

**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

BARKING HOUND VILLAGE, LLC	)	
and WILLIAM FURMAN	)	
APPELLANTS,	)	
	)	
v.	)	Case No. A14A1960
	)	
ROBERT MONYAK and	)	Appeal from the State Court
ELIZABETH MONYAK,	)	of Fulton County
	)	
APPELLEES.	)	Civil Action File No.:
	)	12-EV-015855F

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***AMICI CURIAE* BRIEF OF GEORGIA VETERINARY MEDICAL  
ASSOCIATION, AMERICAN KENNEL CLUB,  
CAT FANCIERS' ASSOCIATION, ANIMAL HEALTH INSTITUTE,  
AMERICAN VETERINARY MEDICAL ASSOCIATION,  
NATIONAL ANIMAL INTEREST ALLIANCE,  
AMERICAN PET PRODUCTS ASSOCIATION,  
AMERICAN ANIMAL HOSPITAL ASSOCIATION AND  
PET INDUSTRY JOINT ADVISORY COUNCIL  
IN SUPPORT OF APPELLANTS**

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### **STATEMENT OF INTEREST**

*Amici* are the Georgia Veterinary Medical Association, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, American Veterinary Medical Association, National Animal Interest Alliance, American Pet Products Association, American Animal Hospital Association, and Pet Industry Joint Advisory Council. These non-profit associations promote animal welfare and responsible animal ownership and are solely responsible for the brief's preparation and submission. They have a substantial interest in ensuring that Georgia laws promote sound welfare and ownership policies. *Amici* believe that recognizing a new measure of damages based on emotional loss is contrary to this goal. *Amici* urge the Court to overturn the trial court's ruling to allow Plaintiffs to recover non-economic damages for the Defendant's alleged act of negligently harming their dog. A statement of interest for each *amicus* is appended to the brief.

### **STATEMENT OF FACTS**

*Amici* adopt the Appellant's Statement of Material Facts to the extent relevant to *amici*'s arguments in this brief.

## **INTRODUCTION AND SUMMARY OF THE ARGUMENT**

The trial court made two major errors in establishing the measure of damages available in pet litigation for acts of negligence that will hurt, not help, Georgia pets. First, it allowed plaintiffs to introduce evidence of noneconomic damages for the injury to their pet. Second, it allowed plaintiffs to subjectively value their pet at tens of thousands of dollars based on factors highly variable from owner to owner, namely how much money owners have and are willing to spend on their pets. These rulings cannot be allowed to stand. They violate Georgia law for when emotion-based damages are permitted, will isolate Georgia in American jurisprudence, and will result in putting many cherished Georgia pets at risk.

*Amici* pet owner and animal welfare groups submit this brief because of the major adverse impact that injecting emotion-based damages into pet litigation will have on Georgia pets. If the Court does not overturn the trial court's ruling and owners can introduce emotion-based evidence in establishing damages for negligent injury to a pet, the costs of every pet's health care, pet products and other pet services in the state will go up to accommodate this new liability. But, people's ability to spend on their pets is limited, as demonstrated by tough choices

owners made during the recent economic downturn. *See, e.g., Assoc. Press, Even Pets Feeling Sting of Financial Struggles*, Fosters.com, Nov. 23, 2008 (owners are “putting the dogs to sleep” rather treating them). Injecting new, massive liability into the pet care system can put essential services, including veterinary care, and with it responsible pet ownership, out of reach of many Georgia residents.

To be clear, creating emotion-based liability in pet litigation is not the pro-pet position. *Amici* deeply cherish pets. Pets do not reap benefits from these awards, only owners do. If pets do not receive proper care because of lawsuits, they are the ones who will be harmed. Further, if tens of thousands of dollars are at stake when pets are injured or killed due to acts of negligence, high dollar pet litigation will become a cottage industry – from boarding incidents, car crashes, veterinary visits, shelter incidents, neighborly disputes, police actions, protection of livestock, and pet-on-pet aggression. *See* Steve Malanga, *Pet Plaintiffs*, Wall St. J., May 9, 2007 at A16 (“everyone would potentially bear more liability”).

*Amici* also submit this brief to clarify key issues of fact and law omitted from the *amicus* brief filed by the Animal Legal Defense Fund (“ALDF”). As this brief will show, the issue of emotion-based damages for negligent harm to pets has

been litigated in some thirty-five states under a variety of facts and legal theories. The results have been remarkably consistent. Regardless of the tort, court or circumstance, courts have broadly rejected emotion-based liability for negligent injury to or death of a pet. *See* Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Value, and Animal Welfare*, 6 Stan. J. of Animal L. & Pol’y 30 (2013) (summarizing and categorizing cases by theories attempted, including value to the owner damages sought here).

As with other states, Georgia carefully limits when a person may recover emotion-based damages from another’s negligence. If the claim is based on a relationship, as argued here, a plaintiff can recover such damages only when he or she is physically impacted by the defendant’s act. *See Lee v. State Farm Mut. Ins. Co.*, 272 Ga. 583, 588; 533 S.E.2d 82, 86 (2000) (explaining the “impact rule”). Plaintiffs do not allege any such physical impact. With regard to property, emotion-based damages are not permitted, even under the alternative measures of damages plaintiffs seek. *See Cherry v. McCutchen*, 65 Ga. App. 301, 303 (1941) (“[T]here can be no recovery for . . . sentimental value” under value to the owner).

Value to the owner and intrinsic value are solely alternative measures of economic damages. Injuries to pets, just as to family members, human best friends and cherished possessions, do not fit within these highly restrictive categories.

