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REPORTER

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Pet Food

The recent pet food recalls, and the subsequent illnesses and deaths of numerous pets, have led to a concerted effort by some personal injury lawyers to expand the type of damages available in pet cases, specifically pain and suffering and other types of noneconomic damages where the injury is solely to the pet, say attorneys Victor E. Schwartz, Philip Goldberg, and Christopher Appel. The authors—all pet owners themselves—say courts are correctly rejecting non-economic damages in animal injury cases.

Plaintiffs' Bar Campaign to Introduce Pain and Suffering Damages In Pet Food Cases Will Only Increase the Pain and Suffering of People's Pets

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For more than two hundred years, the laws governing animal ownership and animal care in this country have been remarkably consistent. These laws have created a stable legal system that promotes responsible animal ownership, deters animal abuse, and promotes innovative, affordable and quality animal care. Under this system, which includes tort and products liability laws, pet owners who were adversely impacted by the pet food recalls are able to be fully and fairly compensated. States generally allow pet owners to recover veterinarian bills and other costs incurred from such an event, including the costs of any special training, income, or special services a pet may have provided to its owner. Also, in most states, punitive damages can be awarded to punish those who commit egregious intentional wrongful acts against pets.

Introducing pain and suffering and other noneconomic damages in animal injury cases will cause adversity for the animals and their owners because it will make veterinary care very expensive. Boarding pets also will become more difficult because boarders, even highly responsible ones, will have to pay much higher insurance costs. Because the amount of money that many Americans have to spend on their pets is limited, the reality is that when pet health-care services become unaffordable, it is the pets who will suffer. More animals will face untreated ailments or, in the worst case scenario, be put to death.

As this article will show, contrary to assertions by some personal injury lawyers in this publication and elsewhere, state tort law does not recognize pain and suffering or loss of companionship-type damages in negligent injury to animal cases including those which the recent food recall has spawned. If they did, the adverse ramifications would be felt by nearly all Ameri-

cans, from law enforcement to family farmers to anyone who pays car insurance. The adverse effects would be especially harsh for pet owners and their pets. For these and other reasons, an overwhelming majority of Americans, including pet owners, responded to a Gallup poll after the pet food recall that owners should not be entitled to pain and suffering type damages in animal injury and death cases.¹

I. The Current Legal Landscape of Non-Economic Damages in Animal Cases

A. State Tort Law Has Rejected Non-Economic Damages in Animal Cases

Animal owners may collect economic damages in litigation for injury or harm to their animals.² Economic damages are the objective financial losses associated with an injury. State tort law, however, has generally stated that such owners may not recover *non-economic* damages, which include subjective emotional losses, most often cited as pain and suffering and loss of companionship. This traditional approach remains the law in nearly every state.

When litigation over animal injuries arise, such as alleged in the new pet food lawsuits, courts look at a variety of costs to assess economic damages. They often start with the fair-market value of an animal, particularly if it has significant market worth. Where the animal has little to no market value, courts may also consider the actual or intrinsic value of the animal.³ In addition, damages may include any other costs associated with making the owner whole, including veterinary expenses incurred in the episode at issue, purchase of a replacement animal, and costs of training a new pet. If an animal is harmed by an act of animal cruelty, some states allow for additional punishment against the actor, such as criminal prosecution against the perpetrator and the awarding of punitive damages to the owner.⁴

Within the last decade or so, a small number of animal rights activists have tried to obtain non-economic damages in pet injury cases. These individuals view non-economic damages in animal litigation as part of their general campaign to give pets, livestock, and other animals the same or similar legal rights as people. Curiously, human beings have no right to bring tort claims for loss of a close friend and most relatives, as this article will show. Viewed from this perspective, the animal rights activist groups are seeking greater rights in animal injury cases than in cases involving human beings.

