NORCOTT, J., dissenting. Virginia Auster, the plaintiff in this case, has been bitten thrice. First, on the evening of July 27, 2000, by Shadow, a mixed breed pit bull owned by the defendant Pedro Salinas, the sexton for the named defendant, Norwalk United Methodist Church,[1] while she attended a meeting of a charitable organization held at the defendant's building. She next was bitten by the Appellate Court's judgment disturbing the trial court's discretionary decision not to set aside the jury's verdict holding the defendant strictly liable to the plaintiff pursuant to the dog bite statute, General Statutes § 22-357.[2] *Auster* v. *Norwalk United Methodist Church*, 94 Conn. App. 617, 624, 894 A.2d 329 (2006). Today, the majority of this court has inflicted the plaintiff's third, and hopefully final, injury with its affirmance of the Appellate Court's intrusion. In my view, the majority improperly discounts the significance of the restrictions that the defendant, through its pastor, David Houston, placed on Shadow after he bit Michelle Langois, the defendant's preschool director. I also disagree with the majority's conclusion that the Appellate Court correctly determined that the trial court had abused its discretion by admitting into evidence the minutes of the defendant's July 16, 2001 board of trustees meeting, in violation of § 4-10 of the Connecticut Code of Evidence.[3] Because I agree with Judge Berdon's well reasoned dissent from the judgment of the Appellate Court; see *Auster* v. *Norwalk United Methodist Church*, supra, 624; and would reverse the judgment of the Appellate Court, I respectfully dissent.

I

I begin by noting my agreement with the facts and procedural history generally stated by the majority opinion. I also agree with the majority's statement of the standard of review, namely, that "[t]he trial court possesses inherent power to set aside a jury verdict which, in the court's opinion, is against the law or the evidence. . . . [The trial court] should not set aside a verdict where it is apparent that there was some evidence upon which the jury might reasonably reach their conclusion, and should not refuse to set it aside where the manifest injustice of the verdict is so plain and palpable as clearly to denote that some mistake was made by the jury in the application of legal principles . . . . Ultimately, [t]he decision to set aside a verdict entails the exercise of a broad legal discretion . . . that, in the absence of clear abuse, we shall not disturb." (Internal quotation marks omitted.) *Jackson* v. *Water Pollution Control Authority*, 278 Conn. 692, 702, 900 A.2d 498 (2006). Indeed, "[t]he standards governing our review of a sufficiency of evidence claim are well established and rigorous. . . . [I]t is not the function of this court to sit as

the seventh juror when we review the sufficiency of the evidence . . . rather, we must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including reasonable inferences therefrom, supports the jury's verdict . . . . In making this determination, [t]he evidence must be given the most favorable construction in support of the verdict of which it is reasonably capable. . . . In other words, [i]f the jury could reasonably have reached its conclusion, the verdict must stand, even if this court disagrees with it." (Internal quotation marks omitted.) *Carrano* v. *Yale-New Haven Hospital*, 279 Conn. 622, 645–46, 904 A.2d 149 (2006). Of course, "[i]f the jury, without conjecture, could not have found a required element of the cause of action, it cannot withstand a motion to set aside the verdict." (Internal quotation marks omitted.) *Glazer* v. *Dress Barn, Inc.*, 274 Conn. 33, 50, 873 A.2d 929 (2005).

In *Falby* v. *Zarembski*, 221 Conn. 14, 19, 602 A.2d 1 (1992), this court set forth the general principles governing the application of § 22-357, which "imposes strict liability on the owner or keeper of any dog that does damage to the body or property of any person. A keeper is defined [by the statute] as any person, other than the owner, harboring or having in his possession any dog. . . . To harbor a dog is to afford lodging, shelter or refuge to it. . . . [P]ossession cannot be fairly construed as anything short of the exercise of dominion and control [over the dog] . . . ." (Citations omitted; internal quotation marks omitted.) Indeed, I agree generally with the majority's reliance on this court's decision in *Falby* for the proposition that, under § 22-357, "a nonowner of a dog cannot be held strictly liable for damage done by the dog to another in the absence of evidence that the nonowner was responsible for maintaining and controlling the dog at the time the damage was done. As we indicated in *Falby*, such proof *generally* will consist of evidence that the nonowner was feeding, giving water to, exercising, sheltering or otherwise caring for the dog when the incident occurred." (Emphasis added.)

