

# MOLLY

## THE MILLION DOLLAR GOLDEN RETRIEVER

What all cremation providers can learn from the case of the botched pet cremation

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Poul Lemasters, as the attorney for the plaintiff, shows the court a photo of pets that were supposed to be cremated but were disposed of in a landfill.



Jurors look over photos of Molly.

This article's headline tells you two things: 1. A pet cremation case gone wrong could cost you millions, and 2. Even if you don't provide pet cremation services, you can learn something from reading this story.

Everyone involved with cremation, whether of pets or of people, thinks about the potential risks and liability. But most are quick to convince themselves that it won't happen to them because

Feel free to fill in the blank with something that makes you feel all snugly and protected, such as "We never make mistakes," or "We know all the people we serve, and they wouldn't sue us."

Whatever the reason, many cremation providers see the risks involved, but don't really think their own business is at risk. Furthermore, most of us are so removed from the outcome of actual cases that we just don't put much stock in the "horror stories" we hear about lawsuits.

In this article, I'm going to try to shed some light into this area of liability and put some real information into your hands, hoping it will convince some of you that you need to institute better policies and procedures.

Trials can generate a lot of useful information, but lawsuits rarely go to trial—cases are usually settled well before they ever get to court. To make

things even harder, most settlements are kept quiet, because no one wants to say what they had to do to settle a case.

We decided to create our own trial to explore firsthand what can happen when a wrongful cremation case is placed in front of a jury.

### THE SETUP

At the 2013 ICCFA Convention in Tampa, Florida, several other death-care professionals helped me stage a mock pet cremation trial. If you're thinking this sounds familiar, it's because at the 2012 convention, we staged a mock trial centered on a human cremation gone wrong.

As with the 2012 mock trial, what made the pet cremation mock trial a unique learning experience was not the people involved, or even the facts of the case. It was the jury.

We recruited Tampa-area residents to sit on the jury. None of them had any experience with pet death care; none of them had any special knowledge of cremation other than what the average person would know. We wanted to hear from people like the ones who would sit on a real jury.

The facts presented to the jury were designed to outline a case that would appall almost anyone. In the history of wrongful human cremation cases, one could argue that the Tri-State Crematory Case in Noble, Georgia, was the one that changed the profession. After



Above left, the plaintiffs' attorney, played by Don Ferfolia, listens to testimony with his clients, "pet crematory owner" Brett VanDeWoestyne and "veterinarian" Kevin Woronchak. Center, Jon Remkus testifies as an expert witness. Right, "plaintiff" Roberta Knauf.

Noble, policies and procedures—as well as lawsuit settlements—changed forever. The facts of that case were horrific but real.

Our mock pet cremation trial was designed to outline a similarly horrific case that could trigger a change in the treatment of pet cremation. And while the facts of our mock case might seem unbelievable, they are based on the kind of events that occur all too often.

## THE FACTS OF THE CASE

The facts were simple. On December 5, 2010, Molly, a 12-year-old golden retriever, was euthanized after a bout with cancer. The plaintiff, Molly's owner (played by Roberta Knauf), contacted the veterinary clinic (clinic owner/vet played by Kevin Woronchak) to make arrangements. Molly's owner scheduled a time to bring her to the clinic to be euthanized.

After the euthanasia process, the vet asked Molly's owner how she wanted to handle her pet's remains. The plaintiff selected private cremation, handled through the clinic. She completed all of the paperwork authorizing the clinic to cremate Molly's remains, and she also selected an urn.

A week later, Molly's owner was contacted and told she could pick up her pet's cremated remains. She picked up the urn and kept it at home for a few months on her bedside table. Finally she bought a niche at a local cemetery where she placed the urn and chose a memorial for the crypt cover. Still a grieving pet parent, she visited Molly's grave several times a month.

Approximately one year after the death of her pet, Molly's owner saw a shocking

story on the local news. The article was about a local landfill that had discovered the bodies of hundreds of discarded pets. Molly's owner was upset by the story and accompanying photos.

Approximately one week later, the story was back in the news. The updated story described a local pet crematory (Brett VanDeWoestyne played the owner) as being under investigation for allegations of dumping pets at the landfill. The story went on to say that the crematory provided pet cremation services to many local vet clinics and hospitals.

Molly's owner immediately found her paperwork authorizing Molly's cremation and learned that the provider of the service was the crematory facing dumping allegations.

The next day Molly's owner contacted the vet clinic to ask the veterinarian about the situation. He assured her that everything was in order and that there was no reason for her to worry. Nevertheless, she did worry, and anxiously followed the story as it developed.

Over the next few months, the media reported that the pet crematory was in a state of disrepair and had not been functional for some time. The crematory made it a practice to dump pets rather than cremate.

Employees admitted that the crematory was used only occasionally and only for communal cremations, not private ones. Furthermore, because the crematory did only communal cremations, families did not receive their pets' cremated remains. Instead, the crematory kept drums of cremated remains from the communal cremations, and when the family requested a private cremation simply

scooped mixed cremated remains into an urn for return to the family.

