

SUPREME COURT, STATE OF NEW YORK
 COUNTY OF ULSTER

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 Iris Lewis,

Plaintiff,

BRIEF OF *AMICUS CURIAE*
 ANIMAL LEGAL DEFENSE FUND

-against-

Al DiDonna, Pharmacist, Jim (James) DiDonna,
 pharmacist, Eckerd Drug Store of Stone Ridge,
 New York, Eckerd Corporation (d/b/a "Eckerd
 Drugs" or "Eckerd Drugstore") (a foreign
 corporation), J.C. Penney Company, Inc., (a foreign
 corporation),

Index No.: 00-472

Defendants.
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Introduction

Despite their legal classification as "property," animals are in fact live, sentient beings long recognized (particularly in the case of dogs) as "man's best friend" and considered by many to be beloved family members, entirely different from other items of property such as tables and chairs. In 1995, a commentator in New York concluded that three important objectives of tort law -- compensation, deterrence and the reflection of societal values -- compelled reevaluation in cases where wrongful killing of animal companions is alleged, noting that no logical reason exists to deny the right to legal recourse for non-economic injuries such as loss of companionship in these cases.¹ Consistent with the development over time of the law governing loss of companionship, and with the extensive evidence of companion animals' role as members of the American family, the Animal Legal Defense Fund submits that the Plaintiff in this case should be allowed to seek

¹ Debra Squires-Lec, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U.L. REV. 1059 (1995).

recourse for her loss of Emily's companionship, both as a cause of action and as an element of Plaintiff's damages.

I. Development of Claims for Loss of Consortium / Loss of Companionship

"Loss of consortium" originally was limited to a wife's household services, including "general usefulness, industry, and attention within the home and family."² This concept of consortium was known as the "material version."³ The more modern "sentimental version" later developed, focusing on a spouse's loss of affection, companionship, society⁴ and sexual relations;⁵ although some courts have sharply criticized efforts to separate consortium into "material" and "sentimental" aspects and have treated them as indivisible.⁶ In cases involving parent/child, as opposed to spousal, loss of consortium, the term has been defined similarly as "the loss of love, companionship, society [and] affection," merely omitting the sexual component.⁷

² *Gail v. Clark*, 410 N.W.2d 662, 667 (Iowa 1987).

³ *Id.* See also *Acuff v. Schmitt*, 248 Iowa 272, 78 N.W.2d 480, 481-82 (1956).

⁴ "Society" has been defined simply as "companionship" or "company." WEBSTER'S ENCYCLOPEDIA UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE (1989), at 1350.

⁵ See, e.g., *Gail v. Clark*, 410 N.W.2d 662, 668 (Iowa 1987); *Agis v. Howard Johnson Co.*, 371 Mass. 140, 146, 355 N.E.2d 315, 320 (1976); *Bronn v. Exeter Clinic, Inc.*, 127 N.H. 155, 161, 498 A.2d 334, 338 (1985).

⁶ See, e.g., *Montgomery v. Stephan*, 359 Mich. 33, 35-36, 101 N.W.2d 227, 228 (1960).

⁷ See, e.g., *Reben v. Ely*, 146 Ariz. 309, 311, 705 P.2d 1360, 1362 (Cl. App. 1985).

Spousal Loss of Consortium

A husband's legal right to his wife's services was first recognized in 1610, when an English court allowed a husband's cause of action for an assault on his wife "*per quod consortium . . . amisit*," which has been translated to "whereby he lost the company of his wife."⁸ The legal status of the wife at that time was generally analogous to that of a servant, *i.e.*, chattel or property of her husband.⁹

By the 1970s, a majority of states had come to recognize a wife's cause of action for loss of consortium, and permitted either spouse to sue for loss of the other's love, society, affection and/or sexual relations;¹⁰ by 1983, nearly every state recognized such claims.¹¹ Countering concerns over expanding tort liability in this manner, courts rejected arguments that recognition of this cause of action would place greater, inappropriate burdens on the judicial system, and promised to "proceed from case to case with discerning caution."¹²

⁸ *Guy v. Livesy*, 79 Eng. Rep. 428 (K.B. 1618); BLACK'S LAW DICTIONARY 1249 (4th ed. 1968); See also F. Warren Hughes, Comment, *Loss of Consortium in North Carolina: Back into the Mainstream of American Legal Thought*, 12 N.C. CENT. L.J. 488 (1981).

⁹ *Montgomery v. Stephan*, 359 Mich. 33, 41, 101 N.W.2d 227, 230 (1960); *Lynch v. Knight*, 11 Eng. Rep. 854, 857 (K.B. 1861); *Theama v. City of Kenosha*, 117 Wis. 2d 508, 512, 344 N.W.2d 513, 515 (1984). See generally Margaret Thornton, *Loss of Consortium: Inequality Before the Law*, 10 SIDNEY L. REV. 259 (1984).

¹⁰ Nancy C. Osborne, Note, *Loss of Consortium: Paradise Lost, Paradise Regained*, 15 CUMB. L. REV. 179, 179 (1985); Kevin Lindsey, Note, *A More Equitable Approach to Loss of Spousal Consortium*, 75 IOWA L. REV. 713, 714 (1990).

