

ATTACHMENT 6

A Redacted Version of the Demand Letter Petitioners Sent to S&M

LAWYERS



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January 23, 2006

SENT BY FEDEX

Dr. Joseph Roetheli, CEO
S&M NuTec, LLC
1 Design Drive
North Kansas City, MO 64116

Re: Claims for Compensation

Dear Dr. Roetheli:

This letter is to request compensation from S&M NuTec ("You") for damages and costs my wife and I have suffered as a result of Greenies manufactured by You and their impact on our Old English Sheepdog, Odin.

BACKGROUND FACTS

First Animal Hospital ("First") in _____, Washington was where we sought Odin's veterinary care from the time we obtained Odin when he was eight weeks old. We continued to use First for our veterinary care for Odin's first four years.

A vet at First had indicated on several occasions that Odin, despite having annual teeth cleanings, had a problem with quick tartar build-up and suggested we should work on it. After a month or two of increased efforts at brushing his teeth, my wife asked our pet food store, _____ in _____, Washington, what they might recommend to supplement the brushing. They told her about Greenies being advertised for tartar control and

she purchased a bag (appropriate for his size/weight). Over the next few weeks, Odin ate two or three Greenies while sitting with us in our living room. He seemed to enjoy them and there didn't appear to be a problem at the time.

On Thursday night, October 28, 2005, Odin started vomiting a bright yellow substance that looked like bile. The next morning, we called our vet who suggested that we watch him and call back if his condition worsened. On Saturday, October 29, 2005, his condition did worsen so we took him into the hospital. Since this is not a dog who tends to eat foreign objects, we didn't feel there was anything unusual in his system. The vet thought he might have pancreatitis, some other intestinal condition, or perhaps a virus. I took him home from First, but his condition worsened, including more throwing up of bile, liquid excretions, lethargy, stopping eating and drinking water almost completely, and grunting when he sat or laid down. Starting on Monday, October 31, 2005, Odin was hospitalized at First and subjected to numerous tests and medications over the next two weeks while he was in and out of the hospital. Although it was clear that his intestines were tender and fluid filled, nothing was visible by either ultrasound or x-ray (and his vomiting prevented a barium study). During this period, his condition continued to deteriorate. On the morning he started to shed his intestines, we were sent for emergency surgery to Second Animal Hospital ("Second") in _____, Washington. That date was November 7, 2005.

Included in Attachment 1 are copies of pictures of Odin, before and after the blockage and illness resulting from the Greenies. Attachment 2 is a set of Odin's complete medical records from First Animal Hospital, beginning from his first visit and through his final care there. Attachment 3 is the medical record from November 7, 2005 reflecting the fecal sample with his intestines.

On November 7, 2005, we took Odin to Second along with his records and x-rays. As reflected in Attachment 4, Odin had been brought into Second with symptoms that included vomiting, watery diarrhea, failure to eat, discomfort in his abdomen, and other problems. After his vomiting subsided sufficiently, Second did a barium series, found a blockage, and took him into surgery. During the surgery, they found "multiple small pieces of what appeared to be greenies – they were dark green and almost the constituency of clay." The Surgery Report reflects that "[t]here was palpable foreign material within the ileum, cecum and ascending colon." Attachment 4 includes the Discharge Summary and the Surgery Report.

Odin remained in Second for over a week. During this time, Second tried to provide medications that would stabilize his condition, stop his diarrhea and vomiting, and encourage him to eat and drink water. On November 11, 2005, Second thought he was sufficiently stabilized to be released to us. Attachment 5 includes all of Odin's medical records from Second, from the date he entered until he was released. Many of the Second records are also included in Attachment 2 because Second sent many of his records to First.

Even though he had been released, Odin continued to have fundamental and serious problems. His stools continued to be liquid and he kept throwing up bile. It appears that the Greenies that lodged in his intestines had triggered inflammatory bowel disease, setting off a firestorm of inflammation that First and Second could not cure. Notwithstanding the surgery and medications prescribed by Second, Odin failed to eat or drink water consistently, and he continued to lose weight. We returned him to Second where they tried again to stabilize him and released him to us again.

