

NO. 07CV287

COURT OF APPEALS
FOR THE STATE OF COLORADO

KATHLEEN SULLIVAN, et al.,

Appellants

vs.

DANIEL BOWEN

Respondent.

***AMICUS CURIAE* BRIEF OF THE ANIMAL LEGAL DEFENSE FUND
REGARDING VALUATION OF COMPANION ANIMALS**

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I. INTRODUCTION

This is not a typical wrongful death case. It does not involve the death of a human. But it does involve genuine and compensable loss. Appellants unjustifiably lost their companion animals and they are entitled to damages that accurately reflect these losses.

“Market value” is not the appropriate measure of damages in this case. Compensatory damages beyond market value are appropriate here because Respondent deprived Appellants of a special kind of “property,” their companion animals, Rooster, Tanner, Kirby, Boomer, and Doc. Unlike other types of property, these companion animals cannot be readily replaced in the marketplace. Indeed, they can never be replaced. These companion animals are indisputably distinct from other types of property — they were living, breathing, and feeling individuals with whom their human companions formed meaningful relationships. These animals’ “actual” value far exceeds the cost of another companion of the same species. Courts in a variety of jurisdictions have agreed and have awarded damages beyond a companion animal’s market value.

Companion animals have enjoyed exceptional treatment by courts, legislatures, and the public unlike that accorded to any other form of property. Animals are given special consideration for many reasons, including their inherent worth and the value placed on the human/animal relationship. Because these relationships and the animals themselves are inimitable and unique, the tort system must value them as such. Accordingly, courts should determine damages based on a companion animals’ actual value to his or her owner.

The Animal Legal Defense Fund (“ALDF”) submits this brief as *amicus curiae*, to assist the Court in its determination of the proper measure of damages

for the loss of Appellants' companion animals. ALDF's qualifications for this role are set out immediately below. ALDF requests this Court calculate Appellants' damages based on factors that adequately evaluate the actual value of a companion animal to his or her guardian.

II. STATEMENT OF THE CASE

ALDF relies upon the statement of the case put forward in the brief of the Appellants.

III. ALDF'S IDENTITY, QUALIFICATIONS AND INTEREST AS AMICUS

The Animal Legal Defense Fund is a national non-profit organization of attorneys and supporting members that specializes in the just treatment of animals within our legal system. ALDF is involved in every aspect of animal law and has 30 years of experience litigating cases and analyzing legal issues concerning animals. ALDF is responsible for developing case law and legal theory involving the valuation of nonhumans by the courts. ALDF and its member attorneys have litigated many cases involving the exact issues in the case at bar. Given its experience and expertise in this area, ALDF can assist the Court in reaching its decision. ALDF has reviewed all of the briefs filed by the parties in this case. ALDF has a particular interest in ensuring the proper valuation of companion animals, including the animals involved in this case.

IV. ARGUMENT

A. Companion Animals and the Law

I. The "Property" Designation Refers To A Bundle Of Rights.

Even though companion animals are considered personal property, that

characterization is no barrier to the damages sought here. The “property” designation — for animate beings and inanimate objects — simply refers to the interest an owner has in particular property.¹ “Property” describes the basic concept of the “bundle of rights” that an owner maintains.² It includes “every species of estate, real and personal, and everything which one person can own and transfer to another. *It extends to every species of right and interest capable of being enjoyed as such upon which it is practicable to place a money value.*”³

As a result of this all-encompassing definition, approaches to valuing property often require a similarly expansive analysis:

[A]nything to which a person may hold a legal title is property, whether it has any market value or not. It may have intrinsic value, but no exchangeable value. It may serve a useful purpose and yet be unsalable and unexchangeable. No one may want it, or have a use for it, except he who possesses it, and yet to him it may be a thing of value, that is, of intrinsic value, something that can be utilized in the accomplishment of his purpose or the attainment of his desires.⁴

Property with little or no market price can have significant actual value to its owner, a unique “value” also recognized by society as intrinsic. Accordingly,

¹ The terms “property” and “property interest” often are used interchangeably. *See, e.g., Allied Inv. Corp. v. Jansen*, 354 Md. 547, 563, 731 A.2d 957 (1999); *Rowe v. Colpoys*, 137 F.2d 249, 251 (D.C. Cir. 1943).

