

Failure to Disclose Johne's Can Lead To Liability

Wisconsin law affords people that unknowingly purchase dairy cows with Johne's disease greater protection than most jurisdictions. Anyone who sells cows in the State of Wisconsin should be aware of the danger of not reporting known or suspected Johne's.

Synopsis:

The Wisconsin legislature created Wis. Stat. § 95.19, a statute that holds all individuals connected with the sale of diseased animals liable if they knowingly conceal the health of the animals, misrepresent the health of the animals, or co-mingle diseased and healthy animals. In 2008, the Wisconsin Court of Appeals applied this statute to a case involving the sale of cows that allegedly had Johne's on the date of sale. The case, *Wilson v. Tuxen*, demonstrates how any individual connected with the sale, transport, or exhibition of Johne's animals may be held liable.

In *Wilson v. Tuxen*, the buyers alleged that at the time of sale the seller said he "never had a problem with Johne's." Months after the purchase, many of the cows tested positive for Johne's. The buyers claimed that the seller's statement was false because the buyers alleged the cows had Johne's at the time of sale. The buyers filed suit in Buffalo County, Wisconsin.

The Wisconsin Court of Appeals affirmed that the seller may be held liable under Wis. Stat. § 95.19 for the alleged statement that he "never had a problem with Johne's" if a jury finds that the seller misrepresented what he knew. Generally, a party can prove a misrepresentation claim such as "no problem" with Johne's, or the herd is generally in good health, if the seller knew that the information was false, or did not actually know whether the information was true or false.

Buyers in most commercial transactions face several obstacles in holding a seller liable for the goods sold. For instance, typically a buyer must first notify the seller of a problem and give the seller an opportunity to cure. Fortunately, buyers of cows with Johne's should not face such obstacles in pursuing Wis. Stat. § 95.19. The Court of Appeals' decision in *Wilson v. Tuxen* did not discuss notice or other such obstacles in the context of a Wis. Stat. § 95.19 claim.

The statute and Court of Appeals decision affects not just operators who sell cows, but those who transport the animals and any veterinarian connected to the sale. Anyone connected with a sale that acts "knowingly" in either concealing known cases of Johne's, misrepresenting what was actually known, or co-mingling healthy and diseased cattle may be held liable to the buyer.

Prepared by:

Edward E. Beckmann, Esq.

Fafinski, Mark & Johnson, P.A.

775 Prairie Center Drive, Suite #400

Eden Prairie, MN 55344

952.995.9500

952.995.9577 (fax)

www.fmjlaw.com