¹¹ Martin S. Amick, Note, *Who Should Recover For Loss of Consortium?*, 35 M.E. L. REV. 295, 295-96 & fn. 4 (1983). See also *American Export Lines, Inc. v. Alvez*, 446 U.S. 274, 284-85 & fn. 11 (1980).

¹² *Diaz v. Eli Lilly & Co.*, 364 Mass. 153, 165, 302, N.E.2d 555, 563 (1973).

Children's Recovery for Parental Injury or Death

Before 1977, no jurisdiction in the United States recognized common law loss of parental consortium as a viable claim or element of recoverable damages.¹³ By the early 1980s, numerous legal commentators supported recognition of an independent cause of action for loss of parental consortium.¹⁴ Advocates maintained that recognition of such an action was "mandated by logic, compassion, and modern sensitivity to the independent identity of the child, the importance of family relationships, and the fairness of compensating persons injured by another's negligence."¹⁵ A growing number of courts have taken the same view and allowed recovery.¹⁶ As noted by the Oklahoma Supreme Court, even those jurisdictions declining to recognize the cause of action had acknowledged that "the child suffers a real and serious loss when a parent is injured and that because of the erosion of the traditional concept of chattel, lack of precedents may be a poor excuse to refuse to acknowledge the cause of action."¹⁷

¹³ Lauren E. Handler, *Parental Consortium Loss Becoming a Viable Claim*, 135 N.J.L.J. 541, Supp. 21 (Oct. 4, 1993).

¹⁴ See, e.g., *Rosen v. Zorzos*, 449 So. 2d 359, 363, fn. 8 (Fla. Ct. App. 1984); *Theama v. City of Kenosha*, 117 Wis. 2d 508, 512, 344 N.W.2d 513, 514 (1984).

¹⁵ *Berger v. Weber*, 411 Mich. 1, 21, 303 N.W.2d 424, 429 (1981) (Levin, J., dissenting, describing position adopted by the majority).

¹⁶ See, e.g., *Hibpsman v. Prudhoe Bay Supply, Inc.*, 734 P.2d 991 (Alaska 1987); *Villareal v. State of Arizona*, 160 Ariz. 474, 774 P.2d 213 (1989); *Dearborn Fabricating & Engineering Corp. v. Wickham*, 532 N.E.2d 16 (Ind. Ct. App. 1988); *Audobon-Extra Ready Mix v. Illinois Cent. Gulf R.R.*, 335 N.W.2d 148 (Iowa 1983); *Giuliani v. Guiler*, 951 S.W.2d 318, 319-20 (Ky. 1997); *Ferriter v. Daniel O'Connell's Sons, Inc.*, 381 Mass. 507, 413 N.E.2d 690 (1980); *Berger v. Weber*, 411 Mich. 1, 303 N.W.2d 424 (1981); *Pence v. Fox*, 248 Mont. 521, 813 P.2d 429 (1991); *Romero v. Byers*, 117 N.M. 422, 872 P.2d 840 (1994); *Williams v. Hook*, 804 P.2d 1131 (Okla. 1990) (injury); *Reagan v. Vaughn*, 804 S.W.2d 463, 467 (Tex. 1990); *Hay v. Medical Center Hosp.*, 145 Vt. 533, 496 A.2d 939 (1985); *Ueland v. Reynolds Metals Co.*, 103 Wash. 2d 131, 691 P.2d 190 (1984); *Belcher v. Goins*, 184 W.Va. 395, 400 S.E.2d 830 (1990); and *Theama v. City of Kenosha*, *supra*.

¹⁷ *Williams v. Hook*, 804 P.2d 1131, 1134-35 (Okla. 1990) (citations omitted).

Again courts did not hesitate to fill the historical void where justice demanded it: "When we find that the common law or 'judge-made law' is unjust or out of step with the times, we have no reluctance to change it."¹⁸

"The common law of today is not a frozen mold of ancient ideas, but such law i[s] active and dynamic and thus changes with the times and growth of society to meet its needs." [Citation omitted.] In *Troue v. Marker* [253 Ind. 284, 290, 252 N.E.2d 800, 804 (1969)], Judge Arterburn further admonished that the "common law must keep pace with changes in our society." Where the reasoning advanced for retention of a common law doctrine is judicially unsound, and where there are no legislative barriers, this Court will abrogate common law doctrine.¹⁹

Parents' Claims For Loss of Children's Consortium

The same dynamic can be seen in the development of loss of companionship cases in which parents have sought recovery where a child was injured or killed. In an early, seminal case, the Wisconsin Supreme Court noted the historical father-child relationship, and concluded that "today's relationship between parents and children is, or should be, more than that between master and servant,"²⁰ such that a parent's claim for loss of a child's "aid, comfort, society and companionship" may be maintained where the minor child has been injured.²¹ By 1988, a

¹⁸ *Villareal v. State of Arizona*, 160 Ariz. 474, 477, 774 P.2d 213, 216 (1989), quoting from *City of Glendale v. Bradshaw*, 108 Ariz. 582, 584, 503 P.2d 803, 805 (1972).

¹⁹ *Dearborn Fabricating & Eng'g Corp. v. Wickham*, 532 N.E.2d 16, 17-18 (Ind. 1988) (recognizing child's loss of consortium claim where parent was negligently injured).

