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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

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“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

I. INTRODUCTION

In the United States, there is nearly one pet for every two Americans.¹ Further, approximately 124 million dogs and cats live in American households.² In one study, forty-five percent of dog owners reported that they take their pets on vacation.³ Another recent survey revealed that more than half of companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island.⁴ Another poll revealed that fifty percent of pet owners would be “very likely” to risk their lives to save their pets, and another thirty-three percent indicated they would be “somewhat likely” to put their own lives in danger.⁵ These statistics indicate that companion animal owners view their pets as family members, rather than as personal property.⁶

According to the law, however, companion animals are considered to be merely personal property or chattel.⁷ In most jurisdictions, this classification has limited the damages that pet owners can recover when their animals are injured or killed as a result of intentional or negligent conduct.⁸ Traditionally, damages have been limited to the market value of

1. See Richard Willing, *Under Law, Pets Are Becoming Almost Human*, USA TODAY, Sept. 13, 2000, at 1A (describing increase in pet population in United States).

2. See Dave Hager, *Pet Policies Look Better As Vet Bills Rise*, GRAND RAPIDS PRESS, May 13, 2001, at J2 (“The Humane Society of the United States estimates that Americans own more than 124 million dogs and cats.”).

3. See Sarah Casey Newman, *Are Heads Behind Hearts in Love for Pets?*, ST. LOUIS POST-DISPATCH, Jan. 27, 2001, at 38 (reporting results of nationwide survey of more than 2,000 pet owners).

4. See Willing, *supra* note 1, at 1A (revealing results of 1995 survey of pet owners).

5. See Cindy Hall & Bob Laird, *Risking It All for Fido*, USA TODAY, June 24, 1999, at 1D (illustrating importance of companion animals in lives of humans).

6. For further discussion of how humans value their animal companions, see *infra* notes 99-122 and accompanying text.

7. See Debra Squires-Lee, Note, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1060 (1995) (recognizing that companion animals are legally defined as personal property).

8. See *Kane v. County of San Diego*, 83 Cal. Rptr. 19, 21-22 (Cal. Ct. App. 1969) (holding that dog owner entitled to market value of animal on day killed plus any interest from that date); *Altieri v. Nanavati*, 573 A.2d 359, 361 (Conn. Super. Ct. 1989) (noting that damages in veterinary malpractice actions are normally limited to market value of animal); *Columbus R.R. Co. v. Woolfolk*, 58 S.E. 152, 154 (Ga. 1907) (holding that market value of dog is proper measure of dam-

the animal.⁹ Some courts, however, have awarded damages based on the animal's actual value to the owner instead of using the market value approach.¹⁰ Other jurisdictions have awarded punitive damages in cases where willful or wanton conduct caused a companion animal's injury or death.¹¹ Most importantly, an overwhelming majority of jurisdictions have not allowed pet owners to recover damages for their emotional suffering resulting from the wrongful injury to or death of their companion animal.¹² Specifically, most courts have refused to permit pet owners to recover damages for emotional distress or loss of companionship.¹³

In recent years, a debate has developed concerning whether companion animal owners should be able to recover more than the market value of their pets when their animals are injured or killed through tortious conduct.¹⁴ At the forefront of this debate is whether pet owners should be

ages); *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 692 (Iowa 1996) (measuring market value of dog according to purchase price, average life of breed, training and particular traits); *Miller v. Econ. Hog & Cattle Powder Co.*, 293 N.W. 4, 11 (Iowa 1940) (noting that damages for injury to animal are ordinarily calculated by comparing value of animal before and after injury); *Kling v. U.S. Fire Ins. Co.*, 146 So. 2d 635, 641-42 (La. Ct. App. 1962) (finding that damages for loss of fox terrier is fair market value of animal and that no sentimental value can be considered); *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1997) (limiting compensatory damages for intentional killing of dog to fair market value of animal); *Greenwald v. Yazoo & Miss. Valley R.R. Co.*, 76 So. 557, 557 (Miss. 1917) (fixing value of deceased hunting dog at market value); *Daughen v. Fox*, 539 A.2d 858, 864 (Pa. Super. Ct. 1988) ("Under Pennsylvania law, a dog is personal property. The fundamental purpose of damages for injury to or destruction of property by tortious conduct of another is to compensate the injured party for actual loss suffered. As in this case, where the property has been destroyed, the measure of damages would be the value of the property prior to its destruction.") (footnote and citation omitted); *Zeid v. Pearce*, 953 S.W.2d 368, 369 (Tex. Ct. App. 1997) (recognizing that in Texas, typical recovery for death of dog is animal's market value); see also DAVID FAVRE & PETER L. BORCHELT, *ANIMAL LAW AND DOG BEHAVIOR* 53 (1999) ("In all personal property injuries, the measure of damages is the amount that will return the owner to his financial status prior to the injury. With animals the primary focus is on fair market value . . .").

9. See FAVRE & BORCHELT, *supra* note 8, at 53-56 (explaining calculation of damages based on fair market value of animal).

10. For further discussion of actual value approach, see *infra* notes 33-43 and accompanying text.

11. For further discussion of punitive damage awards, see *infra* notes 44-47 and accompanying text.

12. See generally Robin Cheryl Miller, Annotation, *Damages for Killing or Injuring Dog*, 61 A.L.R.5TH 635, 650-52 (1998) (summarizing and analyzing damages recoverable for injury to or death of dog).

13. See *id.* at 662-66 (noting unique cases in which courts have permitted dog owners to recover for their emotional injuries).

14. See P. Kennedy Page, *The Potential Cost of Losing Fido's Company; Aggrieved Pet Owners are Seeking Compensation for the Loss of Their Loved Ones*, NAT'L L.J., Jan. 8, 2001, at A15 (discussing whether pet owners should be compensated for loss of society or emotional suffering when their animals are injured or killed due to negligence). Some courts have started to reconsider the manner in which they classify companion animals. See *No Need to Change the Status of Pets*, NEWS TRIB. (Tacoma, Wash.), Apr. 8, 2001, at B6 (discussing tendency of some courts to characterize

able to recover damages for genuine mental suffering.¹⁵ Increasingly, within this context, courts have had to consider whether companion animals should be valued more as a family member, and less as property.¹⁶ Proponents of the movement to expand damages argue that it is necessary because of the unique and special role companion animals play in our society.¹⁷ Critics, however, contend that increased damages would lead to massive litigation.¹⁸

This Note discusses the damages recoverable for the wrongful injury to or death of a companion animal and argues for an expansion of damages. Part II outlines the damages courts have awarded when compensating pet owners for intentional or negligent harm to their animals.¹⁹ Part III analyzes the landmark cases and a recently enacted Tennessee statute that have permitted companion animal owners to recover for their emo-

pets as more than just property). Courts must decide whether to compensate pet owners for non-economic damages or whether to limit damages to the property value of the animal. *See id.* ("If a jury finds the vets were negligent, the interesting part of the case[s] comes next: Whether [the pet owner] can collect damages for loss of her relationship with [the pet].").

15. *See* Kay Lazar, *Courting a Pet Cause-Owners Push for Legal Rights of Furry Friends*, BOSTON HERALD, Jan. 28, 2001, at 3 (describing one pet owner's fight for compensation for pain and emotional distress she suffered when her two-year-old dog was killed by utility truck).

16. *See* Johnson v. Douglas, 723 N.Y.S.2d 627, 628 (N.Y. Sup. Ct. 2001) ("[S]ome pet owners have become so attached to their family pets that the animals are considered members of the family. . . . However, the law is clear that pet owners cannot recover for emotional distress based upon an alleged negligent or malicious destruction of a dog. . . ."); *see also* Rabideau v. City of Racine, 627 N.W.2d 795, 798-99 (Wis. 2001) (holding that public policy precluded owner of companion dog from recovering for emotional distress caused by killing of her dog). In *Rabideau*, the court concluded that the law's classification of a dog as personal property prohibited the pet owner from asserting a claim for the emotional distress caused by the negligent damage to her property. *See id.* at 798 (noting that categorization requires application of established legal doctrine). The court refused to expand the law to allow the dog owner to maintain a claim for negligent infliction of emotional distress stemming from a mere loss of property. *See id.* at 802 (finding that allowing companion animal owners to recover for their property loss would expand law into area where there is no logical or sensible stopping point).

17. *See* 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, 73 (2001) (emphasizing importance of allowing companion animal owners to recover non-economic damages for wrongful injury to or death of their animals). Waisman and Newell note the courts' recognition of the human-animal bond in marital dissolution and probate cases. *See id.* (arguing that bond between human and companion animal cannot be ignored).

18. *See* Willing, *supra* note 1, at 1A (describing fear of unnecessary lawsuits if pet owners were permitted to recover for loss of companionship and infliction of emotional distress).

19. For further discussion of damages recoverable for the injury to or death of a companion animal, *see infra* notes 24-57 and accompanying text.

tional injuries.²⁰ Part IV describes the policy and psychological justifications for valuing companion animals as more than property.²¹ Part V analyzes how the expansion of damages would impact the veterinary profession.²² Finally, Part VI proposes steps that courts and legislatures could take to ensure that companion animals are appropriately valued.²³

II. BACKGROUND

A. *Valuation of Companion Animals Based on Fair Market Value*

In most jurisdictions, pet owners can only recover the fair market value of their animals when they are injured or killed as a result of wrongful conduct.²⁴ Courts have used the market value approach because companion animals, like all animals, are considered personal property.²⁵ According to the market value approach, the pet owner is awarded the amount his pet was worth before the injury or death.²⁶

The market value approach involves a calculation of damages based upon the animal's pedigree, purchase price, general health and unique traits.²⁷ Ultimately, any factor that affects a pet's commercial value will be

20. For further discussion of the statute and cases that have permitted pet owners to recover for their emotional injuries, see *infra* notes 58-98 and accompanying text.

21. For further discussion of justifications for increasing valuation of pets, see *infra* notes 99-135 and accompanying text.

22. For further discussion of ramifications on the veterinary profession, see *infra* notes 136-77 and accompanying text.

