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SUPREME COURT  
OF THE STATE OF WASHINGTON

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BEVERLY VOLK, et al., *Appellants*,

v.

JAMES B. DEMEERLEER, et al., *Respondents*.

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SUPPLEMENTAL BRIEF OF RESPONDENT VOLK

---

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## **I. IDENTITY OF PETITIONER/RESPONDENT**

Petitioners/Respondents Brian P. Winkler and Beverly R. Volk (“Ms. Volk”), as Guardian for Jack Alan Schiering, a minor, and as Personal Representative of the Estates of Phillip and Rebecca Schiering, deceased, and on behalf of all statutory claimants and beneficiaries (hereinafter “Volk” or “plaintiffs”), ask this Court to reverse the court of appeals with respect to that part of its opinion requiring evidence as to a percentage or range of percentage reduction in the plaintiffs’ loss of chance cause of action.

## **II. COURT OF APPEAL’S DECISION**

See Division III Court of Appeals Published Opinion filed November 13, 2014. See Division III Court of Appeals Order filed February 3, 2015.

## **III. ISSUES PRESENTED FOR REVIEW**

Whether expert opinion evidence as to a percentage or range of percentage reduction in the plaintiffs’ loss of chance is necessary to maintain a loss of chance cause of action, and whether Dr. Knoll’s declaration is otherwise sufficient to withstand summary judgment.

#### IV. STATEMENT OF THE CASE

Please see Volk's Petition for Review, the answers to Howard Ashby and Spokane Psychiatric Clinic's Petitions for Review, and *Volk v. DeMeerleer*, 184 Wn. App 389, 395-408, 337 P.3d 372 (2014).

#### V. ARGUMENT

The plaintiffs' loss of chance claim was dismissed because there was no evidence of the percentage or range of percentage reduction in the lost chance. For the reasons that follow, the Court is requested to reverse the court of appeals on this issue and definitively conclude opinion evidence as to the percentage or range of percentage reduction in the lost chance is not required.

It is recognized that the law in Washington on loss of chance needs much clarification:

**A. The Court Of Appeals Erred When It Affirmed Dismissal Of Plaintiffs' Loss Of Chance Claim Because There Was No Opinion Evidence As To The percentage Or Range Of percentage Reduction In The Lost Chance.**

In the case at bench, the court of appeals wrote:

“Every Washington decision that permits recovery for a lost chance contains testimony from an expert health care provider that includes an opinion as to the percentage or range of percentage reduction in the chance of survival.”

*Volk v. DeMeerleer*, 184 Wn. App. 389, 429, 337 P.3d 372 (2014). See also, *Rash v. Providence Health & Servs.*, 183 Wn. App. 612, 334 P.3d 1154 (2014); *Estate of Dormaier v. Columbia Basin Anesthesia*, 177 Wn. App. 828, 313 P.3d 431 (2013).

Percentage or range of percentage evidence is not required in order to maintain a loss of chance claim. Washington first recognized a claim for loss of chance in *Herskovits v. Group Health Coop.*, 99 Wn.2d 609, 664 P.2d 474 (1983). *Herskovits* involved a wrongful death and survival action based on a healthcare provider's failure to diagnose and treat. *Id.* at p. 611. The plaintiffs claimed the decedent incurred a loss of chance of survival. *Id.* at p. 612. The trial court granted summary judgment and the plaintiffs appealed. *Id.* The Supreme Court reversed and remanded the matter for trial.

Neither the lead nor concurring opinion in *Herskovits* required opinion testimony of the sort mandated by the court of appeals in this case. The lead opinion by Justice Dore utilized a substantial factor causation analysis wherein a loss of chance claim could survive even if there was less than a 50% chance the defendant's negligence caused the ultimate harm. *Id.* at 614. Percentage evidence was relevant to the issue of whether the defendant's negligence was a "substantial factor," but such evidence was not required.

