

# Steering Trouble

BY LAWRENCE SAVELL

**W**e've all heard people criticize overly-aggressive or underly-competent drivers by insults such as "he drives like an animal" or "she's a road hog." Beyond causing some consternation to those innocent species allegedly at lower rungs on the mammalian hierarchy, such images also reflect the long historic relation between animals and automobiles.

In the early years of the automobile, motorists and their competitions vied for right-of-way with leg-powered travelers on the dirt paths that were the first boulevards and highways. In a then-still-largely agrarian society, animals often ran wild or virtually unrestricted, keeping attorneys and veterinarians quite busy sorting out the results.

Nowadays, apart from occasional suicidal deer, run-ins between livestock and vehicles are rare. However, they do still occur, particularly in more-rural areas. In such event, can you as a motorist hold the owner of the creature responsible for your physical injuries and/or damage to your car?

This question was explored in *Colglazier v. Fischer*, decided on November 5, 1996 by the Nebraska Court of Appeals.

According to the Court, on July 1, 1992, at about 2:00am, Marjorie Hoelting was driving a 1968 Chevrolet pickup truck owned by her parents, Sherman and Edna Colglazier. She was traveling east on Highway 62 from Stella, Nebraska, to her parents' home near Shubert, Nebraska, at about 50 to 55mph, with her headlights on bright. It was apparently very dark and there were no lights in the area. When Hoelting was just east of Stella, she saw a group of black cows on the highway, blocking both lanes of traffic. Hoelting applied her brakes, skidded, and collided with three cows, causing damage to the truck.

The cattle involved were owned by Edward and Christie Fischer. The Fischers kept a herd of 14 cows in a pasture one mile north of Highway 62 enclosed by a single-strand barbed-wire electric fence. The fence was 32 to 36 inches off the ground, reaching up to the cows' necks.

According to Edward Fischer, the cows were docile animals and were accustomed to the electric fence. Fischer last saw the cows at approximately 5:00pm on June 30, 1992; the electric fence was in working condition and the gate was secured. When notified by a passerby shortly after 10:00pm on June 30, 1992 that some cows were on a county road one-half mile south of the Fischers' pasture, Fischer drove to the location and commenced searching for the cattle with that person. At 10:30pm, Fischer elicited additional help from a friend. The three men conducted an extensive search, hampered by the darkness and the cow-exceeding height of an adjacent cornfield. After the others left, Fischer continued to search in his four-wheeler until 12:30am, when he returned home to get his pickup.

Fischer searched until 1:00am, when he returned home. At 4am, Fischer went back out to search. At that time, Fis-

cher was notified that an accident had occurred involving his cows and Hoelting, and that the rest of his cattle had been found.

After learning of the collision, Fischer inspected the fence surrounding his pasture. According to Fischer, the fenceposts located near the driveway leading to the county road were pulled out of the ground and laid flat upon the ground, causing the fence to be down. The fenceposts were not bent or damaged, no insulators were broken, and no wire was torn.

Fischer testified that normally, if cattle break through a fence, insulators will break, the fence will tear, or the posts will bend. Although Fischer testified that it was his opinion that someone had pulled the posts out of the ground, he did not report to the police that the fence had been tampered with.

The Colglaziers sued the Fischers for damages. At trial, the court ruled that the Fischers were not negligent in their confinement of the cattle or in their duty to round up and confine the cattle once they realized the cattle had escaped. The Colglaziers appealed this decision to the District Court, which affirmed the findings and judgment of the trial court. They then appealed to the Court of Appeals, which again affirmed the ruling for the Fischers.


The Court of Appeals noted that the owner of domestic animals has the duty to exercise ordinary care to confine his or her livestock to prevent them from being unattended upon a public highway. A breach of that duty may constitute negligence.

The principal test is whether the owner should reasonably have foreseen (1) that any of his or her livestock would be upon the highway and (2) the occurrence of an accident. If the owner knows or, in the exercise of ordinary diligence, should know that any of the livestock are unattended upon the highway, it is the owner's duty to exercise ordinary care to round them up and confine them.

Examining the facts, the court upheld the trial courts' finding that, among other things, the Fischers had exercised reasonable care in their confinement of the cattle and in their subsequent search for and roundup of the cows that had escaped.

As time passes, instances of animal-automobile run-ins will, probably and happily, become an even-more-rare event. But the link between these two species will live on, if only in the names of our vehicles: Mustang, Stingray, Jaguar, Cougar, Impala, Ram, and—dare I say it—Bug!

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*Lawrence Savell is Counsel at the law firm Chadbourne & Parke LLP in New York City. This column provides general information and cannot substitute for consultation with an attorney. Additional background on this and prior "Old Cars in Law" articles can be found on-line at <http://www.carcollector.com> *