23. For further discussion of proposals for courts and legislatures, see *infra* notes 178-201 and accompanying text.

24. See Peter Barton & Frances Hill, *How Much Will You Receive in Damages from the Negligent or Intentional Killing of Your Pet Dog or Cat?* 34 N.Y.L. SCH. L. REV. 411-12 (1989) (explaining market value as primary measure of damages for death of pet dog or cat). Under the market value approach, damages are often so minimal that it does make sense for pet owners to file lawsuits. See *id.* at 411 (noting that it is not always in pet owner's interest to sue offending party). Because of the low potential for large recovery, many lawyers are unwilling to represent pet owners in these cases. See Kenneth D. Ross & Thomas Kanyock, *If You Suspect Veterinary Malpractice . . .*, at <http://www.aldf.org/vetmal.htm> (last visited Aug. 25, 2001) (offering guidance to pet owners who fall victim to veterinary malpractice). Pet owners have the option to go to small claims court if they are unable to afford an attorney or if it does not make economic sense to acquire one. See *id.* (discussing option of small claims court). Recovery in small claims court is generally limited to out-of-pocket expenses. See *id.* (articulating potential recovery in small claims court).

25. See Barton & Hill, *supra* note 24, at 411 (reporting courts' classification of companion animals as property).

26. See FAVRE & BORCHELT, *supra* note 8, at 53 ("In all personal property injuries, the measure of damages is the amount that will return the owner to his financial status prior to the injury.").

27. See *Louisville & Nashville R.R. Co. v. Watson*, 94 So. 551, 554 (Ala. 1922) (finding that consideration of dog's special qualities is proper in determining dog's market value); *Stettner v. Graubard*, 368 N.Y.S.2d 683, 685 (Town Ct. 1975) ("[R]elevant factors to be considered . . . include the dog's age, health, breed, training, usefulness and any special traits or characteristics of value. Sentiment, however, may not be considered since that often is as much a measure of the

considered in the damage award.²⁸ Under the market value approach, pet owners must present evidence proving the fair market value of their companion animal.²⁹

The market value approach does not consider the special value a companion animal may have to its individual owner.³⁰ In fact, this approach does not recognize any attachment between a human and his or her pet.³¹ The valuation method "relies instead on what amount the animal would be worth to a stranger acting as a willing buyer in an arm's length transaction for fungible goods."³²

B. *Valuation of Companion Animals Based on Actual Value of Pet to Owner*

Courts that do not use the market value system calculate damages based on the actual value of the companion animal to its owner.³³ This

owner's heart as it is the dog's worth."); *see also* FAVRE & BORCHELT, *supra* note 8, at 54 (explaining elements that comprise market value).

28. *See* FAVRE & BORCHELT, *supra* note 8, at 54 (noting that any factor that affects commercial value changes valuation computation).

29. *See* Burgreen Contracting Co. v. Goodman, 314 So. 2d 284, 294-95 (Ala. Civ. App. 1975) (finding that information relating to value of animal can be given by expert with sufficient knowledge of animal); Wells v. Brown, 217 P.2d 995, 997-98 (Cal. Ct. App. 1950) (affirming jury verdict of \$1,500 in negligent killing of dog even though purchase price was only \$300 because of expert testimony by third party familiar with particular breed); Demeo v. Manville, 386 N.E.2d 917, 918 (Ill. App. Ct. 1979) (discussing evidence that pet owner may introduce to prove value of his or her companion animal); Ponder v. Angel Animal Hosp., Inc., 762 S.W.2d 846, 847 (Mo. Ct. App. 1988) (finding that dog owner failed to prove any loss in dog's value where veterinarian mistakenly neutered animal brought to veterinary hospital); *see also* FAVRE & BORCHELT, *supra* note 8, at 54 (describing presentation of evidence). Expert testimony is normally needed to prove the market value of the animal to the court. *See id.* (describing use of expert testimony). The market value calculations are done on a case by case basis and are ultimately a jury decision. *See id.* (noting role of jury in damage assessment). In many cases, it is difficult to find an accurate method to determine the market value. *See* Barton & Hill, *supra* note 24, at 413-15 (discussing problems with market value approach).

30. *See* Barton & Hill, *supra* note 24, at 415 (assessing flaws of market value approach).

31. *See* GARY L. FRANCIONE, ANIMALS, PROPERTY, AND THE LAW 55 (1995) (describing limitations of market value approach). Francione argues that the market value approach fails to satisfactorily compensate many pet owners. *See id.* (recognizing that many pet owners would never contemplate selling their pets because of emotional attachment they have with their animals). The same scholar suggests that the main reason the market value approach is still widely used is because it is most capable of proof. *See id.* at 61 (stating that awards usually depend on market value of animal).

32. *Id.* at 55.

33. *See* Zeiner v. Spokane Int'l R.R., 300 P.2d 494, 499 (Idaho 1956) (explaining that value of personal property to individual owner is proper measure of damages when possession has no market value); Wilcox v. Butt's Drug Stores, Inc., 35 P.2d 978, 979 (N.M. 1934) (declaring that dog's market value is not proper measure of damages when animal possesses no true market value); McDonald v. Ohio State Univ. Veterinary Hosp., 644 N.E.2d 750, 752 (Ohio Ct. Cl. 1994) (deciding actual value of dog based on animal's age, training and accomplishments). In *Mc-*

approach is primarily used in cases where the animal has no market value or where market value is not a true indication of its worth.³⁴ This valuation system goes beyond simple market value analysis and recognizes the special value of pets to their owners.³⁵ In most cases, under this valuation approach, an animal's actual value increases as the animal ages.³⁶

In theory, this method of calculation appears beneficial to pet owners because it recognizes the unique relationship between companion animals and their owners.³⁷ In practice, however, the damage awards have typically been as minimal as they are under the market value approach.³⁸ The sparse damage awards are primarily due to the fact that courts still view companion animals as property, and damage awards reflect this classification.³⁹

Donald, an owner of a show dog brought a negligence suit against a veterinary hospital after the animal suffered irreversible paraplegia and paralysis of the hind limbs after receiving negligent surgery. *See id.* at 751 (describing factual basis of lawsuit). After a trial was conducted on the sole issue of damages, the court awarded \$5,000 to the owner for the injury to the show dog. *See id.* at 752 (noting specifics of damage award). In calculating damages, the court considered the time and effort involved in training the dog, its unique pedigree and loss of stud fees. *See id.* (explaining elements of damage award). Courts have considered how far they should extend the actual value approach. *See Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1086-87 (Ill. App. Ct. 1987) (determining that dog's value to its owner is proper measure of damages when market value cannot be determined). In *Jankoski*, the court found that the actual value to the owner can include some element of sentimental value, but emphasized that there was no independent cause of action for loss of companionship for the death of a pet. *See id.* at 1087 ("The concept of actual value to the owner may include some element of sentimental value in order to avoid limiting the plaintiff to merely nominal damages.").

34. *See McDonald*, 644 N.E.2d at 752 (recognizing that actual value of property to owner is sometimes better standard than market value). The *McDonald* court emphasized that the market value standard is not a "shackle" and promoted the use of the actual value approach in appropriate circumstances. *See id.* (citing *Bishop v. East Ohio Gas Co.*, 56 N.E.2d 164, 166 (Ohio 1944)) (noting use of actual value standard when market value cannot be ascertained).

35. *See FAVRE & BORCHELT*, *supra* note 8, at 58 (discussing alternative to market value approach). Courts and commentators have alternatively termed this category of damages as the 'intrinsic value' formula. *See Barton & Hill*, *supra* note 24, at 416-21 (analyzing intrinsic value approach). "The term 'intrinsic' focuses on the animals as an [sic] individuals as well as their relationships to human possessors/owners." *FAVRE & BORCHELT*, *supra* note 8, at 58.

36. *See Barton & Hill*, *supra* note 24, at 416 (analyzing damages based on actual or intrinsic value of pet).

37. *See FRANCIONE*, *supra* note 31, at 58 (noting that intrinsic value recognizes attachment between companion animal and its owner). Some scholars claim that valuation based on actual value is too subjective and difficult to measure. *See Barton & Hill*, *supra* note 24, at 419 (analyzing whether sentimental value should be component of damages).

38. *See FRANCIONE*, *supra* note 31, at 58 (recognizing low damage awards based on actual value of animal).

39. *See Barton & Hill*, *supra* note 24, at 421 ("[T]he damages have been as low as the damages awarded using the market value method and are therefore inadequate.").

A long-term feeling of loss of the animal's companionship frequently follows the death of a pet.⁴⁰ For this reason, one court expanded recoverable damages under the actual value approach by allowing loss of companionship to be included as a component of value.⁴¹ Justification for loss of companionship rests on the theory that it "would be wrong not to acknowledge the companionship" that is lost when an animal is wrongfully killed or injured.⁴² Nevertheless, most courts have not permitted loss of companionship to be included in damage awards for the wrongful injury to or death of a companion animal.⁴³

C. *Punitive Damage Awards for the Wrongful Injury to or Death of Companion Animals*

Some courts have allowed the recovery of punitive damages in cases where the person causing harm to the companion animal engaged in conduct that was malicious, willful or in reckless disregard of the rights of the animal and the pet owner.⁴⁴ "Punitive damages are not meant to compen-

40. See, e.g., *FAVRE & BORCHELT*, *supra* note 8, at 64 (describing emotional injuries suffered when pet dies). For a further discussion of the emotional effects on a pet owner from the death of his or her companion animal, see *infra* notes 123-35 and accompanying text.

41. See *Brousseau v. Rosenthal*, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980) (recognizing loss of companionship as element of dog's actual value). In *Brousseau*, a woman boarded her eight-year-old dog at a kennel. See *id.* at 285 (describing factual basis of negligence suit). When she returned to the kennel two weeks later she was told that her dog had died. See *id.* (establishing facts). The court found that the defendant's failure to return the bailed dog, combined with the defendant's lack of an explanation for the dog's death, established negligence. See *id.* at 286 (describing general law applying to bailees of animals). The court concluded that loss of companionship should be included as an element of the dog's actual value and awarded the woman \$550 plus costs and disbursements. See *id.* at 287 (awarding judgment for pet owner). The *Brousseau* case clearly stands in the minority because most courts do not allow loss of companionship to be a component of a damage award for a property loss. See *Klein v. St. Louis Transit Co.*, 93 S.W. 281, 282-83 (Mo. Ct. App. 1906) (finding that loss of dog's companionship and deprivation of pleasure should not be considered in damage award for wrongful death of animal).

42. See *Brousseau*, 443 N.Y.S.2d at 286-87 (describing reasons for allowing loss of companionship as element of damages).