The concurring opinion by Justice Pearson argued loss of chance was a separate harm. *Id.* at 624. Justice Pearson wrote:

"Therefore, I would hold that plaintiff has established a prima facie

issue of proximate cause by producing testimony that defendant probably caused a substantial reduction in Mr. Herskovits' chance of survival."

*Herskovits*, 99 Wn.2d at 634.

Justice Pearson also advocated for a proportional damages approach, but did not state that a statistically derived percentage of loss of chance was required to maintain such a claim. With respect to statistical data, he wrote:

"In effect, this approach conforms to the suggestion of Justice Brachtenbach in his dissent at page 640, footnote 3. **The statistical data relating to the extent of the decedent's chance of survival are considered to show the amount of damages, rather than to establish proximate cause.:**

*Id.* at 635, n. 2 (emphasis added).

Note also that Justice Pearson used the word "considered," only,  
and not the word "required."

In 2011, this Court adopted Justice Pearson's plurality opinion.

"We hold that *Herskovits* applies to lost chance claims where the ultimate harm is some serious injury short of death. We also formally adopt the reasoning of a *Herskovits* plurality. Under this formulation, a plaintiff bears the burden to prove duty, breach, and that such breach of duty proximately caused a loss of chance of a better outcome. This reasoning of the *Herskovits* plurality has largely withstood many of the concerns about the doctrine, particularly because it does not prescribe the specific manner of proving causation in lost chance cases. **Rather, it relies on established tort theories of causation, without applying a particular causation test to all lost chance cases. Instead, the loss of a chance is the compensable injury."**

*Mohr v. Grantham*, 172 Wn.2d 844, 857, 262 P.3d 490 (2011).

With respect to damages, the court wrote:

**“Treating the loss of a chance as the cognizable injury permits plaintiffs to recover for the loss of an opportunity for a better outcome; an interest that we agree should be compensable, while providing for the proper valuation of such an interest. *Lord v. Lovett*, 146 N.H. 232, 236, 770 A.2d 1103 (2001)....”**

*Mohr*, 172 Wn.2d at 858 (emphasis added).

**This Court’s reliance on *Lord v. Lovett* is instructive.** It supports Volk’s contention that percentage or range of percentage evidence as to the degree of the lost chance is not necessary. In that case, the plaintiff suffered a broken neck in an automobile accident. She alleged the defendants’ negligently misdiagnosed her spinal cord injury, failed to immobilize her properly, failed to administer proper steroid therapy and thereby caused her to lose the opportunity of a substantially better recovery. *Lord v. Lovett*, 146 N.H. 232, 233; 770 A.2d 1103, 1104 (2001). The defendants intended to move for dismissal at the close of the plaintiff’s case. **The trial court allowed the plaintiff to make a pre-trial offer of proof. She proffered that her expert would testify the defendants’ negligence deprived her of the opportunity for a substantially better recovery. However, the plaintiff’s expert could not quantify the degree to which she was deprived of a better recovery by the defendants’ negligence. 770 A.2d at 1104 (emphasis added).** The trial court dismissed the plaintiff’s action and the Supreme Court of New Hampshire reversed. *Id.*

Turning to damages, the New Hampshire court addressed the defendants' contention a loss of chance injury is intangible and not amenable to damages calculation.

**“First, we fail to see the logic in denying an injured plaintiff recovery against a physician for the lost opportunity of a better outcome on the basis that the alleged injury is too difficult to calculate, when the physician’s own conduct has caused the difficulty. Second, we have long held that difficulty in calculating damages is not a sufficient reason to deny recovery to an injured party. Third, loss of opportunity is not inherently unquantifiable. A loss of opportunity plaintiff must provide the jury with a basis upon which to distinguish that portion of her injury caused by the defendant’s negligence from the portion resulting from the underlying injury. This can be done through expert testimony just as it is in aggravation of pre-existing injury cases.”**

*Lord v. Lovett*, 146 N.H. 232, 239; 770 A.2d 1103, 1108 (2001) (internal citations omitted) (emphasis added).

