

TRIAL

This month
**Proving
invisible
injuries**

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**ATLA women
lobby Congress, p 10**

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The case was brought by the mother of 12-year-old Monica Graham, who in July 1999 was walking with three other girls by the house of Michael Myers. His 15-year-old stepson, Jaton Griffin, was in the yard with two friends and the family pit bull. Griffin allegedly prompted the dog to chase the girls, and when it did so, Graham fled into the street and was struck by a passing car. She suffered two broken arms, a broken leg, and a fractured jaw.

Graham's mother, Mattie Moore, brought a negligence action against Mia Young, the driver of the car; Myers, the dog's owner; his wife, Jeanne Griffin Myers; and her son, Jaton Griffin. The trial court granted judgment in favor of all the defendants except Young. The jury ruled in Young's favor.

The appeals court remanded the case for trial on Michael Myers's negligence, his negligent entrustment of the dog to Griffin, and Griffin's negligence. The plaintiff conceded that the trial court was correct in granting judgment in Jeanne Griffin Myers's favor because there was no evidence that she owned the dog.

The trial court had held that Moore didn't establish causation because she didn't show why her daughter ran in the direction she did, Finnegan said. However, "the appeals court agreed that there are plenty of facts to establish causation." It said the lower court had failed to view the evidence in the light most favorable to the plaintiff.

At the time of the incident, the dog was unleashed and unconfined, in violation of a county law; that violation is prima facie evidence of negligence, Finnegan said. Because animal control statutes are designed to protect the public, Graham was among the statute's protected class.

"Injuries suffered as a result of fleeing an approaching pit bull that is both unconfined and unleashed, in violation of county law, are the kind of injuries that the ordinance was meant to prevent," Judge Peter Krauser wrote for the three-judge panel.

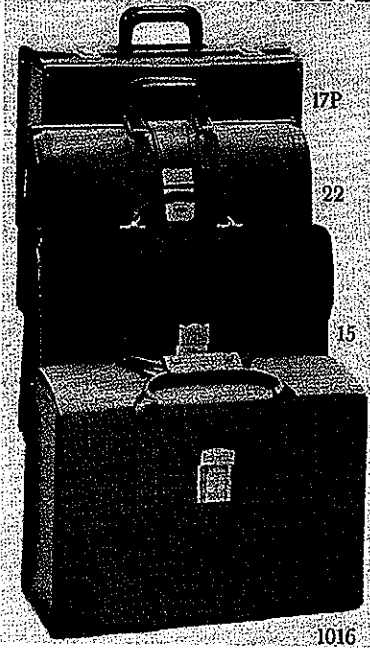
Myers argued that if any negligence could be attributed to him, it would be

Maryland appeals court extends negligent entrustment to pit bulls

A man who entrusted a pit bull to his stepson's care can be sued for negligence and negligent entrustment, the Maryland Court of Special Appeals has ruled in a case where a girl was hit by a car while fleeing from the approaching dog. (*Moore v. Myers*, 868 A.2d 954 (Md. Ct. Spec. App. 2005).)

The decision may affect the breadth of Maryland's negligent-entrustment law, which typically applies to "dangerous instrumentalities" such as cars and guns, according to Kevin Finnegan and Thomas Farrington of Silver Spring, who represent the plaintiff.

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superseded by the intervening actions of Griffin and Young. The appeals court disagreed. Krauser wrote that the jury could have reasonably concluded "that Mr. Myers should have foreseen the danger posed by his dog to the children outside his house" and that if he had complied with the county ordinance, "the accident would probably not have occurred."

The trial court said the plaintiff's negligent-entrustment theory was "novel" but "doesn't hold water," as

was likely to put others at risk of harm, the court said. Myers left the dog with the boy "even though [Myers] was aware that a group of children was in front of his house. That group included Monica. The jury could have found that, given the unreasonable risks posed by these circumstances, Monica was a foreseeable victim."

The court also held that a jury should decide Griffin's negligence. He breached a duty, in that "a reasonable child of Jatón's age, experience, and

managing editor. "It costs the company time, money, sometimes double back pay."

The survey looked at the effects of new FLSA rules enacted in August 2004 and how employers are using them to classify workers as either exempt or nonexempt. The changes redefined "white collar" exemptions for executive, administrative, sales, professional, and computer positions and raised the salary threshold for exempt employees to \$455 a week.

Exempt employees are workers who are exempt from FLSA requirements. For instance, they do not receive overtime pay.

Prince said one reason for the rise in audits may be that employers have difficulty figuring out a complex set of federal and state regulations.

"Historically, [compliance] has been very complicated for employers," noted Price. She said the changes were an attempt to make the rules easier to understand, "so a lot of these audits are actually from the time before the changes were implemented."

Just over half—51 percent—of the employers surveyed by BLR said they "completely" understood the new federal regulations "and their interplay with state law," and 13 percent said they did not have a clear understanding of the laws.

Prince noted that some state laws provide greater protections to workers and that when in doubt, "employers should choose the option that gives workers the most protection."

Employers made several changes to comply with the new rules:

- 11 percent of respondents said they had to raise some employees' salaries to meet the new requirements for exemption.

- 83 percent said they didn't need to change any employees' status from nonexempt to exempt.

- 41 percent said they reviewed all their company's job descriptions to make sure they were accurate.

- 15 percent said they put "substantial limits" on overtime hours.

"Employers really need to reexamine

'Pit bulls, like cars, are "potentially dangerous,"' the judge wrote, adding that Indiana has extended negligent entrustment to dogs in general, and New York has done so with paintball guns.

Maryland's negligent-entrustment cases have involved motor vehicles. However, Krauser noted that the state's definition of negligent entrustment does not refer specifically to motor vehicles, but rather to chattel, which includes dogs. "Pit bulls, like cars, are 'potentially dangerous,'" the judge wrote, adding that Indiana has extended negligent entrustment to dogs in general, and New York has done so with paintball guns.

Although the court acknowledged that the doctrine could be extended to other types of dogs, Myers's violation of an ordinance specific to pit bulls was important to this case, Finnegan said. "The court was willing to extend the doctrine because it considered the dangerous nature of the breed."

"It is very significant that they said a pit bull was in essence a dangerous piece of property," said Kenneth Phillips, a Los Angeles attorney who regularly handles dog bite cases. Some states and municipalities have laws specific to breeds perceived as dangerous—including prohibiting a certain breed and requiring a muzzle or insurance for it—but a breed-specific leash law is uncommon, he added.

Myers should have known that placing the dog under Griffin's supervision

intelligence should have known that prompting his unleashed pit bull to pursue a group of girls constituted an unreasonable risk" to them, Krauser wrote.

Moore is likely to become increasingly significant due to a trend in the insurance industry to deny coverage to owners of certain dog breeds, Phillips said. In such cases, the negligent-entrustment doctrine may be the only way an injured person can recover damages. ■

—ALLISON TORRES BURTKA

More audits look for violations of wage-and-hour laws

One in five employers has been audited by the U.S. Department of Labor (DOL) for violating wage-and-hour laws under the Fair Labor Standards Act (FLSA) and the Family and Medical Leave Act (FMLA), according to a new survey by Business and Legal Reports, Inc. (BLR), a Connecticut-based company that produces compliance and training materials.

The survey also reported that in 2004, these audits collected over \$165 million in back wages under FLSA and \$2 million under FMLA.

"A [Labor Department] audit can be very costly," said Susan Prince, BLR