

No. COA-11-1102

NORTH CAROLINA COURT OF APPEALS

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NANCY L. SHERA and HERBERT  
K. SHERA, SR.,

Plaintiffs-Appellants,

v.

NORTH CAROLINA STATE UNIVERSITY  
VETERINARY TEACHING HOSPITAL,

Defendant-Appellee.

From the North  
Carolina Industrial  
Commission  
I.C. No. TA-21144

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COURT OF APPEALS  
OF NORTH CAROLINA

FILED

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AMICI CURIAE BRIEF OF THE NORTH CAROLINA  
VETERINARY MEDICAL ASSOCIATION, AMERICAN KENNEL CLUB,  
CAT FANCIERS' ASSOCIATION, ANIMAL HEALTH INSTITUTE,  
AMERICAN PET PRODUCTS ASSOCIATION,  
PET INDUSTRY JOINT ADVISORY COUNCIL, AND  
AMERICAN VETERINARY MEDICAL ASSOCIATION

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## ISSUE PRESENTED

Did the Industrial Commission commit reversible error in refusing to expand the nominal concept of a property's intrinsic value to include broad, new emotion-based damages?

## INTEREST OF AMICI CURIAE

*Amici* are the North Carolina Veterinary Medical Association, American Kennel Club, Cat Fanciers' Association, Animal Health Institute, American Pet Products Association, Pet Industry Joint Advisory Council, and American Veterinary Medical Association. These non-profit associations promote animal welfare and have a substantial interest in ensuring that North Carolina laws promote sound pet welfare policy. *Amici* believe that recognizing a new measure of damages based on emotional loss is contrary to this goal. For judicial efficiency, *Amici* join together on this brief and urge this Court to reject the broad new damages rule sought here, consistent with the vast majority of other courts. A statement of interest for each *amicus* is appended to the brief.

## STATEMENTS OF THE CASE AND FACTS

*Amici* adopt Defendant's statements of the case and facts.

## ARGUMENT

The rights and responsibilities of animal ownership and animal care in North Carolina and the United States have been remarkably consistent for the entirety of American

jurisprudence. The law creates a stable system that promotes responsible ownership, deters abuse, and allows for innovative, affordable, and quality care. Under this system, which includes criminal and civil liability laws, owners whose pets are negligently injured or killed can obtain full and fair compensation.

Courts have almost universally rejected, historically and recently, damages based on a pet's sentimental or emotional value. 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 (2006). In just the past twenty years, appellate courts in some thirty-five states have rejected claims based on the emotional relationship between an owner and a beloved pet, no matter how significant the person's grief, legal theories asserted, or whether arising under veterinary malpractice or other circumstances.<sup>1</sup>

Plaintiffs ask this Court to ignore this reasoned and recent precedent. To justify seeking more than \$28,000 of unrelated expenses spent on their pet, they mischaracterize the legal definition of a property's "intrinsic value," also called

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<sup>1</sup> These states include: 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, Vermont, Virginia, Washington, West Virginia, and Wisconsin. See Schwartz & Laird, *supra*, at 236-237.



"value to the owner," to include sentimental attachment. They then cloak their arguments in the message that theirs is the "pro-animal" position.<sup>2</sup> Just the opposite is true. *Amici*, which are dedicated to pet ownership and pet welfare, can assure the Court that if the plaintiffs prevails, many pets will be harmed.

In rejecting similar claims, courts have taken pains to expressly appreciate the love and affection owners and pets give each other and the real sense of loss owners feel when a pet is wrongfully injured or killed. *See, e.g., Rabideau v. City of Racine* 627 N.W.2d 795 (Wis. 2001). Yet, they have found that new, vast liability for emotional loss based on injuries to or death of a pet is not supported by existing law and, important to the animal welfare, has significant adverse consequences to pets, as well as to owners and others in society, that far outweigh any benefits emotional harm damages might provide.