Based on *Herskovits, Mohr* and *Lord*, the plaintiffs' in the case at bench have presented evidence of a loss of chance injury. They have produced testimony, on a more probable than not basis, that defendant's breach of duty caused a loss of chance. Dr. Knoll's declaration (CP 55) addresses loss of chance in paragraphs 10, 13, and 14.

Under the authorities presented above, Dr. Knoll's testimony is sufficient and admissible. His opinions are made on a more probable than not basis with reasonable medical certainty. CP 55, para. 6.

This Court's recent opinion in *Grove v. PeaceHealth St. Joseph Hosp.*, 182 Wn. 2d 136, 341 P3d 261 (2014) supports Volk's argument. In that case, two experts testified for the plaintiff during a medical malpractice trial. Neither expert testified as to a percentage or range of percentage reduction in the chance of survival. Dr. Ghidella opined that Grove would not have suffered permanent injuries or would have had a better outcome if the standard of care had been met. Id. at 140-141. Dr. Adams's testified if the hospital employees had not breached the standard of care, Grove would have had a better chance of avoiding injury or would have suffered less severe injury. Id. at 142 (emphasis added). Although the primary issue decided by the court was whether the trial court properly granted defendants motion for judgment as a matter of law, *Id.* at 138, the experts' testimony as to loss of chance absent percentages strongly supports the plaintiffs' argument in the present case.

**B. Washington Does Not Require Opinion Evidence As To Percentage Or Range Of Percentages In Similar Contexts.**

The jury's function in apportioning causation and damages with respect to a preexisting symptomatic condition is similar to apportioning damages in loss of chance.

"If your verdict is in favor of the plaintiff, and if you find that:

- (1) before this occurrence the [plaintiff] [defendant] had a preexisting [bodily] [mental] condition that was causing pain or disability, and
- (2) because of this occurrence the condition or the pain or the disability was aggravated,

then you should consider the degree to which the condition or the pain or disability was aggravated by this occurrence. However, you should not consider any condition or disability that may have existed prior to this occurrence, or from which the [plaintiff] [defendant] may now be suffering, that was not caused or contributed to by this occurrence.”

WPI 30.17

In a preexisting symptomatic condition case, the goal is to separate the preexisting symptomatic condition from the injury caused by the negligent defendant and apportion damages accordingly. *Id.* There is no requirement the jury consider percentage or range of percentage opinion evidence. *Id.* The same can be said for a jury’s decision apportioning fault, deciding issues of contribution and indemnity, and determining the amount of general damages. The loss of chance is no different. percentage or range of percentage evidence of the kind required by the court of appeals is unnecessary.

Additionally, such a requirement encroaches upon the jury’s rightful determination of damages.

“The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any

court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.”

Washington Constitution, Article 1, Section 21.

The measure of damages is a question of fact within the jury’s province. *Sofie v. Fiberboard Corp.*, 112 Wn.2d 636, 645, 771 P.2d 711 (1989). To require expert testimony as to the percentage or range of percentage reduction in the loss of chance case, as a prerequisite to the jury’s determination of damages, impermissibly encroaches upon the jury’s proper function.

C. **Requiring Statistical Testimony Is Causal Of The Confusion, If**

**Not The Chaos Regarding Washington’s Loss Of Chance Law**

Abstract: Loss of chance is a well-established tort doctrine that seeks to balance traditional tort causation principles with the need to provide a remedy to patients whose injuries or illnesses are seriously exacerbated by physician negligence. In Washington, the doctrine continues to create significant difficulties for judges, juries, and practitioners. Wherever it has been applied, it has often created difficulties. The loss-of-chance doctrine needs clarification - definitive, sensible, and workable guidelines to ensure that loss of chance is consistently and fairly applied. Part of the problem lies in the fact that courts and litigants use the term "loss of chance" as if it has a single, fixed meaning, when in fact it is an umbrella term that covers three separate - though sometimes overlapping - theories of recovery.