43. See *Gluckman v. Am. Airlines, Inc.*, 844 F. Supp. 151, 158 (S.D.N.Y. 1994) (finding no independent cause of action for loss of companionship of pet); see also *Daughen v. Fox*, 539 A.2d 858, 864-65 (Pa. Super. Ct. 1988) (holding that dog owner not entitled to damages for loss of companionship upon death of animal). The *Daughen* court noted that companionship is included in the idea of consortium, the right growing out of a marriage giving each spouse "the right to the companionship, society and affection of each other in their life together." See *id.* at 865 (defining consortium). The court concluded that under no circumstances would it be valid to allow recovery for loss of companionship for the death of an animal. See *id.* (finding no claim for loss of companionship).

44. See *Levine v. Knowles*, 197 So. 2d 329, 332 (Fla. Dist. Ct. App. 1967) (allowing claim for punitive damages based on defendant's conduct); *Wilson v. City of Eagan*, 297 N.W.2d 146, 151 (Minn. 1980) (permitting award of punitive damages based on dog warden's killing of cat because such killing displayed willful

sate an owner for injury to his or her property, but to punish the person causing the injury for his or her unacceptable conduct."⁴⁵ In determining the proper punitive damage award the court will consider the following: (1) degree of malice, (2) amount needed to deter such conduct, (3) wealth of the perpetrator, (4) sentimental value of the animal and (5) degree of pain and suffering of the pet owner.⁴⁶ Some courts are reluctant to allow the recovery of punitive damages because of the absence of a physical injury to the human owner and because of the law's classification of companion animals as property.⁴⁷

D. *Emotional Distress Damages for Wrongful Injury to or Death of Companion Animals*

Most courts have refused to compensate companion animal owners for their mental distress when their pets are injured or killed.⁴⁸ The primary reason is that companion animals are considered property, and damages for mental distress for injury to or loss of property are not

disregard for law and property rights of citizens). In *Knowles*, the court allowed a claim for punitive damages when the defendant cremated a dog that died while in his possession, even though the plaintiffs specifically requested that the dog's body be kept intact for an autopsy. See *Knowles*, 197 So. 2d at 331-32 (allowing claim for punitive damages). In permitting the punitive damages award the court stated that the "doctrine of punitive damages makes the desired admonitory function of certain tort actions more effective than it would if money judgments were always limited to reparation." *Id.* at 331. The court further found, "[t]hat the conduct which gives rise to punitive damages need be willful, wanton, reckless, malicious or oppressive to guard against allowance of punitive damages in cases where there is no admonitory function" *Id.*

45. FAVRE & BORCHELT, *supra* note 8, at 58.

46. See *Companion Animal Wrongful Death or Injury Cases—An Introduction*, Animal Legal Defense Fund, at <http://www.aldf.org/damages.htm> (last visited Aug. 25, 2001) (noting elements courts will consider in determining whether to award punitive damages in cases where companion animals are wrongfully harmed).

47. See *Soucek v. Banham*, 524 N.W.2d 478, 481 (Minn. Ct. App. 1994) (holding that pet owner cannot recover punitive damages for loss of pet because owner merely suffered property damage).

48. See *Jason v. Parks*, 638 N.Y.S.2d 170, 171 (N.Y. App. Div. 1996) (holding that dog owner cannot recover damages for emotional distress caused by wrongful death of animal as result of veterinary malpractice); *Strawser v. Wright*, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992) ("We sympathize with one who must endure the sense of loss which may accompany the death of a pet; however, we cannot ignore the law Ohio law simply does not permit recovery for serious emotional distress which is caused when one witnesses the negligent injury to or destruction of one's property."); *Rowbotham v. Maher*, 658 A.2d 912, 913 (R.I. 1995) (holding that claim for recovery under negligent infliction of emotional distress was unavailable to companion animal owner whose dog was wrongfully killed); *Zeid v. Pearce*, 953 S.W.2d 368, 369-70 (Tex. Ct. App. 1997) (holding that pet owner cannot recover damages for pain and suffering or mental anguish in veterinary malpractice lawsuit); *Julian v. DeVincent*, 184 S.E.2d 535, 536 (W. Va. 1971) (explaining general rule that damages for sentimental value or mental suffering are not recoverable for loss of animal).

recoverable.⁴⁹ The majority view does not recognize any emotional bond between companion animals and their owners.⁵⁰ Although some courts have recognized a unique bond between humans and animals, they still have not allowed damages for pain and suffering.⁵¹

Most courts, following the majority rule, have not allowed emotional distress damages for harm to companion animals when the harm was intentional or negligent.⁵² They have been reluctant to award emotional distress damages for fear that such precedent would result in massive litigation or would lead to emotional damage claims for other forms of property.⁵³ Courts have compared the attachment to a pet as that to a family heirloom or prized school ring.⁵⁴ As one New York court recognized, the fear is that "[s]uch an expansion of the law would place an unnecessary burden on the ever burgeoning caseloads of the court in resolving serious tort claims for injuries to individuals."⁵⁵ The majority approach, however, fails to recognize any unique bond that may exist between companion animals and their owners.⁵⁶ The courts must determine how to acknowledge the profound emotional attachment between humans and companion ani-

49. See *Squires-Lee*, *supra* note 7, at 1060-64 (noting courts' reasoning for refusing to allow recovery for emotional suffering); see also *Strawser*, 610 N.E.2d at 612 (explaining limitations on recoverable damages).

50. See *Squires-Lee*, *supra* note 7, at 1061-62 (arguing that courts have not adequately compensated pet owners for loss of their animal). *Squires-Lee's* fundamental argument is that companion animal owners should be compensated for their emotional losses because the primary goal of tort law is to require the tortfeasor to pay all damages proximately caused by his or her conduct. See *id.* at 1062 (outlining argument for recovery of damages for emotional injuries resulting from death of pet). Furthermore, *Squires-Lee* contends that "[a]s long as mental anguish is compensable in tort, the anguish resulting from the death of a companion animal should also be compensable." *Id.*

51. See *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 690-91 (Iowa 1996) (recognizing unique bond between humans and their companion animals, but yielding to majority rule that pet owners cannot recover for their emotional suffering resulting from harm to their pets); *Fackler v. Genetzky*, 595 N.W.2d 884, 892 (Neb. 1999) ("People may develop an emotional attachment to personal property, whether animals or inanimate objects with sentimental value, but the law does not recognize a right to money damages for emotional distress resulting from the negligent destruction of such property.").

52. See *FAVRE & BORCHELT*, *supra* note 8, at 60 (explaining judicial reluctance to award damages for mental pain and suffering for loss of pet).

53. See *Johnson v. Douglas*, 723 N.Y.S.2d 627, 628 (N.Y. Sup. Ct. 2001) (dismissing claims of pet owners for emotional distress and pain and suffering from witnessing death of their dog).

54. See *id.* (expressing concern for future recoveries for mental stress caused by intentional or negligent destruction of other forms of personal property).

55. *Id.*

56. See Carol L. Gatz, *Animal "Rights" and Emotional Distress for Loss of Pet*, 43 ORANGE COUNTY LAW. 16, 22 (2001) (noting that California law still views family pets as property and does not allow for monetary compensation for any emotional suffering that may result from loss of pet).

mals while keeping lawsuits and recoverable damages within manageable limits.⁵⁷

III. LANDMARK CASES AND STATUTES

A. Cases Allowing Recovery for Emotional Injuries

1. *LaPorte v. Associated Independents, Inc.*

In *LaPorte v. Associated Independents, Inc.*,⁵⁸ a dog owner filed suit against a trash collection corporation for maliciously killing her dog.⁵⁹ An employee for the company threw a garbage can at the miniature dachshund while it was tethered outside the dog owner's house.⁶⁰ The dog owner went outside to find her dog injured and dying while the trash collector laughed.⁶¹

A jury awarded the dog owner \$2,000 in compensatory damages and \$1,000 in punitive damages for the malicious killing of her dog.⁶² The trial judge instructed the jury that the dog owner also could recover for her alleged mental distress.⁶³ The appellate court reversed the damages award because of this jury charge.⁶⁴ The Florida Supreme Court granted the dog owner's writ of certiorari and quashed the appellate court's judgment with directions that the jury award be reinstated.⁶⁵

The court found that the dog owner was entitled to both compensatory and punitive damages for her pain and suffering.⁶⁶ The court explicitly stated that "the affection of a master for his dog is a very real thing and that the malicious destruction of the pet provides an element of damage for which the owner should recover, irrespective of the value of the animal. . . ."⁶⁷

The *LaPorte* case is influential because it expanded the damages available to companion animal owners.⁶⁸ First, the Florida Supreme Court in *LaPorte* held that a dog owner was entitled to recover for her mental suffer-

57. For further discussion of suggested proposals for the courts, see *infra* notes 178-91 and accompanying text.

58. 163 So. 2d 267 (Fla. 1964).

59. See *LaPorte*, 163 So. 2d at 267-68 (describing factual basis of lawsuit).

60. See *id.* at 268 (illustrating events that led to death of dog).

61. See *id.* (describing dog owner's discovery of her deceased companion animal).

62. See *id.* at 267 (setting forth damage award).

63. See *id.* (explaining jury instructions as stated by trial court).

64. See *id.* (remanding for new trial on issue of damages).

65. See *id.* at 269 (determining that finding of appellate court was erroneous).

66. See *id.* at 268-69 ("It is to us obvious from the facts we have related that the act performed by the representative of the [trash collection corporation] was malicious and demonstrated an extreme indifference to the rights of the [dog owner].").

67. *Id.* at 269 (noting that recovery was irrespective of value).

