



2013

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### Recommended Citation

Rowe, Alison M. (2013) "Survey of Damages Measures Recognized in Negligence Cases Involving Animals," *Kentucky Journal of Equine, Agriculture, & Natural Resources Law*: Vol. 5 : Iss. 2 , Article 5.

Available at: <https://uknowledge.uky.edu/kjeanrl/vol5/iss2/5>

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# SURVEY OF DAMAGES MEASURES RECOGNIZED IN NEGLIGENCE CASES INVOLVING ANIMALS

ALISON M. ROWE\*

## I. INTRODUCTION

Human beings form strong emotional bonds with a broad array of living creatures ranging from traditional household pets such as dogs and cats to other animals such as horses,<sup>1</sup> birds, and sheep. As a result of these bonds, many people regard animals differently than inanimate objects. Surveys have found that between 70% and 99% of pet owners, encompassing 50% of U.S. households, consider their pets to be members of their families.<sup>2</sup>

For sound policy reasons, courts have traditionally limited damages in cases where an animal is negligently lost or destroyed to the market or economic value of the animal.<sup>3</sup> This system has resulted in low and predictable costs for veterinary services and other animal-related products and services.<sup>4</sup> However, some people believe owners ought to be compensated for their emotional suffering when a companion animal is destroyed or injured due to negligence because of the strong emotional attachment that they feel towards their companion animals.<sup>5</sup> Accordingly, advocates of change to the traditional damages rules in animal-related cases have encouraged courts and legislatures to depart from established law and award non-economic damages in negligence cases involving animals.<sup>6</sup> One recent trend in companion animal cases involves attempts by plaintiffs to recover emotion-based damages in the form of “intrinsic” or “sentimental” value damages in states where these alternate damages measures have been

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<sup>1</sup> Many horse owners consider their horse a companion animal, even in instances where the horse is also being used for sport or work. See generally Susan J. Hankin, *Not A Living Room Sofa: Changing the Legal Status of Companion Animals*, 4 RUTGERS J. L. & PUB. POL'Y 314 (2007); see also *Fackler v. Genetzky*, 595 N.W.2d 884, 891-92 (Neb. 1999) (involving owners of racehorses who sought damages for their emotional distress based on a veterinarian's alleged negligent destruction of horses).

<sup>2</sup> See Elizabeth C. Hirschman, *Consumers and Their Animal Companions*, 20 J. Cons. Res. 616 (1994); see also ROD PREECE & LORNA CHAMBERLAIN, *ANIMAL WELFARE & HUMAN VALUES* 242 (1993).

<sup>3</sup> See Victor E. Schwartz & Emily J. Laird, *Non-Economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, PEPP. L. REV. 227, 229 (2006) [hereinafter *Non-Economic Damages in Pet Litigation*].

<sup>4</sup> *Id.* at 261-67.

<sup>5</sup> *Id.* at 243-44.

<sup>6</sup> *Id.*

judicially recognized for personal property having little or no market value. This article will explore that trend in detail.

Proponents of current law, including many animal service providers, veterinarians, and animal owner and breeder organizations, argue that allowing the recovery of emotional damages in ordinary negligence cases would lead to potentially astronomical and unpredictable damage awards. They argue these awards would result in negative consequences for everyone involved<sup>7</sup> and ultimately affect the quality and costs of services to animals and their owners.<sup>8</sup>

This article will first articulate the various ways in which courts and legislatures have resolved negligence cases involving plaintiffs seeking emotion-based damages for harm done to their companion animals.<sup>9</sup> Second, this article will provide an overview of the public policy issues surrounding recovery for emotional damages in tort cases involving animals. Finally, this article will explain how allowing non-economic damages in companion animal cases involving mere negligence would be unsound public policy and an unwise departure from established law.

## II. CATEGORIES OF TORT LAW DAMAGES

Plaintiffs in the animal tort cases discussed in this article frame their claims under a number of different damages theories. Therefore, to fully understand the actions of different courts in this genre of cases, it is important to understand the purpose of the basic types of damages recoverable in the tort system.

### *A. Basic Types of Tort Law Damages*

The two fundamental types of tort damages are compensatory and punitive damages. Compensatory damages are “intended to represent the closest possible financial equivalent of the loss or harm suffered by the plaintiff, to make the plaintiff whole again, [and] to restore the plaintiff to the position the plaintiff was in before the tort occurred.”<sup>10</sup> Compensatory

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<sup>7</sup> For an example of how much litigation might be generated, consider that motorists kill more than 1 million dogs and 5 million cats annually. Merritt Clifton, *Roadkill Avoidance Tips from Animal People*, ANIMAL PEOPLE (May 16, 2001), [http://www.animalpeoplenews.org/IMPORTANT\\_MATS/roadkillsTips.html](http://www.animalpeoplenews.org/IMPORTANT_MATS/roadkillsTips.html).

<sup>8</sup> See generally *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 260-67.

<sup>9</sup> The vast majority of cases involving injury or destruction of animals involve ordinary or professional negligence. Accordingly, this article focuses on those cases and not claims involving intentional or malicious conduct, for which additional damages theories may be applicable. See RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 47 cmt. m (2012); see also *infra* note 30.

<sup>10</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 230 (citing Victor E. Schwartz, et al., PROSSER, WADE & SCHWARTZ’S TORTS 519 (10th ed. 2000)).

damages include both economic and non-economic damages.<sup>11</sup> Economic damages compensate plaintiffs for injuries that can be objectively measured.<sup>12</sup> Non-economic damages compensate plaintiffs for intangible, subjective injuries, such as mental anguish, loss of companionship, and emotional distress.<sup>13</sup> Both forms of compensatory damages are intended to compensate the plaintiff, not to punish the tortfeasor.<sup>14</sup>

In contrast, punitive damages are an amount greater than a quantification of the harm suffered.<sup>15</sup> Punitive damages are intended to punish a defendant for his or her conduct to deter similar conduct in the future.<sup>16</sup> Punitive damages are typically only available where a plaintiff proves the defendant's conduct involved a degree of outrage similar to that usually found in crime.<sup>17</sup> The conduct is considered outrageous when the defendant's acts are done with an evil motive or with such reckless indifference to the rights of others that they merit punishment.<sup>18</sup> Punitive damages are not awarded for mere mistakes or errors of judgment.<sup>19</sup>

### *B. Tort Law Damages for Injury to or Destruction of Personal Property*

Traditionally, damages for injury to or destruction of personal property have been awarded based on the value of the property.<sup>20</sup> Most jurisdictions use the market value of the property when calculating damages.<sup>21</sup> In making such calculations, courts generally define market value as "what the property in question could probably have been sold for on the open market, in the ordinary course of voluntary sale by a leisurely seller to a willing buyer."<sup>22</sup>

Generally, non-economic damages are not recoverable in cases in which a plaintiff claims an emotion-based injury because of harm to personal property as a result of negligence.<sup>23</sup> There are several public policy concerns underlying this general rule, including lack of foreseeability and the subjective and easily inflatable nature of emotion-based claims involving property.<sup>24</sup>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> RESTATEMENT (SECOND) OF TORTS: REMEDIES § 908, cmt. b (1979).

<sup>16</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 231.

<sup>17</sup> RESTATEMENT (SECOND) OF TORTS: REMEDIES § 908, cmt. b (1979).

<sup>18</sup> *Id.*

<sup>19</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 235-36 (citing Victor E. Schwartz, et al., PROSSER, WADE & SCHWARTZ'S TORTS 519 (10th ed. 2000)).

<sup>20</sup> *Id.* at 232; see discussion *infra* Part V.A-C.

<sup>21</sup> See discussion *infra* Part V.A-B.

<sup>22</sup> See Schwartz, *supra* note 6, at 547.

