

intrastate, fixed site exhibitions, reasoning that an exhibitor becomes the subject of the AWA if he “distributes” animals by television or simply making them available to the public. Based on that reasoning, which the Court found reasonable, it determined that the district court correctly found that the museum qualified as an animal exhibitor under the AWA by displaying the cats to the public and by broadcasting images of them online to attract visitors. The Court further found that the regulation of the museum did not exceed Congress’s authority under its power to regulate Commerce among the States. It concluded that the museum’s exhibition of the cats substantially affected interstate commerce, even though they were not sold and never traveled away from the premises. The Court noted well settled authority that, when local businesses solicit out-of-state tourists, they engage in activity affecting interstate commerce. “For these reasons, Congress has the power to regulate the museum and the exhibition of the Hemingway cats via the AWA.” Finally, the Court expressed sympathy for the museum’s frustration, but stated it was not the Court’s role to evaluate the wisdom of federal regulations implemented according to powers constitutionally vested in Congress.

Supreme Court — Civil

▼ Supreme Court reverses prior precedent and holds that plaintiff can recover loss of use damages even if vehicle is a total loss.

TORTS: Damages. A taxicab owned by S&M, LLC, d/b/a Huntsville Cab Company (“Huntsville Cab”), was damaged in a collision with an automobile driven by Roy Burchel. The taxi was a total loss and Burchel reimbursed Huntsville Cab for the costs of replacing the vehicle. Huntsville Cab then sued Burchel, seeking damages for the loss of use of the taxi during the time required to purchase and prepare a replacement vehicle. After a bench trial, the court found in favor of Burchel, stating that Alabama law prohibits recovery of loss of use damages with regard to a vehicle that is a total loss. The Court of Civil Appeals affirmed. In doing so, it applied the rule established in *Hunt v. Ward*, 79 So.2d 20 (Ala. 1955), that the owner of a vehicle that is a total loss is entitled only to the fair market value of the car at the time of the accident, less its junk value. Huntsville Cab petitioned for certiorari review. **Reversed.** The Court looked to other jurisdictions that have allowed recovery for loss of use during a reasonable time in which the owner seeks a replacement for the destroyed vehicle. Like those courts, the Court saw no logical reason why a distinction should be drawn between cases in which the property is totally destroyed and those in which it has been injured but is repairable. The Court explained that the purpose of compensatory damages in Alabama is to make the injured party whole by reimbursing him for the loss suffered. The Court concluded that the current rule, established by *Hunt* and followed by subsequent cases, was insufficient to accomplish that purpose when the commercial vehicle at issue is destroyed and a replacement vehicle is not immediately available. The Court thus modified the existing rule to allow the recovery of reasonable loss of use damages during the time reasonably required to procure a suitable replacement vehicle. *Ex parte*

S&M, LLC (In re: S&M, LLC v. Burchel), 21 ALW 50-1 (111210), 12/7/12, Morgan Cty., Woodall; Malone, Stuart, Bolin, Parker, Shaw, Main, and Wise concur; Murdock concurs in the result, 17 pages. [ATTY: Appt: Mary Ena Heath, Huntsville; Apee: Gary Grace, Huntsville]

▼ Supreme Court reverses jury award and holds that plaintiff was not entitled to damages for inverse condemnation in the absence of any physical injury to the property.

PROPERTY: Inverse Condemnation. Logan Properties, Inc., purchased Patio Court, a 30-unit apartment complex. Logan Properties financed the purchase and rehabilitation of Patio Court by obtaining a construction loan from Alamerica Bank. Subsequently, the Housing Authority of the Birmingham District (“the Authority”) obtained a federal grant to develop a public housing complex across the street from Patio Court. The Authority initiated condemnation proceedings in the probate court, but that action was dismissed. Negotiations to sell the property continued and the Authority reiterated its intent to initiate condemnation proceedings if Logan Properties did not agree to sell the property. Logan Properties initiated inverse condemnation proceedings in circuit court, arguing that the Authority’s pursuit of the property over the previous several years constituted a de facto taking of the property. The jury returned a verdict in favor of Logan Properties in the amount of \$350,000 and the court awarded \$110,000 in litigation expenses. The Authority appealed. **Reversed.** The Court explained that if an entity holding eminent domain powers fails to make compensation before taking or injuring private property, the owner is entitled to assert an inverse condemnation claim against that municipal corporation. *See Jefferson Cnty. v. Southern Natural Gas Co.*, 621 So.2d 1282 (Ala. 1993). A plaintiff is required to put forth substantial evidence that: 1) the defendant is “invested with the privilege of taking property for public use”; 2) that the plaintiff’s property was taken, injured, or destroyed; and 3) that the taking, injury, or destruction was caused by the construction or enlargement of the defendants’ works or improvements. Here, it was undisputed that the Authority never took any action that physically injured or had any direct physical impact upon the plaintiff’s properties. Rather, Logan Properties argued that the Authority engaged in a series of actions that resulted in the devaluation of its property. The Court rejected this argument, noting that with one exception, its caselaw has required that property must be physically taken in order to invoke inverse condemnation. In the one exception, *McEachin v. City of Tuscaloosa*, 51 So. 153 (1909), the municipality had cut down shade trees on the right-of-way in front of the plaintiff’s property. The Court held that if the plaintiff’s property was injured by the destruction of the trees in and about the enlargement of the street, she was entitled to compensation. The Court noted that subsequent decisions had retreated from that ruling and held that, to the extent *McEachin* held that a compensable injury can occur in the absence of any physical intrusion, it was wrongly decided. Logan Properties’ argument that it suffered injury in the form of decreased market value failed in the absence of any evidence of a physical injury to that property. *Housing Authority of the Birmingham District v. Logan Properties, Inc.*, 21 ALW 50-2 (1111015), 12/7/12, Jefferson Cty., Stuart; Malone, Parker, Shaw, and Wise concur, 22 pages.