

UNDERSTANDING AND AVOIDING LIABILITY IN THE HORSE INDUSTRY

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Equine and equestrian liability theories have undergone major changes over the past two decades, largely because of the passage of equine activity liability legislation in 46 states (as of January 2010).

I. Negligence

A highly authoritative, widely-accepted definition of negligence is found in *Black's Law Dictionary* (5th Edition). It states, in part:

Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under the circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances.

In other words, conduct, to be negligent, must fall below an established legal standard designed to protect others. Negligent conduct is not necessarily intended to inflict harm. By comparison, however, “gross negligence” involves a deliberate or voluntary act in reckless disregard of the consequences affecting the life or property of another. In assessing negligence, the court will also consider the foreseeability of serious harm that can occur.

When applied to equine and equestrian matters, negligence theories have included:

- * Owning or stabling a horse with known vicious dangerous tendencies and failing to take appropriate corrective action, such as failing to properly restrain the horse or provide proper warnings. This theory often arises in cases where people are bitten, kicked, or trampled by horses.
- * Providing improperly maintained or adjusted equipment, such as saddles, causing the saddles to slip on a horse and the claimant/plaintiff to be injured.
- * Failing to adequately control or handle a horse causing the horse to become loose and injure motorists or pedestrians.
- * Engaging in an activity (such as trash collection, shooting practice, and others) arguably in too close of a proximity to a horse activity, such as a stable, arena, or riding trail, that causes the horse to spook and injure a rider or handler.
- * Providing improper supervision a rider or handler, causing the individual to lose control of the horse and become injured. This theory has been applied to riding instructors and average horse owners who provide horses for others.

II. Equine Activity Liability Acts (“EALAs”)

46 states have enacted some form of an EALA. States without this type of legislation are: California, Maryland, Nevada, and New York. Many of these laws have common characteristics, but all of them differ.

A. How These Laws Generally Work

Most of the EALAs prevent those who take part in equine activities and their families from bringing suit and recovering money if an injury or death results from an “inherent risk of an equine activity.” What constitutes an “equine activity” or an “inherent risk” will vary in each state’s law, but the definitions are usually broad and cover a wide variety of activities.

The EALAs often contain exceptions that, by their terms, allow injured persons or others on their behalf to sue under certain circumstances. For example, most, *but not all*, EALAs allow an “equine activity sponsor,” “equine professional,” or possibly others to be sued if they:

- * Provide tack or equipment that they knew or should have known was faulty, and the fault causes harm to the one partaking in the equine activity.
- * Improperly match a horse with a rider or fail to determine the equine activity

participant's ability to safely manage the horse based on representations of his or her abilities.

- * Own, lease, or have lawful use of land or facilities that have a dangerous latent (non-obvious) condition but for which no noticeable warning signs were posted.
- * Laws in some states allow liability where “gross negligence” or intentional wrongdoing was committed.
- * Laws in a small number of states appear to allow suits to proceed under the legal standard of “negligence” (which essentially is the failure to use reasonable care), typically if the complained-of injury was not caused by an “inherent risk.”

As these exceptions indicate, there really is no “zero liability law.” However, laws in some states are credited with making some people and businesses in the horse industry victorious over pesky and expensive personal injury lawsuits. Also, the equine liability laws can actually help the horse industry, in some states, foresee the types of things that may create liability and then actively strive to *prevent* them.

B. Sign Posting and Contract Language Requirements

Most of the EALAs include sign and warning language requirements, as discussed below. Compliance with these requirements can be very important. A small number of EALAs specify that those who fail to comply with these requirements will lose any liability limitations within their laws.

1. Sign Posting Requirements

Of the states with posting requirements, the laws differ as to the language needed for the signs, letter size, sign size, where the signs should be placed, and sometimes even the color of the letters that appear on the sign.

Equine liability laws in several states across the country now require certain persons or entities (usually “equine activity sponsors” or “equine professionals”) to post noticeable warning signs containing special language. For example, the Texas EALA requires this language:

WARNING

UNDER TEXAS LAW (CHAPTER 87, CIVIL PRACTICE AND REMEDIES CODE), A EQUINE PROFESSIONAL IS NOT LIABLE FOR AN INJURY TO OR THE DEATH OF A PARTICIPANT IN EQUINE ACTIVITIES RESULTING FROM THE INHERENT RISKS OF EQUINE ACTIVITIES.

By comparison, the Massachusetts EALA requires:

WARNING

Under Massachusetts law, an equine professional is not liable for an injury to, or the death of, a participant in equine activities resulting from the inherent risks of equine activities, pursuant to section 2D of chapter 128 of the General Laws.

