

NO. 32288

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

HELEN TRACY CARBASHO,
Plaintiff Below, Appellant,

v.

MICHAEL S. MUSULIN,
Defendant Below, Appellee.

On Appeal From The Circuit Court of Brooke County, West Virginia
Honorable James P. Mazzone, Judge

BRIEF OF AMICUS CURIAE ANIMAL LEGAL DEFENSE FUND IN SUPPORT OF
APPELLANT

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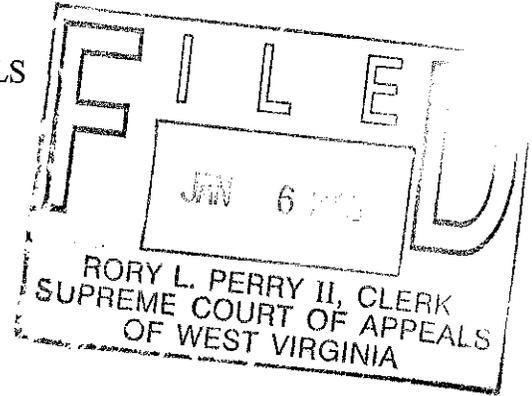


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I. INTRODUCTION

This is not a typical property damage claim. This is a wrongful death case, but it does not involve the death of a human. It does, however, involve real loss - of Ms. Carbasho's companion animal - and the significant bond they shared. She is entitled to compensation for real and indisputable damages that were caused by that injury.

Compensatory damages measured by the property's value to its owner are appropriate here because defendant killed a special kind of "property" - Groucho, Ms. Carbasho's longtime companion. Unlike other property - that has no sentient life and cannot even be killed - Groucho was not a fungible item that can be replaced on the market. Rather, even accepting the law's characterization of animals as property, Groucho was indisputably a special kind of "property" - a living, breathing, feeling being who formed a valuable relationship with Ms. Carbasho and had an identifiable emotional life and consciousness. There should be no doubt that when she lost Groucho, she lost an important member of her family.

This Court must determine the appropriate measure of damages for the loss of this animal, who like many companion animals represents a unique melding of family and property. The modern trend is to determine damages based on companion animals' actual value to their owners; that value is determined by identifiable factors supported by evidence. This Court is urged to follow this body of law, which is established, recognizes society's increasing appreciation of the value of this special relationship, and recognizes the value of this special type of property.

Based on the facts presented by appellant and the arguments here, this Court is urged to reverse the trial court's grant of summary judgment, and remand the case to permit a jury to award

damages based on factors that adequately evaluate the proper pecuniary value for Ms. Carbasho's loss of her companion animal, Groucho.

II. COMPANION ANIMALS AND THE LAW OF PROPERTY

A. Designation as "Property" is Shorthand for a Bundle of Rights.

Companion animals are considered property, but that characterization is no barrier to the damages sought here. An award of "actual value" damages is consistent with a fair judicial appraisal of the proper measure of compensation in similar cases. The property label - for animate beings and inanimate objects - is simply a shorthand method to refer to the interest an owner has in particular property. "Property" describes the basic concept of the "bundle of rights" that an owner maintains. 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." Yuba River Power Co. v. Nevada Irrigation Dist., 207 Cal. 521, 524 (1929) (citations omitted).

Property value is an individualized concept that must be considered on a case by case basis:

Anything 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 not exchangeable value. It may serve a useful purpose and yet be unsalable and unexchangeable. No one may want it, or have the 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 desire. . . .

Moody v. State, 56 S.E. 993, 994 (Ga. 1907).

Yuba River and Moody are illustrative of longstanding and generally accepted property doctrine. 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") (citing cases); Squire v. Guardian Trust Co., 84 N.E.2d 99, 105 (Ohio Common Pleas 1945) ("property should have such a liberal construction as to include every valuable interest which can be enjoyed as property, and recognized as such") (emphasis in original); Womack v. Womack, 172 S.W.2d 307, 308 (Tex. 1943) (property "extends to every species of valuable right and interest") (internal citations omitted). It is clear that property with little or no market value can nonetheless have significant actual value to its owner - value, like that of a companion animal, that may also be recognized by society. It follows that courts should permit damages for loss of such property to be determined by consideration of the value of the loss to the owner.