Courts have been rejecting these efforts, affirming that the fundamental principles of tort law also apply in

pet litigation. Appellate courts denying emotional distress damages in pet cases include those in Alaska, Arizona, California, Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, Washington, West Virginia, and Wisconsin.⁵

These courts have concluded that harm to animals does not fit into the limited types of claims where one may receive emotional harm damages:

(1) Non-economic damages: The general rule is that a plaintiff may only seek pain and suffering-type damages for her own personal injury. In a number of states, recovery for emotional losses for injury to, or death of, a spouse or child have been permitted through survival and death statutes. With regard to pets, as a Massachusetts court held, “the absence of [such] statutory authority precludes recovery.”⁶ Where recovery for loss of companionship is allowed, it is only for the injury to, or death of, a spouse, child, or sibling.

(2) Intentional infliction of emotional distress: A plaintiff may only recover under *intentional* infliction of emotional distress when the defendant commits an outrageous act with the intent or purpose of causing emotional distress to the *plaintiff*. Think of the infamous scene in the movie “Fatal Attraction,” where Glenn Close’s character kills a rabbit to inflict emotional pain on Michael Douglas’s character. In these instances, the defendant harms an animal, but only as a means of inflicting intentional emotional harm against the owner. The fact that the pet is a living creature with significant value to the owner is relevant in these cases, only for assessing the outrageousness of the defendant’s conduct against the owner.⁷

(3) Negligent infliction of emotional distress: A plaintiff may recover under *negligent* infliction of emotional distress only when she is physically injured or is in a defined zone of danger and objectively feels physically threatened.⁸ Thus, a person may *not* seek emotional harm damages if an arsonist burns down her house when she is away, a doctor commits medical malpractice on her child, or if she watches from the sidewalk as a speeding car kills her best friend in the street. A few courts have recognized a “bystander” exception, but only for witnessing a brutal accident involving a spouse, child, or sibling. In concert with these rulings, courts have rejected causes of action for negligent infliction of emotional distress in animal injury cases, both for bystander claims and for veterinary malpractice.⁹

¹ 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, available at <http://www.galluppoll.com/content/?ci=27076&pg=1>.

² See Victor E. Schwartz et al, *Prosser, Wade and Schwartz’s Torts* 547 (10th ed. 2000).

³ See, e.g., *Pickford v. Mason*, 98 P.3d 1232, 1233-35 (Wash. Ct. App. 2004) (“damages are recoverable for the actual or intrinsic value of lost property but not for sentimental value”).

⁴ See, e.g., *Dolan v. Pearce*, No. CIV.A. 97-7519, 1998 WL 252114, *4 (E.D. Pa. 1998) (holding that punitive damages are available in cases involving malicious injury to animals).

⁵ See 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, 236-237 (2006).

⁶ *Krasnecky v. Meffen*, 777 N.E.2d 1286 (Mass. Ct. App. 2002); see also, *Koester v. VCA Animal Hospital*, 624 N.W.2d 209 (Mich. Ct. App. 2000).

⁷ *Burgess v. Taylor*, 44 S.W.3d 806, 813 (Ky. Ct. App. 2001) (holding that a claim for intentional infliction of emotional distress is not “precluded simply because the facts giving rise to the claim involve an animal”).

⁸ See *Lockett v. Hill*, 51 P.3d 5, 7-8 (Or. Ct. App. 2002).

⁹ See, e.g., *id.*; *Coston v. Reardon*, No. 063892, 2001 WL 1467610 (Conn. Super. Oct. 18, 2001); *Holbrook v. Stansell*, 562 S.E.2d 731 (Ga. Ct. App. 2002).

In assessing the state of the law in this area, the most recent Tentative Draft chapter of the *Restatement of the Law (Third): Torts* dealing with emotional harm, states as follows:

While pet animals are often quite different from chattels in terms of emotional attachment, damages for emotional harm arising from negligence causing injury to a pet are also not permitted. Although there can be real and serious emotional disturbance in some cases of harm to pets (and chattels with sentimental value), lines, arbitrary at times, that limit recovery for emotional disturbance are necessary. (Injury to a close personal friend may similarly cause serious emotional disturbance but that is also unrecoverable under this Chapter.)¹⁰

The Wisconsin Supreme Court, which has a reputation for being “plaintiff-friendly,” explained in *Rabideau v. City of Racine*¹¹ that allowing emotional distress claims for “human companions” of animals, where emotional distress damages are otherwise only permitted for a defined set of close family members, does not meet legitimate public policy goals.¹²