² *See generally* Denise R. Johnson, *Reflections on The Bundle of Rights*, 32 *Vt. L. Rev.* 247 (2007).

³ *Yuba River Power Co. v. Nevada Irrigation Dist.*, 207 Cal. 521, 524, 279 P. 128 (1929) (citations omitted) (emphasis added); *see also* 73 CJS PROPERTY § 8 (2003) (the term property “further includes every species of estate, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal or mixed, which may be the subject of ownership” (collecting cases)); *Squire v. Guardian Trust Co.*, 84 N.J. 2d 99, 105 (Ohio Ct. Com. Pl. 1945) (“property should have such a liberal construction as to include every valuable interest which can be enjoyed as property, and recognized as such”); *Womack v. Womack*, 141 Tex. 299, 301, 172 S.W.2d 307 (1943) (property “extends to every species of valuable right and interest” (internal citations omitted)); *York v. Stone*, 178 Wn. 280, 285, 34 P.2d 911 (1934) (“Property is a term of broad significance, embracing everything that has exchangeable value, and every interest or estate which the law regards of sufficient value for judicial recognition.” (citations omitted)).

⁴ *Moock v. State*, 127 Ga. 821, 825, 56 S.E. 993 (1907). (emphasis added)

courts should determine damages for loss of this unique kind of property by considering the amount of the loss to the owner, rather than market price.

How does a court decide the proper amount of damages for such a loss? The “actual value” determination depends on a judicial consideration of property doctrine as well as society’s appreciation of the type of property at issue. Property interests exist in a myriad of contexts, and the term applies both to tangible *and* intangible interests whose value may not be easily calculable.⁵

The law routinely “deal[s] with property in different ways in different circumstances,” and hence “rarely [has] difficulty” ascertaining interference with these intangible interests.⁶ The remedy depends in part on the type of loss. For example, the property interest in a trademark is “based upon the party’s right to be protected in the good will of a trade or business.”⁷ Similarly, patents and copyrights protect “the fruits of intellectual labor, embodied in the form of books, prints, engravings, and the like.”⁸

Courts regularly award damages for the destruction of or injury to these amorphous types of property, despite challenges in calculating their value.⁹ Thus, even with intangible property, the *type* of property and *relation to its owner* —

⁵ See, e.g., Trademark Cases, 100 U.S. 82, 92, 25 L. Ed. 550 (1879) (trademark rights); Bonds v. Carter, 348 Ark. 591, 599, 75 S.W.3d 192 (2002) (timber rights); Golden v. State, 133 Cal. App. 2d 640, 644, 285 P.2d 49 (1955) (liquor license).

⁶ J.J. Penner, The “Bundle of Rights” Picture of Property, 43 UCLA L. REV. 711, 807, 808-09 (1996).

⁷ Hanover Star Milling Co. v. D.D. Metcalf, 240 U.S. 403, 412, 36 S. Ct. 357, 60 L. Ed. 713 (1916). *Limited by statute as stated in* Park ‘N Fly, Inc. v. Dollar Park ‘N Fly, Inc., 469 U.S. 189, 105 S. Ct. 658; 83 L. Ed. 2d 582 (1985).

⁸ Trademark Cases, 100 U.S. at 94 (original emphasis omitted).

⁹ Mieske v. Bartell Drug Co., 92 Wn.2d 40, 44, 593 P.2d 1308 (1979) (“[D]ifficulty of assessment is not cause to deny damages to a plaintiff whose property has no market value and cannot be replaced or reproduced.”); Rhoades, Inc. v. United Air Lines, Inc., 224 F. Supp. 341, 344 (W.D. Pa. 1963) (“[D]estruction of personal property without a market value . . . does not mean the property is valueless and that damages cannot be recovered [Plaintiff] is entitled to damages based upon its special value to the plaintiff.”); RESTATEMENT (SECOND) OF TORTS § 911 (1979) (discussing valuation of property without easily calculable value and citing cases).

rather than the mere designation as property — determine “the application of property rules and principles to specific situations.”¹⁰ The property designation means only that the owner has a protectable interest. It does not restrict the type or amount of protection that courts may afford to the owner or to the property itself. Nor does the property classification limit the claims that may be made and the remedies that may be had in disputes over the property. Hence, “[c]ourts should regularly and systematically evaluate the nature of specific [property] or categories of [property] . . . [and] should give particular attention to the nature of person-object relationships in developing and applying property law.”¹¹

The type of property at issue here has enjoyed legislative and publicly-endorsed protection for centuries. Companion animals like Rooster, Tanner, Kirby, Boomer, and Doc have been granted exceptional treatment by courts, legislatures, and society unlike that accorded any other form of property. Because our society regards companion animals with such esteem, the law should also recognize the value of these animals and the value of the human relationships with these animals.