Courts routinely recognize that different types of property represent different types of interests, with different remedies for their 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." Hanover Star Milling Co. v. D.D. Metcalf, 240 U.S. 403, 412 (1916), limited by statute as stated in Park 'N Fly, Inc. v. Dollar Park 'N Fly, Inc., 469 U.S. 189 (1985). Similarly, patents and copyrights protect "the fruits of intellectual labor, embodied in the form of books, prints, engravings, and the like." In re Trade-Mark Cases, 100 U.S. 82, 94 (1879)(original emphasis omitted).

Courts also regularly award damages for the destruction of or injury to these amorphous types of property. Mieske v. Bartell Drug Co., 593 P.2d 1308, 1311 (Wash. 1979) ("difficulty 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) ("destruction 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 (2d) Torts § 911 (1979) (discussing valuation of property without easily calculable value and citing cases).

Thus, even with intangible property, the type of property and relation to its owner - rather than the mere designation as property - determines the owner's rights and remedies. The property designation means only that the owner has a protectable interest. It does not restrict the type or amount of protection courts may afford to the owner, the property itself, or the claims that may be made and remedies had in disputes over the property.

Here, the Court is dealing with a type of property that has enjoyed legislative and publicly endorsed protection for centuries. Companion animals like Groucho have enjoyed exceptional treatment by courts, legislatures and society unlike that accorded to any other form of property. We give animals special treatment for many reasons, including their inherent value, and we value our relationships with them. Because we regard them so highly, in the tort system, we must also value each one - and the relationships we have with them - individually.

B. Animals Are A Unique Type Of Property With Distinctive Legal Status.

Legislatures and courts make it clear - resoundingly - that non-humans should not be treated like traditional personal property. Every American jurisdiction gives limited legal rights to companion animals. The casebooks and code books are full of decisions and enactments that protect the animals that live among us. This extensive body of law highlights society's longstanding recognition of the enhancement which companion animals add to our lives, and underscores the need

for special treatment of animals in cases like the one before this Court.

1. The Policy Behind Animal Protection Laws

The laws protecting animals reflect a legislative, judicial and societal recognition of the special value Americans place on their nonhuman companions. This public policy of caring and appreciation demonstrates animals' value should be protected. These laws also conclusively establish animals are not to be treated as other forms of property.

For example, in no other circumstance does the law treat the abuse of "property" as a crime - but it does for animals. Nor does the abuse of any other type of property lead to a forfeiture of custody of that property - but it does for animals, in much the same way parents are denied access to children they abuse. See W. Va. Code Section 61-8-19(c). Nor does the law typically require owners of "normal" property who damage or destroy that property to undergo state-sanctioned psychiatric evaluation - but if that property is an animal, many state laws, including those of West Virginia, permit this. See W. Va. Code Section 61-8-19(g). The import of these laws - which are manifestation of the public policy of the jurisdiction - is clear: animals are much different from any other inanimate property that is easily replaced in the market, and wrong done to them should be sanctioned more severely.

2. State Animal Cruelty Statutes

All fifty states and the District of Columbia have enacted animal cruelty laws that penalize the mistreatment of animals. The vast majority of states treat some animal cruelty as a felony; abandonment of an animal is a crime in a significant number of states. Most courts apply these animal cruelty laws seriously, upholding convictions for cruelty of animals in a wide array of

situations.

The extensive protection given to animals - and notably not given to other forms of property - reflects a legislative, judicial and societal recognition of the special value Americans place on animals. An inherent component of the law of every state is the recognition that a relationship with an animal is a special one of certain value, and one that must be protected. Quite telling of this State's recognition of this relationship is the fact that the West Virginia legislature chose to include its statute criminally prohibiting animal cruelty within the Article entitled "Crimes Against Chastity, Morality and Decency."