<sup>23</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 232; see also discussion *infra* Part III.

<sup>24</sup> *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 232.

### III. GENERALLY NO LIABILITY FOR NON-ECONOMIC DAMAGES IN ORDINARY NEGLIGENCE CASES INVOLVING ANIMALS

As discussed previously, non-economic damages are usually not available for negligent harm to personal property.<sup>25</sup> This general principle is applicable to both cases in which the plaintiff seeks to include emotional harms in the calculation of damages and those cases in which the plaintiff sues under a cause of action for negligent infliction of emotional distress.<sup>26</sup> Consistent with these principles, the majority of states refuse to recognize a damages claim for the negligent loss of an animal based on an owner's emotional attachment. Courts in thirty-four states have expressly refused to award such damages.<sup>27</sup> Although many of these courts recognize the strong emotions that owners feel towards their companion animals, courts typically reject claims derived from an owner's emotional attachment on public policy grounds, reasoning that such damages are inherently subjective and therefore easily inflatable.

The Restatement (Third) of Torts, published by the American Law Institute, has recently addressed the recoverability of emotion-based damages arising from damage to pets.<sup>28</sup> The Restatement explains:

While pets are often quite different from other chattels in terms of emotional attachment, an actor who negligently injures another's pet is not liable for emotional harm suffered by the pet's owner. This rule against liability for emotional harm due to injury to a pet limits the liability of veterinarians in the event of malpractice and serves to make veterinary services more readily available for pets. Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines—arbitrary at times—that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable under this Chapter. However, recovery for *intentionally* inflicted emotional harm is not barred when the defendant's method of inflicting harm is by means of causing harm to property, including an animal.<sup>29</sup>

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<sup>25</sup> See discussion *supra* at Part II.B.

<sup>26</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 235-36; see also *infra*

Table 1.

<sup>27</sup> See *infra* Table 1.

<sup>28</sup> See RESTATEMENT (THIRD) OF TORTS: LIAB. FOR PHYSICAL AND EMOTIONAL HARM § 47 cmt. m (2012).

<sup>29</sup> *Id.* (emphasis in original).

As the Restatement (Third) of Torts explains, malice or intentional conduct is required to recover for emotional harm resulting from damage to property, including damage to animals.<sup>30</sup> This article does not address trespass or conversion cases, two areas in which recovery for emotional harm has received more liberal treatment.<sup>31</sup>

#### IV. A MINORITY OF JURISDICTIONS HAVE RECOGNIZED LIABILITY FOR EMOTIONAL HARM IN NEGLIGENCE CASES INVOLVING DAMAGE TO ANIMALS

Appellate courts in a minority of jurisdictions, including Arkansas,<sup>32</sup> Hawaii,<sup>33</sup> Florida,<sup>34</sup> Louisiana,<sup>35</sup> and Texas,<sup>36</sup> have recognized the recoverability of emotion-based damages caused by negligent injury to animals. Despite the existence of a few cases allowing recovery for such damages, the overwhelming majority of courts have been reluctant to award damages for mental harm arising from injury to chattel caused by mere negligence.<sup>37</sup>

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<sup>30</sup> See *Plotnik v. Meihaus*, 146 Cal. Rptr. 3d 585, 601 (Cal Ct. App. 2012) (holding emotional distress damages recoverable on “trespass to personal property” claim involving intentional striking of dog with a bat); *La Porte v. Associated Independents, Inc.*, 163 So. 2d 267, 269 (Fla. 1964) (noting an owner’s affection for dog may be considered in case involving malicious killing of tethered dog by garbage collector); *Brown v. Crocker*, 139 So. 2d 779, 781 (La. Ct. App. 1962) (affirming recovery of damages “for shock and mental anguish experienced” from death of mare and loss of stillborn foal as a result of shooting); *Womack v. Von Rardon*, 135 P.3d 542, 546 (Wash. Ct. App. 2006) (recognizing rule against recovery of emotional harm for negligent injury to pet, but allowing such recovery when there is malicious injury, as occurred when defendant used gasoline to set plaintiff’s cat on fire).

<sup>31</sup> See *Nnadili v. Chevron U.S.A., Inc.*, 435 F. Supp. 2d 93 (D.D.C. 2006); but see *Lubner v. City of Los Angeles*, 53 Cal. Rptr. 2d 24 29-31 (Ct. App. 1996).

<sup>32</sup> See *McAdams v. Faulk*, No. CA01-1350, 2002 WL 700956, at \*5 (Ark. Ct. App. Apr. 24, 2002) (holding mental anguish damages are available in negligence cases involving personal property, including dogs, and that punitive damages were available in veterinary malpractice actions).

<sup>33</sup> See *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981) (holding damages for injured feelings and mental distress suffered through loss of family dog were proper items of recovery in negligence case). The Hawaii legislature may have indirectly overruled *Campbell* by barring damages for “negligent infliction of serious emotional distress or disturbance if the distress or disturbance arises solely out of damage to property or material objects.” HAW. REV. STAT. § 663-8.9 (West 1986).

<sup>34</sup> See *Knowles Animal Hosp., Inc. v. Wills*, 360 So. 2d 37, 38-39 (Fla. Dist. Ct. App. 1978) (stating that the trial court did not err by including for consideration of the jury the element of mental pain and suffering of the owners of the dog in a veterinary negligence case), cert. denied, 368 So.2d 1369 (Fla. 1979).

<sup>35</sup> See *Barrios v. Safeway Ins. Co.*, 97 So. 3d 1019, 1024 (La. Ct. App. 2012) (affirming award of emotion-based damages of \$5,000 to each owner of dog negligently killed by motorist where owners were nearby, arrived at the scene shortly thereafter, loved their animal, and suffered severe emotional harm as a result of the dog’s death).

<sup>36</sup> See *Medlen v. Strickland*, 353 S.W.3d 576, 580-81 (Tex. Ct. App. 2011) (finding loss of a pet dog’s companionship may be recoverable as a component of the dog’s intrinsic or sentimental value), rev’d, *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013).

<sup>37</sup> E.g., W.E. Shipley, Annotation, *Recovery for Mental Shock or Distress in Connection with Injury to or Interference with Tangible Property*, 28 A.L.R. 2d 1070 (1953).

## V. MEASURES OF ECONOMIC DAMAGES IN CASES INVOLVING ANIMALS

In general, courts look at a variety of pecuniary factors in assessing economic damages for injury to or the destruction of an animal. Specifically, courts often consider the fair-market value of the animal itself, particularly if it has significant market worth.<sup>38</sup> For example, courts have allowed expert witness testimony regarding an animal's pedigree, personal characteristics, breeding potential, usefulness to its owner, and services provided to its owner.<sup>39</sup> Where an animal has no market value or the market value cannot be ascertained, some jurisdictions have recognized alternate valuation schemes for animals including "value to the owner" and, in rare cases, sentimental value to the owner.

### A. *The General Rule: Market Value Of Animal*

In the majority of jurisdictions, courts have addressed the issue of measuring damages for an animal that has been negligently destroyed by limiting damages to the animal's fair market value at the time of its destruction.<sup>40</sup> Some jurisdictions also recognize the ability to recover other economic damages, such as veterinary bills, even if they exceed the

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<sup>38</sup> Richard L. Cupp, Jr. & Amber E. Dean, *Veterinarians in the Doghouse: Are Pet Suits Economically Viable?*, 16 THE BRIEF NO.1 (2002).

<sup>39</sup> See *Wells v. Brown*, 217 P.2d 995, 997-98 (Cal. Dist. Ct. App. 1950) (finding testimony by an expert familiar with the dog's breed sufficient with respect to the evidentiary burden on the plaintiff to justify the jury verdict); see also *Dimeo v. Manville*, 386 N.E.2d 917, 918-19 (Ill. App. Ct. 1979) (allowing the introduction of expert testimony pertaining to the dog's commercial value, qualities, and loss of service).