Unlike the majority, however, I would conclude that the defendant's claims on appeal from the judgment of the trial court fall victim to the well settled standard of review applicable to motions to set aside the verdict. I wish to emphasize in detail particular facts that, in my view, require the affirmance of the trial court's decision not to disturb the jury's verdict in this case, because they establish the defendant's control over Shadow in the wake of his attack on Langois, which had preceded his assault on the plaintiff.[4] In that incident, Langois was startled to hear Shadow growling behind her as she exited the defendant's building to go meet her preschool students on the playground. When she turned around, Shadow grabbed Langois' foot with his mouth, biting through her sneaker and breaking the skin while holding her foot in his mouth and shaking his head.[5] Langois'

screams attracted the attention of another teacher at the preschool and Carmen Salinas, the wife of Pedro Salinas, who was able to stop the attack by pulling at Shadow and hitting him repeatedly. Numerous children enrolled in the defendant's preschool had the misfortune of witnessing this, in my view, appalling incident.

Langois, not surprisingly, insisted to Houston, the pastor at the time of her attack, that the defendant order Salinas to get rid of the dog, and she also expressed her wishes to that effect to the school's directors and the defendant's trustees. Houston's charitable and forgiving nature, however, allowed him to see Shadow's value as a pet for the Salinas family, and he instead directed a "compromise" requiring that the dog: (1) be kept inside the basement of the parish house from 6 a.m. until 7 p.m., with no presence outside during the time when the nursery school was open; and (2) be leashed to an adult or chained to the building if he was outside after 7 p.m.[6] The defendant did not, however, erect "beware of dog" signs.

These restrictions did not abate fully the concerns about Shadow, as, in July, 1999, he scratched Barbara Gale, another congregant attending a charity meeting at the defendant's facility, requiring her to receive medical attention.[7] The defendant's trustees subsequently discussed this incident at their monthly meeting. Indeed, Jim Stinson, who succeeded Houston and served as pastor from July, 1999 through June, 2002, after Houston already had put the dog rules in place, described Shadow as a "temperamental" and "snarly dog."

Finally, other evidence tending to support the jury's verdict on the control element includes Salinas' testimony describing Shadow as a "watch dog" for the church. Indeed, Bob Miller, a friend of Salinas, who also was the treasurer and a trustee of the defendant, paid for Shadow's ultimate demise after he bit the plaintiff.[8]

In my view, the cases cited by the majority and the defendant do not require disturbance of the jury's verdict or necessarily support the proposition that this court cannot "construe the term 'keeper' so broadly as to include persons authorized to exercise only limited dominion and control over a dog. Such persons include a landlord who, like the defendant in the present case, may impose some restrictions on the tenant's use and handling of the dog but who otherwise bear no responsibility for the care, maintenance or control of the dog." In *Falby* v. *Zarembski*, supra, 221 Conn. 19, which is relied upon by the majority, this court concluded that there was insufficient evidence to hold the defendant, a home improvement contracting business, strictly liable under § 22-357 when "the evidence presented at trial established that [the employer], through its president . . . had knowledge that [its employee, the dog's owner] was in the habit of bringing the pit bull terrier

with him to various work sites, that it acquiesced in the presence of the dog at these sites and that it could have prohibited [the employee] from bringing the dog with him to work if it had so desired." The court stated that, "[a]lthough such facts may implicate [the employer] in some way in the attack of the dog on [the plaintiff, a passing letter carrier], they do not indicate that it harbored or had possession of the dog and thus do not justify the imposition of strict liability under § 22-357. There was no evidence that [the employer] fed, watered, housed or otherwise cared for the dog. There was no evidence that it exercised any form of control over the actions of the dog. Contrary to the plaintiffs' claim, control over the premises where the dog inflicted the injuries or over [its employee], by virtue of the employment relationship, did not convert [the employer] into a keeper of [its employee's] dog while it was present at the work site." Id., 19–20; see also id., 17–18 (noting that employer and its employees never "voiced an objection to or imposed any conditions on the dog's presence" and that dog was not tied up or leashed on job site).

