

**LEAVING PAWPRINTS ON OUR HEARTS: BYSTANDER
RECOVERY FOR WITNESSING THE NEGLIGENT
KILLING OF A COMPANION ANIMAL**

By
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According to the Pew Research Center, nearly all (97%) Americans with companion animals consider their “furbabies” to be members of the family. This is reflected in a number of other areas, from state and federal laws regarding emergency management that recognize four-legged members of the family unit to divorce and custody laws in multiple states that require courts to treat companion animals not as property, but as family members. Sociologists and psychologists have also documented the expanding recognition of the “multispecies family.” However, the majority of states’ laws still view companion animals as chattel property, even as more and more jurisdictions allow the recovery of intangible damages for the loss of such companion animals. But what about bystander recovery?

Traditional bystander recovery permits a plaintiff to recover for the emotional distress brought on by contemporaneously perceiving the death of a close family member caused by a third party’s negligence. This Article discusses an important new legal trend, as courts around the country have begun to address whether to allow bystander recovery claims for witnessing the death of a companion animal to go forward. As this Article highlights through examination of actual cases, courts nationwide have expanded the definition of “close family member” beyond the traditional norms, so why not include the four-legged members of the family? This Article offers critical insights into the legal arguments, both pro and con.

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I. INTRODUCTION

Imagine a scene that has played out innumerable times: the quiet of a sleepy suburban neighborhood is suddenly pierced by the squealing of brakes and a sickening thump. The mother who had been gardening alongside her nine-year-old son looked up in horror as the beloved family dog she had frantically called to just seconds earlier is violently struck and killed by a speeding, inattentive driver. Days later—days marked by her son’s nightmares and her own frequent crying jags as the horrific scene kept replaying itself in her head—the mother calls a lawyer for advice. His discouraging counsel was to “forget about it,” since the law viewed pets only as property, and did not provide a remedy for the grief and anguish experienced by the mother and son. To the mother, never before had the law seemed so cold, and so wrong. Their dog Buster was not merely the sum value of the animal shelter’s long-forgotten adoption fee; he was a member of their *family*.

Ask virtually anyone who has lost a companion animal, and they will tell you it is a death in the family. When the tragic event is the result of a third party’s negligence, however, and it is witnessed by other family members, the law historically has left the bereaved with no solace. As this Article will argue, given the way that the bystander recovery cause of action has expanded while our perspective on companion animals as family members has similarly evolved, the time is ripe for a change.

In 2022, Americans spent \$136.8 billion on their companion animals, an increase of nearly 11% from 2021.¹ Annually, we spend an average of \$1,533 per dog on “essential” expenses such as food, veterinary care, and grooming.² But Americans also spend significantly on

¹ Michelle Megna, *Pet Ownership Statistics 2025*, FORBES ADVISOR (Jan. 2, 2025), <https://www.forbes.com/advisor/pet-insurance/pet-ownership-statistics/> (accessed Jan. 31, 2025).

² *Id.*

other items for companion animals, from toys to treats to “doggy day care” to clothing, spa days, and even birthday cakes.

Beyond the financial outlay, there are other indications of the place that companion animals occupy in our lives. Like other family members, they can influence our choice in jobs; 4.57% of Americans have left a job they liked because another employer had a pet-friendly office or allowed them to work from home.³ Another 5.25% have taken a pay cut or accepted a position with fewer benefits in order to work in a pet-friendly environment.⁴ Companion animals also impact our relationships; 6.78% of Americans have broken up with a significant other who did not like their companion animal.⁵

Part II begins with an examination of the tort of bystander recovery for negligent infliction of emotional distress and how the definition of who we consider to be a “close relative” has expanded over the years. As our concept of the family unit has changed to encompass less traditional structures, so have courts adapted to evolving notions of who is considered “family.” Part III looks at how humans have come to consider companion animals as family members, and how our feelings for them—especially in times of crisis or loss—closely parallel our sentiments for human members of the family. Part IV discusses how courts and legislatures have been slowly changing their attitudes toward companion animals. Recognizing (sometimes begrudgingly) the importance of the ties to the companion animals in our lives, judges and lawmakers are providing greater protections for our four-legged family members, including in custody orders. Finally, Part V provides a comprehensive, state-by-state analysis of the jurisdictions that have considered the viability of a bystander recovery cause of action for emotional distress stemming from the injury or death of a companion animal. Does recognizing such a cause of action violate public policy or risk opening the floodgates to unmeritorious litigation? Or does it constitute a belated acknowledgment of the genuine place that companion animals enjoy in our lives, our families, and our hearts?

II. HOW THE TORT OF BYSTANDER RECOVERY HAS EVOLVED

The issue of whether a witness may recover damages for emotional distress suffered as a result of witnessing the tortiously caused serious injury to or death of another has long been controversial. At early common law, damages for “shock” or “fright” were not available except in cases of intentional assault.⁶ Gradually, recognition of the

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ See Calvert Magruder, *Mental and Emotion Disturbance in the Law of Torts*, 49 HARV. L. REV. 1033, 1040 (1936), <https://doi.org/10.2307/1333061> (accessed Feb. 1, 2025) (involving a mother who died of shock after watching her child get killed while crossing a highway, where the motorist was not found liable for death of the mother).

validity of psychic injuries led to courts easing restrictions on emotional distress recoveries. This began with courts acknowledging that plaintiffs who suffered physical injuries should be allowed to recover for the mental suffering associated with such harms.⁷ Next, courts expanded recovery with the “zone of danger” rule, allowing damages for those who had been threatened with, but did not actually suffer, physical harm.⁸

Judicial resistance to the notion of bystander recovery was grounded in public policy considerations that have continued to echo in present-day treatments of virtual bystander recovery. Courts pointed to the potential wave of litigation that would result,⁹ the danger of fraudulent claims,¹⁰ and the possibility of unlimited liability for defendants.¹¹ This resistance manifested itself in three distinct theories that emerged to deal with the concern over providing for recovery for bystanders alleging emotional distress. The first of these, the “impact rule,” provided that in order to recover for emotional distress, the bystander herself had to be physically injured by the tortfeasor’s negligent act.¹² After this theory failed to prevent fraudulent claims, a majority of jurisdictions instead adopted the “zone of danger” rule. Under this theory, the bystander could recover for negligent infliction of emotional distress if they feared for their safety while occupying a zone of possible physical peril. But while many states followed this “zone of danger” reasoning, the test still met with considerable criticism over the “artificial distinctions” it set that dismissed individuals with viable claims.¹³

A handful of states still follow the “impact rule,” including Florida,¹⁴ Georgia,¹⁵ Kentucky,¹⁶ and Oregon.¹⁷ Several more still adhere to the

⁷ See *Pittsburgh C.C. & S. L. R. Co. v. Story*, 63 Ill. App. 239, 244 (1896) (holding that in an action for bodily injuries, mental as well as physical suffering resulting from the physical harm may be considered in estimating damages).

⁸ See *Tobin v. Grossman*, 249 N.E.2d 419, 420, 423 (N.Y. App. Div. 1969) (involving a mother who was inside a neighbor’s home when her child was struck by a car).

⁹ *Id.* at 422.

¹⁰ See, e.g., *Manie v. Matson Oldsmobile-Cadillac Co.*, 148 N.W.2d 779, 781–82 (Mich. Sup. Ct. 1967) (explaining how not requiring a physical impact could lead to fraudulent emotional distress claims).

¹¹ See, e.g., *Sinn v. Burd*, 404 A.2d 672, 687–92 (Penn. Sup. Ct. 1979) (Roberts, J., dissenting) (explaining how not requiring physical proof of injury could lead to unlimited liability for defendants).

¹² See, e.g., *Braun v. Craven*, 51 N.E. 657, 660 (Ill. Sup. Ct. 1898) (explaining that a bystander had to be physically harmed by the tortfeasors action in order to recover).

¹³ See, e.g., *Landreth v. Reed*, 570 S.W.2d 486, 489 (Tex. Civ. App. 1978) (explaining that neither method is perfect for resisting fraudulent claims while allowing valid claims).

¹⁴ *Willis v. Gami Golden Glades, LLC*, 967 So. 2d 846, 850 (Fla. 2007).

¹⁵ *Strickland v. Hodges*, 216 S.E.2d 706, 707 (Ga. Ct. App. 1975).

¹⁶ *Nationwide Prop. & Cas. Ins. Co. v. Caple*, 2008 WL 2696904, at *2 (Ky. Ct. App. July 11, 2008).

¹⁷ *Saechao v. Matsakoun*, 717 P.2d 165, 169 (Or. Ct. App. 1986).

“zone of danger” test, including Alabama,¹⁸ Colorado,¹⁹ Delaware,²⁰ Illinois,²¹ Kansas,²² Missouri,²³ New York,²⁴ North Dakota,²⁵ and Vermont.²⁶ But the majority of jurisdictions have adopted some version of the ‘relative bystander’ test first articulated by the California Supreme Court in its 1968 decision, *Dillon v. Legg*.²⁷ In *Dillon*, the California Supreme Court held that a mother could recover for the emotional shock and physical injury resulting from seeing her young daughter run over by the defendant when she was in close proximity to the collision but not in the “zone of danger” herself.²⁸ Responding to concerns about “potentially infinite liability” for bystander negligent infliction of emotional distress (NIED) claims, the *Dillon* court pronounced three factors that would help determine the element of foreseeability in such cases: (1) whether the plaintiff was located near the scene of the accident; (2) whether the shock resulted from a direct emotional impact stemming from sensory and contemporaneous observance of the incident (as opposed to learning about it from others); and (3) whether the plaintiff and victim were closely related.²⁹

Over the following two decades, the California Supreme Court and various appellate courts expanded the bystander recovery doctrine, recognizing viable NIED claims in a variety of circumstances. For example, in one case in which the husband was present, but did not see his wife struck and killed while unloading groceries from the family car, the court said a visual perception was not necessary, as long as there were other sensory, contemporaneous observances.³⁰ It also later allowed claims that did not involve a sudden occurrence, as in the NIED claims of a mother who watched her son suffer excruciating pain over several days before dying.³¹ Other cases relaxed the “contemporaneous” prong, allowing NIED claims to proceed where a parent came upon the scene of the accident within minutes.³²

¹⁸ *AALAR, Ltd. v. Francis*, 716 So. 2d 1141, 1147 (Ala. 1998).