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**The critique of these three cases underscores the extent to which ambiguities in loss-of-chance doctrine currently lead to inconsistent and unpredictable standards of causation and burdens of proof.**

COMMENT: LOSS-OF-CHANCE DOCTRINE IN WASHINGTON:  
FROM HERSKOVITS TO MOHR AND THE NEED FOR  
CLARIFICATION, 89 Wash. L. Rev. 603 (2014) (emphasis added)

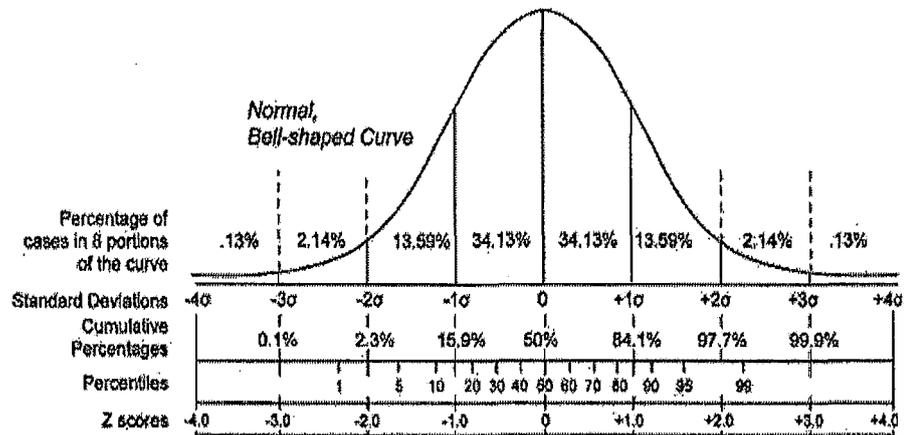
Probability and statistics is an applied mathematical science. Statistical inference (inductive statistics) involves determining the properties of an acquired data set through a process which, to a calculable degree of reliability, allows inferences to be made about a larger population from which the data (sample) is taken. Through this process, hypothesis may be tested and estimates or probabilities can be made. When setting out to perform a specific task, a model is developed which involves assumptions about the population and determines the parameters of the data to be gathered. Data points are often referred to as “observed data.” Use and application of statistical analysis and probabilities developed in this manner is only useful to the extent a model of data gathering based on assumptions and parameters result in obtaining a statistically significant set of observed data.

Statistical significance, in this context, is that the observed data yields results from which valid inferences may be made about the population from which the data originated. Conversely, if data appears to be random in nature, or unassociated with the subject population, it is not a statistically significant sample. When attempting to use and apply information derived from statistical data, such as Inferring certain values, outcomes or

occurrences from statistical data requires rudimentary understanding the mathematical concepts of mean, standard deviation, and probability. **Mean** is the mathematical average of all data point values. **Standard deviation** is a representation of variance in data point values. For example, assuming one were testing student IQ using 100 individuals. In one sample the data points reside in a range of 95 – 125. In another sample, the data points reside in a range of 80 – 135. The standard deviation of the first set would be a smaller value than the standard deviation of the second set. Probability, often expressed in a percentage, is a derivation of distribution of data points from a sample.

A Bell or normal shaped curve is one in which standard deviations are calculated, and in which: the first standard deviation from each side of the mean contains approximately 34.1 % of the population or data points; the second standard deviation from each side of the mean contains approximately 13.6 % of the population or data points; the third standard deviation from each side of the mean contains approximately 2.1 %; and beyond the third standard deviation to infinity, contains approximately .2 % each side of the mean. The total of the percentage of the data points is one. Thus, within the area of one standard deviation from the mean, approximately 68.2 % of the population of data points reside, and within two standard deviations, approximately 95.4% of the data points reside. percentages represent an

accumulation of data point values or volume. Probability is utilization of a percentage value as a predictor.