Upon reading all of this, Molly's owner again contacted the vet clinic. At first clinic personnel assured her everything was OK, but soon they ceased all communication. After undergoing medical treatment and joining a local support group, Molly's owner contacted her attorney (played by me) and became the plaintiff in a lawsuit.

The defendants in the lawsuit, the vet clinic and the pet crematory, also retained an attorney (played by Don Ferfolia).

## THE ARGUMENTS

The plaintiff's argument was based on the duty of the vet clinic and the crematory to follow the contract she signed, the cremation authorization form. The plaintiff also focused on showing that the bond between a pet and his or her owner is no different than the bond between a child and his or her parent.

The plaintiff built a strong case with the jury by talking about how she had trusted Molly's vet and by sharing personal stories about her life with her "child," Molly the golden retriever.

The plaintiff's attorney aimed to show that the plaintiff deserved monetary damages because of the bond between her and Molly and because of the defendants' failure to carry out their duties.

The plaintiff's expert witness (played by Jon Remkus) testified about industry standards and norms. He talked about the entire cremation process, including forms, procedures and communication.

He said that though the vet clinic did use a cremation authorization form, there was little explanation given to the plaintiff about the process and no explanation about the fact that the clinic used an outside crematory.

He testified that the vet clinic had no agreement or understanding about how the pet crematory operated. He also testified to the crematory's lack of proper procedures and its blatant disregard for the contract, as well as the fact that it conducted unauthorized communal cremations and dumped bodies at the landfill that were supposed to be cremated.

The defense focused on the vet clinic having been unaware of the pet crematory's practices. Furthermore, the the defense tried to show that while the pet crematory's conduct may seem unethical or disturbing to some people, no laws were broken either by the vet clinic or the pet crematory.

After all of the evidence had been presented and the testimony heard, the lawyers presented closing arguments. The judge (played by Jeremiah Neville) sent the jury off to another room to deliberate.

## THE JURIES' DECISIONS

The volunteers were divided into two juries, Jury A and Jury B, each comprised of five members. They were asked to apportion responsibility and award damages, if any.

The facts were intended to establish the responsibility of at least one party to the lawsuit, but you never know what a jury will decide or think. It all comes down not to whether you are right or wrong, but to what the members of the jury believe. The jury was asked to decide on three claims:

1. a cause for negligence alleged against each of the parties;
2. a cause for emotional damages; and
3. a cause for punitive damages.

For each cause, the jury was to decide if each party (the vet clinic and the pet crematory) was liable or not liable; the percentage of responsibility for each party; and how much money, if any, should be awarded to the plaintiff.

Both juries returned unanimous decisions in favor of the plaintiff for all

<b>Jury A: \$2.7 million</b> <b>verdict in favor of plaintiff</b> <i>(all decisions were unanimous)</i>			<b>Jury B: \$3.5 million</b> <b>verdict in favor of plaintiff</b> <i>(all decisions were unanimous)</i>		
<b>ISSUE 1: NEGLIGENCE</b>					
<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>	<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>
0%	100%	\$1 million	0%	100%	\$350,000
<b>ISSUE 2: EMOTIONAL DISTRESS</b>					
<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>	<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>
10%	90%	\$700,000	0%	100%	\$150,000
<b>ISSUE 13: PUNITIVE DAMAGES</b>					
<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>	<b>Liability of clinic</b>	<b>Liability of crematory</b>	<b>Total amount</b>
0%	100%	\$1 million	0%	100%	\$3 million

causes. Jury A awarded the plaintiff \$2.7 million, while Jury B awarded her \$3.5 million. So we saw two juries award different but very large amounts.

## QUESTIONS AND COMMENTS

One of the most important benefits we received from putting on this mock trial was the opportunity to talk to the jury members after they rendered their decisions. We asked them what they thought about the trial and what was behind their findings.

The first question we asked was why they assigned very little responsibility for the situation to the pet clinic. What we learned was quite surprising: The jury members all believed the pet clinic had also been victimized by the crematory.

They thought the clinic was simply a conduit for the crematory and had no control over or involvement in the cremation process. To be more specific, both juries believed the pet clinic made no money in this process.

When we presented the jury members with additional information, such as the fact that the clinic did mark up the crematory charges and therefore did make money from the families contracting with the crematory, the jury's decision changed.

In fact, the jury members said if they had known the pet clinic received a "kickback"—their term—for the cremation services, the responsibility/liability split between the clinic and the crematory would have been 50-50 instead of 0-100.

They also said they would have awarded the plaintiff higher damages.

As far as the amount of damages to award, the jury received no specific instructions. Part of the reason for holding the mock trial was to gauge what value (dollar amount) some average consumers would place on improper handling of a beloved pet's remains.