2. Companion Animals Are Viewed Differently Than Any Other Type Of Property.

Legislatures and courts agree that nonhumans are not (and should not be) treated like inanimate personal property. Every American jurisdiction gives unique legal protections to companion animals. These laws are manifestations of a strong public policy that animals should not be treated like other forms of property when evaluating damages.

¹⁰ Craig Anthony Arnold, *The Reconstitution of Property: Property as a Web of Interests*, 26 HARV ENVTL L & POLY 281, 336 (2002).

All fifty states and the District of Columbia have enacted laws that penalize the mistreatment of animals. Forty-six states treat some animal cruelty as a felony.¹² Courts apply these laws seriously, upholding convictions for abuse of animals in a wide array of situations.¹³

a. The Law Honors the Relationship Between People and Their Companion Animals.

Courts and legislatures recognize the undisputed bond between humans and animals. For example, New York and Texas family courts have ordered shared custody or visitation of animal companions.¹⁴

Additionally, California Civil Code Section 1360.5 protects the right of condominium owners to live with companion animals, stating that no condominium association may require an owner to relinquish his or her companion animal.¹⁵ The bill's author emphasized that

[p]eople benefit from pet ownership. Pets help create companionship, comfort, consolation, security, and a sense of well being. Numerous scientific studies show that pet owners live longer, go to the doctor less often, recover from illness more quickly, and have a more positive outlook than those who do not have a pet. Denying one the right to these tangible quality-of-life

(continued . . .)

¹² *Id.* at 337.

¹³ See Animal Legal Defense Fund, U.S. Jurisdictions With and Without Felony Animal Cruelty Provisions, <http://www.aldf.org/article.php?id=261> (2011).

¹⁴ *Hall v. State*, 791 N.E.2d 257, 260 (Ind. Ct. App. 2003) (firing thirty projectiles into cat); *Boushchry v. State*, 648 N.E.2d 1174, 1176 (Ind. Ct. App. 1995) (slitting throat of goose); *West Valley City v. Streeter*, 849 P.2d 613, 613 (Utah Ct. App. 1993) (using gamecocks for fighting); *Commonwealth v. Barnes*, 427 Pa. Super. 326, 329-30, 629 A.2d 123 (Super. Ct. 1993) (neglecting horses).

¹⁵ See, e.g., *Raymond v. Lachmann*, 695 N.Y.S.2d 308, 261 A.D.2d 310 (App. Div. 1999); and *Arrington v. Arrington*, 613 S.W.2d 565, 569 (Tex. App. 1981).

¹⁶ Cal. Civ. Code § 1360.5(a).

benefits should not be done indiscriminately.^{116]}

The Union of American Physicians and Dentists supported the California bill for the same reasons, noting that it was particularly important for the elderly, as “[d]ata has indicated that companion animals can be very beneficial to this population who suffer from depression and loneliness due to isolation.”¹⁷ The broad support for legislation like this, protecting the right to have an animal companion, demonstrates just how strongly the law reflects the value society places on the human-animal relationship.

National recognition of companion animals’ value to their guardians is codified in state and federal legislation keeping guardians and their companion animals together even in times of natural disaster. The animal evacuation laws enacted in the wake of Hurricane Katrina acknowledge the importance of companion animals to their human families. The federal PETS (Pets Evacuation and Transportation Standards) Act mandates federal funding for emergency evacuations of companion animals.¹⁸ The Louisiana Pet Evacuation Bill imposes similar requirements.¹⁹ These examples illustrate the unique significance of animals and their connection with people.

b. The Law Reflects the True Value of Companion Animals In Society.

Animals are genuinely distinguishable from all other types of property, and

¹⁶ Cal. Sen. Jud. Comm. Analysis of Assembly Bill 860 (Aug. 9, 2000), at 2-3.

¹⁷ *Id.*, at 3.

¹⁸ Pub. L. No. 109-308, 120 Stat. 1725 (2006) (codified at 42 U.S.C. §§ 5121, 5196, 5196b, 5170b(a)(3)).

