How Much for that Doggie in the Window? Potential Changes to the Value of a Pet May Be on the Horizon.

Jake P. Skaggs • 832.214.3926 • jskaggs@cozen.com

The first thing on the Texas Supreme Court’s agenda for 2013 is whether or not the 120-year old rule that limits the value of a pet to its fair market value is still good law. The case is being closely watched by pundits and attorneys across the nation because Texas would be the first state to overturn this long-standing and generally accepted principle. This could serve as a relevant, though not binding, precedent for other states as well, and potentially trigger a broader reevaluation of the applicable measure of damages. Importantly, the ruling could also impact the value of a homeowner’s uninsured claim.

The case arises from the death of the Medlens’ family dog, Avery. The dog was found at a local shelter after it had escaped. Mr. Medlen did not have the money to pay the fees for Avery and asked the shelter to hold her until the following week. Unfortunately, the shelter employee did not follow the directions and euthanized Avery the following day. At the time, Texas law limited the value of a pet to only its fair market value. In fact, this is the measure of damages for pets in 35 other states. Only Tennessee and Maryland have a statutory cause of action for the death of a pet, but the statutes severely limit the recoverable damages. Because the value of the family pet is limited to fair market value (which, in Avery’s case, would be minimal considering she was a mutt), the loss of the pet is not a factor when considering the insured’s total uninsured damages, nor are these types of cases typically brought by pet owners. Undeterred, the Medlens sued the shelter and the responsible employee for the negligent death of Avery. The trial court dismissed the suit and the Medlens appealed.

Surprisingly, the Fort Worth Court of Appeals overturned 120 years of precedent and held the Medlens could recover for the sentimental value of Avery. See Medlen v. Strickland, 2011 WL 5247375 (Fort Worth 2011, pet. granted). Most states (including Texas) permit a plaintiff to recover damages for personal property that has no market value, but has sentimental value to the owner (i.e., ornaments, heirlooms, pictures, etc.). But, regardless of the love and companionship pets provide to their owners, family pets have traditionally been categorized as mere chattel. In its opinion, the Fort Worth Court of Appeals argued that the notion the plaintiffs could recover sentimental damages for the loss of a picture of Avery, but were not permitted to recover sentimental damages for the death of Avery, was illogical. The court went on to reason that societal views of pets (especially dogs) have evolved to recognize they are more than mere chattel. The public recognizes pets provide companionship and unconditional love and hold a special value to their owners. Because family pets generally do not have a market value, the Fort Worth Court of Appeals held that sentimental or intrinsic value is the proper measure of damages for injury to a pet.

The Texas Supreme Court quickly accepted certiorari and oral arguments are scheduled for early January, 2013. Numerous veterinarian associations and kennel association have submitted briefs arguing in favor of overturning the court’s opinion. For good reason — it is estimated that 39 percent of American households own at least one dog and 33 percent of American households own at least one cat. Permitting a pet owner to recover sentimental value for the loss of a pet would likely greatly increase investments for veterinarian services and pet health care.

For property and subrogation adjusters, this is an important issue requiring sensitivity when working with an insured after a casualty loss has occurred. Even though the existing majority rule would not allow for the recovery of more than economic damages for injury to or the death of a pet, the rule may be changing and, therefore, care should be taken before advising an insured regarding this issue. As always, the attorneys at Cozen O’Connor stand ready to assist in providing a more detailed analysis for you or your insureds.

To discuss any questions you may have regarding the opinion discussed in this Alert, or how it may apply to your particular circumstances, please contact:
Robert W. Phelan at rphelan@cozen.com or 212.908.1274
Jake P. Skaggs at jskaggs@cozen.com or 832.214.3926

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