²⁰ *Shockley v. Prier*, 66 Wis. 2d 394, 402, 225 N.W.2d 495, 500 (1975).

²¹ *Id.* at 404, 225 N.W.2d at 501.

significant number of state courts were recognizing this claim.²² Parental loss of companionship claims now are allowed in most states, particularly in cases of wrongful death.²³

As is evident from all of the foregoing, development of tort liability with respect to loss of companionship claims has been a gradual process. Along the way, despite detractors' ominous warnings of spawning "litigation almost without end,"²⁴ courts have been willing to modify existing common law to reflect progressing societal views.

II. Claims for Loss of Animal Companionship Reflect Society's Values and Should Be Allowed

A. Courts and Legislatures in New York and Across the United States Have Recognized the Importance of the Human-Animal Companion Bond

A growing number of judges and legislatures, in New York and across the country, clearly recognize that companionship is the primary role of animals like Emily.

²² See, e.g., *Reben v. Ely*, 146 Ariz. 309, 705 P.2d 1360 (1985); *Yordon v. Savage*, 279 So. 2d 844 (Fla. 1973); *Bullard v. Barnes*, 102 Ill. 2d 505, 468 N.E.2d 1228 (1984); *Ballweg v. City of Springfield*, 114 Ill. 2d 107, 499 N.E.2d 1373 (1986); *Dymek v. Nyquist*, 128 Ill. App. 3d 859, 469 N.E.2d 659 (1984); *First Trust Co. of N. Dakota v. Scheels Hardware & Sports Shop, Inc.*, 429 N.W.2d 5 (N.Dak. 1988); *Norvell v. Cuyahoga County Hosp.*, 11 Ohio App. 3d 70, 463 N.E.2d 111 (1983); *Shockley v. Prier*, 66 Wis. 2d 394, 404, 225 N.W.2d 495, 501 (1975).

²³ See, e.g., IDAHO CODE § 5-310 (1999) (interpreted in *Hayward v. Yost*, 72 Idaho 415, 425, 242 P.2d 971, 977 (1952) to include loss of protection, comfort, society and companionship); IND. CODE ANN. § 34-23-2-1 (1999); IOWA R. CIV. P. 8 (1999); KY. REV. STAT. ANN. § 411.135 (Michie 1998); UTAH CODE ANN. § 78-11-6 (1999); WASH. REV. CODE ANN. § 4.24.010 (2000).

²⁴ *Salin v. Kloempkin*, 322 N.W.2d 736, 739 (Minn. 1982), quoting approvingly from *Eschenbach v. Benjamin*, 195 Minn. 378, 380, 263 N.W. 154, 155-56 (1935).

Courts in New York recently examined a case in which the plaintiff had brought a cat named Merlin, later named Lovey, into a shared housing situation.²⁵ The plaintiff then left the premises and, a year and a half later, sought to remove Lovey to a new residence, which the defendant opposed.²⁶ In a preliminary ruling on the plaintiff's seizure motion, the Supreme Court of New York County acknowledged the importance of Lovey's companionship when it ordered the parties to "work out a visitation schedule."²⁷ In its final ruling, however, that court switched to a strict bailment of chattels analysis and awarded Lovey to the plaintiff.²⁸ The Appellate Division, rejecting that approach, reversed and awarded custody to the defendant, citing "the cherished status accorded to pets in our society" and deciding that Lovey should "remain where he has lived, prospered, loved and been loved for the past four years,"²⁹ in the residence finally occupied by defendant alone.

The New York court deciding *Brousseau v. Rosenthal*³⁰ also affirmed the importance of the companionship provided by a beloved pet, in a case where the negligence of a boarding kennel had caused the death of the plaintiff's dog.

The court finds that plaintiff has suffered a grievous loss. The dog was given to her when it was a puppy in August 1970 shortly after plaintiff lost her husband. To this retired woman who lived alone, this pet was her sole and constant

²⁵ *Raymond v. Lachmann*, No. 107990/97 (N.Y. Sup. Ct. Dec. 24, 1997).

²⁶ *Id.*

²⁷ *Id.* (May 30, 1997).

²⁸ *Id.* (Dec. 24, 1997).

²⁹ *Raymond v. Lachmann*, 695 N.Y.S.2d 308, 308-309, 264 A.D. 340, 341 (1999).

³⁰ 110 Misc. 2d 1054, 443 N.Y.S.2d 285 (N.Y.C. Civ. Ct., N.Y. Cty. 1980).

companion. Plaintiff testified that she experienced precisely the kind of psychological trauma associated with the loss of a pet that has received increased recent public attention. As loss of companionship is a long-recognized element of damages in this State, the court must consider this as an element of the dog's actual value to this owner. . . .

Resisting the temptation to romanticize the virtues of a "human's best friend," it would be wrong not to acknowledge the companionship and protection that Mrs. Brousseau lost with the death of her canine companion of eight years. The difficulty of pecuniarily measuring this loss does not absolve defendant of his obligation to compensate plaintiff for that loss, at least to the meager extent that money can make her whole³¹

The court in *Brousseau* distinguished a prior case³² that had excluded loss of (human) companionship "both as an element of damages in wrongful death cases and as an independent common law action" because that exclusion was dictated by restrictions in the wrongful death statute, which does not apply to the killing of a canine.³³ Significantly for the matter now before this Court, the court determined in *Brousseau* that the proper approach was a logical application of "the policies behind the loss of consortium cases"³⁴ to the matter before it, and ruled on that basis that the plaintiff's request for loss of companionship damages should be granted. As the language quoted here suggests, the court's approach in *Brousseau* is equally applicable to allowing loss of companionship as an independent cause of action.