<sup>40</sup> See *Naples v. Miller*, No. 08C-01-093, 2009 WL 1163504, at \*2 (Del. Super. Ct. Apr. 30, 2009) (holding that the maximum damages available to the plaintiff is his injured dog's market value; past and future veterinary expenses are not recoverable to the extent they exceed the dog's value); *Gill v. Brown*, 695 P.2d 1276, 1277 (Idaho Ct. App. 1985) (holding that damages are the fair market value of a donkey at time of its destruction); *Lachenman v. Stice*, 838 N.E.2d 451, 467 (Ind. Ct. App. 2005) (holding that damages are the fair market value of a dog at the time of destruction); *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691-92 (Iowa 1996) (rejecting the intrinsic value measure for a dog, holding that the measure of damages is the amount which will return dog owner, monetarily, to the status he was in before the loss); *Kling v. U.S. Fire Insurance Company*, 146 So.2d 635 at 642 (La. Ct. App. 1962) (holding that a dog's value is the full market value of the dog, excluding personal or sentimental considerations); *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994) (rejecting intrinsic value to owner as a damages measure, holding that the fair market value of a dog is proper measure of damages for a destroyed dog); *Wright v. Edison*, 619 S.W.2d 797, 802 (Mo. Ct. App. 1981) (holding that damages are the difference between the fair market value of cats immediately before and immediately after the alleged injury); *Shera v. N.C. State Univ. Veterinary Teaching Hosp.*, 723 S.E.2d 352, 357 (N.C. Ct. App. 2012) (rejecting an actual value measure of damages for a dog, holding that the market value measure of damages applies to the negligent destruction of the dog); *Daughen v. Fox*, 539 A.2d 858, 864 (Pa. Super. Ct. 1988) (holding that the measure of damages is the value of a dog prior to its destruction; sentimental attachment does not make a dog "unique chattel" under PA law); *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269, 1272 (Vt. 2009) (holding that the measure of damages is the fair market value of cats prior to death less fair market value of cats after death); *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186 (Va. 2006) (holding that the measure of damages is the diminution in value of dog resulting from negligence, plus reasonable and necessary expenses incurred).

animal's market value, when the plaintiff can show that such damages were occasioned by the defendant's tortious conduct. Cases recognizing the recoverability of economic damages exceeding an animal's market value typically involve scenarios where an animal has been injured but not completely lost or destroyed.<sup>41</sup>

*B. A Second Approach: "Value to the Owner" Standard for Animals With No Market Value*

Courts in a number of jurisdictions, including Alaska,<sup>42</sup> California,<sup>43</sup> Illinois,<sup>44</sup> Mississippi,<sup>45</sup> New Mexico,<sup>46</sup> Texas,<sup>47</sup> Washington,<sup>48</sup> and West Virginia,<sup>49</sup> recognize a "value to the owner" standard. Courts use this standard to derive the economic or pecuniary value of goods where there is no market value or the market value is not ascertainable, and where the goods have identifiable features that do not enter into exchange value

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<sup>41</sup> See *Martinez v. Robledo*, 147 Cal. Rptr. 3d 921, 927 (Cal. Ct. App. 2012) (holding that pet owners may recover reasonable costs of treatment as damages for injury to pet, even where such damages exceed pet's market value); *Burgess v. Shampoo Pet Indus., Inc.*, 131 P.3d 1248, 1252 (Kan. Ct. App. 2006) (affirming award of reasonable and necessary veterinary expenses to restore dog with no market value to prior health, where dog groomer negligently caused dog's dislocated hip); *Hyland v. Borrás*, 719 A.2d 662, 664 (N.J. Super. Ct. App. Div. 1998) (affirming an award of \$2,500 for veterinary treatment, cost of supplemental dietary pills, and travel expenses incurred to restore shih-tzu to prior condition, although cost of new shih-tzu was only \$500).

<sup>42</sup> See *Mitchell v. Heinrichs*, 27 P.3d 309, 313-14 (Alaska 2001) (holding that the actual value to owner excludes sentimental value).

<sup>43</sup> See *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 566-67 (Cal. Ct. App. 2009) (holding that the peculiar value to the owner refers to a dog's unique economic value, not its sentimental or emotional value).

<sup>44</sup> See *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987) (holding that the actual value to the owner may include some element of sentimental value).

<sup>45</sup> See *Hodges v. Causey*, 26 So. 945, 946 (Miss. 1900) (holding that the special or pecuniary value of a dog to its owner is to be ascertained by reference to the dog's usefulness and services).

<sup>46</sup> See *Wilcox v. Butt's Drug Stores*, 35 P.2d 978, 979 (N.M. 1934) (holding that the special value of dog to owner does not include sentimental value).

<sup>47</sup> See *Heiligmann v. Rose*, 16 S.W. 931 (Tex. 1891); *Mireles v. Mormon*, No. 03-09-00451-CV, 2010 WL 3059241, at \*17 (Tex. App., Aug. 6, 2010) (holding that damages for the loss of a dog are limited to either the market value, if one can be ascertained, or some special or pecuniary economic value to its owner that is derived from the dog's usefulness and services); *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554 (Tex. App. 2004) (holding similarly to *Mireles v. Mormon*, No. 03-09-00451-CV, 2010 WL 3059241); *Zeid v. Pearce*, 953 S.W.2d 368 (Tex. App. 1997); *Bueckner v. Hamel*, 886 S.W.2d 368 (Tex. App. 1994); see also *Rowe v. Watkins*, 324 S.W.3d 111 (Tex. App. 2010) (holding that the measure of damages is a dog's actual worth or value less sentimental considerations); *Young's Bus Lines, Inc. v. Redmon*, 43 S.W.2d 266 (Tex. Civ. App. 1931) (holding that in the absence of market value, the measure of damages for loss of dog is the "intrinsic or actual" value to dog owner; evidence of sentimental value is inadmissible).

<sup>48</sup> See, e.g., *Sherman v. Kissinger*, 195 P.3d 539, 547-48 (Wash. Ct. App. 2008) (stating that when market value could not be determined that the appropriate measure was value to owner or intrinsic value, excluding sentimental value).

<sup>49</sup> *Carbasha v. Musulin*, 618 S.E.2d 368, 370-71 (W. Va. 2005) (holding that in determining market value, pecuniary value, or some special value of a dog, sentimental value and mental suffering cannot be considered).

but do make the goods more valuable to their owner than to others.<sup>50</sup> Section 911 of the Restatement (Second) of Torts identifies personal records, family portraits, and “dog[s] trained to obey only one master” as examples of items that have little value to others than the owner, and cases where “it would be unjust to limit the damages for destroying or harming the articles to the exchange value.”<sup>51</sup> In such cases, the value to the owner may be awarded.<sup>52</sup> California has codified Section 911 of the Restatement (Second) of Torts, and at least one California court has applied it as the measure of economic damages for an animal having no market value.<sup>53</sup> The terminology used for the value to the owner standards approved in California and other jurisdictions includes intrinsic, actual, peculiar, and special value.