*Amici* appreciate the hardship of losing a pet. But, this Court, like others, should separate the love for a pet from creating new liability law. *See, e.g., Rabideau v. City of Racine*, 627 N.W.2d 795 (Wis. 2001) (maintaining tort law boundaries even though people cherish pets); *Strickland v. Medlen*, 397 S.W.3d 184 (Tex. 2013) (stating relational attachments are not compensable). The Court should overturn the ruling below in the interest of Georgia pets. The current legal system governing pets promotes responsible ownership, deters abuse, and creates a financial environment for affordable and quality pet care.

## **ARGUMENT**

### **I. THE TRIAL COURT’S RULING TO ALLOW EVIDENCE OF EMOTION-BASED DAMAGES PUTS GEORGIA FAR OUTSIDE OF MAINTSTREAM AMERICAN JURISPRUDENCE**

#### **A. Courts Around the Country Have Widely Rejected Attempts To Introduce Emotion-Based Damages in Pet Injury and Death Cases**

Courts throughout the country, both historically and recently, have rejected claims for any emotion-based damages in cases alleging negligent injury to or

death of a pet, including the State of Georgia. This includes the “value to the owner” theory presented here. As detailed in the following 50-state survey, regardless of the court, legal theories asserted or circumstances in which the claims arose, the public policy and legal conclusions have been remarkably consistent: in cases involving negligence, as here, emotion-based liability is not available for one’s attachment to a pet, no matter how unquestionable and justifiable.

- **Alaska:** “[Plaintiff] may not recover damages for her dog’s sentimental value.” *Mitchell v. Heinrichs*, 27 P.3d 309, 314 (Alaska 2001).
- **Arizona:** Allowing “a pet owner to recover emotional distress or loss of companionship damages would be inappropriate as it would offer broader compensation for the loss of a pet than is currently available in this state for the loss of a person.” *Kaufman v. Langhofer*, 222 P.3d 249, 278-79 (Ariz. 2009).
- **California:** “Regardless of how foreseeable a pet owner’s emotional distress may be . . . we discern no basis in policy or reason to impose a duty on a veterinarian to avoid causing emotional distress to the owner of the animal being treated.” *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 564 (Cal. Ct. App. 2009).
- **Connecticut:** Common law does not allow “noneconomic damages resulting from a defendant’s alleged negligent or intentional act resulting in the death of a pet.” *Myers v. City of Hartford*, 853 A.2d 621, 626 (Conn. App. Ct. 2004).
- **Delaware:** “Delaware law does not provide . . . for the pain and suffering of either dog or owner.” *Naples v. Miller*, 2009 WL 1163504, at \*3 (Del. Super. Ct. Apr. 30, 2009), *aff’d*, 992 A.2d 1237 (Del. 2010).



- **Florida:** Allowing such “would place an unnecessary burden on the ever burgeoning caseload of courts in resolving serious tort claims for individuals.” *Kennedy v. Byas*, 867 So. 2d 1195 (Fla. Dist. Ct. App. 2004).
- **Georgia:** Plaintiff “cannot recover for any of her emotional distress.” *Holbrook v. Stansell*, 254 Ga. App. 553, 562 S.E.2d 731 (Ga. Ct. App. 2002).
- **Idaho:** “We are not persuaded to depart from this general rule” of denying recovery for mental anguish in pet cases. *Gill v. Brown*, 695 P.2d 1276, 1278 (Idaho Ct. App. 1985).
- **Illinois:** Plaintiffs seek “recovery by a dog owner for the loss of companionship of a dog. We do not believe this is consistent with Illinois law.” *Jankoski v. Preiser Animal Hosp., Ltd.*, 510 N.E.2d 1084, 1087 (Ill. App. Ct. 1987).
- **Indiana:** “The loss of a pet dog is similarly only an economic loss.” *Lachenman v. Stice*, 838 N.E.2d 451, 461 (Ind. Ct. App. 2006).
- **Iowa:** “[S]entimental attachment of an owner to his or her dog has no place in the computation of damages for the dog’s death or injury.” *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691 (Iowa 1996).
- **Kansas:** Sentimental value is not recoverable. *Burgess v. Shampooch*, 131 P.3d 1248 (Kan. Ct. App. 2006).
- **Kentucky:** “[L]ove and affection” from the loss of personal property “is not compensable.” *Ammon v. Welty*, 113 S.W.3d 185, 188 (Ky. Ct. App. 2003).
- **Massachusetts:** “It would be illogical . . . to accord the plaintiff greater rights than would be recognized in the case of a person who suffers emotional distress as a result of the tortiously caused death of a member of his immediate family.” *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1287-90 (Mass. App. Ct. 2002).
- **Michigan:** The Court will not “take the drastic action proposed by plaintiff.” *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2000).

