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To be argued by
ADAM P. KARP

Washington Supreme Court

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Ct. of Appeals Div. II Docket No. 39767-6

Kitsap Cy. Sup. Ct. Cause No. 08-2-01979-1

JULIE HENDRICKSON,

Plaintiff-Petitioner,

-against-

TENDER CARE ANIMAL HOSPITAL CORP., et al.,

Defendants-Respondents.

PETITION FOR REVIEW (RAP 13.4)

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I. IDENTITY OF PETITIONER

Julie Hendrickson, through her attorney of record Adam P. Karp, makes this petition for review pursuant to RAP 13.4(b)(2 and 4).

II. COURT OF APPEALS DECISION

Ms. Hendrickson seeks reversal of that part of the Sept. 17, 2013 Court of Appeals *Published Opinion* (**Exh. A**) affirming the part of Kitsap County Superior Court Judge Leila Mills's May 22, 2009 order (**Exh. B**) granting summary judgment dismissal of Ms. Hendrickson's claims for emotional distress damages and for reckless breach of bailment, including the May 22, 2009 order denying reconsideration thereof (**Exh. C**).

III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals err by categorically rejecting emotional distress damages upon proof of reckless breach of a veterinary contract?

IV. STATEMENT OF THE CASE

Ms. Julie Hendrickson, a Commander in the United States Navy, serving as a military nurse, sued Tender Care Animal Hospital Corporation d/b/a Ridgetop Animal Hospital and veterinarian Dr. Kristen T. Cage¹ for reckless breach of (bailment) contract, professional negligence, and negligent misrepresentation/lack of informed consent – all pertaining to her four-year-old, Golden Retriever mix named Bear, who

¹ Veterinarian Dr. Shannon L. Heath was dismissed with prejudice.

died from gastric dilatation (bloat) shortly after being discharged from Defendants' hospital. On this date, Ms. Hendrickson left Bear for an elective neuter and microchip implantation. The neutering surgery was uneventful, but substantial vomiting complicated postoperative recovery. Ms. Hendrickson was told by an employee, "I've never seen a dog throw up as much as he has." For this, Bear received a Reglan injection and Ms. Hendrickson learned from staff that, after the injection, "he is much better now." ***Hendrickson Decl., Exh. D.***

Just prior to Bear's discharge that evening, an abdominal radiograph was made showing significant gastric dilatation. Even the chart notes confirmed a diagnosis of bloat, yet no steps were taken to decompress Bear's stomach, much less discuss alternatives to treatment with Ms. Hendrickson. "A dilated stomach, even without torsion, is an emergent and life threatening situation that requires immediate response when presented to a veterinarian." ***Kern Decl., Exh. E.*** Indeed, from moment of intake to moment of discharge, not one veterinarian ever spoke to Ms. Hendrickson, nor did any person seek consent from Ms. Hendrickson for the x-ray taken by Dr. Cage, nor did any person explain the risks associated with discharging Bear in his current condition, nor did any person discuss alternative treatment (e.g., orogastric tube placement,

trocharization, cannula placement) – despite Ms. Hendrickson’s attempt to confirm that a veterinarian on-site was aware of Bear’s condition.

Instead, Defendants discharged Bear to Ms. Hendrickson bloated and weak, with slightly pale gums, recommending orally (through an inexperienced assistant) that Ms. Hendrickson obtain and administer Gas-X, take him on short walks once home, and if his condition worsened, to go to the emergency hospital. Ms. Hendrickson monitored Bear in accordance with the insufficient information given to her by the technician charged with speaking to Ms. Hendrickson while Dr. Cage remained, obscurely and anonymously,² in the back of the hospital.

Upon arriving at home, Bear’s condition remained unstable, so Ms. Hendrickson called the Animal Emergency and Trauma Center (“AETC”) for advice. While on the phone with AETC, Bear lay down in her driveway and did not move, even after being leashed. Noting he stopped breathing and had a weak, rapid pulse, she began CPR and, with a neighbor’s assistance, drove to AETC. Over the long drive, she continued performing CPR.

Bear arrived at AETC in respiratory and cardiac arrest. Despite AETC’s efforts, Bear could not be resuscitated. Ms. Hendrickson suffered profound emotional distress arising from watching Bear die, trying to save

² Ms. Hendrickson did not even know Dr. Cage had attended Bear since no veterinarian made her or his presence known.

his life to no avail, and being lost, numb, and exhausted in the aftermath of the tragedy. *Exh. D*, ¶¶ 13-14. Had she been informed of the risks of discharge as instructed, she would have insisted upon immediate decompression or gone straight to an emergency room. *Id.*, ¶ 12.

Ms. Hendrickson retained board-certified, historically seven-state licensed, surgeon Douglas A. Kern, DVM, MS, DACVS. He opined with reasonable medical certainty that the Defendants' acts and omissions "clearly breached the standard of care," "certainly led to his death," and that the inactions "constitute recklessness and a deliberate indifference to the information gathered by their radiographs and evaluations." *Exh. E*.

On May 8, 2009, the Hon. Leila Mills heard Defendants' motion for summary judgment dismissal. The oral ruling granting relief in part by applying the economic loss rule to dismiss all tort and emotional distress claims, but denying the request to fix damages at a pretended market or replacement value of less than \$450 (noting that fact issues existed, and relying on *Sherman v. Kissinger*, 146 Wash.App. 855 (I, 2008)), was memorialized in a written order on May 22, 2009, and which dismissed with prejudice all claims sounding in tort; all claims for emotional distress damages; and Plaintiff's claim for reckless breach of bailment. *Exh. B*.

On Sept. 18, 2009, Ms. Hendrickson filed a notice of appeal. Defendants did not cross-appeal. Four years later, after a *two year* stay of

proceedings awaiting this court's determination of *Jackowski v. Hawkins Poe, Inc.*, 278 P.3d 1100 (Wash.2012), an economic loss rule case, Division II decided Ms. Hendrickson's appeal, reinstating all her tort claims after reversing the trial court's summary judgment order premised on an erroneous interpretation of the independent duty doctrine. However, it affirmed dismissal of Ms. Hendrickson's emotional distress claim arising from *Restatement (2nd) of Torts* § 353 and *Gaglidari v. Denny's Restaurants, Inc.*, 117 Wn.2d 426 (1991). Ms. Hendrickson seeks this court's review of the latter part of the decision.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

1. RAP 13.4(b)(4)– Substantial Public Importance

Issues of first impression that affect not only the parties at bar but potentially thousands of other daily interactions throughout this State, warrant review under RAP 13.4(b)(4). *State v. Watson*, 155 Wn.2d 574, 577 (2005). Examples where the Court of Appeals has granted RAP 2.3(d)(3) review include *Guillen v. Contreras*, 147 Wash.App. 326, 330 (III, 2008)(noting matter was also of first impression regarding statutory interpretation); *In re Estate of Haviland*, 161 Wash.App. 851, 854 (I, 2011)(first impression).³

³ RAP 2.3(d)(3) serves as a rough analog to RAP 13.4(b)(4).

Perhaps the primary reason to grant review comes from the panel itself, which below acknowledged that Ms. Hendrickson has presented a matter never before reviewed by any appellate court in Washington. *Slip op.*, at 5. It also succumbed to exaggerated speculation, stating that a ruling favoring Ms. Hendrickson would have “enormous” juridical impact in “nearly every” veterinary contract case. *Slip op.*, at 10.

The Economics of Veterinary Medicine and Malpractice

Modern society accepts and furthers the view that companion animals have immense intrinsic and emotional value. Veterinarians know and profit from this as well. If there were ever any question our love for companion animals, consider the images that flooded our television screens in the wake of Hurricane Katrina.⁴ Appellate decisions voice awareness of this substantial interest, and rule accordingly.⁵ Reflecting the increasing value of domestic companion animals in contemporary society, legislatures across the country have moved rapidly to enact a multitude of protections to prevent companion animals and their owners from suffering unnecessary harm. For example, in 1993 only seven states prosecuted

⁴ In the hours, days, and weeks after Hurricane Katrina, news reports were predominated by images of desperate hurricane victims begging to be evacuated with their companion animals. Other hurricane victims, forced by local officials to leave their companions behind, worked tirelessly to be reunited with the animal members of their family after the storm passed. The national response to these images was so staggering that the federal government passed disaster relief legislation to ensure that, in the future, disaster evacuation plans include the evacuation of companion animals. *See* Pets Evacuation and Transportation Standards Act of 2006, 42 U.S.C. §§ 5121, 5196, 5196b, 5170b(a)(3).

⁵ *See, infra.*

companion animal cruelty as a felony. Today, just twenty years later, there is only one (South Dakota) that *does not*.⁶ As an additional safeguard, Washington now statutorily provides for domestic companion animals to be included in orders of protection⁷ as well as in animal trusts.⁸ Washington has five regulatory sections addressing theft of a pet.⁹

Nonetheless, many veterinarians continue to hypocritically rely on the human-animal bond for their livelihoods while contending that their misconduct should be judicially immunized and economically fixed at no more than “market value,” without consideration for the emotional damage their actions and omissions may inflict. To restore equilibrium to this doctrinally unfair alignment, and to use the civil justice system to provide both compensation and deterrence,¹⁰ requires remedies commensurate with the foreseeable harm, as inflicted here by Dr. Cage’s reckless behavior in the handling of Bear.

Respondents may argue that government regulators already mete

⁶ Aldf.org/downloads/Felony_Status_List%204-12.pdf. Washington passed its felony law in 1994. RCW 16.52.205. However, veterinarians are categorically exempted from prosecution for felony animal cruelty for accepted practices. RCW 16.52.205(6).

⁷ See e.g. RCW 26.50.060(1)(l).

⁸ See e.g. RCW 11.118.005-110. Washington is one of over 40 states that allow such trusts.

⁹ RCW 9.08.070; RCW 9.08.072; RCW 9.08.074; RCW 9.08.076; RCW 9.08.078.

¹⁰ This court and other erudite sources have acknowledged the two basic functions of the law of torts – to deter future conduct through a finding of liability and to compensate the injured person for damages sustained. See *Restatement (2nd) Torts* § 901 (1979), *Spokane Truck & Dray Co. v. Hofer*, 2 Wash. 45 (1891), *Babcock v. State*, 112 Wn.2d 83, 113 (1989)(Utter dissenting); *Any v. Martin*, 154 Wn.2d 477 (2005) (Chambers dissenting); Learned Hand, 3 A.B.C.N.Y. Lectures on Legal Topics 87 (1926).

out deterrence to licensed veterinarians. But Washington requires proof of unprofessional conduct by the probatively more onerous clear and convincing evidence standard, muddying deterrent potential. *Newman v. State*, 156 Wash.App. 132, 146 (I, 2010). Further, several legislative and judicial distinctions between veterinary and human care providers in Washington limit oversight and protection of animal patients and their caretakers, such as: (1) The adverse health event and incident reporting system (Ch. 70.56 RCW) does not apply to veterinarians or veterinary hospitals¹¹; (2) The closed malpractice claim reporting system (Ch. 48.140 RCW) does not apply to veterinarians¹²; (3) The health care claims act (Ch. 7.70 RCW) does not apply to veterinarians. *Sherman v. Kissinger*, 146 Wash.App. 855 (2008).

At present, civil litigation does not operate as a reliable failsafe since deterring veterinary malpractice is prohibitively costly with marginal return when orchestrated through a civil suit, utterly unlike human

¹¹ See RCW 70.56.010(6,7,10)(defining hospital as facility licensed under Ch. 70.41 RCW); RCW 70.41.020(4)(defining hospital to reference treatment of “individuals,” not animals).

¹² This Act mandates reporting to the National Practitioner Data Bank and Office of the Insurance Commissioner, pursuant to Ch. 284-24D WAC and Ch. 48.140 RCW, yet veterinarians are not considered “health care providers.” RCW 48.140.010(7)(defining “health care provider” or “provider” to have same meaning as in RCW 7.70.020(1,2)); act, chapter 7.70 RCW, does not apply to veterinarians and veterinary clinics). The National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank (NPDB-HIPDB), does not appear to mandate reporting for veterinarians as they are neither physicians nor dentists and are not listed in the *Examples of Other Health Care Practitioners*, shown on page C-3. See NPDB Guidebook, Ch. C *Health Care Practitioners* pages 1-3.

malpractice claims.¹³ Private litigation is, therefore, a poor and highly costly substitute for discipline.