The authors of the Restatement (Second) of Torts distinguish property’s value to the owner from property’s sentimental value to its owner. Sentiment cannot form a basis for the “peculiar value to the owner”:

Even when the subject matter has its chief value in its value for use by the injured person, if the thing is replaceable, the damages for its loss are limited to replacement value, less an amount for depreciation . . . If the subject matter cannot be replaced, however, as in the case of a destroyed or lost family portrait, the owner will be compensated for its special value to him, as evidenced by the original cost, and the quality and condition at the time of the loss. Likewise an author who with great labor has compiled a manuscript, useful to him but with no exchange value, is entitled, in case of its destruction, to the value of the time spent in producing it or necessary to spend to reproduce it. In these cases, however, *damages cannot be based on sentimental value.*<sup>54</sup>

Generally, the value to the owner measure is an alternative method of deriving the economic value of the animal in the absence of a market value. Most jurisdictions allowing a “value to the owner” measure do not allow recovery for the value of the animal as a companion, the animal’s sentimental value, or any other emotion-based value schemes to be included

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<sup>50</sup> RESTATEMENT (SECOND) OF TORTS § 911, cmt. e (1979).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 566-67 (Cal. Ct. App. 2009) (citing the Restatement (Second) of Torts § 911 and holding that a dog’s “peculiar value” when determining its actual value to the owner does not include sentimental or emotional value).

<sup>54</sup> *Id.* (emphasis supplied).

in an economic damages award.<sup>55</sup> The majority rule is based upon both longstanding property damages principles and sound public policy. As discussed in the next section, only two intermediate appellate courts in the nation have departed from established law and held that sentimental value or the loss of an animal's companionship are factors that may be considered when determining the value to the owner. One of those courts was subsequently overruled.

### *C. Economic Damages for Sentimental Value of Animal*

Most states do not recognize the recovery of sentimental value for any type of personal property. Thus, the majority of courts in jurisdictions that have addressed the recoverability of sentimental value damages for an animal reject such damages.<sup>56</sup>

However, a handful of states have recognized a sentimental value damages measure for items of almost purely sentimental value, such as keepsakes or heirlooms.<sup>57</sup> Only two courts in these states have considered the applicability of this sentimental value measure to animals. In *Lachenman v. Stice*, the Indiana Court of Appeals expressly held that the

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<sup>55</sup> See *supra* notes 42-49.

<sup>56</sup> *Mitchell v. Heinrichs*, 27 P.3d 309, 314 (Alaska 2001) (holding that a dog owner may not recover damages for her dog's sentimental value as a component of actual value to owner); *Lachenman v. Stice*, 838 N.E.2d 451, 467-68 (Ind. Ct. App. 2005) (refusing to extend the holdings of Indiana heirloom cases to allow for recovery of the sentimental value of a dog); *Kling v. U.S. Fire Insurance Company*, 146 So.2d 635 at 642 (La. Ct. App. 1962) (holding that, pursuant to the law of Louisiana, personal or sentimental considerations cannot be considered in valuing a Toy Fox Terrier or other personalty); *Wilcox v. Butt's Drug Stores*, 35 P.2d 978, 979 (N.M. 1934) (holding that under New Mexico law the value to owner of a negligently destroyed dog is based on actual damages sustained by being deprived of dog, not including "sentimental or fanciful value"); *Shera v. N.C. State Univ. Veterinary Teaching Hosp.*, 723 S.E.2d 352, 356-57 (N.C. Ct. App. 2012) (stating sentimental value of negligently destroyed dog is not recoverable); *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269, 1274 (Vt. 2009) (holding that Vermont law does not allow for recovery for sentimental loss not recognized for personal property, including cats); *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 187 n.5 (Va. 2006) (holding that the sentimental value and peculiar value of negligently destroyed personalty, including dogs, is not recoverable under the law of Virginia); *Sherman v. Kissinger*, 195 P.3d 539, 548 (Wash. Ct. App. 2008) (holding that the owner has no right to recovery for emotional distress arising from the negligent death to or injury of a pet); *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005) (holding that damages for sentimental value are not recoverable for the death of a pet dog under West Virginia law).

<sup>57</sup> *Campins v. Capels*, 461 N.E.2d 712, 720-21 (Ind. Ct. App. 1984) (holding an owner's feelings and sentimental value could be taken into consideration when valuing "items of almost purely sentimental value," especially those items won or generated by "blood, sweat, and tears"); *Bateman v. Ryder*, 64 S.W.48, 48-49 (Tenn. 1901) (holding that in an action for trover of trunk that contained, among other items, pictures and manuscripts of plaintiff's deceased husband it was appropriate for a jury to consider evidence of plaintiff's relation to the property and to award damages beyond the actual value of the property if the conversion of the property caused a special loss or injury); *Brown v. Frontier Theatres, Inc.*, 369 S.W.2d 299, 304-305 (Tex. 1963) (holding that in awarding damages for destroyed property whose primary value was sentimental, it is necessary to take into account the owners' feelings for the destroyed property); *Harvey v. Wheeler Transfer & Storage Co.*, 277 N.W. 627, 629 (Wis. 1938) (holding that in awarding damages for destroyed property that is chiefly or exclusively of value to its owner, such as keepsakes, family pictures, and the like, that the measure of damages should take into consideration the owner's feelings for the destroyed property).

sentimental value damages measure recognized for keepsakes in Indiana did not apply to a pet dog.<sup>58</sup> Conversely, a Texas intermediate Court of Appeals held in *Medlen v. Strickland* that the sentimental value measure in heirloom cases does apply to dogs and can reflect the value of the dog's companionship and the attachment an owner feels toward his or her beloved family pet.<sup>59</sup> *Medlen* was subsequently reversed on appeal to the Supreme Court of Texas.<sup>60</sup>

While not expressly addressing a sentimental value damages measure, an intermediate appellate court in Illinois stated in the *dicta* of *Jankoski v. Preiser Animal Hosp., Ltd* that a dog's actual value to its owner may include some element of sentimental value, though damages in such cases are "severely circumscribed."<sup>61</sup> *Medlen* and *Jankoski* are the only two appellate court decisions in the nation known to the author at the time of this article that have held that an animal's sentimental value might be recoverable as economic damages.

The court of appeals' holding in *Medlen* was in conflict with a Texas Supreme Court decision from 1891, *Heiligmann v. Rose*, holding that the "true rule" for determining the value of dogs is "either a market value, if the dog has any, or some special or pecuniary value to the owner, that may be ascertained by reference to the usefulness and services of the dog."<sup>62</sup> The *Medlen* holding was also in conflict with the decisions of other Texas courts of appeals that, consistent with *Heiligmann*, repeatedly held that damages for the loss of a dog with no market value are limited to the actual or pecuniary value of the dog to the owner excluding sentimental considerations.<sup>63</sup>

The *Medlen* court dismissed the controlling precedent in *Heiligmann* as "timeworn" because, it reasoned, the sentimental value measure for irreplaceable heirlooms and the intrinsic value measure for other property had developed at common law since the case was decided.<sup>64</sup> The *Medlen* court supported its holding with the rationale that recovery for sentimental damages is now allowed under Texas law for "all types of personal property" and should also be allowed for pets.<sup>65</sup> The Court of Appeals conflated the concepts of intrinsic value and sentimental value,<sup>66</sup>

<sup>58</sup> *Lachenman*, 838 N.E.2d at 467-68 (refusing to extend the holdings of Indiana heirloom cases to allow for recovery of the sentimental value of a dog).

<sup>59</sup> See *Medlen v. Strickland*, 353 S.W.3d 576, 580-81 (Tex. Ct. App. 2011).

<sup>60</sup> *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013).

<sup>61</sup> See *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1086-87 (Ill. App. Ct. 1987).

<sup>62</sup> *Heiligmann v. Rose*, 16 S.W. 931 (Tex. 1891).

<sup>63</sup> See *Mireles v. Mormon*, 2010 WL 3059241 (Tex. App., Aug. 6, 2010); *Rowe v. Watkins*, 324 S.W.3d 111 (Tex. App. 2010); *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554 (Tex. App. 2004); *Zeid v. Pearce*, 953 S.W.2d 368 (Tex. App. 1997); *Bueckner v. Hamel*, 886 S.W.2d 368 (Tex. App. 1994); *Young's Bus Lines, Inc. v. Redmon*, 43 S.W.2d 266 (Tex. Civ. App. 1931).