¹⁹ *Colwell v. Mentzer Invs., Inc.*, 973 P.2d 631, 638 (Colo. App. 1998).

²⁰ *Pritchett v. Delmarva Builders*, 1998 WL 283376, at *2 (Del. Super. Ct. Feb. 27, 1998).

²¹ *Corgan v. Muehling*, 574 N.E.2d 602, 605 (Ill. 1991).

²² *Grube v. Union Pac. R.R. Co.*, 886 P.2d 845, 846 (Kan. 1994).

²³ *Asaro v. Cardinal Glennon Mem'l Hosp.*, 799 S.W.2d 595, 596 (Mo. 1990).

²⁴ *Trombetta v. Conkling*, 626 N.E.2d 653, 654–55 (N.Y. 1993).

²⁵ *Whetham v. Bismark Hosp.*, 197 N.W.2d 678, 684 (N.D. 1972).

²⁶ *Zeno-Ethridge v. Comcast*, 315 A.3d 978, 982 (Vt. 2024).

²⁷ *Dillon v. Legg*, 441 P.2d 912, 920 (Cal. 1968).

²⁸ *Id.* at 924–25.

²⁹ *Id.* at 919–20.

³⁰ *Krouse v. Graham*, 562 P.2d 1022, 1031 (Cal. 1977).

³¹ *Ochoa v. Superior Ct.*, 703 P.2d 1, 3, 7 (Cal. 1985).

³² *See, e.g., Nazarov v. Superior Ct.*, 80 Cal. App. 3d 553, 563 (1978) (“There was no emotional impact and shock until the consequences of the events unfolding before the observer, but then not fully comprehended, were subsequently explained.”).

However, beginning with its 1989 decision in *Thing v. La Chusa*, the California Supreme Court pulled back from the expansionist trend, holding that a bystander plaintiff must be “present at the scene of the injury-producing event at the time it occurs and is then aware that it is causing injury to the victim.”³³ The primary rationale for narrowing the test (including maintaining and re-affirming the ‘closely related’ prong) was to limit the scope of liability. The *Thing* court, citing an earlier decision, recognized that expanding the scope of recovery would lead to costs “borne by the public generally,” in the form of higher insurance premiums and other costs.³⁴ Following *Thing*, subsequent decisions rejected the NIED claims of daughters whose mother’s artery was cut during surgery, because they were not present in the operating room;³⁵ of a wife who heard (but did not see) the sound of a sign falling on her husband’s head;³⁶ and of a scuba diver’s sister who witnessed his death during a dive but did not know it was due to defective equipment.³⁷

Dillon and its progeny—in California and elsewhere—sought to impose clear boundaries for recovery for NIED claims, even though these “bright lines” have less to do with foreseeability from the standpoint of the defendant than to elements unique to the plaintiff (i.e., the plaintiff’s location, relationship to the victim, and perception of the injury or event). What the *Dillon* court and others did not foresee was how societal changes might impact two of the key aspects of its test. One, of course, is contemporaneous perception of the injury or event, with modern technology impacting our definition of what it means to contemporaneously perceive or experience the injury of another.

Technology has had a tremendous impact on how we perceive the world. Livestreaming applications enable us to perceive things as they are happening. We can communicate with friends and loved ones via FaceTime, conduct virtual business meetings via platforms like Zoom, and view strangers approaching our front door thanks to the Ring doorbell app. But does this constitute contemporaneous perception for bystander recovery purposes? A growing number of courts are confronting this issue. In *Clifton v. McCammack*, the Indiana Supreme Court rejected the bystander recovery claim of a father who had learned of his son’s death through watching a live television news report of the accident.³⁸ Yet, just a few years later, in *Ko v. Maxim Healthcare Services, Inc.*, the Court of Appeals for California’s Second Appellate District recognized a bystander recovery claim for parents who had witnessed the abuse of their special needs child livestreamed to their smartphones from a “nanny cam.”³⁹ The court acknowledged that “the ubiquity of

³³ *Thing v. La Chusa*, 771 P.2d 814, 829 (Cal. 1989).

³⁴ *Id.* at 827 (citing *Borer v. Am. Airlines*, 563 P.2d 858, 860, 862 (Cal. 1977)).

³⁵ *Bird v. Saenz*, 51 P.3d 324, 332 (Cal. 2002).

³⁶ *Ra v. Superior Ct.*, 154 Cal. App. 4th 142, 152–153 (2007).

³⁷ *Fortman v. Förvaltningsbolaget Insulan AB*, 212 Cal. App. 4th 830, 845 (2013).

³⁸ *Clifton v. McCammack*, 43 N.E.3d 213, 215 (Ind. 2015).

³⁹ *Ko v. Maxim Healthcare Servs., Inc.*, 272 Cal. Rptr. 3d 906, 908 (2020).

home surveillance systems and videoconferencing applications since the advent of internet-enabled smartphones has manifestly changed [the ways] in which families spend time together and monitor their children.”⁴⁰

However, it is instructive to note how another societal change, not technological adoption but the changing nature of familial and relationship dynamics, has caused the tort of bystander recovery to evolve by asking the question, “what qualifies as closely related?” This prong has witnessed the most activity, as courts fulfilling their gatekeeping function have struggled to keep up with evolving notions of ‘closely related’ beyond immediate family. For example, the California Supreme Court held that a cohabitational partner did not satisfy the “closely related” prong,⁴¹ while the New Jersey Supreme Court reached the opposite conclusion.⁴² Is marriage a bright line rule? Not according to the Supreme Court of New Hampshire, which permitted NIED recovery for a fiancée.⁴³ Yet courts in Indiana⁴⁴ and Hawaii⁴⁵ held fast to requiring marriage in denying NIED claims of fiancées. What about same-sex marriages? In *Coon v. Joseph*, a California appellate court denied NIED recovery to the LGBT life partner of the victim, reasoning that only a parent-child, grandparent-grandchild, or legally recognized marriage relationship would satisfy the closely related prong.⁴⁶ In a post-*Obergefell* world, it is hard to imagine same-sex marriages being denied this recognition. Existing case authority in multiple jurisdictions has declined to extend bystander recovery for NIED to close cousins⁴⁷ and nieces,⁴⁸ but in a 21st century reality of blended families, children being raised by grandparents or aunts and uncles, and other nontraditional family relationships, will such distinctions survive? More importantly, *should* they survive? A growing number of scholars have called for an updating of the ‘closely related’ test in the context of bystander recovery in NIED claims.⁴⁹

⁴⁰ *Id.* at 917.

⁴¹ *Elden v. Sheldon*, 46 Cal. 3d 267, 273 (Cal. 1988).

⁴² *Dunphy v. Gregor*, 642 A.2d 372, 380 (N.J. 1994).

⁴³ *Graves v. Estabrook*, 818 A.2d 1255, 1262 (N.H. 2003).

⁴⁴ *Smith v. Toney*, 862 N.E.2d 656, 657 (Ind. 2007).

⁴⁵ *Milberger v. KBHL, LLC*, 486 F. Supp. 2d 1156, 1167 (D. Haw. 2007).

⁴⁶ *Coon v. Joseph*, 237 Cal. Rptr. 873, 874, 876 (Cal. Ct. App. 1987).

⁴⁷ *Blanyar v. Pagnottie Enters.*, 679 A.2d 790, 792 (Pa. Super. Ct. 1996).

⁴⁸ *Trombetta*, 626 N.E.2d at 653.

⁴⁹ See, e.g., David Sampedro, *When Living as Husband and Wife Isn't Enough: Re-evaluating Dillon's Close Relationship Test in Light of Dunphy v. Gregor*, 25 STETSON L. REV. 1085, 1088 (1996) (arguing factors from *Dunphy* are sufficient to define parameters of cause of action for NIED for unmarried cohabitants); Dennis G. Bassi, *It's All Relative: A Graphical Reasoning Model for Liberalizing Recovery for Negligent Infliction of Emotional Distress Beyond the Immediate Family*, 30 VAL. U. L. REV. 913, 917 (1996), <https://scholar.valpo.edu/vulr/vol30/iss3/4/> (accessed Feb. 6, 2025) (proposing an alternative approach for legal recognition of a “non-family bystander” for NIED claims); Colin E. Flora, *Special Relationship Bystander Test: A Rational Alternative to the Closely Related Requirement of Negligent Infliction of Emotional Distress for Bystanders*, 39 RUTGERS L. REC. 28, 29 (2012), <https://lawrecord.com/2012/01/26/>

Such ‘updating’ of who we consider family should include a modern assessment of the importance that our four-legged family members occupy in our lives. As the next Part demonstrates, the latest research combined with societal changes reveal the significance of companion animals to our daily existence, as well as the depth of the void left by their deaths as a result of the negligence of others.

III. COMPANION ANIMALS AS FAMILY MEMBERS

In emphasizing the importance of a relational standard for making recovery available for the negligent infliction of emotional distress, the New Jersey Supreme Court observed that it is the presence of “deep, intimate familial ties” that makes “the harm to emotional tranquility so serious and compelling.”⁵⁰ It added “The genuine suffering which flows from such harm stands in stark contrast to the setbacks and sorrows of everyday life, or even to the apprehension of another, less intimate person.”⁵¹

Increasingly, Americans are viewing these familial ties as being equally applicable to four-legged members. A 2023 Pew Research Center survey revealed that nearly all U.S. pet owners—97%—say their pets are part of their family.⁵² The depth of these feelings is equally impressive, with more than half (51%) considering their companion animals as not just a part of the family, but “as much a part of their family as a human member.”⁵³ According to the Center, this sentiment cuts across age, race, and ethnicity boundaries.⁵⁴

The American Veterinary Medical Association’s findings appear to support this. According to its survey, 85% of dog owners and 76% of cat owners think of their companion animals as family.⁵⁵ Scientists seem to agree as well. Sociologist Andrea Laurent-Simpson, author of *Just Like Family: How Companion Animals Joined the Household*, says that dogs and cats within “multispecies family,” have a profound impact on everything from fertility considerations to family finance and the household structure itself.⁵⁶ She points out, “The multispecies family without

special-relationship-bystander-test-a-rational-alternative-to-the-closely-related-requirement-of-negligent-infliction-of-emotional-distress-for-bystanders/ (accessed Feb. 6, 2025) (arguing for replacement of close familial relationship to “persons who would have a sufficient ‘special relationship’”).