**I. DEATH OF A CHERISHED PET DOES NOT FIT WITHIN ANY ALLOWABLE CATEGORY FOR EMOTIONAL HARM DAMAGES**

Damages based on a pet's emotional value have been sought under various legal theories in addition to special property damages, most often negligent infliction of emotional distress and loss of companionship. Courts have overwhelmingly rejected these claims because they, like North Carolina, carefully limit when a person may seek damages based on sentiment, emotional attachment or emotional loss when that person does not sustain

any physical injury him or herself. See *Briggs v. Rosenthal*, 73 N.C.App. 672, 677, 327 S.E.2d 308, 327 cert. denied, 314 N.C. 114, 332 S.E.2d 479 (1985) (quoting Restatement (Second) of Torts § 46 cmt. d (1965)) ("There is no occasion for the law to intervene in every case where someone's feelings are hurt.").

When the defendant's conduct is intentional, the act must be "extreme and outrageous," intended to cause severe emotional distress to the plaintiff, and result in such severe distress. See *Dickens v. Puryear*, 302 N.C. 437, 452, 276 S.E.2d 325, 335 (1981). When emotional harm results from negligence, as is alleged here, plaintiff must show that "(1) the defendant negligently engaged in conduct, (2) it was reasonably foreseeable that such conduct would cause the plaintiff severe emotional distress ..., and (3) the conduct did in fact cause the plaintiff severe emotional distress." *Gardner v. Gardner*, 334 N.C. 662, 665-66, 435 S.E.2d 324, 327 (1993).

Recovery under this theory has been allowed in very limited circumstances. For example, a mother cannot recover emotional distress for the death of a child due to another's negligence if she was not in close proximity to, or observed, the act. See *id.* at 667, 435 S.E.2d at 328; *Sorrells v. M.Y.B. Hospitality Ventures of Asheville*, 334 N.C. 669, 435 S.E.2d 320 (1993). Further, only "severe emotional distress" is actionable; the plaintiff must suffer from an "emotional or mental disorder,

such as ... neurosis, psychosis, chronic depression, phobia, or any other type of severe and disabling emotional or mental condition which may be generally recognized and diagnosed by professionals trained to do so." *Gardner*, 334 N.C. at 667, 435 S.E.2d at 328 (internal citation omitted).

North Carolina also has a cause of action for companionship or consortium damages, but that is strictly limited to deaths of spouses. See *Nicholson v. Hugh Chatham Memorial Hosp., Inc.*, 300 N.C. 295, 303, 266 S.E.2d 818, 822-223 (1980) (including "general companionship, society and affection" and "is limited to the legal marital partner of the injured."). Courts have repeatedly declined to extend companionship damages for loss of a child or other close human relation, choosing to leave the decision of whether to introduce such new liability to the legislature. See, e.g., *Ipock for Hill v. Gilmore*, 85 N.C. App. 70, 354 S.E.2d 315 (1987). The state's Wrongful Death Act does not extend damages for death of a pet. See N.C. Gen. Stat. § 28A-18-2(a).

When harm is only to a property right, as in pet cases, North Carolina has joined the majority of states in compensating owners for the difference in market value of the damaged property caused by the defendant's misconduct. See, e.g., *Light Co. v. Paul*, 261 N.C. 710, 136 S.E.2d 103 (1964). This rule applies to all property, including property whose value is based

on "significant emotional importance" to the owner. *Mace v. Pyatt*, 691 S.E.2d 81, 90 (N.C. Ct. App. 2010).

Amici do not suggest that the above circumstances are the only ones where people experience real emotional hardship at the hand of someone else's wrongdoing. As this Court has recognized:

[T]here must be a line drawn which ends a tortfeasor's liability at some point. While it may seem that there should be a remedy for every wrong, this is an ideal limited perforce by the realities of this world. . . . The problem for the law is to limit the legal consequences of wrongs to a controllable degree.