<sup>64</sup> *Medlen v. Strickland*, 353 S.W.3d at 580.

<sup>65</sup> *Id.*

<sup>66</sup> *Strickland v. Medlen*, 397 S.W.3d 184, 189-90 (Tex. 2013).

and by doing so failed to address a longstanding general rule that damage to personal property having no market value is measured by the actual economic worth of the property to the owner *excluding* sentimental considerations. By holding that a dog's sentimental value is recoverable, the *Medlen* court (had it not been reversed on appeal) would have created an expansive new rule for measuring the value of a dog that would allow the owner to recover unlimited damages derived from the emotional bond between an animal and its owner.

The Supreme Court of Texas overturned *Medlen*, reaffirming that pets are legally classified as property, and that non-economic damages rooted in subjective feelings are inappropriate in negligence cases, no matter how beloved the animal.<sup>67</sup> In reversing the *Medlen* decision, the Supreme Court of Texas clarified that the "special value" referenced in *Heiligmann* is derived from the dog's economic, not emotional, attributes.<sup>68</sup> Pets are not the equivalent of heirlooms, which are kept only for sentiment; pets provide current benefits that can be quantified as their special value to the owner without awarding damages for subjective feelings.<sup>69</sup> To recognize damages based on sentiment would effectively create a common-law loss of companionship claim for companion animals.<sup>70</sup> The Supreme Court of Texas set forth in *Strickland* the compelling pet welfare and social-policy reasons that counsel against permitting such a claim, including "the anomaly of elevating 'man's best friend' over multiple valuable human relationships"<sup>71</sup> and "the open-ended nature of such liability."<sup>72</sup> The Court noted that the Texas legislature is better equipped to decide whether extending wrongful-death actions to pets is in the State's best interest, and if so, to structure an appropriate remedy.<sup>73</sup>

#### *D. Damages For Loss of Companionship of Animal*

Plaintiffs in animal tort cases have sought damages for loss of companionship with an animal both as an independent cause of action and as an element of the animal's value. However, the vast majority of jurisdictions reject damages for an owner's loss of companionship with his or her animal regardless of whether the plaintiff sought damages as an

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<sup>67</sup> *Id.* at 185-86.

<sup>68</sup> *Id.* at 188-89.

<sup>69</sup> *Id.* at 190-91.

<sup>70</sup> *Id.* 191-92.

<sup>71</sup> *Id.* at 195 (noting that loss-of-consortium damages are not available in Texas if siblings, step-children, grandparents, or close human friends are negligently killed).

<sup>72</sup> *Id.* at 195-96 ("Such broad, unstructured liability would invite peculiar results . . . for example, if a Westminster best-of-breed champion with a \$20,000 market value is negligently destroyed, that would be the owner's top-end recovery. But if a 15-year-old frail dog with no market value dies, the owner could sue for unlimited emotional-injury damages.").

<sup>73</sup> *Id.* at 197.

independent cause of action or as an element of the animal's value.<sup>74</sup> The majority of jurisdictions have denied recovery for loss of companionship with a pet due to public policy concerns that will be discussed in more detail.<sup>75</sup> In addition, loss of companionship damages are severely restricted under state laws, which typically require the victim of the tortious conduct to be a close human family member.<sup>76</sup>

*Medlen v. Strickland*, which was later reversed by the Supreme Court of Texas, is the only appellate court decision in the nation known to the author in which a court held that a pet owner may recover loss of companionship as a component of the pet's intrinsic or sentimental value to the owner.<sup>77</sup> *Brousseau v. Rosenthal*,<sup>78</sup> a court opinion out of New York, has been cited by plaintiffs in various cases for the proposition that loss of companionship is a component of property value when establishing the actual value of a dog. *Brousseau*, however, is the opinion of a small claims trial court.<sup>79</sup> Every New York appellate court decision on this issue that the

<sup>74</sup> *Mitchell v. Heinrichs*, 27 P.3d 309, 312-14 (Alaska 2001) (listing a series of factors Alaska courts may use to determine the actual value to the dog owner that does not include companionship); *Kaufman v. Langhofer*, 222 P.3d 272, 277-79 (Ariz. Ct. App. 2009) (holding that damages for loss of companionship are not recoverable for the death of a pet bird under loss of consortium or negligent infliction of emotional distress theories under Arizona law); *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 566-67 (Cal. Ct. App. 2009) (holding that a dog's "peculiar value" when determining its actual value to the owner does not include sentimental or emotional value under California law); *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987) (stating that an action for the loss of companionship of a dog is not recognized under Illinois law); *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1289-1290 (Mass. App. Ct. 2002) (holding that damages for loss of companionship to a sheep was not within the language of the Massachusetts wrongful statute); *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000) (determining recovery for loss of companionship to a dog would require the creation of a new cause of action under Michigan law, a matter in which the court defers to legislature); *Harabes v. The Barkery*, 791 A.2d 1142, 1145 (N.J. Super. Ct. App. Div. 2001) (stating that practical reasons and public policy considerations prevent recovery of loss of companionship for dog under New Jersey law); *DeJoy v. Niagara Mohawk Power Corp.*, 786 N.Y.S.2d 873, 873 (N.Y. App. Div. 2004) (holding under New York law owners could not recover for emotional distress suffered because of the death of horses, precluding the owners' claims for recovery for loss of companionship to a horse, which is legally equivalent); *Lewis v. Di Donna*, 743 N.Y.S.2d 186, 189 (N.Y. App. Div. 2002) (holding that a lower New York court erred in allowing a dog owner to present proof of loss of companionship as part of determining a dog's value); *Oberschlake v. Veterinary Assoc. Animal Hosp.*, 785 N.E.2d 811, 815 (Ohio Ct. App. 2003) (holding that loss of companionship to animals was not recoverable under Ohio law); *Daughen v. Fox*, 539 A.2d 858, 865 (Pa. Super. Ct. 1988) ("[u]nder no circumstances, under the law of Pennsylvania, may there be recovery for loss of companionship due to the death of an animal."); *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269, 1273 (Vt. 2009) (denying recovery for loss of companionship to cats because such recovery would represent a dramatic alteration to Vermont law best left to the legislature); *Sherman v. Kissinger*, 195 P.3d 539, 548 (Wash. Ct. App. 2008) (holding that owner has no right of recovery for loss of companionship to a dog under Washington law); *Carbasha v. Musulin*, 618 S.E.2d 368, 370-71 (W. Va. 2005) (holding that loss of dog's companionship is not recoverable under West Virginia law).

<sup>75</sup> See discussion *infra* Parts V, VI.

<sup>76</sup> See *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 254-57.

<sup>77</sup> See *Medlen v. Strickland*, 353 S.W.3d 576, 580-81 (Tex. Ct. App. 2011).

<sup>78</sup> *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980).

