

## 2010 Update on Companion Animal Valuation

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Last year the American Veterinary Medical Association (AVMA) reported that only 2.1% of pet owners consider their animals to be “*property*,” while the remaining 97.9% describe them as “*family members*” or “*companions*.” Similarly, a recent Pew study determined that more people say they “Feel Close To” their dog than they do either parent—with cats coming in third behind moms. The quantifiable value of the emotional bond Americans share with companion animals is reflected in the enormous amounts they spend every day to maintain and prolong these relationships. In the latest figures released by the AVMA, consumers in this country spend \$24.5 Billion annually on veterinary care alone—generating more revenue than the entire U.S. recording and film industries *combined*. This substantial contribution to the national economy increases exponentially every year, with veterinary spending more than doubling in just the last decade. Overall, Americans are calculated to spend a total of \$47.7 Billion caring for their pets in 2010. To put this in perspective, that is more money than the Gross Domestic Product of 2/3rds of all other nations. Thus, it is clear that the public’s relationship with their companion animals has a concrete economic component.

Apart from opening up their pocketbooks, the nation’s kinship with companion animals has galvanized into unprecedented legal protections as the criminal law has evolved to reflect societal values. For instance, in 1993 there were only 7 states that prosecuted companion animal cruelty as a felony. Now, less than 2 decades later, there are only 4 states that *do not*—as 46 states currently punish felony abusers with fines of tens of thousands of dollars and prison sentences of up to 10 years!

Given that the emotional bond between humans and companion animals is the engine that drives a massive portion of our social economy, one might find it surprising that the civil legal system still treats this bond as if it were completely worthless. In fact, in nearly every state when a cat or dog is killed or injured by someone, the owner of that pet is not due *ANY* compensation under the law other than the animal’s purchase price or “fair market value.” To put this in graphic terms, someone could enter your house and beat your dog to death in front of you, yet you still could not be compensated one penny more than the replacement cost of acquiring another animal. Ironically, the perpetrator of such abuse could be prosecuted for cruelty and fined up to \$50,000—however, all of that money would go straight into the state treasury and the person who lost their beloved companion would receive nothing.

Although criminal penalties for animal abuse have rapidly been updated in the legislatures, the civil penalties for causing harm to companion animals have stagnated due to courts feeling hamstrung by centuries-old common law precedent. This is not mere hyperbole. In recent years, three State Appellate courts relied on decisions from the late 1800s to deny compensation to pet owners beyond their deceased animals’ market value. Thus, regardless of how a state’s criminal law views animal abuse, the age-old civil precedent still holds that all animals are “property,” and one can only receive “market value” damages for property. When one considers that in the late 19<sup>th</sup> Century our country had only just outlawed keeping other human beings as slaves, and women would not be allowed to vote for several more decades, it seems absurd that we would be drawing on that era’s judicial wisdom to determine the value of current social relationships.

As with both slavery and women’s suffrage, though, whenever courts and precedent lag too far behind prevailing social standards, legislatures have the ability to step in and update the civil law that judges must apply. Indeed, in two of those three recent cases referenced above, the courts implored the legislatures to step in and correct what they perceived as a gaping hole

in the law. Yet whenever such legislative forays have been made regarding the value of companion animals, veterinarians and their lobbyists have vehemently opposed any recognized increase in value beyond a pet's economic worth. This is because compensating consumers for the loss of an animal's companionship when someone kills a pet intentionally would logically lead to compensating them when a veterinarian causes the death of a pet by committing malpractice during any of the 200,000,000 visits Americans make to the veterinarian each year.

The AVMA's opposition to recognizing this value appears to present a sharp inconsistency, as they clearly acknowledge that the huge hike in veterinary revenues has been driven directly by the "non-economic" emotional attachment between Americans and their companion animals. For example, the lead '\$24.5 billion story' in the Jan. 2008 AVMA Journal carried the title: "Human-Animal Bond Boosts Spending on Veterinary Care." Similarly a few months ago, the magazine of the American Animal Hospital Association declared: "Every scientifically conducted survey of pet owners since 1995 confirms the vast majority of pet owners consider their pets as members of the family and they are willing to spend the money to keep them healthy." Indeed, every practicing veterinarian admittedly has charged a pet owner more than an animal's "economic value" just for a single visit.