- **Minnesota:** There is “no law supporting” emotional distress or noneconomic damages. *Soucek v. Banham*, 503 N.W.2d 153, 164 (Minn. Ct. App. 1993).
- **Missouri:** Damages are “the difference between fair market value” before and after injury. *Wright v. Edison*, 619 S.W.2d 797, 802 (Mo. Ct. App. 1981).
- **Nebraska:** “This court has clearly held that animals are personal property and that emotional damages cannot be had for the negligent destruction of personal property.” *Fackler v. Genetzky*, 595 N.W.2d 884, 892 (Neb. 1999).
- **Nevada:** Noneconomic damages are not allowed for “the death of an animal.” *Thomson v. Lied Animal Shelter*, 2009 WL 3303733, at \*7 (D. Nev. Oct. 14, 2009); *see also* Nev. Rev. Stat. § 41.740 (barring such noneconomic damages).
- **New Jersey:** “[T]here is no authority . . . for allowing plaintiffs to recover non-economic damages” from killing of plaintiffs’ pet. *Harabes v. The Barkery*, 791 A.2d 1142, 1146 (N.J. Super. Ct. App. Div. 2001); *McDougall v. Lamm*, 48 A.3d 312 (N.J. 2012) (no emotional distress for dog killed in owner’s presence).
- **New Mexico:** “[D]amages for sentimental value are not recoverable” for death of a pet. *Wilcox v. Butt’s Drug Stores, Inc.*, 35 P.2d 978, 979 (N.M. 1934).
- **New York:** Pet owner “may not recover damages for loss of companionship.” *DeJoy v. Niagara Mohawk Power*, 786 N.Y.S.2d 873 (N.Y. App. Div. 2004).
- **North Carolina:** “[T]he sentimental bond between a human and his or her pet companion can neither be quantified in monetary terms nor compensated for under our current law.” *Shera v. N.C. State Univ. Veter. Teach’g Hosp.*, 723 S.E.2d 352, 357 (N.C. Ct. App. 2012).
- **Ohio:** “Without in any way discounting the bonds between humans and animals, we must continue to reject recovery for noneconomic damages for loss or injury to animals.” *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1125-26 (Ohio Ct. App. 2003).

- **Oregon:** “The trial court did not err in denying plaintiffs’ claim for damages based on emotional distress.” *Lockett v. Hill*, 51 P.3d 5, 7-8 (Or. Ct. App. 2002).<sup>1</sup>
- **Pennsylvania:** There can be no recovery for “loss of companionship” due to a pet’s death. *Daughen v. Fox*, 539 A.2d 858, 864-65 (Pa. Super. Ct. 1988).
- **Rhode Island:** “[E]motional trauma” for pet injuries is not recoverable. *Rowbotham v. Maher*, 658 A.2d 912, 913 (R.I. 1995).
- **South Carolina:** The law does not support “emotional distress for injury to one’s pet.” *Bales v. Judelsohn*, slip op., No. 011-268-05 (S.C. Ct. App. 2005).
- **Texas:** Rejecting all noneconomic damages for harm to a pet because it would be “effectively creating a novel – and expansive – tort claim: loss of companionship for the wrongful death of a pet.” *Medlen*, 397 S.W.3d at 185.
- **Vermont:** There is no “compelling reason why, as a matter of public policy, the law should offer broader compensation for the loss of a pet than would be available for the loss of a friend, relative, work animal, heirloom, or memento – all of which can be prized beyond measure, but for which this state’s law does not recognize recovery for sentimental loss.” *Goodby v. Vetpham*, 974 A.2d 1269, 1274 (Vt. 2009).
- **Virginia:** Damages for pet injury is diminution in value “plus reasonable and necessary expenses.” *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186 (Va. 2006).
- **Washington:** “[I]t is well established that a pet owner has no right to emotional distress damages for loss of human-animal bond.” *Sherman v. Kissinger*, 195 P.3d 539, 548 (Wash. Ct. App. 2008).
- **West Virginia:** “[S]entimental value, mental suffering, and emotional distress are not recoverable.” *Carbasho v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005).

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<sup>1</sup> *Freedden v. Stride*, 525 P.2d 166 (Or. 1974) (mental distress for conversion).

- **Wisconsin:** “We note that this rule of nonrecovery applies with equal force to . . . a best friend who is human as it does to a plaintiff whose best friend is a dog.” *Rabideau*, 627 N.W.2d at 801 (Wis. 2001).

Among the remaining states, Hawaii briefly allowed emotion-based liability for harm to property, including pets, but that was legislatively overturned. *See Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1071 (Haw. 1981); Haw. Rev. Stat. § 663-8.9. In Tennessee, a statute defines damages for pets and would not allow emotion-based recovery here. *See Tenn. Code Ann. § 44-17-403* (allowing noneconomic damages only when a pet is on its owner’s property or under control, such as on leash). Louisiana has a mixed history based on civil code particular to that state.<sup>2</sup> *Amici* are unaware of reported appellate cases in Alabama, Arkansas, Colorado, the District of Columbia, Maine, Mississippi, Montana, New Hampshire, North Dakota, Oklahoma, South Dakota, Utah, and Wyoming.

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<sup>2</sup> Louisiana has permitted emotion-based damages for harm to property, but has not created new law for pets. *See Keller v. Case*, 757 So. 2d 920 (La. Ct. App. 2000) (applying standards for anguish for property harm); *Smith v. Univ. Animal Clinic, Inc.*, 30 So. 3d 1154 (La. Ct. App. 2010) (allowing award under depository contracts code); *Barrios v. Safeway Ins. Co.*, 97 So.3d 1019, 1022 (La. Ct. App. Mar. 21, 2012) (allowing award under corporeal movable property code). *But see Kling v. U.S. Fire Ins. Co.*, 146 So. 2d 635, 642 (La. Ct. App. 1962) (“Personal or sentimental considerations cannot enter into” such an award).

In addition, the *Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm* excludes emotion-based damages in pet cases:

“Although harm to pets (and chattels with sentimental value) can cause real and serious emotional harm in some cases, lines – arbitrary at times – that limit recovery for emotional harm are necessary. Indeed, injury to a close personal friend may cause serious emotional harm, but that harm is similarly not recoverable under this Chapter.”

Sec. 47 cmt. m (2012); *see also* Victor E. Schwartz & Emily J. Laird, *Non-economic Damages in Pet Litigation: The Serious Need to Preserve a Rational Rule*, 33 Pepp. L. Rev. 227, 236 (2006).