Kentucky's EALA requires this language:

WARNING

Under Kentucky law, a farm animal activity sponsor, farm animal professional, or other person does not have the duty to eliminate all risks of injury of participation in farm animal activities. There are inherent risks of injury that you voluntarily accept if you participate in farm animal activities

Wisconsin's EALA differs from all of them:

NOTICE: A person who is engaged for compensation in the rental of equines or equine equipment or tack or in the instruction of a person in the riding or driving of an equine or in being a passenger upon an equine is not liable for the injury or death of a person involved in equine activities resulting from the inherent risks of equine activities, as defined in section 895.481(1)(e) of the Wisconsin Statutes.

2. Contract Language Requirements

Many (but not all) of the equine activity liability laws require “equine professionals” and sometimes “equine activity sponsors” to include certain language in their contracts and liability releases. These requirements, when they exist, vary greatly from state to state. For example, some states require use of a “warning” notice, some states require a list of certain “inherent risks,” and some states require both.

Ohio's EALA, for example, contains no sign posting requirement but does require that certain language be included in contracts. It requires inclusion of this language:

A valid waiver for purposes of ... this Section shall be in writing and subscribed by the equine activity participant or the parent, guardian, custodian, or other legal representative of the equine activity participant, and shall specify at least each inherent risk of an equine activity that is listed [as cited below] ... and that will be a subject of the waiver of tort or other civil liability.

Also, Ohio's EALA requires the following language in waivers:

'Inherent risk of an equine activity' means a danger or condition that is an integral part of an equine activity, including, but not limited to, any of the following:

- (a) The propensity of an equine to behave in ways that may result in injury, death, or loss to persons on or around the equine;
- (b) The unpredictability of an equine's reaction to sounds, sudden movement, unfamiliar objects, persons, or other animals;
- (c) Hazards, including, but not limited to, surface or subsurface conditions;
- (d) A collision with another equine, another animal, a person, or an object;
- (e) The potential of an equine activity participant to act in a negligent manner that may contribute to injury, death, or loss to the person of the participant or to other persons, including but not limited to, failing to maintain control over an equine or failing to act within the ability of the participant.

Similarly, the Illinois EALA, which has a sign posting requirement, requires different language in waivers and releases:

Each participant, or parent or guardian of a minor participant, may execute a release assuming responsibility for the risks of engaging in equine activities. The release shall give notice to the participant, or parent or guardian, of the risks of engaging in equine activities, including (i) the propensity of an equine to behave in dangerous ways that may result in injury to the participant, (ii) the inability to predict an equine's reaction to sound, movements, objects, persons, or animals, and (iii) the hazards of surface or subsurface conditions. A release shall remain valid until expressly revoked by a participant, or, if a minor, the parent or guardian.

Because of these differences, it is important to read each equine activity liability law very carefully. If you transact business in different states, never assume that laws are the same in each state. Finally,

remember that even with the passage of these laws, the need for liability insurance remains strong.

C. Examples of the EALAs in Action

Below are three fact scenarios, which will be applied to states with an EALA.

Unsuitable Horse Matters

Ryan, who has a few horses in his barn, wants to take his friend Nathan Novice on a casual horseback ride. Before choosing a horse for his friend Nathan to ride, he asks: "How often have you ridden before?" Nathan replies: "I've ridden for 8 years" (without mentioning that he really has ridden only once in each of those years). Ryan selects the horse "Bullet" for Nathan. "Bullet" is a highly spirited horse that is suitable for very experienced riders. Nathan is quickly thrown, and he sues.

Under many of the EALAs, Nathan has grounds to sue. Florida's EALA, for example, provides that an "equine activity sponsor," "equine professional," or any other person could face liability if they:

[P]rovided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity, or to determine the ability of the participant to safely manage the particular equine based on the participant's representation of his ability.

Relying on this language, Nathan would argue that Ryan did not sufficiently assess his riding skills before assigning "Bullet." Had Ryan asked only a one or two more questions, he would learn that "Bullet" was inappropriate for Nathan.

Horse Not Provided

Betty Boarding Stable Owner owns a boarding stable that does not offer horseback rides or lessons to the public. One day, Mickey, a boarder, brings his girlfriend to the stable to ride his horse. Mickey's horse throws his girlfriend. She now sues Betty, claiming Betty is legally responsible for providing an unsafe horse.

