Who's At Fault?

As this expert points out, there is no such thing as "zero liability."

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"I need no insurance, my state just passed an equine liability law."

"If I just post 'the law' on my stable's wall, I'll be protected from everything."

"Nobody can sue us anymore now that our state has a 'zero liability law.'"

People across the country have made these statements. Every one of them is false.

As of April 1, 2006, 46 states across the country—all but California, Maryland, Nevada, and New York—have passed some form of an equine activity liability law. Though these laws share common characteristics, all of them differ. Contrary to popular belief within the industry, none of the existing Equine Activity Liability Acts (sometimes referred to as EALAs) was designed to permanently eliminate all liability. To the contrary, these laws usually include a list of exceptions which, by their terms, allow injured persons or others on their behalf to sue under certain circumstances.

No stable manager should be without a good, basic understanding of the equine liability laws within their own states and the states in which they do business.

How the Laws Work

Most of the laws state that if an equine activity "participant" is injured while he or she is "engaging in an equine activity," that participant cannot bring a claim against an "equine activity sponsor," "equine professional," and "another person" if the injury is the direct result of an "inherent risk of equine activity."

Generally, the EALAs are designed to serve a variety of purposes, including:

- Encouraging the continued existence of equine-related activities, facilities, and programs;
- Granting people and businesses within the equine industry important defenses in litigation;
- Creating some sense of predictability for the equine industry, such that persons and entities can better foresee, and when possible prevent, the circumstances that give rise to liability and litigation;
- Providing grounds for defense motions for summary judgment, as opposed to grounds for comparative negligence or contributory negligence defenses, which sometimes can only be asserted during expensive trial proceedings;
- Encouraging the use of release of liability agreements; and
- Educating the public prior to participation in horse-related activities about inherent risks and immunities that may bar litigation if injury results.

Testing the Laws

To help understand how the equine liability laws would likely apply, let's examine two scenarios.

1) Before assigning Jennifer a mount to ride, Will the Dude Ranch Wrangler asks: "How often have you ridden before?" Jennifer replies: "I've ridden for 10 years" (without mentioning that she really has ridden only once in each of those 10 years and at a speed no faster than a walk). The wrangler assigns Nancy to ride a spirited horse typically matched with highly experienced riders at the dude ranch. Nancy falls off and sues the ranch.

Under many of the existing equine liability laws, Jennifer has grounds to sue. The equine liability law in Florida, for example, provides that an "equine activity sponsor," "equine professional," or any other person could face liability if they:

"provided 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."

Jennifer, relying on this language, may argue that Will did not sufficiently or reasonably assess her riding skills before assigning the horse. Had Will asked only one or two more questions, he could have learned that the horse was not suitable for Jennifer.

2) Sam owns and operates a horse boarding stable. One day, Jay, a boarder, brings his girlfriend there to ride his horse, but Jay's horse throws his girlfriend. She now sues Sam, claiming that he should be responsible.

Sam would likely win. Sam did not provide the horse, Jay did. Just because Jay happens to stable his horse on Sam's property is not enough to make Sam legally responsible when Jay's horse acts up while under Jay's control. Certainly, a different set of facts could find Sam in a much weaker legal position if Jay's girlfriend claimed that an unsafe condition at Sam's property was the real cause of the problem. —*JF*

Who Benefits?

The laws are designed to protect certain people from liability in the event that someone is injured while taking part in an equine-related activity. Nationwide, the laws differ on who can benefit from the limited liability. For example:

• Adults Only. Pennsylvania's law, which took effect this year, states that "liability for negligence shall only be barred [eliminated] . . . for adult participants" and appears to offer no protection if the injured participant was a minor. Even for those who might benefit from the immunities, the law also states that the benefits only come to those who post in two or more locations a sign that is at least three feet by two feet.

• Non-profits Only. Minnesota's EALA grants immunities from liability only to "a nonprofit corporation, association, or organization, or a person or other entity donating services, livestock, facilities, or equipment for the use of a nonprofit corporation, association, or organization."

• Carriage Activity. Where the participant was injured while a passenger in a horse-drawn carriage ride, courts nationwide cannot agree on whether the EALA should apply at all. Courts in Wisconsin have found that those laws were meant to apply to passengers, as passengers accept "inherent risks." However, Courts in Tennessee and Illinois have ruled that a carriage passenger is not a "participant" and the EALAs do not apply to them.

Exceptions That Might Allow Liability

Despite the immunities and protections these laws promise, most, but not all, of them allow an "equine activity sponsor," "equine professional," or possibly others referenced in the laws, to be sued if they do any of the following:

• Provide tack or equipment that they knew or should have known was faulty, and the fault causes harm to the one partaking in an 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; or

• 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.

EALAs in a small number of states appear to allow lawsuits 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."

Sign Posting and Contract Language

Most EALAs require certain persons or entities, typically equine professionals and equine activity sponsors, to post certain warning signs using language provided in the statute. Kentucky's EALA signage, for example, states:

"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."

Depending on the way the particular state's EALA is worded, a typical horse farm might not be obligated to post a warning sign. The Massachusetts EALA, for example, currently obligates only "equine professionals" to post warning signs. That statute defines an "equine professional" as "a person engaged for compensation: (1) in instructing a participant or renting to a participant an equine for the purpose of riding, driving or being a passenger upon the equine; (2) in renting equipment or tack to a participant; (3) to provide daily care of horses boarded at an equine facility; or (4) to train an equine." Nevertheless, even if you do not qualify as an "equine professional," and even if your state does not target you for the sign-posting requirement, there is certainly no harm in posting the state-specific "warning" sign, anyway.

In addition, many of the laws obligate the persons or entities who post signs to include certain language within their contracts and releases. The required language is usually a repetition of the warning language on the sign. A small number of states, however, require a disclosure of certain risks of equine activities, with the laws providing the list of risks. Compliance with these requirements can be important, especially in some states where the laws specify that those who fail to comply will lose any immunities that the laws would provide.

Wrapping Up

Even with the passage of Equine Activity Liability Laws, the potential for liability is still present. With the state by state variations, it is more important than ever to carefully read the laws that apply to you and to make every effort to comply with their sign posting and contract language requirements.

To receive a copy of your law, contact your state legislator, state horse council, cooperative extension service, or lawyer. [sm]

This article is not intended to constitute legal advice. When matters arise based on specific situations, direct your questions to a knowledgeable attorney.

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Differing Interpretations

As courts nationwide begin to deal with the Equine Activity Liability Laws and try to establish their intent, they cannot always agree. Take carriage cases, for instance. In the setting of an injured passenger on a horse-drawn carriage, sleigh, or wagon ride, courts have differed on whether the passenger qualifies as a "participant" to trigger the EALA's protections. Of the five judges that have considered the issue, three have ruled the passenger is a participant and two courts have gone the other way. —*JF*