The court’s ruling was two-fold. First, there is “no sensible or just stopping point.”¹³ The court stated that:

[I]t is difficult to define with precision the limit of the class of individuals who fit into the human companion category. . . . [It also] would be difficult to cogently identify the class of companion animals because the human capacity to form an emotional bond extends to an enormous array of living creatures.¹⁴

Second, there are “concerns relating to identifying genuine claims of emotional distress, as well as charging tortfeasors with financial burdens that are fair.”¹⁵

Other courts have agreed. An Ohio court in *Pacher v. Invisible Fence of Dayton* said that there would be tremendous “difficulty in defining classes of persons entitled to recover, and classes of animals for which recovery should be allowed.”¹⁶ There also would be “concern about quantifying the emotional value of a pet and about increasing potential burdens of the court system.”¹⁷ A New Jersey appellate court, in *Harabes v. The Barkery Inc.*, said that there was no way to measure such sentimental value that would “ensure fairness” to any party, as the emotional value of a pet can range from \$100 to “as high as the national debt.”¹⁸ A New York court in *Johnson v. Douglas* said, “[t]he problem for the law is to limit the legal consequences of wrongs to a controllable degree.”¹⁹ If non-economic damages were allowed in animal litigation, it would increase “the ever burgeoning caseloads of the court” and interfere

with the court’s ability to adjudicate “serious tort claims for injuries to individuals.”²⁰

In addition, courts have specifically rejected efforts of personal injury lawyers to exploit the legal classification of animals as “property” by arguing that it is insulting to classify cherished family pets as “mere property,” akin to a photograph or an ashtray. While pets are loved and not seen as non-living property, for legal purposes, courts have observed that “viewing a pet as more than property” would be “aberrations flying in the face of overwhelming authority to the contrary.”²¹

Only a few appellate courts have diverged from these core principles in published opinions, but none have allowed for “loss of companionship” damages, as suggested by a personal injury lawyer in this publication. For example, more than 25 years ago, a Florida court allowed an owner to recover modest emotional distress damages for negligent harm to property generally, which included homes, keepsakes, pets, and other such possessions.²² In Washington, a court created a category of intentional infliction of emotional distress for “malicious” injury to a pet so as not to require the alleged wrongdoer to have the actual intent to harm the owner. In doing so, it maintained the definition of animals as property and affirmed that emotional harm damages would not be permitted for acts of negligence.²³

B. Legislatures Have Resisted Efforts to Expand Damages in Animal Cases

In the last few years, personal injury lawyers and some animal rights activist groups have taken their case to state legislatures. They have had very limited success in two states—Illinois and Tennessee. Both states have statutes that specifically permit non-economic damages in animal litigation, but only in very limited circumstances.²⁴ Illinois only permits emotional distress damages when the act harming the animal is malicious or

²⁰ *Id.* (internal citations omitted).

²¹ *Gluckman v. Am. Airlines Inc.*, 844 F. Supp. 151, 159 (S.D.N.Y. 1994) (citing *Snyder v. Bio-Lab Inc.*, 405 N.Y.S. 2d 596 (N.Y. Sup. Ct. 1978) (“[a]s with personal property generally, the measure of damages for injury to, or destruction of, an animal is the amount which will compensate the owner for the loss and thus return him, monetarily, to the status he was in before the loss”) and *Stettner v. Graubard*, 368 N.Y.S.2d 683 (N.Y. Town Ct. 1975) (sentiment will not be considered in assessing market value for purposes of determining measure of damages for destruction of dogs)).

²² *Knowles v. Animal Hospital v. Wills*, 360 So. 2d 37, 38 (Fla. Dist. Ct. App. 1978) (allowing dog owners to recover \$13,000 for physical and mental suffering due to the death of their dog because of a veterinarian’s negligence).

²³ *Womack v. Von Rardon*, 135 P.3d 542, 546 (Wash. Ct. App. 2006).