Similarly, the defendant relies on *Buturla* v. *St. Onge*, 9 Conn. App. 495, 519 A.2d 1235, cert. denied, 203 Conn. 803, 522 A.2d 293 (1987). In that case, the Appellate Court concluded that the trial court properly granted the defendant landlords' motions for summary judgment on the ground that they could not be held strictly liable under § 22-357 because they had not exercised any control over their tenant's offending dog, which had bitten the tenant's guest while in the tenant's apartment. Id., 496–98. In *Buturla*, it was undisputed that the landlords had consented to the dog's presence in the apartment, but also that the landlords had never "fed or taken care of the dog, nor had the dog ever been allowed to roam in or use the yard abutting the building. The affidavits stated further that the only common area used by the dog was the staircase leading from the apartment to the street. That staircase was used only as access to and from the street." Id., 496. The Appellate Court emphasized the tenant's right to exclusive occupancy and control of his apartment, and cited this court's decision in *Hancock* v. *Finch*, 126 Conn. 121, 123, 9 A.2d 811 (1939), for the proposition that, "in order to harbor or possess a dog, some degree of control over the dog must be exercised." *Buturla* v. *St. Onge*, supra, 498. The court distinguished cases wherein landlords and employers had direct control over the dogs at issue, and concluded that "neither the definition of harborer nor the definition of possession" permitted the landlords to be held liable in that case. Id.

The lack of a case directly on point with respect to the particular facts of the present case is not akin to the dog that did not bark. This is because both *Falby* and *Buturla* are readily distinguishable since, unlike the defendant in the present case, the defendants in

those cases never undertook to assert any kind of direct authority over the specific dogs at issue, in response to a *known problem*.[9] In contrast, the facts of this case support the jury's verdict that Shadow was, in fact, the defendant's problem from the time of his arrival in Salinas' apartment until the final bite, and that the defendant took some targeted steps, however ineffectual, to assert control over the dog by ordering it confined and chained. Indeed, I find it significant a trustee of the defendant paid for Shadow's destruction after the dog bit the plaintiff. Accordingly, I conclude that the Appellate Court improperly determined that the trial court abused its discretion by denying the defendant's motion to set aside the verdict.

II

Finally, I again agree with Judge Berdon, and conclude that the trial court did not abuse its wide discretion[10] by admitting into evidence the minutes of the defendant's July 16, 2001 board of trustees meeting pursuant to § 4-10 of the Connecticut Code of Evidence.[11] See *Auster* v. *Norwalk United Methodist Church*, supra, 94 Conn. App. 626 (*Berdon*, *J.*, dissenting). Specifically, these minutes refer to the early pendency of this action against the defendant, and indicate that "the lawsuit has been turned over to the underwriter by the insurance company. An adjuster will contact [Stinson] to set up an appointment and [Bruce Root, a member of the board of trustees] emphasized *the importance of removing the dog from the church property. If the insurance company discovers the dog is still on the premises, it could jeopardize our insurance coverage.*" (Emphasis added.)

Although evidence of insurance is inadmissible to prove liability under § 4-10 (a) of the Connecticut Code of Evidence, that "section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, *ownership, or control*, or bias or prejudice of a witness." (Emphasis added.) Conn. Code Evid. § 4-10 (b); see also *Vasquez* v. *Rocco*, 267 Conn. 59, 66, 836 A.2d 1158 (2003) ("[o]ur rules of evidence do not mandate the exclusion of evidence of liability insurance coverage, however, when it is offered for another purpose, such as to prove the bias or prejudice of a witness"). The majority casts this evidence as irrelevant and demonstrating only the defendant's control over its own premises, a fact not in dispute. In my view, however, the minutes tend to prove that the board members viewed Shadow and his attendant problems as a matter within their control. Accordingly, I conclude that the Appellate Court improperly determined that the trial court abused its discretion by admitting the minutes into evidence.

As the majority points out in footnote 15 of its opinion, the plaintiff rightfully is not yet foreclosed from compensation for her injuries, as this case will be

retried on her common-law negligence claims. That the defendant remains exposed to a pillaging by jury when the case is retried is, however, small solace to me. I would, therefore, reverse the judgment of the Appellate Court and reinstate the jury's verdict in this case. Accordingly, I respectfully dissent.