**Critical to any use of probability and statistics is understanding the model, assumptions, and parameters of the inquiry as it relates to the population and the sample.** An inquiry into IQ as a sole parameter to be sampled is neutral as to age, sex, education, health, etc. unless these variables are part of the inquiry, and statistically significant data is gathered as to each. Probability is the likelihood of an event, observation, or value occurring, in a sampled population. Probability is always a value between zero, (where zero indicates no possibility of occurrence) and one (where one indicates absolute certainty of occurrence). A classic example of is flipping a coin, assuming the coin is symmetrical in shape and balanced in weight. A single flip of a coin always has a probability of 50 % heads, 50 % tails. The probability of successive flips being heads only, or tails only, is a

computation of .5 (50 %) to the power of the number of flips. The probability of three heads or tails in a row is  $.5 \times .5 \times .5 = .125\%$ .

How and why does this all relate to loss of chance law? First, consider the law on certain types of admissible evidence. In Washington, evidence must be relevant to be admissible. ER 401, 402. Relevant evidence is evidence that is probative. ER 401. However, relevant evidence may be excluded if it's unduly prejudicial, confusing, misleading, cumulative, or causes delay. ER 403. Relevant physical objects are capable of three uses at trial: real evidence; illustrative evidence; and demonstrative evidence. A physical object that has a direct part in the incident at issue, such that it has probative value in and of itself, is considered to be admissible, real evidence. *State v. Mitchell*, 56 Wn. App. 610, 613, 784 P.2d 568, (Wash. Ct. App. 1990). Illustrative evidence is physical evidence that is substantially like, and similar in function and operation to, the thing in issue. *Id.*, at 56 Wn. App. 610, 613. Demonstrative evidence is evidence that aids testimony, and "shows" rather than "tells;" e.g., videotapes, charts, and maps. 5 Karl B. Tegland, *Washington Practice: Evidence* § 402.17, at 265 (4th ed. 1999). Such evidence is assumed to have been admitted. See 5 Tegland § 402.17, at 266 (individual items of demonstrative evidence are called exhibits). ER 703 allows experts to use reliable facts or data not admissible as (direct) evidence when forming their opinions.

**Consider, then a plaintiff's expert medical physician who testifies that the defendant physician breached the standard of care in treating X-Malad., that the breach caused a loss of chance of survival, and that the decedent died within 30 days of treatment. Further, the only peer reviewed journal article that addresses treatment and survival statistically studied same, resulting in a 70% survival rate within 30 days of treatment. Query, has the physician provided admissible evidence of a 70 % loss of chance of survival.**

The short answer is "no." The long answer follows. First, use of the study is permissible, to the degree it is relevant, as a learned treatise if read into the record, and/or as demonstrative evidence if the text and/or presumed Bell curve is displayed to the jury. In no instance is it direct evidence or illustrative evidence. However, if the study is simply that of a sample of X-Malady patients who have undergone treatment, the study, alone, lacks relevance and scientific foundation. **This is because there is no data or information to relate it to medical negligence. The study simply states that of 100 percent of those with X-Malady who have undergone treatment, 70 % were observed to survive and 30 % perished, within 30 days of treatment.**

Conversely, consider that the study provides detail of general health of the sample of X-Malady patients, including personal habits like smoking,

pre-existing conditions like COPD or congestive heart failure, diabetes, etc. Further, that, respectively the far left and right to the relative intermediate area of the 70/30 result represents relatively healthy or unhealthy patients, and that part of the distribution near the point at which death occurs (70% / 30% margin) are occupied by marginally healthy and unhealthy patients, respectively, then the physician could rely on and otherwise utilize the study regardless of its admissibility, as it has some relevance and scientific foundation. As an example, the physician could say that the decedent, based upon the decedent's pre-treatment health condition, occupied a position roughly in a transition area between healthy and marginally healthy patients. Then survival would have been statistically expected absent negligence. Query, however, in this scenario would the physician be expected to identify the location of the patient which could then correspondingly reduce the probability of post treatment survival directly by that position in the normal distribution less the percentage falling to the left (towards more healthy) Alternatively, a physician could testify, based on his anecdotal experience, with a small, non-statistically significant treatment of 10 X-Malady patients, further in this treatment which the expert claims is non-negligent, 9 of the 10 survive. Can a physician testify decedent had a 90 % chance of survival absent medical negligence? "No." A small sample of patients lacks statistical significance, and therefore, scientific foundation, to ascribe a precise

percentage, anecdotal or otherwise.

