

LEGAL AND VETERINARY JOURNAL

THE 2017 EUROPEAN ISELP MODULE



Mr. L.M. Schelstraete
Active in the fields of company law and equine law. Within the equine law practice, Luc Schelstraete provides services to Dutch yet often also foreign equine businesses, riders, horse owners and equine authorities.

In this issue of Horse International's Legal and Veterinary Journal we would like to draw our readers attention to the lecture that was given by Schelstraete Equine Lawyers during the recent meeting of The International Society of Equine Locomotor Pathology (ISELP) in the Netherlands.

ISELP AND SMDC

At the beginning of September the Sporthorse Medical Diagnostic Centre (SMDC) hosted veterinarians from all over the world who joined to partake in the European module of the International Society of Equine Locomotor Pathology. The event took place at SMDC's brand new facility in Heesch, the Netherlands, and accommodated numerous vets from various countries for a three day long module. SMDC's newly established facility answers the need of the sport horse industry for a center of excellence where all orthopedic, diagnostic and treatment modalities can be utilized in combination with experience, specific knowledge and individual attention. It was therefore the ultimate location to hold such a prestigious module as the ISELP module. ISELP was formed in the United States under the direction of Dr. Jean-Marie Denoix and focuses

on problems of lameness in the equine athlete with the goal to provide contemporary knowledge and techniques in the continually evolving field of equine locomotor analysis in order to better prepare the equine clinician to understand and manage lameness conditions in the equine athlete. The organizers of the European ISELP Module invited Mr. Luc Schelstraete and Mr. Piotr Wawrzyniak of Schelstraete Equine Lawyers to speak to, and advice, their participants regarding legal matters that might be relevant for both vets and their clients. The lecture zoomed in on conformity and non-conformity in equine sales and reflected also on the liability of the vet that may be derived from the pre-purchase examination.

PRESENTATION BY MR. SCHELSTRAETE AND MR. WAWRZYNIAK

Recent case law indicates that more and more veterinarians are being subjected to civil lawsuits. This occurs both jointly with, and separately from, the seller. It seems to be more common in certain countries to go after the veterinary than the seller when something goes wrong with the horse post purchase. The vets were advised by Schelstraete Equine Lawyers on how to mitigate possible risks. Very important in this context is appropriate maintenance of the file including a written engagement with the client and the proof that the client was informed about the applicable general terms and conditions, the place where these are easily accessible and ideally that the terms and conditions have been provided to the client. The general terms and conditions that in many countries are drafted by professional associations for the veterinary science should contain a limitation of liability and various additional waivers and disclaimers. When things go wrong these are vital in the legal battle. Though, as the daily life proves, these important steps are often neglected.

CONFORMITY AND NON-CONFORMITY IN EQUINE SALES

Mr. Schelstraete and Mr. Wawrzyniak held a lecture titled "Conformity and Non-Conformity in Equine Sales from a Legal and Veterinary Perspective". Mr. Schelstraete commenced the lecture with introducing the concept of conformity and non-conformity stemming from European Union consumer protection laws. Following recent case law the notion of conformity and non-conformity has been applied more frequently to equine cases and sales disputes. The European Directive harmonizing these notions states that the supplied good (the horse) must be in conformity with the sales agreement. The conformity as such is further judged on the basis of the qualities that the buyer, given the nature of the good and the statements of the seller about it, could have expected on the basis of the agreement. The buyer may expect that the object has the qualities that are necessary to be able to use it in a normal way and of the presence of which he did not need to doubt as well as the qualities that are necessary to be able to use it in the particular way that the buyer intends to make of it as provided for in the agreement. In this regard Mr. Schelstraete pointed out the importance of the vet knowing what the purpose of the horse is and the expectations of the buyers, as this may influence the conformity with the agreement, regardless of the outcome of the pre-purchase examination. Although the primary remedy of the buyer is for the seller to repair the non-conformity, many such equine legal disputes lead straight to the resolution of the contract where both the seller and the veterinarian may be held liable.

