



Will Awards for Pain and Suffering Affect Your Bottom Line?

In August of 1997, I wrote an article in the *MVMA News & Views* entitled "Awards for Pain and Suffering: The Owner's or the Patient's?" In that article, I explained that historically emotional damages and an animal's pain and suffering awards were not available because an animal was treated as personal property, just like a chair or bed. Beds or chairs cannot feel and, therefore, they could not get pain and suffering awards. Furthermore, emotional damages were not available because the mental anguish that one would suffer for a bed being damaged or destroyed probably would not be so great that reimbursing a person for the fair market value of the item would not cure the problem. The August 1997 article also discussed the disturbing trend in Michigan and across the United States in which courts are beginning to allow emotional damage awards to animal owners and, in some cases, awards for the animal's pain and suffering. At the time that I wrote that article, I could hardly anticipate that less than three months later, a Wayne County Circuit Court jury, before Judge Kaye Terzag, would award \$5,000.00 to a woman who had her 12-year-old, diabetic Basenji dog die as a result of negligent treatment at a boarding kennel.

Another surprise is that Barry County Circuit Court Judge James H. Fisher permitted the question of emotional damages to go before a jury in a breach of contract case. Apparently in that case, someone sold her horse to a buyer and the buyer allegedly did not pay for the horse and allegedly mistreated

the animal to the extent that it eventually died. A basic premise in contract law is that emotional damages are not available except when "the breach also causes bodily harm or the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result."¹ Normally, such "disturbances" are limited to errors in preparing a corpse for burial, delivering children, or surgeries that are intensely personal in nature.² By allowing the jury to consider emotional damages on an animal, the judge was making or changing the law.

The Wayne County case is a victory for animal rights activists because the jury seemed to recognize that a person could recover emotional damages when an animal died. After all, is a 12-year-old, diabetic Basenji dog really worth \$5,000.00? The dog probably cannot be shown or bred due to its age and/or health condition. At best it is a pet. But if fair market value is traditionally the measure of damages. Fair market value means the amount of money that another person would be willing to pay for the animal. Certainly, most people would not be willing to pay even \$50 for this dog.

This case is dangerous from the veterinarian's perspective because of all the media attention that it received. It may influence the public to file more of these claims and/or more attorneys to accept these claims. Also, judges who saw the case in the media and were once reluctant to allow cases to go to a jury in which owners were alleging emotional damages when their animals were injured or died, might now do so. Then what happens? Veterinarians will be paying out

more money in malpractice cases, the cost of their insurance will likely rise, and to offset these costs, veterinarians will have to raise their rates. I am certain the public would not want to pay \$5,000.00 for a simple spay or neuter operation. As veterinarians know, there is very little pet insurance in the public. Without any real pet insurance out in the public, owners may not pay for such operations or any pet care due to increased veterinarian prices to cover possible legal exposure. As a result, veterinarians could see their businesses suffer.

However, the veterinarian must remember even these recent Michigan cases are not binding opinions. Binding opinions are cases issued by the Michigan Supreme Court or are reported in the Michigan Court of Appeals Reports. The Wayne County case was not appealed to the Michigan Court of Appeals. Veterinarians might be concerned that these circuit court judges who are allowing emotional damages might one day get to the Michigan Court of Appeals or Michigan Supreme Court and change Michigan law. Yet, an appeal any time could cause such a change, which could endanger the veterinary profession. However, for now, the law in Michigan remains that emotional distress damages and pain and suffering should not be awarded in cases where there is loss or injury to an animal.

1. Restatement (Second) of Contracts §353.

2. See *Allinger v Keel*, 102 Mich App 798, 302 NW2d 576 (1981), *rev'd on other grounds*, 411 Mich 1053 (1981); *Kewin v Massachusetts Life Ins. Co.*, 409 Mich. 401, 295 NW2d 50 (1980); *Green v Sudakin*, 81 Mich. App. 545, 265 NW2d 411 (1978).

Mr. Stuart Collis, a 1995 graduate of Thomas M. Cooley Law School in Lansing, is a private practicing attorney in Eaton Rapids. He has an

interest in veterinary and animal law and frequently contributes to News & Views. He may be contacted at (517) 663-4115.

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