¹⁹ 2006 La. Acts 615 (codified at LA. REV. STAT. ANN. §§ 29:726(D)(20)-(21), 729(D)(13)-(14), 753.1).

therefore cannot be subject to traditional rules for valuing inanimate property.²⁰ Even though the societal value placed on our relationships with animals is not of the same *magnitude* as that placed on our relationships with other humans, the *type* of feelings and the range of emotions in human-animal relationships find their only reasonable analogues in the experiences we share with other humans on a daily basis.

An article from the American Veterinary Medical Association summarizes the findings of a 2006 survey of 50,000 companion animal guardians, which revealed that “[m]ost people consider their pets to be family members or companions, not property The statistics reveal that almost all pet owners feel a strong human-animal bond.” According to the survey, 49.7 percent of guardians viewed their companion animals as “family,” while another 48.2 percent considered them “companions.” Only 2.1 percent of those surveyed viewed their companion animals as property. This change in attitude has developed over the last 30 years, evidencing a major shift in the public’s attitude toward companion animals.²¹

There are over 150 million cats and dogs in this country living with humans in homes -- one for every two Americans.²² Recent studies show that 45 percent of dog guardians take their dogs on vacation; more than half of companion animal guardians would prefer a dog or a cat to a human if stranded on a deserted island; and 50 percent would be “very likely” to risk their lives to save their companion

²⁰ David Lametti, The Concept of Property: Relations Through Objects of Social Wealth, 53 U. TORONTO L.J. 325, 353 (2003) (“[W]e need to look at specific resources in order to understand a given property relation. We need to understand how and why resources are valued and used, and tailor norms accordingly.”).

²¹ Human-Animal Bond Boosts Spending on Veterinary Care, JAVMA NEWS, Jan. 1, 2008, <http://www.avma.org/onlnews/javma-jan08/080101a.asp>.

²² *Id.*

animals, while another 33 percent would be “somewhat likely” to put their own lives in danger to save their companion animals.²³

This data further establishes that unique human-animal relationships provide quantifiable, compensable benefits. The value provided by their company is unrelated to the pleasure of owning an inanimate item. Animal companions are thus a distinct kind of property whose loss cannot and should not be valued like that of inert objects.

B. Damages For Companion Animals Should Be Measured by the Animals’ Actual Value To The Owner.

Given the special characteristics of animals and the unique human-animal relationship, there is a rising tide of recognition that the traditional market value calculation of damages does not adequately compensate an owner whose companion animal has been killed.²⁴ That calculation works fine for fungible property that can be bought on the open market: market value damages in those circumstances make the plaintiff whole. But this is not the only way to measure damages. Where the “property” is a unique, living, breathing companion, the traditional approach is inadequate. Acquisition of a different animal could never replace the bond between the Appellants and their companion animals that evolved over time. Even if these companion animals could be valued on the market, that quantum would not accurately reflect Appellants’ losses. Courts have recognized this inadequacy for many years.²⁵ Without damages above market value for the

²³ *Id.*

²⁴ See, e.g., Debra Squires-Lee, Note, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1081-83 (1995).

²⁵ See, e.g., *Brousseau v. Rosenthal*, 110 N.Y. Misc. 2d 1054, 1055, 443 N.Y.S.2d 285 (Civ. Ct. 1980) (“Although the courts have been reluctant to award damages for the emotional value of an injured animal, the court must assess the dog’s actual value to the owner in order to make the owner whole.” (citations omitted)).

death of companion animals, the tort system fails in its “guiding principle . . . to make the injured party as whole as possible through pecuniary compensation.”²⁶

1. Courts Treat Damages In Cases Involving Animals Differently Than In Those Involving Inanimate Forms Of Property.

When the market value of property cannot be ascertained or does not adequately compensate the owner, many courts use “a more elastic standard . . . sometimes called the standard of value to the owner.”²⁷ Courts have awarded special value damages for companion animals for over 100 years.²⁸

Cases from a variety of jurisdictions demonstrate the appropriateness of going beyond market value in cases like this one. In Burgess v. Shampooch Pet Industries, Inc.,²⁹ plaintiff sued for veterinary bills incurred after her dog Murphy was injured while visiting Shampooch for grooming. At trial, the defendant contended that “the damages awarded should be limited to Murphy’s market value,” not the “cost of repairs” (which exceeded his alleged market value).³⁰ The court disagreed:

[U]nlike other types of personal property, there are no true marketplaces that routinely deal in the buying and selling of previously owned pet dogs. Moreover, Murphy’s real value to Burgess as a household pet is noneconomic and, as a result, is

²⁶ Aker Verdal v. S.S. Neil J. Lampson, Inc., 65 Wn. App. 177, 183, 828 P.2d 610 (1992).