At this point, it seemed prudent to seek another opinion about what direction Odin's treatment should take. We met with a local vet, Dr. Jones, who strongly suggested we seek care at Third Animal Hospital ("Third") in _____, Washington. She set up the appointment and we went to meet Dr. Smith. Odin was examined on November 18, 2005 and remained in Third until December 4, 2005. During that period, we worked closely with Dr. Smith, who is an internal medicine specialist. During this long hospitalization, Dr. Smith worked to stabilize his condition through numerous medications, nutritional feeding tubes and special foods. Attachment 6 includes all of Odin's medical records from Third, from the date he entered until he was released.

COMMUNICATIONS WITH YOU

When we took Odin into Third, we were desperately trying to keep him alive. As you may recall, we sent You an email on November 21, 2005. As indicated in the email, Odin was experiencing numerous life threatening problems as a result of the Greenie lodged in his intestines. The email provided facts about his condition and requested "any information you can give us about the negative health impacts of greenies on dogs", including information based on research or anecdotal information. As was obvious from the email, we needed help figuring out what to do and assumed that You had some information that might help our vet save his life. Attachment 7 to this letter is a copy of the email from Jody Hanson, your public relations firm representative, in response to the email sent by my wife which is also included in the email string.

However, instead of sharing information which You have about these problems and helping us save our dog, You requested all of our medical records before you would send anything or let us talk to Your company veterinarian, treating our inquiry like a request for legal discovery: "If Dr. Quest has all of the medical paperwork, he feels he can better help you. We would recommend that you contact all of the veterinarians involved in Odin's care. . . ." (emphasis added).

You suggested you were extremely concerned and would contact our vets, but your demand for "all" of our records and your failure to immediately respond with any substantive information which You may have had from research or other purchasers who had experienced problems, based on the information we sent, was tantamount to an act of bad faith. Thus, we did not

respond to your email because it was so non-responsive and we have been concentrating our efforts on saving our dog with the assistance of Dr. Smith.

STATUS

After Odin was released from Third on December 4, 2005, he continued to struggle, losing another seven pounds, until the steroids and other medications were finally able to stabilize his condition. We are continuing to visit Dr. Smith for medicines and progress checks while he continues to recover. Odin's weight dropped from 70 pounds before eating any Greenies to 47 pounds. (See Attachment 1 for pictures of his current condition.) His stools are somewhat solid and he is eating to some extent, but not enough to gain much weight. He is still, on a daily basis, regurgitating water and small amounts of food on occasion. In addition, he has recently been diagnosed with an opportunistic bacterial infection due to the immuno-suppressants he is taking. This infection will require yet another medication with potentially serious side effects, to be administered for at least six weeks. Massive fur loss (particularly troubling for a non-shedding dog) and skin irritations that are slow to heal and subject to infection are occurring as well. In short, he is far from well and far from the condition prior to suffering from the intestinal blockage caused by the Greenie material.

LEGAL ISSUES

I have spoken with Alan Sash, counsel for Michael Eastwood and Jennifer Reiff. Mr. Sash suggests that You had knowledge about the possible impact of Greenies on a dog's body for several years. If that allegation is true, your failure to provide any information to us in response to our email on November 21, 2005 until we provided all of our medical records would support our claim that you were acting in bad faith.

I have other legal theories to pursue if we decide to litigate this matter. In addition to those proposed by Mr. Sash in his complaint which I won't belabor here and the bad faith claim, You also have liability under the Uniform Commercial Code ("UCC"). Your packaging creates several express and implied warranties. Your package indicates that the Greenies are 100% edible. "Edible" is defined as "fit to be eaten" in Merriam-Webster's Collegiate Dictionary, Eleventh Edition. This affirmation of fact creates an express warranty that the goods shall conform to the affirmation or promise. RCW 62A.2-313. The packaging also creates implied warranties, creating product liability claims for harm to our property. RCW 62A.2-314 and RCW 62A.2-315.

The disclaimer on the packaging states that "[g]ulping any item can be harmful or even fatal to a dog." This disclaimer is unenforceable under the UCC because an exclusion of a warranty must

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be conspicuous. RCW 62A.2-316. A conspicuous notice must be in capitals or, if in the body of a form, larger or other contrasting type or color. RCW 62A.1-201. As a result of these warranties and the inadequacy of your disclaimer, You are required to pay our consequential and incidental damages. RCW 62A.2-714 and 62A.2-715.