⁵⁰ *Portee v. Jaffee*, 417 A.2d 521, 526–27 (N.J. 1980).

⁵¹ *Id.* at 527.

⁵² Anna Brown, *About Half of U.S. Pet Owners Say Their Pets Are as Much a Part of Their Family as a Human Member*, PEW RSCH. CTR. (July 7, 2023), <https://www.pewresearch.org/short-reads/2023/07/07/about-half-us-of-pet-owners-say-their-pets-are-as-much-a-part-of-their-family-as-a-human-member/> (accessed Feb. 2, 2025).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ Southern Methodist University, *Sociologist Confirms What Pet Parents Know: Pets Really Are Part of the Family*, PHYS.ORG (July 16, 2021), <https://phys.org/news/2021-07-sociologist-pet-parents-pets-family.html> (accessed Feb. 2, 2025).

⁵⁶ *Id.*

children is emerging as a new and acceptable form of diversified family structure.⁵⁷ As Laurent-Simpson notes, the ascent of nontraditional family structures—including single-parent families, grandparents raising their grandchildren, LGBTQ families, etc.—helped to pave the way for the multispecies family.⁵⁸

Other sciences have analyzed the nature and depth of human-animal bonds as well, finding more similarities than differences with human-human bonds. Companion animals are a source of comfort and attachment, connecting with their humans much like an infant bonds with their parents. Studies have shown that the same hormones (such as oxytocin) release in human-companion animal interactions as in parent-infant ones.⁵⁹ On the other end of the spectrum, studies have found that grief over the loss of a pet “can be just as severe, prolonged, and debilitating as when a close human companion dies,” with people experiencing sadness, numbness, and anger.⁶⁰ This “pet parenting,” more scientifically described as “alloparenting,” is a natural result of the human capacity for nurturing to be flexible, says biocultural anthropologist Shelly Volsche of the University of Wisconsin at River Falls.⁶¹ It goes beyond those most directly related to us—human family members—and extends to those companion animals we have invited into our homes and our lives.

There is no shortage of published scientific research documenting how human have come to view their companion animals as family members. This includes studies analyzing the bond between homeless people and their companion animals,⁶² documenting the physiological benefits and psychological advantages of viewing companion animals as family members,⁶³ and the nature of human/companion animals family bonds.⁶⁴ The depth of human emotional ties to their companion animals is hardly a recent phenomenon, either. Archaeologists found the remains of a human and cat buried together on the island of Cyprus around 9,500 years ago—believe to be the oldest known evidence of a

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Katherine J. Wu, *Pets Really Can Be Like Human Family*, ATLANTIC (Jan. 16, 2024), <https://www.theatlantic.com/health/archive/2024/01/pet-owners-parents-love-acceptance/677121/> (accessed Feb. 2, 2025).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Marc Bekoff, *Among Homeless People, Dogs Eat First and “Absorb Empathy,”* PSYCH. TODAY (Mar. 31, 2019), <https://www.psychologytoday.com/us/blog/animal-emotions/201904/among-homeless-people-dogs-eat-first-and-absorb-empathy> (accessed Feb. 2, 2025).

⁶³ Allen R. McConnell, *The Well-Being Benefits of Seeing Pets as Family Members*, PSYCH. TODAY (Aug. 13, 2019), <https://www.psychologytoday.com/us/blog/the-social-self/201908/the-well-being-benefits-seeing-pets-family-members> (accessed Feb. 2, 2025).

⁶⁴ Froma Walsh, *Human-Animal Bonds II: The Role of Pets in Family Systems and Family Therapy*, 48:4 FAMILY PROCESS 481–99 (Dec. 2009), <https://doi.org/10.1111/j.1545-5300.2009.01297.x> (accessed Feb. 7, 2025).

special friendship between humans and cats.⁶⁵ The cat's bones were articulated, an indication that it was "intentionally buried with the human, possibly to accompany its owner to the hereafter."⁶⁶

Researchers have documented the long-term feelings of loss, including loss of companionship, following the death of a pet.⁶⁷ The degree and extent of the grief experienced after losing a companion animal is one measure of the strong connection between humans and their four-legged family members. In one study that analyzed the parallels between grief following the loss of a companion animal and the loss of a human loved one, researchers observed that 18% of the respondents were unable to carry out their daily life activities following the death of their pet.⁶⁸ In another study, researchers discovered that the grief responses following the loss of a companion animal were comparable to the grief reactions following the loss of a spouse, parent, or child.⁶⁹ Numerous other studies have examined how humans react to the death of a companion animal, with one concluding that many respondents experience grief and sorrow consistent with the death of a close friend or family member.⁷⁰

Indeed, it is not only the reaction that Americans have to the loss of a companion animal that demonstrates this familial bond, but also how integral pets are to our daily lives. In 2024, the value of the pet industry in the United States reached \$150.6 billion, with spending on companion animals more than doubling over the past decade.⁷¹ An estimated 46% of American pet owners spend the same amount of money—or more—on the health care of their companion animals as they do on their own.⁷² Concern for our companion animals' well-being significantly impacts everything from where we choose to live (Is the area pet-friendly? Will there be enough room for our companion animals?) to when or whether

⁶⁵ Elizabeth Pennisi, *Early Origin for the Purrfect Pet*, SCIENCE (Apr. 8, 2004), <https://www.science.org/content/article/early-origin-purrfect-pet> (accessed Feb. 2, 2025).

⁶⁶ *Id.*

⁶⁷ DAVID FAVRE & PETER L. BORCHELT, ANIMAL LAW AND DOG BEHAVIOR 64 (1999).

⁶⁸ MARY STEWART, *Loss of a Pet—Loss of a Person: A Comparative Study of Bereavement*, in NEW PERSPECTIVES ON OUR LIVES WITH COMPANION ANIMALS, 390 (Aaron Honori Katcher & Alan M. Beck eds., 1983).

⁶⁹ Marilyn K. Gerwolls & Susan M. Labott, *Adjustment to the Death of a Companion Animal*, 7 ANTHROZOÖS 172, 176–77, 182 (Sept. 1, 1994), <https://doi.org/10.2752/089279394787001826> (accessed Mar. 14, 2025).

⁷⁰ Debra Lynn Stephens & Ronald Paul Hill, *The Loss of Animal Companions: A Humanistic and Consumption Perspective*, 4 SOC'Y & ANIMALS 189, 190 (1996), <https://doi.org/10.1163/156853096x00151> (accessed Feb. 24, 2025).

⁷¹ I. Mitic, *Insightful Pet Spending Statistics: Americans are Spending More on Pets Than Ever*, FORTUNLY (updated Jan. 23, 2025), <https://fortunly.com/statistics/pet-spending-statistics/> (accessed Jan. 30, 2025).

⁷² Katie Kuehner-Hebert, *Americans Willing to Spend As Much On Pets' Health Care As Their Own*, BENEFITS PRO (Aug. 16, 2019), <https://www.benefitspro.com/2019/08/16/americans-willing-to-spend-as-much-on-pets-health-care-as-their-own/?slreturn=20250406181428> (accessed Feb. 20, 2025).

to have a child, to our travel and leisure plans.⁷³ For example, 78% of American pet owners travel with their pets each year, and 52% of travelers base their plans on accommodating their companion animals.⁷⁴

Few things illustrate the extent of humans' familial bonds with companion animals better than our concern for them during times of crisis. The stark images of people during Hurricane Katrina and other natural disasters clutching their beloved dog or cat, or refusing to evacuate without their companion animals, are indelibly seared into our collective consciousness. One recent study, collating years of research, found that humans will risk anything, even life-threatening situations, to avoid being separated from their companion animals.⁷⁵ Another poll revealed that 50% of pet owners would be "very likely" to risk their own lives to save their companion animal's life, while another 33% answer that they would be "somewhat likely" to do so.⁷⁶

Clearly, companion animals are seen as family members who provide, and are provided with, emotional support, companionship, and protection. They satisfy interpersonal needs of inclusion, control, respect, and affection. The rewards of having them as part of the family unit outweigh the costs. It is, therefore, no surprise that for some time now, legal scholars have been calling for a reevaluation of how the legal system views companion animals and the nature of their valuation.⁷⁷ Candidly, some voices disagree, making the public policy argument that recognizing noneconomic damages like emotional distress for the loss of a companion animal will open the floodgates to new lawsuits and add not only heightened uncertainty to litigation but also cause the price of pet welfare services and products to rise.⁷⁸

⁷³ Nicole Cosgrove, *12 Interesting Pet Travel Statistics & Trends to Know: 2025 Update*, DOGSTER (updated Jan. 7, 2025), <https://www.dogster.com/lifestyle/pet-travel-statistics-trends> (accessed Jan. 28, 2025).

⁷⁴ *Id.*

⁷⁵ Robyn White, *Owners Will Risk Anything for Their Pets, Research Confirms*, NEWSWEEK (updated Jan. 30, 2024), <https://www.newsweek.com/owners-risk-anything-pets-1864293> (accessed Jan. 27, 2025).

⁷⁶ William C. 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), <https://digitalcommons.law.villanova.edu/vlr/vol47/iss2/4> (accessed Jan. 27, 2025).