This is so although anyone can understand the deep loss suffered when a beloved domestic companion animal is killed or seriously harmed. At first glance, the topic of veterinary malpractice might appear to be of limited social or economic importance. In sheer financial terms, however, U.S. consumers spend over \$24,500,000,000 (\$24.5 billion) exclusively on veterinary care for their pets every year.¹⁴ Remarkably, this annual economic outlay to veterinarians is 300% greater than the gross revenues of the entire U.S. recording industry.¹⁵ The substantial contribution to the U.S. national economy and veterinary profession solely resulting from the value Americans place on their pets is undeniable. These considerable sums continue to rise even in rough economic times.¹⁶

Extensive research by the American Veterinary Medical

¹³ Financial recovery will both entice lawyers to proceed on contingency and incur tens of thousands of dollars in expert fees and litigation costs, as well as effectively deter misconduct by the class of defendants who might have to pay such judgments. Yet the ratio of expert fees and litigation costs to judgments recovered in veterinary malpractice claims are often greater than 1:1 (meaning that the plaintiff breaks even if he prevails), and the judgments are several orders of magnitude smaller than those involving human medical malpractice deaths (or even injuries).

¹⁴American Veterinary Med. Assn., *U.S. Pet Ownership & Demographics Sourcebook*, 1 (AVMA 2007).

¹⁵ Recording Industry Association of America, *2009 Yearend Shipment Statistics*, http://www.riaa.com/keystatistics.php?content_selector=2008-2009-U.S-Shipment-Numbers (accessed Sep. 1, 2010).

¹⁶ AVMA, *U.S. Pet Ownership*, *supra* n. 1. That the number of U.S. pets increased only modestly during these periods makes such spending surges all the more astounding.

Association (“AVMA”) has determined conclusively that the primary factor causing this escalation is the strong bond pet owners share with their companion animals.¹⁷ Washington is ranked sixth as the state with the highest percentage of pet-owning households (62.7%) and the fifth ranked with the most cat-owning households (39%).¹⁸ According to the AVMA, 99% of pet owners now consider their animals to be either “family members” or “companions,” compared with only 1% who consider their pets to be simply “property”,¹⁹ prompting AVMA president Douglas G. Aspros, DVM to say, “The human-animal bond is stronger than ever, but we are very concerned that pets may not be getting the preventive health care they need.”²⁰ Total veterinary visits nationwide increased from 193 million to 202.4 million in 2011.²¹

Another comprehensive study by the veterinary profession determined that 76% of all pet owners said they would “spend any amount necessary to keep their pets healthy.”²² This cultivation of the human-animal bond has been an obvious and absolute boon to the veterinary profession. Salaries for veterinarians have nearly doubled in just the last

¹⁷ Burns, *infra*.

¹⁸ AVMA, U.S. Pet Ownership & Demographics Sourcebook (2012).

¹⁹ AVMA, *U.S. Pet Ownership* (2012).

²⁰ www.avma.org/news/javmanews/pages/130201a.aspx.

²¹ Extrapolating to Washington, with 2.15% of the U.S. population, and skewed by high pet-ownership rankings, this translates to over five million veterinary visits in Washington annually.

²² Lue, *infra*.

10 years.²³ Even the U.S. Bureau of Labor Statistics officially noted how the bond has translated into significant economic gains for the veterinary profession.²⁴ The above demonstrates the substantial public importance – to both owners and veterinarians – of the issue presented by Ms. Hendrickson.

Assessment of Court of Appeals Decision

For further consideration, Ms. Hendrickson rebuts contentions made by the panel:

- a. “Both decisions hinged their analysis on the following provision of the *Restatement of Contracts* § 341.”**

While *Cooperstein* and *Thomas* did rely on the 1932 version of the Restatement of Contracts, *Gaglidari v. Denny’s Restaurants, Inc.*, 117 Wn.2d 426 (1991) adopted the later and more expansive 1981 revision of *Rest. (2nd) of Contracts* § 353, cited by the panel in *slip op.* at 6. Importantly, § 353 broadened the doctrine from its 48-year-old predecessor in three important respects: (1) to permit recovery regardless

²³ At \$120,000, the average veterinarian is in the U.S. Census and Bureau of Labor Statistics’s highest category of 2007 wage earners “\$100,000 and above.” http://pubdb3.census.gov/macro/032007/perinc/new01_001.htm (accessed Sept. 1, 2010).

²⁴ U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2010-2011 Edition, Veterinarians 3* (“Many pet owners consider their pets as members of the family, which serves as evidence that people are placing a higher value on their pets and is an example of the human-animal bond. These pet owners are becoming more aware of the availability of advanced care and are more willing to pay for intensive veterinary care than owners in the past. Furthermore, the number of pet owners purchasing pet insurance is rising, increasing the likelihood that considerable money will be spent on veterinary care.”).

of bodily harm; (2) to permit recovery even absent recklessness or willfulness by instead focusing on the foreseeability of serious emotional disturbance; and (3) by allowing recovery where the contract *or* breach is of a kind that would result in substantial mental anguish.

In other words, if *the contract* is not of the type that when breached would cause such psychological suffering, the recklessness or willfulness of *the breach itself* would justify recovery. Here, Ms. Hendrickson has alleged that both the contract *and* the manner of breaching the contract warrant emotional distress damages. Yet, as described below, the panel undertook *no analysis* as to whether breaching a veterinary contract, recklessly or not, resulting in harm or death to a beloved companion animal (who is also the veterinarian's patient) is of such kind that a veterinarian would understand is particularly likely to cause serious emotional distress.

b. “Based on these examples, the court held that the *Cooperstein* and *Thomas* courts misapplied the *Restatement*”.

Cooperstein and *Thomas* remain good law. They were not reversed. *Gagliardi*, at 445. But they did rely on the first Restatement's narrower doctrine. *Thomas*, at 814, acknowledged the cognizability of these noneconomic damages relating to breach of contract for education at a cosmetology school. *Cooperstein* and *Schwarzmann v. Association of*

Apartment Owners of Bridgehaven, 33 Wash. App. 397, 404 (Div. 1, 1982) (citing *Cooperstein*), while not finding a reckless breach of contract under the evidence presented, nevertheless recognized the cause of action's viability.

In evaluating whether an employment contract is the type contemplated by the Restatements, the *Gagliardi* court quoted a Michigan court:

Loss of a job is not comparable to the loss of a marriage or a child and generally results in estimable monetary damages.... An employment contract will indeed often have a personal element. Employment is an important aspect of most persons' lives, and the breach of an employment contract may result in emotional distress. **The primary purpose in forming such contracts, however, is economic and not to secure the protection of personal interests.....**

Id., at 441 (emphasis added). *Gagliardi* added that the contracts for which mental distress damages are recoverable include those where the contract has "elements of personality" or was "'meant to secure [the] protection' of personal interests." *Id.*, at 446-47. Ms. Hendrickson, like most good caretakers, described her relationship to Bear as if he were her ward and child, the loss of which is more comparable than not to the examples given.²⁵ **Exh. D, ¶ 14.**

²⁵ See *Grather v. Tipery Studios, Inc.*, 334 So.2d 758 (1976, La.App.) (allowing noneconomic damages related to unprofessionally photographed wedding pictures when professional hired); *Mitchell v. Shreveport Laundries, Inc.*, 61 So.2d 539 (La.App.1952) (allowing noneconomic damages related to laundry agent failing to deliver groom's only clean and fitting suit in time for wedding); *Lane v. KinderCare Learning*

The question for this court is whether the bailment contract to provide veterinary care for a sentient, animate being who occupies a status analogous to a child and is not maintained or cared for in the hope of realizing any commercial gain (i.e., through employment, breeding, show or competition) is the type of contract for which emotional distress damages are recoverable under *Gagliardi* – acknowledging, per the above data, that the veterinary industry profits directly from, and markets to, the foreseeable emotional connection between human and “man’s best friend,” also known as the human-animal bond.²⁶

Several personalizing elements exist in treating a nonhuman animal as a family member or companion, like 99 percent of Americans do, making application of the *Gagliardi* doctrine to the present fact pattern sensible. Where animal guardian-owners are willing to spend many times over the purchase price of another canine without any hope of recouping the expense through future profits, the type of loss related to this breach of contract therefore has nothing to do with pecuniary loss. Rather, it stems

Centers, Inc., 231 Mich.App. 689 (1998)(allowing noneconomic damages to mother in breach of contract by day care involving care of 18-month-old).

²⁶ See Lue, Debbie P. Pantenburg et al., *Impact of the owner-pet and client-veterinarian bond on the care that pets receive*, Journal of the American Veterinary Medical Association, Vol. 232:4, Feb. 15, 2008; Katie Burns, *Human-Animal Bond Boosts Spending on Veterinary Care*, Journal of the American Veterinary Medical Association, Vol. 232:1, Jan. 1, 2008; *What are your Clients Willing to Pay?*, Veterinary Economics (August 2007), pp. 100, 104; John W. Albers, *What Pet Owners Really Think About Cost*, Trends magazine (American Animal Hospital Association), May/June 2007, pp. 45-50; *Survey asks how pet owners will respond to an economic downturn*, Journal of the American Veterinary Medical Association, Vol. 232:5, Mar. 1, 2008.

from interference with such “noneconomic values as personal associations, love of a place, and pride in one’s work that add up to one’s sense of identity.”²⁷ *Mooney v. Johnson Cattle Co., Inc.*, 291 Or. 709, 717 (1981) (in evaluating the kind of contractual arrangement for which emotional distress damages might be recoverable in breach).

The types of contracts that other jurisdictions have held fall within § 353 include those essentially tied to the plaintiff’s mental or emotional well-being. Though rejecting the doctrine as to a car, *Kwan v. Mercedes-Benz of N.A., Inc.*, 23 Cal.App.4th 174 (1994), provides a judicious foil as to a dog.²⁸ In discussing § 353, the California Court of Appeals remarked:

In spite of America’s much-discussed ‘love affair with the automobile,’ disruption of an owner’s relationship with his or her car is not, in the normal sense, comparable to the loss or mistreatment of a family member’s remains, an invasion of one’s privacy, or the loss of one’s spouse to a gambling addiction.

Id., at 190 (cit.om.). The Court of Appeals did not even begin to meaningfully examine whether disruption of a plaintiff’s relationship with her dog or cat, by a defendant veterinarian in a contractual relationship

²⁷ The vital connection between an animal and his guardian-owners has been classified by adjunct Harvard Law Professor and renowned author Steven Wise as vesting in the owner a type of “constitutive property.” Wise bases the theory on the proposition that possession or ownership of certain property, like a pet, can become a central aspect of the owner’s sense of identity. Steven M. Wise, *Wrongful Death of a Companion Animal*, 4 *Animal L.* 33 (1998). He refers to companion animals as “quasi-children” who “may also be metaphorical extensions of their owners” such that “the wrongful killing of one’s companion animal may threaten the way in which an owner constitutes herself: in losing her companion animal, she loses a vital part of herself.” *Id.* at 67-68.

²⁸ See *Rabon v. City of Seattle*, 107 Wash.App. 734, 744 (1, 2001) (finding merit in argument that person’s relationship with a dog deserves more protection than with a car);

entrusted to care for the animal in the capacity of a learned professional, through emotional marketing, is the type that would foreseeably generate serious emotional disturbance in the plaintiff. Though it cited to three Washington decisions all confirming the familial and emotional link to pets, the panel ignored the central inquiry: i.e., the emotional nexus.²⁹

Furthermore, two out of state cases speak to the uniqueness of animals in contract disputes, further supporting Ms. Hendrickson's § 353 position. *Houseman v. Dare*, 966 A.2d 24 (N.J.App.,Mar. 10, 2009), reversed the trial court, which held that companion animals are personalty lacking unique value essential to award specific performance, and concluded that money was an insufficient remedy for breach of contract involving custody over a dog. And *Smith v. University Animal Clinic, Inc.*, 30 So.3d 1154 (La.App.2010), *cert. denied*, 36 So.3d 247 (2010), a

²⁹ Such has been repeatedly acknowledged by the Washington Court of Appeals and the Ninth Circuit Court of Appeals. *Pickford v. Mason*, 124 Wash.App. 257, 263 (II, 2004) ("Pickford, with good reason, maintains that Buddy is much more than a piece of property; we agree."); *Womack v. von Rardon*, 133 Wash.App. 254, 263-64 (III, 2006) ("The damages are consistent with actual and intrinsic value concepts as found in *Pickford* because, depending upon the particular case facts, harm may be caused to a person's emotional well-being by malicious injury to that person's pet as personal property."); *Sherman v. Kissinger*, 146 Wash.App. 855, 873 fn. 8 (I, 2008)(veterinary case, permitting emotional damages for intentional torts); *Mansour v. King Cy.*, 131 Wash.App. 255, 265, 267 (I, 2006) (recognizing "emotional importance of pets to their families; acknowledging pets regarded as family"); *Rhoades v. City of Battle Ground*, 115 Wash.App. 752, 766 (II, 2002) ("pets are not fungible" and "private interest at stake is great"); *Downey v. Pierce Cy.*, 165 Wash.App. 152, 165 (II, 2011)("pet owners' interests in keeping their pets ... is arguably more than a mere economic interest because pets are not fungible"); *San Jose Charter of Hells Angels Motorcycle Club v. City of San Jose*, 402 F.3d 962, 975 (9th Cir.,2005)("The emotional attachment to a family's dog is not comparable to a possessory interest in furniture.").

contract case, allowed emotion-based damages upon breach by a veterinary clinic providing boarding services to plaintiff's cat.

c. “*Price* and the other cases involving emotional damages, while instructive, are not analogous here because they did not involve claims for emotional damages arising out of a reckless breach of contract; rather, they all involved negligence claims in tort.”