68. See *LaPorte*, 163 So. 2d at 269 (expanding damages to include mental suffering and punitive damages for death of plaintiff's companion animal).

ing as an element of damages for the malicious killing of her dog, a miniature dachshund.⁶⁹ Second, the court found that punitive damages were warranted because the wrongful conduct was malicious and demonstrated an extreme indifference to the dog owner's rights.⁷⁰ This case therefore paved the way for other courts to allow recovery for emotional suffering resulting from intentional or malicious killing of a companion animal.⁷¹

2. *Campbell v. Animal Quarantine Station*

Hawaii has gone further than any other jurisdiction in allowing companion animal owners to recover for emotional suffering.⁷² In *Campbell v. Animal Quarantine Station*,⁷³ the court upheld a damages award for the emotional distress a family suffered when its dog was killed by the negligent conduct of a state agency.⁷⁴ *Campbell* is a landmark case because the Hawaii Supreme Court permitted the family to recover for its emotional suffering even though the family members were not present when the dog died, did not witness the wrongful conduct and were never in danger.⁷⁵

In *Campbell*, the family dog died while being transported to a private hospital by a state agency.⁷⁶ The dog, a nine-year-old female boxer, was one of seven animals transported in the agency's van to a veterinary hospital.⁷⁷ The van did not have proper ventilation devices and the boxer died of heat prostration after arriving at the hospital.⁷⁸

The trial court awarded \$1,000 to the family for negligent infliction of emotional distress.⁷⁹ The state agency appealed, claiming that the family could not recover for emotional injuries because the family did not witness

69. See *id.* (allowing jury instruction regarding award of damages for mental suffering).

70. See *id.* at 268 (finding punitive damages warranted because of nature of wrongdoer's conduct).

71. See *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454, 456 (Alaska 1985) (recognizing cause of action for intentional infliction of emotional distress for intentional or reckless killing of companion animal); *Gill v. Brown*, 695 P.2d 1276, 1277 (Idaho Ct. App. 1985) (allowing recovery for intentional infliction of emotional distress for killing of plaintiff's donkey). The Second Restatement on Torts states that "[o]ne who by extreme and outrageous conduct intentionally or recklessly causes some emotional distress" is liable for intentional infliction of emotional distress. RESTATEMENT (SECOND) OF TORTS § 46 (1964).

72. For further discussion of Hawaii's allowance of emotional suffering to be included in a damage award for an injury to or death of a companion animal, see *infra* notes 73-89 and accompanying text.

73. 632 P.2d 1066 (Haw. 1981).

74. See *Campbell*, 632 P.2d at 1067 (allowing family to recover emotional distress damages resulting from negligent killing of its dog).

75. See *Squires-Lee*, *supra* note 7, at 1079-80 (explaining state modifications of legal theories to compensate pet owner for loss of animal).

76. See *Campbell*, 632 P.2d at 1067 (reciting facts of case).

77. See *id.* (noting that dog was in van for at least one hour).

78. See *id.* (observing that plaintiffs were notified by phone).

79. See *id.* (describing lower court's order).

the tortious event.⁸⁰ Furthermore, the agency claimed that the family could not recover because the family had not presented medical testimony to substantiate the emotional distress claims and because damages for mental injuries suffered from the loss of personal property were not recoverable.⁸¹

The court upheld the damages award and rejected the view that the family had to witness the negligent conduct to recover.⁸² In addition, the court found that medical testimony should be used to indicate the degree of mental distress suffered, but should not act as a bar to recovery.⁸³ The court concluded that "[m]edical proof can be offered to assist in proving the 'seriousness' of the claim . . . but should not be a requirement allowing or barring the cause of action. . . . [T]he duration and symptoms of the distress affect the amount of recovery."⁸⁴ Finally, the court acknowledged that it was in the minority in allowing recovery for mental distress suffered as a result of the negligent destruction of property.⁸⁵ In support of its position, the court emphasized that even though it had allowed the claim for the past ten years in other contexts, "the fears of unlimited liability had not prov[en] true."⁸⁶

The *Campbell* court evidently was sympathetic to the bond between pets and their owners.⁸⁷ While still classifying a companion animal as property, the court expanded its legal theories to compensate the dog's family for its full loss.⁸⁸ This case might be used as a springboard for other courts to adopt the same or similar legal reasoning to expand the damages recoverable for the wrongful injury to or death of a companion animal.⁸⁹

80. *See id.* (describing procedural facts of case).

81. *See id.* at 1069-71 (stating that family did not see dead animals' body).

82. *See id.* at 1069 (finding no geographical limitation placed on recovery).

83. *See id.* at 1070-71 (discussing utilization of medical testimony).

84. *Id.* at 1071.

85. *See id.* (acknowledging that by allowing recovery for emotional distress it was taking unique approach).

86. *See id.* (offering support for damage award).

87. For further discussion of *Campbell*, see *supra* notes 72-86 and accompanying text and *infra* notes 88-89 and accompanying text.

88. *See Squires-Lee, supra* note 7, at 1080 (examining legal reasoning of *Campbell* court).

89. *See Knowles Animal Hosp. v. Wills*, 360 So. 2d 37, 38 (Fla. Dist. Ct. App. 1978) (upholding jury award that included consideration of dog owners' mental pain and suffering). In *Knowles*, dog owners filed suit against an animal hospital and a veterinarian on the ground that the defendants were grossly negligent in their treatment of the plaintiffs' dog. *See id.* (describing facts). The dog suffered severe burns and disfigurement after being placed on a heating pad and left there for two hours. *See id.* (observing that dog eventually had to be put down). A jury trial found a verdict and judgment in favor of the dog owners and against the veterinary hospital for \$13,000. *See id.* (noting jury award). The court upheld the award stating that "the jury could . . . view the negligent conduct which resulted in the burn injury suffered by the dog to have been of a character amounting to great indifference to the property of the plaintiffs, such as to justify the jury award." *Id.*

B. *Statute Allowing Recovery for Emotional Injuries*

1. *Tennessee's T-Bo Act*

In 2000, Tennessee became the first state to enact legislation that allows companion animal owners to recover for emotional injuries when their pets are wrongfully killed.⁹⁰ The measure allows pet owners to recover up to \$4,000 in non-economic damages "[i]f a person's pet is killed or sustains injuries which result in death caused by the unlawful and intentional, or negligent, act of another"⁹¹ The statute narrowly defines "pet" as any "domesticated dog or cat normally maintained in or near the household of its owner."⁹² In addition, the statute only compensates for loss of expected society, companionship and love and affection of the companion animal.⁹³ Moreover, the T-Bo Act includes a provision that excludes veterinarians from liability for professional negligence.⁹⁴ Finally, it includes a geographic limitation that declares that the statute "shall apply only in incorporated areas of any county having a population in excess of seventy-five thousand. . . ."⁹⁵

The T-Bo Act is a positive development for companion animal owners because it expands available damages.⁹⁶ The statute, however, is extremely narrow in scope because of the statutory cap it places on damages, its coverage of only dogs and cats and its exclusion of veterinarians.⁹⁷ Nevertheless, the statute provides a starting point for other states to adopt similar statutes that expand damages in this area of the law.⁹⁸

IV. POLICY AND PSYCHOLOGICAL JUSTIFICATIONS FOR VALUING COMPANION ANIMALS AS MORE THAN PROPERTY

A. *Companion Animals Viewed As Family Members*

Courts are reluctant to expand damages in cases involving companion animals because of the companion animals' classification as property.⁹⁹ Nevertheless, there are numerous psychological and policy justifications demonstrating that courts should value pets more like family members,

90. See TENN. CODE ANN. § 44-17-403 (2001) (allowing award of non-economic damages for harm suffered in connection with death of pet).

91. TENN. CODE ANN. § 44-17-403(a).

92. TENN. CODE ANN. § 44-17-403(b).

93. See *id.* (noting limits on types of damages recoverable pursuant to statute).

94. See TENN. CODE ANN. § 44-17-403(e) (emphasizing that statute should not be "construed to authorize any award of non-economic damages in an action for professional negligence against a licensed veterinarian").

95. TENN. CODE ANN. § 44-17-403(f).

96. For further discussion of the T-Bo Act's expansion of damages, see *supra* notes 90-95 and accompanying text.

97. See Waisman & Newell, *supra* note 17, at 70-71 (describing limitations of Tennessee statute).

98. See *id.* at 68-71 (describing potential impact of statute).

99. See Squires-Lee, *supra* note 7, at 1060 ("[T]he legal and ethical consequences of that definition are tremendous.").

giving the courts the flexibility to expand damages.¹⁰⁰ Psychological studies examining the relationship between humans and their companion animals reveal that more than seventy percent of pet owners consider their pets to be a member of the family.¹⁰¹

Pets are viewed as members of the family to the extent that they can be anthropomorphized or assigned human thoughts and feelings.¹⁰² Dogs and cats are most commonly humanized and therefore are most frequently regarded as family members.¹⁰³ Pet owners report that a wide variety of human traits and emotions such as loyalty, trustworthiness, happiness, fear or jealousy can be evidenced in their pets.¹⁰⁴ In addition, many pet owners agree that their companion animal is able to reciprocate their love.¹⁰⁵ In fact, some contend that a pet's love is unconditional and uncritical, resulting in a love superior to that which is sometimes shared between humans.¹⁰⁶

100. For further discussion of psychological and policy justifications for valuing companion animals as a family member, see *supra* note 99 and accompanying text and *infra* notes 101-22 and accompanying text.

101. See Debra Lynn Stephens & Ronald Paul Hill, *The Loss of Animal Companions: A Humanistic and Consumption Perspective*, 4 SOC'Y & ANIMALS 189, 190 (1996) (exploring psychological studies that ask pet owners to describe how they view their pets). These studies, which involve asking pet owners to explain how they view their pets, were designed to understand the function companion animals play in their owners' lives. See *id.* (observing that between seventy and ninety percent of pet owners view their pets as family members). Results from one investigation found that as many as ninety-three percent of the respondents viewed their pet as a member of the family. See *id.* (reporting statistics from study designed to examine relationship between humans and their companion animals).

102. See *id.* at 191 (proposing cultural hierarchy among pet species).

103. See *id.* (naming species that are considered most easily anthropomorphized).

104. See Russell W. Belk, *Metaphoric Relationships with Pets*, 4 SOC'Y & ANIMALS 121, 126, 132, 135 (1996) (identifying human traits often assigned to pets). Traditionally, humans "attribute . . . characteristics of 'mindedness' [to their animals] and view them as sharing our emotions. From fables of old to contemporary comics and advertisements, animals have been portrayed with human characteristics of thought, character and morality." *Id.* at 123. In a recent investigation, data was collected through interviews and observations in a veterinary clinic to determine how companion animal owners conceptualize their pets. See Clinton Sanders, *Understanding Dogs: Caretakers' Attributions of Mindedness in Canine-Human Relationships*, 22 J. CONTEMP. ETHNOGRAPHY 205, 206-08 (1993) (explaining purpose of study). Findings revealed that pet owners view their companion animal as "an authentic, reciprocating, and empathetic social actor. . . ." See *id.* at 221 (summarizing results of investigation).