3. Federal Animal Protection Laws

National public policy, embodied in federal law, further illustrates the importance of animals in our society. See e.g., Cohen, Federal Animal Protection Statutes, 1 Animal L. 143 (1995). These federal statutes protect everything from endangered species, the Endangered Species Act, 16 U.S.C. § 972 et seq., to African elephants, African Elephant Conservation Act, 16 U.S.C. § 4201 et seq., to marine mammals, Marine Mammal Protection Act of 1972, 16 U.S.C. § 3371, et seq., to specific birds, Bald and Golden Eagle Protection Act, 16 U.S.C. § 668 et seq. They protect animals at every stage of their lives, from birth, Lacey Act, 18 U.S.C. § 41 et seq., to capture, the Atlantic Tunas Convention Act of 1975, 16 U.S.C. §§ 971 et seq., and even through to death. Humane Slaughter Act, 7 U.S.C. §§ 1901 et seq. These statutes manifest society's belief that animals' lives are valuable ones deserving of protection.

For example, in the Endangered Species Act ("ESA"), Congress declared that "fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the

Nation and to its people." 16 U.S.C. § 1531(a)(3). The ESA is a "pledge" to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction." 16 U.S.C. § 1531(a)(4). Similarly, in the Marine Mammal Protection Act, Congress declared that marine mammals are resources of great international significance, who "should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management." 16 U.S.C. § 1361(6).

In the Animal Welfare Act ("AWA"), Congress again recognized the independent value of animals as beings with separate interests. In detailed language and regulations, the AWA expressly defines the custody and care that must be provided to animals in research, entertainment and sales. The AWA was enacted to "insure that [these] animals . . . are provided humane care and treatment." 7 U.S.C. § 2131(1). Like the other federal laws, the AWA shows federal appreciation of the need to consider animals qua animals, and not as "standard" property.

4. Society Values Animals Differently Than Any Other Type Of Property.

Courts regularly recognize the undisputed bond between humans and animals. Courts in several states, including New York, Maryland, and Texas, have ordered shared custody or visitation of animal companions. Raymond v. Lachmann, 695 N.Y.S.2d 308, 308 (N.Y. App. Div. 1999); Assal v. Kidwell, Civil No. 164421 (Md. Cir. Ct., Montgomery Cty. Dec. 3, 1999); Arrington v. Arrington, 613 S.W.2d 565, 569 (Tex. App. 1981). In a dissenting opinion in Nahrstedt v. Lakeside Vill. Condo. Ass'n., 8 Cal. 4th 361 (1994), Justice Arabian of the California Supreme Court summarized the significance of animal companionship:

The value of pets in daily life is a matter of common knowledge and

understanding as well as extensive documentation . . . 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 . . . Single adults may find certain pets can afford a feeling of security. Families benefit from the experience of sharing that having a pet encourages.

Id. at 390 (Arabian, J., dissenting); see also Bueckner v. Hamel, 886 S.W.2d 368, 376 78 (Tex. 1994) (Andell, J., concurring) ("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.").

Overwhelming evidence proves Americans do not consider companion animals like any other type of property. Root, Man's Best Friend: Property or Family Member? An Examination of the Legal Classification of Companion Animals and its Impact on Damages Recoverable for their Wrongful Death or Injury, 47 Vill. L. Rev. 423, 423 (2002) (footnotes omitted). Indeed, if a realistic and qualitative comparison is to be made, animals simply cannot be compared to property for purposes of cases like these. The only other types of relationships that share the same general characteristics as those we have with animals are those we share with other humans. Even though the societal value placed on such relationships is not of the same magnitude, the type of feelings and range of emotions in human animal relationships finds its only reasonable analog in the experiences we share with others on a daily basis. The following facts are telling:

- 124 million companion animals live in American homes nearly one for every two Americans;
- companion animal owners view their pets as family members, not personal property;

- forty five percent of dog owners take their pets on vacation;
- more than half of companion animal owners would prefer a dog or a cat to a human if they were stranded on a deserted island; and
- fifty percent of pet owners would be "very likely" to risk their lives to save their pets, and another thirty three percent indicated they would be "somewhat likely" to put their own lives in danger to save their pets.

Id.

III. DAMAGES FOR COMPANION ANIMALS SHOULD BE MEASURED BY THE ANIMAL'S ACTUAL VALUE TO THE OWNER.

As established above and discussed in more detail below, courts and state legislatures recognize the traditional market value calculation of damages does not adequately compensate an owner in a wrongful death cause of action. *See Squires Lee, Note: In Defense of Floyd: Appropriately Valuing Companion Animals in Tort, 70 N.Y.U. L. Rev. 1059, 1081 83 (1995).* Typically, if fungible, a plaintiff can acquire equivalent property on the market. But where the companion animal has a limited or non-existent market value but is a unique being with a very real value to his or her owner the traditional approach to damages does not make the plaintiff whole because she cannot replace her unique "property."