## **B. Courts Rejecting Emotion-Based Liability Have Expressly Appreciated the Human-Pet Bond**

Courts have not mechanically made these decisions based on technical legal classifications. In rejecting emotional damage claims in pet cases, courts have taken pains to expressly appreciate the love owners and pets give each other and sense of loss when a pet is wrongfully killed. *See, e.g., Rabideau*, 627 N.W.2d at 795. They have, though, separated this emotional attachment from the need to create new uncertain liability law, even when owners document that they viewed

their pets the same as children. *See Kondaurov*, 629 S.E.2d at 187 (rejecting claim despite psychologist statement that owner treated pet “like a mother/child unit”).

As the Supreme Court of Wisconsin explained, adhering to traditional tenets of American jurisprudence does not undermine the owner-pet relationship:

To the extent this opinion uses the term “property” in describing how humans value the dog they live with, it is done only as a means of applying established legal doctrine to the facts of this case.

*Rabideau*, 627 N.W.2d at 798; *see also Pacher*, 798 N.E.2d at 1125-26 (“[w]ithout in any way discounting the bonds between humans and animals, we must continue to reject recovery for noneconomic damages”); *Ammon*, 113 S.W.3d at 187-89 (bond “is undeniable,” but dog is “not a family member”); *Strawser v. Wright*, 610 N.E. 2d 610, 612 (Ohio Ct. App. 1992) (while the court “sympathize[d] with one who must endure the sense of loss which may accompany the death of a pet,” it “cannot ignore the law”); *Goodby*, 974 A.2d at 1273 (pet’s “special characteristics as personal property” cannot create a common law wrongful death action for pets similar to “what the Wrongful Death Act does” for immediate relatives).

The courts also raised practical concerns with the litigation, including the fact that there would be “no sensible or just stopping point.” *Rabideau*, 627

N.W.2d at 802. It would be impossible “to cogently identify the class of companion animals” – dogs, cats, hamsters, rabbits, parakeets, etc. – “because the human capacity to form an emotional bond extends to an enormous array of living creatures.” *Id.* Veracity of claims would be hard to prove, and, in many cases, “charging tortfeasors with financial burdens” for an owner’s emotional loss for a pet may be unfair. *Id.* Finally, given that Americans own 200 million pets, pet litigation would increase the “ever burgeoning caseloads of the court.” *Johnson v. Douglas*, 723 N.Y.S.2d 627, 628 (N.Y. App. Div. 2001).

Thus, the law is clear. Courts have acknowledged the quasi-familial quality of many human-pet relationships, but have largely concluded that emotion-based damages are not compensable in cases involving negligent injury to a pet, regardless of how the claim is packaged in litigation, *i.e.*, as a tort, measure of damages such as here, loss of companionship, or other theory.

## **II. GEORGIA DOES NOT PERMIT EMOTION-BASED TESTIMONY**

### **A. Georgia Courts Have Already Rejected Emotion-Based Evidence for Harms to Pets in Comparable Cases to the One at Bar**

Most initial cases where owners sought emotion-based damages for pet injuries were tried under the tort of negligent infliction of emotional distress.

Courts, including in Georgia, have rejected these claims because courts have carefully limited the circumstances where a person may recover emotional loss for injury to another. As indicated above, Georgia adheres to the “impact rule.” For actions sounding in negligence, emotion-based recovery “is allowed only where there is some impact on the plaintiff, and that impact must be a physical injury.” *Ryckelely v. Callaway*, 261 Ga. 828, 412 S.E.2d 826 (1992). The “impact rule” may be dropped when the act against the plaintiff is malicious, as with intentional infliction of emotional distress. *See Westview Cemetery v. Blanchard*, 234 Ga. 540, 216 S.E.2d 776 (1975).<sup>3</sup> *Amici* are not aware of any such allegations here.

Under these laws, Georgia courts have denied emotion-based recoveries from negligent deaths of close relatives and friends when the plaintiff is not also physically injured. For example, the Court of Appeals precluded such claims from a father who witnessed serious injuries to his wife and child in a car accident and another man who was driving the car when his wife and grandchildren suffered

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<sup>3</sup> Cases allowing emotion-based damages for malicious acts against a pet, often under intentional infliction of emotional distress, are not applicable here. *See Plotnik v. Meihaus*, 146 Cal. Rptr. 3d 585 (Cal. Ct. App. 2012); *Womack v. Von Rardon*, 135 P.3d 542 (Wash. Ct. App. 2006); *Burgess v. Taylor*, 44 S.W.3d 806, (Footnote continued on next page)



major injuries in a car accident. *See McCunney v. Clary*, 259 Ga. App. 260, 262; 576 S.E.2d 635, 637 (Ga. Ct. App. 2003) (“we and the trial court are bound by the Supreme Court precedents that expressly prohibit such damages for emotional distress from witnessing the serious injury to a spouse or child”); *Bennett v. Moore*, 312 Ga. App. 445; 718 S.E.2d 311 (Ga. Ct. App. 2011) (cert denied 2012) (same).

Under these laws, pet owners in Georgia have also been denied recovery for emotion-based damages. *See Holbrook v. Stansell*, 254 Ga. App. 553, 562 S.E.2d 731 (Ga. Ct. App. 2002) (denying emotion-based damages where plaintiffs sued the owner of a dog that attacked their newborn foal); *Carroll v. Rock*, 220 Ga. App. 260, 469 S.E.2d 391 (Ga. Ct. App. 1996). *Carroll* was comparable to the case at bar. The plaintiff left two cats with a veterinarian, one of the cats escaped, and the jury awarded the owner \$2,000 in noneconomic damages. *Id.* at 262. In contrast to the trial court ruling here, the *Carroll* Court held that the trial court “erred in admitting testimony” as to any emotional harm suffered by the plaintiff. *Id.* The Court should follow *Carroll* in overturning this aspect of the lower court’s ruling.