105. See Belk, *supra* note 104, at 126 (concluding that pet owners believe that their companion animals feel love for them).

106. See *id.* (suggesting that many pet owners perceive their pet's love to be unconditional). During an interview with a female cat owner, the cat owner stated that "[c]ats don't care if [their owner] grows fat, thin, short, etc. . . ." *Id.* This belief that pets share love unconditionally with humans makes some people actually prefer their relationship with their pet to relationships with other human beings. See, e.g., John Archer, *Why Do People Love Their Pets?*, 18 EVOLUTION & HUM. BEHAVIOR 237, 253 (1997) (noting that one individual designated his dog as best man at his wedding). Because relationships with pets are "largely based on attrib-

While the tendency to see a companion animal as a member of the family is pervasive, the role each pet plays in the unique family structure differs.¹⁰⁷ Frequently, companion animal owners view their pets as children and engage in activities that parents often share with their human children such as playing and speaking in motherese.¹⁰⁸ Similar to raising human children, caring for and training pets requires a tremendous investment of time, energy and money.¹⁰⁹ In a recent anecdotal study, a female pet owner described her experience after her dog got an ear infection: "Last summer, [my husband] and I stayed up all night. He took the first six hours and then I took the rest. . . . I think we've sort of learned how to take care of her, just like you do a toddler. . . ."¹¹⁰ Given such investments, it is easy to understand how pet owners become highly attached to their companion animals.

In a cross-cultural survey of pet owners, findings revealed that in addition to being viewed as surrogate children, pets also take on a parental role, providing security and protection.¹¹¹ Some respondents also responded that their pet fulfills the role of partner, offering comfort and emotional support.¹¹² A pet's status as "family member" is often evi-

uted positive features [these relationships]. . . avoid . . . conditional and judgmental features that are so inconvenient in human relationships." *Id.*

107. For further discussion of the different roles companion animals play within a family structure, see *infra* notes 111-22 and accompanying text.

108. See Archer, *supra* note 106, at 241 (summarizing research studies that examine how people view their relationships with pets). In one study, thirty companion animal owners were asked to describe their significant others, including their pets, using various adjectives that were provided. See *id.* (describing study procedures). Results indicated that respondents most frequently selected the same adjectives when describing their children and their pets. See *id.* (analyzing results of study).

109. See *id.* at 238 ("[C]ommonplace examples of the enormous amount of affection, time, and money that people in modern western societies lavish on their pets . . . include offering rewards when they are lost, paying for their grooming and health care, buying them presents . . .").

110. Belk, *supra* note 104, at 128. The purpose of this anecdotal study was to identify themes in human-companion animal relationships. See *id.* at 123 (stating goal of research). Forty pet owners were interviewed and asked about their interactions with and feelings towards their pets. See *id.* (explaining research methods). The study participants were between the ages of fourteen and sixty-eight and owned dogs, cats, birds and horses. See *id.* (describing study sample). Additional information was gathered by observing pet owners at special events such as dog obedience shows and pet photography shoots. See *id.* (reviewing other methods for gathering data about relationships between pets and humans).

111. See Archer, *supra* note 106, at 241 (reporting results from survey designed to understand roles pets play in their owners' lives). Some responses that indicate that pets are viewed as parental figures include: "I enjoy feeling my dog sitting close to me" and "I hate going home when my dog is not there to greet me." *Id.*

112. See *id.* (describing survey results that show some people view pets like spouses). Responses that indicate that some pets fulfill the role of a partner include: "When upset or anxious I turn to my dog for comfort." *Id.*

denced through its inclusion in family rituals.¹¹³ One scholar's interviews with pet owners revealed that companion animals often eat at the same time as their owners, are assigned their own furnishings or rooms and often engage in the same activities as human family members.¹¹⁴ In addition, results demonstrated that it is extremely common for pets to be included in family photographs, and many pet owners admit to carrying pictures of their companion animals in their wallets.¹¹⁵ Pets are also given special consideration during holidays and birthdays.¹¹⁶ Approximately seventy percent of companion animal owners celebrate their pet's birthday, and pets often are given holiday presents and treats like other members of the family.¹¹⁷

Companion animals also have been included in their owners' lives beyond the home.¹¹⁸ A recent Florida newspaper report described the second annual "National Take Your Dog to Work Day" as a new holiday designed to "celebrate the human-animal bond and to acknowledge the frustration of millions of working people who reluctantly leave their pets home alone every day."¹¹⁹ Moreover, currently more than two hundred companies are offering a pet-friendly environment on a regular basis to improve employee morale.¹²⁰ Pet owners who do not have the opportu-

113. See Belk, *supra* note 104, at 134 (illustrating how frequently pets participate in family rituals).

114. See *id.* (providing specific examples of companion animals' involvement in family activities). One pet owner explained during an interview, "I like to treat her like one of the members of the family . . . I don't mind sharing anything with her . . . if we have steak, I always like to make sure I get enough for her." *Id.*

115. See *id.* at 135 (discussing importance people place on including pets in family photographs). Pet owners seem to agree that without their companion animal, a family photograph is not complete. See *id.* (observing that one pet owner would change photographers if companion animal was not permitted in picture).

116. See *id.* (illustrating situations in which pets are included in special celebrations).

117. See Peggy Noonan, *New Tricks for Old Cats and Dogs, Too. Amazing Advances Prolonging Your Life Now Also Help Your Beloved Pet*, USA WEEKEND, May 13, 2001, at 6 (citing statistics regarding number of pet owners who celebrate their animal's birthday); see also Belk, *supra* note 104, at 135 (emphasizing pet involvement in special events). One cat owner was described as "the parent who wants their children to have everything. She gives her cats Christmas presents, and celebrates their birthdays with a cake, candles, and the whole works." *Id.*

118. See Jeanne Malmgren, *Wagging While They Work*, ST. PETERSBURG TIMES, June 21, 2000, at 1D (discussing trend of allowing companion animals to accompany their owners outside home).

119. *Id.* Although some criticize this "holiday" as being a publicity ploy to make money off the multi-million dollar pet industry, others believe that allowing pets to come to work increases employee efficiency and productivity. See *id.* (discussing reactions to "National Take Your Dog to Work Day").

120. See *id.* (providing information on companies that allow pet owners to take their animals to work regularly). An Internet website has been designed to track the companies that allow pets to accompany their owners to work on a daily basis. See *id.* (describing website that tracks "pet-friendly" companies). Approximately twenty-seven percent of these companies fall into the "high-tech" category.

nity to share the workday with their companion animals can now take advantage of a fast growing industry, pet day care centers.¹²¹ A recent report disclosed that the demand for pet day care is high, and pet "parents" are paying between twenty and thirty dollars a day to ensure that their pets have a safe and enjoyable day while they are at work.¹²²

B. *Grief Reactions Reflecting Human-Animal Bond*

Companion animal owners' reactions to the death of their pet highlights the depth of the human-animal bond and demonstrates that pets should be viewed by the law as more than property.¹²³ The degree of grief experienced over the loss of a pet is an indirect measure of the emotional connection between humans and their companion animals.¹²⁴ In a study designed to examine the parallels between grief following the loss of a pet and the loss of a human loved-one, researchers found that eighteen percent of a large, representative sample of adults were unable to carry out their daily life activities during the time following the death of their pet.¹²⁵

See id. (categorizing survey results by type of business). Thirteen percent are pet-related and another thirteen percent are health care companies. *See id.* (categorizing survey results by type of business). Additional categories of businesses include: retail, manufacturing, construction, home repair and government agencies. *See id.* (categorizing survey results).

121. *See* Helen Graves, *Doggone-To Day Care*, BOSTON GLOBE, Nov. 5, 2000, at 1. (exploring recent phenomenon of pet day care). Many of the dog day care centers are run much like nursery schools for human children. *See id.* (describing typical dog's day at center). Some day care centers even offer transportation for its clients. *See, e.g., id.* (listing specific day care center that provides transportation for their clients' dogs). Once at day care, dogs can engage in a variety of activities including playing fetch, digging and playing in sprinklers and pools. *See id.* (detailing day care activities).

122. *See id.* (describing demand for pet day care services). Most of the clients at dog day care are "only children" whose parents work all day outside the home. *See id.* (discussing reasons for choosing dog day care). Married couples with adult children at home spend the most money on their pets and are the most frequent users of this service. *See id.* (reporting demographics for pet day care clients).

123. *See* Archer, *supra* note 106, at 239 (proposing that pet owners' reactions to death of companion animal can be used to measure attachment).

124. *See id.* (stating that grief can be used to assess strength of human-pet attachment).

125. *See* Mary Stewart, *Loss of a Pet—Loss of a Person*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS 390, 390-404 (Aaron Honori Katcher & Alan M. Beck eds., 1983) (reporting results of study examining similarities in grief reactions following loss of pet and human loved one). The purpose of this study was to understand how adults react to the death of a pet and to compare this reaction with that following the loss of a human loved one. *See id.* at 391 (stating goal of study). Fifty-two adults were interviewed and asked to write an essay describing their reaction to a pet's death. *See id.* (summarizing study procedure). Almost all of the adult participants in this study had lost a dog, but one had lost a pony and two others had lost small animals, including a guinea pig and a hamster. *See id.* at 395 (listing types of pets owned by study participants). Findings revealed that all adults in the sample experienced some degree of sadness after the loss of a pet, and approximately one-third reported being "very upset (and often cry[ing] a lot) . . . [but] still able to carry on with their normal routine." *Id.*

Using a scale designed to measure strength of bereavement, researchers found that the grief responses following the loss of a pet were comparable to the grief reactions following the loss of a spouse, parent or child.¹²⁶ In recognition of this grief, a number of pet-loss hotlines have been established to provide emotional support to bereaved pet owners.¹²⁷

Many pet owners engage in bereavement rituals similar to those following the death of a human friend or relative.¹²⁸ For example, many individuals choose to bury their deceased pets to establish an enduring memorial for an important member of the family.¹²⁹ The International

126. See Archer, *supra* note 106, at 240 (listing studies examining grief response of humans following loss of pet); see also M.K. Gerwolls & S.M. Labott, *Adjustment to the Death of a Companion Animal*, 7 ANTHROZOOS 172, 173-87 (1994) (describing long-term study comparing bereavement over pets with bereavement following loss of human family members). For this study, people who had lost a pet were asked to complete an adapted version of the Grief Experience Inventory, a self-report designed to measure human grief. See *id.* (describing measure used to assess grief reaction). Further, a survey, designed to examine adult reactions to the death of a pet, was completed by 242 married couples who had experienced the death of a pet. See Stephens & Hill, *supra* note 101, at 193 (describing survey examining impact of pet deaths). Results from this investigation showed that a large number of respondents were "quite" or "extremely" distressed by the death of their pet. See *id.* (outlining results of survey). Many male respondents stated that their pet's death was almost "as stressful as the loss of a close friendship" and "more stressful than children leaving home or getting married." See *id.* (presenting common male responses to loss of companion animal). Women who responded to the survey stated that their pet's death was about "as stressful as losing touch with their married children, and more stressful than the loss of a close friendship or children leaving home" *Id.* at 193-94.