In addition, I believe the Veterinary Oral Health Council ("VOHC") and its 10 Board members are jointly and severally liable for the harms caused by the Greenies. The VOHC's seal creates implied warranties that are not adequately disclaimed on Your packaging, and Your packaging also fails to refer buyers to the disclaimers on its website which also fail to meet UCC requirements. VOHC also has liability for negligent misrepresentation claims resulting from its endorsement. See *Handberry v Hearst Corporation*, 81 Cal. Rptr. 519 and related cases about liability from endorsements.

We understand from the KIRO TV investigative report that the Federal Drug Administration has initiated an investigation about Your products. Simultaneously with this letter, we are contacting the Food and Drug Administration to explain our situation, and we plan to share our information with this regulatory agency.

DAMAGES

Our current costs total to about \$ _____. These costs include vet bills, emergency and other procedures, surgery, X-rays, ultrasounds, nutritional supplements and IV medicines, and so much more. Attachment 8 includes receipts from the three hospitals referenced above, from our current vet who is providing supplemental medications and blood tests, and from other reasonable and necessary expenses.

Our future costs are unclear. However, we have been told by our expert vet that Odin will need to be on steroids and other medications for the remainder of his life, estimated at three to five years, and can only eat special food which will not re-trigger the diseases caused by the lodged Greenie material. We will also need to get him shots and blood tests from our regular vet every three months for the rest of his life. We estimate our future medical costs for three more years will be about \$ _____. At a 6% interest rate, the present value of these costs is \$ _____.

Thus, the total amount we would accept to settle this matter at present is \$ _____. If we received this amount, we would not pursue additional direct, incidental, consequential, punitive and other damages as are being sought by the New York plaintiffs.

OTHER REMEDIES

In addition to our financial remedy, we are seeking the following additional remedies:

1. You must fix the notice on the Greenie product packaging to be more accurate. The product is not 100% edible and the notice must be made more conspicuous and indicative of the risks from lodging in the colon.
2. You also need to reformulate the product so that this problem cannot occur for other dogs.
3. While recently purchasing special food for Odin, my wife was talking with workers at a pet food store who indicated that salespeople for You had recently visited to do "damage control" and had told them there is no danger from eating Greenies. They related to my wife that all stories were "blown out of proportion" and that "the owners didn't use the product properly". You must correct your sales program to make their representations more accurate, i.e., that Greenies have been found to cause harm and death to some dogs.

CONCLUSION

We have experienced numerous disruptions in our lives during this last 12 week period while trying to figure out what happened to our dog and then to heal him. We have been told that he will actually never be completely healed and will now require special foods and medicine for his shortened life span. In addition to financial damages and loss of income on my part, we have also experienced emotional distress and continual disruption to our work and personal schedules due to our dog's illness, vet appointments, and visits to vet hospitals while he was being diagnosed and treated.

We have seen the news report on KIRO TV in Seattle about Greenies, have spoken with reporters working with KIRO TV who told us that You have been known to pay (or offer to pay) some owners for costs incurred by their dogs who were damaged by Greenies, and seen your settlement offer to Michael Eastwood.

I would prefer to resolve this dispute amicably by receiving payment from You for our damages incurred so far and for future foreseeable direct damages and by Your providing the remedies described above.

If we do not receive a response from you with a satisfactory settlement offer by February 8, 2006, I will assume you have decided not to try and resolve this matter, and we will pursue our available legal and equitable remedies.

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I look forward to receiving your response to this letter.

Very truly yours,

Davis Wright Tremaine LLP

Richard S. Wyde

Attachments

cc: Dr. Roberta Kraus Wyde (w/o attachments)
Alan Sash, Esq. (w/ attachments)

Attachment 1: Pictures of Odin

Pictures Before Greenies

Pictures After Greenies

Attachment 2: Records from First Animal Hospital

Attachment 3: Record from First Animal Hospital Dated November 7, 2005

Attachment 4: Record from Second Animal Hospital Dated November 8, 2005 and Surgery Report

Attachment 5: Records from Second Animal Hospital

Attachment 6: Records from Third Animal Hospital

Attachment 7: Emails Dated November 22, 2005 and November 21, 2005

Attachment 8: Damages Summary and Receipts