*Ipock*, 85 N.C. App. at 75, 354 S.E.2d at 318.

**II. NATIONALLY, COURTS HAVE BROADLY AND OVERWHELMING REJECTED CLAIMS BASED ON AN OWNER'S EMOTIONAL ATTACHMENT TO A PET**

When the above legal theories have been applied in pet litigation, nearly all courts have held that the strong love and affection owners have for their pets does not give rise to any type of litigation awards. See, e.g., *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005) ("damages for sentimental value, mental suffering, and emotional distress are not recoverable for the negligently inflicted death of a dog"); *Daughen v. Fox*, 539 A.2d 858, 864-65 (Pa. Super. Ct. 1988) ("Under no circumstances . . . may there be recovery for loss of companionship due to the death of an animal."); *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554, 561-63 (Tex. Ct. App. 2004) (damages cannot include "subjective value that a dog's owner places on its

companionship"); *Wilcox v. Butt's Drug Stores, Inc.*, 35 P.2d 978, 979 (N.M. 1934) ("sentimental value [is] not recoverable"); *Fackler v. Genetzky*, 595 N.W.2d 884, 890-92 (Neb. 1999) (same).<sup>2</sup>

In issuing these rulings, courts have expressly appreciated the mutual human-pet bond. As the Supreme Court of Wisconsin explained, while it is proper to reject these damages under traditional tenets of American jurisprudence, these laws do not undermine the owner-pet relationship:

Labeling a dog "property" fails to describe the value human beings place upon the companionship that they enjoy with a dog. . . . To the extent this opinion uses the term "property" in describing how humans value the dog they live with, it is done only as a means of applying established legal doctrine.

*Rabideau*, 627 N.W.2d at 798; *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 187 (Va. 2006) (pet is not family despite psychologist testimony that owner treated pet "like a mother/child unit").<sup>3</sup>

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<sup>2</sup> *Gill v. Brown*, 695 P.2d 1276 (Idaho Ct. App. 1985); *McDonald v. Ohio State Univ. Veterinary Hosp.*, 644 N.E.2d 750 (Ohio Ct. of Claims 1994); *Pantelopoulos v. Pantelopoulos*, 869 A.2d 280 (Conn. Super. Ct. 2005); *Lockett v. Hill*, 51 P.3d 5 (Or. Ct. App. 2002); *Kennedy v. Byas*, 867 So. 2d 1195 (Fla. Dist. Ct. App. 2004); *Krasnecky v. Meffen*, 777 N.E.2d 1286 (Mass. App. Ct. 2002); *Lachenman v. Stice*, 838 N.E.2d 451 (Ind. Ct. App. 2006); *Roman v. Carroll*, 621 P.2d 307 (App. 1980); *Rowbotham v. Maher*, 658 A.2d 912 (R.I. 1995); *Altieri v. Nanavati*, 573 A.2d 359 (Conn. Super. Ct. 1989); *Kaufman v. Longhofer*, 222 P.3d 272 (2009).

<sup>3</sup> *Pacher v. Invisible Fence of Dayton*, 798 N.E.2d 1121, 1125-26 (Ohio Ct. App. 2003) ("[w]ithout in any way discounting the bonds between humans and animals, we must continue to reject recovery for noneconomic damages"); *Ammon v. Welty*, 113 S.W.3d 185, 187-89 (Ky. Ct. App. 2003) (bond "is undeniable," but dog is "not a family member."); *Strawser v. Wright*, 610 N.E. 2d 610, 612 (Ohio Ct. App. 1992); *Nichols v. Sukaro Kennels*, 555 N.W.2d

Among the concerns expressed is that there would be "no sensible or just stopping point" for these suits. It would be impossible "to cogently identify the class of companion animals" -- dogs, cats, hamsters, rabbits, parakeets, etc. -- "because the human capacity to form an emotional bond extends to an enormous array of living creatures." *Rabideau*, 627 N.W.2d at 802. Veracity of claims would be hard to prove, and, in many cases, "charging tortfeasors with financial burdens" for an owner's emotional loss for a pet may be unfair. *Id.* Finally, given that two-thirds of Americans have some 200 million pets, the cottage industry of pet litigation would increase the "ever burgeoning caseloads of the court" and interfere with a court's ability to adjudicate "serious tort claims for injuries to individuals." *Johnson v. Douglas*, 723 N.Y.S.2d 627, 628 (N.Y. App. Div. 2001).