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812-13 (Ky. Ct. App. 2001); *Brown v. Muhlenberg*, 269 F.3d 205, 208-19 (3rd Cir. (Footnote continued on next page)

## **B. “Value To The Owner” Damages Do Not Open The Door To Consideration Of Emotion-Based Damages**

Given this undeniable landscape, it is not surprising that Plaintiffs are trying to shoe-horn their claims into other legal theories, namely “value to the owner” and “intrinsic value.” Within the past ten years, clever animal rights lawyers started the trend of recasting emotion-based damage claims in pet cases under these vague-sounding measures of property damages that can be available when property has no market value. The trial court’s ruling uses both terms, stating that Plaintiffs can present evidence of the dog’s “actual value” to them based on, *inter alia*, “non-economic factors demonstrating [the pet’s] intrinsic value.” Op. at 5-6.

In common vernacular, it may be understandable to think that a pet’s “value to the owner” or its “intrinsic value” can include sentimental or emotional value, but both terms have legal meaning excluding all noneconomic factors. In Georgia, as in most states, they are alternative measures of economic damages only. *See Cherry*, 65 Ga. App. at 303. Courts have been clear that, even when “value to the owner” damages are available, there “can be no recovery for . . . sentimental

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2001); *La Porte v. Associated Independents, Inc.*, 163 So.2d 267 (Fla. 1964).

value.” *Id.* “Value to the owner” damages cannot be “any fanciful price that [an owner] might for special reasons place upon them.” *Id.* Similarly, Black’s Law Dictionary defines “intrinsic value” as “[t]he inherent value of a thing, without any special features that might alter its market value. The intrinsic value of a silver coin, for example, is simply the value of the silver within it.” 1549 (7th ed. 1999). Thus, neither term is a gateway for emotion-based damages of any kind. Their purpose is to allow economic recovery when harmed property has no market value.

In the past few years, courts in a half dozen states have applied “value to the owner,” “intrinsic value,” and other comparable alternatives to market value in pet litigation. They have broadly concluded that these measures of damages do not include any consideration of an owner’s sentimental or emotional attachment to the beloved pet. *See* Goldberg, *infra*, at 50-55.<sup>4</sup>

In California, a pet owner in *McMahon v. Craig* waived her right to economic damages to expedite appellate review of the trial court’s rejection of her

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<sup>4</sup> As in Georgia, these terms can be interchanged with “special value” or “peculiar value” to convey the same legal concept. *See, e.g., Dept. of Transp. v. Vest*, 160 Ga. App. 368, 369 (1981) (referring to the “peculiar value to the owner”); Restatement (Second) Torts § 911 cmt. e (1965) (stating a pet’s special value can be evidenced by cost and condition at the time of the loss).

theories of recovery for emotion-based damages, including those based on her pet's value to her. *See* 97 Cal. Rptr. at 559. As here, courts in California had long held that such value is "ascertained by reference to [the item's] usefulness or other qualities," not emotion. *Roos v. Loeser*, 41 Cal. App. 782, 785 (Cal. Ct. App. 1919). Accordingly, "[t]estimony regarding the sentimental value of the property, or any speculative valuations of the property, must be necessarily excluded." *Robinson v. United States*, 175 F. Supp. 2d 1215, 1232 (E.D. Cal. 2001). *McMahon* involved veterinarian malpractice not unlike the case at bar. The Court of Appeals in that case held that damages for a pet can include only a pet's "characteristics that enhance its economic value to the owner, and does not include the owner's emotional attachment to it." 97 Cal. Rptr. at 557.

Similarly, a Washington Court of Appeal concluded that when "value to the owner" damages are permitted, it must be "confined by the limitation on sentimental or fanciful value." *Sherman v. Kissinger*, 195 P.3d at 548. The court stated that "it is well established that a pet owner has no right to emotional distress damages or damages for loss of human-animal bond based on the negligent death or injury to a pet." *Id.* "[I]f the jury decides that the proper measure of damages is

the value to the owner, the jury cannot consider sentimental value.” *Id.* at 547-49. Rather, “value to the owner” is an objective measure of damages based on the “reasonable owner” standard. *Id.*

The Supreme Courts of Alaska and West Virginia, along with the Ohio Court of Appeals, have ruled the same. *See Mitchell v. Heinrichs*, 27 P.3d 309, 313-14 (Alaska 2001) (owner “may not recover damages for her dog’s sentimental value as a component of actual value to her as the dog’s owner”); *Carbasho v. Musulin*, 618 S.E.2d 368, 370 (W.Va. 2005) (“damages for sentimental value or mental suffering are not recoverable” when considering the “special value” of a pet to its owner); *Sokolovic v. Hamilton*, 960 N.E.2d 510 (Ohio Ct. App. Sept. 15, 2011) (“[V]alue to the owner” applies only “in exceptional circumstances” such as for a “unique pedigree”; “sentimentality is not a proper element” of damages).

