” has opened up a universe of similar services. Pet-sitting is among one of the fastest growing segments, and there is a proliferation of services such as [Holidog](#), [Rover](#), [Dogvacay](#), and others. In addition, one variation are websites which offer an assortment of services, such as [Taskrabbit](#), which is an online platform where people can find all sorts of help, from home cleaning, handyman, running errands, and so forth.

While these many platforms and website services describe themselves as part of the new “sharing economy,” from an insurance standpoint, nearly all would be considered a

“business,” in which case the business exclusion in the standard Homeowners Policy would apply. So in the court case, or in your insured’s case, had the dog-sitting been done as a business, the definition of an “insured” in **5.c.** does not extend to include anyone “*using or having custody of these animals ...in the course of any ‘business’.*”

Additional information.

Here are several articles from the IIABA’s Virtual University which relate to the issues discussed here:

["Who Let the Dogs Out?"](#) (Excellent discussion of various dog-bite claims.)

["Gun Liability Coverage"](#) (Illustrates how self-defense coverage under ISO Homeowners Policies differs by edition date.)

["Is It ISO or Is It Memorex Insurance Company?"](#) (Comprehensive discussion of how to distinguish “straight-ISO” forms from proprietary forms.)

["Is Insurance A Commodity?"](#) (Resource page with links.)

["The Commoditization of P&C Insurance"](#) (A veteran insurance expert’s views.)

These articles deal with some of the “sharing economy” issues in insurance:

["House Sharing and Car Sharing"](#)

["Insurance Implications of Car Sharing"](#)

["Zipcars"](#)

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