[1] Salinas was originally a defendant in this action but the plaintiff withdrew her claims against him. Hereafter, references in this opinion to the defendant are to Norwalk United Methodist Church.

[2] General Statutes § 22-357 provides: "If any dog does any damage to either the body or property of any person, the owner or keeper, or, if the owner or keeper is a minor, the parent or guardian of such minor, shall be liable for such damage, except when such damage has been occasioned to the body or property of a person who, at the time such damage was sustained, was committing a trespass or other tort, or was teasing, tormenting or abusing such dog. If a minor, on whose behalf an action under this section is brought, was under seven years of age at the time the damage was done, it shall be presumed that such minor was not committing a trespass or other tort, or teasing, tormenting or abusing such dog, and the burden of proof thereof shall be upon the defendant in such action."

[3] Section 4-10 (a) of the Connecticut Code of Evidence provides: "(a) General rule. Evidence that a person was or was not insured against liability is inadmissible upon the issue of whether the person acted negligently or otherwise wrongfully.

"(b) Exception. This section does not require the exclusion of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, or bias or prejudice of a witness."

[4] In addition to Langois, Shadow also previously had bitten a cable repairman who came to work on Salinas' apartment, an incident that the defendant was not aware of at the time of the plaintiff's injury. This bite led to Shadow being quarantined by the city of Norwalk. Thereafter, Norwalk animal control officials quarantined Shadow for another two weeks after he killed and buried a hapless skunk that had dared to invade the defendant's garbage pile.

[5] The resulting puncture wound required Langois to get a tetanus shot.

[6] When the dog was chained outside, he was secured to the railing of the back steps of the defendant's building.

[7] Salinas paid for Gale's visit to a physician and no claim was filed against the defendant at that time.

[8] Query: What took so long for Shadow to take his final trip to the proverbial farm in Vermont? See footnote 4 of this dissenting opinion and General Statutes § 22-358 (c) (Providing that subject to hearing and notice requirements, "[w]hen any dog, cat or other animal has bitten a person on the premises of the owner or keeper of such dog, cat or other animal, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or regional animal control officer may quarantine such dog, cat or other animal on the premises of the owner or keeper of such dog, cat or other animal. The commissioner, the Chief Animal Control Officer, any animal control officer, any municipal animal control officer or any regional animal control officer may make any order concerning the restraint or disposal of any biting dog, cat or other animal as the commissioner or such officer deems necessary. Notice of any such order shall be given to the person bitten by such dog, cat or other animal within twenty-four hours."); see also General Statutes § 22-358 (f) ("[t]he owner of any dog, cat or other animal which has bitten or attacked a person and has been quarantined pursuant to subsection [c] of this section may authorize the humane euthanization of such dog, cat or other animal by a licensed veterinarian at any time before the end of the fourteenth day of such quarantine").

[9] Accordingly, I also disagree with the defendant's reliance on *Gilbert* v. *Christiansen*, 259 N.W.2d 896, 897–98 (Minn. 1977) (rejecting plaintiff's argument that apartment complex rules and regulations gave its managers right of control over tenant's dog for purposes of strict liability under state dog bite statute), and *Garrard* v. *McComas*, 5 Ohio App. 3d 179, 182, 450 N.E.2d 730 (1982) (trailer park's pet maintenance rules did not give it control over tenant's dog for purposes of strict liability under state dog bite statute). In my view, these cases similarly are distinguishable on their facts because they involve generally applicable rules, rather than the targeted measures of control employed by the defendant in the present case.

[10] See, e.g., *Hayes* v. *Camel*, 283 Conn. 475, 483, 927 A.2d 880 (2007) (trial court's relevancy determination is reviewed for abuse of " 'wide discre-

tion' "); see also *Vasquez* v. *Rocco*, 267 Conn. 59, 65, 836 A.2d 1158 (2003) (determination under Conn. Code Evid. § 4-10 reviewed for abuse of discretion).

[11] See footnote 3 of this dissenting opinion for the text of Conn. Code Evid. § 4-10.