⁷⁷ *See, e.g., id.* at 447 (arguing that, "the market value approach is insufficient to compensate pet owners and that the actual value of the pet to its owner is the most efficient benchmark"); Sonia S. Waisman & Barbara R. Newell, *Recovery of 'Non-Economic' Damages for Wrongful Killing or Injury of Companion Animals: A Judicial and Legislative Trend*, 7 ANIMAL L. 45, 45 (2001), <https://lawcommons.lclark.edu/alr/vol7/iss1/7/> (accessed Jan. 27, 2025) (calling for state laws to "explicitly acknowledge the significance of the human-animal companion relationship" and "codify recovery for such non-economic injuries").

⁷⁸ *See, e.g.,* Phil Goldberg, *Courts and Legislatures Have Kept the Proper Leash on Pet Injury Lawsuits: Why Rejecting Emotion-Based Damages Promotes the Rule of Law, Modern Values, and Animal Welfare*, 6 STAN. J. ANIMAL L. & POL'Y 30, 73–74, 76 (2013), <https://law.stanford.edu/publications/courts-and-legislatures-have-kept-the-proper-leash-on-pet-injury-lawsuits-why-rejecting-emotion-based-damages-promotes-the-rule-of-law>

But as the following section demonstrates, while the wall of the majority viewpoint of American courts and legislatures remains intact—companion animals are mere chattel property—the wall has developed some cracks. Companion animals can be treated as beneficiaries of trusts, a growing number of states consider a pet’s well-being in deciding custody, and more and more courts are allowing claims for emotional distress damages to go forward (albeit under more limited circumstances, such as being secondary to an intentional or reckless act). Against the backdrop of this changing legal landscape, Part V will examine the extension of such damages to bystander recovery contexts.

IV. TAKING IT TO THE COURTS: CHANGING JUDICIAL ATTITUDES TOWARD COMPANION ANIMALS

A. *THE MAJORITY RULE: COMPANION ANIMALS ARE MERE PROPERTY*

For the many courts across the country that have considered emotional distress damages for the loss of or injury to a companion animal, the typical reaction is along the lines of that made by the Supreme Court of Virginia in 2006:

It is beyond debate that animals, particularly dogs and cats, when kept as pets and companions, occupy a position in human affections far removed from livestock. Especially in the case of owners who are disabled, aged or lonely, and emotional bond may exist with a pet resembling that between parent and child, and *the loss of such an animal may give rise to grief approaching that attending the loss of a family member.*⁷⁹

Nevertheless, the court hastened to add that “the law in Virginia, as in most states that have decided the question regards animals, however beloved, as personal property.”⁸⁰ Accordingly, it rejected the emotional distress claim at issue.⁸¹

Indeed, in most jurisdictions there is no recovery of damages for emotional distress arising out of injury to or the death of companion animals because of this “animals as chattel property” view.⁸² In the majority

modern-values-and-animal-welfare/ (accessed Jan. 27, 2025) (arguing that introducing “emotional harm damages” in pet litigation “could put essential pet services and products out of reach of many responsible owners” and create a “cottage industry” of potential litigation).

⁷⁹ *Kondaurov v. Kerdasha*, 629 S.E.2d 181, 186 (Va. 2006) (emphasis added).

⁸⁰ *Id.* at 186–87.

⁸¹ *Id.* at 187.

⁸² *E.g.*, *Mitchell v. Hinrichs*, 27 P.3d 309, 311, 314 (Alaska 2001); *Roman v. Carroll*, 621 P.2d 307, 308 (Ariz. Ct. App. 1980); *Pantelopoulos v. Pantelopoulos*, 869 A.2d 280, 283–84 (Conn. Super. Ct. 2005); *Nichols v. Sukaro Kennels*, 555 N.W.2d 689, 691 (Iowa 1996); *Krasnecky v. Meffen*, 777 N.E.2d 1286, 1287–88, 1290 (Mass. App. Ct. 2002); *Koester v. VCA Animal Hosp.*, 624 N.W.2d 209, 211–12 (Mich. Ct. App. 2000); *Fackler v. Genetzky*, 595 N.W.2d 884, 891–92 (Neb. 1999); *Harabes v. Barkery*, 791 A.2d 1142, 1144, 1146 (N.J. Super. Ct. Law Div. 2001); *Fowler v. Town of Ticonderoga*, 516 N.Y.S.2d 368, 370 (N.Y.

of states, courts uniformly limit damages awards in connection with the death of a pet to the fair market value of the companion animal.⁸³

A minority of states and courts have embraced a different approach, allowing plaintiffs to recover emotional distress claims for injury to or the death of a companion animal. The Hawaii Supreme Court reasoned, for example, that since its existing precedent permitted a plaintiff to recover emotional distress damages for the negligent destruction of tangible property, it made sense to allow the recovery of emotional distress for the negligent death of a pet.⁸⁴ Both the Supreme Court of Alaska⁸⁵ and the Idaho Court of Appeals⁸⁶ have held that the relationship between a person and her companion animal is a sufficiently close one to justify recovery of damages for *intentional* infliction of emotional distress. In more narrow circumstances, the Supreme Court of Tennessee held that a veterinarian's threat to kill a dog because of unpaid vet bills was a sufficient basis for recovery under an intentional infliction of emotional distress theory.⁸⁷

Occasionally, a legislative path has been created to recovering emotional distress damages from the loss of a companion animal. Illinois, for example, passed a statute allowing a plaintiff to recover emotional distress damages only in circumstances where the pet was injured subject to an act of aggravated cruelty or bad faith.⁸⁸ There is no recovery permitted in cases involving ordinary negligence.⁸⁹ The Tennessee legislature took a different approach, allowing plaintiffs to recover non-economic damages for the negligent death of a companion animal, but capping those damages at \$5,000.⁹⁰

B. A STEP IN THE RIGHT DIRECTION? COMPANION ANIMALS AND DIVORCE PROCEEDINGS

American courts have come a long way from the 1897 U.S. Supreme Court decision in *Sentell v. New Orleans Carrollton Railroad Co.*, in which the Court described dogs as having “no intrinsic value,” and

App. Div. 1987); *Shera v. N.C. State Univ. Veterinary Teaching Hosp.*, 723 S.E.2d 352, 354, 357 (N.C. Ct. App. 2012); *Strawser v. Wright*, 610 N.E.2d 610, 612 (Ohio Ct. App. 1992); *Daughen v. Fox*, 539 A.2d 858, 864 (Pa. Super. Ct. 1988); *Miller v. Peraino*, 626 A.2d 637, 640 (Pa. Super. Ct. 1993); *Petco Animal Supplies, Inc. v. Schuster*, 144 S.W.3d 554, 561 (Tex. App. 2004); *Pickford v. Masion*, 98 P.3d 1232, 1235 (Wash. Ct. App. 2004); *Julian v. DeVincent*, 184 S.E.2d 535, 536 (W. Va. 1971); *Rabideau v. City of Racine*, 627 N.W.2d 795, 801–02 (Wis. 2001); *Carbasha v. Musulin*, 618 S.E.2d 368, 371 (W. Va. 2005).

⁸³ See, e.g., *Carbasha*, 618 S.E.2d at 370–71 (stating that “dogs are personal property and damages for sentimental value, mental suffering, and emotional distress are not recoverable for the negligently inflicted death of a dog”).

⁸⁴ *Campbell v. Animal Quarantine Station*, 632 P.2d 1066, 1066 (Haw. 1981).

⁸⁵ *Richardson v. Fairbanks N. Star Borough*, 705 P.2d 454, 456 (Alaska 1985).

⁸⁶ *Gill v. Brown*, 695 P.2d 1276, 1278 (Idaho Ct. App. 1985).

⁸⁷ *Lawrence v. Stanford*, 655 S.W.2d 927, 928, 930–31 (Tenn. 1983).

⁸⁸ 510 ILL. COMP. STAT. 70/16.3 (2008).

⁸⁹ 510 ILL. COMP. STAT. 70/16.3 (2008).

⁹⁰ TENN. CODE ANN. § 44-17-403 (2024).

belonging “in the category of cats, monkeys, parrots, singing birds, and similar animals, kept for pleasure, curiosity, or caprice.”⁹¹ Today, all states have adopted anti-cruelty statutes, and forty-eight of them are felony laws.⁹² These laws afforded companion animals protection as beings (not property) under the law, and assigned to individuals the affirmative duties of caring for, protecting, and treating companion animals humanely. Eventually, the paradigm shift away from companion animals as mere property and toward viewing them instead in a more familial light, as courts and legislatures began to recognize the “enduring, intense, and deeply emotional relationships” between human members of a household and their pets.⁹³ For example, recognizing the documented link between domestic violence and animal cruelty, forty states along with the District of Columbia and Puerto Rico have enacted laws that provide for the inclusion of companion animals in domestic violence protection orders.⁹⁴

Taking things a step further, it has become increasingly common for courts nationwide to specifically address companion animals in divorce and custody cases.⁹⁵ Individual courts have also embraced a ‘best interest’ criteria in rendering such custody decisions, much as they do in cases involving children. For example, in a 1999 New York case, the court acknowledged that the emotional bond between a person and her cat was a two-way street; not only could the human love the cat (appropriately named “Lovey”), but that the cat could love that person back.⁹⁶ Ultimately, the court awarded custody of Lovey to the party residing in

⁹¹ *Sentell v. New Orleans & C.R. Co.*, 166 U.S. 698, 701 (1897).

⁹² Schyler P. Simmons, *What is the Next Step for Companion Pets in the Legal System? The Answer May Lie with the Historical Development of the Legal Rights of Minors*, 1 TEX. A&M L. REV. 253, 261 (2013), <https://doi.org/10.37419/LR.V1.I1.9> (accessed Feb. 2, 2025).

⁹³ Debra Squires-Lee, *In Defense of Floyd: Appropriately Valuing Companion Animals in Tort*, 70 N.Y.U. L. REV. 1059, 1059 (1995), <https://digitalcommons.schulichlaw.dal.ca/cgi/viewcontent.cgi?article=1265&context=djls> (accessed Feb. 2, 2025).