DOCUMENTATION OF THE PRE-PURCHASE EXAMINATION

Mr. Schelstraete further advised the ISELP members to record a statement of the seller prior to the pre-purchase examination and provided examples of how this may

look. It was emphasized that in order to avoid opening the possibility for a legal suit, it is of importance to document the history of the horse, both regarding health and performance. This will help the veterinarian to locate relevant areas of interest and to investigate them more in depth. Following case law it seems that overlooking this step in the pre-purchase exam may, depending on the circumstances of the case, open the veterinarian up for a lawsuit on basis of professional negligence. But as Mr. Wawrzyniak noted the statement of seller has another important juridical consequence. In the statement by seller the seller warrants and represents towards the buyer certain facts about the horse to be true and accurate. If later, it appears that the seller was not entirely correct then such a warranty or representation gives an additional ground to i.) on one hand challenge the contract based on error or fraud and on ii.) the other hand to claim damages based on the breach of warranty. A warranty is a brilliant legal instrument as the person who warrants has strict liability regarding the warranted facts. No default is required. At the same even the force majeure cannot help you if the facts you warrant are not true and accurate. If you warrant, you have to stand in for it. Using a statement by seller is therefore highly recommendable. It does not only give the buyer relevant information about the horse which as such should be part of a normal due diligence process but additionally it strengthens your position in case the things may go wrong. The statement makes the lawyers job and also the vet's job easier.

CONFLICTING OBLIGATIONS FOR VETS

Moreover Mr. Schelstraete emphasized the risks of performing a pre-purchase exam of a horse, which the veterinarian already knows from earlier. In this case the veterinarian has two conflicting

PREPURCHASE EXAMINATION REPORT

The contents of this report are professional and confidential and are prepared solely for the use of the stated purchaser. This report is valid at the time of issue only.

Practice:		Dr	
IDENTIFICATION OF ANIMAL:			
Horse's name:		Passport number:	
Breed:	Colour:	Sex:	Stable age:
Owner's full name and address:	Address of animal's ID:	Stable where kept:	Buyer's complete details:
PURCHASER'S REQUEST:			
Purchaser's name:		Horse number:	
I hereby request that the Veterinary Clinic performs a pre-purchase examination on the horse described above.			
Proposed purpose of the horse:			
I undertake to use this information solely for the pre-purchase examination of this horse, and will not divulge this information to any third party for any other purpose.			
I accept responsibility for payment of veterinary fees associated with this examination.			
Signature:	Date (Purchase report):		Vet:

obligations arising: the duty to not reveal the information previously acquired and; and the duty to disclose important facts regarding the horse to the buyer. In this case it is advised that the vet reconsider his/her involvement in the pre purchase check. If the vet decides to go through with the examination then this should be with full transparency by asking the seller for the approval to release the horse's previous medical documents to the buyer. If this is not done, the vet risks being accused of misrepresentation or fraud.

CASE LAW INDICATES

Case law discussed by Mr. Wawrzyniak pointed out relevant aspects which may be very influential in certain cases. Such as the significance of each veterinary report produced by the vet having a date and being addressed to the person who has requested the examination. The vets have been warned about addressing the recipients of their reports with "whom it may concern". This manner of addressing has proven in the daily legal practice a very risky business and may cause third – unknown parties – to derive

rights from such a report. The vets were warned that the real risk and danger for the vet is that their contractual relation to such parties have not been – correctly - established. Among others, the identity of the client has not been established and no terms and conditions were declare applicable thereto and/or agreed upon. Case law has also presented situations where vets have been sued for treating a horse after the horse was already sold. It is therefore recommended to inquire who the owner is, especially if the horse

comes back fro treatment shortly after a pre-purchase examination.

CONCLUSION

At the end of the lecture Mr. Schelstraete and Mr. Wawrzyniak answered questions asked by participants of the ISELP meeting and gave examples of does and don'ts and many cases of their own practices were discussed from the legal point of view leading to a vivid discussion between participants and lawyers. Summarizing, this presentation and the event as such was a great opportunity to exchange information, expertise and to approach the activities of a vet both from the legal and the veterinary sciences' point of view. It was an honor to have been invited to this respected ISELP Module and Schelstraete Equine Lawyers look forward to future fruitful cooperation with ISELP and the international veterinary community. ■

Nicol Dominiuk
practicing paralegal
and **Piotr M. Wawrzyniak**
practicing lawyers
at Schelstraete
Business Lawyers
and European US
ASIAN Equine
Lawyers in
Oisterwijk and
Amsterdam, the
Netherlands.



If you have any questions and/or comments after reading this article, we would be happy to hear from you. You can also contact us for all equine-law related questions or matters. Please contact us via info@europeanequinelawyers.com or by telephone +31-(0)135114420.

