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Non-Economic Damages in Pet Litigation: Developments in Washington State

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Washington State courts are steadily opening the door for pet owners to seek non-economic damages, such as emotional distress, for injuries to their pets. In the past, Washington courts have allowed emotional distress damages to be awarded in cases involving malicious injury to an animal. The latest case rules that a plaintiff can claim emotional distress damages for a violation of Washington's Theft of Livestock Act (TOLA). This should worry anyone in the pet services industry, including veterinarians, trainers, day care operators, groomers, dog walkers, and kennels as the logic of the case opens the door to emotional distress claims involving companion animals.

This case, *Thorley v. Nowlin*, concerns a thoroughbred horse, and the key holding that permitted the owners to seek emotional distress damages is based on the court's interpretation of the term "actual damages" as used in TOLA. TOLA creates a civil remedy for livestock owners based on the crimes of theft of livestock, animal cruelty, and malicious killing or causing of substantial bodily harm to the livestock of another person. Under TOLA, the owner of the animal damaged by these crimes can sue the perpetrator for up to 3x the "actual damages."

The worrying aspect of this case for the pet care services industry is that the court interpreted a statute that protects livestock—by definition, commercial assets—to permit emotional distress damages. In reaching this conclusion, the court chose to ignore that awarding emotional damages for theft and slaughter of cattle was akin to awarding emotional damages for theft and destruction of farm equipment. Both are economic assets, and the loss of either can represent a serious economic blow to a farmer or rancher. The legislative history of the statute confirms that the purpose of TOLA was to provide farmers and ranchers with a remedy for economic losses arising from willful damage to livestock.

The court's eagerness to find an emotional distress remedy in a statute involving livestock creates precedent for a future court to find that owners of companion animals should be awarded non-economic damages. This is particularly so because the economic damages in companion animal cases are typically small, and the owner typically has a strong emotional attachment to the pet.

That said, this ruling itself is narrow—it is limited to TOLA claims for damage to livestock, which require egregious mistreatment of animals. It is also a ruling by an intermediate appellate court that could be overturned by

the Washington Supreme Court. But if the ruling stands, it creates precedent for future court decisions to extend the logic that emotional distress and other forms of non-economic damages are appropriate in cases of injury to animals. On the one hand, this makes intuitive sense in that it recognizes the bond that many feel towards their companion animals. On the other hand, if courts begin to award these damages in garden variety negligence or malpractice cases, the result will be to push the costs of pet care services even higher to the ultimate detriment of pets and pet owners, as noted in our prior alert on this topic.

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