Betty Boarding Stable Owner would likely win this one. Unlike the Nathan Novice situation, Betty did not provide the horse – Mickey did. Just because Betty happens to stable Mickey's horse is not enough to make Betty legally responsible when the horse acts up while under Mickey's control.

A different set of facts could change Betty's legal position altogether. What if Mickey's

girlfriend claims that an unsafe condition of Betty's land caused the problem? Under most state EALAs, property owners like Betty could potentially be liable under a common EALA exception; Washington's EALA, for example, has an exception allowing certain suits to proceed if an "equine activity sponsor" or "equine professional" "owns, leases, rents, or otherwise is in lawful possession and control of the land . . . upon which the participant sustained injuries because of a dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted." Several other state EALAs contain a similar exception.

Faulty Tack or Equipment

At the close of business one night, Reba Riding Instructor's assistant notifies her that the bridle on "Bart," one of Reba's school horses, has a broken buckle, which will cause it to fall apart. A tired Reba yawns, "I'll fix it first thing in the morning." Morning arrives, but Reba forgets to make the repairs. The bridle comes apart later that morning while Samantha Student rides Bart in a lesson. Samantha loses control of Bart, falls, and sues.

Under the most state EALAs, Samantha's lawsuit could likely proceed under the "faulty tack or equipment" exception. The night before Samantha Student was injured, Reba's assistant alerted Reba to the broken bridle, but Reba failed to make the repairs. Samantha's case would claim that her injuries resulted from the horse reacting uncontrollably to the broken bridle.

Numerous EALAs include the "faulty tack or equipment" exception. Ohio's EALA, for example, allows liability where the "equine activity sponsor, equine activity participant, equine professional, veterinarian, farrier, or other person provides . . . faulty or defective equipment or tack and knows or should know that the equipment or tack is faulty or defective, and the fault or defect . . . proximately causes the harm involved."

III. Defenses

Depending on the facts of a particular matter, the party targeted with a claim or suit can present several possible defenses. Here are some of them: the plaintiff's own negligence contributed to his injuries (in some states, this is called "comparative negligence," but other states evaluate it differently and call it "contributory negligence"); assumption of risk (the plaintiff knew the activity involved was dangerous but proceeded); the plaintiff assumed the "inherent risk" of the equine

activity and the incident arose from an “inherent risk” under an EALA; a valid, legally enforceable written waiver/release prevents the claim or litigation.

IV. Avoiding Liability

Here are some suggestions for avoiding liability:

Understand What Causes Liability

Do not allow unfounded opinions to steer you wrong on something as important as liability. In a continuing effort to avoid liability, it helps to separate fact from fiction. In this connection, consult with a knowledgeable lawyer. Learn about liability through books, articles, and seminars.

Develop Your Own Personal Safety Program

A constant dedication to safety will reduce the risk of injuries and, consequently, liability. Through a series of safety-conscious habits and practices – implemented routinely – you can lessen the risk of liability. Here are two ideas to help get you started:

- * *Regular equipment inspections.* If you provide tack or equipment to others, chances are good that you are at risk for liability if the equipment is blamed for causing an injury, and the injured person claims that you knew or should have known about defects. Many EALAs impose liability under these circumstances. Knowing this risk is a good incentive to stay a step ahead. Regular equipment inspections will help keep your equipment in good condition and avoid liability on this basis.
- * *Train your workers well.* As a general rule, a business is liable for the negligent acts its employees commit during the course of employment. With this in mind, your own dedication to safety is a good start; make sure that all of your workers share it.

Well-Worded Liability Releases

Most states have enforced releases of liability (also called “waivers”) if they are properly presented and signed. There is no substitute for a release that has been drafted by a knowledgeable attorney. Remember that having a release is *never* a substitute for insurance.

Insurance

Insurance will help save your home, your savings, and your property in the event that a claim or a lawsuit is brought against you for which the policy applies. At the very least, insurance could

spare you the enormous cost of a legal defense.

Comply With EALA Requirements

If an EALA affects you or your business, look for sign posting requirements and make sure that you comply. These requirements vary considerably from state to state and there is simply no “one-size-fits-all” sign for nationwide use.

This article is not intended to constitute legal advice. Where questions arise based on specific situations, consult with a knowledgeable attorney.

About the Author

Julie Fershtman is one of the nation’s best-known and most experienced Equine Law practitioners. A lawyer for over 24 years, she has successfully tried equine cases before juries in 4 states, has spoken on Equine Law in 27 states, has drafted hundreds of equine industry contracts, and is a Fellow of the American College of Equine Attorneys.

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