Recent cases in Texas and Indiana are instructive. In these states, unlike in Georgia, one *can* recover sentimental damages for memorabilia and heirlooms, but courts in both states held that even under these laws, emotion-based damages are not available for harm to pets. *See Medlen*, 397 S.W.3d at 184; *Lacheman*, 838 N.E.2d at 467. In Texas, the state Supreme Court explained in a lengthy and

thorough opinion that compensation sought for a lost pet is relational based on “the rich companionship [the pet] provides.” *Medlen*, 397 S.W.3d at 190. Such a relational attachment, just as with a human relationship, “is unquestionable. But, it is also uncompensable.” *Id.* at 195 (noting plaintiffs “seek emotion-based damages for the death of ‘man’s best friend’ when the law denies such damages for the death of a human best friend.”). The Indiana court similarly concluded that “[a] family dog may well have sentimental value, but is in not an item of almost purely sentimental value such as an heirloom.” *Lacheman*, 838 N.E.2d at 467. Thus, the court continued, if “actual value” is the measure of damages, it must “not includ[e] emotional distress, ‘sentimental’ value, etc.” *Id.* at 468.

The trial court, however, cites to a recent New Jersey Supreme Court case, *McDougall v. Lamm*, 211 N.J. 203 (2012), as suggesting otherwise. *See Op.* at 5. The court was correct in suggesting that New Jersey allows a pet’s “intrinsic value” to be compensable, but the New Jersey high court did not state that a pet’s intrinsic value can include emotion-based damages. Just the opposite is true. In this case, the New Jersey high court rejected emotion-based liability and upheld the court below, which “[a]lthough expressing sympathy to plaintiff for the loss she

felt . . . dismissed plaintiff's emotional distress claim and limited plaintiff's claim for damages to the dog's intrinsic value.” *Lamm*, 211 N.J. at 210. In so doing, the court left in place *Harabes v. The Barkery, Inc.*, which held that owners of a dog that died after being subjected to extreme heat at a grooming business could not “recover non-economic damages resulting from defendants’ alleged negligence.” 791 A.2d 1142, 1146 (N.J. Super. Ct. App. Div. 2001).

**C. The Value of a Pet to Its Owner Cannot Be Established Based on How Much Money a Person Has and Is Willing to Spend on Its Pet**

The trial court also incorrectly stated that the value of a pet to its owner can be “demonstrated” by the amount of money that an owner is willing to spend on it, including for its care. *See Op.* at 5; *see also* ALDF Br. at 26 (suggesting the pet’s “non-economic value is easily ascertainable by reference to actually incurred veterinary bills in excess of market value”). Whether or not an owner can recoup certain veterinary care expenses related to a pet’s injury is completely divorced from determining the value of that pet. That value does not change based on how much money the owner has and is willing to spend on the pet.

Pet owners in North Carolina tried a variation on this theory in *Shera v. North Carolina State University Veterinary Teaching Hospital*. *See* 723 S.E.2d at

352. There, the pet owners did not argue that actual value includes pure emotional or sentimental value, but that the actual value of their dog to them could be demonstrated by the amount of money they spent on cancer treatments to save their dog's life. *See id.* The court rejected this creative effort, concluding it would “expand[] that category of damages beyond what is currently recognize under [North Carolina] law.” *Id.* at 358.

Allowing wealthy pet owners to establish high pet values based on their ability and willingness to spend on their pets would turn Georgia valuation principles on its head. Pets with market value would be worth far less than pets without market value. Old pets would be worth more than young ones. Sick pets receiving expensive care would be worth more than healthy pets. Also, average Americans who cannot spend thousands on pet care, but cherish their pets dearly, could not garner large awards. As the Texas Supreme Court elaborated in *Strickland*, owners of pets with significant market or use value “would be better off saying his beloved pet was a ‘worthless mutt’” so that he “could sue for unlimited emotional-injury damages.” *See* 397 S.W.3d at 196. The “tort system cannot countenance liability so imprecise, unbounded and manipulable.” *Id.*



### **III. ARGUMENTS FOR EMOTION-BASED LIABILITY DO NOT HOLD UP TO SCRUTINY**

The brief submitted by *amicus* Animal Legal Defense Fund (“ALDF”) mischaracterizes certain cases and omits key facts. *Amici* point out the following examples to encourage the Court’s further investigation:

ALDF cites *Corso v. Crawford Dog and Cat Hosp.*, 97 Misc. 2d 530 (N.Y. Civ. Ct. 1979) for the proposition that New York courts have permitted noneconomic damages in pet cases. *See* ALDF Brief at 13. But, ALDF does not inform the Court that *Corso*, a trial court decision, has been called an “aberration . . . flying in the face of overwhelming authority to the contrary.” *Gluckman v. Amer. Airlines, Inc.*, 844 F. Supp. 151, 159 (S.D.N.Y. 1994). New York appellate courts have widely rejected emotion-based damages in pet cases. *See, e.g., Jason v. Parks*, 224 A.D.2d 494, 638 N.Y.S.2d 170 (App. Div. 1996) (“It is well established that a pet owner in New York cannot recover damages for emotional distress.”); *DeJoy*, 786 N.Y.S.2d at 873 (“An animal owner in New York may not recover damages for loss of companionship.”); *Feger v. Warwick Animal Shelter*, 814 N.Y.S.2d 700 (App. Div. 2006) (“[Owner] may not recover damages for the emotional harm . . . from the loss of her cat.”).

ALDF cites *Morgan v. Kroupa*, 702 A.2d 630 (Vt. 1997) twice to suggest that Vermont is open to emotion-based damages. See ALDF Brief at 14, 22. But, ALDF does not inform this Court that in *Goodby v. VetPharm*, the Supreme Court of Vermont specifically stated that in *Morgan* that a pet’s “intangible value in monetary terms was never considered or addressed” and that it would not create “a special exception to recover noneconomic damages for the loss of companion animals occasioned by negligence . . .” 974 A.2d at 1274.