⁹⁴ Rebecca F. Wisch, *Domestic Violence and Pets: List of States That Include Pets in Protection Orders*, ANIMAL LEGAL & HIST. CTR. (2024), <https://www.animallaw.info/article/domestic-violence-and-pets-list-states-include-pets-protection-orders> (accessed Feb. 2, 2025).

⁹⁵ See, e.g., Melissa Chan, *Pets Are Part of Our Families. Now They're Part of Our Divorce, Too*, TIME (Jan. 22, 2020, 6:31 PM), <https://time.com/5763775/pet-custody-divorce-laws-dogs/> (accessed Jan. 28, 2025) (“[D]ivorce attorneys say these fights are becoming more common as state courts confront divorce laws that fail to recognize that in ever more homes, not every crucial bond is between humans.”); Barbara J. Gislason, *Understanding Pet Custody Law: Trends in Animal Law Jurisprudence*, DENTON LAW OFF. (Dec. 18, 2019), <https://bdentonlaw.com/2019/12/18/understanding-pet-custody-law-trends-in-animal-law-jurisprudence/> (accessed Jan. 28, 2025) (“The national trend regarding companion animals is to treat them as family members despite their ‘property’ status[.]”); Sara Mickovic, *Fur-Ever Homes After Divorce: The Future of Pet Custody*, 28 ANIMAL L. 47, 57–58 (2022), <https://lawcommons.lclark.edu/alr/vol28/iss1/3/> (accessed Jan. 28, 2025) (chronicling that since Alaska became the first state to codify animals’ interests into their divorce statute in 2017, an additional “three states have enacted laws, and three more states have such laws pending”).

⁹⁶ *Raymond v. Lachmann*, 695 N.Y.S.2d 308, 308–09 (N.Y. App. Div. 1999).

the house where the cat had lived and thrived.⁹⁷ Fourteen years later, another New York court weighed the best standard for considering custody of “Joey,” a miniature dachshund.⁹⁸ The court elected to adopt the ‘best interests’ standard en route to making its custody decision.⁹⁹

As with other issues involving human-companion animal relationships, progress can be charted not just by judicial decision-making, but by legislative developments as well. In 2016, Alaska became the first state to require that judges use this ‘best interest’ standard (sometimes referred to as the ‘well-being’ standard) as a factor in the court’s decision-making when considering the custody award of a companion animal in a divorce case, just as the court would do with a child.¹⁰⁰ Illinois followed suit with a similar statute in 2017.¹⁰¹ In 2018, California passed a similar law.¹⁰² California’s statute, which amended Section 2605 of the state’s family code, expressly gives judges the power to consider the case and best interests of the companion animal when making decisions in separation or divorce matters.¹⁰³

Unfortunately, such advances have not changed the perspective of the majority of state courts. All too often, judges have regarded having to consider the best interests of a companion animal to be an “unlimited drain on judicial resources” and essentially a waste of the court’s time.¹⁰⁴ Nevertheless, the progress that has been made reflects a change in how society—as articulated through its judicial officers and lawmakers—views companion animals no longer as mere property, but as four-legged members of the family unit. Yet, as the following section will explore, is this enough to warrant a change in the ‘close relation’/familial criterion for bystander recovery? The following cases illustrate that the answer to that question lies in that most lawyerly of aphorisms, ‘it depends.’

⁹⁷ *Id.*

⁹⁸ *Travis v. Murray*, 977 N.Y.S.2d 621, 622 (N.Y. Sup. Ct. 2013).

⁹⁹ *Id.* at 624–25, 628. This case is noteworthy for its consideration of similar cases across the country.

¹⁰⁰ Act of Oct. 19, ch. 60, sec. 19, 23–25, 2016 AK. Sess. Laws 60 (enacting H.B. 147, codified at ALASKA STAT. §§ 25.24.160–25.24.230, empowering courts to take well-being of the animal into consideration when deciding ownership in divorce proceedings); Nicole Pallotta, *Alaska Legislature Becomes First to Require Consideration of Animals’ Interests in Custody Cases*, ANIMAL LEGAL DEF. FUND (Jan. 20, 2017), <https://aldf.org/article/alaska-legislature-becomes-first-to-require-consideration-of-animals-interests-in-custody-cases/> (accessed Jan. 28, 2025).

¹⁰¹ Illinois Marriage and Dissolution of Marriage Act, Pub. Act No. 100-0422, 2017 Ill. Laws 452, 502 (amending 750 ILL. COMP. STAT. 5/452 & 501–03, compelling courts to consider the well-being of companion animals in divorce proceedings).

¹⁰² 2018 Cal. Stat. ch. 820 (enacting Assemb. B. 2274, codified at CAL. FAM. CODE § 2605, giving courts authority to make ownership decisions based on the care of a pet).

¹⁰³ *Id.*

¹⁰⁴ Mićkovic, *supra* note 95, at 57; *See, e.g.*, *Bennett v. Bennett*, 655 So. 2d 109, 110–11 (Fla. Dist. Ct. App. 1995) (opining that such custody and visitation determinations would overwhelm courts and create problems for enforcement).

V. BYSTANDER RECOVERY FOR WITNESSING THE
INJURY OR DEATH OF A COMPANION ANIMAL:
A STATE-BY-STATE EXAMINATION

Much like the societal view of companion animals has evolved to regarding them as family members, the legal system's treatment of companion animals has begun to change as well. From being viewed as nothing more than property, a minority of courts and legislators have begun to recognize the viability of emotional distress damages for the injury or death of these four-legged family members. An even greater number of states, in the context of divorce and custody proceedings, accord to companion animals a similar treatment given to children.

But are courts willing to extend such family member treatment even further, by providing a cognizable cause of action for the recovery of emotional distress damages for bystanders—i.e., humans—who have witnessed the death of a companion animal caused by a third party's negligence? As the following examination of how such a cause of action has fared in the multiple states where it has been raised reveals, jurisdictions have been reluctant to embrace an extension of what is meant by "close family relations." In fact, nearly all of the states that have considered such bystander theories have rejected them, for varying reasons.

A. ARIZONA

In one of the earliest cases to address the viability of a bystander cause of action for emotional distress for witnessing the death of a companion animal, the Arizona Court of Appeals tersely rejected the claim.¹⁰⁵ While walking her poodle near her home, Roman witnessed the Carolls' St. Bernard attack and viciously dismember her dog.¹⁰⁶ Two days later, the poodle died.¹⁰⁷ Maintaining that she herself was in the 'zone of danger' and that she had suffered severe emotional shock from seeing the savage attack, Roman sought damages for emotional distress.¹⁰⁸ Roman also contended that her relationship with her poodle was a close one, within the purview of Arizona precedent on recoverability for witnessing injury to another.¹⁰⁹ The trial judge, however, granted a summary judgment in favor of the defendants.¹¹⁰

The appellate court affirmed, holding that the dog was merely personal property, and that damages for negligent infliction of emotional distress could not be recovered for witnessing injury to property.¹¹¹

¹⁰⁵ *Roman*, 621 P.2d at 308.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* (citing *Keck v. Jackson*, 593 P.2d 668 (Ariz. 1979)).

¹¹⁰ *Id.*

¹¹¹ *Id.*

Arizona's position has remained unchanged in the ensuing decades. In 2009, the Arizona Court of Appeals in *Kaufman v. Langhofer* reiterated that pet owners cannot recover damages for emotional distress or loss of companionship resulting from the negligent injury to or the death of their companion animal.¹¹² The *Kaufman* court reasoned that “[b]ecause humans are not related to pets, limits cannot be based on degree of consanguinity”¹¹³ The court added that “as a matter of public policy,” the law should not 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.”¹¹⁴

Several years later, the Arizona legislature removed the word ‘dog’ from the statutory definition of “personal property.”¹¹⁵ Nevertheless, the law in Arizona remains the same: no bystander recovery for witnessing the injury or death of a companion animal caused by another’s negligence; however, the *Kaufman* court did leave open the possibility of emotional distress damages if the loss involved intentional, willful, malicious, or reckless conduct.¹¹⁶

B. NEW YORK

The next jurisdiction to confront a claim for bystander recovery involving the death of a companion animal was New York. In *Fowler v. Town of Ticonderoga*, plaintiff Fowler claimed that defendant Larry La Pann, a Town of Ticonderoga animal control officer, negligently shot and killed Fowler’s dog.¹¹⁷ Although the appellate court rejected the officer’s and town’s defenses of sovereign immunity, it cast a similarly jaundiced eye toward Fowler’s claim of emotional distress for witnessing the horrific act.¹¹⁸ Dismissing the plaintiff’s comparison to New York’s then-controlling authority on bystander recovery,¹¹⁹ the court reasoned that while Fowler may have observed the killing of his dog, “he was not in the zone of danger, was not himself physically injured, and the alleged tort involved personal property, not a family member.”¹²⁰ In other words, even had all other *Dillon v. Legg* criteria been met, New York law’s view of companion animals as mere property negated any prospects for recovery.

¹¹² *Kaufman v. Langhofer*, 222 P.3d 272, 279 (Ariz. Ct. App. 2009) (citing *Goodby v. Vetpharm, Inc.*, 974 A.2d 1269, 1271 (Vt. 2009)).

¹¹³ *Id.* at 278.

¹¹⁴ *Id.* at 279.

¹¹⁵ ARIZ. REV. STAT. § 1-215 (30) (2015).

¹¹⁶ *Kaufman*, 222 P.3d at 279–80.

¹¹⁷ *Fowler*, 516 N.Y.S.2d at 369.

¹¹⁸ *Id.* at 369–70.

¹¹⁹ *Id.* at 370 (citing *Bovsun v. Sanperi*, 461 N.E.2d 843 (N.Y. 1984) (holding that, in certain circumstances, plaintiff may recover for mental distress suffered as a consequence of observing injury inflicted on a family member)).