²⁷ McDonald v. Ohio State Univ. Veterinary Hosp., 67 Ohio Misc. 2d 40, 42, 644 N.E. 2d 750 (Ct. Cl. 1994); Landers v. Municipality of Anchorage, 915 P.2d 614, 618-619 (Alaska 1996) (quoting Bond v. A. H. Belo Corp., 602 S.W.2d 105, 109 (Tex. App. 1980)) (“[t]he most fundamental rule of damages . . . requires the allowance of damages in compensation for the reasonable special value of such articles to their owner taking into consideration the feelings of the owner for such property.”).

²⁸ See, e.g., Hodges v. Causey, 77 Miss. 353, 26 So. 945 (1899) (special value damages for owner and allowing witnesses to testify to the dog’s qualities and characteristics); Klein v. St. Louis Transil. Co., 117 Mo. App. 691, 696-97, 93 S.W. 281 (Ct. App. 1906) (applying actual-value-to-the-owner standard and permitting trier of fact to award damages based on evidence that dog owner prized his dog, took pleasure in his company, and was proud of what the dog could do).

²⁹ 35 Kan. App. 2d 458, 459, 131 P.3d 1248 (Ct. App. 2006).

³⁰ Id. at 460.

difficult if not impossible to appraise in the purely economic terms of market value. . . . “[I]t is impossible to reduce to monetary terms the bond between [hu]man and dog, a relationship which has been more eloquently memorialized in literature and depicted on the motion picture screen.”³¹

Many courts have rejected market value as the measure of damages in companion animal cases. In Brousseau v. Rosenthal,³² plaintiff brought a negligence action against a kennel arising from the death of “her sole and constant companion . . . of eight years.” The court concluded that plaintiff was entitled to “actual value” damages because “it would be wrong not to acknowledge the companionship and protection that Ms. Brousseau lost.”³³ In an Illinois veterinary malpractice case, the court held that there was a value to the human-animal relationship and allowed compensation for that loss.³⁴ In LaPorte v. Assoc. Indep., Inc.,³⁵ the Florida Supreme Court held “that the affection of a master for his [or her] dog is a very real thing and that the malicious destruction of the pet provides an element of damage for which the owner should recover.” Id. Florida courts since LaPorte have followed this precedent.³⁶ These cases are part of a longstanding set of judicial opinions allowing awards that include consideration of

³¹ Id. at 464 (quoting Zager v. Dimilia, 138 Misc. 2d 448, 450, 524 N.Y.S.2d 968 (Just. Ct. 1988)). See also Corsu v. Crawford Dog & Cat Hosp., Inc., 97 Misc. 2d 530, 531, 415 N.Y.S.2d 182 (Civ. Ct. 1979) (“In ruling that a pet such as a dog is not just a thing I believe the plaintiff is entitled to damages *beyond the market value of the dog*. A pet is not an inanimate thing that just receives affection, [she] also returns it.” (emphasis added)).

³² 110 N.Y. Misc. 2d at 1056.

³³ Id.

³⁴ Jankoski v. Preiser Animal Hosp., Ltd., 157 Ill. App. 3d 818, 821, 510 N.E.2d 1084, 110 Ill. Dec. 53 (App. Ct. 1987).

³⁵ 163 So. 2d 267, 269 (Fla. 1964).

³⁶ See Johnson v. Wander, 592 So. 2d 1225, 1226 (Fla. Dist. Ct. App. 1992) (recognizing claim for emotional distress after veterinarian harmed dog); Knowles, Animal Hosp., Inc. v. Wills, 360 So. 2d 37, 38-39 (Fla. Dist. Ct. App. 1978) (same); but see Kennedy v. Byas, 867 So. 2d 1195, 1197-98 (Fla. Dist. Ct. App. 2004) (distinguishing LaPorte and invoking the “direct impact” rule).

the bond as part of an animal's value.³⁷

2. This Court Should Adopt a Measure of Damages Based On Actual Value.

As established above, "actual value" is the proper measure of damages where defendants kill or injure plaintiffs' animals and where plaintiffs can prove that value.³⁸ ALDF urges this Court to allow owners of companion animals to recover the actual and intrinsic value of those animals when they are killed by tortfeasors. In doing so, this Court would affirm the worth of sentient, living beings who provide significant value and form long-lasting relationships with humans.