The AVMA's justification for this position is the claim that recognizing the value of the human-animal bond as a two-way street—whereby instead of just profiting by it, veterinarians would have to give something back if they cause it harm—potentially their malpractice insurance rates would rise to the point that it would have a material impact on the price of veterinary care. This, they allege, would lead to "significantly limiting access to affordable pet health care," and possibly even "driving out practitioners."

Yet nowhere does the AVMA offer any factual evidence to support such assertions. Instead, they resort to floating loose analogies to human malpractice liability (which aren't relevant because AVMA has a self-insurance pool), or flatly insisting that "Common sense tells us that higher liability insurance rates and...what certainly will be a huge increase in lawsuits will result in a significant increase in the cost of providing veterinary care." (this is a direct quote from the AVMA website responding to questions from the rank and file asking if there was any actual proof that insurance rates would rise dramatically—which there isn't).

What the AVMA suggests that "Common sense tells us" has not proven true. According to AVMA's own insurance representatives, states such as Florida that have allowed non-economic damages against veterinarians for 46 years, have not seen *any* increase in either the proportion of lawsuits or in malpractice insurance rates compared to states that do not allow such damages. Furthermore, when the basic numbers behind veterinary malpractice insurance are actually calculated, they reveal such claims of the AVMA to be mathematically impossible.

Specifically, while companion animal veterinarians' salaries have doubled in the last 10 years, to an annual average of \$107,071, the majority still pay only \$182 for their malpractice insurance. When one divides this insurance cost among the average number of clients per veterinarian, it becomes evident that in 2010 **each pet owning household is currently paying only 10¢ per year for their share of veterinary malpractice coverage** (\$182 annual premium ÷ 1755 clients per veterinarian = 11¢ per client). Even if a veterinarian bumps up to the maximum \$1 million/\$3 million coverage for \$234 per year, that still comes out to only 13¢ per client—mere pennies per pet owner each year. Notably, in flat dollars this level of malpractice insurance costs \$8 less in 2010 than it did in 1989. Adjusting for inflation, it is uncovered that veterinarians are actually paying 45% less for these malpractice policies than they were over 20 years ago. Indeed, just this year veterinary malpractice insurance dropped another 5% across the board for companion animal veterinarians.

In 2004, DVM Magazine published the results of a study on non-economic damages conducted by the California Veterinary Medical Association and ABD Insurance—at the time the nation's second largest veterinary insurer. They concluded that allowing loss of companionship damages of up to \$25,000 would result in pet veterinarians' liability insurance roughly doubling to \$400 per year. Dividing that premium amount among veterinary clients equates to a meager 23¢ total per pet-owning household—an amount so low that it makes a mockery of claims that non-economic damages will price people out of pet care.

But suppose the CVMA and ABD's actuarial experts with all the relevant data are wrong. Suppose they are wrong by two orders of magnitude, and veterinary malpractice insurance truly "skyrocketed" by 10,000%, to *100 times* its current level—a staggering \$23,400, which would be greater than the average \$19,558 currently paid by human anesthesiologists for liability coverage. Even under this preposterous scenario, the total veterinary premium would come out to an annual cost increase of \$13 per pet owning household. Viewed as a percentage, this \$13 per year would equate to a 3.7% increase over the current \$356 spent annually by dog owners on veterinary expenditures, and a 6.8% increase over the \$190 average spent by cat owners.

To evaluate whether these 4% and 7% price increases would have a material impact on what pet owners are willing or able to pay for services, let us revisit the recent trends in veterinary expenditures. Again, during the 10-year period from 1996–2006 consumer spending on veterinary care increased by 109%, and veterinarians increased their prices nearly 9% per year—pocketing the extra profit and doubling their salaries in the process. Accordingly, even in this virtually impossible "worst case scenario" where veterinarians pay more for liability insurance than human anesthesiologists, it is mathematically impossible that increased insurance costs would have ANY appreciable impact on either the affordability or availability of veterinary care. Therefore any representative of the veterinary community making this argument is either misinformed or attempting to mislead.

In sum, the only published actuarial study on non-economic damages concluded that allowing up to \$25,000 in compensation for the intentional or negligent killing of a companion animal would increase the average pet owner's veterinary expenses by only 13¢ per year. Perpetuating the common law failure to recognize the economic value of the animal companionship severely undermines the efficacy of the tort system as a mechanism to prevent and compensate unnecessary loss. Because the potential for such compensation will provide an additional deterrent against abhorrent acts of cruelty, and improve the quality of veterinary care by reducing the number of unnecessary accidents, this paltry 13¢ premium is a price that American pet owners are more than willing to pay.