¹²⁰ *Id.*

C. WISCONSIN

Following New York, Wisconsin was the next jurisdiction to consider the issue of bystander recovery for witnessing the injury or death of a companion animal. In *Rabideau v. City of Racine*, the Wisconsin Supreme Court dealt with the death of “Dakota,” Julie Rabideau’s canine companion.¹²¹ Rabideau and City of Racine police officer Jacobi were neighbors, and on March 31, 1999, both had arrived at their respective homes at approximately the same time.¹²² Dakota jumped out of Rabideau’s truck and bounded over toward Jacobi’s yard, where his dog was outside.¹²³ What happened next was hotly disputed; Jacobi contended that fearing for the safety of his dog, wife, and child, he shot and killed Dakota.¹²⁴ Rabideau claimed that Dakota was not behaving aggressively and that she “was crossing the street to retrieve him when shots rang out.”¹²⁵

Dakota died two days after the shooting, and upon learning of his death, Rabideau collapsed, requiring medical treatment.¹²⁶ She sued, alleging negligent infliction of emotional distress after witnessing the tragic incident.¹²⁷ Although the circuit court and lower appellate court had held that Rabideau had not adequately pleaded her emotional distress claims, the Supreme Court of Wisconsin, while agreeing, refused to regard her appeal as frivolous. Examining the arguments on public policy grounds, the court stuck rigidly with the existing “close relatives” as developed in prior Wisconsin law.¹²⁸ The plaintiff and victim, the court reminded the parties, “must be related as spouses, parent-child, grandparent-grandchild, or siblings.”¹²⁹ The court disagreed with Rabideau’s contention that “[a]nyone who has owned and loved a pet would agree that in terms of emotional trauma, watching the death of a pet is akin to losing a close relative.”¹³⁰

Instead, the court maintained that for the same public policy reasons that restricted recovery to only certain close relationships, Rabideau was barred from recovery.¹³¹ The court noted that “this rule of non-recovery applies with equal force to a plaintiff who witnesses as a bystander the negligent injury of a best friend who is human as it does to a plaintiff whose best friend is a dog.”¹³² The emotional loss involving

¹²¹ *Rabideau*, 627 N.W.2d at 797–98.

¹²² *Id.* at 799.

¹²³ *Id.*

¹²⁴ *Id.* at 799–800.

¹²⁵ *Id.* at 800.

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.* at 800–01.

¹²⁹ *Id.* at 801.

¹³⁰ *Id.*

¹³¹ *Id.* at 800–801.

¹³² *Id.* at 801.

a close family member, the court opined, “is less likely to be fraudulent and is a loss that can fairly be charged to the tortfeasor.”¹³³

The Wisconsin Supreme Court was not wholly unsympathetic to Rabideau’s position. It rejected the defense’s position that Rabideau’s argument was frivolous.¹³⁴ And while the court professed discomfort with “the law’s cold characterization of a dog such as Dakota as mere ‘property,’” it adhered to well-established public policy grounds in reaching its decision.¹³⁵ In particular, the court was concerned “that were such a claim to go forward, the law would proceed upon a course that had no just stopping point . . . [w]ere we to recognize a claim for damages for the negligent loss of a dog, we can find little basis for rationally distinguishing other categories of animal companion.”¹³⁶ In other words, the floodgates would be opened.

D. OHIO

Ohio was the next state to consider the issue of bystander recovery claims for emotional distress arising out of witnessing the injury or death of a companion animal. Like preceding states, Ohio adhered to the existing law’s rigid classification of dogs as mere property (while airing the unsuccessful claimant’s arguments to the contrary), but it too ultimately relied on a key element that was missing from the bystander equation; in this case, the actual witnessing of the incident.

The case of *Oberschlake v. Veterinary Associates Animal Hospital* involved an injury to “Poopi,” a miniature poodle brought in to the defendant veterinarian in March 2001 for a routine teeth cleaning, only to emerge with a three-inch incision on her abdomen after the vet tried to spay the previously-spayed dog.¹³⁷ Her humans, Sean and Melissa Oberschlake, brought a veterinary malpractice suit seeking not only damages for their own emotional distress, but Poopi’s as well.¹³⁸ The appellate court demurred, stating “such a change in the law may one day occur, but this is not the proper case for plowing new ground.”¹³⁹

The court acknowledged the various articles provided by the plaintiffs on the subject of the human-animal bond and the argument for expanding tort law to include emotional distress damages for witnessing injury or death of a companion animal.¹⁴⁰ However, the court pointed out a significant obstacle stood in the plaintiffs’ way: neither of the Oberschlakes had actually witnessed the injury, undermining any

¹³³ *Id.*

¹³⁴ *Id.* at 799.

¹³⁵ *Id.* at 798.

¹³⁶ *Id.* at 798–99 (emphasis omitted).

¹³⁷ *Oberschlake v. Veterinary Assocs. Animal Hosp.*, 785 N.E.2d 811, 812 (Ohio Ct. App. 2003).

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 813.

bystander claim.¹⁴¹ The dog had been left at the veterinary hospital and picked up after surgery was performed.¹⁴² Accordingly, there could be no bystander claim. Similarly, the court rejected the claims for emotional distress brought on Poopi's behalf, noting that while "animals can and do suffer pain or distress," "a dog cannot recover for emotional distress—or indeed for any other direct claims . . ."¹⁴³ The court noted that although one earlier Ohio case had impliedly indicated that dog owners may present claims for intentional infliction of emotional distress, the circumstances in the case before the court did not lend themselves to such a cause of action.¹⁴⁴

E. MAINE

Like other states, Maine has also rejected bystander claims for emotional distress stemming from injury or death of a companion animal. And, just like other states, it has relied on whether the facts of the case align with the requisite elements for bystander recovery. In the two cases featured in Maine courts, like their Ohio counterparts, the 'bystander/physical presence' prong was lacking. The first case excluded the emotional distress claim on the grounds that the dog owner was not physically present, which "would have precluded recovery on a bystander theory even if dogs were treated as close family members."¹⁴⁵ A later case also failed for lack of true 'bystander' status. In 2015, Lida Zahares and Nancy Plaisted sued over an April 22, 2013, incident in which Zahares's Boston terrier "Romie" was mauled to death by "Harley," a bulldog belonging to Brian Jacobs and his girlfriend Katherine Saulnier.¹⁴⁶ Harley had escaped from his crate in the defendants' residence and managed to get through the storm door of Zahares's residence, attacking Romie.¹⁴⁷ Although Zahares and Plaisted physically struggled to stop Harley's vicious assault (even stabbing him repeatedly with a kitchen knife), they were unable to save Zahares's dog.¹⁴⁸

The court began by noting that most jurisdictions regarded pets as personal property and that "damages for emotional distress or lost sentimental value are not recoverable."¹⁴⁹ It then observed that a required element under Maine law for proving bystander emotional distress is

¹⁴¹ *Id.* at 814.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 814–15 (citing *Langford v. Emergency Pet Clinic*, 96 Ohio App. 3d 174 (1994) (involving the claims of a person whose dog had been buried in a mass grave)).

¹⁴⁵ *Zahares v. Sauunter*, No. CV-14-137, 2015 Me. Super. LEXIS 177, at *6 (York Cnty. July 8, 2015) (citing *Golt v. Caffrey*, OXFSC-CV-96-09 (Me. Super. Ct., Oxf. Cnty., Mar. 17, 1999)) (emphasis omitted).

¹⁴⁶ *Zahares v. Jacobs*, No. CV-14-137, at *1–2 (Me. Super. Ct. July 8, 2015).

¹⁴⁷ *Id.* at *2.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at *4.

a “close familial relationship.”¹⁵⁰ Although the court acknowledged that “pets are often considered part of the ‘family,’” it stated that “there is no clear authority for holding that pets and owners share a ‘close familial relationship’ to support a claim for bystander liability.”¹⁵¹

But even though it disposed of the bystander recovery claim, the court nevertheless denied the defendants’ bid for a summary judgment. Observing that the plaintiffs had “engaged Harley in a bloody, physical wrestling match,” the court held that they “were not simply mere bystanders, but directly and physically involved.”¹⁵² Distinguishing the plaintiffs as “direct victims” who had been directly threatened with physical harm resulting from the defendants’ negligent conduct, the court ruled that the defendants should have reasonably foreseen that their dog “could not only attack and kill another dog in the neighborhood, but also threaten to harm neighbors and cause them emotional distress.”¹⁵³

F. SOUTH CAROLINA

South Carolina is yet another state to have recently addressed, and rejected, claims of bystander recovery for emotional distress arising out of injury or death to a companion animal. The case, *Fowler v. FedEx Ground Package Sys.*, involved a March 22, 2018, incident in which the Fowlers’ beloved Brittany spaniel, “Honey Bunny,” was run over and killed by a FedEx delivery driver traveling at an excessive speed in the plaintiffs’ own driveway.¹⁵⁴ The Fowlers and their son witnessed the tragic event.¹⁵⁵ The driver, without even apologizing, drove away without delivering any packages as Mrs. Fowler and her son wept over the cruelly mangled body of their dog.¹⁵⁶ Mrs. Fowler experienced severe emotional distress and anxiety in the wake of the incident, necessitating medication.¹⁵⁷ After the Fowlers filed suit, alleging bystander recovery claims among other allegations, the trial court granted partial summary judgment for the defendants, relying on a 120-year-old South Carolina Supreme Court opinion that classified dogs as personal property.¹⁵⁸ The court also relied on an unpublished 2005 appellate opinion

¹⁵⁰ *Id.* (citing *Michaud v. Great N. Nekoosa Corp.*, 715 A.2d 955, 959 (Me. 1998)).

¹⁵¹ *Id.*

¹⁵² *Id.* at *5.

¹⁵³ *Id.* at *8.

¹⁵⁴ *Fowler v. FedEx Ground Package Sys.*, No. 2023-UP-020, 2023 S.C. App. Unpub. LEXIS 25, at *1 (S.C. Ct. App. Jan. 18, 2023); Second Amended Complaint & Demand for Jury Trial at ¶¶ 14–15, 18, *Fowler v. FedEx Ground Package Sys.*, No. 2018-CP-26-06173 (S.C. Ct. Com. Pl. Mar. 4, 2019).