127. See Stephens & Hill, *supra* note 101, at 207 (listing emotional support services for bereaved pet owners). In 1978, the University of Pennsylvania Veterinary Hospital implemented a social work program that was modeled after social work facilities in human medical hospitals. See James Quackenbush & Lawrence Glickman, *Social Work Services for Bereaved Pet Owners*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS, *supra* note 125, at 377, 377-404 (describing social work program established in veterinary hospital). The primary purpose of this service is to provide short-term interventions with bereaved pet owners. See *id.* (explaining main goal of service). Four veterinary schools: Tufts University, Michigan State University, the University of Florida and the University of California at Davis have established hotlines to support bereaved pet owners. See Stephens & Hill, *supra* note 101, at 207 (listing veterinary schools that offer bereavement support). The International Association of Pet Cemeteries is working to establish a certification program for pet cemetery management that would focus on the bereavement process and the specific needs of people who are grieving for a pet. See *id.* (proposing requirements for pet cemetery managers).

128. See Stephens & Hill, *supra* note 101, at 189 (discussing rituals following death of pet). Stephens and Hill conducted research to examine how pet owners respond to the loss of a pet. See *id.* at 194-95 (noting that data was collected from pet cemetery users). To collect data, seventy-three participants who had lost a pet were asked to write an essay detailing their relationship with their companion animal while focusing on their experience at the pet's death. See *id.* (outlining research methodology). In addition, the researchers gathered data at a community pet cemetery by examining the messages engraved on 100 gravestones. See *id.* at 194 (describing data collection technique).

129. See *id.* at 189, 194 (reflecting on growing popularity of pet cemeteries).

Association of Pet Cemeteries reports that there are over 600 existing pet cemeteries and that new ones are being established almost monthly.¹³⁰ Often, companion animal owners have gravestones engraved with sentiments that reflect feelings of profound love and friendship to further memorialize their pet.¹³¹ Recently, Hallmark, one of the largest and most popular greeting card manufacturers, recognized the significance of pet deaths by selling condolence cards for people suffering from the loss of a companion animal.¹³² Not all species of pets are mourned with the same intensity or celebrated with the same bereavement rituals.¹³³ These differences reflect "a cultural hierarchy within which pet animals are arrayed."¹³⁴ This distinction between species is determined mainly by the degree to which the animal may be anthropomorphized or assigned human characteristics.¹³⁵

V. IMPACT OF EXPANDED DAMAGES ON VETERINARY PROFESSION

The classification of companion animals as more than property would have a tremendous impact on the veterinary profession.¹³⁶ Historically,

130. *See id.* at 189 (estimating number of existing pet cemeteries).

131. *See id.* at 195 (discussing themes often found in messages on gravestones for deceased pets). The messages, which include, "We love you [n]ow and [f]orever," "To [o]ur [b]eloved [f]riend" and "My love until we meet again," reflect the profound relationship between humans and their companion animals. *See id.* at 195-96 (reporting messages found on pet gravestones). Other sentiments in which a pet is referred to as "son," "daughter" or "baby" indicate that pet owners often view their companion animals as esteemed members of the family. *See id.* at 197 (recounting epitaphs that reflect pet's status as family member).

132. *See* Bruce Fogle, *The Changing Roles of Animals in Western Society: Influences Upon and From the Veterinary Profession*, 12 *ANTHROZOOS* 234, 236 (1999) (exploring special services designed for pets and pet owners).

133. *See* Stephens & Hill, *supra* note 101, at 191 (proposing that different species of pets are mourned with varying intensity). The types of bereavement rituals following the loss of a pet can reflect the degree of attachment between humans and animals. *See* Archer, *supra* note 106, at 239 (explaining connection between bereavement and attachment). While some species, specifically dogs and cats, are often buried or cremated like humans after death, other species, specifically cold-blooded vertebrates, are disposed of "down a toilet or in a garbage can." *See* Stephens & Hill, *supra* note 101, at 191 (illustrating how different species are often disposed of).

134. Elizabeth C. Hirschman, *Consumers and Their Animal Companions*, 20 *J. CONSUMER RES.* 616, 624-25 (1994) ("[T]he cold-blooded vertebrates appear to occupy the lowest level of this hierarchy, while birds . . . occupy the next higher rung. Above them come . . . [rodents]. And at the top are the most humanized and anthropomorphized of animals—cats and dogs.").

135. *See id.* (providing explanation for hierarchy).

136. *See* Jeannie Perron, *The Law of Veterinary Liability and the Human-Animal Bond*, 210 *J. AM. VETERINARY MED. ASS'N* 184, 184-86 (1997) (emphasizing that promotion of human-animal bond may negatively impact veterinary profession). Perron predicts more malpractice or negligence suits against veterinarians or animal hospitals. *See id.* at 185 (stating future lawsuits are likely because of litigious climate of American society). She believes most of these future suits will include claims for mental suffering and loss of companionship. *See id.* (predicting compo-

veterinarians have been exposed to very limited liability because of the law's categorization of companion animals.¹³⁷ In general, the market value approach to damage awards has limited veterinarians' potential liability in malpractice cases.¹³⁸ Even the landmark cases in this area of the law have protected veterinarians because they have allowed only non-economic damages when the wrongful conduct was willful, intentional, wanton or grossly negligent.¹³⁹ Thus, veterinarians have been shielded from liability for any emotional harm they may cause to pet owners as a result of ordinary negligence.¹⁴⁰ Expanded damages in successful veterinary malpractice cases are necessary and justified to permit recovery for emotional injuries.¹⁴¹

The existence of the veterinary profession depends on the bond between pet owners and their companion animals.¹⁴² "According to the American Veterinary Medical Association, the human companions of companion animals spent \$11.1 billion on health care for their companion animals in 1996."¹⁴³ Despite this huge expenditure on animal healthcare, only one percent of companion animals are covered by pet health insurance.¹⁴⁴ Pet owners are willing to pay out-of-pocket veterinary bills because they regard their animals as family members, not as personal

sition of future claims). Furthermore, she hypothesizes that the success of these suits will hinge on whether plaintiffs make "further progress in persuading courts that there is innate value in the bond between owner and pet." *Id.* Perron fears that the policy statements of veterinary professionals regarding the human-animal bond could be used against the profession in these lawsuits. *See id.* (fearing policy statements of those in veterinary profession could be used as evidence).

137. *See* FAVRE & BORCHELT, *supra* note 8, at 233 (discussing reasons why veterinary malpractice lawsuits are at minimum level).

138. *See id.* ("One factor which has kept the number of lawsuits at a minimum level in the past is the low amount of damages awarded for the injury to animals.").

139. For further discussion of landmark cases, see *supra* notes 58-89 and accompanying text.

140. *See* Harold W. Hannah, *Emotional Distress, Punitive Damages, and the Veterinarian—Some Judicial Responses*, 216 J. AM. VETERINARY MED. ASS'N 25, 25-26 (2000) (recognizing that recovery for emotional distress has only been allowed in cases where claims are based on more than ordinary negligence). Hannah contends that allowing recovery for emotional distress in addition to market value would create "chaos in the . . . companion animal marketplace." *Id.* at 26.

141. *See* Steven M. Wise, *Recovery of Common Law Damages for Emotional Distress, Loss of Society, and Loss of Companionship for the Wrongful Death of a Companion Animal*, 4 ANIMAL L. 33, 47-48 (1998) (justifying pet owners' rights to recover for pain and suffering in veterinary malpractice cases).

142. *See* FRANCIONE, *supra* note 31, at 54 ("The veterinary profession has benefited enormously from an increase in animal ownership and from the fact that animal owners now seek a higher level of care, including preventive treatment, than they did in the past.").

143. Wise, *supra* note 141, at 46.

144. *See* Hager, *supra* note 2, at J2 (noting small amount of pet owners who purchase pet health insurance).

property.¹⁴⁵ As one commentator noted, “[i]f the economic value of companion animals was important . . . as is normally the case with sofas, chairs, and other inanimate property, small animal veterinarians would close their doors, because human companions would never bring their companion animals for treatment.”¹⁴⁶ Veterinarians formally recognize the emotional bond between humans and their pets.¹⁴⁷ Thus, veterinarians should be required to compensate pet owners for destroying this bond when they engage in malpractice.¹⁴⁸ Total compensation can only be accomplished through allowance of damages for emotional distress and loss of companionship.¹⁴⁹ Because the veterinary profession reaps substantial benefits from the human-animal bond, it is logical and equitable that veterinarians absorb the total costs when they commit malpractice.¹⁵⁰

Many veterinarians warn that expansion of damages in veterinary malpractice cases would lead to a drastic increase in the cost of malpractice insurance.¹⁵¹ They argue that the cost of veterinary care would rise “beyond the means of some pet owners.”¹⁵² This fear relies on the assumption that “allowing pet owners to claim loss of companionship and infliction of [emotional] distress encourages unnecessary lawsuits.”¹⁵³ Moreover, this “litigation fear” is compounded by the fact that many veterinarians believe that damage awards would rise beyond reason because of the speculative and intangible nature of emotional injuries.¹⁵⁴

145. See generally FRANCIONE, *supra* note 31, at 54 (“It is obvious that humans who have these relationships with animals do not regard them merely as personal property.”).

146. Wise, *supra* note 141, at 47.

147. See Perron, *supra* note 136, at 184 (noting that veterinary profession has promoted bond between humans and companion animals).