Since *Gaglidari*, Washington courts have shed light on what constitutes a “merely economic” contractual relationship (as in employment) versus one “not primarily economic.” *Price v. State*, 114 Wash.App. 65 (II, 2002), in reversing summary judgment dismissal in a wrongful adoption case, invoked *Gaglidari* to support recovery of emotional distress damages in a dispute between an adoption agency and prospective adoptive parents, even absent proof of physical impact or objective symptomatology, finding:

The relationship in issue here is that between an adoption agency and prospective adoptive parents. It is not merely economic, and a reasonable person standing in the defendant's shoes would easily foresee that its breach is likely to cause significant emotional distress.

Id., at 73. In other words, mere negligence will support general damages provided the parties had a pre-existing, non-economic relationship. This dispenses with the medical evidence standard imposed by negligent infliction of emotional distress (“NIED”) case law in the instance of strangers colliding, as did defendants’ Lincoln Continental crashing

through the plaintiff's back porch utility room during a piano lesson. *Hunsley v. Giard*, 87 Wn.2d 424 (1976); *Price*, at 74 (distinguishing NIED cases that had no prior relationship before defendant's breach).

Citing *Hunsley, Pickford v. Masion*, 124 Wash.App. 257 (II, 2004) rejected NIED arising from harm to a companion animal following defendants' loosed Rottweilers running amok on plaintiff's porch and tearing into her dog as she futilely attempted to render aid. *Pickford*, unlike *Price*, involved parties without any pre-existing relationship, economic or otherwise.³⁰ Of course, the issue at bar does not concern the effect of *negligent* death of an animal. Rather, it seeks a legal determination that emotional distress damages arise from *recklessness* in a pre-existing, noneconomic veterinarian-client-patient relationship.³¹

d. "Thus, recognizing for the first time the existence of emotional distress damages for reckless breach of a bailment contract for veterinary services would constitute a significant change in the law and, as the *Gagliardi* court noted [quoting decision at 448]."

³⁰ This Court has yet to issue *any* decision concerning emotional distress damages arising from harm to a nonhuman animal. None of the Washington appellate cases discussing the subject have even sought certiorari to this court. The time has come for the Washington Supreme Court to clarify and law. *See, e.g., Pickford* (NIED); *Womack* (recognizing malicious injury to a pet); *Sherman* (recognizing intentional torts permit general damages).

³¹ *See American Veterinary Medical Association Veterinarian-Client-Patient Relationship (VCPR) FAQ* (www.avma.org/public/PetCare/Pages/VCPR-FAQs.aspx).

The sky-is-falling premise³² is overstated³³ and entirely speculative.³⁴ *Gaglidari's* 22-year-old forecast that “contractual consensus of the parties will become secondary to an action in tort” is mooted by this court’s 2012 decisions in *Elcon Const., Inc. v. EWU*, 174 Wn.2d 157 (2012) and *Jackowski v. Borchelt*, 174 Wn.2d 720 (2012), upon which this panel relied to reverse the trial court’s elimination of Ms. Hendrickson’s tort claims under the economic loss rule. And the Restatement doctrine discussed in *Gaglidari* was conceived at common law, without any Legislative interference, yet the panel defers to the legislature, eliding the

³² See also, e.g., *Burgess v. Shampooch Pet Indus., Inc.*, 35 Kan.App.2d 458, 465 (2006) (rejecting “hyperbolic[]” claims that a ruling allowing recovery of veterinary bills in excess of acquisition price would “open the proverbial ‘floodgates’ of high dollar litigation on behalf of animals....”).

³³ Similar doomsaying has been made by veterinary associations with respect to the hypothesized increase in the cost of care, without a shred of evidentiary support. See Christopher Green, *The Future of Veterinary Malpractice Liability in the Care of Companion Animals*, 10 *Animal L.* 163, 168 (2004):

Surprisingly, though, the assertion that veterinary costs and prices will dramatically rise as a result of increased compensation is commonly made and accepted without any mathematical verification. Even academic advocates of higher civil damages for animal loss often feel obliged to concede that the potential for ancillary increases in veterinarians’ liability exposure is the Achilles heel of their argument.[FN15] In actuality, the exact opposite may be true: The near total absence of veterinary negligence deterrents under current law may turn out to be the strongest economic reason for draining the baby’s bath water as soon as politically possible.

Id., at 168. Mr. Green undertook the mathematical analysis, using the insurance industry’s own figures, to prove no such danger. *Id.*, at 218-21.

³⁴ Mr. Karp is only one of two full time animal lawyers in the entire State of Washington, out of over 30,000 Washington-licensed attorneys. Veterinary malpractice lawsuits filed annually, on information and belief, number fewer than twenty-five, comprise a tiny fraction of all medical malpractice actions, and an even more miniscule percentage of tort claims generally.

important distinction between statutory and judge-made law in Washington and that the Legislature has already delegated the task back to the courts.³⁵ The panel's unwillingness to give thorough treatment to this age-old common law doctrine abdicates its statutory duty to comport common law to modern societal mores. It also justifies this court's review, along the same lines recognized in *Elcon*, at 165 (prohibiting Court of Appeals from approving economic loss rule's application to particular tort); *slip op.* at 14.

2. RAP 13.4(b)(2)– Conflict with Court of Appeals

The extent to which the decision disregards the numerous instances where the Court of Appeals confirmed the foreseeable emotional impact of disturbing the relationship between person and animal, including the division from which it came, renders its conclusion that *Rest. (2nd) Torts* § 353 does not apply in the veterinary context in conflict.

VI. CONCLUSION

This court should grant review and reverse, sanctifying the substantial public interest to protect humans and animals from fatal outcomes brought about by highly incompetent veterinary practitioners.

Dated this Oct. 16, 2013.

³⁵ RCW 4.04.010 states, "The common law, so far as it is not inconsistent with ... the institutions and condition of society in this state, shall be the rule of decision in all courts of this state."

ANIMAL LAW OFFICES

A stylized, handwritten signature in black ink that reads "Karp". The signature is written in a cursive style with a long horizontal stroke extending to the right.

Adam V. Karp, WSB No. 28622

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Oct. 17, 2013, I caused a true and correct copy of the foregoing to be served upon the following person(s) in the following manner:

[X] Email (stipulated)

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A handwritten signature in black ink, appearing to read "Karp", with a long horizontal stroke extending to the right.

Adam P. Karp, WSBA No. 28622
Attorney for Plaintiff-Appellant

A

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DIVISION II

2013 SEP 17 AM 8:38

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

JULIE HENDRICKSON,

Appellant,

v.

TENDER CARE ANIMAL HOSPITAL CORPORATION d/b/a RIDGETOP ANIMAL HOSPITAL (UBI 602-262-385), a Washington for-profit corporation; SHANNON L. HEATH (VT 6597), a licensed Washington veterinarian; the marital community or domestic partnership comprised of SHANNON HEATH and DOE HEATH; KRISTEN T. CAGE (VT 8099), a licensed Washington veterinarian; the marital community or domestic partnership comprised of KRISTEN T. CAGE and DOE CAGE; and DOES 1-10,

Respondents.

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PUBLISHED OPINION

QUINN-BRINTNALL, J. — Julie Hendrickson appeals the trial court's summary dismissal of her claims for negligent misrepresentation, lack of informed consent, professional negligence, reckless breach of bailment contract, and emotional damages arising out of treatment her dog received at Tender Care Animal Hospital Corporation d/b/a Ridgetop Animal Hospital. She argues that the trial court erred when it (1) dismissed her claims for reckless breach of bailment

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contract and emotional damages, and (2) dismissed all of her tort claims against Tender Care based on the economic loss rule now denominated the independent duty doctrine.

We hold that the trial court properly dismissed Hendrickson's claims for reckless breach of bailment contract and emotional damages because no Washington court has held that such causes of action exist in the context of loss of a pet. Because our Supreme Court has not specifically approved of the applying of the independent duty doctrine to cases involving veterinary care liability or the torts at issue here, we reverse the trial court's summary dismissal of Hendrickson's tort claims and remand for reconsideration of these issues.

FACTS

On March 16, 2007, Hendrickson brought Bear, her golden retriever, to Tender Care to have him neutered and implanted with a microchip. After the procedures, Kristen Cage, the veterinarian on duty that evening, noticed that Bear's abdomen looked swollen. She ordered that x-rays be taken to make sure that Bear did not have gastric dilatation volvulus (GDV), a life-threatening condition that results from the accumulation of gas, fluid, or a combination of the two in the stomach. When Cage examined the x-rays, she noticed that Bear had significant gastric distention but not GDV.

When Hendrickson picked Bear up after the procedures, a front desk employee told her that Bear had vomited but that he had been given antiemetic medication and that he was "much better." Clerk's Papers (CP) at 32. Hendrickson noticed that Bear's abdomen was swollen and when she asked, a Tender Care employee told her that Bear "threw up a lot and swallowed lots of air." CP at 111. The employee told Hendrickson to give Bear an antibloating medication, take him on frequent walks and if his condition worsened, take him to the animal emergency hospital.

When Hendrickson brought Bear back to her home, she did not give him the antibloating medication and instead administered a homeopathic remedy. When she let Bear outside, he lay down in the driveway. Noticing Bear's worsening condition, Hendrickson lifted him into her car to take him to the emergency hospital and noticed that he had stopped breathing and had a weak, rapid pulse. She called a neighbor to drive her and Bear to the emergency hospital while she performed cardiopulmonary resuscitation. Bear arrived at the hospital in respiratory and cardiac arrest and could not be resuscitated. The likely cause of death was GDV.

Hendrickson sued for professional negligence, negligent misrepresentation, lack of informed consent, and reckless breach of bailment contract. She also sought damages for emotional distress arising out of the breach of bailment claim. Tender Care moved for partial summary judgment, claiming that Hendrickson could not prove by clear, cogent, and convincing evidence that Tender Care misrepresented Bear's condition and that claims for lack of informed consent do not apply in cases involving animals. It also argued that because pets are personality under Washington law, damages for Bear's loss were purely economic and not recoverable in tort under the economic loss rule. Finally, it claimed that Hendrickson's damages, if any, should be limited to the replacement value of the animal because a pet owner has no right to damages for emotional distress for loss of a pet.

The trial court partially granted Tender Care's summary judgment motion, dismissing Hendrickson's tort claims, claims for emotional distress damages, and reckless breach of bailment contract claim.¹ Hendrickson appeals the trial court's summary dismissal of these

¹ The trial court denied Tender Care's motion to limit damages to replacement or market value and to dismiss Hendrickson's contract claim. The trial court later granted Hendrickson's motion to voluntarily dismiss the contract claim without prejudice.

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claims. We accepted discretionary review and granted Tender Care's motion to stay our review of this case pending our Supreme Court's decision in *Jackowski v. Borchelt*, 174 Wn.2d 720, 278 P.3d 1100 (2012), in which our Supreme Court recognized the recharacterization of the economic loss rule as the independent duty doctrine.

DISCUSSION

STANDARD OF REVIEW

We review a trial court's summary judgment order de novo, engaging in the same inquiry as the trial court. *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012). "Summary judgment is appropriate 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Visser v. Craig*, 139 Wn. App. 152, 157, 159 P.3d 453 (2007) (quoting CR 56(c)).

The moving party bears the burden of demonstrating that there is no genuine issue of material fact. *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990). "After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact." *Visser*, 139 Wn. App. at 158 (quoting *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986)). "If the nonmoving party fails to do so, then summary judgment is proper." *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

We consider all evidence submitted and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. *McPhaden v. Scott*, 95 Wn. App. 431, 434, 975 P.2d 1033, review denied, 138 Wn.2d 1017 (1999). But a nonmoving party "may not rely on

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speculation, [or on] argumentative assertions that unresolved factual issues remain.” *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

RECKLESS BREACH OF BAILMENT CONTRACT AND EMOTIONAL DISTRESS DAMAGES

Hendrickson argues that the trial court erred when it dismissed her claims for reckless breach of bailment and emotional distress damages. Because Hendrickson has failed to submit, and this court is not aware of, any Washington case creating a claim for emotional distress damages arising out of a contract action, we disagree.

Washington law is clear that “a pet owner has no right to emotional distress damages or damages for loss of human-animal bond based on the negligent death or injury to a pet.” *Sherman v. Kissinger*, 146 Wn. App. 855, 873, 195 P.3d 539 (2008).² Thus, in support of her argument that emotional damages should be recoverable for reckless breach of bailment contract, Hendrickson primarily relies on our Supreme Court’s discussion in *Gaglidari v. Denny’s Restaurants, Inc.*, 117 Wn.2d 426, 815 P.2d 1362 (1991), an employment law case.