The draft Restatement of the Law (Third): Torts on Emotional Harm, which is in final form, also excludes emotion-based damages in pet cases:

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.

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689, 691 (Iowa 1996); *Oberschlake v. Veterinary Assocs. Animal Hosp.*, 785 N.E.2d 811, 812-15 (Ohio Ct. App. 2003).

Am. L. Inst., Restatement of the Law Third, Torts: Liability for Physical and Emotional Harm 64 (Prelim. Draft 5, Mar. 13, 2007).

**III. "INTRINSIC VALUE" SHOULD NOT OPEN THE DOOR FOR EXPANDED DAMAGES BASED ON SENTIMENTALITY**

Given the clarity of North Carolina law and the steadfast reaction of courts against the types of damages sought here, it is not surprising Plaintiffs recast their emotion-based claims under a vague-sounding measure of damages, *i.e.*, "intrinsic value." This trend started in 2008 by some clever animal rights lawyers.<sup>4</sup> While these damages do apply to property that, like many pets, have little market value, the success of this movement depends on mischaracterizing the law. In common vernacular, a pet's "intrinsic value" or its "value to the owner" might include a pet's sentimental or emotional value. But, these terms have legal meaning, and where the legal definition of intrinsic value is comparable to North Carolina's, courts have affirmed that such damages cannot be based on sentiment or emotion.

In North Carolina, as in most states, "intrinsic value" of property is "its true, inherent, and essential value, not depending upon accident, place, or person, but the same every

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<sup>4</sup> Establishing sentiment as part of a pet's intrinsic value is part of the animal rights activists foundation to "support a ruling that animals are not property but have rights of their own and thus legal standing." Douglas Belkin, *Animal Rights Gains Foothold as Law Career*, Boston Globe, Mar. 6, 2005, at 6.

where and to every one." See *Bank of State v. Ford*, 27 N.C. 692, 698, 5 Ired. Law 692 (1845)). Black's Law Dictionary 1549 (7th ed. 1999) defines it as "[t]he inherent value of a thing, without any special features that might alter its market value. The intrinsic value of a silver coin, for example, is simply the value of the silver within it."<sup>5</sup> In short, this is a measure of an item's "unique economic value, not its sentimental or emotional value." See *McMahon v. Craig*, 97 Cal. Rptr. 3d 555, 566 (Cal. Ct. App. 2009). Thus, when an item's intrinsic value can be established, plaintiffs whose harmed property has no market value can still receive some nominal damages.

In the past few years, courts in at least four other states with similarly definitions for intrinsic value have applied these damages in pet litigation. All have concluded that a pet's intrinsic value does not include heightened damages based on an owner's sentimental or emotional attachment to a beloved pet.

In California, a pet has intrinsic or peculiar value only when its economic value is different than the typical economic value of comparable pet. See *id.*; compare *Virginia Breeding & Training Ass'n v. So. Ry. Co.*, 152 N.C. 345, 67 S.E. 748 (N.C.

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<sup>5</sup> See also Restatement (Second) Torts § 911 cmt. e (1965) (if "a dog trained to obey only one master [has] substantially no value to others than the owner . . . the owner will be compensated for its special value to him, as evidenced by the original cost, and the quality and condition at the time of the loss").