148. See Wise, *supra* note 141, at 47 (analyzing compensation in veterinary malpractice cases).

149. See *id.* at 47-48 (justifying pet owners’ claims to pain and suffering damages).

150. See *Williamson v. Prida*, 75 Cal. App. 4th 1417, 1424-25 (Cal. Ct. App. 1999) (discussing standard of care in veterinary malpractice cases). The *Williamson* court emphasized the majority rule that the standard of care for veterinarians is the same as it is for medical doctors. See *id.* (discussing standard of care). “In medical malpractice cases, the established rule is that a doctor must exercise the degree of skill or care usual in the profession We find that this standard applies to veterinary malpractice cases, as well.” *Id.*; see also Joseph H. King, Jr., *The Standard of Care for Veterinarians in Medical Malpractice Claims*, 58 TENN. L. REV. 1, 2-6 (1990) (exploring veterinary malpractice liability and comparing it to medical malpractice claims).

151. See Willing, *supra* note 1, at 1A (explaining stance of critics who oppose allowing pet owners to recover for loss of companionship and emotional distress).

152. *No Need to Change the Status of Pet*, *supra* note 14, at B6.

153. Willing, *supra* note 1, at 1A.

154. See generally Waisman & Newell, *supra* note 17, at 65-68 (analyzing arguments against permitting recovery of non-economic damages for injury to or death of companion animal).

The concerns of the veterinary profession are valid.¹⁵⁵ It is clear that changing the classification of companion animals and allowing non-economic damages would have a substantial effect on the profession.¹⁵⁶ Traditionally, low damage awards have kept veterinary malpractice lawsuits at a minimum.¹⁵⁷ Thus, an increase in the value of companion animals would increase the number of lawsuits filed.¹⁵⁸ The critical issue is whether the rise in the number of lawsuits should be considered a negative consequence.¹⁵⁹

The function of law is to adapt to the ever-changing views of society.¹⁶⁰ Research supports society's recognition of the human-animal bond.¹⁶¹ Medical and veterinary professionals also support the strength of the human-animal bond.¹⁶² Moreover, companion animals are becoming more like family members in American culture.¹⁶³ The law must reflect this valuation and "continue along the evolutionary path toward laws that respect and uphold the value of human-animal relationships."¹⁶⁴ While expanding damages would inevitably lead to a rise in veterinary malpractice lawsuits, this result would merely be a reaction to the law's recognition

155. For a further discussion of the effect of an expansion of damages on the veterinary profession, see *infra* notes 156-59.

156. *Cf. Companion Animal Wrongful Death or Injury Cases—An Introduction*, Animal Legal Defense Fund, at <http://www.aldf.org/damages.htm> (last visited Aug. 25, 2001) (outlining current status of law in companion animal wrongful death or injury cases).

157. *See id.* (explaining reasons for low damage awards).

158. *See* Julie Scelfo, *Good Dogs, Bad Medicine?: More Pet Owners Sue for Malpractice—And Win*, NEWSWEEK, May 21, 2001, at 52 (examining current state of veterinary malpractice lawsuits). Lawsuits will increase as the practice of animal law becomes more widely recognized. *See* Charles Toutant, *Animal Lawyers Do It for Love: Don't Call It a Niche Specialty, But There's Work for Attorneys in the Many-Sided, Evolving Law of Interspecies Relationships*, 159 N.J. L.J. 1049, 1049-50 (2000) ("Animal law is a small but growing sideline specialty practiced by a band of New Jersey attorneys who enjoy vindicating the rights of four-legged clients, even though the cases are unlikely to make them rainmakers anytime soon.").

159. *Cf. Wise*, *supra* note 141, at 47 (discussing accountability of veterinarians in malpractice cases).

160. *Cf. Waisman & Newell*, *supra* note 17, at 73 (noting that law came to recognize that recovery for spousal and parent/child loss of consortium was necessary based on "logic, compassion and modern sensitivit[ies]").

161. For a further discussion of research supporting the human-animal bond, see *supra* notes 99-135 and accompanying text.

162. *See Perron*, *supra* note 136, at 185-86 (warning veterinarians that promotion of human-animal bond may lead to large damages awards in veterinary malpractice cases).

163. For further discussion of evidence supporting proposition that companion animals should be valued as family members, see *supra* notes 99-135 and accompanying text.

164. *See* Chrisanne Beckner, *Pain and Suffering* (May 31, 2001), at <http://www.newsreview.com/issues/Sacto/2001-05-31/news.asp> (last visited Jan. 20, 2002) (discussing challenge to notion that pets are merely property).

of the strength of the human-animal bond.¹⁶⁵ Pet owners would have more incentive to bring lawsuits because the damage awards would not be limited to the market value of the animal.¹⁶⁶ The possibility of increased lawsuits in the veterinary malpractice arena should not stand as a barrier to pet owners who seek to recover for the injury to or loss of their companion animal.¹⁶⁷

The number of veterinary malpractice lawsuits that likely would surface and the amount of future damage awards is unpredictable given that so few of these claims have been filed because of companion animals' classification as property.¹⁶⁸ Indeed, it is possible that the rise in claims will necessitate at least a slight increase in veterinary malpractice insurance premiums.¹⁶⁹ Whether a rise in veterinarian fees will be necessary is debatable considering that veterinarians "typically pay less than \$200 a year for \$1 million of [malpractice] coverage."¹⁷⁰ Because three-fourths of the small animal veterinary practices in the United States gross \$300,000 to \$500,000 per year, and almost one-quarter gross more than \$750,000, it seems shocking that veterinarians would not be able to absorb the increased insurance premiums.¹⁷¹

Moreover, even if veterinarians decided to raise fees, pet owners would have alternatives to pay for the healthcare of their animals.¹⁷² Pet owners could purchase health insurance for their animals just as they do for their own children and family members.¹⁷³ Currently, there are pet insurance policies that cover everything from unexpected surgeries to routine visits.¹⁷⁴ In fact, some companies, including AT&T, are beginning to offer veterinary health insurance to their employees as a payroll deduc-

165. See Kristen Convery, *Lawyer Files Suit Against Xenia, Ohio, Animal Hospital on Behalf of Poodle*, DAYTON DAILY NEWS, July 19, 2001, at A1 (describing one lawyer's fight to change valuation of companion animals in Ohio).

166. See FAVRE & BORCHELT, *supra* note 8, at 233 (predicting rise in number of lawsuits if value of companion animals is enhanced).

167. Cf. Waisman & Newell, *supra* note 17, at 66-67 (answering claim that allowance of non-economic damages would lead to multiplicity of lawsuits and protracted litigation).

168. See FAVRE & BORCHELT, *supra* note 8, at 233 (discussing minimal amount of veterinary malpractice lawsuits).

169. See *No Need to Change the Status of Pet*, *supra* note 14, at B6 (predicting upgrade in status of pets would increase cost of malpractice insurance).

170. Willing, *supra* note 1, at 1A.

171. See Wise, *supra* note 141, at 46 (noting survey published by American Hospital Association concerning veterinary fees and revenues).

172. See Mary Bridgman, *Now You Can Buy Insurance for Fido, Fluffy*, COLUMBUS DISPATCH, July 15, 2001, at 1C (explaining role of veterinary health insurance in United States).

173. See *id.* (describing how one pet owner uses his pet insurance policy frequently on his two dogs).

174. See *id.* ("The policy covers unexpected surgeries and medical treatments as well as routine veterinary care.").

tion.¹⁷⁵ The trend towards veterinary health insurance is already underway in this country.¹⁷⁶ Pet owners could rely on this insurance if veterinarians raised fees as a result of increased lawsuits and damage awards.¹⁷⁷

VI. PROPOSALS FOR COURTS AND LEGISLATURES

A. *How Courts Can Ensure the Appropriate Valuation of Companion Animals*

Courts must recognize that the law's categorization of companion animals as property is archaic and does not reflect society's values or expectations.¹⁷⁸ Removing the "property" label will give the courts more flexibility to expand the damages recoverable for the injury to or death of a companion animal.¹⁷⁹ The process of expanding recoverable damages will take numerous years because the law is well established in most jurisdictions.¹⁸⁰

First, courts must recognize that the market value approach does not adequately compensate many companion animal owners whose pets have been injured or killed through wrongful conduct.¹⁸¹ Courts should focus

175. *See id.* (noting manner in which AT&T uses pet health insurance as employee benefit).

176. *See id.* (explaining recent business success of largest provider of veterinary health insurance). This dependence on insurance is necessary as pet owners spend more on veterinary care. *See* Catherine Trevison, *The Cost of Puppy Love*, PORTLAND OREGONIAN, Mar. 29, 2001, at C1 (finding that money spent on veterinary care has grown faster than overall consumer spending). One study reported that the "average cutoff for 'economic euthanasia'—the point at which owners decide that the cost of treatment has grown too high—is rising, from \$576 in 1997 to \$795 [in 2000]." *Id.*

177. *Cf.* Bridgman, *supra* note 172, at 1C (offering reasons for growing popularity of pet health insurance).

178. *See* Waisman & Newell, *supra* note 17, at 57-62 (summarizing society's recognition of human-animal bond). Waisman and Newell point out that animals were domesticated as long as 14,000 years ago. *See id.* at 57 (describing history of human-animal bond). Recognition of the bond has dramatically increased in the last two decades. *See id.* at 58 (discussing human-animal bond). For example, in March 2000, a motorist threw a dog named Leo to his death in heavy San Jose traffic because of a road rage incident. *See id.* at 62 (encouraging nationwide support for prosecuting motorist). In response, the *Washington Post* ran a headline story of the incident and donations amounting to \$120,000 were received in order to help find and criminally convict the perpetrator. *See id.* (reciting story of Leo's death).

179. *Cf.* Gatz, *supra* note 56, at 17 ("Animals have been considered property, specifically 'chattel', both at English common law and here in America, and therefore owners whose animals have been harmed are limited to recovering only the financial cost of replacing 'beasts.' That may be legally changing.")

180. *See* Barton & Hill, *supra* note 24, at 411 (noting that all reported cases have categorized companion animals as personal property).