³¹ *Id.* at 1056, 443 N.Y.S.2d at 286-87 (citations omitted).

³² *Liff v. Schildkrout*, 49 N.Y.2d 622, 427 N.Y.S.2d 746, 404 N.E.2d 1288 (1980).

³³ 110 Misc. 2d at 1056, 443 N.Y.S.2d at 286, n. 1.

³⁴ *Id.*

In *Corso v. Crawford Dog and Cat Hospital, Inc.*,³⁵ a New York case decided the year before *Brousseau*, the defendant, after euthanizing the plaintiff's dog, was to deliver the dog's remains in a casket for a funeral the plaintiff had planned. Instead, the defendant improperly disposed of the dog, and delivered the casket with the body of a dead cat inside, which the plaintiff discovered at the funeral home. The court concluded that an actionable tort had been committed:

The court must first decide whether a pet such as a dog is only an item of personal property as prior cases have held. 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. . . .

A pet is not an inanimate thing that just receives affection it also returns it. . . .

This decision is not to be construed to include an award for the loss of a family heirloom which would also cause great mental anguish. An heirloom while it might be the source of good feelings is merely an inanimate object and is not capable of returning love and affection. It does not respond to human stimulation; it has no brain capable of displaying emotion which in turn causes a human response. Losing the right to memorialize a pet rock, or a pet tree or losing a family picture album is not actionable. But a dog that is something else. To say it is a piece of personal property and no more is a repudiation of our humaneness. This I cannot accept.³⁶

In 1993, New York's state legislature reflected the similar views of New York citizens when it passed the Pet Cemeteries and Pet Crematoriums law, which begins as follows:

The legislature hereby finds and declares that the relationships that humans develop with other members of the animal kingdom that are taken into our homes and kept as pets are unique and special. These relationships can enrich our lives

³⁵ 97 Misc. 2d 530, 415 N.Y.S.2d 182 (N.Y.C. Civ. Ct., Queens Cty. 1979).

³⁶ *Id.* at 531, 415 N.Y.S.2d at 183. See also *Animal Hospital of Elmont, Inc. v. Gianfrancesco*, 100 Misc.2d 406, 407, 418 N.Y.S.2d 992, 992 (Dist. Ct., 2d Dist., Nassau Cty. 1979) (characterizing an animal companion as a "four-legged member of the family"); *O'Brien v. Exotic Pet Warehouse, Inc.*, N.Y.L.J. Oct. 5, 1999, p. 25 (Westchester Cty. City Ct. of Yonkers Torts).

and increase our happiness. Even after the death of a pet, human attachment to the memory of the pet often remains very strong. . . .³⁷

The Defendants in the instant matter argue that the law concerning the availability of a cause of action in New York for loss of a pet's companionship "was settled" in 1994 when a federal district court in *Gluckman v. American Airlines*³⁸ identified no authority approving such a cause of action. To begin with, the decision of one federal district court cannot create authority binding on this court, nor can it "settle" any issue of New York law. Moreover, *Gluckman* overlooked the fact that *Brousseau's* stated basis for awarding damages for loss of companionship applies equally to allowing an independent cause of action for such deprivation, as discussed above. With respect to *Corso*, the court in *Gluckman* attempted to dispose of that case by saying that *Corso* and the cases following it were "aberrations flying in the face of overwhelming authority to the contrary," yet the court cited only two cases for that assertion. One was *Snyder v. Bio-Lab, Inc.*,³⁹ a case which did not involve companion animals and therefore has no bearing on loss of companionship issues; and the other was *Stettner v. Graubard*,⁴⁰ which relied on a 1931 case that already had been overruled by *Corso* in 1979. *Gluckman* therefore should not be viewed as having "settled" anything about whether current New York law and legal commentary support a cause of action as well as damages for the loss of Emily's companionship.

³⁷ N.Y. Gen. Bus. § 750 (McKinney 2000).

³⁸ 844 F. Supp. 151 (S.D.N.Y. 1994).

³⁹ 94 Misc.2d 816, 405 N.Y.S.2d 596 (Monroe Cty. 1978).

⁴⁰ 82 Misc.2d 132, 368 N.Y.S.2d 683 (Westchester Cty. 1975).