1910) (similarly defining "peculiar value of the animals" under N.C. law). The pet's unique "characteristics [must] enhance its economic value to the owner," as this term "does not include the owner's emotional attachment" to the pet. *Id.* (providing as examples "pedigree, reputation, age, health and ability to win" competitions). The court further stated that "regardless of how foreseeable a pet owner's emotional distress may be in losing a beloved animal, we discern no basis in policy or reason to impose a duty on a veterinarian to avoid causing emotional distress to the owner of the animal being treated." *Id.* at 563 (also precluding recovery under tort and contract theories). Thus, veterinary malpractice claims do not give rise to special damages based on a pet's emotional or sentimental value.

A Washington Court of Appeal, also in a veterinary case, stated that value to the owner "is confined by the limitation on sentimental or fanciful value" because "it is well established that a pet owner has no right to emotional distress damages or damages for loss of human-animal bond based on the negligent death or injury to a pet." *Sherman v. Kissinger*, 195 P.3d 539, 548 (Wash. Ct. App. 2008) (using a "reasonable owner," not personal attachment standard). "[I]f the jury decides that the proper measure of damages is the value to the owner, the jury cannot consider sentimental value." *Id.* at 547-49 (trial court properly struck declaration that plaintiff "mourned for [her

dog] Ruby "the way someone would grieve for a human passing" because testimony "establishing damages on the basis of sentiment or loss of companionship" is precluded).

The Supreme Court of Alaska and the Ohio Court of Appeals have ruled the same. See *Mitchell v. Heinrichs*, 27 P.3d 309, 313-14 (Alaska 2001) (owner "may not recover damages for her dog's sentimental value as a component of actual value to her as the dog's owner"); *Sokolovic v. Hamilton*, \_\_ N.E.2d \_\_, 2011 WL 4090217 (Ohio Ct. App. Sept. 15, 2011) ("value to the owner" applies only "in exceptional circumstances," such as for a dog's "unique pedigree" or for "time invested in specialized, rigorous training, which established that a similar dog was not available on the open market"; "sentimentality is not a proper element in determining damages caused to animals.").

Thus, in states with comparable intrinsic value laws as North Carolina, courts in pet injury cases have held that such damages do not provide an escape hatch for inflated emotion-based awards.<sup>6</sup> Accordingly, *amici* respectfully present three

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<sup>6</sup> By contrast, Texas has a narrow exception where compensation for certain articles that have little to no market value and are kept primarily for sentimental reasons, *i.e.*, keepsakes, can be based on subjective value. See *City of Tyler v. Likes*, 962 S.W.2d 489 (Tex. 1998). Even here, there have been conflicting appellate court rulings as to how this law applies in pet litigation. Compare *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554 (Tex. Ct. App. 2004) with *Medlen v. Strickland*, \_\_ S.W.3d \_\_, 2011 WL 5247375 (Tex. Ct. App. Nov. 3, 2011) (appeal pending).

examples where Plaintiffs mischaracterize the law to overcome precedent:

- Contrary to Plaintiffs' assertion about Washington law, see Pl. Brief at \*15, Washington defines intrinsic value as an item's objective economic value to its owner, and has unequivocally rejected emotion-based damages in pet cases. See *Sherman*, 195 P.3d at 548.
- Contrary to Plaintiffs' assertion about Vermont law, see Pl. Brief at \*17, the Supreme Court of Vermont, too, has already rejected the theory of damages sought here. See *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269 (Vt. 2009) (there is no "compelling reason why, as a matter of public policy, the law should offer broader compensation for the loss of a pet than would be available for the loss of a friend, relative, work animal, heirloom, or memento -- all of which can be prized beyond measure, but for which this state's law does not recognize recovery for sentimental loss.").
- Plaintiffs' citation to *Jankowski v. Preiser Animal Hospital*, see Pl. Brief at \*16, excludes the next sentence stating that such damages are "severely circumscribed" and that plaintiffs "expressly disavow[ed] any sort of [such] limited recovery." 510 N.E. 1084, 1807 (1987).