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

The market value approach to measuring property is a standard used by courts to measure normal property loss. It is not the only way to measure damages. When the market value of property cannot be ascertained, or where the market value does not adequately compensate the

owner, many courts use "a more elastic standard . . . sometimes called the standard of value to the owner." McDonald v. Ohio State Univ. Veterinary Hosp., 644 N.E.2d 750, 752 (Ct. Cl. Oh. 1994); Landers v. Municipality of Anchorage, 915 P.2d 614, 618 619 (Alaska 1996), citing Campins v. Capels, 461 N.E.2d 712, 721 (Ind. 1984) ("the 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;" personal photographs and videotapes); Ramey v. Collins, 2000 WL 776932 (unreported) (Ohio App. 4 Dist., June 5, 2000) (noting that the "actual value to the owner" standard is "more elastic" and permitting dog owners to testify about dog's "value"). In a veterinary malpractice action, the McDonald Court applied the "value to the owner" standard and awarded the plaintiff pet owner damages based on the "unique role the plaintiff's dog played in her life." The court noted that the value to owner doctrine is the best measure of damages in cases where the property has a unique value to the owner that does not translate into a value in the open market. McDonald, 644 N.E.2d. at 752.

Different courts and legislatures use different terms: "actual value," "special value," or "peculiar value," but the principle is the same. Damages must be awarded based on factors particular to the animal in question as well as the specific human animal relationship disrupted and outside the traditional market value approach. The courts (like the legislatures authorizing peculiar value damages) awarding actual value to owners recognize companion animals have inherent value and often possess unique traits that cannot be reflected in their market value. Those facts translate into a value that cannot be compensated by simple market value analysis.

With respect to this value, one psychologist has written:

Early surveys reported a strong psychological and emotional attachment between people and their pets, and the term human-animal bond emerged to represent this attachment. Studies revealed that most pet owners view their pets as both enhancing the quality of family life by minimizing tension between family members and enhancing their owner's compassion for living things, (internal citations omitted). Using a projective technique to investigate owners' closeness to their pet dogs, Barker and Barker (1988, 1990) found that dog owners were as emotionally close to their dogs as to their closest family member. They reported that more than one-third of the dog owners in the study were actually closer to their dogs than to any human family member.

Barker, Therapeutic Aspects of the Human-Companion Animal Interaction, Vol. XVI Psychiatric Times 2 (February 1999).

For over 100 years, courts have held that in actions involving the death of companion animals, a plaintiff may recover damages for the animal's "special" value. *See, e.g., Hodges v. Causey*, 26 So. 945 (Miss. 1900) (special value damages awarded to owner; allowing witnesses to testify to the dog's qualities and characteristics); *Klein v. St. Louis Transit Co.*, 93 S.W.2d 281, 282 83 (1906) (applying actual value to the owner standard and holding trier of fact could 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).

Many modern courts continue to hold the proper measure of recovery for the loss of a companion animal is the real, or "actual" value of a pet to the owner. *See, e.g., Mitchell v. Heinrichs*, 27 P.3d 309, 313 (Alaska 2001) (including costs of training, costs of replacement, medical care, immunizations); *Zeid v. Pearce*, 953 S.W.2d 368, 369 (Tex. App. 1997) (recovery for death of dog is market value or special value to owner); *Altieri v. Nanadati*, 41 Conn. Supp. 317, 320 (1990) (recognizing damages beyond market value sometimes awarded); *Zager v. Dimilia*, 524

N.Y.S.2d 968, 970 (1988) ("traditional restriction in personal property cases that the cost of repair should not exceed the market . . . value of the property should not be applied in a case where . . . a living creature is involved"); Quave v. Bardwell, 449 So. 2d 81, 84 (La. App. 1984) (discussing factors considered to calculate value of plaintiff's dog and approving discretion of trial court in determining damages); Demeo v. Manville, 68 Ill. App. 3d 843, 846 (1979) (trial court properly permitted plaintiff to testify about dog's value based on evidence of qualities and commercial value); Wertman v. Tipping, 166 So. 2d 666 (Fla. 1904) (trier of fact could consider dog's special value to owner); Green v. Leckington, 236 P.2d 335, 337 (1951) (plaintiff allowed to prove special value of dog by evidence of qualities, characteristics, and pedigree); Paguio v. Evening J. Ass'n., 127 N.J.L. 144 (1941) (special damages for killing of dog). Thus, a large number of cases, from courts across the country, supports the application of the "actual value" measure of damages where defendants kill or injure plaintiffs' animals and where plaintiffs can prove that value.

