

LEGAL AND VETERINARY JOURNAL

THE INTERNATIONAL SOCIETY OF EQUINE LOCOMOTOR PATHOLOGY



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 report on the lecture that was given by Mr Luc Schelstraete of European US-Asian Equine Lawyers during the meeting of members of The International Society of Equine Locomotor Pathology (ISELP) on 26 October 2016 in France. The meeting was held at a beautiful chateau near Paris. In his presentation Mr Schelstraete zoomed in on the legal aspects of the position of the veterinarian.

ISELP AND JEAN-MARIE DENOIX

ISELP was formed in the United States, under the direction of Dr.

Jean-Marie Denoix. The main focus of ISELP are the problems of lameness that the equine athletes coup with. ISELP's goal to provide contemporary knowledge and techniques in the continually evolving field of equine locomotor analysis to better prepare the equine clinician to understand and manage lameness conditions in the equine athlete. ISELP has its members all over the world. For more information on ISELP please visit the website <https://www.iselp.org/>. Jean-Marie Denoix is professor of Veterinary Anatomy and of Equine locomotor system pathology and among other the head of CIRALE (Center of Imaging and Research on Equine Locomotor Affections) in Normandy,

France. Jean-Marie Denoix acted as the FEI Imaging and Lameness Expert during the World Equestrian Games in Kentucky (2010) and in Normandy (2014).

PRESENTATION OF MR SCHELSTRAETE

Mr Schelstraete was honored to be invited by ISELP to provide a lecture to its members. As the members of ISELP work internationally, very often in cross-border transaction, Mr Schelstraete focused on the pre-purchase examination, with the title: Pre-purchase examination. Risky business or not? In many legal cases, the experience shows that the pre-purchase examination is the



basis of a possible claim. At the same time from the legal point of view veterinarians tend sometimes to downplay the legal implications of the pre-purchase examination.

THE POSITION OF THE VETERINARIAN

A pre-purchase examination is namely not only relevant in the relation between the purchaser and the seller of the horse, its possible non-conformity with the agreement and/or any possible error in judgment by the buyer.

The pre-purchase examination can be also very important with regards to possible claims towards the veterinarian in questions himself/herself. Based on the European case law in which European Equine Lawyers have been involved into Mr Schelstraete explained the position of the veterinarians. At the same time, he recommended the audience to answer to basic questions before accepting any kind of an engagement with regards to the pre-purchase examination. The questions are:

- Is the veterinarian related to one of the parties involved, like seller, buyer, agent?
- Is the veterinarian familiar with the horse because of f.i. its previous treatments?

During the lecture Mr Schelstraete explained that if one of these questions is to be answered affirmatively then the vet in question should reconsider his role as the vet performing the vet check. The vet should be namely fully transparent while performing the pre-purchase examination. If he knows the horse (his treatments) and during the vet check the seller does not disclose certain important facts to the buyer, the vet himself can come into a very difficult position. In a situation like this, it is advisable that the vet in question preparing for the vet check ask his former client for permission to disclose historical facts on the horse. Such should be done prior to the vetting and recorded in writing.

CONTRACTUAL AGREEMENT

During the lecture Mr Schelstraete underlined the importance of the contractual agreement to be concluded between the vet and the client. It is a daily practice such are not always in place but they are extremely relevant for the position of the vet. It was recommended to the members of ISELP to record the following points in their contractual agreement with the client:

- Correct name and address of the Client;

Capacity of the Client: Professional party or Consumer;

- Complete identity of the Horse to be vetted including check of chip and passport;
- Persons to be present at the vetting;

- Purpose of the horse and level of training and competition;
- Vetting's Objective and resume of tests including x-rays;
- Value of the Horse involved;
- Financial and Juridical Conditions of the vetting including waivers (for as far as possible);
- Optional: Sellers Statement and Statement of

‘Further a vet needs to be aware of the fact that in some cases he can be sued in another EU country.’

Veterinarian if he is familiar with the horse prior to the vetting. In cases where a vet check is part of the process of a sale and purchase, Mr Schelstraete recommended the ISELP members to interview the seller regarding the horse and ask for the answers to the relevant questions set out in a written statement. The information of the seller allows the vet performing the examination to identify particular areas of interest and to investigate them more in depth. Without this information it is likely that the vet may miss important aspects that could be relevant for the observation of the horse as a purchase with or without risks. This also is relevant for the targeted use of the horse and its (dis-)ability to perform. Also the veterinarian should issue a statement about his possible knowledge of the horse if the case. As it appears from the case law veterinarians are likely to be involved into the civil proceedings next to a seller. Especially, when there is information known to the veterinarian about the horse in question and not disclosed to the buyer, the vet could be accused of malpresentation and fraud. Interviewing the seller and recording the information obtained in writing is of equal importance as the clinical tests and radiographs. Depending on the circumstances of a specific case not investigating the history of the horse could be an argument to accuse a veterinarian of professional negligence.

Additionally, Mr Schelstraete pointed out that it is advisable to videotape the pre-purchase examination and the horse being ridden during the vet check. It might be an additional activity to performed for the vet, but it is an important piece of evidence for the event things go wrong and one has to face a civil litigation. As experience shows in cases where there is no solid evidence (like for instance video's) the judges are very likely to rely on witness statements, whereby it is commonly

known that while the time passes, witnesses in their recollection of events might have difficulties in differentiate between facts and fiction (or at least their feeling regarding their recollection of events and so on).

SAMPLE A AND B

A blood or urine test is not only relevant for anti-doping authorities. Testing can be extremely important in a civil transaction too. Mr Schelstraete recommended the ISELP members to use the FEI protocol developed with the FEI Equine Anti-Doping and Controlled Medication Programme (including sample A and B) also with regards to a pre-purchase examination. More information on how the FEI protocols work can be found on an internet. As the FEI protocols were designed to ensure the identity of Sample A and Sample B they provide a very good position in terms of civil evidence. Once collected and sealed the samples cannot be basically manipulated without damaging them. It gives an advantage both for the seller and the buyer that they can always have the sample B tested shall a dispute arise.

CONSUMER PROTECTION

As set out above one of the important points is to establish the capacity of the parties. At the end of his presentation Mr Schelstraete discussed the consumer protection within the European Union. If the

client of the vet in question is a natural person not acting for business purposes, then the consumer protection rules apply. It is good to be aware of the implications of the consumer protection within the EU. They bring among others that in relation to clauses wherein liability is excluded or wherein any dispute between the vet and the consumer shall be subject to arbitration, such clauses are not valid. Further a vet needs to be aware of the fact that in some cases he can be sued in another EU country and that his agreement might be subject to a foreign law, even though he has nothing to do with that specific EU country. Yet, the EU consumer protection provides for the possibility for a consumer to agitate the judge in his own hometown regarding any matters related to a consumer agreement.

CONCLUSION

At the end Mr Schelstraete reviewed some interesting legal cases dealt with the European Equine Lawyers with regards to veterinarians and answered questions asked by participants of the ISELP meeting. Summarizing the event and the presentation were a good opportunity to exchange information, know-how and to approach the activities of a vet both from the legal and the veterinary science's point of view. ■

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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.