Authorities in other states also recognize that animals such as Emily are companions first and foremost. Courts in Maryland⁴¹ and Texas⁴² have ordered shared custody or visitation of animal companions. In *Nahrstedt v. Lakeside Village Condominium Ass'n*,⁴³ California Supreme Court Justice Arabian examined the significance of animal companionship in his dissent. (Although the majority in *Nahrstedt* disagreed with Justice Arabian on the narrow issue ultimately decided, *i.e.* the enforceability of a condominium association's restrictive covenants concerning pets, it made statements on the subject of animal companionship similar to and summarizing those quoted here.⁴⁴)

The value of pets in daily life is a matter of common knowledge and understanding as well as extensive documentation. People of all ages, but particularly the elderly and the young, enjoy their companionship. Those who suffer from serious disease or injury and are confined to their home or bed experience a therapeutic, even spiritual, benefit from their presence. Animals provide comfort at the death of a family member or dear friend, and for the lonely can offer a reason for living when life seems to have lost its meaning. In recognition of these benefits, both Congress and the state Legislature have expressly guaranteed that elderly and handicapped persons living in public-assistance housing cannot be deprived of their pets. Single adults may find certain pets can afford a feeling of security. Families benefit from the experience of sharing that having a pet encourages. While pet ownership may not be a fundamental right as such, unquestionably it is an integral aspect of our daily existence, which cannot be lightly dismissed and should not suffer unwarranted intrusion into its circle of privacy.⁴⁵

⁴¹ *Assal v. Kidwell*, Civil No. 164421 (Md. Cir. Ct., Montgomery Cty. Dec. 3, 1999).

⁴² *Arrington v. Arrington*, 613 S.W.2d 565 (Tex. Civ. Ct. App. 1981).

⁴³ 8 Cal. 4th 361, 878 P.2d 1275, 33 Cal. Rptr. 2d 63 (1994).

⁴⁴ *Id.* at 368, 878 P.2d at 1278, 33 Cal. Rptr. 2d at 66.

⁴⁵ *Id.* at 390, 393-94, 878 P.2d at 1292, 1295, 33 Cal. Rptr. 2d at 80, 83 (Arabian, J., dissenting). See also *Bueckner v. Hamel*, 886 S.W. 2d 368, 376-78 (Tex. Ct. App. 1994) (Andell, J., concurring), a case in which two beloved family pets were shot and killed:

The law must be informed by evolving knowledge and attitudes. Otherwise, it risks becoming irrelevant as a means of resolving conflicts. Society has long since moved beyond the untenable Cartesian view that animals are unfeeling automatons and, hence, society's recognition that

For the same reasons, Tennessee recently enacted the “T-Bo Act” – named for a beloved pet dog who, like Emily, died because of a person’s wrongful acts – which provides as follows:

44-17-4__ (a) If a person's pet [dog or cat] 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 . . . non-economic damages. . . .

(c) Limits for non-economic damages set out in subsection (a) shall not apply to causes of action for intentional infliction of emotional distress or any other civil action other than the direct and sole loss of a pet.

(d) Non-economic damages awarded pursuant to this section shall be limited to compensation for the loss of the reasonably expected society, companionship, love and affection of the pet.⁴⁶

The foregoing case and statutory excerpts clearly reflect the growing consensus in New York and around the nation about what the following factual discussion will confirm is an extremely important, irrefutable bond between humans and their animal companions.

B. Society's Recognition of the Bond is Increasingly Deep and Pervasive

A beloved family member, a true and gentle friend The pain and emptiness in our hearts today can only be comforted when we are reunited with you.

* * *

animals are sentient and emotive beings that are capable of providing companionship to the humans with whom they live. In doing so, courts should not hesitate to acknowledge that a great number of people in this country today treat their pets as family members. Indeed, for many people, pets are the only family members they have.

⁴⁶ 2000 Tennessee Laws Pub. Ch. 762 (S.B. 2157).

The love of my life.

* * *

I love you more than life itself I'll miss you dearly, my sweet boy.⁴⁷

By the 1980s, counseling for loss of animal companions was being increasingly recognized as an important human service.⁴⁸ In fact, already at that time, large veterinary medical centers such as The Animal Medical Center in New York City and Veterinary Hospital of the University of Pennsylvania employed full-time professionals to assist persons coping with the death of an animal companion.⁴⁹ By 1998, nine veterinary schools across the United States offered pet-loss support hotlines;⁵⁰ similar services exist outside the United States as well.⁵¹

In a recent interview, one clinical social worker who ran bereavement meetings at New York's Animal Medical Center discounted the notion that those who become incapacitated after the loss of a pet are eccentric loners and misfits, commenting that he sees "extreme reactions from people with supportive families, no psychological problems and stable lives" -- who "pound the

^{47/} Gravestone Inscriptions at Denver Pet Cemetery, as referenced in Cate Terwilliger, *Saying goodbye: Special friends take leave with dignity in pet cemetery*, THE DENVER POST, Jan. 15, 1998, at G-01.

^{48/} Sandra B. and Randolph T. Barker, *The Human-Canine Bond: Closer Than Family Ties?*, 10 J. MENTAL HEALTH COUNSELING 46, 54 (Jan. 1988).