181. *See* Squires-Lee, *supra* note 7, at 1081-82 (making compensation argument for allowing recovery of emotional suffering). Squires-Lee contends it is inconsistent for the tort system not to compensate a pet owner for the emotional pain from the death of a companion animal because it is widely accepted that

on the actual value of companion animals to their owners on a case by case basis.¹⁸² The presumption should be that the market value approach is insufficient to compensate pet owners and that the actual value of the pet to its owner is the most efficient benchmark.¹⁸³ Pet owners would continue to have the burden of establishing this value through personal and expert testimony.¹⁸⁴ Calculations should include factors such as pedigree, purchase price, special ability or training and the age and general health of the animal.¹⁸⁵ In addition, the actual value should include a consideration of any emotional connection the owner had with his or her animal and recognition of any sentimental value that was lost.¹⁸⁶ The wrongdoer could present evidence that reflects unfavorably on the value of the pet, including evidence of poor training, lack of pedigree and disproof of any human-animal bond.¹⁸⁷

Second, courts should recognize separate causes of action for intentional infliction of emotional distress, negligent infliction of emotional distress and loss of companionship.¹⁸⁸ Pet owners would have to present expert testimony proving any emotional damage suffered from the injury to or loss of their pet.¹⁸⁹ This requirement would decrease the risk of frivolous lawsuits.¹⁹⁰ Clearly, wrongdoers could present evidence to disprove that pet owners suffered emotional damage or had an emotional attachment to their animals.¹⁹¹ After removing the property label from companion animals, courts would have more flexibility to recognize these causes of action.

mental suffering results from the death of a pet. *See id.* at 1082-83 (describing compensation goal of tort law).

182. For further discussion of actual value approach, see *supra* notes 33-39 and accompanying text.

183. *See generally* Barton & Hill, *supra* note 24, at 420 (discussing advantages of actual value approach).

184. *See Veterinary Malpractice Is Common: Pet Guardians Need Better Protection by Our Laws*, at <http://www.geocities.com/amorchien2000/index.html> (last visited Aug. 25, 2001) (emphasizing need for expert witnesses in veterinary malpractice cases).

185. *See* FAVRE & BORCHELT, *supra* note 8, at 54 (discussing common elements of damages).

186. *See* Brousseau v. Rosenthal, 443 N.Y.S.2d 285, 286 (N.Y. Civ. Ct. 1980) (allowing loss of companionship to be component of actual value of pet).

187. *See* FAVRE & BORCHELT, *supra* note 8, at 54 ("[D]efendant may present his own evidence as to the market value of the animal . . .").

188. *Cf.* Waisman & Newell, *supra* note 17, at 74 (suggesting that legislatures must begin to permit recovery for non-economic damages).

189. *See Veterinary Malpractice Is Common*, *supra* note 184, at <http://www.geocities.com/amorchien2000/index.html> (discussing need for expert testimony).

190. *Cf.* Willing, *supra* note 1, at 1A (expressing fear of unnecessary lawsuits).

191. *Cf.* Squires-Lee, *supra* note 7, at 1095 ("Despite the difficulty of measuring emotional damages . . . once courts acknowledge that the emotional harms wrought by the tortious death of a companion animal must be compensated, the opportunity exists to establish a comprehensive, fair, and practical method for determining the amount of damage awards.").

B. *How Legislatures Can Ensure the Appropriate Valuation of Companion Animals*

State legislatures can force a change in this area of the law much faster than the courts.¹⁹² Legislatures should use Tennessee's T-Bo statute as a model and adopt similar statutes that permit recovery of non-economic damages for the wrongful injury to or death of a companion animal.¹⁹³ These statutes could preempt the settled case law and provide remedies for emotional suffering and loss of companionship.¹⁹⁴ Other states should modify Tennessee's statute to include: (1) an expanded definition of "pet" to include a wider variety of animals, beyond a domesticated dog or cat; (2) increased limits on non-economic damages beyond \$4,000; (3) no limits on types of non-economic damages available; (4) recovery of non-economic damages for injury to companion animal that does not result in death; (5) no exclusion of veterinarians in professional malpractice suits; and (6) no geographical limitation on where the statute applies.¹⁹⁵

The statute should include a broader definition of "pet" because humans can form companion relationships with animals besides dogs and cats, including birds and rabbits.¹⁹⁶ In addition, a \$4,000 limit on non-economic damages is extremely low considering the amount of damages awarded in modern courts and because of high litigation costs.¹⁹⁷ Moreo-

192. Cf. Waisman & Newell, *supra* note 17, at 74 (urging that legislatures act to promote change).

193. See *id.* (describing impact of Tennessee's statute).

194. For further discussion of the settled case law, see *supra* notes 24-43 and accompanying text.

195. See Waisman & Newell, *supra* note 17, at 70-71 (discussing limitations of Tennessee's statute). For further discussion of Tennessee's T-Bo Act, see *supra* notes 90-98 and accompanying text.

196. See Nienke Endenburg, *The Attachment of People to Companion Animals*, 8 ANTHROZOOS 83, 87 (1995) (comparing mean attachment coefficients for different pet species); see also R. Lee Zasloff, *Measuring Attachment to Companion Animals: A Dog Is Not a Cat Is Not a Bird*, 47 APPLIED ANIMAL BEHAV. SCI. 43, 46-47 (1996) (describing results from study using assessment tool called Comfort from Companion Animals Scale to measure attachment to various species of pets). Results from this study indicate that other measures designed to assess the human-animal bond provide an inaccurate description of the attachment between certain pet species and their owners. See *id.* at 46 (critiquing human-animal attachment measures). Although dogs and cats typically engage in more activities with their owners, other small pets including birds and rabbits can provide psychological fulfillment. See *id.* at 46-47 (proposing that many pets, regardless of species, share close bond with their owners). Zasloff explains that "there are commonalities in the emotional experience of having a close and caring relationship with a pet, irrespective of the animal's species." *Id.* at 47.

197. Cf. Lisa Sink, *Man Ordered to Pay \$7,500 for Poisoning Neighbors' Dogs*, MILWAUKEE J. SENTINEL, Oct. 13, 2000, at 15B (describing jury verdict where man was ordered to pay \$7,500 in punitive damages for killing his neighbors' dogs with antifreeze-soaked meat). The owners were not satisfied with the verdict because they urged the jury to award at least \$100,000 in punitive damages. See *id.* (noting dog owners' original claims). The dog owners sought the high punitive award

ver, the types of non-economic damage awards available to harmed pet owners should be left to the discretion of the courts and not limited by statute.¹⁹⁸ Furthermore, non-economic damages should be attainable in cases where companion animals are purely injured.¹⁹⁹ Also, as discussed earlier, there is no justification for excluding veterinarians from increased damage awards.²⁰⁰ Finally, the geographical limitation is not necessary because population size cannot accurately predict how individuals within communities value their companion animals.²⁰¹

VII. CONCLUSION

The law's categorization of a companion animal as merely property has limited damages recoverable for pet owners in cases where their animal is wrongfully injured or killed.²⁰² This classification does not accurately reflect societal views relating to the human-animal bond.²⁰³ Public attitudes and psychological evidence indicate that in our society pets are thought of more as family members than as inanimate objects.²⁰⁴

Courts and legislatures must change this characterization of companion animals, and in turn expand the damages available to pet owners whose animals have been injured or killed through intentional, reckless or negligent conduct.²⁰⁵ Pet owners should be compensated for any emo-

because a lower court had dismissed their claim of damages for emotional distress. *See id.* (describing dog owners' dissatisfaction with \$7,500 damage award and Wisconsin's categorization of companion animals).

198. *See* Waisman & Newell, *supra* note 17, at 70 (suggesting that Tennessee's statute allow recovery for other reasonable damages).

199. *See id.* at 71 (arguing that pet owners should not be foreclosed from recovery of non-economic damages in cases where injuries to animals do not result in death).

200. For further discussion of veterinarian liability, see *supra* notes 136-77 and accompanying text.

201. *Cf.* BRUCE FOGLE, *INTERRELATIONS BETWEEN PEOPLE AND PETS* 29-35 (1981) (exploring diverse categories of pet ownership and values and attitudes that characterize each category).

202. *See* FRANCIONE, *supra* note 31, at 55 (recognizing that domestic animals are still considered personal property and noting that remedies for negligence must be understood in this light).

203. For further discussion of societal views of the human-animal bond, see *supra* notes 99-135 and accompanying text.

204. For further discussion of psychological evidence that supports the strength of the human-animal bond, see *supra* notes 99-135 and accompanying text.

205. *See* *Corso v. Crawford Dog & Cat Hosp., Inc.*, 415 N.Y.S.2d 182, 183 (N.Y. Civ. Ct. 1979) (awarding dog owner \$700 in damages for shock, mental anguish and despondency she suffered due to wrongful destruction and loss of her dog's body). In *Corso*, a dog owner was forced to have her fifteen-year-old poodle euthanized by a veterinarian. *See id.* at 182-83 (describing factual basis of case). The owner agreed with the veterinarian that the dog's body would be turned over to an animal funeral arranger. *See id.* at 183 (discussing facts). Subsequently, the veterinarian failed to turn over the remains of the dog to the funeral arranger. *See id.* (establishing facts). The owner arranged an elaborate funeral for the deceased

tional suffering or loss of companionship that results from wrongful conduct against their companion animal.²⁰⁶ In addition, punitive damage awards should be mandatory in cases where injury to the animal is willful, wanton or reckless.²⁰⁷ Such a change in the law will likely take time and will likely vary across jurisdictions. Nevertheless, the gradual expansion of potential damages is justified and necessary to ensure the appropriate legal valuation of companion animals.

William C. Root

dog that included the purchase of a head stone and involvement of her family. *See id.* (setting forth facts). At the funeral, a casket was opened, at which time the owner discovered the body of dead cat instead of her dog's body. *See id.* (describing factual basis of case). The discovery caused the woman tremendous mental distress and anguish. *See id.* (describing effect of mistake on plaintiff). The court allowed the woman to recover beyond the market value of the animal because it viewed the dog as more than just personal property. *See id.* (valuing companion animals as more than property). "This court now overrules prior precedent and holds that a pet is not just a thing but occupies a special place somewhere in between a person and a piece of personal property." *Id.* Most courts have not adopted the *Corso* court's view on the valuation of companion animals. *See Wise, supra* note 141, at 93 (arguing that current laws compensate pet owners for economic loss that is not suffered and fails to compensate for emotional losses that are actually suffered).

206. *See* Page, *supra* note 14, at 20 (explaining argument of those who favor increased valuations of companion animals).

207. *See* Waisman & Newell, *supra* note 17, at 70 (delineating situations in which punitive damages should be awarded for harm to companion animals).