The actual value measure of damages is simply a reflection of the common law's recognition of the need for special valuation of special property like Groucho. For example, New York courts have considered some of the aforementioned factors in assessing plaintiff's damages in animal related cases. In Brousseau v. Rosenthal, 443 N.Y.S.2d 285, 286 87 (Civ. Ct. N.Y. 1980), plaintiff brought a negligence action against a kennel arising from the death of her German Shepherd. Plaintiff's dog "was her sole and constant companion." Brousseau, 443 N.Y.S.2d at 286. The court concluded that fair compensation required a reflection of the dog's "actual value" to plaintiff because "plaintiff relied heavily on this well trained watchdog, and never went out into the street at night without the dog's protection." The appellate court in Brousseau held "loss of companionship is a

long recognized element of damages in [New York]" and directed the lower court to "consider this as an element of the dog's actual value to the owner." Id. at 286-87. Explaining that its valuation was simply a means of providing adequate compensation to plaintiff, the court noted it would be wrong to fail to acknowledge the companionship and protection plaintiff lost with the death of her canine companion. "[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." Id.

Courts in Illinois and Florida have also considered the plaintiff's attachment to a companion animal as a factor in calculating damages for loss of that companion. Jankoski v. Preiser Animal Hosp., Ltd., 157 Ill. App. 3d 818, 821 (1987), applied the actual value standard in a veterinary malpractice action and held that the trier of fact could consider some element of the sentimental value plaintiff felt for the companion animal so that plaintiff could recover more than nominal damages which is what she would have recovered if the dog was treated as standard property. Similarly, in LaPorte v. Assoc. Indep., Inc., 163 So. 2d 267, 269 (Fla. 1964), a dog owner sued a garbage collector for the wrongful killing of her dog. The Florida Supreme Court permitted the owner to recover damages for emotional distress and stated, "We feel that the affection of a master for his 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. at 269; see also Johnson v. Wander, 592 So. 2d 1225, 1226 (Fla. 1992) (recognizing claim for emotional distress after veterinarian mistreated dog); Knowles Animal Hosp., Inc. v. Wills, 360 So. 2d 37, 38 39 (Fla. 1978) (same).

Moreover, the reasoning upon which this Court permits claims for negligent infliction of

emotional distress to go forward when "a person closely related to the plaintiff suffer[s] critical injury or death as a result of defendant's negligent conduct," syl. pt. 2, Heldreth v. Marrs, 188 W. Va. 481, 425 S.E.2d 157 (1992), applies equally to this factual situation, substituting "a companion animal closely related to the plaintiff" for "a person:"

No loss is greater than the loss of a loved one, and no tragedy is more wrenching than the helpless apprehension of the death or serious injury of one whose very existence is a precious treasure. The law should find more than pity for one who is stricken by seeing that a loved one has been critically injured or killed.

Portee v. Jaffee, 84 N. J. 88, 417 A. 2d 521, 526 (1980), quoted with approval in Heldreth, 188 W. Va. at 484 and Stump v. Ashland, Inc., 201 W. Va. 541, 550, 499 S.E.2d 41 (1997). This Court is urged to show Ms. Carbasho "more than pity," *id.*, and allow the jury to consider the appropriate compensation to which she is entitled for the loss of her loved one, Groucho.

B. Many Statutory Enactments Recognize the Worth of the Human Animal Bond And the Need for a Special Measures of Damages.

