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Equine liability law keeps dangerous sport in stride

A number of sports are characteristically dangerous. These particular sports include a number of inherent risks, not to mention the possibility of death.

Heli-skiing offers the risk of an avalanche which can not only kill you, but can leave you stranded in extreme conditions causing frostbite so badly limbs are lost.

The ascent from a scuba dive, if done too quickly, can cause decompression illnesses, potentially producing failure of the spinal cord, brain and lungs.

Big wave surfing can result in drowning after the current pulls you under and smashes your head against hidden rocks or your own board.

Bull riding is obviously dangerous knowing that the 1,800-pound beast can trample you and requires that your next ride be by ambulance.

For the most dedicated sportsmen, though, the risk of getting hurt is far outweighed by the sheer primal pleasure of conquering fears, overcoming adversity and experiencing the thrill of victory, however, that is measured for each individual participant.

Answering why enthusiasts voluntarily participate in arguably dangerous sports is not difficult; answering how we encourage sponsors, organizers and other professionals to provide these sports notwithstanding the potential liability exposure is much more difficult. Participation alone in a sporting event with inherent or obvious dangerous attributes may be enough to waive liability under the legal doctrine of implied assumption of risk.

Participants may also explicitly waive their right to recover under express assumption of risk doctrines through written liability releases. The legislature can further encourage inherently risky sports with statues shifting the burden from the providers onto the participants.

Equine activities, in 47 states including Illinois, are promoted by delineating responsibility of the risk onto the participant. In many of these states, including Illinois, liability releases are also explicitly enforceable to waive participant's losses arising out equine activities.

The Illinois Equine Activity Liability Act defines who and what activities the act protects and, by omissions, defines who and what are not protected, provides specifically the assumed inherent risks of engaging in equine activities and details what exceptions apply to deny otherwise applicable liability protections.

Who does the act protect?

The act protects professionals, equine activity sponsors and other defined individuals from liability in specific circumstances. For example, professionals are defined as those who, for compensation, provide riding lessons or provide horses for riding or driving activities and those who charge for renting tack and equipment for equine activities.

Sponsors are those who sponsor, organize or provide facilities for an equine activity, whether or not for a profit. Individual horse owners may also be protected if they provide horses, equipment or horse-related services, whether or not a fee is charged. If the party sued is not a professional, equine activity sponsor or another person in a covered category, they may not have the liability protections provided by the act.

Who is a participant engaged in an equine activity?

The act defines who is a "participant," who is "engaged" and what is an "equine activity." If an injured person, his/her involvement and the activity do not meet each of these definitions, no liability protection may be provided under the act.

BY YVONNE C. OCRANT

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The act requires the satisfaction of each element and thus not everyone is immune from liability. As a result, the act does not eliminate all lawsuits for horse activity related injuries.

A "participant" is generally simply defined as anyone who engages in an equine activity and "engaged" generally requires riding, training, assisting in medical treatment of, driving or being a passenger upon a horse or assisting a participant in any of these activities. Spectators, unless in an area where they are not permitted to be, are generally not considered participants under the act.

"Equine activities" include a number of listed events such as shows, fairs, competitions, performances and parades and a number of disciplines such as dressage, hunter/jumper, eventing, rodeos, trail riding, games and hunting as well as horse training, teaching, boarding, riding, evaluating for purchase, and providing farrier services. While these definitions appear quite broad enough, a detailed review of the act reveals that the liability protections do not apply to everyone and every activity involving horses.

For example, if someone is assisting loading a horse into a trailer and they are injured, can they sue for their injuries? The first question is whether that person was a participant engaged in an equine activity.

If they were not covered under the act, there are no liability protections. In this very short hypothetical, the person arguably was not riding, training, assisting in medical treatment, driving, a passenger or assisting in any of these activities. Therefore, this person was not a participant engaged in an equine activity and therefore may recover for his/her injuries.

What are the assumed inherent risks of engaging in equine activities?

The act encourages particular equine activities by imposing the assumed risk of injury on the equine activity participants. The inherent risks include the propensity of a horse to behave in way that may cause injury, harm or death, the unpredictability of a horse's reaction to sounds, movement and objects, certain hazards such as surface and subsurface conditions, collisions and the potential of a participant to act negligently and fail to control his or her horse.

However, as you can imagine, there are inherent risks that may not be included in these otherwise apparently broad definitions. For example, getting kicked by a horse reacting to a dog nipping at the horse's back legs or the sound an opening gate or the bite of a fire ant, may or may not be an inherent risk

depending on the particular equine activity engaged in at the time.

Getting trampled by a loose horse or having the saddle slipping off the horse during a trail ride may be an inherent risk depending on the experience level of the rider. Each situation is evaluated on a case-by-case basis taking into consideration the language of the act, the cause of the injury, the risks assumed by the injured person and any exceptions to the protections provided by the equine act itself.

Is the act an absolute liability protection?

The act does not, and was not intended to, completely shield everyone in any situation from liability. Even where you meet the required definition of a professional, equine activity sponsor or other person protected by the act, the person injured was a participant engaged in an equine activity.

Further, the person injured assumed the inherent risk of the equine activity that resulted in the injury, exceptions under the act itself may apply that will still subject you to liability.

For example, if you provided faulty equipment or tack that caused the injury, you may be liable. If you provided the horse ridden and it is determined that you knew the horse was not a proper match for the injured rider based on their respective skills, temperament and/or ability, you may be liable. If you knew of a dangerous condition on the property and this condition caused the injury, you may be liable.

How can clients limit liability exposure?

Sponsors, organizers, professionals and other providers of equestrian activities, and likely most other sporting activities, can minimize their risk of liability exposure by understanding the applicable law's liability protections and the exceptions.

For example, inspect tack and equipment before lending it to others. Obtain details of a participant's abilities and experience and, in equestrian sports, monitor the general nature disposition of each horse before providing it to properly assess the match.

Repair known property dangers as quickly as possible, and, in the meantime, place clearly detectible cones, posts or other warnings of their presence. Post the statutory required warning sign anywhere you provide activities in a clearly readable location. Purchase the proper type and amount of insurance for your activities.

Finally, utilize contracts for your sport-related agreements and require the signing of properly drafted liability releases by any and all participants and spectators.

Consider having all contracts and releases drafted by a knowledgeable attorney who is familiar with your particular activities and the laws of the state in which they all take place to increase the likelihood of the enforceability of these contracts and releases when you need them the most.