²⁴ 510 Ill. Comp. Stat. § 70/16.3 (2002) (allowing damages for aggravated cruelty, torture, or bad faith, including, but not limited to, “the monetary value of the animal, veterinary expenses incurred on behalf of the animal, any other expenses incurred by the owner in rectifying the effects of the cruelty, pain, and suffering of the animal, and emotional distress suffered by the owner”); Tenn. Code Ann. § 44-17-403 (2004) (“If a person’s pet is killed or sustains injuries which result in death caused by the unlawful and intentional, or negligent, act of another or the animal of another, the trier of fact may find the individual causing the death or the owner of the animal causing the death liable for up to five thousand dollars (\$5,000) in noneconomic damages; provided, that if such death is caused by the negligent act of another, the death or fatal injury

¹⁰ Am. L. Inst., *Restatement of the Law Torts: Liability for Physical and Emotional Harm*, Preliminary Draft No. 5, 64 (Mar. 13, 2007).

¹¹ *Rabideau v. City of Racine*, 627 N.W.2d 795, 802 (Wis. 2001).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1126 (Ohio Ct. App. 2003).

¹⁷ *Id.*

¹⁸ *Harabes v. The Barkery Inc.*, 791 A.2d 1142, 1145 (N.J. Super. Ct. App. Div. 2001) (citing *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 690 (Iowa 1996)).

¹⁹ *Johnson v. Douglas*, 723 N.Y.S.2d 627, 628 (N.Y. Sup. Ct. 2001).

cruel, not for acts of negligence or the types of causes of action likely to be advanced in the food recall suits. The Tennessee law also only applies in specific situations, which likely would not apply to the pet food lawsuits, such as where a person or his or her loose animal goes onto another's property and injures that person's pet.

More expansive legislation on this topic has been introduced in other states, but the animal owner and animal welfare communities have successfully stopped the bills. These groups have educated policymakers as to why allowing non-economic damages would compromise animal care by driving up costs and making it unaffordable for many citizens of the state. In Colorado, for example, the backlash against the bill was so severe that the state lawmaker who introduced the legislation ultimately killed his own bill.²⁵ As the *Denver Post* editorialized, allowing pet owners to recover non-economic damages would have "unintended consequences—and actually may work against getting the medical care our dogs and cats need."²⁶ Specifically, it would lead to defensive pet medicine, "put ordinary veterinary care beyond the reach of poorer households," and keep some people from spaying or neutering their pets.²⁷ The *Post* said that a "better title [for the bill] would be 'the Tort Lawyers' Income Relief Act.'"²⁸

II. Continuing to Reject Non-Economic Damages in Pet Suits Is the Right Public Policy

A. The Current System Supports the Pets' Best Interests

Allowing owners to collect emotional harm damages associated with injury to, or loss of, a pet may at first appear to be the "pro-animal" position. But, as the *Denver Post* editorialized, introducing non-economic damage awards in animal litigation would actually *reduce* the overall level of animal care.

Over the past 20 years, the ability and willingness of owners to care for their animals has increased dramatically. Veterinarians generally keep basic costs of animal care affordable for most animal owners. The American Animal Hospital Association reports that the current costs of having an animal spayed is about \$160. (A man's vasectomy, which is a much simpler medical procedure than spaying an animal, costs more than 10 times the spaying fee.) In addition, many owners seek transplants, chemotherapy, joint replacements, and innovative medicines so that their animals can live longer, healthier lives.

Affordable and available veterinary care is integral for those who have taken advantage of these rapid advances in veterinary services. As Professor Rick Cupp of Pepperdine University's School of Law has recognized, any significant increase in the costs of animal

must occur on the property of the deceased pet's owner or caretaker, or while under the control and supervision of the deceased pet's owner or caretaker.").

²⁵ See Julia C. Martinez, *Pet Bill Killed by House Sponsor; Move Outrages Senate Backer*, *Denver Post*, Feb. 16, 2003, at B1.

²⁶ Editorial, *Pet Law Barks Up Wrong Tree*, *Denver Post*, Feb. 12, 2003, at B6.