In that case, Gaglidari, a Denny’s employee, brought a claim for breach of employment contract for discharging her without complying with the terms of her employment handbook. *Gaglidari*, 117 Wn.2d at 430. In seeking emotional distress damages, Gaglidari relied on two decisions in which other divisions of this court held that emotional distress damages were available for intentional or reckless breach of contract, *Thomas v. French*, 30 Wn. App. 811, 817, 638 P.2d 613 (1981), *rev’d on other grounds*, 99 Wn.2d 95, 659 P.2d 1097 (1983), and

² The *Sherman* court also noted that “malicious injury to an animal can support a claim for emotional distress damages” and that Washington courts may recognize emotional distress damages for intentional torts related to animals. 146 Wn. App. at 873 (citing *Womack v. Rardon*, 133 Wn. App. 254, 263, 135 P.3d 542 (2006)). However, as this appeal concerns neither issue, we do not address the matter further.

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Cooperstein v. Van Natter, 26 Wn. App. 91, 99, 611 P.2d 1332, *review denied*, 94 Wn.2d 1013 (1980). Both decisions hinged their analysis on the following provision of the *Restatement of Contracts* § 341 (1932):

In actions for breach of contract, damages will not be given as compensation for mental suffering, except where the breach was wanton or reckless and caused bodily harm and *where it was the wanton or reckless breach of a contract to render a performance of such a character that the defendant had reason to know when the contract was made that the breach would cause mental suffering for reasons other than mere pecuniary loss.*

The *Cooperstein* and *Thomas* courts held that emotional distress damages were available when the breach was either intentional or reckless and the defendant had reason to know when the contract was made that a breach would cause mental suffering for reasons other than mere pecuniary loss. *Cooperstein*, 26 Wn. App. at 99; *Thomas*, 30 Wn. App. at 817. But our Supreme Court in *Gaglidari* held that these courts had interpreted the *Restatement* too broadly. 117 Wn.2d at 443. The court quoted *Restatement (Second) of Contracts* § 353 (1981), which provides, "Recovery for emotional disturbance will be excluded unless the breach also caused bodily harm or *the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result.*" *Gaglidari*, 117 Wn.2d at 443. Comment *a* to this section provides,

In the second exceptional situation, the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result. Common examples are contracts of carriers and innkeepers with passengers and guests, contracts for the carriage or proper disposition of dead bodies, and contracts for the delivery of messages concerning death. Breach of such a contract is particularly likely to cause serious emotional disturbance. Breach of other types of contracts, resulting for example in sudden impoverishment or bankruptcy, may by chance cause even more severe emotional disturbance, but, if the contract is not one where this was a particularly likely risk, there is no recovery for such disturbance.

RESTATEMENT (SECOND) OF CONTRACTS § 353 cmt. *a* (1981).

Based on these examples, the court held that the *Cooperstein* and *Thomas* courts misapplied the *Restatement* because

Restatement of Contracts § 341 does not support the general availability of emotional distress damages in breach of contract actions. Rather, *Restatement of Contracts* § 341 comment *a* focuses on the type or character of the contract. Emotional damages are available under the original *Restatement* only when the type or character of the contract renders emotional suffering for reasons other than pecuniary loss foreseeable from the outset. The Court of Appeals' standard goes beyond the *Restatement* by allowing emotional distress damages regardless of the type of contract involved whenever the breach was wanton or reckless and emotional distress was foreseeable from the outset.

Gaglidari, 117 Wn.2d at 445. Thus, the court held,

[W]hile Washington case law has recognized that a breach of contract may also lead to a related tort claim, we have yet to erase the traditional distinction between tort and contract damages in order to award damages for emotional distress on an ordinary breach of contract action. Anything to the contrary in *Thomas* or *Cooperstein* is specifically disapproved.

Gaglidari, 117 Wn.2d at 445.

Noting the importance of predictability and employer discretion in employment contracts, the court held that emotional distress damages caused by breach of employment contract were not recoverable in Washington. *Gaglidari*, 117 Wn.2d at 447-48. The court also recognized that although “breach of an employment contract may result in emotional distress . . . [t]he primary purpose in forming such contracts . . . is economic and not to secure the protection of personal interests.” *Gaglidari*, 117 Wn.2d at 441 (quoting *Valentine v. Gen. Am. Credit, Inc.*, 420 Mich. 256, 263, 362 N.W.2d 628 (1984)).

Although the *Gaglidari* court denied the plaintiff's claim for emotional distress damages for breach of an employment contract, Hendrickson asks this court to apply the *Restatement* rules set forth in *Gaglidari* to a claim for breach of a bailment contract for veterinary services. She argues that the type of contract at issue here is the type of contract contemplated by the

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Restatement as particularly likely to cause severe emotional disturbance if breached, citing our decision in *Price v. State*, 114 Wn. App. 65, 57 P.3d 639 (2002), as support.

In *Price*, adoptive parents sued the Washington State Department of Social and Health Services for negligent misrepresentation for its failure to disclose the extent of the adopted child's problems, seeking damages for emotional distress. 114 Wn. App. at 67. Upon reviewing Washington case law dealing with emotional damages, we recognized that emotional distress damages tended to be unavailable when the parties had a preexisting, primarily economic relationship, but may be available if the relationship was not primarily economic. *Price*, 114 Wn. App. at 71. Thus, we held that the trial court properly awarded emotional damages to the adoptive parents because the relationship "between an adoption agency and prospective adoptive parents . . . is not merely economic, and a reasonable person standing in the defendant's shoes would easily foresee that its breach is likely to cause significant emotional distress." *Price*, 114 Wn. App. at 73. In reaching this holding, we cited other cases involving types of relationships sufficient to give rise to emotional distress damages, two involving the patient-physician relationship and one involving the insurer-insured relationship. See *Harbeson v. Parke-Davis, Inc.*, 98 Wn.2d 460, 483, 656 P.2d 483 (1983) (wrongful birth action); *Berger v. Sonneland*, 144 Wn.2d 91, 106, 26 P.3d 257 (2001) (physician's wrongful disclosure of confidential information); *Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323, 333, 2 P.3d 1029 (2000) (insurer bad faith), *review denied*, 142 Wn.2d 1017 (2001).

Hendrickson argues that the contract for veterinary services at issue here was more analogous to the relationship between the adoption agency and adoptive parents in *Price* than the employer-employee relationship in *Gaglidari*. Thus, she argues, under the *Restatement*, the reckless breach of the contract to care for Bear was the type of contract likely to cause severe

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emotional disturbance, thus warranting emotional distress damages even absent bodily harm. In support of her contention that “emotional suffering is foreseeable and expected when companion animals are injured or killed,” Hendrickson cites multiple Washington cases discussing the relationship between humans and companion animals. Br. of Appellant at 35 (quoting *Pickford v. Mason*, 124 Wn. App. 257, 263, 98 P.3d 1232 (2004) (“Pickford, with good reason, maintains that Buddy is much more than a piece of property; we agree.”); *Womack v. Rardon*, 133 Wn. App. 254, 263-64, 135 P.3d 542 (2006) (“The damages are consistent with actual and intrinsic value concepts as found in *Pickford* because, depending upon the particular case facts, harm may be caused to a person’s emotional well-being by malicious injury to that person’s pet as personal property.”); *Mansour v. King County*, 131 Wn. App. 255, 267, 128 P.3d 1241 (2006) (“[We have recognized the] ‘emotional importance of pets to their families.’”)).

But Hendrickson’s reliance on these cases is misplaced. *Price* and the other cases involving emotional damages, while instructive, are not analogous here because they did not involve claims for emotional damages arising out of a reckless breach of contract; rather, they all involved negligence claims in tort. Moreover, the harm involved in those cases was the type for which emotional damages have historically been available. For example, in *Harbeson*, in awarding emotional distress damages for wrongful birth, our Supreme Court recognized that although the wrongful death of a child statute, which provides for emotional distress damages, was not necessarily applicable to a wrongful birth claim because the statute involves injury to a child, not the child’s parents, “the statute reflects a policy to compensate parents not only for pecuniary loss but also for emotional injury [and t]here appears to be no compelling reason that policy should not apply in wrongful birth actions.” 98 Wn.2d at 475.

By contrast, here, although the Washington cases Hendrickson cites recognize the existence of emotional suffering resulting from the injury to or loss of a companion animal, those cases uniformly recognize the historic treatment of those animals as property under Washington law and the limitation on emotional distress damages for such injury except in cases of malicious or intentional infliction of injury to those animals. In fact, Hendrickson has failed to submit, and this court is not aware of, any Washington case applying the *Restatement* rule and creating a claim for emotional distress damages arising out of a contract action. Thus, recognizing for the first time the existence of emotional distress damages for reckless breach of a bailment contract for veterinary services would constitute a significant change in the law and, as the *Gagliolari* court noted,

The impact of allowing emotional distress damages for breach of contract would indeed be enormous. It is easily predictable there would be a jury issue on emotional distress in nearly every employee discharge case and in fact nearly every breach of contract case. The contractual consensus of the parties will become secondary to an action in tort. This will represent a profound change in the law, the implication of which probably can be explained only by adverting to the "Law of Unintended Consequences." If there is to be a change of the common law, we believe a more prudential approach would be for the Legislature to consider the matter prior to such a change occurring.

117 Wn.2d at 448. Accordingly, we hold that the trial court did not err when it dismissed Hendrickson's claims for reckless breach of bailment contract and emotional distress damages.

INDEPENDENT DUTY DOCTRINE

Hendrickson next argues that the trial court erred when it dismissed her tort claims based on the former economic loss rule which, while this appeal was pending, was recharacterized as the independent duty doctrine. Because our Supreme Court has not specifically approved of the application of the independent duty doctrine to cases involving the torts at issue here or in cases

of veterinary liability, we agree. The trial court erred when it dismissed Hendrickson's tort claims under the economic loss rule; remand is necessary for reconsideration of these claims.

When a court is called to "distinguish between claims where a plaintiff is limited to contract remedies and cases where recovery in tort may be available," Washington courts historically applied the economic loss rule. *Eastwood v. Horse Harbor Found., Inc.*, 170 Wn.2d 380, 389, 241 P.3d 1256 (2010). The rule applied "to hold parties to their contract remedies when a loss potentially implicates both tort and contract relief." *Alejandre v. Bull*, 159 Wn.2d 674, 681, 153 P.3d 864 (2007). Under our Supreme Court's characterization of the economic loss rule in *Alejandre*, the "key inquiry" was "the nature of the loss and the manner in which it occur[ed], i.e., [we]re the losses economic losses, with economic losses distinguished from personal injury or injury to other property. If the claimed loss [was] an economic loss . . . then the parties [were] limited to contractual remedies." 159 Wn.2d at 684..

While this appeal was pending, our Supreme Court in *Eastwood* "recast the economic loss rule as the independent duty doctrine." *Jackowski*, 174 Wn.2d at 730. In *Eastwood*, the court noted in a plurality decision that "[t]he term 'economic loss rule' has proved to be a misnomer" because it "gives the impression that this is a rule of general application and any time there is an economic loss, there can never be recovery in tort."³ 170 Wn.2d at 387-88. It

³ In *Eastwood*, Justice Fairhurst wrote the lead opinion on behalf of three justices and Justice Chambers wrote for four concurring justices. Chief Justice Madsen also concurred separately but stated that the plurality's "lengthy discourse on the economic loss rule and its new approach for determining when the rule applies is unnecessary." *Eastwood*, 170 Wn.2d at 402. But regardless of the differences of opinion in *Eastwood*,

Justice Fairhurst's lead opinion combines with Justice Chambers' concurrence to comprise a majority of justices agreeing in *Eastwood* that the independent duty doctrine does not bar a tort claim merely because a contract, or other opportunity to allocate risk, also exists between the parties, as long as the tort claim arises independently of the contract or other similar relationship.

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reasoned that such a rule was too broad because any loss arising from a contract could conceivably be characterized as an economic loss, especially under the broad definition of “[e]conomic damages” under RCW 4.56.250(1)(a).⁴ *Eastwood*, 170 Wn.2d at 388. It further noted that a bright line rule prohibiting economic losses from being recoverable in tort does not comport with longstanding case law, citing the torts of intentional interference with another’s contractual relations, wrongful discharge, failure of an insurer to act in good faith, fraudulent concealment or misrepresentation, negligent misrepresentation, breach of an agent’s fiduciary duty to act in good faith, and negligent real estate appraisal as examples. *Eastwood*, 170 Wn.2d at 388.

Recognizing the shortcomings of the economic loss rule, the *Eastwood* court held that the more appropriate inquiry when determining if tort remedies are recoverable when a contractual relationship also exists is whether an independent legal duty exists, outside the parties’ contractual relationship, imposing a duty on the tortfeasor. 170 Wn.2d at 389. Thus, the court held, “An injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract.” *Eastwood*, 170 Wn.2d at 389. The court named this inquiry the “independent duty doctrine.” *Eastwood*, 170 Wn.2d at 398.