The law does not allow, as is sought here, a pet owner to simply tally categories of money spent on a pet over its

lifetime as a basis for an award. Otherwise, pets with market value would be worth far less than pets without market value. Old pets would be worth more than young ones. Sick pets receiving expensive care would be worth more than healthy pets. Also, average Americans who cannot spend thousands on pet care, but cherish their pets dearly, could not garner large awards. In short, it would turn damages law on its head for Plaintiffs to create their own exorbitant measure of damages unrelated to the allegations and exceeding recoveries for pets with actual market value.

**IV. ALLOWING SUBJECTIVE, EMOTION-BASED DAMAGES FOR PETS WILL JEOPARDIZE AFFORDABLE PET CARE**

Pet welfare and social policy weigh heavily against new emotion-based damages in pet cases. See *Harabes v. The Barkery, Inc.*, 791 A.2d 1142 (N.J. Super. Ct. App. Div. 2001) (stating adverse consequences and policy bases for rejecting claims). There is a stark dichotomy between interests of owners who seek these damages -- and animal rights groups that support them -- and pet welfare. When prices of pet services and products rise to pay the awards, many owners will no longer be able to afford pet care, services and products. Should that happen, pets will suffer. See Assoc. Press, *Even Pets Feeling Sting of Financial Struggles*, *Fosters.com*, Nov. 23, 2008, available at 2008 WLNR 22400175 ("we're putting the dogs to sleep" over finances).

The primary concern is that animal care will start to resemble human health care where emotion-based damages have caused costs to substantially rise and dictate care options. Just compare the costs of cancer treatments for pets with the cost of treating humans with similar ailments. But, unlike with human medicine, people's ability to spend on pet care is not elastic. Every dollar paying non-economic damages is a dollar that will not go to pet health. Ruling in plaintiffs' favor, therefore, will cause many families to avoid preventive care, not treat an ill pet, or have a pet needlessly euthanized. Liability concerns also may cause free clinics and other services that many people rely on to close.

Already, despite the fact that pet ownership was on the rise, the median number of new clients and active clients declined between 2007 and 2009.<sup>7</sup> Nearly a quarter of all pet owning households spend no money on veterinary care.<sup>8</sup> Twenty percent of pet owners postpone wellness visits and forty-five percent are postponing care for sick pets.<sup>9</sup> Households that "continue to purchase veterinary services are spending

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<sup>7</sup> See AAHA PulsePoints 2002-2010, cited by KAREN E. FELSTED, NCVEI UPDATE: NEW INSIGHTS IN PRACTICE GROWTH 23, [http://www.ncvei.org/articles/FINAL\\_BAYER\\_VETERINARY\\_CARE\\_USAGE\\_STUDY.pdf](http://www.ncvei.org/articles/FINAL_BAYER_VETERINARY_CARE_USAGE_STUDY.pdf).

<sup>8</sup> See AMERICAN VETERINARY MEDICAL ASSOCIATION, 2007 US PET OWNERSHIP & DEMOGRAPHICS SOURCEBOOK (2007); JOHN W. ALBERS & MICHAEL T. CAVANAUGH, 2010 AAHA STATE OF THE INDUS. REPORT, <http://trends.aahanet.org/vetnewsarticle.aspx?key=4701b5ac-0b87-4885-b96f-70db5396bde0>.

<sup>9</sup> See National Commission on Veterinary Economic Issues, *Survey of Veterinarians*, Quick Poll Jan. 2010.

substantially more, but an increasing proportion of households are choosing not to spend any money for veterinary services."<sup>10</sup>

The impact will also be felt outside of the pet care community. Owners have sought emotion-based damages in many situations involving harm to pets, including car accidents, police actions, and against neighbors for a variety of reasons, including pet-on-pet aggression and protection of livestock. See Steve Malanga, *Pet Plaintiffs*, Wall St. J., May 9, 2007 at A16 ("[J]ust about everyone would potentially bear more liability. . . . Actuaries probably haven't even contemplated what cases like that would do to our insurance premiums.").<sup>11</sup> Also, the country's five thousand community animal shelters and rescues will see significant cost increases and new lawsuits against them when animals in their care are harmed. These shelters already are seeing a hike in abandoned pets and a decrease in adoptions. See *Petfinder Survey: Economy Putting More Pets in Shelters*, petfinder.com, Mar. 29, 2009, at <http://www.petfinder.com/blog/2009/03/27/petfinder-survey-economy-putti/>.