<sup>79</sup> *Brousseau*, 443 N.Y.S.2d at 286 (opinion of "Civil Court, City of New York, New York County" deciding "small claims action"); see also N.Y. CITY CIV. CT. ACT, §§ 201-207 (defining jurisdiction of New York City Civil Court to include civil cases involving amounts up to \$25,000, small claims matters not exceeding \$5,000, and landlord-tenant matters).

author has located indicates that damages for loss of companionship with an animal are *not* recoverable under New York law.<sup>80</sup>

## VI. STATES WITH STATUTORILY DEFINED DAMAGES FOR CASES INVOLVING COMPANION ANIMALS

The legislatures of Maryland and Tennessee have enacted statutes defining and limiting non-economic damages in pet tort cases sounding in negligence.<sup>81</sup> At least one commentator has suggested that a legislative limitation on damages in these cases is not a good compromise, chiefly because damages caps can be struck down as unconstitutional, allowing a “foot in the door” for an expansion of damages and the recognition of unlimited non-economic damages claims.<sup>82</sup>

## VII. THE ADVERSE PUBLIC POLICY CONSEQUENCES OF ALLOWING NON-ECONOMIC DAMAGES IN ANIMAL-RELATED NEGLIGENCE SUITS

There seems to be no unanimous “pro-pet” position on the issue of whether the law should be expanded to allow emotion-based damages for companion animals. Organizations committed to animal well-being are arrayed on both sides.<sup>83</sup> However, if the *Strickland* case — in which numerous animal-welfare organizations filed amicus briefs — is any indicator of a national consensus, the vast majority of pet-friendly groups oppose an expansion of emotion-based damages, lest greater liability raise the cost of animal ownership and ultimately cause animals more harm than good.<sup>84</sup>

Those who support an expansion of emotion-based damages in animal negligence cases proffer spirited arguments in opposition to current law.<sup>85</sup> Generally, they argue that compensating the owner for the market or economic value of a companion animal reflects neither the loss suffered by

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<sup>80</sup> See *Lewis v. Di Donna*, 743 N.Y.S.2d 186 (N.Y. App. Div. 2002) (deciding a dog owner was not allowed to present proof of loss of companionship of her dog with respect to the issue of damages); see also *DeJoy v. Niagara Mohawk Power Corp.*, 786 N.Y.S.2d 873 (N.Y. App. Div. 2004) (affirming dismissal of claim for damages for “loss of companionship and bond between horse and owner”); *Whitmore v. Niagara Mohawk Power Corp.*, 786 N.Y.S.2d 762 (N.Y. App. Div. 2004); *Shrage v. Hatzlacha Cab Corp.*, 788 N.Y.S.2d 4 (N.Y. App. Div. 2004) (affirming dismissal of claims for dog owner’s emotional injury arising from negligent killing of dog, including loss of companionship).

<sup>81</sup> MD. CODE ANN., CTS. & JUD. PROC. § 11-110(b)(1), (2) (West 2012) (limits damages to fair market value plus necessary costs of veterinary care, not to exceed \$7,500 total); TENN. CODE ANN. § 44-17-403(a)(1) (West 2012) (allowing non-economic damages of up to \$5,000 in ordinary negligence cases, if the pet’s death or fatal injury occurs on the property of the owner; excludes certain entities and individuals, such as veterinarians and animal shelters).

<sup>82</sup> *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 269-72.

<sup>83</sup> *Strickland v. Medlen*, 397 S.W.3d 184, 193 (Tex. 2013).

<sup>84</sup> *Id.*

<sup>85</sup> See John Diamond, *Rethinking Compensation for Mental Distress: A Critique of the Restatement (Third) §§ 45-47*, 16 VA. J. SOC. POL’Y & LAW 141, 151-63 (2008).

nor the value to the owner, and they argue that it also fails to account for society's recognition of a companion animal's value.<sup>86</sup> The economic value of a companion animal such as a mixed-breed dog may be so low that it is not worth bringing an action at all, even in cases of clear injustice.<sup>87</sup> Proponents of emotion-based damages claim that allowing increased liability in negligence cases will deter careless actions.<sup>88</sup> Finally, some argue that it is unjust for the veterinary industry to profit from substantial emotional investment in pets while also benefiting from laws that do not recognize full compensation for emotional loss when an animal is injured or destroyed due to negligence.<sup>89</sup> Although it might lead to greater malpractice liability, they also argue that recognizing a legal status for pets would ultimately raise the prestige of the veterinary profession.<sup>90</sup>

While these arguments certainly have some validity — and nobody can deny the grief that a pet owner feels when his or her animal is negligently destroyed — the author sides with proponents of current law and the decisions of the vast majority of the courts in the nation. As the Supreme Court of Texas wisely observed, “an inconvenient, but inescapable truth” remains: “Tort law . . . cannot remedy every wrong.”<sup>91</sup> An expansion of emotion-based damages would harm veterinarians, manufacturers of medicines for animals, boarding stables, rescue groups, other animal-industry services providers, and ultimately animals themselves. The “unintended consequences” of larger liability insurance costs could portend a reduction in quality of veterinary care for animals resulting from reduced demand due to increased fees; a decline in animal health research and development; and a reduction in demand for most or all animal-related goods and services due to increased costs which would be passed on to consumers.<sup>92</sup> Such a dramatic expansion of damages might

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<sup>86</sup> William C. Root, “Man’s Best Friend”: Property or Family Member? An Examination of the Legal Classification of Companion Animals and Its Impact on Damages Recoverable for Their Wrongful Death or Injury, 47 VILL. L. REV. 423, 435-41 (2002); Sonia S. Waisman & Barbara R. Newell, Recovery of “Non-Economic” Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend, 7 ANIMAL L. 45, 46 (2001).

<sup>87</sup> see JOHN HOLLAND, AN ANALYSIS OF FACTORS RESPONSIBLE FOR THE DECLINE OF THE HORSE INDUSTRY (2012), available at [http://www.equinewelfarealliance.org/uploads/Analysis\\_of\\_Factors\\_Responsible\\_for\\_Horse\\_Industry\\_Decline.pdf](http://www.equinewelfarealliance.org/uploads/Analysis_of_Factors_Responsible_for_Horse_Industry_Decline.pdf) (discussing the finding that low end horse had declined in value by 25.4 percent between Spring 2004 and Spring 2010); *Damages for Death or Injury of an Animal*, ANIMAL LEGAL DEFENSE FUND, <http://aldf.org/article.php?id=244> (last visited May 10, 2013).

<sup>88</sup> See Root, *supra* note 86, 441-46 (arguing that an increase in the number veterinary malpractice suits might be a positive social development); see also Diamond, *supra* note 85, at 151-63.

<sup>89</sup> See Diamond, *supra* note 85, at 151-63.

<sup>90</sup> Hankin, *supra* note 1, at 399-409.

<sup>91</sup> *Strickland v. Medlen*, 397 S.W.3d 184, 197 (Tex. 2013).

<sup>92</sup> *Non-Economic Damages in Pet Litigation*, *supra* note 3, at 260-67; Richard L. Cupp, Jr., *Barking Up the Wrong Tree*, L.A. TIMES (June 22, 1998), <http://articles.latimes.com/1998/jun/22/local/me-62429>; see also Richard L. Cupp Jr., *A Dubious Grail: Seeking Tort Law Expansion and Limited Personhood as Stepping Stones Toward Abolishing Animals’ Property Status*, 60 SMU L. REV. 3, 34-54 (2007).

ultimately have a ripple effect beyond animal-related industries as well. Various insurance groups have cautioned that the cost of ordinary homeowners' and motor vehicle insurance policies could also negatively impact the affordability and availability of insurance for consumers.<sup>93</sup>

Additionally, allowing non-economic or emotion-based damages in negligence suits involving animals presents practical problems from a judicial standpoint. First, it is difficult to define the humans that are entitled to recover. Consider a hypothetical family dog, the daily companion of a child, who was initially purchased by the boy's father, and is fed and walked by the boy's mother. Neither the owner of record nor the primary caretaker adequately identifies the human who shares the greatest bond of companionship with this dog. It is also difficult to identify the class of animals for which a pet owner may recover. Humans form a bond with an infinite number of other living creatures. What if the family owned and treasured an unusual pet instead of a dog? Should emotional damages be allowed for birds, reptiles, fish, and tarantulas?<sup>94</sup>

In addition to the difficulty in defining owners and pets, the court system is presented with other challenges. First, the potential financial burden placed on the defendant would be unwarranted in cases of ordinary negligence. In the *Nichols* case cited *supra*, the Iowa Supreme Court held that the owner of a toy poodle killed by a kennel owner's dog was not entitled to recover emotional damages for the loss of the dog.<sup>95</sup> At trial, the owner's expert testified that the pet's value was whatever the owner thinks it is and could be "as high as the national debt."<sup>96</sup> The plaintiff's claims were eventually dismissed, but this illustrates the difficulty in quantifying the sentimental or emotional value of a companion animal and the risk that a negligent tortfeasor would be exposed to extraordinary and unforeseeable damage claims.