^{49/} *Id.*

^{50/} *Id.*

^{51/} Lisa Cooke, *Getting over the death of a companion animal*, Copley News Service, June 22, 1998, *available in* LEXIS, News Library, Arcnws File, quoting Susan Brace (a psychologist specializing in issues of loss) ("The death of an animal companion is a tremendous loss Depending on the individual, losing a pet can be even more traumatic than losing a family member"). Internet on-line pet-support and memorial services are also available. See, e.g., <<http://www.in-memory-of-pets.com>> (visited May 23, 2000).

floor screaming and talking about wanting to die."⁵² A researcher who is a psychiatric nurse, educator and clinician has confirmed⁵³ that animal companions, as one senior citizen has put it, "aren't like family -- they are family."⁵⁴

The bond with animal companions also was evidenced in a 1995 report by the American Animal Hospital Association, in which 70% of surveyed individuals who formerly or then-currently shared their lives with animal companions responded that they thought of their animals as children.⁵⁵ When asked to identify the one companion they would want on a deserted island, 53% listed a dog or cat.⁵⁶ Similarly, ten years earlier, 99% of 1,500 survey respondents considered their animal companions to be a family member.⁵⁷ In perhaps the most dramatic statement about the bond between humans and companion animals, an article entitled "Risking It

⁵² Sheila Moran, *When a pet dies: New resources for living with the loss*, USA TODAY, March 15, 1999, at 4D, quoting social worker Paul Weinberg. See also Terwilliger, *supra* note 47, quoting veterinarian Donna Harris ("[For] many of us, our bonds to our animals are every bit as strong if not stronger than the bonds we would have to a family member. When that relationship is lost and that bond is broken, there is a severe grieving process").

⁵³ Cain, *A Study of Pets in the Family System*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS, pp. 72, 81 (A. Katcher and A. Beck, eds., 1983); see also Roberta Erickson, *Companion Animals and the Elderly*, GERIATRIC NURSING 92, 92 (Mar./Apr. 1985).

⁵⁴ Dru Wilson, *Human-Pet Bond Can Be Therapeutic*, OMAHA WORLD-HERALD, April 15, 1999, at 53, quoting Dorothy Pezoldt, 84-year old resident of Colorado Springs retirement center.

⁵⁵ Carol Marie Cropper, *Strides in Pet Care Come at Price Owners Will Pay*, N.Y. TIMES, Apr. 5, 1998, at 16.

⁵⁶ *Id.*

⁵⁷ Barker, *supra* note 48, at 46, citing to V.L. Voith, *Attachment of People to Companion Animals*, 15 VETERINARY CLINICS OF NORTH AMERICA 289 (1985). See also Cain, *supra* note 53, (majority of survey participants considered their animal companions to be family members and described the animals' role in the family as "very important"); Cindy Hall and Elizabeth Wing, *Pets Are Part of the Family*, USA TODAY, March 1, 2000, at 9D; Dan Vergano, *A Better Life: Love Me, Love My Cat*, USA TODAY, Feb. 14, 2000, at 6D.

All for Fido" reported last year that 50% of survey respondents said they would be "very likely" to risk their own lives to rescue their animal companion, and an additional 33% said they would be "somewhat likely" to do so.⁵⁸

The importance of the human-animal companion bond certainly has not been lost on the nation's business community. In the human resources department, a growing number of companies -- from high-tech companies⁵⁹ to such bastions of tradition as the law firm of Steptoe & Johnson⁶⁰ -- allow companion animals to accompany their humans to work. Companies doing so have noted that this policy is a benefit important enough to some employees to help the companies attract and retain professionals in heavy demand.⁶¹

The bond is at least as evident, if not more so, in the products and services marketplace. A marketing specialist at Coopers & Lybrand, who has studied the "pet supply" industry, has acknowledged that animal companions "are treated as family and nothing is too good for them."⁶² As of 1999, the Best Friends Pet Care company alone had three vacation resorts for companion

⁵⁸ Cindy Hall and Bob Laird, *Risking It All for Fido*, USA TODAY, June 24, 1999, at 1D.

⁵⁹ Candee Wilde, *IT shops let pets come to work* (visited Nov. 11, 1999 and May 22, 2000) <<http://www.cnn.com/TECH/computing/9812/23/petsit.idg/>>. Some of the companies include Netscape Communications Corp., Excite Inc. and Auto Desk, Inc. *Id.*

⁶⁰ Phil McCombs, *Steptoe & Johnson, Attorneys-at-Paw*, WASHINGTON POST, Feb. 9, 2000, at C1. *See also* Jill Schachner Chanen, *Amicus Canine*, A.B.A. J., Aug. 2000, at 85 (quoting, *inter alia*, attorney who when merging his firm with a larger downtown Chicago firm "told the new firm that two things were nonnegotiable -- my secretary and my dog").

⁶¹ Wilde, *supra* note 59. *See also* Edward Iwata, *Staff-Hungry Tech Firms Cast Exotic Lures*, USA TODAY, Feb. 1, 2000, at B1 (high-tech companies offering veterinary insurance as employee benefit).

⁶² Leslie Eaton, *Hey, Big Spenders*, N.Y. TIMES, Sept. 11, 1994, at 1.

animals in the Washington, D.C. area and another 32 across the country, and other similar businesses had been established in Northern Virginia, Maryland, Vermont, and Nevada.⁶³ The International Association of Pet Cemeteries claimed 650 members, including the Hartsdale Pet Cemetery in Westchester County, New York, which was founded in 1896.⁶⁴ At least three greeting card companies, including Hallmark, offer sympathy cards for the loss of animal companions.⁶⁵

Further evidence is found in the increasing advancement and complexity of veterinary medical care for companion animals. According to a 1998 American Veterinarian Medical Association report, \$11.1 billion was spent on health care for companion dogs, cats and birds in 1996, an increase of 61% from expenditures in 1991.⁶⁶ As of 1998, there were twenty board-certified veterinary specialties, ranging from anesthesiology to toxicology.⁶⁷ People travel with their ailing animal companions across the country for access to specialists known for such procedures as kidney transplants, open heart surgery and bone cancer treatment.⁶⁸ In a 1996

⁶³ Jacqueline L. Salmon, *While Owners are Away, Resorts, Salons Pamper Their Pets*, WASHINGTON POST, Aug. 2, 1999, at B1, B4.