Although it reframed the appropriate inquiry and renamed the rule, the court noted that when determining

Key Devel. Inv., LLC v. Port of Tacoma, 173 Wn. App. 1, 19-20, 292 P.3d 833 (2013).

⁴ RCW 4.56.250(1)(a) defines “[e]conomic damages” as “objectively verifiable monetary losses, including medical expenses, loss of earnings, burial costs, loss of use of property, cost of replacement or repair, cost of obtaining substitute domestic services, loss of employment, and loss of business or employment opportunities.”

how a court can distinguish between claims where a plaintiff is limited to contract remedies and cases where recovery in tort may be available[. a] review of our cases on the economic loss rule shows that ordinary tort principles have always resolved this question. . . . The court determines whether there is an independent tort duty of care, and “[t]he existence of a duty is a question of law and depends on mixed considerations of logic, common sense, justice, policy, and precedent.”

Eastwood, 170 Wn.2d at 389 (internal quotation marks omitted) (third alteration in original) (quoting *Snyder v. Med. Serv. Corp. of E. Wash.*, 145 Wn.2d 233, 243, 35 P.3d 1158 (2001)).

A majority of our Supreme Court subsequently recognized its adoption of the independent duty doctrine in *Jackowski and Elcon Construction, Inc. v. Eastern Washington University*, 174 Wn.2d 157, 165, 273 P.3d 965 (2012): Notably, the *Elcon* court recognized that

[t]o date, we have applied the [independent duty] doctrine to a narrow class of cases, primarily limiting its application to claims arising out of construction on real property and real property sales. “We have done so in each case based upon policy considerations unique to those industries. We have never applied the doctrine as a rule of general application outside of these limited circumstances.” *Eastwood*, 170 Wn.2d at 416 (Chambers, J., concurring). Indeed, in *Eastwood* we directed lower courts not to apply the doctrine to tort remedies “unless and until this court has, based upon considerations of common sense, justice, policy and precedent, decided otherwise.” *Eastwood*, 170 Wn.2d at 417 (Chambers, J., concurring).

174 Wn.2d at 165.

Here, Hendrickson’s complaint included claims for negligent misrepresentation, lack of informed consent, and professional negligence in the context of the provision of veterinary services. No Supreme Court case has applied the independent duty doctrine to claims for lack of informed consent or professional veterinary negligence, and although the court has applied the doctrine in cases involving claims for negligent misrepresentation, those cases have exclusively involved real estate contracts and construction defects, not veterinary liability. *Elcon*, 174 Wn.2d at 165.

Accordingly, because our Supreme Court has specifically prohibited lower courts from applying the doctrine unless it has approved of the doctrine's application to a particular tort,⁵ we hold that the trial court erred by dismissing Hendrickson's tort claims based on the former economic loss rule.⁶ *Elcon*, 174 Wn.2d at 165.

In conclusion, we hold that the trial court properly dismissed Hendrickson's claims for reckless breach of bailment contract and emotional damages because no Washington court has held that such causes of action exist and if such major changes in the law are to be effected, they

⁵ We have criticized this rule for its rigidity. *See Austin v. Ettl*, 171 Wn. App. 82, 96 n.15, 286 P.3d 85 (2012) (Van Deren, J., dissenting) (noting that our Supreme Court's rule "forbidding the trial courts and intermediate appellate courts from developing answers [regarding whether the independent duty doctrine applies to a particular tort claim] unnecessarily delays clarification of the law with regard to tort claims in the contract context."). But in addition to our Supreme Court's admonition against lower courts' independent analysis of the applicability of the independent duty doctrine in contexts not already approved by our Supreme Court, because the facts of this case are so removed from the context in which the doctrine has normally been applied, we decline to independently address whether the doctrine should be applicable in the context of veterinary liability.

⁶ Hendrickson makes two additional arguments based on the former economic loss rule: that the "special relationship" exception to the rule applies here and that the loss of a dog is not an "economic loss" under the reasoning of *Alejandre*. Because we hold that the trial court erred in dismissing Hendrickson's claims under the former economic loss rule, we do not address these arguments.

Hendrickson also argues that the trial court should not have dismissed her lack of informed consent, negligent misrepresentation, and professional negligence claims on the merits, noting that this court can affirm on any basis supported by the record below. In its summary judgment motion, Tender Care argued that in the event the trial court did not dismiss Hendrickson's claims based on the former economic loss rule, the trial court should have dismissed her negligent misrepresentation and lack of informed consent claims as a matter of law. But because Tender Care made no argument to the trial court regarding Hendrickson's third tort claim—professional negligence—the trial court's ruling dismissing "[a]ll claims sounding in tort" appears to have been based solely on the former economic loss rule. CP at 273. On appeal, Hendrickson gives only passing treatment to the professional negligence claim, arguing simply that "Dr. Kern's declaration amply puts at issue the question of malpractice." Br. of Appellant at 23. And Tender Care does not respond to any of Hendrickson's arguments on appeal regarding the substance of the three tort claims. Accordingly, we decline to address the substance of Hendrickson's tort claims at this time. RAP 9.12. On remand, both parties will have the opportunity to argue their respective positions on the merits of these tort claims.

No. 39767-6-II

should be made by the legislature. However, because our Supreme Court has not specifically approved of the application of the independent duty doctrine to cases involving the torts at issue here or in cases of veterinary liability, we reverse the trial court's summary dismissal of Hendrickson's tort claims and remand for reconsideration of these issues.

Quinn-Brintnall, J.

QUINN-BRINTNALL, J.

We concur:

Johanson, A.C.J.

JOHANSON, A.C.J.
Fearing, J.

FEARING, J.

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**SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JULIE HENDRICKSON,

Plaintiff,

vs.

TENDER CARE ANIMAL HOSPITAL
CORPORATION d/b/a RIDGETOP ANIMAL
HOSPITAL (UBI 602-262-385), et al.,

Defendants.

Cause No. 08-2-01979-1

**ORDER GRANTING IN PART
AND DENYING IN PART
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before the Court on May 8, 2009 for hearing on the Defendants' Motion for Partial Summary Judgment. Adam Karp appeared for the plaintiff and John Schedler appeared for the defendants. The Court has heard argument of counsel and has considered the following documents:

1. Defendant's Motion for Partial Summary Judgment;
2. Declaration of Allison L. Micheli in Support of Defendants' Motion for Partial Summary Judgment with attached exhibits;
3. Declaration of Bridgette Prible, LVT;
4. Plaintiff's Response to Defendant's Motion for Partial Summary Judgment;
5. Declaration of Adam P. Karp in Opposition to Defendants' Motion for Partial Summary Judgment with attached exhibits;
6. Plaintiff's Motion to Strike on Shortened Time;

ORDER

JUDGE LEILA MILLS
Kitsap County Superior Court
614 Division Street
Port Orchard, WA 98366

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- 7. Defendants' Motion for Leave to Reply in Support of Motion for Summary Judgment;
- 8. Declaration of Prof. Patrick Gavin, D.V.M.;
- 9. Declaration of Kristen Cage, D.V.M.;
- 10. Declaration of John Paulson, D.V.M.;
- 11. Defendants' Reply in Support of Motion for Partial Summary Judgment;
- 12. Opposition to Plaintiff's Motion to Strike on Shortened Time.

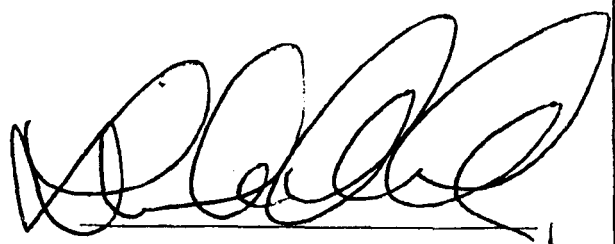
Being so advised, the Court makes the following ruling:

IT IS HEREBY ORDERED:

Defendants' Motion for Partial Summary Judgment is GRANTED IN PART AND DENIED IN PART as follows:

- 1. All claims sounding in tort are DISMISSED;
- 2. All claims for emotional distress damages are DISMISSED;
- 3. Plaintiff's claim for reckless breach of bailment is DISMISSED;
- 4. Defendants' motion to dismiss claims sounding in contract is DENIED;
- 5. Defendants' motion to limit damages to market or replacement value is DENIED.

Dated this 22 day of May, 2009.



JUDGE LEILA MILLS

ORDER

JUDGE LEILA MILLS
Kitsap County Superior Court
614 Division Street
Port Orchard, WA 98366

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SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KITSAP COUNTY

JULIE HENDRICKSON,

Plaintiff,

vs.

TENDER CARE ANIMAL HOSPITAL
CORPORATION d/b/a RIDGETOP ANIMAL
HOSPITAL (UBI 602-262-385), et al.,

Defendants.

No. 08-2-01979-1

ORDER DENYING MOTION FOR
RECONSIDERATION

Clerk's Action Required

THIS MATTER comes before the Court upon Plaintiff's Motion for Reconsideration of an oral ruling granting in part and denying in part Defendant's Motion for Partial Summary Judgment on May 8, 2009. Having reviewed the motion and court file, the Court finds that Plaintiff has failed to prove adequate grounds for reconsideration. Therefore, it is hereby

ORDERED that Plaintiff's Motion for Reconsideration is DENIED without oral argument, and the hearing noted for June 26, 2009 is STRICKEN.

Dated: May 22, 2009.



JUDGE LEILA MILLS,

ORDER

JUDGE LEILA MILLS
Kitsap County Superior Court
614 Division Street
Port Orchard, WA 98366
(360) 337-7140

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JULIE HENDRICKSON,

Plaintiff,

vs.

TENDER CARE ANIMAL HOSPITAL
CORPORATION d/b/a RIDGETOP ANIMAL
HOSPITAL (UBI 602-262-385), et al.;

Defendants.

Case No.: 08-2-01979-1

**SECOND DECLARATION OF JULIE
HENDRICKSON**

DECLARATION

I, JULIE HENDRICKSON, being over the age of eighteen and fully competent to make this statement, and having personal knowledge of the matters contained herein, hereby affirm:

1. I am a Commander in the United States Navy, serving as a military nurse and a quality analyst with the Quality Management Department of Naval Hospital Bremerton, where I am currently stationed.

VALUE OF BEAR

2. I had the pleasure of loving and caring for Bear for nearly 7 months. In my 12 years of

**SECOND DECLARATION OF JULIE
HENDRICKSON - 1**

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1 working with stray dogs, Bear was impressively well-mannered and assimilated quickly as he
2 focused his love and guardianship upon me and the others in our "pack." He was watchful and
3 firm, but loving. I had just traded in my car for one with an interior more suitable for my dogs.
4 Fall was preparing to change to an early winter. We had moved to Kingston in June and were just
5 settling into a routine. It was 8:30 p.m. on or about September 30, 2006 and I decided to take
6 Gundersen Road to get home. I had spent a late Saturday afternoon at work and was eager to get
7 home. There he was, walking lazily along the side of the road...a giant hairy dog. What is he
8 doing here on a Saturday night on this speedway, I wondered. I got my leash ready and reached
9 for the Milkbones. I pulled over just ahead of him and came out of the car slowly. He stopped
10 several feet from the car and observed me curiously. This was a good sign. He waited for me as I
11 approached and slowly took the biscuit I offered him, eyeing me. He stood still as I slipped the
12 leash over his large head. "Someone must be missing you, Big Boy," I said. "Let's get you in the
13 car and check around." He leaped into my hatchback effortlessly and plopped on the dog beds I
14 had just purchased at Costco. Bear had no collar or identification. I went to three homes that
15 night, ten homes the next day, and delivered 20 fliers to mailboxes the day after that. I also
16 contacted Kitsap Humane Society to notify them that I had found Bear and faxed the flier I had
17 made for their listing of "found" dogs. I was never contacted by the Kitsap Humane Society or
18 individuals claiming to be Bear's owners. I had him scanned for a microchip at my veterinarian's
19 office within the week that I found him, but no chip was detected.
20
21

22 3. It is not unusual for a lost, stray, or abandoned dog to designate his safe and preferred
23 place. For Bear, it was my new car. For the first seven days, he would not leave it except to

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 2**

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1 piddle. I would take him for walks on leash and attempt to lead him back into the house but could
2 never get past the car. He would not have it. Well, I thought, it will not be long before we find
3 your home. And so I prayed to find it and for God to comfort those who may have lost him. In
4 the meantime, Bear enjoyed coming to work and taking walks at lunch with me. He never
5 seemed to wonder whether I would return and never strayed even off-leash far from me or the
6 car. He would often decide it was time to get back in the car for both of us.

7 4. After four more weeks of newspaper ads, internet ads, and vet clinic fliers, I finally gave
8 up in January 2007, believing he had been abandoned. Bear enjoyed playing and hanging out
9 with the other dogs and he took great care to be particularly present with me when I was with our
10 pack. I had no idea how full his presence was to me until he died. Bear's heart was well open
11 when I found him. Bear gave love freely without hesitation. Though he was cautious with me
12 when I first found him, he was always loving, seeking me out, rubbing his head on me, offering
13 his paw, offering me a ball or toy to throw for him to chase. He would tirelessly trail after the
14 other dogs who stole his ball from him and they enjoyed the chase. Despite his initial
15 cautiousness with me, he remained by my side whenever possible. He was content with being
16 present with me in silence or sleep.

