



“Mental Anguish” Damages Recoverable for Damage to or Loss of Real Property

Julie I. Fershtman

Foster Swift Equine Liability & Insurance Update

November 2011

PRACTICE AREAS

Equine Law

For years I have been tracking the law nationally regarding recovery of "emotional distress" damages arising from the loss of or injury to personal property. I've defended against these claims, as well, primarily in CCC claims. Fortunately, the prevailing view (with very, very few exceptions) is that these damages are not awardable. The interesting new Michigan case of *Price v. High Pointe Oil Company*, __ Mich. App. __ (Mich. App. 8/25/2011)(for publication), could make you wonder whether the law is heading for change.

In *Price*, the defendant oil distributor inadvertently pumped nearly 400 gallons of oil into the plaintiff homeowner's basement, apparently forgetting that she notified the company a year earlier to stop deliveries since her oil furnace was removed and replaced by a propane tank. Her house had to be destroyed. The plaintiff sued for negligence and boldly sought recovery of emotional distress damages; evidence showed that she received some medical treatment after the incident, even though she did not witness it, and was prescribed anti-depressants. The jury awarded her \$100,000. Affirming the award, the Court of Appeals held that emotional distress damages were permissible since the claim involved a tort of negligence. Conceding that Michigan disallows recovery of these damages for claims involving loss of *personal property* (such as animals), the Court was willing to carve an exception for *real property*. This case is sure to generate considerable debate.

Comment: Insurers issuing CCC endorsements in Michigan should take comfort in the fact that the Court in *Price* distinguished between claims involving real property and personal property; it only awarded recovery of emotional distress damages in the former. Consequently, it is doubtful that *Price* will open the floodgates for CCC-related emotional distress claims.