⁶⁴ Moran, *supra*, note 52.

⁶⁵ Cooke, *supra* note 51.

⁶⁶ Cropper, *supra* note 55.

⁶⁷ *Id.*

⁶⁸ *Id.* The veterinary teaching hospital at the University of California at Davis is a pioneer in feline kidney transplants; Michigan State University's Veterinarian Teaching Hospital is known for open-heart surgery; and Colorado State University's Veterinarian Teaching Hospital is recognized for bone cancer treatments. *Id.* In fact, a procedure for treating osteosarcoma perfected by the Colorado Veterinary Hospital was later adapted for humans. *Id.*

survey by the American Animal Hospital Association, 38% of respondents stated they would spend any amount of money to save the life of their animal companion.⁶⁹

In March 2000, when an angry motorist threw a dog named Leo to his death in heavy San Jose traffic, the WASHINGTON POST ran a front-page story with color photograph,⁷⁰ and donations from across the nation to help find and prosecute the perpetrator reached \$120,000.⁷¹ In November 1998, a New Jersey community and environmental activist beat his four-month old Jack Russell Terrier to death; he noted in an interview that many people acted as if he had killed a child.⁷²

As all of the foregoing affirms, it is simply the inescapable reality that a major portion of our society both personally and professionally considers animal companions to be part of the American family.

^{69/} Deborah Stoudt, *Long Live Cats and Dogs, Owners Say*, BALTIMORE SUN, Jan. 23, 2000, at N1.

^{70/} Michael D. Shear, *Angry Driver Hurls Woman's Pet Into Traffic*, WASHINGTON POST, Mar. 7, 2000, at A1.

^{71/} *Heart-Wrenching Road Rage: Angry Driver Tosses Dog Into Traffic* (visited May-25, 2000) <<http://home.digitalcity.com/sanfrancisco/issues/>>.

^{72/} THE RECORD (Bergen County, NJ), Jan. 14, 2000, at L1.

C. The Significance of the Bond Has Been Further Documented in Recent Health Studies

By the mid-1980s, there was already considerable evidence indicating animal companions had the capacity to reduce the frequency of serious disease and to prolong life.⁷³ In the late 1980s and early 1990s, researchers examined the independent effects of companion animals and other psychosocial factors on one-year survival after acute myocardial infarction.⁷⁴ The researchers concluded the study provided "strong evidence" that companion animals, and dogs in particular, promote cardiovascular health independent of social support and the physiological severity of the illness.⁷⁵ The report noted previous findings that companion animals decrease their human

⁷³ Gregg A. Scoggins, D.V.M., Note, *Legislation Without Representation: How Veterinary Medicine Has Slipped Through the Cracks of Tort Reform*, 1990 U. ILL. L. REV. 953, 973 (1990), citing the following studies demonstrating the benefits of animals in the treatment of handicapped children, the mentally impaired and the elderly, and showing the presence of animals has the effect of lowering blood pressure and heart rates: Beck, Scraydarian & Hunter, *Use of Animals in the Rehabilitation of Psychiatric Patients*, 58 PSYCHOLOGICAL REP. 63, 66 (1986); Fitzgerald, *The Therapeutic Value of Pets*, 144 J. MED. 103 (1986); Bann, Bergstrom, Langston & Thomas, *Physiologic Effects of Humans/Companion Animal Bonding*, 33 NURSING RES. 126 (1984); Fregin, Lynch, Mackie & Monroe, *Heart Rate Changes in the Horse to Human Contact*, 11 PSYCHOPHYSIOLOGY 472 (1974); Friedmann, Katcher, Lynch, Messent & Thomas, *Social Interaction and Blood Pressure: Influence of Companion Animals*, 171 J. NERVOUS & MENT. DIS. 461 (1983). See also, e.g., Cindy C. Wilson and F.L. Netting, *Companion Animals and the Elderly: A State-of-Art Summary*, 183 JOURNAL OF THE AMERICAN VETERINARIAN MEDICAL ASSOCIATION 1425, 1428 (Dec. 15, 1983); Serpell, *The Personality of the Dog and Its Influence on the Pet-Owner Bond*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS, p. 57 (A. Katcher and A. Beck, eds., 1983); and Barker, *supra* note __, at 46 (noting numerous studies documenting the "beneficial effects of pets on the emotional and physical health" of the elderly and the handicapped, for example, and studies demonstrating that interaction with companion animals increases the survival rate of coronary-care patients, and reduces blood pressure and anxiety levels).

⁷⁴ Erika Friedmann and Sue A. Thomas, *Pet Ownership, Social Support, and One-Year Survival After Acute Myocardial Infarction In the Cardiac Arrhythmia Suppression Trial (CAST)*, 76 AMERICAN JOURNAL OF CARDIOLOGY 1213 (Dec. 15, 1995).