Second, the unwieldy legal problems that accompany allowing sentimental and companionship damage claims for pets will certainly invite gamesmanship.<sup>97</sup> For "valuable" animals such as a show horse with an established market value of \$50,000, property law damages principles in all jurisdictions dictate that the owners' maximum recovery would be \$50,000. If sentimental value damages for companion animals with little or no market value are in fact allowed, the show horse's owner might argue that the horse is a "worthless," but beloved, companion animal in hopes of recovering unlimited emotion-based damages.

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<sup>93</sup> *Strickland v. Medlen*, 397 S.W.3d 184, 194 (Tex. 2013).

<sup>94</sup> See *Rabideau v. City of Racine*, 627 N.W.2d 795, 802 (Wis. 2001) (discussing the difficulties involved in creating a bright line rule in this realm).

<sup>95</sup> *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691 (Iowa 1996).

<sup>96</sup> *Id.* at 690.

<sup>97</sup> *Strickland v. Medlen*, 397 S.W.3d 184, 196 (Tex. 2013).

In addition to the application challenges, expanding emotion-based damages to include pets would be against public policy. It would be incongruous to allow owners to recover the loss of a pet's companionship or the emotional bond that the owner has with the pet when similar recovery is not available for a variety of loved human beings. It would be odd if the law "permitted damages for loss of a Saint Bernard but not a brother Bernard."<sup>98</sup>

Virtually all the courts in the United States agree that because of the serious public policy questions, such an expansion of the law should be left to the legislature to evaluate and implement after carefully weighing the potential costs and benefits to the public. However, as discussed above, legislatively-defined parameters and caps on non-economic damages in companion animal negligence cases would be a "slippery slope" and should ultimately be avoided.

TABLE 1.  
STATES REFUSING NON-ECONOMIC DAMAGES IN ORDINARY NEGLIGENCE  
CASES INVOLVING ANIMALS

The majority of states refuse to recognize a damages claim for an owner's emotional attachment to a companion animal when the animal has been negligently lost or destroyed.

<i>State</i>	<i>Case</i>	<i>Facts</i>	<i>Court's Holding</i>
<b>Alaska</b>	<i>See Mitchell v. Heinrichs</i> , 27 P.3d 309, 314 (Alaska 2001).	Defendant landowner shot and killed a pet dog on her property.	No damages for the dog's sentimental and emotional value to owner.
<b>Ariz.</b>	<i>See Kaufman v. Langhofer</i> , 222 P.3d 272, 279 (Ariz. Ct. App. 2009).	Veterinary malpractice claim where negligence resulted in the death of a bird.	No award for damages for emotional distress or loss of companionship with pet negligently injured or killed.
<b>Cal.</b>	<i>See McMahon v. Craig</i> , 97 Cal. Rptr. 3d 555, 568 (Cal.	Veterinary malpractice claim where negligence resulted in the	No award for damages based on dog's sentimental value to

<sup>98</sup> *Id.* at 192.

	Ct. App. 2009).	death of a dog.	owner.
<b>Conn.</b>	<i>See Myers v. City of Hartford</i> , 853 A.2d 621, 626 (Conn. App. Ct. 2004).	Defendant animal control officer negligently destroyed pet dog.	Noneconomic damages are not recoverable for negligent or intentional act resulting in death of pet.
<b>Del.</b>	<i>See Naples v. Miller</i> , 2009 WL 1163504, at *3-4 (Del. Super. Ct. Apr. 30, 2009), <i>aff'd</i> , 992 A.2d 1237 (Del. 2010).	Dog fight on plaintiff's property in which the defendant's unrestrained dog caused significant injury to plaintiff's dog.	No damages for emotional distress and mental anguish resulting from witnessing damage to dog, which is property.
<b>Fla.</b>	<i>Compare Kennedy v. Byas</i> , 867 So.2d 1195, 1198 (Fla. Dist. Ct. App. 2004).	Veterinary malpractice claim where alleged veterinary malpractice caused the plaintiff dog owner emotional distress.	The Impact Rule precluded a dog owner from recovering damages for emotional distress because physical impact is a prerequisite for emotional distress damages.
	<i>with</i>		
	<i>Johnson v. Wander</i> , 592 So.2d 1225 (Fla. Dist. Ct. App. 1992).	Veterinary malpractice claim where alleged veterinary malpractice caused the plaintiff dog owner emotional distress.	Partial summary judgment striking the claims for punitive damages and emotional distress was improvidently granted because a jury questions exists
<b>Ga.</b>	<i>See Holbrook v. Stansell</i> , 562 S.E.2d 731,733	Defendant's dog allegedly attacked a newborn foal,	Impact Rule prevented the grandmother from recovering emotional

	(Ga. Ct. App. 2002).	resulting in injuries so severe that the foal had to be euthanized. Grandmother of the foal's owner witnessed the alleged attack.	distress damages.
<b>Idaho</b>	<i>See Gill v. Brown</i> , 695 P.2d 1276, 1277 (Idaho Ct. App. 1985).	Defendant shot and killed plaintiff's donkey, but plaintiffs did not sustain any physical injury.	Mental anguish damages are not recoverable on negligent infliction of emotional distress claim; different result for intentional infliction of emotional distress claim.
<b>Ind.</b>	<i>See Lachenman v. Stice</i> , 838 N.E.2d 451, 467-8 (In. Ct. App. 2006), <i>trans. denied</i> , 855 N.E.2d 1008 (Ind. 2006).	Plaintiff dog owner witnessed the death of his dog, fatally attacked by a neighbor's dog.	The dog owner's witnessing the death of his dog was insufficient to support a claim for negligent infliction of emotional distress; the sentimental value measure allowed in heirloom cases does not apply to dogs.
<b>Iowa</b>	<i>See Nichols v. Sukaro Kennels</i> , 555 N.W.2d 689, 691 (Iowa 1996).	Dog negligently injured while staying at boarding kennel.	Owner was unable to recover damages for mental distress based on his sentimental attachment to dog.
<b>Kan.</b>	<i>See Burgess v. Shampooch Pet Indus., Inc.</i> , 131 P.3d 1248, 1251 (Kan. Ct. App. 2006).	Dog negligently injured by groomer.	Sentimental value is not recoverable.