ALDF cites *Martinez v. Robledo*, 147 Cal. Rptr. 3d 921 (Cal. Ct. App. 2012) to support “non-economic damages,” ALDF Brief at \*14, but, *Martinez* does not involve noneconomic damages. Plaintiffs there sought solely certain expenses spent on a pet. Also, ALDF does not inform this Court that the California Court of Appeals, as discussed above, ruled in *McMahon v. Craig* that noneconomic damages are not permitted in valuing a lost pet. See 97 Cal. Rptr. 3d at 555.

ALDF cites *Anzalone v. Kragness*, 826 N.E.2d 472 (Ill. Ct. App. 2005) and *Jankoski v. Preiser*, 510 N.E.2d 1084 (Ill. Ct. App. 1987) as allowing sentimental value for harm to a pet without reservation. But, ALDF does not inform the Court that both cases state clearly that such damages must be “severely circumscribed”

and *Anzalone* concludes that such a claim can “produce only small recovery in the loss of a nonpedigree pet.” *Anzalone*, 826 N.E.2d at 477-78 (citing *Jankoski*).

ALDF turns to Illinois, Tennessee and Florida for the notion that these states “allow noneconomic damages” and there is no flood of pet litigation there. But, ALDF fails to inform this Court that none of them would allow noneconomic damages in cases like the one here. The Illinois law applies only to acts of aggravated cruelty, torture, and bad faith, not negligence. *See* 510 Ill. Comp. Stat. 70/16.3 (2013). Tennessee’s statute applies only to pets negligently injured on the owner’s property or on a leash, and exempts veterinarians and others acting in the interest of animal welfare, as here. *See* Tenn. Code Ann. § 44-17-403 (2013).<sup>5</sup> In Florida, the cases ALDF cites involved either intentional, malicious acts or gross negligence. *See La Porte v. Associated Independents*, 163 So. 2d 267, 269 (Fla. 1964) (involving “malicious destruction of the pet”); *Knowles v. Animal Hosp.*, 360 So. 2d 37, 38 (Fla. Ct. App. 1978 (involving “gross negligence”); *Johnson v. Wander*, 592 So. 2d 1225 (Fla. Dist. Ct. App. 1992) (involving gross negligence).

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<sup>5</sup> Tennessee law prohibits noneconomic damages for all claims involving harm to property unless authorized by statute. *See* Tenn. Code Ann. § 29-39-102(k) (2013).

ALDF cites to a student note for arguments that introducing noneconomic damages will not adversely impact pet care. But, ALDF does not inform this Court that the “study” the student cites to is from an insurance broker that since issued a statement saying that “clarifications may be helpful” because the “study” attributed to his firm does not “have any statistical validity.” *See* Goldberg, *infra* at 70-72 (discussing the study and letter). To the contrary, the letter expresses concern over whether “insurance carriers will continue to write veterinary professional liability insurance at all if noneconomic damages are awarded.” *See id.*

#### **IV. ALLOWING EMOTION-BASED DAMAGES WILL JEOPARDIZE AFFORDABLE PET CARE AND HAVE A BROAD IMPACT**

There is a stark dichotomy between pet welfare and the interests of the few owners who seek emotion-based damages – and animal rights groups supporting them.<sup>6</sup> The primary pet welfare concern is that veterinary care will resemble human healthcare, where emotion-based damages increase costs and dictate care.

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<sup>6</sup> *See* Douglas Belkin, *Animal Rights Gains Foothold as Law Career*, Boston Globe, Mar. 6, 2005 (these damages lay a foundation for legal rights in animals).

Most people's ability to spend on pet care is limited.<sup>7</sup> Many families avoid preventive care, do not treat an ill pet, or are forced to euthanize a pet. *See* Assoc. Press, *Even Pets Feeling Sting of Financial Struggles*, Fosters.com, Nov. 23, 2008 ("we're putting the dogs to sleep" over finances); Kim Campbell Thornton, *Pet Owners Skipping Vet Visits as Economy Sinks*, MSNBC.com (Nov. 12, 2008) ("pet owners [are] skimping on preventive care"). Households that "continue to purchase veterinary services are spending substantially more, but an increasing proportion of households are choosing not to spend any money for veterinary services." Christopher A. Wolf, et al., *An Examination of U.S. Consumer Pet-Related & Veterinary Serv. Expenditures, 1980-2005*, 233 J. Am. Veterinary Med. Ass'n 404, 410 (2008). A quarter of owners spend no money on pet care, twenty percent postpone wellness visits and forty-five percent postpone care for sick pets.<sup>8</sup>

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<sup>7</sup> "[P]et owners have a limit — often a few hundred dollars or less — on how much they will spend on veterinary services. . . . [O]wners would pay \$688 for treatment for their pets if there is a 75% chance of recovery and only about \$356 if there is a 10% chance of recovery." John P. Brown & Jon D. Silverman, *The Current and Future Market for Veterinarians and Veterinary Medical Services in the United States*, 215:2 J. Am. Veterinary Med. Ass'n 161, 167 (1999).

<sup>8</sup> *See* American Veterinary Medical Association, 2007 US PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK (2007); John W. Albers & Michael T. Cavanaugh, 2010 AAHA STATE OF THE INDUS. REPORT; National Commission on Veterinary Economic Issues, *Survey of Veterinarians*, Quick Poll Jan. 2010.