Even though the damages awarded were high, the jury members said if we had asked for higher damages, they would have awarded more. We asked what could have caused them to increase the damage amounts. Comments included:

- presentation about actual damages (the plaintiff's medical bills);
- information about how the two defendants worked together; and
- indication that the defendants had actually broken the law. (It was pointed out during the trial that no laws regarding disposition of pets were broken.)

We also asked the jury members what influenced their decisions. They mentioned three factors:

- the plaintiff;
- the plaintiff's attorney; and
- the photos they were shown of the dogs found at the landfill.

Many jury members said they felt the plaintiff had been truly hurt by the defendants' actions and they had to help her, since no one else had. They also were influenced by her attorney. But the biggest influencer was the photos.



**Top**, members of one of the juries listen to testimony.  
**Above left**, Ferfolia holds the mike as a juror announces the verdict.  
**Above right**, the judge, played by Jeremiah Neville, leads the juries back into the “courtroom” to announce their verdicts.

Most convincing were the photos the jury was shown of pets dumped in a landfill and of a pet crematory that improperly disposed of pet cremated remains. Sad to say, these were not PhotoShop creations mocked up for the trial; we used actual photos taken at facilities in the United States.

We also asked the jury members if they thought there are too many frivolous lawsuits, and they unanimously agreed that there are. But when we followed up by asking whether this particular lawsuit was frivolous, only one jury member said “yes.”

This truly amazed us, because when we asked last year’s mock trial jurors—who were deliberating about a cremation mix-up in which a widow was given the wrong cremated remains—seven out of 10 jurors said the lawsuit was frivolous.

This, more than anything else, shows how many people think of pets as part of the family (maybe the best part!) and as deserving of protection, even after death.

## WHAT IT ALL MEANS TO YOU AND YOUR BUSINESS

As I said at the beginning of this article, even if your company does not provide pet services, you can learn from this case. There are two important lessons here.

First, realize that while you may never make a mistake, you rely on many people who might. You need to be aware of everything others do for you. You can and most likely will be accountable for the actions of others, even if they are mistakes. (Note that if the juries had known the vet clinic was making money from the cremations, they would have held the clinic liable.)

Second, the cost of a mistake can be huge. While you might not be able to put a dollar value on the loss of a person or pet, don’t think that a jury won’t be able to. One thing you can be sure of is that if a jury is asked to assign a dollar amount to a loss, it will, and much of the decision could be based on perceptions and feelings.

In this case, though no laws were broken, the jury members “felt” for the plaintiff, who testified about the close bond between herself and Molly, and they wanted to do something about her loss, compensate her in some way. They also wanted to punish those who had hurt her, as can be seen in the large amount of punitive damages.

This mock trial was designed as a learning experience—use it. Take the time to be aware of not only your own policies and procedures, but also those of the companies you rely on in your business.

Develop a policy of transparency, of making sure you know what others are doing and that your clients know what you’re doing. Take control of what you do in your business. By doing so, you can reduce your liability and determine, to some extent, whether issues are prevented from arising and are resolved without a lawsuit when they do arise.

If you don’t think about these issues and act preemptively, be prepared to someday let a jury decide your fate.

## Jury A: \$2.7 million verdict in favor of plaintiff

### ISSUE 1: NEGLIGENCE

Juror	Liability of clinic	Liability of crematory	Total amount
1	0%	100%	\$1 million
2	0%	100%	\$1 million
3	0%	100%	\$1 million
4	0%	100%	\$1 million
5	0%	100%	\$1 million

### ISSUE 2: EMOTIONAL DISTRESS

Juror	Liability of clinic	Liability of crematory	Total amount
1	10%	90%	\$700,000
2	10%	90%	\$700,000
3	10%	90%	\$700,000
4	10%	90%	\$700,000
5	10%	90%	\$700,000

### ISSUE 13: PUNITIVE DAMAGES

Juror	Liability of clinic	Liability of crematory	Total amount
1	0%	100%	\$1 million
2	0%	100%	\$1 million
3	0%	100%	\$1 million
4	0%	100%	\$1 million
5	0%	100%	\$1 million

## Jury B: \$3.5 million verdict in favor of plaintiff

### ISSUE 1: NEGLIGENCE

Juror	Liability of clinic	Liability of crematory	Total amount
1	0%	100%	\$350,000
2	0%	100%	\$350,000
3	0%	100%	\$350,000
4	0%	100%	\$350,000
5	0%	100%	\$350,000

### ISSUE 2: EMOTIONAL DISTRESS

Juror	Liability of clinic	Liability of crematory	Total amount
1	0%	100%	\$150,000
2	0%	100%	\$150,000
3	0%	100%	\$150,000
4	0%	100%	\$150,000
5	0%	100%	\$150,000

### ISSUE 13: PUNITIVE DAMAGES

Juror	Liability of clinic	Liability of crematory	Total amount
1	0%	100%	\$3 million
2	0%	100%	\$3 million
3	0%	100%	\$3 million
4	0%	100%	\$3 million
5	0%	100%	\$3 million