<b>Ky.</b>	<i>See Ammon v. Welty</i> , 113 S.W.3d 185, 187-8 (Ky. Ct. App. 2003).	Unrestrained family dog was impounded and destroyed by dog warden.	Family could not recover for loss of consortium because a dog is personal property, for which loss of love and affection is not compensable.
<b>La.</b>	<i>See Kling v. U.S. Fire Ins. Co.</i> , 146 So.2d 635, 642 (La. Ct. App. 1962), <i>overruled on other grounds by Holland v. Buckley</i> , 305 So.2d 113 (La. 1974), <i>superseded by statute as stated in Pepper v. Triplet</i> , 864 So.2d 181 (La. 2004).	Fatal dog fight resulting in the loss of the plaintiff's dog.	Although the court awarded damages based on the market value for the loss of the dog, the court found personal or sentimental considerations could not be considered in determining damages.
<b>Mass.</b>	<i>See Krasnecky v. Meffen</i> , 777 N.E.2d 1286, 1290 (Mass. App. Ct. 2002).	Defendant's dog killed seven sheep that were considered "companion animals" by owners.	Owners were not able to recover damages for emotional distress or loss of companionship for their sheep.
<b>Mich.</b>	<i>See Koester v. VCA Animal Hosp.</i> , 624 N.W.2d 209, 211-12 (Mich. Ct. App. 2000).	Veterinary malpractice claim where negligence resulted in the death of a dog.	Dog owner could not recover for pain and suffering, extreme fright, mortification, and loss of companionship.
<b>Minn.</b>	<i>See Soucek v. Banham</i> , 503 N.W.2d 153,	Dog shot by police.	Dog owner had no recoverable claim for negligent infliction of

	164 (Minn. Ct. App. 1993).		emotional distress because officers did not know the identity of owner and malicious conduct was not directed at the owner.
	<i>See also Soucek v. Banham</i> , 524 N.W.2d 478, 481 (Minn. Ct. App.1994).	Dog shot by police.	Dog owner's compensatory damages were limited to the fair market value of animal; the dog owner could not recover punitive damages for intentional shooting death of dog.
<b>Miss.</b>	<i>See Wright v. Edison</i> , 619 S.W.2d 797, 801-2 (Mo. Ct. App. 1981).	Plaintiffs sought future damages because of alleged nervousness of pet cats made nervous by the defendant's conduct.	Plaintiffs could not recover future damages; the measure of damages is the difference between the cats' fair market value before and after the alleged injury.
<b>Neb.</b>	<i>See Fackler v. Genetzky</i> , 595 N.W.2d 884, 891-2 (Neb. 1999).	Veterinarian's alleged negligence allegedly caused the death of two racehorses.	Owners of racehorses could not recover damages for their emotional distress.
<b>Nev.</b>	<i>See Thomson v. Lied Animal Shelter</i> , 2009 WL 3303733, *8,*10 (D. Nev. Oct. 14, 2009).	Dog euthanized without owner's consent.	Owner unable to recover damages for emotional distress because owner did not show sufficient evidence of extreme and outrageous conduct, the owner did not witness tortious conduct, and the dog was not in the class of human relatives for whom such damages are

			available.
<b>N.J.</b>	<i>See Harabes v. The Barkery</i> , 791 A.2d 1142, 1145-6 (N.J. Super. Ct. App. Div. 2001).	Dog died following groomer's alleged negligence.	Dog owners were unable to recover damages for emotional distress and loss of companionship because of public policy considerations.
<b>N.M.</b>	<i>See Wilcox v. Butt's Drug Stores, Inc.</i> , 35 P.2d 978, 979 (N.M. 1934).	Druggist's negligence in substituting pills harmful to dogs for harmless pills owner ordered resulted in death of dog.	Sentimental value damages for a dog are not recoverable.
<b>N.Y.</b>	<i>See DeJoy v. Niagara Mohawk Power Corp.</i> , 786 N.Y.S.2d 873, 873 (N.Y. App. Div. 2004).	Horses were electrocuted when defendant's wires fell on their fence.	Horse owners are unable to recover damages for either loss of companionship or emotional distress.
<b>N.C.</b>	<i>See Shera v. N.C. State Univ. Veterinary Teaching Hosp.</i> , 723 S.E.2d 352, 356-7 (N.C. Ct. App. 2012).	Veterinary malpractice claim where negligence resulted in the death of a dog.	The emotional bond owners had with their dog is not recognized as compensable under state law.
<b>Ohio</b>	<i>See Oberschlake v. Veterinary Assoc. Animal Hosp.</i> , 785 N.E.2d 811, 814 (Ohio Ct. App.	Veterinary malpractice claim where negligence resulted in injury to a dog.	Dog owners could not recover for emotional distress and loss of companionship caused by veterinarian's negligence.

	2003).		
<b>Or.</b>	<i>See</i> Lockett v. Hill, 51 P.3d 5, 6-8 (Or. Ct. App. 2002).	Defendant was found negligent in keeping dangerous dogs, which killed plaintiffs' cat.	Cat owners were not entitled to recover on their claim of negligent infliction of emotional distress absent a showing that dog owner's negligent conduct interfered with an interest that was protected by something beyond negligence law.
<b>Pa.</b>	<i>See</i> Daughen v. Fox, 539 A.2d 858, 865 (Pa. Super. Ct. 1988), <i>appeal denied</i> , 553 A.2d 967 (Pa. 1988).	Veterinary malpractice claim where negligence resulted in the death of a dog.	Under no circumstances could owners recover for loss of companionship for death of dog
<b>R.I.</b>	<i>See</i> Rowbotham v. Maher, 658 A.2d 912, 913 (R.I. 1995).	Plaintiff's dog was killed by two other dogs.	Plaintiff could not recover damages for emotional trauma or support a claim for negligent infliction of emotional distress.
<b>S.C.</b>	<i>See</i> Bales v. Judelsohn, 2005 UP 509, 509 (S.C. Ct. App. 2005). <sup>99</sup>	Dog fight resulted in injuries to plaintiff's dog.	State law does not support a cause of action for emotional distress for injury to dog; lost wages resulting from injury to an animal is not actionable because a dog is considered personal property; limited the judgment to reimbursement for

<sup>99</sup>Available<http://www.judicial.state.sc.us/opinions/displayUnPubOpinion.cfm?caseNo=2005-UP-509>.

			veterinary expenses.
<b>Tex.</b>	<i>See Strickland v. Medlen</i> , No. 12-0047, 2013 WL 1366033 (Tex. Apr. 5, 2013).	Death of family dog due to negligence.	Damages for loss of companionship or emotional harm are not recoverable; damages are limited to the “special or pecuniary value” linked to dog’s “usefulness and services,” excluding companionship or value derived from an owner’s emotional attachment to an animal.
<b>Vt.</b>	<i>See Goodby v. Vetpharm, Inc.</i> , 974 A.2d 1269, 1271 (Vt. 2009).	Alleged veterinary malpractice resulted in the death of two cats.	Loss of companionship and emotional distress damages were unavailable.
<b>Va.</b>	<i>See Kondaurov v. Kerdasha</i> , 629 S.E.2d 181 (Va. 2006).	Motorist and her dog were both injured when her vehicle was rear-ended by a bus.	Motorist could not recover damages for emotional distress or mental anguish because of her concern for injuries sustained by her dog.
<b>Wash.</b>	<i>See Sherman v. Kissinger</i> , 195 P.3d 539, 548 (Wash. Ct. App. 2008).	Veterinary malpractice claim where negligence resulted in the death of a dog.	stating that a dog owner has no right to emotional distress damages or damages for loss of human-animal bond based on negligent death or injury to dog
<b>W. Va.</b>	<i>See Carbasho v. Musulin</i> , 618 S.E.2d 368, 371 (W. Va. 2005).	Dog owner and her dog were both struck by defendant’s car; dog died as a result of defendant’s	Damages for sentimental value, mental suffering, and emotional distress not recoverable.

		negligence.	
<b>Wis.</b>	<i>See Rabideau v. City of Racine</i> , 627 N.W.2d 795, 798 (Wis. 2001).	Owner watched a police officer shoot and kill her companion dog.	Owner was not related to the victim as spouse, parent-child, grandparent-grandchild, or sibling, as was required to bring a claim for damages based upon the tort of negligent infliction of emotional distress.

To the author's knowledge, there are no reported court rulings on the issue of the recoverability of emotion-based damages for a companion animal in Alabama, Colorado, the District of Columbia, Maine, Montana, New Hampshire, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming as of the date this article was submitted for publication.