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EVENTINGUSA May/June 2017

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ON THE COVER
Mr. Medicott, ridden by Phillip Dutton, was the highest placed U.S. horse at the 2017 Rolex Kentucky Three-Day Event. USEA/LESLIE MINTZ PHOTO

THREE DAYS THREE WAYS ONE LAW

BY YVONNE C. OCRANT, ESQ.

*Know the
Equine Activity
Liability Law and
Minimize Your
Risk of Liability*

WARNING

UNDER THE EQUINE ACTIVITY LIABILITY ACT, EACH PARTICIPANT WHO ENGAGES IN AN EQUINE ACTIVITY EXPRESSLY ASSUMES THE RISKS OF ENGAGING IN AND LEGAL RESPONSIBILITY FOR INJURY, LOSS, OR DAMAGE TO PERSON OR PROPERTY RESULTING FROM THE RISK OF EQUINE ACTIVITIES.

Have you ever seen this sign – or one just like it – and asked, what is the Equine Activity Liability Act? Why is this sign posted? Who is protected and what activities are covered? If everyone assumes the risks, then how can people sue? Can I get sued? How can I protect myself and my business? As an equine attorney and event rider, I am personally dedicated to protecting equine activities by educating the industry on the laws affecting equine activities and providing information on how to minimize the risk of liability exposure.

Today, 46 states have some form of an Equine Activity Liability Act (Law), many of which share common terms. However, as they slightly differ in one way or another, it is important to know which state's Law applies to you and any given situation. It is recommended that you consult with a knowledgeable attorney to ensure that you take the steps necessary to preserve the liability protections available before liability exposures arise.

WHAT IS THE PURPOSE OF THE LAW?

Lawsuits are filed before you can ask what happened and who did what to whom. No one is completely

immune from liability risks, especially in the horse industry. Despite taking all feasible safety measures, there are always "built-in" dangers while working with or around horses.

The Law encourages equine activities by protecting professionals, facilities, organizers, owners and other specifically categorized individuals from liability resulting from horse-related injuries. By defining the responsibilities and assumed risks of those participating in horse related activities, the Law reduces the risks of lawsuits arising out of the hazardous and unpredictable nature of riding, showing and otherwise being around horses. However, the Law also provides exceptions to liability protections and the protections themselves do not

apply to every person, every activity involving horses and every situation causing injury or loss.

WHO DOES THE LAW PROTECT?

The Law protects professionals, equine activity sponsors and other defined individuals from liability in specific circumstances. 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 other person categorized, they may not have the liability protections provided by the Law.

WHO IS A PARTICIPANT ENGAGED IN AN EQUINE ACTIVITY?

The Law 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, the injured person may be able to be compensated for his/her damages and thus not everyone is immune from liability. As a result, the Law does not eliminate all lawsuits for horse activity related injuries.

While a “participant” is simply defined as anyone who engages in an equine activity, “engaged” generally requires riding, training, assisting in medical treatment of, driving, being a passenger upon an equine or assisting a participant in any of these activities. Spectators, unless in an area where they are not permitted to be, are usually not considered participants under the Law. “Equine activities” include a number of listed events such as shows, fairs, competitions, performances, 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 Law reveals that the liability protections do not apply to everyone and every activity involving horses.

For example, you are loading a horse into your trailer and you ask someone to assist and the horse kicks that person, can they sue you for their injuries? The first question is whether that person was a participant engaged in an equine activity. If they were not under the applicable equine Law, you do not have the liability protections



under the Law. It would be possible to argue the person was not riding, training, assisting in medical treatment, driving, a passenger or assisting you in any of these activities. Therefore, this person was not a participant engaged in an equine activity and therefore may seek damages for his/her injuries. There may be available defenses depending on specific additional facts. The facts of each situation, and the applicable Law, will dictate the likelihood of success in the event of a claim.

WHAT ARE THE ASSUMED INHERENT RISKS OF ENGAGING IN EQUINE ACTIVITIES?