ALDF does not believe that actual value damages should be awarded in every case in which a defendant wrongfully destroys or damages a plaintiff's property. Rather, the precedent described above are manifestations of an overwhelming body of law treating animals like Rooster, Tanner, Kirby, Boomer,

³⁷ See Anzalone v. Kragness, 356 Ill. App. 3d 365, 371-72, 826 N.E.2d 472, 292 Ill. Dec. 331 (App. Ct. 2005) (following Jankoski); Mitchell v. Heinrichs, 27 P.3d 309, 313 (Alaska 2001) (including costs of training, costs of replacement, medical care, immunizations); Allieri v. Namasati, 41 Conn. Supp. 317, 320, 573 A.2d 359 (Super. Ct. 1989) (recognizing damages beyond market value sometimes awarded); Quave v. Bardwell, 449 So. 2d 81, 84 (La. Ct. App. 1984) (discussing factors considered to calculate value of plaintiff's dog and approving discretion of trial court in determining damages); Wertman v. Lipping, 166 So. 2d 666 (Fla. Dist. Ct. App. 1964) (trier of fact could consider dog's special value to owner); Pagnio v. Evening J. Ass'n., 127 N.J.L., 144, 21 A.2d 667 (1941) (special damages for killing of dog).

³⁸ Even though this damages calculation is based on an evaluation of traits and relationships, it is clear that damages will not be denied merely because they cannot be reduced to a mathematical formula. Jacqueline's Wm., Inc. v. Mercantile Stores Co., 80 Wn.2d 784, 786, 498 P.2d 870 (1972) ("[R]ecovery of substantial damages is not to be denied merely because the extent or amount thereof cannot be ascertained with mathematical precision, provided the evidence is sufficient to afford a reasonable basis for estimating loss."); RESTATMENT (SECOND) OF TORTS § 912 (1979) ("[A]n injured person [should] not be deprived of substantial compensation merely because he [or she] cannot prove with complete certainty the extent of harm that he [or she] has suffered."); Nicole Instrument Corp. v. Lindquist & Vennum, 34 F.3d 453, 455 (7th Cir. 1994) (summary judgment for defendant denied where legal malpractice plaintiff alleged "some harm" but could not quantify harm to a "high degree of precision"); Nelson v. Krusey, 678 S.W. 2d 918, 928 (Tex. 1984) (Robertson, J., concurring) (inability to prove extent of damages not fatal in a negligence action). That is, the fact that damages may be somewhat difficult to measure does not diminish the loss to the plaintiff, especially when defendant has caused plaintiff's loss. Nor do the problems of evaluation strip the Court of its power to compensate a plaintiff for his or her loss.

and Doc differently from other property: this law supports this special measure of damages where plaintiffs can prove the actual value of the animal. The legal system should recognize the important role companion animals play in American society and no longer rely on market value for companion animals. All relevant factors must be evaluated if plaintiffs are to receive just compensation for the injuries they suffer in cases involving animals.

As Justice Andell of the Texas Supreme Court noted: "Courts should not hesitate to acknowledge that a great number of people in this country today treat their companion animals as family members. Indeed, for many people, companion animals are the only family members they have."³⁹

There is ample legal authority for this Court to establish a rule to award damages to the Appellants based on the *actual value* of their companion animals. "The difficulty of pecuniarily measuring this loss does not absolve defendant of [the] obligation to compensate plaintiff for that loss, at least to the meager extent that money can make her whole."⁴⁰

V. CONCLUSION

ALDF urges this Court to adopt the actual value approach to companion animal valuation, thereby permitting Appellants to recover damages that adequately compensate them for their loss.

DATED this 28 day of April, 2011.

³⁹ Bueckner v. Hamel, 886 S.W.2d 368, 376-78 (Tex. 1994) (Andell, J., concurring).

⁴⁰ Brousseau, 110 N.Y. Misc. 2d at 1056.

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