¹⁵⁵ Second Amended Complaint at ¶ 18, *Fowler v. FedEx Ground Package Sys.*, No. 2018-CP-26-06173 (S.C. Ct. Com. Pl. Mar. 4, 2019).

¹⁵⁶ *Id.* at ¶¶ 19–20.

¹⁵⁷ *Id.* at ¶ 21.

¹⁵⁸ Order Granting Defendants’ Motion, *Fowler v. FedEx Ground Package Sys.*, No. 2018-CP-26-06173, at *3–4 (S.C. Ct. Com. Pl. Sept. 20, 2019) (citing *State v. Langford*, 33

that held, “South Carolina law does not support a cause of action for emotional distress for injury to one’s pet.”¹⁵⁹

The appellate court affirmed the summary judgment in the defendants’ favor, dismissing the appellants’ arguments that a national trend had emerged in which emotional distress damages had been awarded in cases involving the loss of a companion animal.¹⁶⁰ The court also rejected the Fowlers’ public policy argument that society’s view of companion animals had tilted in favor of regarding them as family members. It said that this remained a legislative issue, and that the Fowlers were free “to urge the [l]egislature to visit this issue in light of public policy considerations including societal sentiment and treatment of pets, and the prospect of public perception that [the] law does not provide a just and fair remedy”¹⁶¹

The Fowlers sought rehearing, pointing out “the shift in a companion animal’s status in modern society.”¹⁶² Among other things, this petition for rehearing pointed to changes in South Carolina law explicitly recognizing “emotional support animals” that provide humans with companionship, reassurance, and emotional support.¹⁶³ The petition for rehearing, however, was unsuccessful.

Despite this apparent intransigence, there are ongoing efforts to advocate for changes to South Carolina law. In the spring of 2021, South Carolina lawyer Kenneth Berger filed a suit seeking bystander recovery after a December 27, 2020, incident.¹⁶⁴ In that incident, an alleged drunk driver, Neil Joost, struck and killed the plaintiffs’ beloved dog “Susie”; the family (including three young children) watching helplessly as Susie was dragged under the vehicle while the defendant continued to drive away.¹⁶⁵ As a statement on Berger’s website states, “Pets are not simply property; they are valued members of our families, and it’s past time South Carolina’s law recognize them as such.”¹⁶⁶

S.E. 370, 371 (S.C. 1899)).

¹⁵⁹ *Id.* at *3 (citing *Bales v. Judelsohn*, No. 2005-UP-509, 2005 S.C. App. Unpub. LEXIS 527 (S.C. Ct. App. Aug. 30, 2005)).

¹⁶⁰ *Fowler*, 2023 S.C. App. Unpub. LEXIS 25, at *1–2.

¹⁶¹ *Id.* at *3.

¹⁶² Appellant’s Petition for Rehearing at 3, *Fowler v. FedEx Ground Package Sys.*, Appellate Case No. 2019-001722 (Feb. 1, 2023) (copy on file with *Animal Law*).

¹⁶³ *Id.* at 4; *see also* S.C. CODE ANN. § 47-3-920(6) (2019) (defining an emotional support animal as “an animal intended to provide companionship and reassurance”).

¹⁶⁴ Asia Wilson, *Family Sues, Says Drunk Driver Hit And Killed Dog In Front Of Children*, WSPA (Apr. 7, 2021) <https://www.wspa.com/news/local-news/family-speaks-out-files-lawsuit-after-alleged-drunk-driver-hits-and-kills-dog-in-front-of-children/> (accessed Feb. 22, 2025); *Alleged Drunk Driver Hit and Killed Family Dog in Front of Mother and Young Children: Lawsuit Filed by Family*, L. OFF. KENNETH E. BERGER, <https://www.berger-lawsc.com/library/alleged-drunk-driver-hit-and-killed-family-dog-in-front-of-mother-and-young-children-lawsuit-fil.cfm> (accessed Feb. 8, 2025) [hereinafter *Alleged Drunk Driver*].

¹⁶⁵ *Alleged Drunk Driver*, *supra* note 164.

¹⁶⁶ *Id.*

G. NEW JERSEY

New Jersey is yet another state that has grappled with the thorny issue of whether to recognize a bystander recovery cause of action after the injury or death of a companion animal. In 2012, the New Jersey Supreme Court in *McDougall v. Lamm* considered whether a pet owner should be permitted to recover for emotional distress caused by observing the traumatic death of her companion animal.¹⁶⁷ On June 7, 2007, Ms. McDougall was walking along a street with her nine-year-old Maltipoo, “Angel,” when a large dog belonging to Charlot Lamm ran out from Lamm’s house and grabbed Angel by the neck, shaking the little dog violently.¹⁶⁸ The plaintiff, who lived alone with Angel, testified at trial about her close relationship with the dog.¹⁶⁹ Despite this, observing that New Jersey law regarded dogs as property and that there was no cause of action for an emotional distress claim based on a loss of property, the trial court granted summary judgment on McDougall’s claim for emotional distress.¹⁷⁰ On appeal, the Appellate Division affirmed this ruling.¹⁷¹

The New Jersey Supreme Court heard McDougall’s argument, which can be summarized as having three parts. First, she contended that a person’s relationship with a companion animal *should* be considered as a close familial relationship along the lines of the test articulated in New Jersey’s seminal bystander recovery case, *Portee v. Jaffee*.¹⁷² McDougall’s second argument was that the limited jurisdictions to recognize a cause of action for emotional distress relating to the death of a companion animal represented the better approach to the issue.¹⁷³ Finally, she argued that public policy concerns about a potential flood of litigation were unwarranted.¹⁷⁴ The appellee, on the other hand, argued against expanding the existing treatment of dogs as chattel property, and against expanding *Portee* to encompass relationships beyond those solely with humans.¹⁷⁵

The court declined to expand *Portee*’s bystander recovery cause of action to include companion animals, even though it recognized that “[t]he bond shared between humans and animals is often an emotional

¹⁶⁷ *McDougall v. Lamm*, 48 A.3d 312, 314 (N.J. 2012).

¹⁶⁸ *Id.* at 315.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* at 316.

¹⁷¹ *Id.*

¹⁷² *Id.* at 314, 317; *see Portee*, 417 A.2d at 523, 528 (limiting bystander recovery to relationships with a “plain and obvious emotional bond,” such as that between a parent and child, in a case regarding a mother who watched helplessly as her son was trapped between the outer door and wall of an elevator shaft and who, following his death, she became severely depressed, attempted suicide, and required extensive counseling).

¹⁷³ *McDougall*, 48 A.3d at 317.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

and enduring one.”¹⁷⁶ To create such a new cause of action “based on observing the death of a pet,” the court held, “would result in an ill-defined and amorphous cause of action that would elevate the loss of pets to a status that exceeds the loss of all but a few human beings.”¹⁷⁷ Equally concerning to the New Jersey Supreme Court was the prospect of usurping the role of the legislature and creating public policy. This included creating a cause of action (by expanding *Portee*) that would represent a clear conflict with existing statutes like New Jersey’s Wrongful Death Act¹⁷⁸ or state laws addressing dangerous dogs.¹⁷⁹ The court was also eager to head off opening the door “to claims that attachments to inanimate forms of property” (like family heirlooms or photographs) should be honored.¹⁸⁰ “In the end,” the court opined, “we leave the *Portee* cause of action where we found it.”¹⁸¹

But *McDougall* would not be the last opportunity for a New Jersey appellate court to address a claim of bystander recovery for emotional distress upon observing the death of a companion animal. In 2021, an appellate court considered the case of Mario Quesada, whose cat “Amor” had to be euthanized after being diagnosed with heart failure disease and saddle thrombus.¹⁸² Quesada was allowed to say goodbye to Amor, and spoke and sang to the cat’s body until it was removed.¹⁸³ Later, Quesada informed the veterinarian that he wanted to display Amor’s body prior to cremation.¹⁸⁴ When he viewed the body, however, Quesada discovered his cat’s corpse had been decapitated; as a result of viewing this, Quesada developed severe mental health issues.¹⁸⁵ He sued, alleging negligent infliction of emotional distress, bystander recovery, and bailment causes of action.¹⁸⁶ After his case was dismissed, Quesada appealed.¹⁸⁷

The appellate court reversed the dismissal and remanded the case.¹⁸⁸ However, it found that the lower court had mistakenly applied the standard of bystander recovery.¹⁸⁹ Discussing the facts in the context of *Portee* and *McDougall*, the appellate court held that Quesada was not asserting that he suffered emotional distress from witnessing

¹⁷⁶ *Id.* at 314.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 326 (citing N.J. STAT. ANN. §§ 2A:31-1 to 2A:31-6).

¹⁷⁹ *Id.* (citing N.J. STAT. ANN. § 4:19-38; N.J. STAT. ANN. § 4:22-20 and N.J. STAT. ANN. § 4:19-16).

¹⁸⁰ *Id.* at 327.

¹⁸¹ *Id.*

¹⁸² *Quesada v. Veterinary Assocs. Animal Hosps.*, No. A-1226-19, 2021 WL 1235136, at *1 (N.J. Super. Ct. App. Div. Apr. 1, 2021).

¹⁸³ *Id.*

¹⁸⁴ *Id.* at *2.

¹⁸⁵ *Id.* at *2–3.

¹⁸⁶ *Id.* at *1, *3.