For particular equine activities, the law imposes 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 their horse. However, there are inherent risks that may not be included in these otherwise broad definitions. For example, if a pole is placed close to a mounting block and a horse, while the rider is mounting, backs up and trips

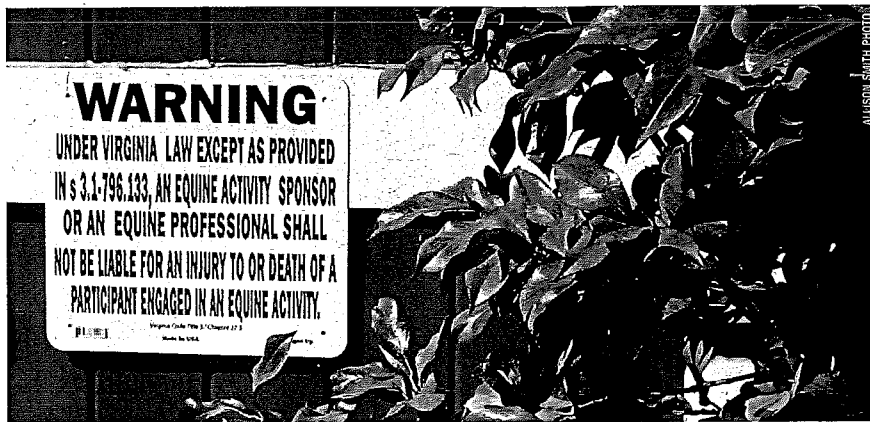
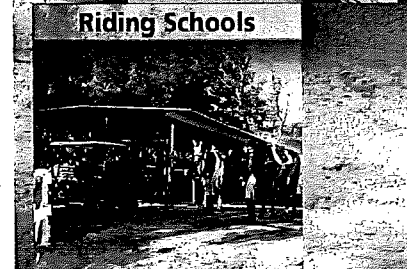
over the pole, causing the rider to fall suffer injuries, was that an inherent risk that the rider assumed? Arguably, yes if the rider saw the pole and knew the horse could possibly back up over it. If this was a beginner rider and she did not know the horse would back up when mounting, possibly no. Each situation is evaluated on a case-by-case basis taking into the language of the applicable Law, the cause of the injury, the risks assumed by the injured person, and any exceptions to the protections provided by the equine Law itself.

IS THE LAW AN ABSOLUTE LIABILITY PROTECTION?

As detailed above, the Law does not, and was not intended to, completely shield everyone in any situation from liability. Even where you meet the required definitions, exceptions under the Law 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 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. ➔



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WHY ARE THE WARNING SIGNS POSTED?

Despite their obvious decorative appeal, the black and white warning signs posted at your barn and other horse facilities actually serve a purpose. The Law requires that every equine professional post and maintain signs that contain the specific language in the warning notice, hopefully, in a clearly visible location. Many of the equine Law statutes require this warning sign language to also be clearly printed in any written contracts for renting horses and equipment, providing boarding and training services, and basically any other equine related services, as well as in any liability releases. Some even specifically state that failing to post the sign and/or include the warning language will completely remove the liability protections otherwise provided by the Law.

HOW CAN I LIMIT MY LIABILITY?

Limit liability for horse-related injuries by knowing your risks of liability exposure and taking the available means to minimize that risk. Inspect your tack and equipment before lending it to others. Obtain details of a rider's abilities and experience and monitor the general nature and disposition of each horse before providing the horse 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 equine Law required warning sign in a clearly readable location anywhere you provide equine activities. Purchase the proper type and amount of insurance for your equine activities. Finally, utilize contracts for your equine related agreements and require the signing of properly drafted liability releases by any and all participants and spectators. Consider having your contracts and releases drafted by a knowledgeable attorney who is familiar with your horse-related 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. Contracts, releases and insurance will be explained in greater detail in my next *Eventing USA* articles.

Limiting your liability in the horse industry requires understanding the laws and how they apply to you and your horse related activities, using common sense, putting safety first, seeking professional legal advice before the problems arise or shortly thereafter, and always remembering to have fun in the process. 3,2,1... have a great ride!

This article is intended for informational and educational purposes only. It is provided with the understanding that the author is not rendering legal advice. If you have questions regarding this subject matter, please contact the author, a licensed attorney practicing equine law, at yocrant@hinshawlaw.com.