A majority of the public clearly recognize these problems, as they oppose compensating owners for emotional loss in pet

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<sup>10</sup> Christopher A. Wolf et al., *An Examination of U.S. Consumer Pet-Related & Veterinary Serv. Expenditures, 1980-2005*, 233 J. AM. VETERINARY MED. ASS'N 404, 410 (2008).

<sup>11</sup> See *Kautzman v. McDonald*, 621 N.W.2d 871 (N.D. 2001) (police action); *Soucek v. Banham*, 503 N.W.2d 153 (Minn. Ct. App. 1993).

litigation. See Joseph Carroll, *Pet Owners Not Worried That Their Pets Will Get Sick From Pet Food: Most Don't Agree With Pain and Suffering Damages for Pets*, Gallup News Service, Apr. 3, 2007. Also, given the large scope and interests implicated here, crafting this new liability, if appropriate at all, should be done by the Legislature. See *Hey v. Moran*, 2002-568-A (R.I. Nov. 25, 2003) (creating such new liability is "more appropriately left to the General Assembly"); *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209 (Mich. Ct. App. 2000) (same).

CONCLUSION

For the foregoing reasons, *amici* request this Court to reject Plaintiff's appeal to create new measures of damages in pet injury litigation. Respectfully submitted, this the 16<sup>th</sup> day of December, 2011.

  
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**APPENDIX: STATEMENTS OF INTEREST**

North Carolina Veterinary Medical Association (NCVMA) is the largest professional organization representing veterinarians and veterinarian staff in the State of North Carolina. The NCVMA works with shelter and humane groups, state agencies and others to promote animal health, responsible pet ownership, disease control, disaster response and public health and safety.

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

The American Kennel Club ("AKC") is the largest registry of purebred dogs and leading not-for-profit organization devoted to the study, breeding, exhibiting, and advancement of dogs. Along with its nearly 5,000 licensed and member clubs and its affiliated organizations, the AKC advocates for the purebred dog as a family companion, advances canine health and well-being, works to protect the rights of all dog owners and promotes responsible dog ownership.

American Pet Products Association ("APPA") is the leading U.S. not-for-profit trade association for the pet products



industry, representing nearly 1,000 pet product manufacturers, importers, manufacturers' representatives and livestock suppliers. APPA's mission is to develop and promote responsible pet ownership.

American Veterinary Medical Association ("AVMA"), established in 1863, is the largest veterinary medical association in the world and the national voice for veterinary profession. The Association has 78,000 members, representing approximately 85% of U.S. veterinarians. The issues presented in this case directly involve the veterinary profession.

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

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

CERTIFICATE OF COMPLIANCE AND SERVICE

I certify that this brief conforms to the requirements of Rule 28 of the North Carolina Rules of Appellate Procedure. The length of this brief, which is presented in proportionally spaced type (Times New Roman), 14-point size, is no more than 3,750 words, including footnotes, but excluding covers, indexes, tables of authorities, certificates of service, and the certificate of compliance with this rule.

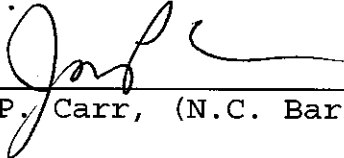
I further certify that a copy of the foregoing Brief was served upon the following by first class U.S. mail, postage prepaid, addressed as follows:

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This the 16<sup>th</sup> day of December, 2011.

  
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