

How Much Is That Doggie in the Window?

ON MARCH 16, Menu Foods Inc., a pet food manufacturer, issued a recall of 60 million canned and pouched items of cat and dog food sold under more than 90 brand names after reporting that one dog and a “small number” of cats had died from kidney failure. At that time, Menu Foods said that tests had failed to identify the problem.

If the many natural pet food stores, pet boutiques, pet bakeries, dog spas, doggie day-care facilities, and off-leash dog parks flourishing in my city are any indication, there are a lot of animal lovers out there. I was upset by news of the recall, because Thor, a slightly overweight senior basset hound, is a member of my family. Thor spends his days doing his favorite things, taking slow walks on the beach, enjoying long naps, and eating dinner. Dinner time is by far his favorite time of day.

In the week following the recall, I searched for information to determine whether Thor was in any danger. I read several sad stories about sick and dying pets. The culprit was still unknown, but all signs pointed to wheat gluten, an ingredient in the tainted pet food. Because of a lack of information, I switched Thor to a natural dog food that contains no wheat products, even though his food was not on the recall list. Was I overreacting? I do not think so, because on April 10 the recall was expanded to cat food that had not been previously recalled, and on April 12 the U.S. Food and Drug Administration warned consumers that some retailers may still have recalled pet food sitting on their shelves.

According to the FDA, on March 20 the death toll was 14. On March 23 there were 15 confirmed deaths. That day, ABC News reported that aminopterin, a rodenticide, was in the tainted pet food. On March 30, however, the FDA reported that testing revealed melamine in both pet food samples and wheat gluten used as an ingredient in the pet food, but no aminopterin. Melamine is a chemical used in fertilizer and in other commercial uses. How did that happen? As the publication deadline of this journal approaches, the FDA’s investigation is still “open and active.”

A chain of veterinarian hospitals—Banfield, The

Pet Hospital—reported that, based on extrapolation, the number of sickened or killed cats and dogs nationwide could reach 39,000. The number of deaths, therefore, could be as low as the teens or as high as the thousands. But the likelihood of the public ever knowing the true death toll is slim, because the FDA has stated that there is no surveillance network like the Centers for Disease Control and Prevention to help keep track of and confirm cases of contamination for dogs and cats.

Lawsuits have already been filed, and with liability all but certain, U.S. courts must again answer the question: How much is that doggie in the window? Historically, U.S. courts have viewed pets as personal property and therefore have limited damages to the value of the pet and to veterinarians’ bills. Labeling pets as property fails to recognize the emotional bond people can have with their cats or dogs. In a few cases, courts have awarded damages for emotional distress. In *Knowles Animal Hosp. Inc. v. Wills*, 360 So.2d 37 (Fla. App. 1978), a dog owner was entitled to collect emotional damages for “neglectful conduct” in a veterinary malpractice case. In *Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981), a family was awarded damages for emotional distress brought about by the negligence of the Animal Quarantine Station, which caused the death of the family’s dog. Recently, in *Womack v. Von Rardon*, 135 P.3d 542 (Wash. App. 2006), a cat owner whose pet had been intentionally set on fire was awarded damages for the emotional distress caused by malicious injury to a pet.

These terrible tragedies may serve as a catalyst for upping the ante. Even though the law has been reluctant to recognize pets as more than personal property, you can be sure that the lawsuits pending against Menu Foods will ask for more. Surely the value of a dog or cat in an animal shelter should not be limited to \$60, the adoption fee Hawaii’s Humane Society charges. On the other hand, I have never advocated that awards for emotional distress should break the bank. The total amount of the damages awarded for all three of the cases described above was the princely sum of \$19,000.

I am not an animal law attorney and am certainly no activist. I just love my dog. I grieve for all the dogs and cats that died because they ate their dinner.

TFL

Julie China is a member of the FBA editorial board.