17
18 5. I never attempted to sell Bear, or would ever have contemplated selling him. Nobody ever
19 offered to buy Bear from me, either. Even if forced, I would not have sold Bear - at any price.

20
21 6. Since becoming an adult, I have rescued abandoned dogs like Bear, including in Guam,
22 Japan, California and Florida. Some of these dogs had been hit by cars and in need of veterinary
23 care to treat a concussion or broken bone, covered in ticks, suffering from life-threatening blood

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 3**

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1 loss, recovering from parvovirus, or had been chained so long that the chain had grown into the
2 neck. In my experience as a long-term dog fosterer, rescuer, and re-homer of many breeds, I state
3 with absolute confidence that Bear did not have a market value at the time he died. The fact that
4 he was abandoned with minor health problems (e.g., I took him to a vet for treatment of
5 coughing) supports this point. Furthermore, at the time he died, he was neutered, unpapered, had
6 gastric dilatation ("bloat"), and was not a puppy. Even without the "bloat," Bear had no market
7 value for the other reasons indicated, since Bear was the type of "throw-away" dog that you find
8 when he has lost his value to anyone and is left to roam as a stray.

9
10 7. Prior to Bear's death, I spent approximately \$545.00 on veterinary bills at Banfield,
11 treating various conditions and getting him vaccinated. On the date he died, I spent \$183.34 at
12 Ridgetop Animal Hospital and \$441.57 to try to save his life at the Animal Emergency and
13 Trauma Center and, when that failed, to privately cremate him at a cost of \$250.09. Attached are
14 true copies of photographs of me and Bear.

15 **LACK OF INFORMED CONSENT**

16 8. On March 16, 2007, at about 8 a.m., I dropped off Bear at Ridgetop Animal Hospital for a
17 neuter and microchip. I returned that evening to pick up Bear. As I was paying, an employee said,
18 "I've never seen a dog throw up as much as he has." As she handed me written discharge
19 instructions, I was told that the staff gave Bear an anti-vomiting injection and that "he is much
20 better now." I made some notes at the bottom of the written discharge instructions per her
21 responses to my questions. I then waited about 20 to 30 minutes.

22
23 9. A staff member then brought Bear out. I asked, "Why is his belly so big?" She responded,

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 4**

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1 "He threw up a lot and swallowed lots of air." She showed me his pale gums and said it was the
2 result of anesthesia from the neuter surgery. She told me not to allow him to eat until the next
3 day and to only allow small amounts of water. Bear's belly was very big; he was panting and
4 very weak. He seemed restless. The written discharge instructions (attached) conflicted with what
5 she said, so I asked her if a veterinarian was on-site and aware of Bear's present condition. The
6 female (who I now know to be Bridgette Pribyl) responded, yes, noting that the veterinarian (who
7 I now know to be Dr. Cage) had ordered x-rays, and that is why I had to wait. Ms. Pribyl
8 proceeded to discharge Bear, adding that I should give Bear Gas-X and take Bear on frequent
9 walks and that if his symptoms became worse from what I was then observing, to take him to an
10 emergency vet. She then helped me lift Bear into my hatchback. No veterinarian contacted me at
11 any time that entire day concerning Bear's condition.
12

13 10. I returned directly home with Bear. His condition had not changed but had not worsened.
14 I twice attempted to give him a 2 mm., very round nodule of a homeopathic remedy known as
15 *Cinchona Officinalis* (30c concentration), produced by Boiron. He spit out the first one and likely
16 did not swallow the second one. Around this time, Bear walked into the house slowly. I kept
17 watching for worsening symptoms, but found none. He appeared to maintain the same condition
18 in which he was discharged. I started looking through veterinary medical books and going online
19 to study abdominal and digestion issues in dogs. I called the Animal Emergency & Trauma
20 Center and explained Bear's symptoms. While on the phone, Bear wanted to go out, so I let him
21 out, following him. He then lay down in the driveway. This signified an appreciable change in his
22 condition, so while I was still on the line with the Center, I told them I was coming to see them
23

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 5**

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1 now.

2 11. After carrying him into my car and ensuring three of my other dogs were inside, I noted
3 that Bear had stopped breathing and had a weak, rapid pulse. I started CPR and called a neighbor
4 to drive me to the Center. I continued CPR on Bear the whole way to the hospital. He arrived in
5 respiratory and cardiac arrest and we tried to resuscitate him without success.

6 12. At no time prior to Bear's discharge (or after) was I informed by Dr. Cage or any
7 employee of Ridgetop Animal Hospital of any risks associated with discharging Bear in the
8 condition in which I retrieved him. I was not told to take him directly to an emergency hospital.
9 Nor was I informed of any alternatives to discharge through decompression. No veterinarian or
10 employee of Ridgetop Animal Hospital went over the chart notes, or showed me the x-rays that
11 had been taken without my knowledge (I waited for quite some time before Bear came into the
12 lobby, without having been told ahead of time that the delay would be the result of Dr. Cage
13 taking x-rays). Had I been informed of the significant risks associated with discharging him in
14 that condition and doing nothing other than as related to me by Ms. Pribyl (as stated above), I
15 would never have left Ridgetop Animal Hospital and gone straight home. Instead, I would have
16 demanded that Ridgetop Animal Hospital decompress his stomach or gone straight to Animal
17 Emergency & Trauma Center if they were unwilling or unable to treat him properly
18

19
20 **EMOTIONAL DISTRESS**

21 13. I prayed desperately as I performed CPR on Bear en route to the Center. I knew, at this
22 point, it was his only chance at survival and I resolved to resuscitate him. The mental anxiety
23 associated with trying to save his life and watching resuscitative efforts fail were profound and,

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 6**

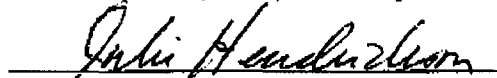
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1 sadly, unforgettable. When I finally left his side that night, I was numb and too exhausted
2 physically and emotionally to properly thank my neighbor for driving us to the Center, and me
3 home. I dreaded going home without Bear and stayed awake throughout the night trying to
4 understand what had happened. I had never had a dog die after a neuter, and Bear was such a part
5 of my life and home that I could not believe he was gone. I called my closest friend in the middle
6 of the night and just cried. He readily listened and acknowledged Bear's death with great sadness
7 and shock. I had no answers for him, but I was grateful he could offer prayers and thoughts for
8 Bear and us. I reached out to Dr. Paulson, the owner of Ridgetop Animal Hospital, the very next
9 day and felt that the significance of both Bear's life, and his death, passed unacknowledged. I
10 visited with his body to send flowers with him for his cremation and to pray for peace for both
11 him and me.
12

13 14. His death left me lost. That Sunday, I knew that I did not have the strength to deal with
14 anything beyond taking care of the dogs at home and attempting to work through the distress
15 associated with Bear's death, so I called my boss, requested a week of leave, and took a week of
16 leave. I could not bear to call family and others close to me to speak of Bear's death until I had
17 more time to believe he was gone for good. When I did talk with them, they only echoed the
18 question that I could not answer, "I can't believe he died after a neuter. How did that happen?"
19

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

22 Executed this April 27, 2009, in the city of Bremerton.

23 

24 **SECOND DECLARATION OF JULIE**
25 **HENDRICKSON - 7**

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Julie Hendrickson

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**SECOND DECLARATION OF JULIE
HENDRICKSON - 8**

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" Bear"
Hendrickson



DISCHARGE INSTRUCTIONS

Your pet has been under anesthesia. We recommend the following for the first 24 hours following surgery:

- Wait until 8pm before offering any food to your pet, and then only offer a small meal. You may offer small amounts of water at any time. Some vomiting may occur and is normal.
- Due to your pet's limited coordination, keep your pet confined to a small area overnight to help prevent accidental injury.

The continuing care instructions listed below should be followed for the 5-day period following any surgical procedure:

- Your pet confined indoors, clean and dry. Discourage rough play and watch for possible chewing of incision area. (If chewing is a problem, a collar will be provided).
- Clean the incision site twice daily for any redness, swelling or discharge.

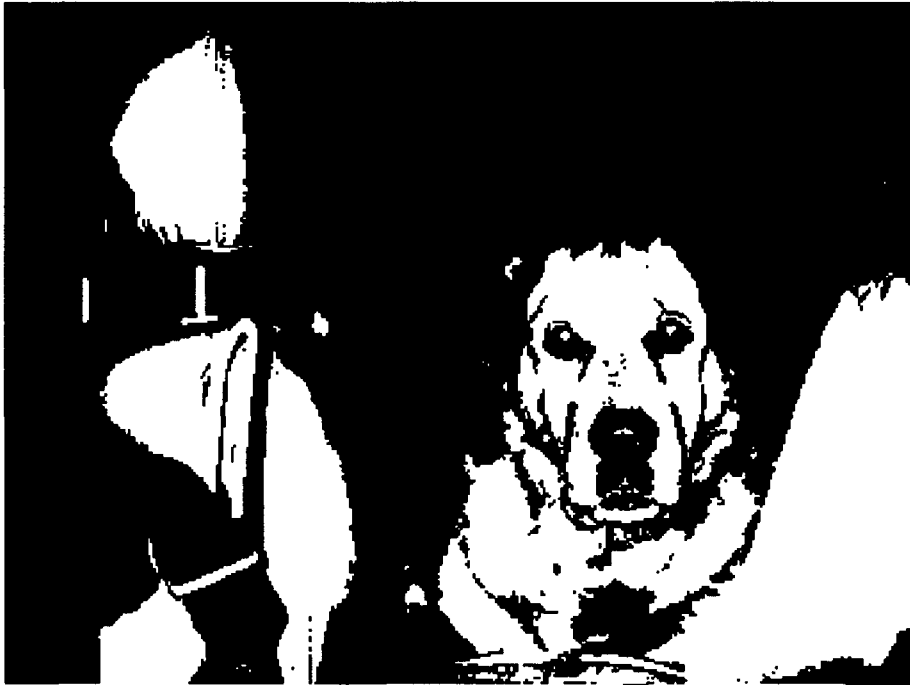
3. also perform the following in addition to any items marked above:

- Place warm compress on wound 5 to 10 minutes twice daily.
- Clean wound twice daily with a mixture of warm water and hydrogen peroxide.
- Rain removal in _____ days.
- Bandage removal/change in _____ days.

Other General Instructions:

- Suture removal not required.
- Suture removal in _____ days.
- Start medications as provided on _____. Give as directed.
- Your pet was in heat. She may continue to attract males for up to 2 weeks.

SPECIAL INSTRUCTIONS: 1730 - anti-emetic (6-8 hrs)
anesthesia + depth perception
check 2x daily





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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

JULIE HENDRICKSON,

Case No.: 08-2-01979-1

Plaintiff,

**DECLARATION OF
DOUGLAS A. KERN, DVM**

vs.

**TENDER CARE ANIMAL HOSPITAL
CORPORATION d/b/a RIDGETOP ANIMAL
HOSPITAL (UBI 602-262-385), et al.;**

Defendants.

DECLARATION

I, DOUGLAS A. KERN, being over the age of eighteen and fully competent to make this statement, and having personal knowledge of the matters contained herein, hereby affirm:

1. Attached is a report I have prepared concerning the death of Bear Hendrickson. I incorporate by reference the entire contents of this report as if restated in the body of this declaration.
2. Attached also is my curriculum vitae.

**DECLARATION OF DOUGLAS A.
KERN, DVM- 1**

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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.

Executed this April 21, 2009, in the city of PORTLAND, MAINE



Douglas A. Kern, DVM, MS

**DECLARATION OF DOUGLAS A.
KERN, DVM- 2**

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Douglas A. Kern, DVM, MS
Diplomate, American College of Veterinary Surgeons
Portland Veterinary Specialists

Veterinary Medical Case Summary

This document is open to amendments of opinion as additional documentary or testimonial evidence becomes available.

Owner: Julie Hendrickson, Kingston, WA

Patient: "Bear", a 4 year old, neutered male, Golden Retriever mix, canine, 40 kg

Treating Facility: Ridgetop Animal Hospital (Silverdale, WA)

Pertinent History: Bear was a 4 year old, neutered male, Golden Retriever mix canine that was in excellent health and admitted for an elective neutering at Ridgetop Animal Hospital on March 16, 2007. The neutering procedure was uneventful but postoperative recovery was characterized by vomiting. It was treated with metoclopramide (Reglan) injection. Ms. Hendrickson arrived to pick Bear up at 1900 hours. Just prior to discharge an abdominal radiograph was made showing significant gastric dilatation. It was recommended that Ms. Hendrickson get some simethicone (Gas X) and give it to Bear and also take him on some short walks once home. Bear was discharged some time later to Ms. Hendrickson. Bear was bloated, weak and slightly pale. Ridgetop also recommended taking Bear to the emergency clinic if his condition worsened. Bear arrived at the Animal Emergency & Treatment Center in respiratory and cardiac arrest at 22:14 hours. CPR was attempted but stopped after 20 minutes since no response was seen. Bear did not receive a necropsy (post-mortem) examination and was privately cremated.