²⁷ *Id.*

²⁸ *Id.*

care would likely decrease the willingness and ability of owners to seek care when their animals are sick.²⁹

The demand for veterinary medicine for pets is much more elastic than the demand for human medicine. Although consumers will spend a lot of money for life-saving human medical procedures, many pet owners have a limit—often a few hundred dollars or less—on how much they will spend on veterinary services. With higher prices, fewer pet owners could (or would) pay for needed veterinary medicine; in turn, more animals would suffer. In effect, pet owners would be compensated at the cost of their pets' health and lives.³⁰

If a person could collect emotional harm damages from pet boarders, veterinarians, and others in the animal field, costs for these services would substantially rise or the services would become unavailable. Animal health care would resemble the human healthcare system, replete with dramatic increases in costs caused by more defensive medicine and higher liability insurance premiums. As a sage legal commentator observed, "[a]s with human doctors . . . [pet] owners are increasingly likely to sue," such as when their animals are hurt in an accident or when receiving medical care.³¹ The increased costs of liability coverage would also carry over into grooming, training, and transportation services and animal products of all kinds.

Already there has been discussion that allowing non-economic damages in animal litigation could cause veterinarians and shelters to leave the business³² or shut free clinics that spay, neuter, and vaccinate pets. One California veterinarian who has treated cats with kidney problems since the pet food recall told a local reporter, "This hysteria and sue-happy mentality is very bad. . . . If I have to pay hundreds of thousands of dollars for insurance, how much will I have to charge for a spay or neuter?"³³ Veterinarians may become more defensive in their practices by recommending treatment that may otherwise be unnecessary. They also may avoid risky procedures, thereby depriving pets of important medical care. As a result, "more pets would suffer with untreated ailments"³⁴ or be put to sleep.³⁵

²⁹ Richard L. Cupp Jr., *Barking Up the Wrong Tree Justice: Awarding Emotional Distress Damages to Pet Owners Whose Animals Are Harmed Is a Dog of an Idea*, *L.A. Times*, June 22, 1998, at B5 [hereinafter "*Barking Up the Wrong Tree*"]; see also Richard Marosi, *Every Dog Has His Day in Court*, *L.A. Times*, May 24, 2000, at A1 ("Veterinarians believe animal health care costs would skyrocket under an avalanche of litigation. Ironically, they say, animals would suffer because owners would not be able to afford treatment.").

³⁰ *Id.* A 1999 study reveals that pet owners 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).

³¹ Richard L. Cupp Jr. & Amber E. Dean, *Veterinarians in the Doghouse: Are Pet Suits Economically Viable?*, *The Brief*, Spring 2002, at 43, 43.

³² Rebecca J. Huss, *Valuation in Veterinary Malpractice*, 35 *Loy. U. Chi. L.J.* 479, 531 (2004).

³³ Denise Nix and Josh Grossberg, *Cat Owners File Lawsuit Over Tainted Pet Food*, *Daily Breeze*, Mar. 29, 2007, at A1.

³⁴ *Barking Up the Wrong Tree*, *supra* note 28, at B5.

³⁵ See Huss, *supra* note 31, at 531 (the higher cost of veterinary care "may increase the rate of euthanization of animals").

The Bloomington *Pantagraph* recently editorialized in response to the pet food litigation, “Before anyone enacts laws allowing pet owners to sue for ‘loss of companionship’—as is done when someone loses a child or a spouse—consider the repercussions.”³⁶ Similarly, Jon Katz, a noted author of several books on the changing relationship between dogs and people, was interviewed by the *Los Angeles Times* about the effort to inject emotional harm damages into the food recall suits. In addition to warning against the unintended consequences discussed above, he said that he is troubled by people who consider their pets “fur children” and insist that losing a pet is similar to losing a child: “As the father of a child and a dog lover, I know it’s not the same thing. . . . I don’t think people have thought through the consequences here.”³⁷

While proponents of non-economic damages in animal litigation suggest these damages would provide better treatment for animals, the unintended consequences of their actions would actually lead to the opposite result.