Liability concerns also may cause some services, such as free clinics for spaying and neutering, to close. Shelters, rescues and other services may no longer afford to take in dogs and other pets. Risks and costs for other pet services, such as walking and boarding, will also rise and become less available. Of equal concern, fewer people will get pets, leaving pets abandoned and in shelters to die. Also, less veterinary care increases public health risks, as controlling rabies and zoonotic disease is an important function of veterinary services.

In addition, the impact of the lower court's ruling will be felt outside of the pet care community. Pet owners themselves would face liability if their pet attacked another animal. *See, e.g., Pickford v. Masion* 98 P.3d 1232, 1233-35 (Wash. Ct. App. 2004) (pet-on-pet injuries); *Rowbotham*, 658 A.2d at 912 (same). “[P]et-on-pet aggression is at least as common as attacks on humans, [and] big awards would sharply increase insurance company liabilities and force homeowners to choose more often between their insurance and their pets.” Malanga, *supra* at A16.

Car insurance rates would rise because of risks associated with pets running into roads and riding in cars. *See, e.g., Johnson*, 723 N.Y.S.2d at 628 (struck by car); *Kondaurov*, 629 S.E.2d at 181 (in car); *see also* Malanga, *supra*, at A16 (“Actuaries

probably haven't even contemplated what cases like that would do to our insurance premiums."). Georgia police could be subject to liability, even when taking appropriate action against a threatening dog. *See, e.g., Kautzman v. McDonald*, 621 N.W.2d 871, 876-77 (N.D. 2001) (dog shot to protect community); Laura Summers, *Suit Seeks \$125,000 in Officer's Killing of Dog*, Tulsa World, July 2, 2008 at A14 (officer: "I hated to shoot the dog, but had no choice").

The public recognizes these problems and opposes compensating owners for emotional loss in pet litigation. *See* Joseph Carroll, *Pet Owners Not Worried That Their Pets Will Get Sick From Pet Food: Most Don't Agree With Pain and Suffering Damages for Pets*, Gallup News Service, Apr. 3, 2007. Given the complexity of the public policies involved with compensating owners for emotional loss in pet cases, it is not surprising that many courts have deferred the issue to their legislatures. *See, e.g., Kondaurov*, 629 S.E.2d at 187 ("permitting such an award would amount to a sweeping change in the law of damages, a subject properly left to legislative consideration"). *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211 (Mich. Ct. App. 2001) ("We refuse to create a remedy where there is no legal structure

in which to give it support.”). The Court should also reject this unwise expansion of damages in pet litigation.

### **CONCLUSION**

For these reasons, this Court should reverse the lower court’s ruling and hold that noneconomic damages are not available in animal injury cases.

Respectfully submitted,

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Dated: December 18, 2014



## **APPENDIX: STATEMENTS OF INTEREST**

The Georgia Veterinary Medical Association (GVMA) is committed to advancing the veterinary medical profession and supporting the veterinarian's role in improving animal and public health. Established in 1906, the GVMA is a not-for-profit association representing more than 70 percent of veterinarians in Georgia in companion animal practice, food animal practice, government, academia, industry and uniformed services.

Animal Health Institute ("AHI") is a national trade association of manufacturers of animal health products, pharmaceuticals, vaccines and feed additives used in food production and medicines that keep pets healthy. A primary objective of AHI is to ensure a safe and effective supply of medicines that help pets live longer. AHI supports policies to protect and promote animal healthcare.

The American Kennel Club ("AKC") is the largest registry of purebred dogs and leading not-for-profit organization devoted to the study, breeding, exhibiting, and advancement of dogs. Along with its more than 5,000 member and licensed clubs and affiliated organizations, the AKC advocates for the purebred dog as a

family companion, advances canine health and well-being, works to protect the rights of all dog owners and promotes responsible dog ownership.

The American Pet Products Association (“APPA”) is the leading U.S. not-for-profit trade association for the pet products industry, representing nearly 1,000 pet product manufacturers, importers, manufacturers’ representatives and livestock suppliers. APPA’s mission is to develop and promote responsible pet ownership.

The American Veterinary Medical Association (“AVMA”), established in 1863, is the largest veterinary medical association in the world and the national voice for the veterinary profession. The Association has more than 85,000 members, representing approximately 80% of U.S. veterinarians. The issues presented in this case directly involve the veterinary profession.

The Cat Fanciers’ Association (“CFA”) is a non-profit organization founded in 1906 and has the largest registry of pedigreed cats in the world. CFA’s mission is to preserve and promote the pedigreed breeds of cats and enhance the well-being of all cats. It is dedicated to the promotion of cat health, cat welfare and public education of responsible cat ownership.

The National Animal Interest Alliance (NAIA) is an association of business, agricultural, scientific, and recreational interests dedicated to promoting animal welfare and strengthening the bond between humans and animals. NAIA was founded in 1991 to provide education regarding responsible animal ownership and use, and to oppose animal rights extremism. Its members include pet owners, dog and cat clubs, obedience clubs and rescue groups as well as breeders, trainers, veterinarians, research scientists, farmers, fishermen, hunters and wildlife biologists.

The Pet Industry Joint Advisory Council (“PIJAC”) is the largest trade association advocating on companion animal issues, representing thousands of manufacturers, distributors, breeders, and retailers. PIJAC advocates for healthy and safe pets, responsible trade in pets and pet products, and pro-pet policies.

## **PROOF OF SERVICE**

I certify that on December 18, 2014, an original and seven copies of the foregoing Brief were sent by overnight mail for filing addressed to the following:

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I further certify that a copy of the foregoing Brief was sent by U.S. Mail in a first-class postage-prepaid envelope addressed to the following:

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