Documents Reviewed: Medical records from Ridgetop Animal Hospital (8 pages)
Medical records from Animal Emergency & Trauma Center (4 pages)
Medical records from Banfield The Pet Hospital (12 pages)
Radiographs dated 3/16/2007 (2 views; right lateral abdomen, right lateral abdomen [more caudal than the first])
Deposition of Bridgette Pribyl (E Transcript)
Deposition of Dr. Kristen Cage (E Transcript)
Correction Pages for Pribyl and Cage Depositions (2 pages)
Supplemental Clarifications for Pribyl and Cage (3 pages)
Cage's Answers to First Discovery Requests (13 pages)
Plaintiff's Third Discovery To Defendant Ridgetop Animal Hospital (7 pages)

Veterinary Medical Opinion

I state with reasonable medical certainty that, in my veterinary medical opinion, Ridgetop Animal Hospital's treatment of Bear fell below the standard of care for a reasonably prudent general practitioner in the State of Washington. The applicable standard of care for Bear Hendrickson was the recognition of post-operative bloating and then to initiate emergency care to decompress the gas distended stomach. Furthermore, I note that the deviation from that standard of care by the doctor on duty or in charge of Bear's care certainly led to his death.

This opinion is evidenced by the following:

1. The doctor(s) in charge failed to recognize the cause of postoperative vomiting and to react to the findings of the diagnostic test that they performed. It was at that time that treatment needed to be instituted, and it was not.
2. The hospital failed to recommend appropriate treatment by insisting upon immediate transport of Bear to an emergency clinic. They instead proceeded with Bear's discharge from the hospital without appropriate informed consent to Ms. Hendrickson of the severity of Bear's condition. Dr. Cage did not spend anytime discussing the potential severity of Bear's bloated condition with Ms. Hendrickson. The risk of not doing anything (orogastric tube placement, trocharization or cannula placement) was far greater than any complications derived from decompressing Bear's stomach. If Dr. Cage was reticent in performance of either technique then direct or informed consent to Ms. Hendrickson should have been made to that effect. Relying on a relatively inexperienced technician to relate recommendations to Ms. Hendrickson did not offer enough information or expression of urgency that this case required. Since the appropriate recommendation was not made to Ms. Hendrickson, direct injury to Bear did occur.

The clinical condition of gastric dilatation does not always involve volvulus or torsion of the stomach. It is the dilatation (bloating) of the stomach that compresses the major blood vasculature of the abdomen and interferes with blood flow to the heart which ultimately compromises all other organs. The pressure against the diaphragm also interferes with breathing and decreases ventilation substantially. The discomfort experienced by affected patients is great. A non-dilated, torsed stomach is not a life threatening problem. A dilated stomach, even without torsion, is an emergent and life threatening situation that requires immediate response when presented to a veterinarian. Certainly, if the animal is hospitalized, this condition requires rapid treatment or immediate referral to a facility that can perform decompression. All licensed veterinarians should be capable of decompressing a stomach. Recognized forms of treatment included passage of an orogastric tube for gastric lavage and decompression or trocharization through the abdominal and gastric walls. The risk with either treatment technique would be minimal with the anticipated benefit of instant relief, return of proper blood flow, and survival. Nontreatment was not an option.

Simethicone administration is not universally accepted as a treatment for gastric distention. It would only potentially work if the gas was "frothy" as it reduces the surface tension and reduces the froth. I opine that its administration would be of little to no benefit to Bear which was unfortunately born out in his case.

I further opine that based on the (inappropriately labeled) digital radiographs of Bear's abdomen, the degree of abdominal distension was severe. It involves the entire abdomen. Additionally, the surgical and hospital authorization release attempts to make the owner of the patient liable for all circumstances that might occur, but it is predicated on the "minimal risk" associated with anesthesia and not the postoperative events that did occur in Bear's case.

Since shortly after graduating from the College of Veterinary Medicine at the University of Minnesota in 1987, I have been performing referral surgeries. I successfully completed an American College of Veterinary Surgeons (ACVS) approved residency program and passed their rigorous examinations to receive my board certification in 1996. I have practiced in Massachusetts, Virginia, Ohio, Nebraska, Iowa and Maine and have also been licensed to practice in Minnesota. I currently maintain active licensure status in Maine and Connecticut. My experience in these states, familiarity with the national scope of veterinary colleges, similarities

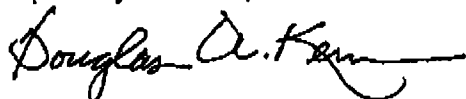
among veterinary practice acts, and the professional literature corroborate that the standard of care and expectations among states is in essence equal, i.e., a national standard of veterinary care. Therefore, the standard of veterinary medical care that I am applying to evaluate this case is national in scope and expectation and applies to practitioners in Washington State. I am familiar with the veterinary practice act in Washington State and reciprocity of licensure exists between Maine, Connecticut and Washington State. The anatomy, medicine, diagnostic evaluations, risks and benefits of action are the same in Washington State as in Maine. In the case of Bear Hendrickson, the failure to respond to an enlarging postoperative abdomen and lethargy or weakness clearly breached the standard of care. The notations by staff at the Ridgetop Animal Hospital document at least the recognition of his gastric distention.

Conclusion

With a reasonable degree of medical certainty I opine that the Ridgetop Animal Hospital's actions and omissions caused the death of Bear and violated the standard of care for a veterinary practitioner licensed in the State of Washington, with respect to Bear's post-surgical treatment, post-diagnostic evaluation, and discharge of Bear from the hospital. Not recognizing the severity of the complication and responding to it appropriately is the central cause of the substandard care.

It is my professional opinion that the inactions of Ridgetop Animal Hospital constitute recklessness and a deliberate indifference to the information gathered by their radiographs and evaluations.

Respectfully submitted,



Douglas A. Kern, DVM, MS
Diplomate, American College of Veterinary Surgeons
Portland Veterinary Specialists
Portland, Maine
4/21/09

CURRICULUM VITAE

NAME: Douglas Arthur Kern

EDUCATION: B.S. in Chemistry: 1979-1983
American Chemical Society Approved Degree
University of Wisconsin - River Falls
River Falls, WI

B.S. in Veterinary Science: 1983-1985
College of Veterinary Medicine
University of Minnesota
St. Paul, MN

D.V.M.: 1983-1987
College of Veterinary Medicine
University of Minnesota
St. Paul, MN

Internship Certificate: 1987-1988
Rowley Memorial Animal Hospital
Massachusetts Society for the Prevention of Cruelty to Animals
Springfield, MA

Residency in Small Animal Surgery Certificate: 1990-1993
College of Veterinary Medicine
Virginia Polytechnic Institute and State University
Blacksburg, VA

M.S. in Veterinary Science: 1990-1993
College of Veterinary Medicine
Virginia Polytechnic Institute and State University
Blacksburg, VA

Diplomate American College of Veterinary Surgeons: 1996

EMPLOYMENT:

Surgeon: 2005-present
Portland Veterinary Specialists
2255 Congress Street
Portland, ME 04012

Surgeon: 2005-2007
Bath Brunswick Veterinary Associates, Inc.
257 Bath Road
Brunswick, ME 04011

Surgeon: 2003-2005
Casco Bay Surgical Services
North Deering Veterinary Hospital
456 Auburn Street
Portland, ME 04103

Surgeon/President: 2001-2003
Delta Surgery Group, P.C.
9664 Mockingbird Drive
Omaha, NE 68127

Surgeon: 1999-2001
Veterinary Specialties of Omaha
4834 South 97th Street
Omaha, NE 68127

Surgeon/Partner: 1997-1999
Veterinary Referral & Critical Care
1596 Hockett Road
Manakin-Sabot, VA 23103

Surgeon/Owner: 1996-1997
Ambulatory Surgery Referral Practice
40-B Braeburn Drive
Richmond, VA 23233

Surgeon: 1993-1996
Veterinary Surgical Services
Tennessee Avenue Animal Hospital
Cincinnati, OH 45229

Resident in Small Animal Surgery: 1990-1993
Department of Small Animal Clinical Sciences
Virginia-Maryland Regional College of Veterinary Medicine
Virginia Polytechnic Institute and State University
Blacksburg, VA 24061

Staff Veterinarian, Director of Interns: 1988-1990
Rowley Memorial Animal Hospital
Massachusetts Society for the Prevention of Cruelty to Animals
Springfield, MA 01105

Intern in Small Animal Medicine and Surgery: 1987-1988
Rowley Memorial Animal Hospital
Massachusetts Society for the Prevention of Cruelty to Animals
Springfield, MA 01105

AWARDS AND HONORS:

Professional:

Alpha Zeta Traveling Scholarship: 1985
Veterinary Student Council Award for Service to the Veterinary College: 1985
Pfizer Veterinary Student Scholarship Award: 1986
Certificate of Commendation for Outstanding Contributions to the College of Veterinary Medicine: 1986
Hill's Pet Products Senior Student Award: 1987
Clifton A. Paulson Memorial Award: 1987
AVMA Auxiliary Award: 1987
Phi Zeta National Honor Society of Veterinary Medicine: 1993
Phi Zeta Research Paper Award - Chi Chapter: 1993

Public Service:

Outstanding Young Men of America: 1986
University President's Student Leadership and Service Recognition: 1986

PROFESSIONAL ORGANIZATION MEMBERSHIP:

American College of Veterinary Surgeons: 1996 - present
American Veterinary Medical Association: 1987 - present
Minnesota Veterinary Medical Association: 1987 - present
Nebraska Veterinary Medical Association: 1999 - 2003
American Canine Sports Medicine Association: 2000 - 2004
Massachusetts Veterinary Medical Association: 1987 - 1990
Cincinnati Veterinary Medical Association: 1994 - 1996
Veterinary Orthopedic Society: 1992 - 1996; 2001- 2004
Alpha Zeta Fraternity: 1983 - present
Phi Zeta Fraternity: 1993 - present
Richmond Academy: 1996-1997
Central Virginia Veterinary Medical Association: 1996 - 1999

PUBLIC ORGANIZATION MEMBERSHIP:

Board of Trustees of S.I.D. #184: 2002
Papillion Area Lions Club: 2000 - 2003
 Membership Director: 2002-2003
 District Service Dog Director: 2002-2003
 Board of Directors: 2002-2003
Omaha Mens Garden Club: 2000 - 2003
Great Plains Pond Society: 2000 - 2003

STATE LICENSURE:

Massachusetts	3379	1987 - 1993
Minnesota	00287	1987 - 1997
Ohio	6674	1993 - 1996
Virginia	0301006624	1994 - 2000
Nebraska	2948	1999 - 2003
Connecticut	2933	2002 - present
Maine	VT1540	2003 - present

TEACHING - PROFESSIONAL:

Virginia Polytechnic Institute and State University

VM 8354 - Clinical Techniques: 1990-1992
Lectures and laboratories on small animal restraint, diagnostic techniques and euthanasia.

VM 8624 - Surgical Principles and Practicals I: 1990-1992
Elective surgical procedures in small animals. Surgical laboratory assistant.

VM 8724 - Surgical Principles and Practicals II: 1990-1993
Soft tissue and orthopedic surgical procedures in small animals. Surgical laboratory assistant.

VM 8444 - Introduction to Anesthesiology, Radiology and Surgery: 1992
Suture techniques, suture patterns, and hand-ties.

VM 9984 - Advanced Small Animal Surgery: 1992-1993
Lectures and laboratory on interdental stabilization for mandibular fractures.

VM 9614 - Small Animal Surgery Clerkship: 1990-1993
Clinical small animal surgery.

TEACHING - GRADUATE:

Virginia Polytechnic Institute and State University

VMS 5514 - Advances in Musculoskeletal Surgery: 1992
Mandibular fractures in the dog.

UNIVERSITY AND PROFESSIONAL SERVICE ACTIVITIES:
Nebraska Veterinary Medical Association

Member: Continuing Education Committee: 2001- present
Member: Public Relations Committee: 2000-present

Virginia Polytechnic Institute and State University

Department:

Member: Virginia-Maryland Regional College of Veterinary Medicine, Department of Small Animal Clinical Sciences Computer Committee: 1991-1993

College:

Member: Virginia-Maryland Regional College of Veterinary Medicine Research and Graduate Studies Board: 1992-1993

Member: Virginia-Maryland Regional College of Veterinary Medicine Graduate Affairs Committee: 1992-1993

Group leader: Virginia-Maryland Regional College of Veterinary Medicine Graduate Student Retreat: June 18, 1993

University of Minnesota

Member: Board of Directors of Incorporation, Minnesota Student Chapter of the American Veterinary Medical Association: 1986-present

Member: Board of Directors, Minnesota Veterinary Medical Association: 1986-1987

Member, President-elect, President, Immediate Past President: Minnesota Student Chapter of the American Veterinary Medical Association: 1983-1987, 1984-1985, 1985-1986, 1986-1987

Chairman: Student American Veterinary Medical Association National Educational Symposium - Minnesota: 1984-1986

Principal Incorporator: Minnesota Student Chapter of the American Veterinary Medical Association: 1986

Member, Secretary: Student Council, University of Minnesota College of Veterinary Medicine: 1983-1987, 1983-1984

RESEARCH:

Biomechanical Evaluation of Interdental Fixation of Mandibular Fracture in Dogs.