¹⁸⁷ *Id.* at *1.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.* at *5

his cat in pain and dying.¹⁹⁰ Accordingly, his emotional distress claim “does not fall under ‘bystander’ liability as enunciated in *Portee* and is therefore not barred by *McDougall*.”¹⁹¹ Instead, the court ruled that Quesada had stated a “direct” claim of negligent infliction of emotional distress.¹⁹² In this sense—finding a theory of recovery that better fit the facts—the New Jersey court followed a path similar to its Maine counterpart in the *Zahares & Plaisted* case.¹⁹³

H. CONNECTICUT

Perhaps no state has sent as many mixed signals on the issue of bystander recovery for witnessing the injury or death of a companion animal as Connecticut. On the one hand, *Myers v. City of Hartford*, a 2004 case, left open the possibility of a claim for emotional distress damages under such circumstances (even though, under the facts presented, the court rejected the plaintiff’s claim).¹⁹⁴ Citing the *Myers* decision, a later case, *Vaneck v. Cosenza-Drew*, observed that “[w]hile precluding a general cause of action for intentional or negligent infliction or emotional distress . . . *Myers* did not expressly foreclose a claim of severe emotional distress suffered by a *bystanding owner* who witnesses the fatal injury to a pet.”¹⁹⁵ In *Vaneck*, the plaintiff witnessed the defendant in his car strike Vaneck’s dog “Shadow,” killing the pet.¹⁹⁶ The court denied the defendant’s motion to strike Vaneck’s bystander claim for emotional distress, noting that *Myers* had anticipated the potential for viable bystander claims and that Connecticut’s seminal bystander decision, *Clohessy v. Bachelor*, expressly decided to “leave to another day the question of what other relationships may qualify.”¹⁹⁷ And rather than worry about usurping the legislative role, the *Vaneck* court explicitly noted that, in passing a law empowering judges to include companion animals in family protective orders, the Connecticut legislature had already acknowledged that companion animals like Shadow hold “a distinct, identifiable and legally protected place within the human family unit.”¹⁹⁸

A later case, *Miller v. Hamden*, dealt with a claim alleging mistreatment of dogs that had been impounded.¹⁹⁹ However, it declined to follow

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at *1.

¹⁹³ *Zahares*, 2015 Me. Super. LEXIS 177, at *4–5, *10.

¹⁹⁴ See *Myers v. City of Hartford*, 853 A.2d 621, 626 (Conn. App. Ct. 2004) (discussing the emotional distress claim of a person whose companion animal was removed from her premises and euthanized without notifying the plaintiff).

¹⁹⁵ *Vaneck v. Cosenza-Drew*, MMXCV085003942S, 2009 Conn. Super. LEXIS 1056, at *10–11 (Apr. 20, 2009) (emphasis added).

¹⁹⁶ *Id.* at *1.

¹⁹⁷ *Id.* at *12, *15.

¹⁹⁸ *Id.* at *14–15.

¹⁹⁹ *Miller v. Hamden*, CV186079834S, 2019 Conn. Super. LEXIS 1607 (May 28, 2019).

Vaneck because the plaintiff did not allege that she had witnessed her dogs' injuries.²⁰⁰ But in a case of judicial whiplash, another Connecticut Superior Court held that because the close relationship was between a person and his companion animal, "the plaintiff . . . fails to meet the elements for bystander emotional distress."²⁰¹

The rollercoaster of judicial decision-making in Connecticut continued with *Field v. Astro Logistics, LLC* in 2022. In *Field*, the defendant's vehicle struck and seriously injured the plaintiff's dog, and the plaintiff "sensorily perceived the collision" and was "with the dog before substantial change occurred to its condition."²⁰² Accordingly, the court held the plaintiff had sufficiently alleged a claim for bystander liability.²⁰³

The yo-yoing judicial rulings were not done, however. Merely months later, in January 2023, yet another Connecticut court reached a different result. In *Brisson v. These Guys New York Deli Corp. d/b/a Amazon Delivery*, on April 9, 2021, the defendant's driver ran over Neil and Margaret Brisson's dog "Lily" in the plaintiffs' driveway while making a delivery.²⁰⁴ Plaintiff Neil Brisson witnessed the horrific incident and "rushed to the side of his family pet."²⁰⁵ His wife did not witness the incident, but said goodbye "to her faithful and loving companion, whom the Brissons had raised as a puppy and developed a bond that lasted more than a decade."²⁰⁶

In analyzing the bystander cause of action, the court declined to follow the *Vaneck* and *Field* holdings.²⁰⁷ The court examined the facts in light of the Connecticut Supreme Court's bystander recovery test expressed in *Clohessy v. Bachelor*.²⁰⁸ It held that "the relationship between a pet owner and a pet does not meet the 'closely related' element of *Clohessy*, as that case appears to restrict this element to the close relationship between a parent and a child or between siblings."²⁰⁹ Furthermore, the court agreed that to recognize such a relationship and corresponding bystander cause of action would be overreaching, and "would amount to creating a new cause of action without legislative or appellate authority."²¹⁰ As the court observed, "to construe the term

²⁰⁰ *Id.* at *6 n.4.

²⁰¹ *Bonilla v. Conn. Veterinary Ctr., Inc.*, CV136040848S, 2013 Conn. Super. LEXIS 2933, at *4 (Dec. 18, 2013).

²⁰² *Field v. Astro Logistics, LLC*, MMX-CV22-6033510-S, 2022 Conn. Super. LEXIS 1420, at *1 (June 30, 2022).

²⁰³ *Id.* at *2.

²⁰⁴ *Brisson v. These Guys N.Y. Corp. d/b/a Amazon Delivery*, FBT-CV-22-6112778-S, 2023 Conn. Super. LEXIS 54, at *1 (Conn. Super. Ct. Jan. 20, 2023).

²⁰⁵ *Id.* at *1-2.

²⁰⁶ *Id.* at *2.

²⁰⁷ *Id.* at *9.

²⁰⁸ *Clohessy v. Bachelor*, 237 Conn. 31, 51-54 (Conn. 1996).

²⁰⁹ *Brisson*, 2023 Conn. Super. LEXIS 54, at *9.

²¹⁰ *Id.* at *9-10.

'related to' to extend to other than another human being would be in derogation of its fidelity to the principles which limit its authority."²¹¹

So how will a future Connecticut court rule when confronted with a bystander recovery claim for emotional distress as a result of witnessing the injury or death of a companion animal? The answer is very much up in the air.

VI. CONCLUSION

The Book of Samuel relates the story of two men in the same city, one rich with "many flocks and herds," and one who was poor and had nothing but "one little ewe lamb."²¹² The lamb grew up with the impoverished man and his children, and it "did eat of his own meat and drank of his own cup and lay in his bosom, and was unto him like a daughter."²¹³ A classic text on veterinary ethics describes the bond between humans and companion animals in somewhat less prosaic terms. It defines this bond as:

[A]t the very least a continuous, bidirectional relationship between a human and an animal, which brings a significant benefit to a central aspect of the lives of each . . . in which each party treats the other not just as something entitled to respect and benefit in its own right but also as an object of admiration, trust, devotion, or love.²¹⁴

As this Article has argued, people today regard companion animals as members of our families. This is reflected not just in our more pragmatic concerns such as living arrangements or choice of employment, but in the depth of our feelings when our four-legged companions are with us, and when they leave us through death. Skeptics rail against the availability of emotional distress damages for the loss of a pet because they claim it will put companion animals on an equal footing with human family members, such as children.²¹⁵ However, those making this argument forget that historically, the common law has always been suspicious of emotional distress claims, and that for decades, recovery for the wrongful death of a child was limited to pecuniary loss rather than the mental anguish that resulted from such a death.²¹⁶

Law is about change, and about adapting to what Justice Oliver Wendell Holmes, Jr. referred to as "the felt necessities of the time."²¹⁷ In one of his most famous essays, Holmes proclaimed:

²¹¹ *Id.* at *10.

²¹² 2 *Samuel* 12:2-3.

²¹³ *Id.*

²¹⁴ JERROLD TANNENBAUM, *VETERINARY ETHICS: ANIMAL WELFARE, CLIENT RELATIONS, COMPETITION AND COLLEGIALLY* 185 (2nd ed. 1995).

²¹⁵ *See supra* Part V.G.

²¹⁶ *See, e.g.*, *Buchanan v. Stout*, 139 A.D. 204 (N.Y. App. Div. 1908) (holding that mental distress caused by the loss of a parent, child, or spouse cannot be a basis for recovery).

²¹⁷ OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 3 (1881).

It is revolting to have no better reason for a rule of law than . . . it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it has been laid down have vanished long since, and the rule simply persists from blind imitation of the past.²¹⁸

Courts should be more open to change regarding the availability of bystander recovery for emotional distress resulting from the injury or death of a companion animal due to a third party's negligence. In a Texas case dealing with the shooting and killing of a plaintiff's dalmatian and Australian shepherd, Justice Andell opined:

The law should reflect society's recognition that animals are sentient and emotive beings In doing so, 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.²¹⁹

Similarly, in dissenting from the majority's opinion in a 2005 West Virginia Supreme Court decision denying recovery to a plaintiff who witnessed the death of her dog when he was struck by a negligent driver, Justice Starcher called for the law to adapt to modern day values and attitudes.²²⁰ Noting that courts are empowered to adjust the common law to current needs, he criticized the majority for continuing "to maintain the primitive limits of the common law, and [refusing] to adjust to the realities of the modern world, and permit recovery of damages for sentimental values, mental suffering, or emotional distress."²²¹

The relationship between humans and their companion animals has evolved over the course of history. To a limited extent, the judicial and legislative branches have recognized this, and have taken some steps to adjust the law's treatment of this unique bond. Yet, with rare exceptions, courts have declined to expand the bystander recovery doctrine and its "close relation" prong to include the emotional devastation that results from witnessing the injury or death of a companion animal. Courts must recognize their obligation to adjust the law to fit modern society's outlook when it comes to our four-legged family members and permit such bystander recovery.

²¹⁸ Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 469 (1897), <https://doi.org/10.2307/1342108> (accessed Feb. 23, 2025).

²¹⁹ *Bueckner v. Hamel*, 886 S.W.2d 368, 378 (Tex. App. 1st 1994) (Andell, J., concurring).

²²⁰ *Carbasha*, 618 S.E.2d at 369.

²²¹ *Id.* at 372 (Starcher, J., dissenting).