In referencing the expert's anecdotal experience, can the expert adopt the 70% study value as the loss of chance value, assuming that it is raw and without references to health conditions of the patients? "No." The study is silent as to any effective negligence and, again, is irrelevant and lacks foundation. May the expert state that based on his anecdotal experience, the study results (where the study does consider pre-treatment health condition of the patients) and his knowledge of the decedent's health, that the expert would have expected the decedent to have an 80 % chance of survival absent negligence? "Yes." The expert has provided foundation based in relevant statistics, but reasonably modified by his experience.

However, one consideration is lacking, what is the value of loss of chance? Consider whether there is any study related to the effect of negligence on the treatment of X-Malady patients, or any defense expert testifying that based upon the expert's interpretation and application of the study (where the study does consider pre-treatment health condition of the patients); and where the expert has considered the pre-treatment health of the decedent and perceives decedent had a lesser health condition than concluded by the plaintiff's expert; and the defense expert's anecdotal treatment/outcome experience in treating X-Malady patients. If the defense expert were to say that the

survival rate absent medical negligence would, in the expert's opinion, be 40 %, would this testimony be admissible? "Yes." Further, what could the jury do with the testimony provided by both experts. First, it is within the providence of the jury to determine weight and sufficiency of evidence and the credibility of witnesses. The jury could regard any or all of the testimony of either or both experts and could find, without any risk of judicial review of a decision, a loss of chance value between 70 % and 40 %. However, if the jury adopts 70%, is there a 70% loss of chance? Is there a 30 % loss of chance (70% minus 40%)? Or is the loss of chance calculated as a function of the difference between 40 % and 70 % loss of chance? That is, the difference between the defense 40 % and the plaintiffs' 70% is 30% over which 100 % of the loss of chance exists. As an example, then if the jury adopts 70 % as raw loss of chance, then it would convert the 70 % to a relative 100 % loss of chance value. Conversely, if the jury adopted a 40 % raw loss of chance as testified to by the defense expert, then the computed loss of chance value would be 0 %. As further example, if the jury would adopt a 55% loss of chance of raw value, would it compute to a 50 % loss of chance value when considering that the difference of 15 % between 40% and 70 % (15 % divided by 30 % equals 50 %).

This conundrum was addressed in the recent law review article as referenced above. Discussing the Herskovits decision:

Furthermore, the opinion is unclear as to how to calculate the actual percentage lost. At one point, the court uses 14%, as stipulated by the parties, which would be the proportional percentage, based on a 100% expectation of survival scale. Later on, the court moves to a relative proportional percentage, stating that a reduction from 39% to 25% is a 36% loss of chance. This poses significant problems both in terms of the substantial factor test and in damages. For example, say Patient A has a 4% chance of survival, which is reduced to 1%. That is either a 3% loss of chance, or a 75% loss of chance, depending on which type of proportionality is applied. Patient B had a 60% chance of survival that was reduced to 40% because of the defendant's negligence. The strict proportional difference would be 20%, and the relative proportional difference would be 33.3%. Under the all-or-nothing approach, and if relative proportionality is applied, Patient A might stand to recover the full amount of damages when the possibility of dying was 96%, while Patient B would get nothing. However, it takes no stretch of the imagination to see that Patient B has been more harmed by defendant's negligence. Under the proportional approach, Patient A could recover either 3% or 75%, and Patient B would recover 20% or 33%. Under the substantial factor approach, both Patient A and B are eligible to recover 100% of damages. However, seeing as how percentages are manipulable, using relative proportionality makes the lost chance appear more substantial than it actually is.