Principal Investigator

**Source: Virginia-Maryland Regional College of Veterinary Medicine, Quick Response Grant:
1990-1991**

\$1,065

Fixation of Segmental Mandibular Osteotomy in Dogs: A Comparative Analysis.

Principal Investigator

**Source: Virginia-Maryland Regional College of Veterinary Medicine, Clinical Research Grant,
Quick Response Grant, Synthes: 1991-1992**

\$6,846

**Histologic Changes in the Inferior Alveolar Nerve of Dogs Associated with Experimental
Mandibular Fracture.**

Principal Investigator

**Source: Virginia-Maryland Regional College of Veterinary Medicine Clinical Research Grant:
1991-1992**

\$2,078

Studies on Pneumothorax in the Dog.

Principal Investigator

Source: Virginia Veterinary Memorial Fund: 1991-1992

\$4,436

**Quadrisol[®] 5 field trial (U.S. CLIN 1): A double-blind placebo-controlled clinical efficacy trial with
Quadrisol[®] 5 for the treatment of pain and inflammation in dogs with degenerative joint disease
(DJD) secondary to chronic musculoskeletal disorders of the elbow, hip and/or stifle joint.**

Cooperating Practitioner

Source: Intervet Inc, Akzo Nobel, Millsboro, DE: 1998-1999

National epidemiological survey of cranial cruciate disease

Cooperating Practitioner

Source: University of Minnesota, College of Veterinary Medicine: 2000

Phase II clinical trial of autologous vaccine for the treatment of malignant neoplasia

Cooperating Practitioner

Source: Streck Laboratories, Omaha, NE: 2002

Grants submitted but not funded:

**Oral Glycosaminoglycan for the Management and Treatment of Degenerative Joint Disease in the
Dog.**

Principal Investigator

Source: Virginia Veterinary Memorial Fund: 1993

\$4,000

PRESENTATIONS:

Research Data:

Studies on pneumothorax in the dog

Kern DA, Carrig CB, Martin RA

May 20, 1991

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Biomechanical evaluation of interdental fixation for mandibular fracture in dogs

Kern DA, Smith MM, Grant JW, Rockhill AD

June 15, 1991

Sponsor: Southeastern Veterinary Surgeons Conference
Lake Lanier, GA

Inferior alveolar nerve injury in the dog

Kern DA, Dyer KR, Smith MM

November 11, 1991

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Biomechanical strength of interdental fixation for mandibular fracture in dogs

Kern DA, Smith MM, Grant JW, Rockhill AD

May 19, 1992

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Biomechanical evaluation of interdental fixation for mandibular fractures in dogs

Kern DA, Smith MM, Grant JW, Rockhill AD

November 3, 1992

Sponsor: American College of Veterinary Surgeons
20th Annual Surgical Forum
27th Annual ACVS Scientific Meeting
Miami, FL

Preliminary results of the effects of mandibular fixation on bone healing

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH, Dyer KR

November 9, 1992

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Canine mandibular osteotomy model: the effects of fixation on bone healing and nerve regeneration

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH, Dyer KR

April 9, 1993

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

An evaluation of inferior alveolar nerve healing after mandibular body osteotomy in the dog

Kern DA, Dyer KR, Gregg JM, Smith MM, Irby MH

April 11, 1993

Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH, Dyer KR

May 25, 1993

**Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA**

Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH, Dyer KR

June 12, 1993

**Sponsor: Southeastern Veterinary Surgeons Conference
Lake Lanier, GA**

Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH, Dyer KR

October 27, 1993

**Sponsor: American College of Veterinary Surgeons
21st Annual Surgery Forum
28th Annual ACVS Scientific Meeting
San Francisco, CA**

Radiographic evaluation of induced pneumothorax in the dog

Kern DA, Carrig CB, Martin RA

December 2, 1993

**Sponsor: American College of Veterinary Radiologists
1993 Annual Scientific Meeting
Chicago, IL**

Continuing Education and Service:

Acute abdomen in the dog and cat

December 13, 1990

**Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA**

Orthopedic surgery of the canine forelimb

April 20-21, 1991

**Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA**

Interdental mandibular fracture repair

October 19, 1991

**Sponsor: West Virginia Veterinary Medical Association
Morgantown, WV**

Small animal dentistry

Interdental wiring techniques

December 13-14, 1991

**Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA**

Spinal surgery

March 28, 1992

**Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA**

Canine hip dysplasia
May 21, 1992
Sponsor: Southwest Virginia Veterinary Association
Christiansburg, VA

Orthopedic surgery of the canine hindlimb
External skeletal fixation of the tibia
October 2-3, 1992
Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Small animal dentistry
Interdental mandibular fracture repair
December 18-19, 1992
Sponsor: Virginia-Maryland Regional College of Veterinary Medicine
Blacksburg, VA

Canine mandibular fractures and interdental repair
December 22, 1992
Sponsor: Rowley Memorial Animal Hospital - MSPCA
Springfield, MA

Canine Corps Health Fair
Regional police dog examinations
October 31, 1993
Sponsor: Cincinnati Veterinary Medical Association
Cincinnati, OH

Canine stifle surgery
November 2, 1993
Sponsor: Dayton Veterinary Medical Association
Dayton, OH

Surgical correction of congenital abnormalities
November 10, 1993
Sponsor: Cincinnati Kennel Club
Cincinnati, OH

Laboratory for internal and external fixation of mandibular fractures
March 5, 1994
Sponsor: 61st Annual American Animal Hospital Association Meeting
Boston, MA

Orthopedic conditions in the canine
March 15, 1994
Sponsor: Cincinnati Veterinary Technician Association
Cincinnati, OH

Orthopedics and fracture repair
May 10, 1994
Sponsor: Butler-Warren County Veterinary Medical Association
Middletown, OH

Canine hip dysplasia
August 9, 1994
Sponsor: Clermont County Veterinary Medical Association
Withamsville, OH

Intervertebral disk disease

September 11, 1996
Sponsor: Central Virginia Veterinary Medical Association
Richmond, VA

Hip dysplasia, intervertebral disk disease, external skeletal fixation

October 21, 1997
Sponsor: Lynchburg Veterinary Medical Association
Lynchburg, VA

Use of analgesia in small animals

November 3, 1998
Sponsor: Virginia Assoc. of Licensed Veterinary Technicians-Central Division
Richmond, VA

Wet Lab Co-Instructor

Jugular catheters, Bone marrow biopsy, Thoracostomy tube placement
June 18, 1999
Sponsor: Nebraska Veterinary Medical Association
North Platte, NE

Lameness, Hip dysplasia, Acute abdomen

September 21, 1999
Sponsor: Nebraska Academy of Veterinary Medicine
Omaha, NE

What is out there and how is it working?

Trends and new treatments in surgery
October 5, 2000
Sponsor: Interstate Veterinary Medical Association
South Sioux City, NE

State of the Art in Veterinary Surgery

What is a Diplomate of the American College of Veterinary Surgeons
May 15, 2002
Sponsor: Nebraska Kennel Club
Omaha, NE

Conditions Affecting the Dog that Can Present as Hindlimb Lameness in the Dog

October 3, 2002
Sponsor: Interstate Veterinary Medical Association
South Sioux City, NE

Shoulder Lameness

February 3, 2004
Sponsor: Downeast Veterinary Group
Portland, ME

Practical Aspects of Orthopedic and Soft Tissue Surgery

October 9, 2004
Sponsor: Maine Veterinary Medical Association
Bangor, ME

Hip Dysplasia and Cranial Cruciate Ligament Disease

December 7, 2005
Sponsor: Portland Veterinary Specialists
Westbrook, ME

Diagnosis and Management of Oral Tumors
March 22, 2006
Sponsor: Portland Veterinary Specialists
Westbrook, ME

Surgical Emergencies
September 12, 2006
Sponsor: Portland Veterinary Specialists
Westbrook, ME

Dog: Companions, Friends & Family
May 18, 2007
Sponsor: George E. Jack Elementary
Standish, ME

Shoulder and Stifle Instability
May 22, 2007
Sponsor: Portland Veterinary Specialists
Westbrook, ME

PUBLICATIONS:

Abstracts:

Kern DA. Editor-Proceedings of the Minnesota Student American Veterinary Medical Association Symposium (16th annual) 1986.

Kern DA, Smith MM, Grant JW, Rockhill AD. Mechanical evaluation of interdental fixation for mandibular fractures in dogs. Scientific Meeting Abstracts - ACVS 1992. Vet Surg, 21(5);1992:394.

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Dyer KR, Irby MH. Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs. Scientific Meeting Abstracts - ACVS 1993. Vet Surg, 22(5);1993:385-386.

Kern DA, Carrig CB, Martin RA. Radiographic evaluation of induced pneumothorax in the dog. ACVR 1993 Scientific Meeting Abstracts, Dec 1993.

Proceedings:

Kern DA, Carrig CB, Martin RA. Studies on pneumothorax in the dog. Proceedings of the 3rd Annual Virginia-Maryland Regional College of Veterinary Medicine Research Day. May 1991:25.

Dew TL, Kern DA. The application of the Inoue technique of external skeletal fixation for the treatment of two femoral fractures complicated by non-union in the canine. Proceeding Vet Ortho Society, Keystone CO; Feb 1992.

Kern DA, Smith MM, Grant JW, Rockhill AD. Mechanical evaluation of interdental fixation for mandibular fracture in dogs. Proceedings of the 4th Annual Virginia-Maryland Regional College of Veterinary Medicine Research Day. May 1992:21.

Kern DA, Smith MM, Grant JW, Rockhill AD. Mechanical evaluation of interdental fixation for mandibular fractures in dogs. ACVS 1992 Scientific Meeting Abstracts - Small Animal Proceedings, Nov 1992:14.

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Irby MH. Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs. Proceedings of the 5th Annual Virginia-Maryland Regional College of Veterinary Medicine Research Day. May 1993:12.

Kern DA, Smith MM, Stevenson S, Moon ML, Saunders GK, Dyer KR, Irby MH. Bone healing of mandibular body osteotomies after plate, interdental, and external skeletal fixation in dogs. ACVS 1993 Scientific Meeting Abstracts - Small Animal Proceedings, Nov 1993:16-17.

Journals - Refereed:

Kern DA, Miles KG. What is your diagnosis? J Am Vet Med Assoc, 198(2);1991:315-316.

Dew TL, Kern DA, Johnston SA. Treatment of complicated femoral fractures with external skeletal fixation utilizing bone screws and polymethylmethacrylate. Vet Comp Ortho Trauma, 5(4);1992:170-175.

Kern DA, Smith MM, Grant JW, Rockhill AD. Evaluation of bending strength of five interdental fixation apparatuses applied to canine mandibles. Am J Vet Res, 54(7);1993:1177-1182.

Kern DA, Carrig CB, Martin RA. Radiographic evaluation of induced pneumothorax in the dog. Vet Rad & Ultra, 35(6); 1994, 411-417.

Kern DA, Smith MM, Stevenson S, et al. Evaluation of three fixation techniques for repair of mandibular fractures in dogs. J Am Vet Med Assoc, 206(12); 1995: 1883-1890.

Beckham Jr HF, Smith MM, Kern DA. Use of a modified toggle pin for repair of coxofemoral luxation in dogs with multiple orthopedic injuries: 14 cases (1986-1994). J Am Vet Med Assoc, 208(1); 1996: 81-84.

Manuscripts Submitted:

LeMarié RJ, Waldron DR, Kern DA, et al. Thymoma in a cat. J Sm Anim Pract

Manuscripts in Progress:

Kern DA, Dyer KR, Gregg JM, et al. Evaluation of inferior alveolar nerve healing after mandibular body osteotomy in the dog.

Peer Reviewer:

Veterinary Medicine – 2000-2004

KARP LAW OFFICE

October 17, 2013 - 7:10 AM

Transmittal Letter

Document Uploaded: 397676-Petition for Review.pdf

Case Name: Hendrickson v. Tender Care

Court of Appeals Case Number: 39767-6

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: ____

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: ____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Check was mailed directly to Supreme Court on Tues., Oct. 15, 2013.

Sender Name: Adam P Karp - Email: adam@animal-lawyer.com

A copy of this document has been emailed to the following addresses:

adam@animal-lawyer.com
john@schedlerschambers.com