

Strange (But True) Cases of Veterinary Law

Thomas A. Carlson, D. V. M., M. S.*

(THIS IS ONE IN A CONTINUING SERIES OF ARTICLES ABOUT TRUE CASES OF ANIMAL-RELATED DISPUTES THAT ACTUALLY FOUND THEIR WAY TO THE COURTROOM. READ THE FACTS OF THE CASE AND DETERMINE HOW YOU WOULD HAVE DECIDED IN LIGHT OF THE ASSOCIATED ISSUES AND ARGUMENTS, i.e. INTERPRET THE "HISTORY" AND "CLINICAL DATA" AND THEN SEE IF YOU AGREE WITH THE COURT'S ULTIMATE "DIAGNOSIS". GOOD LUCK!!!)

The case presented here, *Smith vs. State Farm Fire and Casualty Company*¹, was tried before the Louisiana Court of Appeals in March of 1980. The record reveals that Mr. Benton Smith (hereinafter "plaintiff") was a farmer who had purchased a 300 pound heifer in December of 1988. The plaintiff testified that he had purchased the cow for the purposes of restocking his herd and that the animal in question was an ordinary, gentle range cow. He further testified that the cow was allowed to graze in the pasture area around the plaintiff's homestead. On February 8, 1979, the plaintiff found the cow had somehow left its usual range area and had subsequently fallen into the family's swimming pool causing extensive damage to same. He then tried to collect for these damages under his homeowner's insurance policy. The State Farm Fire and Casualty Company (hereinafter "defendant") denied this claim because, it argues, the policy in question has provision which excluded coverage of damages inflicted by "domestic animals". [Remember, as noted above, this trial is at the appellate level. The first court found in favor of the plaintiff and awarded him damages of \$2,159.89. It is from that decision that the defendant has appealed.]

The homeowner's insurance policy in question reads as follows: "This policy insures against all risks of physical loss to the property covered except as otherwise excluded or limited. This policy does not insure against loss by wear and tear; marring or scratchings; deterioration; inherent vice; latent defect; mechanical break-

down; rust; mold; wet or dry rot; contamination; smog; smoke from agricultural smudging or industrial operations; settling; cracking; shrinkage, bulging or expansion of pavements, patios, foundations, walls, floor, roofs or ceilings; birds, vermin, rodents, insects or domestic animals" (emphasis added). At issue, then is whether a cow does or does not fall within the classification category of "domestic animal".

The plaintiff does not want the cow in question to be classified as such because, if this occurs, he is then blocked from collecting for the pool's damage due to the insurance policy coverage disclaimer. He argues that the emphasis, with regard to the disclaimer clause, must be placed upon the adjective "domestic" rather than the word "animal". Thus, he claims that "domestic" must mean specifically household pets. He argues that to exclude all "domestic animals" would eliminate (i.e. from insurance coverage) all but wild animals, which in a modern society could hardly be expected to inflict damage to a home in the first place.

On the other hand, the defendant does want the cow in question to be classified as a "domestic animal" to avoid being compelled to pay a claim that it feels was specifically excluded in the very language of the insurance policy in question. The defendant, then, argues that the word "domestic" in the insurance policy is synonymous with the word "domesticated". To support this claim, the defendant cited several case precedents: in *Granger vs. United States Fidelity and Guaranty Co.*² the court stated: "Cases relating to injuries caused by animals are generally divided into two categories, according to the nature of the animals. One category includes wild or undomesticated animals, such as lions, tigers, wolves, etc. The second category embraces animals which have been

*Dr. Carlson is a 1988 graduate of the Iowa State College of Veterinary Medicine, and completed his small animal residency here in 1993. He is currently in the College of Law, University of Nebraska-Lincoln.

domesticated, such as horses, cattle, sheep, dogs, etc.” Further, in Marsh vs. Snyder³ the court said; “domestic or tame animals are those which have been domesticated by man for centuries, such as horses, sheep, goats, cows and dogs.” Also, in Young vs. Blaum⁴, the court found that a male goat falls into the category of “domestic animals”.

Determine how you would decide this case and then turn to page 109 for the court’s actual ruling.

Quality Sharpening!

We guarantee you the best clipper blade sharpening and clipper repairing you ever had. More than 40 years factory training. We now service the largest veterinary colleges, veterinary hospitals, and kennels in the USA. Satisfied customers in 50 states and they recommend us: “They are new when we are through.” Cleaned, polished and cut. Oster clippers and blades sold. Avoid C.O.D. Enclose \$3.50 for each set of blades, plus \$3.50 per order of blades for postage, handling and insurance.

Service Grinding & Supply Co., Inc.
Route 9, Box 9058
Hayward, WI 54843

Book Review

The Cat: Diseases and Clinical Management, second ed., edited by Robert G. Sherding

This book is in two volumes. I found it to be very thorough with sections covering nutrition, behavior, intoxication and injury, infectious diseases, parasitic diseases, and separate sections for the cardiovascular, digestive, endocrine, neuromuscular, skeletal, urinary and reproductive systems, the skin and eyes and ears. An introductory section covering such topics as the history of domesticated cats and information about history and physical exam, drug and fluid therapy and anesthesia is extremely well written and full of interesting and practical information. The book contains quite a bit of detail, but the sections are well organized and the information is easy to find. I would highly recommend this book to veterinarians in either companion animal or mixed animal practice, where high quality feline medicine is practiced.

Susan O'Brien DVM
Associate Professor
ISU CVM Dept. of Clin. Sciences

The Cat: Diseases and Clinical Management

second ed. Vol. 1 and 2

Ed. by Robert G. Sherding, 2,046pg, illustrated.

Churchill Livingstone, New York, Edinburgh, London, Madrid, Melbourne, Tokyo

Law Case Decision

The appellate court reversed the decision of the lower court, i.e. it ruled that the plaintiff's cow was a "domestic animal" under the exclusionary provisions of the homeowner's insurance policy. (The defendant could not then collect for the pool damages via his homeowner's insurance policy.) It then ordered that the plaintiff's suit be dismissed and also ordered the plaintiff to bear all the costs of both the initial trial as well as this appeal.

(Author's note: curiously, no mention is made in the court record as to what ever happened to the cow in question. We can only hope that she is poolside somewhere, in between exhilarating "cowpaddle" laps, enjoying the refreshing shade of a nearby umbrella while she simultaneously dreams of (ISU's famous Vet. Med. mascot) "BUD" and casually sips from her ice cold "silage cooler".)

References

1. Smith vs. State Farm Fire and Casualty Company, 381 So.2d 913, LA 1980.
2. Granger vs. United States Fidelity and Guaranty Co., 266 So2d 526, LA 1972.
3. Marsh vs. Snyder, 113 So2d 5, LA 1959.
4. Young vs. Blaum, 146 So.168, LA 1933.