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January 3, 2018 RE: Doe v. Smith

CJ-2017-246

Insurance lawyer

**By email, hard copy to follow**

Dear Michael,

I received your *Offers to Confess Judgment*. While I can’t accept the offers, I thought it worth a counter. It seems to me we are farthest apart on the loss of the Doe’ Poodle, Pupster. In additional to being a beloved member of the family, and AKA Registered, Pupster was cross-trained as a bird dog and to track wounded deer. She was also trained to provide emotional therapy at local senior centers. An AKA registered Poodle puppy runs $1000-1200, or more. Training can run into the thousands of dollars. I have enclosed webpages illustrating the cost for a puppy and the monthly cost to train a bird dog. I understand it usually takes 3-4 months to train just for bird hunting. At $950 per month, that’s $2,850-3,800 for the bird training. Pupster, as noted, was also trained to track wounded deer (Oklahoma recently allowed deer hunting with dogs) and as a therapy animal. Training her replacement could easily run $10,000 or more (I also enclose a webpage illustrating the cost of a fully trained Poodle—though I recognize it is for a protection trained dog).

In addition to Pupster’s pure “property value,” she was a beloved member of the Doe’ family, who’s life was cut short by your insured’s reckless driving. As I’m sure you can imagine, her loss was very emotional for John and Jane Doe. Mr. Doe described to me coming to a stop after the wreck and asking his wife if she was “ok.” He could not see his wife because his hunting gear broke through the back window of their truck and was covering his wife in the front seat. She told him she thought she was okay, but that their Pupster “didn’t make it.” Oklahoma allows a claim for emotional distress damages for witnessing a death where: (1) the plaintiff was directly physically involved in the incident, (2) the plaintiff was damaged from actually viewing injury to another rather than from learning of accident later, and (3) a familial or other close personal relationship existed between plaintiff and party whose injury gave rise to plaintiff’s mental anguish. *Kraszewski v. Baptist Medical Center of Oklahoma, Inc.,* 1996 OK 141. There is support in the law for including a beloved family pet in the category of “close personal relationship.” E.g., *Vaneck v. Drew,* 2009 WL 1333918 (Conn. Super. 2009). This would be a good test case as the Doees, and Pupster are a sympathetic family.

Regardless whether we make the emotional distress claim, even if Allstate is right that Pupster was “just property,” given the market value of a fully trained AKC registered Poodle, I don’t see any real hazard of a verdict less than the $500 offer. Thus, in addition to whatever value the jury puts on Pupster, we will also recover our attorney fee. I already have several hours researching the law, and valuation, and the fee will only grow as this will be a research, and brief, heavy issue to try (and then for one or the other of us to appeal).

I also think you are light on the Doe’s claims. This was a serious and emotionally charged wreck, apart from the loss of the pet. Your client pulled to the shoulder and then simply turned off the shoulder directly in front of the Doe truck. The impact was significant and terrifying. Your client’s SUV rolled and the Does feared their truck was going to roll as well. When they finally came to a stop, Mr. Doe looked out of his window at what appeared to be a lifeless woman hanging out of your client’s SUV. He looked over toward his wife and could not see her, and feared she was dead as well. The Does are tough, country folk, though, and basically just gutted it out after the wreck. Rather than wrack up huge medical bills, they mostly just toughed it out. In addition to the emotional toll, though, John still has trouble with his neck, and Jane has some ongoing physical concerns as well.

Having said all the above, this does seem like a case we ought to resolve. That’s because the Does had previously (before your offers to confess) given me bottom dollar authority for $20,000. Your offers total $15,500. If you can find your way to $20,000 (however Allstate needs to allocate the three claims) we have a deal. Otherwise, we will proceed to trial where I think we will get a nice verdict, and also our attorney fee for the property claim. *This offer will remain open until noon on Wednesday, January 10, 2018.* I look forward to hearing from you.

Sincerely,

Paul Kouri

PK/jk

Enclosures

CC: John and Jane Doe w/o