

# state of the art

EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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## Contaminated Pet Food: What's The Damage?

By Mark Masters

Reports of contaminated pet food have been filling the news in recent weeks. The question on everyone's mind is "What are the damages?" In Michigan, the answer is "Not much."

While pet owners may unconditionally love their cats and dogs, the monetary legal value of these furry family members is negligible. Pets have long been considered personal property in Michigan. *Ten Hopen v Walker*, 96 Mich. 236, 239 (1893). While some would have you believe otherwise, animals are not human beings. The compensable damage to the family dog is measured the same as if the damage was to the family car. Namely, what was the fair market value of the animal before the injury (or death) related to the contaminated food, and what is the value afterwards? That difference is the amount of Plaintiff's damages, plus any veterinarian bills or the like related to the sickness and a refund for the price of the contaminated food.

In addition to the typically negligible personal property claim based on the market value of the pet, Plaintiffs always argue that they are entitled to damages for their own mental anguish from the death or sickness of their beloved pet. Legal theories of recovery usually include claims of intentional and negligent infliction of emotional distress. However, these claims typically fail.

In *Koester v. VCA Animal Hospital*, 244 Mich App 173 (2000), Plaintiff's dog choked to death while under the care of a veterinarian. In dismissing Plaintiff's claims beyond the fair market value of the dog and the veterinarian bills, the Court of Appeals held:

...

### SECRET WARDLE NOTES:

While the sentimental value of a family pet may be immeasurable, Michigan law measures the legal value very low. The damages allowed for the negligent death of a family pet are simply the market value of the animal, *i.e.*, what would the fair market selling price of the animal have been but for the injury/damage to the pet?

Despite numerous attempts by Plaintiffs over the last 100 years to change the measure of damages, the law remains the same: "There is no Michigan precedent that permits the recovery of damages for emotional injuries allegedly suffered as a consequence of property damage." *Bernhardt v Ingram Regional Medical Center*, 249 Mich App 274, 279 (2002).

However, *if* Plaintiff can make a valid claim for intentional infliction of emotion injury (which requires the showing of "extreme and outrageous conduct" by the Defendant), Plaintiff *may* be able to avoid summary disposition of an emotional damage claim based on loss of a pet.

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“There is no Michigan precedent that permits the recovery of damages for emotional injuries allegedly suffered as a consequence of property damage. Plaintiff requests that we allow such recovery when a pet is the property that is damaged, arguing that pets have evolved in our modern society to a status that is not consistent with their characterization as ‘chattel.’ In essence, Plaintiff requests that we create for pet owners an independent cause of action for loss of companionship when a pet is negligently injured by a veterinarian. Although this Court is sympathetic to Plaintiff’s position, we defer to the Legislature to create such a remedy.”

...

“We decline to allow the recovery of emotional distress damages arising from negligence committed in the care of Plaintiff’s pet; therefore, Plaintiff’s complaint failed to plead legally cognizable damages and was properly dismissed by the trial court.”

Accordingly, the recovery for damage sustained by a pet is generally limited to out of pocket expenses and the decrease in the fair market value of the pet.

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