B. The Impact of Imposing Non-Economic Damages in Pet Cases Would Have a Far Reaching Impact

Introducing non-economic damages into animal litigation would adversely affect not only pet owners, but also the general public, including law-enforcement officers and family farmers. The American public appears to understand these adverse consequences. In response to a Gallup Poll taken after the pet food recalls, an overwhelming majority of the public (63%), which included pet owners, stated that pet owners should only be entitled to their actual economic damages, and not pain and suffering-type damages.³⁸

(1) Pet Owners: In addition to higher veterinary bills, a pet owner would face potentially enormous liability if her pet attacked another animal, even where the incident was entirely out of character for the pet. In fact, several of the cases where plaintiffs have sought non-economic damages in the past have involved such incidents.³⁹ With the increased popularity of public dog runs and dog parks in suburban communities, and the propensity for dogs and cats to be outside in rural areas, pet owners could be subject to unreasonable liability should their pet cause harm to another’s animal.

(2) The Public: Members of the public could be subject to liability for non-economic damages if an animal was injured in an automobile accident or on their property. It is not unusual for a dog or cat to run out into the street or for a pet to eat something poisonous on another person’s property. If individual people were liable for thousands of dollars in emotional distress, sentimental value, or loss of companionship-type damages

³⁶ Editorial, *Contaminated Pet Food Raises Sticky Questions*, *Pantagraph*, Apr. 4, 2007, at A6.

³⁷ Molly Selvin & Abigail Goldman, *A Dog’s Life: What’s It Worth?*, *L.A. Times*, Mar. 30, 2007, at 1.

³⁸ 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, available at <http://www.galluppoll.com/content/?ci=27076&pg=1>.

³⁹ See, e.g., *Pickford v. Masion*, 98 P.3d 1232, 1233-35 (Wash. Ct. App. 2004).

for such accidents, the cost of auto and homeowner insurance would skyrocket. Defendants without insurance could pay tens of thousands of dollars out-of-pocket for one incident.

(3) Law Enforcement and Municipalities: In a number of other cases, pet owners have sought non-economic damages after police officers shot their pets in order to protect themselves or others.⁴⁰ While these claims have been rejected, a change in the law could cause police departments to divert significant resources from law enforcement to paying pet owners for emotional harm. Worse, police officers could hesitate before taking the necessary actions to protect themselves or the community, such as when a loose dog enters someone’s property and threatens them. In addition, municipalities could face increased liability related to their stewardship of animal shelter and animal control programs.

(4) Family Farmers and Livestock Producers: An increase in the cost of veterinary services would force family farmers and livestock producers to either spend more for the same veterinary care or purchase fewer veterinary services. Spending more would leave them more vulnerable to foreign competition, which ultimately would force higher prices for American consumers. With regard to the latter, as the pet food recall has shown, a healthy food supply is important for increased production and the health of human and pet consumers.

In addition, as some lawsuits have already shown, family farmers may need to take certain measures to protect their farm animals from other people’s animals who stray onto their farms. For example, in *Mitchell v. Heinrichs*,⁴¹ a family farmer grew concerned when stray dogs ran near her livestock pen, where a goat had just given birth; she perceived that “the dogs were excited by the smell of the blood and were threatening her livestock.”⁴² Ms. Heinrichs tried to scare the dogs away, and only shot them when the dogs turned their attention to her. In this instance, the court adhered to traditional tort law and ruled that the owner was only entitled to the fair market value of the dogs, which did not include any emotional or non-economic damages.⁴³

III. Conclusion

Personal injury lawyers responding to the pet food recalls have an understandable agenda of promoting non-economic damage awards in pet litigation. Obviously, a \$100,000 award for an injury to a pet would generate a much higher contingency fee than an award of \$5,000 or \$10,000. By way of contrast, knowledgeable animal ownership and animal welfare groups, as well as the general public, oppose such efforts because they appreciate that introducing non-economic damages into pet litigation would create a worse environment for pets, owners, and others. Losing a pet unexpectedly can often be tragic, whether it be a dog, a cat, or a goldfish, but for every one owner who hits the “litigation lottery” and would recover non-economic damages, thousands of animals may no longer get the care they need.

⁴⁰ See, e.g., *Soucek v. Banham*, 503 N.W.2d 153, 164 (Minn. Ct. App. 1993).

⁴¹ 27 P.3d 309 (Alaska 2001).

⁴² *Id.* at 311.

⁴³ See *id.* at 314.