COMMENT, *supra*, at 89 Wash. L. Rev. 614 (emphasis added)

Further, consider that, in loss of chance of better outcome cases, whether using the proportional value approach is appropriate. That is, by whatever means a jury concludes an assigned loss of chance value does using the proportional approach by determining damages as that percentage of loss of chance of the ultimate outcome where the ultimate outcome is 100 % of

value. Although there may be some logic in using this approach, where the claim is loss of chance of survival as the ultimate outcome of death. There, the claims for damage of the decedent are established by the death as it may be relatively straightforward to calculate both economic loss and loss of any emotional distress should the decedent have knowledge of the loss of chance and statutory beneficiary survival of decedent.

However, it is clearly troublesome to try to apply a proportional approach, in many instances, in loss of chance of a better outcome case. Where a patient has pre-existing conditions which involve various levels of pain, suffering, disability, and impact or affect on activities of daily living, it is unclear in trying to divine the exact nature of the relative values of pain, suffering, emotional distress, and affect on activities of daily living from the actual result versus the ultimate result where the actual result is the condition of the patient/plaintiff and the ultimate result from the proportionate values are diminished is the better condition of the patient/plaintiff had no negligence occurred. That is, there is certain difficulty in asking a jury to divine what condition a patient/plaintiff might have physically and mentally been had no negligence occurred where there is a large variance in the nature of a patient/plaintiff from stoic to an "egg shell" patient/plaintiff.

Finally, it is simply inconsistent to state on one hand that a loss of chance exists under Washington law as a separate, identifiable tort claim

from a tort claim based upon the ultimate outcome, where, when calculating damages, the jury is required to determine the value of the ultimate outcome and proportionally reduce the value of the loss of chance claim. Where percentage testimony is required to establish the relative value of loss of chance, and a jury is required to state the value on a verdict form. It can only be concluded, logically, that in doing so, a loss of chance claim becomes a function of and dependent on a finding of specific nature and value of the ultimate outcome. In the proportional approach, then, the loss of chance claim is purely a subsidiary and dependent claim of the ultimate outcome rather than an independent claim.

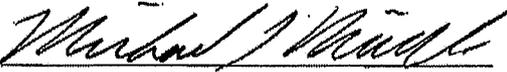
For these reasons, the Court is requested to conclude evidence as to the percentage or a range of percentage reduction in a loss of chance of case is not required and reverse the court of appeals on this issue.

#### V. CONCLUSION

The plaintiffs' loss of chance claim was dismissed because there was no evidence of the percentage or range of percentage reduction in the lost chance. The Court is requested to definitively conclude opinion evidence as to the percentage or range of percentage reduction in the loss of chance is not required. The Court is requested to reverse the court of appeals as to its decision on loss of chance.

RESPECTFULLY SUBMITTED this 28th day of August, 2015.

MICHAEL J RICCELLI PS

By: 

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Bruce E. Cox, WSBA #26856

**DECLARATION OF SERVICE**

I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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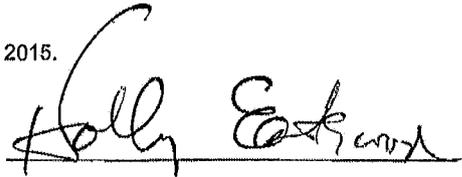
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28th day of August, 2015.



## OFFICE RECEPTIONIST, CLERK

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**To:** Holly@mjrps.net  
**Subject:** FW: Volk v. DeMeerleer - Cause No. 91387-1 - Supplemental Brief 2  
**Attachments:** 64 - Volk Second Suppl Brief.pdf

Received on 8-31-2015

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

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**From:** Olive Easterwood [mailto:Holly@mjrps.net]  
**Sent:** Friday, August 28, 2015 4:57 PM  
**To:** Bausch, Lisa <Lisa.Bausch@courts.wa.gov>  
**Subject:** Volk v. DeMeerleer - Cause No. 91387-1 - Supplemental Brief 2

Lisa,

Attached is the Supplemental Brief of Respondent Volk. This is the second brief filed by our office today.

Thank you.

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