



Issue Analysis: It's About *the Dogs!*

Non-Economic Damages Claims Ultimately Harm General Animal Wellbeing

There is no question that our society holds dogs in very high esteem. Dogs do it all: from serving the public as police K-9s, to working as service and performance animals, to serving their owners as wonderful pets. Dogs are such a beloved part of our lives that it's common for owners to consider dogs as part of the family.

These emotional ties have led some individuals and groups to propose fundamental changes to laws dealing with pets. One type of proposal would allow juries to award large, undefined financial awards in lawsuits involving injury to pets that are the result of accidents. On the surface, this may sound like a good idea and a simple reflection of the value people place on their pets. However, there's a catch—allowing these types of awards in cases involving injury to pets will likely have many unintended consequences, and in the long run may actually harm pets. For this reason it is crucial that animals continue to enjoy the protections afforded by their traditional legal treatment as property.

Legal Background – Damages 101

To understand the problem, it helps to start with a brief review of current law.

Laws governing animal ownership and animal care throughout the United States have been remarkably consistent for over two hundred years. These traditions provide that pets are considered the legal property of their owners while benefitting from laws governing their care and treatment. It does not mean that we care for our pets any less; rather, it simply provides the legal framework by which owners derive the *right and responsibility* to provide care in a manner that is best for the animal. When combined with criminal laws prohibiting animal cruelty and dog fighting, and civil laws addressing both intentional and negligent injury and killing of animals, the classification of pets as legal property has served as the foundation of a stable legal system that promotes responsible animal ownership; deters animal abuse; and promotes innovative, affordable, and quality animal care.

Under this existing system, owners whose pets are *negligently* injured or killed can be fully and fairly compensated. In these cases, which the law considers as accidental property damage or destruction cases, pet



SHETLAND SHEEPDOG – MARY BLOOM FOR AKC

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owners can recover the economic value of a pet, the cost of any veterinarian bills resulting from an alleged injury, and in some instances, other reasonable and necessary costs arising out of the injury. These types of damages are called “economic damages” because they are of a certain or determinable dollar value.

In addition to these “economic” damage awards (and aside from any criminal charges of negligence or animal cruelty the individual may face), most states allow a plaintiff to receive a second, additional type of damages. If a defendant is found to have acted with malice and intended to cause emotional distress against the plaintiff through the injuring or killing of the plaintiff's pet, the defendant could be considered to have committed an intentional wrongful act *against the plaintiff/dog owner* (not the pet). In such cases, *punitive damages* may be awarded in an effort to punish as well as to deter further intentional or reckless behavior or actions motivated by malice.

A third type of award is called “non-economic” damages, named so because they attempt to cure intangible harms, such as pain and suffering, which cannot be readily represented by an actual dollar amount.

Long-standing legal principles limit the availability of non-economic damages. They may be claimed only by the close family of victims who have died or who have been severely injured. Non-economic damages are typically not available in cases involving damage to personal property (remember, animals are considered property under the law). This principle has provided the justification for courts to almost universally reject allowing compensation for an owner's emotional loss in pet injury and death cases. (Note: Tennessee allows recovery for non-economic damages, but limits recovery at \$5,000 and exempts veterinarians and organizations acting on behalf of public or animal welfare from having to pay such damages.)

Change Efforts Afoot

Over the past several years, there have been many attempts, mostly in state legislatures, to change the legal system to allow non-economic damages in cases involving negligent injury or death to a pet. On the surface, they may sound like a fair way to compensate the owner of an injured pet. However, legal scholars and animal experts agree that significant negative consequences would flow from allowing non-economic

damages to be awarded in pet injury and death cases.

Simply put, the risk of increased legal liability will result in increased costs to cover that liability for all parties in the animal care chain (which will ultimately be passed on to animal owners), while posing increased risks to public health. For example, the availability of non-economic damages would subject veterinarians to more lawsuits alleging damage to an owner's animal. Increased malpractice insurance costs would make it more expensive for veterinarians to practice, which would, in turn, increase the cost of veteri-



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nary care. Higher pet care costs could easily put routine veterinary care and diagnostic testing out of reach for many dog owners. Furthermore, dogs that do not receive regular health care represent an increased risk to public health, since they may not be adequately vaccinated against zoonotic diseases such as rabies. The availability of non-economic damages would also likely result in an increase in litigation subjecting all types of parties to the risks of increased liability, including pet sitters, dog parks, and even neighbors. Increased liability concerns could also cause some free animal care services to close, and may go so far as to discourage animal ownership and result in needless euthanizations. The American Kennel Club believes that these risks would far outweigh any benefits non-economic damages might provide.

Moreover, courts may interpret permitting non-economic damages as an implicit change in the legal status of animals. The AKC believes that such action should be legislative, explicit, and subject to extensive public debate.

For these reasons, awarding non-economic damages in pet injury cases represents poor public policy.

What AKC is Doing About the Problem

The American Kennel Club has worked on several fronts in the fight against the deleterious effects of non-economic damages in negligent pet

No. 12-0047, opinion available at www.supreme.courts.state.tx.us/historical/2013/apr/120047.pdf. In a majority opinion authored by Justice Don R. Willet, the court held that while pets hold a special place in the hearts of their owners, non-economic damages are not available in cases involving the negligent death of a pet. This reversed a decision of a Texas appeals court, which previously held otherwise. The American Kennel Club submitted a "friend of the court" brief in the case expressing opposition to non-economic damages, and was joined by the Cat

Fanciers' Association, the Animal Health Institute, the American Veterinary Medical Association (AVMA), the National Animal Interest Alliance (NAIA), the American Pet Products Association (APPA), and the Pet Industry Joint Advisory Council (PIJAC). The majority opinion specifically agreed with and heavily cited the brief submitted by AKC and other joining friends of the court.

It is likely that efforts to allow non-economic damages will continue to increase in the foreseeable future. For the wellbeing of all dogs and their owners, the American Kennel Club is committed to educating and working to ensure that governments continue to treat animals in the traditional legal sense, and to ensure that a stable, affordable, and high-quality animal care system remains accessible for all animal owners.

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The AMERICAN KENNEL CLUB is dedicated to upholding the integrity of its Registry, promoting the sport of purebred dogs and breeding for type and function. Founded in 1884, the AKC and its affiliated organizations advocate for the purebred dog as a family companion, advance canine health and well-being, work to protect the rights of all dog owners and promote responsible dog ownership.