⁷⁵ *Id.* at 1217.

companions' anxiety and sympathetic nervous system arousal in response to stressors.⁷⁶ The report also noted that Medicaid recipients with animal companions visited their physicians less frequently than those without animals.⁷⁷ A similar study in the early 1990s, which compared risk factors for cardiovascular disease in people who shared their lives with animal companions and those who did not,⁷⁸ found that those with animal companions had significantly lower systolic blood pressure and plasma triglycerides than those without animals.⁷⁹

Further evidence of that positive correlation was presented in a recent study of stockbrokers already taking medication for hypertension, wherein researchers found those who adopted an animal companion reduced by half the increase in blood pressure that accompanied stress.⁸⁰ Moreover when participants were undergoing stressful verbal and mathematics tests, researchers found that companion animals calmed the participants the most, while "the spouse is the worst person to be there."⁸¹

⁷⁶ *Id.*, citing to the following: C.C. Wilson, *The Pet as an Anxiolytic Intervention*, 179 *J NERV MENT DIS* 482 (1991); and Friedmann, *The Role of Pets in Enhancing Human Wellbeing: Physiological Effects*, in *WALTHAM BOOK OF HUMAN ANIMAL INTERACTIONS*, pp. 33-53 (I. Robinson, ed., 1995).

⁷⁷ *Id.*, citing to J.M. Siegel, *Stressful Life Events and Use of Physician Services Among the Elderly: The Moderating Role of Pet Ownership*, 58 *J. PERS. SOC. PSYCHOL.* 1081 (1990).

⁷⁸ Warwick P. Anderson, et al., *Pet Ownership and Risk Factors for Cardiovascular Disease*, 157 *MEDICAL JOURNAL OF AUSTRALIA* 298 (Sept. 7, 1992).

⁷⁹ *Id.*

⁸⁰ *Study: Pets curb dangerous rises in blood pressure* (visited Nov. 11, 1999 and May 23, 2000) <<http://www.cnn.com/HEALTH/heart/9911/07/pets.heart/index.html>>. See also Tracy Connor, *Pets Can Reduce Blood Pressure*, *THE NEW YORK POST*, Nov. 8, 1999, at 28.

⁸¹ *Study: Pets curb dangerous rises in blood pressure* (visited Nov. 11, 1999 and May 23, 2000) <<http://www.cnn.com/HEALTH/heart/9911/07/pets.heart/index.html>>; and Tracy Connor, *Pets Can Reduce Blood Pressure*, *THE NEW YORK POST*, Nov. 8, 1999, at 28 (both quoting psychologist Karen Allen, one of the principal researchers in the stockbrokers' study).

Conclusion

Through judicial development of the common law, causes of action and damages for such non-economic injuries as loss of companionship, society, affection, love and service have developed to reflect society's evolving views about relationships between spouses, as well as parents and children. As must always be the case if we are to continue to progress, society's views and values have evolved further. At this point in time, as court decisions are increasingly reflecting, the evidence is overwhelming that the bond between many persons and their animal companions can be as strong as any bond with other family members.

Writing in the *New York University Law Review*, Debra Squires-Lee noted in 1995 that according to the Restatement of Torts, Second, "the goals of tort are: '(a) to give compensation, indemnity or restitution for harms; (b) to determine rights; (c) to punish wrongdoers and deter wrongful conduct; and (d) to vindicate parties and deter retaliation or violent and unlawful self-help.'"⁸² As Ms. Squires-Lee, in light of the considerations discussed in this brief, concluded, "the emotional harms wrought by the death of a companion animal must be recognized if these goals of tort law are to be fulfilled."⁸³

⁸² Squires-Lee, *supra* note 1, at 1080-1081, citing RESTATEMENT (SECOND) OF TORTS 901 (1979), *see also* Stanley Ingber, *Rethinking Intangible Injuries: A Focus on Remedy*, 73 CAL. L. REV. 772, 772 (1985) ("Theoretically the tort process serves to compensate victims, . . . deter wrongdoers and vindicate important societal and personal values") and 3 Fowler V. Harper *et al.*, THE LAW OF TORTS 11.5, at 98 (2d ed. 1986) (asserting that "any measure to reduce costs of accidents—must on the whole satisfy the ethical or moral sense of the community, its feeling of what is fair and just").

⁸³ Squires-Lee, *supra* note 1, at 1080-1081.

Just as courts in the past have come to recognize that recovery for spousal and parent/child loss of consortium claims is "mandated by logic, compassion and modern sensitivities,"⁸⁴ as well as by "the fairness of compensating persons injured by another's negligence"⁸⁵ and the other major goals of tort law, when a person's cherished animal companion is wrongfully killed by another, claims must be allowed to reflect our society's widespread belief that an extremely important companionship relation has been lost. The Animal Legal Defense Fund therefore urges this Court to allow a cause of action, as well as damages, for the Plaintiff's loss of the companionship she shared with Emily.

Respectfully submitted,

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⁸⁴ *Berger v. Weber*, 411 Mich. 1, 21, 303 N.W.2d 424, 429 (1981) (Levin, J., dissenting, describing position adopted by the majority).

⁸⁵ *Id.*