Recognizing that the market value approach does not provide fair compensation to plaintiffs in companion animal cases, several states have adopted statutes that permit plaintiffs to recover based on the "peculiar value" of their companion animals. See, e.g., Cal. Civ. Code § 3355; Mont. Code Ann. § 27 1 3 5; N.D. Cent. Code § 32 03 33; Okla Stat. Tit. 23 § 93; S.D. Codified Laws § 21 1 8 and Guam Code Ann. 2277. California Civil Code section 3355, similar to many other state statutes, provides, in pertinent part,

Where certain property has a peculiar value to a person recovering damages for deprivation thereof or injury thereto, that may be deemed to be its value against one who had notice before incurring [damages] . . . or against a willful wrongdoer.

Several courts have applied the "peculiar value" standard to evaluate the correct measure of damages arising from injury to or death of animals. King v. Karpe, 170 Cal. App. 2d 344, 349 (1959); Drinkhouse v. Van Ness, 202 Cal. 359, 378 79 (1927); Durocher v. Myers, 274 P. 1062, 1064 (Mont. 1929); Orford v. Topp, 136 P. 227 (Montana 1959) (peculiar value approach applicable when property acquires a value "peculiar to the individual alone" and where damages based on market value would be "manifestly inadequate").

For example, in King, defendant negligently killed plaintiff's prized breeding cow. At trial, the jury awarded plaintiff \$5,000 because plaintiff demonstrated defendant was aware the cow was of outstanding breeding stock. The award was not based on the (much lower) fair market value of the cow, but on plaintiff's subjective determination of the cow's worth pursuant to California Civil Code Section 3355. 170 Cal. App. 2d at 349. Similarly, in Drinkhouse, the court upheld recovery of peculiar value damages for the destruction of a horse because the evidence established that the horse was "a sire of valuable racing stock" and defendants had "intimate and full knowledge" of this fact. 202 Cal. at 378-79. Finally, in Durocher, the court found that "a dog may be shown to have a market value, or to have some special or peculiar value to its owner." 274 P. at 1064.

Notably, Tennessee has adopted a statute expressly authorizing the recovery of emotional distress damages for death to a companion animal. Tenn. Code Ann. § 44 17 403 (2000). Enacted in 2000, the T Bo Act provides recovery of non economic damages to compensate the plaintiff for "the loss of the reasonably expected society, companionship, love and affection of the pet." Tenn. Code Ann. § 44 17 403(d). The Tennessee legislature's recognition that emotional distress and loss of companionship are appropriate forms of relief for the death of a companion animal reflects a

societal belief that companion animals occupy a unique place in our world, a place that this Court should recognize.

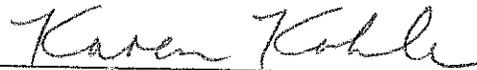
C. The Damages for Loss of a Companion Animal as Suggested by ALDF are Consistent with Existing Law.

ALDF's position here simply confirms the doctrines discussed above - that courts and legislatures have been applying for years - and the common sense notion that the value of sentient, living beings who provide significant value and form long lasting relationships with humans should be measured in a different way than inanimate pieces of property. ALDF believes only because of the unique nature of this type of property - a companion animal like Groucho - the cases, law and overwhelming trend support an "actual value to plaintiff" measure of damages in cases where defendants kill or injure plaintiffs' animals, and where plaintiffs can prove the actual value of the animal. There is a growing consensus around the country that the legal system must recognize the important role companion animals play in American society. Regardless of the "property" designation, the traditional market value approach to damages no longer is viable, as many courts and legislatures already have recognized. All relevant factors must be evaluated if plaintiffs are to receive just compensation for the injuries they suffer in cases involving animals.

IV. CONCLUSION

Based upon the foregoing, amicus curiae Animal Legal Defense Fund urges this Court to affirmatively acknowledge companion animals such as Groucho as the unique articles of property that they are - living, feeling beings which routinely form long term emotional attachments with their owners - and reverse the trial courts grant of summary judgment, allowing the jury to make a determination of the special and important value of Groucho to Ms. Carbasho.

Respectfully Submitted this 5 day of January, 2005



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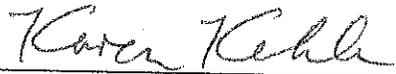
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CERTIFICATE OF SERVICE

I hereby certify that on the ^{5th} day of January, 2005, I served the foregoing *Brief of Amicus Curiae Animal League Defense Fund in Support of Appellant* upon all counsel of record, by depositing a true copy thereof in the United States mail, postage prepaid, in an envelope addressed as follows:

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